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Evil as Privation Justifying Restorative Justice

Josh Shrader-Perry

Introduction:

In the last forty years, the prison population has increased by “150 percent.”¹ There are a number of reasons for this inflation, but one important factor is the justification for punishing people in the ways in which we do. Punitive punishment has not resulted in a safer society or a reduction in the prison population. Instead, it seems likely that punitive punishment has contributed not only to violence in prisons, but to the continued violence of previously incarcerated offenders after their release.² In this paper, I would like to suggest a different way to view immoral actions in relationship to criminal punishment. It is my suggestion that understanding evil as privation has important implications for justifying restorative justice practices.

First, when we understand evil as privation, all people become capable of evil. This makes it more difficult to create epistemic distances between offenders and ourselves—i.e., seeing offenders as evil monsters, and ourselves as unable to commit the same evil actions. Second, evil as privation shows us that a person’s life and current situation contribute to their decisions. I suggest that privation can deepen depending on the circumstances in which a person finds themselves. Third, evil as privation implies that justice should include an attempt to restore the moral good within people. To show this, I will primarily follow Thomas Aquinas’s understanding of evil as privation, as I think his notion of evil as privation is more systematically defined than Augustine’s.

At the outset, I note that I will diverge from Aquinas’ application of evil as privation. Aquinas does not argue for restorative justice in light of his understanding of evil. However, I nevertheless think that understanding evil as privation can in fact provide justification for a more restorative concept of justice. I will begin with a short exposition of Aquinas’ understanding of evil as privation. Then I will explain Aquinas’ understanding of privation as the source of immoral actions. Lastly, I will show how privation can account for criminal actions and provide a justification for restorative forms of justice.

¹ Benjamin Yost, “Punishment, Desert, and Equality: A Levinasian Analysis” *Death and Other Penalties: Philosophy in a Time of Mass Incarceration*, eds. Geoffrey Adelsberg, Lisa Guenther, & Scott Zeman (New York: Fordham University Press, 2015), 141.

² Derrick Quintero, “In Reality—From the Row” *Death and Other Penalties: Philosophy in a Time of Mass Incarceration*, eds. Geoffrey Adelsberg, Lisa Guenther, & Scott Zeman (New York: Fordham University Press, 2015), 77.

Aquinas' Understanding of Evil as Privation:

The basic idea behind evil as privation is that evil is an absence of a specific good that a particular creature ought to have. For instance, it is not evil for a human being to be born without wings. However, for a bird to be born without wings is a privation and therefore a natural evil, because a bird ought to have wings. Unlike Augustine, Aquinas explains that evil as privation can be understood in two ways: in the moral sense and in the ontological sense. In a moral sense evil can be understood as a “subject that is evil, and this subject is an entity.”³ Here we see that in the moral sense while Aquinas does not believe that evil exists per se, he does concede that one can say that evil can be properly said to exist in that it is an absence of a particular good. Therefore, in an ontological sense, evil is still the absence of “a particular good, not an entity.”⁴ For Aquinas, a good is that which is desirable and therefore real. Because evil is that which is called “contrary to good” evil is contrary to what is desirable and “as such cannot be an entity” in itself.⁵ Aquinas explains that this is the case for three reasons.

The first is grounded on the Aristotelean notion of the end or goal of all desire. Aquinas explains that every efficient cause has as its goal some desirable end—i.e., a good end. The greater the efficient cause the greater the good that is sought as its end. He gives an example: the administrator of a city has as her goal the welfare of the city. However, a regent has as her goal the welfare of the kingdom. Following Aristotle, Aquinas says that we cannot regress endlessly in a series of efficient causes. Therefore, it is necessary to posit a supreme efficient cause that itself is uncaused by some other efficient cause. Similarly, Aquinas suggests that there must be a “universal good to which we trace back all goods.”⁶ This universal good and the first cause are the same for Aquinas. He continues: the first universal cause, causes particular beings, and because this first cause is also the universal good, causes particular goods. Therefore, what is caused as being is also good. From this Aquinas concludes: “everything that is a real thing needs to be a particular good and so, by reason of what exists, cannot be contrary to good. And so we conclude that evil as such is the privation of a particular good, a privation that is associated with a particular good, and not an entity.”⁷ In other words, because being is good, evil as contrary to good, cannot be a being.

The second reason, Aquinas writes that every existing thing has a desire for the good. Here, good is equated with what “befits” a particular being.⁸ The

³ Thomas Aquinas, *On Evil*, ed. Brian Davis, trans. Richard Regan (Oxford: Oxford University Press, 2003), 58.

⁴ Aquinas, *On Evil*, 58.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

desire for some good is understood as “conformity with some good.”⁹ Because evil, for Aquinas, is opposed to good, “contrary” to it, evil cannot be an entity. He takes the idea of evil as an entity to absurdity: “if evil were a real thing, it would neither desire anything nor be desired by anything, and so have no activity or movement, since nothing acts or moves except because of the desire for an end.”¹⁰ Therefore, evil cannot be an entity. A good is either a particular being (or part of it) or is desirable as in a good end. Evil cannot be desired as an end itself, nor can it be a being or part of a being (from the first argument). From this, Aquinas gives his third reason for evil being a privation: existence itself is desirable and therefore good. Since evil is contrary to good (from the first argument), it is also contrary to existence.¹¹

A Privative Theory of Immoral Action:

In terms of natural goods, it is not difficult to see how one can understand natural evil as a privation. However, the notion becomes more difficult to conceptualize when it comes to moral evils. Here we are not thinking about physical privations, but moral privations. One difficulty with conceptualizing moral evil on the basis of privation is that it could result in the moral agent not be accountable for their actions. Similarly to the way that one is not responsible for a physical abnormality on the basis of privation theories of evil, if one’s actions are based on a privation, one could attempt to say that people are not responsible for their actions. How can one be responsible for a lack in oneself? However, Aquinas, I think rightly, develops a moral theory of privation that still enables people to hold others responsible for their immoral actions.

Gregory Reichberg explains that Aquinas’ moral theory is based on an understanding of mixed privations: some “privations signify a way to corruption...in which something positive persists; thus sickness does not entirely remove health, ugliness beauty, or falsity truth. These mixed privations permit the coexistence of the positive element they affect.”¹² Therefore, as will become clear soon, a privation of the will does not destroy the will itself but can be understood as a mixed privation. This allows Aquinas to hold “sin has the nature of moral wrong only because it is voluntary.”¹³ It must be within the power of the moral agent to choose to act immorally. It is not just a privation within the will that causes people to sin, they must be able to voluntarily will immoral actions. If moral wrong was the result of a pure privation of the will, hereby one might say

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid., 58-59.

¹² Gregory Reichberg, “Beyond Privation: Moral Evil in Aquinas’s *De Malo*” *The Review of Metaphysics* 55 (June 2002): 756

¹³ Aquinas, *De Malo*, 97.

that the will was absent or destroyed, then people would not be responsible for their immoral actions.

Reichberg also notes that the intention of certain ends is the determinative element in Aquinas theory of morality: “only acts incompatible with the due end will be termed *against reason*.”¹⁴ For Aquinas, an action is immoral when it is against reason by nature of its being disordered from its proper end. The ultimate end for humanity is God. Immoral actions are privative in the sense that they are not conformed with the due end of humanity. They are “something more than privations,” according to Reichberg in that they are in “opposition to” the moral law.¹⁵ As stated above, Aquinas explains that while evil is a privation and does not exist *per se*, it can exist as a privation of something else: “since evil is not an intrinsically existing thing but is present in something as a privation...”¹⁶

In this way, the deficiency of an active power, which when ordered properly would be directed towards a good, can be said to cause evil. I discussed above how evil cannot be desired, because only the good can be desired and evil is contrary to good. In the same vein, evil as such cannot be directly willed. It is only by willing something that one perceives as good but is in reality outside the due ordination of the particular being, that one can will evil.¹⁷ Without good, evil would not exist. However, this does not mean that evil must exist because good exists. Evil as privation is by its nature dependent on the good. According to Aquinas, good causes evil accidentally.¹⁸ Aquinas here uses the example of a fire. He says, “the cause of evil that is the destruction of water is the causal power of fire.”¹⁹ Fire itself is not an evil, but in exercising its causal power, it does have the potential to destroy.

Aquinas states that the will can cause immoral actions in two ways. First, one can desire something that is perceived as good (even though it is ultimately evil), this might be a formally deficient good. Aquinas uses the example of an adulterer. He explains that to the adulterer, gratifying their sensual pleasure seems like a good. However, this good is contrary to their due end. The will, then, chooses a deficient good, one not ordered to the proper end of humanity.²⁰ This is important for the imputation of moral responsibility for Aquinas. While one may desire a deficient good because they perceive it as a good, the will ultimately chooses the deficient good over a properly oriented good.²¹

¹⁴ Reichberg, “Beyond Privation,” 753.

¹⁵ *Ibid.*, 757

¹⁶ Aquinas, *De Malo*, 70.

¹⁷ *Ibid.*, 70.

¹⁸ *Ibid.*, 71.

¹⁹ *Ibid.*

²⁰ *Ibid.*, 70.

²¹ *Ibid.*, 71.

Second, the will can choose evil when it itself is deficient. In this way, the will as deficient can choose to do something that Aquinas calls evil in an “absolute sense.”²² Whereas in the first example the will chose evil because the person desired a perceived, but deficient good, the will as deficient can choose to do something because the act itself is evil. As Aquinas explains: “the deficiency presupposed in the will before sin is a simple negation, not a moral fault or punishment. But the will incurs the nature of moral wrong because it undertakes the evil deed in the state of such negation, since in undertaking the very deed, the good that is lacking becomes requisite, namely, actually attending to the rule of reason and God’s law.”²³

It seems then, for Aquinas, that there are two ways in which one can commit moral evil. However, I think it is important to note that Aquinas does have a more positive view of human nature than his predecessor Augustine. It seems that Aquinas largely understands the will to function properly. Human beings often commit moral evil only as they mistakenly perceive it to be a part of some good. Yet, there are also times in which human beings willingly commit acts that cannot be described as anything other than evil. Reichberg explains: “a wrongful deed has the character of privation insofar as it lacks a due ordination to the agent’s rightful end; it is something more than privation insofar as it is an act posited in opposition to the moral rule.”²⁴ Reichberg continues on to explain that for Aquinas, when considering the nature of evil as privation, immoral action “detracts from what is properly human; it represents an impoverishment...that affects the doer and his action.”²⁵ In the end, Aquinas understands human beings to be responsible for their actions. The volitional nature of human actions allows for the imputation of moral worth to the actions of an agent. It also justifies the ability to punish immoral actions. While I agree that actions must be volitionally under the agents control for the proper imputation of moral worth, I think that Aquinas’ own theory of privation should lead to a different application of punishment than he seemed to condone.

According to Aquinas’ understanding of evil as privation, evil is first and foremost the absence of some good that a particular being ought to have. Metaphysically this understanding of evil holds all the way through. However, as we have seen, Aquinas also talks about notions of mixed privations in relation to moral action. This notion allows him to suggest that actions, and at times people, can rightly be called evil. And as this relates to moral imputability, I think this is an important concept. If, however, as Aquinas says, evil is the privation of some particular good a being ought to have, then this has interesting implications for the

²² Ibid.

²³ Ibid., 73.

²⁴ Reichberg, “Beyond Privation,” 757.

²⁵ Ibid., 759.

way in which we punish people for immoral and criminal actions in contemporary society.

In contemporary society, we attempt to punish people in proportion to the criminal actions that they commit. Our justifications for punishment assume that people act voluntarily, and the concept of just desert is active as a way of measuring the amount of punishment that an immoral or criminal action demands. Additionally, the concept of desert ties the punishment to the person who committed the act.²⁶ Underlying all of this is an assumption about evil: namely, that evil is a thing and people willfully choose evil. While Aquinas does not deny that evil can be rightly called something, at least when in the mind, inasmuch as it is a privation of something else, and does not deny that one chooses evil, privation gives a more nuanced understanding of evil that, if we take seriously, should cause us to reevaluate our punishment system.

Implications of Evil as Privation for the Justice System:

If we understand evil to be privative in nature, then we have to reevaluate what it means to be evil. Often times when people commit evil actions, we assume that they themselves are, in fact, evil. And while this label might be important for moral imputation, it is metaphysically damaging. Privation theory reveals that, even when people commit terrible evils, the evil that they *are*, refers in fact to what they lack. What I mean is that, if people grow up in a situation that does not promote the development of moral goodness within them, it makes sense that they would develop with some kind of lack, a privation. Yet, if evil is precisely the absence of some good, then there is hope to rehabilitate the moral good within offenders. Whereas, if evil is in fact something in and of itself, we are no longer talking about filling an absence, what we are now talking about is tearing down the evil of/inside a person before being able to rehabilitate the moral goodness within them. In many cases, if we assume evil is something itself, we might nevertheless be able to accomplish this, but this story might run differently in the case of horrific evils. If we assume truly horrific evils are subsistent beings, then we have a daunting, potentially impossible task ahead of us. Or, as we often do, we simply choose to write this person off as a monster and either leave them imprisoned for the rest of their life or kill them.

On the other hand, privation theory can lead us towards an enhanced moral understanding of evil that implies a need for restoration and not punishment alone. At this point, I would like to note that I am not advocating for an approach to criminal justice that is not punitive and does not separate criminal offenders from society for a time. I am arguing, that the culture of the justice system needs

²⁶ There is some worry that without a notion of just desert, that punishment as deterrent could be applied to people important to a criminal as a way to deter criminal action. Desert in a sense ties the punishment to the offender.

to be one in which restoration takes precedent over mere incarceration. Understanding evil as privation implies a human capacity for evil action, even horrific or radical evil, that is often times written off. By capacity for evil, I mean simply, any human being has the possibility for evil. Given situations similar to a criminal offender's, any human person would be more likely to commit the same crime. Implicit in privation theory, and here I diverge from a strictly Thomistic account and lean on Hannah Arendt, is the idea that evil as privation develops. No one comes into this world predestined for evil. Evil as privation can be deepened over time, either by the direct attack on one's goodness, or by a lack of nurturing one's goodness. This can be a self-inflicted attack on one's goodness (for Aquinas choosing evil actions is always in some way a diminishing of the moral goodness of the person), a self-neglect of one's goodness, or others can attack or neglect the development of goodness in the self.

This then leads to a privation of goodness within the self, a defect of the will, which Aquinas explains is the way in which people choose evil directly. In many other cases, people choose evil indirectly in the pursuit of some good. If we understand evil as a privation, then we ought to be impelled to try to restore the good within human beings, as opposed to just separating and punishing them for their wrong doing. One way that we might be able to accomplish this is by providing psychological services to those who are incarcerated. We might also accomplish this by providing other services that would enable incarcerated people to better themselves; we could provide access to education, career preparedness courses, and potentially even some technical job training. However, this does not mean that we do not recognize evil as something done, only that we understand that the mode of evil's existence is precisely in its being the absence of some particular good. Therefore, we ought to engage in practices that not only punish, largely accomplished by the separation from society, but also engage in practices that restore moral goodness within criminal offenders.

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