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Beyond Moral Responsibility to a System that Works

Bruce N. Waller

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Abstract Moving beyond the retributive system requires clearing away some of the basic assumptions that form the foundation of that system: most importantly, the assumption of moral responsibility, which is held in place by deep and destructive belief in a just world. Efforts to justify moral responsibility typically appeal to some version of self-making, and that appeal is only plausible through limits on inquiry. Eliminating moral responsibility removes a major impediment to deeper inquiry and understanding of the biological, social, and environmental causes of both vicious and virtuous behavior. The resources for moving beyond the moral responsibility are already being developed in social democratic corporatist cultures as well as in workplace management models that nurture commitment and reject blame and shame. Without moral responsibility we must face the unpleasant fact that although punishment is sometimes unavoidable it is always unjust. That unpleasant fact motivates difficult but beneficial changes that minimize both the extent and the severity of punitive measures.

Keywords Moral responsibility · Belief in a just world · Neoliberalism · Retributivism

e-mail: bnwaller@ysu.edu

How do we move beyond moral responsibility and just deserts and retribution to a system that works? A system that works not only in reducing crime and reducing recidivism but also in improving society and enriching lives? Basically, we know what needs to be done. Read Adrian Raine's wonderful book, The Anatomy of Violence [1], and it will explain many of the basic biosocial causes for crime; and then study the work of Gregg Caruso [2, 3] and Derk Pereboom [4-6] on the public health model to learn how we ought to fix those causes; study the positive programs of the Scandinavian justice system, and learn what not to do from examining the egregious U.S. injustice system; read John Callender's [7] work on an artistic model of responsibility to gain a better perspective on a richer alternative to retributive moral responsibility; and all that will take us giant steps toward fixing the problems. Obviously there is much more research to be done on the causes of crime and the roots of social problems, and how to fix them; but we already know a tremendous amount about what needs to be done; so why aren't we doing it?

John Locke said that philosophers should be *under* laborers in the work of science. We should be clearing away the verbal confusions and obsolete beliefs that are impediments to the work of scientists. I would be happy to think that I could be of service to researchers like Adrian Raine [1] and Farah Focquaert [8, 9] and Olivia Choy [10] by clearing away some of the debris that impedes the appreciation and implementation of their outstanding research. And I've been trying. But it's hard. There is a major problem that prevents us from adopting and implementing the insights that these

B. N. Waller (🖂)

Department of Philosophy and Religious Studies, Youngstown State University, One University Plaza, Youngstown, OH 44512, USA

researchers have provided; and that problem is the debris of moral responsibility and just deserts and the retributive system. Clearing away that debris looks easy: we don't have the special godlike powers of self-creation that are required for genuine moral responsibility, so we should send moral responsibility to the junkyard and clear the ground for scientific research that will actually discover ways of solving our problems. But for 35 years I've huffed and puffed to push the debris of moral responsibility out of the way, and it has hardly budged. Philosophers more creative than I – such as Derk Pereboom [4, 5] and Gregg Caruso [11, 12] and Neil Levy [13] – have worked at the same task, but belief in moral responsibility has not disappeared.

Why is it so hard to get rid of moral responsibility? It shouldn't be. After all, the basic reason for contriving the moral responsibility system no longer exists. Why did we concoct something as implausible as moral responsibility in the first place? The real problems started when god became just. As Bernard Williams [14] makes clear, so long as the gods were tricksters and con men, then no one expected the gods - and the world governed by the gods - to promote justice. The ancient Greeks were entrapped by fated disasters, or placed in horrible situations in which no matter what they did they would commit a terrible crime, and they suffered punishment for their fated wrongs; but really, why would you expect the fates and the punishments to be just? The ancient Hebraic god was just as bad: Job was a righteous and upright man, who eschewed evil; but on a silly dare between God and Satan, Job's family was killed, all his possessions lost, and he was covered with painful bleeding boils from the soles of his feet to the crown of his head. And when Job had the temerity to question God about this miserable treatment, God quickly put Job in his place: Who are you to question God? Where were you when I hung the stars in place? Canst thou pull up leviathan with a hook? Or in other words, I'll treat you however I wish, you worthless worm, and justice has nothing to do with it. But eventually the world became more orderly, and the governing deity became a god of order and justice. And then there was a big problem: how can it be just for god to punish us for our sins - and punish quite severely - when omnipotent God made us this way? Lorenzo Valla [5] asked that question in his famous dialogue on free will, but he had no answer: he recommended that we stop asking. Martin Luther asked the same question, decided there was no reasonable answer, and concluded we should reject reason and accept by faith that it *must* be just.

Pico della Mirandola [15] offered an elaborate libertarian answer: God grants to humans, his last and favorite creation, a godlike power to *make themselves* by their own choices. It was rank heresy, of course. If God gives special First cause powers to humans, then God is no longer *omni*potent. And in any case, it made no sense: who would be doing the choosing? Heretical nonsense it might be, but it became very popular, and remains so to this day: We are morally responsible because we have the special power to *make ourselves*. From free will Southern Baptists to atheistic existentialists, the idea that we are morally responsible because we are *self-made* is very appealing. Even a sober empiricist like Dan Dennett is not immune to its charms:

I take responsibility for anything I make and then inflict upon the general public; if my soup causes food poisoning, or my automobile causes air pollution, or my robot runs amok and kills someone, I, the manufacturer, am to blame. . . . I am held responsible for releasing the product to the public with whatever flaws it has. Common wisdom has it that much the same rationale grounds personal responsibility; I have created and unleashed an agent who is myself; if its acts produce harm, the manufacturer is held responsible. I think this common wisdom is indeed wisdom . . . [16: 85].

So we *justly deserve* our rewards and punishments, because of our own creative powers of self-making. Or if not complete self-making, at least Frankfurt's [17] higher-order reflective *approval* of our own characters and desires, or – in Fischer's formulation [18] – a deep approval of living *my* way.

The brilliant libertarian and compatibilist efforts have provided a variety of philosophical insights, and some very creative models, but – short of appeals to miracles, and with miracles you can prove *anything* – they have failed to provide an account of how punishment could be *justly deserved*, given the enormous role that luck plays in shaping our characters, circumstances, and outcomes [13, 19]. And yet philosophers – and not just philosophers, but some psychologists, and lots of legal theorists, not to mention the general public – hang onto moral responsibility like a fox terrier with a cherished bedroom slipper.

The strange thing about this fervent but hopeless quest to find grounds for moral responsibility is that it is a search for a solution to a problem that no longer exists. The motive for establishing an account of moral responsibility is long since gone. There is no just god in Heaven making everything right with the world. We do not have to prove that the world is just, when clearly it is not. We do not have to solve the problem of evil: we didn't need Voltaire to tell us that this is *not* the best of all possible worlds. And we don't need to show that punishment is just, when obviously it is not. Moral responsibility was contrived to make the punishment that God inflicts - and that in some cases we must inflict - just. So long as we live in a just world governed by a just God, then God's punishments must be just, and the punishments that we must inflict must be just. But if there is no just God, and we do not live in a just world, and it is not true that ought implies can and that ought not implies that we can not, then we are no longer compelled to contrive an implausible story about moral responsibility. Moral responsibility is a desperate solution to an obsolete problem. So why is it so hard to haul away the moral responsibility debris?

The debris of moral responsibility is difficult to eliminate because it is held securely in place by a larger system of belief. Retributivism is part of a system supported by belief in a just world, and that belief has not disappeared [20] even when we realize it is obviously false. Instead it has gone underground – a deep nonconscious belief that causes us to conclude that rape victims *must* be bad, that ought implies can, and that the rich and the poor are reaping what they sowed and receiving their just deserts.

Melvin Lerner, who pioneered research on just world beliefs, called belief in a just world a "fundamental delusion" [21]. Fellow researcher Adrian Furnham states that according to the belief in a just world: "quite justly, good things tend to happen to good people and bad things to bad people despite the fact that this is patently not the case" [22: 795]. Paul of Tarsus, in common with most contemporary Christians, believed in a just world: "Be not deceived; God is not mocked: for whatsoever a man soweth, that shall he also reap." [Galatians 6:7] The Hindu tradition embraces the same belief, in almost the same words: "As a man himself sows, so he himself reaps; no man inherits the good or evil act of another man. The fruit is of the same quality as the action." [Mahabharata, xii.291.22)] In contrast, Jesus of Nazareth knew that many "reap where they did not sow," and deprive those who sowed of any benefits:

For unto every one that hath shall be given, and he shall have abundance: but from him that hath not shall be taken away even that which he hath. [Matthew 26:29]

The rich get richer and the poor get exploited in our unjust world.

Belief in a just world provides comfort and confidence: Behave well in this just world and you will be safe and secure. But then we observe innocent children afflicted with terrible diseases, innocent people dying in earthquakes, famines, ethnic purges; innocent people who are victims of brutal violent rape. How can we preserve the comforting belief in a just world? Easy. The "innocent victims" were not so innocent. The impoverished person is lazy; the tsunami victims offended God by their evil ways. An undersecretary of education in the Reagan administration [23] insisted that sick children bring their suffering on themselves through vile behavior in a previous life. The rape victim invited the attack by her provocative dress and promiscuous lifestyle. She *must* have brought this on herself; otherwise I and my loved ones could be subject to unjust suffering, and the comfort of belief in a just world is destroyed. Those with the strongest belief in a just world are most likely to blame victims for their misfortune [24-28]; and innocent victims are not only blamed by others but also blame themselves [21: 123–125].

While the "folk" may believe in a just world, we might expect philosophers to resist it. (Since philosophers, as everyone knows, are exceptionally wise.) But as Bernard Williams [14] makes clear, the history of Western philosophy is permeated with belief in a just world. Plato's *Republic* was written to prove that – appearances notwithstanding – the world *is* just, and virtue always triumphs over vice. In Aristotle's ethics, flourishing happiness is the mark of a genuinely virtuous man (virtue does not guarantee flourishing, but it is a necessary condition). Belief in a just world reaches its philosophical apex in Kant: the world *must* be such that every person has the power to freely follow the path of virtue, and whatever we *ought* to do we invariably *can* do.

We all know that the world is not fair and just, that we do not always reap what we sow, and that in any case we are sowing different varieties of seed over different qualities of soil using widely divergent horticultural skills. Or rather we know it when we consciously scrutinize the belief. But belief in a just world usually operates nonconsciously, and exerts its subtle influence on some of the most impressive members of the philosophical tribe.

George Sher is a rigorous observer, and he knows that the world is not inherently fair and that we do not all enjoy essentially equal opportunity. But his *non*conscious belief in a just world still exerts a powerful influence on his ideas and arguments. Sher tells a charming story of industrious N, who overcomes initial disadvantages by working harder:

Even if M is initially stronger or more intelligent than N, this difference will only entail that M does not deserve what he has achieved relative to N if the difference between them has made it impossible for N to achieve as much as M. However, differences in strength, intelligence, and other native gifts are rarely so pronounced as to have this effect. The far more common effect of such differences is merely to make it more *difficult* for the less talented person to reach a given level of attainment. He must work harder, husband his resources more carefully, plan more shrewdly, and so on. [29: 31–32]

Fortitude, self-confidence, the ability to plan shrewdly: actually these cluster with other advantages, rather than offsetting those advantages in a just world distribution. Sher's story of N who works harder and overcomes initial disadvantages follows a popular plot: the resolute tortoise outraces the lethargic hare, the little engine scales the great mountain, Ragged Dick (one of Horatio Alger's heroes) starts as a homeless boot-black on the New York City streets but – thanks to his energy, industriousness, honesty, and optimistic attitude achieves success and security. The stories are typically fiction. Sometimes attributes balance out, and superior fortitude makes up for superior skill. But fortitude and skill are more often joined, as inferior skill and poor education and lack of opportunity result in lethargy, while greater initial advantages also have cumulative effects. But deep belief in a just world motivates belief in "equal opportunity" and moral responsibility.

The moral responsibility system makes us feel good. We justly deserve our privileged places, and we shouldn't worry about those who are suffering: they justly deserve it. The punitive measures we inflict are justly deserved, and rather than feeling bad when we punish we feel righteous. We have a deep animal strikeback desire, and moral responsibility clothes that primitive desire in robes of justice. Furthermore, if and only if I do right, then I'll prosper in this just and orderly world; and I must be doing right, because I am prospering. And whatever I accomplished, I did it all myself, and owe nothing to anyone. No wonder that's hard to reject, obviously false though it is. And belief in a just world, which is the foundation of that system, has gone deep into our nonconscious belief system, and that makes it even more difficult to dislodge.

Moving beyond retributivism requires major changes, including substantive cultural changes. But those changes are not impossible; indeed, in some cultures the changes are well under way: cultures that sociologists call social democratic corporatist cultures, such as those found in Norway and Sweden. Unfortunately, the neoliberal cultures - especially the U.S. and the UK seem to be moving in the opposite direction, as demagogues exploit punitive populism and xenophobia to ratchet up fear and blame and punishment. But to focus on the positive, there are cultures that are making serious progress toward minimizing or even eliminating retributive just deserts, and the radical individualism that is its close consort. Michael Cavadino and James Dignan note that in social democratic corporatist cultures "people are not so ruthlessly held responsible for the offenses they have committed, which are less likely to be attributed to the free will of the individual offender," and there is "a greater willingness to assume a degree of collective responsibility for the fact than an offence has been committed" [30: 26]. This reduced insistence on individual moral responsibility is part of a larger system, based in a "communitarian ethos" that fosters "more inclusionary economic and social policies." As Cavadino and Dignan state, in social democratic corporatist cultures:

The corporate citizen, unlike the neo-liberal, is much more his brother's keeper – even if he has done wrong – with a stronger sense of "there but for the grace of God go I" – in terms of both economic failure and criminal activity [31: 448].

As the U.S. and the UK sink deeper into neoliberal retributivism and radical individualism, it is important to recognize that there are cultural alternatives: important, because it indicates that such positive change is at least possible, and that there is a better path to follow; and also important because it explains that retributivism is difficult to budge because it is held in place by a larger cultural system.

Cultural change is not an easy process. In the neoliberal U.S., it seems that when we take a couple of small steps forward, those are followed by several giant steps backward. But the outlook is not totally bleak. Even in the bastions of neoliberalism, there are significant forces pushing in the opposite direction. Those positive forces are not the work of philosophers, who seem dedicated to keeping the moribund system of moral responsibility on life support. Instead they emerge from contemporary developments in business management and workplace engineering. In studying the most efficient and effective workplace settings, workplace engineers found that the best models are not those that celebrate neoliberal values of authoritarian top-down management and control by blaming and shaming of errant individuals; to the contrary, the most effective workplace models are those that reject individual blame and shame and instead seek the deeper systemic causes of errors and mistakes, and in which everyone works together as a team to fix the problems [32, 33]. In that setting, when workers do not fear blame and shame for mistakes, the deeper causes of errors and problems are sought out and fixed; and "harmless errors" and near-misses and potential problems are not hidden but are instead uncovered and fixed before they cause disasters.

The "system" model treats all workers as valuable team members who make important contributions with *both* their physical labor and their intelligent attention. Every worker is empowered to call a halt if a problem or a potential problem is discovered; then *every* worker contributes to finding a solution to the problem [34]. There is no rigid distinction between management – who provide the intelligence and planning – and workers who mindlessly provide the labor. This is the "no-blame system" approach to the workplace, that transformed Japanese manufacturing.

The advantages of the system approach were too obvious to ignore, and its adoption in air traffic control was a remarkable success. Air traffic controllers had a long and frightening record of errors – errors that resulted in terrifying near-misses and sometimes in catastrophe. Controllers worked under conditions of enormous stress in a complex and intense system, with constant handoffs of flights to a controller in another region, flight names and instructions that were easily confused and misunderstood, and very limited resources for detecting mistaken instructions. Errors could be disastrous, and were deemed absolutely unacceptable: any controller error was assumed to be the result of negligence. In such conditions, controllers struggled to hide errors or deflect the blame onto others; small errors were covered up rather than reported, and the underlying problems were not addressed, resulting in more errors until finally an error resulted in a near miss or an accident that could not be hidden. When that happened, the "negligent" controller was blamed and fired and the problem supposedly was solved. When the morally responsible negligent worker is blamed for the problem, no deeper inquiry is needed, or allowed; and the deeper destructive causes remain in place.

The no-blame system model brought a radical and valuable change to the working conditions of air traffic controllers. Rather than blaming individual controllers for errors, controllers were encouraged and commended for reporting small errors and the circumstances in which they occurred; the inevitable errors were no longer hidden, and information concerning error patterns could be collected and analyzed, and problems could be found and fixed before they caused harm. Controllers were treated as respected team members committed to discovering and fixing problems, working together with a shared commitment to making air traffic control as error free as possible: not only by finding and reporting system flaws that were causing errors, but also by devising a system of multiple checks that would catch errors before they became disasters. Rather than isolated individuals who faced the constant stress of meeting an impossible standard of perfection, controllers became valued members of a team that sought out sources of error and devised effective means of fixing them. Rather than working under the fear of blame and punishment, controllers shared a commitment to a valuable enterprise. Rather than seeking nonexistent infallible workers, the no-blame system approach created an almost infallible system.

In the United States, conservative estimates place the number of hospital deaths caused by errors at between 40,000 and 100,00 annually [33]: the equivalent of more than three jetliner crashes every week. In an effort to address this frightening problem, some hospitals in the U.S. and the UK have adopted a "beyond blame and shame" policy, that is essentially the no-blame system model applied to hospitals. While the policy has enjoyed

considerable success in reducing errors, it has also generated substantial opposition. That there should be resistance to the no-blame system approach is hardly a surprise. After all, the basic principles of the no-blame system model are those of social democratic corporatist cultures - communitarian commitments, rejection of blame and shame, focus on understanding and solving the deep systemic sources of problems - in fundamental opposition to the authoritarianism and retributivism and radical individualism of the larger neoliberal culture. In hospitals, much of the opposition came from physicians who held places of individual privilege and elite status. The system approach emphasizes the valued contribution and knowledge of all workers with a shared commitment to improving the system, and some physicians feared that would diminish their special standing. They were deeply offended by the idea that nurses and technicians could have any role in preventing the errors of infallible physicians. No way could nurses or technicians be equally valued partners in a shared enterprise with physicians.

While fear of compromising one's elite individual status is one source of the opposition to the system approach, another is a basic revulsion against emphasis on *systems* rather than individuals, and on seeking deeper systemic causes rather than focusing blame and moral responsibility on the erring individual. Edmund Pellegrino, a bioethicist who favors a virtue theory approach to medical ethics, insists that "it will be necessary to reaffirm the moral nature of medical error, and to retain the notions of blame, accountability, and responsibility." [35: 84–85] Pellegrino fears that a system approach will promote complacency, and that shame and blame are essential sources of motivation:

there are the associate dangers of complacency and dulling of the moral sensibilities of the humans in the system when either a "blame-free" approach or a "blame-the-system" approach is adopted. The power of individual guilt can be constructive as often as it is destructive. Personal accountability is owed to the person injured. The deterrent effect of fear of shame and blame is not safely ignored. [35: 86]

Blame and shame do indeed have an important deterrent effect: they deter discovery of the sources of errors and solutions to underlying problems. Pellegrino fears complacency; but complacency comes with the cover ups that the blame system promotes. The physician did *not* make a mistake because it was successfully covered up, or because the problem was *really* caused by someone else (usually a nurse, but sometimes the patient) to whom the blame was shifted. When medical teams make sincere efforts to find and fix the deep and difficult sources of problems, that is the opposite of complacency.

So threatening is the system approach – in its emphasis on studying deeper systemic causes of problems rather than blaming individuals – that Pellegrino characterizes it as "utopian social engineering" that is comparable to "the malignant social engineering of totalitarian states" [35: 85]. Shifting the heavy weight of neoliberal retributivism will require heavy lifting, and successful steps in the direction of social democratic corporatist culture are regarded as a threat. Development of the system and commitment workplace model – and replacing the control model and the blame and shame orientation – is an important but difficult step in the process of cultural change and rejection of retributivism. The social democratic corporatist culture is basically the system/commitment model writ large.

Even if we can make all the positive cultural changes, we will not get beyond punishment. Dan Dennett says that he would not want to live in a society without punishment; I would love to live in a society without punishment, but that's not going to happen in the foreseeable future. Norway's Bastoy Island prison is an enormous improvement over Attica, but it is still a prison. It involves the coercive infliction of suffering and restraint, even if we wish it did not and we aim at minimizing it (as Bastoy Island does). This remains a process of coercively isolating persons who cause harm, and a coercively imposed painful restriction of freedom; and no one justly deserves such treatment. We cannot at present eliminate the necessity for inflicting harm by coercively isolating those who cause great harm to others. Some may insist it is not really punishment, because it does not aim at causing suffering for those coercively isolated. But whatever we call it, it involves knowingly and coercively inflicting suffering on those who have committed serious harm; and that looks and feels like punishment.

Recognizing that we *must* inflict unjust punishment forces us to confront a painful fact: the world is not just, and we are unable to avoid participation in unjust practices. We want to believe that the world is just, that ought implies can, and we always *can* do what we *ought* to do, and can always *avoid* doing what we *ought not* do. But we should confront the fact that the world is not just, that for the foreseeable future we must punish, and the punishment we must inflict will be unjust. We should strive to minimize punishment, minimize the suffering imposed, and make punishment as beneficial as possible for those punished; but we are better motivated to take such steps when we recognize that the punishment we are inflicting is unjust, rather than imagining it to be just deserts and righteous retribution. We should never become comfortable with punishment. Robert Harris (a brutal murderer shaped by horrific treatment throughout his childhood and adolescence) [36] did not deserve to be punished, but we could not avoid punishing him. We could have avoided killing him, and we could have treated him more humanely by far (at the very least, protecting him from violent sexual abuse as a young prisoner). But once he had become a hardened murderer, punishment was unavoidable. It was also unjust, and we are better off acknowledging and even emphasizing that fact.

We have been trying to solve the problem of punishment by contriving models that make punishment just; that problem cannot be solved in our unjust world. But the big problem is not the inevitable injustice of punishment, but our efforts to portray punishment as just, and our deep nonconscious commitment to belief in a just world. Recognizing that punishment is invariably and fundamentally unjust has great advantages. One, we eliminate the self-made man, along with the individualism and greed and arrogance and cruelty to those less fortunate. Two, we open the way to deeper inquiries into the causes of behavior. If we want to believe that punishment is just, we must stop looking: either by appeal to miraculous first causes so that there is no deeper cause to consider, or by ruling deeper inquiry out of bounds or ridiculing deeper inquiry as a form of "metaphysical megalomania" [37: 21]. The most important step seeking the deeper systemic causes – is blocked. Three, we recognize that no one justly deserves punishment, and we are not tempted by righteous retribution and our powerful strike-back desires to punish someone (guilty or not). That desire is strong enough without adding the motivation that we are doing something morally virtuous when we inflict punishment. Four, it prevents us from becoming comfortable with punishment.

Moral responsibility was needed to make God's acts just in God's just world; so why hang onto moral responsibility when God is gone and the world is clearly not just? Because we still have a deep nonconscious belief in a just world, and we become uncomfortable – as we should – when we must punish *and* must acknowledge that all punishment is unjust. But that discomfort is valuable, and we should reject the moral responsibility analgesics. The discomfort is a painful prod to encourage us to do the hard work of minimizing the need for punitive measures and making unavoidable punishment the least painful possible. Moral responsibility assures us that punishment is just, and that those punished are receiving their just deserts; that is not an incentive for reform and improvement.

Punishment is unjust but – at least for the foreseeable future - unavoidable. But the big problem is not the injustice of punishment, painful as that is. Recognizing the injustice of punishment is a benefit. The big problem is the futile effort to make punishment just. Belief in a just world is part of an interlocking system: blaming victims, authoritarian attitudes (those in positions of authority must be good, because otherwise they would not be at the top), radical individualism and self-making (because otherwise how could the rich and the poor be getting their just deserts in this just world, if they did not somehow make themselves and thus bear ultimate responsibility). The moral responsibility system not only props up bad cultural systems of self-made men and rugged individualism and "just deserts," but also encourages harsher punitive measures, and (in order to preserve itself) blocks deeper inquiry into the real causes. We do not live in a just world, and we cannot make sense of the moral responsibility that we contrive to block our recognition of the part we must play in inflicting unjust punishment.

We cannot stop punishing; but we can stop pretending that punishment is just. The problem of retributivism is a systemic problem based on blame and shame, belief in a just world, radical individualism, and social structures that exert control rather than fostering commitment. We will not eliminate the debris of moral responsibility until we have another system available to take its place; but thanks to the sociologists and criminologists who have elucidated the advantages of cultures that minimize moral responsibility, thanks to neuropsychologists who have enlarged our understanding of the real causes of problem behavior, thanks to psychologists who have dredged up the nonconscious belief in a just world and exposed its harmful power, and thanks to workplace engineers who have demonstrated the advantages of systems that reject blame and shame in favor of shared commitment and deeper understanding, we now know the benefits and the possibility of replacing the retributive system.

Compliance with ethical standards

Conflict of interest The author declares that he has no conflicts of interest.

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