

## ARTICLE

# Non-paradigmatic punishments

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## Abstract

This review article argues for a better acknowledgement by penal philosophers of the diversity of subjects, agents, and practices of punishment. Much current penal philosophy has an unhelpful hyper-focus on the criminal punishment of culpable adults, by states, often through imprisonment. This paradigmatic case is important, but other subjects, agents, and practices of punishment are not statistically insignificant side-issues, and a comprehensive account of punishment should address them. Our understanding of punishment as a whole can be enhanced by considering non-paradigmatic punishment, with implications for whether and when punishment is justified, how we should understand appropriate authority, and how we should understand and engage with abolitionist arguments. We explore non-paradigmatic penal practices (community punishments, suspended prison sentence, restorative justice, and alternative jurisprudence), non-paradigmatic punishing agents (International judicial bodies, schools, and religious communities; with practices such as boycotts, shaming and shunning) and non-paradigmatic subjects of punishment (collective agents, corporations and children).

## 1 | INTRODUCTION

According to a well-known and widely-accepted definition, punishment involves the inflicting of hard treatment, on an offender by an appropriate authority, in response to independently specifiable wrongdoing (Benn, 1958;

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Flew, 1954; Hart, 1960). This account, which we call the Hart-Benn-Flew or HBF account, has sometimes been found inadequate (Zaibert, 2006), or insufficiently specific: some think censure essential to punishment (Boonin, 2008; Feinberg, 1965); and there is disagreement as to whether hard treatment must involve intentionally inflicted suffering (Hanna, 2008, 2017, 2020; Wringle, 2013, 2019). Furthermore, methodological worries about the role of conceptual analysis in philosophy raise questions about the philosophical significance of defining punishment (Wringle, 2021). Nevertheless, the account has formed a recurrent point of reference in recent work on the philosophy of punishment.

Although the HBF account was initially developed as an analysis of legal punishment, the terms 'wrongdoing', 'appropriate authority' and 'hard treatment' can be understood more broadly, so that the analysis captures a wider range of phenomena.<sup>1</sup> Nevertheless, philosophical (and indeed popular) discussion of punishment gravitates towards a comparatively narrow range of kinds of case: hard treatment (most often imprisonment, monetary fines, or death); inflicted on individual culpable adult wrongdoers; by a legitimate and typically democratic state; in response to identifiable, often criminal, wrongdoing; following legal due process. We shall call these 'usual suspect' cases paradigmatic. Non-paradigmatic punishments depart from this paradigm in one or more ways.

Non-paradigmatic punishment includes cases where punishment is inflicted on subjects other than culpable individual adults: in particular, the punishment of children, and of adults who do not meet standard conditions of criminal responsibility, as well as of collective agents, such as business corporations. It also includes punishments inflicted by agents other than states, including both smaller scale institutions such as schools and closed communities, and punishments in the international domain, such as punishments imposed by international tribunals and the international community as a whole. Finally, it includes forms of punishment that constitute a significant fraction of the business of domestic courts in many jurisdictions, such as probation and supervision orders; as well as those that are at home in alternative mechanisms of justice such as youth courts and institutions of restorative justice. Many instances of punishment depart from the paradigmatic case in multiple ways: schools punish children, international tribunals punish states, corporations are held to account through international co-operation, restorative justice practices are prominent in some contexts involving collective wrongdoing and so on.

Hoskins has drawn attention to a political turn in recent work in philosophy of punishment which locates questions about the justification of punishment within the broader context of political theory, and in particular the justification of the coercive power of the state (Hoskins, 2017; citing: Brudner, 2009; Chiao, 2016; Dagger, 2011a, 2011b; Matravers, 2011; Sigler, 2011; Thorburn, 2011; and; Husak, 2008; Ristroph, 2015, 2016; see also; Tadros, 2011, 2016; Chiao, 2018; Wellman, 2017). Work in this vein typically concentrates on paradigmatic instances of punishment, seeing the state as the agent of punishment and – either explicitly or implicitly – the citizen as its subject. But with a few exceptions (Bennett, 2008; Duff, 2001) this work also tends to concentrate primarily on paradigmatic punitive measures. This pattern is replicated in work that has a broader focus, although some general discussions of punishment address some of these issues briefly (e.g. Brooks, 2021, on corporate crime; Canton, 2017, 2018, on probation practice).

Our interest here is in the wide variety of cases that can be brought under the umbrella of the HBF account along with a Feinberg-style communicative condition. Part of our aim is simply, to illustrate this range of cases and to take note of some of the questions they raise. However, attention to these kinds of cases also casts light on a range of issues that ought to be central to philosophical discussion of punishment: the plausibility of abolitionist positions; the extent to which the definition of punishment should hinge on intentional infliction of hardship or suffering; and the missing dimensions of the political turn. In particular, we argue that accounts of hard treatment should focus on what is experienced as burdensome, rather than the intentions of punishing agents; that abolitionists should focus on calling for the abolition of state-imposed incarceration, rather than the abolition of punishment tout court; and that proponents of political justifications of punitive institutions owe us an account of how punishment by institutions other than the state might be justified.

## 2 | NON-PARADIGMATIC PUNITIVE MEASURES

### 2.1 | Criminal punishment beyond the prison

As Worrall and Hoy observe, the prison looms large in popular and political discourse. The prison, they argue, appears synonymous with penalty, since one meaning of 'penal' is *as a place of confinement and punishment*. They suggest that we lack the language to 'think about punishment, without thinking about prison' (Worrall & Hoy, 2005, pp. xiii, xv). Noorda has recently labelled a range of noncustodial judicial and administrative responses to crime, as 'expressment' (Noorda, forthcoming). However, while the question of what counts as imprisonment is not straightforward (Noorda, forthcoming; cf Husak, 2020), we are cautious about framing all kinds of punishments as variants on imprisonment, since most crimes are not punished by imprisonment. In many jurisdictions incarceration only accounts for a small proportion of criminal punishments (Demleitner, 2014; Hörnle, 2019; Office for National Statistics, 2021, p.7).

Non-custodial responses to crime are sometimes popularly perceived as being not 'really' punishment (McIvor, 1994, p.175). Consideration of the HBF account of punishment suggests otherwise. Insofar as alternatives to custody are imposed by courts in response to criminal wrongs they meet the first two conditions. Furthermore, in many jurisdictions, probation supervision may include onerous conditions: drug rehabilitation, curfew, unpaid work. Empirical research on the 'pains' of probation (Durnescu, 2011) and electronic monitoring (B. K. Payne et al., 2014; Bülow, 2014) suggests that measures like these are often experienced as burdensome or requiring loss. They can also play a role in communicating censure. Consequently we concur with Duff in considering them squarely as forms of punishment (Duff, 2001, pp.99–102).

Suspended prison sentences in particular suffer from the perception that they are not 'really' punishments. Suspended sentences are complex, and vary more than other disposals between jurisdictions in form, content and ranking in severity against other sentences (Freiberg, 2019, pp.81–82). In England and Wales, the jurisdiction with which we are most familiar, suspended sentences are used where the court finds that only a defined prison sentence reflects censure proportionate to the seriousness of the offence (Sentencing Guidelines England & Wales, 2021). Next, the court may identify a reason for suspension: 'realistic prospect of rehabilitation', 'strong personal mitigation', or evidence that immediate custody would 'produce a significant harmful impact upon others,' such as dependants (ibid). Imprisonment is suspended for a set period to which community punishment requirements may be attached, with breach activating the custodial element. When these requirements are met, it is intended that the individual never goes to a prison. It does not follow that such sentences are not punishment. In fact, in addition to the censuring aspect already noted, they can satisfy all the requirements of the HBF account. They are, of course, imposed by courts in response to criminal conduct. As with community sentences, additional requirements may be burdensome, as may the threat of immediate incarceration.

In many jurisdictions, the law is quite clear about the status of these practices: they *are* punishments. Furthermore, our discussion suggest that non-custodial sentences can be understood as forms of punishment without placing significant strain on existing ways of thinking about punishment. The comparative scarcity of discussion of non-custodial sentences in general philosophical discussions of punishment may reflect either (as Worrall and Hoy suggest) the absence of forms of language which allow us to discuss punishment without putting prison at the centre of it, or philosophers' comparative unfamiliarity with this empirical information. This scarcity also leaves open the question of how far accounts of the justification of the criminal punishment of culpable adults can accommodate punishments of this sort. Criminal punishment can however be broader than these common mainstream responses to offending, as we hope to show by examining restorative justice and alternative jurisprudence.

## 2.2 | Restorative justice

Restorative justice aims to repair relationships between offender and victim, rather than redressing wrong or promoting retributive suffering (Okimoto et al., 2009, p.157; Walker, 2006). Face-to-face restorative justice practices, bringing offender and victim together with a facilitator and sometimes supporters, are widely agreed to be the most effective. Other related practices include indirect mediation, group conferencing, circle sentencing, and practices without victim involvement (such as reflective letter-writing exercises) (Shapland et al., 2011, p.140; Sherman & Strang, 2007).

Braithwaite lists the theoretical constraining values of restorative justice as: 'non-domination, empowerment, honouring legally specific upper limits on sanctions; respectful listening; equal concern for all stakeholders; accountability, appealability; ' and respect for basic rights (Braithwaite, 2003, pp.8–9; the notion of non-domination draws on the discussion of domination in Braithwaite & Pettit, 1990, pp.61–9). Restorative justice will not be suitable for every case, and evaluating the success of restorative justice is complex. Braithwaite (1998, p.329) notes restorative justice cannot resolve deep structural injustices that affect criminal punishment, and Wood (2015) argues that restorative justice cannot reduce reliance on incarceration, since it is often used for minor and youth offences. Yet restorative practices are used in prisons (Criminal Justice Joint Inspection, 2012, ch. 4) and for many victims and perpetrators, restorative practices are more likely to be successful than adversarial approaches and conventional sentencing (Doak & O'Mahony, 2019, p.220). Further, the deliberative practices of restorative justice provide some procedural legitimacy, and an inspectable standard (Roche, 2004).

While some understand restorative justice as an alternative *form* of punishment (Zehr, 2002), others identify restorative justice as an alternative *to* punishment (Duff, 2003a, 2018, pp.282–283; but cf Duff, 2002, 2003b). Some examples of restorative justice are clearly not *criminal* punishment: consider restorative practices used in neighbourhood civil dispute resolution (Doak & O'Mahony, 2017). Indeed, insofar as they may avoid censure or even not be conceived of as responses to wrongdoing, some might doubt they are punishment at all. Some may hesitate to classify instances of restorative practices used in schools (Jean-Pierre & Parris-Drummond, 2018) as punishment (We say more about this issue in section IV.).

However, restorative justice can constitute a formal state response to criminal behaviour, when ordered by a sentencing court: in England and Wales for example, community punishment requirements may include restorative practices. In line with the HBF account of punishment, these requirements are at least part of the order of a legally empowered sentencer, in response to culpable criminal wrong. While restorative practices seek primarily to restore relationships rather than to purposefully provide harsh treatment, restorative agreements may involve unpaid work or service as the participants deem appropriate. Furthermore, most restorative practices require wrongdoers to take responsibility for harm caused, which can be an onerous undertaking.

Similarly, although censure of wrongdoing is rarely at the centre of restorative practices, the identification of wrongdoing as a behaviour that results in a need to repair relationships seems unavoidable. This might be regarded as a form of censure. Furthermore, since restorative practices ordered by criminal courts will typically address more serious (i.e. criminal) wrongs, there is good reason to think that acknowledging this kind of wrong will be more onerous for an offender, than acknowledging the lesser wrongs involved in non-criminal restorative practice (cf. Duff, 2001, p.107). In short, while restorative practices are diverse, and some are best not considered as punishment, at least some instances of restorative practice are best understood as non-paradigmatic forms of criminal punishment. Penal theory should, then, address questions about their justification.

## 2.3 | Alternative jurisprudence

Problem-solving courts follow a community justice trajectory, providing ongoing individualised support to address personal difficulties contributing to offending behaviour. Key examples include the Red Hook (Brooklyn) and

Mid-Town (Manhattan) Community Justice Centres, with contributions from the Centre for Court Innovation.<sup>2</sup> Emerging in a jurisdiction where individual judges have more discretion and control than in many others, these judge-led programmes allow scope for creative approaches to sentencing: supporting convicted individuals towards compliance, while also following community justice principles of giving back to the local community through unpaid work cleaning and renovating local public spaces, in addition to other requirements (Clear et al., 2011, pp.20–23).

Since each problem-solving project reflects local priorities, there is no single exemplar (J. L. Miller & Johnson, 2009, p.44), or unifying theory (Berman, 2009, p.3; Strang, 2004, p.76). Nevertheless, there are shared features:

1. Collaboration;
2. Information sharing;
3. Individually tailored sentences;
4. [Successful] Outcomes;
5. Accountability (see particularly J. L. Miller & Johnson, 2009, pp.123–124; also Nolan, 2009, pp.10–11).
6. Community engagement (DeMatteo et al., 2019; Wolf, 2007)

This approach smooths co-working between separate on-site support organisations (e.g. housing, addiction services, access to work or training). Information sharing between such partner organisations facilitates sentence delivery. Individuals and their defence lawyer work with the sentencer and support team throughout their sentence, and requirements are adjusted to help the individual towards successful compliance with their order. Since every problem-solving project is different, accountability practices are challenging, but necessary to avoid or at least mitigate the paternalistic, coercive, potential of these practices.

Therapeutic jurisprudence sees specialised courts and judges using social cognitive psychology methods to support people with particular types of problem underlying their offending: for example, drug courts and mental health courts. Sentencers provide ongoing oversight, gradually amending requirements to support the individual with both addressing their difficulties, and order compliance. Wexler and Winick describe the processes as of itself therapeutic or healing. Judges use motivational interviewing (Gal & Dancig-Rosenberg, 2020; Winick, 2003), to help individuals to acknowledge problems, identify personal goals, support movement towards these goals, and tackle underlying issues to reduce offending behaviour. Therapeutic court programmes provide practical, personal, and clinical support; and reward progress (Nolan, 2009, p. 44; Winick, 2003, p.187). In US drug courts, rewards are a small but important part of motivating the participant forwards: applause, judicial hugs (California), doughnuts (Florida), and judicial cartwheels (North Carolina) (Nolan, 2009, pp. 44–46).

While problem-solving courts respond to local priorities and hence often lack theoretical footing, therapeutic jurisprudence has foundational principles. These are: integrating alcohol and drug treatment with the criminal justice process; non-adversarial approaches bringing prosecution, defence, sentencers and other staff together to promote public safety (with attention to the participant's rights); identifying and including eligible participants early; providing a range of treatment and rehabilitative services; abstinence monitoring through frequent testing; co-ordination between treatment and legal teams to monitor compliance; ongoing judicial involvement; monitoring and evaluating achievement and effectiveness; interdisciplinary education to promote effective operations; and forging partnerships with other organisations and public bodies to generate local support to enhance effectiveness (The National Association of Drug Court Professionals, 1997).

There are concerns that therapeutic jurisprudence is based on unproven empirical arguments (Husak, 2011, p.219); and serious concerns about whether participants rights can be effectively protected, particularly when pre-trial proceedings require participants to waive rights (E. J. Miller, 2009), and post-conviction processes demand a guilty plea (Husak, 2011, p.220). Pre-trial proceedings are diversionary practices, aiming to counter net-widening effects, that otherwise draw petty offenders into the criminal justice process, through destigmatising support. But not all therapeutic courts live up to these aims: some studies found stigmatising and degrading practices in some drug courts (Miethe et al., 2000, pp.536–537).

Problem-solving courts and therapeutic jurisprudence may require longer, more intensive supervision than mainstream punishments. Information sharing with partner agencies may threaten privacy (J. Payne, 2005). Some concerns about net-widening and privacy can be addressed through informed voluntary consent to participate. Further, Roche's proposals for discursive procedural legitimacy and for oversight and accountability through explanation (Roche, 2004), initially formulated for application to restorative justice, are also applicable to judge-led alternative jurisprudence.

Some problem-solving courts operate within the mainstream criminal justice system (e.g., Australian Neighbourhood Justice Centres, inspired by the Red Hook Community Court, New York, and the now-closed North Liverpool Community Justice Centre, England (Henderson & Duncanson, 2018, p.211)). Where these practices are ordered by a criminal court, in response to culpable criminal offending, we suggest these orders should be viewed as punishments. Some therapeutic court practices are diversionary: they may seek to 'divert' individuals from criminal process specifically in order to reduce stigma and avoid the condemnation of criminal conviction. For example, US drug courts - unlike Scottish drug courts - often make use of pre-trial and bail proceedings to avoid reaching a criminal trial. Such practices might be best understood as 'other than' criminal punishment.

Nevertheless, even diversionary drug courts meet at (least some of) the HBF account characterisations of punishment. First, they respond to criminal acts, holding individuals responsible and accountable. Second, while alternative jurisprudence is not designed to inflict intended suffering for its own sake, the practices are not soft options. 'Tough' and 'therapeutic' need not be mutually exclusive (Nolan, 2009, pp.51–54), and the measures involved (such as regular drug testing, regular meetings, engaging with support services) are similar to measure used in probation and identified above as often burdensome. Third, these are responses ordered by criminally empowered sentencers, even if sentencers act outwith this capacity. Moreover, while diversionary practices seek to avoid the social stigma attached to individuals convicted through mainstream criminal justice process, with a view to reducing recidivism, this need not prevent alternative practices from conveying disapproval for criminal conduct. These points suggest that like paradigmatic instances of punishment, diversionary courts call for justification from penal theory.

Whether restorative and alternative jurisprudential practices should be viewed as forms of punishment bears on the plausibility of penal abolitionism: the view that all punishment, as a social institution should be replaced with ways of treating offenders that are not forms of punishment. For example, Boonin advocates the replacement of punishment, which he thinks cannot be justified, with a form of pure restitution (2008, ch5), which he takes to be closely related to restorative justice (2008, p.216 n 8; cf Sayre-McCord, 2001; Hanna, 2008.) But if, as we have suggested, some restorative justice practices are forms of punishment, Boonin's view may not entail the abolition of punishment, but the replacement of one form of punishment by another (cf Cholbi, 2010.) Similarly, Allegra McLeod recommends replacing criminal justice practices with preventative social measures (2015, p.1171): improving public spaces and job-creation (p.1225–1232). These aims overlap with community-centred alternative jurisprudence practices (Brown Coverdale, 2021, p.425). If these practices are in fact punishment, then what we have is either a change of method of punishment or the replacement of one agent of punishment by another.

Recognising some kinds of restorative and alternative practices as punishment while recognizing the complexity and range of practices in this area may produce better-informed and more widely applicable penal theory. It is also relevant to penal practice. Many jurisdictions accord procedural rights to offenders to protect them from the harms that would result from being wrongly punished. For example, the American constitution's Eighth Amendment provides protections against cruel and unusual punishment. If alternative jurisprudence practices constitute punishment this will affect their implementation in the USA. Similar issues will arise elsewhere: many European states provide privacy protections for certain kinds of offenders; high burdens of proof in criminal trials are sometimes defended on the grounds that they protect individuals from distinctive harms that might arise from being wrongly punished and so on.

### 3 | NON-PARADIGMATIC PUNISHING AUTHORITIES

Some approaches to restorative and alternative jurisprudential practices aim at minimizing or bypassing the involvement of the state in interpersonal disputes (Christie, 1977). Some might think the HBF account's 'appropriate authority' clause entails that they are not punishment. In response, one might emphasize the extent to which in practice the state still plays a role 'in the background': in deciding eligibility, monitoring compliance, providing back-up sanctions for the non-compliant and so on. Alternatively, one might consider whether 'appropriate authority' must be state authority. In making a case for understanding 'appropriate authority' more broadly we might look either to institutions whose reach extends beyond the boundaries of individual states; or to institutions below the level of the state such as schools and religious institutions, and to non-institutionalized practices such as boycotts and public shaming. We consider each in turn.

A common-sense understanding of the term 'punishment' suggests that hard treatment imposed in response to violations of international criminal law by permanent international bodies, such as the International Criminal Court and by ad hoc international tribunals such as the International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda (May, 2004; May & Fyfe, 2017) should count as punishment. The existence of international bodies with the power to impose hard treatment in response to breaches of international criminal law raises a range of distinctive normative issues, including questions about the authority of international law, victors' justice, and the apparent retroactive application of legal norms (May, 2004, 2008; Wringle, 2006). However, it also raises normative questions that seem closely related to questions about the justification of punishment in the domestic case. Furthermore, many of the patterns of justification to which theorists appeal in justifying them have obvious parallels there (May & Fyfe, 2017). Denying that these justifications are justifications of punishment obscures more than it illuminates.

International judicial bodies, whether ad hoc or permanent, are typically instituted through treaties signed by states. We might think that in instituting them states delegate their authority to international bodies, and appeal to this fact in defending an interpretation of the appropriate authority condition that understands appropriate authority as state authority. However, the delegation model may not provide the best account of the authoritativeness of international criminal law and of international criminal tribunals. An alternative account draws on Raz's (Raz, 1986) account of the authority of domestic laws (Tasioulas, 2010). For Raz, domestic law is authoritative because agents are better able to act in accordance with the reasons that they have by following the law's directives than if they were to decide for themselves on a case by case basis. One might claim the same for international law.

Since Raz's account is not intended exclusively as an account of criminal law, it does not explain why international judicial bodies have a right to impose punishment in response to breaches of international law. One view is that this right belongs in the first instance either to individuals (along the lines of a Lockean natural right to punish) (Altman & Wellman, 2011) or to the international community as a whole (May, 2004; May & Fyfe, 2017). While the right to punish severe breaches of human rights is typically delegated to well-functioning states, other agents retain those rights when they fail to do so. However, there is no philosophical consensus as to what makes punishments imposed by international criminal tribunals legitimate. The political turn has left this issue underexplored.

Punishments imposed by international bodies remain paradigmatic in one sense: they are typically imposed or intended to be imposed on individual wrongdoers – albeit individuals whose wrongdoing often has a collective dimension (May, 2004). However, Lang has argued that international criminal law might have developed in such a way as to allow for the punishment of states considered as collective agents (Lang, 2007). Some might argue that it is constitutive of something's being a state that it not be subject to any form of higher authority, and consequently deny that the idea of punishing states is intelligible. However, it seems hard to deny that existing political entities such as France, Germany, Australia and so on could, in principle, bind themselves to submit themselves to some overarching judicial authority via treaties. Political entities that did so would almost certainly inherit many of the existing legal and moral responsibilities of states and continue to exercise most of the functions that states have typically undertaken.

A denial that they would be states seems to require stipulative definition (We address further qualms concerning the possibility of punishing collective agents in Section IV.)

International courts often operate in situations where considerations of transitional justice apply (Drumbl, 2007; May, 2012). In many such situations non-paradigmatic punitive measures may be especially appropriate, either because of the widespread nature of the kind of wrongdoing with which they deal, or because of the particular demands that might arise from the need for national reconciliation (Drumbl, 2007). These measures often have at least some features in common with – and in some cases may even have inspired – some of the alternative jurisprudential practices considered in Section II. They also give rise to similar qualms relating to questions about due process as well as worries about impunity.

In considering punishments inflicted by sub-state level institutions, we may again be tempted to understand appropriate authority as authority delegated by the state. But when a private club expels a member for persistent breach of its rules, a religious order imposes a penance on one of its adherents, or a parent grounds a teenager they are not exercising authority on behalf of the state, even if they act in ways which the state permits. Indeed, they may be acting in ways that the state has good reason to deprecate, but which it could not justify prohibiting. Of course, the state can regulate the ways in which parents and private institutions punish. But regulation is not the same as delegation. There are a range of constraints, including procedural constraints of due process, lack of bias and so forth that we would expect to be applicable to anyone acting on behalf of the state. It would be intolerably intrusive for the state to hold parents and private institutions answerable to these constraints.

Schools provide an interesting case, particularly where schools are funded and/or regulated by the state and school attendance is mandatory. Punishments imposed by the state's schools are, in a certain sense, punishments imposed by the state. They are not criminal punishments – though they may share significant features with criminal punishment – both in respect of seriousness (think here of the impact that exclusion from school may have on a young person's life chances) and insofar as they may involve being called to account for public wrongdoing in a public forum. We should not allow the fact that the state is acting through an intermediary to disguise the fact that what we have here is, in effect, an 'arm's-length' exercise of power by the state. This being so, due process constraints of the sort described in the previous paragraph may be appropriate here.

Non-institutionalized social sanctions, such as boycotts, public shaming, and shunning raise particular difficulties for those who interpret the appropriate authority condition as referring to state authority. These practices, which have recently attracted particular interest from both philosophers and popular writers (Radzik, 2020; Ronson, 2016), typically involve non-paradigmatic penal measures (such as public shaming and social isolation). They may also be directed at non-paradigmatic subjects of punishment (such as corporations). Nevertheless, they have been taken to constitute forms of punishment by both critics and defenders (Billingham & Parr, 2020a, 2020b; Meckled-Garcia & Aitchison, 2021; Radzik, 2020) Doing so allows for the application of well-understood patterns of justification – whether in terms of deterrence, retribution, the promotion of reconciliation or the expression of valuable states of affairs – and critique – for example, as disproportionate, as lacking appropriate constraint by due process, and as failing to respect those to whom they are applied as persons (Radzik, 2020). The notion of punishment does significant normative work here: if we assimilate these practices to some other category – such as the category of protest – different patterns of justification and critique appear to apply, and different instances will seem justified or unjustified (Pettigrove, 2020).

It makes little sense to think of the state as delegating authority in these cases. These practices could presumably continue even if the state were to wither away. Some might regard cases of informal punishment as a reason for rejecting the idea that punishment need involve relations of authority at all (cf Zaibert, 2006). This would be compelling if we thought that authority must be political authority. But like Radzik (Radzik, 2020 pp19ff) we find it more illuminating to consider the possibility of non-political forms of authority here. Three different models are available here. One possibility, explored by Radzik, is to see individuals as having moral authority over one another in virtue of their right to call one another to account as moral equals (Radzik, 2020). A second is to see such individuals as acting on behalf of a real or imagined moral community. A third possibility is to see the notion of authority here descriptively

rather than prescriptively – as something which exists when individuals take themselves to have the standing to call one another to account (and perhaps when others accede to that way of seeing things). On any of these accounts, more will need to be said about whether and how the relevant kind of authority might ground a right to punish.

#### 4 | NON-STANDARD SUBJECTS OF PUNISHMENT

The subject of punishment is often assumed to be the mature, fully adult, responsible, (and perhaps also socially included) citizen. As we have already noted this approach is typical of the ‘political turn’; but it is often implicit in work on punishment that does not explicitly adopt this perspective. However, many punishments are inflicted on subjects who are not citizens. States frequently punish adult non-citizens (Coca-Vila & Irrarázaval, 2021; Wringle, 2021; Yaffe, 2020), juvenile offenders (Duff, 2002; Walgrave, 2002; Yaffe, 2018) and collective agents, such as corporations (Bjornsson & Hess, 2017; Wells, 2001). It is hard to see non-citizens as full members of the political community (Wringle, 2021). One might take a similar view of the socially excluded (Duff, 2010; Shelby, 2007; Holroyd, 2010), and the not fully responsible (Yaffe, 2018). Finally, however one thinks about the relationship between corporations and the political community, the idea that corporations themselves are members of the political community places severe strains on the idea that the political community is a community of equals (Wringle, 2012).

Philosophers and legal theorists often find the possibility of the criminal punishment of corporate entities perplexing (Coffee, 1981; Hasnas, 2009; Sepinwall, 2016). Since corporations have, in the famous phrase, ‘no body to kick and no soul to damn’, some have wondered whether any treatment imposed upon them can constitute hard or burdensome treatment (Rich, 2016). Other philosophers raise normative issues: if corporations can – as many philosophers suppose – be considered as collective agents whose agency does not reduce to that of their principals (French, 1984; List & Pettit, 2011), we might think that burdens imposed upon them harm agents who have not been found guilty (and may not in fact be guilty) of any criminal offence – and thus, perhaps, constitute extra-legal punishment. Finally, writers with a public policy focus have sometimes worried that legislation which criminalizes corporate agents may provide a mechanism for shielding powerful individuals from accountability rather than promoting the kinds of beneficial social goals that we might want a system of regulation of corporate actions to serve (Fisse & Braithwaite, 1993; for policies to address this see; Barnard, 1999).

We claim no expertise on questions of public policy here. However, the conceptual and moral points can be addressed well enough to allow criminal punishment to figure in the toolkit of those tasked with designing appropriate regulatory frameworks for corporate agents. Even if corporate agents cannot suffer, they can be burdened: insofar as they have interests – most conspicuously financial interests – which need not coincide with the interests of their members, their pursuit of these interests can be severely and systematically obstructed (Wringle, 2016). Furthermore, incorporating an expressive condition into our account of punishment allows us to respond to the worry that punishment of a corporate body might amount to punishment of innocent individuals who constitute that body. On an expressivist account, criminal actions are the proper object of the censure involved in penal hard treatment. Since most theories of collective agency allow us to distinguish between the actions of a corporation and the actions of the individuals who make it up, we can also distinguish between censure directed at the actions of corporate agents and of individuals who make them up. So, punishing a collective body need not involve punishing its members.

Individuals associated with a corporation on which punitive burdens are imposed may be harmed by these burdens. These harms are best understood as collateral harms of punishment, rather than punishment itself. Collateral harms of this sort can also occur in paradigmatic cases of punishment. Although such harms may play a role in determining what sorts of punitive measures can appropriately be taken against individuals, they are not typically regarded as making all such punishments illegitimate (Bülow, 2014; Pasternak, 2011). Indeed, a case for the abolition of corporate punishment based on the existence of collateral harms seems much weaker than a case for the abolition of individual punishment based on collateral harms that such punishments impose on family members and others

who might be dependent on that individual, since individuals' association with a corporation will often be more voluntary than their association with family members.

The considerations that we have appealed to in arguing that the punishment of corporations is intelligible also apply to the intelligibility of punishing states (Tanguay-Renaud, 2013). However, the question of moral permissibility raises further issues. The kinds of measure which have typically been directed against states in the guise of punishment, such as punitive war or stringent economic sanctions are capable of inflicting much more serious harms on individuals associated with those states than anything which we might expect a state to impose on corporations (Erskine, 2010; Luban, 2011; Pasternak, 2021). We may also doubt whether we can easily distinguish burdens that censure states from burdens that censure their citizens (Hoskins, 2014).

There are also morally significant differences between the ways in which individuals are associated with states and with other kinds of collective body. An individual's association with a particular state is typically a much less voluntary matter than their association with an entity such as a business corporation. Few individuals have the option of existing without ties to some state or other; and although some may have the option of emigrating and renouncing citizenship of a state with which they are associated, the barriers to doing so are significantly higher than the barriers to renouncing association with a domestic business corporation. On the other hand, in democratic states at least, there is a much more intimate connection between the wills of citizens and the wills of the state than there is between the wills of employees and business corporations (Pasternak, 2021; contrast; Lawford-Smith, 2019).

We turn now from consideration of subjects of punishment who are not individuals to individuals who do not fit the paradigm of the fully responsible individual citizen. One important kind of case is the punishment – or putative punishment – of children. *Prima facie* it seems that children are subject to punishments imposed by (at least) the following different kinds of authorities: parents, schools – which may be administered by the state, and where the state may compel their attendance – and the state itself.

Philosophers of education have defended a wide range of views on the question of whether the punishment of children is conceptually possible. Marshall has argued that because punishment presupposes a notion of culpability that is inapplicable to children, children cannot be punished (Marshall, 1984); Wilson has argued that insofar as education involves rule-governed practices, it must allow for the possibility of punishment (Wilson, 1977, 1984); Hand that while punishment is only a central element of some kinds of rule-based practice – those which involve what he calls 'rules of obligation', such rules are likely to play an important role in any school community (Hand, 2020); and Martin that the sense in which rules of obligation require punishment is one on which the notion of punishment risks being trivialized (Martin, 2020).

Acquiring the capacity for culpability involves the maturation of psychological capacities whose possession is a matter of degree (Yaffe, 2018). Some might doubt whether all those who come to the attention of the criminal justice system possess all of these capacities to the extent that a fully just system of criminal justice requires. Nevertheless, the vast majority of individuals seem to acquire at least some of the relevant capacities to some degree before becoming legal adults, and while still in formal schooling. If so, Marshall's culpability-based argument should not prevent us from thinking that at least some of what goes by the name of punishment in school really is punishment (even if some is misdescribed as such). Furthermore, an appreciation of the wide range of measures that might in principle count as punitive should mitigate the worries of Martin about the idea that punishment might play an ineliminable role in schools. This leaves open a wide range of questions about the circumstances in which punitive responses to classroom wrongs – and other wrongdoing in the school community – might be justifiable (Brown Coverdale, 2020).

The state also punishes children directly both through special juvenile courts, and in some cases through the adult court system. This practice should raise many questions for advocates of the political turn. Does it make sense for state to assess the offending behaviour of non-adults through a system which exists in parallel to the adult justice system? If so, should hard treatment inflicted by institutions of this sort should be regarded as punishment? Should the state should be in the business of punishing non-adults at all? Finally, should punitive measures imposed on non-adults either through the adult criminal justice system or through a separate system of juvenile courts be more lenient than those imposed on adult offenders for similar crimes?

Walgrave suggests that although criminal wrongdoing by non-adults should be addressed through the court system, the court process should result in processes of restoration which are mandatory, offender focussed, and involve significant burdens on offenders, rather than in punishment (Walgrave, 2002). However, Duff argues that restorative process with these features might plausibly be regarded as being alternative forms of punishment rather than alternatives to punishment (Duff, 2002). One might agree without holding that states should respond to crimes committed by non-adults in precisely the same ways as they do to crimes committed by adults.

Some differences between the ways in which states typically treat adult and non-adult offenders may be accounted for by justifiable differences in the aims of the adult and non-adult criminal justice systems. The punishment of juvenile offenders might justifiably aim at different ends from the punishment of adults: it might have an educational dimension which would be unjustifiably paternalistic if considered in the punishment of adults (Duff, 2002). Different punitive aims might justify different punitive measures. But different punitive measures might be appropriate even where punitive ends were the same: for example, psychological differences between juvenile and adult offenders might require different means towards achieving goals such as deterrence or Duff-style communication.

Much here will depend on what one takes the psychological, sociological and normative differences between childhood and adulthood to be. These may vary from place to place. However, one feature is comparatively widespread: punitive measures imposed on non-adults are typically more lenient than punishments imposed on adult offenders for the same offences (Yaffe, 2018). One justification for these so-called youth discounts which differs in interesting ways from those mentioned so far appeals to considerations of proportionality, understood as the principle that those who are less culpable should be less severely punished.

Yaffe proposes that those who have not reached the age at which they have a political voice are thereby less culpable for transgressions of the law to which they are subject (Yaffe, 2018). An interesting extension of this proposal (which Yaffe himself resists) might cover other kinds of non-paradigmatic subjects of punishment, including resident non-citizens, the temporarily disenfranchised, and perhaps also the politically marginalized and excluded (Wringe, 2021; Yaffe, 2018, 2020). However, it is less clear how the proposal might apply to so called *mala in se* crimes whose wrongness does not depend on their legal prohibition (such as rape and murder) than to crimes involving wrongs involving *mala prohibita*. While Yaffe's work gives us some idea of the resources on which proponents of the political turn might call to deal with some of the questions raised by the punishment of non-paradigmatic subjects of punishment, much work remains to be done here.

## 5 | CONCLUSION

We have reviewed a wide range of non-paradigmatic punishments. We conclude by drawing some more general morals. A broader view of the penal landscape may help us to avoid the risks of theorising with a restricted range of examples. One is that of talking past the practice we intend to theorize. Hyper-focus on paradigmatic cases may lead to the complacent assumption that non-paradigmatic cases are a tiny minority and obscure the breadth of penal institutions and practices in need of philosophical grounding. Discussion of non-paradigmatic cases may also help us to consider what standards of proof, due process protections, and mechanisms for mitigating collateral harms, are appropriate in a range of specific contexts.

In our introduction we drew attention to the 'political' turn in penal theory. While we applaud Ristroph's (2015, 2016) insight that justified punishment requires not only justified criminal law, but also procedural legitimacy around the enforcement and prosecution of those laws, we suggest that a fully satisfactory elaboration of this point requires attention to the diversity of penal practices, of which imprisonment is only a small fraction. Furthermore, we emphasize once more that because of their focus on relations between citizens and the state, many advocates of the political turn have had comparatively little to say about the implications of their views for non-paradigmatic subjects of punishment or punishing agents. While the political turn might be developed in such a way as to accommodate these kinds of punishment, there is clearly much work still to be done here.

Even if the paradigmatic case is of particular importance as an initial point of orientation, explicit consideration of non-paradigmatic punishing agents, methods and subjects of punishment illuminate complexities that are better engaged with than defined out of scope: non-paradigmatic punishment still stands in need of justification. In particular, if we are persuaded of the view put forward by some advocates of the political turn that the justification of punitive institutions depends on the fact that punishment holds offenders accountable *as members* of a community (Bennett, 2008; Duff, 2001; Hoskins, 2019) then we need to ensure both that those who fall under those practices are, in the appropriate sense, community members and that our punishment practices are suitably inclusive of people with convictions as members of our communities (Brown Coverdale, 2018).

Our discussion of agents of punishment other than the state has highlighted reasons for thinking that the 'appropriate authority' should be interpreted more broadly than it sometimes has been. Doing so opens up room for distinguishing between questions about the justification of punishment *tout court* from questions about the justification of state punishment. This, together with our discussion of non-paradigmatic methods of punishment opens up a new perspective on an issue which has, with good reason, played a prominent role in recent discussions of philosophy of punishment – namely that of abolitionism (cf Zaibert, 2006 p23). We find it helpful to distinguish between a number of different views that might go by this name. The most ambitious would involve the abolition of all forms of punishment whatsoever. A less ambitious, but still very wide-ranging view would be one on which the state should not be involved in punishment. And a more targeted view would focus not on the abolition of state punishment, but on particular forms of punitive measure employed by the state such as incarceration.

Consideration of the wide range of non-paradigmatic forms of punishment should make us cautious about arguments for abolition hyper-focused on the institution of punishment. Abolitionists of this stripe must explain how getting rid of punishment would affect a wide range of institutions in both the domestic and the international sphere. This may make the second form of abolitionism appear more plausible. If so, we might expect reflection on the role of the state to play a central role in abolitionist arguments. However, we think a consideration of the kinds of case of non-paradigmatic punishment we consider in Section II should make us cautious about this view too. For we find it likely that many of the kinds of things that abolitionists would like to replace punishment with will themselves be forms of punishment. This leaves us with the third version of abolitionism.

Despite some remaining reservations (Brown Coverdale, 2021) we take this view to be more plausible than the other two. But many questions about it remain. If we seek to replace prisons with a range of practices that have the effect of community improvement, individual support, and repairing harms, can these practices be alternative jurisprudence practices, originating from within the existing criminal justice process or must their origin be outside of present practice, rooted in the social justice and inclusion demands of civil rights movements? Can civil society provide the accountability and oversight of due process? Would working in partnership and sharing knowledge, at least in the short term, better serve the needs of those whose lives are impacted by criminal punishment, prisoners, their families and communities? To answer these questions, we need a better understanding of the diversity of punishment.

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## ENDNOTES

- <sup>1</sup> Hart allows for the possibility of punishments other than legal punishments but describes them as 'sub-standard or secondary cases.' We think they are neither substandard or secondary (Hart, 1960 p5).
- <sup>2</sup> See <https://www.courtinnovation.org/about>.

## REFERENCES

- Altman, A., & Wellman, C. (2011). *A liberal theory of international law*. Oxford University Press.
- Barnard, J. (1999). Reintegrative shaming in corporate sentencing. *Southern California Law Review*, 72, 959–1008.
- Benn, S. (1958). An approach to the problems of punishment. *Philosophy*, 33(127), 325–341. <https://doi.org/10.1017/s0031819100055017>
- Bennett, C. (2008). *The apology ritual a philosophical theory of punishment*. Cambridge University Press.
- Berman, G. (2009). Problem-solving courts and the moment of truth. In P. C. Higgins & M. B. Mackinim (Eds.), *Problem-Solving Courts: Justice for the Twenty-First Century?* (pp. 1–12). ABC-CLIO.
- Billingham, P., & Parr, T. (2020a). Online public shaming: Virtues and vices. *Journal of Social Philosophy*, 51(3), 371–390. <https://doi.org/10.1111/josp.12308>
- Billingham, P., & Parr, T. (2020b). Enforcing social norms: The morality of public shaming. *European Journal of Philosophy*, 28(4), 997–1016. <https://doi.org/10.1111/ejop.12543>
- Bjornsson, G., & Hess, K. (2017). Corporate crocodile tears? On the reactive attitudes of corporate agents. *Philosophy and Phenomenological Research*, 94(2), 273–298. <https://doi.org/10.1111/phpr.12260>
- Boonin, D. (2008). *The problem of punishment*. Cambridge University Press.
- Braithwaite, J. (1998). Restorative justice. In M. H. Tonry (Ed.), *The Handbook of Crime & Punishment* (pp. 323–344). University Press.
- Braithwaite, J. (2003). Principles of restorative justice. In A. Von Hirsch, J. V. Roberts, A. Bottoms, K. Roach, & M. Schiff (Eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 1–20). Hart.
- Braithwaite, J., & Pettit, P. (1990). *Not just deserts*. Oxford University Press.
- Brooks, T. (2021). *Punishment: A critical introduction*. Routledge.
- Brown Coverdale, H. (2018). Punishment and welfare: Defending offender's inclusion as subjects of state care. *Ethics and Social Welfare*, 12(2), 117–132. <https://doi.org/10.1080/17496535.2017.1364398>
- Brown Coverdale, H. (2020). What makes a response to schoolroom wrongs permissible? *Theory and Research in Education*, 18(1), 23–39. <https://doi.org/10.1177/1477878520912997>
- Brown Coverdale, H. (2021). Caring and the prison in philosophy, policy and practice: Under lock and key. *Journal of Applied Philosophy*, 38(3), 415–430. <https://doi.org/10.1111/japp.12415>
- Brudner, A. (2009). *Punishment and freedom*. Oxford University Press.
- Bülöw, W. (2014). The harms beyond imprisonment: Do we have special moral obligations towards the families and children of prisoners? *Ethical Theory & Moral Practice*, 17(4), 775–789. <https://doi.org/10.1007/s10677-013-9483-7>
- Canton, R. (2017). *Why punish? An introduction to the philosophy of punishment*. Red Globe Press.
- Canton, R. (2018). Probation and the philosophy of punishment. *Probation Journal* (Vol. 65(3), pp. 252–268). SAGE Publications Ltd.
- Chiao, V. (2016). Two conceptions of the criminal law. In C. Flanders & Z. Hoskins (Eds.), *The New Philosophy of Criminal Law* (pp. 19–36). Rowman Littlefield International.
- Chiao, V. (2018). *Criminal law in the age of the administrative state*. Oxford University Press.
- Cholbi, M. (2010). Compulsory victim restitution is punishment: A reply to Boonin. *Public Reason*, 2(1), 85–93.
- Christie, N. (1977). Conflicts as property. *British Journal of Criminology*, 17(1), 1–15. <https://doi.org/10.1093/oxfordjournals.bjc.a046783>
- Clear, T. R., Hamilton, J., & Cadora, E. (2011). *Community justice* (2nd ed.). Routledge.
- Coca-Vila, I., & Irarrázaval, C. (2021). A criminal law for semi-citizens. *Journal of Applied Philosophy* online first. <https://doi.org/10.1111/japp.12534>
- Coffee, J. (1981). "No soul to damn: no body to kick": An unscandalized inquiry into the problem of corporate punishment. *Michigan Law Review*, 79(3), 386–459. <https://doi.org/10.2307/1288201>
- Criminal Justice Joint Inspection. (2012). *Facing up to offending: Use of restorative justice in the criminal justice system: A joint thematic inspection by HMIC, HMI Probation, HMI Prisons and the HMCPSP*. Criminal Justice Joint Inspection.
- Dagger, R. (2011a). Republicanism and the foundations of criminal law. In R. A. Duff & S. Green (Eds.), *Philosophical Foundations of Criminal Law* (pp. 44–66). Oxford University Press.
- Dagger, R. (2011b). *Social contracts, fair play, and the justification of punishment* (Vol. 8, pp. 341–368). Ohio State Journal of Criminal Law.

- DeMatteo, D., Heilbrun, K., Arnold, S., & Thornewill, A. (2019). Problem-solving courts and the criminal justice system. In *Problem-Solving Courts and the Criminal Justice System*. Oxford University Press.
- Demleitner, N. V. (2014). Types of punishment. In M. D. Dubber & T. Hörnle (Eds.), *The Oxford Handbook of Criminal Law* (pp. 941–963). Oxford University Press.
- Doak, J., & O'Mahony, D. (2017). *Reimagining restorative justice: Agency and accountability in the criminal process* (1st ed.). Hart Publishing.
- Doak, J., & O'Mahony, D. (2019). Evaluating the success of restorative justice conferencing: A values-based approach. In T. Gavrielides (Ed.), *Routledge International Handbook of Restorative Justice* (1st ed., pp. 211–223). Routledge.
- Drumbl, M. (2007). *Atrocity, punishment and international law*. Cambridge University Press.
- Duff (2002). Punishing the young. In I. Weijers & R. A. Duff (Eds.), *Punishing Juveniles: Principle and Critique* (pp. 115–135). Hart Publishing.
- Duff, R. A. (2001). *Punishment, communication, and community*. Oxford University Press.
- Duff, R. A. (2003a). Restoration and retribution. In A. Von Hirsch (Ed.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 43–60). Hart.
- Duff, R. A. (2003b). Probation, punishment and restorative justice: Should altruism be engaged in punishment? *The Howard Journal of Criminal Justice*, 42(2), 181–197. <https://doi.org/10.1111/1468-2311.00275>
- Duff, R. A. (2010). Blame, moral standing and the legitimacy of the criminal trial. *Ratio*, 23(2), 123–140. <https://doi.org/10.1111/j.1467-9329.2010.00456.x>
- Duff, R. A. (2018). *The realm of criminal law*. Oxford University Press.
- Durnescu, I. (2011). Pains of probation: Effective practice and human rights. *International Journal of Offender Therapy and Comparative Criminology*, 55(4), 530–545. <https://doi.org/10.1177/0306624x10369489>
- Erskine, T. (2010). Kicking bodies and damning souls: The danger of harming "innocent" individuals while punishing "delinquent" states. *Ethics and International Affairs*, 24(3), 261–285. <https://doi.org/10.1017/cbo9780511976780.011>
- Feinberg, J. (1965). The expressive function of punishment. *The Monist*, 49(3), 397–423. <https://doi.org/10.4324/9781315243290-1>
- Fisse, B., & Braithwaite, J. (1993). *Corporations crime and accountability*. Cambridge University Press.
- Flew, A. (1954). The justification of punishment. *Philosophy*, 29(111), 291–307. <https://doi.org/10.1017/s0031819100067152>
- Freiberg, A. (2019). Suspended sentences in Australia: Uncertain, unstable, unpopular, and unnecessary alternatives to imprisonment. *Law and Contemporary Problems*, 82(1), 81–110.
- French, P. (1984). *Collective and corporate responsibility*. Columbia University Press.
- Gal, T., & Dancig-Rosenberg, H. (2020). 'I am starting to believe in the word "justice"' lessons from an ethnographic study on community courts. *American Journal of Comparative Law*, 68(2), 376–411. <https://doi.org/10.1093/ajcl/avaa017>
- Hand, M. (2020). On the necessity of school punishment. *Theory and Research in Education*, 18(1), 10–22. <https://doi.org/10.1177/1477878520907039>
- Hanna, N. (2008). Say what? A critique of expressive retributivism. *Law and Philosophy*, 27(2), 123–150. <https://doi.org/10.1007/s10982-007-9014-6>
- Hanna, N. (2017). The nature of punishment: Reply to Wringe. *Ethical Theory & Moral Practice*, 20(5), 969–976. <https://doi.org/10.1007/s10677-017-9835-9>
- Hanna, N. (2020). The nature of punishment revisited: Reply to Wringe. *Ethical Theory & Moral Practice*, 23(1), 89–100. <https://doi.org/10.1007/s10677-019-10047-1>
- Hart, H. L. A. (1960). Prolegomenon to the principles of punishment. *Proceedings of the Aristotelian Society*, 60(1), 1–26. <https://doi.org/10.1093/acprof:oso/9780199534777.003.0001>
- Hasnas, J. (2009). The centenary of a mistake: One hundred years of corporate criminal liability. *American Criminal Law Review*, 46, 1329–1358.
- Henderson, E., & Duncanson, K. (2018). Design and ideology: Innovation and the magistrates' court. *Griffith Law Review*, 27(2), 207–232. <https://doi.org/10.1080/10383441.2018.1592741>
- Holroyd, J. (2010). Punishment and justice. *Social Theory and Practice*, 36(1), 78–111. <https://doi.org/10.5840/soctheorpract20103614>
- Hörnle, T. (2019). Comparative assessment of sentencing laws, practices, and trends. In D. K. Brown & B. Weisser (Eds.), *The Oxford Handbook of Criminal Process* (pp. 887–910). Oxford University Press.
- Hoskins, Z. (2014). Punishing states and the spectre of guilt by association. *International Criminal Law Review*, 14(4–5), 901–919. <https://doi.org/10.1163/15718123-01405009>
- Hoskins, Z. (2017). Punishment. *Analysis*, 77(3), 619–632.
- Hoskins, Z. (2019). Beyond punishment? A normative account of the collateral legal consequences of conviction. *Studies in Penal Theory and Philosophy*. Oxford University Press.
- Husak, D. (2008). *Overcriminalization: The limits of the criminal law*. Oxford University Press.
- Husak, D. (2011). Retributivism, proportionality, and the challenge of the drug court movement. In M. Tonry (Ed.), *Retributivism, Proportionality, and the Challenge of the Drug Court Movement* (pp. 214–233). Oxford University Press.

- Husak, D. (2020). Criminal law at the margins. *Criminal Law and Philosophy*, 14(3), 381–393. <https://doi.org/10.1007/s11572-019-09505-9>
- Jean-Pierre, J., & Parris-Drummond, S. (2018). Alternative school discipline principles and interventions: An overview of the literature. *McGill Journal of Education (Online)*, 53(3), 414–433.
- Lang, A. (2007). Crime and punishment: Holding states accountable. *Ethics and International Affairs*, 21(2), 239–257. <https://doi.org/10.1111/j.1747-7093.2007.00072.x>
- Lawford-Smith, H. (2019). *Not in our name oxford*. Oxford University Press.
- List, C., & Pettit, P. (2011). *Group agency: The possibility, design, and status of corporate agents*. Cambridge University Press.
- Luban, D. (2011). War as punishment. *Philosophy and Public Affairs*, 39(4), 299–330. <https://doi.org/10.1111/j.1088-4963.2012.01210.x>
- Marshall, D. (1984). John Wilson on the necessity of punishment. *Journal of Philosophy of Education*, 18(1), 97–104. <https://doi.org/10.1111/j.1467-9752.1984.tb00048.x>
- Martin, C. (2020). Punishment and the argument from necessity: A reply to hand. *Theory and Research in Education*, 18(3), 352–358. <https://doi.org/10.1177/1477878520926140>
- Matravers, M. (2011). Political theory and the criminal law. In R. A. Duff & S. Green (Eds.), *Philosophical Foundations of Criminal Law* (pp. 44–66). Oxford University Press.
- May, L. (2004). *Crimes against humanity: A normative account*. Cambridge University Press.
- May, L. (2008). *Aggression and crimes against peace*. Cambridge University Press.
- May, L. (2012). *After war ends: A philosophical perspective*. Cambridge University Press.
- May, L., & Fyfe, S. (2017). *International criminal tribunals: A philosophical defense*. Cambridge University Press.
- McLeod, A. M. (2015). Prison abolition and grounded justice. *UCLA Law Review*, 62(5), 1156–1239.
- McIvor, G. (1994). Community service: Progress and prospects. In A. Duff, S. Marshall, R. E. Dobash, & R. Dobash (Eds.), *Penal Theory and Practice: Tradition and innovation in criminal justice* (pp. 171–184). Manchester University Press in association with the Fulbright Commission London; Distributed exclusively in the USA and Canada by St. Martin's Press.
- Meckled Garcia, S., & Aitchison, G. (2021). Against online public shaming. *Social Theory and Practice*, 47(1), 1–31. <https://doi.org/10.5840/soctheorpract20201117109>
- Miethe, T. D., Lu, H., & Reese, E. (2000). Reintegrative shaming and recidivism risks in drug court: Explanations for some unexpected findings. *Crime & Delinquency*, 46(4), 522–541. <https://doi.org/10.1177/0011128700046004006>
- Miller, E. J. (2009). Drugs, courts, and the new penology. *Stanford Law and Policy Review*, 20, 417.
- Miller, J. L., & Johnson, D. C. (2009). *Problem solving courts: A measure of justice*. Rowman & Littlefield Publishers, Inc.
- Nolan, J. L. (2009). *Legal accents, legal borrowing: The international problem-solving court movement*. Princeton University Press.
- Noorda, H. (forthcoming). *Expriprisonment: Deprivations of liberty on the street and at home*.
- Office for National Statistics. (2021). *Criminal justice statistics quarterly*, England and Wales.
- Okimoto, T., Wenzel, M., & Feather, N. (2009). Beyond retribution: Conceptualizing restorative justice and exploring its determinants. *Social Justice Research*, 22(1), 156–180. <https://doi.org/10.1007/s11211-009-0092-5>
- Pasternak, A. (2011). The distributive effect of collective punishment. In T. Isaacs & R. Vernon (Eds.), *Accountability for Collective Wrongdoing* (pp. 210–231). Cambridge University Press.
- Pasternak, A. (2021). *Responsible citizens, irresponsible states: Should states pay for their citizens wrongdoing?* Oxford University Press.
- Payne, B. K., May, D. C., & Wood, P. B. (2014). The 'pains' of electronic monitoring: A slap on the wrist or just as bad as prison? *Criminal Justice Studies*, 27(2), 133–148. <https://doi.org/10.1080/1478601x.2014.885755>
- Payne, J. (2005). *Final report on the North Queensland drug court*. Australian Institute of Criminology.
- Pettigrove, G. (2020). Punishment and protest. In L. Radzik, C. Bennett, G. Pettigrove, & G. Sher (Eds.), *The Ethics of Social Punishment: The Enforcement of Morality in Everyday Life* (pp. 113–134). Cambridge University Press.
- Radzik, L. (2020). The ethics of social punishment. In *The Ethics of Social Punishment: The Enforcement of Morality in Everyday Life*. Cambridge University Press.
- Raz, J. (1986). *The morality of freedom*. Oxford University Press.
- Rich, S. (2016). Corporate criminals and punishment theory. *Canadian Journal of Law and Jurisprudence*, 29(1), 97–118. <https://doi.org/10.1017/cjlj.2016.4>
- Ristroph, A. (2015). Regulation or resistance? A Counter-Narrative of Constitutional Criminal Procedure (Vol. 95, pp. 1555–1617). Boston University Law Review.
- Ristroph, A. (2016). The conditions of legitimate punishment. In C. Flanders & Z. Hoskins (Eds.), *The New Philosophy of Criminal Law* (pp. 75–95).
- Roche, D. (2004). *Accountability in restorative justice*. Oxford University Press.
- Ronson, J. (2016). *So you've been publicly shamed*. Riverhead Books.
- Sayre-McCord, G. (2001). Criminal justice and legal reparations as an alternative to punishment. *Philosophical Issues*, 11(1), 502–529. <https://doi.org/10.1111/0029-4624.35.s1.19>
- Sentencing Guidelines England & Wales. (2021). *Imposition of community and custodial sentences – sentencing*.

- Sepinwall, A. (2016). Corporate moral responsibility. *Philosophy Compass*, 11(1), 3–13. <https://doi.org/10.1111/phc3.12293>
- Shapland, J., Robinson, G., & Sorsby, A. (2011). *Restorative justice in practice: Evaluating what works for victims and offenders*. Routledge.
- Shelby, T. (2007). Justice, deviance, and the dark ghetto. *Philosophy and Public Affairs*, 35(2), 126–160. <https://doi.org/10.1111/j.1088-4963.2007.00106.x>
- Sherman, L. W., & Strang, H. (2007). *Restorative justice the evidence*. Smith Institute.
- Sigler, M. (2011). The political morality of the eighth amendment. *Ohio State Journal of Criminal Law*, 8, 403–430.
- Strang, H. (2004). The threat to restorative justice posed by the merger with community justice: A paradigm muddle. *Contemporary Justice Review*, 7(1), 75–79. <https://doi.org/10.1080/1028258042000212021>
- Tadros, V. (2011). *The ends of harm: The moral foundations of criminal law*. Oxford University Press.
- Tadros, V. (2016). *Wrongs and crimes*. Oxford University Press.
- Tanguay-Renaud, F. (2013). Criminalizing the state. *Criminal Law and Philosophy*, 7(2), 255–284. <https://doi.org/10.1007/s11572-012-9181-x>
- Tasioulas, J. (2010). The legitimacy of international law. In S. Besson & J. Tasioulas (Eds.), *The Philosophy of International Law* (pp. 97–118). Oxford University Press.
- The National Association of Drug Court Professionals. (1997). *Defining drug courts: The key components*. U.S. Department of Justice.
- Thorburn, M. (2011). Criminal law as public law. In R. A. Duff & S. Green (Eds.), *Philosophical Foundations of Criminal Law* (pp. 44–66). Oxford University Press.
- Walgrave, L. (2002). Not punishing children but committing them to restore. In I. Weijers & R. A. Duff (Eds.), *Punishing Juveniles: Principle and Critique* (pp. 93–114). Hart Publishing.
- Walker, M. U. (2006). The curious case of care and restorative justice in the U.S. context. In M. Hamington & D. C. Miller (Eds.), *Socializing Care: Feminist ethics and public issues* (pp. 145–162). Rowman & Littlefield Publishers.
- Wellman, C. (2017). *Rights forfeiture and punishment*. Oxford University Press.
- Wells, C. (2001). *Corporations and criminal responsibility*. Cambridge University Press.
- Wilson, J. (1977). *Philosophy and practical education*. Routledge & Kegan Paul.
- Wilson, J. (1984). A reply to James Marshall. *Journal of Philosophy of Education*, 18(1), 105–107. <https://doi.org/10.1111/j.1467-9752.1984.tb00049.x>
- Winick, B. J. (2003). Sparking motivation and reducing perceived coercion. In B. J. Winick & D. B. Wexler (Eds.), *Judging in a Therapeutic Key: Therapeutic jurisprudence and the courts* (pp. 181–188). Carolina Academic Press.
- Wolf, R. V. (2007). *Principles of problem-solving justice* (p. 102). Center for Court Innovation.
- Wood, W. R. (2015). Why restorative justice will not reduce incarceration. *British Journal of Criminology*, 55(5), 883–900. <https://doi.org/10.1093/bjc/azu108>
- Worrall, A., & Hoy, C. (2005). *Punishment in the Community: Managing offenders, making choices* (2nd ed.). Willan Pub.
- Wringe, B. (2006). Why punish war crimes? Victor's justice and expressive justifications of punishment. *Law and Philosophy*, 25(2), 159–191. <https://doi.org/10.1007/s10982-005-8707-y>
- Wringe, B. (2012). Collective agents and communicative theories of punishment. *Journal of Social Philosophy*, 43(4), 436–456. <https://doi.org/10.1111/josp.12002>
- Wringe, B. (2013). Must punishment be intended to cause suffering? *Ethical Theory & Moral Practice*, 16(4), 863–877. <https://doi.org/10.1007/s10677-012-9388-x>
- Wringe, B. (2016). *An expressive theory of punishment*. Springer.
- Wringe, B. (2019). Punishment, jesters and judges: A Response to Nathan Hanna. *Ethical Theory & Moral Practice*, 22(1), 3–12. <https://doi.org/10.1007/s10677-018-9966-7>
- Wringe, B. (2021). Punishing noncitizens. *Journal of Applied Philosophy*, 38(3), 384–400. <https://doi.org/10.1111/japp.12453>
- Yaffe, G. (2018). *The age of culpability: Children and the nature of criminal responsibility*. Oxford University Press.
- Yaffe, G. (2020). Punishing non-citizens. *Criminal Law and Philosophy*, 14(3), 347–364. <https://doi.org/10.1007/s11572-020-09537-6>
- Zaibert, L. (2006). *Punishment and retribution*. Routledge.
- Zehr, H. (2002). *The little book of restorative justice*. Good Books.

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