

Is the only reason for
punishment
retribution?



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' The ultimate reason for the state to punish law-breakers is retribution. All other reasons are peripheral'. Discuss

This evaluation of the different theories of punishment will be analysed first by explaining the four main theories of punishment. I will then look into Kant's reasoning as to why the ultimate reason for the state to punish law-makers is retribution. I will explain how Kant believed criminals damage society and how he believes the only way for their damage to be repaired is through retribution. Then Kant's accusation of the other theories of punishment being unjust will be explained. I conclude that Kant's theory makes sense as long as you agree with him on a few points making all other reasons for punishment peripheral. Then I will go on to look into free will and its relationship with punishment. All four theories require free will which, shown through experiments by Libet and others does not exist. Finally, I will explain Caruso's theory of punishment which is compatible with a free will sceptic view of the world concluding that retribution is not the ultimate reason for punishment and neither are the other four.

The belief that the ultimate reason for the state to punish criminals is retribution is called retributivism. This theory of punishment claims ' that the primary justification for punishing a criminal is that the criminal deserves it.'[1]In other words the criminal is getting their desert, meaning they are getting what they deserve.

There are three other classical reasons for punishment which the statement we are discussing accuses of being peripheral; consequentialist, communicative, and restorative. A Consequentialist account of punishment is

a forward-looking theory of punishment, meaning the punishment will be based on the consequences of itself rather than based on which crime has been committed. It argues ' that if a punishment is good at all it is only so by virtue of some further happy state of affairs (such as less crime) that it tends to bring about.'[2]It can come in many forms such as imprisonment, reformation, and deterrence but as long as the punishment results in more good than bad it is a justified way of punishing criminals. Utilitarianism, the consequentialist moral philosophy which argues what we call good can be reduced to pleasure, is often coupled with a consequentialist view of punishment as it looks solely at the outcomes of the punishment however the two are not mutually exclusive. A communicative theory of punishment is both forward-looking and backward-looking because it punishes the criminal for the crime they committed but does so with the purpose of communicating to the criminal what they did wrong in an attempt to change their moral values, so they can be re-integrated with society. Restorative theories of punishment ' suggest that, once the facts of a crime have been established, our priority should not be to punish the offender but (i) to meet the victim's needs, and (ii) to ensure that the offender is fully aware of the damage they have caused to people and of their liability to repair that damage.'[3]This is often done through ' face-face meetings between the victim and offender'[4]ran by the state who attempt to resolve the conflict through dialogue. The result of restorative punishment may result in the criminal giving a payment of some kind to the victim.

One argument for the only non-peripheral reason of punishment being retribution comes from Kant. He argues that retribution is the only theory of

punishment that treats people as moral agents, respecting their moral autonomy. A criminal who breaks the law damages the state and in order to repair the damage done the criminal has to be punished in a way that restores the status quo. Kant's idea is that criminal acts 'push us all toward a lawless world, a "state of nature."' [5] This is why Kant believes crime damages the state as it moves us further from a civil society where conflict can be solved without violence, to a lawless and animalistic state of nature. Kant says, 'Whatever undeserved evil you inflict upon another within the people, you inflict upon yourself.' [6] In other words "an eye for an eye" so for the status quo to be restored in, for example a theft, something has to be taken from the criminal of equal value of that which was stolen.

After setting out arguments as to why retribution is the ultimate reason for punishment Kant goes on to criticise the other theories of punishment's use of people as means to an end rather than ends in themselves.

Consequentialist theorists would justify imprisoning a criminal in an attempt to keep society safe but to Kant this 'is incompatible with human dignity.' [7] Because it violates Kant's human formulation; "one man ought never to be dealt with merely as a means subservient to the purpose of another." [8] Consequentialists would calculate which method of punishment would result in the most pleasurable result viewing the criminal as a number not a morally autonomous being. Rehabilitation may appear to treat criminals as ends in themselves however it 'is actually no more than the attempt to mould people into what we think they should be.' [9] The state would be forcibly changing people ignoring their autonomy. A communicative punishment also would ignore a criminal's autonomy as it

would attempt to shame the criminal into accepting their wrongs which would not work if the criminal was proud of the damage they caused meaning the damage they caused to the state could not be repaired.

Overall, I believe Kant offers strong arguments as to why retribution is the ultimate reason for the state to punish law-breakers. All other reasons are peripheral because they either ignore the human formulation which appears to be an intuitively good formulation or do not do enough to restore damage done to the state by the criminal. However, his theory does rely on us accepting the human formulation and his views on the state of nature but the strongest argument against Kant's theory of punishment comes from its obsession with human autonomy, otherwise known as free will. It argues that we do not have free will so any theory of punishment which relies on free will is wrong.

All four of these theories of punishments rely on the metaphysical concept of free will. Free will is a metaphysical concept because all scientific experiments, which work purely on the physical, into free will show that it does not exist. One of the earliest experiments into free will was done by Libet in which he proves that 'freely voluntary acts are preceded by a specific electrical change in the brain (the 'readiness potential', RP) that begins 550 ms before the act. Human subjects became aware of intention to act 350-400 ms after RP starts, but 200 ms before the motor act'[10] This experiment gave patients two buttons to choose between, they were told to press one of the buttons when a light in front of them turned on. Information about which button the patient chose was found in the brain before the patients were aware of their choice. A different laboratory 'extended this <https://assignbuster.com/is-the-only-reason-for-punishment-retribution/>

work'[11]discovering two brain regions that contained information telling the scientists which button the patient would press a full ' seven seconds prior to the subject's decision.'[12]These experiment shows that there is no physical evidence of decisions appearing in the brain without any cause. This means that for someone to believe in free will they must except that something metaphysical exists. The belief in free will is therefore faith based and it seems ludicrous to argue that we should base theories of punishment on a faith on free will rather than objective facts.

Before going over why the theories outlined above require the illusion of free will it is first important to define free will. When talking about punishment free will is defined in terms of moral responsibility. Free will can therefore be defined through the Principle of Alternate Possibilities (PAP) ' which requires that an agent be able to have acted otherwise if she is morally responsible for her action.'[13]This means that for someone to have free will they must have been able to act differently than they did. For example, going to the local shops and buying oranges instead of apples, for the person shopping to be free they must have been able to have chosen apples or something else instead of the oranges. The two experiments explained above show that the person choosing between the fruits was not free to pick as the decision would have been found in her brain before she was consciously aware of it. The decisions would have been physical caused by events in her brain.

Retributivism is especially reliant on free will as it seeks to cause the offender pain in order to right the wrongs committed. This is the same as punishing an asthmatic person for coughing as, just as the asthmatic person had to cough, the offender had to commit the crime and could not

have acted differently, they were just unlucky in having certain neuron patterns that day. Criminals are just as unlucky to be criminals as an asthmatic person is to be asthmatic so any theory of punishment that is backwards looking and aims to give the criminal their desert cannot be seen as moral.

Consequentialist may argue that their theory is compatible with free will as punishment can still be used as a deterrence or as a method of protecting greater society. There are two problems with this though the first being that consequentialism attempts to increase the good in society, implying there is some sort of objective “goodness” but notions like this ‘seem to depend upon people being able to freely choose how to think and act.’[14]As what is right and wrong or good and evil, they appear just to be the result of neuronal patterns in the brain. The second issue of consequentialism is that it could justify incarcerating innocent people or giving criminals unproportioned punishments by saying it will deter others from committing these crimes.

Communicative punishment is reliant on free will because condemning and shaming a criminal for the crime they committed would otherwise be like condemning an asthmatic person for coughing which is massively unjustified. Restorative punishment is also just as reliant as the others as making a criminal pay back what they stole or damaged is the same as making someone who unknowingly spread a disease by coughing pay for another victim’s healthcare which we would never expect. Now we can see how all four theories of punishment rely on free will to be justified we can conclude

that retribution is not the ultimate reason for punishment and that all three other theories cannot even be said to be peripheral as they are unjustified.

Caruso has created a system of punishment which is combatable with reality.

It is the ' public health quarantine model'[15]it treats criminals as if they were Ebola patients, they have not done anything which justifies them receiving punishment but ' for the safety of society'[16]they are quarantined. Criminals can be quarantined in order to protect society from them, but the quarantine should not be a hurtful environment and should be as ' least restrictive as possible'[17]its purpose should ultimately be treatment and rehabilitation. As well as being compatible with reality Caruso's system would fix many issues of the justice system because it would understand that criminals are just unlucky it would not treat a minority who grew up in poverty surrounded by crime as the same as a middle class person because it would take into account that one situation was more likely to lead to crime than the other. The only way punishment is compatible with free will is if we treat criminals like victims.

In conclusion despite Kant making a strong case for retribution being the ultimate reason to punish law-breakers the fact that free will does not exist collapses his system. All four classical theories of punishment that have been explained are completely unjust from a free will sceptic viewpoint and therefore none of them are the ultimate reason for punishment instead the ultimate reason for punishment is to protect society and rehabilitate law-breakers.

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📖 **United States v. Grayson, 438 U. S. 41 (1978)**

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[1]Murphy, 2007, pp. 11

[2]Bennett, 2004, pp. 324

[3]Johnstone, 2002, pp. 1

[4]Johnstone, 2002, pp. 1

[5]Cardinal, Jones & Hayward, 2015, pp. 98

[6]Kant, 1996, pp. 224

[7]Rachels, 1995, pp. 136

[8]Kant, 1887, pp. 194

[9]Rachels, 1995, pp. 136

[10]Libet, 1999, pp. 47

[11]Harris, 2012, pp. 8

[12]Haynes, 2011, pp. 14

[13]Berofksy, 2011, pp. 155

[14]Harris, 2012, pp. 48

[15]Warburton & Edmonds, 2016

[16]Warburton & Edmonds, 2016

[17]Warburton & Edmonds, 2016