BRUTAL ACADEMIA:
FOUCAULT AND HOBBES ON CRIMINALITY AND PUNISHMENT

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ABSTRACT

The relationship between normality and criminality is the subject of much debate, illustrated most prominently in the ongoing struggle to establish some kind of moral justification for punishment. This paper's concern is with extraneous moral justifications, primarily within consequentialist arguments for punishment: I propose and maintain that the only moral justification needed for a state or normality to punish criminality is the fact that criminals exist at all. This conclusion is derived from a particular reading of Thomas Hobbes, coupled with a Foucauldian understanding of state and institutional power-dynamics. This paper charts the development of normality and criminality throughout Hobbes' political cosmology, while employing the work of Foucault on state racism, governmentality, and panopticism in order to illustrate the powers at work in transforming the state of nature into a state of criminality, drawing the two theorists together into a statist framework that, I believe, holds a greater degree of salience and moral clout than both consequentialist and retributivist arguments, so long as honesty is, in fact, a virtue.

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I: NORMAL AND CRIMINAL

Everybody loves a criminal. We watch movies about mafiosos, London thugs, television shows about crooked cops and drug addicts; we read books glorifying the criminally bent, young delinquents and grizzled wiseguys. All of us have probably fancied ourselves a criminal at some point as well: that little rush of decadent illegality you get when you break the rules. You feel like you are part of something, a rebel in a society catering to normality, a punk in the grand edifice of suburbia. The fetishization of rebellion, so present in American society, has transformed itself into a fetish for safe subversion. Yet, for all our fantasizing, there remains a hatred behind the construction of the criminal in popular culture, made manifest by absence. How many real criminals do you know? How many convicted felons? Have you ever been inside a prison, shared a cigarette with a gangbanger? For most normal people, the answers are few, none, and never. The majority of real encounters between the normal and criminal individuals are limited to structures of, unsurprisingly, crimes. You are mugged. Your house is robbed. Your car is stolen. All of a sudden, criminality stops being a fantasy and starts being an actuality, an actuality that likely does not leave you so sympathetic to the criminal mindset. The criminal is no longer the glorious agent of subversion: now, the criminal becomes something you *hate*.

This easy switch, from longing to disgust, betrays one of the central facets of the relationship between criminal and normal: the criminal *does not fit in*. There is some kind of essential difference between the criminal and the normal that normality recognizes, but cannot understand: this failing is rectified by the simultaneous condemnation and exaltation of

criminality. We keep real criminals in prisons, to punish them, but we keep our idealized criminals in screens and pages, to entertain us, to let us escape from our banal normality. There is something about the criminal *in theory* that we adore, and simultaneously something about the criminal *in reality* that we hate: a kind of self-affirmation at the expense of the common good. Criminality and normality are locked into parasitic relation, and like so many parasites, the actual, real effects of criminality are difficult to notice until it causes too much harm to cope with. This, more often than not, leads to an endemic failing on the part of normality to fully understand the internal workings of criminality, and in turn an endemic failing in the ways normality manages criminality.

Criminals are humans too. At least, that is the sentiment normality maintains when it punishes criminality: there is something *wrong* with *you*. You *do not fit*. I can *fix* that. *I* can *make you normal*, not *criminal*. This mindset is the logical terminus of the consequentialist, utilitarian approach to punishment: the treatment of criminals must be conducted with humanity, such that the criminal *can become human*. There is a contradiction here, or at the very least, some kind of artificial division at work, in the humanity of the normal and the criminal. The humaneness of normality's treatment and response to criminality is underscored by an essential definition of what *humanity* itself is constituted by: existing as normal. The criminal is somehow normally deficient, an other to normality's self. The criminal is not normal *yet*- but that can change.

This paper aims at understanding of the paradoxical and hypocritical relationship between criminality and normality. I reject the notion that criminals are somehow deficient in humanity and need to be made and re-educated into normals, and instead posit that criminality is a perfectly human mode of being, and one that, by virtue of its existence, invites and justifies all

forms of punishment levied against it by normality. Rather more provocatively, I further argue that this is no bad thing.

II: INHUMAN AND HUMAN

Foucault and Hobbes have irrevocably changed the theoretical landscape in two very different ways. At first blush, the two theorists seem impossible to synthesize. Foucault's impact on the way in which theorists conceive of civil society has been profoundly negative and deconstructive- and Hobbes built, or at least justified, civil society in the first place. How can they be reconciled? I maintain that Foucault and Hobbes both espouse remarkably *respectable* accounts of criminality and the rights of the criminal, though not in the consequentialist or utilitarian sense: instead of operating under the assumption that criminals are somehow deficient in morality or humanity, a particular reading of Foucault's *Discipline and Punish*- when coupled with an extrapolation derived from his *"Society Must Be Defended"*- and Hobbes' account of the right of the criminal to resist punishment place the two theorists as defenders of the *humanity of the criminal*. The following sections will lay out my reasonings for this claim: first, by examining Hobbes' account of the criminal's right to resist punishment through the lenses of Schmitt and Ristoph, and attempting to establish his account for the justification of both punishment and resistance on the part of the sovereign and criminal; second, by approaching Foucault's *Discipline and Punish*, *"Society Must Be Defended"*, and *Security, Territory, Population* from a 'cryptonormative'[1] perspective, in pursuit of the functional and genealogical difference between normal and criminal; and third, I attempt to employ my account of the two theorists, with analytic cues from Jakobs and Neal, to make the case that contemporary forms of

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[1] I owe this language to the infamous Foucault-Habermas debates- unlike Habermas, however, I do not think that an implicit reliance on Enlightenment ideals diminishes the strength of Foucault's critique: if anything, as I explain in section IV, that bolsters it.

the punishment of criminality, such things as Hampton's moral education theory and consequentialism writ large, are dramatically and horrifically *inhumane*.

III: RULE AND NATURE

The frontispiece of Hobbes' *Leviathan* is perhaps one of the most striking symbols in all of political theory: a giant composed of many bodies, crowned, clutching sword and crosier, surveying field and town alike. In that image alone, all of what *Leviathan* suggests can be found. The secular and spiritual authority of the sovereign, incarnated in the state itself, formed of many and beholden to one: it inspires within the observer a kind of terror and awe. Schmitt gives us an acute summary of the formation of this being, and suggests at its origin: "The terror of the state of nature drives anguished individuals to come together; their fear rises to an extreme; a spark of reason (*ratio*) flashes, and suddenly there stands in front of them a new god."[2] Of particular interest is the notion of terror, necessarily present within nature as *bellum omnium contra omnes* and the ultimate motivation for the escape of humanity into "the civil, stately (*staatlichen*) condition".[3] Through fear, distrust, and anguish, disparate individuals are brought together and mutually, willingly succumb to the sovereign and its power: *but that fear remains*. It is the fear, I think, of criminality. The criminal is, in essence, a *citizen of the state of nature*: this is, admittedly, an extrapolation from Hobbes' account of crime within nature: "[T]hat the civil law ceasing, crimes cease; for there being no other law remaining but that of nature, there is no place for accusation, every man being his own judge, and accused only by his own conscience, and cleared by the uprightness of his own intention."[4] A criminal in a reality without civil law is no

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[2] Carl Schmitt, *The Leviathan in the state theory of Thomas Hobbes: meaning and failure of a political symbol*, ed. George Schwab, trans. George Schwab and Erna Hilfstein (Westport: Greenwood Press, 1996), 31.
[3] Ibid..
[4] Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994), 191.

criminal. It may be a sinner, to be sure, so long as there is some God to judge it, but in order for an individual's actions to carry the weight and name of crime civil law is *required*: in other words, some kind of normality is needed.[5] In this sense, criminality functions as normality's unfortunate memento of the state of nature: a perpetual reminder of the motivation for civility that normality attempts to disguise and cast in more pleasant terms than absolute terror at one's fellow human beings. The urge for civility is the urge to *escape* nature, to find protection and safety, under the auspices of the sovereign.

However, this is not the rhetoric of normality, or at least, not normality's superficial rhetoric. Normality wishes to *forget* nature altogether, to forget constant fear and suspicion; but it in turn forgets that constant fear is the *urge* for civil society. To deny a reliance on fear is to deny the history of the civil society altogether, to deny the *sovereign-as-process*. It is all well and good, even easy to assume that normality is born out of vacuum, some kind of present, intangible absolute that has always been and always will be, but that assumption is wrong. Civility and normality are born out of nature, a combative and miserable state of nature, in escape and flight from fear, but civility can never outpace nature. Schmitt knows: "Hobbes by no means turns the "state" constructed by human beings and the "civil" peace that it engenders into an earthly paradise."[6] Normality *wants* paradise; it can't have it. Criminality will always be found within normality, because normality itself is found within criminality. Normality reproduces nature into criminality as form of escape: the punishments that normality levies against criminality are petty vengeances against normality's own ever-present history.

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[5] Ibid., 190-91.
[6] Schmitt, 35.

Ristoph lays out the self-loathing paradox of punishment within normality in the clearest language: "[P]hysically coercive punishments may be socially necessary, but they are also acts of violence, persistent traces of the rule of the strong in a system otherwise committed to rule by consent."[7] The idea that the rule of the strong exists as 'traces' within normality suggests a shame at work in the history of the normal, a kind of self-disgust at ever having been so brutish. Ristoph goes on, however, to make sense of this paradox. "Conceptually," she writes, "...punishment is a distinctive species of violence in that it takes place in a recurrent, specific state of nature, not an original or universal one. Once a subject has disobeyed the sovereign, he and the sovereign are in the state of nature vis-à-vis each other. The sovereign, a uniquely political and artificial construct, now exists in a version of the state of nature, and he possesses the broad right of mortal beings to do whatever seems necessary to preserve himself from imminent or future threats."[8] A recurrent state of nature is precisely what criminality *is*. The criminal exists always in the state of nature[9], insofar as criminality itself is merely normality's reproduction and attempt to relegate the state of nature into something legible and manageable. The criminal relegates the sovereign into the state of nature by virtue of its existence: the response of the sovereign, justified by Hobbes' second law of nature[10], is physical retaliation and self-defense, expressed as violent punishment. The criminal, therefore, has always the right to resist punishment, as it and its opponent- the sovereign, the normal, call it what you will- are always and forever in a state of nature and war against one another.

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[7] Alice Ristoph, "Respect and Resistance in Punishment Theory", *California Law Review,* 97, no. 2 (2009), 604.
[8] Ibid., 615.
[9] See Michel Foucault, *"Society Must Be Defended": Lectures at the Collège de France, 1975-76*, ed. Mauro Bertani and Alessandro Fontana, trans. David Macey (New York: Picador 2003), 90 (hereafter *SMD*); cf. Hobbes, 77.
[10] Hobbes, 80.

This idea, in and of itself, does not seem overwhelmingly revolutionary. In fact, it seems quite intuitive: under this reading, not only is the sovereign justified in its punishment of criminals, but the criminal is justified in its defiance of the sovereign, in the language of justification as understood by civil society. The dilemma of violent punishment thus ceases to be such a dilemma from, as it were, a criminal understanding of punishment: the criminal knows, in a certain sense, what it's getting into. For normality, however, the dilemma becomes an ontological one. Normality wishes at all times to deny the state of nature, and yet, should it wish to justify its attempts to purge criminality from itself, it is forced to rely upon the inherent violence of nature. The serpent devours its own tail, and begins to dream: these dreams take the form of *humanity*.

This is most obvious in theorists' attempts to justify punishment in terms of things other than rank self-defense.[11] Appeals to some notion of a greater good, a common end, a categorical imperative, mask the real operation of punishment. They are an attempt to produce a narrative of punishment that couches violence in necessity, inevitability, and humanity. The normal perspective towards violence is that it is somehow wrong and evil, something that *does not fit* into civil society. The criminal perspective is quite different: violence is neither evil nor good, instead something that is simply *there*. Violence is breathing: you do it to stay alive. "*[B]y all means we can, to defend ourselves*"[12] is the purest distillation of Hobbes' account of the state of nature, and the purest distillation of criminality. Criminality is not some evil to be vanquished. Criminality is the callous and cunning heart of human existence, of any living existence. The conflict between criminality and normality does not center around supposed moral differences

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[11] See Jean Hampton, "The Moral Education Theory of Punishment", in *Punishment*, ed. A. John Simmons et. al. (Princeton: Princeton University Press, 1995), 112.
[12] Hobbes, 80.

between the two: the conflict exists because criminality and normality are *different realities*, different modes of existence. Criminality is the state of nature; normality is the escape from nature, into the arms of the sovereign, chased forever and threatened always by memories of the brutality it fears.

IV: WATCH AND LEARN

Foucault, like Nietzsche before him, liked to break things- and like Nietzsche, his favorite thing to break seemed to be modernity. Nietzsche's *Genealogy* provided a tasteful evisceration of the ways in which morality was approached by his contemporaries; Foucault carried on his legacy in *Discipline and Punish*, though moving beyond morality itself and into the tangible[13] reality of the prison. Both theorists employed a genealogical method, a historical centering for concepts generally taken as somehow ahistorical, and both have direct and immediate pertinence for the justification of the punishment of criminals. Quite unlike Nietzsche, however, Foucault is legendarily difficult to get a straight answer out of: his apparent dismissal and re-appropriation of various Enlightenment ideals has led theorists to dismiss his work as cryptonormative.[14] To call Foucault cryptonormative, however, is no dismissal. By re-appropriating the ideals of the Enlightenment, Foucault enjoys an exquisite vantage by which to point out the rampant hypocrisies of the Enlightenment's successor: normality. With regards to ideals like freedom[15], rationality, or mental health, a Foucauldian genealogical methodology diagrams the *lineage* of the virtue, tracing it back to its origin and showing the ways in which it has mutated into its

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[13] Though intangible *for the criminal*: see Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books 1995), 200 (hereafter *D&P*).

[14] See especially Jurgen Habermas, "Taking Aim at the Heart of the Present", in *Michel Foucault: Critical Assessments*, vol. 7, ed. Barry Smart (London: Routledge 1995), 289.

[15] Most commonly found now as the rhetorical justification for the functional military colonization of various non-Western states by Western democracies.

contemporary form. With regards to punishment, Foucault assesses, in Hobbesian terms, *the sublimation of states of nature*.

Discipline and Punish opens with a graphic and visceral account of the execution of Damiens the regicide, an exorbitant, lengthy affair that culminates in what is essentially a botched job.[16] Like the frontispiece of *Leviathan*, Foucault's narrativization of Damiens' execution is rife with meaning. The agony inflicted on the body regicide, the ineffectiveness of authority's torture, the spectacle of it all: these all form, in one sense or another, the essential motivational components for the shift from public punishment to private punishment.[17] What we have now, to Foucault, is a scientific, subtle form of punishment, one that rebrands the physical power so present and obvious in violent punishment into the architectural, mental techniques of punitive surveillance.[18] These techniques are not just for criminals, either: Foucault collapses schoolchildren, soldiers, medical patients, workers, and hypothetically all institutionally located individuals into potential and probable subjects of panopticism.[19] Panopticism is normality. To be normal is simultaneously to be perpetually institutionally surveyed and denied your birthright as a human being: *brutality*. The essential function of panopticism is to subvert the physical violence inherently threatened in the state of nature by humanity and replace it with a *mental violence*, internalized and authorized by the *sovereign-as-institution*. The problem, of course, is that some individuals are not bothered or affected by mental violence. We call these individuals criminals. Civil society, normality, is effective at employing violence *so long* as violence is treated as wrong or evil: the criminal does not see it that way. Normality's usage of violence is

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[16] Foucault, *D&P*, 3-5.
[17] Public and private here should be taken in the sense of the legibility and salience of punishment, not the governmental location of the authority inflicting it or the sphere in which it happens.
[18] Ibid., 206.
[19] Ibid., 205.

caught up in hypocrisy and caveats- 'if there is no physical harm, it is not violence', 'detention is not violence', 'punishment serves to educate, not harm'. Foucault shows this in his tracing-back of the mutations of punishment and violence: it is simply *more effective* for the sovereign to dominate through mental and architecto-biological techniques than it is to dominate through physical violence, and simultaneously, it is easier to impose this mental domination if it *catches the subject unawares*. This is rudely accomplished through the power-knowledge function of governmentality: the sovereign, through its use of power, defines and reproduces knowledge *in the pursuit of power*.[20] This is the creation of the normal: the civil society of *Leviathan* transforms itself, through governmentality, into an all-encompassing normality, a disassociation from the dualism of nature and civil society into singular, ahistorical totality. This transformation, however, is far from absolute; there is always something bleeding. Normality, despite its best efforts, cannot escape nature, cannot totally remove from itself violence- but it knows something about nature. By definition, nature is in a certain sense *deterritorialized*: normality has *reterritorialized* nature into criminality, that it might cope with its fear of nature's brutality, and find some justification for its own self-hatred.

There is a certain synergy present between normality's reterritorialization of nature as criminality and Foucault's account of state racism. He writes, "[state racism is] a racism that society will direct against itself, against its own elements and its products. This is the internal racism of permanent purification, and it will become one of the basic dimensions of social normalization."[21] My language of *normality* is, in essence, derived from this quotation.[22] The

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[20] Michel Foucault, *Security, Territory, Population*, ed. Michel Senellart, trans. Graham Burchell (New York: Palgrave Macmillan 2007), 350-51 (hereafter *STP*).
[21] Foucault, *SMD*, 62.
[22] The fact that it's a pithy ontological foil to *criminality* certainly didn't hurt either.

language of racism hardly does the concept justice, in my opinion: the phenomenon will find ways to 'racialize' individuals regardless of what we consider currently to be race. Normality desires, in the end, a totality of itself: it wants everything to be the same, to be normal. To do this, it invents mechanisms of othering designed to "purify", to cast out some kind of human existence that is not conducive to its own definition of normality- the color of one's skin, the geographical location in which one was born, or one's sexual orientation, for example, can all represent challenges to normality. State racism is not concerned with "race"- it is concerned with *races other than its own*. These races have nothing to do with any real delineation between human beings, but rather delineations between individual agents' degrees of conformity. In short, Foucault's state racism is a description of the perpetual reterritorialization of nature by normality. Unfortunately, normality *requires* a criminal in order to be defined *as normal*: but it will never admit that. You can have no self without other.

Now, the issue with Foucault is, of course, to work out whether this sequence- the establishment of civil society out of the state of nature, the transformation of civil society into normality through mechanisms of state racism and governmental power-knowledge, the reterritorialization of nature into criminality by normality- has any kind of normative onus within it. I reckon, as should be obvious from my treatment of the whole thing, that it does. A positive analysis of the sequence should strive to remain free of ethical judgement but yet, like Foucault's account of the development of discipline and panopticism or Nietzsche's account of the rise of ressentiment, it is difficult to mask disgust behind empiricism. This disgust has its origin, I suspect, in a general and pervasive distaste on the part of human beings for *hypocrisy*. Hypocrisy, roughly defined, is the ability to hold a contradiction static: it is tautological heresy,

but enormously *useful*. Within formal logical arguments, an awareness of contradiction allows for the valid generation of any possible proposition, a sublime cop-out that makes much logical argumentation possible. Within less abstracted realities, however, contradiction and hypocrisy are generally inimical to social interaction. We simply don't trust people who lie to themselves. However, a strictly Foucauldian reading of the sequence of the reterritorialization of nature does not allow us to point out the real hypocrisy present in normality's justifications for the punishment of criminality: the following section lays out how a synthesis of Foucault and Hobbes points out the rampant contradictions in and invalidates the argument of Hampton's moral education theory, as well as pointing towards some hypocrisies present within contemporary humanism in general.

V: INTIMIDATE AND HURT

At this point, it may be wise to retread some ground perhaps forgotten. The third section of this essay laid out an understanding of the Hobbesian right of the criminal to resist punishment on the grounds that the criminal is a being *of the state of nature*, and by that position justifies the sovereign in its punishment of criminality. I also examined the major motivation for the transformation of society from the state of nature to civility, namely fear. The fourth section investigates the genealogy of normality and criminality from a Foucauldian perspective, locating normality as the terminus of the civil function of governmentality, which reterritorializes nature into criminality in pursuit of the state racist ideal of self-purification. This section aims at bringing those analyses together, establishing a full archaeological account of the transformation of society into civility into normality, alongside the transformation of nature into criminality, and

then examining how this account can inform theorization about the moral justifications for punishment.

Obviously, Hobbes never had much to say about Foucault. Foucault, however, does engage Hobbes on a number of levels: in "*Society Must Be Defended*", he lays out a reading of Hobbes that places *Leviathan* as a pursuit "to silence the discourse of political historicism"- in essence, the narratives and histories, the genealogies, of state and political power.[23] For Foucault, the escape from warfare espoused in *Leviathan* is a futile attempt of dehistoricization, a rejection of "the web and the secret of institutions and systems of power"[24], of what war really is: domination. However, I do not think that Foucault's critique of Hobbes is an out-and-out dismissal: rather, it is a call for a reinterpretation of Hobbes *in light of* an awareness of political historicism, a much-needed update. War is inescapable, as is nature, history; any system of power, of sovereignty, is beholden to war.[25] What Hobbes accomplishes in *Leviathan* is not truly an escape from war, but a shift from total war to local war: the fact that criminality exists at all is a testament to the invasive power of nature. Once that facet of sovereignty is recognized, a similar reconsideration must be conducted with regards to moral justifications for punishment.

The right to resist punishment in Hobbes in inalienable, so long as that punishment threatens existence.[26] The reasoning behind that inalienability is that the criminal is a denizen of the state of nature, not civil society: in dealing with criminality, the sovereign acts within the state of nature, not civil society, and both are justified in their respective resistance and punishment. Günther Jakobs' concept of *Feindstrafrecht* represents a succinct account of this

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[23] Ibid., 111.
[24] Ibid., 110.
[25] Ibid., 111.
[26] Hobbes, 204.

relationship from the perspective of the sovereign: by disregarding legality, the criminal voids its status as a member of civil society, and is as such no longer deserving of legal conduct with regards to punishment.[27] *Feindstrafrecht* is the inversion of the criminal's right to resist punishment: you are allowed to run, and the sovereign is allowed to chase you. It allows the sovereign to *reterritorialize itself into criminality*, justified through the criminal's rejection of civility. By becoming criminal, the sovereign re-enters the state of nature, re-appropriates violence in the natural sense and *rejects violence in the institutional sense*. This capacity of the sovereign allows for a synthesis with Foucault: in this sense, Hobbes does not in full escape or reject political historicism, does not reject the state of nature in entirety.[28] Hobbes grants the sovereign the ability to engage with the criminal within the warfare of political historicism, within nature itself. In this way, the serpent sees its own tail, and begins to eat.

It is critically important to note that *Feindstrafrecht*, in the Hobbesian context, provides total moral justification for punishment- insofar as any 'moral' justification for punishment is possible- despite the fact that it strikes the mind, in all probability, as brutal and inhumane. This brutality, however, is symptomatic of most forms of punishment, regardless of their supposed justifications, an endemic dissonance within legal violence. Benjamin succinctly describes this dissonance in discussion of capital punishment: "[f]or in the exercise of violence over life and death more than in any other legal act, law reaffirms itself. But in this very violence something

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[27] See Günther Jakobs, "Kriminalisierung im Vorfeld einer Rechtsgutsverletzung", *Zeitschrift für die gesamte Strafechtswissenschaft* 97 (1985), 751-785. See also Günther Jakobs, "Bürgerstrafrecht und Feindstrafrecht", *HRRS* (March, 2004), 88-95. Of particular interest is the notion of *inside* and *outside* implicitly present within a combined reading of Jakobs and Schmitt, but that is another essay altogether.
[28] See Andrew W. Neal, "Cutting Off the King's Head: Foucault's *Society Must Be Defended* and the Problem of Sovereignty", *Alternatives* 29 (2004), 391-92.

rotten in law is revealed...”[29] Much work has been done to diagnose this “rotten” quality of the law, to treat it: these treatments forget the origins of punishment and legality in the first place. Benjamin cites violence as the origin of the law- punishment is, therefore, a return to nature on the part of the sovereign.[30] There remains a failing, however, on the part of many scholars of punishment to recognize this history, and its moral implications. In particular, this failing is present in many consequentialist theorists, and *especially* in the work of Jean Hampton.

Hampton presents a justification for the punishment of criminality on the grounds that punishment ought function as a form of moral education. She summarizes the moral education theory concisely, writing “the theory’s point is this: Wrong occasions punishment not because pain deserves pain, but because evil deserves correction.”[31] If the language of “correction” does not at this point bother you, then you can simply disregard the remainder of this paper- burn it, if you like. If it does, however, then read on.

What does “correction” actually entail? Primarily, it signifies a kind of deficiency on the part of the person to be “corrected”, that some facet of their existence that is wrong or lacking, unfit for society. It is the linguistic distillation of normality’s approach to criminality, *and it should not be so*. There is no need for correction: what there is a need for is *expulsion and annihilation*. To claim otherwise is to admit insincerity and hypocrisy. Attempts to “correct” the criminal betray a failing to understand what the criminal *is*: nature itself, recontextualized and reterritorialized into an other, an outside-yet-inside memento of political historicism. If anything, the criminal is *more human* than the normal, the sovereign: the criminal exists as the original

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[29] Walter Benjamin, “Critique of Violence”, in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz, trans. Edmund Jephcott, (New York: Schocken Books 1986), 286.
[30] Ibid..
[31] Hampton, 142.

citizen of reality, of history, of nature; the sovereign and the normal are constructions, built on

fear, the "flash of reason", and governmentality.[32] To engage with the criminal, the sovereign and

the normal must "correct" *themselves*, through *Feindstrafrecht* or other, similar legal

mechanisms. Hampton simply does not account for the possibility that what is normal and moral

is not absolute. The moral education theory is a testament to paternalism- and while she is aware

of this critique, she dismisses it. "I wonder whether," she writes, "by calling this theory

paternalistic, one might not be irritated more by the thought of being governed than by the

thought of what this particular theory says being governed involves. Yet, unless one is prepared

to be an anarchist, one must admit that being governed is necessary as long as we, as human

beings, are prone to immoral acts. We do not outgrow cruelty, or meanness, or the egoistic

disregard for others when we reach the age of majority."[33] No, we do not outgrow cruelty- we

cannot. All we can do is sublimate that cruelty from physical to nonphysical expressions of

violence. Normality panopticizes, not brutalizes, and Hampton wants us to think that

panopticization, discipline, and re-education are somehow more morally justifiable than outright

brutality. They are not *more* morally justified- the Hobbesian interpretation of *Feindstrafrecht*

serves as a perfectly legitimate moral justification for punishment. The criminal transgresses the

boundaries of normality and civility, prompting the sovereign and the normal into a reversion, a

reterritorialization that enables the sovereign and the normal to act within the state of nature that

by rights is the criminal's environ.

Hampton is even aware that the process of correction exists outside of mere legal

punishments: "punishment efforts by *any* institution or individuals should be perceived as effort

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[32] Schmitt, 31.
[33] Hampton, 124.

at moral education[.]"[34] Again, moral education implies a moral deficiency on the part of the criminal and a *total misunderstanding of morality* on the part of the educating institution. Morality- specifically legal morality- is a quirk of civility, not inherent to nature and its inhabitants. Moral education, therefore, is a thinly veiled attempt to recontextualize criminality and nature into a group of misguided citizens of normality. *The process does not need to continue*. An awareness of criminality as a reterritorialization of nature justifies all forms of punishment: the rejection of the state of nature is the entire foundation of civil society. A recognizance, therefore, of criminality as nature enables the state and the sovereign to *attack* criminality, to *punish* it, to *brutalize*- not to re-educate. It is, very simply, better to die than to let someone change your mind for you.

VI: BRUTAL AND ACADEMIC

Unlike Foucault, I am willing to be normative outright- the crypticism can go hang. The moral education theory Hampton espouses is an exercise in stubborn denial. Where the theory to be merely positive, insofar as it would be read as an account of the *actual* functionings of punishment, there would be no issue- in a certain sense, Hampton is absolutely correct about punishment as education. Where we diverge is the notion that it is *more morally justified* to educate than to simply brutalize and alienate. That is, to be very blunt, misguided and dangerous. *Punishment is morally justified at all times and in all ways, so long as the authority punishing knows why it does so*. Authority punishes because authority rejects nature *totally*- any tracery of nature are to be extinguished in full. *That is all*. There is no moral trickery going on here- where the trickery happens is in the hearts of those who suggest that brutality and inhumanity should be

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[34] Hampton, 121.

conflated. Brutality is humanity. It is the purest incarnation of our agency. Physical violence, though regrettable, is more tolerable than mental violence: this position is one I find little company for, and yet I believe it to be true. A true humanism ought embrace violence as a means explicitly, not appear to reject it for arbitrary reasons of recontextualized humanity.

This leaves us, however, in a curious position with regards to the debate between consequentialists and retributivists. In essence, what has been advanced here is a purely statist conception of punishment, one that suggests that the only moral justification necessary for an authority's punishment of a criminal is that the punished *is* a criminal- there is no room for other moral justifications, and *any* other moral justifications represent an extraneous dosage of moralistic thinking. This is not a pleasant state of affairs, but it is, I think, the one that we occupy. If this seems somehow inimical to you, dear reader, I would briefly advise you to engage in a sensible and enjoyable bout of anarchist rage, hatred, and revolutionary brutality.

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