

Arguments for and
against a deterrence
justification
criminology essay



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The idea that punishment requires some sort of justification is because it is seen to involve some of infliction of suffering or pain (Bentham, 1789, p 45) and as a result can only truly be justified if its consequences are deemed to be beneficial (Bentham, 1789, p 45).

The idea of deterrence is to stop individuals committing further offences, known as individual deterrence but to also by deterring potential offenders within the community from committing a similar offence. Zimring and Hawkins (1973, p 40) suggest this to be known as general deterrence, and works on the basis that punishment such as prison sentences deters criminals due to the fear of the punishment (Davies, Croall and Tyrer, 1998, p 300).

Punishment is hoped to achieve particular aims by implementing different theories of sentencing, depending on the sentencing policy will depend on the balance between six different theories. Within deterrence theory, offenders and potential offenders must be evaluated, and it must be decided as to what will make an impact on them. The idea of deterrence aims to make potential offenders think about their actions and the likely consequences of them (Davies, Croall and Tyrer, 1998, p 240). Therefore it could be seen that deterrence approaches show little concern with the severity of the crime committed, but more so with the prevention of the crime being committed again, and could therefore be seen by some as ignoring the problem of crime (Ashworth, p 1078).

However, deterrence is not always designed to punish people however, but to stop those committing further offences, focusing on how actions will affect

their future behaviour (Davies, Croall and Tyrer, 1998, p, 249), and this can be seen through absolute discharges for example, the idea to act as a warning to not commit a further offence or they will be punished (Davies, Croall and Tyrer, 1998, p 249).

This is a similar idea to what is used in everyday life ' theory underpinning a threat issued to encourage people to comply with rules or refrain from infringing them' (Davies, Croall and Tyrer, 1998, p 245). A problem arises however, when deciding what is expected to deter others, Bentham (1789, p 1079) and more recently Walker (1991, p 1079) suggest that an appropriate action to be setting penalties to outweigh the benefits of committing an offence, however this relies on the premise that those who commit crime are rational thinkers and that are responsible for their actions. This premise however, causes conflict as to whether or not criminals are in fact rational within their actions or whether crime is in fact an act of impulse.

Early examples of deterrence, such as the Panopticon, as designed by Bentham (1971, p 26) suggested a circular, tiered building with inward looking cells, towards a central inspection tower, to promote the idea that behaviour within prisons would be regulated as prisoners would not know if they were being watched and therefore would behave. The idea also being that the Panopticon would be placed near a city centre, so it would be seen as a reminder to the community of the consequences of crime thus reinforcing the idea of general deterrence.

In some circumstances deterrence approaches have appeared to work, Ross et al (1970, p 68) suggested that after the introduction of the Breathalyzer in

1967, and taking into account other external factors, reported a drop in all road casualties.

Similarly, Condon (1994, p 246) reported that after a high number of fatalities on roads in West London, after speed cameras were introduced, these fatalities were reduced by one third. However, these studies are examples of offences which may be more likely to be thought about, on the basis that the probability of being caught may be deemed to be high, or linked to the consequences of their actions and the value that someone places on holding a license.

The Home Office (1990, p 296) suggested that although some criminals appear to be calculating and balance risk and gain, much crime conducted is acted upon impulse and therefore would be unrealistic to construct a sentencing system designed to deter, on the basis that most would not think about the consequences in advance. Davies, Croall and Tyrer (1998, p 246) also suggest that the most serious of criminal acts are often not calculated and therefore many would not consider getting caught.

However, others disagree, and believe that not all crimes are random, and it is likely that calculations about the likelihood of being caught are likely to weighed up, and as a result may well deter some people from the decision to commit an offence, but this would require significant measurement of why some people decide to act or not act with criminal intent (Davies, Croall and Tyrer, 1998, p 300)

Von Hirsh and Ashworth (1993, p 296) reported that new law stated that the primary purpose for the sentencer should be with the aim of desert, rather than deterrence.

If the idea that crime is based on criminals being calculating and balancing the options of risk and gain, then therefore punishment should not be pre-determined, but should vary on what offenders consider to be a non-desirable punishment in order to deter them, therefore their punishment need be flexible, and this may not be seen to be fair or just but should be seen to be effective and suit the notion that anything should be done (Davies, Croall and Tyrer, 1998, p 246).

It could also be seen that the idea of individual and general deterrence to be in conflict, if the idea of punishment is to punish on the basis of what deters an individual from re-offending then this may not be what would deter other potential offenders from committing a similar offence in the first instance. By implementing differential sentences then this reflects the view to change individual behaviour, but to deter the public, and therefore potential offenders sentences need to be fixed and certain regardless of age or circumstances (Wilson and Hernstein, p 34).

Akers (1997, p 40) suggests that certainty of getting caught is more effective in deterring crime than the severity of punishment, however as Davies, Croall and Tyrer (1998, p 299) suggest that as only 2% of crimes result in a conviction, the assumption is that people are likely to deem the chances of being punished very low, therefore as Akers (1997, p 40) suggest if punishment is less certain, punishment must be more severe in order to

deter in order for people to believe that they have more to lose than gain from committing a crime. Beyleveld (1978, p 40) agrees with Akers, that punishment should be increased to maintain effective deterrence, and suggests that the only way to deter different people with varying offences and circumstances is to set punishment out of proportion with the severity of the crime.

However, Wright (1982, p 40) suggests that this may just encourage criminals to try harder to avoid detection for their crimes and that punishment should fit the crime.

On the other hand, Beadau (1964, p 40) and Beyleveld (1979, p 40) have both suggested that the abolishment of the death penalty had no impact on the murder rates in the USA and UK respectively. Therefore, the severity of punishment could be seen to have little impact on the offending rates, and that other factors must be involved in the 'decision' to commit a crime.

Walker (1985, p 40) suggests that capital punishment is no more effective as a deterrence than imprisonment and that in most circumstances, murder is not a rational choice and therefore, the punishment is irrelevant and a deterrence effect is unlikely. It is therefore unjustifiable to construct punishment on the basis of deterrence, if it was never the intention to commit a criminal act.

Wright (1993 p 8) addressed modern theories of the certainty and severity of punishment and rational choice theories suggest that people make decisions to act based on the choice to maximise profit and minimise loss, therefore the decisions to offend are based on perceived effort and reward rather than <https://assignbuster.com/arguments-for-and-against-a-deterrence-justification-criminology-essay/>

the chances of being caught and the severity of punishment (Becker 1986, p 8).

Nonetheless, Charles Murray, in ' Does Prison Work?' (1997 p 300) concludes that incarceration solves the problem of crime and that prison is the most effective way of deterring crime, short of the death penalty.

Davies, Croall and Tyrer (1998, p 299) propose another problem with the idea of deterrence approaches to punishment is that there are high reconviction rates that show the majority of those who have been imprisoned will be reconvicted within two years, and therefore if punishment seems to be ineffective to prevent re-offending then a deterrence approach to punishment is unjustifiable and invalid (Bentham, p 57)

Martin and Webster (1971, p 40) suggest that in some circumstances punishment may push individuals into a situation where they may have little to lose from re-offending, such as a lack of opportunities due to previous convictions, or loss of family. This also promotes a similar idea to labelling theorists who suggest that the notion of being caught and stigmatised may lead to an individual committing further offending.

Chambliss (1969, p 157) reports that the criminal legal system is ineffective as it processes people who are least likely to be deterred from the punishment imposed, whilst ignoring any harsh treatment of those who would be deterred by such sanctions, maintaining organizational power.

Davies, Croall and Tyrer (1998, p 34) also suggest that this can create a moral dilemma as those perceived by the courts as being less likely to offend will receive shorter or less harsh sentences than someone perceived more

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likely to re-offend, and therefore this maintains inequalities within the legal system and makes it harder to reinforce the view that deterrence is a valid concept for punishment.

Overall it appears that there is much conflict as to if deterrence theory is a valid justification of punishment. Ross (1973, p 68) argues that the effect that deterrence has is due to the subjective probability of sanctions, and although there is some evidence as to what is considered effective examples of deterrence approaches, most studies are reported to be inconclusive. Therefore it can only be seen that the result of deterrence theory will depend on what is considered as value and as a risk to the individual, on the basis that crime is calculated. However there is little agreement as to what makes up this calculation, whether it is the likelihood of punishment, the type of crime, the severity of punishment. How criminals are perceived by sentencers in the criminal justice system reflects how they are treated, if they are perceived as calculating then it would be logical to propose heavier sentences, but if it is deemed to be an irrational factor than this would be illogical as a deterrence approach.

Deterrence theory causes conflict with punishment as there is little consistency within sentencing to maintain effective deterrence, and although the view may be to deter individuals from re-offending, which has proved to be inconclusive, there is little evidence to show that flexibility within the sentencing process maintains general deterrence. Another problem with this approach is the idea of proportionality, and again this links to how the offender or potential offender is perceived by the criminal justice system.

One of the main objections is that it focuses on the individual behaviour and the preconceptions of expected future behaviour, rather than focusing on the criminal act itself and the reasoning behind the offences, such as external factors, commonly linked to retributive approaches.

Overall it would appear that there needs to be further investigation into the conception of human behaviour to explore reasoning, rational and irrational behind individual motivational states to carry out a criminal act.