CGSC 281/PHIL 181: Phil&Sci Human Nature   Gendler/Yale University, Spring 2011

Reading Guide
Punishment I

Readings for 22 March 2011

READINGS (REQUIRED)

[A] Louis Pojman, "Punishment: An Overview" from Louis Pojman, ed. *Introduction to Philosophy: Classical and Contemporary Readings* (Oxford University Press, 2004), pp. 441-444.

[B] Immanuel Kant, "The Right to Punish," an excerpt from *The Philosophy of Law* (*Rechtslehre*) (trans. W. Hastie, 1887, pp. 194-198), as reprinted in Pojman 2004, pp. 445-447.

[C] John Rawls, "Two Concepts of Punishment," an excerpt from "Two Concepts of Rules" (*Philosophical Review* 64: 1955, pp. 3-13), as reprinted in Pojman 2004, pp. 464-468.

[A] Louis Pojman, "Punishment: An Overview" from Louis Pojman, ed. *Introduction to Philosophy: Classical and Contemporary Readings* (Oxford University Press, 2004), pp. 441-444.

Background

Louis Paul Pojman (1935-2005) was an American philosopher and professor of philosophy; as a young man, he served as an ordained minister in the Reformed Church of America. You can find more information about his life and career at http://www.louispojman.com.
The selection we are reading –which Pojman prepared for his well-known introductory textbook -- describes the main philosophical positions concerning the nature of punishment by explaining how they each answer the question "under what conditions, if any, is criminal punishment justified?"
As you will see when you do the rest of this week's reading, our old friend Immanuel Kant defends a retributivist account, while 20th-century philosopher John Rawls (from whom we will hear more later in the semester), defends a utilitarian account, with some attention to retributionism. (Later in his career, Rawls became a critic of utilitarianism.) We will discuss rehabilitationism in lecture.

Passages to focus on/passages to skim

As with all of today's reading selections, this one is short, and should be read in full.

Terms and Concepts

Be sure that you understand and are able to distinguish among the following items and concepts

Terms and Concepts: responsibility; retributivism, utilitarian deterrence, rehabilitationism; backward-looking, forward-looking

Reading Questions

As you read through the selection, keep in mind the following questions:

(1) What, according to Pojman, is the connection between responsibility on the one hand, and praise and blame on the other?

(2) What are the five key components of the notion of "punishment," according to Pojman? Does Pojman's analysis fully capture the notion? (Is his list exhaustive? Overly-inclusive?)

(3) What does it mean for a theory to be "backward looking" or "forward looking?"

(4) How do the three major positions on the nature of the justification of punishment differ? What, if anything, do they agree on? (Remember that pairs of views may disagree with one another on some matters but agree on others.)

[B] Immanuel Kant, "The Right to Punish," an excerpt from *The Philosophy of Law* (*Rechtslehre*) (trans. W. Hastie, 1887, pp. 194-198), as reprinted in Pojman 2004, pp. 445-447.

Background

We have already read selections from the 18th Century German philosopher Immanuel Kant (1724-1804), in particular, from his 1785 *Groundwork for the Metaphysics of Morals*. (For general background on Kant, see the reading guide for 22 February 2011.)

For this lecture, we are reading a selection from Kant's 1797 *Rechtslehre* – generally translated as the *Philosophy* (or *Doctrine*) *of Right* (or *Law*) -- in which some familiar concepts, notably categorical imperatives and rational agency, are applied to the notion of punishment. According to Kant, the penal law is a categorical imperative (p. 445): we have a perfect duty to uphold a system of criminal justice in which criminals are always given punishment of exactly the quality and quantity that they deserve. Otherwise, "justice would cease to be justice, if it were bartered away for any consideration whatever" (p. 446). (That is: the penal law is derivable as a perfect duty from the Categorical Imperative.)

So, on Kant's picture, even though criminals may not will their own punishment as such, their *rational selves* will that a system of laws exist in which the punishment for criminal acts is always carried out in exact proportion to the crime that is committed. His account of the justification of punishment is thus a "retributivist" one: criminal punishment is justified because the criminal deserves to be punished, for he has violated the principle of equality.

Terms, Concepts and Examples

Be sure that you understand and are able to distinguish among the following terms and concepts, and that you understand the roles played by the following examples:

Terms and Concepts: public/private crime, base/violent crime; judicial/natural punishment; principle of equality; *jus taliones* (right of retaliation); categorical/hypothetical imperative

Examples: gaining medical knowledge by performing dangerous experiments on a criminal (p. 446), the disbanding of civil society and the execution of jailed murderers (pp. 446-7)

Open Yale courses

Passages to focus on/passages to skim

As you know from your earlier readings, Kant is difficult to understand, but rewarding to study. Make sure to read this very brief selection carefully at least twice.

Reading Questions:

(1) What does Kant say is wrong with a utilitarian approach to the justification of punishment (pp. 445-446)? How might a utilitarian respond to the example Kant uses in putting forward this objection? (You may find some thoughts about this in the Rawls selection below.)

(2) What is the "principle of equality?" How does this principle figure in Kant's argument for the conclusion that crime tips the scale of justice such that punishment is required to bring it back into balance? Is this argument valid? Sound?

(3) Why does Kant say that if members of a civil society resolved to disband and scatter themselves throughout the world, they must first execute all murderers in prison? How on his view would not doing so constitute a "public violation of justice?"

(4) What are some empirical objections that could be raised in response to Kant's strong emphasis on the voluntary willing of wrongs by criminals? Given these objections, should we prefer some other theory of punishment?

[C] John Rawls, "Two Concepts of Punishment," an excerpt from "Two Concepts of Rules" (*Philosophical Review* **64: 1955, pp. 3-13), as reprinted in Pojman 2004, pp. 464-468.**

Background

John Rawls (1921-2002) was an American philosopher and leading figure in moral and political philosophy whose work also had an impact in other fields, such as economics and political science. For the bulk of his career, he held the James Bryant Conant University Professorship of Philosophy at Harvard University. Rawls is best-known for his enormously influential 1971 work *A Theory of Justice*, from which we will be reading selections later in the semester. Today our focus is on an excerpt from his much earlier work: the important paper "Two Concepts of Rules" (1955).

In this paper, Rawls shows how the distinction between justifying a practice and justifying an action falling under a practice can be put to work in defending a rule-utilitarian account of justice against some natural objections. In his later work, Rawls rejected utilitarianism as providing the correct approach to questions of social justice, but this paper constitutes an important defense of some aspects of the position.

Terms and Concepts

Be sure that you understand and are able to distinguish among the following items and concepts.

Terms and Concepts: justifying a practice/justifying a particular action falling under a practice; retributionism (note: this just means "retributivism," cf. Pojman above), utilitarianism; rule, practice; telishment

Passages to focus on/passages to skim

Please read this brief selection in its entirety.

Reading Questions

As you read through the selection, keep in mind the following questions:

(1) What does Rawls mean when he says that the judge looks to the past while the legislator looks to the future (p. 465)? What significance does this difference in vantage points have for Rawls' overarching claim?

(2) What is the distinction between justifying a practice and justifying a particular action falling under that practice?

(3) What is the problem that Carritt[1] raises for utilitarianism (p. 467; Rawls calls this 'telishment' (p. 468)) and how might the distinction in (2) be used to respond to it? How might John Stuart Mill react to the possibility of telishment?

[Posted 03/08/2011]

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[1] E.F. Carritt was a mid-century British philosopher whose 1947 *Ethical and Political Thinking* was widely read in the years that Rawls was composing his article.