



A plea for reformatory model of punishment

Patitapaban Das

Department of Philosophy, Ravenshaw University, Cuttack, Odisha, India

Abstract

“Koi kisiko itnā pyār karen jo usko mārde” (Does anyone love someone so much that she kills him?). This is a stupendous dialogue delivered near the end of a recent Bollywood movie named *Dhoom-2*. In the movie it is portrayed that the heroine shoots at the hero because she loves him so much that she does not want the hero's life rusted in the police custody. At the prima facie, someone might accuse the heroine being immoral taking someone's life or inflicting pain to him. Though slightly different, an act of punishment also aims at inflicting pain or hardship in someone's life. The act of killing or inflicting pain is justified on the ground that a) prohibits others from indulging in the same act as in preventive theory b) tit for tat as in deterrent theory c) for educating someone as in case of reformatory theory. However, the act of killing or inflicting pain to someone is not merely judged by the consequence of an action rather by the intention or motive of so doing. This evokes the problem of decision procedure regarding the moral validity of an action. This also triggers a philosophical debate over the legitimacy and moral worthiness of punishment in whatsoever form may be. Generally three views - deterrent, retributive and reformatory - about punishment are proffered in the philosophical literature. According to the deterrent theory punishment is inflicted on someone so that others would be deterred from doing crimes. For retributive theory, punishment is just like a negative reward which is due for the criminals. Reformatory theory is the view according to which punishment is an act of reformation. This paper examines the moral rationale behind these views and proposes that two of these are similar in their approach since both of them base their argument on the intention or motive of the action. Moreover, this article is tilted towards one of these two views namely reformatory theory of punishment. This paper examines the moral grounds of these theories and then shows that reformatory theory is based on solid moral grounds. The paper has three parts. In the first part, I focus on the moral groundings of theories regarding punishment. In the second, I rebuff the moral foundations of deterrent and preventive theories. In the third part, I discuss the moral strength of reformatory theory.

Keywords: punishment, deterrent, retributive, reformatory theory, moral justification

Introduction

Act of punishment is a juridical idea. The political or social agency or authority is responsible to incur punishment upon someone. Punishment might be of many kinds namely physical, psychological, social or economic. Levying monetary burden is an example of economic Punishment. However, we will be more concerned about physical and psychological type of Punishment in this paper. As mentioned earlier, punishment requires a legal validity or authenticity. Perhaps this is the most basic distinction between crime and Punishment. Interestingly, punishments are incurred to curtail or control crime. However, there is a very thin divisive line between punishment and a crime. For, example, if someone hurts other, his act is called as a crime and he will be branded as a criminal. However, when a policeman hurts a person, it is often called as Punishment. So what distinguish criminal activity from the act of punishment are the legal sanction and the intention behind the action.

Calling for intention is a call for moral worth of an action. There are two antagonistic camps in philosophy namely deontologists and consequentialists who endeavour to investigate the moral worth of an action. Consequentialism, having a massive fan following seek to determine the moral worth of an action in proportionate to the consequences one

action fetches, the act A is morally good if it fetches morally desirable or good result, wrong if otherwise. Even though consequentialism invited serious investigation and popular appraisal during 16th and 17th century, it is severely criticised mainly from two grounds. Firstly, it is obsessed with the result or consequence very much. However it does not devise satisfactory or adequate formulae to decide what a good result is.

Hedonism, otherwise known as utilitarianism intervened to rescue consequentialism by devising a hedonistic calculus. Greatest happiness of the greatest number is the formulae. However, history of ideas has witnessed massive debate over the nature and structure of this hedonistic principle. The most precarious criticism against the principle is that it goes against our most common intuition i.e. each person's value is important. By no means should one's value and importance be undermined for the sake of other. Utilitarianism in its simplest form tends to sacrifice the minority for the sake of majority.

Consequentialism is also criticised for ignoring the importance of the motive of the action. For consequentialism, an action A is good if its result/ consequence would be good. The question, however, remains unanswered is about the mismatch between the action done and the desired consequence. There is always a possibility of going wrong. A doctor, for instance,

toils hard to rescue the patient. The possibility foreseen by the doctor is having an operation. The doctor's motive is not evil. However, to his utter frustration, the patient dies. The consequence is wrong even the motive behind the action is right. Consequentialism terms this action as wrong ignoring the importance of the intention behind the action. There is always uncertainty between the action done and result occurred. Consequentialism perhaps is on back foot in this regard.

Deontologists, therefore, emphasise on the motive or intention rendered behind one action. For them, an action is good if the underneath intention or motive is good. No wonder, the ardent champion of deontology declares that one should tell the truth no matter the world dooms. Even though this view suffers from quantitative issue, i.e. intention or motive cannot be quantified and therefore be easily manipulated, it seems that modern juridical psychology is highly influenced by this view. The most spoken formulae, i.e. 'one innocent should not be punished no matter hundred criminals go unpunished' is simply an expression of this deontological temperament. So, not the consequence rather motive or intention makes an act punishable or laudable.

It is a strong claim. Mere intention might turn an action morally good or morally worthy or morally wrong. However it is not sufficient to turn action punishable or laudable. For instance, as mentioned earlier when one person kills another no matter how noble his motive might be he will be branded as criminal or at least as a murderer. But when a state indulges in killing someone with the same motive his action is appreciated. What matters then is the juridical recognition rather than mere motive. Legal sanction or recognition makes an action laudable and its prohibition makes it punishable. This makes punishable acts resting on shaky grounds. Mere legal sanction or prohibition makes moral action punishable and vice versa. The source and nature of legal recognition plays an important role here. If the source of juridical authority is an autocratic one punishment is resulted by whims. History of mankind is full of instances of such autocratic legal recognition where life has become unbearable and therefore history has been coloured red by innocent people's blood.

Even though the nature and source of authority remain noble, there is a possibility of clash in the nature and structure of motive behind an action. Motive or intention is set largely due to one's metaphysical convictions, political ideologies, power play and circumstantial exigencies. For Shri Krishna, Arjuna is not guilty and hence his action is unpunishable killing his kith and kin in the war because he has to follow his duty and ascribed to the divine will. For Arjuna he is guilty and morally corrupt and hence is subject to punishment killing massive populace for certain cause whatsoever it may be. Shri Krishna has convinced Arjuna by showing his *viswarupa* or roughly translated his argument by force. However, this is a classic instance of metaphysical convictions moulding one's motive of action similarly many of contemporary activities are motivated by metaphysical convictions. Interestingly Bhagat Singh was called as a terrorist by the British government. No wonder Nathuram Godse would also be levelled as a terrorist. This paper does not aim at exploring the psychological genesis of such acts. However, this is to show that many acts are

performed due to certain metaphysical inclinations which are judged as morally not worthy or strongly punishable by the antagonistic metaphysical camp. History is full of instances witnessing ideological clashes. It is said that wars start in mind. Political ideologies determine the moral worth of an action and therefore rebuff the act of opposite ideology. The advent of multicultural and communitarian literature has criticised the idea of ideological universalism as myth. Hence, determining punishable acts have become challenging and risky. To sum up this section, the following illuminations are revealed.

1. Acts of punishment are difficult to determine
2. Acts of punishment are determined by an array of psychological, metaphysical, political and social elements.

Having said the above stated facts about acts of punishment, let's scan the established theories regarding it. Two well known theories mainly retributive and preventive theories are under scrutiny in this section. The official doctrine of retributive theory uphold following presuppositions.

1. Each action has equal reactions.
2. No action should go unrecognised.
3. Punishment is a negative reward.
4. Punishment is a balancing act, i.e. hand for a hand and eye for an eye.

Even the slightest intuition can reveal the flaw of these claims. The theory is highly influenced by scientific world view and reduces man into an object or a mere machine. 'Each action has equal and opposite reaction' is Newtonian physics to explain the natural world. However, in the natural world there are mere events not actions. Things can be determined by such a mechanical law. Human actions are motivated and intended. Such a deterministic and mechanical explanation would be proved inadequate to explain human world. Even the very name of the theory refers to animal world. Retribution meaning vengeance is a typical animal instinct which human civilisation has toiled hard to overcome. We don't bite dogs because they bite us. Similarly the theory is ground on such a conviction which civilised human world does not subscribe to. About balancing act, it can be said that hand for hand well balances but eye for an eye makes the whole world blind.

Even retributive theory reduces man to a machine or an object, preventive theory treats man as a mere means. The official doctrine declares that punishment is required in the society because it prevents others indulging in the same kind of criminal activities. There are couple of corollaries of this claim. Firstly, the doctrine depends heavily on the idea of fear. If the punishment would be harsh it creates a sense of fear among others. Eventually it prevents or prohibits others indulging in the same criminal activities. This theory though does not reduce man into machine, but to an animal. It is said that man are like animals in respect to food, sleep, fearfulness and sexual orientation. Because of the presence of these animalistic qualities, the theory believes that human beings can be treated like animals. Animals can be treated through a hunter; human beings can be prevented from criminal activities by punishment. History has enough evidence to falsify this claim. Human beings can never be sabotaged by fear or force. Rather fear or force works in opposite direction.

Human beings have come out of force or fear impressed upon him by nature. Massive bloody revolutions have been set forth against most exploitive rulers whose sole weapon of operation was fear. A hunter can make a tiger dance but not a human being.

The second corollary of the doctrine is that even though it treats man as a man but merely a means. The claim is sarcastically represented as 'Ram is punished not because he stole a goat but because goat will not be stolen.' That means people are punished not solely because they committed mistake but because to create an example before the society not to commit such mistakes. By this many implications follow.

- a. More amount of punishment is inflicted upon than someone deserves only to show others that consequences of such action are not good.
- b. Some innocent persons are punished in the name of the society and social security since the sole aim of punishment is not to punish he said person but to create and awareness against the crime.
- c. Human beings become simply samples. Philosophically, Kant fights this attitude tooth and nail. For him human beings dwell in a kingdom of ends and therefore it is immoral to treat them as mere means. His maxim says act in such a manner that you never treat man as mere a means but an end.

Any reductionist theory therefore is proved inadequate in respect to punishment. The above theories attempted to reduce man into either things or animals. It is said in the previous section that such a reduction is morally unjustified. So any theory treats man as a man is praiseworthy. The dilemma, however, is that treating man as man, nothing less than that rebuffs the whole idea of punishment. Idea of punishment stands on that 'fall' from manhood. And therefore a good theory of punishment would rebuke punishment. This is the paradox of theory relating to punishment. A plausible theory of punishment is, if at all, should and must have the following desiderata.

1. It should treat man as man nothing less than that. Man should not be treated as either a thing or machine or an animal.
2. Man should be treated as an end, never as a means only. Any justification of punishment should not use the inherent dignity and right of man.
3. Punishment if any should be inflicted for the welfare of the person concerned not more than that. So love you therefore kill you.

I propose that all these desiderata are adequately satisfied by Gandhian view on morality, moral obligation and accountability. At the first sight Gandhi rebuffs the idea of punishment as a technique for social change. Gandhi does not see the 'fall' of mankind towards animal kingdom or the world of objects. Rather Gandhi tries to elevate the status of man to divinity. He believes that a divine spark is present in human beings and therefore they are divine by nature. Sin or crime is mere a condition not a constituent of this divinity. One can see a heavy influence of Christ on Gandhi urging him to hate the sin not the sinner.

Ascribing a different category to man different both from objects and animals was not new for Gandhi to innovate. From time immemorial man has distanced himself from both the world. No wonder, Aristotle institutionalised this temperament by his famous dictum 'All men are mortal.' Even though men are animals, no one punishes an animal because it harms someone. On the other hand we claim that punishment is inflicted on someone because she acted like animal. That means men are not punished because they acted like animals but because they did not act like human, i.e. rationally. So punishment is primarily aimed at training man behave rationally. The dilemma is animality is hammered to invoke rationality. Kant the champion of enlightenment also urged to sabotage our animality to polish rationality already within man. Kant however, negates any external sanction for achieving this. For him, moral principles are categorical imperatives and therefore any rational being can cognise this with a little effort. Because Kant believes that one's rationality cannot be transformed through hammering at animality but a transformation of rationality itself. Not doing so we commit a category mistake. Therefore, for Kant, moral principles force upon by the rationality itself. Punishment should not be determined by the external sanction rather would be determined by ones pure reason and practical reason. I think this is sufficient to show the internal ruptures in the theories of punishment.

Gandhi in his own way also subscribes to this temperament. For him one's conscience is the utmost arbiter in regard to moral worth of an action. Where there is a bottle neck between morality and legality, morality has an upper say. Gandhi undermines political diktat in the name of moral conscience. In fact Gandhi violets legal sanctions if those contradict moral conscience. The foundation of such a belief is that human beings are bestowed with moral faculty which is noble and divine.

Similar view forms reformatory theory of punishment. It holds that punishment should be inflicted on man only to reform them. According to this view, all so called criminals are psychological patients. Hence they need treatment, counselling. They deserve solidarity, sympathy or piety, not punishment. Gandhi moves one step further. Following Christ, he believes that it is immoral to hate the sinner, not the sin. Crimes, if any, are done under certain circumstances. A good theory of punishment should focus on eradicating the conditions that trigger crime.

Conclusion

To conclude, it can be said that the category of punishment is itself a faulty idea. Even though, someone clings on devising a theory on it, the theory must base on the idea of human dignity to the extent that man should be treated as man only not less than that. Within this framework, punishment is allowed only on the condition that it helps the person concerned only. The theory is founded on a single principle, 'Love you, so kill you.'

Reference

1. Acton HB (ed.). The Philosophy of Punishment, St. Martin's Press, Great Britain, 1969.

2. Alexander L. The Doomsday Machine: Proportionality, Punishment and Prevention, *The Monist*, 1980; 63(2).
3. Armstrong KG. The Retributivist Hits Back, in Acton, H. B. (ed.), 1969.
4. Bedau HA. Retribution and the Theory of Punishment, *Journal of Philosophy*, 1978, 75.
5. Goldman AH. The Paradox of Punishment, in Simmons, AJ, Cohen M, Cohen J, Beitz CR. (eds.), 1995.
6. Lyons W. Deterrent theory and Punishment of the Innocent, *Ethics*, 1974; 84.
7. Moberly W. *The Ethics of Punishment*, Faber and Faber, London, 1968.