

WHAT IS THE POINT OF PUNISHMENT?

BRIGID EVANS EMERGES FROM DETENTION TO TELL US WHY WE PUNISH

You're sitting in detention. Again. It's always the same students every week too. Sure, maybe you did the wrong thing – but teachers always seem to notice when you misbehave while other students get away with way more than you ever do. Why is that? What is the purpose of punishment and why are some people more likely to be punished than others?

Punishment, in order to be justified at all, is often explained as fulfilling a certain function, one that advances some morally desirable goal. That function some claim to be about preventing future wrong actions, seeking restitution, or even retribution for a wrong that has been done. It might perhaps be a combination of these functions. Punishment (in theory) achieves its desired end, according to many philosophers, through its expressive dimension. This is to say; when we punish a wrong action we are communicating something. That communication allows punishment to fulfil its function in the classroom and in society more generally. So while there might be easier ways to ensure that you won't reoffend, it is essential that punishment meets certain conditions in order to be justified.

Under this view, punishment needs to express something to even count as punishment, and it needs to express the right thing to the right people for that punishment to be justified. This is necessary as most of the ways we punish individuals are with actions that would usually be considered wrong; imprisonment, physical harm, even killing someone. This idea originates with American political and legal philosopher Joel Feinberg. He argued that to conceptually distinguish punishment from “mere penalties” or deterrents, like library fines, we need to know what punishment is meant to express. This expression determines whether something counts as punishment and whether that punishment is justified.

Advocates of expressivist theories have different views about what and to whom punishment is attempting to communicate. These can generally be divided into ‘communicative’ and ‘denunciatory’ accounts. Communicative accounts, put simply, argue that punishment ought to communicate something to the wrong-doer. This may be saying to the wrong-doer that their society disapproves of their actions and what that society's behavioural standards are. It may then hope to enable the criminal to change their behaviour, to feel remorse or to recognise and accept society's standards. The criminal may never fulfil this hope, but this is not what is important; it is the communication to the wrong-doer and the *potential* of them receiving the message that justified the punishment.

'Denunciatory' accounts argue that punishment may not simply be to communicate standards to wrong-doers. For philosophers Igor Primoratz and Jean Hampton, 'punishment is not like a private letter; it is like a billboard put up on a busy street...it is also meant for the victim of crime and for the public at large'. Here the punishment of the wrong-doer serves to communicate to others that such behaviour is not acceptable. This might serve to frighten or deter other members of society from committing crimes. To an extent, this communication could express just what the moral and behavioural standards of that community are. Where these standards are clearly communicated, punishment may even influence the moral and social development of citizens.

So the question is whether punishment is saying something to the person being punished or to everyone. Think about if you were to see one of your classmates getting into trouble for misbehaving. Do you think the teacher is expressing to that student her disapproval and attempting to dissuade them from behaving in that same way again? Would you be more or less likely to copy that student's behaviour? Your answer to these questions might depend on just what the action was, who the classmate was and how consistent, severe or public the punishment was.

Whichever account we might accept, punishment is meant to communicate standards for behaviour. Communication is a tricky thing though; it's very easy for messages to come out wrong or for these messages to carry with them additional and unintended communication. What is being communicated, for example, when we disproportionately punish one group for actions that others more easily get away with?

Indigenous Australians are one such group who are statistically more likely to be punished than other groups. In fact they make up 27 per cent of the nation's prison population despite being roughly 3 per cent of the overall population. This means they are 13 per cent more likely to go to prison than non-indigenous Australians. Understanding what is accompanying the intended messages of punishment might allow us to understand why our indigenous populations seem to be punished more often or more harshly than others. For the proponents of expressivist theories too, understanding this might allow us to determine if our system of punishment is just.

There are many factors that are involved in deciding to punish an individual. Some of these may be explicit, such as the standards of behavior we are intending to communicate, and many are implicit. These implicit communications may not be known to those determining whether or not to punish. Instead, these factors are unconsciously influencing the decision-making. These implicit communications unintentionally express ideas not simply about the sorts of actions that get punished; they also express ideas about the *sorts of people* who are punished.

These implicit judgements and communications may arise out of cognitive biases. These biases are activated involuntarily and exist outside of the decision-makers awareness. Examples of just some of these cognitive distortions which may influence the decision to punish are implicit bias, confirmation bias, and attribution bias, each of these can impede

accuracy in what we perceive and how we interpret these perceptions. Think about the last time someone tried to start conversation with you in a public place, like a train station. How were they dressed? This probably influenced how you felt about being approached, even if you don't really endorse this way of judging people.

Confirmation bias is the natural tendency to interpret new information in ways that confirm our pre-existing beliefs. This means that the way we learn and remember is directed by what we already accept about the world; discounting, downplaying or discarding information that challenges those beliefs. While confirmation bias might allow for consistency in our beliefs –it can be dangerous when deciding if someone has committed a wrong action. If we already suspect the individual is guilty (even if this suspicion is purely subconscious) our mind is naturally going to search for information that confirms these suspicions and downplays evidence to the contrary.

Implicit bias is a broader cognitive distortion than confirmation bias. It refers to the 'attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.' These stereotypes and attitudes can be positive or negative and lead to feelings and beliefs about others which are based on characteristics such as race, ethnicity, age, and appearance. Combining this with confirmation bias, if an individual is part of a group who is stereotypically associated with punishable actions we may be subconsciously primed to interpret their actions as conforming to that stereotype.

Finally, a fundamental error occurs when we interpret or explain our own or others behavior in a way that overemphasizes dispositional factors while downplaying situational factors. This may mean that we attribute the person's action to their character instead of any potentially contributing circumstances. Psychologists call this 'attribution bias.' This kind of bias affects how we explain or predict a person's behaviour based on what are ultimately irrelevant factors. It often leads us to unconsciously think that the actions of the accused are reflective of their character- that they are essentially a good person who has made a mistake or they are a bad person and they ought to be punished. If we have already unconsciously been influenced by stereotypes and confirmation bias these three factors may explain why certain groups are disproportionately represented in our justice system.

Punishment then may not be intentionally communicating anything other than the standards of the community. It may however be unintentionally communicating an adherence to certain stereotyped assumptions and cognitive biases when certain individuals or groups are disproportionately punished. Similarly, when certain individuals or groups continually avoid punishment or face less severe punishment than others an implicit communication is expressed. This isn't what punishment is meant to be communicating, so when this message is slipping through a concern arises; is our justice system working as it should? A philosophical proponent of an expressivist theory, faced with the Australian situation, may well conclude that the system is broken, and therefore unjust.