Jon Jacobs talks about his evolving interest in criminal justice ethics

“My route of access into topics and issues in criminal justice ethics is via moral psychology, and I have become increasingly interested in relations between moral psychology and politics—in the normative sense—concerning conceptions of political order and justifications for such conceptions,” says Jacobs.

Over the past decade or so, Jacobs has engaged questions about the justification of punishment within a more restricted scope of ethics and moral psychology. Recently, however, he has found more and more reason to place these ethical considerations within a broader normative landscape that includes political factors. The motivation for this broadening of scope, in part, comes from the incontrovertible evidence that criminal sanction, i.e., punishment, as it is practiced now, “appears to be so miserably ineffective in regard to motivating ethical self-correction on the part of offenders and also in regard to their reintegration into civil society when they are released.”

This is a double failure of imprisonment, then, but it also goes well beyond “failure”. It even goes beyond what are frequently referred to in contemporary discourse as the “invisible punishments” associated with imprisonment, including disenfranchisement and disqualification (e.g., to vote, to obtain meaningful employment, etc.). The point Jacobs is making—or at least the question he is asking—extends even one step beyond these already egregious and troubling features of our practices of punishment: that imprisonment in the US (and presumably other liberal polities, at least insofar as their incarceration practices are similar) may in fact be responsible for, as he says, (further) “disabling” offenders in two ways.

His work-in-progress thesis, then, concerns what imprisonment does to an individual’s capacity to participate (properly or in an advantageous way) in

(A) a liberal-democratic political order and

(B) the character of civil society

At a recent meeting of some of the participants in the ACI project, Jacobs informally presented this thesis, and a constructive, engaging discussion followed.

As those in the field of criminology know, there is a plethora of data on the harms of imprisonment, including the invisible punishments; there is also a great deal of data, however disparate, on various intervention programs for offenders, whether they are aimed at the currently incarcerated or at the recently released. In addition, there is a strong push in recent years among state governments to employ “best practices,” to find out “what works in reentry”. Policy makers want recommendations, and frequently, this gets masked as a merely empirical question of “what works” when in fact, there are complex and layered philosophical
questions at play—and for the philosophically minded, these deeper questions are being addressed in contemporary scholarship through several different but clearly overlapping tropes, including our three title terms of ‘agency,’ ‘identity’ and ‘character’.

For this reason, Jacobs says, “In a way, I’m trying to slow down the rush from data to policy by exploring the question of what is normatively at stake in imprisonment in a liberal polity,” and again, ‘normatively’ here refers to both matters of individual attitudes and dispositions, which philosophers usually call ethical, and matters with a broader political dimension. He wants to “diagnose beneath the data” and flesh out an appropriately thick notion of agency/character/identity that gives due attention to the intertwining of the ethical and political components of being a full person and a participant in a liberal, democratic society.

Some things Jacobs is not directly and primarily concerned with at this stage:

- What sorts of conduct should be criminalized
- The question of which punishments are appropriate for specific offenses
- Eliminating all dispute and friction over the precise form punishment should take (such an elimination in a liberal, democratic society is, says Jacobs, of course, nearly impossible. Moreover, such a format of government does not require it, i.e., there is room for ongoing debate and friction).
- Whether certain persons have had a fair opportunity to comply with the law and whether ‘rotten social background’ is a basis for diminished liability. This is relevant and significant but we need to fashion an approach to it by addressing other issues first.