

## **An Idealist Justification of Punishment**

**Jane Johnson**

*DM Verlag, 2008*

It is certainly unusual to find a book that attempts to explore punishment through appealing to the German Idealists, but in this book we are shown an interesting and convincingly put alternative to the 'Big Two' justifications of punishment – Utilitarian and Retributivist theories. This book, which is an impressive contribution to Australian philosophy, will come as a breath of fresh air to those who have become tired of the repetitive, and often *ad hoc*, attempts by authors to either once again show the superiority of one of these views, or to somehow blend them together – a task which more often than not ends in plain contradiction. But very quickly one learns that this is not a text for beginners in the philosophy of law, as the initial discussion of the two theories of punishment, and the problems that plague them, is comparatively brief compared to the extensive examination of Kant and Hegel. Having said this, though, this book is obviously for philosophers of law, particularly for those who might not otherwise have read Kant or Hegel, and the brevity of this first discussion shows that this text will find an audience with those who have already been frustrated by the tenor of the current debate, and are eager to find an alternative way to justify the institution of punishment.

The author's suggestion is to abandon the debate in its present form, and to recast it in an Idealist context, and because of this the reader is thrown into discussions about, for example, the difference between 'real' and 'logical' negation, 'community and reciprocity', and 'construction'. In doing so Johnson has set herself a difficult task by both putting forward a theory of punishment which will be alien to most, while also staying at the forefront of analysis of both Kantian and Hegelian social theory. But the main problem of such a task will always be engaging people with a philosophy that relatively few are familiar with in any great detail, and which throughout the 20<sup>th</sup> Century has had the reputation of being mostly outdated. It was certainly a good idea, then, to set up the problem in terms of Hart's suggestion that a theory of punishment must provide both a 'general justifying aim', as well as a justification for the distribution of its application. Here philosophers of law will find themselves on familiar ground, and Johnson always goes to great pains to show the varying success of how Utilitarians, Retributivists and Idealists fare at justifying punishment to the victims of crime, society at large, and to criminals themselves. By

doing this the reader is able to have some appreciation of the success of an Idealist justification of punishment even without understanding the nuances of Idealist philosophy. But perhaps the main flaw of this book is not so much what it does say, but what it does not. As it was adapted from a PhD it is relatively brief (at roughly two hundred pages), and at the end of the work, the discussion having remained quite abstract throughout, one is very eager to see some example of how this theory can be applied in a more concrete way. Because such a discussion is absent, this may initially prevent what is otherwise a very interesting theory from finding a wide audience.

Turning to the arguments themselves, Johnson immediately throws the reader into the midst of Idealist metaphysics, and from this discussion she attempts to justify a relatively thick conception of society, one for which the institution of punishment is conceptually primitive. To justify this position Johnson carefully explores the philosophy of both Kant and Hegel, while going to great lengths to avoid the technical jargon that has made these writers relatively unpopular. The discussion begins with Kant, a familiar figure to philosophers of law, and often put forward as a Retributivist *par excellence*, though Johnson immediately criticises this interpretation for relying on a far too narrow cross-section of Kant's writings.<sup>1</sup> The variety of texts that Johnson uses in her discussion is quite impressive, as it includes references, not only to Kant's practical philosophy, but also from his theoretical writings, both pre- and post-Critical, as well as from his lecture notes. But not only does Johnson attempt to rebut the common interpretation of Kant on punishment, she does so by appealing to concepts which have had very little treatment, even in Idealist circles. One of the highlights of the book is her discussion of the concept of 'community', centered on the Third Analogy from the *First Critique* (one of the most neglected passages in all of Kant's writing), as it is here that she best demonstrates her ability to add something relatively new to Idealist scholarship, while also ensuring that the discussion is accessible to those who are unfamiliar with Kantian philosophy.

At the end of this section Johnson concludes that society, for Kant, is a constructed community that serves the purpose of realizing and upholding the rights of its individual members. The institution of punishment is necessary to 'negate' the actions of those who attempt to undermine this system, as only by doing this can right, both in particular and in general, be restored. For Kant, crime is negated through a public display of retribution

---

<sup>1</sup> The main targets here are David E. Cooper, 'Hegel's Theory of Punishment', in Z. A. Pelczynski (ed), *Hegel's Political Philosophy* (1971) and Mark Tunick, 'Is Kant a Retributivist?' (1996) 1 *History of Political Thought XVII* 60-78.

(i.e., the sentencing of the criminal), in proportion to how dramatically he violated the system of right. This communicates to the victim, the criminal, and society as a whole, that rights do actually exist, and that the criminal acted incorrectly when he attempted to violate these rights. Though I do not have time to expand on this view here, one can already begin to see how Kant's justification of punishment is an interesting blend of Retributivism and Utilitarianism. But no sooner is this conclusion made than Johnson moves on to a discussion of Hegel's theory of punishment. Though at the end of the book there is a (brief) examination of an Idealist justification of punishment as a whole, a more extended discussion of Kant's theory in particular would have been useful, if only to justify why there was a need to examine Hegel's theory on top of Kant's. Given that there was no criticism of Kant's theory at this point the move to the next section comes as a little jarring.

The discussion of Hegel is (surprisingly) even clearer than the section on Kant, though this may be because there was no need to argue against other interpretations of Hegel's theory of punishment, given that few such works exist. Here Johnson again returns to the concept of negation, though this discussion is easier to get through than the first, given that it builds on the discussion in the section on Kant.<sup>2</sup> Johnson then proceeds to emphasize the rich concept of 'recognition', and in doing so she puts herself at the forefront of contemporary Hegel scholarship, in which this concept plays a key role.<sup>3</sup> In this discussion she draws reasonably similar conclusions to the ones found in Kant's theory, though the flexibility of the concept of recognition allow for a more rigorous justification of punishment. In the concluding section we can see that Johnson ultimately believes that Hegel's justification is stronger than Kant's, and so her conclusions seem to recommend consideration of the former's theory over the latter's. One may ask the question whether this book would have been better had Johnson placed the primary focus on Hegel throughout, while only drawing on Kant as a background to Hegel's theory. Certainly there would have been more time to discuss the implications of an Idealist justification of punishment, but ultimately I feel that the examination of Kant was necessary considering the intended audience of this book. I doubt I would be criticised for assuming that most philosophers of law would be more familiar with Kant than with Hegel, so by including the discussion of Kant one may be both

---

<sup>2</sup> By doing so Johnson aligns herself with this most recent scholarship on Hegel, which focuses on the continuity between the philosophy of Kant and Hegel. See especially Robert Pippin, *The Satisfaction of Self-Consciousness* (1989), and Terry Pinkard, *Hegel's Phenomenology: The Sociality of Reason* (1994).

<sup>3</sup> See especially Paul Redding, *Hegel's Hermeneutics*, (1996), and Bernard Williams, *Hegel's Ethics of Recognition*, (1997).

more able to understand Hegel's justification of punishment, and more likely to give some consideration to Hegel's own theory (as a development of Kant's). But even though Johnson concludes that Hegel's proposal is more complete, this is certainly not rigorously argued throughout, and thus she is able to recommend both theories to her readers, and lets them decide which theory they find more persuasive.

The thing that might most turn people off an Idealist justification of punishment is that, if one were to accept and advocate the author's conclusions, one would have to come to a fairly rigorous understanding of these complex and relatively unfamiliar figures (especially in the case of Hegel). Because of this is it a shame that there was no section that explored these ideas in application, or one that attempted to address some specific issues that are particularly contentious in contemporary debates in the philosophy of law. If this were the case I feel that more people would be likely to be persuaded by the author's conclusions. But considering that this is a relatively short book it is commendable that Johnson was able to include as much as she did, and without, may I add, compromising the depth of the analysis. Overall this is a multi-faceted work that will interest anyone regardless of their familiarity with German philosophy, and it will only become more appealing upon re-reading it as one's understanding of Idealism grows. This book is a considerable achievement in that it provides something to offer both philosophers of law, eager to escape the seemingly irresolvable dispute between Utilitarian and Retributivist justifications of punishment, and it will also interest those who are sympathetic to German Idealism, as it provides an example of how Idealist thinking can be applied to modern philosophical discussions. This book should very much be considered as a useful groundwork for other writers to build upon, as the author has provided a perfect starting point from which to explore an Idealist justification of punishment.

Anthony Hooper  
(Department of Philosophy,  
University of Sydney)