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**A CRITIQUE OF THE RATIONAL CHOICE THEORY**  
**AS A JUSTIFICATION FOR JUSTICE**

**A Long Essay Written in Partial Fulfilment of the**  
**Requirements for the Award of the Baccalaureate Degree in**  
**Philosophy.**

**NAIROBI 2023**

## **DECLARATION**

I declare that this long essay is my original work achieved through my personal reading, research, and critical reflection. To the best of my knowledge, it has never been submitted to any other college or university for academic credit. All sources have been cited in full and acknowledged.

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## **DEDICATION**

I dedicate this work to the family of Mr. Edward and Lydia Mukasa, the Order of Friars Minor, Capuchin, and to all who believe in change, truth, and justice.

## **ACKNOWLEDGEMENT**

My deepest appreciation belongs to the Almighty God for his bountiful compassion and kindness, which have brought me to this point. I am grateful to my parents, brothers, and sisters for their love and support, and I am grateful to the Order of Friars Minor Capuchin for their fraternity and leadership. Fr. Camillus Leku, my lecturer and supervisor, deserves my gratitude for his instruction and patience. My heartfelt thanks to everyone who took the time to proofread my work, finally, I want to thank all of my friends for their encouragement and support.

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## **ABSTRACT**

The world we live in is full of immoralities and crimes that can be collectively termed as injustices. There are several causes of these offensive acts among which are; uncontrolled desires, self-interest, and deprivation of resources. And yet justice demands that social benefits ought to be distributed fairly and impartially, which seems a challenge in the current society. But because human beings are rational, they use their faculties of the intellect and the will, first of all, to gather the necessary information on the desired good. Then they go ahead to choose among the available alternatives in a manner that maximizes their benefits and minimizes their burdens. Having done that, they devise plans on how to attain their desire which can be corporeal or otherwise, and finally, they dive into action. This is not accomplished in a single action but in a series of events, and because it is performed consciously, voluntarily and willingly, it qualifies to be judged as a moral act. In a situation where such actions are discovered to be immoral or criminal, it means they upset the state of balance in society, and justice demands a restoration into equilibrium, which can be achieved through punishment. The intention of punishment is both retributive and deterring, to avoid future offense, and it should not be heavier than the offense itself. Justice is only fulfilled when reconciliation is done after the punishment for the sake of healing.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### **1 Introduction**

Louis O. Kattsoff argues that morality cannot be enhanced or reduced by ethics alone. To put it another way, it does not follow that learning about ethics will endow someone with a set of guidelines they can follow automatically to address every issue they encounter.<sup>1</sup> Mostly, persons who study ethics are no more or no less probable compared to those who do not, rob, murder, or indulge in seduction. By stating that the trained dietician does not always eat healthily, Kattsoff reiterates his position. To know about is not yet to use.<sup>2</sup>

In summary, while ethics may not instantly transform one into a morally upright person, it does give them an understanding of moral action. Ethics looks for a body of morally true information. The main task of someone studying ethics is to think critically about moral circumstances and provide particular solutions to them. This paper intends to explore the meaning of the Rational Choice Theory, and its assumptions regarding how self-interest determines individuals' moral choices, keeping in mind that we are dealing with conscious rational beings. The essay as well examines the phenomenology of morality, assessing the interplay between the will and intellect in moral decision-making. Along the same line, this paper also aspires to justify the need for justice in society in the form of retribution and deterrence kinds of punishments.

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<sup>1</sup> Louis O. Kattsoff, *Making Moral Decisions: An Existential Analysis*. (Hague: Springer, 1965), 4.

<sup>2</sup> Louis, *Making Moral Decisions*, 4.

## 1.2 BACKGROUND OF THE STUDY

Desire is one of the appetitive functions proper to the human person. It follows from our fundamental conception of being as an active identification with oneself.<sup>3</sup> An identification supposes two terms, namely; subject and object. Active identification can occur in two directions, either the subject draws the object into itself, and then we have the knowledge, or the object draws the subject towards itself, and then we have striving, or appetite,<sup>4</sup> which we commonly refer to as desire.

Desire is defined by function rather than by the presence of any specific emotion, and is known by the work it accomplishes in conjunction with belief to produce action.<sup>5</sup> Desire is what drives the human person to make rational choices to attain a particular object, and the rational choice theory explains this.

### 1.2.1 The Rational Choice Theory

The rational choice theory is based on the foundation that human beings are rational because of the possession of a rational soul comprising of the will and intellect. Therefore, human beings are always conscious of their choices and actions. Louis Kattsoff points out that it can be difficult to define the term "option," but when we say that John has a choice, we mean that John can choose what to do. He is free to perform one of these acts if he chooses. Choice means that an individual has the freedom to select from a range of options.<sup>6</sup> One can choose to act or not act.

Additionally, Louis claims that it is absolutely possible to decide anything intellectually without also deciding on a practical outcome. This is an argument that one can rationally select one item above another without trying to accomplish or obtain the selected thing. Even though

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<sup>3</sup> J. F. Donceel, *Philosophical Psychology*. 2<sup>nd</sup> ed. (New York: Sheed and Ward, 1961), 197.

<sup>4</sup> Donceel, *Philosophical Psychology*, 197.

<sup>5</sup> Edward Craig, ed. *The shorter Routledge Encyclopedia of philosophy*. (New York: Routledge, 2005), 195.

<sup>6</sup> Louis, *Making Moral Decisions*, 13.

everyone recognizes that killing is bad, people nonetheless engage in war.<sup>7</sup> Louis Kattsoff gives an example that although a person may rationally decide that he should never steal, he may nonetheless steal if he sees his family going hungry. People frequently act improperly and refrain from doing appropriately. This does not always imply dishonesty or hypocrisy. It might entail being prepared to make an exception to the rule in a specific circumstance. It should be obvious that the assumption is that freedom, whether expressed in a choice or an action, is possible.<sup>8</sup>

### **1.2.2 The Human Person as a Free and Rational Being**

According to Marian Maskulak, the human person is composed of two aspects or orders: *a physical or corporeal order (the body) and a spiritual order (the soul)*.<sup>9</sup> The spiritual order, the soul, is the adequate principle of one's actions, with complete dominion not only of itself but also of the person's being. Jason T. Eberl, in his work, *Thomistic Principles and Bioethics*, argues that the soul is generally understood as "the intrinsic principle by which humans live and perform their operations".<sup>10</sup> Donceel asserts that the human soul has some powers responsible for the person's daily operations as a rational being. These operative powers are called Faculties of the soul. Among these faculties, the highest ones are *INTELLECT and WILL*<sup>11</sup>.

#### **1.2.2.1 The Intellect**

Donceel in his book *Philosophical Psychology* defines the intellect as the faculty through which the human person unites the known object to himself as the knowing subject. The "intellect is an immaterial cognitive faculty in the human soul concerned with the mental operations of

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<sup>7</sup> Louis, *Making Moral Decisions*, 13.

<sup>8</sup> Louis, *Making Moral Decisions*, 13.

<sup>9</sup> Marian Maskulak, *Edith Stein and the Body-soul-spirit at the Center of Holistic Formation*. (New York: Peter Lang, 2007), 62.

<sup>10</sup> Jason T. Eberl, *Thomistic Principles and Bioethics*. (New York: Routledge, 2006), 24.

<sup>11</sup> Donceel, *Philosophical Psychology*, 325.

knowing”.<sup>12</sup> Its proper object is *things in themselves*, the material objects like people, animals, plants, houses, etc. In other words, all objects that the senses can perceive, the what-ness or quiddity of material objects.

Donceel adds that not only the material objects, because there are other objects which are *immaterial*, such as; *God, spirits, etc.*, BUT the *BEING in all its extension*. The intellect knows such BEING from the point of view of the intelligibility or truth of the object<sup>13</sup>. By his intellect, the human person acquires knowledge through the process which involves both sensation and intellection.

### **1.2.2.2 The Will**

Donceel also says that the will, through which the subject tends to unite oneself with the known object, is a faculty or power which inclines the human person to seek the objects with which their knowing powers put them in contact<sup>14</sup>. This is what we call Appetition, from the Latin word *ad-petere*, which means *to seek after* or *to direct oneself towards something*. In the precise definition, appetite refers to a thing's capacity to seek its own good. When used more generally, it also refers to the act of searching.<sup>15</sup> Appetite, therefore, means both; *an action*: the exercise to intend, and *an active capacity* from which the action emanates, the fundamental power to seek.

It is commonly agreed that human beings feel or experience an attraction towards objects themselves or towards acting in a particular way. This fundamental attraction towards something or a particular course of action is called *Volition*; it is an *inclination* or a *tendency* towards an object or acting<sup>16</sup>. Aspects like desiring, loving, choosing, intending, enjoying, and even their opposites are always considered as part of willing.

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<sup>12</sup> Donceel, *Philosophical Psychology*, 246.

<sup>13</sup> Donceel, *Philosophical Psychology*, 249.

<sup>14</sup> Donceel, *Philosophical Psychology*, 285.

<sup>15</sup> Donceel, *Philosophical Psychology*, 197.

<sup>16</sup> Donceel, *Philosophical Psychology*, 125.

### 1.2.2.3 Consciousness

Consciousness understood in its broadest possible meaning, is a possession of oneself in oneself, an immanence of all that which we are in all that which we are, according to Donceel, it is a perfect identity of being with itself, a manner of being which makes us exist in ourselves and for ourselves so that we are not for ourselves as if we were not, in a word a way of fully living. The notion of consciousness coincides with the idea of being<sup>17</sup>. Being is knowable and known insofar as it is in act. Hence to be conscious is to be.

### 1.2.3 Ethics and Morality

Ethics is typically the area of philosophy that deals with moral judgment and human behavior. Ethics aims to find the guiding principles that help people distinguish right and wrong. In the book *Approaches to Ethics*, ethics' crucial role is highlighted in assisting people in making moral decisions rather than trying to force them to act following their beliefs<sup>18</sup>. What is seen as good conduct is referred to as morals and morality, and bad behavior is regarded as immorality.

In everyday speech, the terms morals and ethics are frequently employed. Although the terms morals and ethics are often used interchangeably, they have different historical roots. Morals originate from *mores*, a Latin-based word that denotes conduct, and ethics originates from the *ethos*, a Greek word that refers to custom (behavioral habits) or character. Similarly, according to Patricia Debeljuh, values and ethics are sometimes interchangeable; they are not synonymous. Ethics is derived from ideals and must be consistent with them. The distinction is that whereas values are concerned with what is suitable and desirable, ethics are concerned with what is right and correct<sup>19</sup>. For example, a person's right to just distribution of social benefits is a valuable and

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<sup>17</sup> Donceel, *Philosophical Psychology*, 318.

<sup>18</sup> Jones, Frederick Sontag, Morton O. Beckner, Robert J. Fogelin. Eds. *Approaches to Ethics: Representative Selections from Classical Times to the Present*. (New York: McGraw-Hill Book, 1962), 8.

<sup>19</sup> Patricia Debeljuh, *Ethics: Learning to Live*. (Nairobi: Focus Publications Limited, 2022), 25.

desirable social ideal. Generally, ethics clarifies the obligations that one person owes to another person.

#### **1.2.4 Justice**

Immoral or Criminal behaviors are often called injustices and therefore require a just response. Mark Tebbit claims that as a fundamental moral concept, justice can only be ascribed in situations involving consciousness, rationality, and a moral sense<sup>20</sup>. Pain caused by floods or earthquakes do not amount to injustice. Justice involves actions such as contributing to the common good in to society, respecting individual rights and freedom, as well as giving to each person what is the due in situations of immorality or crime, justice is normally fulfilled in form of punishments, and this falls under commutative justice.

### **1.3 STATEMENT OF THE PROBLEM**

Modern society is characterized by some immoral activities and unethical behavior or crimes that often go unpunished. For example, embezzlement of public funds, sexual abuse, murder, and land grabbing, to mention but a few. *Is there any conclusive answer to why these acts are happening?* Laws have been made by the Legislature and the Judiciary is in place, *why are they ineffective?* Why are these acts increasing? To explain people's choice of behavior, this paper employs the economic approach of the rational choice theory, which as per Ronald Akers, holds “that human behavior can best be described by assuming that people aim to maximize their self-interest, subject to information and opportunity costs”.<sup>21</sup>

This approach claims that because *human beings are rational, in most cases, they obtain the necessary information about a given activity before executing it.* Jeremy Bentham says that; People’s intentionality and the general tendency of an act depend on the sum total of its

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<sup>20</sup> Mark Tebbit, *Philosophy of Law: An Introduction*, 2<sup>nd</sup> ed. (New York: Routledge, 2005), 6.

<sup>21</sup> Ronald. L. Akers, *Criminological Theories: Introduction and Evaluation*, 2<sup>nd</sup> ed. (New York: Routledge, 2013), 23.

consequences<sup>22</sup>. They are knowledgeable and aware of the expected benefits and burdens of a specific act. For this reason, they look out for and choose behaviors with high advantages and low burdens, not minding about the effect on other individuals as long as they satisfy their interests. This self-interest principle underpins several contemporary social sciences, including political science, political psychology, and utilitarianism in ethics.

Bentham says that people make a rational choice in a state of understanding, intending to achieve specific results<sup>23</sup>. Therefore, because it is determined that individuals are conscious of their acts, they know which action is good and which one is bad, and they possess the liberty to choose between these actions, and they are aware of the consequences of these actions, this essay aims at justifying the necessity for justice, whether distributive or commutative, specifically in form of punishment of the offenders. This is because the laws are in place; they are known but are not followed, therefore hope is placed in punishment to transform the mentality of individuals toward crime and immorality. This essay relies on the works of Cesare Beccaria to examine the authority to punish, and to assess the intention and rationale of swift and effective punishments, doing so for the sake of justice. It also advocates for rehabilitation and reconciliation after justice is done.

#### **1.4 OBJECTIVES OF THE STUDY**

- ❖ To examine the assumption that self-interest is the dominant force in human behavior.
- ❖ To investigate the effect of moral experience on people's ethical choices.
- ❖ To explore the impact of the mind and the will on moral choice.
- ❖ To analyze the methodology of executing moral judgments.

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<sup>22</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*. (Kitchener: Batoche Books, 2000), 61.

<sup>23</sup> Bentham, *An Introduction to the Principles of Morals and Legislation*, 62

- ❖ To justify the necessity of punishments as retributive and deterrence to immorality.
- ❖ To have a better understanding of ourselves as human beings.

### **1.5 JUSTIFICATION OF THE STUDY**

It is a fact that human beings are rational, and conscious, and have the freedom to make decisions. This means that human beings are moral beings. However, they cannot be left to exercise their so-called freedom as they want because in the process they will end up hurting other people directly or indirectly. There are already some laws in place to prohibit people from offending others, but some of them are weak and ineffective. Therefore, there is a need to impose serious penalties that will be faced by whoever transgresses the Law and these penalties must be upheld to be swift and effective. This is because people are not afraid of the Law per se, but they fear the consequences of breaking the law, such as punishment.

### **1.6 SCOPE AND LIMITATIONS OF THE STUDY**

The research primarily focuses on studying the rational choice approach as a tool for understanding individual behavior and on observing the roles of the mind and the will in moral choice-making as an interplay between knowing and doing. There is also a necessity for the vindication of punishment of those who act contrary to the Laws, Norms, and Customs of the society, effecting this punishment as a form of justice.

The limitation of this study is that there is no field work, i.e. going out to the field to interact with people to know their moral experience, not even using questionnaires to collect people's opinions, it is purely analytical research.

## 1.7 LITERATURE REVIEW

### Introduction

This section reviews several authors' works about the rational choice approach to moral decision-making and the need for punishments to keep the legal system under control.

According to Amartya Sen in his book *The Rational Behavior*, it is not difficult to agree that many aspects of rationality, such as binary consistency, cannot be reduced to a simple formula. Even if it is now difficult to dispute the shortcomings of the traditional assumptions of rational action typically utilized in economic theory, this understanding does not instantly result in alternative characterizations that might be viewed as satisfactory.<sup>24</sup> Amartya adds that finding alternatives to the traditional assumptions of rational behavior that are found in economic writings will not be a simple task, both since the shortcomings that have been identified have been seen as necessitating rather differing remedies and because there is little chance of discovering an alternative assumption structure that will be as straightforward and practical as the fundamental precepts of self-interest maximization or continuity of decision-making.<sup>25</sup>

Mas-Collel claims that according to the rational choice perspective, wishes are fundamental and influence decisions. The key consistency constraint of the hypothesis of revealed preference, an equivalent approach, is that if alternative X is ever selected while equivalent Y is available, Y will never be selected when both X and Y are accessible. This approach treats decision behavior as primitive and sets several consistency constraints. Both approaches are comparable in some circumstances.<sup>26</sup>

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<sup>24</sup> Amartya Sen, "Rational Behavior" In Eatwell, John, Milgate, Murray and Newman Peter, Ed., *Utility and Probability*. (New York: W. W. Norton & Company, 1990), 215.

<sup>25</sup> Amartya Sen, *Rational Behavior*, in Eatwell, 216.

<sup>26</sup> Mas-Collel, Andreu, Whinston, Michael, and Green, Jerry R., *Microeconomic Theory*. (New York: Oxford University Press, 1995), 91.

According to Hal Varian, people make decisions in order to achieve their goals. Because the options must satisfy numerous criteria, there must be something that adapts to ensure that all of these options are consistent. This straightforward design suggests a tactic: The decision-makers are who? What restrictions do they encounter? How are things between them? What happens if the choices don't agree with one another?<sup>27</sup>

Robert Frank contends that behavior in rational choice theory results from the pursuit of goals, making preference definition essential. Frank talks about two general strategies. The self-interest standard of reason states that rational beings only consider costs and benefits that directly benefit them. The present-aim standard of rationality states that rational people act rationally to pursue any goals they may have at the moment of decision-making.<sup>28</sup> Frank feels that neither tactic is unquestionably effective. Many people seem to be more interested in other people's well-being than their own, suggesting that the self-interest norm's underlying egoism is probably overly limited. Contrarily, the present-aim standard does not impose any limitations on preference formation, suggesting that any explanation can be supported by an appeal to wants.<sup>29</sup>

Daniel Hamermesh and Neal Soss created a suicide rational choice theory. They assume that the cost of maintaining oneself at a certain minimum level of subsistence each period is represented by a technological relationship that negatively determines an individual's desirability and positively determines their "consumption" at any given time. Consumption changes with age and permanent income, which gauges present earnings as well as anticipated future ones. It is thought that people's dislikes of suicide vary exogenously (in accordance with a probability

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<sup>27</sup> Hal Varian, *How to Build an Economic Model in Your Spare Time*. In Szenberg, Michael, *Economists at Work* (Ann Arbor, MI: University of Michigan Press, 1997), 4.

<sup>28</sup> Robert. H. Frank, *Microeconomics and Behavior*, 3<sup>rd</sup> ed. (New York: McGraw-Hill, 1997), 18.

<sup>29</sup> Robert. H. Frank, *Microeconomics and Behavior*, 19.

distribution), meaning that some people loathe it more than others. This idea states that "...an individual commits suicide when his entire discounted lifetime utility is zero."<sup>30</sup>

Consequently, in this paradigm, there is a rational actor who is forward-thinking, evaluating not just his current utility but also his potential future utility. If the overall utility for the remainder of his life is greater with suicide and terminating his present life than with continuing to live, suicide is the "logical" alternative.<sup>31</sup>

## **1.8 THEORETICAL FRAMEWORK**

This research is informed by Jeremy Bentham and Cesare Beccaria's works on utilitarianism, freedom, crime and punishment, and principles of morals and legislation. They believe that individuals act in self-interest attempting to maximize their benefits and minimize their downsides. Therefore, justice in form of retributive and deterrence approaches to punishment is necessary to prevent people from acting against Ethics and Morality.

## **1.9 METHODOLOGY**

The philosophical analytical method is employed in this investigation. The study uses philosophic analysis and critique to assess the pertinent ideas from books, journals, and online resources. The writings of **Cesare Beccaria** serve as the main source. The study's footnotes and bibliography provide acknowledgements of the secondary sources, which were acquired from electronic and library resources linked towards this research issue.

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<sup>30</sup> Daniel. S. Hamermesh, and Neal. M. Soss, *An Economic Theory of Suicide*. Journal of Political Economy, (1974), 85.

<sup>31</sup> Hamermesh, and Soss, "An Economic Theory of Suicide." 85.

## CHAPTER TWO

### RATIONAL CHOICE THEORY

#### **Introduction**

This chapter explains the *Rational Choice theory* and uses it to illustrate how self-interest leads to offending the moral and ethical codes of the society. This chapter presents the presumptions of the rational choice theory to show how consciously people gather the necessary information about their objects of desire, choose the best option among the many alternatives, and take the appropriate actions to achieve their desired object. Individuals do all this for their satisfaction not for the benefit of others, in the process they do not mind offending society's laws and norms.

#### **2.1 Brief History**

The roots of rational choice theory can be traced back to the age of reason; however, their exact origins are unknown. Thomas Hobbes defined its primary intellectual standpoint; Hobbes attempted to explain the basic mechanism of political systems using human decisions. He suggested that all people have desires and fears which drive choices<sup>32</sup>. Prominent people, including Francis Hutcheson, David Hume, Adam Smith, and subsequent utilitarians like Jeremy Bentham and John Stuart Mill, carried on the work. Many others, including economists such as Marshall and Samuelson, followed suit. These writings gave rise to what is now known as *conventional rational choice theory*.

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<sup>32</sup> Thomas Hobbes, *The Leviathan*. (Tucson: University of Arizona, 1996), 8.

Smith highlighted the potential societal utility of Hobbes' simplistic assumption of self-interest, famously writing that “it is not from the kindness of the butcher, brewer, or baker that we expect our food, but from their regard to their advantage”.<sup>33</sup> This means that these producers only do so because there is a benefit payment. By reducing moral content to an interpersonally equivalent utility numéraire, which was also believed to motivate the individual, utilitarians went on to formally establish the connection between individual choice and social welfare. So, from classical preference theory, the rational choice theory emerged, which is choosing in conformity with one's values or desires.

## 2.2 Rational choice theory

Rational choice theory is a concept that explores the relationship between human desires and decisions.<sup>34</sup> *This essay refers to various manifestations of rational choice theory as the Rational Choice Approach.* The works of Cesare Beccaria; *The treatise on Crimes and Punishments*, 1764, and Jeremy Bentham; *An Introduction to the Principles of Morals and Legislation*, 1789, form the intellectual foundation for the rational choice approach. Alternative applications of the rational choice approach are founded on the premise that all conduct, as formalized by Bentham, whether immoral, criminal, or otherwise, is driven by personal gain and the desire to reduce suffering and increase pleasure<sup>35</sup>. To alter people's perceptions of the benefits and drawbacks of certain decisions, interventions to immorality must be logical.

Beccaria and Bentham's notion of immorality, crime, and punishment initially impacted social control strategies, but a double century of psychological, biological, and sociological

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<sup>33</sup> Adam Smith, *An inquiry into the nature and causes of the Wealth of Nations*. (London: Clowes and Sons, 1776), 119.

<sup>34</sup> Bill McCarthy, “Rational Choice Theory and Crime” In Brunisma, D. and D. Weisburd, eds. *Encyclopedia of Crime and Criminal Justice*. (California: Springer, 2014), 2.

<sup>35</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*. (New York: Batoche Books, 2000), 92.

explanations eventually eclipsed the *classical school* beliefs as they claimed that; people behave immorally because of biological, psychological, or societal pressures. The expected-utility model of ethical decision-making developed by economist Gary Becker in 1968, the work on reasoning criminals by criminologists Derek Cornish and Ronald Clarke in 1987, and the writings on social control by sociologist Jack Gibbs all contributed to a revival of *classical school* ideas. The foundational concepts of Beccaria and Bentham and the significance of self-interest in explaining behavior form the basis of the rational choice approach.<sup>36</sup> *The Rational Choice Theory had an early application in Beccaria's brief essay on smuggling of 1764*, on quantifying how high tariffs could be before contraband proved worthwhile.<sup>37</sup>

### **2.3 Presumptions of the Rational Choice Approach**

Individuals have desires that may not necessarily refer to acts and behavior but outcomes such as goods, services, states of being, and pleasure, among others, derived from the acts people choose.<sup>38</sup> For this reason, individuals choose these acts as a means to an end, and yet, not all these acts are good.

The projected benefits of an outcome concerning its costs influence people's desires. There are various potential rewards (including financial, social gains, and emotional benefits) and burdens (such as opportunity cost, external, economic, social, and emotional disbenefits).<sup>39</sup> The measure of a course of action's anticipated outcome is the estimated cost-benefit ratio, and this is what drives individuals' moral choices.

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<sup>36</sup> Cesare Beccaria, *'On Crimes and Punishments' and Other Writings*. (London: Cambridge University Press, 1995), xvii.

<sup>37</sup> Cesare Beccaria, *On Crimes and Punishments*, xiii.

<sup>38</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 3.

<sup>39</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 3.

People can rank the importance of their desired outcomes in descending order. Desires are generally stable; they don't change when a decision is made but can change in response to new information.<sup>40</sup> It is precisely for this reason that people persist in their immoral tendencies even when they are fully aware that their actions are bad.

People's estimates of the effects of outcomes are impacted by the data they receive. However, collecting data has a price. Because of this, people frequently make decisions with insufficient information although they always prefer having all relevant information when making judgments.<sup>41</sup> People routinely make mistakes, have a weak memory, and may believe they are well-informed when they are not.

A person's attitude toward risk and uncertainty may affect their desires. Not taking risks as such, but rather people's risk-taking behaviors affect how satisfied they are with a result (risk-taking is not an end in and of itself). Risk-seekers normally prefer fair chances to certain outcomes, whereas risk-averse people typically decline to make what is thought of as a decent gamble. Risk aversion is thought to be mostly fixed by several rational choice theorists, while it may vary depending on the decision and the circumstance.<sup>42</sup>

## **2.4 Cases of Irrationality**

Bill McCarthy asserts that, despite the preceding assumptions, the rational choice approach does not preclude people from acting irrationally, and they may behave contrary to their will for a variety of reasons. Deep emotions, for example, or an abrupt change in circumstances, could impair their judgment. They may be unaware of the interests that drive them, or they may have limited intellectual capabilities that limit their capacity to apply knowledge efficiently or reflect on earlier

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<sup>40</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 3.

<sup>41</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 3.

<sup>42</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 4.

decisions these may be similarly clouded to observers Pseudo-consciousnesses, habits, native culture, lethargy, determinism (biological, psychological, or social), or other comparable explanations for behavior may also push people to make choices that go against their desires.<sup>43</sup>

Neither does the rational choice approach presume that people execute literal calculations or constantly express their thoughts in a rational manner (logical reasoning, reflection, or meditation). In its simplest version, the rational choice approach refers to a person's consistency in desires and decisions, as per Bill.<sup>44</sup> It also takes a probabilistic approach instead of a deterministic one, explaining how most people arrive at many conclusions without presuming that all decisions can be rationalized. It argues that many people's conduct can be regarded as rational rather than continuously conscious of how they try to maximize their interests.

## **2.5 A Deeper Understanding of the Rational Choice Approach**

Generally, deliberate acts are described in light of the 'actual reason' actors have in committing them, by which actual reason is meant to imply 'the practical reason' that prompted the act. Jan de Jonge says that to describe human behaviors on grounds of cognitive operations that prompted them, one should suppose that individuals are rational to have no limitation to the interpretations one could offer of the actor's psychological states. Any conduct could similarly well be related to any opinion and any desire.<sup>45</sup> This is one of the reasons why a person is taken for mental checkups before being convicted.

According to the rational choice approach in Jan's view, human action is the result of a double selection process: first, only the feasible action alternatives are chosen from among all possible (and relevant) action alternates. Second, the preferable option is selected from this group

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<sup>43</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 6.

<sup>44</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 6.

<sup>45</sup> Jan de Jonge, *Rethinking the Rational Choice Theory: A Companion on Rational and Moral Action*. (London: Palgrave Macmillan, 2012), 7.

of further options. Based on the (economical, legal, sociological, physiological, and emotional) constraints an actor faces, the viable set is chosen. The actor decides from among the options based on his preference ordering.<sup>46</sup> This proves that an individual takes time and resources before acting, take the example of those who commit *Cyber-crimes*.

Typically, the limitations do not affect the desires. Also presumed are consistent desires (normally, there is no connection to actual desires but to essential desires, such as wealth, health, status, among others). This explains why the laws and standards in place today are ineffectual at preventing offense. Jan claims that as a result, behavioral changes are typically solely explained by modifications to the limitations. Additionally, it is presupposed that an agent's behaviors are driven solely by their desires. An actor's assumptions about the connection between both action and result are founded on his beliefs.<sup>47</sup>

Jan thinks that an actor's expectations reflect his understanding of the circumstances (the constraints, the possibilities), as well as his predictions about the likely outcomes of potential courses of action. They are the result of information, knowledge, and experience. While an actor's wishes are guided by expectations, only desires drive an actor to act.<sup>48</sup> Reason, in Hume's words, is the slave of passions.<sup>49</sup> It is believed that reason serves as a tool for obtaining goals that are not themselves justified by reasons. But even subject to passions, and individual still has an option to choose what is good or what is wrong.

## **2.6 Judging Rationality from Behavior**

Jan also clarifies that three, more or less distinct, qualities combine to form the idea of "rational behavior." The first is that it indicates instrumental rationality, or the ability to select the

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<sup>46</sup> Jan de Jonge, *Rethinking the Rational Choice Theory*, 7.

<sup>47</sup> Jan de Jonge, *Rethinking the Rational Choice Theory*, 8.

<sup>48</sup> Jan de Jonge, *Rethinking the Rational Choice Theory*, 8.

<sup>49</sup> David Hume, *A Treatise on Human Nature*. (London: The Floating Press, 2009), 636.

best means (methods) to achieve a particular objective. The second component is that a rational individual is capable of allocating his limited resources in a way that maximizes his utility. The agent's self-centeredness is the third component. His need to have his needs met will always be his driving force. A logical decision must meet certain criteria in order to be considered an ideal decision. The information needed to choose the best course of operation should be available in an optimal number and quality, and the desires should be arranged in a coherent and consistent manner.<sup>50</sup> Picture this process onto a person who participates in gambling, be it in casinos or sports betting.

In the view of M. E. Bratman, it is not necessary to engage in the deliberate processes needed to evaluate a decision sensibly every time. Practical reason opposes the notion that each activity is focused on distinct personal goals. Actions are comprised of activities, and activities are typically a component of larger plans. Agents typically use this reasoning to go from one intention to another. Plans are the means by which the relationship between thought and deed is gradually strengthened over time.<sup>51</sup> In the same line of thought, Anthony Giddens says that an action is not, as is sometimes believed, a succession of distinct activities, each undertaken consciously and gratifying some want, but rather the flux of self-monitored activity. The actor can only comprehend a purposeful deed in retrospect.<sup>52</sup> For example bank robbers do not just wake up one day and jump into a bank to steal, they plan strategically, how to enter and exit, they even go in with plan B.

## **2.7 Rationality and Self-interest**

Basing on Amartya Sen, as long as they are self-centered, an agent's desires are typically left up to interpretation. However, economic theory does appear to function with a far more

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<sup>50</sup> Jan de Jonge, *Rethinking the Rational Choice Theory*, 9.

<sup>51</sup> M. E. Bratman, *Intentions, Plans, and Practical Reasoning*. (Stanford: CSLI Publications, 1999), 30.

<sup>52</sup> Anthony Giddens, *New Rules of Sociological Method*. (Cambridge: Polity Press, 1993), 89.

constrained notion of desires; they are exclusively self-interested and not just self-centered. According to the rational choice method, people only make decisions that are in their best interests and nothing else.<sup>53</sup>

Even when an action seems to be done for the good of other people, there is intrinsic self-interest. For example, one may perform charitable acts such as contributing to the welfare of the needy, to gain fame and gratification, this is so common with politicians. Martin Hollis suggests that agents do not consider other people's interests when deciding which course of action to take, or that if they do, they simply consider them as a means to an end.<sup>54</sup>

Relying on the observations of Bill McCarthy, the rational choice method focuses the consequences of people's desires on decisions rather than their causes, in contrast to many other moral choice theories. Contrast this with theories that claim that insufficient self-control, distinct association, stressed interpersonal interactions, peer influences, underprivileged neighborhoods, or other communal experiences or circumstances are the root causes of immorality and crime. These arguments frequently assume that immorality is irrational and unattractive.<sup>55</sup>

## **2.8 Why People Choose Immorality**

The rational choice approach assumes that people choose their moral behavior based on the same cost-benefit analysis criteria they use to make moral decisions. Immoral activity can have several benefits, including monetary gain, a psychological rush or enjoyment from the deeds, and prestige. Conversely, critics of the rational choice approach to immorality frequently claim that the benefits of immorality are so insignificant that they cannot be justified as incentives. However,

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<sup>53</sup> Amartya Sen, *The Idea of Justice*. (London: Allen Lane, 2009), 179.

<sup>54</sup> Martin Hollis, *Reason in Action*. (Cambridge: Cambridge University Press, 1996), 6.

<sup>55</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 6.

some unethical rewards from their actions outweigh those from moral jobs, even if many immoral persons don't make much money from their actions.

Bill also notes in his work that a study on drug sellers found that their monthly income was more than twice that of those in legal professions<sup>56</sup>. Unlike low-paid foot soldiers, who usually make less than the minimum wage, bank robbers make much more money. A comparable study on homeless children found that drug-selling minors received a triple share the average legal daily wage from legitimate jobs<sup>57</sup>. Additionally, a willingness to transgress in the future is linked to the belief that acting unethically would result in financial gain<sup>58</sup>.

The rational choice approach holds that financial consequences, for example, a losing of legal income, impact moral decision-making according to Bill. He also claims is supported by inmate research, demonstrating both a robust and detrimental influence of lawful money on immorality and a favorable correlation between immorality and the length of a current unemployment period<sup>59</sup>. Additionally, mild immorality complements work, whereas severe immorality is a substitute for work.

## **2.10 Cost of Immorality**

Bill again reveals that research on homeless youngsters investigates the deterrent impact of physiological agony as a distinct immorality consequence. Many people (including sufferers, observers, authorities, and other perpetrators) perceive immorality as dangerous, and opinions of immoral danger are negatively connected with thievery, drug abuse, and prostitution, regardless of other negative outcomes, rewards, or background characteristics.<sup>60</sup> According to research in

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<sup>56</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 10.

<sup>57</sup> McCarthy, Bill and John Hagan. 2005. "Danger and the Decision to Offend." *Social Forces* 83 (3):1065-1086.

<sup>58</sup> Mehlkop, Guido and Peter Graeff. 2010. "Modelling a Rational Choice Theory of Criminal Action: Subjective Expected Utilities, Norms, and Interactions." *Rationality and Society* 22: 189-212.

<sup>59</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 11.

<sup>60</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 11.

which participants are asked to explain the various repercussions of immorality, many people believe that danger is a crucial concern.<sup>61</sup>

According to inmate studies, Bill continues to note that while the certainty of punishment has a strong deterrent effect, the severity of the penalties frequently has a negligible or insignificant impact. However, the results of discipline are not absolute. Related research has shown that those who successfully conduct an unethical act or crime but are not arrested for it are more likely to believe that they will get away with it again in the future if they pull off another one.<sup>62</sup>

Additional research looks at how people differ in their perceptions of punishment and its implications for immorality. Several of these studies assess individuals' propensity for or intention to offend in the future using narratives or fictitious circumstances. According to a recent survey of individuals, those who believe there is little possibility of getting detected are much more inclined to engage in tax fraud in the future.<sup>63</sup> According to youth study, young people are less inclined to commit fraud or a violent crime if they believe that a conviction is both prone and burdensome.<sup>64</sup> This is one of the main tenets of this study, emphasizing the need to punish offenders in order to deter future offence.

## **2.11 Rational Choice Approach Critique**

According to Bill McCarthy some critics contend that the rational choice approach doesn't significantly advance the field's understanding of immorality. They also claim that the projections of the rational choice approach conflict with the reality of immorality. The rational choice

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<sup>61</sup> Bouffard, Jeffrey A, M. Lyn Exum, and Peter A. Collins. 2010. "Methodological Artifacts in Tests of Rational Choice Theory." *Journal of Criminal Justice* 38: 400-409.

<sup>62</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 11.

<sup>63</sup> Mehlkop, Guido and Peter Graeff. 2010. "Modelling a Rational Choice Theory of Criminal Action: Subjective Expected Utilities, Norms, and Interactions." *Rationality and Society* 22: 199-222.

<sup>64</sup> Matsueda, Ross L., Derek Kreager, and David Huizinga. 2006. "Deterring Delinquents: A Rational Choice Model of Theft and Violence." *American Sociological Review* 71: 95-122.

approach is opposed on the grounds that it portrays morally corrupt individuals who gather all relevant information and thoroughly evaluate it before acting.<sup>65</sup>

Bill adds that another criticism claims that various implications can be drawn from research on the rational choice theory of immorality. First, both people who choose evil and those who do not have a range of preferences. It is ludicrous to suppose that all of the guilty parties have the same values or that moral judgments are driven solely by one factor, such as the thrill of moral transgression or its financial benefits. People have varied desires, immorality can have a variety of benefits, and they have different opinions about the benefits and cons of immorality.<sup>66</sup>

Secondly, moral decisions may be tactically made in light of other people's decisions. Depending on other people's strategic decisions, the utility of moral decisions may change, going from being a dominant strategy to a non-dominant one. Despite the fact that we frequently assume that victims, law enforcement, and other social engineering agents all have distinct desires that are incompatible, self-sufficient, and constant, game theory and deterrence investigation suggest that each party's desires can overlap and may change in response to the actions of the other, as well as their strategy decisions.<sup>67</sup>

Bill still claims that critics assert that the rational choice approach only applies to specific types of immoral behavior or crimes, such as intentional fraud, and does not apply to immoral acts of passion (such as masturbation, adultery in marriages, gluttony, and so forth). There is no support, however, for the assertion that specific types of immoral acts are beyond rational choice or that the rational choice approach does not apply to the choice to engage in a particular violation. The rational choice method recognizes that a person's moral decision could not be logical.<sup>68</sup>

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<sup>65</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 16.

<sup>66</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 16.

<sup>67</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 17.

<sup>68</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 17.

Bill concludes by saying that most people's choices are consistent with the standard rational choice approach, despite the fact that many experimental participants make decisions that do not follow it. Many of the reported disparities in rational choice method estimations, according to its detractors, can be resolved by combining the classic rational choice approach with a theory of errors, making it preferable to other approaches like bounded rationality and prospect theory.<sup>69</sup>

## **Conclusion**

The major purpose of this chapter is to express the rationality of individuals and the awareness of the outcomes of their actions. Keeping in mind the fact that they normally offend the Law with self-interested intentions, there is a necessity, therefore, to be rational and conscious while judging these actions and dispensing justice, for there is proof that punishments can be effective to deter offence and satisfy the retributivists. The next chapter will explain in details the rational process of an individual.

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<sup>69</sup> Bill McCarthy, *Rational Choice Theory and Crime*, 17.

## CHAPTER THREE

### PHENOMENOLOGY OF MORALITY

#### Introduction

The previous chapter displayed that a human person is a rational being who makes conscious rational choices to achieve a desire object. This chapter ventures into the phenomenology of morality, moral judgement, and moral choice. It is meant to elaborate on the deliberation process during moral decision-making. It describes the internal activities of the will and the intellect that lead an individual into action. It also explains how an act is judged to be wrong or right, and this will guide, good or bad, and from this one can decide which action deserves a punishment and what kind of punishment to administer.

#### 3.1 Phenomenology of Morality

The subjective nature of one's experiences, or, as it is usually termed, their *what-it-is-likeness*, is referred to as *phenomenology*.<sup>70</sup> When applied this way, one can, for instance, focus on the similarity of a severe pain that they are currently feeling and attempt to describe the subjective element of that suffering. Therefore, “moral phenomenology studies the experiential aspect of our inner moral existence”.<sup>71</sup> Its focus is the moral experience in all of its diversity, and its goals are to produce accurate descriptions of such experience.

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<sup>70</sup> John Drummond and Mark Timmons, eds. *Moral Phenomenology: Stanford Encyclopedia of Philosophy*. (Stanford university, 2021), <https://plato.stanford.edu/entries/moral-phenomenology/>. 1.

<sup>71</sup> Moral Phenomenology: Stanford Encyclopedia of Philosophy, 1.

In analyzing moral phenomenology, three perspectives are considered; first-person perspective, which is *introspection*; second-person perspective, which is *an encounter with the other person*, which can lead to intersubjectivity; and third-person perspective, which is *the view of the observer*.<sup>72</sup>

### 3.2 Moral Experience

The only starting point for moral philosophy is what is *immediately revealed, that is, from the data of experience*. Aldo Vendemiati says that each of us has unique life experiences, particular moral experiences that others share, but still is deeply personal.<sup>73</sup> We have thought about these events since we were young and have developed some ideas regarding what is good and bad. Not all behaviors raise ethical concerns. Acts that can be classified as ethical or unethical, moral or immoral, or criminal, contain four components: *1) actions (instead of beliefs) that are (2) human acts, (3) of free will, and (4) have an impact on others*.

#### 3.2.1 Action

Initially and ultimately, some deeds need to be done. For instance, the issue is with the act of stealing or the act of giving to philanthropy rather than an idle notion that robbing a lot of money would allow one to buy a yacht or a vague ambition to be more kind. Joycelyn M. Pollock points out that unless it affects people's activities, we are hardly interested in how people perceive or feel about an action. In some ethical theories, the purpose or justification for a behavior is a key element of that activity.<sup>74</sup> For example, to judge an action as moral or immoral, one must first understand its motivation, according to ethical formalism. However, before making a moral judgment, some

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<sup>72</sup> Moral Phenomenology: Stanford Encyclopedia of Philosophy, 4.

<sup>73</sup> Aldo Vandemiati, *In the First Person: An Outline of General Ethics*. 2<sup>nd</sup> ed (Rome: Urbaniana University Press, 2020), 23.

<sup>74</sup>Joycelyn M. Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 10<sup>th</sup> ed. (Boston: Cengage, 2017), 13.

conduct, not only a concept, must be evaluated. In a similar way, justice is administered based on proof of acts rather than opinions.

### **3.2.2 Only Human Acts**

Moral and ethical judgments are made primarily on how people behave. While we may be critical of pet owners who give their pets a chance to bite, it is not considered immoral or criminal for a dog to bite. Even though they cause death, destruction, and suffering. Drought, famine, floods, or any other natural catastrophes are not viewed as immoral; nonetheless, people who had the opportunity and ability to assist victims but chose not to may be viewed as immoral, and those who embezzle disaster funds are criminals. As per Joycelyn, most philosophers agree that because only humans can reason, only humans can be morally good or bad.<sup>75</sup>

### **3.2.3 Free Will**

Joycelyn asserts that moral discussions are often limited to human behavior and behavior resulting from free will and free action. People who lack the information required to make reasonable moral judgments are not deemed morally responsible. In this sense, the infants and the insane are often exempted from accountability, as is the case when assigning legal liability. Joycelyn adds that because we do not think they are capable of reasoning in the same way that we do and as a result, we cannot determine if their behaviors are moral or immoral.<sup>76</sup> When a three-year-old hits a little baby, one may criticize him with the same intention of teaching or integrating him as opposed to punishing him as one would an older child or adult. We decapitate the violent and mentally ill (keeping them segregated in cells) in order to protect ourselves, but we view them as unwell, not evil. This is applicable even if their acts are identical to those of other people who

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<sup>75</sup> Joycelyn, *Ethical Dilemmas and Decisions in Criminal Justice*, 13.

<sup>76</sup> Joycelyn, *Ethical Dilemmas and Decisions in Criminal Justice*, 14.

get punishment. A homicide, for instance, may lead to the death penalty or hospitalization, depending on whether the perpetrator is deemed sane or insane, responsible or not.

### **3.2.4 Has an Impact on Others**

Often, we only discuss moral or immoral behavior when it significantly affects other people. For instance, throwing a rock over a bridge wouldn't be good or harmful unless you could hit or aim at someone below. Each of the ethical issues and paradoxes discussed in this essay involves at least two parties and calls for actions that affect at least one other person. Finding a course of action that does not, even unintentionally, impact others is difficult. Likewise, even a hermit who lives by himself on a desolate island is capable of acting immorally or unethically. The hermit is a member of human society whether he likes it or not; hence Joycelyn would argue that even hermit might take activities that could be viewed as unethical if they harm or endanger the future of humanity, such as killing oneself or polluting the environment<sup>77</sup>.

### **3.3 Moral Choice**

John. A. Oesterle in his book, *Ethics: The introduction to moral science* that while every action is voluntary and always a free act, not all voluntary actions are typically free or an act of choice. Any activity carried out and directed by the will is referred to as a voluntary act. On the other hand, the term "choice" refers to a certain category of actions carried out and directed by the will.<sup>78</sup>To put the matter in more familiar terms, when we speak of having "freedom of the will", we are referring to the act of choosing; the other actions that we will, but do not refer to choice, are not acts of free will.<sup>79</sup>

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<sup>77</sup> Joycelyn, *Ethical Dilemmas and Decisions in Criminal Justice*, 14.

<sup>78</sup>John. A. Oesterle, *Ethics: The Introduction to Moral Science*. (USA: Prentice-hall, 1957), 82.

<sup>79</sup> Oesterle, *Ethics: The Introduction to Moral Science*, 82.

### 3.3.1 Acts of Desire

Oesterle claims that acts of desire, then, are not acts of choice. Both an act of desire and an act of choice indeed imply a tendency toward something viewed as good or satisfying. But the act of desire springs more immediately from the emotions, with the will more or less concurring with the desire. In contrast, choice presupposes the will operating much more determinately. He adds that since pleasure or pain always accompany emotions, desire is usually associated with either pleasure when the object desired is present or pain when it is missing. Choice, however, is not necessarily connected with pleasure or pain.<sup>80</sup> Acts of desire are normally self-interested.

Oesterle also says that an individual ought to choose in terms of good or evil rather than pleasure or pain since all acts of the will are concerned with seeking or avoiding what the intellect grasps as good or bad<sup>81</sup>. If pleasure or pain is present in an act of choice, one tends to choose one or the other, not merely because of pleasure or pain but because an object is viewed and willed as a good to be desired or an evil to be avoided. Sometimes, one may even choose what is painful, not because it is painful but because of some good that can be achieved through it. For example; fasting. Those who make immoral choices are usually driven by desire.

It is in Oesterle's view that the way the will behaves appears to set choice apart from actions of desire or impulsive behavior. While deciding, the will guides and regulates one's emotions and impulses as opposed to desire, which tends to follow the cues of the sense of appetite. As a result, even if all of these actions could be considered voluntary, the act of choosing is unquestionably more voluntary than the others. In contrast, a voluntary act is wholly of one's own volition, whereas the others are more akin to mixed or partially voluntary actions—and in any event, are not truly free.

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<sup>80</sup> Oesterle, *Ethics: The Introduction to Moral Science*, 82.

<sup>81</sup> Oesterle, *Ethics: The Introduction to Moral Science*, 83.

As a result, although they are both entirely voluntary activities, willing and the act of choice are rather different. The difference between the two is best explained by pointing out that willing relates to an end, such as pleasure, which is something sought for its own reason. Choice is simultaneously focused on methods, something being sought after in order to further something else., for example choosing between different options for goodness sake. This is why one can wish to be a foot taller than one is but cannot choose anything in relation to becoming taller since there are no means available. To state the same distinction in terms of what is possible rather than something impossible, people *will* to be healthy, and they *choose* the means to become healthy; likewise, people *will* happiness, and they *choose* the means of attaining happiness.

### 3.3.2 Deliberation and Choice

Having distinguished choice in a general way from other voluntary acts, there is still need to understand more about the nature of choice itself, *first* because the act of choice is often misunderstood and *second* because freedom of the will properly resides in people's choices. Unless we grasp this matter sufficiently, we shall be seriously deficient and even erroneous in our understanding of man's moral action. It is Oesterle's wish that to understand precisely what the act of choice is in man and how it differs from other voluntary acts, one must see how an act of choice follows an act of deliberation.<sup>82</sup> Just as the operation of the will generally follows that of the intellect.

Oesterle explains that people deliberate when they take counsel about something to be done. Deliberation is a work of practical reason; people consider and evaluate explanations for or against doing something. Consequently, people do not adequately deliberate about ends but about means, for unless there is something already given as an object of desire, there is nothing to

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<sup>82</sup> Oesterle, *Ethics: The Introduction to Moral Science*, 83.

deliberate about by seeking to achieve this object of desire.<sup>83</sup> For example, the patient's health is the end given to the doctor; he does not deliberate about whether the patient should be cured or not, but whether this or that means will restore health.

The connection of deliberation with choice becomes obvious. *One cannot exercise choice except in terms of deliberating*, however small the deliberation may be in many cases. Thus, Oesterle concludes that people decide by deliberation; their choice is the selection of what they have deliberated about. Deliberation belongs to reason, choice to the will. They are so intimately connected that they cooperate to perform what seems to be only one act, yet a distinction always remains between them.<sup>84</sup> Therefore, in case of an immoral act or a crime, justice needs to be served because the offender was fully aware of the steps taken in executing the plan to attain his goal.

### **3.4 Moral Reflection**

The basis for ethical reflection can be found in internal and external experiences, which people observe using their internal and external senses, such as sight, sound, etc. The internal events people witness or understand through their conscience give rise to generalizations they comprehend through intuition. One should, for instance, practice good deeds and abstain from evil, refrain from mistreating people, keep his word, and submit to legitimate authority. Similar to how we see an external experience as accurate and authentic, these facts seem valid and certain in our consciousness. Patricia Debeljuh says that the phenomenon known as *synderesis* is the outcome of habitual knowledge, which results from the presence of the first and most fundamental moral principles within people.<sup>85</sup>

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<sup>83</sup> Oesterle, *Ethics: The Introduction to Moral Science*, 84.

<sup>84</sup> Oesterle, *Ethics: The Introduction to Moral Science*, 85.

<sup>85</sup> Debeljuh, *Ethics: Learning to Live*, 35.

Debeljuh defines synderesis is a quality of the human soul that enables one to comprehend the fundamental precepts that ought to direct all human activities.<sup>86</sup> These fundamental moral principles for conduct are acquired via experience. For instance, the child learns from a young age that doing anything wrong has consequences; if he tells a deception or disobeys his mother, he is punished; by giving his brother part of his sweets, he discovers that it is pleasant and good to be generous. The person progressively learns certain truths via these frequent encounters that are a part of developing because of his experience and the distinct cases and examples that come up throughout his life.

### **3.5 Scope of Moral Experience**

In this part, the study aims at offering a general taxonomy of different moral experience types in a somewhat preliminary manner. It is meant to guide the reader on the formation of moral judgements, to know which act is good and which act is bad. It is through this process we pass judgement on our acts and on the acts of other people, so as to render justice afterwards.

#### **3.5.1 Moral Perception**

According to the Stanford encyclopedia on moral phenomenology, this encompasses moral experiences that heavily rely on one's perceptual faculties, the most evident of which are visual and auditory.<sup>87</sup> The moral wrongness of observing someone torture another person mercilessly illustrates visual moral perception. An example of a moral experience based on audio perception is hearing someone say something intentionally offensive and recognizing it for what it is, i.e. an immoral act and a display of an injustice.

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<sup>86</sup> Debeljuh, *Ethics: Learning to Live*, 35.

<sup>87</sup> Moral Phenomenology: Stanford Encyclopedia of Philosophy, 2.

### 3.5.2 Moral Emotion

Guilt and outrage are examples of moral emotions; they are appropriate responses to one's perception of moral violation by oneself and others. as per the same encyclopedia.<sup>88</sup> It can be explained as the sensation of anger over a particular injustice, which is unmistakably a moral mental state and has a distinctive perceptual nature. The same is true for some forms of scorn, gratitude, compassion, respect, (out)rage, and other moral feelings

### 3.5.3 Moral Judgement

It is also noted that this term refers to the practice of thinking morally regularly, whether about one's deeds; past, present, or future or one's character; past, present, or future; or the actions or character of others; or the institutional structures and behavior.<sup>89</sup> Within this category, numerous more categories of phenomenological relevance are necessary. To express the distinction in the viewpoint of the phenomenology of perspective between first and third-person moral judgment, Maurice Mandelbaum separated *direct* from *removed* moral judgments. Additionally, he found the phenomenological justification for divorcing judgements of value from judgments of obligation. We will elaborate on Mandelbaum's idea in a moment.

### 3.5.4 Moral Deliberation

To reach a moral judgment on a subject, moral deliberation frequently involves coming up with moral concepts and weighing their plausibility (For example, by pondering them over and evaluating arguments for and against). The encyclopedia also clarifies that this category focuses on the conscious process that usually results in either the decision to act based on one's

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<sup>88</sup> Moral Phenomenology: Stanford Encyclopedia of Philosophy, 2.

<sup>89</sup> Moral Phenomenology: Stanford Encyclopedia of Philosophy, 2.

considerations or the formation of a moral judgment, which are typical consequences of this process.<sup>90</sup>

### 3.5.5 Moral Agency

This refers to exercising one's capacity to act, which includes having experiences with moral decision-making (a form of willpower) and experiences with planning, attempting, striving, and acting in morally significant ways. When an agent reaches the necessary level of moral knowledge, they can see *intuitively what to do without applying rules and making judgments*, as Hubert and Stuart Dreyfus described in their discussion of ethical comportment.<sup>91</sup>

### 3.6 Maurice Mandelbaum's View

According to the analytic tradition, phenomenological inquiry relies on introspection to identify characteristics of one's moral experience, which can then be used to conclude the experience's psychological makeup. Maurice Mandelbaum, whose book, *The Phenomenology of Moral Experience* was crucial in igniting analytic philosophers' interest in the phenomenal nature of moral experience, will be a significant source of guidance in this section. Analyzing individual's moral consciousness data is where the phenomenological approach to ethics begins, claims Mandelbaum.<sup>92</sup> And according to him, this has to do with how moral judgements are assessed.

Mandelbaum is in accordance with the standard differentiation between moral duty judgments and value judgments, sometimes known as moral worth. But he thinks the distinction between *direct* and *removed* moral judgments is the one that has the most phenomenological significance. Prior judgments were more concerned with *rightness* or *wrongness* than with value.

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<sup>90</sup> Moral Phenomenology: Stanford Encyclopedia of Philosophy, 2.

<sup>91</sup> Hubert. L. Dreyfus and Stuart. E. Dreyfus, "What is Morality? A phenomenological Account of the Development of Ethical Expertise" in David Rasmussen ed., *Universalism vs. Communitarianism*. (Cambridge: mass, 1990), 243.

<sup>92</sup> Maurice Henry Mandelbaum, *The Phenomenology of Moral Experience*. (USA: Creative Media Partners, 2021), 30.

Additionally, an agent is immediately presented with a situation in which he feels he must make a moral choice,<sup>93</sup> and formulate moral judgments. The name "removed moral judgements" comes from the fact that they are formed from the perspective of an observer. Value judgments that have been removed are concerned with specific character qualities (the virtues and vices) or the general character of another person. Removed deontic judgements, on the other hand, address the conduct of another person or one's prior self.

### **3.7 The Structural Method According to Mandelbaum**

Mandelbaum defines direct moral judgments as those made by an agent when confronted with a moral circumstance. Mandelbaum's phenomenological account of the experience leading to this type of judgment is divided into two parts. To begin, he describes the experience of being compelled to perform or stop from performing a predetermined action. Second, he describes what he considers to be the phenomenological basis of the previously indicated feeling.<sup>94</sup> According to Mandelbaum, the perception of moral need comprises an experienced demand that is viewed as an energy that, like other energies, may possibly be described by relating to its perceived source and trajectory. This energy exists in nature and is felt in society when an act of injustice is committed.

According to Mandelbaum, whenever we render a direct moral judgment, we usually believe that the demands are being made of us from the outside. They are requests that seem to have been made without our involvement, but we feel compelled to comply.<sup>95</sup> Mandelbaum's demand is therefore reflective, which is a feature of moral judgements made directly. It emerges randomly and is directed at the agent who is making the judgment. He claims that this experience of independence is what gives direct moral encounters their objectivity because the demands seem

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<sup>93</sup> Mandelbaum, *The Phenomenology of Moral Experience*, 41.

<sup>94</sup> Mandelbaum, *The Phenomenology of Moral Experience*, 45.

<sup>95</sup> Mandelbaum, *The Phenomenology of Moral Experience*, 54.

to come from the circumstances the person is facing and are separate from their own interests, desires, and aversions. Even if some people choose to disregard this influence, everyone is aware of whether what they are doing is wrong or right.<sup>96</sup>

Let us take a case in point: A man goes out to a bar for a drink, and in the process, there comes a permissive woman who entices him sexually. His sexual desire is hiked, but then he recalls that he is a married man with a very loving and faithful wife. He is conscious of his commitment to be faithful to his wife and not to indulge in extramarital sexual acts, despite his current situation of being seduced and having a sexual urge. He then tells this seducer that he has to go back to his wife at home, and so he leaves the bar.

The man's refusal to engage in a sexual act is caused by external circumstances such as the fear of the aftermath of the act, and probably his marital commitment to be faithful to his wife. From this example, one can conclude that the man had an option of fulfilling his bodily desires by indulging with the seducer, but he chose not to, may be because he rationally made a cost-benefit analysis in his mind. According to Mandelbaum, the experience of various actions being most appropriate for one's present situation, as well as the perception of this type of appropriateness, are the foundation of the felt urge that is typical of the phenomenology of direct moral necessity.

### **3.8 Mandelbaum's Scope of Moral Experience**

#### **3.8.1 Judgmental Moral Experience**

Mandelbaum distinguishes between ethical principles that result from conscious deliberation and moral views that arise spontaneously without prior conscious deliberation.<sup>97</sup> For instance, in a situation where I am in charge of hiring staff, I might pause, consider the specifics of a situation that calls for moral responding, while also requiring to practice justice, and on that

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<sup>96</sup> Mandelbaum, *The Phenomenology of Moral Experience*, 55.

<sup>97</sup> Mandelbaum, *The Phenomenology of Moral Experience*, 57.

ground, form the opinion that I should forgo hiring my relative's friend, who isn't even qualified for the job, in favor of hiring someone qualified and fit for the position. The procedure of weighing my alternatives, imagining the way I would maintain a positive relationship with my relative after hiring his friend, as well as pondering about the way it would affect the work, knowing well that he lacks the qualifications for the position, may jeopardize the job, leads me to conclude that I morally and justly ought, all things regarded, to make the right decision, to be fair to the organization and to other applicants who might be qualified and fit for the job.

An example of Spontaneous judgmental experience is to see a gang of young men pour fuel on a defenseless animal, say a kitten, and light it on fire, it is morally repugnant.<sup>98</sup> In this scenario, deliberation is unnecessary. And, of course, there is a spectrum of circumstances involving more or less thought and hence varying degrees of deliberation and spontaneity in developing a belief with moral substance between the two cases just stated. Moral phenomenology should not be limited to deliberative moral judgment alone.

### **3.8.2 Ethical Compartment**

This describes instances in which a person behaves morally appropriately without consciously developing moral opinions.<sup>99</sup> According to the hypothesis, people with a high level of moral awareness may not make moral judgments as part of their experience when responding habitually to morally challenging situations.

### **3.7.3 Moral Judging**

There is a phenomenology of moral judgment, in which one reproves a moral matter, with the emphasis on the distinct phenomenology of developing or already having a conviction as

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<sup>98</sup> Terry Horgan and Mark Timmons, "Moral Phenomenology and Moral Theory" in *Philosophical Issues*, Vol. 15, Normativity (Ridgeview Publishing Company, 2005), 60.

<sup>99</sup> Dreyfus & Dreyfus, *What is Morality?* 245.

contrasted to the phenomenology of developing or already having any other kind of psychological mindset, such as already harboring a desire, personal intentions, wishing, insinuating, or whatever.<sup>100</sup> Recognizing one's psychological condition(s) at the time of moral decision-making or judgement, whether those conditions are merely beliefs or another type of non-belief condition, is an essential aspect. This is significant to keep in mind because it helps to prevent biased judgments, which can lead to an unfair distribution of justice.

### **Conclusion**

One of the purposes of this section containing moral judgement, is to prepare the reader for the next chapter concerning justice and punishment, as well as make a link with the previous chapter which justified the need for justice. Note that moral judgement aids in the exercise of justice by examining the morality of the action and assessing an appropriate punishment.

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<sup>100</sup> Terry and Mark, *Moral Phenomenology and Moral Theory*, 63.

## CHAPTER FOUR

### JUSTICE

#### Introduction

From the previous chapters, the essay has shown how uncontrolled desire can lead to immorality and crime. These two cause an imbalance in society, and that can be corrected through justice. The majority of prominent intellectuals, from Plato to Kant, have given the issue of justice careful consideration. This question appears to be one that man cannot definitively answer, but only advances the question. It is still as unanswered today as it was then. This chapter explains the meaning of justice, mainly in form of punishment and discusses the intention of punishment. This section is based on the work of Cesare Beccaria.

#### 4.1 Justice

Justice is the proper distribution of wealth and resources in society, and equally, meritocratically, according to status or some other arrangements. The essence of justice is identified with equality.<sup>101</sup> All societies tend to sense that a person has an inviolability based on justice that even the interests of the community cannot trump. Indeed, Plato already mentioned it in the *Republic* saying that, justice is “a notion that each man is to be given what is his due”.<sup>102</sup> St Thomas said that, justice is a virtue and a habit that enables man to give to each one what is his

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<sup>101</sup> Giorgio Del Vecchio, *Justice: A Historical and Philosophical Essay*. (Edinburgh: Edinburgh University Press 1952), 23.

<sup>102</sup> Francis. M. Cornford, *The Republic of Plato*. (London: Oxford University Press, 1941), 44.

due with a constant and perpetual will.<sup>103</sup> Justice is located in the will not in the intellect, for we are called just by doing something good not by knowing something well

According to Teleologists, such as Cicero, Justice is the ordering principle through which the society pursues the good for human beings.<sup>104</sup> However, theorists of justice as fairness believe that, Justice is a thin concept that provides a fair treatment that enables each person to pursue his or her own good.<sup>105</sup> Additionally, to understand the notion of justice properly, it is necessary to place it in the concept of law. In law, the theory of justice covers the whole field of principles and procedures that ought to be followed.<sup>106</sup> In this respect, the system of law is also known as the system of justice. Thus, the idea of justice refers to the right to equality through equity and impartiality.

Since it expresses a person's unbreakable desire for his or her own happiness, the desire for justice is fundamental to and deeply ingrained in the human mind. Justice is not necessary when there are no clashes of interest. When one interest can only be gratified at the expense of the other, there is a conflict of justice.

#### **4.2 Aristotle's Analysis of Justice**

According to Aristotle, justice is that kind of character that dispels people to the perfection of just acts, behaving justly, and wishing for what is just. On the other hand, injustice is the state that makes the act unjust and wishes for unjust things.<sup>107</sup> Justice also consists in treating equals equally and un-equals unequally but in proportion to their relevant differences. Sometimes, this is referred to as equality of differences.

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<sup>103</sup> Edward. J. Gratsch, *Aquinas' Summa: An Introduction and Interpretation*. (New York: Alba House, 1985), 173.

<sup>104</sup> Edward Craig, *The shorter Routledge Encyclopedia of philosophy*, 482.

<sup>105</sup> Joseph Margolis, "Rawls on Justice –Once again" in J. R. Lindgren, ed., *Horizons of Justice*, (New York: Peter Lang Publishing, 1996), 123.

<sup>106</sup> Jeremiah Newman, *Foundations of Justice: A Historico-Critical in Thomism*. (Cork University Press, 1954), 12.

<sup>107</sup> Aristotle, *Nicomachean Ethics*, J. A. K. Thompson trans. (London: Penguin classics, 1955),112.

Evidently, the concept of impartiality comes first in this. The idea of impartiality implies a certain level of equality, not that all situations should be handled the same way, but rather that the onus is on those who would handle them differently to make distinctions. As a result, since these factors affect judgment, justice itself does not regard people, material prosperity, or social rank. The right to equal consideration to be treated similarly unless material discrepancies are established genuinely means that.<sup>108</sup>

#### **4.2.1 Societal Justice According to Aristotle**

When we discuss societal justice, we realize that it refers to a type of justice that is achieved amongst people who share a life in order to meet their needs as free and equal individuals, either mathematically or proportionally. In associations where these conditions are absent, societal fairness is also absent. Only those whose relationships with one another are governed by law and those who are susceptible to injustice will find justice.<sup>109</sup> Additionally, societal justice can be expanded into two main categories namely, *natural* and *legal* justice.

*Natural justice* is that which has some validity everywhere and *legal justice* is that which can take one form or another but once laid down, it becomes decisive.<sup>110</sup> In a word, they are man-made just laws that are not the same everywhere. Justice can be divided into three main categories namely; personal justice, supernatural justice and social justice.

#### **4.3.1 Personal Justice**

Consciousness is another name for personal justice. It happens when a person reacts emotionally to his or her deeds as a result of their upbringing and acquired morals.<sup>111</sup> The justice

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<sup>108</sup> Stanly. I. Benn, "Justice", in Edward ed., *The Encyclopedia of Philosophy* Vol iv, (New York: MacMillan, 1967), 299.

<sup>109</sup> Aristotle, *Nicomachean Ethics*, 129.

<sup>110</sup> Newman, *Foundations of Justice*, 73.

<sup>111</sup> Justice, Available at: <http://soeyberty.com/law/what-isjustice/ixz0yVLaomt7>, Accessed on 15 September 2010.

of the society in which the individual was raised is typically comparable to this form of justice, but as the person ages and gains life experience, his personal conceptions of justice typically alter.

### **4.3.2 Supernatural Justice**

Justice is supposedly directed by God, force, or energy in this culture. It is also thought that this being is perfect in its justice and is infallible. Those who adhere to this kind of justice find solace in the notion that justice will be administered to all, and they are also discouraged from wrongdoing because they worry about receiving heavenly justice.<sup>112</sup>

### **4.3.3 Social or Legal Justice**

This calls for the establishment of a set of laws decided upon by the community itself, followed by the appointment of authorities to carry out the law's enforcement.<sup>113</sup> Because a widespread ethical standard is established, this typically helps the populace. The three primary categories of social justice are distributive, commutative, and restorative justice.

#### **4.3.3.1 Distributive Justice**

This deals with the exercise of power in the right order in the relation between those who have the power and those delivered to this power.<sup>114</sup> Man has a responsibility to treat each member of society fairly in his capacity as the custodian of the common good. Everyone in the society must gain from distributive justice. Only if a maldistribution is to everyone's benefit, all social products must be allocated equitably.<sup>115</sup> On the other hand, public authority can however deprive an individual his or her freedom, not only when he has committed a crime but also when he falls victim to anything that would endanger the social whole.<sup>116</sup>

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<sup>112</sup> Justice, Available at: <http://socyberty.com/law/what-isjustice/ixz0yVLaomt7>, Accessed on 15 September 2010.

<sup>113</sup> Newman, *Foundations of Justice*, 45.

<sup>114</sup> Josef Pieper, *The Four Cardinal Virtues*. (Indiana: University of Notre Dame Press, 1954), 81.

<sup>115</sup> Alan Brown, *Modern Political Philosophy: Theories of the Just Society*. (New York: Penguin Books, 1986), 57.

<sup>116</sup> Walter Kaufmann, "Doubts about Justice" in H. E. Kiefer and M. K. Munitz, eds *Ethics and Social Justice*. (New York: State University of New York Press Albany, 1968), 64.

#### **4.3.3.2 Commutative or Ministerial Justice**

This is the balance between an individual and how he relates to others. It hits a mean according to arithmetical proportion.<sup>117</sup> The individual must be conscious of his obligations towards the other, self, and the society. If this obligation is broken, there will be *anomie* if we use sociological terms.

#### **4.3.3.3 Restorative or Compensatory Justice**

Compensatory In order to be just, both the victim's loss and the wrongdoer's gain must be made up for. In the course of restorative justice, those with an interest in a particular offense come to a consensus on how to handle the offense's consequences.<sup>118</sup> Restitution is simply re-instating a person to what he formerly possessed. In this case, a creditor has the right to receive the equivalent of a service rendered or reparation for sustained loss.

#### **4.4 Justice according to Cesare Beccaria**

Beccaria was not satisfied with the Legislature and Judiciary of his time, and he decided to fashion powerful criticisms of the existing system using analytical tools through his master piece *on crimes and punishment* which first came out in 1764.<sup>119</sup> Although many of the specific suggestions were ignored, the activities brought him to sufficient prominence for the Austrian government ultimately to place him in important positions within the Lombard administration. His ideology of justice is explained in his writings.

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<sup>117</sup> Newman, *Foundations of Justice*, 50.

<sup>118</sup> Michel Rosenfeld, "Restitution, Retribution, Political justice and the Rule of Law" in J. Ralph Lindgren, ed. *Horizons of Justice*. (Lausanne: International Academic Publishers, 1996), 186.

<sup>119</sup> Cesare Beccaria, *On Crimes and Punishments*, xiii.

#### 4.5 Determinants of Human Actions According to Beccaria

Beccaria's philosophy was based on human nature, especially on what he called "ineradicable human sentiments."<sup>120</sup> Beccaria agreed with Verri's assessment of how pain serves a purpose. Verri believed that the sources of human action were one's passions. But he persisted in believing that reason played a crucial part in shaping and guiding people's passionate emotions. Additionally, he considered the pursuit of pleasure itself to be secondary to the need to flee sorrow. So, happiness was more than just momentary appreciation of nice feelings. Instead, it was accomplished by rationally pursuing our interests and removing barriers to our well-being, like unemployment.<sup>121</sup>

Beccaria asserted that "pain and pleasure are the motivational powers of all conscious creatures," but he also maintained that "any action of our will is precisely equivalent to the intensity of the sensual impression that offer ascent to it."<sup>122</sup> This meant, as he later clarified, that "the final cause of deeds is the desire of pleasure, their proximal and the efficient cause is the fleeing from pain." because "man sleeps in peace, but acts in affliction".<sup>123</sup>He advocated for punishment because it arouses pain in a way and thus reshapes individuals.

#### 4.6 Beccaria's Moral Judgement

Beccaria adopted Locke and Helvétius' empiricist position by arguing that all human knowledge, even morality and justice, is a result of the activity of stimuli on our senses. He did not, however, fully mechanize or deterministically understand this process. Like Verri, he maintained a component of the rationalist perspective by identifying a specific role for human reason in the organization and synthesis of our sensory impressions. Furthermore, contrary to

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<sup>120</sup> Cesare Beccaria, *On Crimes and Punishments*, 10.

<sup>121</sup> Cesare Beccaria, *On Crimes and Punishments*, xiv.

<sup>122</sup> Cesare Beccaria, *On Crimes and Punishments*, 21, 41.

<sup>123</sup> Cesare Beccaria, *On Crimes and Punishments*, 157.

Hume's view that reason is the slave of the passions, both Italian thinkers held that what makes people unique is their ability to logically channel and regulate their impulses.<sup>124</sup>

The foundation for Beccaria's endeavor to give the law what he saw as a more reasonable foundation was this modified empiricist epistemology. In order to ensure that crime and suffering are inextricably linked, laws must be unambiguous and punishments must be swift, definite, and efficient. For a legal system to be rational, laws had to be as specific as feasible and judicial discretion had to be kept to a minimum.<sup>125</sup> As a result, the basic legal and political vocabulary boiled down to the possibility of punishment or the infliction of pain if people do not act in a stipulated manner<sup>126</sup>. The establishment of the right to punish provided the key to people's understanding of the whole legal and political system and consequently was the starting point for Beccaria's theory.

#### **4.7 Beccaria's Theory of Punishment**

This was a result of Beccaria's use of the concept of a social contract like a theoretical tool to restrict the applicability of law while also referring to a traditional utilitarian defense of the law.<sup>127</sup> Beccaria knew the downsides of both contractarian and utilitarian views; therefore, he made a symbiosis whereby the strengths of one theory compensated the weaknesses of the other.

Beccaria's mixture of contractarianism and utilitarianism modified the latter in two main respects. *First*, the consensus stated that the goal of government should be to uphold laws that advance the happiness of the people by protecting each and every citizen's important interests to the greatest extent feasible rather than focusing on maximizing aggregate utility.<sup>128</sup>

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<sup>124</sup> Cesare Beccaria, *On Crimes and Punishments*, xvi.

<sup>125</sup> Cesare Beccaria, *On Crimes and Punishments*, xvi.

<sup>126</sup> Cesare Beccaria, *On Crimes and Punishments*, xvii.

<sup>127</sup> Cesare Beccaria, *On Crimes and Punishments*, xviii.

<sup>128</sup> Cesare Beccaria, *On Crimes and Punishments*, 101.

*Second*, Beccaria prevented the collapse of rule into act utilitarianism, which would have allowed the government to consider each case on its own merits, by making the rules subject to a contract. Both of these actions stopped the utilitarian thinking he used as a powerful weapon for social criticism and reform from occasionally being used to sacrifice the individual for the welfare of the society.<sup>129</sup> These considerations enabled Beccaria to adopt a compromise theory, similar to that proposed by contemporary philosophers such as John Rawls and H. L. A. Hart, which found room for the concerns of retributivists as well.

#### **4.8 Retributive versus Utilitarian View**

The advantages and disadvantages of the utilitarian and retributive approaches to punishment have usually been summarized as follows. Punishment has a future focus for utilitarians. Its primary goal is to decrease crime, which will lessen suffering in the future. According to this viewpoint, previous wrongs can only be prevented from happening again by making unlawful behaviors less alluring than legitimate ones. Punishment, in contrast, appears a backward focus to a retributivist. It stems from guilt and attempts to guarantee that offenders experience consequences appropriate with their actions.<sup>130</sup>

The utilitarian viewpoint has received two broad and connected objections from retributivists, which both go right to the core of Beccaria's argument. First, they contend that utilitarianism could result in the application of harsh sanctions for relatively minor violations in an effort to discourage repeated minor transgressions of the law by providing an extreme exemplary penalty.<sup>131</sup> Such as hanging someone for stealing a goat. Second, they claim that utilitarianism can be used to defend penalizing an innocent individual for an offence they

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<sup>129</sup> Cesare Beccaria, *On Crimes and Punishments*, 102.

<sup>130</sup> Cesare Beccaria, *On Crimes and Punishments*, xxi.

<sup>131</sup> Cesare Beccaria, *On Crimes and Punishments*, xxi.

never committed.<sup>132</sup> For instance, if the genuine offender evaded capture and a conviction was required to preserve public confidence in the efficacy of law enforcement and to maintain the deterrence of penalty.

In response, utilitarians claim that the retributivist viewpoint is cyclical and ambiguous, essentially equivalent to the claim that someone deserves to be punished because they deserve it. These ideas may be effective at identifying the offender who needs to be punished, but they fall short when it comes to justifying why and how. The “lex talionis”, sometimes known as the “an eye for an eye, a tooth for a tooth” maxim, is a well-known retributivist argument.<sup>133</sup> It is not apparent, for example, what penalty it imposes on a toothless person who has knocked out another person's teeth.

#### **4.9 Intention and Rationale of Punishment**

Knowing the benefits and limitations of each of these ideas of punishment, Beccaria designed his theory to take use of the former while avoiding the latter. He used utilitarian view as his main defense for why punishment was necessary.<sup>134</sup> He ignored justice's retributive goal, which he argued was excessively arbitrary and frequently meaningless when it came to intention of punishing. Its fundamental tenet was that offenses against the body politic must be penalized by inflicting misery onto the offender's body in accordance with the lex talionis.<sup>135</sup>

Such ideas were unreasonable and unhelpful to Beccaria. According to him, the only goal of punishment may be to stop the offender from harming others again and to discourage others from doing the same. Therefore, in accordance with the principle of proportionality, punishments and the methods used to impose them should be chosen in a way that leaves the most potential

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<sup>132</sup> Cesare Beccaria, *On Crimes and Punishments*, xxi.

<sup>133</sup> Cesare Beccaria, *On Crimes and Punishments*, xxii.

<sup>134</sup> Cesare Beccaria, *On Crimes and Punishments*, 43.

<sup>135</sup> Cesare Beccaria, *On Crimes and Punishments*, xxiii.

impact on people's thoughts while causing the least amount of suffering to the body of the guilty party.<sup>136</sup>

However, Beccaria emphasized that application of punishment had to be limited by retributivist considerations of guilt. As a result of this dual perspective on punishment, Beccaria made a similar distinction to that proposed by Rawls and Hart between the functions of the legislator and those of the judiciary<sup>137</sup>. The first should adopt utilitarian criteria for the framing of laws and punishments, the second employ retributive criteria when applying these rules to particular cases.

#### **4.10 Argument Against Torture**

Beccaria proposed two alternative applications for torture. First, to persuade the offenders to confess to their crimes, or to clarify any inconsistencies discovered during their interrogation, or to identify their collaborators, or ultimately, to uncover any other offenses of that he is guilty but may be not accused.<sup>138</sup> Beccaria raised an objection, saying that this process was both unfair and ineffective. Beccaria maintained that society had a responsibility to protect the person until it was "determined that he had breached the pacts according to which this protection was supplied." Torture meant punishing individuals before they had been proven guilty.<sup>139</sup>

The *second* use of torture, is as a means of punishment for exonerating guilt. Against this, Beccaria argues that offences ought to be categorized by the harm they inflicted on society and punished accordingly. He believed that penalties should never cause more suffering than is required to stop a specific crime or outweigh in misery the harm caused to society by the offense

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<sup>136</sup> Cesare Beccaria, *On Crimes and Punishments*, 31.

<sup>137</sup> Cesare Beccaria, *On Crimes and Punishments*, 12, 14-15.

<sup>138</sup> Cesare Beccaria, *On Crimes and Punishments*, 57.

<sup>139</sup> Cesare Beccaria, *On Crimes and Punishments*, 39.

they were intended to stop.<sup>140</sup> Furthermore, he said that torture was fundamentally harsh and degrading and that, as a result, it was prone to lead to an increase in violent actions by sensitizing individuals to brutality.

#### **4.11 Argument Against the Death penalty**

Beccaria held that granting the state the authority to frequently murder its citizens should never be considered helpful or necessary to safeguard their interests. According to him, the death sentence is largely ineffective and a dubious deterrence. He reasoned that by executing the perpetrator, a potentially beneficial citizen who could pay back society's obligation is eliminated from the system.<sup>141</sup> For the cases of murder and a revolutionary leader who threatened the existing government and public interest, Beccaria advocated for imprisonment or exile<sup>142</sup>.

#### **4.12 Critique of Beccaria's Theory**

According to Hegel, Beccaria's argument exposes the contractarian view of political obligation's supreme folly. According to him, the state has the legal authority to demand that its citizens give their life in defense of the state.<sup>143</sup> Although Beccaria is often interpreted as having radicalized the Hobbesian account of the social contract, Hobbes himself did not deny the state the right to apply the death penalty in appropriate cases. On the contrary, he believed it was entirely rational that contractors would grant such a right in order to protect themselves from law-breaking by others. He merely contended that the condemned had no duty to obey in such circumstances<sup>144</sup>.

In a significant critique of Beccaria's position, Kant noted that the contractors cannot be taken to be figuratively willing their own execution when they grant the state the right to punish

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<sup>140</sup> Cesare Beccaria, *On Crimes and Punishments*, xxv.

<sup>141</sup> Cesare Beccaria, *On Crimes and Punishments*, xxvii.

<sup>142</sup> Cesare Beccaria, *On Crimes and Punishments*, xxvii.

<sup>143</sup> Hegel, *The Phenomenology of Mind*, trans. J. Baillie. (New York:1967), 526.

<sup>144</sup> Richard Bellamy, Croce, Gramsci, *Bobbio and the Italian Political Tradition*. (Dublin: ECPR Press, 2013), 61.

specific offenses with death. Instead, they are attempting to establish a legal framework that is suitable for a society that they are aware is likely to be home to murders and other awful crimes. The offender just decides to conduct a punishable act; they do not will their own punishment. According to Kant, Beccaria could only have made the case for the utter injustice of the death penalty if he had been willing to apply a natural rights theory that views all murder as inherently wicked.<sup>145</sup>

#### **4.13 PERSONAL REFLECTION**

Cesare Beccaria came up with wonderful views on the necessity, intention and rationale of fulfilling justice in the society. However, He overlooked the idea of rehabilitating the offenders' moral personalities and the need for reconciliation after exercising justice. Justice is not accomplished if it ends with law and punishment. Punishment makes people hardened, bitter, and anti-social, and they even become threats to the society. Whatever the case, rehabilitation, that is, restoration or reconciliation, creates a social and fair society. If this is not done, the circle of relationship will be broken.

##### **4.13.1 Reconciliation**

Reconciliation is fixing and improving damaged relationships in order to make them reflect a common humanity and work toward a common future that is based on compassion, truthfulness, and harmony.<sup>146</sup> In this process, justice, Human rights and accountability must not be sacrificed for reconciliation. The independence of the judicial systems needs to be restored so as to objectively participate in the transitional justice process.

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<sup>145</sup> Benjamin. S. Yost, "Kant's Justification of the Death Penalty Reconsidered", *Kantian Review*, (volume 15-2, 2010), 4-10.

<sup>146</sup> M. Makasa, "Liberation Tool for Reconciliation", In *The African Forum for Catholic Social Teaching (AFCAST), The Church in Service to Reconciliation, Justice and Peace*, , (Harare: Arrupe College, 2009), 25.

### **4.13.2 Ways of achieving Reconciliation**

Reconciliation is achieved by changed attitudes, habits and practices which include forgiveness, respect for others, acceptance, honesty commitment, cooperation and willingness to embrace the vulnerable Other<sup>147</sup>. Opening up and sustaining conversation are also important aspects of reconciliation. This means breaking out of the circular arguments of reprisal to create and sustain the conversation necessary to make living together possible. Politically, reconciliation requires far interactions between members of different groups, overcoming of antagonistic division and the discovery and creation of a society in which all citizens have a sense of belonging.

Also crucial is acknowledging and dealing with the past. Creating meaningful relationships, changing societal attitudes, and giving the means for justice, healing, restitution, and restoration are all part of this. It is necessary to identify, reconstruct, and modify the social, economic, and political institutions that contributed to conflict.

### **Conclusion**

Justice's primary objective is to make amends for the harm done by involving all parties involved in an understanding dialogue through open, voluntary communication. This doesn't only apply to situations where one man owes another something; justice is also employed to restore the tranquility that most closely reflects a man's essence whenever it is harmed. Restorative justice's use presents a question regarding torture and murder.

### **GENERAL CONCLUSION**

The rational choice approach is a normative principle, but not in the sense that it can be used to judge whether a person's behavior is right or wrong; instead, it is normative in that it indicates what a person should do to achieve a particular end or objective. It is used to explain,

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<sup>147</sup> Pieper, *The Four Cardinal Virtues*, 79.

predict, and even describe human behavior. According to the rational choice approach, desire satisfaction can apply to various factors, including achieving goals.

Desire in itself is not bad, but the problem comes from uncontrolled desire and what exactly is desired. Desire driven by self-interest is dangerous, especially in this world characterized by scarcity of resources, it leads to conflicts between individuals in the society, and this throws the state of equilibrium out of balance. Only justice can restore the situation back to normal, and also avoid future offence in the society.

Therefore, punishment is necessary, but it should not be treated as an end in itself but as a means, it should be done for the sake of justice. I still emphasize the need to mend the broken relationship and to heal the wounds caused in the process so as to create a better society.

## BIBLIOGRAPHY

- Akers, Ronald. L. *Criminological Theories: Introduction and Evaluation*, 2nd ed. New York: Routledge, 2013.
- Aristotle, *Nicomachean Ethics*, J. A. K. Thompson trans. London: Penguin classics, 1955.
- Beccaria, Cesare. *On Crimes and Punishments and Other Writings*. Cambridge University Press, 1995.
- Bellamy, Richard Croce. *Gramsci, Bobbio and the Italian Political Tradition*. Dublin: ECPR Press, 2013.
- Benn, Stanly. I. "Justice", In Edward. Ed. *The Encyclopedia of Philosophy Vol IV*. New York: MacMillan, 1967.
- Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. Kitchener: Batoche Books, 2000.
- Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. New York: Batoche Books, 2000.
- Bouffard, Jeffrey A, M. Lyn Exum, and Peter A. Collins. 2010. "Methodological Artifacts in
- Bratman, M. E. *Intentions, Plans, and Practical Reasoning*. Stanford: CSLI Publications, 1999.
- Brown, Alan. *Modern Political Philosophy: Theories of the Just Society*. New York: Penguin Books, 1986.
- Cornford, Francis. M. *The Republic of Plato*. London: Oxford University Press, 1941.
- Craig, Edward. ed. *The Shorter Routledge Encyclopedia of Philosophy*. New York: Routledge, 2005.
- Debeljuh, Patricia. *Ethics: Learning to Live*. Focus Publications Limited, 2022.
- Del Vecchio, Giorgio. *Justice: A Historical and Philosophical Essay*. Edinburgh: Edinburgh University Press, 1952.
- Donceel, J. F., *Philosophical Psychology*. New York: Sheed and Ward, 1961.
- Dreyfus, Hubert. L. and Stuart. E. Dreyfus, "What is Morality? A Phenomenological Account of the Development of Ethical Expertise" In David Rasmussen ed. *Universalism vs. Communitarianism*. Cambridge: Mass1990.
- Eberl, Jason T. *Thomistic Principles and Bioethics*. New York: Routledge, 2006.
- Frank, Robert. H. *Microeconomics and Behavior*, 3<sup>rd</sup> ed. New York: McGraw-Hill, 1997.
- Giddens, Anthony. *New Rules of Sociological Method*. Cambridge: Polity Press, 1993.
- Gretsch, Edward. J. *Aquinas' Summa: An Introduction and Interpretation*. New York: Alba House, 1985.
- Hamermesh, Daniel. S. and Neal. M. Soss. *An Economic Theory of Suicide*. *Journal of Political Economy*, (1974)
- Hegel. *The Phenomenology of Mind*, trans. J. Baillie. New York:1967.
- Hobbes, Thomas. *The Leviathan*. USA: University of Arizona, 1996.
- Hollis, Martin *Reason in Action*. Cambridge: Cambridge University Press, 1996.

- Horgan, Terry and Mark Timmons, "Moral Phenomenology and Moral Theory" In *Philosophical Issues*, Vol. 15. Ridgeview Publishing Company, 2005.
- Hume, David. *A Treatise on Human Nature*. London: The Floating Press, 2009.
- Jones, W. T., Frederick Sontag, Morton O. Beckner, Robert J. Fogelin. Eds. *Approaches to Ethics: Representative Selections from Classical Times to the Present*. New York: McGraw-Hill Book, 1962.
- Jonge, Jan de. *Rethinking the Rational Choice Theory: A Companion on Rational and Moral Action*. London: Palgrave Macmillan, 2012.
- Kattsoff, Louis O. *Making Moral Decisions: An Existential Analysis*. Hague: Springer, 1965.
- Kaufmann, Walter "Doubts about Justice" In H. E. Kiefer and M. K. Munitz, eds. *Ethics and Social Justice*. New York: State University of New York Press Albany, 1968.
- M. Makasa, "Liberation Tool for Reconciliation", in The African Forum for Catholic Social Teaching (AFCAST). *The Church in Service to Reconciliation, Justice and Peace*, Harare: Arrupe College, 2009.
- Mandelbaum, Maurice Henry. *The Phenomenology of Moral Experience*. USA: Creative Media Partners, 202.
- Margolis, Joseph. "Rawls on Justice –Once again" In J. R. Lindgren, ed. *Horizons of Justice*. New York: Peter Lang Publishing, 1996.
- Margolis, Joseph. "Rawls on Justice –Once again" In R. Lindgren, ed. *Horizons of Justice*. New York: Peter Lang Publishing, 1996.
- Mas-Collel, Andreu, Whinston, Michael, and Green, Jerry R., *Microeconomic Theory*. New York: Oxford University Press, 1995.
- Maskulak, Marian. *Edith Stein and the Body-soul-spirit at the Center of Holistic Formation*. New York: Peter Lang, 2007.
- Matsueda, Ross L., Derek Kreager, and David Huizinga. 2006. "Deterring Delinquents: A
- McCarthy, Bill and John Hagan. 2005. "Danger and the Decision to Offend." *Social Forces* 83
- McCarthy, Bill. "Rational Choice Theory and Crime," In Brunisma, D. and D. Weisburd, Eds. *Encyclopedia of Crime and Criminal Justice*. California: Springer, 2014.
- Mehlkop, Guido and Peter Graeff. 2010. "Modelling a Rational Choice Theory of Criminal Action: Subjective Expected Utilities, Norms, and Interactions." *Rationality and Society* 22: 189-222.
- Newman, Jeremiah *Foundations of Justice: A Historico-Critical in Thomism*. (Cork University Press, 1954), 12.
- Newman, Jeremiah. *Foundations of Justice: A Historico-Critical in Thomism*. Cork University Press, 1954.
- Oesterle, John. A. *Ethics: The Introduction to Moral Science*. USA: Prentice-hall, 1957

Pieper, Josef. *The Four Cardinal Virtues*. Indiana: University of Notre Dame Press, 1954.

Pollock, Joycelyn M. *Ethical Dilemmas and Decisions in Criminal Justice*, 10<sup>th</sup> ed. Boston: Cengage, 2017.

Rational Choice Model of Theft and Violence.” *American Sociological Review* 71: 95–122.

Sen, Amartya. “Rational Behavior.” In Eatwell, John, Milgate, Murray, and Newman Peter, *Utility and Probability*. New York: W. W. Norton & Company, 1990), 215.

Sen, Amartya. *The Idea of Justice*. London: Allen Lane, 2009.

Smith, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: Clowes and Sons, 1776.

Tebbit, Mark *Philosophy of Law: An Introduction*, 2<sup>nd</sup> ed. New York: Routledge, 2005.

Tests of Rational Choice Theory.” *Journal of Criminal Justice* 38: 400-409.

Vandemiati, Aldo. *In the First Person: An Outline of General Ethics*. 2<sup>nd</sup> ed.,. Urbaniana University Press, 2020.

Varian, Hal *How to Build an Economic Model in Your Spare Time*. In Szenberg, Michael, *Economists at Work*. Ann Arbor, MI: University of Michigan Press, 1997.

Yost, Benjamin. S. “Kant’s Justification of the Death Penalty Reconsidered”, *Kantian review*, (volume 15-2, 2010), 4-10.

#### **Internet Sources**

Justice, Available at: <http://socyberty.com/law/what-isjustice/ixz0yVLaomt7> , Accessed on 15 September 2010.

John Drummond and Mark Timmons, eds. *Moral Phenomenology: Stanford Encyclopedia of Philosophy*. (Stanford university, 2021), <https://plato.stanford.edu/entries/moral-phenomenology/>.