

# Punishment And Justification: A Study on Kant's View on Punishment

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## Abstract:

Punishment is in Kant's view a topic in the philosophy of law or right. Punishment is imposed not by individuals, but by courts and judges, and it is therefore a practice that presupposes the existence of the state. Kant argues in some detail that we have a moral obligation to leave the state of nature and to enter a civil commonwealth, because it is only in a state or commonwealth that external justice, especially with respect to rights to hold property, can be assured and enforced. The state then exists as the enforcer of the rights of citizens. Kant's theory of the state and its proper functions, and of the law of property and of punishment, is all statements of moral ideals. This paper is studying the concept of Punishment, Justification of Punishment and the Kant's view on Justification of Punishment.

**Keywords:** Punishment, Justification, Retribution, Kant;s etc.

## 1. Introduction:

Punishment is the imposition of an undesirable or unpleasant outcome upon a group or individual meted out by an authority. The study and practice of the punishment of crimes is called Penology. The authority may be either a group or a single person and punishment may be carried out formally under a system of law or informally in other kinds of social settings such as within a family. The reason for punishment includes retribution, deterrence, rehabilitation, and incapacitation. Punishment may be in the form of positive punishment and negative punishment. The reduction of a behavior via application of an unpleasant stimulus is known as positive punishment whereas removal of a pleasant stimulus is known as negative punishment. Extra chores or spanking are examples of positive punishment, while removing an offending student's recess or play privileges are examples of negative punishment.

Punishment is in Kant's view a topic in the philosophy of law or right (Recht). Punishment is imposed not by individuals, but by courts and judges, and it is therefore a practice that presupposes the existence of the state. Kant argues in some detail that we have a moral obligation to leave the state of nature and to enter a civil commonwealth, because it is only in a state or commonwealth that external justice, especially with respect to rights to hold property, can be assured and enforced. The state then exists as the enforcer of the rights of citizens. Kant's theory of the state and its proper functions, and of the law of property and of punishment, is all statements of moral ideals.

Kant understands that actual states will at best approximate to such ideals, and at worst, will fail to exemplify some or all of these ideals? We should remember that in the discussions that follow Kant is talking about developing an ideal, and we can think about the issue of punishment in a similar vein by asking to what extent Kant's ideal is embodied or not in arrangements for handling crime and

punishment in present-day societies.<sup>8</sup> Because the discussion of punishment is part of the Resht, what we are applying is not the familiar categorical imperative as stated in the Grundlegung: "Act only on that maxim through which you can at the same time will that it should be a universal law". Rather we will be using the more restricted version that is appropriate for Resht, which Kant calls "The Universal Principle of Law (Recht)": "An action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law."

## 2. Objectives of the study:

- To study the concept of Punishment
- To study the Justification of Punishment
- To study the Kant's view on Punishment

## 3. Methodology:

The present study is mainly based on secondary sources of information. It has been collected from various Law reports, law journals, Books and articles etc.

## 4. Concept of Punishment:

The concept of punishment is not restricted to one interpretation. It changes constantly through time and from place to place. Punishment may be described simplistically as the infliction of pain on a person as a penalty for a violation, fault or offence. In reality, punishment cannot be defined in simple, unambiguous, UN dimensional terms. It is not, as is sometimes implied, an aspect of the social contract between punisher and punished, in whatever setting - prison, school, household, in some senses, the involuntariness of the person punished may be underestimated. Although there may be consensus that certain core penological activities such as capital punishment constitute punishments, it is more difficult to specify the boundaries between punishment and neighboring concepts such as social control. Social control may be viewed as the more global concept and punishment one - penological aspect of it (Robert Adams 1998, The Abuses of Punishment).

## 5. Justifying on Punishment:

Punishment and the justification for punishing crimes in light of the right to dignity of an individual, as well as his or her rationality and responsibility, has been a subject of debate among philosophers, political leaders and lawyers for centuries. This is further complicated by the various distinctions between different classes of criminals. Various theories of punishment have been developed, each of which attempts to justify the practice in some form and to state its proper objectives. Offences are controlled by the threat of punishment. This is so much so that the definition of a crime is not complete without punishment, as no one can be charged for an offence, if there is no prescribed punishment for that offence. Hence, punishment can be justified as the purpose of a crime, offence or omission. Punishment is always against the conduct of an offender and not against the person in his individual capacity, hence justified. Where one is punished by way of fine, imprisonment, a death penalty or compensation, deprives the individual of his liberty and serves the purpose for which that punishment is meant. The Court is always informed by differing punishment objectives before imposing a sentence upon the accused. Such objectives and purposes of punishment can be categorized into four main

theories, namely: deterrence, incapacitation, retribution and rehabilitation/reformation<sup>3</sup>. These principles ought to guide decisions about appropriate kinds and justifications of punishments. The dominant justifications for punishment are provided by the retributive Utilitarian theory.

## 6. Kant's view on Justification of Punishment:

Kant's justification of punishment relies on the notion of deterrence. There has been a considerable renaissance in retributivism as a theory of the justification of punishment in the second half of this century. Retributivism is often defended as if it were a particularly hardy moral intuition, a basic free-standing moral principle that is undesirable from any broader theory or set of principles. In this vein it is often "supported" through the presentation of outrageous and horribly cruel crimes, especially against persons, particularly murder, in order to elicit what may be thought to be the natural and appropriate emotional response, a response of anger, indignation, and desire for retribution. Under such accounts the retributive idea has little to do with ethics thought of as a rationally defended systematic theory.<sup>3</sup> In the history of retributivism, Kant has a prominent place. He was one of the classic defenders of a tough retributivism, at a time when the new humaneness and teleology in the theory of punishment was making its first headway with the help of (equally classic) Enlightenment writers like Beccaria. I wish to show that Kant did not regard retribution as a basic, undesirable moral principle; rather, he is concerned, as far as possible, to find a rational basis for the idea of retribution, and to relate it closely to the root ideas of his moral philosophy: the categorical imperative (CI), and the idea of respect for persons.

Kant's theory of punishment has been discussed usually as a series of statements that have been considered for their implications for the justification of punishment; it is less often considered with respect to its basis in the broader Kantian practical philosophy. Kant uses the phrase "a categorical imperative" usually to refer to a specific obligation that is derived from the categorical imperative. Thus, for example, "Refrain from making any lying promises" is a categorical imperative that is established by the argument presented in the second of Kant's well-known four examples in the *Grundlegung*. So, when Kant writes that "The principle of punishment is a categorical imperative", he is telling us that this principle (a) makes an unconditional moral demand, not one that may be altered for the sake of someone's convenience or preference, and (b) that it can be derived from some version of the categorical imperative. The title quotation also refers to the principle of punishment, which Kant identifies as the *lex talionis*. The *lex talionis* is usually identified with the formulations derived from Mosaic law, "An eye for an eye, a tooth for a tooth, a life for a life."

Murphy adduces fourteen quotes in support of his construction of Kant (Murphy 1992, 36-39). Of these nine deals with the difficulties of conceptualizing free-will and the consequent problem of telling whether someone is morally iniquitous. It should be noted that the force of these quotes is to modify the administration rather than the justification of punishment. They demand that, even though punishment is justified, we are cautious in its application because the motivations behind crime are complex and never entirely deducible. This is the purpose for which Murphy uses the quotes. It is to be noted though that the majority of the evidence offered by Murphy makes no mention of the justification of punishment. Of the remaining five quotations one seems to deal with neither the justification nor the application of punishment:

The more legislation and government are brought into harmony with the [ideals of justice], the rarer would punishments become, and it is therefore quite rational to maintain, as Plato does, that in a perfect state no punishment whatsoever would be required. (From *The Critique of Pure Reason* cited Murphy 1992, 37; Murphy's modification)

This says nothing about punishment or its justifications. Rather it suggests that ideally law and government act so as to deter crime. This sort of deterrence is uncontentious because crime is a bad thing to be avoided where possible. The question is whether punishment can be used to this end and because purely deterrent punishment would use an individual as a means to an end the answer, on Kant's own criteria for moral theory, must be no. It might also be noted that Kant seemed to have a very optimistic opinion of how easy it is to deter people from crime. For example, in the *Groundwork* he asserts that [t]here is no one, not even the most consummate villain, provided only that he is otherwise accustomed to the use of reason, who, when we set before him examples of honesty of purpose, of steadfastness in following good maxims, of sympathy and general benevolence (even combined with great sacrifices of advantage and comfort), does not wish that he might also possess these qualities. Only on account of his inclinations and impulses he cannot attain this in himself, but at the same time he wishes to be free from such inclinations which are burdensome to himself (1987, 87).

Whether or not this is accurate psychology it does suggest why Kant believed that in an ideal state, with perfectly framed and promulgated laws as examples, crime could be eradicated. In such a state punishment would not have the function of deterrence: there would be no punishment. Thus, the question of justifying punishment would be rendered academic and hypothetical at best.

Kant's talk of a hindrance to a hindrance of freedom does not, on the face of it, add anything to the argument because the victim's right has already been hindered and it is too late to "hinder that hindrance". This line can only make sense with regard to punishment if there is some ongoing hindrance perpetrated by the criminal which remains in need of "undoing" after the commission of the immediate offence. We have already seen that the claim that a criminal ought not to keep the profits of his crime is true. Maybe, then, there is some ongoing profit which the criminal may rightly be deprived of. In this case we need to consider what might constitute profit apart from the immediate material booty of an offence against property and how the criminal might be deprived of such profit. If there is such an ongoing harm then punishment would be analogous to a combination of self-defense and enforcement: defense of a right which is being breached in an ongoing sense and/or enforcement of a duty which is being ignored in an ongoing sense.

## 7. Conclusion:

Kant's attempted justification of punishment is problematic because it is framed exclusively in terms of freedom and the right to freedom. It is not at all obvious how a freedom, once taken away, can be restored. If anything, punishment seems to be a gratuitous additional diminishment of freedom (the criminal's freedom). While this may be intuitively appealing and even poetically just, Kant doesn't offer us a principled justification for this removal of freedom in terms of his supreme principle which demands that freedom be maximized.

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