

# Justifying Punishment Theoretically: Between Conventional Capacity and Alternativity Test

**Idowu William**

*Department of Philosophy, Obafemi Awolowo University, Ile Ife, Nigeria*

*Controversies abound in the fields of Political Theory, Political Philosophy and Political Science concerning the rightness or wrongness of punishment in political societies. The substance of these discussions and debates revolves around the issue of justification. To this end, the literature in these fields are replete with theories commonly tagged and termed as conventional or orthodox. The convictions in these conventional theories such as Retributivism, Deterrence and Incapacitation Theories are legion and legendary. Nevertheless, the strengths of these conventional theories are not strong enough to prevent the vitiation of the theoretical capacities encoded in them. With these lingering defects, Alternative Theories such as Expressivism, Communicativism and Contractarianism have been suggested. The strength of methodology in political theory has assisted in showing that, as much as the conventional theory are defective, in like manner, alternative theories have their defect. Based on these findings, this paper concluded that even though no theory in political philosophy is totally immune from defect, the Theory of Preservationism could be argued as an acceptable theoretical paradigm in justifying punishment. Preservationism is simple and straightforward in as much as it argues that punishment is theoretically justified as long as it preserves political society, an argument that is missing in the capacity of conventional theories as well as the test furnished in alternative theories.*

**Keywords:** Punishment, justification, conventionality, capacity, alternativity, test, theories

## Introduction

The fields of political philosophy, political theory and philosophy of law, are replete with several theories whose major aims and objectives are devoted and geared towards finding lasting solution to the intractable problems posed by the need to discover what could, in the best theoretical sense and sound philosophical basis and perspective, to the justification of punishment. An objection could be raised against the essence and nitty-gritty of these opening remark and commencing statement in that the statement actually misrepresent the nature and character of philosophy, philosophical task and theories. This is because philosophy does not give room for agreement: rather, it endorses, encourages and exceptionally engenders disagreement, debates, contentions and controversies. Philosophy grows, develops and advances through disagreement and controversies through reflective, contemplative and argumentative methodology that is consistently adopted in prosecuting tasks

assignments and researches. This is what makes it difficult and impossible for any philosophical theory to be immune from defect. Does, immunity from deficiencies and defects are impossible attitudes, states and sessions in the belly, womb and ways of theories termed and tagged as “philosophical” in nature, character, content, colour, capacity and consequence.

Nevertheless, with respect to sizzling theoretical captures concerning punishment, the major concern has been how to explain what could be the most acceptable morally credible means and argument by which punishment can be considered justifiable. This point alone divides one school from another and one theory from other theories. Again, this controversial attitude is what separate philosophy from other disciplines even though all academic and intellectual disciplines emanated, historically, originally and foundationally from philosophy. From this, it can be submitted that there are just two kinds of intellectual disciplines:

philosophy, on the one hand, and other disciplines, on the other hand.

In recent literature, the division among these theories has been classified and considered as the camp of traditional theories and non-traditional theories. It means that some theories are considered orthodox and non-orthodox, conventional and non-conventional. What makes these theories worth considering can be defined and established from two perspectives: one is the gross inadequacies and notable insufficiencies inherent in traditional theories which means that alternative theories ought to be discovered and spotted for useful considerations. In the second sense, it is important to pay close attention to the nature and texture of existing alternative theories that could be put up as presentable, formidable and noteworthy alternative challenges to traditional theories. This is coming from the observed perspective and empirically instantiable view that the current era, our contemporary world, this 21<sup>st</sup> century, is said and pronounced to be the age, era and epoch of alternatives, especially in areas of education, medicine, sports and so forth. Thus, given the dimensional, directional display of interest in alternative ideas, and, also, the due and deliberate challenge that alternative thinking poses on the global scene, it behoves humans to adopt and attempt a sense of due diligence and deliberate determination, by way of critical analysis, the existing theories, both conventional and alternative, on the nature of punishment and its justification to make informed choices and conscious knowledge and awareness on human decisions on which platform of theories to follow, promote and pursue concerning the institution and instrument of punishment in human political societies. As a matter of fact, this kind of analysis and articulated argument are necessarily important for consideration in the African social-political sphere, context and milieu where the democratic experience, experiment and adventure is still nascent, burgeoning and a budding cultural practice where power to do and undo is considered as right, seraphic and divine; where the freedom to protest is often seen as demonic and devilish and, thus, requires and deserves being punished; where right, civil liberties and freedom to associate are treated harshly and compensated with dazzling dozes of imprisonment and punishment; where laws are made and broken by leaders with impunity; where

citizens are not tried by competent court of law before being imprisoned and where, in the larger sense, and, on a larger scale, innocent citizens have found themselves being punished as and for the guilty ones and where the guilty, condemned and law breakers are expressly free and fairly treated to roam in the street and atmosphere of society without being questioned nor queried. In light of the foregoing, the paper seeks to interrogate the following: what is punishment? What is the sense and essence of the justification of punishment? What are traditional theories of punishment? What are the inadequacies of traditional theories of punishment? What are alternative theories of punishment? What is the major difference between traditional and alternative theories of punishment? What is the sagacious import and philosophical significance of the justification of punishment? Where do we go from here: between the capacity of conventionality and the text of alternativity?

In the final analysis, the paper should seek, strife and struggle to push through with the theory of preservationism as enjoying a sense of credible capacity, without any sense of agonising argument, in the context of the test of theories, as encoded in a positive parole, patrol and parade of positive performance concerning the question of justification. In doing this, it is not suggested that the theory of preservationism is invincible and cannot be critiqued. What the paper is voicing out is that there is something about preservationism that other theories both conventional and alternatives nearly assume but do not utilize space to assert which is the beauty and aesthetics of preserving society through punishment.

#### ***Paradigms concerning punishment***

Although human miseries, calamities, sufferings, attacks, afflictions, adversities, tragedies and so on as so forth appear on the increase in the 21<sup>st</sup> century, on this count, it is believed, by way of presupposition, that such negative experiences ought not to be complicated or compounded by the existence of systematic and systemic institutions of punishment. To this end, the idea of punishment and pain therefore requires and deserves a comprehensive and rational account that borders on and bears the image of justification. The fact that punishment is synonymous with pain even if punishment is to be meted out on the account of committal of crimes and criminal behaviours, there

is still the need for a complete sense of justification. Even if the necessity of justification of punishment is sacrosanct, sacred and significant, it still behoves that the nature of punishment be given a clear, concrete and comprehensive understanding. What, then, is punishment?

The contention is simple, sharp but straightforward and seriously significant that punishment does not exist in a vacuum nor is it conceivable outside the regime and reign of law or laws. Nevertheless, law is not punishment and punishment is not law; both are unique and peculiar institutions in human society even if it is true that both may not be divorced from each other. However, regardless of the acceptable fact that punishment and law are twin and complementary concepts, yet, they are distinctive social and political tools with differentiated and demarcated statuses in society. In other words, both do not enjoy conceptual sameness or similarity. Each can still be put up for analysis without impinging on the other even if it ought to be admitted that the definition of punishment may not exist and may not be conceived as complete, comprehensive and convincing without a serious and strong connection with specific laws, rules and regulations. It is in this sense that the *Preservationist Approach* to the justification of punishment derives its enduring significance, expectational importance, vivacious value and convincing credibility in the sense that where and when law exists, it exists to preserve society. Again, since no system of punishment exist without a vivid connection to law, it is presupposed that both law and punishment exist to preserve society where they both reign supremely. This is the emphatic expression on which the Preservationist Approach is established and embedded. This is why punishment can be conceptually conceived as non-existent outside the regime of recognised laws, legal rules and regulations. In a nutshell, punishment cannot and does not exist on its own; punishment is a guest of legal rules and regulations specifically directed as legal responses and answers to the prevalence and perpetuation of crimes and criminal behaviour. Although the question of justification sounds very important to the nature of punishment, nevertheless, punishment and its nature stand separate on its own without necessarily considering what it stands for in the light of whatever theories of justification may be offered or

allowed in the literature. Still, the question what is punishment? Is still a standing issue. What, Then, is punishment?

### ***What is punishment?***

The word "punishment" has been analysed by various scholars. Anthony Flew suggested five criteria and conditions satisfied by a standard case, to which the word "punishment" would be applied. To begin with, it must involve an "evil, an unpleasantness, to the victim"; it must be for an actual or intended offence; it must be of an actual or supposed offender; it must be "the work of personal agencies (i.e. not merely the natural consequences of an action)" and finally, it must be imposed by a real or supposed legal authority, against whom the offence has been committed {1954: 291-307}. However, from Flew's argument, it could be argued that, is it only the system of rules that an offence can be committed against. How about the individual who is the victim, against whom an offence is committed? Does he/she not has any right to punish those who committed an offence against him/her? Flew's criteria do not seem to answer this question. Punishment has been historically defined as an infliction of pain, evil or deprivation of good and this is geared towards achieving utmost obedience from the people. Thomas Hobbes saw punishment as an evil inflicted by an entitled public authority, on an individual whom such authority has proclaimed guilty of an offence, and this is so, that men be obedient {1967}. Thomas Hobbes explained punishment as being governed by rules and enforced by the public authority. Given this definition, a question arises on how to address the case of one who is judged by the authority as a transgressor of the law, but who, in the actual sense, is innocent. Can the evil meted out on such a person, be justified and seen as punishment? This is a loophole in Thomas' definition of punishment.

Aristotle also saw punishment as a penalty given to an unjust individual to restore social balance and stability. For Aristotle, before the law, everyone is equal but once an individual commits a crime which is against the law, to another person, then there is no equality between the offender and the one who is offended and because equality must be restored, the enforcer of the law punishes the offender {1977: 38-42}. Punishment has been

defined by various moral philosophers and scholars and it boils down to being an unfavourable treatment given to a rational agent who goes against the dictate of the laid down rules and such treatment can only be meted out by an authority constituted by a legal system.

***Punishment and the pursuit of justification***

To justify means to provide an acceptable explanation, to absolve and declare to be free from blame or sin, to give reasons for one's action; and to make an argument to prove that one is in the right. From this perspective, a convincing conception of that which is justificatory can be harnessed and established. In this sense, the idea of justification could properly be said to consist of providing or furnishing a normative basis for action, policy, practice, pursuit, activity, orientation and what have you. Thus, justification refers to the provision of a reason, explanation, or excuse which provides convincing, morally acceptable support for behaviour or a belief or occurrence. In the outright sense, the basic concern in the pursuit of justification consists of isolating, for discussion, what is perceived as a convincing reason for a practice or policy not necessarily the mere act of giving one or some reason for that policy or practice.

According to Claire Finkelstein (2005: 207), the institution of punishment involves acts that are normally highly morally objectionable. From this reading, it could follow that if an act is morally objectionable, to punish such an act will involve providing morally acceptable reasons. It is these morally acceptable reasons that constitute the justification for the institutionalization of punishment. So, that an act is morally bad is not an end in itself in the justification of the punishment of such an act; a morally sound argument still requires being raised, spotted or established. It means that the pursuit of justification is not a means to an end but an end in itself. Justifications are not meant to produce, provide or provoke a dead-end; rather, justifications are meant to be an outlet for conveying a modicum of rationality in our targeted argument concerning or with respect to what is considered significant and necessary in the business and discipline of thinking, reasoning and ratiocinatively engagement, endeavours and adventure. To make a demand for theories of justification in any philosophical work is not new

nor is it strange. Philosophy, as it were, is home to the task and business of justifications. In epistemology, logic and critical evidence and arguments, justification is rife, reasonable, readily offered, available and opted for. It is the business and pursuit of justification that bears out the image and the likelihood of serious critical thinking. No oddity is observed and alleged if political philosophy, theory and science clamours and make a cry for clarity and correctness when the practice of punishment is subjected to the business of and demand for justification. The peak of utility in any society is justice when and where justice is missing, mis administered, mismanaged, mis constructed, misused and misinterpreted and misapprehended, the utility of justice disappears and vanishes; justices become remote and distanced from practical reality. Usefully, justices and justification have something in common which is the demand and resolve for fairness. So, if punishment is to be coded and encoded in the justices of justification, ambience and resemblance of fairness ought to be hinted at.

In a nutshell, the cry and clamour for clarity and correctness in the pursuit of justification for punishment in political philosophy ought to be painstaking; ought to be a persuasive performance in the palace of perception; a perspective painted, portrayed and pictured in the power of profit and the positive possibility perennially and persistently permeated peculated by the potency of poetic prowess. Indeed, the pursuit for justification is neither ordinary nor mean but one which deserves and requires clarity, correctness, simplicity and a special sense is serious significant within the context of caution, care and carefulness without engaging in the agony of unending argument whose test and thirst for truth is not fallaciously formed nor formulated. Philosophy is a discipline whose thirst or justifications are not necessarily tied to the chasing charm of shadow nor is it busy with businesses and burdens without the betterness of bitter bread whose nourishing capacity is based on the bed and bedrock of burden doubt. In what follows, how justifications concerning punishment have been argued shall constitute the space of consequent discussion below.

In other words, how have both conventional and alternatives theories presented their different notion about the justification of punishment? This is the basis of the title above: "Between

Conventional Capacity and Alternativity Test". With this in me, the question is what are the capacities that conventional theories for the justification of punishment carry? What are the proofs or tests for justification of punishment that alternative theories present? The remainder of the paper revolves around a critical exposition concerning this objective.

### ***Philosophy and conventional theories of justification concerning punishment***

The theories of punishment are the rational basis of punishment and are the underlying principles or methods of punishment. The rationale of punishment is the explanation of its basis, fundamental reasons and justification. Scholars have posited several rational bases for punishment, they dovetailed into the theories of punishment and this will be analysed in the next section. These theories provide rational account and justifications, from a conventional perspective, showing their understanding of what justification means in the theoretical sense. The conventional capacities and characters contained in these theories are presented in what follows.

#### ***The retributive theory***

According to Alec Walen, the concept of retributive justice has been used in various ways but it is best understood as that form of justice committed to the following three principles: first and foremost, that those who commit various degrees of crimes, most especially serious crimes, morally deserve to suffer a proportional punishment. Furthermore, it is morally good, inherently, if a legitimate enforcer of the law, gives offenders the punishment they deserve and lastly, that it is not morally allowed to intentionally punish the innocent or to inflict a punitive measure on an offender, which is large and not proportionate {2014}. From this, I could deduce that the retributive theory of punishment is that theory which states that, given a wrongful act, an offender deserves to suffer a punishment that is proportionate to the crime committed and that it is not ethical to intentionally punish an innocent person. It is not just, to allow an offender to roam free, without being made to suffer a proportionate punishment.

Given this, it can be said that one of the fundamental reasons for punishment is such that an

offender receives a return, in terms of punishment, for the crimes committed. Immanuel Kant is one of the proponents of the retributive theory. The retributive theory focuses on punishment to only those who deserve it. For him, unlike deterrence theory, an innocent can never be punished and since the retributive theory is backward looking, it is not concerned with the possibility of a person committing a crime. However, for punishment to be meted out, a person must be found guilty {1887: 145} On the part of Mohanty, the core principles of retributivism are desert and proportionality.

In any case, criticisms have been levied against this theory. According to Michelle Maiese, retributive justice does not help the victims in any way, other than giving them the feeling that, at least, the offender got punished {2004}. In addition, how to accurately measure the amount of punishment is a big problem that will be proportional to the crime committed. Michelle also posited that retributive punishment tends to slip into punishment based on revenge and if this is the case, it will not satisfy "the principles of proportionality or consistency" {2004}.

#### ***The deterrence theory***

The deterrent theory is another basis for punishment. Deterrent theory of punishment was given by classical philosophers such as Thomas Hobbes {1588-1678}, Cesare Veccaria {1738-1794} and Jeremy Bentham {1748-1832} and the two utilitarian philosophers of the 18th century, Cesare Beccaria and Jeremy Bentham formulated the deterrence theory as both an explanation of crime and a method for reducing it. According to Mark C. Stafford, deterrence is the omission or reduction of a crime because of the fear of legal punishment. For him, punishment deters people from committing crimes in the future {2016}. From this, it can be inferred that deterrent theory of punishment states that the threat and enforcement of punishment deter or prevent the reoccurrence of wrongful actions. Punishment is inflicted on criminals to discourage them from committing future crimes.

Nevertheless, the theory is not without criticisms. According to Valerie Wright, one problem with the deterrence theory is that it assumes that human beings are rational actors who consider the consequences of their actions before

deciding to commit a crime; but this is often not the case. For instance, most criminals are under the influence of drugs or alcohol at the time of their offence, therefore, it is unlikely that such persons are deterred by either the certainty or severity of punishment because of their temporarily impaired capacity to consider the advantages and disadvantages of their actions. Another problem, for Wright, in assessing the deterrent theory is that potential offenders must be aware of sanction risks and the consequences of committing a criminal act but research has shown that the general public tends to underestimate how severe a sanction, which is generally imposed, could be. Given this, the absence of information on the awareness of punishment makes it difficult to conclude the deterrent effects of sanctions {2010: 2-3}. Another objection to give to this theory is that, even with the mindset that one can be punished for committing a crime, it does not ultimately stop an individual from perpetrating a criminal act in the future neither does it reduce crime rates in a society.

### ***The incapacitation theory***

The Oxford Learner's Dictionary defines incapacitation as "the act of making someone incapable and disabled to do something". It can be said that another rationale or basis for punishment is to render a criminal incapable of committing further crimes. One method of rendering an offender incapable of committing any further crime is imprisonment. When an offender is imprisoned, he/she is confined in an area such that there are restrictions to his/her movements. Alana Barton posited that proponents of the incapacitation theory of punishment advocate that offenders should be prevented from committing further crimes either by temporarily or permanently removing them from the society where they belong or by some other processes and methods that will restrain their ability to commit further crimes. For him, the most severe and permanent form of incapacitation is capital punishment and what cannot be disputed is the fact that once one is put to death, such an individual is rendered incapable of committing prospective crimes and because of this, capital punishment is undeniably effective in its "incapacitating" function {2005: 463}.

Although this could be the case, what if the method of incapacitation does not take the form of a death sentence, this means that, even if an

offender is incapacitated maybe by punishment, it will be false to conclude that such a person cannot still commit a crime upon his release. Incapacitation, as a basis of punishment, does not fully take away the will to commit offences from the offender. No matter the method of incapacitation, except the death sentence, an offender can still choose to commit crimes upon his release, so, incapacitation does not render an offender incapable of committing crimes in the future. Despite this criticism, incapacitation is still a rationale for punishment, whereby it disables a criminal from committing further crimes.

### ***The compensatory theory***

According to Manmeet Singh, the theory of compensation in criminal law is mainly about compensation to the victim of a crime. For him, a victim of a crime has suffered any loss because of some act or omission of the offender {2015}. The victim of a crime must be compensated for any loss or harm he/she has suffered.

However, for Ahmad Siddique, the entire focus of the criminal justice system is, mostly, on the offender, to punish him whereas those who suffer from the actions of an offender are forgotten people in the criminal justice system. For him, compensation to victims of crime rests primarily on two grounds. Firstly, a criminal who inflicted injury or caused harm to persons or properties must compensate for the loss and second, a state that failed to protect victims must pay compensation to him {2005: 544}. This theory simply states the idea that the offender must compensate, pay back and make up for the damages to the victim but it is, most of the time, not the case that the offender pays back exactly what the victim lost. Most times, no matter how much the offender pays back to the victim, it does not suffice for the number of losses and damages caused to the victim. For instance, if a victim was raped and the offender was asked to compensate, it is hard to know what will be enough to cover for the traumatic experience of the victim. This is a flaw in this theory of punishment.

### ***Philosophy and alternative (non-conventional) theories of justification on punishment***

Important debate and credible discourse in political philosophy, political theory, philosophy of law and jurisprudence are littered with and lettered concerning theories of justification for punishment



that can be strictly and seriously titled and tagged as alternative theories or non-traditional theories of justification of punishment. They are so defined and described in as much as these set of theories are theoretical attempt at providing a new perspective to existing traditional theories and, more importantly, a way of escape from the quagmire of lingering limitations, increasing inadequacies and serious insufficiencies that have rocked the substance, soul and spirit of traditional theories of justification. They are alternative theories because they form a solid rejection, serious refutation and sincere refusal of the rigidity of conventionalism in matters that centre on and revolve around the justification of punishment. Indeed, these alternative approaches are often cast in ways and manners that reiterate the importance of individuality, the performance of human philosophical motivations, moods and methods and, importantly, reliable radical display of human rationality. Alternative theories concerning punishment and justification are, in the principal sense, three in number: EXPRESSIVISM, COMMUNICATIVISM AND CONTRACTARIANISM.

Among these three, contractarianism is keenly influential, thoroughly, testedly, totally, and toweringly impactful, powerfully popularly and performingly philosophical on account of its dependable and designated connection with a popular classical tradition in the history of western philosophy especially within the stanza, standard and dimensions conjured and controlled by modernism. Indeed, the theory of contractarianism, with respect to punishment and its justification, is a contemporary attempt at relaying and reifying the relevance of the social contract tradition tangentially and temperately touted as constituting the commencing point and centre of modern philosophy to affirm its seriousness and significance in terms of contemporary philosophical thinking and theorisation. Although contractarianism is popular and powerfully presented and represented in the thoughts of major contemporary philosophical thinking and thinkers it does not, however, follow that both expressivism and communicativism are short of adherents, followers and proponents. The safest of submissions to make, along this line of thinking, is that contractarianism has earned for itself an

overshadowing status that is second to none and, that, by implication, leaves or has left both expressivism and communicativism, perhaps, in the abyss and museum of curious historical forgetfulness as if they do not exist in the literature concerning punishment and its justification. Although focus and attention may be sincerely concentrated on contractarianism, it does not follow that one or two statements may be out of place when offered in honour of expressivism and communicativism.

### ***Expressivism as an alternative theory justifying punishment***

The expressivist theory of punishment is deeply rooted in the platform provided by alternativistic thinking because it excludes and excuses itself from trait, traces, tendencies and temperament offered by traditionality and conventional ways of perceiving punishment as the justified instrument and institution in human political society. As an alternative version concerning justification of punishment, it looks away from the idea institutionalization and concentrates on punishment as a form of expression, a kind of language, hence, the term expressivism. This alternative way of looking at punishment and the whole idea of justification was propounded and postulated by Bill Wringe in his book and titled; and several other journal article.

In the same breath, expressivism has equally been articulated, analysed and advanced in the thought and works of Lee Ambrose (2017) and Sifferd, Katrina (2016). For Wringe and others, punishment represents a specific and particular language; punishment is an expression of certain mental state in those who undergo and experience one form of punishment or the other. Thus, there is or seems to be a critical connection and close affinity between our human cognitive representation and cogitative presentation and the kind of punishment such persons are exposed to. In this sense, punishment is a representation and replay of human psychology.

In another sense but similarly related, punishment represents an expression of certain specific and particular behavioural pattern or tendency. In this sense, the expressivist theory of punishment can be branded and rebranded as a behavioural theory of punishment but the behaviour

in question is a reflection of what goes on in our human mental state, platform and template when certain punitive experiences are open to such persons. It will not be incorrect to contend that if punishment exposes a person to a certain state, the most realistic submission to make is not all about the punishment per se but the mental state that is created in the process which is real for the person even more than the physical act of being punished regardless of the kind of punishment that is meted out to such person.

In another related sense, this certain mental state are true of persons who are punished or undergo some punitive measures and actions, it could not be decreed and declared as preposterous imagination to claim that those mental state are strong enough to provoke into existence certain other behavioural manifestations, action and attitudes suggesting the reality of those mental state and, by implication and extensive reasoning, the reality, actuality and factuality of justificatory experiences in terms of whether the punishment is acceptable and accommodated as justified or in terms of rejection.

In other words, the point is that if mental state that are concomitant with punishment are positive and do not lead to extreme behaviours, can one deduce the mental state that are created on account of punishment elicit a sense or modicum of justification? If those mental state are negative, they lead to wrong behaviours which means a basis for justification of such punishment is ensued and brought into being. In a sense, the expressivist theory of punishment is an expression of a broad range of ideas intermingling with theories and thesis in troubled waters and waiting tempers in philosophy of mind.

In this sense, the expressivist theory of punishment has a multi-dimensional significance and monumental contribution to fields of epistemology, metaphysics, ethics, political philosophy, jurisprudence and legal philosophy, philosophy of language and science and so forth. The utility and unquestioned usefulness is unambiguously ground breaking; its lasting impact and lingering serves to break the dead-end concerning theories of punishment and, thus, affords philosophy the opportunity for continuity and the contriving of cogent controversies and debatable discourses that deliberately present and represent philosophy as house and haven of useful

and undying controversy that are healthily second to none.

Apart from being an alternative theory in general to the question of justification of punishment in political philosophy. Expressivism is equally an alternative theory to the deterrence theory in particular, concerning the justification of punishment within the context of traditional theories of justification. Going by this direction and dimension of thought, expressivism is a novel approach in as much as it places due emphasis and diligent attention on the nature of expression adduced and created by punishment, not on the mental state of the criminal who is duly punished for criminal offences committed but, particularly, on expressions that are formed and framed by the public who are conscious of and witnesses to sentences and punishment by state Institutions on crimes, criminal behaviours and criminal.

Indeed, if public expression concerning punishment are anything to go by, they lend credence and are pointers to expression of ideals and not necessarily images and ideas of deterrent. This is because the opinions that are formed and expressed are revelations of the quality and quantity of thoughts, attitudes and temperaments that revolve around justice concerns, sense of equity, principles and policies that reiterate or repudiate equality be the law, sanity, sanctity, and sacredness of states criminal justice system, legal transparency and objectivity, subjective non-interference with procedures and processes of the law, culture and practice of neutrality and transparency and so forth. Given this version and dimension of expressivism, the awareness towards alternativity is underscored and endorsed.

In other words, the beauty of expressivism is the insightful focus on not only how punishment is judged and justified in terms of the mental state shared and expressed by criminals but also the public. So, rather than judge public expression, and show and share opinions on punishment by the criminal justice system as enthused and ensconced on deterrence, what it does is provide key information on how the public thinks, not necessarily act in terms of being deterred.

Thus, expressivism moves justification of punishment away from the region and realm of deterrence to the realm of respectful and recognisable public thought and expression in as much as it is true that the public may never conceive



the idea of punishment as deterrence because it is never in the mind of the public to ever commit the crimes and offences against the state that is being punished. This is why expressivism gains its access into the annals of alternativism and alternative theorisation in political philosophy and jurisprudence.

But, if critical issues are to be raised with respect to expressivism, as an alternative theory, then, the following issues are certainly credible, naturally notable and noteworthy and generally germane. In the first instance, there exists a conflict between internality and externality in the justification of punishment. Indeed, justification is more credible when it is internally induced and construed than when externally done. His conflict expressivism to settle thus leaving the problem of justification of punishment hanging.

Secondly, how do we handle the weight of balance of the credibility between the mental states of the criminal concerning the criminal justice system on the justification of punishment and that of public perception and expression on the same problem of justification of systems of punishment in society? Which one is weightier and more credible? Thirdly, public perceptions about justifying punishment are not and may not be uniform and monolithic. In the fourth sense, expressivism reliance and dependence on mental state as a clue to the justification of punishment may be problematic or may fall in the face of the fact or reality of cognitive closure. How do we open up the mental state of the criminal when the public is cognitively close to such a mental state? In the fifth sense, the issue of justification of punishment is still an outstanding issue that expressivism is yet to answer in terms of the search or the question for an absolute criterion or criteria by which punishment may be justified.

Expressivism is yet to provide that absolute criterion or moral imperative by which punishment may be justified. In the pen ultimate sense, what about the possibility of conflict between the mental state one cannot see and expressive human behaviours that we can see? How do we reconcile or settle, handle and manage these conflicts? For example, expressive human behaviour may be pretentious and, so, may not tally with the mental state they purport to express or represent. Finally, but not least, if mental states are expressive of

punishment, on the part of the criminal, how does one transcend the gap between the expressive mental state and expressive human behaviour that are meant to reflect or represent those mental state.

### ***Communicativism as an alternative test for justifying punishment***

Communicativism is another alternative theory concerning the justification of punishment. Although this theory is distanced from the conventional tradition theories, its separation or being distanced from the traditional theories is partial. This is because it enjoys a sense of resemblance and sameness with the retributive theory in conventional thought. Nevertheless, its beauty and merit consist in the spotlight it places on the significance of punishment to communicate what a criminal deserves. In this sense, it is established on and rooted in the desert theory which states that when a criminal is punished for committing a crime and the crime is legally established and is worthy of being punished for, the punishment for the crime is what the criminal deserves.

Indeed, the statement of communicativism is the view that punishment communicates “the censure or condemnation that offenders deserve for their crimes.” Just like expressivism, communicativism equally draws strength of justification concerning punishment by dwelling on the role and perception of community observers on the justificatoriness of punishment. Bennett (2008) pontificated that this version of communicativism is credibly cogent and concretely comprehensive with the clarity, certitude and conviction generally accepted across divides and among community of scholars. In this sense, “punishment serves to express to the community generally (including the offender and victim) the society’s denunciation of or dissociation from the crime.”

Nevertheless, just like expressivism, communicativism is in its own right a plausible approach but with obvious defect, limit and inadequacies. If punishment is communicative, is it the reality of punishment it communicates? It is important to further state that the problematic of punishment in moral and political philosophy, including jurisprudence, is not about punishment per se; punishment is everywhere but the critical issue is about justification. How does

communicativism explain what punishment communicates as constitutive of justification? What is the connection between what a thing communicates and what communicate justifying what is communicated? Also, is the concept of communication interred in the significance of an absolute moral imperativeness? How is communicativism, the theory of communication, endorsed and ensconced in normativism? And, what is more, must a theory create, endorse or allow a regime of dichotomy or bifurcation in the pathway of justification before such a theory is actually seen or conceived to be morally acceptable, notably normative and absolutely justifiable? Besides, communicativism is hardly distinguishable from traditional theory such as retributivism because it makes serious allusion to such thus denying this theory of a complete alternative status and identity. These and more are some of the pitfalls of the theory of communicativism with respect to the justification of punishment.

### ***The contractarian approach to the justification of punishment***

The contractarian approach to the justification of punishment is legendary because it has a long line of lasting connection with the essential substance of the history of western philosophy. The contemporary significance it possesses is in equal terms, legendary. As a matter of historical fact import interest and involvement, the contractarian theory of punishment is founded on the social contract theory developed in the ancient era by the sophist, articulated into prominence and popularity in modern times by classical philosophers such as Thomas Hobbes, Jacques Rouse, John Locke and ultimately stoutly defended in contemporary times by John Rawls and *et al.* Social contract theory is a theory that originated during the Age of Enlightenment and here, the state has legitimate authority over the individual. As John Locke rightly puts it, the people left the state of nature due to their need for a civil society where their excesses will be curbed and the state will be given the power to punish offenders. Once a civil society is formed, the state is justified in meting out punishment to offenders. The condition is that the state must be the enforcer of the law and punishment must be for criminals who refuse to abide by the law and act opposingly. In the Eastern side of the world, punishment is doled out by the state, to curb

wrongdoings and ensure a stable and secure government.

The contractarian theory of punishment arose from the notion of the social contract theory. In the words of Meagan Nation, for John Locke, given the idea of the social contract theory, which shows that the people consented to be governed by the political authorities, it also gives the people the power to check the activities of the government in case they step out of line and this shows that power belongs to the majority. On his part, Locke opined that the social contract theory is of the view that government exist by the people for the society's common good and also for the protection of the people's rights {2019: 85}.

Away from the above, Alex Tuckness analysed Locke as believing that the notion of punishment requires that there must be a law. John Locke is of the view that the state of nature has the law of nature governing it and it is permitted that an individual "punish" another, in that state. Nevertheless, given the fact that there was a transition into civil society, the power to punish was then handed over to the government {Alex Tuckness, 2005}. Given that Locke believed that the government is derived from an agreement between men to give up life in the state of nature in favour of life in a political or civil society, the power of law enforcement is bestowed on the government or state, by the people, to ensure a safe and stable society.

But, in the words of Celeste, Thomas Hobbes believes that given the fact that humans are naturally self-interested, although rational, they will consent to submit to the authority of a "sovereign" to be able to live in civil society, that is to their benefits and for their interests. Due to the rationality in men, they accept the concept of a social contract which will ensure a better life than that of the state of nature. For Hobbes, since the "sovereign" is given the power to mete out punishment for the infraction of the law, men thus have good, although self-interested reason, to adjust themselves according to the "artifice of morality in general and justice in particular" {Celeste Friend, 2004}.

In addition, Corey Brettschneider, and Rousseau upheld the view that the state punishment outside a social contract cannot be legitimate because each time an issue of punishment arises, assent and agreement will be impossible. For him, punishment is only justified in a society whose

social contract is legitimate {Corey Brettschneider, 2011}. It can be deduced from this that, political authorities are assented to, as meting out punishment to defaulters of the provisions of a contract.

### ***Fichte's approach on punishment***

The Contractarian idea concerning the justification of punishment appears popular and quite appealing and avowedly accommodated in the writings of eminent contractarian philosophers in the history of western philosophy such as the thoughts of the German Philosopher Fichtes.

According to Dean Moyer, Johann Gottlieb Fichte (1762-1814) is of the view that for any person, it is either that the contract does not exist at all but if it exists, it binds such person completely. Here, the basis of the existence of the social contract theory is within the social contract theory {Dean Moyer, 2017}. However, in David James' analysis, of Fichte's theory of punishment, he projected two aims: the first is the "technical aim" which is concerned with putting into place, appropriate punitive measures for punishing criminals, for the sake of ensuring public security and the second aim suggests that, irrespective of the punishment of offenders, a criminal's humanity ought to be respected, in this case, punishment is for the reformation of the criminal.

Fichte argues that opportunity should be granted to the offender to be able to reform himself so that he can become part of the "civil contract" once again and bear his rights as a legal participant of a contract {David James, 2019}. In my interpretation of Fichte's argument, since an individual agrees to the terms of a contract, the contract binds him completely such that when he defaults, a sense of justification for the punishment is automatically founded on his agreement to the terms of the contract. Fichte saw punishment as an opportunity given to the criminal to aid in his reformation because his humanity ought to be respected, criminal or not.

Meanwhile, does this also apply to one who is accused of murder? Is it not permitted to say that a murderer has no atom of humanity in him? How does reformation help in atoning for the wrong done to his victims and their families? No matter how some criminals are punished, sometimes,

reformation is not achieved and this is affirmed by the high rise in criminal operations.

### ***Contemporary contractarian approach: Rawls, Morris and Finkelstein***

Contemporary issues, inquiries, investigations and interrogations concerning the contractarian theory of punishment, are quite fundamental, profound and thought provoking. Inasmuch as it provides the challenging and thorough-going perspectives that expose the controversial substances, contested statements and critical and crucial subject matters that either enervate or, at best, enhance a social and contractual basis on which most modern states have been persistently but perplexingly argued to have originated from and generally seen, conceived and commented to have been founded upon. Some scholars in the contemporary sense can be sighted and discussed as constituting and conveying the contemporary version of contractarian approach to the justification of punishment. John Rawls is a good example. For Rawls, individuals are capable of making impartial judgements and principles, since they can reason from a universal point of view. For him, the moral and political point of view of persons, are discovered impartially. He appealed to this point of view by imagining persons in his theory of the "Original Position" which is limited by "the veil of ignorance". Rawls's "Original Position" is his overviewed version of the state of nature. It is in this position that we discover what is expected of individuals and social institutions, which will enable them to cooperatively live together. In this position, behind the Veil of Ignorance, one's knowledge of his gender, age, status, abilities, talents, disabilities and so on, are denied him. For Rawls, this condition helps the people to formulate and adopt principles that are going to be fair and favourable to them, following the formation of a civil society.

Also, for him, "morally adequate principles of justice are those principles people would agree to, in an original position which is essentially characterized by this Veil of Ignorance" {James Sterba, 1990}. In other to live in a contractarian society that is just, principles are advocated for, by self-interested individuals, in the Original Position behind the Veil of Ignorance. For Rawls, the laws chosen are just, however, legal punishments correspond to moral wrongs: "those who are

punished for violating just laws, have normally done something wrong", hence "a propensity to commit such acts is a mark of bad character, and in a just society, legal punishments will only fall upon those who display these faults" {1972: 314-315}.

Regardless of the novelty in Rawls approach, it can still be challenged. One major challenge to Rawls is a question on the possibility and plausibility of the Original Position and the Veil of Ignorance. Is there any factual record of it? In what realistic situation can the people agree on formulating laws when they are denied their social status, age, gender and the likes?

Another contemporary contractarian with respect to punishment and its justification is Christopher Morris. Morris argues that once they fall into this temptation, then they forfeit some or all of their "moral standing" and the expression of one's unwillingness to respect the "constraint that the contract imposes", is a deliberate commitment of criminal actions {1991}.

Notwithstanding, a challenge is based on the fact that Morris' hypothesis does not take into account, the fate of the victims of the outcome of a criminal's actions. Even though criminals lose some or all of their moral standing, how does it compensate the victims of crime? Moreover, Morris did not satisfactorily account for what form, the loss of one's moral standing, might take.

Claire Finkelstein, another contemporary contractarian theorist, analysed contractarianism according to a version one might call "rational contractarianism". For her, rational contractarianism suggests a model according to which, individuals, on knowing the circumstances of their lives, agree to the provisions of certain social institutions because they see themselves as faring better under the society that is governed by such institutions. In relation to punishment, a rational contractarian approach maintains that the members of a society consent to the outlines of punishment, based on the fact that they see themselves as benefiting from the "deterrent effect" of such system.

In the words of Finkelstein, a contractor gives his assent to the institution of punishment, only if he views himself as benefiting from the effects of punishment and in this case, punishment of violators of the law is voluntary, since a contractor already gave his consent to be punished in the eventuality of his committing a crime. In other

words, he already agreed to be governed by the institution of punishment only because he is going to be a beneficiary of its deterrent effect. For her, one fares better when he already agrees to live under "the threat of punishment" than when he did not agree in the first place {2005: 214-218}. Following from Finkelstein's arguments, one could deduce that the penalties allocated to offenders are predicted, given the initial consent. The practice of punishment is agreed upon by rational agents because there is the belief that there would be cases of defections. It can be affirmed that Claire believed that defections are still within the social contract and defectors already know the sanction for refraining from cooperating.

Could also be the case that Claire's position is just a hypothesis and has no bearing on reality. Nevertheless, Claire did not succinctly explain how one could benefit from the deterrent effects of punishment. Punishment, given its nature, is not supposed to be favourable to offenders.

### ***Political philosophy and the purpose of justification***

Political philosophy is concerned with serious and seasoned analysis concerning human activities in political society. In this sense, the human actions maintain the political settings becomes a thing of interest. To this end, questions concerning such actions are opened to being examined, accessed and interrogated. This interrogation constitutes the input that philosophy offers when it comes to understanding the integrity of action within society. Furthermore, the business of and concern with justification in political philosophy revolves around whether human's actions in the political sphere are fair or unfair, wrong or right, adequate or inadequate, reasonable or unreasonable, rational or irrational and so on and so forth.

Indeed, the justification of actions politically consist in the moral or ethical wordiness that can be ascribed to such actions put up by humans either as a respond to certain policies, practices, or certain structural and institutional behaviours. Conduct and views, on the one hand, or on the other hand, certain defenses that are raised invented and arrogated to such actions in the ultimate sense. So, when human actions in the political sense are considered justified or not, what is critically at stake is the rationality of otherwise, the moral blamed wordiness or otherwise of what may be regarded as human

political actions, policies, practices, behaviour, institutional conduct and the rest.

In a nutshell, in this particular case, the business of justification of punishment in political philosophy consist in the concerned with whether punishment, when meted out in political society is rationally so or otherwise, ethically blame worthy or otherwise when the state carries out such punishment. In the end, justifying punishment theoretically, in the crucial sense consist in identifying the rationality of punishment in each theory of punishment whether in the conventional sense or in the capacity put up by alternatives theories.

### ***Towards a theory of preservationism***

Philosophy advances, develops and makes progress cautiously, carefully and consciously but this it does by dint of critical, rational and reflective method. One theory, and existing theory, is rejected by means of the use of fiercely, ferocious and fiery use of language in the bid to promote and bring into existence a new theory within the community of thinkers and comity of philosopher. Nevertheless, it does not follow by this, that such a new theory is immune from defect. It is this possibility in philosophy that makes the discipline to retain its Pedagogic stability, performing stamina, peculiar survival and social significance. This is what accounts for the spate of theories witnessed in the history of philosophy. As a matter of fact, the temperament of philosophy and the context of its culture does not forbid nor reject any new theory from coming into existence as long as man has not ceased nor refused to be a thinking being. This is because man lives to think and man thinks to live. It is the perennial and persistent engagement in the activity of thinking, what Cartesian metaphysics, logic and epistemology refers to as “The Cogito”, that has informed and necessitated the idea and theory of PRESERVATIONISM.

On its path, the theory of preservationism suggested, in this paper, does not make an absolute claim that suggests that it is in possession of the absolute truth with reference to the justification of punishment. It only makes a claim that punishment has the capacity to preserve human society where it is administered, affirmed and applied because it serves as a way of keeping society from the dangers of crimes and criminal behaviours. Its emphasis is

that society, through its laws, legal system and the focus of its jurisprudence, is never silent over what crime is and the necessity of punishing crimes because there is a society that deserves to be preserved. So, in the first instance, from a preliminary point of view, the theory of preservationism affirms the fact that it is society and the members who make up that society are those that are being preserved when punishment is administered against crime and criminal behaviours. The voice of punishment is, therefore, is the voice of the fact that something about society is being preserved. This tenor of thinking answers the question, in the preliminary sense, about who is preserved and what is being preserved through the agency of punishment. The strength of a theory consists in the capacity of what is entailed in its affirmation, adoption and the answers it provides and presents to traditional questions about punishment that traditional theories fail to account for. The strength of the theory of preservationism is in the fact that it asserts, most prominently, beyond mere assumptions that it is society that is undergoing processes, patterns and procedures of preservation when punishment is affirmed and administered concerning crimes and criminal conducts in society. Crimes do not preserve society; punishment is a reactive attitude against the possibility of society losing their advantage and adventure of being preserved. In this direction, the institution and instruments of law plays, performs and parade a paradigm of potency in ensuring that nothing about society is taken for granted. Indeed, the laws of a society that spells out punishment concerning crimes and criminal attitudes represent and reflect how serious society is about its survival and preservation. Punishment underscores the seriousness of society concerning its preservation and survival. Going by the analysis so far, the methodic clarity of the theory of preservationism is what is attempted in definite and deliberate terms. For example, if the strength of the theory of preservationism is to be underscored, it will mean that some hypothetical propositions ought to be suggested. Hypothetically, the more punishment is emphasized, the more a society is seen as realistically serious and reflectively sensibly significant about its own survival, protection and preservation. Again, where laws are in place, their existence is to preserve society; where laws are not

in place, society stands the risk of being endangered and its preservation encroached upon. Punishment represents the face, frame and form concerning the seriousness of laws. So, along with laws, they ensure the preservation of society that possesses both laws and punishment. If punishment is not administered, societies that make laws seem and look unserious about their laws.

Coming from the perspective of clarity, the detail of the theory of preservationism as far as the justification of punishment is concerned is this: punishment becomes justified if it contributes to the survival, protection and preservation of a society that conceives the need and actually goes ahead to affirm, adopt, administer and apply its utility. Thus, the utility of punishment consists in preserving society. If the goal of preservation is not ensured and outside societal experience, then, its utility becomes questionable as far as the goal of preservation is concerned. To this end, it becomes unjustifiable because the goal of preservation is lacking, absent and missing. If an instrument fails in achieving its functioning capacity, existential objectivism and ubiquitous utility, its goodness and moral worthiness becomes open to sceptical conclusions and disputations that are ensconced in doubt. This kind of fatal fortune and fallacious fate awaits any attempt at justifying punishment but which is not based on the bedrock of preservation. Thus, preservation becomes very key to the whole debate and conversations around what constitutes justification for the institution of punishment. My submission is that the justification of punishment derives from the thesis that preservation of society, in the wholistic sense, is critical, crucial and central to whatever argument is raised in favour of punishment and its justification. In this sense, the concern of the theory of preservationism consists in showing the utility of punishment as far as preservation of society is concerned and, more importantly, that once it is the case that society is preserved through the application of punishment, then that institution of punishment is justified from the moral and legal perspectives.

However, a bit of clarity is needed at this point. I have three issues to clarify. One is that the title of this paper strikes at the useful difference that exists between conventional theories of punishment and the capacity for justification that they carry, bear and express, on one hand, and, the utility of alternative theories and the texts they provide for

what is justifiable, on the other hand. The point is that nothing incongruous, incoherence and incomplete is interred, ingrained and embedded in the title of the paper. Every sense and essence of philosophic meaningfulness is accommodated in other to provide a concrete, specific but convincing basis for the reflective temperament and exercise to be pursued concerning the objective of the paper. The second issue that requires clarification is about the utility and necessity of alternative thinking with respect to subject matter of punishment. Since philosophy has been adjudged as controversial, by that alone, the way has been paved for the existence and convincing template for alternative thinking. The suggestion of "Preservationism" becomes an accommodated possibility within the ambience of alternative thinking. A notable objection against alternative thinking is that it is an attempt at distraction, denial, diversion and deviation from what is mainstream. The substance of this objection is that there is no alternative to philosophy and as such, philosophy ought not to entertain, accommodate nor allow alternative thinking. The error of this objection is that, while it is true that philosophy does not, indeed, have an alternative, yet, it is not true that philosophy ought not to allow alternative thinking. This is because philosophy itself, *ab initio*, was an alternative to ways, means and methods of providing answers to fundamental questions of existence. In third sense, there is the right to fair hearing on the part of any philosophical theory. The substance of this idea draws inspiration from the substance and nature of philosophy itself. All theories have the right to fair hearing as long as what is utilized in accessing such new theories is the temperament of critical reasoning rather than mere moments and manners expressive of patronizing negativity, pathetic attitudinal notoriety, non challant and inactive paradigm in academic and intellectual parading performance and share pessimism. Works and ideas have to be accessed on the basis of their merits: the Deterrence and Retributivist theories of yester years would not have become household names and popular theories, today, if they were not accorded and assigned the right to air their views and perspective on what could constitute the core components of what justification or punishment consist in.

Political philosophy is inundated with several theories of justification of punishment. So far, the engagement in the present concern has been a tested



and thorough focus on some conventional theories of justification concerning punishment and those that have been tagged and termed as alternative theories. Conventional theories have the aura of theoretical convictions that emanates from the ageless concern with how societies have been structured historically. On their part, alternatives theories are overwhelmed with recent and contemporary realities that peculates and permeate political societies. However, regardless of the conventional convictions and the theoretical capacities registered in alternative theories both attempts at justifying punishment theoretically seem to be ensconced in a lingering sense and appreciable doses of limitabilism. I could wish to suggest that the core character of justification of punishment in political philosophy be driven towards a theory of preservationism. In my little thinking, as long as and as much as what actuate, animate and pulsates the concerned about punishment is centred on, revolves around and focuses on the preservation of society, then, punishment ought to be considered as justified. Each of the theories under the caption of conventionality and those under the coverage of alternativity, all do not seem to have centre their concern and fixed their focus on the connection between punishment and preservation of human political society as long as the concerned and debate are repeatedly removed from the preservation consideration, I perceived that the task of justifying punishment theoretically may continue to elude our substantive engagement in political philosophy. The advantage encoded, imbued and embedded in the theory of preservationism is simplicity, straightforwardness and the significant concentration it places not on the criminal alone, the crime in question, but, in the primary and principal senses, in the significance of punishment in persevering society and the intuitional aesthetics and the structural finesse on which society is built, based and blessed. Again, the advantage in the theory of preservationism is the core values it arrogate to human action especially in the ability they possess in either building or destroying society. It means that the theory of preservationism equally places a positive but realistic focus on the connection between human action and the extent to which they can preserve the society if humans choose to serve the society and if they choose

otherwise, the merit in punishing those who choose the later when the nexus of preservation is tempered with. Nonetheless, it does not follow that the Theory of Preservationism advanced, adduced and advocated as a new theoretical frontier in defending the justification of punishment is removed from the corridor, context and concerned of any critique: what the theory seem to enjoy as a basis for its credibility, correctness, compelling completeness and conviction is that, whereas, other theories both conventional and alternatives, only assume the ideal of preservation of society, where and when punishment is applied, affirmed and administered: they all failed in concretely, comprehensively and convincingly asserting, affirming and foregrounding the ideal of preservation.

### Conclusion

What has been attempted, in this paper, is a careful but critical adventure into the canons and concept concerning justifying punishment theoretically. Conventional theories, in their convictions and capacities have been examined, discoursed and debated with a specious eye on the controversies they accommodate and allow. In the other direction are alternative theories and the test of alternativity they encode, express and enlist. In the final analysis, while each of these theoretical coverages have their merit, the obvious and open limits, they naturally carry and convey have not been spared nor side lined. In the end, the paper adopts a theoretical position tagged ‘preservationism’ as a favoured position on which the monumental memory of merit concerning punishment can be maintained and mentioned without any loss of meaningfulness as far as the mindset on the justification of punishment is concerned.

### References

- Alex Tuckness (2005). *Locke's Political Philosophy*. In Stanford Encyclopedia of Philosophy. Accessed on December 9, 2021.
- Aristotle (1977). "The Strengths and Limits of the Retributive Theory of Punishment". In *Philosophic exchange*, Ethics. E. P. Dutton & Co. (eds.). 112: 38-42.
- Barton, A. (2005). "Incapacitation Theory". In *Encyclopedia of Prisons and Correctional Facilities*. M. Bosworth (ed.). Thousand Oaks, California: Sage publications Inc. 2: 463-465.



- Beccaria, C. (1764). "On Crime and Punishment". CreateSpace Independent Publishing Platform.
- Bennett, C. (2006). 'State Denunciation of Crime.' *Journal of Moral Philosophy*, 3: 288–304.
- Bentham, J. (1830). *Rationale of Punishment*. London: Robert Heward, Cambridge: Cambridge University Press.
- Brettschneider, C. (2011). "Rights Within the Social Contract: Rousseau on Punishment". In *Law as Punishment/Law as Regulation*. Austin Sarat, Lawrence Douglas and Martha Merrill Umphrey (eds.). Stanford: Stanford University Press.
- Finkelstein, C. O. (2005). "A Contractarian Approach to Punishment". In *The Blackwell Guide to the Philosophy of Law and Legal Theory*. Martin P. Golding and William A. Edmundson (eds.). pp 207-220, Oxford: Blackwell Publishing.
- Finkelstein, C. O. (2011). "Punishment as Contract". In *Faculty Scholarship at Penn Law*, 995.
- Flew, A. (1954). "The Justification of Punishment". In *The Journal of Philosophy*. Vol. 29, Issue (III): 291-307.
- Friend, C. (2004). *The Social Contract Theory*. In Internet Encyclopedia of Philosophy. <https://utm.edu/soc-cont/>. Accessed on December 9, 2021.
- James, D. (2019). "Crime, Contract and Humanity: Fichte's Theory of Punishment". *British Journal for the History of Philosophy*. Vol. 30, Issue 4: 609-625. Special Issue on Post-Kantian Practical Philosophy, 2022.
- Kant, I. (1887). "The Retributive Theory of Punishment". *The Philosophy of Law: An Exposition of The Fundamental Principles of Jurisprudence as The Science of Right* (ed.). Edinburgh: T & T Clark.
- Lee, A. Y. K. (2017). "An Expressive Theory of Punishment". *The Philosophical Quarterly*, 67(267): 418–421.
- Maiese, M. (2004). "Retributive Justice". *Beyondintractability.org*. Accessed on October 4, 2021.
- Mohanty, A. (2015). "Retributive Theory of Punishment: A Critical Analysis". *Academike - Articles on Legal Issues*, <https://www.lawoctopus.com>. Accessed on October 4, 2021.
- Morris, C. W. (1991). "Punishment and Loss of Moral Standing". *Canadian Journal of Philosophy*, 21(1): 53-79.
- Moyar, D. (2017). *Fichte's Organic Unification: Recognition and the Self-Overcoming of Social Contract Theory*. Cambridge: Cambridge University Press.
- Nation, M. (2019). "Locke's Social Contract: Is It Legitimate?" *CLA Journal*, 7: 85.
- Rawls, J. (1972). *A Theory of Justice*. Harvard: Harvard University Press.
- Rousseau, J. J. (2021). *The Social Contract*. <https://www.sparknotes.com/Rousseau/section2/>. Accessed on December 11, 2021.
- Siddique, A. (2005). *Criminology*. Lucknow: Eastern Book Company.
- Sifferd, Katrina (2016). "Wringe, Bill. An Expressive Theory of Punishment". *Ethics*, 127(1): 319 -323.
- Singh, M. (2015). "Theory of Relationship Between Law and Morality". *Legal Service India.Com*, <https://relation between law and morality or Ethics.html>. Accessed on October 8, 2021.
- Stafford, M. C. (2016). "Deterrent Theory". *The Blackwell Encyclopaedia of Sociology*, Wiley Publishing.
- Sterba, J. (1990). *Ethics in the History of Western Philosophy*. London: MacMillan Publishing/St. Martin's Press.
- Thomas, H. and Pogson, S. W. G. (1967). *Leviathan*. Oxford: Clarendon Press.
- Walen, A. (2014). "Retributive Justice". *The Stanford Encyclopaedia of Philosophy, Plato*. *Stanford.edu*. Accessed on October 4, 2021.
- Wright, V. (2010). *Deterrence in Criminal Justice: Evaluating Certainty vs Severity of Punishment*. Washington, DC: Sentencing Project.
- Wringe, B. (2016). *An Expressive Theory of Punishment*. London: Palgrave Macmillian.