

Punishing the Morally Unaccountable

Prompt #2 – Word Count: 1196 (including title)

Is a murderer responsible for their actions? While the answer to this question may seem self-evident, it requires more reflection than one might anticipate. To be responsible is to be answerable – to be the conscious author of an action. If a person does not choose their action, meaning they do not possess self-determination, they cannot be held accountable. Indeed, an act must be the product of one's own *free will* if we wish to attribute blame, hence its necessity for moral responsibility. Considering this, the free will debate is not simply a joust between abstract ideas – it has implications for how we deal with crime and how we define the state's role in society. So, what if it turns out that free will is just an illusion? I contend that it would benefit society as it teaches us how to punish justly and efficiently. Throughout, I will address why retribution is unjust, argue how our lack of self-determination renders the human will mouldable and predictable, and discuss the state's subsequent duty to educate and rehabilitate.

How do we justify punishment? Punishment presupposes a crime. Crime is an illegal act defined by laws enforced by the state, which, in turn, "claims the monopoly of the legitimate use of physical force within [its] territory."¹ The state justifies this use of physical force in terms of retribution, deterrence, incapacitation, or rehabilitation. However, retribution falters without free will. For millennia, the principle *lex talionis* (i.e. an eye for an eye) has justified retributive justice. For instance, Hammurabi's Code states, "if a man knock out the teeth of his equal, his teeth shall be knocked out."² The general idea is that the offender deserves to suffer the same degree of harm they inflicted. The intuitive strength of this argument is undeniable – it *feels* fair to punish those who deserve it. Yet, without free

1 E. N. T. H. Gerth, and C. Wright Mills, "From Max Weber: Essays in Sociology," *The Journal of Philosophy* 43, no. 26 (December 19, 1946): 722, <https://doi.org/10.2307/2019397>.

2 "The Avalon Project : Code of Hammurabi," n.d., <https://avalon.law.yale.edu/ancient/hamframe.asp>.

will, it is unwarranted. Peter van Inwagen's consequence argument supports this stance: "If determinism is true, then our acts are the consequence of laws of nature and events in the remote past. But it's not up to us what went on before we were born, and neither is it up to us what the laws of nature are. Therefore, the consequences of these things (including our present acts) are not up to us."³ Indeed, we cannot hold an offender responsible for their actions since they could neither determine nor prevent their will, rendering retribution unjust.

Let us continue to other theories of punishment. For one, unless speaking of the *certainty* of being caught, deterrence falters to empirical data⁴. Considering this and the fact that free will is irrelevant to deterrence theory, it is not worth addressing further. Ultimately, only rehabilitation and incapacitation are congruent with my stance. The idea is that criminals can be transformed to cease their *desire* to commit crimes (rehabilitation) during a period of isolation lasting until they can be safely re-introduced to society (incapacitation). Of course, this presupposes that a criminal is not *born* but is *formed*. Admittedly, genes can influence the development of deviant behaviour – for instance, there seem to be genetic influences on the development of antisocial personality disorder⁵ – but our biology is not the sole determinant of our actions. Neural plasticity implies that individuals evolve with every new stimulus they receive. While their genes may affect this capacity⁶, it is clear that individuals are largely *nurtured* into who they are. This nurturing moulds their relation to reality, determining how they internalise experiences. Thus, let us expand on the consequence argument: our psychology is formed by our nature and how we are nurtured, but we control

³ Peter van Inwagen, *An Essay on Free Will* (Great Clarendon Street, Oxford University Press, 1999), v.

⁴ Daniel S. Nagin, "Deterrence in the Twenty-First Century," *Crime and Justice* 42, no. 1 (August 1, 2013): 199–263, <https://doi.org/10.1086/670398>.

⁵ Guang Guo et al., "The VNTR 2 Repeat in MAOA and Delinquent Behavior in Adolescence and Young Adulthood: Associations and MAOA Promoter Activity," *European Journal of Human Genetics* 16, no. 5 (January 23, 2008): 626–34, <https://doi.org/10.1038/sj.ejhg.5201999>.

⁶ National Academies Press (US), "Grand Challenge: Nature Versus Nurture: How Does the Interplay of Biology and Experience Shape Our Brains and Make Us Who We Are?," *From Molecules to Minds - NCBI Bookshelf*, 2008, <https://www.ncbi.nlm.nih.gov/books/NBK50991/>.

neither, so our present psychology is not up to us. As Thomas Reid averred, “the determination of the will [is] an effect.”⁷ Visibly, nurture and nature are its cause, so human will is not free. However, this means that our behaviour is predictable and mouldable. Hence, punishment serves not to *penalise* but to *discipline*.

One could critique that rehabilitation harms the unaccountable by forcibly isolating them. However, the criminal has already socially ostracised themselves due to their behaviour. Therefore, they require isolated rehabilitation to instil the discipline and norms necessary for social inclusion. Society is *cooperative*. Thus, empathy is a prerequisite for a productive society since it allows individuals to understand and treat each other with the respect necessary for cooperation. Moreover, empathy requires similarity. Accordingly, society needs norms for this empathy to proliferate. In this regard, the state must instil individuals with these norms through institutions such as education, for which Pierre Bourdieu explains its role in forming the unconscious foundations of our thought: “The unconscious is history—the collective history that has produced our categories of thought, and the individual history through which they have been inculcated in us: it is, for example, from the social history of educational institutions [...] and from the (forgotten or repressed) history of our singular relationship to these institutions that we can expect some true revelations about the objective and subjective structures that always guide our thinking, despite ourselves.”⁸ Our thoughts are the consequence of historical processes. Education evolves as “collective history” influences how “individual history” is taught. It is a dialectic where novelty confronts tradition, moulding the reality of the individuals going through these institutions.

⁷ Thomas Reid, *Essays on the Active Powers of the Human Mind* (Edinburgh: Printed Bell & Bradfute, 1803), 250.

⁸ Pierre Bourdieu, *Méditations pascaliennes* (Paris: Seuil, 1997), 21. *Translated from the original French by myself with the help of ChatGPT.*

Furthermore, as a constant feedback loop, norms evolve with society, with the state's institutions adapting accordingly. Our standards of morality, sanity, or, most explicitly, legality are the direct consequence of this process. Conversely, outcasts are simply not moulded correctly to align with the current norms. For example, the history of homosexuality shows that the era and place a person is born determines whether they are considered normal, deviant, or "diseased."⁹ Abnormal individuals are *disadvantaged* since society does not accommodate them and actively *ostracises* them¹⁰. This causes unemployment, isolation, and depression¹¹, leading to violent crime¹². Their deviancy makes empathising with them difficult since the norms needed for mutual understanding do not exist. This is most flagrant with criminals: having broken the most explicit norms (the law), they are the greatest deviants and, therefore, the hardest to empathise with. Thus, when criminal activity occurs, it is the clearest indicator that the state has failed its duty as a normative force. Ultimately, rehabilitation is the state correcting *its* mistake, not the criminal's, so the offender must be treated with respect and decency during their period of re-education.

In 2011, Anders Breivik killed 77 people in Norway during two terrorist attacks. He serves his 21-year sentence in an apartment with an Xbox, a kitchen, and a training room. In response, columnist Simon Cottee wrote: "Norway doesn't understand evil. [...] Breivik is a monster who deserves a slow and painful death. [...] Even in liberal Norway tolerance should

⁹ "Homosexuality," Stanford Encyclopedia of Philosophy, 2021, <https://plato.stanford.edu/entries/homosexuality/>.

¹⁰ Selma C Rudert et al., "When and Why We Ostracize Others: Motivated Social Exclusion in Group Contexts.," *Journal of Personality and Social Psychology* 125, no. 4 (October 1, 2023): 803–26, <https://doi.org/10.1037/pspi0000423>.

¹¹ Xanthe Hunt et al., "Effectiveness of Social Inclusion Interventions for Anxiety and Depression Among Adolescents: A Systematic Review," *International Journal of Environmental Research and Public Health/International Journal of Environmental Research and Public Health* 20, no. 3 (January 19, 2023): 1895, <https://doi.org/10.3390/ijerph20031895>.

¹² Seena Fazel et al., "Depression and Violence: A Swedish Population Study," *the Lancet. Psychiatry* 2, no. 3 (March 1, 2015): 224–32, [https://doi.org/10.1016/s2215-0366\(14\)00128-x](https://doi.org/10.1016/s2215-0366(14)00128-x).

have [its] limits.”¹³ Norway’s prisons are famed for focusing on rehabilitating and re-integrating its inmates. Like Cottee, there may be the emotional impulse to be repulsed by rapists and murderers receiving “luxurious”¹⁴ treatment. However, Norway’s low recidivism and crime rates testify to rehabilitation’s effectiveness and highlight how criminals are largely a product of their society. If society accepts the inexistence of free will, perhaps we can progress toward more effective and humane forms of punishment.

13 Simon Cottee, “Norway Doesn’T Understand Evil,” UnHerd, February 8, 2022, <https://unherd.com/2022/02/norway-doesnt-understand-evil/>.

14 OLIROUX TV, “The World’s Most Luxurious Prison | 2020 Documentary,” June 30, 2021, <https://www.youtube.com/watch?v=kVEXRth-hJs>.

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