

Ethics of Policing and Prisons: Schedule with Abstracts

Day 1: Friday, March 11th

Breakfast, lunch, and all talks will take place in the McFall Center Assembly Room

9:00 – 9:30 a.m. **Coffee & Breakfast**

9:30 – 10:20 a.m. **Julinna Oxley** (Coastal Carolina University)

“The Ethics of Feminist Policing”

Chair: Raymond Swisher (Bowling Green State University)

An examination of law enforcement in the United States reveals three disturbing trends: (a) an increase in the militarization of police operations, especially during civil unrest, and the corresponding use of SWAT teams to capture “criminals,” (b) an increase in (our awareness of) deadly shootings of citizens who appear to not pose a threat to law enforcement, especially of unarmed black men, and (c) an increase in the arrest of citizens who have not obviously violated the law, but whose activities and profile are suspicious enough to justify arrest and incarceration. These practices contribute to the perception that law is being unfairly enforced, escalates tension between citizens and law enforcement officers, and exacerbates the levels of distrust between citizens and law enforcement.

I argue that this situation can be reversed by developing and implementing a normative feminist ideal of police conduct, discretion and protocol conceptually grounded in social harmony, rather than social control. First, I show how gendered social norms inform the practice of law enforcement: the social norms of masculinity, such as being tough and uncompromising, are accepted as the appropriate norms for carrying out law enforcement. Then I offer an “intersectional” analysis of law enforcement which shows how and why distinct groups experience police surveillance differently; intersectionality is a way of showing how related systems of oppression, domination or discrimination function together to affect individuals differently, but in intersecting ways. For example, Angela Davis argues that black men are more heavily policed because they threaten white supremacy and masculinity more so than white women or any other male population. An intersectional analysis of oppression provides a way of thinking about oppressed populations as unfairly targeted subjects of surveillance.

10:20 – 11:10 a.m. **Richard Lippke** (Indiana University Bloomington)

“The Case against Jails”

Chair: Philip Stinson (Bowling Green State University)

Jails in the United States are mostly funded and operated by municipalities or regional authorities. We currently house about three-quarters of a million people in jails, a majority of whom have not yet been convicted of the most recent charges against them. Jails are routinely described as inhospitable institutions—worse than prisons in many cases. The denizens of jails are disproportionately poor, black or Hispanic, mentally ill, and struggling with problems of substance abuse. Those who are serving sentences are mostly minor offenders convicted of one or more misdemeanors. The case against jails consists of two parts: First, there are persuasive arguments according to which we should substantially reduce our use of pre-trial detention. Also, those individuals who are justifiably detained pre-trial should not be kept in facilities designed to punish them, since they have not yet been shown to be appropriately liable to

punishment. Second, the convicted offenders who are housed in jails should be dealt with in other ways. Most are not dangerous, except perhaps to themselves, and will be returning to civil society in relatively short order. Intensive probation or restorative justice approaches to their offending should be the norm. Those who must be detained should be housed in facilities designed to do much less harm to them and address their criminogenic needs. In the course of advancing these two proposals, I address various objections to them.

11:10 – 11:40 a.m. **Break & Refreshments**

11:40 a.m. – 12:30 p.m. **David Birks** (University of Kiel)

“Benefitting Offenders”

Chair: **Steve Demuth** (Bowling Green State University)

According to a commonly held view, it is at least *prima facie* morally objectionable for the state to interfere with our own self-regarding choices with the aim of benefiting us. For instance, it would be objectionable for the state to ban a food with a high fat content, or to force us to take daily exercise for our own good. In this paper, I focus on the following two related questions: If it is impermissible to prevent an innocent person from harming herself, is it impermissible to prevent a criminal offender from doing the same? Similarly, if it is impermissible to compel an innocent person to pursue activities that benefit her, is it also impermissible to compel the same from a criminal offender?

Both questions concern the permissibility of paternalistic behaviour, which is thought to be morally objectionable regardless of whether a person has committed a criminal offence. I argue that even if we hold that at least some paternalistic behaviour is impermissible when directed towards innocent persons, in certain cases, the same behaviour is permissible when directed towards criminal offenders. I also defend the claim that it is morally preferable to behave paternalistically towards offenders than to impose traditional methods of punishment.

12:30-2:15 p.m. **Lunch**

2:15-3:45 p.m. **Keynote Speaker: Douglas Husak** (Rutgers University)

“Proxy Offenses in Crime Prevention: The Special Case of Drug Proscriptions”

Our drug policy has been widely deemed a failure because the criminalization of drug use has not succeeded in reducing prevalence rates. I contend that the most promising basis to defend the justifiability of drug offenses is to construe them as proxy offenses: offenses designed to prevent the commission of other, more serious crimes. I make a case that many law enforcement officials use drug proscriptions for this purpose in the real world. When construed as proxy offenses, drug prohibitions are less vulnerable to some of the familiar objections brought against their legitimacy. In the end, however, the justification for punishing those who commit drug offenses remains dubious.

3:45-4:00 p.m. **Break**

4:00-4:50 p.m. **Steven Swartz** (University of North Carolina at Chapel Hill)

“The Slurring Function of American Punishment”

Chair: Karin Coble (Law Office of Karin L. Coble)

Many philosophers have held that criminal punishment has an important symbolic or expressive function, and that punishment is a form of moral communication. Punishment is a social practice imbued with moral and evaluative meaning. This paper explores the meaning of American punishment, given our actual penal practices and the non-ideal political and social context in which these practices are embedded. The understanding of punishment I offer draws heavily on the work of others who have argued that contemporary American policing and penal practices grew out of previous forms of racial control, that the U.S. criminal justice system is systematically biased against people of color, and that this system helps to sustain white supremacy within the U.S. Such criticisms lead naturally to a provocative view of the expressive or communicative meaning of American punishment: that punishment in the U.S. functions much like a racial slur. Assuming that criminal justice has a symbolic or expressive function, I forward three broad reasons for thinking that the evaluative message conveyed by punishment in the U.S. is racialized in a way that resembles slurs. First, explicit racial animus played a powerful role in shaping our current criminal justice institutions and practices; if so, it is not unreasonable to think that such animus contributed to the communicative meaning of those institutions and practices. Second, there are important connections between our criminal justice practices/concepts and widespread (explicit and implicit) racial biases, associations, and stereotypes. Some prominent philosophical accounts of slurs similarly portray slurs as communicating negative stereotypes about the target group. Third, people of color often report that they experience encounters with the criminal justice system (including, but not limited to experiences of formal punishment) as communicating an insulting racialized message. After exploring these reasons, I offer some speculative ideas about how understanding the communicative meaning of American punishment in terms of racial slurs might be theoretically useful. Of particular interest is the question: If American punishment functions like a racial slur, what kinds of reforms to our criminal justice practices would be up to the task of rehabilitating punishment’s meaning? I contend that only radically transformative penal and social reform will do. If so, this understanding of punishment grounds a new argument for the abolition of punishment as we know it.

6:00-7:00 p.m. **Open Bar at SamB’s Restaurant**

7:00-9:00 p.m. **Dinner at Sam B’s Restaurant**

Day 2: Saturday, March 12th

Breakfast, lunch, and all talks will take place in the McFall Center Assembly Room

9:00 – 9:30 a.m. **Coffee & Breakfast**

9:30 – 10:20 a.m. **Matt Whitt** (Duke University)

“Felon Disenfranchisement and Democratic Legitimacy”

Chair: Geoff Pynn (Northern Illinois University)

In the United States, almost all states deny the right to vote to individuals serving a felony sentence in prison. Additionally, most states practice some form of post-release felon disenfranchisement. Not surprisingly, these policies have long been the target of philosophical criticism. However, philosophers and legal scholars have recently advanced a new wave of arguments in support of felon disenfranchisement. These arguments draw on democratic theory, rather than punishment or citizenship theory, to justify restricting felons’ voting rights. Consequently, they are largely immune to existing criticisms. In their basic form, these new arguments maintain that democratic ideals of self-determination justify felon disenfranchisement when a polity votes for it (Altman). Stronger versions claim that democratic self-determination actually *requires* disenfranchising felons (Ramsay; Sigler).

In my paper, I review these new arguments, acknowledge their force against existing criticism, and then offer a new critique that engages them on their own terms. Far from justifying felon disenfranchisement, I argue that fundamental democratic ideals actually motivate against this form of electoral exclusion. Using a modified version of democratic theory’s “all-subjected principle,” I argue that liberal democracies undermine their own legitimacy when they deny the vote to felons and individuals serving prison sentences (Dahl, Gould). By perpetuating a class of adults who are governed by democratic law but barred from the processes that generate, authorize, direct, and check that law, felon disenfranchisement undermines the legitimacy of democratic self-determination. My proposed argument can effectively critique the new defenses of disenfranchisement because it does something that existing critiques do not: It finds common ground on which all subjects of a democracy—disenfranchised felons and enfranchised ‘full’ citizens alike—have reason to reject disenfranchisement policies. Felon disenfranchisement undermines democratic legitimacy, and this negatively impacts all who are governed by democratic law, felons and non-felons alike.

10:20 – 11:10 a.m. **Lori Gruen** (Wesleyan University)

“Dignity Denied: Violence, Imprisonment, and Deadened Democratic Aspirations”

Chair: Andrew Erickson (Bowling Green State University)

In this paper, written with a couple of her incarcerated students, Lori Gruen explores some troubling ethical and political contradictions that emerge in this age of racialized mass incarceration. The paper will focus on two related areas of concern, violence and resignation, and their relationship to dignity. In poor communities of color, dignity is often (though not always) maintained through actions that involve violence. When arrested and convicted of violent offenses that were dignity enhancing in a particular context, incarcerated individuals are not just stripped of the dignity that the criminal action conferred, but within the prison system they are left unable to construct alternative grounds for reconstructing dignity. Dignity is also dually threatened for those who are wrongly incarcerated. They have no expectation that they will be seen or heard, so they often become resigned to doing the time. Prior to incarceration, whether guilty or not, there is a general view that the system is not meant to work for poor

black folks. Once incarcerated this belief intensifies. The sense of dignity that animates white people based, in part, on the idea that one is owed democratic protections and allows one to demand justice, is diminished for incarcerated black men. They experience democratic institutions as exclusionary and they anticipate structural failures that further their marginalization. The profound implications of this dignity loss are under explored and in this paper we discuss the difficulties of attaining a sense of dignity for socially disenfranchised people who are facing long-term incarceration.

11:10 – 11:40 a.m. **Break & Refreshments**

11:40 a.m. – 12:30 p.m. **Mariam Kennedy** (Indiana University Bloomington)

“*A Liberal Theory of Punishment and Higher Education in Prisons*”

Chair: Jorge Mario Chaves (Bowling Green State University)

Only five percent of prisoners have access to postsecondary education while incarcerated, despite the many empirically documented advantages of receiving an education in prison.¹ However, establishing and maintaining such programs is difficult, as various practical challenges plague these unique college programs. Security protocols regulating teaching materials and banning internet access can make it difficult to conduct a class. Inmates can be involuntarily transferred mid-semester, or committed to solitary confinement. Prisons are often in remote locations, difficult for teachers to reach. Most of all, lack of funding means that very few programs can survive.

Political sentiment also dramatically affects access to higher education in prisons. American politicians have persistently embraced tough on crime, anti-prisoner rhetoric, which is largely supported by the American public. There is some evidence that this kind of retributive sentiment is linked to harsher penalties for criminals overall.² Certainly it has had a direct impact on prison education programs. When Andrew Cuomo announced plans in 2014 to put a bare million dollars of state money into a fledgling college for prisoners project, one politician warned we shouldn't make “smarter criminals,” while another senator said, “It should be ‘do the crime, do the time,’ not ‘do the crime, earn a degree.’³”

In this paper I suggest that reviving Lockean principles of punishment could change the political discourse about prison education. Locke's theory of punishment is not strongly retributive nor is it strictly utilitarian. It is superior to both these traditional justifications of punishment because it emphasizes the restorative aspect of punishment, reparation. Moreover, Locke's work has a preeminent place in the American political tradition. As such, it is the first place to seek an ideal theory of punishment in the liberal state, and the natural foundation for just critique of our prison system. Joining their voices to this more academic perspective, students from the Indiana Women's Prison political philosophy class reflect on the significance of a college education behind bars.

12:30-2:15 p.m. **Lunch**

¹ Erisman, Contardo. *supra* at vi.

² Tuckness, Alex. “Retribution and Restitution in Locke's Theory of Punishment.” *The Journal of Politics*. 72.3 (2003): 720-732. Print. pg 721

³ Keller, Bill. “College for Criminals.” Editorial. *New York Times*. 10 April 2014: A25

2:15-3:45 p.m. **Keynote Speaker: Thom Brooks** (Durham University)

“Restorative Justice and Punitive Restoration”

Restorative justice approaches offer a promising alternative to formal sentencing. Victims are more satisfied, reoffending is less and at reduced costs. However, these findings are limited in scale and application that confine these approaches to relatively few cases that restrict their potential. I argue for a fundamental revision called punitive restoration that permits otherwise forbidden options like hard treatment. Punitive restoration can justify their use where they can best enable the restoration of rights for offenders in light of their circumstances as a means of fulfilling the aim of restoration instead of penal abolition.

3:45-4:00 p.m. **Break**

4:00-4:50 p.m. **Benjamin S. Yost** (Providence College)

“What’s Wrong with Differential Punishment?”

Chair: Emma Young (Indiana University)

The sentencing disparities between black and white drug offenders are having their day in the media, but the statistics remain shocking. Roughly half of those incarcerated for drug offenses in federal and state jurisdictions are black, even though blacks make up only 13 percent of the population, and blacks and whites use and sell drugs at roughly the same rate (Ghandnoosh 2014: 21). Nevertheless, many philosophers who endorse a noncomparative conception of retributive justice deny that this state of affairs is even *prima facie* unjust.

Noncomparativists see nothing amiss with inequality as such; they maintain that retributive justice is violated only when offenders are disproportionately punished (simple noncomparativism) or when offenders are treated disrespectfully (respectarian noncomparativism). By contrast, comparative conceptions of retributive justice assert that an offender’s retributive deserts are determined in part by how other offenders are treated, and most comparativists subscribe to the view that racial disparities in punishment are unjust.

I agree that the differential treatment of blacks is a breach of retributive justice, but I think that the most popular flavor of comparativism, comparative egalitarianism (Hurka 2003; McLeod 2003; Miller 2003; Cholbi 2006), misunderstands why this is so. My paper defends an alternative comparativist position, arguing that the violation of retributive justice lies not in the bare fact of unequal treatment, as egalitarians insist, but in the racially oppressive nature of differential punishment.

I begin by discussing respectarianism’s analysis of the wrongfulness of differential punishment (esp. Avraham and Statman 2013). I show that respectarianism is explanatorily insufficient, insofar as it cannot account for the way implicit bias corrupts even noncomparative justice. (I set aside simple noncomparativism, which most retributivists find unpersuasive.) In the middle of the paper, I develop my preferred explanation of the wrongfulness of the differential punishment of blacks: such punishment reinforces structural racial oppression. This is a comparative retributivist claim insofar as structural oppression involves essentially comparative wrongs. What’s wrong with structural racial oppression is that it reinforces illicit racial hierarchies. 1 Because the problem with the differential punishment of blacks must be explicated in terms of structural racial oppression, the normative concepts central to egalitarianism and respectarianism – equality and dignity – turn out to obscure rather than illuminate the wrong in question. Respectarianism cannot account for structural oppression because dignity is a noncomparative concept. Although egalitarianism is a comparative theory, it cannot account for the important moral asymmetry between the differential punishment of privileged and disadvantaged social groups, and so the approach fails to capture what is morally distinctive about the differential punishment of blacks. Because blacks, unlike whites, are oppressed, differential punishment can, and does, contribute to their oppression.² I conclude with a few remarks on how legal institutions might remedy this problem.