

Arthur Shuster. *Punishment and the History of Political Philosophy: From Classical Republicanism to the Crisis of Modern Criminal Justice.* University of Toronto Press 2016. 192 pp. \$50.00 CAD (Hardcover ISBN 9781442647282).

As the title indicates, the book deals with crime and punishment from the perspective of political philosophy (rather than criminology, sociology or history). Rather than value-neutral, the approach is normative in the sense that it is fundamentally concerned with the question of the purpose or end of punishment and with its moral justification, and in the sense that it is situated within the tradition of Western philosophy and larger themes of virtue, law, and the good society (5). Sounding the customary alarm as to the crisis pertaining to a subject matter, the book sets out to examine the fundamental questions of criminal justice. According to Shuster, the best way to understand this crisis is by examining the shift in the history of Western political thought from classical republicanism to modern natural right and contractarianism (11). Consequently, the book proceeds in a chronological order, from Plato, through Hobbes, Montesquieu, Baccaria and Kant, to Foucault.

One of the central claims of the book is that ‘unlike classical republicanism, modern natural right, in its original formulation as the inalienable right to defend one’s life and livelihood, necessarily implies a wholesale rejection of retributive punishment’ (11). This, according to Shuster, necessitates a thorough examination of the classical political concept of punishment as offered by Plato’s *Laws*, so following the Introduction, the book begins with Chapter 1 dealing with ‘The Problem of Punishment and the Limits of Reform’ in Plato’s *Laws*. According to Shuster, Plato’s *Laws* is distinguished from other, more philosophical dialogues such as the *Republic* and *Statesman*, in that it focuses on a civic and legalist view of political life, and accordingly accepts as fundamental a respect for the law and for its authority (19). What follows is a fairly detailed analysis of some of the aspects of the dialogue, detailed enough to warrant several linguistic breakdowns of the key concepts typically found in Platonic scholarship. According to Shuster, the logic of civic-republicanism, as provided by Plato’s Athenian Stranger, requires retributive (non-therapeutic) punishment and regards it as morally desirable. ‘In a political community ruled by laws rather than by enlightened experts [as in the *Republic*], the correction of offenders must come under legal regulation no less than any other facet of social life’ (49).

Chapter 2, titled ‘Modern Natural Right and Punishment in Hobbes’s *Leviathan*,’ looks at Hobbes as a foundational modern political thinker, the first theoretician to attempt a systematic normative theory of punishment consistent with modern natural right (which is the basic principle of modern politics) (51). This chapter begins by analyzing Hobbes’s derivation of the right to punish from the fundamental natural right to self-preservation, and argues that this becomes the basis of all modern punishment theories until Kant. It next discusses the aspirational or humanizing aspect of Hobbes’s purely deterrent theory of punishment, the rational limits of the sovereign’s punishing power, and the collision between the sovereign’s right to punish and the criminal’s right to self-preservation. The chapter concludes by arguing that Hobbes’s attempt to distinguish theoretically between a punishable criminal and an enemy in the state of nature fails.

Chapter 3, on ‘Liberalizing the Criminal Law: Montesquieu and Baccaria,’ argues that Montesquieu’s insights into the malleability of human nature and the effect of commerce led him to conclude that the administration of punishment in modern societies can become considerably milder than Hobbes had anticipated. Often hailed as the father of classical liberal criminal law, ‘Montesquieu’s endorsement of retributive punishment was qualified by his commitment to liberty and by his appreciation of the affinity between retribution and despotic government. Consequently, he seems to have attempted to continue Hobbes’s rhetorical project of transforming the popular idea

of punishment by contriving to limit the scope or application of the principle of retribution as much as practicable” (89). Following in the footsteps of Montesquieu, Italian philosopher Baccaria published a seminal treatise *On Crimes and Punishment* (1764), which influenced thinkers and politicians as varied as Voltaire, Bentham, and Thomas Jefferson. Although best known for his opposition to capital punishment, Baccaria’s most significant theoretical contribution, according to Shuster, was his attempt to ground the right to punish in the social contract of liberal theory (90). Hobbes and Montesquieu found the origin of the right to punish in nature rather than in human convention, and Baccaria departs from this view. To cite Shuster citing Baccaria: ‘It was necessity ... that constrained men to give up part of their personal liberty; hence, it is certain that each man wanted to put only the least possible portion into the public deposit, only as much as necessary to induce others to defend it. The aggregate of these smallest possible portions of individual liberty constitutes the right to punish; everything beyond that is an abuse and not justice, a fact but scarcely a right’ (91).

In ‘Retribution and Individual Autonomy in Kant’s *Rechtslehre*,’ the author attempts to demonstrate that a defining moment in the development of the idea of modern criminal justice occurs in Kant’s *Rechtslehre*. ‘In that work, Kant precisely identifies the threat posed to individual dignity and autonomy by modern criminal justice (as articulated by Kant’s predecessors) and argues that only the principle of retribution can protect the individual from the paternalistic tendencies of utilitarian punishment’ (14).

The final chapter, titled ‘Foucault and the Crisis of Modern Criminal Justice,’ reexamines the previous four chapters from the perspective of Foucault’s notorious critique of the modern penal system in *Discipline and Punish*. According to Shuster’s reading of Foucault, ‘the new mode or correction has the *appearance* of mildness, having exchanged corporal punishments for incarceration, when in fact it has only adopted new methods that are the more oppressive for being insidious’ (116). According to Shuster, Foucault’s analysis reveals that the supposed harmony between general utility and moderation, which the penal reformers had taken for granted, has proved to be illusory (122). Foucault’s critique of modern criminal justice theory, despite its faults, remains crucial if for no other reason than because of its emphasis on the role of politics in any theory of punishment or criminological analysis.

In sum, in taking the decidedly historical approach, as the author puts it, ‘the present book offers an alternative to the general tendency of punishment scholarship in recent decades – most of which is authored by legal scholars and ethicists – to oversimplify or altogether abstract from the political dimension of critical scholarship’ (14). The book is, indeed, steeped in theory and as such should be an attractive read for scholars and academics dealing with political theory, social philosophy, and penology. The book is relatively brief, with chapters that are not too extensive; although at times complex, the overall quality is that of approachability and readability, so a graduate student or a law student could easily find it useful and insightful. All in all, I highly recommend the book.

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