

Capital Punishment in Hegel's System

1. Abstract

In the "Elements of the philosophy of right", Hegel introduces three kinds of wrong one of which is known as a crime by which the right is negated and the only way to negate this negation -for his purpose of the logical mediation- is through the punishment. After justifying the punishment, he argues on whether it should be equal to the crime which has been happened or not? and he concludes that it should be equal to the value of the crime and not the character of it, in addition, there should be a maximum for this value of the punishment. Therefore, he shows different rights and how they are different in the quality and not just quantity and how there is a right for life that if it has not been recognized the punishment for it has the same value as taking the life of the person whose act it is.

There are two different kinds of question that someone can ask in this view. The first question is whether the punishment is justified or it could have been another way for the crime to be negated? This question has been raised by Allen wood in his paper¹ and he mentions it, But it is not the purpose of this paper, although I have my own view about it and later I will mention it briefly. The second question, in which the focus of this paper is mostly on, is where the threshold of the punishment is and is the capital punishment the maximum punishment that Hegel was searching in his system or is it a tough decision and it does not work in his system?

¹ Allen Wood, 1990, pp.111: "But why must this protection take the specific form of punishing their violation? Suppose there were a society in which the authorities have devised fairly effective ways of protecting (what we would otherwise call) people's rights, but without the use of punishment - as by making it difficult to violate rights, or by educating people so that violations of right will not be common."

2.Capital punishment in Hegel's system

There are two parts in the “elements of the philosophy of right” that are mainly focused on the crime and its punishment. The first part is from §82 to §104 in which Hegel describes wrong and the three different kinds of it which namely are: Unintentional wrong, deception, and the crime. The first one is unintentional and not important but it is the second one and mostly the third one that Hegel considers for deserving the punishment. Then the second part is from §209 to § 229 in which Hegel is arguing about the administration of justice in the civil society and how for a punishment to be more concrete and objective there should be positive laws by which a state can argue about the different kinds of crime in quality and quantity.

Hegel bases his political theory on rights. In abstract right, he introduces the right to the property as one the main rights². Then later by introducing the crime, he argues that it is the act that is infringing the right as right and for it to be negated there should be a punishment. So, I will give a definition of a crime on Hegel's view according to these parts and then I will discuss on how this definition fits his system.

A: Crime=def. an *act of a rational person*, by which the *right as right* is infringed.

He sees crime as an act because there is no good reason to accuse someone of his dispositions and the true factor that something can be measured is through the person's actions rather than his intentions only which is hard to judge:

“Thus, the laws of the state cannot claim to extend to a person's disposition, for in the moral sphere, I exist [only] for myself, and force is meaningless in the context.”

(PR, §94)

² PR, §40 & §41

Besides, he sees this act as a **coercion** to the right, in addition, he brings punishment as another coercion that will negate the first one and brings the mediate situation in the system. Therefore, for the question that why he introduces punishment for the crime and no other possibilities, one answer is that the nature of the crime is coercion and it needs something in its own nature for being negated and a good choice is a punishment which is a coercion too. but, it is not the case that he is choosing the punishment for negating the crime and he mentions that punishment is the manifestation of the crime itself.³

Another notion is the fact that this act is done by a **rational** person, for the reason that when he introduces punishment he mentions that this act is done for honoring the criminal as a rational person rather than deterrence or some other act that someone will do for the acts of a dog.⁴

Consequently, as Steinberger mentions in his paper too, Hegel did not see punishment for all people and he excluded irrational people from the criminals⁵.

Now I should mention that although it seems odd that a rational person does an act which in Hegel's perspective is something null and void⁶, he has his own answer to this dilemma: He sees crime as a possible part of one of the choices of a free will, therefore crime is not at all impossible for a rational free will, and even this person in the moment of the act is aware of his doing wrong but he does it anyways-due to his right of a free choice- and it is one of the reasons that makes the crime something null and void in which the person who does this is willing to negate some other wills and he also wills

³ PR, §101

⁴ PR, §100

⁵ Peter J. Steinberger, 1983, pp.862: "First, crimes are committed by free individuals, individuals with a capacity for rational choice. Again, lunatics, children, and animals may do things that have bad consequences, but they do not deserve to be punished for them."

⁶ PR, §82

the consequences of this act which is the act of the punishment of himself. Therefore, another reason for the appearance of the punishment is the nullity of this act that should be negated for the sake of the mediation of the whole system of Hegel.

After justifying the punishment for crime, he argues on how much the scale of the punishment should be. And, the place in which he justifies the capital punishment is in this argument:

First, he makes a difference between the quality of a crime and the quantity of it.⁷ he mentions both are important, but the difference between the kinds of the crime is in their quality. For giving more information about the quality and the quantity of the crime, he gives the example of the difference between theft and robbery. He argues that this difference is in the type of them and in their quality but the difference in the quantity is the one when the difference is about the number of the items that has been rubbed.

Second, he discusses the issue that the punishment should be equal to the crime. He gives the old famous example of the phrase in the Bible, “an eye for an eye”, and he argues on how the equality in the character of an act is not possible due to the fact that there is not always a situation in which the equal act could be considered like when a person steals something but he doesn’t own the same thing for the state to take from him. Accordingly, he introduces the equality between the **value** of the crime and the value of the punishment.

“The cancellation of crime is retribution in so far as the latter, by its concept, is an infringement of an infringement, and in so far as crime, by its existence, has a determinate qualitative and quantitative magnitude, so that its negation, as existent, also has a determinate magnitude. But this identity [of crime and retribution], which is based on the concept, is not an equality in the specific character of the infringement, but in its character in itself- i.e. in terms of its value.”

(PR, §101)

⁷ PR, §96

According to this argument we now can see why Hegel sees the capital punishment as a justified punishment-equal to the value of life- and Later in this same section, he mentions the death penalty for the punishment of the murderers and argues that the right to live has no equivalence in value but the life itself:

“But although retribution cannot aim to achieve specific equality, this is not the case with murder, which necessarily incurs the death penalty. For since life is the entire compass of existence, the punishment [for murder] cannot consist in a value - since none is equivalent to life but only in the taking of another life.”

(PR,101)

Accordingly, one thing we know for sure is that Hegel approved the death penalty for the murderers. So there are two types of the question that this idea raises: First, is there other crimes that match the value of the life and the death penalty? And if the answer is no, the second question is: how all the things can be measured and have equal values except life that the only equal value for it, is the life itself?

Although there is no strict answer to these questions, there is some evidence in his writings that we can find the answers from.

First of all, I should mention that in the ethical life he brings the positive laws due to the fact that there should be some rules for adjusting punishments to the crimes in the sphere of the state, because if not they are subjective and it is hard for doing this for each crime without any law. These laws are the universal determinations of the part of the abstract right for the punishment, and they should be applied to the individual cases.⁸ So, when the positive law is established, the capital punishment will be an established law too.

⁸ PR, §214

Another fact is that according to Hegel, for punishments to be neutral and not being like revenges-which are also infringements and not the negation of negations⁹- there should be an agent whose job is these acts; therefore, he gives this power to the state:

“To require that this contradiction, which in the present case is to be found in the manner in which wrong is cancelled, should be resolved in the same way as contradictions in other kinds of wrong (see § § 86 and 89), is to require a justice freed from subjective interest and subjective shape and from the contingency of power - that is, a punitive rather than an avenging justice.) Primarily, this constitutes a requirement for a will which, as a particular and subjective will, also wills the universal as such. But this concept of morality is not just a requirement; it has emerged in the course of this movement itself.”

(PR,103)

By doing this and also stating that the life of the people is not as important as the state is in itself in which the right as right is guarded, he gives too much power to the state that it will be too hard to find its part of the responsibility in the crime:

“But the state is by no means a contract (see § 75), and its substantial essence does not consist unconditionally in the protection and safeguarding of the lives and property of individuals as such. The state is rather that higher instance which may even itself lay claim to the lives and property of individuals and require their sacrifice. - Furthermore. The action of the criminal involves not only the concept of crime, its rationality in and for itself which the state must enforce with or without the consent of individuals, but also the formal rationality of the individual's volition.”

(PR,100)

According to “A” he sees the crime as coercion to the universal right and as Wood¹⁰ quoted

⁹ PR, §102 & §103

¹⁰ Allen Wood, 1990, pp.113

Hegel's writing, by doing crime the criminal is willing his own punishment:

“Insofar as the agent is a rational being, it lies in his action that it is something universal. \If you steal from another, then you steal from yourself! If you kill someone, then you kill everybody, and even yourself! The action is a law that you set up and that through your action you have recognized in and for yourself. “

(NP 244)

In Hegel's point of view, the universal right that the criminal is infringing, is the thing that civil society is protecting. So, this act is a crime to the sphere of the civil society and this notion is another evidence that shows Hegel gives more power to the state that it should have in comparison to the individuals live:

“The fact that an injury to one member of society is an injury to all the others does not alter the nature of crime in terms of its concept, but in terms of its outward existence; for the injury now affects the attitudes and consciousness of civil society, and not just the existence [Dasein] of the immediately injured party.... Although the view that they are a threat to civil society may appear to aggravate crimes, it has in fact been chiefly responsible for a reduction in punishments. A penal code is therefore primarily a product of its time and of the current condition of civil society.”

(PR §218)

Accordingly, we can see the state has the power and the penal law to protect itself, and according to earlier arguments, we saw that the maximum punishment for the equality of the value of the crimes is “taking the life of the criminal”. By considering these two notions, the state has the law of the capital punishment although it is not for all the crimes and there are few crimes which will fit this law.¹¹

¹¹ One of the consequences of the Beccaria's objection (PR, §100) was that it reduced the amount of capital

For answering the two questions raised earlier I can say that when the law of capital punishment has been set according to the justification in the abstract right that Hegel gives for the murderers, now it is the responsibility of the administration of justice of a civil society to judge the value of the crime to see if it fits the value of a person's life or not, and I think it is possible that it can find some crimes that fit this law. But another question to ask here is whether taking the life of a person is another coercion to the right itself or it is the negation of a negation?

I guess for investigating this question we can see that how Hegel only mentions the murder as a crime that deserves a capital punishment. So maybe Hegel just saw this one as the only crime for the law of taking the life of the criminal.

Therefore, I cannot find a way for not justifying the capital punishment in the Hegel's system, Although for further investigations I should mention that Dyde¹² has good arguments when he talks about the crime as a social product of a society and not just an act of a person and it is one notion which is not considered in Hegel's system and he mostly gives the power to the state and sees the state as an Ideal one that has no responsibility other than punishing, when an act of crime has been done by its citizens. This issue is an objection of the system of Hegel and not an objection of the kind that searches

punishments that accordingly Hegel was agree too. But the differences of his objections and how Hegel answer to his objection is not the case of this paper.

¹² W.Dyde,1898,pp.70: "From the beginning to the end, the state's attitude towards crime is summed up in abstract right. It never occurred to Hegel that the criminal and society were jointly responsible for crime. He never thought that crime was an indication of an *imperfect social order*. On the contrary it seemed to him to be due to the state's strength and perfection that it might treat crime with greater leniency."

the connections of the system of Hegel to itself. But my Contention in here is as same as Dyde when he discusses that in a crime which is a social phenomenon, there are chains of events involved that should be regarded and just seeing the person who has done the act is not a fair choice. In these chains of events, one of the responsible sides is the state itself for many reasons like not educating a good citizen or not providing enough for them even though it is their rights.¹³

But again I cannot say that this issue cannot be solved in his system, due to the fact that in setting the positive laws, the responsibility of the state can be included. Consequently, the threshold of punishments will go lower and in this case maybe the maximum value of a crime will not be taking the life of a criminal and it should be something else instead.

3.conclusion

Even though my first intuition of the Hegel's system -when it goes to the capital punishment- was that it would be a mistake in it, as what has been argued above there is no place of mistake and the capital punishment is working in Hegel's system. But if we go beyond his system and starting to criticize his system as a whole, we can see that maybe he is giving too much power to the state when it comes to the individual lives of the people. However, this issue is not that much hard that cannot be solved in his theory of punishment and by some changes that I mentioned earlier it can be working.

I should now emphasize that what I argued here is based on the Hegel's theory of punishment in "Elements of the philosophy of right" and the problems that I mentioned and the solutions were only for this part and maybe if we go through the whole philosophy of right there is no place for us rather than

¹³ Hegel mentions in his writings that a theft for being Hungary is justified because there is the right to life involved that should be protected, but it is not that clear whether he was seeing the state responsibility in this action or not. In my reading I think this example is not enough for rejecting this objection.

giving too much power to the state, but in the part of the punishment I think we can make some amendments according to Hegel's own system for this system to be working.

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4. References

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