Kant, Merit, and Punishment – Part II

(The excerpts by Kant come from: *Foundations for the Metaphysic of Morals*, the *Critique of Pure Reason*, and *The Science of Right*.)

I. Preliminary Remarks

These notes will change the order of the reading a bit. I will begin commenting on the section titled 'Of the Ideal of the Summum Bonum as a Determining Ground of the Ultimate End of Pure Reason' (pp. 36-39). The I will return to Kant's remarks on merit, which begin at the very bottom of page 35, and continue on the first column of page 36. To conclude, I will comment on the last section of the excerpt, titled 'The Right to Punish' (pp 39-41).

II. Morals, Merit, and Happiness

Let me begin with this: The part of the excerpt by Kant titled 'Of the Ideal of the Summum Bonum as a Determining Ground of the Ultimate End of Pure Reason' is very difficult. It comes from Kant's main work, the *Critique of Pure Reason*, which is a famously difficult text. We could spend half of the semester struggling and discussing those few pages alone. But we won't. You should read those paragraphs (you should read all the excerpt). However, here I will focus on two remarks Kant makes in those paragraphs. Both of these remarks point to Kant's thoughts on happiness and its relation to morality, which leads Kant to commenting also on the relation between happiness and merit.

On page 38, in the first column, Kant declares that we must "*Do that which will render [us]* ***worthy*** *of happiness*" [NOTE: there is an important mistake in this translation—which I have corrected while quoting. The text should say "...worthy of happiness.." *not* "...unworthy..."]. Anyone who values happiness (which is most likely most of us, if not everyone) would want to ask why Kant says this.

If you have already read the first part of my notes on Kant, you'll remember that Kant doesn't think that happiness is much of a moral compass. As we saw in the first set of notes, Kant

believes that it is reason, and reason alone, that which should be the source of any sort of moral action. Remember that for Kant, a will is good, not on account of what it does, but because it can "picture" a moral law that is universal (that is, that anyone can abide by), and in "picturing" this law, it can choose to do what that law commands. Furthermore, remember that the source of this law is reason, and not any other faculty of the mind. In other words, Kant believes that since we are rational creatures, and since reason works the same way for everyone (reason is universally the same in everyone, according to Kant), then we all have access to the same moral laws, and must abide by them if we want to be moral creatures.

Now, since happiness has been for a long time an important component of different moral theories, perhaps Kant feels compelled to make some room for it in his moral theory. You'll remember from the first set of notes on Kant, that Kant argues that happiness can never be the compass of moral action. The goodness of an action, and thus its moral value, is determined by whether it adheres to reason's categorical imperative. Furthermore, Kant argues that part of the reason happiness cannot be the end of moral action is that: 1) it is a somewhat fluid notion, in the sense that different individuals will have different ideas of what happiness is; 2) more importantly for Kant, this is so because happiness is tied to inclinations, not reason—and inclinations are dependent of desires and emotions.

What is problematic, for Kant, about our practical pursuit of happiness, is that it is not a universal pursuit. We could say that happiness is not a good guide for moral action, precisely because we have different conceptions of it, or different contents for what counts as happiness. Perhaps for you, happiness is akin to being a successful marathon runner, while for your sibling, happiness is related to becoming a singer in a famous pop band, etc. Kant believes an action that has positive moral value must be grounded on the fact that it is the same for everyone—and actions guided by happiness are inherently not universal. Actions like not lying or not killing are standards that we can *all* be measured by (or at least Kant claims this). And our compliance to these "moral standards", dictated by the categorical imperative, are never guided by happiness. Nevertheless, he does believe that actions that have moral worth can be a source of happiness. In this sense, even though happiness does not guide moral action, in some instances it can help in its pursuit.

However, this is only part of the story. The second remark that is at the center of this section comes immediately after the one about rendering ourselves worthy of happiness. It comes in the

form of a question: “If I conduct myself so as not to be unworthy of happiness, may I hope thereby to obtain happiness?” (excerpt, p. 39). Kant’s answer to this question can also seem odd. Let me preface it by making the following clear: Although Kant doesn’t think that happiness is directly related to the moral worth of an action, he does think that it indirectly helps us in becoming morally upright creatures. He believes, for example, that those who lack sources of gratification, well-being, and happiness will have a more difficult time doing morally worthy acts. In other words, even if happiness is not directly related to the moral worth of action, the lack of happiness does endanger the possibility of doing a morally worthy act. For example, Kant would say that someone who doesn’t have the means to eat (because he lacks money, or because has no proper support system to rely on for food, etc.), will be more inclined to do an act contrary to the categorical imperative, like stealing. In this sense, the lack of happiness jeopardizes our capacity to act in a morally positive way.

This, perhaps, is what leads Kant to argue that, even if happiness is not a guide for moral action, its lack is even more detrimental to us. Thus, he finds himself making room for happiness, as at least a tangential or indirect good to pursue. Kant more or less explains this in the second to last paragraph of the section: “Happiness alone is, in the view of reason, far from being the complete good. Reason does not approve of it (however much inclination may desire it), except as united with desert. On the other hand, morality alone, and with it, mere desert, is likewise far from being the complete good. To make it complete, he who conducts himself in a manner not unworthy of happiness, must be able to hope for the possession of happiness” (expert, p. 39). What Kant means is that, even though happiness is not the end goal of morality, this doesn’t mean that there is no connection between them. In fact, what Kant is suggesting is that, although happiness doesn’t guide moral action, it does seem sound for rational agents to *hope* for happiness—that is, it is not far-fetched that along with abiding by the categorical imperative we make ourselves *deserving* of happiness. These passages lead us to other territories in Kantian thought. However, it will not hurt to say that what is behind this connection between moral action and the *hope* for happiness is Kant’s suggestion that rational creatures like us can assume (but never *know* for certain) that there is a higher power (i.e. God) who has designed reality in such a way that moral action, which is directed by reason, merits the delivery of happiness. Unfortunately, the discussion of God in Kant will distract us too much from the matter at hand for us to pursue it here. Nevertheless, it is helpful

to know that Kant argues that, although happiness is not a goal of moral action, it makes sense for rational creatures like us to *hope* that our positive moral actions make us deserving in happiness. Whether happiness is ever delivered to us is a matter we have can have no knowledge of.

III. Kant's General Thoughts on Merit

Once we've understood the central idea about the categorical imperative, what can be described as Kant's logic of merit is quite straightforward. His remarks on the basic criteria of merit apply initially to morality, but we can safely assume that they apply also to matters of right and the law.

Kant declares that anyone who abides by the moral law, deserves nothing special. Certainly someone who abides by the categorical imperative deserves no punishment, since this person is acting according to what the universal moral law dictates. But this person doesn't necessarily deserve any praise or reward either, since she is doing exactly what the categorical imperative dictates everyone to do. We do not deserve special treatment for doing what is right.

In contrast, and quite evidently so, anyone who acts against the categorical imperative, is subject to moral demerit. And in a juridical context, this might mean that this person is subject to punishment. This, of course is to be determined by the law, and, ideally, the penalty must match the moral and legal transgression or criminal injury.

For Kant, then, only those whose actions go beyond what the categorical imperative merit a reward. And we can assume that the more the act goes beyond the limit of the what the categorical imperative commands, so to speak, the greater the reward, or at least the more deserving of a reward. Kant only gives a short example of what he has in mind, but it is clear enough to give us an idea of what he means. He suggests that, for example, saving a person who is a complete stranger from a dangerous situation, particularly if saving this person puts our life at considerable risk, is something goes beyond the commandment of the categorical imperative. Were we to succeed, we would deserve some sort of reward.

IV. Punishment

In this section, from Kant's book titled *The Science of Right*, focuses on judicial punishment, and

not merely on moral merit and demerit. Perhaps it is worth starting off by noticing that Kant declares that the "penal law is a categorical imperative" (excerpt, p. 40). What Kant's words suggest is that once humans form a social group regulated by agree-upon laws, those laws—he assumes—are an extension of the moral dimension of the creatures that we are. They are an extension, in other words, of the universal moral laws we can all recognize as the rational creatures we are. In this sense, the application of the law by an appointed judge must be applied always, not with the intention of using whomever committed an infraction as means for something. Instead, the expectation is that the law is always applied looking to deliver the deserved punishment. In this sense, the delivery of a punishment determined by a law (and a judge that helps determine that this is so), is never to be used as a forms of making an example out of the criminal. The delivery of punishment only looks to deliver what is due for the committed infraction.

Kant illustrates what he means with an example that is most curious and compelling. Imagine that Joseph has been found guilty of murder. According to Kant, the appropriate punishment for committing a murder, is death. (Kant is a strong supporter of capital punishment—more about this in a moment.) Imagine, however, that instead of being executed, Joseph agrees to be subjected to painful and dangerous experiments as his punishment. The experiments, Kant imagines, are meant to serve some sort of medical purpose. If Joseph survives the experiments, then he is allowed to live—his life is spared. Even if a group of knowledgeable doctors argue in favor of this option, contending that the results of the experiments on Joseph will bring great benefit to humanity, Kant believes that this would go against the categorical imperative *and* the law. He says this because the application of (criminal) law is never meant to use the person who is punished as a means for anything. The laws and their application are meant only to deliver the appropriate punishment. Anything that departs from that strict view of the purpose of laws, becomes a departure from justice and from what reason dictates.

We can assume that Kant envisions that a system of laws will consider general options regarding actions which count as requiring punishment. But, furthermore, each instance of the application of a specific law is to be considered by an appointed judge in the appropriate setting. That is, each law, although determines a general idea of which infractions merit which punishments, the application of the law seems to allow for some wiggle room, depending on the agents and the circumstances. Curiously, Kant illustrates this detail of the application of laws

taking into consideration the possible difference in socio-economic status between of two different agents. If a person who is wealthy is imposed a fine for slandering another—perhaps someone not at all wealthy and of a less social standing than the one who committed the slander—then this will hardly affect the slanderer. Kant argues that, in this case, there seems to be no "direct proportion to the injustice of the original injury" (excerpt, p. 40). A fine will be barely felt to be a punishment by the wealthy person. However, Kant suggest, if instead the penalty involves also a public apology and perhaps a kiss on the hand of the offended individual, then this will be felt by the more wealthy and "honorable" slanderer as a humiliating experience. (Sure, Kant's example is outdated—we do not think of kissing the hands of those who are wealthier and more "honorable" than us as a way of rendering respect, and that the reverse is a form of humiliation—but we get his point: his example means to show that the slanderer is to be subjected to an equal amount of humiliation as caused to the person whom he slandered.) In this sense, Kant is arguing that the universality of a law is only to be found out in the appropriate application of the law. The main principle to be followed is that any infraction to the law is to be subject to some form of retribution. Justice, for Kant, seems to be only found in the application of a *proportional punishment* that matches the damage or injury caused by the crime.

However, there is at least one crime that allows for no wiggle room depending on the circumstance and the agents: murder. Kant, as I mentioned above, argues strongly that the only punishment fit for someone who has committed murder, is death. We can assume that, one simple explanation for this is that Kant finds that anyone who is willing to take another person's life, is then willing to be subjected to the same treatment, and therefore *must be subjected to the same treatment*. This train of thought follows, in very general stokes, the logic that informs the categorical imperative: "Act only according to that maxim whereby you can at the same time will that it should become a universal law". In this sense, if someone decides to murder another person, this means that he is also subject to a maxim that he has willed to become a universal law. However, the point of capital punishment, for Kant, is never to make an example out of the murderer by killing him. Rather, it is strictly conceived by him as a matter of absolute retribution, to be handled by the state.

I'll end with this: there are those readers of Kant who find his defense of capital punishment sound. And they have good reason to defend him, insofar Kant insists that the only way to conceive

of desert when it comes to moral and criminal issues is to match the injury with an equal amount of injury. This seems, on the surface at least, a sound conception of justice. However, Kant also had said that moral injury, and by extension criminal injury, is the denial of an individual's rationality. Remember, what the categorical imperative is after is the defense of each individual's capacity to choose, that is, to exercise reason. The exercise of reason by means of rational choice is at least one way in which we uphold our dignity and inherent value as humans. Are we not, then, forced to ask: Is not capital punishment—the death of someone—also a way of denying someone's rationality and inherent value? There seems to be no sound Kantian criticism to Kant's defense of capital punishment. But it is also difficult to measure if Kant's economy of punishment of 'an eye for an eye', is really beneficial to the uplifting of humanity as whole. It is difficult to see, in this sense, what logic upholds the right for the state to kill an individual. In this sense, Kant's economy of punishment seems to be somewhat distorted.