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WHY ONLY THE STATE MAY INFLICT CRIMINAL SANCTIONS: THE CASE AGAINST PRIVATELY INFLICTED SANCTIONS

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Criminal sanctions are typically inflicted by the state. The central role of the state in determining the severity of these sanctions and inflicting them requires justification. One justification for *state-inflicted* sanctions is simply that the state is more likely than other agents to determine accurately what a wrongdoer justly deserves and to inflict a just sanction on those who deserve it. Hence, in principle, the state could be replaced by other agents, for example, private individuals. This hypothesis has given rise to recent calls to reform the state's criminal justice system by introducing privately inflicted sanctions, for example, shaming penalties, private prisons, or private probationary services. This paper challenges this view and argues that the agency of the state is indispensable to criminal sanctions. Privately inflicted sanctions sever the link between the state's judgments concerning the wrongfulness of the action and the appropriateness of the sanction and the infliction of sufferings on the criminal. When a private individual inflicts punishment, she acts on what she and not the state judges to be a justified response to a criminal act. Privately inflicted sanctions for violations of criminal laws are not grounded in the judgments of the appropriate agent, namely the state. It is impermissible on the part of the state to approve, encourage, or initiate the infliction of a sanction (for violating a state-issued prohibition) on an alleged wrongdoer on the basis of a private judgment. Such an approval grants undue weight to the private judgment of the individual who inflicts the sanction.

I. INTRODUCTION

Criminal sanctions are typically administered by the state. Via its public officials, the state determines the severity of criminal sanctions and carries

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out the actual infliction of these sanctions. Recent developments in the criminal-law system are designed to shift some of these powers from the state to individual citizens or other private entities. Shaming penalties are one paradigmatic example of such a shift in powers. In the case of shaming penalties, both the power to determine the severity of sanctions and the power to inflict sanctions are shifted from the state to private citizens.[1] Privately run for-profit prisons are another example, but here only the power to inflict criminal sanctions is transferred from the state to corporate bodies.[2] The victims' rights movement also proposes to shift some of the powers to punish from the state to the victims of crime. A less well-known example of privately inflicted sanctions is the recent initiative to privatize the probationary system in Britain.[3] This paper provides a philosophical perspective on the legitimacy of privately inflicted sanctions.

Many observers have raised concerns against the recent initiatives to privatize the criminal-law system.[4] This paper exposes the rationale underlying these concerns. I argue that there is a link between the state's judgments concerning the wrongfulness of the act and the infliction of sanctions. This link, it will be argued, is indispensable to the legitimacy of the infliction of criminal sanctions triggered by violating state-issued prohibitions. Insofar as the state is the source of criminal prohibitions, it should also determine the nature and the severity of the sanctions that follow their violation and should inflict these sanctions. Delegating the power to determine the nature and severity of the criminal sanctions (e.g., by using shaming penalties) or delegating the power to inflict criminal sanctions to private entities (e.g., by establishing private prisons) severs the link between the state's judgments concerning the wrongfulness of the act and the determination of the severity of the sanction or the infliction of the sanction. It is impermissible on the part of the state to authorize, encourage, or initiate the infliction of sanctions in the absence of such a link.

One popular justification for state-inflicted sanctions is an instrumental one. On this view, criminal sanctions should be administered by the institution that is most likely to determine accurately what wrongdoers justly deserve and to inflict the just punishment successfully (or efficiently). The

1. For contemporary advocates of shaming sanctions, *see* Dan Kahan, *What Do Alternative Sanctions Mean?*, 63 CHI. L. REV. 591–653 (1996); Dan M. Kahan & Eric A. Posner, *Shaming White-Collar Criminals: A Proposal for Reform of the Federal Sentencing Guidelines*, 42 J.L. & ECON. 365–391 (1999). In a recent article, Dan Kahan expresses reservations concerning his earlier advocacy of shaming penalties. *See* Dan Kahan, *What's Really Wrong with Shaming Sanctions*, 84 TEX. L. REV. 2075 (2006).

2. *See* Douglas C. McDonald, *Public Imprisonment by Private Means: The Re-emergence of Private Prisons and Jails in the United States, the United Kingdom, and Australia*, 34 BRIT. J. CRIMINOLOGY 29 (1994).

3. *See* the Offender Management Bill in the British Parliament, *available at* http://www.publications.parliament.uk/pa/cm200607/cmbills/009/2007009.pdf.

4. *See, e.g.,* Stephen P. Garvey, *Can Shaming Penalties Educate?*, 65 U. CHI. L. REV. 748–749 (1998); Alon Harel & Alon Klement, *The Economics of Stigma: Why More Detection of Crime May Result in Less Stigmatization*, 36 J. LEGAL STUD. 355–378 (2007).

reason why the state should inflict criminal sanctions on this view is that the state is better placed to do so than other agents. If this is the case, criminal sanctions for wrongdoing do not *have* to be inflicted by the state. Criminal sanctions could and indeed should be inflicted by private individuals when these individuals can more effectively inflict them. Criminal sanctioning is therefore ultimately a task in search of an appropriate agent. Such a justification sharply separates the questions of the rationale of criminal punishment and the criteria for determining its appropriateness from the question of who should administer the sanctions. The answer to the latter question can be provided only once the former questions concerning the rationale underlying criminal punishment and the criteria for determining the appropriate sanction have been addressed.

This paper rejects this instrumental explanation; it argues that the state is not merely a means for inflicting deserved suffering on criminals. Under this view, the replacement of the state with other agents is not merely impractical or contingently undesirable; instead, state-inflicted sanctions are essential to the legitimacy of criminal sanctions. To the extent that the state prohibits certain sorts of conduct, it is the state and the state alone that ought to administer sanctions for the violations of these prohibitions. A full understanding of the normative justification for criminal sanctions requires an understanding of the indispensability of the agency of the state to the legitimacy of the criminal-law system.

In Section II, I define what I mean by "criminal sanctions," "privately inflicted sanctions," and "state-inflicted sanctions" and differentiate between three types of justification for *state-inflicted* criminal sanctions: instrumental justifications, normative preconditions justifications, and state-centered justifications. In Section III, I argue in favor of an "integrationist" state-centered justification. I argue that the practice of inflicting sanctions for wrongdoing is an integral part of other duties and powers that the state has. The appropriateness of sanctions and their success in achieving their goals depends on their being integrated into other spheres of the state's activity. The state is by definition the originator of state-issued prohibitions. Issuing these prohibitions presupposes a judgment on the part of the state with respect to the wrongfulness of violating these prohibitions. Legitimate criminal sanctions for violating state-issued prohibitions must reflect the state's judgment. Privately inflicted sanctions, I argue, do not reflect the state's judgment concerning the wrongfulness of the act or the appropriateness of the sanction; they are therefore illegitimate.

II. JUSTIFICATIONS FOR STATE-INFLICTED SANCTIONS

Prior to examining the three types of justification for *state-inflicted* criminal sanctions, I explain here what I mean by criminal sanctions and by state-inflicted and privately inflicted sanctions.

The fact that one of the characteristic features of criminal sanctions is that they are administered by the state may generate a suspicion that it is simply part of the definition of criminal sanctions that they are state-inflicted. On this view, privately inflicted sanctions are not illegitimate; instead, they simply ought not to be labeled "criminal." Rebutting this suspicion and establishing a normative argument against privately inflicted criminal sanctions requires characterizing criminal sanctions in a way that is independent of the agent who inflicts these sanctions.

Following H.L.A. Hart, I characterize criminal sanctions as sanctions that involve "pain or other consequences normally considered unpleasant" which are inflicted upon "an actual or supposed offender for his offence" and which must also be imposed for "an offence against legal rules."[5] There is, however, an additional component not explicitly mentioned by Hart that must be stressed: the nature of the remedy. It is obvious that not all unpleasant consequences triggered by violation of a legal rule should be classified as punishment. Tort liability for negligence per se, based on the violation of a statutory norm, could meet this test.[6] Yet tort liability differs from criminal liability in that the remedy is typically compensatory rather than punitive.

There are also cases in which the state inflicts pain or other unpleasant consequences that are not characterized as criminal punishments. The state deports aliens, expatriates individuals under extreme circumstances, and impeaches presidents for wrongful behavior.[7] None of these acts is categorized as a criminal sanction. The arguments provided below as to why the state rather than private agents ought to have the power to inflict criminal sanctions may apply to some of these cases even if they are not traditionally categorized as criminal. However, given the fact that criminal law is a paradigmatic case involving punitive measures triggered by violations of state prohibitions, I limit my analysis to criminal sanctions alone.

The distinction between state-inflicted sanctions and privately inflicted sanctions also requires some clarification. State-inflicted sanctions are sanctions administered by state officials in their capacity as state officials. Privately inflicted sanctions are inflicted by private entities. The privately inflicted sanctions that are the target of my critique are those and only those sanctions inflicted by individuals (or other private entities) at the encouragement or initiative of the state. Thus it is not claimed here that it is impermissible for individuals to criticize or ostracize convicted offenders on the basis of a judgment that criminals are evil, that they ought to suffer, and so on. Instead, what is impermissible is for the state to hand over the

5. *See* H.L.A. HART, PROLEGOMENON TO THE PRINCIPLES OF PUNISHMENT IN PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW 1, 4–5 (1968).

6. The part of the civil law bearing the strongest resemblance to the criminal law is the law of tort. Consequently, textbooks of criminal law often start by differentiating between criminal law and tort law. *See, e.g.,* GLANVILLE WILLIAMS, TEXTBOOK OF CRIMINAL LAW 25 (2nd ed. 1983).

7. These are the examples provided in GEORGE FLETCHER, RETHINKING CRIMINAL LAW (1978), at 412.

determination of the severity of criminal sanctions or the actual infliction of criminal sanctions to private individuals.

One might object that once the state hands over the power to inflict a sanction to an individual or a private entity, the sanction thereby becomes a state-inflicted sanction. From this it would follow that state-approved or state-initiated privately inflicted sanctions are conceptually impossible. This objection is based on a misunderstanding. To qualify as a state-inflicted sanction, the sanction must be inflicted by a state official. An individual who is called upon "to shame" an offender or a private corporation that is hired to run a prison does not thereby become an official of the state, and consequently the sanctions inflicted by him or it are privately inflicted sanctions. To qualify as a state-inflicted sanction, the agent inflicting it must be an agent that is morally barred from acting on the basis of its own independent judgments, for example, a judge or a prison guard. In contrast, a private individual who is called upon to shame an offender and a corporation that is hired to run a prison are private entities who are, I argue, required to exercise their independent moral judgment, and the sanctions they inflict are therefore privately inflicted sanctions.

I now turn to the description of three types of justification for state-inflicted criminal sanctions. Under the first type of justification—the instrumental justification—the state is the appropriate agent to inflict criminal sanctions simply because it is deliberative and impartial. As such, it is the most qualified to determine what the just (or appropriate) punishment is and to inflict it on those who deserve it. On this view, the infliction of criminal sanctions could in principle be performed by other, nonstate agents; and furthermore, it is possible that institutions other than the state should (wholly or in part) replace the state.

Under the second type of justification—the normative precondition justification—the infliction of criminal sanctions by the state achieves goals that could in principle be fully realized through the infliction of sanctions by private agents. Yet, in contrast to the instrumental justification, there are normative constraints that preclude the infliction of sanctions by agents other than the state. In other words, although the agency of the state is not essential to the success of criminal sanctions, it is a noncontingent normative precondition for the just infliction of criminal punishment.[8]

8. Asserting that the agency of the state is a "noncontingent normative precondition for the just infliction of punishment" raises questions concerning the nature and the strength of this normative precondition. The normative-precondition justification would not preclude the possibility that there may be circumstances under which nonstate agents can justly inflict criminal sanctions. Yet the normative-precondition justification maintains that under normal conditions, there are central features of the state that make it the only agent that can inflict criminal sanctions. Radical transformation of the state or of other agents may open the possibility that other agents would justly inflict criminal sanctions. The conditions that could justify such a change ought to be more extreme than those that would justify such a change under the instrumental view. A simple change in the costs of privately inflicted sanctions or in the

Finally, under the third type of justification—the state-centered justification—the power to inflict criminal sanctions is an agent-dependent power—a power that can be successfully exercised only by the state. State-inflicted sanctions are designed to realize goals or perform tasks that cannot, in principle, be performed successfully by private institutions or individuals acting on their own. There is a fundamental difference between state-inflicted criminal punishment and suffering inflicted on the guilty by other agents. For this reason criminal sanctions can only be carried out by the state.

Instrumental justifications are premised on the idea that punishment serves important societal goals that could in principle be realized by other nonstate agents. However, the state is seen as more capable or better placed to create the institutions and/or sustain the practices that guarantee that punishment is imposed in accordance with the gravity of the offence. A variant of this argument is that state-inflicted sanctions are justified because the state's costs in establishing the relevant institutions or sustaining them are lower than those of other agents. A well-known proponent of the view that the state is better capable of determining the appropriate severity of sanctions is John Locke, who believed that:

> To this strange doctrine, viz. That *in the state of nature, every one has the executive power* of the law of nature, I doubt not but it will be objected, That it is unreasonable for Men to be Judges in their own Cases, that Self-Love will make Men partial to themselves and their Friends. And on the other side, that Ill Nature, Passion and Revenge will carry them too far in punishing others. And hence nothing but Confusion and Disorder will follow, and that therefore God hath certainly appointed Government to restrain the partiality and violence of men. I easily grant, that *Civil Government* is the proper Remedy for the inconveniencies of the State of Nature, which must certainly be Great, where Men may be judges in their own Case.[9]

According to Locke, the state should be empowered to inflict sanctions on those who transgress the laws of nature because the state is less partial than alternative agents in its treatment of offenders and, consequently, less likely to inflict inappropriate sanctions. When individuals are called upon to inflict sanctions on their friends, they are likely to inflict sanctions that are too light. In other cases, motives of vengeance may induce individuals to inflict sanctions that are excessive. Interestingly, law and economics scholars often endorse a similar view. In their view, punishment should be supplied by the state because the infliction of sanctions involves a collective action problem.[10] The individual who inflicts a sanction has to bear the costs

deliberative powers of the state or private agents would not suffice to justify transferring the power to inflict sanctions from the state to private agents.

9. *See* JOHN LOCKE, TWO TREATIES OF GOVERNMENT: SECOND TREATISE sec. 13 (Peter Laslett ed., 1960).

10. *See* DENNIS C. MUELLER, II PUBLIC CHOICE (1989), at 9–15.

of inflicting the sanction himself, whereas the benefits resulting from the infliction of sanctions (e.g., crime prevention) are enjoyed by everybody. Consequently, individuals have suboptimal incentives to inflict sanctions.[11]

This brief discussion is sufficient to illustrate that two of the most influential views concerning punishment, namely, certain versions of retributivism and deterrence theories, fall under the category of instrumental theories. Some (although not all) retributivists argue that punishment is justified in order "to ensure that wrong-doers receive the suffering which they deserve."[12] Under this view, "necessarily acts of certain kinds have an intrinsic property that it is fit, appropriate or 'called for' that the perpetrator suffers for it."[13] But there is no principled reason why the infliction of deserved suffering must be performed by the state. In fact: "if a wrong-doer suffers some natural calamity—especially if it is a consequence of her wrong-doing, or resembles the harm she had done to others—this may be seen . . . as 'just what she deserves.'"[14]

The same instrumentalist view concerning the role of the state in punishment is shared by other types of retributivists, for example, those who believe that punishment expresses punitive emotions such as resentment or indignation.[15] In the view of "punitive-emotions" retributivists, "certain wrongdoers quite properly excite the resentment (anger, hatred) of all right-thinking people, and the criminal law is a civilized and efficient way in which such passions may be directed toward their proper objects, allowing victims to get legitimate revenge consistently with the maintenance of public order."[16] To the extent that desert-based retributivists or the punitive-emotions retributivists insist that it is the state rather than other agents that should inflict the deserved sufferings, it is simply because the state is well placed to determine what a person deserves and to inflict the sanction.

Deterrence theorists believe that deterrence depends on the probability of detection and the severity of the sanction;[17] the agency of the state plays no essential role in the justification of punishment, and consequently there is no principled reason to believe that nonstate agents cannot inflict

11. This is an argument in favor of the state inflicting the sanction or at least paying for its infliction but not necessarily determining its size.

12. *See* R.A. Duff, Trials and Punishments (1986), at 198.

13. *See* Thomas E. Hill, *Kant on Wrongdoing, Desert, and Punishment*, 18 L. & Phil. 407, 425 (1999).

14. Duff, *supra* note 12, at 198. For a clarification and defense of the claim that the guilty deserve to suffer, *see* Lawrence H. Davis, *They Deserve to Suffer*, 32 Analysis 136–140 (1972). For a very careful articulation of desert theories, *see* Hill *supra* note 13, at 413–414. Hill distinguishes between practical or action-guiding desert theories and merely faith-guiding or wish-expression desert theories. The former argue that perpetrating crimes provides one a reason to inflict sufferings on the guilty while the latter argue merely that perpetrating crimes provides one a reason to wish that the guilty suffer. It is clear that a justification of punishment ought to be based on a strong, i.e., action-guiding desert theory.

15. *See* R.A. Duff, Punishment, Communication and Community 23–27 (2001).

16. *See* Jeffrie G. Murphy & Jean Hampton, Forgiveness and Mercy 3–4 (1988).

17. *See* Gary Becker, *Crime and Punishment: An Economic Approach*, 76 J. Pol. Econ. 169–217 (1968).

sanctions that will deter wrongdoers. In fact, deterrence theorists have often pointed out that nonstate agents may be more effective than state agents in inflicting sanctions and that such sanctions may be more effective in deterring crimes.[18]

The justification of *state-inflicted* punishments on the basis of instrumental considerations requires two argumentative steps. First, one must establish that inflicting sanctions for wrongdoing is appropriate or desirable. The infliction of sanctions of an appropriate magnitude fulfills an important role, for example, the infliction of sufferings on those who deserve it or deterring or preventing crime. Second, one must establish that *state-inflicted* punishments are in fact the most effective means of inflicting the appropriate sanctions for transgressions. The criteria for the appropriateness of the sanctions can be based on considerations of justice, for example, desert, or they can be utilitarian. In both cases, however, the prospects of success in identifying and inflicting the appropriate sanctions or the cost-effectiveness in performing this task (or other contingent advantages) provide the sole basis for determining who should have the power to inflict sanctions. Punishment can therefore be described as a task in search of an agent capable of performing it.

The normative-preconditions argument also maintains that punishment can be imposed by nonstate agents. Furthermore, punishments inflicted by nonstate agents can in principle function in the same ways and be valuable for the same reasons as state-inflicted sanctions. Nevertheless, the advocates of the normative-preconditions justifications maintain that punishment inflicted by nonstate agents is unjust for principled, noncontingent reasons. A familiar argument along these lines maintains that punishment is designed to deter crimes but that procedural considerations require that the severity of punishment be determined on the basis of a democratic deliberative process. It is thus unjust to inflict sanctions (even if these sanctions are "deserved" or produce efficient incentives) unless certain procedural preconditions are satisfied. These procedural preconditions require (at least under normal circumstances) the agency of the state. Another version of this type of justification asserts that punishment is inherently a prerogative of the victim. The infliction of sanctions by the state is justified only when victims consent to transfer their power to inflict sanctions to the state. State-inflicted sanctions are thus just because the power to inflict sanctions is voluntarily transferred to the state by its citizens. In some passages of his famous discussion of punishment, John Locke argues in this vein that the

18. Economic advocates of deterrence theories have often argued for the use of "bounty hunters" to detect crime. *See, e.g.,* Mitchell Polinsky, *Private Versus Public Enforcement of Fines*, 9 J. LEGAL STUD. 105–127 (1980); Steven Shavell, *The Optimal Structure of Law Enforcement*, 36 J. L. & ECON. 255–287 (1993). The advocates of shaming penalties also share the belief that privately inflicted sanctions may be a better way of preventing crime. *See* Kahan, *What Do Alternative Sanctions Mean?*, *supra* note 1; Kahan & Posner, *Shaming White-Collar Criminals*, *supra* note 1; Kahan, *What's Really Wrong*, *supra* note 1.

consent of the governed to delegate their powers to punish is a necessary procedural requirement.[19]

The third type of justification, the state-centered justification for criminal sanctions, takes a more radical route and maintains that state-inflicted sanctions are fundamentally different from sanctions imposed by other agents. Although privately inflicted sanctions may be desirable for various reasons, they are desirable for different reasons from those of state-inflicted sanctions. A useful analogy illustrating the nature of state-centered justifications is the blood feud. In a blood feud, it is not the mere act of killing that counts; it is rather the performance of the killing by the appropriate agent, that is, by a (male) member of the victim's family, that counts. It is clear in the Bible that it is only a specific member of the victim's family who has the right and responsibility to kill the slayer with impunity.[20] The agent killing the murderer in a blood feud is not perceived as a means to perform the (allegedly just) act of killing; instead, it is the act of killing that provides an opportunity for the appropriate agent to act in order redress the injustice. A killing not performed by the appropriate agent does not therefore constitute blood feud and cannot redress the injustice.

Joel Feinberg's theory of punishment is an example of a state-centered justification. Under his famous formulation of the expressive theory of punishment, "punishment is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, on the part either of the punishing authority himself or of those 'in whose name' the punishment is inflicted."[21] This function can only be performed by the state, since "punishment expresses the *judgment*. . . of the community that what the criminal did was wrong."[22] In contemporary societies it is the state (and perhaps the state alone) that is understood to speak in the name of the community. Punishment of criminals performed by agents other than the state may, of course, deter wrongdoers, satisfy retributivist concerns, and serve other important functions but it does not have the same symbolic expressive significance that Feinberg believes punishment ought to have.

Another influential example of a state-centered justification for state-inflicted sanctions can be traced back to Kant's discussion of punishment in the *Metaphysics of Morals*:

> Even if a civil society were to be dissolved by the consent of all its members (e.g., if a people inhabiting an island decided to separate and disperse throughout

19. Locke, *supra* note 9, at 87.

20. *See, e.g.*, Pamela Barmash, Homicide in the Biblical World 24 (2005).

21. *See* Joel Feinberg, *The Expressive Function of Punishment*, *in* A Reader on Punishment 74 (R.A. Duff & David Garland ed., 1994).

22. *Id.* at 76. Of course one could argue that a private sanction inflicted by individuals in the community may even better express the community's sentiments. It is not, however, my aim here to defend the position that the state speaks "in the name of the community" but only to point out theorists who defend state-centered justifications for criminal sanctions.

> the world), the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve and blood guilt does not cling to the people for not having insisted upon this punishment; for otherwise the people can be regarded as collaborators in this public violation of justice.[23]

Under one plausible interpretation, Kant believes that the last murderer has to be executed *before* the dispersion of the society.[24] An attempt to remedy the great injustice of not executing the murderer *before* the dispersion of the society could not be remedied by killing him *after* the dispersion of the society. For this would constitute a private act of killing rather than a public act of execution, and unlike a public execution, a private killing could not be done in the name of the people as a collectivity. The practice of state-inflicted execution of murderers is thus fundamentally different from a practice in which murderers are killed by nonstate agents. It is the difference in the identity of the agent that explains why the former act is required by justice while the latter is prohibited.

Note that the advocates of state-centered justifications for criminal punishments need not deny that some of the desirable by-products of criminal punishments (e.g., deterring crimes or inflicting deserved sufferings on the guilty) can be achieved by sanctions inflicted by nonstate agents. In order to be classified as an advocate of a state-centered justification for criminal sanctions, it is sufficient to maintain that state-inflicted criminal sanctions have some central functions that cannot, in principle, be realized by nonstate agents.

III. IN DEFENSE OF A STATE-CENTERED JUSTIFICATION OF CRIMINAL PUNISHMENT

Section II investigates three types of justifications of state-inflicted criminal sanctions: instrumental justifications, normative-preconditions justifications, and state-centered justifications. In this section, I argue that state-centered justifications provide a more accurate account of our

23. IMMANUEL KANT, THE METAPHYSICS OF MORALS 106 (Mary Gregor trans., ed., 1996).

24. This conclusion follows from the interpretation given to this section by Thomas Hill, who believes that Kant's theory of punishment is a mixed theory. Establishing the practice of punishing wrongdoers is designed to protect freedom rather than to inflict deserved sanctions. Once this scheme is established, state officials are required to impose sanctions as prescribed by law without deviating for pragmatic reasons. This section is understood by Hill to highlight the officials' duty to apply the law, i.e., to "reaffirm the idea that those responsible for enforcing the law must apply the legally prescribed sanctions without concern for whether punishment has any deterrent value in the particular case." *See* Hill, *supra* note 13, at 433. After the dispersion of the state, there are no officials who are charged with the responsibility of imposing sanctions prescribed by law. Hence the infliction of suffering cannot be justified as a part of the faithful fulfillment of the officials' duties.

pretheoretical intuitions. Furthermore, I develop a version of the state-centered justification that I call the "integrationist justification" for state-inflicted criminal sanctions. Under an integrationist justification, the successful exercise of the power to inflict sanctions depends upon a complex normative framework that comprises other state duties and powers. The power to inflict criminal sanctions as well as the power to determine their severity is inextricably linked with the power to issue prohibitions whose violations call for punitive measures. The power to inflict sanctions has to be a state power because of the interdependence between the state's power to issue prohibitions and the power to determine the severity of these sanctions and inflict sanctions triggered by violating these prohibitions.

Subsection A introduces the idea of an integrationist justification through the example of parent-children relationships. Subsection B develops an integrationist justification for state-inflicted criminal sanctions and argues that an integrationist justification for the state's exclusive power to inflict criminal sanctions is consistent with some deeply seated pretheoretical convictions.

The Parental Power to Inflict Sanctions: An Integrationist Justification

This section explores the justification for parentally inflicted sanctions. In particular it investigates the case for a "parent-centered" justification of punishment inflicted on children. It is important, however, to concede at the outset that this section is not aimed at conclusively establishing the soundness of a parent-centered justification. Instead, it aims to explore the structure of such a justification in order to facilitate the construction of an analogous argument in the political context.

A parent-centered justification of the punishment of children asserts that parentally inflicted sanctions realize goals or perform tasks that cannot be successfully realized by nonparental agents. There is thus a fundamental difference between parentally inflicted punishment and suffering inflicted on children by other agents (or by natural forces). The successful infliction of punishments (or at least some types of punishments) hinges upon the identity of the agent who performs it.

To examine the plausibility of this justification, compare it with an instrumental justification. At the center of such a justification would be the idea that punishing children is conducive to their education and promotes their well-being. Having established the desirability of inflicting sanctions, an instrumental justification would then point to the fact that parents typically love their children and are deeply interested in their future well-being. Because of this, a parent is more likely than other agents to punish a child under circumstances in which the punishment contributes to the child's well-being.

This argument has some intuitive force and yet it fails to explain fundamental intuitions concerning parenthood. According to a deeply held belief, the power to inflict sanctions belongs "naturally" to parents and cannot be transferred to a third party without undermining the very institution of parenthood.[25] In contrast to the instrumentalist justification, the parent-centered justification which sees parenthood as necessary for the successful infliction of sanctions can better account for this conviction.

Can the conviction that the power to inflict sanctions naturally "belongs" to the parents be justified? Why should not the power to inflict sanctions be assigned to the agent who is most likely to exercise it properly? After all, sanctions inflicted on children are designed to educate them, and while it is possible that parents are more likely to exercise this power in a way that is conducive to this purpose, there is nothing that, in principle, precludes the possibility that other agents would be more successful at this task.

One plausible defense of a parent-centered justification for granting parents the power to inflict sanctions is an integrationist defense. Under such a justification, parental duties and powers cannot be understood in isolation. Rather, the powers exercised in punishing a child are affected by and in turn reflect on other parental duties, and vice versa. The sentiments, convictions, and judgments acquired in the course of inflicting sanctions are conducive to the fulfillment of other parental duties, and the sentiments, convictions, and judgments acquired in the course of fulfilling other parental duties are conducive to the rightful infliction of sanctions. It seems, for example, that punishment of children inculcates in parents awareness that the children's well-being ought not to be equated with their immediate short-term pleasures. The parents' power to punish children is conducive to a better appreciation of what the well-being of their children consists of.

The conviction that the power to inflict sanctions "naturally belongs" to parents can now be seen as being founded on the interrelations between different parental duties and powers. The power to inflict sanctions is "natural" to parenthood because having such a power and/or exercising it is conducive to the emergence of certain sentiments, to the maintenance of practices, and to the formation of beliefs and judgments that are conducive to parenthood. Under this view, one must resist the temptation to look at punishment simply as a means of fulfilling an important task and then go in search of the agent who is the most capable of performing this task. Instead,

25. To establish the alleged naturalness of parenthood, think of a community in which parents are barred from inflicting sanctions on their children and the power to inflict sanctions is assigned to the parents' closest neighbors. Such a practice could be justified on the grounds that loving parents may be too soft and consequently that the sanctions they are likely to inflict on their children are too lenient. Neighbors, under this view, are less partial and more objective in their judgments concerning punishment. I suspect many would reject such a proposal as preposterous not merely because of the flaws in its factual premises. The resistance to such a proposal rests on the conviction that the power to punish "belongs" to the parents or that it is "natural" that parents are the ones who have the power to inflict sanctions and that stripping parents of their power to punish should be equated with stripping parents of parenthood.

one ought to regard parenthood as an important social institution for the sake of which one ought to assign tasks that contribute to the overall success of this institution. The appropriateness of sanctions and their success in achieving their goals thus depend on their being integrated with other aspects of parenthood.[26] Parenthood and in particular the emotional and deliberative preconditions for being a good parent are thus the key to the understanding of punishment.

To sum up, the integrationist justification for assigning parents the power to inflict sanctions analyzes parenthood in its totality as a complex relation that involves the fulfillment of duties and the exercise of powers. The appropriateness of assigning these duties and powers to an agent ought not to be judged separately. Instead, a complete account of parenthood ought to be based on an understanding of the mutual interrelations between these different powers and duties.

An Integrationist Justification for State-Inflicted Sanctions

Can a similar integrationist justification be provided for state-inflicted sanctions? Under such a justification, criminal punishment is not merely an important task in search of an agent capable of performing it; instead, the infliction of criminal punishment is an integral part of successful statehood in the same way that the infliction of sanctions on children is perceived by advocates of the integrationist justification as an integral part of successful parenting. The power to inflict criminal sanctions on wrongdoers is essential to the state because it is interrelated with other powers and duties of the state such that stripping the state of this power disrupts its proper functioning. This section points out some pretheoretical intuitions that support an integrationist justification and develops an integrationist justification for the state's exclusive power to determine the sanctions and inflict them.

Several intuitive observations support the conjecture that the state's power to inflict criminal sanctions is grounded in an integrationist justification. The power to inflict criminal sanctions is a sphere of operation of the state that is almost universally perceived to be basic and fundamental. It is easy to conceive of a state that does not redistribute resources. To imagine a society without a criminal-law system or without a scheme of sanctions for the violation of norms is regarded often as tantamount to imagining a stateless existence. There are, of course, numerous other ways in which the state operates, but most of these seem to be more peripheral to the state's existence than the power to inflict sanctions for transgressions.

Furthermore, most people do not perceive privately inflicted sanctions and state-inflicted sanctions as interchangeable. A criminal conviction may

26. The integrationist justification is hardly a novelty in the literature on parenthood. One influential argument suggests that the power to command and the duty to care are interrelated. *See* SAINT AUGUSTINE, XIX CITY OF GOD ch. 14 (Penguin Books, 2003).

often give rise to (justified or unjustified) negative reactions on the part of private individuals. These negative reactions may in turn lead to the infliction of (justified or unjustified) privately inflicted sanctions such as social stigmatization and isolation. There may be some sound prudential or moral reasons not to socialize with a person convicted of a crime. But privately inflicted sanctions cannot substitute wholly or in part for state-inflicted sanctions following a criminal conviction.

If criminal punishment could successfully be inflicted by nonstate agents, state-inflicted criminal sanctions should arguably, as a matter of justice, be calculated in a way that takes into consideration the sufferings of the criminal that result from privately inflicted sanctions.[27] Yet, while courts sometimes take into account the private sufferings borne by the criminal, they are not obliged to do so. The private sufferings of the guilty (including private sufferings resulting from the infliction of privately inflicted sanctions) may lead courts to inflict a more lenient sentence out of compassion, but such leniency is discretionary, and many theorists have opposed it.[28] This indicates that state-inflicted sanctions are not typically viewed as commensurate with private sanctions. Privately inflicted sanctions and state-inflicted sanctions are not merely two forms of commensurate sufferings that are added to each other. A possible explanation for the reluctance to conduct such a calculation is that private sanctions are "not imposed by the state, and whatever is not imposed by the state cannot be part of offender's punishment."[29]

Both of these observations can be easily explained within the framework of a state-centered justification. In a state-centered justification, the power to inflict criminal sanctions is understood to be essential to statehood such that stripping the state of this power frustrates the functioning of the state as such. The nonsubstitutability of privately inflicted sanctions for state-inflicted sanctions also points to the fundamental role that the state as the agent in charge of inflicting sanctions plays in justifying the infliction of these sanctions. These considerations support a state-centered justification of criminal sanctions. This leaves open, however, the question of whether such a justification can be provided.

Some opponents of privately inflicted criminal sanctions argue that a delegation of the power to inflict sanctions to private individuals raises

27. Law and economics theorists have often advocated such a position. In the context of tort law, *see, e.g.,* Robert Cooter & Ariel Porat, *Should Courts Deduct Non-Legal Sanctions from Damages?*, 30 J. LEGAL STUD. 401–422 (2001).

28. *See, e.g.,* Richard Bierschbach & Alex Stein, *Overenforcement*, 93 GEO. L.J. 1743, 1750–1752 (2005). Even theorists who support the substitutability of state-inflicted and privately inflicted sanctions concede that this is not the general view. *See, e.g.,* Douglas Husak, *Already Punished Enough*, 18 PHIL. TOPICS 79 (1990). An interesting indication of the reluctance to take into account sufferings resulting from privately inflicted sanctions can be found in German criminal law. Section 51 of the German Criminal Code, entitled "Crediting," requires courts to deduct sanctions imposed by courts for the same offense but it does not indicate that privately inflicted sanctions ought to be deducted. The German Criminal Code differentiates sharply between state-inflicted sanctions and privately inflicted sanctions.

29. *See* Husak, *supra* note 28, at 85. Husak himself, however, rejects this view.

serious pragmatic concerns.[30] I wish, however, to raise a principled argument against such a delegation—an argument that suggests that even if the pragmatic concerns can be overcome, such a delegation is nonetheless impermissible.

The most fundamental task of the state is the task of governing justly. Just governance requires the state to govern its citizens under constraints dictated by justice. Just governance presupposes the guidance of behavior, and the issuing of prohibitions is necessary for such guidance. Violating these prohibitions gives rise to sanctions.

The state may therefore legitimately issue criminal prohibitions. I argue that the state may not delegate nor transfer the power to determine the severity of the sanctions or administer the sanctions that arise from the violation of its criminal prohibitions to private agents (corporations or citizens). On the integrationist account of criminal sanctions that I offer, the same agent who is the source of criminal prohibitions must also administer the sanctions for the violation of these prohibitions. It follows that to the extent that the state issues criminal prohibitions, it must also administer the sanctions that arise from the violation of these prohibitions. The integrationist justification aims to show that the power to inflict sanctions is indispensable to just governance. Given that the state is assigned the power to issue prohibitions (necessary for just governance), it alone ought to make determinations concerning the severity of the sanctions (triggered by violating state-issued prohibitions) and then it also ought to inflict these sanctions. The state, being the initiator of criminal prohibitions, cannot thus delegate the powers to determine the severity of the sanctions or the power to inflict them to private entities.

Criminal sanctions are triggered by the violation of state-issued prohibitions. These prohibitions are grounded in the state's judgments concerning the wrongfulness of violating these prohibitions and the appropriateness of inflicting sanctions for violating them. Privately inflicted sanctions, under this argument, are grounded in the private judgments of those who inflict them. They sever the link between the state's judgments concerning the wrongfulness of the act or the appropriateness of the sanctions and the infliction of the sanction; and furthermore, I show below that privately inflicted sanctions are impermissible for that reason. It is impermissible on the part of the state to authorize, initiate, or encourage individuals to inflict suffering on the guilty.

To establish the impermissibility of privately inflicted sanctions, assume a law-abiding citizen A, who is asked (or hired) by the state to inflict sanctions on convicted offenders. The state asks A to ostracize persons convicted of

30. Pragmatic concerns were often raised against shaming penalties. There are many who believe that shaming penalties are erratic and unreliable. *See, e.g.*, Garvey, *supra* note 4. Others have pointed out that the more criminals are detected, the lesser the effectiveness of shaming penalties is. *See* Harel & Klement, *supra* note 4.

a particular offense. Upon being notified about the conviction of person B for this offense, A considers whether she ought to participate in the state-initiated sentencing scheme by ostracizing B or limiting her social interaction with B.

It seems that A's decision to ostracize B could be based on three possible reasons. Ostracizing B could be based (1) on A's judgment that ostracizing B is a way of fulfilling A's civic obligations; it could be based (2) on A's judgment that B committed an offence and deserves to be punished; and it could be based (3) on A's trust that the state made an accurate determination concerning the wrongfulness of B's behavior and the appropriateness of the sanction. In the third case, A does not form an independent judgment with respect to these issues. In each one of these cases, I discuss two separate issues. First I discuss the question of whether ostracizing B can count as punishment, and second I discuss whether it is permissible (either on the part of the private individual to inflict the sanction or on the part of the state to initiate, authorize, or encourage such an infliction).

Ostracizing B as a way of fulfilling one's civic duties is of course harmful to B but it is not properly classified as a criminal punishment since it does not presuppose a judgment on the part of A that B has committed a wrong. Punishment, after all, involves the infliction of suffering grounded in a particular reason, namely that a wrong has been perpetrated.[31] Inflicting suffering as a means of fulfilling one's civic duty does not presuppose a judgment by A concerning the prior commission of a wrong on the part of the criminal.

Is it permissible for A to inflict suffering on B in order to fulfill his or her civic duty and to do it under circumstances in which A has not formed an opinion concerning the wrongfulness of B's behavior? To establish the impermissibility of such an act, think of the grievance that B can raise against A. Most convincingly, B can argue that it is unjust on the part of A to inflict suffering without forming a judgment that B committed a wrong. A's assertion that he merely fulfills a civic duty implies that A is willing to inflict this suffering irrespective of whether B has committed a wrong. It seems evident that there can be no civic duty to inflict suffering under these conditions.

Assume now that A ostracizes B because she formed the opinion that B has committed a wrong and deserves to be punished. This is indeed a punishment for wrongdoing, but A's judgment concerning the wrongfulness of B's behavior and the appropriateness of the sanction is a private judgment on the part of A. The sanction does not reflect a judgment *on the part of the state* concerning the severity of the offence or the appropriateness of the sanction. The person inflicting the sanction may, of course, happen to form an opinion on these matters identical to that of the state. But this would

31. All conventional definitions of punishment include reference to such a requirement. *See, e.g.,* Hart, *supra* note 5, at 4–5.

be a happy coincidence and would not transform the private infliction of suffering into a state punishment.

But is A's infliction of suffering in this case impermissible? As long as A's judgment is a private one made by A on the basis of her own judgment, it may be permissible. Yet it is wrong on the part of the state to approve of the infliction of the sanction under these circumstances. To establish the impermissibility of the state's support for A's action, one should note that the state may not simply endorse A's judgment concerning the wrongfulness of B's action. It would be wrong on the part of the state to grant A's private judgment greater weight than B's private judgment concerning the wrongfulness of B's behavior. Instead the state ought to make its own public judgment concerning the wrongfulness of B's action and its ramifications. B has a legitimate grievance if he is subjected to A's state-initiated private sanction (based on A's private judgment), and this grievance is distinct from any grievance he may have in being subjected to an (unjust) public judgment.

Assume finally that A ostracizes B not because she believes it is her civic duty or because she forms an independent judgment concerning the wrongfulness of the act and the appropriateness of the sanction. Instead, A inflicts the sanction because she trusts the state's judgment on these matters. It seems that sanctions inflicted on the basis of such trust are grounded in the state's own judgments and can thus be regarded as criminal sanctions proper. The trustworthy citizen does not form an independent judgment concerning the wrongfulness of the action or the appropriateness of the sanction determined by the state. He simply functions as an instrument for realizing the state's own judgments.

But it is doubtful whether such trust could be ever justified. If such trust could be justified, the citizen would be exempt from responsibility for the infliction of an inappropriate sanction. The moral responsibility for inflicting such a sanction would rest with the state. Such an exemption from moral responsibility is sometimes justified with respect to state officials such as judges, prison guards, or perhaps even executioners. Citizens, however, are different. They cannot abdicate their responsibility for the infliction of suffering. It follows that a citizen cannot act on behalf of the state by entering into an agreement with the state to inflict sanctions that would absolve him from personal responsibility. It is only by becoming an official of the state that such an abdication of responsibility is justifiable.

Inflicting a sanction under these circumstances exposes the agent who inflicts it to a serious risk. Judgments concerning the appropriateness of sanctions for wrongdoing are highly contestable. A citizen who is asked by the state to inflict sufferings on a criminal should not rely on the state's judgments when the consequences are so grave. The citizen is required in this situation to form a judgment concerning the appropriateness of the sanction she is to inflict. If she fails to do so and, if, as a result of her unquestioning conformity with the state's judgments, she inflicts an

inappropriate sanction, she is accountable for her failure. Inflicting the sanction in these circumstances should therefore be regarded as a private act on the part of the citizen, founded on the citizen's own judgment that the sufferings inflicted are appropriate. Failing to form an independent opinion concerning the appropriateness of the sanction does not transform the act from a private into a public act and does not turn it into a state sanction.

The status of a citizen who is called upon by the state to inflict sanctions thus differs from the status of an official. A judge, a prison guard, or even an executioner is often entitled or obligated faithfully to execute the state's sentencing decisions. Such a duty to execute the state's sentencing decisions is not boundless but it is much broader than the duties borne by a citizen. Demarcating the boundary between citizens and officials is not always easy, I admit, but it is this line that explains the difference in the moral responsibility of a judge or a prison guard, on the one hand, and of a citizen who is asked by the state to participate in the infliction of privately inflicted sanctions, on the other. The former is an official who is typically entitled or even required to perform this task irrespective of his private convictions concerning the appropriateness of the sanction; the latter bears moral responsibility for what she does irrespective of whether she follows the state's sentencing guidelines.

To conclude, the integrationist argument maintains that the power to issue prohibitions and the powers to make determinations concerning the severity of the sanctions and to inflict them are inextricably interrelated. It is impermissible on the part of individuals to inflict sanctions (for violating state-issued prohibitions) without forming an independent judgment with respect to the wrongfulness of the action and the appropriateness of the sanctions. If they form such a judgment, it is impermissible for the state to endorse that judgment. To the extent that criminal sanctions for violating state-issued prohibitions are justified, they therefore have to be inflicted by the same agent who issues the prohibitions. The suffering inflicted by privately inflicted sanctions is grounded in a private judgment concerning the wrongfulness of the act or the appropriateness of the sanction. By privatizing the infliction of the sanction, the state effectively not merely transfers the "technical" power to execute the sanction; instead, it strips itself of the power to make binding determinations concerning the wrongfulness of the act and the appropriateness of the sanction. These determinations should instead be attributed to the individual who inflicts the sanction rather than to the state.

By delegating this power to private individuals, the state in effect severs the link between the prohibitions it issues and the suffering inflicted on the offender. The individual who inflicts punishment on the basis of reasons he has acquired from the state acts on what she has come to believe and has judged to be a sufficient basis for action. The contribution to the genesis of his action made by the state's invitation to participate in the infliction

of sanctions is, so to speak, superseded by the agent's own judgment.[32] The suffering of the criminal is therefore a "private" suffering—a suffering founded on a citizen's judgments concerning the wrongfulness of the act and the appropriateness of the sanction.

Two recent initiatives to privatize the infliction of sanctions, namely, shaming penalties and private prisons, illustrate the relevance of this conclusion to contemporary controversies. These two initiatives involve two different forms of privatization. Shaming penalties privatize both the determination of the severity of the sanction and the infliction of the sanction. The agents who shame select the sanctions they wish to inflict (within the boundaries of the law) and they are also in charge of inflicting these sanctions. In contrast, the corporations operating private prisons inflict sanctions whose severity is determined by the state.

Shaming penalties involve stigmatization. Stigmatization imposes costs on offenders by identifying them and disseminating information about them. This in turn generates social and professional isolation and alienation from the rest of society. Shaming penalties presuppose the active cooperation of private individuals. Such cooperation is needed because effective stigmatization requires that individuals distance themselves from the offenders and isolate them personally or professionally.

This aspect of shaming penalties was diagnosed and condemned in James Whitman's vigorous attack on shaming penalties:

> However much prisons may have declined into chaos, they are in principle controllable. However monstrous they may have become, we all agree that the state has the duty to manage them: to establish rules, to call review boards, to answer complaints in court. None of that apparatus exists to control the enforcement of shame. This means that though courts may wish to abandon the prison system and switch to a system of shaming, they must not be permitted to do so. Doing so means abandoning their obligation to maintain a monopoly of the means of power—it means abandoning their duty to be imposers of measured punishment.[33]

Yet Whitman fails to provide reasons for his assertion that only the state ought to control the infliction of sanctions. Advocates of shaming penalties do not have to accept Whitman's dogmatic assertion that delegating the power to inflict sanctions means abandoning the state's "obligation to maintain a monopoly of the means of power—it means abandoning their duty to be imposers of measured punishment." Such an advocate could question whether by introducing shaming penalties the state indeed abandons its

32. This way of articulating my claim is borrowed from the discussion of Scanlon's defense of freedom of speech. *See* Thomas Scanlon, *A Theory of Freedom of Expression*, 1 PHIL. & PUB. AFF. 204, 212 (1972).

33. *See* James Q. Whitman, *What Is Wrong with Inflicting Shame Sanctions?*, 107 YALE L.J. 1055, 1091 (1998).

monopoly on power and whether it has an obligation to maintain such a monopoly in the first place.

The integrationist justification may provide the missing rationale for Whitman's opposition to shaming penalties. Shaming penalties, as currently practiced in the United States, constitute a highly deficient privately inflicted scheme of sanctions. Shaming penalties are often inflicted for the wrong reasons. Individuals who inflict shaming penalties are often instrumentally motivated.[34] In some cases the hostile reactions take place when the commission of the offence is indicative that goods or services likely to be provided by an offender are inferior to those likely to be provided by nonoffenders.[35] In such cases the suffering inflicted on the criminal is merely a price reflecting the inferior quality of the goods or services rather than a genuinely punitive measure. But even when ostracizing the offender is based on a judgment that the offender has committed a wrong, this judgment is a private judgment on the part of those who ostracize, and it would thus be wrong for the state to grant its approval to this judgment; more specifically, it would be tantamount to granting undue weight to the judgment of the individual or private entity who inflicts the penalty.

The emergence of private prisons has sparked a heated debate. For the most part this debate focuses on the relative efficiency of private prisons as compared to their publicly run counterparts.[36] Yet some critics of private prisons challenge the legitimacy of these prisons. These critics share the view that the act of incarceration is "intrinsically governmental in nature" and that as a consequence, a recourse to private prisons is inappropriate regardless of the relative efficiency of this penal form.[37] An example can be found in Michael Walzer's claim that establishing private prisons is wrong because it "exposes the prisoners to private or corporate purposes, and it sets them at some distance from the protection of the law."[38] Walzer thus worries that private prisons are operated by agents who are not motivated by the right sort of reasons. His concern is that it is unjust to expose prisoners to treatment governed by profit considerations.

The main argument of this paper leads to the conclusion that even if the running of private prisons were not dominated by profit motives, prisons should not be operated by private entities. These entities have a duty to make independent judgments concerning the wrongfulness of the act and the severity of the sanctions, and those judgments are never judgments that can justify the infliction of state-initiated privately inflicted sanctions.

The infliction of state-initiated privately inflicted sanctions is impermissible. It is impermissible on the part of a citizen to inflict sanctions without

34. *See* Harel & Klement, *supra* note 4.

35. *See* Richard Posner & Eric Rasmusen, *Creating and Enforcing Norms, With Special Reference to Sanctions*, 19 INT. REV. L. & ECON. 369, 371 (1999).

36. *See* Sharon Dolovich, *State Punishment and Private Prisons*, 55 DUKE L.J. 437, 441 (2005).

37. For an examination of this claim, *see* McDonald, *supra* note 2, at 39.

38. *See* Michael Walzer, *Hold the Justice*, NEW REPUBLIC, April 1985, at 12.

forming an independent judgment concerning the wrongfulness of the alleged wrongful act. When such a private judgment has been formed, it is impermissible on the part of the state to approve of the infliction of the punishment, since such an approval gives undue weight to the private moral convictions of the individual who inflicts the sanction. Furthermore, the belief that sanctions for wrongdoing should reflect the state's judgments concerning the wrongfulness of the act is quite fundamental to what we think of as a legal system. Instituting privately inflicted sanctions would thus challenge fundamental assumptions about the legal system. Under these assumptions criminal sanctions ought to be grounded in societal judgments generated by social and political deliberation.

The examples of shaming penalties and private prisons demonstrate that the debates concerning the justification of state-inflicted sanctions are not merely theoretical. Even if a solely privately inflicted scheme of sanctions is not a realistic option, there are currently reforms or reform proposals to grant private individuals the power to inflict sanctions for wrongdoing. These proposals have often been initiated and discussed by economists, sociologists, and lawyers. This paper establishes that philosophical considerations provide reasons to oppose schemes of privately inflicted sanctions.