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# THEORIES OF PUNISHMENT

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## **Abstract**

*A crime ought to be punished. One who suffers wrong is not degraded. His soul is not hurt by it. But one who does wrong lowers himself in the scale of moral perfection. A man is rewarded for his evil deeds. A criminal has voluntarily violated the moral law which is recognized by the society. He has deliberately broken the moral law. The majesty and authority of the moral law demand that he ought to be punished. Wrongness of the act is brought home to the criminal by punishing him. This is the ethical justification of punishment. Three principal theories have been put forward to justify punishment. They are known as the preventive (or deterrent) theory, the reformatory (or educative) theory, and the retributive theory.*

**Keywords:** *Deterrent theory, reformatory theory, retributive theory, capital punishment*

## **INTRODUCTION**

There is a way in which the state commonly affects the moral lives of its individual member, and that is the way of punishment. It is evident that the laws of a state sometimes deal with moral matter directly, although at other times they deal with matters which become only indirectly moral, through their being dealt with by laws which are bound to affect our social relation.

A crime ought to be punished. One who suffers wrong is not degraded. His soul is not hurt by it. But one who does wrong lowers himself in the scale of moral perfection. A man is rewarded for his evil deeds. A criminal has voluntarily violated the moral law which is recognized by the society. He has deliberately broken the moral law. The majesty and authority of the moral law demand that he ought to be punished. Wrongness of the act is brought home to the criminal by punishing him. This is the ethical justification of punishment.

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## **THE DETERRENT THEORY**

According to this theory the purpose of punishing anyone who has done wrong is to deter others from doing the same wrong. It is the view of punishment that is held when the judge makes an 'example' of some offender. Moralists often object to this view of punishment because, according to it, the offender is being treated merely as a means to the good of others. This, however, is not quite correct, for, except in the case of capital punishment, the punishment is likely to have a more deterrent effect on the offender himself than on others, and so he is not being used as a mere means to the good of others.

The real weakness of the deterrent theory is that, if the only purpose of punishment is to deter people from wrong-doing; it does not really matter whether the person punished is

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himself innocent or guilty. There have been cases where administrators of occupied countries or even inefficient schoolmasters have punished innocent victims simply for the sake of the effect on other people; outcome of a deterrent theory. It is even more common, however, to give, on the pretext of deterring other people, a punishment which is more severe than that which would have been given on other considerations, and this is a case in which, clearly, a moral issue is involved. It is always wrong to inflict on an offender greater suffering than he deserves, and no deterrent argument can justify this being done.

The exact sense in which an offender deserves punishment will need to be considered in connection with the retributive theory, but there is no doubt that most people, including those being punished by legal sentences, have a very clear intuition that punishment beyond a certain limit for a particular crime is unjust. It may be that, up to that limit, the magistrate is justified in varying the degree of punishment for deterrent considerations. If the offence is not likely to be repeated there may be good grounds for letting the offender off easily, while, if the offence is becoming more common, it may be desirable to punish the offender as severely as he deserves to be punished.

## **THE REFORMATIVE THEORY**

According to this theory, the aim of punishment is to reform the character of the offender himself. This view is popular at the present day, but is often misunderstood. Many people who say that punishment should have been in view of the reformation of the offender, mean that the offender should not be punished at all but that he should receive an education which will enable him to live better. There can be no doubt of the desirability of giving offenders such education but education is not punishment, except in so far as it is a painful process, and modern educators are inclined to deny that the process needs to be painful. It is certainly not the case that to inflict pain on a man is normally the best way to reform him and yet that is what a reformatory theory of punishment would strictly imply. There are other ways of reforming the offender—education, kind treatment, and even forgiveness. The reformatory theory is supported by criminology: Criminology regard every crime as a pathological phenomenon, a mild form of insanity; an innate or acquired physiological defect. Therefore the criminals ought to be treated in hospitals, asylums; and not in reformatories. Thus, according to criminology crimes are not deliberate violations of the moral law. They are due to physiological peculiarities. Constitutional defects compel criminals to commit crimes. For example; in kleptomania a criminal is compelled to steal. Punishment, therefore, should take the form of detention in asylums and reformatories, or treatment in hospitals. The supporters of this view are called criminal anthropologists.

But every crime is not a case of insanity or due to physiological defect. There are proper crimes. They are not due to physiological defects. They are deliberate violations of the moral law. They ought to be punished. But the kleptomaniac is not punished but excused. He suffers from a mental disease which may be due to a physiological defect. The crime which are deliberated breaches of the moral law should be punished because they are not caused by physiological defects. But in insanity the man is alienated from himself and his acts are not his own.

Capital punishment cannot be justified on this theory without much more extensive knowledge of what happens after death than even the more dogmatic expounders of immortality claim to

give, but it is doubtful whether the enlightened conscience ever approves capital punishment. It is to be remembered that physical suffering of those punished by imprisonment and especially by solitary confinement is a pain which is not caused by violence to the body, and probably the pain of social disapproval is for the most people the severest form of punishment. The reformatory value of such suffering lies in its capacity for making the offender see the evil of his wrong-doing, and this will be considered later.

Freud and his followers hold that crimes are often committed under the influence of repressed complexes – sex wishes and spite wishes – due to thwarted sex wishes. Therefore the treatment of such forms of crimes should be medical or educational rather than purely punitive. Such criminals should be treated by the psycho-analytic method. In such cases, the remedy lies in unearthing the repressed unconsciousness, tracing them to their causes, and directing to the socially acceptable channels. But all crimes are not brought about by repressed complexes. There are some crimes which are due to willful violation of the moral law by normal persons. Such criminals should be punished adequately to vindicate the authority of the moral law. Punishment convinces of the righteousness of punishment. It makes them repent for their crimes and reform themselves. It prevents them and others reform committing similar crimes.

## **THE RETRIBUTIVE THEORY**

This theory of punishment in its simplest form holds that the aim of punishment is to make the offender suffer what his victim has suffered, and so this theory appears to justify the law of ‘an eye for an eye and a tooth for a tooth’. If the business of a theory of punishment were to explain how the custom of inflicting punishment began and developed, there would be good grounds for accepting the retributive theory in some form or other. It is a natural tendency or instinct, which is found among animals as well as men, to requite injury with injury. The danger in primitive society is that the injury inflicted by the man who is seeking revenge may be out of all proportion to the injury which he himself has suffered and very early in social organization arrangements are made to control the amount of vengeance taken by an injured individual. The biased victim of the crime is not allowed to decide for himself the amount of penalty the criminal should suffer, but this is decided by the old men of the tribe or by its chief, forming a primitive court of law. We may regard the ‘eye for an eye and tooth for a tooth’ of the law of Moses as a mitigation of the harsher punishments inflicted by the avenger in earlier times. We have in the book of Genesis an example of an avenger who boasted of punishments for exceeding the eye for an eye; Lamech sang to his wives ‘if Cain shall be avenged sevenfold, truly Lamech seventy and seven-fold’ It is undoubtedly in such retribution that punishment had its origin.

The aim of punishment is to defend the supremacy and authority of the moral law and to do justice to a criminal. The moral law is broken by a criminal and justice demands that he should be established. The moral law is supreme and authoritative. If it is broken by a person he ought to be punished. To appease the offended majesty of the moral law, punishment must be inflicted on the criminal as an indication of its authority. If the criminal is not punished the moral loses its dignity, authority and majesty. Punishment is the act of restoring the moral order which has been broken by the criminal.

Aristotle regards punishment as a negative reward. The man who deliberately breaks a moral law is entitled to a negative reward. The society gives him what is his due. It does not deprive

him of his due. It gives him what he has earned by committing the crime.

Kant held that punishment ought to be inflicted on the criminal because he has committed a crime, not as a means to his own good or that of others. He advocates the retributive theory of punishment. Kant says, "punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or society. The penal law is a categorical imperative."

Hegel also advocates this view. He also holds that punishment is demanded by the criminal. It is his reward. It is what he deserves, what he has earned by breaking the moral law. It may be said to be his negative reward. This is why some criminals who escape punishment by the state impose upon themselves some form of penance. They feel that they have not got their deserts which they have earned by their evil deeds.

Bradley, a Neo-Hegelian, also holds the same view. "We pay the penalty" he says, "because we owe it, and for no other reason; and if punishment is inflicted for any other reason whatever, then because it is merited by wrong; it is a gross immorality, a crying injustice; punishment is inflicted for that sake of punishment." Punishment is an act of justice; it is a retribution for a branch of the moral law.

The retributive theory assumes two forms:

i) Regoristicii) Mollified

According to its regoristic form, punishment is inflicted according to the character of the offence. If the offence is severe, the punishment should be severe; and if the offence is light, the punishment should be light, irrespective of other circumstances. 'Eye for an eye' and 'tooth for a tooth' is motto of this view. In inflicting punishment attendant circumstances should not be taken into account. For example, a man has killed a person; therefore he should be hanged irrespective of any other circumstances.

According to the mollified form, punishment should be inflicted according to the character of the offence under particular circumstance. Here the extenuating circumstances, e.g; the age of the criminal, his intention, provoking circumstance, etc. should be taken into account. The mollified form of the retributive to be the most satisfactory theory of punishment.

Rashdall advocated the reformative theory of punishment, and criticizes the retributive theory. He brands it as a vindictive theory. The amount of pain to be inflicted on the criminal in proportion to the crime cannot be ascertained. There is absolutely no commensurability between them. If due amount of pain has been inflicted, nomore pain should be inflicted for utilitarian considerations. But this is untenable. Whether punishment ought to be inflicted and how much punishment is not determined by utilitarian considerations. Punishment is a means to the spiritual good of the criminal and society.

## **CAPITAL PUNISHMENT**

According to the deterrent theory, a person who deliberately commits murder should be given capital punishment. He has deprived a person of his life, and so should be hanged to prevent others from committing the heinous crime. According to the retributive theory also

a murderer should be given capital punishment. He has taken away the life of person in cold blood. So justice demands that he be deprived of his life. There is nothing unjust in this act of justice. The rigorous form of the retributive theory does not make any concession. But the mollified form of it recommends taking into consideration the criminal's age, provocation, education and other extenuating circumstances in softening the rigour of justice. In the contemporary age of humanitarian sentiments the trend of the enlightened public opinion is against capital punishment and for replacing it by transportation for life; and yet capital punishment has not yet been abolished by the majority of states.

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Punishment in its very conception is now acknowledged to be an inherently retributive practice, whatever may be the further role of retribution as a (or the) justification or goal of punishment.Â The prevailing features in the modern theory of punishment were developed by analytic philosophers half a century ago.