



An Article On the Conflict Between Utilitarianism and Duty-Sharing in Justifying the Foundations of Punishment

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Abstract: *Whit the advent of the industrial revolution in the 18 th century and the birth of the modern penal law schools, justification and legitimization of the capital- punishment were the most recent concerns of philosophers and thinkers in the field of the normative ethical.*

In the normative ethical charter, there are two major theories, the task- oriented theory, and the other ultimate- oriented theory, the two theories have been defined and interpreted during the history, but the sharing point of the both judgments about correctness or rnaccuracy of human behavior, therefore justification of 1. Retribution and the principles of criminalization and punishment in the field of the normative ethics (task- oriented and ultimate- oriented) is discussed. The most principle drstinction criterion between task – oriented form ultimate-oriented in justification of the death- penalty is the relation and and proportion between the right and benefit. The task- orienteds believe that welfare is the same that is created by acting of the death penalty, regardless of its consequences, they valorize for rnberently to enforce of the capital- punishment for the criminer as reward. The task- orienteds in enfore of the capital- punishment regard to the past and they belive a good acting, regardless of its possible consequences it deserves admiration in the future.

As a bad acting, regardless of its possible resulte and consequences it deserves punishment in the future.

For this reason, in enforce the death- penalty, they use of the broader and winder concepts. And they lxlieve that jushe requires a criminal to be executed, even if with enforce of the copital- punishment it does not benefit for the society. But against ultimate- orienteds believe that the right cause the general welfar, then the capital- punishment is itself an evil and they consider it entirely consequential, because the copital- punishment is meaning ful when it creates good effects in the futur, otherwise it is completely futile.

On the same basis, the purpose of the capital- punishment is not to annoy the sensitive creatur, nor the eliminate the crime which previously committed, but the purpose is to prevention of genenral and specificm so the capital- punishment is not itself worthiness and what is important is the socail benefit of punishment.

Keywords: *Utilitarianism, Task- Orintad, Capital- Punishment, Ultimate- Oriented, Normative Ethical, Meritocaracy*

INTRODUCTION

We face wite two theories in the field of normative behavior, task-oriented theory and ultimete oriented theory and ultimete oriented theory, these two theories have always been defined and eplained contradictory each throughout history. uerlitarranism is the most important.

The followers of this theory is believed that the good and evil or the correctness or inaccuracy of an act, was different perspective on the result of the action. Like aristippus (355-435 q.m) and epicurus(37-442 q.m), the result of action is considered as usefulness or pleasure of the subject. If it was practical for subject, beneficial or pleasurable, it would be good otherwise it is bad. (Kapelson, 1375, 467). And others, such as Jeremy Bentham (1732-1804 A.D). and John Stuart Mill (1806- 1873 A.D). believe that the goodness of an act, is when it is beneficial to others addition to the subject.

Bentham's public benefit is a means to achieve persons benefit, while Mill's view public benefit is the principal favorable. (Russell, 106, 1373).

But functionalists believe that goodness and bad action are not based on results, but self-acting attributes which determine whether.

It is good or bad, for example, affairs like truthfulness are good, or you have to treat people with justice, if we pay attention to the self-action, if the results of truth and justice do not affect their good and bad, such a theory is a task-oriented theory. There is a controversy about the source of the moral duty.

Some, like Emile Durkheim (1858- 1919 AD) believes that this duty is determined by the society (Durkheim, 1381: p,51) and others, like Jean-Jacques Rousseau (1712-1778) and Emmanuel Kant (1724- 1804 AD). Believe that this task is determined by conscience or practical wisdom.

Therefore, due to the contrast between these two great methods of intellectual about the relation between right and good, in order to provide a reasonable and logical criterion for recognition of the truth or wrong of moral propositions what is worthy of reflection and thinking is that: the main research question: 1- what is the most important base functionalists in legitimacy and accepting the capital punishment? Subsidiary of research question?

- 1- what is the correct or wrong criterion of moral proposition in both utilitarian and task-oriented approaches?
- 2- what is the relation between the right and the two approaches of utilitarianism and task-oriented?

Importance and necessity of research since the capital punishment is a conflict between comfort and public security and on the other hand it is the value of the life of a human being. Who is a criminal or not criminal, and on the other hand, all of the human laws and regulations are based on the principle of the struggle for survival, therefore, the capital punishment cannot be matched with other physical punishments because execution require to numb and. When it happens, it will never be returned.

On the other hand, due to the legal system of country of Iran does not have a single unit and as matter of fact, it is a mixture of the Roman-German and Anglo-Saxon legal system this has led to the Iranian respectable judge of justice and legislator who act as their style about the capital punishment, and sometimes was utilitarian and sometimes task-oriented, while it is clear that utilitarianism is a legitimate, and task-oriented is moral which is appropriate of adjudication.

Therefore, the subject of this research was based on this basis in order to analyze the views of utilitarian and task-oriented, about the intellectual and practical field of Iranian legislators and respectable judges.

The purpose of research

Generally, in the discussion of the justification of the punishment, we are seeking to provide an appropriate criterion for recognition of the correctness acting from wrong, so in the justification of the capital punishment the main anxiety is firstly: is the capital punishment correct or not? Secondly: if it is correct, what is the theoretical basis and the true or the false criterion of this moral proposition? The subject of this research is the conflict between utilitarianism and task-oriented in justifying the capital punishment.

The purpose of this research is to analyze the opinions of the experts in the field of normative behavior, which can provide a proper criterion for recognition of the correct proposition from the false, and it is noticeable that we require to appropriate justification for the certain and specific punishment and retaliation and reprimand

that are considered in different ways. And every day we see a rising rate of education, so, by providing a proper criterion, we have taken a step towards being justly of capital punishment.

Research hypotheses

1. It seems that the notion of justice in terms of usefulness is inseparably linked in utilitarian approach, accordingly. The most important basis for utilitarianism is to justify the capital punishment of social benefits, while in the task-oriented approach, the concept of justice is linked to the concept of right, therefore, the most important basis for task-oriented is to justify.
2. It seems that the correct or false criterion of moral propositions in utilitarian approach is the principle of benefit. However, the task-oriented criterion is to determine the correct or false of the moral proposition, obedience to orders and areas of law, in other words, is the moral obligation to perform duty.
3. Considering the view and opinion of utilitarian philosophers, it seems in this rational approach is preferable benefit and general welfare on right and justice. However, in the task-oriented approach right and justice is preferred on the benefit and general welfare.

Background research

Studies and research in scientific institutions and universities and show that up to day have not been done any fundamental research about fundamental issues of the philosophy of criminal prosecution such as, the philosophy of crime, the principles of the punishment and the justification of punishment.

As we have mentioned discussion about justification of the death penalty has not been conducted any research from the perspective of utilitarians and task-oriented scholars, therefore, the subject matter of the present research remains completely virgin and intact, and if the subject matter insert among the books and scientific articles is expressed useless, so they have dealt with this topic during other discussions.

It is also necessary to state about the death penalty that the books and articles and theses need to be stated that the books, articles and theses written as descriptive studies, in such a way that, first the history of this punishment in Iranian law, or ultimately, implemented to match this punishment with international statutes and regulations, which of course, they are remarkable, in their place.

For example

- 1) A research on the death penalty in Iranian public courts was conducted by Mohammad Moghaddar Wejad in 1959. This research has a descriptive aspect and has four parts and has focused on the historical records of executions and early human civilizations, as well as theories which related to the death penalty in ancient Iran.
- 2) A book titled comparative review of the death penalty was written by Mohammad Ibrahim Shams Natteri in 1999, which consists of three parts, the first part investigates historical of the capital punishment and its enforce in various nations and different religions. As well as he pointed to the modern perspectives of criminal law schools on the execution, and in the second section he has investigated the type of the execution punishment including, retribution and limitation and tazirat of the execution, and the role of deterrent of this punishment in Iranian law, and in the third section, he has investigated the types of the execution of the limitation, and he has discussed about common and special qualification for enforce the execution of the limitation.
- 3) A thesis titled the analysis of the capital punishment in crimes of tazir and deterrent was written by Fereydon Jafari in 2003, that has investigated the issue of the execution, this research consists of three chapters. In the first chapter, entitled general, he has investigated to expression of the purposes and principles of the death penalty and the history of this punishment, and in the second chapter, he has

investigated the execution in crimes which causes of tazir and deterrent to perspective of jurrdical-legal and in the third chapter, he has investigated to the position of the execution in the islamic penal code and other rales.

But what makes this collection privilegad from other researches is the utilitarians and deonotologists of this present article in justification and legalization of the death penalty, in the other words, in this paper has been tried to help out the opinios and belives of benefical scientists and task- oriented toward a proper justification for the application and execution of the capital- punishment, and on the other hand, in the sam vein, the conflict between these two normative ethical theories emerges in the justification ot the copital- punishment, which unique in the its kind- since the present subject is considered as a criminal law rssue, it requires thinking.

Concepts and indioms

The concept of task- oriented: task- oriented is one of the major issue of normative ethics. The followers of this moral theory pay attention to itself acting, hance, they judge the correctness or incorrect of acts, regardless of its possible consequences, and in issuance of normative verdicts, they does not pay attention to the ultimate. Accordingly, the punish- eutermists, which a dacument on task- oriented ethics, without any reeducation and delivery of moral proposition, provide a justification for the punishment of delinquents who are completely past- oriented (R.K.rostami, 2013).

It is worth noting that due to the large number of task- orintrd theories, there is no single definition or comprehensive definition of it, for example, emmanual kants rationalism and david rosss intuitionism and exaggerated theory are among the task- oriented (Atrak,1392:27).

Task-oriented is often referred to as a theory in opposition to teleology. Task men, contrary to teleologists, be live that at least some actions and works can be found that, regadless of the results they recall, doing them is good and necessary and in the other words, some acts and behavior are always and intrinsically correct, necessary or improper and immoralfor this reason, authars have often relied or analogy to provide a comprehensive definition.

The oldest and most traditional is the source of retributive punishment. Retribution is productive of task-oriented moralitg, (Rustami1391:25). In task- oriented the word is equivalent to word deotology which is a compination of the two greek words deants meaning duty and requirement and logos means knowledge that collecively implies deonotology (loyalty).

Some believe that jeremy bentham was the first person to use term task- oriented, and other believe that this term was first used by C,D, B ad in his book five type of moral theory (atrak 1392: 28). The theory of duty has been raised for the first time in kants works, the task- oriented does not accept the obligatory rewards and good marals all to be fuctional directly or indivectly. From what is immaterially good or as a function of what most conquest good upon evil provides for own human, their community or the whole world.

They be live that, in addition to good or bad, the ersult of a practic or rale, there are other practice or rule make reward or mandatory.

That is, it creates, the existence of a particuler act of self, other than the value. In other words, the task-oriented be live that action or rule can be morally correct or necessary, even if it does not creat the greatest predominace good upon evil for himself, the community or the world (franken 2004: 46, 47).

Teleologists know in normative ethics criterion, good or bad believe that any action that producet the most and highest level of goodness (happiness,pleasur,etc). is ethically good and necessary, but the task- oriented in contrast, believe that cats have intrinsice value per se, and their value dose not depened on the results or acts that are followed in the future.

The concept of utilitarianism

Utilitarianism, that has been translated into profligacy, virtue, and beneficial originality, was discussed in his early form in the work of the Greek philosopher, who has been taught in the years 270 to 306 BC (Godarzi boroujerds and meqhadadi.1999: page27).

Afterward, there were utilitarianism such as Ulpian, Beccaria, Hopson, John Brown, Shaftesbury, Herbert Spencer, Hartley and others. But in 1764, with the publication of the book of crimes and punishment by Cesare Beccaria of Italy as a fundamental work in the utilitarian school, he criticized the criminal justice system in the 18th century and presented a plan or draft for rational reform and humanization of punishment, as a new theory in this field:

At the same time, the storm of liberation that have been included England, France, and other European countries, and with criticisms that came to the status of the penalty with the philosophers' gathering of votes such as Montesquieu, Caesar. Beccaria, Jeremy Bentham and Jean-Jacques Rousseau, took the concept of new color and smell, and it took a new direction and moved away from social revenge and led to the birth of a socially beneficial school.

The supporters of this school have expressed the most luck for most people, for the purpose of punishing a utilitarian calculation and argued that the punishment was determined fair or unfair in the light of the benefits of social punishment. For this reason, in the philosophy of the criminal law the enlightenment, philosophers such as Beccaria and Jeremy Bentham have been pioneered and criticized the brutal and cruel crimes of the time before, and they have said of the benefit of the retribution, but in fact, Bentham should be known as founder of the utilitarianism school. So although, in terms of lawyers.

Cesare Beccaria is the creator of utilitarianism of penology. But utilitarianism of penology is associated with Jeremy Bentham, (Rustami, 1391: page63). In fact, utilitarianism is a moral theory that is among the ultimate and consequential theories, and is of course, the most famous and most influential of consequential in the field of normative ethics.

The ethical theory of utilitarianism is a product of morality, which emerged and created in the writings and works of philosophers such as Utilitarians, during the era of enlightenment. The first time Jeremy Bentham, a reformist philosopher and reformer at the beginning of the nineteenth century, designed in the UK. Successionists evaluate the correctness and inaccuracy of an action based on the amount of profit or pleasure and welfare it generates. In the opinion of the utilitarian, it is a practical and necessary action to maximize the profit and welfare of the most relevant community members.

Type of utilitarian ideas

1. Operational utilitarianism
2. rule-oriented utilitarianism

Concept of capital- punishment

Execution is an Arabic word that means destroying and killing (Dehkoda 1377:234). But in reforming the death penalty is a form of punishment, which is the termination of the life of the violator due to some crimes (Jafari Langroudi 2009: page,115).

Execution is the oldest and most recognized punishment and is as old as the history of criminal law, and politicians and statesmen for deleting their opponents, they have been very resorted to this issue. Capital-punishment that is foreseen in criminal law and is typically applied to convicted offenders who committed the most serious crimes and would be harmful to society and certainly not be improved. Capital- punishment is punishment degree of criminal offense and a scandalous nature, aiming at the perpetual exclusion of the perpetrator from society, thereby protecting the criminal life of the community from endangering the potential danger of the perpetrator.

Looking at the history of various civilizations, from the rule of Hammurabi to the rule of Babylon, the Assyrian, Achaemenid and Sassanid, and to the west, and almost all the governments of the world and all divine religions, it can be seen that all the people for the time being, death penalty has been used to respond to some of the flawed behaviors of their own laws.

As is often the case in the old laws, many offenses are subject to this punishment, and the quality of its implementation varies according to the case, the type of crime and its conditions, and sometimes the social class against which it was condemned, and torture was also a pivotal and necessary part before its execution, but gradually the legal scope of this punishment was limited to crimes such as intentional murder or actions against the security of the country and by limiting some other very important crimes, and by eliminating torture, the convicted person was the same in terms of how it was executed in a variety of crimes, and even a simple and gentle and to the criminal's life.

In considering the death penalty in different eras, it is appropriate to pay attention that history has been divided into the period of private justice and the period of general justice (Sanei, 1996: p. 45).

Among the features of the era of revenge or private justice, one can mention the collective responsibility and justice in the punishment (Warbaha, 2009: 67) by examining historical texts and legal analyzes it can be concluded that in each region or period where it is possible the exercise of state sovereignty did not impose more punishment in the form of individual retaliation and through private wars, so that sometimes, in front of a tribal, dozens of murdered tribes were killed by the victim's tribe, and may have continued to be revenge, murder, war and blood bath in many years, but in any period or region the government exercised sovereignty to use relatively modest methods of punishment although in some periods of history, the punishment was very violent and barbaric (Shams Natteri, 1999: p. 36).

Spirit is the most valuable blessing of God, given to mankind and has been the worst punishment of human life throughout history.

Without recurrence of this punishment, philosophers, lawyers have always been in the process of discussing the right to take human lives by governments, power and others.

In ancient times, or more precisely the era of private vengeance was not a specific norm for the practice and enforcement of punishment at the present time, but as the interval increases with the Renaissance, views on the death penalty are worse and schools offer exile and imprisonment and punitive and corrective instead of the death penalty. As for the abolition of the death penalty is concerned, all international measures are being taken in such a way that, over the course of decades, many governments in the world have been affected by these thoughts to abolish the death penalty in their own country.

Conventional techniques of capital punishment in the world

1. Electric chair
2. Fatal injection

Conflict in the constructive components of the capital punishment.

According to the task-oriented, punishment is the tool for enforcing of right, but according to the utilitarianism, punishment is a means of increasing public good and reducing of general evil. Now, let's look at an analyzing the components of punishment in opinion of utilitarianism and task-oriented.

Therefore, in the first speech, the components of the capital punishment from the perspective of the task-oriented, and in the second speech we will discuss about subject of the components of the death penalty from the perspective of utilitarianists.

Components of capital punishment from the perspective of the task-oriented.

Among the components of the capital punishment, which is considered by the dominant thinkers in this great way of thinking, is the following:

The reciprocity of the capital- punishment, the proportionality of the capital- punishment, consideration of the element of authority in the capital- punishment, which in this speech will explain briefly.

1. the retaliation of the capital- punishment the task- oriented approach to punishment is completely retrospective, each of the elements of the justification of the task- orienteds is essentially observer to the past. Punishment, compensation, merit and tolerance of punishment due to the past mistakes seem to be all referring to the past in the context of their past (tabiyat, 2007,p,254).

This intellectual approach criminalizes the perpetrator because of the violation of the law of justice and the disturbance of public order by a crime that has been committed in the past, and not because of the possible profits and losses that may result from the enforcement of the penalty for the community.

As a result, what legitimizes punishment, not its future implication, such as criminal reform and crime prevention, and etc, but past events that indicate a deliberate attack on ethics.

In the system of task- oriented, human is intrinsically dignified in his nature and consequently it can not be victimized to the price of protecting collective values of individual rights or impose an unfair penalty on the pretext maintaining social discipline, because each individual has an irreducible right it is justic that no justification can override it (rustami, 1391,p,31).

Therefore, as state and the task- oriented believe that one of the components of the capital- punishment is that the perpetrator of a crime by committing on incomplete act in the past deserves to be condemned to death because the person by deliberately committing a criminal act violates and security the general public has been re- established by committing the punishment of the lost order.

According to them, criminal acts regardless of their effects and results in the future deserve the performance of punishment. Therefore, the performance of the punishment towards the offender is based on violation of ethics and justice in the past.

2. proportionality of the capital- punishment.

The principle of the proportionality of a crime with punishment is one of the most equitable and just rules of criminal law. This principle has often come up with a definition of justice, and it specified and determined the criterion and clear and fair rule that according to it criminal must be prosecuted.

When we turn the page of the history sheets, we pay attention the punishment of the old European system in the 18th century was under the system of retributivity that was surrounded more by physical punishment and death penalty, which in the middle ages hurt the good natured person, for executed in various forms, such as mutilating, burning with torture, cutting head and be half (omid 1383:399).

The principle of humanity requires that we have being human behavior with accused of committing a crime or even guilty.

The prohibition of torture and cruel, inhuman or degrading treatment or punishment, as referred to in article 5 of the universal declaration of human rights and article 7 of the international covenant on civil and political rights (1966) and article 5 of the European convention on human rights (1990) is the direct effect of this approach.

According to Foucault, and at the time of the punishment of the worst murders, at least should be respect one thing: being human beings (Foucault, 2006:94). The practices of severe punishment and intensification of punishment and recourse to violence as an inhuman action of rotten and reactionary styles that. No rational and good – natured human ever accept it.

Criminal justice administrator need to know that the blind practices of punishment, free of any kind of humanity and reformist spirit that is associated with the former revenge system, is in no way logical and consistent with the spirit of human justice. In other words, when the criminal law kills the people with cruel, severe criminal punishment and when they do not pay attention to their circumstances and conditions and cause them to be badly named and infected, they will commit another crime. (Oppressed, 1358,94).

One of the main reasons for the opponents of execution is the moral reason that, by relying on moral teachings, they give in to the abomination and obscenity of violence and they raise up to this conclusion that

say: violence against violence is not good. Execution is contrary to humanity's sense of friendship and the spirit of modern civilization which respects the right to life for all human beings. From the perspective of Kant, a fair trial must be imposed by law, and also, punishment must be appropriate with the crime or sharia to be so severe that it would deprive the offender of the advantage of committing the crime, but it would not so severe of its harm, if the community of criminal will be able to enjoy the benefits of their crime, in this case society will be partner of his crime (Rustami, 1391, page 36). Contrary to the general increase in public good and in rejecting the usefulness of punishment, Kant states that those who commit acts of punishment for social benefit consider human as a means to achieve their goals and they have not pay attention to the human dignity, degree and munificence, consequently, according to Kant, judicial penalties should never be issued for demand of good, whether for the benefit of the perpetrator or for the civil society.

Because one should never treat human beings as a mere instrument in the service of other purposes and consider him to be subject to objective rights with other objects in a row, therefore, he should regard the criminal as worthy and punishment before using this punishment, should be think about useful for him and other citizens (Ardabili, 1392, page, 109). Also, Joel Feinberg worked in an influential article, he writes about in relation to the proportionality of punishment write the crime of committing (and justice requires that the punishment be proportionate with the crime, justice requires that the punitive dimension of the punishment also corresponds to the crime and the crime of committing has also value of the blame. In addition, the amount of blaming given by the punishment that express by the punishment must be commensurate with the crime, meaning that more serious crime are to be blamed in comparison with lesser crimes (Rostami, 1391: page 56) the advocates of the theory of conscience focus on the ability of the blame (Rahmdel, 1389: 64).

It is inferred from the element of rejection of retributivism that, the amount of the merit is different according to the severity and weakness of the crime of committing and the degree of sensitivity of society to the crime. Von Heresh emphasizes the importance of justice in dealing with the accused and the necessity of respecting his rights, but in his view the issue of proportionality is not punishable by justice and fairness, but more proportionate has been tied with the element of social denunciation. (Haman: 67).

The severity and weakness of the penalties may indicate the severity and weakness of the crimes. According to Montesquieu, the penalty for any crime is extracted from the specific nature of that crime. Therefore, if two offenses that damages are not proportional to society, are given to a ratio of penalty then the basis of moral feeling that have been blood and slowly and difficulty penetrated into the minds of the people, and it has been needed, so will be destroyed. (Farahbakh, 2001, page, 216).

In task-oriented, the criterion of measuring acts is duty and the ethical behavior is determining on the basis of a duty, obeying the law is duty, and rebellion of the law is crime, so, from the perspective of Kant the offender is one who violates moral orders and has been disturbed and disordered the moral order or the society. It should be know that in this approach, of the criminal law by considering constant penalty for homogeneous of these categories of crimes are not.

In the same row of the motivation of the performance, personality traits and factors such as those. According to the retributivism, punishment should be proportional to the severity of the crime. Hodson writes about this: what is needed is a plan of penalties, in which it is shown that very severe criminals deserve very severe punishment and penalties should be graded according to the severity of the crime on this scale (Kant, 1385: 224) opponents or the capital-punishment believe that the death-penalty can not be accurately correlated with the crime of committing the offense. There for this punishment not fair (Khazi, 1369: 113).

But against Sir Janet Ballantyne, a prominent criminal defense lawyer, in the late nineteenth century, when prisons had not yet reached a stage where they lost their compunction, he believed; in jail for dangerous perpetrators, it is not enough to stop the crime even for a long time, let alone a murder case that will not in any way replace the death penalty.

I have no doubt that there will not even be a single case where a condemned person to death, with full joy, refuses to change his punishment with any other punishment that is in the law (same: 115). So, considering

the proportionality between crime and punishment, the legislator and the judge should pay attention to a few points in the stage of recognition and evolution of punishment: first, one should see that there is a logical relationship between the evil nature of the crime and the nature of the punishment?

Secondly is the amount of punishment consistent with the degree of damage that is potentially or actual? (rahimi nejad. And habibzadeh, 1378: 121).

Therefore, it seems that in a task-oriented approach, the crime of committing offenses from the point of view of the public's general feelings of society is more obscure the meritorious is as diverse as possible, so firstly, the punishment as defined in its definition, reflects the hatred of society as a crime.

Secondly, whatever the amount of crime is more severe, it can be realized the more severe the hatred of the society, therefore, it is obvious that the community's response to a simple theft caused by starvation is milder than its response to rape or armed robbery or, for example, if a person rationalized murder deliberately, general feelings of society deserve him to death, but if it is proven that he had not a mental health at that time of the crime, general feelings of society, does not deserve him to the death.

Considering what has been said, in view point of task-oriented, penalty is considered as an instrument of the implementation of the right is honorable and the most obvious feature of the punishment is its fitting with committal crime.

According to the task-oriented, it should be said that the appropriate punishment is a penalty based on deserving and depending on the degree of verifiability of the crime of committing an offense.

3- Attention to the element of discretion in executing the death penalty.

Option is the ability to handle the verb's ultimate purpose, according to Kant, in order for us to do something at our option, or in other words, in order to use of our option properly, we must use of our wisdom in doing so do. That is, if our work is wisely, then it will be optional, therefore, the power is the ability to handle by window (Scroton, 1375: 126, 127).

In fact, the notion of option, like some of concepts Kant uses, is inferred a priori and makes sense in relation to the ultimate in human being in ethics, with the explanation that the attainment of each person and respect to the individual, the wise beings mean that the will of each human beings is the origin of the moral law, that is, every individual is the maker of the general law of morality, that is the source of individual option (sanei dareh bidi, 1378: 320). The optional will about convicted prisoners of imprisonment means that people are completely free to make decisions.

Therefore, the honor and the human position of individual is when respected, that does not degrade his human position.

A person who does not value the life and freedom of other and does not have the right to his life, does not deserve, be loved.

What is the different between a person and animal if one has denied this property by committing a crime?

As the evil animal can be controlled by beating, the action of this method does not harm human dignity of course about the offensive human (mehrpour, 1374: 176, 177).

The task-oriented have strong assumption about optional and responsibility of human as a person to commit a crime means that he deserves punishment, even claims that the offender has requested his punishment and he has chosen it or is satisfied with its imposition, then he has the right to be punished as a wise person (Rostami, 1391:31).

Grossius, an Indian lawyer and diplomat denied the right revenge on penalties after a bad penalty and believes that the right to punishment comes from crime, and the crime of committing a crime is a measure of punishment.

He stipulates that a person who commits a crime has deliberately been punished (peradel, 1393:38).

Therefore, in accordance with the concept of destitution, the capital punishment is, the person who committed the offense with the free will.

Secondly, the person who committed the offense was executed with the commission of the crime, in the first place, demanded that the punishment be imposed, and in second, the community allowed the person to punish him/ her with the death- penalty, because the perpetrator knew that committing this crime was due to the death penalty.

Components of the capital- punishment from the perspective of utilitarianists.

Among the components of the capital- punishment which is in the interest of the utilitarianists of this massive mentality, is the certainty of the death- penalty.

The proportionality of the death- penalty, the necessity of the death- penalty, which will be explained in this speech.

1. the certainty of the death- penalty what more attracts attention in be beneficial ideas such as beccaria is the deepening of societys confidence in the implementation of the punishment, not its severity, he also agrees with montesquieu, the author of the spirit of the laws, that according to them, the severity of the punishment is not punishable by crime, but that it is definite that it can affect peoples spirits and prevent future crimes(beccaria, 1764:104).
2. the certainty inevitable retribution, even moderate, always has a stronger effect than the fear of horrible punishment that there is hope of liberation therein, for it is impossible to escape the punishment, the mildest suffering strikes the human spirit, while the most hoped- for- go will leave the imagination of the most painful suffering out of the mind, especially when the lack of punishment strengthens it more. Imagine the first moments when a brutal act is spread in cities and villages, citizens are like people who have thunder both on their heads, all are full of anger and horror- etc.

The moment of punishment is just that time, do not let the offender escape, accelerate to prove the crime and the judgment of it.

Prepare the firewood, bring the offender to the public square, call the crowd aloud, when you declare your judgment just like when peace and freedom are announced, you will hear the voice of applause and admiration of the people, you will see them as the horror scenes go as if they were going to win laws (foucault,1791:139).

According to beccaria, as soon as the perpetrator has been found guilty, the punishment must automatically be sought and there must be apply it without any ignoring, for this reason, in his theory, there is no any place for forgiving through pardon and reduction in the punishment due to the circumstances, or there was not premature release of the determined punishment imposed on him, so, he states that mercy is a virtue worthy of the legislator, not an executor and must be manifested in the law, not in particular ordinances.

Because if people realize that they can be forgiven their guilty, and that punishment is not necessary result of their actions, the deceptive hope of liberation from punishment will be grow in their Nature and they will believe that if passed, it is possible that condemnations without pardon are an obligation a product of justice.

Let the law, from pity and law enforces, be firm and convincing, but a legislator must be kind and philanthropist, as well as a wise architect that build its foundations on the interest each person has in his welfare.

2- the necessity of capital- punishment

In accordance with article 8 the universal declaration of human rights: the law should only provide for penalties that are distinctly and necessarily anticipated.

Hence, utilitarianists believe that punishment must remain in the boundary of necessity and should not be more severe than it is necessary to reduce the crime through deterrence.

Penalties that go beyond the boundaries of the need to preserve the treasury of general prosperity is naturally tyrannical, and whatever security of people be more holy and more protected from offense, and ruling council will grant more freedom to its own subjects, the punishment is more just.

In some respect, the necessity must be sought in the public order, which in fact was born to guarantee the values of society, is latent in the social conscience of the community. The main task of the government is to establish and maintain a public order, and in order to maintain this order, it has to shelter the criminal law (mohseni, 1375 :23).

According to beccaria, the punishments that go beyond the boundaries of the need to preserve the treasury of general prosperity are potentially tyrannical. The more holy and more protected from offense, and ruling council will grant more freedom to its own subjects, the punishment is more justly (beccaria, 1389: 41).

Extremely dramatic, but useless punishment, as well as hidden punishment, are not necessary, but punishment should be considered as compensation for the offender because of the harm done to all citizens, they must pay to each of them: penalties are indispensable to endlessly in the face of the citizens eyes and to reveal the common utility of the common and particular moves (foucault, 1385:137).

In Durkheim's view, the criterion of public order should be identified in public or collective conscience, because public order in fact in some way expresses the necessary and unnecessary boundaries of punishment. The real role of punishment is to integrate social cohesion or to maintain its conservative forces in public conscience.

So the suffering that is imposed as punishment on the agent of the crime, although inevitably born, is the cause that created it, but the cruelty is not frivolous, it is an indication that collective feelings are always collective and the sharing of the population in a single belief continues (Durkheim, 1381:100).

Therefore, in views beccaria in performance of punishment, in addition to its legality, it should also be paid attention to the necessity of punishment it means, in addition to the fact that punishment should be determined by the legislator, punishment should also have goals that are essential to its pillars.

And because of this, the legislator has forbidden to recede from the goals that society ultimately considers for punishment. Beccaria believes that the society grants power to the legislator under a social contract, but this power should be in the interest of the society when it is ratifying the laws.

The privilege of this action will be prevention of the offender's repetition in the future.

3- To be proportional of the capital- punishment

In view of the philosophers of the school of social utilitarianism, the single goal of the punishment is to prevent the perpetrator from harming society in the future.

This detention will be obtained when the suffering of the punishment exceeds the profit that would result from the commission of a crime.

Therefore, punishment is proportional to a punishment which by creating more fear and pain, can better prevent crime (rahiminejad and habibzadeh, 1378:119).

In the clearer sense, finding the perfect punishment for a crime is to find a loss that will always deprive any attraction to the idea of a crime (foucault, 1385:131).

Ultimately the punishment in this school is to prevent and improve public goodness and on the same basis, the choice of punishment commensurate with the committing a crime has extra role in preventing repeat offenses. According to Montesquieu, heavy and violent punishment on the one hand is a kind of oppression, on the other hand, it is always accustomed people to tolerate heavy punishment and gradually reduces fear (Norbaha, 1388:104).

In addition to Montesquieu, who disagrees with the act of inappropriate punishment for committing a crime, Beccaria writes for revealing, ugly and ineffective severe and disproportionate punishment, who can read history, and against all the barbaric and vain torture was applied by the cold-blooded people and gave themselves the wise person, think and does not shake.

Beccaria did not allow heavy punishment for two reasons:

First of all, the proportion between crime and punishment can not be met in any way because heavy and light crimes are punishable in proportionate manner, and this shows disparity and harmony so well.

Second, heavy punishment actually loses the title of punishment because a brutal dramatic scene for humanity is a sign of an immediate anger, so such punishments create a kind of non-punishment (Mazluman, bita:68).

On the other hand, Beccaria in contrast to his predecessors, considered that the measures were more effective than punishment, and that it would be used as a means to prevent evil in the future so that the offender would not commit another crime after committing the first crime, this proves that the ultimate purpose of punishment is to protect the interests of society, not to provide moral opinions, the severity of the punishment should be determined by increasing the perpetrators' risk to the community, and the severity and hazardousness of the damage that he has committed (Ali Abadi, 1368:16).

Therefore, the punishment must be as consistent as possible with the nature of the crime, in order to avoid fear of punishment of the mind from the way which crime is committed (Foucault, 1385:132).

According to the above, it seems that according to Beccaria, the reform of criminals is considered as the main and basic purpose of punishment, according to him, is a fair and just punishment guaranteeing the peace of the community and its legal health.

Therefore, he does not recognize the violent punishments and emphasizes the adoption of new tricks to punish criminals. On the other hand, utilitarian thinkers believe that notion of justice is tied to the concept of utility.

Therefore, from their point of view, the appropriate punishment is the intellectual approach of the principle of benefit, while the task-oriented believe that the concept of justice is tied to the concept of punishment commensurate with the crime of commission.

Conclusion

There are two main theories in the normative ethics charter: one task-oriented theory and the other utilitarian theory, these two theories have been defined and interpreted through out history in confrontation to each the theory is on attention and focusing of human actions and judgment on their correctness and falsehood, therefore the justification of punishment and the principles of criminalization and punishment is mainly influenced by the normative ethics set- the difference between utilitarianists and task-oriented is so serious that Michael Moore states: following both views is like trying to hunt two birds with a rock, obviously, when we throw a stone, we will necessarily lose another bird. One of the main effects of the contrast between these two great forms of thought in justifying the death-penalty is culding:

1. contrast between the two proportions of the right and will, the main criterion is the distinction between task-oriented from ultimate-oriented is the relation and proportion of the right and well.

In Kant's thought, that in fact, is a kind of retrospective philosophy, the pursuit of the right is so important that nothing is capable of resisting against it and as capable of resisting against it. And as it emphasizes life (spirit), every person has the right to justice, that even the happiness of the entire society can not override it, guaranteed rights with justice can not be subordinated to social utility calculations.

From the point of view of the task-oriented may be the performance of the right does not cause of the general increase of welfare and goodness, but it should be noted that only justice and performance of the right that causes happiness of mankind.

The task-oriented consider to the act itself, and regard the correct or incorrect of a act, regardless to its probable consequences.

So the performance of the act is based on fact that duty for us is a moral obligation, regardless of the effects and results and profit and loss which it will create in the future.

According to Kant, the correct behavior is to perform the task according to duty, the correct scale or the falsity of the act is the duty.

So if we do our duty, we have done our duty. And if we turn ourselves off from our duty, we commit the wrong act, then it is the duty that is specified whether our action is correct or not correct but with the effort and endeavor for doing an act what is important is the motivation for doing the act.

In fact, motivation for committing an act gives our action moral value, he states in this regard that those who are motivated to do their homework have good will, and that the will of the good is one that is good in kind and its own right.

On the other hand, in perspective of utilitarianism, accuracy or inaccuracy of moral proposition are identified in the light of utility. So in utilitarianism ethica, since we are seeking more profit, we must inevitably take the good of the right in contrast between good and right and consider the good before right, because from the perspective of utilitarianism.

It is only a pleasure that is intrinsically good and is the only evil that is inherently bad.

2. conflict in the concept and the ultimate punishment

Another aspect of differentiating viewpoint of the task-oriented utilitarianism is that task-oriented do not regard the suffering of punishment not only as a rebellion, but also according to the perpetrators merits.

The task-oriented believe that the good is the one created by the exercise of the right. Therefore, they regard the actions of punishment, regardless of its consequences as the same right and believe that a good action, regardless of its likely effects and consequences, is worthy of punishment in the future.

As a pure task-oriented, wegel believes that the punishment of the perpetrator is the same as justic.

For this reason, bad human behavior is like a crime. Kant as a task-oriented, believes that judicial punishment should never be desirable either for the benefit of the perpetrator or for the benefit of civil society, since it should never be treated with human as pure instrument.

Therefore, the perpetrator must be deserving and punishable before it can be conceived as a benefit to himself and to the other citizens.

So, the offender has the inherent right to be treated with him as a creature with wisdom and intelligence.

Therefore, the force should be punished with force, because the offender who uses force, establishes a law with his own acts, so this is itself a criminal who punishes himself and use of force is due to his own will, and this law his right is valid, but there no way to punish the element of justic or right, because it is just a matter of expediency.

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