

**Symposium:
Ayn Rand on Punishment**

Ayn Rand and the Problem of Punishment

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1. Introduction

In 2008, I published a book called *The Problem of Punishment*.¹ Its goal is threefold: to explain what the problem of punishment is, to critically evaluate the various solutions that have been offered in response to the problem, and to defend the claim that none of the solutions to the problem is successful—the claim is that it is morally impermissible for the state to punish people for breaking the law. The book was intended to be comprehensive in its coverage of the many theories of punishment that constitute the enormous literature on this subject, but it does not include a discussion of Ayn Rand’s view on this topic. This omission should come as little surprise: as far as I can tell, Rand wrote very little about punishment and published even less. Still, I now see this feature of the book as a somewhat regrettable oversight. Although Rand seems to have said very little about punishment, what she did say suggests an interesting kind of view that is not currently represented in the literature on the subject. My goal in this article, then, is to provide a sort of brief appendix to the book by trying to tease out Rand’s theory of punishment and to subject it to critical evaluation. I will begin by making a few comments about punishment in general and a few comments about Rand in general, and will then reconstruct her position and present a few specific objections to it.

2. The Nature of Punishment

Let’s start with the question of what punishment is. Suppose that there is a law against robbing liquor stores and that the law is a just and reasonable one. Suppose also that there is a decision procedure for determining whether or not a given person has robbed a liquor store and that this decision procedure is itself a just and reasonable one. And suppose that

¹ David Boonin, *The Problem of Punishment* (Cambridge, UK: Cambridge University Press, 2008).

Larry has been found guilty of robbing a liquor store by means of this decision procedure. In that case, Larry is what I will call an offender. An offender is someone who has been found, by a just and reasonable decision procedure, to have violated a just and reasonable law.

Punishment involves the state's doing something to Larry because of the fact that Larry is an offender. Clear paradigmatic instances of punishment include the state's fining him, whipping him, putting him in prison, or executing him. We can therefore develop a satisfactory account of what punishment in general is by considering what properties these various practices have in common and what properties distinguish them from other practices that are not forms of punishment. I offer a fairly detailed analysis of this sort in Chapter 1 of my book, but for my purposes here the following brief remarks should be sufficient.

First, punishment is harmful. It is, in some way or other, bad for the person who is punished. If the state gave money to Larry, or a free vacation, or a pleasant massage, or a life-extending medical procedure, we would not say that the state had punished him. Second, the harmfulness of the act by which the state punishes Larry is not a merely foreseeable consequence of the act. Rather, the act is carried out, at least in part, in order to harm Larry. That this is so can be seen by comparing punitive and non-punitive practices that are otherwise comparably harmful. Suppose, for example, that Larry visits a national park, and that the state charges him an entry fee to get in. Suppose also that once Larry is in the park, he litters, and that the state imposes a fine on him for littering. Intuitively, it seems clear that the fee for entering the park is not a form of punishment and that the fine for littering in the park is a form of punishment. One difference between the two cases that helps to account for this judgment is that the state imposes a fine on Larry for littering in order to make him suffer a loss, but making him suffer a loss is not the point of charging him a few dollars for entering the park. The same is true of the difference between putting someone in prison because he has committed a crime and putting him under quarantine because he has contracted a contagious disease. Being deprived of freedom of movement is a significant harm. We put criminals in prison in order to impose this harm on them, but we do not put sick people under quarantine in order to impose harm on them. This is not to say that punishment involves intending harm as an end in itself. The harm involved may well be intended as a means to some further end, such as increasing social utility or producing a just distribution of welfare. The point remains, though, that the harm involved in an act of punishment is not merely a foreseen consequence of the act. We punish people in order to harm them.

Punishment thus involves, at the very least, intentionally harming a person because the person has been convicted of a crime. With this understanding of punishment in mind, we should be in a position to see what the problem of punishment is. Generally speaking, it is wrong to intentionally harm people. If the state were to treat a typical, ordinary citizen in the way that it treats offenders when it punishes them for breaking the law, it would be

clear that the state's behavior was immoral. If punishment is to be morally justified, then, there must be something about the fact that offenders have broken the law that renders it permissible to treat them in ways that it would not be permissible to treat non-offenders. But what exactly is it about this difference that renders such behavior permissible, and how exactly does it do this? This is the problem of punishment.

3. A Brief Sketch of Objectivism

Let me turn now to Ayn Rand's philosophy. I begin with two brief claims. First, Rand is not a utilitarian. Second, Rand is not a paternalist. These two claims are (I hope) entirely uncontroversial, but they are important nonetheless. They rule out the possibility that Rand could consistently endorse two of the most common solutions to the problem of punishment. She cannot argue that punishing Larry is permissible because it benefits society by deterring others from committing similar crimes. She also cannot argue that punishing Larry is permissible because it will help to reform and thus to benefit Larry himself.

Rand is, instead, an Objectivist. I don't have the time or the expertise to provide a detailed account of what this means here. Relying heavily on the analysis of Rand's ethics found in Tara Smith's book *Ayn Rand's Normative Ethics*,² let me briefly sketch the relevant basic points. First, ethics is concerned with good and bad, and these values arise from objective facts about nature. It is an objective fact about trees, for example, that their roots must have certain properties in order for the trees to be able to survive and flourish. Roots that have these properties are good roots. Roots that lack these properties are bad roots. More generally, to say that something is good or bad is to say that it is good or bad for a particular organism. A trait is good if it contributes to the survival and flourishing of that organism, bad if it runs counter to that end. The concepts of good and bad are unintelligible outside of this context.

Second, this analysis of good and bad applies to human beings and to human ethics as well. As Rand puts it, "the standard of value of the Objectivist ethics, the standard by which one judges what is good or evil—is man's life, or: that which is required for man's survival *qua* man."³ In order to determine which human traits are good, one must determine which traits are conducive to human survival and flourishing. Ethical norms are those norms the adherence to which best promotes the survival and flourishing of those who adhere to them.

Finally, while all of this may sound like a recipe for a kind of Machiavellian amorality, Rand argues, at least on the interpretation that I will be presupposing here, that the result of this kind of approach is the

² Tara Smith, *Ayn Rand's Normative Ethics: The Virtuous Egoist* (New York: Cambridge University Press, 2006).

³ Quoted in Smith, *Ayn Rand's Normative Ethics*, p. 28.

endorsement of a set of largely, though not entirely, familiar and traditional moral virtues. In the short term, for example, dishonesty may sometimes prove more beneficial than honesty. But in the long run, on this account, the deliberate cultivation of a disposition to behave honestly is more prudent. There is a natural connection, that is, between honest behavior and long-term flourishing. Similarly, there may at times be short-term benefits to acting unjustly, where justice involves treating people as they deserve to be treated, but there are even greater long-term benefits to being the sort of person who would not stoop to such a level even when he found himself in such circumstances. It is good that you live justly, that is, because it is good for you to live justly. Ethical norms are good to follow because they are good for the people who follow them.

4. Ayn Rand on Punishment

Having said a bit about Rand and a bit about punishment, we can now turn to the subject of Rand and punishment. Punishment connects bad behavior to bad consequences. Objectivism connects good behavior to good consequences. So how might an Objectivist moral theory be used to justify the practice of punishment?

The only extensive discussion of punishment in Rand's writings seems to be that contained in her letter to John Hospers, dated April 29, 1961 (see Appendix below).⁴ Strictly speaking, the letter addresses the question of how much punishment the state is justified in imposing on a particular person, rather than the question of what justifies the state in imposing such punishment in the first place. But we can try to infer an answer to the latter question from some of the remarks that Rand makes in answering the former. This is because at a few points in the letter, Rand refers to general principles in developing her answer, and we can ask how these general principles might be used to solve the problem of punishment. From what Rand says in the letter, there seem to be two possibilities.

One possibility is to look at what Rand says in the second paragraph of the letter when she identifies the principles that she says "should be the base of legal justice in determining punishments." In particular, she writes that "[t]he law should . . . impose restraints on the criminal, such as a jail sentence, *not* in order to reform him, but in order to make *him* bear the painful consequences of his action (or their equivalent) which he inflicted on his victims." Similarly, in the letter's final paragraph, she writes that "the principle by which a specific argument [about how much punishment is deserved] has to be guided is *retribution*, not *reform*. . . . When I say 'retribution,' I mean the point above, namely: the imposition of painful consequences proportionate to the injury caused by the criminal act. The purpose of the law is *not* to prevent a future offense, but to punish the one

⁴ Michael S. Berliner, ed., *Letters of Ayn Rand* (New York: Plume, 1997), pp. 544-63; excerpt on punishment in *ibid.*, pp. 558-60.

actually committed.” We might think, then, that Rand’s answer to the question of what justifies the state in punishing an offender is simply this: the state is justified in harming an offender because the offender, by virtue of being an offender, harmed his victims.

This response, however, would clearly be inadequate. It amounts to telling us what it is for the state to punish an offender, rather than what justifies the state in punishing him. The fact that the harm done to the offender is done in response to the offender’s wrongdoing is what makes the harm to the offender an instance of punishment, but what makes an act an act of punishment is not the same as what makes an act of punishment justified.

The other possibility is to look at Rand’s remark in the letter’s opening paragraph that “the basic principle that should guide one’s judgment in issues of justice is the law of causality: one should never attempt to evade or break the connection between cause and effect—one should never attempt to deprive a man of the consequences of his actions, good or evil.” This approach seems more promising. While the principle of retribution is explicitly presented as a principle for determining the magnitude of deserved punishment only, the law of causality is characterized as “the basic principle” governing judgments about “issues of justice” in general.

What might the law of causality help to show about the practice of punishment? The answer depends on who we apply it to. If we apply it to the offender, the law of causality might help to answer the question of how much punishment the offender deserves. We could say that the offender’s act is wrong to the extent that it violates the law of causality and that this justifies the claim that the deserved punishment must be proportionate to the offense. The pick-pocket deprives his victim of some of the consequences of his previous actions, to follow Rand’s example, but the murderer deprives his victim of much more. Looking at the law of causality from this angle, though, would only tell us about what was wrong with the offender’s behavior. By itself, it would tell us nothing about how we should behave in response to it. To show that a person deserves something is not to show that we are entitled to impose on him what he deserves.

Perhaps, then, we should instead apply the law of causality to ourselves. On this approach, our ensuring that offenders get their just deserts is one way that we ourselves respect the connection between good and bad actions and good and bad consequences. The law of causality connects bad actions to bad consequences. Punishing an offender for his bad actions is a means of securing this connection, and so our punishing an offender is justified by the demands that the law of causality makes on us. More explicitly, this understanding of Rand’s implicit argument for punishment can be formulated in terms of three premises. The first premise maintains that bad behavior is naturally connected to bad consequences. The second premise maintains that we should adhere to what Rand calls the law of causality. The third premise maintains that punishment involves the deliberate imposition of bad consequences on people for their bad behavior. The first two premises arise from Rand’s Objectivist moral philosophy. The third premise amounts

to a relatively uncontroversial definition of punishment. The conclusion is that people should be punished for their bad behavior. Since bad consequences naturally follow from bad behavior, and since we should respect the natural causal connection between the two, we should impose bad consequences on people for their bad behavior, which is just to say that we should punish them for it. This, in the end, strikes me as the most promising way of trying to extract a justification of punishment from Rand's remarks. The argument itself is an interesting one, distinct from the more familiar positions that dominate the literature.

5. Critique of Rand's View on Punishment

There are, however, two problems with Rand's argument for punishment. The first is that the argument as I have formulated it is not valid. Even if all of its premises are true, the conclusion does not follow from them. This can most easily be seen by looking first at a conclusion that does follow from the premises. This, in turn, can most easily be seen by looking at a few examples. Consider first what I will call *The Flourishing Entrepreneur*:

A brilliant, independent, hard-working entrepreneur exemplifies all of the Randian virtues to the highest degree. As a result, he is extremely successful, wealthy, and happy.

What does the law of causality entail about how we should treat the Flourishing Entrepreneur? The law of causality says that "one should never attempt to *evade* or *break* the connection between cause and effect—one should never attempt to *deprive* a man of the consequences of his actions, good or evil." The wealth that the entrepreneur has amassed comes to him as the natural consequence of his good behavior. The law of causality says that we should not actively interfere with such causal chains. As a result, the law of causality can help to justify the claim that it would be wrong to confiscate the wealth that the entrepreneur has earned.

Now consider the case of what I will call *The Not-So-Flourishing Loafer*:

A lazy, irresponsible loafer spends all of his time sitting on a street corner asking for handouts. As a result, he is extremely poor, unhealthy, and unhappy.

What does the law of causality entail about how we should treat the Not-So-Flourishing Loafer? The poverty that the loafer endures comes to him as the natural consequence of his bad behavior. The law of causality says that we should not actively interfere with such causal chains. As a result, the law of causality can help to justify the claim that it would be wrong to provide welfare payments to the loafer.

Now notice that in both cases, while the law of causality does tell us to refrain from actively interfering with the natural causal chain, it does not

require us actively to reinforce or support it. What follows, in effect, is simply that we should not tax the entrepreneur for his good behavior or support the loafer for his bad behavior. To do so, in either case, would be to deflect the natural consequences of a person's actions away from the person who has performed them. This much should be clear in the cases of the entrepreneur and the loafer, but the same is true in any case in which the law of causality is applied to our treatment of someone who has behaved badly. It applies just as forcefully to what I am taking here to be Rand's argument in defense of punishment. What follows from the law of causality and the fact that bad behavior is naturally connected to bad consequences, is not that we should punish people who have behaved badly, but simply that we should refrain from rewarding people who have behaved badly. From the fact that we should not reward such people, it clearly does not follow that we should punish them. We should not reward people simply for having red hair, for example, but it does not follow from this that we should punish people simply for having red hair. And so, as far as I can see, the law of causality that Rand appeals to in her letter to Hospers as "the basic principle" to govern our judgments about "issues of justice" is too weak to justify the practice of punishment.

Let's suppose, however, that I am wrong about this, and that Rand's law of causality can be interpreted, or simply revised, in such a way that it truly entails that we should punish people for their bad behavior and not simply that we should refrain from rewarding them for it. If that is the case, then a second problem arises. The problem is that the argument will now have implications that Rand would surely reject. This is because the law of causality treats good and bad actions symmetrically. As Rand puts it, "one should never attempt to deprive a man of the consequences of his actions, *good or evil*." The presumed symmetry of good and bad actions can be used to generate examples that run parallel to my first two cases and which produce unacceptable results.

Consider, for example, the case of what I will call *The Unlucky Entrepreneur*:

A brilliant, independent, hard-working entrepreneur exemplifies all of the Randian virtues to the highest degree. Due to a series of unfortunate events that were entirely beyond his control, however, he is extremely poor, unhealthy, and unhappy.

If the law of causality is strong enough to justify imposing the naturally connected negative consequences of a person's bad behavior on him in cases where he has been lucky enough to avoid them, then it must also be strong enough to justify imposing the naturally connected positive consequences of a person's good behavior on him in cases where he has been unlucky enough to miss out on them. This means that while it would be wrong to write welfare checks to the Lazy Loafer, it would not be wrong to write such checks to the

Unlucky Entrepreneur. Indeed, it would not simply not be wrong to write such checks, but positively wrong not to write them.

This is itself a result that Rand would surely be unwilling to accept, but the problem runs even deeper than this. In order to justify the practice of punishment, after all, we must justify more than simply offering the criminal the opportunity to suffer the bad consequences of his bad behavior if he so chooses, the way that a member of the clergy might offer one of his congregants the choice of voluntarily doing penance to atone for a sin. Rather, we must justify imposing those consequences on the offender whether the offender is willing to suffer them or not. If the law of causality is strong enough to justify imposing the bad consequences of the offender's bad actions on him whether he wants to accept them or not, then given the symmetry between good and bad, it must also be strong enough to justify imposing the good consequences of the Unlucky Entrepreneur's actions on him whether he wants to accept them or not. This implication is even more unacceptable.

Another kind of example runs in the opposite direction to the previous one, but produces the same kind of problematic result. Consider the case of what I will call *The Lucky Loafer*:

A lazy, irresponsible loafer spends all of his time sitting on a street corner asking for handouts. One day, a generous billionaire gives him a billion dollars.

If the law of causality is strong enough to justify imposing the naturally connected negative consequences of a person's bad behavior on him in cases where he has been lucky enough to avoid them, as in the case of a criminal who has successfully robbed a liquor store, then it must also be strong enough to justify imposing the naturally connected poverty on the loafer who has been lucky enough to avoid it. It would be right to confiscate the money from the Lucky Loafer, and wrong to fail to do so. But this result, too, is clearly unacceptable. Whether the loafer deserved the money or not, the billionaire surely had the right to give it to him if he wanted to do so, and since the billionaire did give the loafer the money, the loafer just as surely has the right to keep it.

In the end, then, the argument in defense of punishment that seems most plausibly to arise from Rand's letter to Hospers is impaled on the horns of a dilemma. If the law of causality is understood in the way that Rand plainly seems to state it, then it is too weak to do the job. The law as stated directs us to step back and allow the natural causal chain between good and bad actions and good and bad consequences to play itself out. This is enough to justify prohibiting us from rewarding people for their bad behavior, but it is not enough to justify punishing them for it. If, on the other hand, the law of causality is understood in a way that does render it strong enough to justify punishing people for their bad behavior, then it will be too strong because it will justify other claims that Rand is clearly committed to rejecting.

As a result of all of this, there seems to be no satisfactory route from Rand's law of causality—the “basic principle” governing judgments about “issues of justice”—to a solution to the problem of punishment. If I am right about this, then a defender of Rand's ethics is left with two options: develop a different way of getting from the Objectivist moral theory to the conclusion that punishment is justified, or reject the claim that it is permissible for the state to punish people for breaking the law. I myself would suggest pursuing the second option, but I'm not at all sure what Rand herself would have said.

Appendix:
Ayn Rand's April 29, 1969 Letter to John Hospers (Excerpt)

. . . I am glad that you agree with me on the issue of justice vs. mercy. It is an enormously important principle that embraces all of one's relationships with men: private, personal, public, social and political. But you say that you are not clear on what I would regard as the deserved, in specific cases. My answer is: the basic principle that should guide one's judgment in issues of justice is the law of causality: one should never attempt to evade or break the connection between cause and effect—one should never attempt to deprive a man of the consequences of his actions, good or evil. (One should not deprive a man of the values or benefits his actions have caused, such as expropriating a man's wealth for somebody else's benefit; and one should not deflect the disaster which his actions have caused, such as giving relief checks to a lazy, irresponsible loafer.)

But you ask me what is the punishment deserved by criminal actions. This is a technical, *legal* issue, which has to be answered by the philosophy of law. The law has to be guided by moral principles, but their application to specific cases is a special field of study. I can only indicate in a general way what principles should be the base of legal justice in determining punishments. The law should: a. correct the consequences of the crime in regard to the victim, whenever possible (such as recovering stolen property and returning it to the owner); b. impose restraints on the criminal, such as a jail sentence, *not* in order to reform him, but in order to make *him* bear the painful consequences of his action (or their equivalent) which he inflicted on his victims; c. make the punishment proportionate to the crime *in the full context of all the legally punishable crimes*.

This last point, I believe, is the question you are specifically interested in, when you write: “I find it difficult to say whether a man who has committed, e.g., armed robbery, deserves one year in jail, five years, ten years, or psychiatric therapy to keep him from repeating his offense.” The principle of justice on which the answer has to be based is contextual: the severity of the punishment must match the gravity of the crime, in the full context of the penal code. The punishment for pickpocketing cannot be the same as for murder; the punishment

for murder cannot be the same as for manslaughter, etc. It is an enormously complex issue, in which one must integrate the whole scale of legally defined crimes and mitigating circumstances, on the one hand—with a proportionately scaled series of punishments, on the other. Thus the punishment deserved by armed robbery would depend on its place in the scale which begins with the lightest misdemeanor and ends with murder.

What punishment is deserved by the two extremes of the scale *is* open to disagreement and discussion—but the principle by which a specific argument has to be guided is *retribution*, not *reform*. The issue of attempting to “reform” criminals is an entirely separate issue and a highly dubious one, even in the case of juvenile delinquents. At best, it might be a carefully limited adjunct of the penal code (and I doubt even that), *not* its primary, determining factor. When I say “retribution,” I mean the point above, namely: the imposition of painful consequences proportionate to the injury caused by the criminal act. The purpose of the law is *not* to prevent a future offense, but to punish the one actually committed. If there were a proved, demonstrated, scientific, objectively certain way of preventing future crimes (which does not exist), it would not justify the idea that the law should prevent future offenses and let the present one go unpunished. It would still be necessary to punish the actual crime. . . .

