

## Punishment and Justice

### TWO CONFLICTING AIMS

A central theme of our discussion over the past two weeks has been a conflict between two important aims of the state:

**SAFETY:** the state should use its power to protect its citizens *from one another* by preventing citizens from violating one another's rights.

**RESPECT:** the state should protect its citizens *from itself*, only using its power in ways that treat its citizens justly and do not violate its citizens' rights.

#### Racial profiling (Adam Hosein):

- Some argue that we could more effectively prevent violent crime if we engaged in racial profiling (SAFETY), since doing so would make us statistically more likely to capture criminals.
- *But*, engaging in racial profiling seems to require treating citizens unjustly (RESPECT).

#### Punishment (Erin Kelly):

- The threat of punishment, and the incarceration of criminals, is one of the main tools the state has for protecting its citizens from one another (SAFETY).
- However, punishing a citizen involves doing things that would normally violate her rights: using the threat of violence to coerce her into a locked cell, taking away her freedom, etc. So it seems that punishment needs a very powerful justification if it is not to violate RESPECT. And it seems very likely that some (many) of the punishments currently given by the US lack this justification.

### TWO BIG QUESTIONS

#### (1) How should the state take historical injustice into account in its law enforcement decisions?

There's good reason to think that minority groups commit certain crimes disproportionately often *because* of the historical oppression they have suffered. When enforcing the law, then, the state may punish members of minority groups disproportionately often (even if they engage in no racial profiling). This seems to add to the disadvantages faced by the minority group, which in turn may lead to more crime, which would lead to more imprisonment, and so on in a vicious cycle. (This is the problem Ta-Nehisi Coates pointed out in his article).

So: if the state enforces the law without taking historical injustice into account, it is at risk of compounding those very injustices. (Note: another conflict between SAFETY and RESPECT). What could be done to avoid this vicious cycle?

## (2) What purpose(s) should punishment serve?

This is a question about what *justifies* punishment: not what *actually* motivates people to punish, but rather what *ought to* motivate people to punish.

### Retribution:

- Idea: the purpose of punishment is to give evil people what they deserve.
- Advantage: respects the idea that punishment should only be doled out to those who deserve blame.
- Disadvantage: seems vengeful and counterproductive. Also, is subject to worries about whether blame is ever justified (cf. Barbara Fried's article).

### Deterrence:

- Idea: the purpose of punishment is to prevent crime.
  - Special deterrence: the function of punishment is to prevent the person being punished from committing further crimes, e.g. by incapacitation or rehabilitation (cf. Menninger essay).
  - General deterrence: the function of punishment is to prevent people other than the person punished from committing similar crimes, by giving them an incentive not to do so (think of parking tickets).
- Advantage: seems more productive, less vengeful, more humanitarian.
- Disadvantage: seems to imply that it could be okay to punish an innocent person (C. S. Lewis' objection). Also unclear whether and when punishment deters.

### Penance:

- Idea: the purpose of punishment is to give the perpetrator a chance to demonstrate remorse and a commitment to reform.
  - Example: Ross drinking the fat.
- Advantage: seems less counterproductive than retribution, but still only justifies punishing those who committed the crime.
- Disadvantage: unclear how it could be implemented by the state. (Though see reparative/restorative justice programs).

## TWO KINDS OF THEORY

**Ideal theory:** imagine you can redesign society from scratch. What would the ideal society look like? (Important: don't assume the people are ideal; try to come up with ideal institutions for dealing with non ideal people).

**Non ideal theory:** start with the (*very*) imperfect society we've got. What are some ways we might be able to make it better, given the constraints we face? What are reforms we could introduce that might have a realistic chance of being adopted? How could we convince people to take on the reforms?

MIT OpenCourseWare  
<http://ocw.mit.edu>

24.191 Ethics in Your Life: Being, Thinking, Doing (or Not?)  
Spring 2015

For information about citing these materials or our Terms of Use, visit: <http://ocw.mit.edu/terms>.