

Punishment

Dr Thom Brooks
Reader in Law
Durham Law School

Punishment is a topic of increasing importance for citizens and policymakers. Why should we punish criminals? Which theory of punishment is most compelling? Is the death penalty ever justified? These questions and many others are addressed in the most comprehensive examination of all leading approaches, including retribution, deterrence, restorative justice and expressivism and

case studies such as domestic violence, youth offenders and sex crimes. *Punishment* introduces and defends a new 'unified' theory of punishment that brings together multiple purposes such as desert, crime reduction and restoration within one coherent theory that is pluralistic, novel and ground-breaking providing new insights into criminal justice reform.



PUNISHMENT

Thom Brooks

ROUTLEDGE

'Lucid, fair minded and well informed. Thom Brooks' *Punishment* offers a superb introduction to a complex and conscientious subject ... The way Brooks shows their interconnectedness and application in practice will interest not only students but scholars as well'.

Stuart P. Green, Distinguished Professor of Law, Rutgers School of Law

'A new survey of the terrain is overdue. And who better to conduct it than Thom Brooks, whose grasp of the literature and feel for the issues is second to none? From the noble ideals of 'communicative' theory to the grim realities of children in prison: in *Punishment* Brooks covers it all with insight, rigour, and energy'.

John Gardner, Professor of Jurisprudence, University of Oxford

What justifies the punishment of criminals?

Which approach to criminal justice can improve crime reduction and public confidence?

The unified theory of punishment is a groundbreaking approach with practical benefits.

The Criminal Justice Act 2003 states 'five purposes of sentencing': crime reduction, public protection, offender rehabilitation, punishment and reparation. Sentencing guidelines reaffirm these principles, but lack a coherent framework. Why these purposes and not others? What if they conflict?

Most scholars reject multiple penal purposes because of the potential for conflict, such as securing just deserts without sacrificing deterrence.

The unified theory provides the coherent, rights-based framework we require. Multiple sentencing purposes are justified for the protection of rights. Different purposes conflict when they lack a common overarching aim. Crimes are public wrongs that violate and threaten rights. Pun-

ishment should be understood as a response to crime that aims to protect and maintain rights. The five purposes of sentencing represent different ways to achieve rights protection. The unified theory provides us with the coherent framework that can justify their inclusion and illuminate their implementation in practice.

The unified theory of punishment is found in Thom Brooks, *Punishment* (Routledge, 2012).

Criminal Justice Reforms

The unified theory of punishment offers new ideas for criminal justice reforms that better secure the protection of rights for all.

Punitive Restoration

Punitive restoration is a transformation of restorative justice bringing together stakeholders including the public outside the adversarial trial. Research suggests restorative approaches engender high satisfaction by users and they contribute to reducing reoffending by up to 25% over alternatives saving £9 for every £1 spent.

Punishment Flexibility

Punitive restoration expands the potential range of available sanctions to include brief imprisonment. This represents a new perspective for securing rights and satisfying multiple penal purposes through more closely tailoring punishment to the needs and expectations of

stakeholders while improving public confidence.

Prison as a place for 'cooling off'

Imprisonment is more often a confirmation of serious problems for offenders rather than their beginning. Brief and intensive use of prisons can provide an important time for 'cooling off' and self-reflection to target problem areas swiftly and effectively to address risk factors for reoffending and improve rehabilitation prospects.

Prison Reforms

Prisons should become places of last resort where alternative options are ineffective. There should be greater use of brief and intensive sentences with improved utilisation of existing resources, such as retraining prison officers to become Personal Support Officers. Support should be extended to all former inmates to improve transition outside prison and reduce likelihood of reoffending.

Why a 'unified' theory of punishment?

- * A coherent framework to manage potential conflict between different sentencing purposes
- * Rejects a one-size-fits all approach and recognises importance of context
- * Ensures 'outcome flexibility' so punishment can better meet the needs and expectations of stakeholders
- * Punitive restoration model clarifies how restorative justice can be transformed and utilized more widely contributing to **less crime, and higher public confidence at less cost**

The unified theory of punishment helps us 'cut to the heart of our criminal justice public policy decision-making and should be taken into account when we decide how justice should be served' and offers 'a model for use by judges and magistrates'.

Research Councils UK, *Big Ideas for the Future* report 2010 which included the unified theory of punishment as one of the top 100 'Big Ideas' for the future.

Thom Brooks is Reader in Law in Durham Law School and founding editor of the *Journal of Moral Philosophy*. He has held visiting positions at Oxford, St Andrews and Uppsala. *Punishment* is nominated for book

awards from the American Philosophical Association, Political Studies Association and Society of Legal Scholars and named 'Book of the Month' by the European Sociological Association.

thom.brooks@durham.ac.uk

Please cite this document as Brooks, Thom (2013) 'Punishment', Durham Law School Briefing Document, Durham University.