



A CRITIQUE OF JUSTICE AND JUSTIFICATION FOR PUNISHMENT

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Abstract:

The notions of justice and the supposed justification for legal punishment are irredeemably farce because no single definition conceptualized through the philosophical traditions are without flaws of contradictions, illogicality and impracticability; while the conditions for legal punishment which ought to be fair and just, cannot be reasonably and sufficiently met. The aim of this paper is to criticize the definitions and conceptualization of justice and the supposed justification for punishment as well as the proposed conditions that will make such justifications tenable in a bid to propose more just and effective alternatives. It also questions the complex relationships between the various theories of justice - the deterrence, retributive, rehabilitative, and restorative justice. The methodology adopted for this research is critical analysis with a phenomenological approach. The paper explores the tension between theories justifying punishment, including retributivism, utilitarianism, and restorative justice, and highlights the underlying values and assumptions that shape our understanding of legal punishment as well as the challenge of fairness and tenability. It argues that the justification for legal punishment must not rely only on abstract principles but also on how it is experienced and understood within human existence. The value of this paper is its contribution to a deeper understanding of the failings of existing justification for punishment, especially the concept of responsibility and its attempt to provide alternative justification rooted in the consideration of lived experiences. The findings of this research have implications for contemporary and emerging discourse of justice as they not only challenge the status quo but advocate for the development and adoption of just and effective alternative approaches to justice and punishment that address the causes and prevention of crime as well as holistic healing within the lived experiences construct.

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INTRODUCTION

The concept of justice has been a cornerstone of human civilization, shaping our understanding of right and wrong, and informing our systems of punishment and rehabilitation. However this paper adopting the methods of critical analysis with a phenomenological approach, argues that attempts at obtaining justice and giving justice in the real sense are actions in futility just as the supposed justification for legal punishment. This is not just because the concept of justice has been inexhaustibly defined from different philosophical traditions and perspectives, without sustained consensus but because no single definition stands today without reasonable fault especially under phenomenological scrutiny and also because of the contradictions and tensions among the traditional theories justifying legal punishment. These theories that were designed for the recognition and appraisal of punishment as a legal institution unfortunately emphasised different and conflicting criteria, while some emphasised moral deserts and retribution, some others appealed to the social utilities of punishment causing irreconcilable differences that could jeopardise their reason de tat. Objections to these punishment justifying theories include the questions about the morality of capital punishment, blood vengeance, self righteous vindictiveness and prioritizing of common welfare to secure sacrificial victims. (Doyle 1967:1).

In addition, the concept of legal punishment is such that for it to be deemed to truly promote justice, the conditions to be met are in-exhaustive and almost impracticable. This paper therefore argues that, the notions of justice and the supposed justification for legal punishment are irredeemably a farce. This critique is particularly relevant in the context of contemporary debates around criminal justice reform, mass incarceration, and restorative justice. As scholars have noted, the traditional punitive approach to justice has failed to address the root causes of crime, disproportionately affecting marginalized communities and perpetuating cycles of violence (Alexander, 2010; Wacquant, 2009).

This paper will engage with these critical perspectives, examining the theoretical frameworks and philosophical underpinnings of justice and punishment. Through a critical analysis of key concepts, theories, and debates, we will interrogate the justification for punishment and explore alternative approaches to justice that prioritize rehabilitation, restorative justice, and social transformation. This approach reframes debates in criminal law by grounding them in human meaning rather than abstract rationalizations.

This paper will begin with the examination of the definitions and conceptualization of justice through different philosophical tradition. So what is justice and how is it defined?

Justice refers to just conduct; the quality of being right and fair. It is widely believed that the Greeks were the first set of people who have the record of having pondered upon the concept of justice and come up with various views on justice. To them, justice is the all-embracing virtue and the greatest of all virtues. From the Milesian group we have Anaximander who claims that justice is the ultimate principle tending towards the physical world'. Heraclitus' belief is similar, for him 'the sun will not overstep his measures, If he does the Erinyes' (the handmaids of justice) will find him out'. The Pythagoreans claim that justice conforms to the physical world and that harmony is a basic principle that cuts across all disciplines. To the Sophists, justice is a convention based on the law of the State'. (Copleston, 1946, p 134). Thrasymachus claims that 'justice is all about the interest of the strong. To him might is right, that is, in every society the stronger establish themselves in power and their interests become justice. They make laws to protect their interests which become justice in their



societies for as long as they are in power. Justice is therefore, the interest of the stronger. (Omoregbe, 1993, p 160)

In his dialogue, Republic, Plato agreed that justice is the having and doing of what is one's own. A just man is a man in just the right place; doing his best and giving the precise equivalent of what he has received. Justice is the harmony produced when each class of the society performs his roles and duty efficiently. (Plato, 1952, p290-315). For Aristotle justice is the greatest of virtues, it is in justice that every virtue is comprehended. It is that which is fair and equal. (Aristotle, 1980, pl08) called just Spinoza claims that in a natural state there is nothing which can be or unjust, but only in a civil state, in which it is decided by universal consent what is one person's and what is another's. Justice and injustice therefore are external notions and not attributes, which manifest the nature of the mind"(Spinoza, 2001, pl92)

The Roman jurists saw justice as the whole essence of man's life. (Ndubuisi,2008, p33). St Thomas Aquinas defined justice as the firm and constants will to give to each one his due. (p33) John Locke and other advocates argued that justice is part of natural law; it involves the system of consequences which naturally derives from any action or choice. Justice to them, requires according individuals or groups what they actually deserve, merit or are entitled to, hence, it is a universal and absolute concept. (Omoregbe, 1993, p207).

John Rawls in his A Theory of Justice claims that justice is the first virtue of social institutions as truth is of scientific systems. And he used an imaginary device called the original position to imagine people who would decide the principle of justice for the society behind the veil of ignorance to conclude that the principle they will decide will have to do with political liberties and economic arrangements that will take into cognizance the least advantaged and reflect fair equality of opportunities. (John Rawls, 1971, p302). A traditional Latin definition of justice is "suum cuique tribuere" that is, to allocate to each their own. (Anthony Flew, 1960, pl74).

MAIN TEXT

A Critique of the Concept of Justice

Given the various definitions of the concept of justice, this paper agrees with Ndubuisi who argues that 'it becomes more illusory to speak of absolute justice as justice itself is borne of a convention made possible by a mutual intercourse of people regardless of religious leanings or diversity of the people over a period of time aimed to guard against the oppression of the poor and the weak'(Ndubuisi, p34). This points out the relativity of the concept of justice as it is coloured with the hue of the socio-cultural context of the people she governs. These various definitions serve as proof that the building blocks of these concepts of justice are crooked misfits for a solid construction. For instance, the traditional Latin conception of justice - to allocate to each of their own - is a backwards-looking individualistic approach for securing for everyone their presumably diverse deserts and entitlements. (Anthony Flew, p174).

Also, critics have argued that Plato's concept of justice revolves around class rule, the division of the classes and the equation of the fates of the state with that of a ruling class. As Nietzsche (1887) astutely observed, "the concept of justice... is a subtle and crafty one, which has been used to justify the most diverse and contradictory things" (p. 73). Similarly, Foucault (1977) argued that justice is not an objective or neutral concept, but rather a product of power relations, shaped by dominant ideologies and institutions. The justification for punishment, too, has been



subject to various interpretations, with some arguing that it serves as a means of retribution, deterrence, or rehabilitation (Hart, 1968; Kant, 1797). While some critics say it is totalitarian, others focus on his desire for a state founded on justice, a perfect state where there is absolute good and justice. To some other, this desire is not morally superior to totalitarianism. (pl74). In addition, the concepts of fairness and equality in the concept of justice are plagued with a lot of challenges. Justice certainly is about the equal treatment of equals, but does it follow that all individuals are relevantly equal? Also, according to Unah, there seems to be a mix up of mathematical concepts (equal) with a criterion for accessing social conduct (fair). (Unal, 2002, p88). Even the symbols of justice leave us with some questions. Lady Justice equipped with three (3) symbols - a sword symbolising the court's coercive power; a blindfold to depict that justice is blind, not biased, and impartial; the same law applies to all. And a scale to weigh competing claims which indicate that justice may involve not strict equality but proportionality. (Mackinnon, 2004, p 248) On what ground is this proportionality based, measured and meted out? Lady justice needs to be seeing, so as to observe and reason critically about the socio-cultural nuances of lived experiences of all members of society. It is therefore evident from these analyses that the concept of justice from earliest times till now are flawed, there are diverse loopholes in the fabric of the concept of justice. Not even the idea of justice as the proper ordering of things and persons within a society is free of flaws. Perhaps an analysis of the concept of legal punishment may redeem the concept of justice

Analysis of the Concept of Legal Punishment

At the center of the concept of justice is punishment and there are many perspectives or views of punishment in terms of how much punishment to be administered, when it should be done and the expected outcome. There is the utilitarian perspective, retributive and restorative perspectives. But before we go on it is pertinent to take a look at what crime is.

Crime is generally understood to be an offence for which there is severe punishment by law. Ndubuisi also claims that the idea of the constituents of crime centers on a people's cultures and values which could be as its horizon of moral conviction. Crime is the violation of public rights and duties; it affects negatively the cohesion of a community, thereby violating the fundamental values of the society as it distorts the unity and security. Hence, there is no separation between crime and punishment. (Ndubuisi, 2008, pp|7- 19).

This paper is focused on legal punishment and seeks to provide answers to the following questions: Is legal punishment morally justified? Does the society have the right to punish and when does she have this right?

To start with we shall define legal punishment and distinguish it from what it is not. We are here concerned about legal punishment and not any kind of punishment such as, parents punishing their children by forbidding them from watching TV for a week for acts of misbehavior or disobedience; or school authority punishing students etc., but with the punishment meted out by the legal system of a society.

The current consensus on the nature of punishment is expressed in the following statement:

A person, P, is punished by something, X if and only if:

1. x is some pain or other consequence normally considered unpleasant



2. x is intentionally imposed upon P by someone else Q
3. Q has the authority under the rules of the (legal or other) system to impose X upon P
4. x is imposed on p by Q on account of an offence as defined by the (legal or other) rules

Because P is authoritatively found to be the offender. (Hugo Adam Bedau, 1974, p142)

An analysis of this definition shows that the concepts of legal punishment has to do with pain both physical, emotional, psychological etc., it must be unpleasant not some experience that brings joy. It must be imposed on the offender or criminal consciously with the full intention to do so. This punishment is different from street lynching and the likes. It comes only from a system that is authorized to do so either in a law court, traditional court etc. This punishment is imposed on an offender because he broke the law, either through acts of commission or omission, his offence must be recognized by law and as against the law. And an offender is authoritatively, legally punished because it is proven without doubt that he committed an offence, he is culpable and responsible for a crime. (p142)

Despite this consensus on the definition of justice, it has not escaped the questions that undermine it such as:

- i. the nature of pain that should be mete out to a criminal,
- ii. in what form or proportion should it be?
- iii. the issue of the intention of the legal system,
- iv. the system who has the authority to punish.
- v. why would the society punish?

Even Wittgenstein expressed a passing hesitation thus:

Why do we punish criminals? Is it from a desire revenge? Is it in order to prevent a repetition of the crime? And so on. The truth is there is no one reason. There is the institution of punishing criminals. people support this for different reasons and at different cases and at different time... And so punishments are carried out. (Wittgenstein, 1966, p50)

What then is the justification for punishment? There are fundamentally three (3) Justifications for punishment namely- Retribution, Deterrence and Reformatory Theories.

Retributive Theory

This theory claims that there is a moral order which is the world. When a crime is committed the balance of this moral order is upset and can only be put right again by an appropriate punishment, an eye for eye and tooth for tooth- through which the balance of the moral order becomes restored. (Omoregbe, p 116). The Retributive argument is that legal punishment is justified as a means of making those who are responsible for a crime to pay for it. This is based on the concept of justice that says it is only fair or just that a person who caused a great pain or harm to another to be made to suffer similarly or proportionally to the pain or harm he caused.



In this view, punishment is internally related to the wrongful conduct; it is based on an abstract notion of justice in that we punish to right or wrong or restore some original state. (Barbara Mackinnon, p 307)

But in many cases some wrongs cannot be made right, for instance someone lied against another, spreading false rumour about him thereby defaming his character, this person is sued for defamation of character punished by the law and made to renounce as false his earlier statements. He does all that is required of him by the law, but does this really right the wrong? Does this remove the embarrassment, agony and character dent that this person suffered while the defamation was going on? Well, the proponents of retributive argument says, the righting of wrong is of some abstract or metaphysical type and that we always do have some intuitive sense of what we mean when we say justice was done' .(p 307).

Also according to the retributivists, payment must be made in some way that is equivalent to the crime, equivalence is in two (2) senses- **the egalitarian sense** where payment is identical to what

was done or taken. That is, an arm for an arm where payment is proportional, here, harms or wrongs are thought of in degrees- bad, worse, worst, hence, punishment are also scaled from the minimal to the most severe. (p 307)

There are serious practical and moral problems with these modes of repayment of wrong doing. It is not always possible to get exact payment, an arm for an arm in all cases. For instance, in a case of a serial killer which involves multiple murders, payment for such crime cannot be in kind, the murderer cannot be killed more than once, and hence, which of the several killings will be paid for when he is eventually killed? Also, it is morally objectionable to rape a rapist. A common objection to the retributivist view is that it amounts to a condoning of revenge.

Reformative theory

Both Reformatory and Deterrent theories are subsumed under the Utilitarian theory whose principle is utility, here, justification of punishment is based on its serving a useful purpose, punishment should be concerned about the future and not the past. The purpose of punishment is not simply to make a person suffer for his wrong doing but to also produce good results such that something good can come from the punishment. It is expected to reform the character of the criminal and to deter both the criminal himself and other people from committing the same kind of offence in the future. (Omoregbe, p119)

Reformatory theory of justice is often used interchangeably with retribution theory. Its main concern is not with retribution and punishment but it is concerned with making a victim whole and reintegrating the offender into society. This approach is intended to frequently bring an offender and a victim together, so that the offender can better understand the effect his offense had on the victim.

But the question is how effective is this approach both in its reformatory and restorative roles? How well as it worked in bringing about justice?



Deterrence Theory

The Deterrence argument offers a moral justification for punishment if and only if the punishment prevents or deters crime. This idea is based on the nature and purpose of law in that every law has a sanction attached to it; a force must be behind it. Legal punishment based on this reasoning is for the purpose of preventing people from breaking the law. To deter from committing an offence, it works on the decision-making ability of the would-be criminal, where he considers his intended action against the punishment it could attract, thereby weighing the gain against the price (punishment). (Mackinnon, p302)

Deterrence does not work in this way in all cases, such as, in deterring the crime of passion where people are overcome by strong emotions, they are in most cases not able to calculate the risks versus the benefits neither are they able to control their emotion especially anger to be able to stop themselves from continuing to act as they will. (p302) For instance, an enraged ditched ex-lover who cannot control his emotion will prefer punishment after his anger has been unleashed on his victim either by maiming, destroying the body maybe by pouring acid or killing. His thinking may be that, if I can't have you, nobody else will and I will ensure this even if I eventually die for doing so. Also, crime is not deterred in situations where the criminal reasons that the benefit or reward of his crime is great enough to take the risk and the punishment small in comparison. He may even reason that, if his acts are well perfected, he may not be caught and there may not even be punishment to face.

Therefore, besides the threat of punishment, there are other conditions that should be made available, such as, strict regulation or outright banning the possession of guns by individuals or all non-security agents, increased street lighting, security posts manned by competent and fully armed security personnel located in considerable distances from one another, more police officers and patrol teams, CCTV cameras with real-time monitoring located at strategic points to not just record crimes but create instant alert to ongoing crime scenes so as to aid prevention of completion of crime where possible, authentic social security numbers for easy identification of persons so as to make it almost impossible for a crime to be undetected and a criminal to evade justice. The deterrence efficacy of any given punishment has been understood to be a function of at least six presumably independent variables:

1. Severity
2. Certainty
3. Celerity
4. Frequency
5. Publicity
6. Personality of the potential offender. (Franklin E.Z. & Gordon J. H., 1973, p 143)

Besides the fact that each of these variables is itself a complex of several factors, there is the question of how and with what model do we measure their effects in deterrence?

For as long as we cannot answer these essential questions, we should be cautious in acting based on the popular maxim "the greater the severity of a punishment, the greater its deterrent efficacy". Because we cannot claim confidently that by increasing the severity of a punishment, there will be



reduction in crime rate. For instance, if that were the case, there would be no crime in those Sharia law governed countries or states where punishments for offences involve cutting off arms and legs and even death. Likewise, by reducing the severity of punishment we cannot ascertain confidently that it will increase the crime rate.

Also, publicity as a variable is open to contentions. Publicity here covers the degree of public and legal perception of the liability of the offender and the imposition of the sanction. (pl43) It is also important to note that the degree of personality of the potential offender cannot be divorced from his degree of liability; hence we shall take a look at the ideas of punishment and responsibility.

Phenomenological Analysis of the Concepts of Responsibility in Legal Punishment

This paper adopted a phenomenological framework which demonstrates that the concepts of legal punishment and responsibility as constituents of justice are not to be examined as mere theoretical constructs but as dynamic phenomena which are shaped by both textual interpretations and lived experiences. This is important in interrogating and exposing the flawed justification for legal punishment.

Responsibility is the notion that a person is answerable for his action and so is a proper subject for praise or blame. This can be so only when the act is within the agent's power, that is, up to him. (Flew, p284) There is a long-standing contention among philosophers as to whether this definition implies an absolute, internal, 'contra-causal' freedom or simply the absence of external constraint and other defeating conditions. Besides this, there are principally two (2) conditions necessary for responsibility:

- That the agent knows what he is doing and
- That his desires and intention play some roles in the act or omission. (p284)

From both the retributive and deterrence points of view, responsibility is essential for punishment. It is believed it is unjust to punish those who are not responsible for a crime. And it would not make sense to do otherwise, or else nobody would obey the law when one could be punished whether or not it is obeyed. The legal punishment system therefore, contains defenses grounded in the requirement that a person has to be responsible for a crime to be punished. Also, committing a crime is not enough to ascertain responsibility for there is no system of strict liability in which the only issues we are concerned with is whether or not an offender actually did or caused something.

Besides the more common defense for claiming non-responsibility for crimes such as; external constraint such as, being physically forced to commit a crime or there is threat to life and insanity; there is the personality of the offender which most often have not been given enough prominence in the overall execution of justice.

This paper, by personality here means, the environmentally and hereditarily conditioned characteristics of an individual. And this we claim is essential in assessing the absolute or total liability or not to an offence; this is because an individual's upbringing and environment when properly analyzed could make him a victim. That is, an individual who has been traumatized by their upbringing, their environment and genetic inheritance is first and foremost a victim of his family, environmental and hereditary conditioning ever before they became offenders or criminals.



To buttress this point, we examine the account of Robert Alton Harris, culled from the San Francisco Examiner, Image magazine of Jan. 8, 1989.

His alcoholic father often abused his mother and Robert 's sisters. In one episode of rage, he kicked Robert 's mother, causing Robert's premature birth. When Roberts was 2 years old, his father slapped him across the dinner table, causing him to fall out of his high chair and have convulsions. He then proceeded to choke Robert but the child survived. The family worked as migrant farm hands sleeping in tents or in their car. When he was fourteen years old, Robert 's mother put him out of the car and just drove away.

He kicked around for years. In 1975, he killed a roommate of his older brother for whom he was charged for manslaughter and was jailed for 2 and half years. 6 months after he was paroled, he killed 2 teenage boys. The killings were described as especially gratuitous and heartless, for Robert seemed not to have any feelings for his victims. And in 1992, he was executed in San Quentin. (Mackinnon, p304)

It is evident that Robert was also a victim of cruelty from parents that should have shown him love, care and friendship. A home that should have made him psychologically and emotionally stable helped to destabilise him and he ended up unleashing on the society, his emotional agony in the only language he understood - heartless violence.

Trumatized people with this kind of upbringing and even such that are worse than this abound in our society, it will be unfair in the course of executing punishment in the name of justice-to overlook the fact that these people are themselves victims and should not be held wholly liable for their crimes no matter how terrible. The societal system that did not hold their parents, family and community liable for destroying a child's mental, emotional psychological make-up should also not hold wholly responsible for any offence, the traumatized individuals that are the product of such convenient oversight. Doing otherwise puts a dent on the sacredness of justice. According to J. S. Mill, 'actions have consequences and it is the duty of rulers and society to restrain men from damaging other's interest (mental, emotional, psychological, and physical) and to require them to assume responsibility in furthering the interests of their community' (Mill, 1859, p)

Furthermore, a society that does not make it almost impossible to commit a crime, by putting in place deterrence mechanism cannot be justified in meting out punishment when laws are broken. For instance, to prosecute car owners for contravening parking rules, such as, parking in unlawful places, will be an act of injustice, if the government had not:

- Made enough provision for accessible, affordable and comfortable transport system that plies all routes which reduces the need to drive,
- if enough parking spaces that are easily accessible, affordable and safe have not been provided,
- if warning signs are not put out to warn would be offenders that they were about committing an offence
- If enough security officer are not out to effect the law
- If everyone is not aware of the penalty and the certainty of being punished.



Again, where a society fails in her duties to her citizens; fails in providing the basic, necessary amenities of life, and providing an enabling environment for self-actualization, crime rate would definitely be on the increase. It is unreasonable to fail to provide and secure equitable access to the basic and essential needs of the citizenry while hoping to control the rate of crime by doling out sanctions. Where citizens' interest are catered to, basic amenities provided for all reasonably, mental health of all especially children and young adults are protected, the leaning towards crime will be greatly reduced and uninteresting and the need for legal punishment will not arise.

This paper has established the following:

The connection between punishment and responsibility, that is, that punishment is based on an offender being responsible for the crime, is central to the system of legal punishment

That the certainty of this is an important element of the morality of legal punishment, therefore, it is important to balance essentially the degree of culpability vis - a - vis an offenders' background with the degree of punishment meted to him.

Attaining this balance and maintaining it in all scenarios of legal punishment makes a mockery of the supposed execution of justice and by extension the justice and legal punishment moral edifice. John Rawls observed that 'most people regard punishment as an acceptable institution. Only a few have rejected punishment entirely, which is rather surprising when one considers all that can be said against it'. (Rawls, 1955, pl 11) As it is, we have a lot to say against it.

Justice from some retributivists' point of view is said to be done when a perpetrator is punished whether or not people feel good about it. However, this has been questioned as to whether any type of justice exists that is not a matter of providing emotional satisfaction to victims or others who are enraged by a wrong done to them. (Barbara Mackinnon, p308) This emotional satisfaction derived from justice; does it really make the victim whole? Since the concept of justice as being restorative is about making a victim whole. So how does the punishment of a rapist provide his victim an emotional satisfaction that makes her whole? Can it undo the rape incidence and erase the trauma from her memory? Can it alter the psychological consequences of such experience and restore her to the state of being "unraped"?

A different point of view is that of Ernest Van Den Haag who argues that 'the ideal of equal justice demands that justice be equally distributed. He also claims that punishment - regardless of the motivation - is not intended to revenge, offset or compensate for the victim's suffering or to be measured by it. Punishment is to vindicate the law and the social order undermined by the crime. (Ernest Van De Haag, 1986). This point of view has inadvertently made the law and social order more superior than the humans it was drafted to cater to. Or where is the equal distribution of justice when all that matters is the vindication of the law and social order while the redressing of wrong - emotionally, psychologically, physically etc. is not prioritized?

Emerging Alternative Approaches

Contemporary alternative approaches to legal punishment proffers intertwined restorative , rehabilitative justice as well as social transformation, offering a holistic and inclusive way immersed in phenomenological framework to address harm and promote healing. Rehabilitation approaches focus on addressing underlying issues such as are evident in an individual or society's lived experience, such as an individual's upbringing and environment that enhances their inclination to



crime and harming others, as well as other relevant social issues. It also provides support for individuals to reintegrate into society. This approach recognizes that people can change and grow, and that rehabilitation is a key aspect of justice. This approach includes the ideas of restorative justice which focuses on repairing harm, promoting healing, and rebuilding relationships between victims, offenders, and communities (Zehr, 2002).; Community-Based Programs which provide alternatives to incarceration, addressing root causes of crime and promoting social reintegration (Clear & Austin, 2009).

Social transformation approaches include addressing systemic issues and promoting structural change to prevent harm and promote justice. Such as the idea of transformative justice which focuses on addressing root causes of harm, promoting community healing, and building a more just society (Davis, 2012), as well as community-based initiatives which address poverty, inequality, and social exclusion, promoting social justice and reducing harm (Sullivan & Tifft, 2005). These alternative approaches prioritize healing, accountability, and social transformation, offering a more inclusive and effective way to address harm and promote justice.

CONCLUSION

This paper through the experiential depth afforded it by its phenomenological analysis established the flaws inherent in the conceptualization of justice across philosophical traditions. Just as the retributive and restorative intent of justice cannot undo the harm done to the victim, the quest for equal distribution of justice and vindication of law and social order as justification for legal punishment undermines the place of individuals in the social order as the law is made for human beings and not the other way around.

A forward-looking collectivist ideal of justice is that of imposing an equality of outcomes. This simply means the expected outcome of any legal punishment of both the law, social order or the state and that of the victim and all enraged by the wrong done to them should be equal, then we can say both metaphysically and morally that justice has been done but is equality of outcome for both the law, the victim and the criminal attainable? Is it possible to mete out a punishment that is justly due to a criminal thereby vindicating the law and victim equally or in equal proportion? How do you measure in proportion the equal vindication a victim gets for the loss of a child in comparison to the vindication of the law and undermined social order vis -a vis the punishment mete out to the criminal?

Furthermore, to make the justification for legal punishment tenable and justified, the following conditions should be met:

- Individuals should be brought up in stable and normal environment; they should be products of environments - home, society etc. that enhance total, all-round balance in a person. So that society never again produces the likes of Robert Alton Harris.
- Individuals who have been negatively conditioned (hereditarily and environmentally) should be compulsorily rehabilitated and should not be allowed into normal society until they are reconditioned to adapt well.
- Prior to their rehabilitation therapy, they should not be allowed to have children or be in anyway responsible for raising children or wards.



- The society should be organised such that it would be almost unnecessary to commit crime in that, the needs of the citizenry will be provided for or the means to meet the needs are easily accessible to all across board.
- The society should be structured such that it will be almost impossible to commit a crime because the streets are flooded with light, there is a sufficient number of police officers; all the citizens have security numbers for easy and prompt identification; the citizens are aware of hidden cameras in places that are liable to criminal occurrence; the severity, certainty, and celerity of the penalty for offence should be known by all the citizens.

If these and many more of these conditions are met in any society, there would be zero level of crime. But are these conditions tenable? Can it be acceptable to all?

This paper's critique of the concept of justice, the nature and justification of punishment shows that the whole architecture of justice and punishment is flawed, unintelligible, untenable and indefensible. Yet, despite the genuineness and legitimacy of grievances against the system of punishment, other considerations show that a world without punishment is both unattainable and undesirable. Moreover, the emerging alternative approaches of restoration, rehabilitation and social transformation have shown promise of ensuring justice is more focused on experiential realities in the society, it is inclusive of more relevant stakeholders in its execution of justice and prioritises social transformation and social justice, only then can there be redemption for justice and punishment.



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