

Punishment

By Thom Brooks

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Caitlin Gormley (University of Glasgow)

Punishment is a topic which concerns all actors in society. Why and how we should punish crimes remains pertinent, particularly when considering who it should be delivered by and to. Thom Brooks, a philosophical-legal academic, addresses questions such as these in his critical introduction to the philosophy of punishment. In his book, simply titled '*Punishment*', he accessibly and engagingly addresses the theoretical underpinnings of this topic and the practical implications of their application to in-depth case studies of capital punishment, juvenile offenders, domestic abuse and sexual crimes. Brooks outlines that the aims of his book are to present to readers, coming to the subject for the first time, a critical guide to the latest research on leading and varied theories of punishment and their ability to speak to important case studies.

Brooks provides a comprehensive definition of punishment which informs its use throughout the book which follows a legal and Hegelian paradigm: the justification of punishment relies upon criminalisation only under a just legal system (Hegel, 1969). For Brooks, punishment is a response to crime which must involve a loss (including a loss of liberty or money for example); must only be administered when someone has broken the law; and, can only be used by an authority with a legal system (p.1-2). However, he only refers to punishment as imprisonment and does not consider non-penal responses to crime, such as community sanctions or probation, as forms of punishment – this is a worrying assumption, which could undermine the attempts of non-custodial sanctions to instead be seen as a 'soft alternative'.

It is important to note, Brooks states from the outset that he believes that it is important to understand punishment as a practice informed by theory, and this empiricism is evident in the notably systematic structure of the book; Brooks coherently presents his thesis in three sections. The first explores in detail the philosophical underpinnings of 'general theories' of punishment in four chapters so titled: retributivism; deterrence; rehabilitation; and, restorative justice. The second

section – ‘hybrid theories’ - contains two chapters exploring possible combinations of the previous section: the former deals with mixed theories of legal and political philosophy put forth respectively by John Rawls and Herbert Hart; while the latter explores *expressivism*, noting that punishment publically denounces criminal offenders and communicates the moral wrongdoing. This section culminates with a chapter on Brooks’ preferred model: a unified theory of punishment which blends each of the previous six theories into a single, cohesive theoretical approach which Brooks claims rests upon the idea that different penal goals are compatible (p. 126). He goes on to apply these theories in the third section, which explores the four in-depth case studies mentioned above. This concludes, unsurprisingly, with his preference for the unified theory of punishment. This pluralist approach, which has its roots in late nineteenth-century British Idealism (which popularised the works of Kant and Hegel for an Anglophone audience), is indeed compelling due to the complimentary use of each theory in combating negative aspects of the other, not to mention its flexibility *ad infinitum* in application.

Although Brooks seeks to unravel the philosophical underpinnings of the theory of punishment within a legal and penal field, it is impossible to ignore how interdisciplinary this topic is: his avoidance of sociological, penological and criminological fields of thought is highly evident and restrictive. An engagement with these narratives he may have saved himself some repetitive explanation of concepts. An example of this was his exploration of *expressivism* as a hybrid theory of punishment; Emile Durkheim’s sociological theory that the communicative – or what Brooks refers to as ‘expressive’ - element of punishment reiterates and reproduces collective sentiments, which produce social solidarity, regarding that which we decree to be right and wrong (Durkheim, 1982: 99). In order to substantiate his preference for the unified theory of punishment Brooks lays his conclusive foundations on a, somewhat outdated (in the wider interdisciplinary field of crime and punishment), Blairite conceptualisation of punishment as a means to manage crime: ‘tough on crime, tough on the causes of crime’. As such Brooks goes on to recommend that penal sentences could be used more often for less time to allow offenders time to ‘cool off’ (p. 213), ignoring the (cost-reducing) efforts of community based offender supervision (see McNeill et al, 2010).

A further criticism of this work is the constant repetition which becomes frustrating, particularly when the author includes in the definition of a concept the word he is defining as well as an array of sentences such as ‘this claim appears to claim that...’ (p. 94). The author’s intended readership of this book is newcomers to this field of philosophical-legal punishment; however, examples of punishment practices from the USA and the UK are inconsistent and unlabelled throughout. It would take someone with a little knowledge of the field to differentiate between those American and British practices which, as a result, undermine the intended readership of this piece.

The consideration of how we punish crime is dealt with conceptually and operationally through a clear and consistent marrying of theory and practice, with extremely useful hypothetical scenarios which allow the reader to engage with their own moral views as well as those of society’s legal jurisprudence. Despite flaws on style and approach, Brooks does reach a comprehensive conclusion which collates theory and practice in a manner suitable for newcomers to this interdisciplinary field. This book would be useful for students of social science while dealing with concepts of crime and justice at an undergraduate level, as well as for an audience of practitioners within the psy-complex (psychology, psychiatry and social work) and legal field.

Bibliography

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