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Paradoxes of Punishment

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Paradoxes of Punishment Leigh A. Payne Keally McBride. Punishment and Political Order. Ann Arbor: University of Michigan Press, 2007. 194pp. \$19.95 (pbk). \$55.00(hc). ISBN-10: 0-472-06982-9

Keally McBride's *Punishment and Political Order* explores a paradox: punishment potentially reinforces and undermines legitimate democratic authority. McBride works through this paradox using a range of texts and devices. She draws her arguments from analysis of fictional texts, specifically Kafka's "In the Penal Colony," and political philosophy, including Locke, Nietzsche, Grotius, Bentham, Foucault, and Agamben. She employs examples of punishment in U.S. prisons historically (e.g., Eastern State Penitentiary) and currently (e.g., Abu Ghraib and Guantánamo). McBride also weaves into her analysis contemporary data from public opinion polls, news reports, prison studies, and comparisons between the United States and other countries. This slim book, in other words, covers a lot of ground. McBride has also achieved her goal of producing a "smart and pleasurable" book to read. (ix)

The paradox at the heart of the study stems from the notion that "punishment in liberal regimes is intended to make government evident, but as a limited, not absolute power." (122) McBride makes clear, however, that such ideals are not always met: "When states give in to the temptations of power and punish merely for the sake of command, punishment may sow obedience but will ultimately reap resistance." (163) In the Introduction McBride uses her own involvement in a prison reform project to illustrate the complexity of determining when states cross the line of legitimate punishment to abuse. She finds that despite a shared goal of reducing recidivism the group faced "a fundamental inability to decide on the basic story." (2) Exoffenders in the group lacked "credibility" and "legitimate voice," while those without direct prison experience trusted that prison "works just fine, particularly since it doesn't influence our daily lives." (2) This experience allows McBride to identify the three central political players in her paradox: the state, offenders and ex-offenders, and an audience. The state asserts its authority through punishment. The offender community attempts to challenge that authority and bring change by making prison abuse visible. The audience trusts and benefits from the state's system of punishment. It ignores evidence that contradicts beliefs or a sense of security. A logical conclusion to be drawn from McBride's introductory story is that avoiding prison abuse depends on an enlightened state and system of punishment, the capacity of the offender community to effectively expose prison abuse, or a societal recognition that the cost of abuse exceeds its benefits.

Much of McBride's book would lead the reader to consider each of these possible scenarios highly unlikely. The state, for example, tends to justify punishment in terms of ideals. McBride asks, "are ideals of punishment always bound to be nobler than the practices creating an inescapable chasm between ideals of justice and practices of power?" (84) After examining both fictional examples and historical models of

punishment, she draws the conclusion that "Perfection, defined as the ability to construct a society where justice is fully realized, is a mirage; the real test of a society is how it manages its failures." (25) McBride suggests that confidence determines effective management of those failures. She contends, for example, that "vehement policing demonstrates political power remarkably unsure of itself." (15) She further argues that the United States has a larger prison population than any other advanced democracy and a higher level of incarceration than at any other time in the country's history. (102) Quoting Nietzsche, she puzzles over the persistence of abuse in U.S. prisons: "As the power and self-confidence of a community increase, the penal law always becomes more moderate...it is not unthinkable that a society might attain such a consciousness of power that it could allow itself the noblest luxury possible to it - letting those who harm it go unpunished." (151)

The capacity of offenders and ex-offenders to draw attention to abuse seems equally unlikely in McBride's treatment. She recognizes the unique position that these actors play in assessing the legitimacy of state authority. After all, punishment puts a state's "ideals... on display and at stake." (5) It "reveals whether a society adheres to the rule of law." (8) McBride muses that "Perhaps the true test of whether a state can truly be considered democratic is if those sitting in the jails believe it is so." (102) McBride doubts, however, that offenders can influence public opinion. As her own experience illustrates, prisoners lack "credibility" and "legitimate voice." She further argues that prisoners lack citizenship rights, evidenced by labor practices in prisons and laws that restrict ex-offenders' employment and mobility even after they have served their sentence. Restrictions on voting rights for prisoners and ex-offenders provide additional evidence of limits on citizenship. Prisons do not perform their function of rehabilitating offenders or preparing them to succeed as equals after imprisonment. Ex-offenders remain stigmatized and unequal, leading McBride to conclude that "punishment rarely, if ever, produces ideal behavior or citizens." (5)

McBride links the failure at rehabilitation and restoration of prisoners to the same social factors that led to their imprisonment in the first place: inequality and economic crisis. Inequality is evident in the disproportionate ratio of blacks to whites in prison (according to the United States Department of Justice black men of all ages are incarcerated at more than seven times the rate of white men). Rising incarceration rates, moreover, parallel the losses of jobs in manufacturing. Even motivated and skilled workers fail to find adequate and legitimate employment both before and after serving time in prison. She concludes that "insistence that participation in the labor force is always a matter of rational choice, not social opportunity, becomes increasingly difficult to maintain." (145) McBride uses prison labor, and the notoriously low wages paid for it, to illustrate the crisis of employment in the United States: "even at slave wages, American workers cannot compete in the global marketplace anymore. And this may be the primary reason that so many potential workers are behind bars in the first place." (137) McBride, thus, argues that the responsibility for crime and high levels of incarceration rests with the state, and not solely with individual wrongdoers: "Bad laws are the source of criminality.... People are not the source of criminality; rather, poor government is." (91) She adds, "Society must be organized in such a way that there is no gain from participating in criminal activity...the need to punish must be perceived as a failure on the part of the state in accomplishing its mission, not necessarily a failure on the part of the criminal." (26)

With the media and prisoner advocacy groups presenting evidence of the sort that McBride reproduces in her book, we might expect U.S. citizens to protest prison abuse. Lack of awareness and mobilization, however, is over-determined in McBride's treatment. She discusses how abuse remains hidden from public view in remote and isolated contemporary prisons. Belief in the state's duty and ability to maintain order and protect citizens through punishment also causes citizens to ignore or discount news reports, academic and policy studies, and advocates' protests exposing abuse. A "craving for comprehensible order" legitimizes the state's actions. (39) Audiences thus view punishment as a mechanism to "achieve a better world, make better judgments next time." (42) Audience perception of abuse is clouded by these belief systems. As McBride states, "People feel more secure in an unequal world when the government adopts

more rigorous policing methods. The state...has proven its continued indispensability." (123)

McBride's chapters seem to lead to the conclusion that the United States has reached a crisis: "punishment is clearly illogical or disproportionate, [and] those who enforce it lose their authority and become tyrants instead." (102) Rather than despair over this outcome, however, McBride sees it as transformative. She uses Shklar's words to suggest that change in the abusive practices by state authorities is not necessarily probable, but neither is it impossible. (17) Abu Ghraib and Guantánamo provide that possibility. She states, "religious tensions and different ethnic identification did not prevent average Americans from feeling absolute horror at the abuse of prisoners in Abu Ghraib. ...we cannot assume that public apathy [toward U.S. prisoners] will continue in the future. When a train of abuses becomes 'visible,' and when the standard of reason is applied, rather than assumed, with respect to methods of punishment, there may yet be a day of reckoning and reform. ...The real question is whether the habits of obedience will continue to trump the intangible ideals at play, and whether these ideals can truly be wielded to redistribute power." (125)

What is it about the abuses at these U.S. prisons located outside the country supports McBride's optimistic forecast? The arguments she presents in the chapters leading to the conclusion would have predicted a very pessimistic view of these events. The state could, and has, justified its practices as legitimate and effective in the war on terrorism. An insecure U.S. public should accept those justifications. And as geographically distant non-citizens and foreigners, suspected terrorists at Abu Ghraib and Guantánamo would seem even less likely to raise awareness of abuse than the prisoners within the country that McBride describes as lacking a credible or legitimate voice.

Several factors explain McBride's optimism. International attention is key. She does not deny that the abuses at both locations could and do occur within prisons on U.S. soil, but she argues that "Nothing brings on self-examination like the view of an outsider." (148) International attention could also change the security calculation for Americans. In her words, "the assertion of U.S. power in the punishment of prisoners and detainees has led to an unraveling of U.S. political power in the world." (153) While she suggests that this has not "led to a delegitimation of the regime domestically," she does assert that it "...changed the frame of reference by which we understand the U.S. role in Iraq," and that we "...might see a renewed perception on the part of the American public that could spur reform." (161-162)

McBride's optimism hinges not only on broad exposure to the abuses, but also to the capacity to link those abuses to an illegitimate state. When society recognizes the abuses as undermining national values and weakening national security, then they become transformative. Readers may agree with McBride's argument, or wish to share her optimism. To do so, however, we would need further evidence and discussion.

McBride suggests that the U.S. support for the war in Iraq diminished as a result of an Abu Ghraib/Guantánamo effect. If public exposure and international condemnation of abuse tarnished state legitimacy and authority, how does McBride explain the reelection of George Bush? How would she explain the wild applause the Vice Presidential candidate Sarah Palin received at the recent Republican National Convention when she scoffed at Presidential candidate Barak Obama's insistence that suspected terrorists should be read their rights?

In my book *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions to State Violence*, I make a similar argument about the power of exposure to abuse. Public reaction is a predictable outcome to these "unsettling accounts." What is not predictable is the political uses of the abuses themselves and the public reaction to them. As I have argued in *Unsettling Accounts*, "the best, most ethical, democratic, or even legal argument will not necessarily win." (290) McBride's book gives us more reason, not less, to doubt the transformative outcome of abuses at Abu Ghraib and Guantánamo. That reason is based on her

persuasive arguments surrounding belief in the state's noble purpose to punish and reform and the silencing of the abused.

Abu Ghraib and Guantánamo thus seem to reinforce the capacity of legitimate states to dodge challenges to their authority even in the face of extreme abuses of power. Where state legitimacy is in question, however, abuses may successfully erode that power. Such cases include the military regimes in Latin America or apartheid South Africa, where exposure to abuse transformed the regimes into perpetrators of, rather than protectors from, violence against citizens. Paradoxically, belief in, and decentralized authority of, democratic regimes better shield them from challenges to their abuse of authority. McBride recounts Vice President Dick Cheney's quip that the Abu Ghraib abuse "does not represent us." Transformation may only occur once society has begun to question the legitimacy of the government, particularly when citizens' security is threatened by that government. Objectively, that may have already happened due to the abuses of power by the United States. As McBride argues, however, perception, and not objective reality, animates the transformative process. It is not "impossible" that perception will change, but it is highly improbable given the capacity of states to legitimize abuse by calling it another name (i.e., "harsh interrogation") and playing on citizens' fears of another terrorist attack.

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Leigh A. Payne is professor of Political Science at the University of Wisconsin-Madison. She is the author of books, book chapters, and articles on the legacy of authoritarianism in countries emerging from an authoritarian past. Her most recent book, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Durham and London: Duke University Press, 2008), explores the political processes that unfold when Argentine, Brazilian, Chilean, and South African perpetrators make public testimony about their role in past state terror. She is currently working on projects on transitional justice, trauma tourism, and the impact of speech laws on how the violent past is remembered.

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