**Themes in Kant’s Moral and Political Philosophy**

**Lecture 4: Punishment**

**1. Right, coercion, and lawgiving**

(a.) “If then my action or my condition generally can coexist with the freedom of everyone in accordance with a universal law, whoever hinders me in it does me wrong; for this hindrance…cannot coexist with the freedom in accordance with a universal law” (MM 6:230)

(b.) “Coercion is a hindrance or resistance to freedom. Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a hindering of a hindrance to freedom) is consistent with freedom in accordance with universal laws, that is, it is right. Hence, there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it” (MM 6:231).

(c.) “In all lawgiving…there are two elements: first, a law…and second, an incentive…It is clear that in the [juridical] case this incentive which is something other than the idea of duty must be drawn from pathological determining grounds of choice” (MM 6:219).

**2. Punishment: some passages**

(c.) “The right to punish is the right a ruler has against his subject to inflict pain upon him because of his having committed a crime” (MM 6:331).

(d.) “Punishment…can never be inflicted merely as a means to promote some other good for the criminal himself or for civil society. It must always be inflicted upon him only because he has committed a crime” (MM 6:331).

(e.) “But what kind of punishment is it that public justice makes its principle and measure? None other than the principle of equality (in the position of the needle on the scale of justice)…Accordingly, whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself. If you insult him, you insult yourself; if you steal from him, you steal from yourself; if you strike him, you strike yourself; if you kill him, you kill yourself” (MM 6:332).

(f.) “If he has committed murder, he must die. Here there is no substitute that will satisfy justice. There is no similarity between life, however wretched it may be, and death, hence no likeness between the crime and the retribution unless death is judicially carried out upon the wrongdoer, although it must still be freed from any mistreatment… ⎯ Even if a civil society were to be dissolved by the consent of all its members…, the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserves and blood guilt does not cling to the people for not having insisted upon this punishment” (MM 6:333).

**3. The retributivist reading**

(g.) “Kant here [in reference to (e.)] clearly holds a strong retributive theory of punishment, i.e., he holds that guilt merits, and is thus a sufficient condition for, the infliction of punishment” (Murphy: 120).

Question: If the purpose of the law in Kant’s political philosophy is to provide security, then why would he endorse a purely retributive (and thus backward-looking) theory of punishment?

**4. The mixed theory reading: deterrence and retribution**

First attempt: Any retribution will deter, and so Kant’s account is a mixed theory.

Question: Could this view be consistent with Kant’s claim that punishment can never be inflicted merely as a means?

Second attempt: Punishment is retributive in its application, and a deterrent as a result of its being threatened.

Question: How do the two aspects of punishment fit together? How can this mixed reading make sense of passages in which Kant says that the purpose of punishment is retributive?

**Reading:**

Primary: *Doctrine of Right,* Private Right General Remark E (MM 6:331-337),

*Doctrine of Right*, Appendix Section 5 (MM 6:362-363).

Secondary: Byrd, “Kant’s theory of punishment: deterrence in its threat, retribution

in its execution”.

Ripstein, *Force and Freedom*, chapter 10.

Merle, “A Kantian critique of Kant’s theory of punishment”

Hill, “Kant on punishment: a coherent mix of deterrence and

retribution?”

 Murphy, *Kant: the philosophy of right*, chapter 4.