

# **An Ideal Justification of Punishment**

**A J Johnson**

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# Abstract

Legal punishment is frequently regarded as a cornerstone of the legal system yet (surely to its detriment) it is a practice which lacks a firm philosophical foundation. In spite of exercising many extremely capable legal and philosophical minds (particularly during the twentieth century) no generally agreed upon justification of punishment has been found. The nub of the problem has however been acknowledged as the inability of either of the major candidate theories (utilitarianism or retributivism) to provide an account able to address all the relevant parties. Whilst utilitarianism is often regarded as competent to the task of justifying punishment to society in terms of the attainment of some greater good, it seems entirely inadequate when it comes to formulating a justification to the criminal to explain why he has been singled out for punishment. And in the case of retributivism the situation is reversed. To the criminal it can be put that through punishment he is treated in accordance with what he has done, but in the matter of justifying punishment to society, the key principle of desert is unable to be properly grounded. Thus the central motivation of this thesis is to attempt to redress this shortcoming in the philosophical literature and to formulate a viable justification of legal punishment.

Ultimately it will be argued that the accounts of both Kant and Hegel offer a way of resolving the dilemma of punishment, and in particular it is their idealist orientation over and above their more widely acknowledged characterization as retributivists which allows them to fulfil this role. In Kant's case his contribution is derived from a reworked and more sophisticated version of his retributivism than is generally found in the literature. Following Susan Meld Shell's lead, Kant's construction of justice is explored and found both to enhance and support the traditional justification of punishment he can offer to the criminal, and to furnish an otherwise elusive justification of punishment to society more broadly. A reading of Hegel on punishment is also developed by taking seriously his theory of recognition and aspects of his logic, particularly regarding negation and contradiction. His account then addresses quite neatly and straightforwardly the three audiences for whom a justification of punishment is sought – the criminal, the victim and society itself.

Not only does the thesis address the problem of punishment but it has further implications for Kant and Hegel scholarship as well as philosophy more broadly. One of the key points to come out of this thesis is that Kant and Hegel (if given adequate intellectual consideration) seem potentially able to offer up significant contributions to contemporary problems and issues beyond just the one argued for here regarding punishment. Their work is not merely of historical interest but has real and wide ranging possibilities which provide a rich resource for future research.

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