



The Urgings of Conscience: A Theory of Punishment

Jacob Adler

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While most philosophers who write about punishment ask, "Why may we punish the guilty?" Jacob Adler asks, "To what extent does a guilty person have a duty to submit to punishment?" He maintains that if we are to justify any system of punishment by the state, we must explain why persons guilty of an offense are morally bound to submit to punitive treatment, or to undertake it on their own. Using Rawls's theory of social contract as a framework, the author presents what he calls the rectification theory of punishment.

After examining punishment from two points of view—that of the punisher and that of the offender who is to be punished—Adler proposes the Paradigm of the Conscientious Punishee: a repentant wrongdoer who views punishment as not necessarily unpleasant, but as something it is morally incumbent upon one to undertake. The author argues that this paradigm must play a central role in the theory of punishment. Citing community service projects and penances for sin (as required by some religions), Adler argues that punishment need not involve pain or any other disvalue. Instead he defines it in terms of its justificatory connection with wrongdoing: punishment is that which is justified by the prior commission of an offense and generally not justified without the prior commission of an offense.

The rectification theory applies particularly to offenses involving basic liberties. It is based on the assumption that each person is guaranteed the right to an inviolable sphere of liberty. Someone who commits an offense has expanded his or her sphere by arrogating excess liberties. In order to maintain the equality on which this theory rests, an equivalent body of liberties must be given up. In discussing applications of the theory, Adler demonstrates that active service (as punishment) is more effective in safeguarding important rights and interests and maintaining the social contract than is afflictive punishment.

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