



CRIME AND PUNISHMENT

Antoni Gomila
Dep. Psychology
University of the Balearic Islands



my question

- why should we punish those who commit crimes?
- not: whether and when we feel the impulse to punish



- my question presupposes our way to deal with evil: a penal system (a code, police, prosecutors, judges, sanctions involving prison,...)
- is any of this justified? on what grounds? why don't just ask for compensation in these cases (as civil law)?



- we'll see that the answer has to do with our inclinations
- and suggest which ones are the relevant for the normative question



outline

1. the question
2. the retributivist answer
3. the consequentialist answer
4. the restaurativist answer
5. a modest proposal: retributivism cum restaurativism



I. the question

- why to punish? what's the point of criminal justice?
- rehabilitation? social revenge? social control? recognition of the harm done? protect society? institutionalized revenge?



- the penal system lacks coherence, involves components derived from those multiple, different, grounds
- while they are incompatible: different views, for example, on the role of the State; on the legitimate procedures; on the sentences; on the design of the jails; on the activities allowed in the jail; on the time sentenced...



in the background

- why do we have norms? which is their binding force? which ones to have?
- which people deviate from right, to what extent, and why
- impulse to punish -regardless of norms!



- now: why do we have right/wrong in the first place, for a whole society
- enforcement, part of normativity --otherwise, what's the point of having norms nobody respects?
- problem of legitimation -in this case, for social practices, rather than for rules



more specifically

- why do we have a penal system at all?
- not just civil law: regulations among people, rights and duties, etc., but **CRIMES**
- as transgressions beyond the private sphere, that threaten society as a whole



- and which form it should best adopt?
- codes, police, prosecutors, judges, prison, forensic psychologists,...
- which punishment? prison, third degree, on probation, redemption by work,...



critical stance

- does the penal system work well?
- is it effective?
- is it cost-effective?
- is it fair? or is it discriminatory?



2. the retributivist

- punishment, justified in itself: the proper reaction to crime
- punishment as retaliation, as “social” revenge
- as the way to provide to the offender “what she deserves”
- in order to satisfy the victim



- backwards-oriented
- proportioned to the crime
- avoids escalating violence: takes the punishment of the hands of the victim
- traditional notion “eye for eye”



doubts

- but why is it important that the crime is punished?
just to satisfy/placate the will of revenge of the
victim? what if it is not felt? or there is no particular
victim?
- does the State have an interest in that criminals get
what they “deserve”?
- is there any good in causing more pain/harm?
(remember, no appeal to social benefits, effects, is
allowed here!)



Hegel's answer

- the criminal needs a punishment as a “purge” to overcome her status: he’s got the “right to be punished”, as a way to get her back to normal as a member of society
- this makes punishment for the good of the criminal, not for the good of the victim
- punishment as penance: religious inspiration



- it doesn't capture a genuine psychological need: criminals usually do not confess and do not beg pardon
- but it suggests one: the need to be treated as a person, not as an instrument, or a thing
- also, link between crime and moral status (from doing evil to being evil)



retributive attitudes

- those reactive attitudes that we experience in response to how others behave to us, to somebody else, or we behave to others
- reactive: rage, compassion, mourning...
- retributive: shame, resentment, indignation, guilt, pride,...



- retributive attitudes are moral emotions:
involve an implicit moral judgment
- not yet an explicit moral norm! -> yet to be
discussed by the community
- second-personal reasons vs third-personal
ones



3. the consequentialist

- punishment, justified by its beneficial consequences
- the approach of a social engineer



how punishment works

- through dissuasion
- through incapacitation
- through rehabilitation



but...

- the penal system is seldom effective:
 - massified jails do not rehabilitate
 - the level of crime is not contingent upon the level of repression
 - crime is present in jails
 - some crimes (white collar) do not get punished



but...

- the expected beneficial consequences must outweigh the costs
- is a penal system the most cost-effective way to fight crime?
- superior alternative: educational and social care programmes?



but...

- people generally thinks of punishment for some crimes in retributivist terms; lack of effectivity of the system increases de-legitimization of the penal system
- some other crimes (fraud, corruption), less likely to ask for privation of freedom, but loss of illegal gains



greatest weakness

- it justifies not punishment of a transgressor -as a way to get her cooperation to catch another, for instance
- it justifies punishment of an innocent: if that's the way to achieve the objectives
- in general, overlooks that culpability is the key, and it is a individual notion (responsibility)



4. the restaurativist

- punishment, as a form to restaure the relationship between transgressor and victim
- greatest attention to the victim, than to the offender
- punishment, as a follow-up to begging pardon



motivation

- a critical stance upon the current penal system:
 - distances offender and victim
 - no role for beggin pardon
 - induces the offender to deny responsibility, and act in her own interest



alternative

- punishment just makes sense if procures satisfaction/reparation to the victim
- the offender should be made to plead guilty and beg the victim's pardon
- by the community, through a mediator
- punishment: reached by agreement



model

- how to deal with bullies at school:
 - make him sensitive to the harm caused
 - let the group voice the complaints
 - rise awareness of how relationships are affected
 - look for ways to compensate



doubts

- criminal justice, not just interpersonal relationships, but social values/rules at stake
- nothing prevent the offender to beg the pardon of the victim, and plead guilty
- even if the victim pardons, trial and punishment equally in order



- above all: in many cases, the offender do not recognizes her responsibility, or tries to diminish it (our of self-interest)
- good faith and voluntary participation, not enough



- last but not least: not of crimes involve an individual victim -but the community
- fraud, corruption...



however...

- it highlights again the important role of the reactive attitudes, as the psychological foundation of the punishment
- it projects at the level of the criminal law the interplay of moral emotions: shame, guilt, indignation, resentment...



5. a modest proposal

- a combination of retributivism and restaurativism
- retributivist: punishment is the appropriate response to crime
- restaurativist: an offense requires guilt recognition and begging the pardon



interpersonal punishment

- verbal reproaches, reproaching looks
- lack of good will, no more cooperation
- no more greeting
- loss of interest in the relationship



therefore...

- punishment, the symbolically appropriate response to crime: as a social reproach
- which involves treating the offender as she deserves -as a moral subject (a responsible agent)
- as part of the process of moral conscientization of the offender, to assume her wrongdoing
- in the hands of the state level, as warrant of individual rights (moral community)



not that...

- offender' sincere remorse is for sure
- upon begging pardon the offender goes free
- justice as an agreement among particulars



but...

- context-sensitive, case-based, punishments
- relevance of sincere pardon-begging, as a condition to reintegration as a moral subject
- being punished as a moral experience
- which culminates in the apology ritual