

Determinism and prepunishment: the radical nature of compatibilism

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I shall argue that compatibilism cannot resist in a principled way the temptation to prepunish people. Compatibilism thus emerges as a much more radical view than it is typically presented and perceived, and is seen to be at odds with fundamental moral intuitions.

Let us begin by making a few explications and assumptions:

Compatibilism is, broadly, the view that even if everything is determined, this does not make much of a difference, morally. According to compatibilism, it is a mistake to think that we lose anything morally significant if we do not have libertarian free will. We can continue to function with our common-sense moral paradigm, which requires free will for moral responsibility, and moral responsibility for desert, blame, and punishment – even in a fully deterministic world.

Prepunishment is the punishing of people who, it is believed, are going to commit a crime, before they have committed it. If the person does go on to commit the crime, and the only way of punishing him is through prepunishment, then prepunishment is the only way of establishing desert and justice. If prepunishment prevents the crime, it is morally tempting in a different way, because – unlike regular punishment, i.e. postpunishment – it is not inflicted after there are victims of crime, but rather prevents the crime, and so prevents also the potential harm.¹

Finally, let us assume for the sake of our argument both determinism and complete predictability: if people's actions are determined, and we have perfect epistemic capacities, we can know ahead who will commit a crime.

Prepunishment is commonly thought to be morally abhorrent. It seems to be a form of punishing the innocent: before there has been a crime, there is no one who is guilty, hence no one who *may* be punished, morally; there is also as yet nothing to punish *for*. That this may not suffice, however, came out in a previous debate in this journal. Christopher New (1992, 1995) proposed that we may punish a person before he commits a crime when we know beyond a reasonable doubt that that person is going to commit it, and when we also know that we will be unable to punish him after he commits it. If 'beyond a reasonable doubt' suffices for regular

¹ The prevention of the crime changes also the status of the punishment, but this lies beyond our scope.

punishment, New claimed, and it exists in a case of prepunishment (say, the person tells us that he is going to commit the crime, and he is reliable), then prepunishment may be permissible. I replied (1994) that such prepunishment runs counter to the idea of respect for persons, according to which we must let the (still innocent) person decide, even at the last moment, to refrain from committing the crime, thus allowing him to maintain his moral goodness and not be punished. This seems to capture the common-sense view.

But what if there is only the sort of free will that is compatible with determinism? Given determinism and complete predictability, compatibilism seems to lack any principled way of resisting the temptation of prepunishment. The mere temporal matter, that in prepunishment there is still no crime, and no one is yet deserving and blameworthy, does not seem to go very deep. Compatibilism allows that (a) a person's committing of a crime is completely determined, and yet (b) he commits it out of his own free will, hence he is morally responsible for it, and liable to blame and punishment. If we perfectly know *now* that it is completely determined that a person will commit a crime in (say) a week, out of his own (compatibilist) free will, the compatibilist does not have a strong principled objection to prepunishing this person now, before he has actually committed the crime. The common-sense objection, that we must allow him to change his mind, does not apply here; for according to compatibilism it is already determined that he will *not* change his mind. Thus, there seems to be no point, from a compatibilist perspective, for waiting.

The compatibilist ought perhaps to bite the bullet, and say that indeed there would be nothing wrong with prepunishing people in such circumstances. The only reason we ought not to prepunish people on a regular basis is epistemic, namely, that we rarely have the required powers of prediction. Or perhaps there are also pragmatic reasons not to regularly engage in prepunishment. But irrespective of whether we ought to rethink our position on prepunishment (this question lies beyond our scope here), it becomes clear that compatibilism cannot in itself resist prepunishment. This puts it in stark opposition to the common-sense view. If determinism makes prepunishment permissible (and perhaps even obligatory), then determinism is a very big deal. The traditional compatibilist stance, according to which determinism does not really change anything, morally, is thereby *shown* to be false. Thinking about prepunishment reveals what a radical position compatibilism is.²

² I am very grateful to Iddo Landau, Daniel Statman and Meshi Uri, for comments on drafts of this paper.

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References

- New, C. 1992. Time and punishment. *Analysis* 52: 35–40.
New, C. 1995. Punishing times: reply to Smilansky. *Analysis* 55: 60–62.
Smilansky, S. 1994. The time to punish. *Analysis* 54: 50–53.

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