

Justice without Punishment? The Ethics of a Non-Punitive Alternative to Criminal Punishment

The objective of the project.

Punishment involves the intentional infliction of suffering on a supposed or actual offender(s) for a conduct that is represented as a moral or legal transgression. The overarching goal of this project is to determine whether a non-punitive approach to addressing criminal behavior—one that does not consist in intentionally inflicting suffering on offenders—is ethically defensible. This objective will be realized by investigating whether a novel, holistic and fully non-punitive model proposed in this project can better respect and protect the fundamental rights of all parties involved—the wider society, offenders, and crime victims—than punitive approaches.

Description of the research.

In order to realize the objective of the project, several themes will be comprehensively discussed, e.g., crime reduction and its ethical costs, practical feasibility of a non-punitive reform of the criminal justice system, obligations of the state to victims of crime, the problem of vengeance, potential abuses of the state power, moral responsibility, restorative and retributive approaches to justice system. Each theme will be addressed by attempting to answer specific research questions such as: What ethically sound measures are available for a non-punitive approach to prevent convicted offenders from re-offending and the general public from committing crimes? Can the wider society and crime victims accept practices of dealing with criminal behavior that do not appeal to retributive sentiments? If not, should this preclude introduction of a non-punitive reform? Does the state have a moral obligation toward victims to (proportionally) punish those who made them suffer? Is a non-punitive approach sufficient to protect the rights of victims/ doing justice to victims? Would a non-punitive approach systematically prompt the aggrieved party to retaliate on its own? If so, could such an approach be ethically justified? Can a non-punitive approach have adequate safeguards to protect citizens from potential abuses of the state power? Does the state have a moral obligation (or is it at least morally permissible) to give offenders what they ‘deserve’? Is the state morally obliged to try to rehabilitate a criminal?

The reasons for choosing the research topic.

One thing that almost automatically comes to mind when one hears about the abolition of punishment is that the world without punishment would be heaven for criminals and hell for everyone else, especially for victims of crime. A closer scrutiny, however, reveals that this seemingly compelling picture may not only be false, but that the dangers associated with the abolition of punishment may lie elsewhere, even at the other end of the spectrum. The empirical research suggests that criminal punishment in the form of imprisonment is not effective in preventing convicted offenders from re-offending. This is also true for violent criminals and severe sentences. Moreover, the general deterrent effect of the death penalty on homicide has not been proven. Furthermore, notable ethicists argue that punishment as a retribution on behalf of the victim cannot reflect an authentic right, in contrast to the responses justified on non-punitive approaches, such as, e.g., restitution, restoration, recognition of suffering, protection, physical and psychological support. Moreover, some even argue that a non-punitive approach may not only respect victims' rights, but may also better meet their needs than punitive alternatives. On the other hand, opponents of a non-punitive approach claim that there is a possibility that instead of bringing to life ‘heaven for criminals,’ its introduction could lead to violations of offenders’ basic rights. Some even argue that certain non-punitive models would promote cruel and inhumane treatment of offenders, or even a complete and unlimited surrender of their autonomy to the state.

Expected results.

As the above discussion shows, the main research problem of whether a non-punitive alternative to criminal punishment can better respect and protect the fundamental rights of all parties involved than punitive approaches is far from being resolved. Taking into account the social and economic costs and, above all, the harm and suffering being caused by criminal punishment, the search for ethically sound non-punitive alternative to addressing criminal behavior is of great moral importance for a modern and humane society. The expression ‘ethically sound’ is particularly relevant here: the ethically sound non-punitive alternative to criminal punishment must not only ameliorate suffering of the convicts and their families, but also take into account the fact that victims and prospective victims of crime do not deserve to suffer either. The project will determine whether such a non-punitive approach can be constructed. Depending on the obtained result, a comprehensive non-punitive model, or a detailed and thorough justification why the state should refrain from addressing criminal behavior only by means of non-punitive responses, will be the final outcome of the project.