BOOK REVIEWS

ON GUILT, RESPONSIBILITY AND PUNISHMENT. By Alf Ross. 1975. Stevens & Sons, London. Distributors : N.M. Tripathi, Bombay. Pp. x+183. Price £ 4.

I

IN MANY ways, the book under review is of exceptional importance for legal philosophers, criminologists and penologists. Not merely does it attempt to remove persistent misunderstandings concerning 'justifications' for determination of guilt and punishment, but it also charts out new, and seminal, directions for analysis. Alf Ross' analysis must be acclaimed as a major event in thinking about guilt, punishment and responsibility in the second half of twentieth century.

Of the many contributions made by the book to our understanding, the most significant areas relate to: (*i*) the 'campaign' against requirement of *mens rea* as a basis for punishment, and (*ii*) the problem of determinism as undermining all moral and legal bases for guilt and punishment. We devote this brief review to these two aspects.

II

Ross states[1] the case for abolition of *mens rea* as advanced by Barbara Wootton in the sixties quite carefully. Her main conclusion was that if "prevention of forbidden acts" is conceived to be "the primary function of courts" then it is "illogical" to insist on categories of *mens rea*, 'negligence' and 'accident' as a basis of determination of 'guilt' and punishment. This is so because:

> A man is equally dead and his relative equally bereaved whether he was stabbed or run over by a drunken motorist or by an incompetent one; and the inconvenience caused by the loss of your bicycle is unaffected by the question whether or no the youth who removed it had the intention of putting it back, if in fact he had not done so at the time of his arrest.[2]

But Barbara Wootton does not altogether wish us to do away with the mental conditions, signified by *mens rea* and its 'exceptions'. The relevant stage at which they ought to be considered is the stage not of conviction but *sentencing* (or 'treatment'.) For, as she says, obviously :

1. Alf Ross, *On Guilt, Responsibility and Punishment* 72-78 (1975).
2. B. Wootton, *Crime and Criminal Law* 51 (1963).

> The prevention of accidental deaths presents different problems from those involved in the prevention of wilful murders. The result of the actions of the careless, the mistaken, the wicked and the merely unfortunate may be indistinguishable from one another, *but each case calls for a different treatment*.[3]

In other words, Wootton's analysis, offers us an alternate model of administration of criminal justice. In the existing Anglo-American model, the bulk of creative energies of the judicial and enforcement system is spent in arriving at imputation of criminal liability, rather than on the question of how the offender upon conviction, should be dealt with. On the Wootton model, the creative energies of the legal system as a whole would be dedicated not so much to the determination of guilt as to the determination of how the offender can be 'treated' or 'rehabilitated' in a manner that he may not offend again. Implicit in the second model is the claim that it is morally superior to the first ; also implicit is the utilitarian claim that the second model would be more efficient in terms of preventing recurrence of criminal behaviour.

Alf Ross disagrees with both these claims as did H.L.A. Hart before him.[4] Taking the second claim first, we find that the principal objection of Ross to it is simply that there is no way of ascertaining the truth of that claim, since all extant legal systems (with minor exceptions of strict liability) presently insist on imputation of ascription of guilty mind as a basis for punishment. Ross says that this claim is 'doubtful'; that "the question how a system of criminal law that drops the requirement of criminal imputation will work is surely one we cannot answer with any certainty". We "must", he says, leave it "to conjecture, fortified as best it may be by hypothesis."[5]

Ross concedes that "immediate preventive effect" would be a certain result of the Wootton model; it would provide

> more inducement than does the law as it actually stands to pay greater heed to what one is doing and to take care, as far as possible, to avoid situations in which there is a significant risk of one's being a cause of some accidental injury.[6]

But, he speculates that in the long run "such an arrangement will...weaken the general preventive effect of penal law".[7]

Why so? Ross' hypothesis is that the "general preventive effect of penal law" depends on the "capacity of the system to strengthen and form popular moral attitudes of disapproval of criminal acts" and that this

3. *Id.* at 53 (emphasis added).
4. H.L.A. Hart, *Punishment and Responsibility* 158-185 (1968).
5. Alf Ross, *supra* note 1 at 80.
6. *Id.* at 81.
7. *Ibid.*

capacity "in turn depends on popular recognition of justice of punishment."[8] So far so good. But when Ross goes ahead to argue that the popular recognition of the justice of punishment itself in turn depends on the belief that "punishment should be both directed at the guilty and reasonably related to the guilt" and this condition will "certainly not be fulfilled in a legal system in which it is a matter of pure luck whether one will be prosecuted and possibly sentenced to one or other form of suffering or cure"[9] he indeed proves too much.

For, quite clearly under both the models the requirement that punishment must be directed to guilty and that it should be reasonably related to the guilt is conceded. It is no part of the Wootton thesis that everyone must be severely punished just because everyone is found guilty. And indeed not everyone would be found guilty on the Wootton model because it, more or less, takes for granted that model of law enforcement which in human experience involves both selective and differential enforcement. The mere fact that I am run over by a negligent driver offers no assurance to my kith and kin, in *either* model, that the negligent driver or the reckless one who caused my death would be found or if found would be properly prosecuted. The chances that he would be found and prosecuted are roughly about the same in both models, since neither overtly concerns itself with the question of appropriate models of law enforcement, but assumes some kind of model more or less, on the basis of existent realities. The result then is that it is a matter of "pure luck" whether "one would be prosecuted and possibly sentenced" *as much* in the model proposed by Barbara Wootton *as* in the one espoused by Alf Ross. Indeed, what is not more a matter of "pure luck" is that in the Wootton model if a negligent or reckless driver causing my death is prosecuted the consequence will be that he would be convicted and punished— something that cannot be so readily said on the existing *mens rea* model of criminal liability. And that, I think, is the crucial point sustaining the Wootton hypothesis.

It is, I believe, the moral argument which is the more impressive against Wootton thesis. Here we find many strands of argument. *First*, Ross accepts Hart's standpoint that: "The requirement of imputation is the condition of the individual's ability to plan his own life with the purpose of keeping himself free of the criminal law".[10] Hart himself puts this aspect as follows:

> [T]he system which makes liability to the law's sanctions dependent upon a voluntary act not only maximizes the power of the individual to determine by his choice his future fate; it also maximizes his power to identify in advance his space which will be left open to him free from law's interference. Whereas a system

8. *Ibid.*
9. *Ibid.*
10. *Id.* at 82.

> from which responsibility was eliminated so that he was liable for what he did by mistake or accident would leave each individual not only less able to exclude the future interference by the law with his life, but also less able to foresee the times of the law's interference.[11]

Hart maintains that the system based on the requirement of imputation of *mens rea* undoubtedly takes the risk that men may not attain "complete success in conforming to the law". But the risk is not "taken for nothing". Rather, "It is the price we pay for the general recognition that a man's fate should depend upon his choice and this is to foster the prime social virtue of self-restraint".[12]

We will call this first argument the "autonomy" argument. The *second* argument against the Wootton thesis is the political or ideological argument, formulated as early as 1892 by the Scandinavian jurist Carl Goos that "the requirement of guilt, and moral and mental responsibility, is the citizen's Magna Carta in the face of the power of the State".[13] Reversion to barbarism, with all its consequences, would be inevitable according to Goos, if we fail to "keep hold of the postulate" of free will which "is a condition of life for society when it does not want to give up all the conquests it has made for a legally safeguarded life in society for its members, and which it has cost many struggles to win."[14]

The *third*, and related argument, is the argument of fear. This argument relies on the extreme consequences which may (or must) follow the success of the campaign to eliminate responsibility. This fear is most vividly brought out by Ross :

> When the judge (and here I mean the person who finds a man *guilty*) is replaced by a manipulator and the therapist, when the criminal law is based on a philosophy of treating citizens like mice or patients without responsibility, the vista that opens up is not so much that of criminal's paradise as that of a totalitarian state with its mechanical and unlimited power over the individual.[15]

The *fourth* argument bears on moral justifications of punishment itself.[16] Both Hart and Ross take exception to the view that if retributive justification of punishment is to be rejected, and preventive justification to be accepted, there should be no question of imputation of responsibility.

It is at this point that Alf Ross offers us a genuinely new understanding of the retributive doctrine. He maintains that "right from the start the opposition of 'prevention' and 'retribution' as alternatives sets us off

11. Hart, *supra* note 4 at 181-82.
12. *Id.* at 182.
13. Alf Ross, *supra* note 1 at 99.
14. C. Goos, 2 *Den Almindelige Retslaere* 618 (1892), quoted by Alf Ross, *supra* note 1 at 99-100.
15. Alf Ross, *supra* note 1 at 70.
16. For enunciation of the notion of 'punishment' see *id.* at 33-60.

on the wrong track."[17] The opposition between the two "is meaningless because the opposing answers are not concerned with the same question". Basically three questions are raised when we speak of aims or justifications of punishment. First, how is the "State's moral right to classify certain acts as criminal justified and defined ?" Second, what acts, if any, "has the State a moral duty to punish ?" And third "What moral principles apply for establishing the *conditions in which* specific individual is liable to punishment and for *fixing the degree* of punishment ?"[18] Ross maintains that the idea of retribution has simply no relevant answers to the first two questions; it is solely concerned to provide an answer to the third, that is "it provides the condition and measure for individual penalties".[19] The first question can only be answered, he says, on 'prevention', or more broadly the utilitarian lines.

The second question too can be answered on purely utilitarian lines. But Ross is willing to concede that "if one assumes that it is the moral task of the State to realize moral justice" then one can say that the "State ought to punish any action that is reprehensible according to the presupposed moral system". Ross says : "Certain variants of the retributive theory do indeed have this content, and they merge here with the utilitarian viewpoint that unless 'morality' is enforced society will perish."[20]

In other words, the importance of Ross' analysis consists in highlighting the fact that retribution not to be understood (nor has it been so understood by retributivist themselves) as an *aim* of punishment. Rather, the retributive principle is offered as "its legitimation and a principle of its measurement."[21] If this insight has "ceased to be obvious" it is because the classical authors (like Kant, Hegel, Binding and others) are no longer read and people "simply parrot one another's hearsay that the absolute theorists claim retribution, and not prevention, to be the aim of punishment". Ross complains that just "no one stops to consider how unreasonable such an assumption is" and how "a thinker of Kant's calibre could have thought anything so foolish."[22] These are strong words, characteristic of Alf Ross' style. But denunciation of pseudo-scholarship, and of parroting of each other's hearsay, has a poignant relevance to the Indian context where theories of punishment are inevitably taught and analysed, by and large, in intellectually perverse and perniciously capsule forms.

III

Let us now briefly deal with the first three arguments. The human

17. *Id.* at 89.
18. *Id.* at 50-51.
19. *Id.* at 51.
20. *Id.* at 53.
21. *Id.* at 62.
22. *Id.* at 62-63.

autonomy argument, initiated by Hart and reinforced now by Ross, is based on the model of a rational man. It assumes that the system of criminal liability has a significant bearing, and provides a critical variable, for human conduct. It takes for granted that the principles of criminal liability educate men in the exercise of their free choice; it educates them in the "prime virtue of self-restraint" in day-to-day choice making and overall planning of future life. The individual is able to "foresee the times of the law's interference" better under the *mens rea* model of criminal liability than under the strict liability model. He is assured that if he commits a criminal act by mistake, negligence or inadvertence, he may not be convicted or punished.

This is an attractive argument; but in the form in which it has so far been developed by Hart and Ross it is not free of difficulties. The first difficulty is simply that if this argument was to hold without any qualification, the imposition of strict liability for any act cannot simply be justified. Neither Ross nor Hart deal specifically with the problems raised by strict liability for their autonomy argument. The second difficulty is that, characteristically, *victims* of criminal acts disappear from the view of Ross and Hart in this argument, whereas this was the starting point of Barbara Wootton's thinking. When Hart talks about the "price we pay for the general recognition that a man's fate should depend upon his choice", he is thinking of *all* men, and society, generally. But from a strictly victim-oriented perspective, people who are paying the price (or are called upon to do so) are those who are exposed to criminal acts or harm flowing from them. If we were able to assume that we are all potential victims and were asked to choose the principles of criminal liability under a Rawlsian veil of ignorance, Hart seems to be saying that we would, or ought to, favour the principle of *mens rea* as basing criminal liability. All of us know now that the "veil of ignorance" premise offers us no assurance for yielding indubitable principles of justice.

In any event, the Hart-Ross analysis proceeds on a number of assumptions. Some of these are : (*i*) there are morally acceptable foundations for criminal law and justice of punishment ; (*ii*) all members of society know what the criminal law, at any given time or at all times, requires to be done or forbids; (*iii*) this knowledge enters as a significant consideration in rational decisions made by individuals (and groups, a factor not explicit in the Hart-Ross analysis) in choosing among alternative courses of action ; and (*iv*) the "times of the law's interference" with individual or group life, in terms of appropriate enforcement procedures, are actually ascertainable to individuals and groups while making rational choices or decisions. These assumptions raise a host of questions which cannot be pursued in this review. But for the present purposes it will suffice to say that the autonomy argument, while intuitively appealing, is in its present stage no more than a rhetorical way of expressing one's own moral preference.

The second argument, namely the political or ideological argument, hits the nail on the head quite sharply. In Carl Goos' words, we recall, the requirement of responsibility, both moral and legal, is "the citizen's Magna Carta in the face of power of the State". This is, in essence, a liberal position. But this position then means that we view criminal law primarily in terms of *political justice* (that is, relation between the citizen and the state) than in terms of prevention of crime or 'social defence'. Once we begin to do this, we transcend the problem of bases of responsibility and come to grapple more meaningfully with the problems raised by the 'radical' criminologists or 'new criminology'.[23] But when thus confronted we usually find liberal thinkers on the subject changing their premises of political justice and reverting to mere utilitarian notions of crime prevention and the lot.[24]

Of course, despite this kind of somersaulting and cognitive tensions the core of the Magna Carta argument remains. And that is : that there ought to be moral limits to state action in proscribing certain conduct as criminal and prescribing and administering penalties for the transgressions of law norms. But thus formulated, the argument is not conclusive against the Wootton model, for all that the latter proposes to do is to *transfer* the question of *mens rea* or responsibility to the level of sentencing from that of conviction. Responsibility notions are still dominant ; but their dominance is shifted to the more important level of sentencing.

The third argument—the argument of fear—is primarily emotional. What is here involved is the notion that lawyers and judges (and prison officers) as a class are more solicitous of human dignity than the class of psychotherapists and social workers in dealing with the people successfully labelled as 'criminals'. The idea is that somehow psychiatrists will treat "people like mice" or "men without responsibility", whereas jail officials, lawyers and judges will not do so. To some extent this is an empirical question. To some extent the reference to totalitarianism in Ross' exposition of this argument seems to suggest that the delegation of power to deal with the criminals from prison authorities to psychiatists (and 'manipulators', whoever this phrase may refer to) will bring about "an unlimited power over individuals". Of course, there have been many powerful, and even heart-rending critiques of "psychiatric justice".[25]

23. See *e.g.* I. Taylor, P. Walton and J. Young, *The New Criminology for a Social Theory of Deviance* (1963); *Id., Critical Criminology* (1975); C. Reasons and R. Rich, *The Sociology of Law: A Conflicts Perspective* 191-232, 413-427 (1975); R. Brown *et al.* (ed.), *Law and Society* 81 (1978); G. Hawkins, *The New Penology* in *id.* at 108.

24. See *e.g.*, Randzinowicz and J. King, *The Growth of Crime: The International Experience* 84-87 (1979). In a sense, the observation in the text also clearly applies to the useful analyses of Hart, *supra* note 4 and Alf Ross, *supra* note 1.

25. E. g. T.S. Szaz, *Law, Liberty and Psychiatry* (1963); Szaz, *Ideology and Insanity: Essays on Pychiatric Dehumanization of Man* (1970); but see *Contra* K. Menniger, *The Crime of Punishment* (1968).

And these have, notably, emanated not from jurists but from practising psychiatrists themselves. But lawmen, by the same token, cannot be unmindful of similar critiques of prison justice which now abound. Surely, if there was, as is the case, a choice between the excesses of psychiatric justice as against the excesses of prison justice, *there is not really much to choose*. Lawmen may out of habit, as also from certain constellations of material interest, prefer "punishment" to "treatment", given the *type* of choice.

But the argument of fear surely cannot be conclusive against the Wootton model of movement only on one-sided analysis of what happens in some societies under the label of "treatment" just as the argument against punishment cannot be similarly conclusive by reference to what happens under the penal system of some societies. This might be relevant but not conclusive. Any system which treats men as mice is abhorrent. But this is not the issue. The issue is : is there something about "treatment" as distinct from "punishment" which would *necessarily* result in men being treated as mice ?

And a related issue is : is the requirement of *mens rea* or responsibility a causal concomitant of free societies as distinct from totalitarian ones ? Is the growing presence of strict liability offences, at least in the criminal law of developing societies, a symptom of the invariant-looking relationship between "totalitarianism" and "democracy" ? These are hard questions which the argument of fear evades. One wishes that Ross would have dealt with these questions more systematically ; one hopes that he would do so before long.

IV

Ultimately, Alf Ross' position against abolition of *mens rea* is a moral position. He says : "to eliminate the requirement of imputability would lead to *morally indefensible, unjust convictions*".[26] The reason for this is that for Ross the very definition of punishment is that the punishment is a social response which besides including suffering or unpleasant consequences for the norm-violator includes articulation of the "disapproval of the violator".[27] Moral censure of the violator, in Ross' analysis, is conduct-influencing. And it is "the moral aspect of the penal system, the moral disapproval which characterises punishment", which "is through its influence on moral feelings and attitudes of decisive significance for the preventive function of the system".[28] It is, therefore, vital that "sentencing a man to punishment" be popularly experienced as moral disapproval of him.[29] If the law, however, precludes moral responsibility at the stage of conviction, the "criminal system would appear in the

26. *Supra* note 1 at 91.
27. *Id.* at 39.
28. *Id.* at 90.
29. *Id.* at 91.

people's eyes as a manifestation of a brutal will to power" and not as "an exponent of society's morally based needs and of its moral disapproval of disregard of its needs".[30] What Ross objects most then in the Wootton model is that "it is *punishment* as (moral) *disapproval*, not *punishment as suffering*, that is the target of the abolitionists".[31]

It is surprizing that an author of the calibre of Ross, who offers us many striking examples of how logical and linguistic analysis of words can dissolve many of our central puzzles[32] should himself heavily use the word "moral" all through the analysis summarized above. What does it precisely mean to say that there are certain "morally based needs of the society", that penal system would be effective only in so far as it gives scope for articulation of "moral disapproval of society" and that "moral censure" is a vital aspect of punishment as a mode of social response to norm-violation ? The question is : whose morality is (or is to be) embodied in criminal law and its administration ? Ross himself provides an answer in his critique of Hart when he says :

> In the first place, the professed *opinio communis*, is of course a fancy. All we can say is that there is a certain unanimity within a certain cultural group. Secondly barring a metaphysical postulate about a trans-personal moral consciousness which reveals eternal truths to us, the results of the analysis are no more than a description...of a particular moral view existing in a particular cultural group at a particular time. The same holds when an author relies on his moral conviction. What he presents us with is a personal confession that may claim interest as any other human document but *not* as evidence of any trans-personal truth.[33]

If this be so, what are we to make of the generous references to morality and moral sense of the community in regard to punishment that Ross reiterates ? One answer to this question is to be found is his view that the task of "philosophers and criminologists" is not so much to describe positive, institutionalized morality of social groups but to provide a critical evaluation of it. He states :

> It is the moral critic's tasks...to test the positive, experienced morality in order to discover the purposes it was made to serve, and how it is to be evaluated in the light of consciously accepted norms. In brief, we must attempt to rationalize our experienced morality, and especially our experienced criterion of

30. *Ibid.*
31. *Id.* at 69.
32. See *e.g.*, *id.* at 1-12, 13-23, 159-180.
33. *Id.* at 59 (emphasis added).

mental responsibility, or perhaps rather approaches to it of which we are in possession.[34]

Even so, the question still persists : assuming multiple moralities in a plural society which are "positive" as well as "experienced", how are we to "rationalize" these ? Must the violation of law against theft in a Jean Valjean type situation be visited with penal consequences ? If so visited, must it also be accompanied by a moral censure of the violator of the law ? If this does not happen, does the law against theft, and with its the penal system *necessarily* lose effectiveness and moral legitimacy? These simply put questions admit no easy answers. Radical criminology has indeed raised this type of questions much more sharply and thoroughly. It is indeed a pity that so rigorous and through a mature reflection Ross proceeds in complete inadvertence to this rather important arena of agonizing.

About half of Ross' analysis is devoted to a discussion of free will and determinism despite the fact that he firmly believes that the "problems of criminal law can and must be solved without recourse to the philosophical dispute between determinism and indeterminism".[35] Ross does it because he feels that quite "indigested and confused" understandings of the issue do in fact "play an important part in argumentation and the forming of opinions" on criminal law theories and policies.

In keeping with contemporary literature on the subject, Ross advances certain important clarifications.[36] Following William James' celebrated analysis, Ross reminds us of the distinction between "soft" and "hard" varieties of determinism. He distinguishes clearly between two types of freedoms involved in the discussion: the freedom of action and freedom of will. Hard or genuine determinism places emphasis on the freedom of *will*: soft determinism emphazises freedom of *action*. He formulates the matter thus: "Moral responsibility presupposes not only that we could have *acted* otherwise, but also that we could have *willed* otherwise".[37] He further identifies two consequences of determinism in relation to morality: one he labels 'incompatibilism' and other 'nihilism'. The former simply means that "moral responsibility is *inconsistent* with determinism" whereas the latter means that, "moral responsibility is impossible".[38] Ross does not favour moral nihilism as is clear from his statement that its "unreasonableness" is so "glaring" that it can "never have had any serious adherents".[39] He also describes as false "the postulate

34. *Id.* at 92.

35. *Id.* at 101, quoting Stephon Hurwitz, *Den danske kriminalret. Almindelig del* 104 *et. seq.* (1952).

36. See the references in Ross, *supra* note 1 at 104-105, f. ns. 6-27. To this we might add T. Honderich, *Punishment: the Supposed Justifications* 108-147 (1969); G. *Dworkin* (ed.), *Determinism, Free Will and Moral Responsibility* (1970).

37. Ross, *supra* note 1 at 86.

38. *Id.* at 86 (emphasis added).

39. *Id.* at 86-87.

of determinism" which describes the idea that determinism is scientifically proven.[40]

It is not necessary, nor would it be worth while, to follow what the author himself calls "the twisting track of argument" which he unfolds and pursues in the book.[41] Readers would find interesting Ross' analysis of Scandinavian thought on determinism, and particularly of the views of Hedenius, a hard determinist.[42] Ross' account might have been more complete had he included in his analysis a review of some of the major positions of B.F.Skinner's *Beyond Freedom and Dignity*. Be that as it may, in conclusion of this review essay, look at one segment of Ross' analysis as indicative of his overall position in regard to the controversy.

Ross does not subscribe to hard determinism. He is unwilling to assume with the view of Hedenius that "increased insight" into the antecedents of the accused "will kill the desire or the capacity to harbour moral ill will".[43]

But Ross concedes that with "growing insight and understanding within which moral reactions are appropriate contracts gradually to zero". He cites with approval Ekelof's view that

> moral indignation presupposes that consideration of causes should not be pursued beyond the point needed to establish that a certain person was the perpetrator of the crime. And for the person who sees punishment as a social function, the administering of a punishment cannot be seen at the same time as a moral appeal. The critical judgment and the moral apprisal proceed, so to speak, on different mental planes.[44]

All said and done, Ross concludes that determinism and morality are not irreconcilable, even when it is conceded that the maxim *compendre, c'est pardoner* expresses a "psychological truth." That truth is

> that the more we know of a man and of the misdeed that he has performed, and the more we can fill in the details of his inheritance, environment and life story—the more likely it is that we will come across circumstances which will mitigate the anger we feel towards the man, but not our judgment of his deed. However, if no circumstances of this kind come to light, the mere incorporation of the deed into causal nexus will be without any significance whatsoever for the moral judgment.[45]

Whether "circumstances of this kind will come into light" will ultimately depend on how *far* one is willing to look at the antecedents of the

40. *Id.* at 102.
41. *Id.* at 101-179.
42. *Id.* at 114-137.
43. *Id.* at 153.
44. *Ibid.*
45. *Id.* at 155-56.

accused. If the consideration of the causes, as Ekelof has observed, "should not be pursued beyond the point needed to establish" legal guilt, then the foregoing observation of Ross is not of a fundamental importance for criminology as well as penology. And one may even say that if mitigation of anger (referred to in the above passage) arising out of a total comprehension of the accused's antecedents becomes a systemic property of the administration of criminal justice, the conative function of moral disapproval as an essential aspect of punishment (and on which Ross lays so much *sotre*) is bound to weaken. If this weakens, what assurance there is that people at large may not regard administration of criminal justice, in Ross' own terms, as a manifestation of brutal will to power rather than that of "society's morally based needs and of its moral disapproval of disregard of these needs"?[46]

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46. *Id.* at 91.

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