

The Crucial Assumption of Angela Davis's
Non-Ideal Moral Framework

Angela Davis's *Are Prisons Obsolete?* details a variety of alternatives to the contemporary US prison industrial complex. Among these abolitionist alternatives is the *reconceptualization* of our punitive responses to crime in the form of *restoration*, *repair*, and *reconciliation*. In practice, this *reconceptualization* could manifest as “a justice system based on reparation and reconciliation rather than retribution and vengeance” (107). Davis's justification for this kind of policy rests upon the claim that *there is no necessary link between crime and punishment*, the validity of which requires a discussion of the ideology of the American prison.

Emerging in the US around the time of American Revolution, the penitentiary was born out of a desire to move away from the vengeful, “example-making” capital and corporal forms of punishment inherited from the English. In theory, incarceration would provide convicts with ample opportunity for reflection and penitence via forced labor and solitude, yielding repentant men with transformed souls who were ready for re-entry into civic society. Indeed, Davis shows that the penitentiary's historical conception was distinctly progressive and retribution-averse.

In her subsequent discussion of the ideology of the prison, however, Davis depicts the modern-day prison as nothing but a site for “racial retribution” and corporative profit drive – a drastic divergence from the original rehabilitative aims of the penitentiary (33). Within this social and historical context, Davis's initial claim about the link between crime and punishment emerges as the more nuanced claim that punishment, *primarily in the form of prisons*, is not a logical requirement in the aftermath of crime, namely because the contemporary prison industrial complex has failed to serve its rehabilitative function. Thus, Davis's justification for a more reparation- and reconciliation-based justice system seems to rest on the *assumption* that these rehabilitative alternatives are inherently preferable to retributive forms of consequence. As a result, she does not

supplement her discussion with an argument in support of a preference for rehabilitative over retributive forms of justice. Retributivist Immanuel Kant would take issue with this.

In *The Penal Law and the Law of Pardon*, Kant argues that because our rational will is what grounds our status as free, moral beings, punishment is *deserved* when crimes are committed intentionally. Punishment *itself* is an affirmation of the innate rationality of man, because we only punish people who are *ends in themselves*. To abstain from punishment when it is deserved would be to treat people as *mere means*. Relatedly, judicial punishment must not be used as a mere means “to promote some other good for the criminal himself or for civil society,” as this would undermine the innate personality of the wrongdoer (32). This stands in direct opposition to Angela Davis’s concern with the prison’s *failure* to promote rehabilitative good for the wrongdoer, as well as her proposal for a justice system based on “reparation and reconciliation,” which inherently prioritizes consideration of the punishment’s utility for both the criminal and his fellow citizens.

Davis’s final presentation of evidence in support of this kind of policy concerns the case of Amy Biehl, a dramatic success story of restorative justice in practice. After a period of respectful communication and collaboration, Biehl’s parents appear to be able to make genuine peace with two of their daughter’s killers. In accordance with the Law of retribution, Kant would undoubtedly argue that since these men have made exceptions of themselves by violating the universal categorical imperative, their own crime should be inflicted upon them (e.g. murder). In general, Kant would characterize Davis’s advocacy for policies that look to a “theory of happiness... for some advantage to be gained by...reducing the amount of [punishment]” as the *ultimate disrespect to humanity* – because implicit in her theory of justice that prioritizes utility (e.g. rehabilitation) for the wrongdoer over determination of the appropriate kind of punishment is the notion that wrongdoers lack a rational will to appeal to in the first place (32).

Works Cited

Davis, A.Y. (2003). *Are prisons obsolete?* Seven Stories Press.

Kant, I. (2011). *The Penal Law and the Law of Pardon*. Oxford University Press.