

Ethics of Imprisonment:

Essays in Criminal Justice Ethics

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Abstract

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Abstract: This licentiate thesis consists of three essays which all concern the ethics of imprisonment and what constitutes an ethically defensible treatment of criminal offenders.

Paper 1 defends the claim that prisoners have a right to privacy. I argue that the right to privacy is important because of its connection to moral agency. For that reason is the protection of inmates' right to privacy also warranted by different established philosophical theories about the justification of legal punishment. I discuss the practical implications of this argument. Ultimately I argue the invasion of privacy should be minimized to the greatest extent possible without compromising other important values and rights to safety and security. In defending this position, I argue that respect for inmates' privacy should be part of the objective of creating and upholding a secure environment to better effect in the long run.

Paper 2 discusses whether the collateral harm of imprisonment to the close family members and children of prison inmates may give rise to special moral obligations towards them. Several collateral harms, including decreased psychological wellbeing, financial costs, loss of economic opportunities, and intrusion and control over their private lives, are identified. Two competing perspectives in moral philosophy are applied in order to assess whether the harms are permissible. The first is consequentialist and the second is deontological, and it is argued that both of them fails and therefore it is hard to defend the position that allowing for these harms would be morally permissible, even for the sake of the overall aims of incarceration. Instead, it is argued that these harms imply that imprisonment should only be used as a last resort. Where it is necessary, imprisonment should give rise to special moral obligations towards families of prisoners. Using the notion of residual obligation, these obligations are defended, categorized and clarified.

Paper 3 evaluates electronic monitoring (EM) from an ethical perspective and discusses whether it could be a promising alternative to imprisonment as a criminal sanction for a series of criminal offenses. EM evaluated from an ethical perspective as six initial ethical challenges are addressed and discussed. It is argued that since EM is developing as a technology and a punitive means, it is urgent to discuss its ethical implications and incorporate moral values into its design and development.

Keywords: Collateral Harms, Communicative Theory of Punishment, Consequentialism, Criminal Justice Ethics, Doctrine of Double Effect, Electronic Monitoring, Imprisonment, Legal Punishment, Moral Education Theory of Punishment, Privacy, Philosophy of Punishment, Retributivism

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This licentiate thesis includes an introduction and the following research articles:

- I. Bülow, William, 2014. "Treating Inmates as Moral Agents: A Defence for the Right to Privacy in Prison", Forthcoming in *Criminal Justice Ethics*.
- II. Bülow, William, 2013. "The Harms beyond Imprisonment: Do We Have Special Moral Obligations towards Families and Children of Prisoners?" *Ethical Theory and Moral Practice*: DOI 10.1007/s10677-013-9483-7.
- III. Bülow, William, 2013. "Electronic Monitoring of Offenders: An Ethical Review", *Science and Engineering Ethics*: DOI 10.1007/s11948-013-9462-3.

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As tradition prescribes, I am responsible for all of the faults, mistakes, and errors in this thesis.

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Näsbyark, April 2014

“Only a few have rejected punishment entirely, which is rather surprising when one considers all that can be said against it”

- John Rawls

1. Introduction

The institution of legal punishment is among the core institutions of modern states. At the same time this institution gives rise to serious philosophical and ethical questions. What, if anything, gives the state the right to punish those citizens who fail to abide by its laws? This is the traditional question regarding the justification of legal punishment. However, further problems emerge beyond this fairly straightforward question. Assuming that it can be legitimate for a state to incarcerate criminal offenders, then what, exactly, constitutes ethically defensible prison conditions? Do prisoners have a right to privacy? Do we have special moral obligations to families and children of prisoners? Is electronic monitoring a promising alternative to prison sentences? These questions belong to the field of research referred to as *criminal justice ethics*. Criminal justice ethics is a sub-discipline of applied ethics which deals with ethical issues that arise within, or result from the criminal justice system. Among other things, this involves ethical inquiries about criminalization, policing, courting, and punishment.¹ This thesis consists of this introduction and three essays which all fall within this research field. In particular, the essays in this thesis are concerned with the ethics of imprisonment and what constitutes an ethically defensible treatment of criminal offenders.

The purpose of this introduction is to provide a general background to the essays. In section 2, I introduce the notion of legal punishment. Section 3 introduces theories about the justification of punishment. In section 4 I discuss two initial questions regarding the ethics of imprisonment: For what sort of criminal offenses is imprisonment a fitting criminal sanction? If imprisonment is a fitting criminal sanction for certain crimes, what sorts of prison conditions are morally justified? In the end of the last section of this introduction the essays are summarized.

¹ For an introduction to the field of criminal justice ethics, see Kleinig (2008).

2. Legal punishment

Any discussion on the philosophy of punishment must start from an idea of what punishment is. Still, what I am concerned with is not any type of punishment, but *legal punishment*. For illustration, assume that Alex punishes her daughter Beate for not being home in time by grounding Beate for a week. Though this is an instance of punishment, it is not the kind of punishment which I discuss in this thesis. Rather it is a kind of private punishment; a decision made by a private individual (Brooks 2012). In contrast, assume that Alex is sentenced by a court to serve 24 months in prison for having physically abused Beate. This would be an instance of legal punishment.

Needless to say, there are similarities between these two kinds of punishment. There are also distinct differences. Legal punishment is not a decision made by a private individual, but is an act authorized by the state in response to what is judged as a *criminal* wrongdoing. That means that legal punishment is always for a particular crime (Brooks 2012). Criminal wrongdoing is not identical to *moral* wrongdoing. As a moral wrongdoing may not be a criminal act; a criminal wrongdoing is not necessarily a moral wrongdoing.² Thus, we can distinguish legal punishment by claiming that it is a form of punishment exercised within a legal system, authorized by the state in response to criminal wrongdoings within the same legal system.³

Further clarifications are needed in order to have a satisfying definition of legal punishment. First of all, punishment (legal or non-legal) is thought of as something

² I am aware that some may disagree with this description of the connection between criminal law and morality. Echoing the famous claim made by Thomas of Aquinas, *Lex iniusta non est lex* (unjust law is not law) proponents of natural law hold that what rightfully counts as law is at least to some extent constrained by morality. Here I do not attempt to discuss central questions for analytical jurisprudence, nor do I assume that either legal positivism or natural theories of law are correct. Rather, I wish to stress that at least some crimes, most notably *mala in prohibita*, are not obviously morally wrong in every circumstance. For an illuminating discussion on both legal positivism and natural law theories, see Lyons (1984).

³ To say that the punishment is authorized by the state, and thus not authorized by private individuals, is not incompatible with the fact that it is indeed individuals (i.e. prison officers) who carry out the punishment. These individuals are not carrying out the punishment in virtue of being private persons, but in virtue of representing the state.

that is *unpleasant* or *burdensome* for the individual being punished. Punishment involves some form of harm or deprivation. In our examples above the deprivation of freedom of movement is a harm suffered by both Beate and Alex. What is more, the harm or deprivation caused by a legal punishment is *intentionally* inflicted on the criminal offender by the state authority. Since punishment is intentional this opens up for the possibility of there being further harms or burdens associated with punishment, but which are not necessarily parts of it. For instance, ex-prisoners often experience lack of job opportunities and of housing (Pettersson and Carlsson 2013). Another example, which will be addressed in the second paper included in this thesis, is harm to third parties, such as the families and children to prisoners. As I argue there, the potential harms to these parties should not be seen as parts of the punishment, but collateral consequences thereof.⁴

Finally, a plausible definition of legal punishment – as any form of punishment – also involves an element of condemnation (Boonin 2008; Feinberg 1965; Zimmerman 2011). Punishment is given not only in response to a criminal wrongdoing, but does so in a way that also shows disapproval of that wrong.⁵ By punishing someone, one does not only inflict harm on that person. One does so in a way which expresses disapproval of that person's behavior.⁶

3. Some Theories of Punishment

It is often assumed among moral philosophers that individuals have a *prima facie* right not to be intentionally harmed. As legal punishment involves intentional harm or deprivation, it should come as no surprise that it is often considered standing in

⁴ Many titles which address these collateral harms refer to them as 'punishment for innocent parties' or 'punishment beyond the offender' (see for instance, Manning (2011) and Comfort (2007) for examples). Though I understand that this has a strong and powerful rhetoric, I hold that these descriptions are misleading. It is arguable that neither of these harms are intended as part of the punishment.

⁵ Not every proposed definition of legal punishment suggests that it is essentially involves an element of disapproval. For example Hart does not include this aspect in his definition of punishment (2008, 4-5).

⁶ For philosophical defenses of definitions of legal punishment similar to the one I have outlined in this section, see Boonin (2008) and Zimmerman (2011).

need of a moral justification. This is most often referred to as *The Problem of Punishment*.

In recent years there has been a huge increase of work in the philosophy of punishment. Here, I will not provide an exhaustive list of all proposed justifications of legal punishment.⁷ Nor will I try to determine which theory is the most plausible. Rather, I will focus on three families of theories which are discussed explicitly in the papers included in this thesis. These include *Retributivism*, *Consequentialism*, and *Expressivistic Theories of Punishment*. In relation to Expressivistic theories, two different approaches will be discussed: *The Moral Education Theory* and *The Communicative Theory of Punishment*.

Before I introduce the abovementioned theories of punishment I wish to make one remark. A common theme in the philosophy of punishment is that part of the moral justification of legal punishment must be that criminal offenders forfeit at least some of their moral rights (e.g. Morris 1991; Wellman 2012). This view is referred to as *The Right Forfeiture Theory of Punishment* (Wellman 2012).⁸ Though I believe that this is an important discussion for philosophers working on punishment, it appears to have less relevance for the purpose of this thesis compared to the abovementioned theories. The right forfeiture theory is probably best conceived of as a view about the moral permissibility of legal punishment.⁹ But as such the right forfeiture theory appear to be insufficiently equipped to provide a promising theoretical starting point for a discussion on how we ought to treat criminal offenders. Or to put it differently: it is one thing to say that legal punishment can be morally permissible, and yet another to say what sort of prison conditions are morally desirable. I would say that we are in a better position to address the later question if we

⁷ For a critical but accessible introduction to different theories of legal punishment see Brooks (2012). Another critical examination of various proposed justifications for legal punishment is Boonin (2008).

⁸ For critical discussions on the idea of right forfeiture and punishment, see Boonin (2008) and Lippke (2001; 2007).

⁹ This is also how Wellman (2012) presents the theory. He holds that traditional theories of punishment, including some of those which I discuss in the papers included in this thesis, only explain why we want to punish, but cannot establish why it is morally permissible to punish.

were to have an idea about what the *aim* or *purpose* of punishment is. The theories which I discuss below all provide candidates for what the aim of punishment should be.¹⁰ Moreover, even though proponents of right forfeiture theory hold that some right forfeiture is necessary in order for legal punishment to be morally justified; at least some of the proponents of this view equally argue that this only provides part of its justification. For example Christopher W. Morris (1991) holds that the justification of punishment presupposes the loss of moral rights, but at the same time demands further reasons motivating this practice. Morris does not provide a definitive claim about what these further reasons are, but he does mention that his view is compatible with retribution, moral education or deterrence as possible overall aims of punishment (Morris 1991, 55). Therefore, at least Morris version of this theory would have to include at least one of the theories which I present in the below.¹¹

3.1. Retributivism

Retributivism is probably the most well-known theory of punishment (Brooks 2012). Familiar phrases such as ‘an-eye-for-an-eye’ express the basic idea of retributivism: guilty offenders ought to get what they deserve, which is to suffer the proportional harm which they themselves have inflicted on their victims. Retributivists

¹⁰ I wish to emphasize that I do not hold that right forfeiture theorists are fully unable to say anything whatsoever about what sort of prison conditions are morally permissible. Rather the obvious implication of the right forfeiture theory is that any prison conditions does not violate the rights which the offender has not forfeited is morally permissible. Perhaps it is possible to provide a full theory about imprisonment from this perspective. My point is only that theories which specify the aim of punishment appear more promising as theoretical starting points.

¹¹ Another form of theory which I do not address in this thesis is so called “mixed theories of punishment”. The characteristic feature of these theories is that they attempt to combine elements from retributivism and consequentialism. For instance H.L.A Hart (2008) argues that a morally acceptable account of punishment must address a number of different questions, including (1) ‘what justifies the general practice of punishment?’ (2) ‘Who may we punish?’ (3) ‘How severely may we punish?’ According to Hart different moral principles are relevant as answer to each of these questions. For instance, though the general practice of punishment is justified by its beneficial consequences, it should only be distributed to guilty offenders for criminal offences (Hart 2008, 9). Thus, while retributivism should not be conceived of as the general aim of punishment, it determines its distribution. The reason why I will not address this kind of theory is equal to the reason for which theories concerning right forfeiture will not be addressed. It is questions about the aim of punishment which are directly related to questions about prison conditions. The question of who may be morally permissibly punished is in this sense not of direct relevance.

see punishment of a guilty person as something which is just and/or something which is good in itself.

Retributivism comes in different forms and can be defended on different grounds. For instance, some of its proponents defend retribution by appealing to thought experiments or examples which are held to show that punitive desert is intrinsically valuable. Punishing the guilty, it is argued, is *ceteris paribus* a more valuable state of affairs compared to not punishing the guilty, even though this would not lead to any further positive effects (c.f. Kershnar 2002).¹² Others argue that punishment amounts to the elimination of an unfair advantage that the offender has gained as a result of his or her crime. On this view, society is in part understood as the distribution of burdens and benefits, where the burdens are here understood as compliance to the criminal law. Each individual is imposed by the burden of adhering to this equal and fair distribution of burdens as well as to its benefits. Punishment, on this view, is seen as a way of restoring fairness and justice when someone has breached the initial fairness (Boonin 2008, 120). An important feature of any form of retributive theory of punishment, however, is that criminals ought to be punished (or at least not more than) in proportion to their crime. The concepts of *desert* and *proportionality* within a retributive framework are thus interlinked (Brook 2012). Another way to put this is to say that the punishment must *fit* the crime.

With its focus on the intrinsic value of punitive desert and/or elimination of an unfair advantage, retributivism is an essentially backward-looking theory. According to the retributivists the justification of legal punishment does not primarily lie in its future effects, regardless of whether these are the reformation of the offender or the deterrence of other individuals from committing crimes. Punishment is a matter of

¹² Strictly speaking, this view is not exclusive to retributivistic theories. It is also inherent in so-called desert-adjusted utilitarianism. According to this view the hedonistic axiology of traditional hedonistic utilitarianism can be modified in such a way that takes factors concerning peoples' desert into account (Rydberg 2011, 89). This view is in at least one interpretation compatible with the claim that punishing the guilty is *ceteris paribus* a more valuable state of affairs compared to not punishing the guilty, even though this would not lead to any further positive effects. Still, this is not a form of retributivism. For a discussion on this view, see Rydberg (2011).

desert, moral responsibility, and justice. This relates to the view inherent in retributivistic theories; that individuals are moral agents. As Richard Lippke points out, standard retributivist theories conceive legal punishment as a form of institutionalized moral blame. On this picture, offenders are conceived of as agents capable of responsiveness to moral considerations, and thus as appropriate objects of praise and blame (Lippke 2006, 274).

As a final note on retributivism, I wish to stress the difference between retribution and vengeance. The immediate difference is that vengeance, in contrast to retributivist punishment, is personal in its nature. As Brooks (2012) points out, vengeance “is an act of private justice without limits: I seek vengeance when I desire to injure another; I injure another to a degree I am satisfied with and not only to what he may deserve” (Brooks 2012, 17). In contrast, retributivist punishment is an act of public justice and has limits. According to retributivism punishment is justified when it is deserved, and only to the amount that it is deserved. A further difference between revenge and retribution is that retribution is dependent on a past wrongdoing. This, however, is not necessary for vengeance or revenge. Revenge is not rational in the sense that the avenger must have been wronged. It is sufficient that the avenger *feels* that he or she has been harmed or injured to some extent, regardless of whether this experienced harm constitutes a wrongdoing or not (c.f. Nozick 1981).

3.2. Consequentialism

Unlike retributivism, consequentialists do not see legal punishment as something which is good in itself. Defenders of consequentialism rather see punishment as a necessary evil which, if it is justified, is so because of its overall good consequences (Boonin 2008). Thus, in contrast to retributivism, consequentialist theories of punishment are essentially *forward-looking*. This view is in its essence expressed and endorsed by utilitarian philosopher Jeremy Bentham. He writes:

But all punishment is mischief; all punishment in itself is evil. Upon the principle of utility, if it ought at all to be admitted, it ought only to be ad-

mitted in so far as it promises to exclude some greater evil (Bentham 1996, 158).

It is possible to discuss what exactly counts as good consequences. However, in the context of legal punishment the immediate good for which punishment is justified is crime-prevention (Duff 2001).¹³ Consequentialists typically argue that legal punishment may lead to crime-prevention in at least three different ways. First, she may argue that legal punishment *deters* individuals from committing criminal offenses either through its execution or as a potential threat. The threat of punishment is held to provide individuals with an incentive not to break the law. This is referred to as *general deterrence*. The offender who has been punished may be deterred from committing further offenses due to the unpleasant experience of punishment. This is referred to as *specific deterrence* (Duff 2001).

Second, legal punishment, and most notably imprisonment and capital punishment, is held to *incapacitate* the offender and render her unable to commit further crimes. To what extent one is actually incapacitated varies between different forms of penal sanctions. As Duff (2001) points out most sanctions incapacitate offenders only partially and temporarily, rather than completely and permanently. Imprisonment hinders the prisoners from committing certain offenses, but it is still possible for the inmate to commit crimes against fellow inmates or prison officers. In so far as one is not imprisoned for life, the incapacitation is only temporary.

Third, being subject to punishment may *reform* or *rehabilitate* the offender. By reform I here mean that punishment's aim could be to modify people's dispositions in such a way that they will freely avoid, or refrain from, committing future crimes. Punishment could – at least in theory – induce a respect for the criminal law and induce the recognition on the offender's behalf that the crime committed was wrong.

¹³ As Duff points out, crime-prevention is not a final good, but requires justification on its own. From a utilitarian perspective this could be argued for in terms of reducing the suffering and harm caused by crimes. Also, where there is less crime, people will arguably feel safer, which also contributes to their overall wellbeing. Besides, crime-prevention, it is at least arguable that punishment provides satisfaction for the ones affected by crime, which, according to the utilitarian, could contribute to overall well-being (Duff 2001, 4).

Rehabilitation, in contrast to reformation, does not necessary involves changes in character. Being rehabilitated is rather a matter of becoming more compliant with the law and to better function in society. Different forms of legal sanctions, such as imprisonment or electronic monitoring, could be accompanied by further measures which aim at helping, assisting and/or improving the convicted offenders skills and capacities. These may include work-training, education, and drug treatment programs.¹⁴

From a consequentialist perspective it is not only the good effects of punishment that matters, but also the harms it causes to the offender and other people directly or indirectly affected. In the ideal case punishment should cause as little harm as possible with as large effect possible. In fact, if the goal is overall crime prevention, it could be argued that punishment does not have to be the prime means towards this end. It appears that a proponent of consequentialism should therefore strongly encourage other crime-preventive strategies and not rest solely on the use of punishment.

3.3 Expressivistic Theories of Punishment

The third type of theories to be discussed is Expressivistic theories of punishment. Theories of this sort take seriously into account that legal punishment has a communicative or expressive function, and suggest that it is in virtue of this function punishment is justified.¹⁵ I will focus on two theories of this kind. The first is The

¹⁴ I am aware that rehabilitation does not comply with the definition of punishment which I outlined and described in section 2. In contrast to punishment, rehabilitation does not intend to harm the offender, but rather to help the offender and make him or her better off. In similar vein, Göran Duus-Otterström points out that it is questionable that rehabilitation should be seen as a form of punishment (2007, 49). Still, nothing of this suggests that rehabilitation is not perceived of as a burden for the offender. The participation in a rehabilitation program might be very burdensome and unpleasant for the offender, even though the harm is not intended.

¹⁵ It should be acknowledged that as I treat expressivistic theories of punishment as distinct from retributivism and consequentialism some might find this division somewhat misleading. There are retributivists who seek the justification of punishment as a deserved response to crime in its expressive function. On this view punishment communicates the censure which offenders deserve for their wrongdoing (see e.g. Duff 2001, 27-30; Bennett 2008). Still, there are good reasons to treat expressivistic theories separately. Not all theories focusing on the expressive function of punishment are retributivistic. Also, there appears to be important differences between for instance the communicative theory advocated by Duff and

Moral Education Theory. Moral education theory combines elements of deterrence, retribution, and rehabilitation, and sees punishment as a form of moral education. Adherents of this view hold that though punishment partly aims to deter, legal punishment first and foremost aim to *tell* offenders that what they did was morally wrong. According to Jean Hampton (1984), who is famously associated with this view, punishment conveys a larger message to agents who are able to reflect on the reasons for criminal law; namely, that certain acts are prohibited because they are morally wrong.¹⁶ Punishment is a way of teaching and morally educating offenders (as well as the rest of society). Still, Hampton argues that punishment is not meant as a way of conditioning offenders to do what society requires them to do. Punishment is aiming at teaching the offender what is morally right or wrong, not to force her into being moral. In this sense, moral education theory is different from consequentialism. For the moral education theorist it is first and foremost the function of punishment as moral educator, i.e. its expressive function, which provides it with its justification. In contrast, a consequentialist could be open to whatever means of conditioning the offender in so far as it helps reducing and preventing crimes.

According R.A. Duff (2001) there are problems with the moral education theory in so far as it sees moral education of offenders as the general aim of punishment. For instance, it is not obvious that offenders need moral education. The fact that one acted wrongly does not entail that one did not understand that one's act was morally wrong. The offender may very well recognize that what he or she did was indeed wrong, but committed the criminal act despite this – for instance out of strong self-interests. If this is the case, moral education is not what the offender needs. The problem is rather that he or she does not care enough about it (Duff 2001, 91). Instead, Duff suggests that legal punishment should not be seen as a communicative enterprise aiming at moral reformation. Rather it should be a communicative enter-

standard forms of retributivism, where the former sees deserved punishment as partly justified as a reformatory enterprise, whereas the latter does not (Brooks 2012, 106).

¹⁶ In section 2 I stress that criminal wrongdoing is not the same as moral wrongdoing. Many criminal acts may very well be immoral, but necessarily not all are. If this is true, this may provide a challenge to the moral education theory.

prise which “seeks to persuade the wrongdoers of the error of their ways and to repair the damage done by their crimes to their communal relationship” Duff, 2001, 91-92). This leads to Duff’s own theory: The Communicative Theory of Punishment. According to Duff, criminal offenses are *public wrongs*. That is, wrongs in which the public as a whole has a proper interest (2001, 60-61). This proper interest involves an authoritative and communal condemnation of such a wrong, which in turn merit a communal response. Criminal wrongdoings, understood as public wrongs, are not only wrongs to the victim, but to the society as a whole. The victim is not wronged solely in virtue of being a freestanding individual, but is wronged as a member of the community. Thus, crimes are always wrongs against the community according to Duff (2001, 63).

Following this view of crimes, Duff holds that the aim of punishment is to communicate to the offender that what he or she has done is wrong. Legal punishment, he argues, should be seen as a species of secular penance, whereas the deprivations it involves will cause the offender to repent from his or her past wrongdoing. Through this repentance the offender will start to reform and, hopefully, reconcile with those she has wronged. Thus, punishment, according to Duff, should both be communicative and inclusionary (Duff 2001, 106ff). Also, the theory incorporates both forward-looking and backwards-looking components. It is backward-looking in the sense that punishment is justified as deserved censure. Unlike pure retributivistic accounts, however, it is forward-looking in its focus on reform and reconciliation where the aim is to restore the relationship between the offender and the community.

4. Punishment and Imprisonment

Imprisonment or incarceration is the harshest form of punishment in many countries nowadays.¹⁷ In fact, it is almost as punishment is synonymous to imprisonment.

¹⁷ One might argue, rightly I believe, that capital punishment is a harsher form of punishment than imprisonment. This, however, is a matter of dispute among moral philosophers. Utilitarian moral philoso-

According to Michael Foucault there are two underlying features of imprisonment which explains why it became the prime means of punishment in modern society since the beginning of the 19th century. First, it involves the deprivation of liberty. Liberty is a good which belongs to everybody in the same way and has the same value for all. Thus the loss of liberty and freedom is, unlike fines, an egalitarian punishment (Foucault 1991, 232). Second, prison is an apparatus for transforming individuals. According to Foucault this aspect was not unique to prisons, and that prison was not qualitatively different from other institutions in society. He writes:

How could prison not be immediately accepted when, by locking up, retraining and rendering docile, it merely reproduces, with a little more emphasis, all the mechanisms that are to be found in the social body? The prison is like a rather discipline barracks, a strict school, a dark workshop, but not qualitatively different (1991, 233).

According to Foucault it should be made clear that prisons were not primarily intended as a way of depriving individuals their freedom to which the correctional task was later added. From the beginning of the 19th century penal imprisonment covered both the deprivation of liberty as well as the correctional task. It inhabited, so to speak, an unceasing element of discipline (1991, 233). Whether the purpose of imprisonment nowadays ought to be explicitly reformatory or not is of course a matter of discussion. For instance, Lippke (2007) argues that imprisonment should not be so concerned with the improvement and development of the inmates' moral personalities (2007, 111-12). Still, imprisonment does involve the intentional deprivation and restrictions of freedom and liberty, and to a large extent, privacy. In doing so, imprisonment largely diminishes the offender's possibility to live an autonomous life (Lippke 2007; 2003). Insofar as we do value these goods it is clear that it is a very serious penal sanction. Also, besides the immediate effects of prison to the inmate's life, imprisonment also has collateral consequences which go beyond the

phers J.S. Mill (1806-1873), for instance, famously favored capital punishment because it is more humane than life-long prison sentences (Mill 1986). Whether Mill is right or not is of course dependent on what sort of imprisonment one does consider and compare with the death penalty. For sure, the prison conditions which Mill had in mind are very different from many current prison systems, not least many humane forms.

imprisonment. Most immediate is the prospects of employment and housing (Pettersson and Carlsson, 2013). It also has collateral consequences beyond the prison inmate insofar as it also negatively affects prisoners' families and loved ones (Comfort 2007).

In what follows I will briefly address two discussions in the ethics of imprisonment. (1) For what sort of criminal offenses is imprisonment a fitting criminal sanction? (2) If imprisonment is a fitting criminal sanction for certain crimes, what sorts of prison conditions are morally justified? I will discuss these issues in turn. While doing so I will use the theories of punishment introduced in the previous section as well as introduce the essays included in this thesis.

4.1. Who should go to prison?

Among penal philosophers it is a common view that imprisonment should be exercised very carefully and that imprisonment is an appropriate response only to a limited set of criminal offenses (Lippke 2007; Kleinig 2008; Duff 2001). A straightforward argument for this view is retributivistic. As imprisonment is a very harsh form of punishment, and as the punishment should be proportionate to the criminal wrongdoing made by the offender, it is only demanded for serious offenders where this kind of deprivation is deserved. As I indicated in the above, imprisonment largely diminishes the offender's possibility to live an autonomous life, and as a punishment it is suitable for crimes which have the same effect. As Lippke puts it:

Incarceration might thus be regarded by retributivists as an especially suitable penal response to those serious offenses that defeat or diminish in significant ways the capabilities of victims to live decent lives of their own choosing. There seems little doubt that that those incarcerated suffers severe losses to such capabilities. Imprisonment cramps and truncates the lives of offenders, at least for the duration of their sentences. As such it does something to serious offenders that is comparable, if not exactly equivalent, to what many of them have done to their victims (Lippke 2003, 33).

Following this line of reasoning, Lippke argues that imprisonment is an appropriate punishment for criminal offenses that with a high degree of culpability inflict, or threaten to inflict, severe physical and psychological harm. This, he argues, includes homicide, aggravated assaults, rape, kidnapping, terrorism. Equally, the case for imprisonment is weaker where culpability as well as the potential harm inflicted is low. These include many property crimes and drug crimes (Lippke 2007, 65).

One does not have to endorse retributivism in order to be restrictive about the use of imprisonment. Consequentialism could arguably support this conclusion as well. As I pointed out above (section 3.2.) proponents of consequentialism hold that punishment is always an evil and is justified only in so far as it leads to overall good consequences. As the harms and deprivations of imprisonment can be very exhaustive we shall expect the good effects of imprisonment, such as deterrence or reformation, to be larger than the effects of legal sanctions associated with fewer burdens, such as community services or electronic monitoring. One could thus argue that from a consequentialist perspective these alternatives shall be considered before imprisonment, especially for low-risk offenders and where re-offending is unlikely (Bülow 2013a). One could argue, however, that imprisonment seems to have most to be said for it when there is high risk of continual criminal activity and where it is needed in order to provide security and safety to society. But as John Kleinig (2008) points out, judgments like these are very hard to assess. He writes:

We should remember, however, that judgments of dangerousness are fraught with difficulty. Such judgments are better determined by repeated lawlessness than by some psychosocial assessment, though even in the former situation it is important not to overemphasize the need for incarceration. The analysis of crime patterns suggests that for many who engage in criminal activity, criminality represents a phase rather than a disposition. Even if, given the social potency that the fear of crime possesses, we might err on the side of caution, our tendency to overestimate the risk of re-offending should give us pause before we determine that incarceration would be justified (Kleinig 2008, 222).

As for consequentialism I believe that moral educational theory also implies caution towards the claim that imprisonment should be the prime means of punishment. Moral educational theory does not support any particular form of punishment, but as Shafer-Landau points out, incarceration in itself seems to be an insufficient means to attain the moral educational goal of punishment. Even under the best conditions, Shafer-Landau argues, prison only provide the setting in which a moral education and moral reformation of the offender can take place (1991, 200). Moreover, even if it is the case that incarceration is morally educational, it can be questioned whether it is the most efficient or best alternative. Arguably, someone might learn that vandalism on communal property is wrong, not by being incarcerated for two months, but rather to be forced to repair or restore the same property which one has destroyed. Similarly, a man sentenced for domestic abuse could, if practically possible, be sentence to community service helping out at a women's shelter. To make the case against imprisonment from a moral educational perspective even harder, prison seems even more problematic if we consider the fact that prison inmates often are subject to some form of *prisonization*. This denotes to "the process by which inmates takes on, to a greater or lesser extent, the folkways, mores, customs, and general culture of the penitentiary" (Lippke 2007, 179). If inmates tend to become prisonized, this would probably also hinder them from taking in the moral message which their punishment is supposed to communicate. Of course there are ways in which the tendencies of prisonization could be countered, for instance by allowing prisoners to have good social contacts and visits from friends, families and other people from outside the institution (Lippke 2007; Bülow 2013b). It thus appears to me that moral educational theorist, in so far as they endorse imprisonment as a criminal sanction at all, should be much willing to discuss what prison conditions – if any – will be most beneficial for moral reform.

Let us now turn to Duff's communicative theory of punishment. One implication of Duffs theory is that imprisonment should not be used as a prime means of punishment. A salient feature of imprisonment, according to Duff, is that it communicates to the offender that he or she is not fitted to live with the rest of us. It thus excludes

the offender and interrupts her relations to the rest of society by removing her from the ordinary community. On Duff's view this is problematic, since his account of punishment as a secular penance builds from the idea that the offender is a member of the community and that punishment ought to be inclusionary (Duff 2001, 149). Therefore, probation, community service, and other modes of punishment which can be executed within society should be preferred. Imprisonment is a reasonable response only to the most serious of wrongdoings. But even in these cases, imprisonment should not be a means of exclusion, but should, as all forms of punishments according to Duff, be a way of reconciling the offender with the society (Duff 2001, 148-52).

The discussion so far is not exhaustive, but does only provide a rough sketch. As a general and cautious conclusion, however, I would point out that there is a presumptive case for restricting the use of imprisonment to a more rare form of punishment only appropriate for severe crimes. In other words imprisonment should be considered as a last resort. This leaves upon the question about what sort of punishment is appropriate as an alternative to imprisonment. I discuss one potential alternative, namely electronic monitoring in paper III.

4.2. Morally defensible prison conditions

Can there be an ethics of imprisonment? Some philosophers have found this self-contradictory and repugnant. For instance Derek R. Brookes, who has suggested that "To propose or construct a correctional ethics would be an oxymoron, rather like presenting oneself as a married bachelor or a violent pacifist; or, closer still, like constructing an ethic for slave-masters (Brookes 2005, 40).¹⁸ Still others believe that though many instances of imprisonment and that many current prison regimes are morally problematic, the punishment as such is not inherently wrong

¹⁸ Another way to reach the same conclusion would be to argue that not only imprisonment, but legal punishment as such is immoral. For defenses of this view, see Boonin (2008) and Zimmerman (2011).

(e.g. Nussbaum 2004; Kleinig 2005; 2008; Lippke 2007; Duff 2001). For instance, Martha Nussbaum writes:

There is no reason to think that the whole institution of imprisonment is incompatible with basic human dignity and respect. The very fact of limiting a person's freedom for a period of time does not express the view that this person is not fully human (Nussbaum 2004, 249).

The tension illustrated by the divergent opinions of Brookes and Nussbaum can be further illuminated. As John Kleinig (2005) points out it is important to keep apart two different questions in the ethics of imprisonment which otherwise can easily conflated. First, is imprisonment as punishment morally justified at all? Second, are our current practices of imprisonment morally acceptable? Now a person can give an affirmative answer to the first question while at the same time provide various negative answers to the later. An answer along these lines would thus be a *reformerist*, while those who give a negative answer to Kleinig's first question would be *abolitionists* (Kleinig 2005, 3).

No doubt, the case for abolitionism is much harder than the case for reform. The former presupposes that even the most humane forms of imprisonment are immoral. This thesis is on par with those who believe that the use of imprisonment as a form of legal punishment is not inherently wrong in itself. It thus takes a reformists perspective. It ought to be observed, however, that this position is compatible with the claim that none of the current or past prison regimes in the world have been morally justified. Instead the reformist perspective should be understood as a *normative project*, which tries to assess what sort of imprisonment is morally defensible and in what ways prisons may be reformed. Still, when I discuss imprisonment and in what ways it ought to be reformed my empirical starting point is mainly how im-

prisonment is used in Europe and in the U.S. These are also the examples first and foremost addressed (and thereby assessed) in the papers.¹⁹

Some might argue that imprisonment as it is used in these countries should neither be abolished nor reformed. Rather, prisons should to large extent remain as they are, or perhaps made much harsher and severe. This, however, is a problematic position for reasons which I explicitly defend in the papers included in this thesis. For instance, in paper I I argue that according to most theories of punishment - including retributivism, consequentialism, moral education theory, and the communicative theory of punishment - imprisonment should be compatible with treating inmates as moral agents. This in turn also implies – or so I argue – that prison inmates must also be assured certain levels of privacy, for instance by allowing inmates individual cells, and not to supervise their visits. For many prison systems, such as the U.S and the U.K, which suffers from prison overcrowding, this means that serious prison reforms should be encouraged (Bülow *forthcoming*). Similarly in Paper II I argue that collateral harms of imprisonment affecting third parties ought to be mitigated. Part of my argument for this conclusion is that two standard positions in normative ethics (consequentialism and deontology) fail to show that the harms to children and families of prisoners are morally permissible. Among other things I argue that prisons ought to be more accessible and family and children friendly when it comes to visits. Specific accommodations should be made for this purpose and, in case where it is manageable, a guest-apartment could be provided enabling longer visits in a family and child friendly environment (Bülow 2013b).

Some might worry that if prison conditions are arranged in the way that I propose in the papers, imprisonment will cease to be, or become less of a punishment. Punishment should, as I stated in the definition in the above, be unpleasant or involve some sort of deprivation (section 2). But if the suggestions I propose in the papers

¹⁹ I wish to stress that I do not hold that the arguments in the papers are only relevant for the U.S and for Europe. In so far as my arguments are valid they are also universal. That said it is reasonably that respect for inmates privacy addressed in paper I, for instance, is not the most urgent or pressing issue in every prison system. Basic needs such as health, hygiene and fundamental rights are more urgent in many prisons if we were to look at how prison conditions looks like on the global level.

renders imprisonment too easy, some might object that it equally ceases to be a punishment. I am myself skeptical about this point. It rests on the dichotomy concerning the relation between imprisonment and incarceration on the one hand, and punishment on the other: more humane forms of incarceration are only achievable at the cost of punishing less. This, however, is not apparent. As long as the aim of imprisonment is to deprive offenders of their freedom and liberty, none of what I suggest in the papers undermines this function. For instance, even though we assure inmates with certain levels privacy, or where we to actively mitigate harm to families and children of prisoners' by improving prison facilities, this certainly does not render prison a place where the inmates freedom, liberty, and possibility to live an autonomous life is not largely diminished.

5. Summary of the Essays

Paper I

As I indicated in the above, imprisonment involves deprivations of freedom and autonomy (section 4). In order to do so, incarceration inevitably involves careful supervision and control, which in turn certainly affects to inmates prospects of privacy. In paper I (*Treating Inmates as Moral Agents: An Argument for Privacy in Prison*) it is argued that though some privacy must be interfered prison inmates ought to enjoy as much privacy as possible in so far as this does not compromise other values, such as safety and security. I argue in defense of the idea that the right to privacy is important because of its connection to moral agency. I discuss and defend three arguments in support of this claim: (i) privacy is crucial in order to empower agents in formulating their own autonomous decisions and beliefs; (ii) respect for one's privacy is crucial in order to conceive oneself as a self-determined agent; and (iii) respect for one's privacy is crucial in order to conceive oneself as a trustworthy agent. In paper I it is argued that the importance of treating prison inmates as moral agents is inherent or can be motivated from different established philosophical theories about the justification of legal punishment – including retribu-

utivism, consequentialism, moral education theory, and the communicative theory of punishment. Therefore, all theories should support inmates' right to certain levels of privacy. Still, any account defending prison inmates' right to privacy must deal with two possible problems. First, there is the question of how much privacy should be allowed during imprisonment. Second, the right to privacy may conflict with other rights, both the rights of the public and the prison staff, but also of the prison inmates themselves. This last point is particularly important, since the right to security – to which the right to privacy is often held to be in conflict – must be specified and further elaborated, in relation to whom the right to security is concerned. The paper also includes a discussion on how the aim of protecting privacy can be achieved. I suggest that respecting privacy can be a good way of actually promoting and creating a safer and more secure environment. It might be argued that if there is little gain in security, but a much greater loss in the inmates' right to privacy, then security should remain the foremost consideration. In response, I would say that this might be true in a particularly well-defined case. However, issues that arise from the control process, such as cell searches, strip searches, and drug tests, must be carried out in such a way that it also respects the privacy and integrity of the inmates, and that in doing so, a more balanced and secure environment is perhaps successfully achieved (Easton 2011, 74ff). Moreover, Lippke points to empirical evidence showing that individuals subject to imprisonment where they are unable to control aspects of their own lives may suffer from a number of maladies. These maladies may include seemingly irrational behavior designed to provoke some sort of response and intolerable levels of frustration, which may lead to sudden uncontrollable outrage (Lippke 2007, 114).²⁰ If this is correct, then respecting the right to privacy should arguably be part of the objective of creating and upholding a secure environment and with better effect in the long run.

²⁰ Among other things, Lippke also points out that convicted offenders may suffer from an inability to initiate any activities, chronic apathy, lethargy, depression and despair as a result of greater control over all aspects of their lives (2007, 114).

Paper II

Besides its immediate impact on the prison inmate, imprisonment also affects third parties. In paper II (*The harms beyond Imprisonment: Do we have special moral obligations towards the families and children of prisoners?*) I discuss prison conditions explicitly by addressing the rights of prisoners' families and children. Different types of collateral harms affecting prisoners' families and children, including decreased psychological wellbeing, financial costs and loss of economic opportunities, and intrusions and control of their private life, are indirect consequences of imprisonment. Paper II discusses whether these collateral harms of imprisonment to prison inmates' close family members and children give rise special moral obligations towards them. I argue that it is hard to defend the position that allowing for the abovementioned harms would be morally permissible for the sake of the overall aims of incarceration. Two potential strategies are discussed, (1) that the benefits of imprisonment outweighs the harms to third parties and (2) an appeal to doctrine of double effect. The former strategy, it is argued is refuted since it can be questioned whether the benefits are sufficiently good to outweigh the harms, and that it would result in treating family members as means rather than ends in themselves. The later strategy, according to which the collateral harms are foreseen side-effects which it can be permissible to bring about, is refuted by the claim that the doctrine of double effect is not applicable to this case. The reason is that though most of the conditions of the doctrine are fulfilled, it fails to fulfill the proportionality condition that the good of imprisonment is not good enough compared to the bad, and there is no better route to the former. It is argued that the harms imply that imprisonment should only be used as a last resort and where it is necessary gives rise to special moral obligations. Using the notion of residual obligation, these obligations are defend, categorized and clarified (Hansson and Peterson 2001). Though not exhaustive the obligations defended in paper II include obligations of improvement which implies – or so I argue – that prison facilities should be made more accessible and friendly when it comes to visits and accommodations should be made for this purpose. It is also arguable that in some cases, where it is in the child's best interest, female pris-

ons shall allow babies to stay with their mothers. In cases where manageable, prisons could be expected to provide guest apartments for long-distance traveling families and enable longer visits in a family and child friendly environment. In paper II I also suggest that one potential obligation could be to reduce the financial costs and economic losses associated with imprisonment of family members, especially by providing support when it comes to prison visits and contacts with their loved ones. I suggest that economic support and aid should be given in order to prevent for instance moving, since this can result in further dramatic changes for children of prisoners.

Paper III

One conclusion argued for in this thesis is that imprisonment should be a limited criminal sanction and probably much more limited than it is in many countries nowadays. This, however, leaves open what exactly should be encouraged in cases where prison sentences are inappropriate. In paper 3 (*Electronic Monitoring of Offenders: An Ethical Review*) I consider one possible alternative, namely electronic monitoring. Even though electronic monitoring might be seen as a promising alternative to imprisonment one should also be careful with its use since it might not be without any further costs. As von Hirsh has pointed out, community based sanctions also give rise to ethical problems on their own which must be addressed (von Hirsh 1990). Unfortunately these ethical problems have received scant attention from philosophers and scholars working in applied ethics. The aim of paper 3 is to address, assess, and discuss some potential ethical challenges when implementing electronic monitoring. To this end six initial ethical challenges are identified: (1) Increased risk of harm, (2) Profit-driven industry, (3) Unjustified intrusion of privacy, (4) The potential risk of stigmatization, (5) Unfair distribution of punishment, (6) how EM relates to the different aims of punishment. It is argued that since EM is developing as a technology and as a punitive means, it is urgent to discuss its ethical implications and to incorporate moral values into its design and development. Our stance on various ethical issues largely shapes how EM will come to develop. The position

defended in the paper implies that certain limits are to be acknowledged and possible changes encouraged. Protection of the public, as well as the offender, is crucial; EM programs must be used in such a manner that they can ensure safety and security for all the parties involved. It is argued that complete monitoring of offenders is ethically unjustified. To support probation the current forms of EM of offenders' locations are needed, while constant recording of conversations is not. Instead this would constitute an unjustified invasion of privacy. Another aspect is concerned with the potential risk of stigmatization, where limiting this risk encourages technological design that can make the device more discrete and smaller. Also, what we want from EM is heavily dependent on our normative and philosophical views regarding punishment. The paper considers EM from the perspective of consequentialism, retributivism, and moral educational theory. Even though this discussion is brief, it is shown that discussions on EM programs must continually be informed by a philosophy and ethics of punishment.

6. Looking forward

Needless to say, a licentiate thesis is not exhaustive. Far more could be said about the ethics imprisonment. For instance, questions about prisoners' work opportunities, healthcare, and prisoners' political rights have not been addressed at all.²¹ These questions also deserve serious attention from legal and moral philosophers. I also wish to point to another, further issue. If we are to really start looking forward, little has been said about our moral obligations to prisoners' post-release. There is one thing to discuss whether imprisonment can be morally defensible, and yet another to assess which responsibilities, if any, come afterwards. Should it be possible

²¹ Most notably the question regarding prisoners' political rights has attracted serious attention from legal and political philosophers (e.g. Munn 2011; Lippke 2007). Notably this debate has been fueled by the practice of criminal disenfranchisement in several jurisdictions. For instance in the U.S certain states, such as Kentucky and Virginia, ex-prisoners are permanently prevented from voting, where many states engage in less criminal disenfranchisement. Maine and Vermont are the only states which permit prisoners to vote during their sentence. Other jurisdictions outside the U.S also restrict prisoners voting rights. For instance, in the U.K prisoners are not allowed to vote during their sentencing. New Zealand and Australia restrict voting rights for prisoners imprisoned for a sufficiently long amount of time (Munn 2011).

for everyone to extract information about ex-convicts and access to criminal records?²² To what extent, if any, can ex-offender restrictions, such as restrictions in access to employment, housing, public assistance, the right to vote, possibility of student loans, and driver's licenses, be morally justified? If so, which restrictions? To what extent? On what grounds? All abovementioned practices are common in the U.S, even though similar ones, especially with regard to employment, can be found in other legal systems (Hoskins 2014). That said, I wish to indicate that the philosophical work on legal punishment does not end with the question on whether it is morally justified practice or not. It is only – if anything at all – a start.

²² For a recent discussion on this matter see (Tunick 2013).

Errata for previously published papers:

Paper II

Section 2.3: "an essential feature of all institutions" should be: "an essential feature of all total institutions"

Section 3.1: "Although the deterrence effect of imprisonment" should be "Although deterrence theory"

Section 3.2: "In some rare cases children and families suffer very little, and outweigh the value of retribution" should be "In some rare cases children and families suffer very little, and is outweighed by the value of retribution"

Footnotes: 14 and 15 should appear in the reverse order.

In footnote 18, "originate from the moral philosophy of Ross and Stratton-Lake (2002)" should be "originate from the moral philosophy of W.D Ross (2002)".

Conclusion: "... has desirable consequences from a crime-preventive and reintegrative perspective. Concern for families and children's wellbeing ..." should be "...has desirable consequences from a crime-preventive and reintegrative perspective, concern for families and children's wellbeing ..."

Paper III

Electronic monitoring and the aim of punishment: "there are no good reasons for believing that EM has no such effect in itself (Nellis 2006)" should be "there are no good reasons for believing that EM has such an effect in itself (Nellis 2006)"

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Svensk sammanfattning

Denna licentiatavhandling består av tre artiklar som samtliga berör kriminalvård utifrån ett moralfilosofiskt perspektiv. Tillsammans med en introduktion syftar avhandlingen till att belysa frågor om hur kriminalvårdsklienter i såväl frivård, men framförallt i fängelser, bör behandlas. Min etiska diskussion utgår först och främst från forskning om fängelseförhållanden i EU och i Nordamerika.

Första artikeln berör frågor om övervakning och personlig integritet i anstaltsmiljöer. Har man som kriminalvårdsklient rätt till sin personliga integritet? Om så är fallet, hur ska klientens rätt till en personlig integritet vägas mot exempelvis behovet av säkerhet och en trygg anstaltsmiljö? I artikeln argumenterar jag för att inskränkningar av den personliga integriteten ska hållas till ett minimum, utan att den för den skull kompromissar med säkerhet och trygghet. Jag försvarar detta påstående med hänvisning till hur respekt för den personliga integriteten är av stor betydelse för att klienterna behandlas och erkänns som moraliska agenter. Att klienter bör behandlas och erkännas som moraliska agenter är något som i sin tur kan motiveras, och även förutsatts av, flera filosofiska teorier om straffets moraliska legitimitet. I uppsatsen föreslår jag att etiskt försvarbara anstaltsmiljöer bör kunna förse klienter med eget rum, att besök i allra möjligaste mån inte bör övervakas, att visitationer alltid bör utföras med varsamhet och med respekt för klienten, att alternativa metoder för drogdetektion bör introduceras och ersätta urinprover vilka till hög grad uppfattas som integritetsinskränkande. Jag argumenterar också för hur ett aktivt värnande om klienternas personliga integritet bör vara del av säkerhetsarbetet, och hur detta kan bidra till en säkrare och tryggare anstaltsmiljö.

I den andra artikeln utgår jag ifrån anhörigas perspektiv och rättigheter. Fängelsestraff påverkar inte enbart den som avtjänar straffet, utan också familjer och barn. Enligt kriminologer är sämre psykologiskt välbefinnande, ekonomiska svårigheter och risken för stigmatisering, vanligt förekommande negativa konsekvenser för

anhöriga till kriminalvårdsklienter. En annan påverkande faktor är att den kontroll som kriminalvården utövar över klienten ofta också påverkar anhöriga. I artikeln argumenterar jag för svårigheter i att rättfärdiga dessa sidoeffekter utifrån ett etiskt perspektiv. Jag argumenterar därför istället för att fängelser inte bör ses som ett första alternativ när det kommer till valet av bestraffning. Istället bör det användas som en sista utväg där inga andra påföljder anses hjälpliga eller lämpliga. I den mån fängelser ändå används som bestraffning bör det ge upphov till särskilda skyldigheter gentemot klientens anhöriga. I uppsatsen används begreppet *restplik* (eng. residual obligations) för att klargöra vilka former av förpliktelser fängelsebestraffning ger upphov till. Även om analysen inte är definitiv och fullständig i den mån att andra skyldigheter kan inkluderas, så argumenterar jag för att anstalter bör vara besöksanpassade, och i möjliga fall bör fängelser kunna förse anhöriga med en gästlägenhet (för att möjliggöra längre besök för långväga resande). Där det är förenligt med principen om barnets bästa bör kvinnofängelser tillåta att spädbarn och yngre barn kan bo med sina mödrar. Jag föreslår också att en möjlig skyldighet skulle vara att minska de finansiella kostnader och ekonomiska förluster i samband med fängslandet av familjemedlemmar, särskilt genom att ge stöd när det gäller anstaltsbesök. Jag föreslår att ekonomiskt stöd också bör kunna ges för att exempelvis förhindra flytt, eftersom sådan kan resultera i ytterligare dramatiska förändringar för en del barn.

I avhandlingens tredje artikel diskuteras huruvida intensiv övervakning, eller s.k. fotboja, kan utgöra ett önskvärt alternativ till fängelsestraff. Totalt sex olika etiska aspekter av intensiv övervakning diskuteras, vilka inkluderar: (1) ökade risker för allmänheten och för klienten om straff verkställs i det fria, (2) att den teknologiska utvecklingen till stor del kommer från vinstdrivande företag, (3) övervakningens påverkan på klientens personliga integritet, (4) risken för stigmatisering, (5) risken för orättvis bestraffning, och (6) huruvida intensiv övervakning kan uppfylla de mål som straff vanligtvis anses syfta till, så som avskräckande, vedergällning, eller moraliskt uppfostrande. I uppsatsen argumenterar jag för att frågor om straffpåföljdens utformning såväl som de teknologiska innovationerna bör ta etiska och värdemäss-

iga dimensioner i beaktande. I uppsatsen föreslår jag att intensiv övervakning inte bör vara för omfattande, utan att enbart övervakning av klientens plats bör övervakas. Mer omfattande övervakning, såsom ljudupptagning, bör inte tillåtas även om det skulle vara möjligt. Ett annat förslag är att den fysiska fotbojan bör göras diskret för att minska den önskade risken för stigmatisering. Slutligen påpekar jag att uppsatsens analys inte är definitiv, utan att utformningen av intensiv övervakning till stor del är beroende av den filosofiska och penologiska diskussionen om straffets syfte, mål och rättfärdigande.