

Anselm on the Character Creation Theory of Punishment

Katherin A. Rogers
University of Delaware

How can we deal theoretically with the issue of forgiveness? I have found that when facing a philosophical puzzle here at the beginning of the 21st century, help is very likely to be found in the work of Anselm of Canterbury. It turns out that Anselm provides a series of plausible theses about human choice, action, and responsibility, out of which a viable theory of punishment, what I call the Character Creation Theory, can be constructed—a theory which satisfies our various intuitions about punishment at least as well as other retributivist views, but which can make sense of the appropriateness of forgiveness. In this paper I would like to set out the premises of the theory as they appear in Anselm’s work.

In 1983 Karla Faye Tucker committed a horrific murder for which she was sentenced to death. During the fourteen years of appeals she (at least to all outward appearances) repented of her crime, underwent a complete conversion to Christianity, and became a model prisoner and spiritual support and advisor to other inmates. She requested that her sentence be commuted to life. Her requests were ultimately denied, and she was executed in 1998. Her case occasioned a nationwide debate in the United States in which many spoke against her execution. Some posed the standard arguments purporting to show that capital punishment is always wrong. Others held that the original sentence had been unfair. A third commonly expressed sentiment was that she had changed so much since the crime that, even if she deserved to die on the day she was sentenced, she did not deserve death any more. This third position seems plausible and wholesome, and yet contemporary theories of punishment cannot deal with it.¹

Since the issue is what Tucker “deserved,” those advancing this third view can be categorized as retributivists. That is, we do not punish in order to achieve some benefit for society. We punish because it is deserved. But contemporary retributivist theories focus exclusively on the fact of the past action. The wrongdoer deserves to suffer in virtue of having knowingly and willfully done wrong. If justice requires that the one who has done wrong should suffer the appropriate punishment, how is it that Tucker no longer deserves to be executed? The claim is *not* that justice required that she be punished in 1998 as much as in 1983, but that some other moral value came into play to conflict with the demands of justice. Nor is it that Tucker ought to be shown mercy, if we take “mercy” to mean being punished less than one genuinely deserves, such that mercy introduces a problem of injustice.² The claim is rather that Tucker in 1998 truly “deserves” less punishment than she did in 1983. I will use “forgiveness” to mean the choice to punish less because the offender has come to deserve less punishment.³

¹ In saying this I do not intend to endorse the death penalty. For the purposes of this paper, that issue can be bracketed.

² This is a standard understanding of “mercy.” See, for example, Alwynne Smart, “Mercy,” *Philosophy* 43 (1968), 345–59.

³ The law speaks of “commuting” a sentence, but for my purposes “forgiveness” seems the more appropriate term connotatively. I am using the word in a somewhat non-standard way. For comparison see, for example, Jeffrie

A few contemporary retributivists have recognized the reasonableness of the intuition that someone who has undergone a radical change of heart deserves less punishment than she originally deserved, but the standard move has been to argue that the changed person is, in some more-than-metaphorical sense, a genuinely “new” person. The real offender no longer “exists.”⁴ Were this analysis correct, there could be no forgiveness as I understand the concept, since forgiveness requires that the same person who at one point deserved more punishment at a later point comes to deserve less. But surely the analysis is mistaken. If someone had borrowed money from Tucker in 1982, she could hardly say, in 1998, that she did not owe the money since the Tucker from whom she had borrowed no longer existed. Tucker herself, as she was preparing to die in 1998, expressed her deep sorrow for the crimes she had committed. She understood herself to be the same person. This sort of serious repentance is only possible if it is one and the same person who has committed the crime, and then is later sorry for it.

How can we deal theoretically with the issue of forgiveness? I have found that when facing a philosophical puzzle here at the beginning of the 21st century, help is very likely to be found in the work of Anselm of Canterbury. It turns out that Anselm provides a series of plausible theses about human choice, action, and responsibility, out of which a viable theory of punishment, what I call the Character Creation Theory, can be constructed—a theory which satisfies our various intuitions about punishment at least as well as other retributivist views, but which can make sense of the appropriateness of forgiveness. Elsewhere I have sketched and defended this theory in the contemporary idiom, as it might apply to punishment by the state.⁵ Here I would like to set out the premises of the theory as they appear in Anselm’s work. It may be that the theory works better in Anselm’s theist universe in which judgment is backed up by omniscience and perfect goodness, than it does when applied to any earthly penal system. First, I will explain the outlines of the theory, and then show its Anselmian pedigree.

The theory rests on two basic principles. The first is that the wicked deserve unhappiness. punishment is justified because the one with bad character ought to suffer. This can be considered a version of “moral” retributivism, a view which is mentioned in the contemporary literature, but only to be quickly dismissed. My theory is significantly different from standard retributivism. Ordinarily retributivism is expressed as “backwards looking” in that what justifies punishment is the past action of the offender. Consequentialist theories are “forward looking” in that what justifies punishment is the hope of future benefits. The theory I propose is a “present looking” theory. It is not the past which is gone, or the future which has not yet arrived, which justifies punishment. Rather what justifies punishment is the condition of the offender in the present—at the time he is punished.

Murphy, “Mercy and Legal Justice,” *Social Philosophy and Policy* 4 (1986), 1–14. Murphy describes “forgiveness” as a feeling on the part of an injured party (4).

⁴ Smart (1968) p.358. Kant says something similar in *Religion Within the Limits of Reason Alone* 68.

⁵ Katherin A. Rogers, “Retribution, Forgiveness, and the Character Creation Theory of Punishment,” *Social Theory and Practice* 33 (2007), 75–103.

The second principle grounding my theory is the claim that it is through voluntarily and responsibly choosing and doing the morally wrong deed that you become wicked (or *more* wicked). The way we often talk about the criminal reflects this second principle. For example, when we say of the voluntary perpetrator of a brutal murder that he is “no longer fit to live among us” we make a claim, not just about his wicked choice and action, but about his “present” moral condition after the crime. The act itself is not taken to be simply a “symptom” of a pre-existing wickedness which must issue in murder. If the murderer is really deserving of punishment, then the murder must have been committed in a voluntary and responsible way which entails that it is not the necessary acting out of a preestablished character beyond the agent’s control.⁶ The presumption is that, before he committed the murder, this person *was* at least minimally fit to live among us. Chances are he must have been pretty bad already to get to the point where a brutal murder could be an option, but it is through committing the murder that he “becomes” a wicked murderer. His character achieves a sort of “critical mass” of wickedness which makes him deserving to suffer as a murderer. I christen my view the Character Creation Theory of Punishment due to this principle that you create your character through your choices.

In proposing this theory as a secular view of punishment, I am careful to insist upon limitations on the state. We cannot move directly from moral desert to justified punishment by the state because the fact that you deserve to suffer does not necessarily entail that the state, society, or anyone, short of God, is obliged or even permitted, to give you what you deserve. I assume a simple political model in which the main purposes of the state are protecting the rights of its citizens and keeping order. I hold that, although all of the wicked deserve unhappiness, the state must appeal to consequentialist reasons like prevention and deterrence to justify its actually giving particular offenders what they in fact deserve. In its secular version, then, the theory is an “impure” or “mixed” retributivism which can help itself to consequentialist reasoning regarding the role of “legal” punishment.

When this theory is tested against our intuitions it has a great deal of power. It explains why only the guilty should be punished, why the incomplete attempt should be punished less than the completed crime, why it is more than a matter of epistemology that we should not “pay” you for your crime before you actually do it, and a host of other standard beliefs. Most importantly for our purposes here, it makes sense of the intuition that sincere repentance merits forgiveness. The theory holds that punishment is deserved at the time it is administered because of the wicked character of the offender. But this means that someone who truly repudiates his past deeds and genuinely reforms, who undergoes a real change of character, does not deserve to be punished.

There are a number of criticisms one might raise against the Character Creation Theory, especially in its secular incarnation. An examination of its Anselmian foundations will, I think, render the theory more persuasive. Especially interesting will be the organic relationship Anselm

⁶ Whether real moral responsibility can be squared with determinism is an issue outside the scope of the present paper.

sees between divine grace and divine forgiveness. The former is an instance of “mercy” in that it begins the process by which the sinner can escape punishment and is, by definition, not deserved. But divine grace, in Anselm’s story of salvation, is followed by forgiveness which is deserved because of the change which the offender has produced in himself. On the other hand, the non-theist may find the theory less appealing once its Anselmian roots are bared.

Let us start with a quick glance at some qualifications required for the theory in its secular version. Though all the wicked deserve to suffer, it is not the job of the state to see to it that they all get what they deserve. This strikes me as an obvious claim. Anselm makes a similar distinction in explaining how it is possible that the same action ought and ought not to occur. Someone might really deserve a beating, and so it is right that he is hit. But if the one doing the hitting has no right to be administering the beating, then it is not right that the hitter hits.⁷ It seemed unexceptionable to apply this distinction to legal punishment: though someone deserves to suffer, in some instances it is not appropriate for the state to inflict the suffering. Yet a standard criticism of moral retributivism seems to rest on the assumption that if the wicked deserve to suffer, then it must be up to the state to see to it that *all* of the wicked are made to suffer to the full extent of their wickedness. And that would involve wildly counterintuitive consequences in practice. Some readers have questioned the Character Creation Theory as I proposed it, apparently finding it very confusing that I should claim that some might deserve to suffer, but that the state must invoke consequentialist reasons to justify its punishing them.

I think what is at work here is the difference in the assumptions which the theist and the non-theist bring to the discussion. It might indeed be puzzling to suggest that justice requires that someone ought to suffer, but that absolutely no one has any right to inflict that suffering. In a godless universe the state may be the highest authority, the ultimate enforcer of the law, and the purveyor of justice. If justice demands that someone suffer, then, in a godless universe, it would seem to follow that the state should punish. And conversely, in cases where we believe the state should not punish, it must follow that no suffering is deserved. The theist, of course, has a very different perspective. She may well hold that earthly justice is close to oxymoronic (Anselm, though he was forced to deal with political matters, wrote nothing on political philosophy and apparently found the world of politics odious). Happily, on the theist understanding, there is an authority in the universe which transcends the state, and so one can coherently posit “just deserts” which lie outside the mandate of the legal system.⁸

What of the claim that the wicked ought to suffer? Intuitively this seems a plausible claim, but defending it in a secular setting is difficult. Beyond quoting philosophical authority and offering thought experiments in the hope of eliciting the intuition, there isn’t much to say.

⁷ *On Truth* 8. *Cur Deus Homo* 1.7 makes a similar point regarding human suffering at the hands of the devil.

⁸ One of the standard problems raised against moral retributivism is that we, society, are not in a position to judge of the inner states of the offender, and so cannot assess his character. In defending the secular version of the Character Creation Theory, a fair response is that we can and do judge inner states all the time in evaluating responsibility. We cannot do it perfectly, but our rough approximations are enough to do the job. Of course, when the question is one of divine punishment, this problem does not arise.

The claim works differently within a theist theory, at least in an Augustinian universe. Augustine's view, and Anselm agrees, is that the wicked ought to suffer, rather like the pen "ought" to fall if I throw it up in the air, or two and two "ought" to equal four. That is, it is a natural law of the human condition that if you reject God, you do suffer. The popular conception of divine punishment which supposes that one could be wicked and do just fine, were it not that the vindictive divinity steps in to smite, is misguided. On Augustine's analysis of the consequences of sin, man turns away from God and in so doing introduces the ubiquitous condition of war which is our lot—war with God, war with each other, war of the individual against himself.⁹ Anselm echoes this assessment. Sin is the abandoning of justice, which is the effective desire to have one's desires properly ordered to the will of God. What happens if you throw that away? As Anselm says about Adam and Eve, "everything about them became weakened and corrupted."¹⁰ One might say that God "sends" people to hell, but the Catechism of the Catholic Church captures this Anselmian view when it defines "hell" as the "state of definitive self-exclusion from communion with God and the blessed..." (Section 1033; emphasis mine).

Now it is true that Satan, according to Anselm's *The Fall of the Devil*, does not appreciate the necessary connection between wickedness and punishment. Before he sins he knows he "ought" to be punished if he should sin, but he does not know that he "will" be punished. And this lacuna in his knowledge, which he shares with the angels who will remain good, is divinely ordained to give the angels the opportunity to adhere to God freely. It would not be possible to choose the good freely without the possibility of abandoning the good. But you could not possibly choose sin if you saw with perfect clarity that the choice would inevitably be followed by unadulterated misery.¹¹ So before the fall, the angels do not see the connection between wickedness and suffering. But this is ignorance on their part. It does not constitute proof that Anselm sees divine punishment as something extrinsic to the condition of sin—something which God "adds on" to make creatures suffer though they would otherwise continue happy and flourishing in their wickedness.

This conception of "tacked on" punishment is just incoherent in an Anselmian universe. Anselm stands solidly with Augustine in the eudaemonistic tradition.¹² The goal of our existence is happiness, and happiness consists in our flourishing according to our natures as human, which nature has its source in the Idea of Man in the mind of God. Our happiness, then, lies in conforming our desires to God's plan. Failure to do so renders suffering inevitable. Whether or not any of this can be imported in defense of a secular theory of punishment by the state is an open question.

⁹ This is a constant theme in Augustine. One good proof text is *City of God* 14.15.

¹⁰ *On the Virgin Conception and Original Sin* 2.

¹¹ *On the Fall of the Devil* 22–24.

¹² See my "Anselm on Eudaemonism and the hierarchical structure of moral choice," *Religious Studies* 41 (2005), 249–68.

Interestingly, Anselm makes a point of the “present looking” entailment of the claim that the wicked deserve to suffer because of their wicked character.¹³ The Character Creation Theory can be distinguished from consequentialist theories and standard retributivist theories in that these find the justification for punishment in events which are not present at the time of the punishment. Consequentialism looks to effects to be achieved in the future, and standard retributivism looks to actions in the past. But consider Anselm’s discussion of why sin is not to be located in the sinful action, nor in its consequences, but rather in the will:

Suppose sin should be either an action which someone does, which does not exist except while it is being done, and when it is completed passes away so it no longer exists, or the consequences which were produced and remain—as in writing something that should not be written, the act of writing which passes away, produces the letters which remain. As the action passes away so that it no longer exists, the sin would similarly pass away and no longer exist. Or else as long as the consequences [of the sin] remained, the sin could never be blotted out. But we see that often sin is not erased by the end of the action, and is erased, even though the consequences remain. For which reason, neither the action which passes nor the work which remains is ever the sin.¹⁴

It seems to me that this focus on the present is appealing. Consequentialism is notorious for its “forward looking” orientation, in that it seems to use the offender and his present sufferings merely as a means to some future benefit for society. But standard retributivism has an analogous problem with its “backward looking” view. Most contemporary retributivists embrace the point that all that matters is the past deed—the intervening time and events are irrelevant to desert.¹⁵ This is why the intuition that the repentant offender deserves forgiveness poses such a problem for standard retributivism.

The second basic principle of the Character Creation Theory is that one in some sense causes one’s own character through the choices that one makes. Anselm offers a well-developed and plausible libertarian analysis of human freedom which is aimed at explaining and defending exactly this thesis.¹⁶ God has given us freedom precisely so that we cling to the justice He has given us “on our own.” If we do so then we can be said, albeit in a very limited way, to give that justice to ourselves.¹⁷ That is the whole point of God’s making us the sort of beings that we are. Our moral status ultimately derives from choices of which we are the absolute originators. And of course, if we abandon justice then we have made ourselves wicked. (This is not any species of Pelagianism, by the way. We cannot possibly generate any good out of ourselves. All we do is hang on to what God has given—or fail to do so.)

¹³ I thank my research assistant Alison Lubar for calling this to my attention.

¹⁴ *On the Virgin Conception and Original Sin* 4. Translation is my own.

¹⁵ A good example is Michael Moore, *Placing Blame* (Oxford: Clarendon Press, 1997), 168 and 404.

¹⁶ See my *Anselm on Freedom* forthcoming from Oxford University Press.

¹⁷ *On the Fall of the Devil* 18.

In defending this idea that one creates one's own character, Anselm finds himself at odds with many philosophers from radically different perspectives. It is a standard complaint among contemporary compatibilists that libertarian freedom entails that choices are self-caused, and that is impossible since it would involve a sort of creation *ex nihilo*. The free agent would have to be an Unmoved Mover. Anselm argues that this is indeed what freedom means. God has created us in His image, especially by bestowing upon us a power to choose from ourselves. Augustine, too, in the final analysis, is unsympathetic to the idea that we might truly cause our own characters. In a sense we make ourselves wicked voluntarily, but Augustine is a compatibilist, so when we sin "voluntarily" we inevitably choose the lesser goods which we find most desirable.¹⁸ And the idea that we might make ourselves "better" on our own is just absurd in Augustine's view.¹⁹ But if the first principle of the Character Creation Theory of Punishment is plausible, that the wicked ought to suffer, then Augustine's ascribing all decisive causal power to God, seems to entail the unpleasant consequence that God is ultimately responsible for the sin upon which the suffering must follow. Anselm's pioneering work on free will, including the claim that we bear ultimate responsibility for our characters, aims to respond to exactly this problem.

With the two constitutive principles explained, it should be easy to see how the Character Creation Theory of Punishment deals with repentance. One deserves to suffer because one is wicked. And one becomes wicked through consciously choosing to do wicked things, and perhaps becomes even worse by actually doing them, and worse still by continuing to identify with and embrace the deed—steeping in one's wickedness, as it were.²⁰ But this means that, should one repent, that is, come to hate and utterly reject one's crime, one may sincerely change and become good. But the good do not deserve to suffer. And so repentance is deeply relevant to the justification for punishment. Christians, of course, should find this obvious, and perhaps that explains in part the very widespread intuition that Karla Faye Tucker did not deserve the death penalty.

But perhaps my assertion that Christians should find this obvious is a bit hasty. If the claim is that forgiveness is "deserved," does not that conflict with the orthodox teaching, vigorously defended by Anselm, that fallen man cannot be turned from sin and saved without grace, and grace cannot possibly be merited? We do not deserve grace. It would seem that mercy, the undeserved remission of punishment, is what is at issue when the question is divine punishment, and not forgiveness. In the *Proslogion* 10–11, Anselm ponders a question similar to that which vexes standard retributivists. God is merciful, and mercy seems like a good thing, and yet is it not inherently unjust to fail to punish someone who truly deserves it? In the *Proslogion* Anselm argues that both mercy and justice are consistent with, and manifestations of, God's goodness, but in *De Concordia* a more developed picture emerges which sees a necessary and

¹⁸ See my "Augustine's Compatibilism" *Religious Studies* 40 (2004), 415–35.

¹⁹ *City of God* 12.9.

²⁰ These claims are discussed at length in "Retribution, Forgiveness, and the Character Creation Theory of Punishment" forthcoming in *Social Theory and Practice*. I thank my research assistant Allison Lubar for the vivid image of the offender "steeping" in his ruined character.

organic relationship between two separate moments in the salvation story of the individual, one involving undeserved grace towards the sinner and the second involving forgiveness.²¹

In *De Concordia* Anselm insists upon both grace and free will in salvation. “For there is no way that God could justly pay (*retribueret*) the good and the evil for their individual deserts (*meritis*), if they had done neither the good nor the bad through freedom of choice.”²² The condition of original sin is such that the individual cannot be just, because in order to be just one must be motivated by a desire for justice, that is, a desire to conform one’s desires to the will of God. But fallen man lacks this desire and cannot possibly choose to generate it in himself, since we choose only on the basis of our desires. God’s grace restores this desire. And this restoration is entirely unmerited, since we could not be just before we have the desire to be just. It is an act of divine mercy. But on Anselm’s account, and this sets him at odds with Augustine, grace is not irresistible. That is, God can restore the desire for justice to someone who can then abandon it. The individual must hold on to the justice he has been given, and not throw it away.²³ This might seem a small role for free will to play, in that the human being cannot possibly generate any new good out of himself. But it does entail the radical consequence that whether or not a particular individual, to whom God has given grace, is saved or damned depends on the free choice of that individual, and not on the will of God. When the one who has received unmerited grace clings to it through free will, he comes to “merit” his heavenly reward. The interplay between mercy and forgiveness is nicely expressed in Anselm’s parable from *Cur Deus Homo* 2.16 where the innocent citizen (Christ) makes repayment for the whole wicked city (humanity) which has rebelled against its proper king. The payment is adequate to restore the king’s loss, but each individual citizen must choose to recognize and associate himself with the transaction in order to be reconciled. Salvation, then, begins in gratuitous mercy but ends in deserved forgiveness.

Perhaps there is a moral here for punishment even in a secular context. The Character Creation Theory may provide a moral reason for the state to show mercy, even though *prima facie* that entails some present injustice. Suppose failure to punish the offender as much as he deserves now leads to real reformation such that the offender comes to deserve less punishment. Then, ultimately, perhaps very little injustice was done by failing to punish. The possibility that the offender can come to deserve less punishment would seem to be a good argument against the death penalty. Administering the death penalty would put society in the position of denying the offender the chance to come to actually deserve less than this most severe punishment. But whether or not Anselm’s theory of divine mercy and justice can really be meaningfully applied to earthly “justice” is too difficult a question for the present paper.

²¹ A more complete picture would add a third moment to the process. The argument in the *Cur Deus Homo* insists that without the payment of Christ’s sacrifice, God cannot show mercy to the sinful as that would indeed be unjust (1.12). God’s grace does not really come free. It is paid for in His own blood.

²² *De Concordia* 3.1.

²³ *De Concordia* 3.5.