

Burden of Proof

An introduction to anti-punitive thought

As I do not yet dare to approach the subject of my opposition to punishment to its fullest extent, I am so far going to confine myself to write a short reminder. A reminder on who carries the burden of proof in the argument around punishment. The punitive or the anti-punitive side. Those in favour of or those opposed to punishment. The transhumanists or the stickists, as I like to call those who believe that punishment can meaningfully improve society.

What I have noticed most in this debate is that the burden of proof seems to be skewed. It is put onto those with a desire to abolish punishment. On those who don't wish to harm people who have engaged in antisocial behaviour. This is an absolute misplacement on many levels. Not only is the burden of proof on the people who want to engage in punishment, but that burden of proof is massive. Not punishing people isn't just the default position, it is a position that has a massive advantage in the beginning already. By no means do I think that anyone will be convinced here that punishment is bad. Many will think that punishment passes this burden of proof with flying colours. My goal here is mainly to show that the burden of proof does in fact lay with the pro punishment side and that it is quite sizeable. Simply demonstrating the quality of argument needed to even be potentially valid.

Let us talk about the individual being punished and work ourselves up from there. Punishment is, necessitated by definition, harming a person. Sure, a person who in many cases has done harmful things themselves, but nonetheless a harmful act. Any time a person harms another there must be some level of justification for it. Many will already see the condolence it gives victims as being sufficiently good for justifying punishment, but that is a justification, nonetheless. Harmful acts are to be avoided generally, therefore the only justification for doing some harm can only ever be preventing another harm. To illustrate that, imagine Hitler had fled from the bunker, jumped on a plane, and tried fleeing to Argentina. He however crashes on a deserted Island in the ocean. He is the only survivor and will definitely never make it off the island again. Now you are presented with a switch. You can choose whether the island has food or fresh water or not. Consider: Hitler will never be off the island anymore one way or another. No one will find out about Hitler's fate anymore either one way or another, even your memory of the choice will be erased after making it. He is no longer a threat; people won't get consolidation one way or another and even you will forget. Can't make an example of him either. The only thing that would change is that in the scenario with food and water Hitler will have a long, healthy life and in the other a short one of which the last are pure suffering. Considering this situation, it is certainly not rational to make even such an evil man pointlessly suffer. Hence, there must be at least some external justification. Some sliver of a reason on why to punish someone. Hence, the opposition to punishment must be the default position.

Now, let us continue by looking at the immediate negative consequences of the pursuit of punishment. Many people do only one harmful deed at all or only slightly harmful deeds periodically. Then when they are pursued by the enforcers of punishment, they will do genuinely harmful deeds in order to escape it. Deeds on a level of harmfulness they would never have done if not out of fear of being punished. And they add up, as the more they do the more threatening the punishment usually becomes. So, a petty thief who steals 5\$ worth of stuff from a grocery shop a day could happen to crash their car in an attempt to flee from police or maim/kill a person out of fear of them snitching on

them. And now that they have done that the punishment threatens to become a lot more serious and thus, they are actually willing to engage in a shootout with people who wish to bring them to “justice”. They become more and more desperate in an attempt to evade the punishment that they do far more harm than they would ever have without punishers pursuing them. Punishment creates a permanent fear after engaging in a punishable deed that even undermines genuine attempts to get better. Imagine a young person engaged in a fistfight who hit too hard and accidentally kills someone. They may immediately afterwards think that they must re-examine their life. That they must become better people. Yet manslaughter will be punished and hence they must live in permanent fear of punishment. Something detrimental to any effort of genuine improvement. Even in a country where the “justice” system is focused on healing these kinds of people may want to heal on their own terms instead of those of the system. Hence, they still do not wish to be captured and thus both try evading capture and live in fear of being captured. This demonstrates how even a restorative “justice” system, as long as it is forced and thus serves the purpose of punishment, can in fact worsen the restorative process. So stickists must not only justify harming the perpetrator but also all harm coming to victims that become victims because they were harmed in trying to conduct the punishment.

Then also the harm done to falsely accused people. Every attempt at punishing will always have some collateral damage in form of people who are falsely accused of a deed as well. Even the death penalty in the US, where people often make every appeal possible to avoid it, usually has at the lowest estimation a 2% rate of false killings of innocents. So, if even those who we claim to be absolutely sure of being perpetrators are to 2% false, what about all those with a lower form of punishment who don't see it as worth it doing every appeal? Sure, with other punishments people can get released from prison or get their money back. But even then, victims of prison can't get back the time sent, people who have to work for free can't either, or even with people who had to pay a fine, they may not have had the money at a crucial moment before they get it back, still resulting in a negative situation that cannot be undone. Meaning all punishment will always have some unintended victims. Always will do some harm to innocents branded as being worthy of punishment. Another few people that need to be accounted for in the burden of proof that punishment works.

Then of course who could forget all those close to the victims of punishment. All those children, partners, parents, employers etc. to those being punished. People don't exist in a vacuum. Everyone has people they depend upon and those depending on them. Everyone is at least to some part in someone else's schedule. A person that is affected by punishment will always be less able or completely unable to continue to take part in those social webs they are currently a part of. Let us say a person who was the primary breadwinner of a household is taken out of it because they are taken to prison. This household then loses the breadwinner and whoever employed the person loses an employee. Those are also damages that directly result from punishment. Even with light stuff like fines one still has an emotional and financial burden that makes it less possible to fulfil such functions. Imagine all those people who couldn't get their family dinner for a few days because they couldn't pay a speeding ticket otherwise. Or the stress from a court process alone already making someone less focused on everyday tasks. Small damages as long as it's not prison or death, but damages nonetheless. Damages that must be accounted for when trying to make a serious argument in favour of punishment.

A counterargument that might be used is what about bad people who have actively negative connections. Abusers and other unpleasant people. First of all, it must be said that it is impossible to only have negative connections. One might be an abuser to one's spouse and child but a great employee or good friend. People have many relationships, so it is unlikely that literally every single one has bad consequences. So, there is likely someone everywhere who must be accounted for when punishing. Secondly, even interrupting negative relationships can be bad. People who get a vacuum of

any kind in their life will have to rearrange it. This can still prove difficult. Let us take an abusive spouse as an example. Their partner might be relieved to see them being walked off to prison. But they were still integrated in each other's lives. The abusive partner may have still had chores in the household or have been the breadwinner. Maybe the fact that the abused partner was unable to pay the bills by themselves was the cause of the abuse in the first place. Of course, one can say, "If that economic necessity hadn't existed then that bad effect wouldn't have occurred." But I can argue just as well. If there had been sufficient resources for that person to leave their partner in the first place, then the very reason for which the punishment is carried out wouldn't have happened. But in short, any person has good relationships. And even ending a bad one still restructures lives quite drastically. All things to be accounted for when arguing for punishment.

That last argument actually leads us directly into the next. Had there been the resources allocated towards allowing the poor abused spouse to live by themselves then that abusive dependence relationship could never have come about in the first place. Yet as a society we waste our resources punishing rather than treating root causes. All these brilliant scientists we now use to analyse evidence to find out who did a crime. All those people we make chase after "criminals". The steel and concrete of the prisons. The lead and brass of bullets. The oil and steel for police cars. Even the wooden hammers judges use to declare their judgements would be a waste of wood if punishment is proven ineffective. For that it doesn't even need to be proven wholly ineffective. Just less effective than all the other things we could use them on. We have a certain quantity of resources that any carrying out of punishment requires. Each of these resources has countless other possibilities for its use. Each prison building probably takes up the resources for two or three schools. Every cop we have chasing after someone to punish them is an opportunity cost, for otherwise they may have become teachers, social workers, or psychologists. Or really any other job that doesn't directly involve harming people. Each gun and bullet they use might be in better hands when owned by a neighbourhood watch or a private individual engaging in self-defence instead of a cop pursuing someone's punishment. So, when you look at each and every resource the execution of a punishment would require. Every hour of labour, every ton of concrete, every box of bullets. Think whether they could have been used any better way, or whether punishment is truly the best option. And once you dedicate resources, they must be substantial. For if something is technically illegal but ill enforced, then the whole system will become a laughingstock and it might actively inspire certain deeds. Who knows how many deeds will be inspired via the forbidden fruit effect. The adrenaline rush of doing something that a punishment technically exists for that I however still safe enough to do to attract adrenaline junkies. So, it will probably have to be a lot of resources if you expect any effectiveness whatsoever.

Thinking about all this, the burden of proof for punishment seems like a truly herculean task to carry. You wish to harm a person, perhaps innocent, making them more dangerous because they try to flee. Taking them away from other people's lives who may have depended on them. Not only do you personally wish for that, but you advocate for society to actively use resources to reach that goal. Resources that have so many other good uses. You may have a good reason to want certain people punished, but you need to formulate that reason well to meet this criterion. You need to prove that a deed is so important to punish that the resource use it requires to enforce justifies all the negative side effects plus opportunity cost. Sounds harder to prove already, doesn't it? As promised, not just a burden of proof, a substantial burden of proof.

And now for my Marxist friends an argument we in particular are most susceptible to. Punishment is a tool wielded by the capitalist state against its subverters. The ruling class of a state is always the one that the punishment is used on behalf of. They only use it when something goes against their interests. An actually bad person being punished is only the case because certain bad

people, through their bad deeds, also make ruling class lives worse. Punishment is a tool of the ruling class and thus, unless the most progressive class is the one wielding it, must be an instrument of the reaction. So, there are only two possible pro-punishment Marxist stances. One is that while we must oppose punishment now until the working class is in charge. This already half-cedes the position to us antipunitivists while the other part is utopianism. Marxists should stay away from making concrete claims about postrevolutionary society. Saying "we bring punishment back then" is one of these cases where this applies. Of course, I also say that a postrevolutionary society will be non-punitive. But to me revolution has as one of its primary tasks to abolish punishment and hence it would be simply irrational to say anything but. Now for the second option we have that while punishment now is bourgeois it is still so important that we shouldn't oppose it, nonetheless. This merely adds another layer to the burden of proof. Also needing to prove that punishment in spite of being a counterrevolutionary force is so necessary that it must be kept at all times. This same argument applies to all others who wish to change society qualitatively as well. Punishment is a tool of the status quo, no matter what you want to switch it out for. Whoever you think currently holds power wields the tool of punishment and if you want to get rid of them, they will use it against you. Meaning this argument still fully applies. You are either halfway to being an antipunitivists already or have an added layer in the burden of proof.

So, you have a reactionary, sometimes-innocents-hurting act of violence with much collateral damage from people you rip those you punish away from and those that are hurt from the victims of punishment trying to escape. And in fact, you want society to direct substantial resources towards that. Resources that could be used in dozens of other good ways. Good luck proving that.