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### Aristotle and Mutual Accountability: A Just Theory of Punishment

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Claremont McKenna College

Aristotle and Mutual Accountability: A Just Theory of Punishment

Submitted to  
Professor Paul Hurley

By  
Dina Rosin

For  
Senior Thesis  
Spring 2020  
May 11, 2020

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## Acknowledgements

First and foremost, I am incredibly indebted to the profound investment that my thesis reader, Professor Paul Hurley, has put into myself and my thesis. Thank you for working with me over many months to develop these ideas and for seeing me as both a student and a person throughout this process. In encouraging me to question how things ought to be, you have instilled in me a deep understanding of how philosophy can change the world. I hope we can continue our video calls for many years to come.

My academic journey at CMC has been defined by brilliant and caring professors. Thank you to Professor Amy Kind for being a wonderful role model, mentor, and friend to me, and for challenging me to think more critically about the world around me, and what I can know about it, through your courses. You have inspired and impacted me more than I can easily express, and getting to work with you has certainly been one of the greatest privileges of my life thus far. I am also very grateful to Professor Derik Smith, whose courses and dedicated mentorship have helped me think differently and find a voice at CMC. I would additionally like to extend deep gratitude to Professor Andrew Schroeder and Professor Jon Shields for significant investment in my education.

I am very grateful for the many ways in which my academic journey has been deeply benefitted by my extracurricular pursuits at CMC. Specifically, I owe a big thank you to the Associated Students of Claremont McKenna College, the Gould Center for Humanistic Studies, the Claremont Journal of Law and Public Policy, and the First Year Guide program.

Thank you to my wonderful friends and peers in Claremont who have both encouraged and supported my many endeavors throughout college, and have filled my life with a true abundance of love. Thank you for constantly challenging my beliefs and spending time grappling with complicated ideas with me (again, and again, and again).

I'd like to acknowledge my family, especially my parents Debby and Larry Rosin, for providing me access to an education like this, and for supporting me in so many ways throughout the years. I am also very grateful to the generosity of the Weinstein family for making quarantine so enjoyable, and providing a great backdrop for this endeavor.

Lastly, thank you to Claremont McKenna College for a rigorous and demanding education that has profoundly changed me as a person. I am excited to see how the rest of my life will be so enriched by the time I spent here.

### **Abstract**

How can citizens of a moral community both be held accountable and be accountable for their actions and their character? What is the role of both the state and the citizen in restoring accountability? In this thesis, I apply Aristotle's conception of virtue to Stephen Darwall and William Darwall's mutual accountability framework for punishment. I present a theory of punishment that creates an obligation on both the state and the citizen to uphold virtue and be accountable, and posits rehabilitation of character as a necessary component of maintaining mutual accountability. I then apply this theory to a paradigmatic case that allows us to consider on what grounds we can find relevant justification for punishment.

## Preface

As I write this thesis, the world seems to be collapsing before my eyes. COVID-19 has spread throughout the world, and this global pandemic has only emphasized so many injustices and oppressions. While the disease itself does not discriminate, it is clear who will be most affected by the virus and the economic implications of it: the poor, the incarcerated, communities of color, those lacking access to healthcare, people experiencing homelessness who are unable to social distance, and more.

I was compelled to write this thesis because I am interested in the many requirements of justice. Though individuals ought to hold themselves to account, the state also plays a profound role in creating the conditions of a just society that will allow for accountability. As we aim to hold ourselves and our fellow citizens responsible, we must also profoundly reckon with the role of the state in upholding justice.

I hope this thesis provides interesting justification for punishment. I think a lot about the obligations we all hold to each other, and I encourage you to consider how you can hold yourself to mutual accountability. Rehabilitation of character ought to be an ongoing process, and I encourage you to continue to challenge yourself and grow.

### **Virtue and Accountability**

In any moral community, we ought to have laws and commitments that the citizens of the community are expected to adhere to, and a system to arbitrate cases in which someone has breached these collective obligations. We hold both commitments and obligations, some that we choose to engage in, and others that we are simply mandated to abide by. We are bound both to obligations we have to each other, and the obligations our government has to us. Though all of us may aim to live virtuously, we can all fall short of this high ideal. For example, maybe I take \$5 out of my friend's wallet when I am in a pinch, and later apologize for this breach of trust and respect for private property. In this case, my apology would likely do the trick, leaving my friendship strong, with my friend knowing that they can continue to hold me accountable if I harm them in the future. However, in criminal cases, the state doesn't simply arbitrate harm between actors, but rather, prosecutes and holds individuals accountable on behalf of the state. This is because criminal cases involve harms to the moral community. The moral community is the state in which all citizens live in accordance with laws and structures that guide moral obligations.

In *Nicomachean Ethics*, Aristotle outlines two conditions that must be met for society to be virtuous (Aristotle). First, individuals have a personal responsibility to habituate their character to align the apparent good with the actual good. Second, the state has an obligation to create the conditions in which citizens can act virtuously. Thus, the state ought to act as the body creating laws and holding citizens accountable to those laws in a moral community. Furthermore, the state ought to facilitate a citizen's process of rehabilitation so that citizens can regain equal standing within this moral community.

*Virtue and the Self*

According to Aristotle, virtue and vice are within our power. Aristotle writes that just as our actions are of our own accord, “virtue is also up to us, and so also, in the same way, is vice” (37). Though ultimately in our control, the process of becoming virtuous requires accountability, both within ourselves and as carried out by the state.

If I experience physical sickness, I cannot simply wish the sickness away, as much as I may want to. Similarly, moral sickness cannot simply be wished away. While before you are sick, you can actively work to better yourself to prevent sickness, once you have become ill, you must now take significant steps to rid yourself of such illness. Aristotle writes “it is unreasonable for someone doing injustice not to wish to be unjust, or for someone doing intemperate action not to wish to be intemperate. This does not mean, however, that if he is unjust and wishes to stop, he will thereby stop and be just” (38). Though self-reflection is necessary for ultimately engaging in the process of rehabilitation, simply wishing for a change in character is insufficient.

As someone cannot simply wish to rid themselves of moral illness, it is necessary for individuals to go through a process of rehabilitation to get to a state of proper moral standing (38). Furthermore, we ought to act in ways that promote virtue, and not simply in ways that are virtuous within themselves. As our actions are a result of our character, we must guide our character to “aim at the apparent good” so that our actions are similarly virtuous (39). However, what may be the apparent good is not necessarily the actual good. Though we all aim at the good, sometimes what we aim at is only apparently good,



and so our aim misses the mark. This helps to explain why simply wishing to be just is not enough to actually be just.

For example, in *A Christmas Carol* (Dickens), Ebenezer Scrooge mistakes the apparent good for the actual good. In his pursuit of the good, he is fundamentally mistaken, and believes that it is wealth at all costs that will lead to a satisfying and good life. However, after being visited by phantoms who force him to see his life in a new light, Scrooge comes to realize he had maintained an impoverished understanding of virtue. While he had previously seen wealth and greed as the good, he comes to realize that the actual good is compassion, generosity, and kindness. The rehabilitation of his character means that Scrooge does not simply understand virtue, but he also acts in accordance with it. Scrooge becomes generous and kind, and begins to give away his wealth and treat others with dignity in accordance with these principles. In this example, Scrooge is able to tease out the actual good from the apparent good when he is put in conditions that allow him to see this distinction for himself. Scrooge couldn't simply desire to be different, but rather, he had to engage in this process of rehabilitation so that his character would transform, and his actions would similarly become virtuous in line with his character.

Furthermore, Scrooge wasn't able to simply come to this realization alone. Rather, he needed guidance and intervention for him to understand that he had been misguided in his pursuit of the good. This can be a particularly weighty task for individuals who are unable to recognize the fundamental ways in which they have distorted ideas of right and wrong.

*Virtue and the State*

On an Aristotelian account, citizens have a moral obligation to align their character with the actual good so that their actions are virtuous, in line with their character. The state similarly has an obligation to promote virtue by creating the necessary conditions for citizens to be able to act virtuously. Aristotle argues that political science is of high aim as it seeks good both for the individual and for the community. Aristotle writes that “for even if the good is the same for a city as for an individual, still the good of the city is apparently a greater and more complete good to acquire and preserve” (Aristotle, 2). To allow citizens to act virtuously as members of a moral community, the state has an obligation to create the necessary conditions for individuals to act virtuously.

The state does not simply have an obligation to create the conditions for citizens to act virtuously, but also must hold citizens to account when they are no longer acting as virtuous members of the moral community. Scrooge, for instance, was able to act virtuously and as a contributing member of the moral community after his character underwent a process of rehabilitation. For him to engage in this process, he needed the ghosts of Christmas past, present, and yet to come to awaken him to his moral failings. Similarly, the state ought to facilitate the process of habituation among its citizens, as well as help citizens to identify the need for rehabilitation, so that citizens can act virtuously in line with their character.

*Aristotle, Accountability, and Habituation*

Aristotle provides us with a rich account of what virtue is and how it ought to be achieved. Aristotle's dual obligations -- both on the individual and on the state -- can provide meaningful insight in to how we might consider situations in which someone has committed a most egregious attack on the moral community.

On Aristotle's account, the state does not simply have an obligation to rehabilitate those like Scrooge who have a deeply impoverished and misguided understanding of the good, but also to consistently promote virtue throughout the moral community by helping citizens become and act virtuously. The state does this by creating and upholding norms and standards for virtuous character and promotes this to the citizenship in a variety of ways. For instance, the state may carry out educational initiatives to instill knowledge and good character within its citizens. The state may demonstrate its values through initiatives for the public good, such as by ensuring that all citizens have basic necessities. The state can nudge citizens towards virtue by providing incentives for citizens to create and build community. In this way, the state can consistently encourage its citizens to practice reflection and habituation so that citizens can work to maintain a virtuous character.

There are many breaches of the laws of a moral community that might not need the state to act in its role as a facilitator of habituation. For instance, someone might break a law of a moral community and immediately understand this breach to be morally wrong, and then take steps to rectify the harm incurred and the underlying character flaw that led to bad action without state intervention. In cases such as this, the law may not need to be enforced for individuals to hold themselves to account and to be accountable

for their actions. Or, there are some breaches of morality that while individuals ought to hold themselves to account for, we might think the state should have no role in legislating. For instance, if the state were to write laws punishing heartbreak, that would likely be a breach in personal autonomy, despite heartbreak being so incredibly painful. Thus, it is the most egregious of crimes that are attacks on our moral community and demonstrate a fundamental failure to be accountable that the state ought to step in and arbitrate.

Aristotle helps us enrich how we might think about punishing the most fundamental failures of mutual accountability. These failures involve deep breaches to the ethical norms of the moral community. I will explain a mutual accountability framework of punishment, and then will explain how applying Aristotle's ideas of virtue to mutual accountability provides a stronger account of, and justification for, punishment.

### *Mutual Accountability Framework*

In *Criminal Process as Mutual Accountability: Mass Incarceration, Carcerality, and Abolition*, Stephen Darwall and William Darwall present a restorative framework to consider the state's role in carrying out punishment (Darwall). This piece outlines what such a framework would actually look like, and how it might be carried out by the state. The laws of the state may not align with the necessary conditions for a moral community, which obviously creates a tension for individuals to hold themselves accountable to the laws of the state. Through a mutual accountability framework, we are able to see how the state might uphold and facilitate Aristotelian notions of virtue and accountability. Additionally, Aristotle's account of virtue enriches Darwall and Darwall's theory of

mutual accountability by providing an account of rehabilitation as a necessary component of being mutually accountable.

*What is mutual accountability?*

Violations of the laws of the state are presupposed to be morally wrong, as laws should be in line with the values that the state strives to uphold in its citizens. Sometimes, laws legislate things that are bad in themselves, or *mala in se*. For example, the state ought to make illegal murder, rape and discrimination, as these crimes hold inherent moral wrongness. Other times, the state legislates in ways that make certain actions wrong, or *mala prohibita*, though these crimes do not naturally affect the rights or property of others. For instance, a country might legislate that you can only drive on one side of the road. Once the state has established this norm, it becomes immoral to drive on the other side of the road, as this would put the safety of others at risk. Whether laws are created *mala in se* or *mala prohibita*, they create standards and norms of a moral community.

Criminal acts are considered not simply violations of an individual's rights, but a violation to the moral community. It is through a legal order that citizens can be treated as equals, as all citizens are subject to the same laws and arbitration of legal violations. There are moral obligations that all members of a moral community owe to each other, and thus, violations of the laws of a moral community create dysfunction. In criminal cases, the terms of respectful community existence are threatened, and those who are harmed have had their humanity discounted in a fundamental way. Thus, criminal law is

not adjudicated simply by the actors or on behalf of the victim, but by the state on behalf of the moral community, as every citizen's rights have been in some way violated.

As laid out by Darwall and Darwall, mutual accountability helps to explain the justifiable grounds in which criminal process can be enacted, and why the state ought to carry out punishment (though I will later explain what punishment ought to actually look like) when laws of the state have been violated. Mutual accountability is a restorative perspective to punishment, and takes as given that all forms of accountability are fundamentally mutual, as one must be accountable to *something*.

Mutual accountability must be carried out by a representative authority. Further, “practices of criminal accountability must be able to be justified from a perspective that is representative of the moral community as equal moral persons” (190). Simply put, mutual accountability holds the requirement that the state can only be justified in law enforcement when it allows people to regain their standing in society as equals so that they can continue to be held mutually accountable to each other and within a moral community.

Mutual accountability does not necessarily need to be carried out by the state. In many cases, such as civil cases, individuals can find methods without state intervention to bring accountability, harm-reduction, and forgiveness. However, criminal cases seem to necessitate state intervention, as breaches to the law are not simply upon an individual, but rather, violate the moral community to which all citizens have collective membership.

*Justification for Mutual Accountability in Criminal Procedure*

Darwall and Darwall lay out two conditions of this framework as enacted in criminal procedure. First, “criminal process should be conceived in terms of mutual accountability,” since all accountability is fundamentally mutual. Second, criminal accountability must be justifiable “from a perspective that is representative of the moral community as equal moral persons” (190). With these conditions, mutual accountability is conceived and justified by its ability to hold individuals in equal standing with each other. Violating the necessary norms of a moral community substantively disrespects not simply the law, but also the expectation that the victim of a crime will be treated as an equal under the law and among other citizens. Thus, mutual accountability does not necessitate that the violator is harmed, but rather, creates the requirement that accountability can only be achieved when the violator and the victim can continue to stand in equal relations as citizens under the law.

Darwall and Darwall write that “part of holding the convicted accountable is to demand that they take responsibility for, and do their part to repair, the breach of trust their actions have occasioned” (193). In this way, the violator is both repairing harm done to the victim and establishing themselves as citizens committed to the demands of the moral community.

## A New Theory of Punishment

I have previously laid out Aristotle's understanding of virtue, and the role that both the individual and the state play in upholding virtue. I have also laid out Darwall and Darwall's mutual accountability framework for punishment. Applying Aristotle's rich account of virtue to this mutual accountability framework of punishment helps us to see the role of punishment in the promotion of virtue as a means to facilitate mutual accountability. I will present a theory of punishment that combines Aristotle's notion of virtue with a mutual accountability framework, which I believe paints a rich justification for why punishment might be necessary, and what that punishment might look like.

There are many different theories for why we might punish someone who breaks a law. A retributivist argues that we should *hold* people accountable and responsible for their actions, and holding individuals to account means punishment, usually harsh punishment, as a consequence for the crime committed. A rehabilitationist argues that we should 'fix' individuals so that they can *be* accountable, and continue as citizens who can be just actors within the moral community. If we use Aristotle's idea of human virtue and flourishing, we can see a richer account of why we might punish, which will affect which cases we will choose to use punishment at all, and the cases for which punishment might be entirely unnecessary. Furthermore, changing the justification for punishment will affect the kinds of punishments that ought to be used.

### *Promoting Virtue*

Aristotle writes "we are by nature able to acquire them [the virtues], and we are completed through habit" (Aristotle, 18). Humans have the capacity to flourish and be



virtuous creatures, however, we all must cultivate that ability within ourselves. If we presuppose this as a basic truth, we are likely to see punishment dramatically differently. First, we ought to think that no bad action could fundamentally condemn a character. By recognizing the humanity of all, we might think that even the most egregious failures of character does not render someone unable to become a virtuous citizen. I am particularly compelled by Aristotle's account of human virtue as applied to punishment because I think this is a beautiful vision through which to see humanity: that all individuals have the ability to flourish and act virtuously.

Aristotle provides a compelling lens through which to look at mutual accountability because it **recognizes the need for rehabilitation in order to hold people to mutual accountability**. Thus, personal rehabilitation ought to be a fundamental component and outcome of punishment, as it will allow for individuals to be held in mutual accountability.

Aristotle further provides such a rich lens through which to view mutual accountability because he recognizes the shared responsibility of the state and the individual. On this view, serious flaws of character require rehabilitation so that actors can be restored to equal citizenship and held mutually accountable to each other. Thus, the state has a complex role to play: the necessary process of rehabilitation might look different for different people, so how can the state facilitate rehabilitation for each citizen when necessary? For example, while the phantoms were able to awaken Scrooge to his fundamental character flaws and allow him to begin the process of rehabilitation, this same process might not work for others. Scrooge wasn't prescribed an exact treatment for his lack of moral clarity, but rather, was given the necessary conditions that allowed him

to see his moral flaws and rehabilitate his character. Thus, while Scrooge needed to himself take accountability for his actions, he also needed to be given the appropriate conditions for him to realize that he needed to rehabilitate his character.

### *The Theory*

By using Aristotelian notions of human flourishing, we can imagine a more rich picture of punishment that is fundamentally restorative. The state ought to restore people to virtue not simply so that their actions and character can be good, but to allow individuals to continue to be mutually accountable to each other. Furthermore, we can see how a restorative understanding of mutual accountability will be beneficial for the violator, the moral community, and the victim.

On this account of punishment, justice requires that both the individual and the state uphold their commitments to accountability. Punishment is carried out for the purpose of ensuring that all individuals can be held in mutual accountability, which requires a process of rehabilitation. This process of rehabilitation aligns the apparent good with the actual good, so that citizens can act virtuously, and therefore can be productive members of a moral community in which all citizens are held in mutual accountability. This Theory commits to the notion that all people are fundamentally able to become virtuous. Therefore, it is the role of punishment to allow citizens to build a virtuous character.

This Theory is distinct in that it 1) creates an obligation on both the state and the citizen in upholding virtue 2) posits rehabilitation of character as a necessity for mutual accountability.

### *Responsibility of the Self*

Though we all aim at the apparent good, we can fail to recognize when the apparent good is misaligned with the actual good. Thus, recognition of wrongness is a fundamental component of rehabilitation, as it allows us to realign our values so that our pursuit of the apparent good aligns with the actual good. On Aristotle's account, rehabilitation is a necessary process for this realignment. If we extend this to the framework for punishment presented by Darwall and Darwall, being held in society as mutually accountable actors requires individuals to create good character through the process of rehabilitation. Theories of punishment ought to consider the rehabilitation of character from failures of the self to act virtuously to be a central and necessary component of punishment, as it will allow for individuals to continue functioning within mutually accountability to each other.

Furthermore, this Theory requires individuals to hold themselves to account, which is needed for the process of rehabilitation. This means that individuals are seen as autonomous persons responsible both for their actions and their character.

### *Responsibility of the State*

While citizens must take responsibility for both their character and actions, the state needs to facilitate the conditions that allow individuals to do so. Thus, mutual accountability between citizens relies on an active role of the state to uphold these conditions of justice.

In *Dark Ghettos: Injustice, Dissent, and Reform*, Tommie Shelby outlines the role of the state in creating both the conditions of justice as well as a criminal justice system that is fair. We might think of the role of the state in creating the necessary conditions for mutual accountability in this way. The state has a responsibility to create a criminal justice system that is free from entrenched biases and structural flaws that would lead to “arbitrary and uneven enforcement, wrongful convictions, unfair sentences” (Shelby, 228) and more within the processes of legal enforcement. Shelby explains that a just criminal justice system is not enough if there are structural injustices within society, such as “unjustified economic inequality, widespread patterns of discrimination, and inadequate protections of basic liberties” (228). To create the conditions of mutual accountability, we might think the state is responsible for ensuring both a fair and impartial criminal justice system as well as a society free of systemic injustice. For individuals to be responsible for holding themselves to account, the state must uphold the conditions of justice.

### *Harsh Treatment*

Fundamentally, punishment ought to be about being accountable, holding accountable, and restoring accountability. While harsh treatment may be a component of facilitating this accountability, this accountability could be met without harsh treatment. Harsh treatment, such as incarceration, may be necessary for an individual to be held to account or for the conditions of mutual accountability to be met. As previously stated, part of accountability is rehabilitation of character so that we can continue to stand in mutual accountability. For example, we sometimes put children in a time out so that they

can calm down and reflect on their behavior in order to improve their character. In this case, though the purpose of the punishment is the facilitation of rehabilitation. Harsh treatment would only serve as a constituent component of punishment if the violator is unable and unwilling to be mutually accountable and harsh treatment, like incarceration, facilitates an individual taking accountability. In itself, harsh treatment does little to hold someone to account.

*Overcoming objection: Retribution*

Darwall and Darwall write that “a mutual accountability rationale differs, first, both from any notion of retaliation and from any purely retributivist view according to which a perpetrator deserves to be harmed proportionately to the harm they have caused others. Deserved suffering plays no essential role in mutual accountability” (Darwall 192). As Darwall and Darwall point out, retributive justification for punishment is incongruent with mutual accountability because harming someone does nothing, in itself, to allow two actors to return to standing in mutual accountability. On a mutual accountability conception, harsh punishment doesn’t allow for the violator to hold themselves to account “through the (likely painful) realization of the interpersonal significance of what they have done.” Further, “criminal processes of mutual accountability seek to enact and restore mutual respect for the dignity of all persons.”

To expand upon this through an Aristotelian lens, retribution fails to center the rehabilitation of character as a central feature of punishment. As Arthur Ripstein explains of retribution in *Equality, Responsibility, and the Law*, “in the case of crimes...there is a strong and legitimate retributive sentiment, which demands that wrongdoers “pay” for

their deeds” (Ripstein, 133). However, this ‘payment’ of sorts isn’t made to the victim of the crime. A retributive justification for punishment argues that individuals should be punished because they caused harm. However, the Theory finds that punishment ought to be a mechanism that allows for the perpetrators of crime to hold themselves to account. A retributivist account overstates the role of the state in holding individuals accountable, and understates the extent to which individuals need to hold themselves to account. Citizens can be held in mutual accountability only when both the state and individual both uphold these responsibilities.

#### *Overcoming Objection: Rehabilitation*

A rehabilitationist perspective is insufficient justification for punishment because it posits individuals as things meant to be ‘fixed’ by the state rather than autonomous citizens who need to be accountable for their actions and their character. The state cannot simply ‘fix’ someone if an individual does not choose to go through the challenging yet necessary process of rehabilitation to re-establish mutual accountability. Though the state certainly has a profound role to play in creating the conditions of justice and facilitating the process of rehabilitation, a rehabilitationist view overstates the extent to which the state plays a role in holding individuals to account for crime.

On an Aristotelian account, individuals need to decide to participate in the process of rehabilitation for one’s character to become more virtuous. As Aristotle wrote, “it is unreasonable for someone doing injustice not to wish to be unjust, or for someone doing intemperate action not to wish to be intemperate.”<sup>1</sup> As previously mentioned, individuals

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<sup>1</sup> Pg 38

must go through the process of self-reflection needed to realign the apparent good with the actual good. This helps to explain why there is no prescriptive way for the state to rehabilitate a citizen, or restore them to virtue. While the state plays an important role in facilitating an individual's journey to rehabilitation, the state cannot simply rehabilitate a citizen without the citizen taking intentional efforts to rehabilitate their character.

## Case Study

*In The Terrorist Attacks in Norway, July 22nd 2011, Some Kantian Reflections,* Helga Varden presents a case study that can help us apply the Theory (Varden). Through this, we can see how Kantian ideas of universalization help to justify an Aristotelian conception of mutual accountability. Further, we can see that this framework of punishment provides richer rationale for why punishment ought to be enacted. Helga Varden teases out mental illness from moral illness and presents justification for punishment on Kantian grounds. While Varden provides interesting and helpful insight into distinctions of moral culpability, her conclusions would be benefited by a more restorative, Aristotelian approach.

### *The case: ABB*

Varden presents a paradigmatic case in which to think about punishment: Anders Behring Breivik (referred to as ABB) carried out terrorist attacks in which 77 people were murdered and hundreds were injured in Norway. Such a tragic and awful act begs an important question: what do we do when someone has so fundamentally disrespected our moral order? The victim of ABB's terrorism was not simply everyone physically harmed and those whose loved ones were harmed, but also, an assault on the moral community broadly.

During the trial, ABB "showed no signs of regret, remorse, or any other emotions appropriate for the circumstances" (240). Varden writes that "not once was there reason to think that he understood, in the ordinary moral sense of the word, what he had done" (240). Two psychiatric reports disagreed over whether ABB suffered from paranoid



schizophrenia and delusion, and he was ultimately diagnosed with a Narcissistic Personality Disorder (NPD), which caused him to “struggle to experience the other-directed emotions constitutive of being a person,” making him “more likely to fail in [his] efforts to develop full, healthy ethical character” (249). While NPD is a kind of mental illness, his aggressive and destructive behavior was not just a result of mental illness, but also, can be explained by moral illness.

According to Varden, we can separate moral culpability of those who are mentally ill from those who are morally ill. Varden thinks that punishment cannot be carried out on those who are mentally ill, as those who are mentally ill lack the ability to self-correct mistaken beliefs about right and wrong. However, Varden presents a different explanation that might explain ABB’s actions: moral illness. ABB seems to fundamentally mistake the good and has an extremely perverse understanding of morality. Varden explains this as a moral illness, which she believes we can hold individuals accountable for, unlike in the case of mental illness. ABB’s sense of the good was so fundamentally warped that even when presented with compelling evidence to the contrary, he remained firm in his convictions about morality. Not only had ABB grossly misaligned the apparent good and the actual good, but he had acted on his malicious beliefs in a way that wronged other citizens and the moral community. On Varden’s account, those who suffer from moral illness have the necessary epistemic conditions to recognize their failure of character, yet refuse to do so. Thus, the state has a role to play in holding ABB accountable for his actions through the use of punishment.

*Kant*

Using Kantian ethics, Varden provides an account for how and why ABB should be punished. Kant writes that “for all rational beings stand under the law that each of them is to treat itself and all others never merely as a means, but always at the same time as an end in itself” (Kant, 43). Varden applies this to the case of ABB, and writes that “it was so important to subject ABB to justice in the public court system...that behavior [respectful treatment] made it possible for us all to uphold our commitment to humanity and to interacting rightfully at all times...we upheld the humanity in him that he himself proved so utterly incapable of upholding.” In this way, the law is being upheld as universal, as ABB is being treated with the same respect that all others would be given under the law. By treating all citizens by the same rule of law, decisions can be found legitimate even if the verdict itself is disagreed upon.

A Kantian framework provides a compelling account for treating everyone with equal respect under the law. Mutual accountability is fundamentally about universalizing the principles that allow us to live in equal relations to each other. For Kant, “the formula of an absolutely good will” is the “categorical imperative,” which follows as “act according to maxims that can at the same time have as their object themselves as universal laws of nature” (Kant, 49). This provides rich justification for the Theory; we will be held in mutual accountability if we act in ways that everyone can act in, and thus, we can hold these reciprocal and universal expectations for all. Thus, for punishment to be in line with the categorical imperative, it ought to be for the purpose of holding everyone as equal citizens under the law.

Varden wants to use Kant as justification for a very lengthy sentence of incarceration. As the Norwegian penal code allows for a 21-year sentence as the maximum punishment for any crime in a single trial (which is considered a life-sentence), this is the sentence ABB received. Varden concludes that this is a disgraceful punishment for ABB, as it suggests unequal respect for the lives of those killed by ABB and ABB himself. Varden writes that this punishment is “absurd,” because “ABB killed 77 people, and each killing becomes equivalent to 1/77th of 21 years, or 0.273 years or a little over three months, according to the current Norwegian Penal Code” (Varden 255).

Varden is right: no prison sentence given to ABB could possibly “match the wrongdoing” that ABB has caused on so many. However, if we are to consider this dilemma using the Theory, we will see that this reciprocal property is simply a flawed way of justifying the use of punishment.

#### *‘Forvaring’ as Accountability*

Under the Theory of punishment, ABB would have to become a citizen who can stand in mutual accountability, which would require rehabilitation of character. Unfortunately, ABB has demonstrated such a perverse misunderstanding of right and wrong, which has led to massive harm for citizens and the fabric of the moral community of which ABB is a part. ABB has demonstrated that he is unwilling to hold himself accountable and be accountable for his actions, and is currently unwilling to engage in what would be a necessary process of rehabilitation for ABB to stand in mutual accountability with fellow citizens.

This begs an important question: can we hold individuals who have committed such egregious crimes to account? If yes, how can we do so? The Norwegian penal system has a clause known as ‘forvaring,’ (or, “safekeeping”) in which “a prisoner cannot be released unless psychiatrists deem him or her no longer a danger to society” (241). If ABB is morally ill and unable to understand that he has so profoundly misaligned the apparent good and actual good, he poses a threat to society, and thus his prison sentence could be extended beyond the maximum sentence given in Norway of 21 years. The ‘forvaring’ clause provides justification for keeping ABB incarcerated for the rest of his life because his moral illness will prevent him from ever regaining equal standing within the moral community. If ABB fails to be accountable for his actions, he will never be able to live in mutual accountability with fellow citizens.

‘Forvaring’ is used as justification to protect the moral community from those who will continue to cause harm when they are so fundamentally unable to align the apparent good with the actual good. In the case of ABB, Varden explains that the ‘forvaring’ clause provides the necessary justification for incarcerating ABB for longer than the maximum sentence of 21 years, effectively giving ABB a true life sentence.

However, ‘forvaring’ should not simply be an alternative to punishment, but rather, a constituent component of punishment. In carrying out its role of enforcing the norms of the moral community, the state needs to ensure that all citizens are mutually accountable to each other. If ABB refuses and is unable to understand his fundamental flaws of character, and the need to hold himself accountable for his actions and rehabilitate his character, the state needs to separate him from the moral community because he has not upheld his end of mutual accountability. Thus, ‘forvaring’ does not

simply need to act as justification for extending the sentence of ABB. 'Forvaring' provides the framework that the state should be using in determining punishment that incorporates the need for citizens to be accountable for their actions and their character, be held accountable, and to restore accountability.

On Kantian grounds, Varden defends a retributivist justification for punishment. Varden writes that 'forvaring' "should not be a replacement for punishment, the means by which we restore rightful relations. The category of 'safekeeping' addresses the moral illness involved, but cannot remedy an insufficiently retributive sentence that fails to express proper respect for the victims and their rights" (Varden, 257). Thus, she concludes that "the 'forvaring' clause and the prison sentence are two categories that do independent work" (257). I believe that the Theory provides more compelling justification for punishment as a means to restoring, as Varden puts it, "rightful relations" between citizens and showing respect for the rights of victims.

Mutual accountability as justification for punishment allows us to create equality of persons as members of a moral community. Under the Theory, ABB would certainly be subject to punishment, as he has failed to be accountable, and thus needs to be held accountable for his actions. However, accountability ought to be much richer than simply throwing ABB in prison, and thus, should be justified on stronger grounds. ABB has failed to be accountable and has failed to act in equal standing to his fellow citizens, and has infringed on the rights of others in the most fundamental of ways. Acting in its role as moral arbitrator, the state has an obligation to facilitate ABB being accountable. If ABB is able to truly be accountable, this should, in principle, provide more to the victims than simply harming ABB would. The state should determine what being accountable looks

like in a way that would actually help bring justice to the victims and create mutual accountability. ABB should be held to this standard.

‘Forvaring’ ought to be a constitutive component of punishment because it ensures that victims will receive “proper respect,” as Varden writes, for their harm by ensuring that only when all citizens of a moral community can stand in mutual accountability will punishment have performed its purpose. Furthermore, though Varden justifies harsh treatment on Kantian grounds, she is failing to treat ABB as an end in himself. Though ABB has fundamentally failed to be accountable, he still holds personhood. The Theory of punishment recognizes that we must respect the humanity of even those individuals who have committed the most egregious of sins, as all persons have the capacity to be virtuous. Respecting ABB as an autonomous person, in part, means holding him accountable for his actions and his character.

## Conclusion

I have presented a Theory of punishment in which punishment is used as a means to hold citizens of a moral community in mutual accountability, and thus situates rehabilitation of character as a central component of punishment. On this account, there is responsibility on both the individual and the state to be accountable and to create the conditions necessary for justice. These are all seen as necessary features of accountability to uphold the standards and norms of the moral community.

However, this Theory is simply that - a theory. We live in a deeply complex world, and actually applying a theory such as this would be very complicated. The world we live in is filled with injustice and oppression - how can individuals hold themselves to account when the state has failed to uphold its end?

This Theory helps us to think about what is needed when the conditions of mutual accountability are not met. External conditions such as systemic injustice might make us fail to be mutually accountable. Internal conditions, such as mental illness and implicit bias, would alter our ability to stand in mutual accountability.

This Theory posits how punishment ought to be justified within a just society. Though we do not live in a just society, we can use this framework to think about how things should be, so we can get closer to justice. We can attempt to promote virtue in ourselves and in others so that we can live in mutual accountability, and similarly, the state can use this end as reasoning and justification for policy decisions.

I hope this theory might provide a helpful framework to consider current debates about the criminal justice system. For instance, let us consider the death penalty. As Aristotle wrote, “we are by nature able to acquire them [the virtues]” (Aristotle, 18). If

there is something inherent to personhood that allows us the capacity to acquire a virtuous character, we ought to think that no action can so fundamentally undermine personhood as to erase the ability for someone to become virtuous. Thus, the death penalty is not justifiable punishment as it fails to even allow an individual to become virtuous. Further, the death penalty fails to promote mutual accountability as it undermines the personhood of those who fall prey to it.

Ultimately, I believe this thesis illuminates how complicated justice can be. Both the state and the individual are responsible for being accountable and restoring accountability. Citizens standing in equal relations through mutual accountability is complicated by systemic injustice. Punishment ought to promote rehabilitation in order for citizens to be mutually accountable, however, carrying out this sort of punishment would mean the fundamental reimagination of most current criminal justice systems. Promoting this end – of all citizens standing in mutual accountability – ought to be worth trying for.



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