

WILLIAM GODWIN'S MORAL EDUCATION THEORY OF PUNISHMENT: IS IT A RESTORATIVE APPROACH TO JUSTICE ?

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This article focuses on a significant historical foundation for the contemporary restorative justice perspective on punishment and corrections. William Godwin's views, which are characterised here as a version of the moral education theory of punishment, provide a critique of the justifications of punishment – retribution, deterrence, and rehabilitation – that have informed correctional policy and practice since his own era, two hundred years ago. The assumptions of the moral education theory lead him to reject coercive punishment as a morally or politically viable method of social control. Instead, he outlines an approach that is based on informal control, with a least restrictive standard applied to the type and duration of coercion used to restrain offenders who threaten safety, and a set of duties owed to the offender by community members.

INTRODUCTION

Restorative Justice advocates have argued that, during the past several centuries, the state's expanding role in the process of conflict adjudication has reduced victims, offenders, their families, and community members to mutely passive bystanders in the justice process (Hudson and Galway, 1996). With its emphasis on abstractly defined due process of law and the professionalisation of criminal justice personnel, the criminal justice system has set up and ensured that those who are involved in a situation of harm-done will remain strangers, indifferent to, and even unaware of their separate fates (Van Ness, 1996). Nowhere are these detrimental side-effects more evident than in the sentencing and correctional processes where only judges, attorneys, and civil service employees are directly and actively involved.¹ Even the roles played by these officials in the justice process have been increasingly limited to the application of narrowly defined sentencing statues and by correctional budgets that disallow any goals other than constitutionally compliant warehousing (Feeley and Simon, 1992; Tonry, 1995).

Retrospectively it seems that the post 1960s rallying cry for “swift, certain and severe” punishment captured the public attention with the same mind-numbing, hyperbolic spin of a political campaign slogan. Decades of so-called correctional reform have not slowed the growth of an offender population banished to the government-run, toxic social dumping grounds that transverse our nation. The restorative justice focus on personal and mutual accountability, on peacemaking and justice as “equal well-being” (Sullivan and Tifft, 1997), and its associated practices of victim-offender mediation and reconciliation, should therefore come as no surprise. These practices reverse years of disassociation and alienation in the criminal justice system by bringing people in to face-to-face communication with each other and re-establishing the stakes each party has in the outcome of their mutual deliberations (Hudson and Galaway, 1996).

The restorative justice approach to crime control and corrections has only recently begun to be systematically articulated as an alternative to the standard rehabilitationist and retributivist perspectives that presently inform the criminal and juvenile justice systems. Yet, like the latter, restorative justice draws its inspiration and synthesises its guiding assumptions from deeply rooted sources in Judeo-Christian and Enlightenment thought. While often alluded to, rarely have these sources been explored in depth. The following discussion attempts to contribute to the development of restorative justice theory and practice through an examination of the work of one of the earliest critics of the modern state’s role in the criminal justice process, William Godwin. My objectives are to offer a brief summary of Godwin’s views on punishment and to suggest that these views have more than historical interest. Unlike the traditional punishment philosophies that inform contemporary corrections, Godwin’s has the potential of providing the basis of an approach to criminal punishment that supports restorative justice ideals and goals.

THE ROAD NOT TAKEN

Modern corrections has always been attended by a potent brew of theology, politics and science (Greven, 1990). For the past two centuries, various assumptions about punishment and its effect on behaviour have fuelled powerful ideological justifications for the construction of prison seminaries, prison factories, juvenile reformatories, therapeutic communities for offenders, and more recently, the “just deserts” prison. Interestingly, all of these experiments in controlling and changing human behaviour have been

based on punishment philosophies – reform and rehabilitation, retribution, and deterrence – that were already current two hundred years ago, when the prison first emerged as modernity’s answer to the growing glut of criminals generated by the new economic and social order.

At the height of the original debate on the purposes of legal punishment and designs of prisons, Jeremy Bentham was lobbying the English Parliament to push through funding for his Panopticon (Semple, 1993) and the Pennsylvania Quakers were implementing John Howard’s ideas in their reconstruction of the Walnut Street jail (Ignatieff, 1978; Rothman 1971/1990). At the same time, Godwin, now known as the “father of Anarchism”, was expounding another point of view for responding to wrongdoers. In his *Enquiry Concerning Political Justice* (1793/1976), Godwin offered trenchant criticisms of deterrence, retribution, and reform as justifications for punishment. He also offered an alternative. This alternative was the road not taken, or, more straightforwardly, the historical loser in the political history of punishment. Like most punishment theory, Godwin’s alternative included, in basic outline, a normative political theory of the state’s role in identifying and controlling law violators, assumptions about the psychological effects of punishment and its influence on behaviour, and by inference, a proto-sociological theory of social order and control. Each of these aspects of Godwin’s views is examined below.

GODWIN IN CONTEXT

William Godwin was an active, well-known participant in the intellectual ferment of late 18th-century London. The son of a middle-class Congregationalist minister, he was educated for the ministry at an elite Dissenting seminary, which offered a more free-thinking climate than the staunchly conservative environs of Oxford or Cambridge (Stafford, 1980). Under the prevailing influence of Enlightenment thinkers, Godwin rejected organised religion in early adulthood and became a supporter of the French and American revolutions, although he was sharply critical of the natural rights philosophy that undergirded them (Stafford, 1980). He lived openly with and then, when she became pregnant in 1797, married Mary Wollstoncraft, the first great modern feminist (Kramnick, 1976).

Godwin’s nascent anarchist political philosophy showed influences from both the liberal individualist tradition that shaped the US Constitution and the communitarian tradition associated with Jacques Rousseau that later

emerged in the socialist and communist challenges to industrial capitalism in the nineteenth century. Accordingly, Alan Ritter (1980), has described anarchist political philosophy as “communal individuality”.

Godwin’s punishment theory can be interpreted as one of the first modern articulations of what is known today as the moral education theory of punishment. Like many Enlightenment rationalists, Godwin was an ethical objectivist (Stafford, 1980, p. 280). He believed that in situations involving moral choice, that is, choices that concern harm, fairness, and group or individual welfare, there is a right and wrong choice, which individuals may determine independently of their subjective emotions or the circumstances of the situation.²

‘What is the standard of morality and duty ?’ Justice. Not the arbitrary decrees that are in force in a particular climate; but those laws of reason that are equally obligatory wherever man is to be found. There is an obvious distinction between those particulars in each instance which constitute the permanent nature of the case before us, and those interpositions of a peremptory authority to which it may be prudent to submit, but which cannot alter our ideas of the conduct to which independent man ought to adhere. (Godwin, 1793.1976, p. 638)

Godwin’s assertion on this point is important for any version of the moral education theory of punishment because, in this view, punishment is justified as a way of preventing wrongdoing only “insofar as it can teach both wrongdoers and the public at large the moral reasons for *choosing* not to perform an offence.” (Hampton, 1995, p. 117). This, although “ideas of conduct” are universal, competence in their application is a learned skill. Most thinkers who have advanced the moral education theory, including Godwin and Emile Durkheim (1925/1973), maintain that moral judgement is not passive deference to a set of rules or values, but in Durkheim’s words, “enlightened assent.” “We must have knowledge, as clear and complete an awareness as possible of the reasons for our conduct,” and so “...teaching morality is neither to preach nor to indoctrinate; it is to explain.” (Durkheim, p. 120). Moral knowledge, in this perspective, is generated by people’s deliberations about and “explanations” of the problems they define and encounter in daily life. Good explanations are then transmitted to others as solutions that work to preserve individual integrity and simultaneously promote cooperation and social welfare.

In a nutshell, Godwin was articulating what today is called a cognitivist moral psychology. Moral cognitivism supports Godwin's perspective with the premise that competence in making moral judgements depends on the cognitive reasoning skills a person employs in her or his particular deliberations about the applicability of norms and rules to particular situations. We might think of the moral cognitivist as making an important distinction between reasons for action and motives for action. In other words, the cognitivist does not deny that moral judgements may be accompanied by strong emotions or that individual psychological states may provide unconscious (or conscious) motivations to act in certain way, moral or otherwise. Rather, she asserts that moral judgement fundamentally involves a process of rational deliberation about the moral "facts of the matter" (Wren, 1991), or in Godwin's term, "ideas of conduct". A sound moral judgement cannot be right today and not right tomorrow (if all things remain the same), nor can a moral reason for acting in a certain way apply to me and him, but not for you and her (again assuming each of us faces the same circumstances.) Moral judgements have their own logic, in other words, which is not a logic contingent on individual experience. Yet this logic is not simply "there", inborn in greater or lesser degree in individuals. Godwin, and later Durkheim, suggest that cognitive-moral reasoning skills are rather nurtured and expressed, and to some degree given their content, within specific social contexts. Individuals who lack opportunities to engage with others as respected, but perhaps not yet equal (in the sense of fully competent), partners in deliberations that entail important consequences for themselves and others will not develop the degree of moral autonomy they need to assume a productive and satisfying role in their communities.

The fundamental focus of the moral education theory of punishment is the significance of moral autonomy for the maintenance of social cooperation and order. Each individual, endowed with reasons and thus with the capacity to act responsibly, is his or her own ultimate moral authority in matters of choice and therefore responsible for those choices. Individuals do not merely internalise social norms and act as "judgemental dopes" (Garfinkel, 1967/ 1990) then they conform to social expectations and norms that promote cooperation and social welfare. Instead they act morally, even when such actions override immediate self-interest, when and because they understand the intrinsic truth and value of morality's dictates for their own life and human society. For anarchists, like their classical liberal-individualist

counterparts, moral autonomy is a primary correlate of human freedom that both describes a fundamental condition of human identity and provides a normative ideal for systems of governance and organisation. Nevertheless, their “communal individuality” leads anarchists, contrary to a popular stereotype, not to value individual liberty over social welfare. Instead they argue in ways that promote their insight that one requires the other. Godwin’s punishment theory provides an excellent example of these arguments.

For Godwin, moral knowledge is of paramount significance for the development of independent individuals who will advance the common good. Anything that impedes moral knowledge should therefore not be promoted or tolerated. Coercion does precisely that:

Let us consider the effect that coercion produces upon the mind of him against whom it is employed. It cannot begin with convincing; it is no argument. It begins with producing the sensation of pain, and the sentiment of distaste. It begins with violently alienating the mind from the truth with which we wish it to be impressed. It includes in it a tacit confession of imbecility. If he who employs coercion against me could mould me to his purposes by argument, no doubt he would. He pretends to punish me because his argument is strong; but he really punishes me because his argument is weak. (pp. 641-642).

EIGHTEENTH-CENTURY PUNISHMENT THEORY

The three punishment philosophies that supported the expansion of the new carceral network in the late 18th century relied, Godwin argued, on a notion of justified coercion to effect socially positive outcomes from legal and moral wrongdoing. None, therefore, was oriented towards the recognition and development of moral autonomy. First, the deterrence theory that emerged from Bentham’s utilitarianism is completely ruled out by Godwin’s ethics and moral epistemology. Moral reasoning for Godwin is distinct from prudential reasoning. Deterrence theory is based on the idea that individuals who choose to violate laws or important social norms do so on the basis of self-interested, cost-benefit calculations. The aim of punishment is to force them to recalculate the odds (Bentham, 1781/1998). Deterrence theory is therefore indifferent to moral reasons for actions involving legal wrongdoing, a view that for moral cognitivists like Godwin, is a completely deficient account of human interaction and communication. Instead, the moral education theory of punishment

presupposes that the capacity for moral reasoning and knowledge is the defining characteristic of human beings (Hampton, 1995).

Second, Godwin objected to retributivism. His arguments against it were somewhat diffuse, but one of his primary objections drew upon utilitarian assumptions. Retributivism is premised on the idea that punishment is the logical and natural consequence of wrongdoing. Against this view, Godwin argued that “the man who should shut up in prison and periodically torture some atrocious criminal, from the mere consideration of the abstract congruity of crime and punishment, without a possible benefit to himself or others” (p. 636) is engaging in the same immoral behaviour as the wrongdoer because the offensive act is past and cannot be controlled retrospectively. In other words, retributive punishment is aimed at serving the punisher’s desires through the infliction of pain on the criminal (p. 633). Understood as such, retributivism is essentially a species of revenge, which if cultivated leads to the degradation of everyone involved. Punishment, according to Godwin, can be justified *only* if it prevents future acts of wrongdoing (p. 635).³ It is in the moral psychology that undergirds his arguments about how the future acts of wrongdoing can and should be prevented that Godwin parts company with the utilitarians.

Godwin also developed another, different kind of argument against retributivism, which is aimed at the adversarial process in criminal trials. The retributivist contends that a necessary connection exists between a defendant’s intention, his guilt, and his desert. Godwin argued that a jury’s consideration of the psychological states of the offender, the social circumstances of the crime, and the testimony of witnesses was always inherently fraught with interpretive ambiguities - ambiguities that could not, indeed should not, be reconciled in to some version of the “truth” that established the retributivist connection “beyond a reasonable doubt” (pp. 652-657). The honest person will admit that all humans are highly inscrutable to both themselves and others, and that even in mundane matters, two people can reasonably disagree about “what happened” (pp. 682-683). For Godwin, the forced versions of “truth” produced in criminal courts are mere cover-ups for indulgence in the impulse for revenge in the aftermath of crime. In time, people tend to move from anger to compassion, “for the same reason that a master if he do not beat his slave in a moment of resentment, often feels a repugnance to the beating of him at all” (p. 657). Unlike many of his educated contemporaries. Godwin was sceptical of the reforms in the criminal justice system taking place in

England and Western Europe, concluding his critique of retributivism with the observation that, “it is easy for a man who desires to shake off an imputation under which he labours to talk of being put on his trial; but no man ever seriously wished for this ordeal who knew what a trial was” (p. 657).

Finally, Godwin opposed the reform philosophy of punishment, then best articulated by John Howard. Reformation, which ultimately aims at improving a person’s outward display of moral character, cannot be achieved through any form of coercion. The very fact of coercion confounds the basis of positive change because it relies on external threat or the use of force, rather than on reasoned, reciprocal deliberation to achieve the wrongdoer’s consensual compliance with moral norms. Many correctional researchers seem to be arriving at a similar point of view today, at least in terms of their views on whether incarceration has any *intrinsic* role to play in offender rehabilitation. Indeed, Godwin sounds quite contemporary in his contention that the reformation approach’s exclusive focus on the individual wrongdoer in practice removes him from the processes of social intercourse through which he might learn to practice “benevolence and justice” (pp. 677-678).

These arguments, he cautioned, should not lead us “to lose sight of reformation,” but to conclude that “reformation cannot reasonably be made the object of punishment” (p. 669). As a temporary expedient, punishment *can* change behaviour, but the obedience or even changed opinion it produces are based on self-interest activated by fear; hence “servility has operated that within him that liberal enquiry and instruction were not able to do (p. 668). Contemporary moral education theorists use similar arguments to oppose rehabilitationist corrections, because, they argue, modern rehabilitation is based on forms of psychological, sociological, or biological determinism. In theory if not in practice, correctional rehabilitation affirms any procedures that effect the desired behavioural changes in the wrongdoer. Historically, rehabilitational corrections has been more dependent on therapists’ consciences than on their theoretical assumptions for assigning limits to the kinds and thresholds of treatment that can be sued. As Jean Hampton (1991), a contemporary moral philosopher maintains, “the moral education theorist does not want ‘education’ confused with ‘conditioning’...The goal of punishment is not to destroy the criminal’s freedom of choice, but to persuade him to use his freedom in a way consistent with the freedom of others. Thus any punishment that would damage the autonomy of the criminal is ruled out by this theory” (p. 126).

PUNISHMENT AND SOCIAL CONTROL

These are the core elements of Godwin's moral theory and his main arguments against the traditional justifications for legal punishment. To support his alternative view, he also developed a nascent theory of social control as it relates to the purposes and justifications for punishment. As mentioned, Godwin was a rationalist who believed that moral progress tends to manifest itself in decreasing reliance on government to achieve social order and welfare. Government in all its forms, he believed, was a kind of tyranny of the few over the many. In the background of this view is the religious antinomianism of Dissenting Protestantism, which Godwin translated in to a secular critique of law, or "governmental social control" as a barrier to the development of independent, virtuous individuals.⁴ For Godwin, a society of equals free from governmental coercion and domination would be a society in which individuals would be able to reach their capacity to exercise moral judgement without relying on others to motivate or reward them. In this sense, Godwin was most definitely not a utilitarian because utilitarianism is based on the assumption that both the "good" and the "right" are defined by the consequences of one's actions.

Instead, Godwin implicitly advocated a perfectionist ethic, consistent with his religious training and ethical objectivism (Stafford, 1980, pp. 286-287). Moral development in this perspective emerges when individuals "do good for goodness' sake", because their understanding of goodness is not dependent on contingent values and goals. In direct opposition to political liberalism which supports an expanded role for government, Godwin argued that the authority of the state should never be employed to create or contribute to a more just society because:

It is a violation of political justice to confound the authority which depends on force [i.e. government], with the authority which arises from reverence and esteem;... These two kinds of authority may happen to vest in the same person; but they are altogether distinct and independent of each other. The consequence which has flowed from confounding them has been a greater debasement of human character than could easily have followed upon direct and unqualified slavery... Man is the ornament of the universe only in proportion as he consults his judgment. Whatever I submit to the irresistible impulse of necessity is not mine... Where I make the

voluntary surrender of my understanding, and commit my conscience to another man's keeping, the consequence is clear. I then become the most mischievous and pernicious of animals...I put an end, as to my own share, to that happy collision of understandings upon which the hopes of human improvement depend. I can have no genuine fortitude, for fortitude is the offspring of conviction. I can have no conscious integrity, for I do not understand my own principles, and have never brought them to the test of examination. I am the ready tool of injustice, cruelty and profligacy;...(pp. 243-244).

There is a kind of paradox in Godwin's perspective on the relationship between morality and social order that is inherent in the moral education theory of punishment and more generally in Enlightenment rationalism. Cooperative social action undertaken in the pursuit of collectively defined social goals leads to coercion and servility, a condition antithetical to the development of moral knowledge. Although humans are fundamentally social animals, individuals come to know themselves and reach their full human capacities only if they are provided with the conditions and skills to exercise freedom and learn from their experiences and their mistakes; freedom is a necessary precondition to moral autonomy. But – here's the paradox – the morally autonomous person, Godwin's anarchist citizen, will always exercise her or his freedom in promoting social welfare, that is, in benevolent, "other regarding" action. Hence, the exercise of moral autonomy is not a kind of moral independence that inures the individual to criticism from others such that he can pursue unhampered individual goals. It is rather the fullest expression of the individual's recognition of the commitment to human community.⁵

Based on such assumptions, Godwin argued that one of the best ways to bring a "hardened criminal" back in to the social fold was to cast him in to the wilderness (i.e. banish him) and let him learn the lessons of survival without a paternalistic authority overseeing his progress (p. 690). Besides its apparent inconsistency, with his criticism of Howard's reformation approach to punishment, this example illustrates a vulnerable aspect of Godwin's theory: his embrace of Enlightenment optimism. Enlightenment thought assumed that, when left to free development, reason and morality will emerge hand in hand, leading toward the best possible outcome for human relationships and society. A richer, "postmodernist" (as in post-

Holocaust, post-colonial) version of the moral education theory of punishment perhaps needs to be developed and include an account of tragedy and the inevitability of human failing.

MORAL ORDER

Like Durkheim (1925/1973), Godwin elaborated a consensus view of social order (Garland, (1990). Since moral knowledge has an objective basis, people can and often do agree on the basic terms of their relationships. (In Durkheim's terms, social order is premised on "pre-contract" rules and norms that secure people's desire for social cooperation [Durkheim, 1893/1984]). Disagreements and conflicts arise from ignorance and fear, which Godwin argued exist in proportion to the degree to which any given society employs coercive, punitive methods to achieve certain goals. The more freedom (i.e. less government) a society fosters, the more social control of wrongdoers will be informal and non-coercive. Non-coercive social control in an anarchist society is based, negatively, on reprimand and censorship ("reintegrative shaming" in John Braithwaite's [1989] term), and positively, on the free and vigorous exchange of ideas. Individuals, as opposed to communities (by which Godwin meant groups organised to achieve collective social action), may and should exercise their own freedom to ensure that other individuals do not impede this exchange:

Coercion, exercised in the name of the state upon its respective members, cannot be the duty of the community' but coercion may be the duty of individuals within the community. The duty of individuals, in their political capacity, is, in the first place, to endeavour to meliorate the state of society in which they exist, and to be indefatigable in detecting its imperfections. (p. 661)

On the affirmative side, however, Godwin maintained that communities were "competent to change their institutions, and thus to extirpate offence in a way infinitely more rational and just than that of "punishment" (p. 660). In other words, organised collective action that promotes institutional reform to increase individual freedom and welfare is not only always possible, but always desirable because to do so is a rational way of simultaneously fostering connectedness and decreasing individual wrongdoing. Institutionalised inequality and oppression proportionately multiplies the kind and degree of punishments employed to maintain the benefits of the society's dominant members (p. 673). Both communities and individuals have duties to eliminate

as much as possible institutionalised coercion, especially its most virulent form of punishment, but they have different legitimate means of carrying out their duties. Communities should act only to effect positive institutional change, never to coerce people to pursue those changes or to act in certain ways. The ultimate goal, according to Godwin, is “the abolition of all punishment” (p. 652), because “punishment has no proper tendency to prepare men for a state in which punishment shall cease (p. 659).

Despite these arguments, Godwin believed that there was one justification for coercive treatment of wrongdoers shared by nonanarchist governments and communities. Some wrongdoers, he maintained, pose immediate threats to life and security and must therefore be restrained. Restraint is distinct from punishment, because “punishment is employed against an individual whose violence is over”, whereas restraint seeks to prevent future injury (p. 643). In today’s terms, this is called incapacitation. Although restraint of those who pose immediate threats is justified as a form of social self-defence, Godwin astutely cautioned that the threat of future harm “is the very argument that has been employed to justify the most execrable tyrannies” (p. 643). His moral education theory established limits to restraint that the criminal justice system of his and our own time do not. Restraint is justified only when “allowing the offender to be at large shall be notoriously hazardous to public security” (p. 672). Contemporary empirical research has shown that adult murderers have one of the lowest recidivism rates for the same crime type, so Godwin’s limitation would rule out incapacitation for most murderers.

We should grant that there are problems with Godwin’s views on restraint. We know, for example, that accurate predictions of individuals’ future offending based on their past violations are difficult to make.⁵ Godwin’s limitations on restraint rules out incapacitations of people like war criminals who may have participated in genocidal killing but who, like the statistically average murderer, are unlikely to kill again (Ritter, 1975, p. 79). Nevertheless, we might extend and modify Godwin’s views on this point to promote the application of a “standard of the least restrictive alternative” to criminal sentencing, which would be consistent with the assumptions of the moral education theory of punishment.⁷ The three principles Godwin developed to guide a society’s response to criminal wrongdoing, or as he terms to, the ensure “the justice of punishment” would be appropriate to this endeavour:

- 1 Every man is bound to employ such means as shall suggest themselves for preventing evils subversive of general security, it being first ascertained, either by experience or reasoning, that all milder methods are inadequate to the exigencies of the case.
- 2 When indeed the person of the offender has first been seized, there is a further duty incumbent on his punisher the duty of endeavouring his reform. But this makes no part of the direct consideration. The duty of every man to contribute to the intellectual health of his neighbour is of general application.
- 3 Restrain the offender as long as the safety of the community prescribes it, for this is just. Restrain him not an instant from a simple view to his own improvement, for this is contrary to reason and to morality (p. 675).

We might add to this list a fourth principle or “credo” to guide the basic attitude towards those who act in socially destructive, harmful ways:

- 4 If there be any man whom it may be necessary, for the safety of the whole, to put under restraint, this circumstance is a powerful plea to the humanity and justice of those who conduct the affairs of the community, in his behalf. This is the man who most stands in need of their assistance (p. 672).

In sum, Godwin viewed punishment in all its forms as an unsatisfactory, indeed self-defeating, approach to moral education. Individuals and communities should strive to overcome the need for punishment, not to institutionalise it. Contrary to other traditional punishment philosophies which seek to provide a normative theory of justification for the infliction of some form of suffering on wrongdoers, Godwin’s version of the moral education theory denies that punishment is ever justified.⁸ Rather, it is an unfortunate consequence of unequal, coercive human relationships.

Godwin’s moral education theory of punishment is complex – its main points have only been touched upon here – and grounded in an early version of anarchist political philosophy that has many problematic theoretical and practical aspects. Yet the moral education theory of punishment is not limited to William Godwin or to anarchism as political philosophy. In different versions, it has been developed by diverse scholars, including Emile Durkheim (1925/1973), Lawrence Kohlberg (*et.al.*, 1972’ Kohlberg, 1981),

and (indirectly) John Dewey (1994). In all its versions, the moral education theory of punishment is based on assumptions that are intrinsic to Judeo-Christian values and modern political philosophy. This may be both its strength and its weakness. Many contemporary scholars, for example, are critical of the moral and epistemological rationalism on which Godwin's perspective on punishment is premised. Nevertheless, the strength of his perspective lies in the fact that, as the road *not* taken, it provides the basis of a powerful critique of the history and present practices of corrections. Godwin stresses the significance of moral learning in non-coercive social contexts that actively and directly engage both offenders and non-offenders in mutually relevant problem-solving. He also provides a basic set of assumptions for non-carceral, restorative solutions to crime control. In this respect, Godwin's punishment theory clearly has a place as an early forerunner to the restorative justice movement.

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Notes

- 1 The exception is capital cases in which juries make sentencing determinations.
- 2 Ethical objectivism does not *necessarily* entail the belief that moral knowledge is so
how available to social actors without dependence on their conceptual-linguistic
and cultural frameworks. There are many different versions of ethical objectivism
developed by contemporary moral philosophers. For an overview, see the essays
collected in *Moral knowledge: New readings in moral epistemology*, edited by
W.Sinnott-Armstrong and M. Timmons (NY: Oxford, 1996). Godwin, however,
was a man of his day, and therefore a rationalist in matters of moral epistemology:
he believed that reason, a capacity shared by all humans, provides access to universal
moral truths.
- 3 Godwin employed utilitarian assumptions to argue that capital punishment –
execution of the offender – is never justified because, it is always sufficiently
practicable, without this, to prevent him from further offence” (p. 672).
- 4 See E.P. Thompson’s *Witness against the beast* (The New Press, 1993) for an engaging
historical account of religious antinomianism translated in to radical social and
political protest in the 18th century.
- 5 Thus on this point Godwin’s views are more akin to Kant’s who wrote, “It is duty to
oneself as well as to others not to isolate oneself...but to use one’s moral perfections
in social intercourse...Whilst making oneself a fixed centre of one’s principles, one
ought to regard this circle drawn around one as also forming an all-inclusive circle
of those who, in their disposition are citizens of the world. (*The metaphysics of
morals*, p. 265, Mary Gregor, trans, NY: Cambridge University Press).
- 6 For this reason, it would be hard to make a clear distinction between “restraint” and
“preventative detention”, a practice which is constitutionally and ethically
controversial, as illustrated by recent debates on post-release commitment of sex
offenders to treatment programmes. Nevertheless, assuming some initial criteria
could be agreed on, corrections would be revolutionised is restraint functioned as
the only allowable justification for incarceration. If this seems impractical, one
might point to welfare reform as a precedent in terms of politician’s recent willingness
to overhaul a huge social institution without any clear assessment of what the
consequences might be.
- 7 For a contemporary argument for a standard of the least restrictive alternative applied
to criminal sentencing, see Michael Tonry’s (1995) conclusions.
- 8 Godwin is quite radical in his view that punishment *per se* is never justified. Other
theorists would not state their positions in such unequivocal terms. For example,
Hampton (1995) claims that, “punishment is justified as a way of preventing
wrongdoing insofar as it can teach both wrongdoers and the public at large the
moral reasons for *choosing* not to perform an offence”(p. 117). A Godwinian retort
to this formulation might be that *effective* moral education would never be
experienced by either the wrong doer or the educator as *punishment* since coercion
would not – could not – be involved. In other words, if moral education serves and
improves the well-being of offender , educator and community, it should not be
referred to as punishment.

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