

Poverty and Criminal Responsibility

Victor Tadros

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Let us suppose that the following two things are true of a particular society, as they probably are of many societies. One is that poor people in the society are poor as a consequence of distributive injustice. Were we to distribute wealth adequately, they would be better off than they are. The other is that the fact that they are poorer than they ought to be makes them more likely to commit criminal offences. Poverty is what we might call criminogenic: it tends to increase the crime rate. This might be true of poverty in itself, or it might only be true of poverty in circumstances of inequality, or unjust inequality. For our purposes, it does not matter very much what makes it unjust that the poor are as poor as they are. It only matters, whatever the right view about justice and wealth, that they are worse off than they ought to be, and that this is criminogenic. It also does not matter much why poverty is criminogenic. We need only assume that the state has responsibility for reducing criminogenic social conditions and that, by perpetuating economic injustice, it has failed adequately to achieve this.

To what extent can these two things undermine the entitlement of the society to hold poor individuals criminally responsible for what they do? One possibility is that some poor people in such conditions might not be responsible agents at all. We might not be able to hold them responsible for what they do because they lack the basic cognitive, moral and volitional capacities that are required to be regarded as responsible people in general. That might be because they lack education or other important opportunities for socialization. If that is true they lack what may be called “status responsibility.”¹ Their lack of status responsibility entitles them to an exemption from criminal responsibility.

¹ Victor Tadros, *Criminal Responsibility* (Oxford: Oxford University Press, 2005) ch. 5.

V. Tadros (✉)

School of Law, University of Warwick, Coventry CV4 7AL, UK
e-mail: V.Tadros@warwick.ac.uk

Where should we draw the line between people who are status responsible and people who are not? In deciding that persons lack status responsibility, we decide that they lack the capacities that are required for full moral interpersonal relations. The interpersonal relationships are grounded in our capacities to address each other in terms of moral and political norms that all can be expected to endorse and respect. They ground not only our social interactions with each other, but also our political relationships. To decide that a person lacks status responsibility is to decide that he is to be excluded from the normal set of social and political relations that we have with each other.

There are some people for whom such a decision is the right one. There are people who we cannot address in terms of our moral and political norms in the normal way because we cannot expect them to understand and act on the norms. But we should be wary of deciding that this is the case. Insofar as possible, we should seek to include others in our ordinary social and political relationships. We should err on the side of treating others as status responsible because in failing to do so we deny them something that is of very basic value to human beings: the full range of rights and obligations that go with reciprocal moral and political relations. For this reason, we should treat inadequate provision of education and opportunities for socialization as undermining status responsibility only in the most extreme cases.

Another possibility is that some poor people are justified in committing some of the crimes that they commit. In extremis, poor people may be justified in taking food from others in order to prevent themselves from starving. They may well be justified in doing more than that. They may be entitled to take goods from other people who have more than their fair share of wealth. By doing so, they may move the distribution of wealth in the direction of justice, and they may be at least entitled to do that. If that is true, while they are responsible for stealing, they are entitled to a justification defense, and hence they are not criminally responsible for what they have done.

Some people might doubt that a general strategy of permitting poor people to take goods from the rich will move the distribution of wealth in the direction of justice. That might or might not be good enough reason to restrict the provision of a justification defense to the poor for theft from the rich. At any rate, the impact on criminal responsibility of this kind of justification is still limited. It only applies to people who have less than their fair share of wealth who take goods from people who have more than their fair share of wealth. It does nothing to address the question of whether we can hold poor people responsible for their crimes in general where the state, in our name, has treated them unjustly in economic terms.

Here is another alternative. We might distinguish between our right to blame people for what they do and the extent to which they must shoulder the burdens for what they do. It might be argued that we are entitled to blame the poor for what they do. It is sufficient for that purpose that what they do reflects their judgments. But even if that is so, there might be reasons why we should be cautious about imposing burdens on them as a consequence of those judgments, since they have had a less valuable range of choices available to them. We have good reason to prefer that the burdens that we suffer are sensitive to the choices that we are provided with.

They have reason to prefer having had a better range of choices, and the burdens that people suffer should be sensitive to that range of choices.²

On this approach, the fact that we are responsible for restricting the choices of the poor might make a difference to the distribution of burdens. We cannot reject a principle requiring us to shoulder an increased proportion of those burdens, it might be argued, because they come about as a result of our decisions to restrict the opportunities available to the poor. However, this account does nothing to erode our right to blame the poor for the crimes they commit, only to restrict the extent to which they can be punished for committing the crimes.

Our question is whether we ought to withhold blame from victims of injustice for the crimes they commit. Our right to blame them, it might be argued, is eroded by the fact that we perpetrated the injustice. By perpetrating distributive injustice against the poor, we might lose standing to hold them responsible for what they have done. That may be true even if they are responsible for what they have done. There are different explanations of how our standing to hold others responsible may be eroded, but two are most important. One is grounded in hypocrisy: the fact that one person commits the same kinds of wrong as someone else deprives the one of standing to hold the other person responsible for his wrongs. The other explanation is complicity: the fact that one person participates in the wrong of someone else deprives the one of standing to hold the other person responsible for the wrong. A person cannot act as judge when he ought to be a co-defendant. The argument from complicity is more powerful than the argument from hypocrisy.

Where the two features of a society described above obtain, we should regard the state as complicit in the crimes of the poor. From this we can derive a moral claim that poor people have for the state to refrain from holding them responsible for their crimes, even if they are in fact responsible for them.³ In recognizing this, we do not undermine our recognition that they are status responsible. Nor do we not regard their actions as either justified or excused. There may be someone who can hold them responsible for what they have done. But the person who can do this is not the author of the circumstances that make their wrongdoing more likely to occur. In holding them criminally responsible, we perpetrate a kind of injustice against them.

Failing to hold the poor responsible for the crimes that they commit may, however, constitute another kind of injustice. For one thing, we might fail to provide an adequate public response to a wrong that has been done to the victim, and the victim might have a special kind of interest in there being such a public response. Furthermore, failing to hold poor criminals responsible for their crimes might further erode the security of the poor. The poor, by being victims of distributive injustice, are already worse off than they ought to be in security terms. One reason for this is that wealth provides us with opportunities to make ourselves more secure.

² See Thomas Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1998) ch. 6, esp. pp. 290–294.

³ See R. A. Duff, “Principle and Contradiction in the Criminal Law: Motives and Criminal Liability,” in *Philosophy and the Criminal Law: Principle and Critique* (Cambridge, England: Cambridge University Press, 1998), and Duff “‘I Might Be Guilty, But You Can’t Try Me’: Estoppel and Other Bars to Trial,” 1 *Ohio State Journal of Criminal Law* (2003); see also G. A. Cohen, “Casting the First Stone: Who Can, and Who Can’t, Condemn the Terrorists?,” 81 *Royal Institute of Philosophy Supplements* (2006).

Therefore, in failing to hold the poor responsible for their crimes, we might compound the injustice done to the poor.

Ultimately, then, under persistent conditions of economic injustice, economic injustice is, in one way or another, compounded by criminal injustice. Either there is the injustice of holding the poor responsible for their crimes where our justification for doing so is eroded by our complicity in their crimes. Alternatively, there is the injustice of failing to hold them responsible for their crimes. This involves the injustice of failing to provide the victims of crime with adequate public recognition that a wrong has been done to them and the injustice of compounding the already unjust insecurity of the poor.

1 Eroding the Entitlement to Hold Others Responsible

The account we will consider rests on a distinction between the conditions which make a person responsible for something and the justifications for holding the person responsible for the thing at issue. It is one thing to say about a person that she is responsible for the action that she performs. It is another thing to say that we are entitled to hold her responsible for her actions. To be justified in holding people responsible for their actions it must be true that they are responsible for their actions, but that is not sufficient.

One reason why it may not be sufficient has to do with what we might call standing. A person may be responsible for some action which we lack standing to hold her responsible for performing. We can often usefully ask whether one person is responsible to another person for performing a particular action. In asking that, we ask whether the other person has standing to hold the one responsible for performing the action. Let us consider, for example, some foolish action that a person performs in the course of his employment which harms his employer's reputation. His employer has standing to hold him responsible for that action. But if another employer, or another private citizen, attempts to hold him responsible for that action, he is entitled to say that it is none of his business.⁴ That is not to say that other people cannot treat him as responsible. Other employers might refuse to hire him on this basis. In saying that they may not hold him responsible, we indicate that they are not entitled to engage him in practices of responsibility.

In this case, we can say that it is only a person's employer that has standing to hold him responsible for his failures as an employee, because he is responsible to his employer for his conduct as an employee. This kind of claim is not relevant here though. The state in principle has standing to hold its citizens and visitors responsible for the crimes they commit. We might even argue that it has standing of a special kind. Here is a plausible explanation why.⁵ What distinguishes a crime

⁴ Cf. R. A. Duff, *Answering for Crime* (Oxford: Hart, 2007), pp. 23–30; see also Tadros, op. cit., ch. 1.

⁵ See S. E. Marshall and R. A. Duff, "Criminalization and Sharing Wrongs," 11 *Canadian Journal of Law and Jurisprudence* (1998); see also R. A. Duff, *Punishment, Communication and Community* (Oxford: Oxford University Press, 2001); R. A. Duff, L. Farmer, S. E. Marshall and V. Tadros, *The Trial on Trial Case 3: Towards a Normative Theory of the Criminal Trial* (Oxford: Hart, 2007); and R. A. Duff, *Answering for Crime*.

from a private wrong is that a crime is the kind of wrong which citizens must answer to other citizens for committing, and they must answer not only *qua* private individual but *qua* citizen. If that is true, we can conceive of crimes as wrongs that violate the conditions of citizenship. In violating the conditions of citizenship the offender properly attracts public condemnation. The criminal trial provides a forum within which people who commit crimes can be held responsible by the public, as represented by the state.

It must be noted that we are concerned with crimes in the normative sense rather than the descriptive sense. There are many things that are crimes on the statute books which do not fulfill this normative conception of a crime. The normative idea of a crime, it is suggested, is that crimes are wrongs which the state has standing to hold citizens responsible for committing. This provides the outline of an argument against criminalizing some wrongs. If we suppose that adultery is at least sometimes wrong, why should the state not criminalize it? A skeleton of an answer is that adultery is not the sort of thing that the state ought to hold citizens responsible for. Adultery may be wrong, but it is not a public wrong. It is not the kind of wrong that citizens are entitled to hold each other responsible for *qua* citizens.

We require flesh to put on these bones. We must consider what kinds of wrong violate conditions of citizenship, and hence a political theory with citizenship at its core sits in the background of the normative theory of crime. Without making any further progress on that, we can already see that the state in principle has standing to call individuals to account for their criminal actions. That fact is what distinguishes crimes from other kinds of wrong. If the state in principle lacks standing to hold citizens responsible for a particular kind of conduct, the conduct should not be a crime at all.

We may assume, then, that we are concerned with genuine crimes that are committed by the poor, wrongs that the state in principle has standing to hold others responsible for committing as citizens. Here we are interested in a different aspect of standing. If we suppose that one person in principle has standing to hold another person responsible for performing some action, why might he not be entitled to do so in this particular case? We might distinguish between relational and non-relational reasons why not. Non-relational reasons have to do with things that are specific either to of the persons which provide reasons against the first holding the second responsible in this case. Relational reasons have to do with special features about the relationship between the two persons either in general, or with respect to the act in particular. While the first person might in principle be entitled to hold the second responsible for his action, it might be that the relationship between them is defective either in general or with respect to the action in particular.

There are various non-relational reasons that might have significance for the question of standing. For example, there may be reasons of mercy. Given other things that a person has suffered it may be wrong for us to hold him responsible for a wrong that he has done us, given that we know that this will make him suffer further pain. Alternatively, it may be that we are incapable of participating adequately in a practice of responsibility. Even though someone was a responsible agent at the time that she wronged another person, she might now be incapable of understanding the norms that applied to her then.

Neither of these explanations has much importance in this context. More important is a concern with hypocrisy. The idea here is that one person ought not to criticize another person for a particular action if the first regularly flouts the standards that he would hold the other person to himself, or at least he ought not to do so if he is unrepentant. Hypocrisy can sometimes rest on a person's propensity to commit wrongs of a similar or greater magnitude of seriousness. Rapists and murderers ought not to hold thieves responsible for stealing. It is especially problematic when an accuser has a tendency to commit wrongs of the same kind. Thieves have a special reason not to hold other thieves responsible for stealing, a reason that is stronger than that which applies to reckless drivers, even if reckless driving and theft are wrongs of a similar magnitude.

The moral significance of hypocrisy has to do with the way in which hypocrites imply that they are exempt from the moral standards that they apply to the people they accuse. There are two potential faults here that have a common root. One concerns the original standards of conduct; the other the standards of accountability. Let us suppose that Melanie has performed a wrong which another person regularly perpetrates. In criticizing the actions of the other person in these circumstances, Melanie may imply that the reasons against the action apply to him but not to her. However, it may be that not all claims of hypocrisy are like this. Perhaps the hypocrite is simply being irrational or walling herself off from making obvious inferences from her judgments because it is uncomfortable to do this.⁶ A similar concern to the one expressed above applies in that case. The hypocrite implies that the accused person is obliged submit to critical scrutiny of his conduct while denying that she has a similar obligation in morally similar circumstances. Whether it is the original obligation not to perform the wrongful action, or the new obligation to submit herself to critical scrutiny in a relationship of responsibility, in being hypocritical, Melanie implies that different moral standards apply to her than she regards as applying to the accused person.

These things are faults because the very idea of a reason for action is neutral between agents. In recognizing that there is a reason not to perform some act, we must accept that the reason moves rational agents who set ends for themselves. Thus each person must accept that in principle that reason applies to others as well, insofar as they are rational agents. The converse is also true. In claiming that we have a reason not to do something, others must accept that rational agents must treat that as a reason not to do the thing at issue. If we are each to see ourselves as rational agents who are subject to reasons, we must also see that the very same reason applies to us. Reasons for action, by their nature, create a basic symmetry between agents. In seeing us as being required to act for a reason, others must see themselves as moved by the same reason, and through that they recognize a basic symmetry between themselves and others: we can all be held to account in the court of reason.

When a person criticizes another person for some action that the critic himself performs, he implies that he and the person he criticizes stand differently in the

⁶ See Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, Mass.: Harvard University Press, 1990), pp. 25–26.

court of reason, either with respect to the action or with respect to the obligation to submit to being held to account for it. Hence, it is wrong for him to criticize the other person because it is wrong to imply that he is not subject to the same reasons as the other person and that for some special reason he is excluded from being held responsible for the action where the other person is. The hypocrite denies that he and others whom he criticizes have the same status as moral agents who are subject to the reason, and he ought not to deny that.

There are circumstances in which there really is a reason for one person to refrain from an action where the reason does not apply to others. For example, it may be wrong for others to discipline a particular child but not wrong for the child's parent to do so. There is no problem of hypocrisy in the parent criticizing another person for disciplining his child, even if he commonly does the same thing. In this case, there is something special about the parent with respect to the court of reasons that does not apply to others. This is shown by the fact that the parent recognizes that at a more general level there is parity with respect to the reasons that apply to everyone. Just as it is wrong for other people to discipline his children, so it is wrong for him to discipline theirs.

Relational reasons for someone not to hold another person responsible for the wrong that he has done are grounded in particular defects that his relationship with the person might have either in general or with respect to the particular action. Let us suppose, for example, that Melanie has done a more serious wrong to Neil in the past than the one that she is accusing him of. In that case she might be accused of hypocrisy. She is accusing him of wrongdoing when she is a wrongdoer herself. The non-relational reasons for her not to hold him responsible for what he has done apply in this case as well.

But the charge is more powerful than that. We start from a position where we have an obligation to others to enter into reciprocal relationships of responsibility with them, at least with respect to some kinds of wrong. Normally, we are entitled to hold each other responsible for some of the wrongs that we commit, simply as human beings. However, when one person commits a wrong against another, he gives her a reason not to engage in those ordinary relationships of responsibility. When he wrongs her, she is entitled to distance herself from him, and hence to deny the obligation to enter into future relationships of responsibility with him. She can accept that she has done wrong to him, and that victims of wrongs are normally entitled to hold wrongdoers responsible for wrongs of this kind. But she denies that he can hold her responsible for the wrong, on the grounds that this entitlement is conditional. It is eroded by the wrong that he has previously done to her.

The reason why this might be so is that practices of responsibility ought to be conducted by showing adequate concern for each other as human beings. When a person holds another person responsible for a wrong that she has committed, she is entitled to expect that he has proper concern for her as a human being, that in holding her responsible he will not treat her unjustly by punishing her disproportionately, or by denying her an adequate opportunity to provide an explanation of why she did what she did. Insofar as she has been treated unjustly by him, since she has no reason to expect that this will be the case, she has a right to distance herself from him.

In this explanation, the reason to deny that one person is entitled to hold another responsible for the wrong that she has committed does not pick out the wrong that she has performed in particular. It is grounded in the erosion of the relationship between herself and the other person in general. The poor might be entitled to claim something like this. As victims of injustice, since they have been treated wrongly, they are entitled to distance themselves from relations of responsibility with the state.

But their claim is still stronger than this. It is grounded in the responsibility of the state for the performance of this criminal action in particular. If one person bears moral responsibility for another person's performance of this particular action, the first has a further reason not to hold the other person responsible for it. This kind of relationship is the relationship of complicity. The following is an account of the moral idea of complicity rather than complicity in the law, though it will draw on some examples that have legal significance.

In cases of complicity there is a principal, who performs a wrongful action, and a complicit agent, who has a relationship of one kind or another with the action by the principal. There are different ways in which a person might become complicit and different degrees of fault for complicity. Complicity has what lawyers call *actus reus* and *mens rea* dimensions. Each dimension can affect the seriousness of a person's complicity overall. The seriousness of complicity is sensitive to the degree of involvement and to the mental state of the wrongdoer.

One very serious way of being complicit in a wrong is to orchestrate it. Smith hires a hit-man to shoot Jones. In that case, the hit-man plays a role in Smith's plan to have Jones shot. Less serious are cases where a person participates in someone else's plan to commit a wrong. For example Smith might encourage Jones to perform the wrong without orchestrating it, or he might provide him with advice about how to commit the wrong. Smith might provide Jones with material assistance to do the wrong, for example if Smith provides the hit-man with the gun to shoot Jones. Assistance might be less direct than that though, as where Smith provides the hit-man with the means to get away from the scene of the crime, or with a place to hide Jones's body. Finally, Smith might contribute to the conditions which make wrongdoing of this kind more likely, where he does not participate in a plan to do wrong at all. Smith publishes a directory of hit-men which assists gangland bosses in finding the hit-man of their choice. The gangland boss finds the hit-man through the directory. Smith has a kind of complicity in his shooting his victim.

Agents who are complicit in the wrongful acts of others might have different degrees of fault for the wrongful assistance they provide. We will focus on complicit agents who provide assistance to the principal agent. Let us suppose that Smith provides a hit-man with a gun to shoot Jones. He might do so intending that he will use it to shoot Jones, or he might do so knowing but not intending that he will shoot Jones. He might give him the gun taking a risk that he will shoot Jones, or thinking that he will use it on a firing range, but where he ought to know that he will shoot Jones. Finally, Smith might give him the gun, complying with the relevant just laws and where he has no reason to believe that he will use it for anything but innocent purposes. We might say about these cases, a little crudely, that Smith is

respectively intentionally complicit, knowingly complicit, recklessly complicit, negligently complicit and innocently complicit.⁷

We might deny that innocent complicity should be called a kind of complicity at all. Complicity, it might be argued, should require some degree of fault. But there is something to be said for the idea of innocent complicity. Let us suppose that Smith runs a gun shop. Jones comes in to buy a gun. Smith abides by his moral and legal obligations in selling Jones the gun. Jones then uses it to shoot someone. Smith nevertheless bears a kind of strict responsibility for the shooting. Had he known, he thinks to himself, he ought not to have done that.⁸ Even if Smith can appropriately consider himself as justified in selling Jones the gun, he nevertheless ought to regret having done so; not to regret having made the decision under the epistemic conditions he was in, but to regret that he acted in a way that was wrong, even though he was not in an epistemic position to know that it was wrong.⁹

Let us consider a person's entitlement to hold the wrongdoer responsible for what he has done in cases of complicity. One thing to note here is that the complicit person's entitlement is affected only if she is in some way at fault for the occurrence of the wrongful conduct. It is not sufficient that she is innocently complicit. If a person innocently sells a principal a gun and he shoots someone, he cannot deny, on the grounds that she provided him with the gun, that she is entitled to hold him responsible for the shooting. Complicity must be wrongful in some way for it to erode the grounds of her entitlement to hold him responsible for what he has done. That does not matter too much in this context, though, as it is common knowledge that the poverty created by injustice is criminogenic. Even if it is not common knowledge, our political representatives ought to know that. Furthermore, this is one of the reasons against perpetrating distributive injustice.

The greater the fault of the complicit agent, the greater the extent to which his entitlement is eroded. Let us suppose that Smith provides the hit-man with the gun, intending that he shoot Jones with it. Smith cannot then hold him responsible for shooting Jones with it. "I did just what you intended me to do with it," he might respond. However, if Smith is merely negligent this kind of claim is much weaker. Let us suppose that Smith negligently sells the hit-man the gun, and finding out that he has shot Jones with it, Smith attempts to hold the hit-man responsible for it. "You should have thought about what I was going to do with it when you sold me the gun," he replies. But that does not provide very strong grounds for the hit-man to claim that Smith is not entitled to hold him responsible for his conduct. The weaker the person's fault, the less responsibility he bears for the principal's conduct. The less responsibility he bears for the principal's conduct, the greater his entitlement to hold the principal responsible for what he has done.

Cases of complicity are distinct from cases of hypocrisy in the following sense. In cases of hypocrisy, one person's entitlement to hold another responsible for his wrongdoing is eroded because the one person must regard himself subject to the

⁷ See Tadros, *op. cit.*, ch. 9.

⁸ See *ibid.*, ch. 10; see also Thomson *op. cit.*, pp. 172–173.

⁹ See Victor Tadros, "The Scope and the Grounds of Responsibility," *New Criminal Law Review* (2008); see also Thomson *op. cit.*, pp. 172–173.

same reasons for action as the other. In cases of complicity, it is eroded because a person must regard himself as responsible, to some degree or other, for the other person's wrongful action. The paradox in hypocritical accusation is that the criticizing agent claims that the other person ought to have been moved by a reason while implying that the he need not be moved by that reason, despite the lack of a morally significant difference between them. The paradox in accusations for things that a person is complicit in is that the complicit person claims to be entitled to hold the principal responsible for something that he is responsible for. The complicit person claims to sit as a judge in the case, to use a legal metaphor, where he should be regarded as co-defendant.

2 The Value of Practices of Responsibility

We have so far suggested two ways in which one person might lose standing to hold another responsible for what he does. We have also suggested, without arguing for it, that cases of complicity are more powerful than cases of hypocrisy. Having responsibility for the action under consideration creates a stronger reason to refrain from holding another person responsible for what he did than the fact that we would be hypocritical in doing so. This is at least intuitively plausible. But it might be wondered whether there is any good foundation for these intuitions. There are two objections to consider, and the response to the second is tied to the response to the first. The first objection is very general. It has to do with the extent to which the position being advocated here advocates that wrongdoers compound their wrongdoing with further wrongs. The second is more specific. It calls into question why standing should be more powerfully eroded in cases of complicity compared with cases of hypocrisy.

Here is the first objection.¹⁰ Let us suppose, as is plausible, that it is valuable for people to be held responsible for the wrongs they perpetrate. Were it not for a person's own prior wrongdoing, there would be good reason for him to hold others responsible for the wrong that they have perpetrated; something which is true of the state with respect to criminal wrongdoing. However, as he has committed a prior wrong, either by performing a similar kind of wrong himself or by being complicit in the other person's wrong, he regards himself as lacking standing and hence refrains from holding the other person responsible for what he has done. But here the wrongdoer seems simply to compound his earlier wrongdoing by refraining from doing a valuable thing in holding the other person responsible. How could that be so?

Up to this point, we have treated hypocrisy and complicity as providing a bar on holding others responsible. But this is not entirely right. Given that both people have done wrong, what each ideally ought to do is both to hold the other person responsible for what he has done and at the same time to hold himself responsible for his own wrongdoing. He ought to enter into relations of responsibility with the other wrongdoer but at the same time to treat himself as an object of self-criticism.

¹⁰ Thanks are due to Andrew Williams on this matter.

The wrong is in entering into a practice of responsibility with the other person while at the same time blocking the attribution of responsibility to himself.

Let us suppose that is what the wrongdoer does. He holds the other person responsible for what he has done without allowing himself to be subject to appropriate criticism either for wrongdoing of that kind or for his complicity in the wrong. He has behaved in a non-ideal way. He has fulfilled one of his obligations: his obligation to hold the other responsible for what he has done. But, the objector suggests, this is still closer to the ideal than failing to hold the other person responsible for what he has done at all. In failing to hold the other person responsible at all, he has both perpetrated a wrong and failed to hold the other person responsible for what he has done. How can it possibly be preferable to compound his earlier wrong by failing in yet a further way to behave in the morally ideal manner? Yet that is what arguments about standing seem to require.

The first thing to do is to explore further the important point that standing can be repaired by entering into a practice of responsibility where we subject ourselves to criticism at the same time as subjecting others to it. Let us suppose that Sally is complicit in Ted's wrong and she later comes to recognize that she and Ted are both responsible for the wrong. She therefore holds herself responsible for her role. In subjecting herself to criticism, she helps to foster the expectation that she will now take wrongdoing seriously. If that is right, Ted can also hold both himself and Sally responsible for his wrongdoing, subjecting himself and Sally to criticism for what they both have done. In fact, not only can she do so, she plausibly has a duty to do so. Complicit wrongdoers ought to hold both themselves and the principal wrongdoer responsible for what they have done. In entering into such a practice Sally does not imply that the reasons that Ted ought to have complied with do not apply to her. She makes it explicit that she is subject to the same court of reasons as Ted. This is akin to a group form of self-criticism. In this case, the relationship of responsibility is properly reciprocal. In holding Ted responsible for what he has done, Sally accepts the demand that she ought to be held responsible for what she has done.

This relational aspect is central to the value of practices of responsibility. The value of practices of responsibility is that they help us to repair our relationships where, through our wrongdoing, we have violated the moral principles that ought to govern the relationships. This is so because the moral principles that govern our relationships with each other arise from the fact of our mutual moral status as normatively governed agents. In violating the principles, we also implicitly fail to treat the person we wrong as a moral agent of equal and great moral concern. Practices of responsibility are to be entered into in order to communicate to wrongdoers the moral principles that they ought to be governed by, and through that to ensure that they come to fully recognize the moral status of their fellow human beings and to ensure that their actions are guided appropriately. Only then can we live together with the expectation that our future relations will be governed by principles of mutual respect.

From this, we can see the injustice involved in defective practices of responsibility, for example in practices involving hypocrisy or complicity. The value of practices of responsibility is to repair our relationships by helping to ensure that we fully recognize our equal and great moral significance as normatively governed agents.

But if the accuser is being hypocritical or is complicit in the wrongdoing, he fails to recognize that he has equal moral status to the accused, such that they are both to be governed by the set of moral principles that are derived from our status. Let us suppose that Sally accuses Ted of wrongdoing that she is complicit in performing, but at the same time denies her involvement. She attempts to foster in Ted his obligation to abide by a moral principle, to be grounded in his recognition that we, as human beings, have equal moral status. But she does so while denying that he has the right to address her on that basis. Hence, she fails to treat Ted with the respect that he is due as a moral agent by denying his equal moral status, and in that way she perpetrates an injustice against him.

Returning to the initial objection, let us suppose that Ted has wronged someone, who is thus the victim, and Sally is complicit in the wrong. We may compare three things that then happen. In the first case, Sally holds Ted responsible for the wrongdoing and at the same time holds herself responsible. In the second case, Sally holds Ted responsible for the wrongdoing and refuses herself to be held responsible for it. In the third case, Sally refrains from holding Ted responsible for wrongdoing to avoid being held responsible herself. The first case is the ideal, for the reasons explored above. But the third case may be preferable to the second. We may well ask how this can be. In the second case, one person is held responsible for his wrongdoing, whereas in the third, no one is. If it is valuable to hold people responsible for what they have done, we should value the fact that at least one person is held responsible. That is closer to the ideal of both being held responsible for what they have done in the first case.

One answer is that there is intrinsic disvalue in the practice of responsibility in the second case that might sometimes outweigh the value of Ted being held responsible for what he has done. The intrinsic disvalue is in the wrong that another person does to Ted in the practice itself, through which Sally denies Ted's equal moral status. It may still be something of positive value that Ted is held responsible for what he has done, but it is something of negative value that this is done by perpetrating an injustice on Ted. The wrong done to Ted by implying his lack of moral status when compared with another person may be more significant than the value of holding him responsible for what he has done. That is at least plausible when the wrong that he has committed is not very serious.

The objection might be pressed further, however. Let us compare again the second and third cases. In the third case there is no relationship of responsibility whereas in the second case there is a defective relationship of responsibility. Why should we think that no relationship of responsibility is preferable to a defective relationship? After all, in the third case we may both continue to fail to recognize the principles that ought to govern our relations with our fellow human beings, and hence to recognize their equal status. We may wonder if our failure to engage in a practice of responsibility does not perpetrate an injustice against our fellow human beings through a double denial of their equal moral status. This would be the case if we have a duty rather than a mere permission to hold others responsible for their wrongdoing, a duty which itself is grounded in the interests of the victim. In that case, failing to do our duty to hold others responsible for their wrongdoing would fail to respect the interests of the victim as a guide to our actions.

Here there is an important difference between the state and other agents with respect to wrongs. The state has a special duty to hold people responsible for their criminal wrongs, grounded in the fact that it provides a forum for public condemnation of wrongdoing. This provides some special considerations about the injustice of the state failing to hold criminals responsible for their wrongdoing. Leaving that aside, individuals often do not have a duty to hold each other responsible for wrongdoing. They sometimes even have an obligation to refrain from doing that. They certainly should not all independently hold the wrongdoer responsible for what he has done through practices of responsibility. Where one person has held another responsible for his wrongdoing, it is not morally required, and it may be morally prohibited, for others to do so. Let us suppose that an employee of a university breaks an important promise at work. The head of his department calls him to account for doing so. The employee recognizes that he has done something wrong, apologizes, and thereby fosters the expectation that he will in the future fulfill his duties of promise-keeping. In that case, it would be wrong for the Vice Chancellor to engage the employee in a similar practice of responsibility again. Since he has been held responsible for what he has done, others should refrain from holding him responsible. For this reason, the most that we can say is that there is a duty on the best placed agent to hold wrongdoers responsible for their wrongdoing, and perhaps we cannot say even that.

This provides us with good reason often to prefer the third to the second case. In the third case, Sally does not hold Ted responsible for his wrongdoing through a defective practice of responsibility. She does not fail to do her duty to the victim through this failure, and hence she does not fail to respect Ted's interests through her inaction. She then leaves it open for others, including Ted himself, to hold him and her, responsible for his wrongdoing. An ideal practice of responsibility may be available through which he can be held responsible for what he has done. In that case, she should not engage in a defective practice, since in engaging in a defective practice she may block a more ideal practice of responsibility from taking place.

This suggests that in failing to hold Ted responsible in the third case, Sally does not imply that he is entitled to go on breaching the principles that ought to govern relationships between human beings. She does not deny her equal moral status to him. She does not deny that he should be held responsible for doing what he has done. In refraining from holding him responsible, she allows others, who are better placed than she, to do so. Perhaps they can do so without perpetrating a further injustice against Ted.

Therefore, there are two reasons why we ought sometimes to refrain from engaging in defective practices of responsibility. One is that the wrong that the accuser does to the accused in defective practices of responsibility might be more significant than the value of holding the wrongdoer responsible for what he has done. The other is that in holding another person responsible for what he has done through a defective practice of responsibility, the accuser might block practices of responsibility that are closer to the ideal.

Building further on the value of our practices of responsibility will help us to see why claims of complicity might be more powerful than claims of hypocrisy, and thus meet the second objection as well. In hypocritically criticizing someone for

wrongdoing, the hypocrite perpetrates a wrong against the person. He implies either that the moral principles that apply to her do not apply to him or he treats the person as being obliged to be morally scrutinized for her wrongdoing while denying that it is appropriate to be morally scrutinized himself. In that case, we may well ask why there should be anything special about complicity. Are not all of the morally significant ideas in place in cases of hypocrisy?

To answer this, we must explore a further feature of our practices of responsibility: their focus on particular acts. Practices of responsibility have value in repairing our moral relations with each other. They primarily achieve this by being act focused. They are focused on holding people responsible for the particular acts that they perform rather than for their moral conduct in general. One reason why this is so is that the primary relationship that we are attempting to repair is between the wrongdoer and the victim. The normal way in which this relationship must be repaired is by encouraging the wrongdoer to see the effect of his wrongdoing on the victim. Our moral principles are grounded in the fact that we ought to see significant interests of our fellow human beings as reasons for action. The significance of the interests is in turn grounded in their moral status as agents who are governed by norms. When a wrong is perpetrated, the wrongdoer has shown a failure to recognize such an interest as a reason for action, and that normally results in the interest being set back. In getting the agent to focus on the effects of his wrongdoing, we encourage him to reflect on the interest that the agent has, and in turn on its significance given her equal moral status. This provides the victim with the opportunity to have it recognized that her status is taken seriously, something that has been called into question by the fact that she has been wronged.

Given that practices of responsibility are act focused in this way, we can see why claims based on complicity erode standing to a greater degree than claims based on hypocrisy. Let us suppose that Paul engages Rachel in a practice of responsibility about a particular wrongful act which he is complicit in, but he blocks attempts to hold him responsible for that act. In doing so, he implies that Rachel must respond to her wrongdoing by recognizing that the interest of the victim underpins a moral principle that she ought not to have perpetrated the wrong. But he denies that he must respond to the interest in that way and through that repair his relationship with the victim. The victim is provided with an opportunity for the individuals responsible to repair their relationship with her by accepting the moral significance of her interests. In holding Rachel responsible for the wrong while denying his responsibility, Paul implies that the moral obligation to repair applies especially to her with respect to this instance of wrongdoing. Hence, the claim that he and Rachel face different moral demands is especially stark. In cases of hypocrisy, in contrast, Paul might claim that others are entitled to hold him responsible for the wrongs he has perpetrated, where the wrongs have set back the interests of other victims.

3 Complicity and the Unjust Creation of Criminogenic Conditions

Let us take up the central claim that the grounds of the state's entitlement to hold poor people responsible for the crimes they commit in conditions of economic

injustice are eroded by the fact that the state has a kind of complicity in the crimes. The state is complicit insofar as the economic injustice it perpetrates creates criminogenic conditions: conditions in which it is more likely that crimes will be committed. This claim provides a powerful reason why the state should not hold the poor responsible for the crimes they commit.

That is not to say that there are other relational and non-relational reasons against the state holding the poor responsible for what they do. For one thing, the state would behave hypocritically in holding the poor responsible for what they do. In creating criminogenic conditions through distributive injustice, the state not only treats the poor unjustly with respect to their level of wealth, it also shows itself to have insufficient concern about crimes of that kind being committed. One reason not to perpetrate distributive injustice is that distributive injustice is criminogenic. In perpetrating distributive injustice, the state shows itself to have insufficient concern for the victims of crime. Hence, in holding the poor responsible for what they do, the state claims that the poor should be held responsible for violating their moral obligations while denying the entitlement of the poor to hold it responsible for failing to adhere to those very obligations.

Furthermore, there are other relational reasons to deny that the state is entitled to hold the poor criminally responsible in these circumstances. The poor can claim that as the state has treated them unjustly, they are entitled to distance themselves from engaging in relations of responsibility with the state. Given that the state perpetrates an economic injustice against them, they have good reason to think that it is insufficiently morally concerned about them. Thus they have reason to believe that the state will deprive them of adequate opportunities to participate in its practices of responsibility and to show adequate regard for their well-being in punishing them. In current conditions, there are plenty of other reasons for the poor to believe that these things are true. But even were we to improve our system of trials and punishments, the poor would have some reason not to participate in them, given that they are treated unjustly in economic terms.

These things are relatively uncontroversial philosophically, though they are very controversial in the real world. More philosophically controversial, but also more powerful, is the claim that the state is complicit in the crimes of the poor. The power of showing that the state is complicit in the crimes of the poor should be clear enough not only from the previous discussion of complicity, but also from the fact that the claim of complicity can be added to the claims of hypocrisy and the entitlement to distance oneself from relations of responsibility following wrongdoing just discussed.

To show that the claim of complicity is plausible, the following question needs to be addressed. Why does one agent become complicit in the wrongdoing of others merely by creating the conditions in which others are more likely to commit those wrongs even if the one agent does not intend that the others will commit that wrong? Only conspiracy theorists believe that our political leaders, in perpetrating economic injustices against the poor, intend that the poor will commit crimes. At most, they know that the poor will be more likely to commit crimes in circumstances of economic injustice. This is just the kind of controversy that might arise in other familiar issues concerning complicity. We may well ask, for instance, to what extent

someone is complicit in the use of child labor by buying clothes that she knows are made in sweatshops that use children.

In pressing the objection that complicity cannot stretch this far, the objector might focus on the *actus reus* of complicity, its *mens rea*, or on the conjunction of the two. With respect to the *actus reus*, the objector might claim that in creating the conditions in which it is more likely that the poor will commit crimes, the state has done nothing to assist the crimes, and hence cannot be regarded as complicit in them. With respect to the *mens rea*, the objector might claim that as the state lacks the intention that the poor will commit crimes, it ought not to be regarded as complicit in the crimes. But as we will see, the *actus reus* and the *mens rea* claims are highly implausible independently, and this helps to establish that they ought not to be regarded as plausible in conjunction.

Let us begin with the *actus reus* claim. The objector's thought here is that creating the conditions where it is more likely that a crime will occur is not a complicit act. To test the claim, we should consider cases where the agent has the greatest degree of fault. Let us suppose that government officials think that they can hold onto power more effectively in conditions where the poor commit crimes. When the poor commit crimes, security based arguments have more force, and such arguments are easier for the government to make than for their main political opponents, who have a long civil liberties tradition. Since the officials have read criminological literature showing that criminal offending increases in circumstances of greater inequality, they develop regressive taxation policies. We could not then deny that the state is complicit in the crimes of the poor, in a way that erodes their entitlement to hold them responsible for those crimes.

The *mens rea* claim is even weaker. In standard cases of complicity by assistance, the agent acts with knowledge that the principal agent will commit the crime, but without the intention that he will do so. If Smith provides the hit-man with the gun for cash, knowing that he will shoot Jones, but not caring whether he does so, or even if Jones hopes that he will fail in his plan, Jones is complicit in the shooting. Our conception of complicity would be cast very narrowly if we were to require complicit agents to have an intention for the principal agent to perform the crime.

It might be argued here that while the state knows that the crime rate will increase in conditions of inequality, it does not know that any particular poor person will commit a crime. Therefore, this should be seen as a case of reckless complicity rather than knowing complicity, and hence the claim that the state is not entitled to hold a particular poor person responsible for what the person has done is significantly weakened. But it is difficult to see how that could be right. Let us suppose that Smith is instructed by a gangland boss to provide a hit-man with a gun, but he is yet to select a hit-man from his little black book. Smith provides the gun by leaving it in a safety deposit box for the selected hit-man to pick up. The gangland boss then selects a particular hit-man. Later Smith attempts to hold the hit-man responsible for shooting Jones. The fact that Smith did not know that it would be him in particular that commits the wrong cannot make any difference to his claim that Smith is not entitled to hold him responsible for what he has done. It also cannot make any difference that Smith does not know that he is going to shoot Jones in

particular, at least if there is no good reason for Smith to want to see Jones in particular shot.

Given that both the objector's *actus reus* claim and his *mens rea* claim are very weak independently, we have good reason to doubt that they can succeed in conjunction. However, we should consider arguments that they cannot succeed. Here is one kind of argument. The *actus reus* of complicity is differentiated: there are different kinds of complicity which reflect the different ways in which one person might be involved in the principal agent's crime. Some kinds of complicity require an intention that the principal agent commit his crime where others do not. In providing assistance, it might be argued, knowledge that the principal agent will commit his crime, or even recklessness, is sufficient for complicity. But that is not sufficient in other cases and particularly not in cases where complicity takes the form of the creation of conditions under which the principal agent's wrongful conduct is more likely to occur.

Here is the kind of example that might seem to make this plausible. Let us suppose that Susan runs a door to door sales company in Klanfield where a high proportion of residents are members of a racist organization. A number of her employees are black. Susan sends her black employees into Klanfield, knowing that some of them will be assaulted. Her employees are aware of the risks posed by visiting Klanfield, but many of them take the risk in order to keep their jobs. Derek, a racist resident of Klanfield, assaults John, one of Susan's black employees. We may consider these two variations on the case. In the first case Susan sends her employees to Klanfield because she is a racist who wants to see them assaulted, even though she could make just as much money sending them elsewhere. In the second case, Susan sends her employees to Klanfield knowing that some of them will be assaulted, but she does it just because it will make her more money than sending them elsewhere.

It might seem that there is a sharp distinction to be drawn between these cases. In the first case, Derek unknowingly carries out Susan's plan to see black people assaulted. In the second case, he does not. That makes Susan complicit in the first case but not in the second, it might be argued. This may reveal itself in the intuition that whereas Susan cannot hold Derek responsible for assaulting John in the first case, she can do so in the second.

The first thing to note about these cases is that the intentions of the party are irrelevant if the person's actions are not wrong at all. If she has not done something that is even *prima facie* wrong, she need not provide a reason why she did what she did. Let us suppose that Jake is a gun seller, who is permitted, both legally and morally, to sell guns to people who fulfill some criteria. Harry comes into Jake's shop, fulfilling the criteria. Jake intends that he will commit a crime with the gun. That fact alone cannot make him complicit. If he has done what he is permitted to do, he has not fulfilled the *actus reus* of complicity. Jake only needs to provide justifications for his wrongful acts. Under these conditions, since selling the gun is permissible, he can perform that action for any reason whatsoever.¹¹ If that is right, we should be cautious about regarding Susan as complicit in the first case.

¹¹ See John Gardner, "Justifications and Reasons," in *Offences and Defences* (Oxford: Oxford University Press, 2007); see also Tadros, *Criminal Responsibility*, ch. 10.

But let us suppose that what Susan has done in sending her employees to Klanfield is *prima facie* wrong. Why might it make a difference whether she intends them to be assaulted or merely knew that they would be? The answer is the familiar one that we can sometimes justify proportionate foreseen harm to others even if we cannot justify intentional harms to others. Here we may compare the well known pair of examples of a strategic bomber and a terror bomber. During a justified war, a strategic bomber drops a bomb on a munitions factory next to a school, killing a number of children, in order to deprive the enemy of vital munitions and end the war, thereby reducing loss of civilian lives overall. A terror bomber drops a bomb on a school, intending to kill the same number of children, in order to demoralize the enemy and end the war, thereby reducing loss of civilian lives by the same number overall. Many people think that if the number of lives saved is big enough, the strategic bomber might be justified in dropping his bomb where the terror bomber is not.

This distinction might be thought relevant here as well. It might be thought that Susan can justify sending her employees to Klanfield in the second case, knowing that they will be assaulted but that she cannot justify it in the first case.¹² Sending her employees to Klanfield might be thought justifiable. But if it is justifiable, it is nevertheless *prima facie* wrong. Hence, she must provide a reason for sending the employees there, to turn a justifiable action into a justified one, and given her bad intentions she cannot provide such a reason. Assuming that it is justifiable to send her employees to Klanfield, such a reason is available to Susan in the second case. Hence, her intentions can plausibly make a difference in a case like this.

But this difference between intended and foreseen consequences is relevant, if it is, only because we are concerned with a justifiable action. By stipulation, our focus is on cases where the state has committed a wrong of economic injustice, not only *prima facie* but all things considered. We are in the realm of actions which are not only unjustified but unjustifiable. In that case the distinction between the intention that poor people will commit crimes and knowledge that they will do so cannot play the kind of role that it might play in the analysis of the previous example. That militates strongly in favor of seeing the state as complicit in the crimes of the poor. The fact that the poor are more likely to commit crimes in circumstances of injustice provides a further reason against doing something that is already wrong. The state cannot then claim that it is not complicit in those crimes on the grounds that it regrets their occurrence.

It might be thought, however, that even if the state is complicit in the crimes of the poor, this kind of case shows up a concern about the relationship between complicity and the entitlement to hold others responsible. To see the concern, let us suppose that Susan sends her employees to Klanfield because it will make her more money than sending them elsewhere, but that she is wrong to do this. Considerations concerning their safety ought to have led her to send them elsewhere, even though she would make less money in doing so. In the case where Susan sends her employees to Klanfield intending that they are assaulted by the racist residents, it is

¹² Cf. Judith Jarvis Thomson *Rights, Restitution and Risk* (Cambridge, Mass.: Harvard University Press, 1986); see also Thomas Scanlon, "Intention and Permissibility I," 74 *Proceedings of the Aristotelian Society Supplementary Volumes* (2000); F. M. Kamm, *Intricate Ethics* (Oxford: Oxford University Press, 2007), pp. 132–133; and Tadros, *Criminal Responsibility*, ch. 10.

clearly absurd for her to hold the residents responsible for what they have done. In the case where she acts on financial grounds, though, any claim that she is not entitled to hold the racist residents responsible for what they have done seems weak.

It may be thought that the same concern arises with respect to the state's complicity in the crimes of the poor. However, there is a significant difference between the Klanfield case and the poverty case, which explains our intuitions about the Klanfield case. In the Klanfield case, the racist attitudes of the residents cause an injustice not only to Susan's black employees but also to her. She is not morally permitted to send her employees into Klanfield because of the tendency of others to do wrong, and that restricts her economic opportunities. This fact counts heavily against barring her from holding the residents responsible for the wrongs that they commit against her employees. The residents cannot say to her: "If you did not want your employees to be assaulted, you should not have sent them to visit us." They cannot say this because she should be entitled to send her employees to visit them, and it is their propensity to do wrong that prevents her from having such a moral permission. No similar kind of claim is available to the state with respect to the crimes of the poor.

The poor have a significant claim that the state is not entitled to hold them responsible for the crimes that they commit. The idea is not just that the state would be hypocritical in holding the poor responsible for their crimes they commit, in that it has shown itself to be insufficiently concerned about criminal offending through the creation of conditions under which offending is more likely to occur. It is not just that the poor, in having been treated unjustly by the state, have a good reason to distance themselves from the state with respect to practices of responsibility. Both these things are true. But the claim is also based on the state's complicity in their crimes. Even if they cannot deny that they are responsible for their crimes, the poor can deny that the state is entitled to hold them responsible, on the grounds that the state has created unjust conditions in which their responsible criminal offending becomes more likely. As a consequence it bears responsibility for their crimes.

Importantly, this also shows why this kind of claim is more powerful when made by the poor than it is when it is made by the rich in circumstances of injustice, something that has intuitive plausibility. A rich person who is responsible for committing a crime has a claim of hypocrisy. He can suggest that the state, in creating conditions of economic injustice, shows itself to be insufficiently concerned about crimes of this kind being committed, and therefore that it cannot hold him responsible for committing his crime. But that claim is relatively weak. The state treats the commission of such crimes as a reason against perpetrating economic injustice against the poor, but a reason that is not sufficiently strong to defeat its motivations in perpetrating such injustices. The poor, in contrast, claim that the state is in part responsible for the crimes that they commit. As it bears responsibility for the crime, it is not entitled to hold others responsible for it.

4 Compounding Injustice

Insofar as the two conditions with which we began are satisfied, the poor have a legitimate claim that the state should not hold them responsible for the crimes that

they commit on three grounds. The first is that the state is hypocritical in holding them responsible, in that it shows itself, through perpetrating economic injustice, to be insufficiently concerned about their crimes by creating criminogenic conditions. The second is that as victims of injustice, they have legitimate reasons to distance themselves from state practices of responsibility. Given the way they have been treated, they have no expectation that justice will be done within those practices. The third ground is that the state is complicit in their crimes. It bears responsibility for those crimes, and is not entitled to act as judge in a case where it ought to be a co-defendant.

The poor may have a claim that the state cannot hold them responsible for crimes they commit. Nothing said thus far entails that the poor have a right that the state should refrain from holding them responsible for the crimes that they commit. Instead, a kind of injustice is perpetrated by the state against the poor when it holds them responsible for their crimes even if they are criminally responsible for them. At least the state commits such an injustice so insofar as it does not fully recognize its own responsibility for the wrongdoing of the poor.¹³ It was suggested earlier that an ideal practice of responsibility might involve complicit parties holding their partners in crime and themselves responsible for the crimes they commit. Could we imagine a criminal justice process, or some other practice of responsibility, in which the poor are held responsible for the crimes that they commit but the state also accepts its responsibility for the crimes?

In order adequately to accept responsibility for the crimes of the poor, the state would have to create the expectation that it will not act in such a way that it is complicit with similar crimes in the future. It could do this only by rectifying criminogenic economic injustice. If such a practice is possible at all, it is possible only at the point that an economically unjust state becomes just. At that moment, it has a full entitlement to hold the poor criminally responsible, insofar as it accepts its complicity in their crimes. Until then, though, it cannot claim that it accepts responsibility for complicity. Failing that, we may ask if the argument provided so far warrants an absolute bar on the state holding the poor responsible for the crimes they commit. In order to see why not we should consider the concern that in failing to hold the poor responsible for the crimes that they commit the state may perpetrate another kind of injustice: an injustice against victims and potential victims of crime. If there is such a thing as criminal justice, it must sometimes be just for the state to hold people responsible for their crimes. At least sometimes, moreover, this is not something that the state is merely entitled to do; it is something that the state is required to do. Citizens can rightly demand that the state provides public condemnation for serious criminal wrongdoing. A failure to condemn serious criminal wrongdoing, where the responsible person is known to us, constitutes a serious injustice: the injustice of failing to publicly recognize the moral significance of the victim and her interests.

For this reason, in conditions of economic injustice, the state is caught in a moral dilemma with respect to criminal justice. It must, in one way or another, compound the injustice that it has perpetrated through its unjust distribution of wealth. Either it

¹³ See Duff, *Answering for Crime*, pp. 192–193.

must hold the poor responsible for the crimes that they commit, perpetrating one kind of criminal injustice. Alternatively it must fail to do so, perpetrating another kind of criminal injustice.¹⁴ Economic injustice is not only wrong for intrinsic reasons, then. It is wrong because it is inevitably compounded by criminal injustice of one kind or another.

It is worth asking why crime victims might have an interest in the state holding the person who has committed the crime responsible for the crime that he has committed. It is useful to distinguish intrinsic and instrumental reasons here. Citizens have a reason to want the offender to be held responsible for its own sake. One central reason has to do with state condemnation for the wrong that has been done to them. Let us assume, though it is often not safe to assume, that the crime that has been committed against the victim is legitimately a crime. Furthermore, let us suppose that since it does not merely rectify the economic injustice that the state perpetrated, the victim can regard herself as worse off than she ought to be in some respect. Perhaps that might be because the crime deprives her of something other than her wealth, say because it involves interference with bodily integrity or because it results in her being economically worse off than she ought to be.

For the criminalization of some conduct to be legitimate, the conduct proscribed must be not only wrongful but publicly wrongful. It must be the kind of wrong that the public has a legitimate interest in condemning through public institutions. One reason that has been given to explain why the public might have such an interest is that condemning the defendant's conduct expresses a kind of solidarity with the victim. The defendant, through his conduct, indicates to the victim that she lacks full status as a human being. The state, in investigating, prosecuting, convicting, and condemning the defendant's conduct vindicates the victim's standing as having equal worth.¹⁵ It expresses condemnation in order to express public solidarity with the victim in order to confirm that the state, unlike the defendant, recognizes her human status. Whether or not we think that condemnation is expressed through punishment, many legal theorists will agree that this is an appropriate role for a criminal conviction to play.¹⁶

Let us suppose that the state is not entitled to hold the defendant responsible for committing this crime. In that case, the state fails to condemn what has been done to the victim, and hence fails to respond to the defendant's manifest attitude towards her status. Hence, her legitimate demand, that the state re-affirms her human status through prosecution and conviction, is denied to her. It is for this reason that we might think that states that lack adequate laws of rape and murder, or an adequate criminal justice machinery for the prosecution and conviction of those offences, violate the human rights of their citizens. These failures constitute a failure to take

¹⁴ Duff, "I Might Be Guilty, But You Can't Try Me': Estoppel and Other Bars to Trial," pp. 245, 257–259.

¹⁵ See Jean Hampton, "Righting Wrongs: The Goal of Retribution," in *The Intrinsic Worth of Persons: Contractarianism in Moral and Political Philosophy* (Cambridge, England: Cambridge University Press, 2007).

¹⁶ See Thomas Scanlon, "Punishment and the Rule of Law," in *The Difficulty of Tolerance: Essays in Political Philosophy* (Cambridge, England: Cambridge University Press, 2003).

seriously the state's responsibility to affirm the moral status of its citizens when that status is denied by others.

In considering the instrumental value of convictions, there is a range of criminal offences the existence of which cannot plausibly be defended as public wrongs done to victims. Particularly important are offences of security which are designed to enhance the security of the population as a whole. Possession offences are the most common, but even offences such as murder and rape have security as part of their rationale. Many of our offences ought to be repealed or rewritten in the light of normative concerns. One such concern is based on the value of security itself. It is questionable whether some of our criminal offences enhance security at all. Some clearly erode security of a kind, such as security from interference by the state in the form of wrongful investigations, prosecutions, and convictions. Furthermore, some offences, particularly in the area of terrorism, erode the security of people who have a relatively low level of security already.

For the sake of argument, let us consider a security based offence which is just. The English offence which prohibits possession of an automatic weapon is plausibly an offence of that kind.¹⁷ It is an offence which provides security to those individuals who are least secure, as well as the rest of us, in that gun crime is likely to be more prevalent in poor urban communities. It does this, moreover, with a relatively minor interference with liberty. Not many people have a very strong reason to want to possess an automatic weapon.¹⁸ Let us suppose that a poor person possesses an automatic firearm. He claims that the state is not entitled to hold him responsible for that, given its complicity in what he has done. But members of the poorest communities can then counterclaim that the state must hold him responsible for doing so, inasmuch as a failure to do that to him, and others like him, further erodes their security.

Given that they are victims of economic injustice, the poor are almost certainly more insecure than they ought to be. This will be so for two reasons. First, poverty, or at least poverty which is a consequence of injustice, is almost certainly a cause of an increase in the crime rate, particularly in poor communities. Second, because the poor have less wealth than they ought to have, they have less money to spend on enhancing their security. One advantage of being wealthy is that the wealthy can make themselves more secure from crime, by living in more expensive safer places, by purchasing security alarms and by choosing to go to more expensive restaurants, clubs, and bars where crime is less likely to occur. Therefore, failing to prosecute and convict the offender of a security based offence might compound the injustice done to others who are already victims of injustice.

For these reasons, we should not think that the claim of complicity provides an absolute bar on prosecuting the poor for the crimes that they commit. Let us suppose that the state is complicit in the crimes of the poor, by perpetrating economic injustices against them which make them more likely to offend. That provides a reason not to hold the poor responsible for the crimes they commit. But the state must attend not only to the injustices that result from prosecution and conviction but

¹⁷ See Section 51 of the Firearms Act 1968.

¹⁸ See Victor Tadros, "Crimes and Security" 71 *Modern Law Review* (2008).

also the injustices that result from a failure to prosecute and convict. In some cases, however, while failing to prosecute and convict the offender will cause some injustice to the victim or to other citizens, the injustice is insufficiently grave to outweigh the injustice of holding the offender responsible for what he has done. This will particularly be true with respect to victimless crimes which have impact primarily on the security of the well off.

When we express the idea that we should not hold the poor responsible for the crimes that they commit we are likely to be faced with two responses. One is that the poor have adequate opportunities to do things other than what they did. It is often pointed out that the poor are not compelled to commit crimes, that other poor people do not do it, and that poverty cannot, except in extremis, be either a justification or excuse for criminal offending. The other is that in failing to hold the poor responsible for what they have done, we patronize them. We act as though they do not count as full moral agents, which is something that they have good reason to resist.

In many cases, both of these responses are along the right lines. The poor are responsible agents, whose offending is rarely justified. Yet there may nevertheless be good reasons why we should not hold them responsible in a criminal trial for the crimes that they commit. Even if they are properly held responsible, there are good reasons for us to feel uneasy about that and to regret the injustice that has been perpetrated against them. By creating conditions of injustice in which poor people are more likely to commit crimes, we, as democratic citizens, show ourselves not only to be willing to treat the poor unjustly, we show ourselves to be insufficiently motivated to create less criminogenic conditions. We must bear some responsibility for the crimes that they commit, and this provides us with a reason not to hold those individuals responsible for their crimes. As we are complicit in their crimes, we should be co-defendants rather than judges. To refrain from holding them responsible is not to patronize them as having a lack of ability or moral status, and it is not to justify or excuse their conduct. It is to accept our own responsibility for what they responsibly do. If we nevertheless have sufficient reason to hold them responsible for what they do, we ought also to regret this fact, and to respond accordingly. At least we can say that the hearts of bleeding hearted liberals have good reason to bleed.¹⁹

¹⁹ An earlier version of this article was delivered to the political philosophy discussion group at Queen's University in Kingston Ontario. I would like to thank the participants, the organizers Malcolm Thorburn, and Andrew Lister, and also Kimberley Brownlee and Andrew Williams for their generous comments and discussion.