In Defence of *Punishment* and the Unified Theory of Punishment: A Reply

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Introduction

Punishment is a major contribution to contemporary debates concerning the philosophy of punishment. The book advances three overlapping aims. The first is to provide the most comprehensive coverage of this fast moving field. While there are several excellent introductions available, they have become dated without substantive coverage of recent work on communicative theories of punishment or restorative justice, for example (Honderich 1969; Walker 1991). A second aim of the book is to advance a new theory—the 'unified theory' of punishment—as a distinctive and compelling alternative to existing approaches. The third and final aim is to consider the relation of theory to practice in order to highlight the conceptual as well as more practical challenges each penal theory faces.

Mark Tunick raises several concerns with my analysis in *Punishment*. While noting is 'in many respects an engaging work', Tunick expresses reservations about my treatment of several penal theories, especially retributivism (26).[1] He is especially critical of my unified theory of punishment and he has doubts even of the possible coherence of such an account. These are important issues and I am delighted to have this opportunity to clarify my position. I will begin by addressing Tunick's criticisms of my treatment of some penal theories in general before turning to the central issue about the plausibility—even possibility—of a unified theory of punishment. Much of the concerns raised appear to rest on misinterpretations of my arguments, a problem that I have encountered before from Tunick in his review of my previous book which I address in my conclusion below.

The Philosophy of Punishment

The first and primary aim of *Punishment* is to provide the most comprehensive critical introduction to the philosophy of punishment. This aim is clearly met although it was no easy task as my publisher will attest given the extra time required to complete the book: while published in 2012, the original publication date was three years before so hardly 'written in haste' as Tunick suggests (26).

Most of the book is split between two types of penal theories. I call the first set 'general theories' because they largely justify punishment in terms of a single purpose, such as retribution, deterrence, rehabilitation and restorative justice. For example, deterrence proponents defend different accounts of how their particular brand should be defended, but each claims the purpose of punishment is to deter. The second set is 'hybrid theories' which attempt to bring together two or more purposes, most commonly retributivist desert and deterrence. This part of the book examines Rawls, Hart and their mixed theories of punishment, expressivism (which includes the communicative theory of punishment) and my distinctive unified theory of punishment.

The purpose of these sections is to critically examine each of these seven theories of punishment. The discussion aims to reveal the diversity within each—such as the varieties of different views of retributivism or deterrence—and the problems that challenge each theory. Some of these problems are well-known. One example is the problem that deterrence proponents might justify the punishment of an innocent person if it enabled deterrence (Brooks 2012: 38—40). A second example is the problem of the unreformable offender for rehabilitation theories: if punishment is justified for its rehabilitative effects, can it justify imposing punishment on offenders resistant to them? (Brooks 2012: 61—62).

[1] All references in the text refer to Tunick (2014). My comments relate to only *some* of the problems and mischaracterisations I find with his reading of *Punishment* and so they are not the only points of disagreement between us in my view.

Many other problems identified in *Punishment* are much less known. One is the problem of time and changing effects for deterrence (Brooks 2012: 41—41). This is the problem that what may deter today may not do so tomorrow. Whatever knowledge we have of deterrent effects (if any) is always knowledge of the past where the owl of Minerva takes it flight at dusk. The deterrent potential of any punishment is always in flux and subject to constant change. Another issue is the problem of multiple meanings for expressivist theories of punishment (Brooks 2012: 109—110). Expressivists claim punishment should be justified, at least in part, as an expression of public disapproval. However, any message that is 'expressed' is likely to be more a collection of voices disapproving of a crime for different reasons and these reasons may not cohere—which undermines the ability of any punishment to communicate a sufficiently clear intended message to offenders. And so on.

A Debate about Retribution?

Tunick is critical about my discussion of other penal theories, especially retribution. He claims my characterization is 'less than charitable' and this is because he misrepresents my arguments (5). For example, Tunick states that my view is that retributivists are non-consequentialists (5). He rejects this view and claims that so do I: 'Later [Brooks] will say it is really only "traditional" retributivists who reject appeals to consequences and that a retributivist *can* regard consequences as relevant' (5).

This criticism is based on several mistakes. Tunick fails to recognise that my discussion of retributivism in my chapter on 'Retribution' is of what I call 'the standard view'—which I also identify as 'traditional retributivism' on the same page (Brooks 2012: 33). This standard and traditional view of retribution is sometimes referred to as *positive* retributivism where desert is both necessary and sufficient for punishment (Brooks 2012: 33). Tunick is mistaken to claim my discussion of the standard view of retributivism is something different from its 'traditional' rendering. Tunick cites a passage in my second chapter on 'Deterrence', but I do not claim the standard view of (positive) retributivism regards consequences as relevant: 'Retributivists, on the standard view, would punish the undeterrable because punishment is deserved. Future consequences are irrelevant' (Brooks 2012: 40).

My focus on the standard view of retribution as positive retributivism is not by accident. This chapter is within the 'general theories' section of my book focussing on penal theories justifying punishment in relation to a single purpose (*e.g.*, desert, deterrence, etc.). Positive retributivism is not the only variety of retributivism. I make this clear upfront stating '[r]etributivism is a rich, venerable tradition with a variety of supporters who each defend different retributivist variations' (Brooks 2012: 15). One such variety is *negative* retributivism where desert is necessary, but not sufficient, to justify punishment which allows for additional factors to become relevant. I am clear that my primary discussion of negative retributivism is rightly discussed in a later section of the book covering hybrid theories of punishment. I state that it is 'an important break from traditional retributivism' focussing on it over several pages clarifying how it is understood and why it is a hybrid view of punishment (Brooks 2012: 33, 96—99). So while I acknowledge retributivism is understood in different ways, my main focus on (positive) retribution is consistent throughout.[2]

[2] Tunick misrepresents my views about negative retributivism as well. He claims that 'Brooks knocks down negative retributivism because it denies "any" link between punishment and desert' and argues this is not true of all negative retributivists. But this is not what I argue. Consider the very passage Tunick cites in context: 'the positive retributivist *must* punish a deserving criminal: if the criminal is not punished, then he will not receive what is deserved. Negative retributivists are not compelled to punish deserving persons: they need only *not* punish *un*deserving persons. [¶] Negative retributivists avoid the problem of how to link crime and punishment

This brings us to a further, related misreading. Tunick says: 'The retributivist answer to why we should punish is, [Brooks] says, that we must respond to evil by inflicting pain. Why? 'Pain is a necessary response to evil actions because God has decreed it' (6). Tunick cites this sentence from a section where I state that 'there are several different ways retributivists determine punishment in relation to desert. This list is not exhaustive' (Brooks 2012: 26). I consider various views from Kantian strict equality, punishment as correcting unfair advantage, proportional retributivism and others (Brooks 2012: 26—34). These are each different ways in which some retributivists understand the link between desert and proportionality. The sentence Tunick highlights is a summary of the view of St Paul, who exemplifies the view that the guilty should suffer pain (Brooks 2012: 26). Nowhere do I claim that this is what all retributivists do or even should defend this position. Beyond a brief comment in my chapter on capital punishment on its historical origins, the only references to God anywhere in the main text is in this single paragraph. Yet, Tunick swiftly takes this view to be *my* understanding of retribution. Such a seriously flawed and uncharitable reading is simply baffling. Tunick wrongly claims that I argue all retributivists 'rely on a religious belief about what God decrees' (6) or 'because God demands it' (7, 14). This is not my view of retributivism nor punishment more broadly—and nowhere supported by any careful reading of my text.[3]

Furthermore, Tunick is especially mistaken to argue my rejection of (positive) retribution as a defensible theory of punishment is because any judgement of a crime's moral wrongfulness is a matter of personal conviction (6). In fact, my central objection is to (positive) retributivism's legal moralism. My rejection of legal moralism is clear from the book's introduction and noted consistently throughout (Brooks 2012: 6—10, 22, 57, 111—13, 129, 138—39, 218—19, 237). I argue that the retributivist commitment to legal moralism undermines its ability to be applicable for all crimes we would to include in our criminal law. Perhaps Tunick wishes to defend legal moralism against my critique. But he nonetheless fails to acknowledge a crucial and consistent position defended throughout the book.

Comments on Non-Retributivist Theories

Tunick claims 'there are some serious deficiencies' in my account of 'forward-looking or consequentialist theories' (8). His criticisms once again rest on significant mistakes both philosophical and interpretive.

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through desert by taking the back door: they deny that any such link need exist' (Brooks 2012: 34). So my argument is not—contrary to Tunick—that all negative retributivists deny any link, but rather whether they choose to justify and impose punishment may depend on factors beyond desert alone. Note that the section discussing negative retributivism is not discussed by Tunick here which raises questions about why it was overlooked.

[3] In a footnote, Tunick rejects my criticism of proportional retributivism (6n6). He says my argument is 'puzzling', but is it? Suppose we create *separate* lists of crimes and of punishments without regard to the other. Proportional retributivists next rank items on each list from the most serious or severe to the least serious or severe. For example, a list of crimes like rape, murder and illegal parking might be ranked murder, rape and illegal parking. Likewise, a list of punishments such as lifetime imprisonment, a £50 fine and 15 years imprisonment might be ranked lifetime imprisonment, 15 years imprisonment and a £50 fine. Proportional retributivists then connect them linking the most serious offence with the most severe punishment working down the list. On the example here, murder would be punished by lifetime imprisonment, rape by 15 years imprisonment and illegal parking by a £50 fine. My criticism is that the relationship of crimes to punishment is external and so not connected internally to an offender's desert. If the second most severe punishment on our list was a £51 fine or lifetime imprisonment, then this would be the punishment for rape: what is doing most of the work is not the desert of the individual offender, but rather external considerations about lists that might differ from one person to the next. Moreover, it is surely puzzling why one, and only one, crime can and should be linked to one, and only one, punishment (Brooks 2012: 31—33).

One example is his criticisms about my chapter on deterrence. Tunick states that I wrongly conflate incapacitation with deterrence. For Tunick, 'to deter me is to affect my will' (8). But if he read my chapter more closely, he would acknowledge that I argue that deterrence is about crime reduction and so 'may take several forms, such as fear, incapacitation, and reform. The first form is the traditional understanding' (Brooks 2012: 37). For Tunick, a person is only deterred from a crime where he chooses against criminality because she has performed a cost-benefit calculation. But why think this is the only way to prevent individuals from engaging in crime? The word 'deter' means not only to dissuade another from doing something, but also to prevent an occurrence. The former is what most commentators normally refer to for sure—and so do I in virtually all comments in the book—but my aim is not to restate general views, but to critically challenge them and reveal new insights.

Tunick next claims that the statistics used in one part of the book are treated differently elsewhere:

> Brooks argues that deterrence fails as a general justifying aim of punishment empirically because at best the deterrent effect is a 2—5% reduction in crime. At first he correctly reports that according to one study this is the effect of a 10% increase in the prison population, but he later wrongly implies that it is the entire deterrent effect of punishing and not merely the marginal effect of the 10% increase (9).

Tunick is incorrect to claim the 10% figure is (or is supposed to) relate to the same things. After arguing that 'the big problem for deterrence theories is that punishment does not appear to have much, if any, confirmed deterrent effect' where none of the claims made are challenged by Tunick, I conclude this section of the chapter on deterrence stating that 'not all studies have failed to find substantive deterrent effects' although they 'often conclude that these effects are modest at best' (Brooks 2012: 42, 44). This is where I first state the 10% figure reported by Tunick. But the second mention of a 10% figure *is about a different study and different issue* in my chapter on rehabilitation: 'studies have found that reconvictions may be reduced 5—10 per cent through a targeted rehabilitative treatment programme' (Brooks 2012: 59). Tunick claims the studies I draw on—supporting the first statement—do not support my second statement and so he claims I am interpreting the same studies in different and inconsistent ways. This is incorrect: the second claim is about a different issue and studies by entirely different scholars which Tunick fails to notice.

Tunick states that another of my criticisms about deterrence 'is also suspect' (9). He says: 'Brooks concludes that punishment cannot have "a" deterrent effect where citizens do not know how crimes might be punished' (9). But what do I *actually* argue?

After considering empirical research including the fact 'there is little evidence to suggest that criminals weigh costs and benefits in the way that many deterrence models assume' (and which Tunick continually employs), I argue that 'deterrence may assume too much' about the range of information that citizens must possess about the criminal law, likelihood of conviction, possible sentences, etc. that undermines the claim that there is 'a' single deterrent effect because offenders have little more to rely on 'than guesswork' (Brooks 2012: 46). I then say:

> Punishment fails to serve its deterrent function where citizens do not know what is criminalized. Perhaps punishment might have a more limited deterrent function on a crime-by-crime basis … Citizens cannot be deterred from crimes that they are unaware of … The problem is that punishment cannot have a deterrent effect where citizens do not know how their crimes might be punished (Brooks 2012; 46).

The context makes clear that I do not deny possible deterrent effects by citizens on a crime-by-crime basis and in the book I claim this can be possible even where citizens make judgements based on mistakes. But I rightly reject the idea that punishment can have a deterrent effect for crimes the public is unaware of and that there cannot be one general effect for all where each person may react differently with various degrees of accurate information.

Tunick argues that my 'discussion of expressivism serves as an example of how the book can at times mislead' (27). This is without merit. Consider his two key criticisms. First, Tunick claims I argue Feinberg regards prison 'as an essential feature of expressive punishment' (27).[4] But, in fact, I claim that expressivism is 'best understood as theories of justified imprisonment…because they often do not explicitly address the justification of non-prison forms of punishments' (Brooks 2012: 114). Secondly, Tunick states that I wrong associate 'expressivism with rehabilitative theories' and so fail to recognise that 'there are surely expressivists who would not think their views should be grouped with rehabilitative theories' (27—28). But, in fact, the comments cited refer to my discussion of expressivist theories, such as Antony Duff who claims 'punishment should be understood, justified and administered as a mode of moral communication with offenders that seeks to persuade them to repent their crimes, to reform themselves, and to reconcile themselves with those they have wronged' (Duff 2001: 115—16, cited in Brooks 2012: 116). So I appropriate note and discuss expressivists who do include rehabilitative elements, but nor do I claim that all expressivists do so (Brooks 2012: 115—16). So if Tunick is worried that I think all expressivists are rehabilitative theorists in disguise, this concern is misplaced.

The Return of Minerva's Owl

This is not the first time that Tunick has mischaracterized my views: he previously published a similarly uncharitable review of my last monograph (Tunick 2009, see Brooks 2013: 174—77). Tunick claims my *Hegel's Political Philosophy: A Systematic Reading of the Philosophy of Right* makes any number of interpretive mistakes without carefully considering—or mentioning—my evidence (Brooks 2007). For example, I argue that Hegel's theory of punishment is not retributive, but instead provides us with a penal theory that attempts to bring together elements of retribution, deterrence and rehabilitation into a coherent framework (Brooks 2007: 39—51, see Brooks 2004). Part of my evidence is that previous interpretations by other Hegel scholars, including Tunick, do not make best sense of Hegel's comments about punishment in the *Philosophy of Right*. I argue he offers a passage in his *Science of Logic* that is coherent with his comments about punishment, it explicitly endorses a non-retributivist theory of punishment and it has not been mentioned in any discussion of his views:

> Punishment, for example, has various determinations: it is retribution, a deterrent example as well, a threat used by the law as a deterrent, and also it brings the criminal to his senses and reforms him. Each of these different determinations has been considered the ground of punishment, because each is still not the whole punishment itself (Hegel 1999: 465).

For Hegel, punishment is neither retributive, preventative nor rehabilitative, but a combination of the three.[5] This opens up the possibility for what I call a 'unified theory' of

[4] Tunick cites as evidence a page where Feinberg is not named (Brooks 2012: 115).

[5] Anyone familiar with Hegel's philosophy should be unsurprised—and perhaps even expect—Hegel to claim different positions are problematic insofar as they are one-sided and that we should endorse bringing together three different perspectives into a new view that unifies them and makes their opposition disappear. This is not

punishment (Brooks 2012b, Brooks 2013: 174). I argue it is unsurprising to find—if only we were to look for it—that Hegel's first interpreters in English, the British Idealists, held a similar view of punishment (Brooks 151n48, see Brooks 2003, 2010, 2011, 2014a). This is forcefully stated in ways that echo Hegel's comments above, such as by T. H. Green: 'It is commonly asked whether punishment according to its proper nature is retributive or preventative or reformatory. The true answer is that it is and should be all three' (Green 1986: 138). Tunick's original critique fails to acknowledge these key points and he offers no mention of the passage by Hegel in his review or his earlier work on Hegel's punishment (Tunick 1992, 2009). This is unfortunate because it appears to directly undermine his position.

This failure to engage or acknowledge my central arguments is at work again in Tunick's review of *Punishment*. For example, I reprint Hegel's statement in his *Science of Logic* once again and identify it as 'the best classic statement' of the unified theory of punishment (Brooks 2012a: 126). I then argue that while Hegel first identifies this view, I will defend his position within a new framework to render it more compelling (Brooks 2012a: 127). Hegel's philosophy of punishment—and its reformulation by the British Idealists—plays a crucial role for my views throughout the book and rooted in a text which Tunick has reviewed before.

It is difficult for me to understand why Tunick selectively references Hegel several times without once acknowledging the arguments I offer in *Punishment* to demonstrate Hegel defends a distinctive, 'unified theory' of punishment that is at the core of my renewed defence of this theory (7, 14—15). Yet again, Tunick fails to engage with my substantive arguments and nor does he consider the passage from the *Science of Logic* used a second time as a central part of my discussion. He does draw on comments in one section of his *Philosophy of Right* that I cite in *Punishment*, but does not engage with my interpretation and instead focuses on a sentence in the *Philosophy of Right*'s addition to a section written by Hegel's student H. G. Hotho which claims that crimes cannot go unpunished (14). Tunick takes this to be unequivocal evidence that Hegel is a 'positive retributivist': for Hegel, desert is necessary and sufficient for punishment although the form punishment might take can be affected by factors other than desert.

The problem for Tunick here is that this claim runs contrary to what Hegel says in the *Philosophy of Right*. For example, Hegel defends the right of the monarch 'to pardon criminals'—and so desert is *not* necessary and sufficient for punishment after all (Hegel 1991: 325).[6] In his review of my previous book, Tunick acknowledges Hegel's claims in favour of pardons discussed in that book (Tunick 2009: 451; Brooks 2007: 101, 107—9). It is unclear how Tunick can claim *both* that Hegel justifies the need for punishment for all crimes *and* that Hegel defends the use of pardons where crimes would then go unpunished. My unified theory has an answer: if the purpose of punishment is the restoration of rights, then pardons may be justifiable insofar as they better serve this purpose than punishment (Brooks 2012: 130). Perhaps Tunick rejects this view, but he must engage with the reasons offered in support of it.

The Unified Theory of Punishment

The central conclusions of my chapters in *Punishment* on retribution, deterrence, rehabilitation, restorative justice, mixed theories of punishment (such as Rawls's and Hart's)

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to say Hegel is correct or most compelling to argue in this way, but it is a famously characteristic feature of his argumentative structure: why think it does not apply to our understanding of punishment, especially when he appears to explicitly defend such a view? Perhaps Tunick disagrees with Hegel, but this is no reason to deny he makes these claims.

[6] See Hegel (1991: 325): 'The sovereignty of the monarch is the source of the *right to pardon* criminals'.

and expressivism is to demonstrate that each captures something important about punishment while also suffering from serious problems. About everyone agrees we should never punish the innocent, but this does not mean we must endorse the legal moralism common to most varieties of retributivism concerning desert. Likewise, many people might find a criminal justice system that made crimes more likely a major concern although it is difficult, if not impossible, to provide unambiguous evidence supporting deterrence. While each theory of punishment supports one or more highly attractive goals, they each run into difficulties. So one question is whether it is possible to bring together these goals into a new, coherent and unified framework while avoiding the problems each theory faces.

I argue next that this is not a mere theoretical exercise, but an issue of significant practical importance. This is because the sentencing guidelines commonly used in jurisdictions across the United States, the United Kingdom and elsewhere are influenced by what I call the 'penal pluralism' found in the Model Penal Code which claims the general purposes governing punishment include elements of retribution, deterrence and rehabilitation. The issue is that we require a new framework that can bring these different purposes together in a unified way to avoid endless conflicts about the roles each should play. So the aim of the unified theory of punishment is to build off of earlier work by Hegel, Green and other British Idealists to show it is theoretically possible and compelling with the result of offering a new model for how penal pluralism might operate in a coherent framework.

Tunick claims that I appeal to the metaphor of baking a cake to explain why 'we require a coherent pluralism' (15). I don't. The motivation behind why we require a coherent and unified pluralism is to address the problem of different penal principles clashing in the absence of such a framework.[7] My brief analogy of baking a cake is used, in fact, in my discussion of which principles should be included. I ask of the Model Penal Code: 'Why should *any* of these goals be included?' and claim the answer appears to be 'that each is intuitively attractive on its individual merits' (Brooks 2012: 132). The issue is that we lack a sense of unity bringing together these penal goals.

I argue that unity may be possible through understanding crime as justified as an infringement of our rights where punishment aims at their restoration.[8] This allows me to argue that punishment cannot then be justified if the criminalisation of the offender is not justified in this way. This also allows me to condemn punishments that are counterproductive to reducing recidivism (Brooks 2012: 130—32). Echoing comments made by Hegel and British Idealists, I argue that punishments should be proportionate to the right infringed by a crime whereby some rights are more fundamental than others and so deserving of a more significant response. There will be inevitable debate about how this should be operationalised, but note my unified theory of punishment unifies different penal purposes (*e.g.*, desert, deterrence, etc.) by appealing to a new overarching purpose of rights restoration. So the unified theory of punishment addresses penal pluralism in a coherently structured way.

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[7] See Muir (2014: 4—5).

[8] Tunick claims my unified theory 'would seem to support the use of wildly disproportionate punishment, such as that meted out by Alexander's "Doomsday Machine," which zap into oblivion people who intentionally commit a crime no matter how serious the crime in order to achieve a society with zero crime' (19). This is a gross misreading of my views. Not only do I rule out the possibility of zero crime—even for deterrence theorists—I nowhere argue that any criminal should be zapped into oblivion (Brooks 2012: 44—45). Instead, punishments are to be proportionate to the right infringed. Curiously, Tunick notes my support for the 'stakeholder society', but fails to notice my claim that 'capital punishment renders the stakeholder society impossible' (Brooks 2012: 170). Nor do I accept Tunick's view that a juvenile with a fatal disease 'has no future stake in society' (21), as the recent case of Stephen Sutton MBE makes out (see url: https://www.justgiving.com/stephen-sutton-tct/).

One illustration of the unified theory of punishment in practice is what I call *punitive restoration* (Brooks 2012: 132, 136, 142—43, 147, 196—98; Brooks 2014b).[9] This is a modification of restorative justice practices. I argue that restorative justice gets much right: it demonstrates how bringing together relevant stakeholders can lead to higher participant approval and reduced recidivism at much reduced costs. One problem is faces is that relevant stakeholders include the public—'we' have a stake in outcomes and not only the victim or offenders—so I argue for a conference format bringing together victims, offenders, their support networks and the public and I'm critical of the prevalence of victim-offender mediation instead of conferencing. A second problem for restorative justice proponents is their outcomes are too limited because they largely rule out prison and other forms of hard treatment and this, in turn, limits their applicability to more cases beyond relatively minor crimes often by juvenile offenders. The reason behind this is strong: namely, that prisons often make situations much worse. I argue this calls for reforming our prisons so that they better enable restoration in the situations where it may be appropriate. This more 'punitive' restoration is permissive of more punitive outcomes, but with the aim of embedding restorative practices much deeper into the criminal justice system and so making the system less punitive overall. It also unifies different penal goals, such as desert, crime reduction, rehabilitation and others, within a framework guided by the overarching goal of restoring rights. Punitive restoration is one example of what a unified theory of punishment might look like in practice.

Part of the analysis is that *one* of the many reasons to support punitive restoration is it offers a new way to improve public confidence in the criminal justice system without being populist (Brooks 2014c). This is a significant challenge on the minds of any serious policy-maker because often these populist proposals may undermine the gains made in crime reduction: California's 'three strikes and you're out' law is one of many such examples. So policies should aim to improve public confidence without being merely populist. Tunick is critical of the few comments made about public opinion and punishment, but his highlighting of where I provide 'one' of my reasons for or against a view is hardly to provide the full picture (20—21). Perhaps the public's views should not count at all, but such an account would be unrealistic and so readily dismissed by any serious policy-maker—and rejected by Hegel as well (Hegel 1991: 250—51).

Finally, I defend a model of stakeholding to combat criminal offending. I note that the various and often overlapping risk factor for offending have something in common. These factors include unemployment, financial insecurity, housing insecurity and drug and alcohol abuse among others. The idea is that these risk factors can help us identify persons at greater likelihood of future offending: if true, then it is important such factors are tackled in advance and that punishment does not render persons even more at risk. I argue our approach to addressing risk factors should be done with the aim of enabling stakeholders. This is because of my hypothesis that persons who see themselves as having a stake in society will be less likely to engage in criminality all things considered. Tunick criticises my citing a report published in the aftermath of the 2011 London riots because its Panel chair noted the riots were unique as a historical event, but Tunick fails to acknowledge that the underlying causes such as the self-believe that individuals were alienated from society is yet more confirmation of what is reported elsewhere for several years (Barry 2006).

Conclusion

[9] Tunick is incorrect to claim 'Brooks calls his theory not restorative *justice* but restorative *punishment*' (16). I don't. Tunick appears to refer to my chapter on restorative justice where I consider whether or not it is a form of punishment as understood by proponents of restorative justice.

Punishment is an ambitious book that aims to critically challenge our orthodox views about theories of punishment and their application to case studies, as well as defend a new theory of punishment—the 'unified theory' of punishment. I can hardly be surprised to find my account taken to task by those who accept the penal theories I reject in favour of the unified theory. Such an occasion is welcomed as an opportunity to be pushed further to defend my arguments and counterarguments. To this end, academia is a distinctive way of life whereby the highest flattery can often take the form of extended criticisms. My reply repays this debt. While I am disappointed by the many mischaracterisations of my views, I am grateful to Tunick for attempting to engage with my work once again so I can clarify the many problems found in his misreading.

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