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The logic, life, language and limit of contractarianism on punishment

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The objective of this article is the critical assessment of contractarianism as an alternative approach to the justification of punishment. In doing this, the article focused on the logic, life, language and limit of contractarianism. The article discovered that even though the theory of contractarianism, when viewed from the perspectives of its life, logic, language and limit, is not a completely convincing alternative to traditional theories on the justification of punishment, however, it expresses emphasis on the unambiguous utility of the social contract idea in the justification of punishment. Also, the article discovered that contractarianism, in its theoretical justification of punishment, hinges on contractarian ideals such as human rationality, consent, voluntary commitment, agreement, enjoyments of benefits and the desire to see to the sustenance of society, as a morally acceptable and praiseworthy basis for the justification.

Contribution: The article concluded that an essential part to the merit of this theory of punishment is its positive allusion to and plausible accommodation and acknowledgement of the philosophy of preservationism.

Keywords: contractarianism; punishment; rationality; justification; limitabilism; preservationism; philosophy.

Introduction

The word 'punishment' has been an issue of perennial interest to a plethora of scholars and thinkers within the disciplines of political science, sociology, political theory and philosophy, jurisprudence as well as psychology. Anthony Flew suggested five criteria and conditions to which the word 'punishment' would and could be applied. To begin with, it must involve an 'evil, an unpleasantness, to the victim'; it must be for an actual or intended offence; it must be of an actual or supposed offender; it must be 'the work of personal agencies (i.e. not merely the natural consequences of an action)' and finally, it must be imposed by a legal authority, against whom the crime has been committed (1954:291–307). Although Anthony Flew's suggested criteria appear popular and a well-received body of thoughts, however, what is critical to the scholarship on punishment revolves around the theoretical justification of the system and institution of punishment in political society. This article attempts an understanding of the theoretical justification of punishment from the perspective provided by the contractarian approach. Going the way of contractarianism is necessitated by what Claire Finkelstein (2005) tagged as an alternative resource in thinking and thoughts concerning punishment.

To this end, this article wishes to discuss contractarianism concerning the justification of punishment. To do this, the article shall examine four areas of conceptualisation about this theory: the logic, the life, the language and, most importantly, the limit. The importance of any theory concerning punishment stems from the fact that just as laws are critically integral to the survival of modern political societies, in the same vein, punishment is an integral aspect of modern political societies. Indeed, punishment has come to stay, has refused to go away and, to this end, deserves and requires a sufficient sense of justification.

The logic of the contractarian theory of punishment

The word 'logic' can be broadly construed but, in the central sense, the meaning revolves around the idea of rational thinking, sound rational thought process, and the content and level of rationality and reasonability encoded in our thinking, pattern, judgements and conclusions. In the simplest sense, to be logical means to be a sound thinker or an outcome of thought that is considered good not morally, but technically or practically. But, when related to the contractarian approach, the logic of contractarianism can be taken to mean a philosophy of contractarianism.

Here, to be logical is equated to being philosophical and vice versa.

In another sense, the logic of contractarianism can be usefully tagged and succinctly summarised as the ideology of contractarianism when and where it bothers on the justification of punishment. In this sense, the logic of contractarianism passes for the central idea that contractarianism, within the context of justification, seeks to promote. Logically, therefore, the ideology of contractarianism is the necessities around contractarianism.

When keenly concretised and carefully conceptualised, the best definition for the logic of contractarianism is the existence of limits in traditional theories of punishment. If this definition is followed, it could mean that the philosophy of 'limitabilism' is the logic that warrants alternatives. Logically speaking, therefore, the modes and means of contractarian logic are sound and acceptable as an alternative to traditional theories of punishment just in case there are no limits to what it seeks, strives and struggles to replace, reject, repudiate, renounce, vitiate or compliment all together. Thus, the logic of alternatives is the logic of limits. In the end, one could reasonably or rationally contend that alternativism is premised on limitabilism or, at best, the logic of limitabilism is the breeding ground for or the forerunner to the logic of alternativism. No alternative parades a power and potency of plausibility outside the shore and shell of limitability of existing theories. Thus, the logic of the contractarian theory of punishment derives from the obvious limits of traditional theories of punishment which have now necessitated contractarianism as an alternative. But, more importantly is the view that the best logical content, character and contour to the contractarian theory of punishment, admittedly and expectedly, derive from a social contract tradition that was exceptionally and excellently introduced into the history of political philosophy through the writings of Thomas Hobbes, John Locke and Jean Jacques Rousseau. The details of this tradition and how they dovetailed into the contractarian approach to punishment are to be outlined below. Nevertheless, it is important to stress and sustain the argument that the logic that the social contract theory supplied to contractarianism as a theory of punishment is, strictly and straightforwardly, a historical one even if this does not betray, compromise or negotiate away the ratiocinating respect and contemplative culture, character and content of that historical logic. However, in what follows, it is important to stress that there are two angles and dimensions of arguments to the basic beauty of this historical logic: (1) the logical character provided by the limits of existing traditional theories of punishment and (2) the logical content provided and supplied by the social contract itself.

Contractarian approach and the limits of traditional theories of punishment

Although the contractarian approach to punishment is anchored on the need and the necessity of providing a firmly footed foundation for the theoretical justification of punishment, it could be posited that the lingering limits and the languishing loopholes in famously existing and eloquently favoured traditional theories of punishment equally provided the basis and justification for the coming into being of the contractarian approach of punishment. Thus, there is a double dimension to the question of justification with respect to punishment: previous sets of theories and their limits provided a justification for a new sense and set of theory whose sufficient sense of justification concerning punishment deserves a serious sense of attention.

There are legions of traditional theories and the justification of punishment such as the preventive, the incapacitation, the compensatory, the deterrent and the retributivist. Of these lists, the most popular and widely acceptable in political philosophical discourses are the last two. It is the perennial failure and the palpable limits of these two popular theories that necessitated the alternative theories that political philosophy has come to witness in the contractarian direction and dimension. The preventive theory is associated with Jeremy Bentham whose claim and conclusion is that crimes and criminals ought to be prevented (1830:167). The incapacitation theory stresses the necessity of capital punishment as the highest point of punishment and incapacitation for the criminal (Barton 2005:463). On its part, the compensatory theory advocates the need for victims of crimes to be compensated both by the criminal and the state (Quadri 2017:544). These three theories are sufficiently flawed which made attention and focus, in the traditional sense to be placed on the retributivist and deterrence theories.

Retributivism is anchored on three major conditions, which are, firstly, that those who commit various degrees of crimes, most especially serious crimes, morally deserve to suffer a proportional punishment; secondly, that it is morally good, if a legitimate enforcer of the law gives offenders the punishment they deserve and, lastly, that it is not morally allowed to intentionally punish the innocent or to inflict a punitive measure on an offender, which is large and not proportionate (Walen 2014). However, there are criticisms against retributivism. In the first instance, retributivism does not seem to establish a morally permissible basis for the justification of punishment especially from the consent of the individual criminal. Again, for a scholar named Michelle Mause, the retributive justice does not help the victims in any way, other than giving them the feeling that, at least, the offender got punished. Michelle also posited that retributive punishment has the tendency of slipping into punishment based on revenge, and if this is the case, it will not satisfy 'the principles of proportionality or consistency' (2004). In addition, given the retributive theory, how do we accurately measure the amount of punishment that will be proportional to the crime committed? On its part, traditional arguments on punishment, from the perspective of deterrence, state that punishment is justified if it deters. Deterrent theory of punishment was postulated by classical philosophers such as Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794) and Jeremy Bentham (1748–1832). Bentham and Beccaria, from the utilitarian

standpoint, formulated the deterrence theory as both an explanation of crime and a method for reducing it. According to Mark C. Stafford, deterrence is the omission or reduction of a crime because of the fear of legal punishment. For him, punishment deters people from committing crimes in the future (2016). From this, it can be inferred that deterrent theory of punishment states that the threat and enforcement of punishment deter or prevent the reoccurrence of wrongful actions. Punishment is inflicted on criminals to discourage them from committing future crimes.

Nevertheless, the theory is not without criticisms. One problem with the deterrence theory is that it assumes that human beings are rational actors who consider the consequences of their actions before deciding to commit a crime; but, this is often not the case. For instance, most criminals are under the influence of drugs or alcohol at the time of their offence; therefore, it is unlikely that such persons are deterred by either the certainty or severity of punishment because of their temporarily impaired capacity to consider the advantages and disadvantages of their actions. Another problem with the deterrent theory is that potential offenders must be aware of sanction risks and the consequences of committing a criminal act, but research has shown that the general public has the tendency to underestimate how severe a sanction, which is generally imposed, could be. Given this, the absence of information on the awareness of punishment makes it difficult to draw conclusions regarding the deterrent effects of sanctions. Another objection to give to this theory is that, even with the mindset that one can be punished for committing a crime, it does not ultimately stop an individual from perpetuating a criminal act in the future; neither does it reduce crime rates in a society. Deterrence is, however, another fundamental reason for punishment. However, more importantly, a basic standing objection to deterrent theory is that it holds a promise for the future but which is never epistemologically compliant with human cognitive ability and cerebral capacity, in as much as what is of the future is of the future and not today. The future is beyond our human capacity to establish with certainty; what may be conceived and perceived to happen in the future may end up not being so. What if, instead of crime reducing and people being deterred, crime increases in the future? What, then, will be the fate of deterrence theory in this respect? All these account for why an alternative theory for the justification of punishment is sought for in the contractarian approach.

Why the contractarian theory of punishment?

For Fred D'Agostino, the object of social contract theories is to show that, in the most general sense, rules can be justified rationally (2017). However, when people are capable of formulating rules that are rationally justified and establishing a good government, punishment of wrongdoers is justified, in order to ensure a stable government. The contractarian theory of punishment's purpose is to make it known that when rules are rationally justified, then punishing a defector of these rules can also be justified. There are two conditions to the necessity, logic and rationale of the contractarian theory of punishment: the philosophical and historical conditions.

Philosophical conditions for the contractarian theory of punishment

The philosophical condition for the contractarian theory of punishment draws from the thoughts of social contract theorists in the history of philosophy. Their position is based on the idea that the social contract explains that individuals live together in a civil society, according to the agreement which establishes moral and political rules that govern one's behaviour. When we live according to a social contract, we live morally by our choice not because we were compelled or possibly because divinity requires obedience from us. The philosophical condition for the social contract theory is that actions must be borne out of individuals' choice and decisions in a way that will not endanger or impede on others' liberty. In relation to punishment, its condition is that it must be for those who act contrary to the agreement on the moral and political rules of behaviour.

Historical conditions for the contractarian theory of punishment

Social contract theory is a theory that originated during the Age of Enlightenment, and here, the state has legitimate authority over the individual. As John Locke rightly puts it, the people left the state of nature due to their need for a civil society where their excesses will be curbed and the state will be given the power to punish offenders. Once a civil society is formed, the state is justified in meting out punishment to offenders. The condition is that the state must be the enforcer of the law and punishment must be for criminals who refuse to abide by the law. In history, punishment is doled out by the state, to curb wrongdoings and ensure a stable and secure government. On these two conditions lies the strength (logic) of the contractarian theory of punishment.

The life of the contractarian theory of punishment

The life of an entity consists of the heartbeat, soul and spirit of that entity, without which that entity cannot be alive. The life of a thing, in this case the contractarian theory of punishment, comprises of those things that animate, activate and actuate the genetic makeup and the conscious movement of that entity. The life of the contractarian theory of punishment derives from the principal ideas and ideals that not only brought the social contract theory into being but which continue to explain the perpetuity of what is original, fundamental and foundational to its theoretical and practical possibilities. In this sense, the contractarian theory of punishment draws heavily and impressively not only from the social contract theory but also the positive possibility and profitability that social contract theory has generated and gained in the sustenance and retention of these ideas and theories that seek to rationalise and justify punishment solely, eminently and pre-eminently from the point of view and perspective provided by what human rationality in the

collective sense can do, achieve and sustain. What, then, explains the life (substance) of the contractarian theory of punishment and its attempt at justification?

What is the contractarian theory of punishment?

The contractarian theory of punishment arose from the notion of the social contract theory. In the words of Meagan Nation, for John Locke, given the idea of the social contract theory, which shows that the people consented to be governed by the political authorities, it also gives the people the power to check the activities of the government in case they step out of line and this shows that power belongs to the majority. However, Locke's social contract theory contended that government exists by the people for the society's common good as well as for the protection of the people's rights (2019:85).

Moreover, Alex Tuckness analysed Locke as believing that the notion of punishment requires that there must be a law. John Locke is of the view that the state of nature has the law of nature governing it and it is permitted that an individual 'punish' another, in that state. However, given the fact that there was a transition into civil society, the power to punish was then handed over to the government (Tuckness 2005). Given that Locke believed that the government is derived from an agreement between men to give up life in the state of nature in favour of life in a political or civil society, the power of law enforcement is bestowed on the government or state, by the people, to ensure a safe and stable society.

However, in the words of Celeste, Hobbes believes that given the fact that humans are naturally self-interested, although rational, they will consent to submitting to the authority of a 'sovereign' in other to be able to live in a civil society that is to their benefits and for their interests. Due to the rationality in men, they accept the concept of a social contract which will ensure a better life than that of the state of nature. Nonetheless, for him, because the 'sovereign' is given the power to mete out punishment for the infraction of the law, men thus have a good, although self-interested, reason to adjust themselves according to the 'artifice of morality in general and justice in particular' (Friend 2004).

In addition, according to Corey Brettschneider, Rousseau upheld the view that the state punishment that is outside a social contract cannot be legitimate because each time an issue of punishment arises, assent and agreement will be impossible. For him, punishment is only justified in a society whose social contract is legitimate (Brettschneider 2011). It can be deduced from this that political authorities are assented to, as meting out punishment to defaulters of the provisions of a contract. In a nutshell, the life of the contractarian theory of punishment consists in the following gist: punishment is right because people, through contract, consent to punish themselves, in accordance with their set rules, when they all know and are aware that they have gone against the interest of others, the roles they collectively set and are only experiencing the fallout of what they consented to. Thus, punishment is people's persuaded judgement about themselves; the state is only found in helping people's sense of rationality and consent agenda to come to pass. Herein lies the justification of punishment: punishment is people's vote of no confidence on offenders and crime perpetuators.

Conceptual approaches to the contractarian theory of punishment

Several scholars gave their understanding of the concept of the contractarian theory of punishment. Some of these scholars are discussed in what follows.

Crime, contract and humanity: Fichte's theory of punishment

Johann Gottlieb Fichte (1762–1814) is of the view that for any person, it is that the contract does not exist at all; but if it exists, it binds such person completely. Here, the basis of the existence of the social contract theory is within the social contract theory (Moyar 2017). However, in David James' analysis, in Fichte's theory of punishment, two aims are projected: the first is the 'technical aim' which is concerned with putting into place appropriate punitive measures for punishing criminals for the sake of ensuring public security, and the second aim suggests that, irrespective of the punishment of offenders, a criminal's humanity ought to be respected; in this case, punishment is for the reformation of the criminal.

Fichte argues that opportunity should be granted to the offender to be able to reform himself, so that he can become part of the 'civil contract' once again and bear his rights as a legal participant of a contract (James 2019). Fichte's argument can be interpreted that inasmuch as an individual agrees to the term of a contract, the contract binds him completely such that when he defaults, a sense of justification for the punishment is automatically founded on and conferred by his agreement to the terms of the contract. Fichte saw punishment as an opportunity given to the criminal to aid in his reformation because his humanity ought to be respected, criminal or not.

Meanwhile, does this also apply to one who is accused of murder? Is it not convincing to say that a murderer has no atom of humanity in him? How does reformation help in atoning for the wrong done to his victims and their families? Interpretively, Fichte is conflicting two ideals which are the humanitarian or reformatory and the contractarian dimensions. The two ought to be separated if a seasoned and sound sense of justification for punishment is to be produced and provided. In any case, aside from these observations, no matter how some criminals are punished, sometimes, reformation is not achieved and this is affirmed by the high rise in criminal operations. In addition, it ought to be stressed and said that the essence and sense of contractarian theory of punishment is not about reformation or about being humanitarian but, in actuality and nothing more pretentious,

about holding each person, in a social contract context, liable, concerning what they initially consented to and that they vowed to sustain within a validating voice of vehicular vivacity.

Immanuel Kant's approach to the contractarian theory of punishment

Immanuel Kant argued that, following the transition from the state of nature to the civil society, the people give up their freedom to act as they like and voluntarily agree to the set laws and this is the social contract. Here, one is free to do as one pleases, only if it does not cause harm or hamper the freedom of another. According to Friedrich Rauscher, Immanuel Kant believed that an individual has rights and ought to have liberty, but to preserve these, he has the duty of consenting to a civil society, governed by the social contract. To ensure security and preservation of society. Punishment, also, deter offenders and members of a society, from defaulting the social contact's provision (Rauscher 2007). Critically, when Kant's position on punishment is read, it is important to differentiate and separate the flavour, form and formula of contractarianism from deterrence even if it must be admitted that there could be nothing wrong in drawing support for an alternative theory for an existing, conventional, traditional or an orthodox theory that the alternative one seeks to replace, not necessarily complement. The reference to deterrence in Kantian view ought to be accepted with a sense of caution, else what is presented as contractarian in nature may end up slipping and sliding into a life that is not its. However, judging from Kant's argument, given that it is the goal of a contract to preserve individual's freedom, it can be deduced that once one's freedom impedes on the freedom of others, it is also within the contract that such defaulter be punished. The people make their laws by reason and whoever goes against the law deserves to be punished. Herein lies the monumental merit of justification of the contractarian theory courtesy of Immanuel Kant.

Nonetheless, it is not wholly the case that punishment in a society successfully deters one from impeding on other's safety and liberty. After the period of an offender's incarceration, it is very possible for him to commit the same or more crimes. What then is the alternative measure to solve this inconsistency? Human nature is what it is fluctuating, unpredictable and, most of the times, undependable and unreliable. Nevertheless, what is important in handling and managing the unpredictability of human nature is to have inexistence and correct institutions that have the capacities to maintain constant certitude and persuasive consistence in abiding by and adhering to rules and laws contained, in a clear-cut and completely convincing, organised and well-arranged forms.

The elements and substance of the contractarian theory of punishment

For Celeste Friend (2004), the substance of social contract theory is such that individuals' moral and political duties depend on a mutual agreement made among themselves, to form a society. Fred D'Agostino posited that the social contract theory has five elements. They are 'the role of the social contract, the parties, agreement, the object of agreement and what the agreement is supposed to show' (1996). These scholars gave their thoughts on the essential parts of the social contract theory. On punishment, Cesare Beccaria (1764) gave three key elements of punishment. They are 'the swiftness of punishment, the certainty of punishment and the severity of punishment'. Given the above, the element and substance of the contractarian theory of punishment is therefore the enforcement of penalties on defaulters of the agreement. The punitive measures are not pleasurable but are harsh rewards for wrongdoings, as a result of defecting from one's moral and political obligation which the contract demands. It is on this theoretical formulation that the life and substance of the contractarian theory of punishment is constructed without which there is no philosophy of contractarianism as far as punishment and its justification are concerned. The language of contractarianism with respect to punishment and its justification draws from this theoretical life support to which attention is turned. Essentially, this opens up valid theoretical hints and thoughtful ideas that permeate contractarianism as an ideological impression in philosophical debates and discourses.

The language of the contractarian theory of punishment

In terms of language, every contractarian approach to punishment is woven around certain linguistic construct, words, concepts and terminologies in their varying specificities and particularised significations that are crucially determinate, germane and critically guaranteed in relation to every political philosophical discourse on punishment from the perspective of contractarianism. In other words, when and where such expressions are admitted, allowed and accommodated, such concepts and terminologies provide a ready register and respectable recognition of the mindset and heartbeat of not only the issues that are at hand but also, equally, the central themes and ideas that are to follow. In this sense, it is not a misnomer to posit that every idea and issue of interest in philosophical discourses impressively carries their own respective and peculiar language, linguistic worldview and expressive metaphysics. This linguistic construct, concept and terminologies not only assist in explaining the rationale and rationality allowed in relation to contractarian philosophy but also they assist in sharing and showcasing the internal sense of justification contained in contractarianism with respect to punishment. In this case, contractarianism's use of language is double-edged: one, the pattern of rationality creating, as it were, a sense of theoretical sufficiency and adequacy and, two, working out a sense of justification from what flows out or that which is emitted from the beginning. To this end, the language of a theme is given and afforded a respectable requirement if an entity is to be fully comprehended. Thus, regardless of the struggle and strife that a philosophical theory may encounter with respect to public acceptance, it is the language deployed or employed by such theory that exposes and expresses its

sufficient sense, seriousness and solidity of its actual and expressed meanings.

While the traditional theorists of punishment are lacking in this consensual approach, a contractarian approach receives a plus and plausibility concerning its submission on the justification of punishment on account of the space that accommodates the consent of the individual when it comes to punishment and the justification of same within an existing system via the social contract angle. It also ensures and establishes the merits and memorable mention of individual participation in the social contract from which the theoretical justification of punishment derives. Therefore, two elements of pure significance are involved: the consent elements and the participation elements; a rational element and the practical elements; the theoretical elements and the pragmatic elements and empirical elements; these elements constitute the bedrock of theoretical strength and solidity for what is known as the contractarian theory of punishment in political philosophy.

The language of a thing is an epitome and embodiment of the character, culture and composition of that thing. In a sense, language is life because it expresses and communicates the cultural worldview of that thing. In essence, it is the language of a thing that explains the rationality and the complete comprehensibility of that entity. If the language of contractarianism is not understood, neither can its attempt at providing a theoretical justification of punishment be argued to be worthy of sagacious acceptance.

The language of contractarianism exposes its dynamics, dimensions, definitions, the details and data without which it becomes difficult to access and comprehend. Language is the soul and culture of a thing: of what it is that it is and of what it is not that it is not. In essence, even if contractarianism has its life and logic, such internal and external features, capacity and carriage make sense only if or just in case its language is open to public comprehension and unquestioned understanding. Thus, it is important to articulate choice concepts that make contractarianism and its offer of a theoretical justification of punishment comprehensible:

- Human rationality: In the first instance, the language of the contractarian theory is constructed along the line of human rationality and rational thinking. It is this element that brought a contract into existence in the first place. Admittedly, without the stake and sense of coded and clear rationality, there will be no room for a contract that is appealing and open to being accommodated, accepted and allowed. Indeed, the beauty of contractarianism is the plausible acceptability that the foundation of contractarianism is the place, priority and power of rationality. Philosophy thrives when rationality is respected and recognised. It is, therefore, a plausible submission and positive conclusion that, given this rational element, contractarianism is strictly philosophical and in a strict adherence to the rule of the game of philosophy. Thus, contractarianism may not be flouted or faulted on account of the lack of the merit of philosophy.
- Human mutuality of consents: The plausible rationality embedded in the contractarian theory of punishment is its assured and adequate sense of reference to the power of consent and the mutuality that consent perception enjoys and exhibits. Indeed, also, the justification inherent in the contractarian approach to punishment derives from the existence of a mutual concern for terms and conditions of a contract that was freely given when and while matters and moments of society emerge. Again, the mutuality of consent invokes the expeditious philosophical elements that people, within a contract tradition, engagingly endorses.
- Human collectivity: Contractarianism is what it is on account of the collective that enters into contracts. No one individual can engage in a contract with self except for self-resolutions which are, properly speaking, not and never contractual.
- Modes, methods and means of punitivity: In a contract relationship, default designs are determined, defined and, based on consent earlier given, defended absolutely. In other words, no contract relationship is definite and final outside conditions of punitivity when the contract in question is flouted. Essentially, therefore, no contract relationship is complete, convincing and conclusive if punishment is not spelt out even if it ought to be stressed that punishment, in a contract relationship, is specific, certain and well defined. It is the agreement and consent to the contract pact that explicates a justification of punishment when such occurs. Punishment in this sense is never ill-defined because a contract relationship is always a serious one devoid of senseless sentiments, emotional empathy and pathetic projection, peddling and profession of psychological protest. Indeed, punitivity and punishment constitute compatible components of contract relationship; punishment constitutes the life and the logic of contract, in this case, the social contract principle. Without punishment, the social contract philosophy and principle does not make sense. The emphasis on the contractarian approach to punishment, especially its insistent intention at justification, lies in the fundamental moral standpoint that when individuals enter into contract relationship, on account of virtues such as consent, voluntariness, agreement and commitment, any attempt at flouting or even a real and factual deflection ought to attract a sense of punishment and deservedly too. This is where the contractarian approach to punishment derives its legality, legitimacy and moral worthiness in as much as individuals who partake in the contract have closed down their consent and commitment to such.
- Defined interests and expectations: Every contract is based on specified interests. When those interests are jettisoned, abandoned, punctured and played with, they often signify a modicum of threat and tempting trouble that could truncate the nitty-gritty of the contract. In essence, no contract exists without interests and benefits. This is predicated on the principle and postulate that self-interest is always the principal motive for entering into contract relationship. The classical theories on the social

contract all have an appealing allusion to these postulates and principles inherent in human nature. As a matter of fact, the principle of self-interest was the motive cause as well as the actuating and animating force that drives humans in their rationalistic traits, temperaments and tendency to the formation of a social contract.

- Choice: The promise and premise of choice is an important element of human freedom. Thus, choice remains a respectable item of the social contract tradition and constitutes one of the core linguistic foundations on which the contractarian approach stands. Humans have come to be regarded as free moral agents even though it ought to be understood that there is a plethora of agonising arguments, contentious controversies, contradictory conclusions, and special but seriously silencing submissions by political and moral philosophers on this subject matter.
- Rights and obligations: Every contract relationship is made up of the components and details concerning rights and obligations. Rights and obligations are prime and important subject matters in philosophy. Rights emphasise what one is entitled to and that can be enforced. Obligations refer to expectations from those that one is in contract relationship with. Such obligations are enforceable against those who have it.
- Correctivity: There are two ways to interpret correctivity: one is conscious attempt at operating the social contract within the context of principles of fair play and the administration of what is right; two, correctivity means the openness that parties to the contract have in pointing attention to possible errors, mistakes, faults and wrongdoings when they are likely to occur.
- Faithfultivism: Part of what makes a contract relationship, in the social sense promising and objective, is the expectation that parties to such contracts be found faithful to what they have consented to. Interestingly, this applies sweetly and suitably to elements required if punishment is to be justified within the perspective of contractarianism.
- Enforceability: From the perspective of contractarianism, all aspects of existing contract, including rights and benefits, on one hand, and obligations, liabilities and defaults, on the other hand, expectedly, are open to being enforced. Enforcement is a key rule to the game of the contractarian approach to punishment.
- The originality of commitment to the contract: According to the contractarian approach to punishment, the justification of punishment derives from the original, sincere and faithful commitment to terms and conditions of the social contract. The sincerity of commitments in dictating terms justifies the outcome.
- The binding nature of the contract: The philosophy of contractarianism is founded on the principle that when contracts are entered into, they remain binding and enforceable on the parties concerned. This is one of the elements of inspiration for the contractarian approach in its quest for justification of punishment. Those who enter into such a contract and are found defaulting are liable to being punished and the intention to punish is lawful and moral in as much as there are initial commitments to the contracts.
- Goals, objectives, aims and missions of a contract: Every pursuit and practice, within a social setting and context, is made up of set out targets, defined goals and specific objectives. If the objective of a social contract relationship is the foundation of political society, it is equally true that the objective is the preservation of that society. In this sense, as preservation is the key, it follows that experiences and expressions of punishment constitute a part of the objective of the social contract. This is one of the plausible bases that the contractarian approach draws from in its justification of punishment. The concept of preservationism shall be outlined, articulated and defended, if need be, at the end of this attempt.
- The legality and legitimacy of the content, scores and consequence of the contract: The social contract pact has the character of legality and legitimacy in as much as the contents are consented to by rational and free agents who desire and decide what it does for their self-interests in the collective sense and fashion. In jurisprudence, discourses around the social contract are conceived, conceptualised and constructed along the lines of legalism.
- Sanctity and sacredness of the contract in all its ramifications: If it is true that consenting individuals are agreed on the terms of a contract, it could follow from the consenting nature of this agreement imposing a reasonable amount of sanctity and sacredness to the contract. The sanctity of such relationships, a social contract relationship, is not always open to questioning or being queried especially when there are no concrete evidences of compulsion and the dreadful element of duress.
- Associationism: The social contract ideal, practice and pursuit are a form of association in itself. The only difference, in its classical sense and history, is that the association formed translates into a state, or, less euphemistically, the emergence of a society, that is determinedly, deliberately and decisively political in nature.
- Co-operativism: The spirit of cooperation is what gathers, generates and gains into existence not just a social contract but also the emergence of a political entity called a state. Indeed, the punishment of offenders in the contractarian sense is part of what fosters and festoons not just the state as an apparatus for social and political control but also a spirit of cooperation that brought the social contract idea into place in the first instance. Co-operationism stands as one of the ways through which the necessity of punishment is exercised, expressed, entertained and executed into a binding effect.
- Promise: The contractarian justification of punishment is founded on the promise obtained, *ab initio*, that the contents, data and details, including punishment, when the need arises, of the covenant and contract stand enforceable and binding on the parties. It is this moral credit and credibility of fulfilling and standing by promise driven that sets apart, as memorably meritorious, the contractarian approach to punishment and its justification from orthodox theories of punishment.
- The power of bargaining and negotiation: Although classical theories on the social contract of Thomas Hobbes,

Jean Jacques Rousseau and John Locke may not have insistently itemised and intentionally incorporated elements of negotiation and bargaining in what translated into and ensured the emergence of political societies, yet, these elements represent and reflect what was feasible and visible if such societies of gargantuan proportion were to emerge in the first instance. Part of the merit of justification from the perspective of the contractarian approach stems from the plausible, positive and profitable admissibility for the power of negotiation and bargaining.

- In the standard and sublime senses, the idea of the social contract is a social project bringing humans together in the formation of political societies called the state.

All these linguistic concepts and terminologies are validating components of social contracts from which the justification of punishment stands and derives. Where there is a contract, justification derives from the statement of such a contract. This sentential correctness and observation find ready applicability to the idea of punishment arising there, for which a theory is hereby constructed, conceived and concocted. These are the linguistic symbols, concepts and terminologies validating punishment tagged as the contractarian theory.

The limit of contractarian theory of punishment

Generally, all philosophical theories suffer from the very set of mindset that they develop towards one another. In this sense, it is a convincing postulate that no philosophical theory is immune from weaknesses, shortcomings, pitfalls and perilous specificities. Indeed, even if it is agreed that the contractarian approach to punishment is, needless to say, seminal and sublime, however, it is not a completely convincing, concretely clear-cut and a seriously special and strong alternative to traditional and conventional theories of punishment because of inherently ingrained, significantly perceivable and plausible limitations characteristic of the theory. It is important to examine some of these limitations and expect to see how far it succeeds in expanding the literature on this deserving aspect of the discipline of philosophy.

Richard Dagger's critique of contractarianism; between contractarianism and contractualism

Richard Dagger's position is that fair play ought to be the condition for participating or being a member of a contract. In his critique of the basic tenet of the contractarian approach to punishment, he posited that consent should not be the necessary condition for entering into a contract, because, as opposed to Rawls, there are limits to what can be taken to be a 'cooperative venture' which is for mutual advantage. A societal system could be exploitative and oppressive, and because the people already gave their consent, they are required to fulfil their obligations under this system. If Dagger's position on contractarianism is anything to go by, it could follow that contractarianism was extremely obsessed with the significance and sacredness of consent while overlooking the possibility of exploitation. Therefore, it could mean that the possibility of exploitation was not taken into consideration in the formation of the contract. Truly, practical political realities of modern and contemporary states provide strong and serious evidential admissions to these possibilities especially when state powers are utilised indiscriminately, injudiciously and unwarrantedly. It follows that contractarianism overlooks and neglects an important element of society that sets apart the ruling political class from the rest in the society. But, then, Dagger has more to say. For Dagger, grounded on fair play, people have no obligation to obey their rulers. His argument, therefore, is that the fair play theory's aim is to secure the cooperation of the legal order by rendering punitive measures on those who wish to take 'unfair advantage of the law-abiding members' of a society. Dagger believes that when an offender has paid his or her debt back to the society, it is fair that such person should resume and go back to being among those who are participants of a cooperative venture. He also argues that everyone ought to be treated fairly and this should be the basis for participating in a cooperative venture, not merely giving consents (2011:366).

On the distinction between contractarianism and contractualism, Dagger is of the view that contractarians are rational agents who give their consents in order to advance their interests; nevertheless, the starting point for contractualists is that 'reasonable individuals cooperate in order to live according to fair principles with others'. However, he raised a challenge against the contractarians which is based on the question of whether cooperation for one's interests, which involves taking advantage of the cooperative efforts of others, generates a system of morality. However, the contractualists do not face this criticism, according to Dagger, simply because it is based on 'reasonable agents' who already agreed to playing their parts to achieve a fair system (2011:344–345). As a full member of a contract, everyone ought to be treated fairly, as a party or a defector. Hence, for Dagger, the fair play theory has more in common with contractualism, than with contractarianism because the former relies more on fair play, as reasonable agents know that it is unfair to benefit from a contract, when one does not play his part. In the words of Dagger, under the theory of fair play, reasonable persons aim to establish 'a fair system of social cooperation, and reasonable citizens will have no complaint, even when subjected to punishment, if they are treated fairly within such a system' (2011:362–367). Nevertheless, a challenge to Dagger's view is on whether fair play implies equality. Moreover, what is the source of the theory of fair play? It is also not the case that every member of a cooperative venture believes in the idea of fair play to everyone.

David Gauthier on contractarianism

David Gauthier affirmed that, most times, a person's interests, as a basis for being party to a contract, do not include the well-being of others (1986:87). From this argument, it can be deduced that, given that individuals are intentional about entering a contract, so that their interests

will be advanced, the well-being of others is not taken into account and it is plausible to assume that the rights of others can be trampled upon, to ensure the improvement of another's well-being. Even when the institution of punishment is put in place to enforce punitive measures on violators, due to the lack of interest in the well-being of others, more situations will arise that will warrant punishment and this could mess the advantageous reasons for entering an agreement or contract in the first place.

Humean attack on contractarianism

Social contract theorists normally, regularly and constantly posit that individuals are obligated to obey a government, because they gave their consent and promised to do so, and because one could say that men are roughly equal in their natural abilities, it is hard for one to have power over the rest without their voluntary submission. On this point, Christine Chwaszcza shares the opinion of David Hume in rejecting the view that the people gave their promise to obey a government and asserts that it is mostly the case that the people do not fully understand the importance of their obligations. For Hume, if this is the case, it would be wrong to also say that the motive of obligations is self-interest. Hume denies the social theorists' ground that people perform their duty because they promised to, and that it is reduced to self-interest. Hume maintains that 'contracts cannot create normative obligations out of a normative void, because their normative bindingness itself relies on the acknowledgement that promises ought to be kept' (Chwaszcza 2013:115).

Hume's argument is that the contractarians derive their 'normative force' from the idea that having rules is good and is therefore necessary for the establishment of a society and he advocates impartiality in the application of these rules, such that it corrects the notion of self-interest and 'natural feelings of sympathy and benevolence which tend to be partial and favours persons close to oneself'. For Hume, a standard is therefore 'constituted by reflecting on the common good, that is, the good for society as a whole' (Christine 2013:115–116). Given this, the provision and enforcement of the law is for the good of all and is not partial; neither does it support the notion of self-interest. If a standard is for the common good, it is plausible to affirm that its basis is the self-interest of the members of a society.

Conclusion

The concept of punishment, from the foregoing articulated analysis and agreement, is a serious subject matter in political, social and legal philosophy. Surely, the significance of punishment and its justification is what accounts for the distinction between orthodox and non-orthodox, conventional and non-conventional, traditional and non-traditional (alternative) theories. Given the trending temperaments, tendencies and traits towards alternative thinking in the literature concerning punishment, it is in that light that this article took time to flesh out the fascinating form and frame of the contractarian approach. Thus, it is convincing that, if the contractarian approach is to be exhaustively considered, conceptualised and critically approached, it is important to undertake a careful and concrete classification of the contractarian theory in connection with a logic it presents, the life it possesses, the language it professes and portrays, its performing capacity and potent competence without excluding the limits it carries, peddles and projects to the philosophical community. All these insights into a contractarian approach to punishment are informed by and founded on the running but respectable ideas that while there is a recognised correlation and connectivity in all these subjects of searching and serial treatments; nevertheless, it is needless to say that every attempt at comprehending punishment and its justification, especially from the contractarian perspective, ought to be mindful of memorable, momentous and a monumental meaningfulness that the philosophy, the theory, the thesis and the doctrine of that preservationism bears. In the end, it is submitted that punishment and its justification is still an important dimension and informed direction that states and political societies ought to maintain in other to preserve, protect and perpetuate the sanction and sacredness encoded, embedded and embroiled in our humanity, speciality and the social contract principle and pact that seasoned and serious contractarians hold as a very persuasive, potent and point through which modern, post-modern and contemporary societies emerged, evolved and emanated from.

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