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# AN INQUIRY CONCERNING JUST PUNISHMENT

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**Naseem Alsadi**

nalsadi@uoguelph.ca

0921859

PHIL\*2120

Dr. Dorter

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In a society established on the foundations of just punishment, what are the moral implications of the practice of nepotism in avoiding just punishment. The problem is one that deals with moral authority, and in specific, who is designated the responsibility of establishing a moral criteria? Such a question brings along with it a burden of immense responsibility. With a prospective solution comes implications on the role of the sovereign and the citizens of the state, along with the legitimacy of legal punishment through the command of the sovereign. Such a discussion consequently unravels and unveils the *raison d'être* of a sovereign and a morally binding social contract.

It will be shown throughout this paper that the establishment of a sovereign is a necessity and the legislation entailed by the erection of a sovereign are indispensable. Arguments will be laid out to support the formation of an objective moral criteria; a moral criteria of universal implications, specifically implemented and legally coerced upon all individuals of the state by a higher authority than themselves. In doing so, we may come to know the *raison d'être* of the higher authority referred to as the sovereign and the ramifications of escaping justice. Furthermore, it will be shown that the practice of nepotism in not reporting loved ones for breaking the law, is undesirable when analyzed in totality. To begin, moral authority is discussed and in specific whether it ought to lie external to or within the individual.

Philosophers and other great minds have taken an attempt at answering this problem, moving towards either a more subjective and individualistic solution, or a more objective and universal criteria. Immanuel Kant, a 18th century Enlightenment philosopher, argues for universal moral consistency, disregarding an agent's environment and possible outcomes [2]. Opting for a rational, objective system, many Enlightenment philosophers such as Kant, set out to see actions as entirely binding in of themselves and not sought out in effort to reach other ends. Telling the truth, therefore, is an end in of itself and not sought to make others happy. Leading to controversial conclusions such as the moral reprehensibility of deceiving potential murders about the location of their potential victims. On the other side of the coin, we have moral individualism, which introduces a large amount of subjectivity into the moral criteria. Extending into branches such as egoism, which preaches a self-interest based consequentialism. Egoist philosophers assert that all agents ought to act from their own self-interest. Hence, a moral compass essentially becomes a product of an individual's environment and his own interests.

Firstly, we begin our discourse by analyzing the implications of a purely subjective and individualistic moral criteria. When the responsibility of deriving a moral compass is designated towards to the individual, he himself becomes the highest authority of moral guidance. This concept is comedically displayed in a 13th century Sufi tale about the Seljuq satirist, Mulla Nasr ud-Din Hojja, who was one day was appointed judge of the state. He was approached by two individuals, each attesting to their own side of a heated argument. The plaintiff went first, propounding a strong

argument for his case, leaving Nasr ud-Din no other choice but to reply, "Yes, you are right." The defendant arose next and powerfully asserted his argument, leaving Nasr ud-Din with no other choice but to reply, "Yes, you are right also". In sheer amazement, the court registrar stood and proclaimed, "My lord, I cannot fathom how both the plaintiff and the defendant can be right." Nasr ud-Din, in a state of despair, replies, "Court registrar, you are right also." [3]

This tale attempts to display the consequences of morality being in the eye of the beholder. This Sufi tale showcases that progress cannot be made when such a stance is taken and the absurdity of living without objective morality. When objective morality is denied, the influence of the sovereign is greatly reduced. Without moral objectivity, the sovereign forfeits the ability to punish individuals on ethical grounds. Any attempt from the sovereign to punish citizens of the state, on mere moral grounds, is an attempt to claim moral authority, which is unsupported and unfounded in moral subjectivism.

Without punishment, individuals are free to do as they please, whether that means harming or murdering others. Without a higher source of moral guidance, murderers are able to roam the street and unashamedly strike fear in the hearts of fellow citizens. Rapists, likewise, are free to impose their will and escape without punishment from a superior authority. Additionally, utilizing moral subjectivism, it can be proven that citizens of the state are not obliged to sacrifice their self-interest for others or society as a whole. It follows that since an individual seeks only to follow self-interest he has no moral responsibility to the state or his fellow citizens. A society where individuals have no moral responsibility to fellow individuals or to the sovereign, is an unpredictable, unstable society, bound to lead to inevitable destructive internal conflicts.

However, not all philosophical consensus conforms to this chaotic state of nature. Take the 17th century philosopher John Locke, who firmly presents his variant state of nature in his book the *Second Treatise on Civil Government*. Locke states, "The State of Nature has a Law of Nature to govern it", referring to what many know as reason or common sense. Locke indicates throughout his writing that a state of nature is actually non-chaotic and that this reason, present in all individuals, teaches non-violence and respect for others' liberty and property [5]. It is important to note however, that Locke's reason is not a set of *a priori* principles. Locke postulates in his book, *An Essay Concerning Human Understanding*, that our knowledge is obtained and derived from experience, and at birth we are nothing more than a blank slate [6]. Therefore, this law of nature that Locke is alluding to is derived *a posteriori*, from an individual's experience. This, however, presents a problem for Locke, if this law of nature is obtained from our experiences, and we acknowledge that different people have different experiences, this law of nature is not universal, but rather quite relative and subjective. Under Locke's *a posteriori* derived law of nature, if an individual's reason is molded through

experience to justify the murder of innocent people, then no one can assert to this individual that his opinion is incorrect or barbaric. Locke's anarchic state of nature is a circumstance where individuals are free to do as they please and avoid legal punishment, it is a circumstance bound to lead to chaotic ends.

The only way to escape such fate is to establish a sovereign, who assumes moral authority over all individuals of the state. The establishment of the sovereign therefore benefits individuals by securing their rights, and benefits society as a whole by punishing those who transgress moral boundaries. The sovereign therein can be seen as a total amenity to the overall state of society. The sovereign exercises its total authority by utilizing mental and/or physical punishment to compel individuals to follow the set moral standards. The sovereign formulates a set of legislations that aim to benefit society and the individuals that compose it. These legislations set the moral standard for individuals to live by, and the terms of punishment that they are involuntarily subject to.

Therefore, it can be seen that through the means of legislation, the sovereign is able to benefit the individual, as well as society. The individuals of the state should seek to ratify and uphold the legislations of the sovereign, to the highest degree. Ensuring that the legislations of the sovereign are never disregarded nor neglected. Only through these legislations can an individual's rights be guaranteed. Thus, any attempt to compromise or disregard the legislations administered by the sovereign, is an attempt to injure the condition of the individual and society.

In analyzing these legislations, their aims comes into view. That is, the aim of these legislations is to achieve true justice. Thus, our conclusive statement can be rephrased as such, "The sovereign establishes justice to benefit the individual by saving him from his prior state of chaos and insecurity."

Moving forward, we will analyze the implications of committing actions deemed morally reprehensible by the sovereign, and avoiding punishment. To begin this discussion we introduce a classical Socratic dialogue written by Plato, namely, the *Gorgias*. Here Socrates asserts that to avoid punishment for committing a wrongful action is to injure oneself (Gorgias 472 d-e). Therefore, to prevent a friend or family member from being met with a just punishment for committing a wrongful action, is to injure them. The practice of nepotism, hence, becomes undesirable and unfavourable. This proposition can be supported using various supplementary evidence/premises.

Discord is present on the legitimacy of receiving just punishment. Acknowledging that justice is an amenity to the individual, the individual should therefore strive in aim of achieving and upholding justice. Thus, whenever the sovereign justly punishes the individual, through legal and just means, the merit of justice is bestowed upon the individual. It is important to note of the presence of justice on both ends of the stick. Take for instance, the man who

aggressively strike his companion, and when the companion is questioned on what has happened, he replies, "I have been struck aggressively by my companion." Likewise should be the man who is justly punished by the sovereign. For when the sovereign punishes this man, justly, he replies to those who ask what has happened, "I have indeed been justly punished by the sovereign."

Secondly, when a moral agent commits a wrongful action, he is either punished or is left unpunished. When the latter occurs, justice has failed and the sovereign has not benefited the individual, insofar as punishments from the sovereign were erected to uphold justice. The sovereign no longer benefits the individual, nor does he benefit society when his promise to uphold punishment is broken. The sovereign's core responsibility along with his *raison d'être* is not fulfilled, and therefore becomes of no pragmatic use to the individual. Therefore, it can be firmly asserted that when an individual commits a wrongful action, he is only benefited when justice excels and he is punished by the sovereign.

Lastly, using conditional logic and the premises asserted, a proposition can be formulated. An individual is only benefited when justice excels and he is punished by the sovereign, therefore, if an individual has been punished by the sovereign, he has been benefited by the sovereign. Therein the sovereign has fulfilled his obligation to the individual, and has bestowed upon him great benefit. The benefit brought about through this punishment should be seen as an end in of itself, rather than being contingent on other things. The benefits received from just punishment far outnumber the injury or harm received by the individual in all circumstances.

Although, many would object to this point, including philosophers such as Confucius, whom clearly encouraged nepotism<sup>1</sup>. It can be argued that punishment causes suffering, therefore to lead loved ones to suffering is evil. However, digging beneath the surface quickly vanquishes this objection. Noting that the sovereign applies a just punishment to the individual, and the individual equates punishment to suffering, it can be said that the individual has then suffered justly. Previously it was shown that through the means of legislation, justice aims to benefit the individual, therefore to suffer justly is to suffer in aim of achieving greater benefit. This is similar to the wrestler, who suffers mentally and physically in aim of improving and ameliorating his skill. To suffer justly is then to suffer mentally and/or physically in aim of improving and benefiting oneself. Even if not initially apparent, suffering justly is to aim at some good, which in the Aristotelian view is the motivation for all actions. Those who object to this do so from their own bubble of experience, without further considering potential predicaments. Likewise, is the traveller who lightens his load in aim of easing the

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<sup>1</sup>Confucius asserted that covering for family was a virtue. Relating to how a father and son must cover for one another, and therefore stressing nepotism[1].

journey by freeing himself from his sustenance. More appropriately, he is like the child who avoids medical treatment due to his fear of surgery.

Now equipped with the necessary knowledge to answer the core question at hand we can move forward. We have seen that through the means of justice, the sovereign benefits the individual and society. Additionally, avoiding punishment after committing wrongful actions causes injury to oneself. An individual aims to maximize benefits and reduce injury for the ones he loves, such as family and friends. Therefore, one should ensure that their loved ones are met with their respective dosage of justice, even if it entails mental or physical punishment from the sovereign. Nepotism therefore cannot bring about benefit, but rather harm.

Taking an Aristotelian view, all action is sought out in aim of achieving good and reducing evil. Individuals, therefore, seek to minimize harm and increase benefit. Additionally, an individual will seek to maximize benefit to both friends and family. This can be extended further using altruism, which is a moral principle that asserts the disposition to bring benefit to all others, not only family and friends. Therefore, acknowledging that avoiding just punishment brings injury, it becomes every individual's responsibility to not only make sure that their loved ones receive just punishment, but also that all members of society receive their respective quantity of just punishment. As an individual of the state it becomes imperative to strive in the name of justice, not only in pursuing just punishment for family, but also for all fellow citizens.

The complete argument can be situated as follows, to ensure clarity and intelligibility. Man is born doomed to an initial chaotic state of nature, where moral authority lies at the level of the individual. He escapes from his natural condition with the introduction of a sovereign, who establishes and formulates an objective moral criteria. The sovereign has therein erected justice to benefit the individual and society as a whole. The sovereign proceeds to punish those who transgress moral boundaries and commit morally reprehensible actions. Therefore, the sovereign commits a just deed when he lawfully punishes the individual. As a result, the individual has had a just deed done to him by the sovereign. Acknowledging that it is through just and legal means that the sovereign saves the individual from his initial state of nature, the sovereign has therein benefited the individual when he is punished. Lastly, if one cares for his friends and family and wishes the best for them, he must ensure that they are met with the appropriate just punishment for any morally reprehensible actions.

In retrospect, it has been shown that to truly benefit someone who has committed a morally reprehensible action, you must ensure that they are met with just punishment. Whether they are physically or mentally punished, it is a

mandatory responsibility to guarantee all citizens of the state are benefited by the presence of the sovereign. To not do such entails the failure on your behalf to seek the best for the ones you love and the ones that love you.

## References

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