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Book Notes: The Sense of Justice Empathy in Law and Punishment, by Markus Dirk Dubber

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BOOK NOTES

THE SENSE OF JUSTICE: EMPATHY IN LAW AND PUNISHMENT, BY MARKUS DIRK DUBBER. NEW YORK: NEW YORK UNIVERSITY PRESS, 2006. Pp. ix + 206. Index. \$40.00 hardcover.

BY AUDREY NGO-LEE

The sense of justice has long been abused, asserts Markus Dirk Dubber, who believes nonetheless that the concept is not inherently flawed, but merely misunderstood. Dubber begins the book with examples of misapplications of the sense of justice, ranging from the use of victim impact statements to manipulations of jury composition, illustrating how they can prevent people from seeing the offender as a fellow moral person.

The first three chapters are devoted to exposing how the sense of justice has been used by both populists and elitists to preclude hard thinking about Judge Learned Hand's dilemma: whose sense of justice should prevail, the individual judge's or the community's? Dubber argues that it should be neither. While Edward Cahn's critique of Judge Hand's position was that Hand erred in choosing the community's sense of justice over his own, Dubber thinks that both Cahn and Hand have fundamentally misconceived the sense of justice as a communal construct when it ought to be conceived of as an individual moral capacity.

Dubber uses the last two chapters to mine liberal thinkers John Rawls and Jürgen Habermas, as well as the fields of moral psychology and language competence, for a better definition of the sense of justice. For Dubber, the sense of justice must be a true abstract concept and reflective act that ultimately will give rise to the desire to treat others justly because they are equally as capable of self-government as we are. Turning to the sense of justice in punishment, Dubber concludes that identification with both the victim and the offender through the exercise of empathy and recognition of offenders as persons entitled to justice are necessary for a fair resolution to any criminal case.

