

## ***The Impact of Incarceration on Moral Agency***

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The U.S Model Penal Code (MPC) states that retribution—the notion that by punishing a criminal offender he gets his moral “just deserts”—is the primary justification for criminal punishment. However, the MPC indicates that other purposes may also be considered, including deterrence, incapacitation, and rehabilitation. The MPC uses a sentencing model called limiting retributivism, whereby forward-looking principles of punishment aimed at decreasing crime can be considered with the upper limit of proportional punishment set by retributivism. The “father” of limiting retributivism, Norval Morris, argued that the imposition of punishment should also obey the principle of parsimony—that is, the sentence imposed should be no more severe than necessary to achieve its purposes. This paper will explore the ways in which the state can inflict punishment under limiting retributivism in a way that fulfills the notion of “just deserts” while utilizing the forward-looking principle of rehabilitation to mitigate harmful effects on moral agency related to burdensome and condemnatory treatment of offenders.

### **Introduction**

Research suggests that the modern approach to incarceration as punishment has detrimental impacts on agency and can have a criminogenic result. Moral agency is a person’s capacity to recognize, and act in accordance with, moral reasons. In this paper, we explore three ways in which traditional incarceration harms offenders’ moral agency, and as a result, expedites crime. First, incarceration causes harmful effects directly associated with the experience of incarceration; second, it causes effects that emerge as post-incarceration repercussions; and third, incarceration impacts non-incarcerated third parties (Pritikin, 2008).

We will argue that one way to address the problem of incarceration's effect on moral agency is to reconceive retributive punishment under a limiting retributive model—such as that reflected in the US Model Penal Code—as compatible with rehabilitative programming and outcomes. Limiting retributivism can be interpreted to allow retribution to be imposed in a way that does not deteriorate an offender's moral agency but still includes a loss of civil liberties. For example, community-based sanctions and shorter sentences can deny specific liberties and yet retain forward-looking considerations that do not increase the presence and severity of crime. This sort of sentence would take seriously Norval Morris's notion that punishment should be parsimonious (no more severe than necessary).

If there are fewer people incarcerated, and they are incarcerated in ways preserving their agency, fewer people suffer from the negative effects of punishment. Thus, based on this reasoning, rates of recidivism and crime should decrease. The criminal justice system has thought of rehabilitation too narrowly; conversely, our approach to rehabilitation targets not just the offender, but the nature of incarceration itself. This new model would not undermine retribution, but reframe it, and would ameliorate the nature of punishment as a whole.

## **Justifications of Criminal Punishment**

### **The Functions of Punishment**

In this paper, we will refer to punishment using Antony Duff's definition: "the imposition of something that is intended to be both burdensome and reprobative, on a supposed offender for a supposed crime, by a person or body who claims the authority to do so" (Duff, 2017, p. 2). Traditional justifications of punishment include retributivism, deterrence, incapacitation, and rehabilitation (Brooks, 2013). Retributivism entails that when an offender breaks the law, justice requires that he suffers in proportion to the crime of his offense (Brooks, 2013). Deterrence necessitates that the general justification of punishment is to deter future crimes by threat of punishment and/or incapacitation (Brooks, 2013). Incapacitation involves limiting an offender's environment to make reoffending unlikely—usually via incarceration (Brooks, 2013). Rehabilitation aims for the reformation of offenders and assists in their transition from criminal to law-abiding citizens (Brooks, 2013).

Deterrence, incapacitation, and rehabilitation are forward-looking, and focus on the consequences of punishment; thus,

punishment is justified so long as it achieves the greater good (typically, crime reduction) (Duff, 2017). This utilitarian basis aims to maximize happiness and well-being for everyone (Duff, 2017). Retributive punishment, on the other hand, is typically considered an intrinsically appropriate and deserved backward-looking response to wrongdoing (Duff, 2017). One of the prominent versions of retribution justifies punishment based upon its expressive and communicative character (Duff, 2017). This approach communicates censure to the offender while coercing them to recognize and regret their wrongdoing; it also provides the offender with the opportunity to reform themselves and their future actions (Duff, 2017).

### **Limiting Retributivism: A hybrid justification of punishment**

It has been argued that some version of Norval Morris's mixed theory of punishment—limiting retributivism—is the consensus model of punishment in the U.S. and is reflected in the U.S Model Penal Code (Frase, 2003). This theory applies the retributive aim of “just deserts” to set the proportional sentencing range for a specific type of crime and offender and then considers how the other principles of punishment can work within this range (Frase, 2003). Retribution, thus, acts as a general constraint on the total amount of punishment, and the other principles can inform how much and what type of punishment is applied within this constraint (Sifferd, forthcoming). This system considers backward-looking retributive notions of proportionality and forward-looking concerns of the societal impact of crimes to create a structure that is both proportional to crime and offender and intends to decrease crime rates and recidivism. Importantly, limiting retributivism does not call for the *lex talionis* approach to proportionality that employs an ‘eye for an eye’ argument for retaliation. Instead, limiting retributivism applies a notion of retribution that requires an offender be denied important liberties as punishment; but, does not require that the offender be physically or psychologically harmed.

Historically, retributivism and utilitarian theories have been perceived as conflicting and even mutually exclusive principles of punishment; however, Morris' model opened the possibility to bridge the gap between backward-looking and forward-looking theories (Frase, 2003). Under this model, determining appropriate punishment within the potential range and adhering to blameworthiness may be difficult; yet, implementing this model results in a more proportional form of punishment (Haist, 2009). This is because the model does not dictate a specific correct sentence, but it identifies when a sentence has exceeded the upper

limit (Haist, 2009). Ideally, a sentence can be specifically tailored to a particular offender given the nature of his crime and his chances for rehabilitation.

The U.S. MPC reflects limiting retributivism in that section §102(2) states that it aims to “render sentences in all cases within a range of severity proportionate to the gravity of offenses, the harm done to crime victims, and the blameworthiness of offenders; and when reasonably feasible, to achieve offender rehabilitation” as well as other forward-looking aims including deterrence and incapacitation. However, one might argue that the way in which the model has been applied in the US has caused it to move away from many of Morris’s principles. Indeed, some of America’s practices of punishment directly contradict Morris’s model and, we will argue, contribute to the detrimental criminogenic impacts of crime. In the following sections, we identify two ways in which the American criminal justice system has failed to instantiate the principles of limiting retributivism. First, the American approach to punishment pushes the upper bound of sentencing beyond the limits of proportionality. Second, deterrence, incapacitation, and—especially—rehabilitation is underutilized in the American system.

Morris specifically argued that, under limiting retributivism, the least restrictive criminal sanction necessary to achieve defined social purposes should be imposed (Sifferd, forthcoming). This principle is known as parsimony: the preference for the least severe sanction that still achieves the proportionality of a particular sentence (Frase, 2003). In keeping with parsimony, a system can implement utilitarian and humanitarian aims that avoid the disproportionate and/or needless suffering and punishment of offenders (Frase, 2003). The principle of parsimony also states that judges should use the lower end of the range of deserved punishments as a starting point and should increase that penalty if enough factors require increased severity (Frase, 2003).

## **The Rise and Fall of Rehabilitation in the U.S.**

The domination of retribution as the goal of the U.S criminal justice system became apparent with the sharp decline of rehabilitation in the 1970s. Because punishment is burdensome and can require the imposition of something painful, rehabilitation was perceived as being incompatible with punishment. However, rehabilitation was not always thought to be at odds with retribution in the U.S criminal justice system. At the start of the 20th century, rehabilitation was gaining traction after the first juvenile court was created in Illinois in 1899 (M. Fondacaro et al., 2015). This court sought to rehabilitate children, rather than punish them. Once

introduced into the juvenile courts, the rehabilitative model was encouraged in the adult criminal justice system as well. Yet, in the late 1960s, rehabilitation declined in juvenile justice as the nation lost confidence in the juvenile justice system's ability to save every child (M. Fondacaro et al., 2015). The adult criminal justice system mirrored these sentiments and a decline of rehabilitation was present throughout the system (M. Fondacaro et al., 2015).

The Anti-Drug Act of 1986 passed by the Reagan Administration is an example of legislation that fed into the rise of punitive retribution (NeSmith, 2015). This legislation sought to intensify public fear and a sense of national urgency in regard to drug-use, further incentivizing the War on Drugs (NeSmith, 2015). In essence, the Anti-drug Act of 1986 issued a basic framework for mandatory minimum penalties for federal drug trafficking (NeSmith, 2015). This legislation instituted a lower limit on sanction severity, contradicting the limiting retributivism model which only calls for an upper limit. Shortly thereafter, the Anti-Drug Abuse Act of 1988 was passed and instituted severe penalties on offenders and elicited historically unprecedented levels of incarceration due to drug use and possession. This legislation is a prime example of retributive policy that had adverse criminogenic effects and diminished an offender's moral agency.

### **Moral Agency and Incarceration**

Moral agency is the ability of a self-aware individual to discern right from wrong and form a moral decision for which he can be held responsible (Taylor, 2009). Philosopher Charles Taylor argues that our sense of personhood is critical to moral agency as an individual need to possess self-awareness and be cognizant of the idea that he is a specialized agent (Sugarman & Thrift, 2017). This agent is essentially a person who has an "understanding of self as an agent and can make plans for his/her own life" (Taylor 2009, p. 263). Because humans bear this self-awareness, we influence the formation of who we are and who we will be (Sugarman & Thrift, 2017). That is, we can have a sense of who we would like to be in the future, and then take steps to become that person.

This perspective of human beings as "self-interpreting animals" contributes to the idea of agency as incorporating a "significance feature"—ideals, beliefs, and overall things that an individual considers important (Taylor, 2009, p. 262). These two aspects of agency work together as Taylor believed consciousness can morph what one considers significant (Taylor, 2009). Taylor deemed representative consciousness as being fundamental in making life plans and asserted, "We can only get at this by seeing

persons as self-interpreting beings” (Taylor, 2009, p. 263). Therefore, when things go wrong within an individual’s development, their sense of personhood can be corrupted, and consequently, so can their moral agency. What shapes an individual’s morality can vary depending on the cultures of the community in which he was raised. These differences allow for the rise of individual identity while offering a structure of shared ethics. Implementation of these common morals is integral in developing our sense of integrity and identity as they compel us to think and act in specific manners (Sugarman & Thrift, 2017).

Incarceration of persons for the purpose of punishment has negative impacts on an offender’s moral agency. The role that a person plays in their community – as father, son, partner, employee, friend – is important to one’s sense of self. Once offenders are incarcerated, they may lose a sense of themselves as they are taken out of their communities. Further, Taylor makes it clear that the ability to make plans and pursue those plans is vital to agency, but incarcerated offenders largely lose the ability to make meaningful choices. Incarcerated offenders are often not conscious of the time scale and alternate possibilities the way non-incarcerated people are—they do not have the same sense of future. They can lose their sense of individual identity and lose a personal sense of right and wrong because they are placed into a community composed of people who made bad choices. Yet they are forced to adapt to their new community in prison. Incarceration prohibits offenders from creating life goals, maintaining personal values, and making meaningful choices—the three central aspects of moral agency.

Incarceration’s ability to compromise moral agency is depicted in America’s high rates of recidivism. In the United States, nearly 50% of federal prisoners were rearrested within eight years of their release (Sifferd, forthcoming). Research suggests that cognitive factors can increase the chances of recidivism. This is because the experience of incarceration can harm executive functions which are vital for self-regulation and top-down decision-making (Sifferd, forthcoming). When incarcerated, inmates have limited control over daily decision making, and this weakens their executive functions and, thus, makes abiding to moral and legal rules difficult (Sifferd, forthcoming). When offenders are put in a 2ft x 4 ft ‘cell, they no longer make decisions regarding what they eat, what they do, or where they go, and by not exercising their executive functions and capacities for self-reflection, they lose their sense of personhood (Sifferd, forthcoming). The dehumanizing nature of incarceration is, ultimately, what leads to an offender’s deterioration of moral agency. This weakening of executive functions, hence, contributes

to recidivism and renders that incarceration is, essentially, criminogenic.

Research further supports that the modern approach to incarceration plays a significant factor in corrupting the moral agency of offenders and, consequently, facilitating crime. Below we will delve more deeply into the three primary systems by which the execution of incarceration harms moral agency, and we will argue that these harmful impacts expedite criminal behavior. The three primary systems are: 1. those that relate to the experience of incarceration; 2. those that arise as post-incarceration consequences; and, 3. those that affect people other than the incarcerated offender himself (Pritikin, 2008).

## **The Experience of Incarceration**

The first mechanism is the experience of incarceration itself. One method by which this occurs is through prison interactions. By placing criminals convicted of disparate degrees of offenses, in some cases, a prisoner is surrounded by offenders who committed much more serious crimes and is more likely to make such mistakes again. This is particularly deleterious to low-risk offenders as their chances of recidivism are increased after exposure to high-risk offenders (Pritikin, 2008). Prolonged relations between low-risk and high-risk offenders are problematic due to the newfound criminal opportunities low-risk inmates are being introduced to. Although the extent of this influence is presently undetermined, studies corroborate that high rates of recidivism is, to some degree, attributable to the strengthening of criminal relationships (Pritikin, 2008). These low-level inmates are introduced to greater crimes, and thus exposed to more opportunities to reoffend.

Criminals surrender many civil liberties when they are incarcerated; and this is not necessarily unjust under limiting retributivism: they lose voting rights, the ability to maintain many personal relationships, the opportunity to participate in meaningful work, and the general ability to make and keep their own plans. However, some of these meaningful works can provide an offender with a productive outlet while incarcerated; they can concentrate their energy on making a positive contribution to society while also legally generating income. However, an overwhelming majority of prisons fail to provide inmates this chance—and the few that do hardly pay them a livable wage. Studies have shown that there has been a decrease in the maximum daily wages paid to inmates. As of 2017, the national average wages of inmates for regular jobs (non-industry) ranged from \$0.14-\$0.63 per hour and ranged from

\$0.33-\$1.41 for jobs in state-owned businesses (correctional industries). Subsequently, the lack of meaningful work unnecessarily diminishes offenders' moral agency.

In-prison violence—particularly guard-on-inmate and inmate-on-inmate—is another example of how the experience of incarceration continues to negatively influence inmates. Violence committed against inmates by prison guards can devastate their “sense of personhood” (Pritikin, 2008, p. 1057). This brutalization tends to generate hate for authority and the state as it not only dehumanizes them, but fails to protect them from danger (Pritikin, 2008). Similarly, when inmates are victims of other inmates' acts of violence, their sense of self-worth is at risk of being destroyed; therefore, they eventually begin to harbor resentment for the system that did not fulfill their duty to protect them (Pritikin, 2008). These hostile sentiments can sometimes devolve into acts of crime. This concept works conjointly with the elements of the Theory of Reactance. According to this theory, offenders may react adversely to a denial of liberties or freedom by engaging in the very conduct that was prohibited. The recognition of this threat to their freedom incites their reactance arousal, increasing their tendency to recommit the crime that placed them in prison to begin with.

The combination of experiences resulting from incarceration distribute a burdensome attack on an offender's moral agency as they destroy the offender's sense of personhood. This sense of personhood—and identity—is integral to moral agency as it allows the offender the opportunity of individuality and self-awareness that comes with being a normal member of society. This self-interpreting behavior is essential for individuals to then make morally just choices; but, when inhibited by these previously delineated factors, offenders are prevented from having this ability. Thus, this demonstrates that incarceration in itself is criminogenic and has detrimental impacts on an offender's moral agency.

## **Post Incarceration Consequences**

The second mechanism by which incarceration causes crime is delineated under the effects that emerge as post-incarceration repercussions, supported by Labeling Theory. Labeling Theory states that the offender becomes the thing he is described as, with an emphasis on the disapproved behavior. A study conducted by C.W. Thomas and D.M. Bishop in 1984 found results that sanctioning escalates criminality; it revealed that boys who were convicted for their criminal offense versus those who evaded



punishment were more likely to continue with acts of delinquency (Braithwaite, 1989). The incessant reminder of an offender's criminal history as the offender attempts to begin their post-incarceration life can lead to drawing out the deviant behavior that it is attempting to sub-due (Braithwaite, 1989). Despite variances in perspectives, every version of it holds that social control makes the deviant worse as it constrains them solely to their label (Braithwaite, 1989). Some believe that there are three stages to the labeling process: 1. A formal confrontation between the deviant and his community; 2. The community passes a verdict about the "nature of the deviancy"; and, 3. The community grants the former offender a social position, "redefining his position in society" (Braithwaite, 1989, p. 18).

Unsurprisingly, criminal history plays the strongest role in whether an individual is sentenced to prison for a felony conviction—followed by whether the defendant received credit for time served (Olson, 2019). Increased felony cases and probability of receiving a prison sentence succeeding a felony conviction caused significant growth in the number of individuals in correctional custody (Olson, 2019). This data can be understood through the lens of Labeling Theory. The stigmatization that a released offender experiences could increase criminality as it engenders difficulty in finding a job, generating sufficient finances, and deprivation of political rights (Pritikin, 2008). Challenges in acquiring a job is the biggest risk for recidivism and could result in them lashing out at the system for failing them (Pritikin, 2008). Moreover, economic impairments emerge from the "denial of governmental benefits. Combined with the aforementioned phenomena, the criminogenic effects will be magnified" (Pritikin, 2008). Lastly, the deprivation of political rights similarly exacerbates the stigma surrounding former offenders, and although much has not yet been proven, it could be another pull towards deviancy (Pritikin, 2008).

In essence, criminal history essentially condemns the offender to falling victim to the Labeling Theory which results in social stigma surrounding him. This derogatory classification of the individual confines him to his criminal history as a deviant rather than as a person. Further, the inability of former inmates to receive government assistance because of this label breaks their trust in the nation and pushes them back towards the life of criminality. Thus, their moral agency deteriorates and rates of recidivism increase, once again showcasing how incarceration and post-incarceration incarceration largely impacts agency and deviancy. An offender's sense of personhood is corrupted when they are in prison because they do not pursue life goals, exercise moral decision-making, or maintain relationships in their

community. When a person cannot actively formulate life plans and reflect on who they are, they do not utilize their executive functions to the extent required to be moral agents.

### **Third Party Impacts**

Severance of personal relationships due to incarceration also has an immense impact on an offender's moral agency (Pritikin, 2008). When an individual is incarcerated, their family is directly impacted by their absence and criminal label—even long after their release. In particular, the family suffers financially and economically which can spiral them into poverty. The extreme duress each family member endures due to their penurious circumstances has a proven correlation and causation relationship with criminal behavior. In times of desperation, offenders may believe their only option for survival is through criminal acts and so, they recidivate.

Many former offenders simply desire to provide for their family. Therefore, they are aware that returning to prison is not going to be beneficial for their relatives. Further, family and community connections are critical for offenders to maintain as they drastically decrease rates of recidivism (Pritikin, 2008).

Community-based sanctions are a form of punishment that deny certain liberties while allowing for an offender to retain ties with their community; thus, not fully exposing them to the criminogenic effects associated with incarceration (Martin, 2003). Community-based sanctions include drug courts, family counseling, house arrest, and electronic monitoring (Martin, 2003).

Such forms of punishment are beneficial for low-risk offenders because it allows them to maintain relationships while they serve their sentence. One study that examined roughly 150,000 convicted adults sentenced to either community-based sanctions or incarceration found that community-corrections lessened recidivism rates, whereas incarceration had criminogenic effects that lead to above-average recidivism rates (M. Fondacaro et al., 2015).

One program centered one community corrections noted that offenders who engaged in in-prison family counseling recidivate at substantially lower rates compared to the national average—2%-4% versus 64% (Pritikin, 2008). These relationships serve as motivators for offenders to follow the law; the weakening of these bonds due to the nature of incarceration counteract possible progress that offenders can make which has detrimental consequences.

The children of incarcerated parents also experience serious trauma because they lose their parents to long prison sentences (NeSmith, 2015). The incarceration of a parent impedes on a child's sense of security and stability in addition to undermining their sense of self-worth and belonging (NeSmith, 2015). When a parent is serving a long prison term, the home environment becomes increasingly unstable which can prompt a child to lash out violently and/or drop out of school in order to supply additional income. Moreover, the lack of security that children with incarcerated parents are subjected to causes low self-esteem because they lack the ability to connect with their parents and express their emotions and desires (NeSmith, 2015).

When families are ripped apart, especially for prolonged periods of time, the afflicted family members are left to fend for themselves with little to no support system. Consequently, this has had a negative ripple effect on families and communities; thus, contributing to the adverse psychological impacts of incarceration that affect moral agency.

However, the implementation of community-based sanctions can protect low-risk offenders from being exposed to these criminogenic effects. Such sanctions can preserve an offender's moral agency by letting him maintain his relationships and choice-making capacities. When sentencing community-based sanctions, an offender is not solely defined by his crime: an offender can still actively be a father, an employee, and a contributing member of society. By keeping his status as a community member, an offender's moral agency will remain intact and this will make recidivism less likely.

## **Conclusions: Rehabilitative Retribution**

America's tough on crime attitude is partly responsible for creating a disproportionate criminal justice system that violates the principles of limiting retributivism by issuing sentences beyond the upper limits of blameworthiness. Since the 80s, retribution has dominated other justifications of punishment such that sentences contravene the principle of parsimony (Frase, 2003). This system fosters criminogenic effects that impede on an offender's sense of identity (Taylor, 2009). We have shown above that within the jail and prison setting, offenders are not able to exercise responsible choice-making and that their sense of personal identity and moral agency is diminished. We believe that this is contributing to the criminogenic effect of prison. Under the limiting retributivism model, criminal punishment ought not to diminish an offender's

moral agency whenever feasible—and this can be achieved through shorter sentences of traditional incarceration, community-based sanctions, and rehabilitative programming (Frase, 2003). Providing community-based sanctions can implement Morris’s principle of parsimony effectively without undermining retributive notions, rehabilitative sentences—programs that give an opportunity for meaningful choices.

In order to prevent criminogenic effects associated with the experience of incarceration, the U.S sentences should be closer in severity to those in Europe. The current system of punishment in the US routinely delivers very harsh sentences that seem to violate Morris’s principle of parsimony. The length of sentences in the US are considerably longer than those of other western nations for similar crimes (Finding Direction, 2011). Studies reveal that despite having similar crime rates, the U.S. depends immensely on incarceration as a form of sentencing. While the United States’ mean percent of total adults sentenced from 1995 to 2000 averaged 69.9 percent, other countries’ per-centages are drastically lower; Canada averaged 33.8 percent, England and Wales averaged 9.2 per-cent, Finland averaged 7.2 percent, and Germany averaged 7.5 percent (Finding Direction, 2011). Further, when comparing sentence length of similar offenses, the U.S. outranks England and Wales, Australia, and Finland in almost every crime (Finding Direction, 2011). Consequently, the US’s criminal justice system has resulted in a devastating level of mass incarceration. Though the U.S is home to 5% of the world’s population, it contains 25% of its prisoners—making it the world’s leader in incarceration (NeSmith, 2015). Since the 1970s, the number of incarcerated individuals has increased sevenfold to nearly 2.2 million in 2016; and this demonstrates our systems failure to implement an effective form of limiting retributivism (Sawyer & Wagner, 2019).

Also, in some cases, providing community-based sanctions can implement Morris’s principle of parsimony effectively without undermining retributive notions. By sentencing low-risk offenders to community sanctions while retaining prisons for more dangerous offenders, low-risk offenders can reserve their moral agency by still making their own daily decisions, earning a living, and maintaining social relationships (Sifferd, forthcoming). Thus, community-based sanctions are more proportional and even cost-effective, while being less criminogenic (Sifferd, forthcoming). This approach could better consider forward-looking principles and if utilized correctly, could preserve offenders’ moral agency as they serve their sentences.

The Hawaii Hope Program was a more recent example of this deterrence-based corrections which focused on the prohibition of continued substance abuse (Byrne and Hummer, 2016). This program operated under the assumption that addiction is a choice, not a disease. The choice, thus, became either an offender abstains from drug use and resides in the community, or he continues to use drugs and is incarcerated (Byrne and Hummer, 2016). Such programs are especially important, considering 451,000 offenders are incarcerated for nonviolent drug offenses on a given day (Sawyer & Wagner, 2019). However, community-based programs are not implemented enough to effectively operate under the limiting retributivism model and prevent criminogenic effects that impact moral agency (Byrne and Hummer, 2016).

Even for incarcerated offenders, the implementation of rehabilitative programming can be utilized nationwide to provide an “enriched prison environment” that allows inmates to exercise their right to make choices—one of the critical elements of moral agency (Sifferd, forthcoming). An example outlining the feasibility and effectiveness of this limiting retributivism is illustrated through the success of its implementation by the Cook County jail in Chicago. The jail employs various programs to assist offenders in practicing cognitive and executive functions and fostering their moral agency, including chess, construction, and yoga. Chess allows the inmates to exercise cognitive capacities as they learn how to make plans beforehand and recover from mistakes; construction provides them the chance to learn useful skills, successfully reintegrate back into society, and become productive members of society; and yoga provides them a sense of normalcy as well as a healthy way to deal with stress.

Making these changes would entail taking the role rehabilitation can play within the limiting retributive model seriously. This has not been done, in part because extreme retributive attitudes perceive principles such as rehabilitation as being incompatible with punishment (Brooks, 2013). This is because punishment is generally thought to be burdensome and can require the imposition of something painful; however, punishment can be burdensome and reprobative while refraining from negatively impacting an offender’s moral agency (Brooks, 2013). Rehabilitation does not work against punishment as much as it works in favor of moral reformation (Brooks, 2013). This theory is, thus, grounded in the notion that criminals commit crimes because they lack moral education and/or are subjected to environments that make moral decision-making increasingly difficult (Brooks, 2013).

When applying limiting retributivism, retribution can be interpreted in a way that aligns with rehabilitative thinking. Rehabilitation seeks the reformation of offenders, and this reformation is achieved when criminals understand their transgressions and choose to act against criminal activity in the future (Brooks, 2013). This requires the moral agency of offenders, because in this way re-habilitation involves an acknowledgment of their own agency in the form of regret. As moral agents, offenders can not only take responsibility for their actions, but they also endorse their capacity to make responsible and legally abiding choices in the future.

The implementation of rehabilitation and other forward-looking principles is vital for our criminal justice system because it can prevent criminogenic effects that impact moral agency and lead to crime reduction. Rehabilitation reduces the criminogenic effects of the experience of incarceration as it provides offenders an alternative punishment; it decreases post-incarceration consequences by offering inmates a more productive outlet to better themselves; and it minimizes negative third party impacts by lessening recidivism, thus allowing former offenders an opportunity to rebuild and strengthen their interpersonal relationships. One way these forward-looking principles can be utilized under limiting retributivism is by instituting community-based sanctions for low-risk offenders. Community-based sanctions can fulfill retributive aims by preserving moral agency and minimizing recidivism.

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