

Chapter 16

The Ethics of Respect and Punishment

16.1 Homework

Readings – EMP 9, RTD 9 (Kant)

Study questions:

1. Kant provided another formulation of the categorical imperative: “Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.” What is the most important reason, for Kant, for thinking this is true?
2. Why, according to Kant, ought criminals to be punished?
3. What are Kant’s objections to the Utilitarian view of punishment?
4. What are Kant’s two principles of punishment?

16.2 Introduction

Kant’s fundamental idea is that moral rules are nothing mysterious, but just the rules which reasonable, free people would agree on if they all set aside their prejudices and special interests and in order to live together in some mutually beneficial and harmonious way.

Another important aspect of Kantian moral philosophy is his emphasis on *respect*. The emphasis is so important that Kant gives a second formulation of the Categorical Imperative in terms of the respect we ought to have for other human beings. This is what this chapter is about.

What is very attractive about Kant’s view is the idea of absolute rules. Kant gives us a basis on which to ground the idea that some moral rules do not suffer any exception. People often appeal to Kant in order to defend personal human rights (against torture for example).

While Kant's emphasis on respect will seem to you as easily acceptable, the consequences of his view, when taken really seriously, are more controversial. In particular, from his theory of respect, Kant derives a theory of *retributive* punishment. We'll discuss this view, and compare it with others, with the example of death penalty.

The questions you want to think about during this chapter are:

1. Should we always treat people with respect? what does it mean to treat people with respect? can you think of any circumstances in which you would be morally justified to not treating someone with respect?
2. What does it mean to use other people as a mean to your own ends? Do you think it is possible to live a life without ever treating other people as means to your own ends?
3. Why do we punish criminals? Is punishment morally justified? If yes, do you believe punishment is morally justified as a rehabilitation process, as a form of retributive justice, or because of its deterrent effect?

16.3 Kant on Respect

Second Formulation of the Categorical Imperative :

You remember the Categorical Imperative, i.e. the ultimate moral law: act only according to that maxim which you can at the same time will that it should become a universal law. Kant proposes a second formulation for it in the *Groundwork of a Metaphysics of Morals*:

Definition 26 – *The Categorical Imperative, second formulation*

Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.

The precise relationship between the two formulations (consequence, equivalence or else) remains a matter of academic controversy. Nothing of interest for us. What is interesting for us is to understand what he means by “treating humanity [...] always as an end and never as a means only”, why he considers that this has the status of a supreme moral law, and what the consequences are.

Let's us try to understand first

Disentangling the Categorical Imperative :

The main idea is that:

1. Human beings have a *special kind of value*, “above all price”: two human beings do not count twice as much as one human beings. There is no relative value, hence no possible comparison, nor is there any replacement of comparative value. This is what Kant calls *human dignity*. Dignity is not for sale.

2. This special kind of value is grounded in humans' *rationality*. As rational agents, we are able to make our own decisions and set our own goals. This is our fundamental *autonomy*.
3. From this it follows that there are some constraints on how we can treat humans. The core idea is that we are never morally justified to treat humans merely as merely to another's end.

In short then. we have the following relationships:

$$Rationality \longleftrightarrow Autonomy \longleftrightarrow Dignity \longleftrightarrow DueRespect$$

Four remarks :

1. Only Humans – The duty of respect applies only to humans. Other things (including animals according to Kant) lack rationality, and hence lack both autonomy and dignity. “Things” (car, soap and dishwasher) don't have value in and by themselves. Only humans' ends and goals put a value on things. Example: the price of vinyl discs.
That said, we have an indirect duty to treat animal without cruelty, not because of their feelings, but because to the effects that treating badly animals could have on our behavior towards humans.
2. Self-respect – Kant tells us to respect humanity in others *as well as in yourself*. Kant thus considers *self-respect* as a moral duty.
Example: the deferential wife
3. Emotions and feelings set aside – Kant tells us to *act* and not to *feel*: as usual, Kant sets aside all emotional aspect of our moral life. Respect is shown through action, not emotions and feelings.
4. There is a nuance here : the point is that we are never justified to treat other *merely as a mean*. This seems to open for treating people as means, if we treat them as ends at the same time.

What is it to treat other people as ends? :

Some example to understand :

1. *Superbad* – Seth, Fogel and the fake ID – Compare Seth and Evan
2. The Tuskegee syphilis experiments 1930-1972 (!)
3. Factory Closing

Respect of autonomy – From the examples above, we gather that what we unacceptable is to:

1. not allowing people to get the relevant information
2. in doing so, not allowing them to make their own decision on the basis of that information

—→ *Whenever we use other people merely as means, we remove their ability to make up their own mind. This is what Kant tells us is never morally justified.*

Using people as means, but as an end at the same time – In most cases, you may get the same result in treating people with respect:

- Seth could explain to Fogel how important it is for him to get alcohol for the party
- HIV experiments
- The director of the factory could negotiate with workers that they work seriously during the last week, with some compensation.

—→ *You can use someone as a mean, but only if you treat him or her as an end as well. In this case, you tell the truth, and the person can decide to make your goal his own.*

So, in Kant's view, the most admirable aspect of human beings is their ability to reason, to set their own goals, and to make their own mind on how to achieve these goals. *As rational agents, all human beings have access to the supreme law of morality*, i.e. the categorical imperative. This is what give them their dignity, which is worth of absolute respect.

As I said before, this view probably seems rather acceptable to you. In order to fully understand the view, we need to see what the consequences are for the theory of punishment.

16.4 Punishment: deterrence, rehabilitation and retribution

How can punishment be morally justified? – There are various views on this.

1. **Retribution** – Paying back as a matter of justice.
2. **Deterrence** – Punishment inhibits further crimes.
3. **Rehabilitation** – Punishment supposed to make people change.

The Utilitarian view on Punishment – Deterrence and Rehabilitation are defensible from *a utilitarian point of view*:

1. By itself, any kind of punishment, which involves suffering, is bad from an utilitarian point of view
2. Punishment can thus be justified *only if the beneficial consequences outweigh the suffering it cause*
3. The ways in which punishment could have good consequences : keep the streets secure, discourage misbehavior in other people, satisfy the victims, and potential rehabilitation of the criminals.

According to Rachels, the most common view in the US right now is the rehabilitative view: we think criminals as people to be treated.

Kant's criticisms against the utilitarian view – The utilitarian approach to punishment is incompatible with human dignity: it treats people merely as means, it does not treat them as rational beings.

- Securing the street and deterrence effect: using people as means

- Rehabilitation: violation of autonomy!!! rehabilitation is “the attempt to mold people into what we think they should be. As such, it violates their rights as autonomous beings.” (EMP p.136) In other words, we do not respect their autonomous decision to act in particular ways when we try to rehabilitate criminals (change their ways of thinking)

According to Kant, the only way to morally justify punishment is in terms of retribution. Let us see how Kant's retributive view of punishment.

16.5 Kant's retributive theory

Retribution and Responsibility – Kant maintains that we must punish criminals in order to treat them as ends in themselves. How can this be? In short: *by punishing them we treat them as responsible for their actions*. In more detail:

Why punishing is being respectful? – argument 1 :

1. Human beings are rational, autonomous agents
 2. As such, they make free decisions
 3. As such, they are responsible for their actions
 4. So: to treat them with respect is to treat them as responsible for their deeds
- Compare with: animals, deranged people. – not responsible, not punished (“training for animals”)

What to think about argument 1 :

The more you think criminals have control over their actions, the more you will be attracted by the argument. If, by contrast, you think that criminals are at least in part victims of circumstances, then the argument won't be convincing to you.

Why punishing is being respectful? – argument 2 :

1. Human beings are rational, autonomous agents
2. As such, they have access to the moral law
3. Hence, when acting, they are implicitly decreeing: this is the way I can will that anybody be treated
4. This includes himself!
5. We can apply the rule to him : in doing so, we are respecting his judgment about how people should be treated.

Kant: “His own evil deed draws the punishment upon himself” (quoted by Rachels p. 139)

What to think about argument 2 :

This seems spurious. It does not seem right to apply a maxim just because someone else applied it. If the maxim is not universalizable, then the action is not right.

Back to previous example: rape the raper and torture the torturer?

Consequence: Two Principles for punishment :

The Two Principles :

1. **Frist Principle:** People should be punished *because and only because they have committed a crime*
2. **Second Principle:** People should be punished *in proportion to the seriousness of the crimes* they have committed

Understanding the first principle – The first principle tells us that:

1. Punishment is morally justified only for guilty people.

Note that, under the utilitarian view, it is in principle possible that punishing an innocent is more beneficial for the welfare of the society (remember the scape goating example)

2. Even in the case of guilty people. the reason why we are morally justified to punish is nothing else than the crime itself (politics, race or social peace should not be considered)

Understanding the second principle – lex talionis “an eye for an eye”

- what it does not mean: rape the raper? torture the torturer? If we take the rule literally, then it seems that we would have a justification against human rights, these very rights that we are trying to secure with Kant!

- what is really means, and why it was progress at the time: limitations on punishments

Application for capital punishment: Kant happened to believe that capital punishment is justified. But one could be Kantian and still not accept capital punishment. We'll discuss capital punishment in the next chapter.

16.6 Conclusion

Insights to keep from Kant :

On moral rules : moral rules are just what reasonable, free people would agree upon if they would set aside their prejudices and self-interest

On moral action : we are morally obligated as *rational agents*. We are autonomous, hence responsible of our actions. Reason is the most reliable way to figure out moral issues.

On moral credit : The reasons why we do what we do count a lot for moral credit. Motives are important, and duty is the best of our motives. There is something immensely admirable about doing your duty *despite* your immediate inclinations.

On the moral point of view : there is something very suspicious about wanting to make exceptions for ourselves. *Universality* is a key aspect of morality.

On punishment : Punishing can be the expression of respect.

What is missing in Kant :

The problem of absolute rules : we need a better account on whether or not there are exceptions to the rules.

The neglect of emotions and character – some argue that an element of moral life consists in overcoming the split between duty and inclination through education. Our emotions can be educated, and part of building our character consists in educating our emotional responses such that our emotions comply with the standard of reason. To care about people may be taken as an important virtue of character.

The place of consequences – Consequences, and in particular foreseeable consequences should be part of the picture.

On punishment : There is something spurious about the idea to play by the rules of the criminals. There should be other ways to respect criminals as responsible agents, but still not apply punishment as a “pay back”.

A proposal: Could not we think of rehabilitation as a way to treat people as a means and as an end at the same time, if they accept to make our goal (to change the way they behave) their own? In this way, it seems that we would treat them as responsible and with the due respect.