

Immanuel kant theory of justice



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The philosopher Immanuel Kant believed that his retributive theories of justice were based in logic and reason. The retributive stance on punishment states that punishment is necessary, and indeed, justified, on the basis that the act of committing crime deserves punishment. The strict guidelines Kant's theories created, coupled with the very nature of retributive justice fuelled the arguments of those of Kant's critics who claimed his approach would lead to harsh and ineffective sentencing. It is my intention to use this paper as a means of exploring and addressing these claims.

“ Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime; for a human being ought never to be manipulated merely as a means related to another's purposes... First, he must be found to be deserving of punishment before consideration can be given to the utility of this particular punishment for himself or for fellow citizens”[1].

Upon considering the above it is clear that, in Kant's view, the only purpose punishment should serve is to penalize the criminal for committing a crime. Whether or not the punishment could have an affect on the criminal's propensity to reform is therefore irrelevant. The punishment is there to punish the criminal for the crime they have committed; nothing more, nothing less.

This leads on to the theory of ' just deserts'. This theory is now considered to be one of the more prominent views on the subject of the punishment of criminals[2]. The key belief of the principle being that offenders must

deserve punishment: “[in] the everyday thinking about punishment, the idea of desert figures prominently. Ask the person on the street why a wrongdoer should be punished, [and] he is likely to say that he ‘deserves’ it”[3].

Kant advocated two principles regarding the way punishment should be meted out. As we have established above, the first of which is that the only right and proper grounds for punishment is that the criminal ‘deserves it’. And so it follows that punishing a criminal with the aim of promoting happiness, reformation or deterrence would run contrary to the ‘categorical imperative’ by making the punishment a means to an end. Kant’s categorical imperative is the universal law that states that all people must act in a morally correct manner at all times. Therefore one’s own desires or wishes cannot be taken into account when making a decision, as no one person’s desires should be prioritized above another’s. The desired outcome of any action must be to avoid causing harm or inflicting damage upon another person. In this regard, Kant defines an act as ‘morally correct’ if it can be applied as a universal law. For example: “I will never tell the truth” would be deemed to be immoral because it could not be applied as universal law as, in the event of everyone having to “never tell the truth”, the truth would lose its significance.

In simpler terms, when considering Kant’s categorical imperative, the logical approach surely dictates that we must consider the affect our own actions will have on others, and then to avoid carrying out actions that will harm or hinder the rights of others. The second of Kant’s principles regarding punishment relates to proportionality; the sentence received should be proportionate to the crime committed.

Kant's theories of autonomy and free decision making make up the foundations for his view on 'just deserts'. The theory submits, first of all, that everybody is duty bound to respect each others rights. Kant goes on to suggest that adhering to the law is a sacrifice of one's right to freedom of choice. Therefore, those that commit crime gain an unfair advantage over those that do not. Punishment is used as a means to redress the balance between the law abiding citizens and the criminals, removing any unfairly gained advantage from the criminals. The punishment is intended to punish no more or less than relates to the advantage gained. It follows, therefore, that deterrence and reformation bear no relevance to this method of sentencing.

This type of justice system is still relevant today, and indeed, has been put to use by some governments. The U. S. State of California has rigorously applied retributive punishment philosophies to its court system. Retributive justice has been applied in California since the inception of the Determinate Sentencing Law: "The Legislature finds and declares that the purpose of imprisonment for crime is punishment"[4]. One of the key policies of California's justice system is the "three strike rule". The three strike rule was introduced in 1994[5]. It's main purpose was to punish repeat offenders by handing out long sentences – a minimum of twenty-five years – to those that have been convicted of a felony and already have two "strikes" for violence on their record. Sentencing under these guidelines leads to particularly long, and critics say, ineffective, sentences[6]. The policy has been successful in that it has kept criminals off the streets for longer[7], but it can be argued that the detrimental effects, such as criminals receiving life

sentences for what amounts to petty offences - the third strike doesn't have to be a violent offence - outweigh the beneficial effects. This policy also conflicts with Kant's categorical imperative in that receiving a life sentence for being convicted of shoplifting[8](as the third strike) is not proportionate.

We have already established that Kant's intention is for individuals who have been found to have broken the law to receive punishment that is relative to the advantage that they have gained by committing the crime. If the above assessment were to hold true it would mean that Andrew von Hirsch's proclamation regarding the opinion of the person on the street[9] would surely be correct. Despite this, one could argue there to be various potential flaws present within the theory. Not the least of which is how to apply this theory of punishment to a criminal that has gained no discernible advantage from their crime.

For example: A boy living alone with his mother is periodically abused by her. He is subjected to sustained mental, physical and sexual assaults that he is powerless to prevent. He is kept locked up for the majority of his time at home and is threatened that, were he to tell anyone of what he has suffered, he would receive more severe abuse. The abuse continues as he grows older and eventually he fights back. On this occasion he hears his mother approaching him via the stairs that lead to his room. He rushes to the top of the stairs and pushes her down them, resulting in her death. I would suggest that it is certainly arguable that the boy's only intention was for the abuse to stop, rather than an intention to kill or seriously injure his mother.

SOURCE IT UP It surely would not be right to say that there has been any advantage gained in this example. The rest of society is not expected to

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endure such abuse, and so it follows that the boy was already at a disadvantage. Also, surely the victim in this crime was herself guilty of not respecting the rights of her son, as per Kant's theory of 'just desert'. This would surely lend weight to the line of thinking that it would be unfair to punish the criminal in this, albeit radical example, where there has been no advantage gained, by the very same principles applied to those that have gained some advantage. This example seems to support the beliefs of Kant's critics[10], and certainly strengthens the view that "two wrongs don't make a right".

Kant endorsed capital punishment as a suitable punishment for murderers[11]. This stance is a good example of Kant's beliefs regarding proportionality; a life for a life. However, this stance also goes some way to strengthening the claims of those that believe Kant's philosophy encourages harsh sentencing[12]. This leads on to the area of Kant's philosophy that has attracted the most criticism. How can ending the autonomy of another, criminal or otherwise, be in keeping with Kant's theories regarding categorical imperative? To use Kant's own words, to hand out capital punishment must surely be classed as FIND SOME RELEVANT WORDS. Why is it that this stance can be upheld in relation to suicide or murder, but disregarded when it comes to the punishment of a criminal? Again, we turn to the view of Andrew von Hirsch, who said:

' A person who violates the rules has something others have – the benefits of the system – but by renouncing what others have assumed, the burdens of self-restraint, he has acquired an unfair advantage. Matters are not even

until this advantage is in some way erased ... Justice - that is punishing such individuals - restores the equilibrium of benefits and burdens...'[13]

Kant justifies such an approach by saying "[the criminal] draws the evil deed back to himself ... when he suffers that which according to the penal law ... is the same as what he has inflicted on others". According to this line of thinking, a criminal that has murdered somebody else has done so because they have made a choice to do so, and in doing so, they have gained an advantage over the victim. In other words: A kills B because A didn't like the look of B. By murdering B, A has sought to gain an advantage over the rest of law abiding society, who by adhering to the law, have sacrificed their freedom of choice. So, A's choice to murder B, is deemed to be A unfairly reclaiming his freedom of choice. However, if A is punished via capital punishment, it is not to gain any advantage, it is merely to punish A for the crime he has committed in a proportionate manner. He has taken a life, therefore his own becomes forfeit. Again, though, there is a case for arguments against Kant's stance on the matter. How can theory stand up in cases where the criminal has not acted out of any rational thought? How can Kant's view apply in cases where the criminal has lost their mind to insanity and acted on instinct rather than choice? There is no reason, no autonomy in such an instance.

In conclusion, I believe Kant's theory on punishment to promote certain values which are of utmost importance to society. Namely, the categorical imperative and, in particular, his view on morally correct actions. However, there is perhaps, something robotic about his theory. It would be wonderful if everybody told the truth all of the time, regardless of consequence. It would

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be equally wonderful if people did not commit crime at all. I believe that asking everyone to follow the same universal laws, while noble and beneficial in theory, cannot be achieved due to the complexity and intrinsic selfishness of human beings. Similarly, to punish them in such a way; without taking deterrence, the propensity to reform, or any other individual factors pertaining to a given case, such as circumstance and state of mind, would be unfair. While I agree that proportionality would offer certain advantages when sentencing, such as adherence to the rule of law; everyone is treated equally. Kant's stance on punishment also presents its fair share of problems. Namely, that people's actions are often dictated by circumstance, which obviously would not be taken into consideration under the guidelines laid out by Kant, and presented throughout this essay. Owing to this fact, I believe that Kant's stance on punishment would be perfect in an ideal world. However, as unfortunate as this fact is: we do not live in an ideal world.