Kennedy Commentary on The Secret Failure of Deterrence

Dan Kahan has argued that ADeterrence-Talk is really a code language through which we avoid speaking in expressly moral terms.\(^1\) The real value of deterrence is its secret ambition to quiet illiberal conflict between contending cultural styles and moral outlooks.\(^2\) (P. 415.) Deterrence does this by displacing a more explicitly moral type of discourse, one which produces incessant illiberal conflict over status.\(^3\) (P. 416.) In this sense, the real significance of deterrence theory lies not in what it says but in what it stops us from saying.\(^4\) (Id.) This secret ambition of deterrence is a good thing in Kahan=s view in the sense that it minimizes and manages illiberal conflict between moral zealots.

Kahan is right and wrong. Deterrence talk does serve as a mask, but it is one that does us a great disservice, and the problems with the masking effects of deterrence talk are not the ones that Kahan considers. The Secret Ambition of Deterrence may be to minimize moral division, but it has helped fuel an irrational severity in punishment and in doing so has increased moral division. The real story of our discourse and practices of punishment over the last few decades has been what I would call expressive severity. The instrumentalism of deterrence idiom has stoked, not cooled, these fires. Indeed, severity in punishment over the last few decades is in part a reaction against instrumentalism, a reaction most visible in the way that anecdotal stories about the sufferings of individual crime victims triumph over any attempt by experts to use statistic to situate these stories in some larger context.

At the heart of Kahan=s analysis is a very dark—and incomplete--vision of public moral discourse: it is a zero sum game between competing subcommunities.

Because fundamental moral dissensus is a permanent feature of the modern condition [citation omitted], we can expect citizens to submit to a regime in which democratic majorities continually get their way only if citizens are assured that the things they care about most will not be dragged through the mud of contestation.\(^2\)

Building on Rawls, Kahan converts liberal theory into a form of moral nihilism.

Citizens of diverse persuasions are more likely to converge on solutions to their common problems if they agree not to treat politics as a site for adjudicating the fundamental issues of value that divide them and if accommodation and compromise are not taxed with connotations of moral collaboration or surrender.\(^3\)

Deterrence idiom, in Kahan’s mind, is valuable because it avoids fundamental moral disagreement, even if deterrence talk does not describe how people really think about punishment or justify punishment in a way that is philosophically adequate.

Kahan’s vision conflates expressive discourse with what I would call Expressive Imperialism.\(^@\) It largely assumes that you cannot disagree with someone’s moral position without expressing contempt for their perspective. It further assumes that moral views are static, categorical and comprehensive. To the contrary, people don’t always know with clarity how their ultimate values apply to a given issue. People’s moral frameworks are not completely open ended, but they remain works in progress for many. Finally, people desire consensus and are willing to compromise to get it. They are not always exactly sure what they can live with and what they cannot, but they do want to live together. They understand the role that accommodation and compromise plays in social life. Moral discussion does not inevitably lead to moral division.

Kahan’s brief for deterrence talk also ignores its true costs. People are only likely to feel

\(^2\)Deterrence at 479 citing Gutmann & Thompson and quoting Holmes.

\(^3\)K at 479.
some sense of allegiance to a society and to that society’s laws if they feel that that society stands for something morally meaningful. By reducing punishment to a cost-benefit exercise, deterrence denies punishment a constitutive moral meaning. This makes society more anxious, more punitive, and ultimately more divided.
I disagree. I think that citizens of diverse persuasions are less likely to compromise if they don’t feel a sense of attachment to society. Attachment grows out of a feeling that you have something fundamental in common with others. Especially something sacred. Something that is not instrumental or a means to a greater end.