

Deterrence or retributivism which theory philosophy essay



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Looking at punishment as a whole, its aim varies from retribution to social benefit or rehabilitation. In behaviourism, punishment is referred to as the consequence for undesired behaviour: it can be positive or negative, depending on the nature of the consequences (B. F, Skinner, n. d). In all, punishment is uncomfortable for the one experiencing it. It is with great effort that modern philosophers have tried to explain what punishment it. Kant in his book 'The science of right', stated that to punish an offender is the sole right of the sovereign as the supreme power of the head of the state (Kant and Hastie, 1790, p. 82). Based on Kant's philosophy, if justice and righteousness should perish, the world would have no purpose. Kant is for the notion that punishment is some form of retribution for the offended which is implemented by the authority to the offender. For Kant, the minute a person commits an unjust act, he already gives himself the right to be punished (Kant and Hastie, 1790, p. 82; Barber 1994). As stated by Kant " In every punishment, as such, there must first be justice, and this constitutes the essence of the notion" (Kant, 1788, p. 35), meaning that the punisher must feel that justice is served and that the punished must also feel that justice has been served unto him. In this sense, punishment is mentally and physically evil, but not morally evil (Kant, 1788, p. 35).

The practice of punishment can be greatly reflected from prehistoric scriptures and from the words of prehistoric philosophers like Plato, Aristotle and Socrates. For Socrates, punishment is necessary " to serve as a corrective measure that would be of benefit to the criminal by helping him to overcome his evil tendencies" (Patterson, 1975, p. 44). On the other hand, Aristotle sees punishment as a paternal, where the punisher exercises his

power as that of a father to a child and a king to his subjects. Another view was conveyed by Crito, where punishment “ was to enable society to get even with the criminal by inflicting upon him an evil that was equivalent to the one he had caused others to suffer” (Patterson, 1975, p. 44).

Let us now look at the question as to which should be morally preferred between deterrence and retributivism. The first question that pops to mind is why should either of the two be preferred? What is morally superior about any of them? Is deterrence morally superior to retributivism and is retributivism morally superior to deterrence? Deterrence is a theory believed by Jeremy Bentham, a Utilitarian philosopher, influenced by the works of Beccaria. In his book *An introduction to the principles of morals and legislation*, he argued that “ nature has placed mankind under the governance of two sovereign masters, pain and pleasure” (Bentham, 1948, p. 125). Bentham’s approach is to act in way that creates the greatest good for the greatest number. The good is a product of pleasure and the bad is a product of pain, therefore in a Utilitarian system pleasure and pain are the standards for value. To illustrate, if there is an epidemic of sheep being stolen and the desired outcome is for the sheep to stop being stolen, whoever is stealing the sheep should be caught and punished. As much as this is a lot of pain for one person, it benefits the majority and also serves as a deterrence mechanism. Generally, the moral theory of utilitarianism proposes that right and wrong are products of the balance of good and bad in a specific action (Corlett, 2008).

The practicality of deterrence theorized reduction in crime that results from making crime too costly of a proposition for a potential criminal. That is, from <https://assignbuster.com/deterrence-or-retributivism-which-theory-philosophy-essay/>

economic perspective, by disincentivizing crime for individuals, the price becomes too high.

Deterrence comes in two basic forms, general deterrence and specific deterrence. Specific deterrence is designed to deter only the offending individual from committing that crime in the future (Deterrence theory, n. d, p. 233). General deterrence is designed to prevent crime in the general population. Consequently, the states punishment of offenders serves as an example for others in the general population who have not yet participated in criminal events (Deterrence theory, n. d, p. 233). Based on general deterrence, some may morally favour deterrence over retributivism; it does not seek to create harm against those who perpetrate offences, it merely seeks to deter them. Looking at deterrence in general, research shows that genes may influence or cause criminal behaviour (Daily reporter, November, 2010). In light of this, will it be right to punish an individual for an action that was probably beyond his/her control.

Unlike deterrence, Kant's philosophy of retributivism is more concerned and based on morality instead of the political nature of punishment (Clear, 1994).

In that the victim feels a sense of involvement, justice and fairness.

Retributivism is a backward looking theory on punishment and aims to create a just society by looking to the past to determine what is to be done in the present, so long as it is just, deterrence does not matter. Kant supports the concept of retributive justice on the basis of a "principle of equality" (Kant, 1972). This is associated to the impartiality of interests a utilitarian considers in ethical decision-making. Therefore, the opinion that the "scale of justice" ought neither lean no more to one side than the other <https://assignbuster.com/deterrence-or-retributivism-which-theory-philosophy-essay/>

amounts to an eye-for-an-eye justice procedure that punishes an offender as much as the victim. Ideally, the severity of punishments should be equivalent to the seriousness of crimes. Realistically, it is challenging to match punishments and crimes, since there is no way to accurately standardize the moral depravity of certain crimes and/or the distress of precise punishments. Disparate to the utilitarian theory of punishing innocent persons for the good of others, retributive justice does not allow for the possibility of punishing innocent people by no means. Though retributivism seems to deliver justice and fairness more seriously than the deterrence theory of utilitarianism and seems to be on the victim's side, this still does not necessarily mean it is a superior theory.

The case of Derek Bentley is an example of retributivism. This case roused widespread controversy amongst people and received great media attention in the 1950s. Derek Bentley was sentenced to death for allegedly killing a police officer during a burgled break in at a warehouse in Croydon, Surrey, when in actual fact it was his friend and accomplice Christopher Craig that fired the shot which killed the police officer. Bentley was sentenced under the reasons that he encouraged Craig to shoot by shouting out "let him have it", when all he was trying to say to his friend was for him to hand over the gun to the police officer. Craig was aged 16 and a minor and therefore could not receive the death penalty. Derek was 19 years old so he got the death penalty even though he had the mental capacity of an 11 year old; this fact was not disclosed to the jury during the trial. The home secretary at the time, Sir David Maxwell Fyfe said he could not see any reason for intervening in the case after petitions were signed by the people. Eventually

45 years after his death, Bentley was granted a partial pardon and scientific evidence also showed that the three police officers who testified about Bentley shouting “ let him have it”, had lied under oath (BBC News, 28th January 1953). The main aim of the system was to use Bentley as a scapegoat to others to deter them from committing not necessarily murder in general but the shooting and killing of a police officer. It could be said that if it we're not a police officer who was shot, the case might have had a different outcome. It was a very unjust decision which indeed might have favoured the victim's family and close cohort and sent a message to the society and people and therefore regarded as just.

Another case is that of Timothy Evans, who was wrongly hanged in the 1950s for the murder of his wife and baby daughter. His wife and daughter had been strangled in bath, Mr Evans blamed his neighbour Christie but he was believed by no one. At trial Christie went ahead to give evidence which would convict Mr Evans. However three years later, Christie was found guilty of a string of murders. At Christie's trial he admitted that he had murdered Mrs Evans and might have also been responsible for murdering Evans' daughter. The police investigation was never prepared to entertain the possibility that anyone other than Mr Evans could have carried out the murders, despite evidence to the contrary. Though in 1966, Evans was given a posthumous royal pardon, but his convictions have still not being quashed (BBC News, 9 March 2010). If Christie was never eventually caught out for other murders, it would have still been assumed that Evans was the perpetrator and Christie would've been out in the society committing more crime. Just like the case of Bentley, unjust outcome for the family but as long

as it deters the population and society at large from committing such crime it is deemed just. Retributivism seeks to use the offenders as scapegoats, it fails to recognise and punish the real criminals; the aim to reduce crime is not achieved because if innocent individuals are being convicted, the criminals are still out there wrecking more havoc.

Are either of these theories effective?

Statistics from Crime survey for England and Wales (CSEW) shown on the website of the office for national statistics, shows that there were 8.9 million crimes against adults in England and Wales in this year ending September 2012, an 8% decrease compared with the previous year's survey. This reduction was driven by statistically significant decrease in vandalism, burglary and vehicle-related theft. Also, the police recorded 3.8 million crimes in the year ending September 2012, a decrease of 7% compared with the previous year. Looking at these figures it can be said that punishment is effective as a deterrence factor because crime is reducing. However, its effectiveness does not extend to stopping crimes as people are still committing crime. Having said all that, not all crimes are recorded. This known as the dark figure of crime. So due to this dark figure of crime, it cannot be concluded as to whether crime is actually being reduced. Also not all criminals are caught, for example, not every street graffiti artist is caught, so if the criminals that have not been caught are still in the society, they will continue to commit crime.

According to Garland (1990, p. 1) " The punishment of offender is a peculiar unsettling and dismaying aspect of social life. As a social policy it is a

continual disappointment, seeming always to fail in its ambition and to be undercut by crises and contradictions of one sort or another. As a moral of political issue it provokes intemperate emotions, deeply conflicting interests and intractable disagreement”.

Punishing an offender does not always guarantee a desired outcome as majority of offenders are given the chance to finish their sentences earlier than proposed; hence the reason for punishing is defeated.

Selected crimes, such as crimes of passion and crimes which are committed while the offender is under the influence of drugs, cannot be deterred because their perpetrators don't logically evaluate the benefits versus the costs (which include punishment) before committing an unlawful act.

Having said all that, the deterrence theory being effective comes down to what type person an individual is. If one is brought up in a loving home surrounded by care and positive role models, such individual will most definitely be deterred because he/she has a sense of belonging and has a good foundation of morals, norms and values. However if one has grown up in hard and tough conditions, being bullied with no positive role models to look up to, it is more likely that such an individual will not be deterred from committing crime as he/she will not have that sense of belonging, he/she may be angry at the world and lack morals and values. Looking at religion, retribution to some may seem outrageous and unjust, some may that only God gives life and only God should be the one to take life and that murder is a sin regardless of what justification it holds. However a life for a life may not hold such an emotive controversial stand and seem such an outrageous

thing to do when it is concerned with dictators like Saddam Hussain, Hilter and Idi Amin. In that such a punishment will bring about the liberation of millions.

Retributivism fails to promote morally right conduct because it seeks to severe the punishment to the offender rather than to seek to rehabilitate him or to keep him for disciplining (Shook, 2004). Some may say that it is fair for offenders of genocide crimes to have their punishment fit their crime. However others might say that, in inflicting capital punishment upon such an individual it does not allow the individual to suffer appropriately for their offence.

In conclusion, the evidence base for deterrence approach is uncertain, so it is unknown if it deters crime or not. Will it be moral to implement a deterrence philosophy when there is no idea if it works or not. According to Braithwaite's restorative justice, communities need to let their feelings known and to be recompensed for the wrong that has been done against them. That doesn't necessarily mean, they seek an eye for an eye. Retributivism doesn't essentially mean for the punishment to fit the crime, it means that the offender is named, shamed and made to give something back as a means of repayment which is a kind of retributivism, which can be seen as quite moral.

The evidence base for deterrence is not strong, it also can act, not necessarily as a deterrent but as a ' why should one care if one is going to get done anyway regardless of who offended'. Retributivism can mean vengeance whereby the victim's mentality becomes harsher. But on the

other hand studies in modern retributivism argue that reintegration, naming and shaming are better ways forward.