

1 Introduction

- 1.1 Human beings are a punitive species. Perhaps because we are social animals, and require the cooperation of others to achieve our goals, we are strongly disposed to punish those who take advantage of us. Those who ‘free-ride’, taking benefits to which they are not entitled, are subject to exclusion, the imposition of fines or harsher penalties. Wrongdoing arouses strong emotions in us, whether it is done to us, or to others. We want punishments to ‘fit the crime’ – the worse the crime, the worse the punishment – without regard for the evidence of whether it ‘works’, that is, without thinking about punishment in consequentialist terms.

- 1.2 The details vary from place to place and from time to culture, but punishment has been a human universal, because it has been in our evolutionary interests. However, those evolutionary impulses are crude guides to how we should deal with offenders in contemporary society. It is clear that the general public thinks that punishment is a real and necessary response to someone who has committed a crime. However, to impose punishments on people is to treat them in a way that is a clear violation of their human rights and this raises a moral dilemma on whether it is just to punish an individual without fully understanding their motives, background and general circumstances; should we punish someone for stealing bread to feed their children?

Some facts and figures:

- In 2024, the prison population of the United Kingdom stood at approximately **97,800 people**, of which 87,900 were in England and Wales, 8,000 in Scotland, and a further 1,900 were in Northern Ireland.
- The number of people incarcerated in England and Wales is at a historical high and the proportion of people incarcerated in relation to the general population is also at its highest ever.
- The largest number of prisoners received a custodial sentence for **theft offences** – more than 25,000 individuals and 29% of prisoners. This high



number is a result of the very high number of convictions for theft offences (more than 89,000), rather than harsh sentencing for these offences.

- The United States leads the world in total number of people incarcerated, with more than 2 million prisoners nationwide
- Every year around 300 people in England and Wales are given a life sentence for murder. About 5,300 people are currently serving a prison sentence for the same. And around 300 people annually are released having served the prison part of their sentence.
- There are currently over 500,000 cases pending in the UK criminal court system.
- The cost to keep an offender in prison is roughly £1,000 per day

1.3 The concept of punishment has a rich history: Plato sees punishment as an integral part of a complex system of words and deeds by which the legislator seeks to convey to the citizens the values by which they are to live their lives. Punishment thus has what some modern writers have called a 'communicative' function. Socrates argued that just punishment, though painful, benefits the person punished by removing injustice from her soul. Kant's (1720-1804) view is that society has a categorical obligation to punish someone who has committed a crime and that it would be morally wrong not to impose punishment.

1.4 The question remains though on how best to ensure that any punishment is just and how to balance the requirements of the three main parties usually involved when a law has been seen to be broken: the victim, society and the offender?

2 Reasons For Punishment

2.1 So where does the authority to administer punishment come from? Before the 18th Century, the Sovereign generally had the right to punish anyone they saw fit, as well as pardoning favourites when required. Punishments were very often barbaric and carried out in public to show the power of the King or Queen to their subjects. However, with the Renaissance people started to



question the ultimate power of a monarch and pushed for a more enlightened approach to the social contract between an individual and the state in which they lived. However, as Hobbes (1588-1679) suggested in his Leviathan, there was still a need for a powerful authority to provide a relatively safe society and protect individuals against what he called the general “state of nature” where people are only out for personal gain and that it is only the rule of law and the threat of punishment that keep us in check.

- 2.2 In line with this change, torture and capital punishment were seen as being against humanity and the individual authority of the sovereign to punish was expanded to a wider group in society with Parliaments making laws and Judges and Magistrates hearing cases and sentencing in a more humane manner. Foucault (1926-84) summarises this change: “the expiation that once rained down upon the body must be replaced by a punishment that acts in depth on the heart, the thoughts, the will, the inclinations. Or as the French philosopher Malby (1709-85) stated ‘Punishment, if I may so put it, should strike the soul rather than the body’.
- 2.3 In general, punishment follows the philosophical consequentialist view; that our actions have consequences and as rational beings we are aware of what the consequences could be before we take them. But these consequentialist grounds alone cannot justify our current system of criminal justice. We want punishments to ‘fit the crime’ – the worse the crime, the worse the punishment – without regard for the evidence of whether it ‘works’, that is, without thinking about punishment in consequentialist terms.
- 2.4 In the UK, similar to many other Western countries, punishing an offender usually involves one or more of the following, often in conjunction with one another:
 - Financial penalty
 - Community payback – where an individual has to do unpaid work as part of a recognised, organised scheme.



- A restriction on general liberty such as a curfew, electronic tagging, geographic exclusion or a probation course.
- A custodial sentence

2.5 Philosophers have traditionally tended to justify the state punishment of individuals in four main ways:

- Retribution
- Rehabilitation
- Deterrence
- Public Safety

There are obvious pros and cons associated with each of these aspects and these are discussed in more detail below.

3 Retribution/Just Desert:

3.1 One of the oldest and most basic justifications for punishment involves the principles of revenge and retribution. This equation of punishment with the gravity of the offense is embedded in the Judeo-Christian tradition in the Mosaic laws of the Old Testament that emphasize the idea of “an eye for an eye.” Neither constrained by questions of offender culpability nor directed at preventing future wrongdoing, offenders under a retributive philosophy simply get what they deserve.

3.2 Honderich (1933-) amongst others suggest that retribution is a backwards looking theory of punishment and place the justification of punishment wholly in the past. Any such punishments are about some freedom and responsibility of offenders in their offence and the challenge is to come up with a just way of relating the past offence with some form of punishment regardless of whether there are any beneficial consequences for the individuals concerned or for society.

3.3 Consequentialists argue that it cannot be Just simply to punish an offender with there being no beneficial impact on society or the individual. There has to be some consequential benefits behind any punishment otherwise it's



simply the state imposing one bad thing on top of another. This is one reason that retribution is usually part of a hybrid justification for punishment.

4 Rehabilitation

- 4.1 One justification for punishing offenders is the need to reform them, move them from pushing against the laws of society and change their characters so they will no longer feel the need to commit offences and instead comply with the generally accepted values of a society. Thus, punishment is seen as a form of treatment in order to rehabilitate offenders back into society.
- 4.2 It is often argued by its proponents that by spending more on rehabilitation, and on policies that ameliorate criminogenic environments, we can ensure that there are fewer people who will choose crime. There will likely remain a class of people who are not deterred, and some of them will be dangerous. They might require longer sentences. But there are likely to be relatively few of them, and the costs of housing them in secure but non-punitive environments need not be high. If we can overcome our evolutionary bent to mete out brutal treatment to those who break the social codes, we begin to glimpse responses to crime that are much less harsh, but much more effective in reducing its costs.
- 4.3 Rehabilitation is usually undertaken by teams of support professionals, either inside of prison or in the community by probation services. It is usually in operation alongside some form of penalty for the offence such as a fine, curfew or unpaid work. However, with the high levels of recidivism, critics of this approach suggest that it does not work and that such approaches to reforming individual offenders are costly failures and could never be successful.

5 Deterrent

- 5.1 It is difficult to confirm what impact punishment has on preventing offences in the future, both by the offender and the wider population. As Nozick (1938-2002) claims, punishment acts as a communication to society as to what can happen if you don't abide by the rules. However, it could be argued that the



deterrence approach isn't just as it is a form of coercion, and that society should concentrate on developing a moral motive not to offend in the first place.

- 5.2 Punishment as a deterrent works on the principle that if you know you may end up in prison, with onerous limitations on your freedom or with a hefty financial penalty, then you will be less likely to carry out crime in the first place. It can also be argued that punishment needs to be seen to be the direct result of crime than whether the individual offender is changed as a result.
- 5.3 One criticism of the deterrence theory is that it could effectively justify punishing innocent people so long as it sends out a message to anyone else who may have been contemplating crime. This 'scapegoat' approach works on a utilitarian principle that overall society benefits by stopping crime even if some innocent individuals are wrongly convicted. As a consequence, the deterrent theory only works when it is clear that only proven offenders are punished.
- 5.4 Another criticism of the deterrence theory is that it simply doesn't work. The hard data confirms that murderers were not put off by the death penalty, serious crime still occurs despite heavy sentences being handed down by judges and lesser crimes are still carried out on a daily basis even when the punishments are widely communicated via the press and social media.

6 Public Safety

- 6.1 It is obvious that once inside prison the offender is no longer a threat to the general public, although possibly a threat to other prisoners. One logical conclusion to this theory is that serious offenders are never let out of prison, so they never become a threat to the public again. However, whilst there are many offenders with multiple convictions who are clearly beyond reform, there are many individuals who are unlikely to break the law again after completing their sentence. The challenge is to be able to identify the serial



offenders and keep them away from the general public as long as possible but in practice it is difficult to identify criminals who will reoffend.

- 6.2 Another challenge to the public safety theory of punishment is what crimes can justly result in imprisonment? Obviously offenders who commit serious crimes against individuals may offend again so it could be justified in keeping them away from society, but what about crimes against organisations such as fraud or shop lifting where no individual is harmed and public safety is not compromised.
- 6.3 It is also pointed out that prison is a great place to develop your criminal skills so the longer you are in prison the better the criminal you may become. The data from criminology is messy and hard to interpret, but there are reasons to think that we can secure all the deterrence benefits of prison sentences with very much shorter sentences, at a lower cost to society but with limited impact on public safety.

7 Other Options:

- 7.1 The obvious question around any approach to punishment is whether it is just and morally acceptable in the 21st Century. Society has moved on from cruel forms of punishment such as hanging or hard labour camps and we now have a better understanding of some of the root causes of why people commit crimes, so why isn't there more of a focus on addressing these root causes to avoid individuals offending in the first place?
- 7.2 The abolitionist movement advocate for the removal of punishment altogether and reconciliation, not punishment, is a proper response to criminal acts. Their proposals suggest that the present criminal (in)justice systems focus on someone to punish, caring little about the criminal's need or the victim's loss. The abolitionist response seeks to restore both the criminal and the victim to full humanity, to lives of integrity and dignity in the community. Abolitionists advocate the least amount of coercion and intervention in an individual's life and the maximum amount of care and



services to all people in the society. This seems like an idealistic objective and one that would require a complete overhaul of how we currently approach law and order and how to move the emphasis and resources from punishment to prevention and care for those criminally inclined.

- 7.3 The justification of our current system of punishment depends on whether people *deserve* harsh treatment. Some modern thinkers, including Sam Harris and the neuroscientist John-Dylan Haynes, have suggested that, in fact, no one at all deserves to be punished because our choices and behaviour are all determined by physical processes we can't control. This questioning of whether we have free will and that our behaviours are determined has many challengers and is the topic for much wider debate.

8 Conclusion

- 8.1 In western society the grisly spectacle of the public executions and torture centuries ago has been replaced by a less harsh approach to punishing offenders. However, in a just society should it still be acceptable to lock individuals away, often for years, when there are other possible options? Shouldn't a society that promotes itself as civilised be more pro-active in identifying potential offenders and turning them away from crime, whilst at the same time addressing the acknowledged root causes of many of the reasons behind crime in the first place. Alternatively, should we recognise that the apparent 'soft' approach to punishment does not work as evidenced by the high levels of recidivism and take a step back to harsher punishments. 'Hang em and flog em' or ask offenders just to say sorry for what they have done and let them go – what's your view?

9 References

- Aeon essays on punishment <https://aeon.co/>
- Facts and figures from the Office For National Statistics
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice>
- Michel Foucault – Discipline and Punishment



- Ted Honderich – Punishment
- Nigel Warburton – Philosophy the basics

Suggested discussion points –

- 1) Retribution versus restorative methods of dealing with crime? Or both?
- 2) What is your view on a ‘life sentence’ – is it morally right to ‘watch’ an individual for the rest of their physical life, whether in prison or back in the community?
- 3) What are your views on the concept of a ‘career criminal’? Is it worth pursuing rehabilitation?
- 4) See 7.2 and 8.1 – how can we identify ‘those who are criminally inclined’? Is there a role for schools and higher education establishments?
- 5) What is your response to the ‘hang em and flog them’ people in our western society?

