

# The concept of just punishment philosophy essay



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In his paper "A Non-utilitarian Approach to Punishment", H. J. McCloskey argues that a utilitarian account of punishment 'dictates unjust punishments which are unacceptable to the common moral consciousness' (239). In your paper, (a) outline the argument McCloskey provides for this conclusion and (b) raise two objections to his argument. If you support his argument, then respond to the objections that you or other critics mount.

The concept of a just punishment is captivating and is debated among many philosophers today. Punishment is defined as the intentional infliction of suffering on an offender for a moral or legal wrongdoing. In this essay I will go into great detail of McCloskey's article, and discuss how his argument that a utilitarian account of punishment is unjust and retributive theory is the only way punishment can be considered just. I will also introduce objections to McCloskey's theory that attempt to disprove that in order to justify punishment you have to connect punishment with moral wrongdoing, and the offender must get a punishment he deserves. I agree with McCloskey's argument, and will offer my opinion in responding to the arguments posed against his theory.

To the average mind, punishment should generally be justified based on utilitarian grounds. It seems to make the most sense that satisfying the greater good is obviously relevant when determining which type of punishments should be inflicted. The question arises which punishments are "just", and this must be answered before we can determine which punishments are morally permissible. Although crime is bad, a punishment's purpose is to prevent it more so than cancel it. To punish crime is an imperfect state of affairs. Punishments such as whipping, imprisonment, and

death are considered evils. Although crime is an evil and prosecutors deserve to be punished, these punishments need to be justified based on their utility. A society with no crime and no punishment is obviously better than one with both. McCloskey argues that good results come from punishment, because it is attempting to set a precedent not to commit the crime in the future which will cause the greater utility. Punishment is justified because it is useful as opposed to because society should be able to illustrate indignity towards the offender, or if one says the punishment cancels out the crime, or because as a human being himself, he has the right to be punished. H. J McCloskey says that these justifications are implausible in a way that utilitarian justification is not. He argues that morality of punishment is by a retributive theory, specifically the theory where " evils should be distributed according to desert, and that the vicious deserve to suffer."

Just punishment is deserved punishment. In order to deserved to be punished, the offender must have committed an offence that that a morally accepted as an offence. If an innocent man was being punished, this would definitely not be justified. Punishing a person not responsible for his behavior, such as a person with a mental problem would also be seen as unjust. Whether punishments actually work is irrelevant in determining if they are just or not. In the 18th century people were hung for shoplifting, where in today's life this would be considered severely unjust. According to utilitarian's this type of outrageous punishment could only be permissible if it somehow turned out that it would achieve greater utility.

Morality suggests that in order for punishment to be just, it has to be merited by the offence being committed. It must involve care in determining if the offender is truly responsible, and it implies a moderate punishment, that shouldn't be excessive. It should not surpass what fits the severity of the crime being committed. The point is that an outsider should be able to say that the person being punished deserved that type of punishment. One shouldn't say that good has come out of one being punished. It seems logical to say that the punishment was useful but not deserved, and deserved but not useful, and one cannot say that a punishment was solely undeserved. Unjust punishment is whether collective or scapegoat punishments that result in inefficient trial procedures, corrupt police methods, or mistaken tests, as is punishment for things that have nothing to do with the crime. Just punishment is one that fits a retributive theory. " it points to a very important consideration in determining the morality of punishment (it's justice) and explains what punishments are just, and why they are just. A utilitarian would say that any punishment, regardless of severity, would be just if in the long run it created greater utility for a greater number of people. Utilitarian's dismiss appeals about moral consciousness that relate to ones emotional response. McCloskey disagrees with utilitarian's in this sense. He argues that our moral consciousness gives us answers we don not accept as defensible after hard observation, and the judgments which we do accept after serious manifestation are the ones being appealed. Before a utilitarian questions this approach, he must ensure that he is secure from similar criticism. One could argue that a utilitarian's would appeal the theory of utility is based on an uncritical emotional acceptance of what at first seems to be a moral principle, but after sever examination, could involve great

evils. If a utilitarian were to argue that utilitarianism does not involve unjust punishment, and the answer is that whether or not unjust punishments are useful, it is logical to think that at some point they will become useful, in which case a utilitarian is committed to. A utilitarian would argue that it could be necessary to punish a lunatic, mentally challenged person or an innocent person being framed as being guilty, which McCloskey and I do not agree with. If a person is not in control of his actions, he should not be punished for an offence he didn't know he was committing

An objection to McCloskey's theory would be the utilitarian theory. Utilitarian's only justify punishment after balancing the good and evil produced with the outcome. McCoslkey says that in order to justify punishment you have to connect punishment with moral wrongdoing. The offender must get a punishment he deserves. McCloskey brings up an example to justify his objection to the utilitarian theory. He uses an example of a town that has a racial conflict, and where a black man rapes a white woman, and riots, white mobs, and with the help of the police, killing of black men occur as a result. If a utilitarian were there he would convict the initial black rapist instantly, if he knows this will prevent the riots and killings, so as a utilitarian he has the duty to bear a false witness in order to punish the innocent person. A utilitarian only performs acts that bring about the most utility. McCloskey argues that it is not morally permissible to perform this kind of act, making the utilitarian justification incorrect. An innocent man should not be framed and punished for something he didn't do, regardless of what the outcome would be.

Thus the retributive theory of punishment with its criterion of justice as an end in itself gives place to a theory which regards punishment solely as a means to an end, utilitarian or moral, according as the common advantage or the good of the criminal is sought.