

# Examine the key ideas associated with law and punishment

Law



Examine the key ideas associated with law and punishment Law and Punishment go hand in hand. There are Laws, which are the system of rules which a particular country or community recognises as regulating the actions of followers, and there are punishments, for when a member of said country/community breaks the rules. Punishment is defined as the infliction of a penalty or to cause pain for an offence.

Most of the time it is not a choice as to whether you are part of a law-following community because almost all countries in the world have some kind of law-system and often the minute you turn the age where you are legally responsible or step off the boat, plane or train you are subjected to their laws. The Biblical views on punishment have often been based on the old testament teaching ' an eye for an eye'. The bible also lays out punishments for certain crimes that appear to follow this teaching. Except that there are many punishments in the bible that seem to be out of proportion to the crime e. . " whoever curses his father or his mother will be put to death". There are many problems with this statement for example it does not state how old the son/daughter has to be to deserve this punishment, it seems to imply even a 4 year old who does not necessarily know what they are saying can be put to death for cursing their parents. An eye for an eye is also relevant in today's laws, it is the basis of retributive justice that is present in our society. Retributive justice is the idea that those who have done the crime should somehow pay back for what they did.

Rachel's said " People deserve to be treated in the same way that they have (voluntarily treated others)" This seems like a fair way of treating someone because why someone should be allowed to do one thing and then not

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expect to be treated in the same way? But some punishments that are retributive e. g. capital punishment do not seem to benefit society and there is a risk of the punishment becoming revengeful not retributive. Retributive justice also causes a problem because it might make capital punishment a legitimate approach to punishment.

I. e. If a person murders it is right for them to be killed. And It also can lead the legal system to instead of appearing like someone is being made to pay back what they have done wrong to looking like the legal system is being hypocritical i. e. we are showing society that it is wrong to be violent by being violent to wrong doers. This is not how we should be teaching people to not be violent. The punishment also must not be disproportionate to the crime e. g. sentencing a small child to death for stealing a sweet from a shop.

Some forms of punishment e. g. fines may be disproportionate because to people with money a fine does not make any difference but to someone who has just enough money or just below the money they need for necessities it can be a massive problem, but on average I think retributive measures helps to make the punishment be proportionate to the crime because the person can be treated the way they treated others. Deterrence is another form of punishment. It means that we should punish for crimes in order to deter others from committing the same crime i. e. f we know what the punishment for an act is we are less inclined to do it. However there are problems with this because it assumes that the perpetrator had intent and full knowledge of what they were doing was wrong but often violent crimes happen in the heat of the moment and are not planned and those violent crimes that are

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calculated are often done by those people who are mentally ill. Also, why should we punish someone for the sake of someone else? Reformatory justice is becoming more popular in today's society and is the attempt to turn the criminal into a normal law-abiding citizen.

It is often based on the idea that everyone has an intrinsic value simply because they are human and the improvement of humans is good. According to deontology this is good because rehabilitation prevents people treating others as means. There is also a utilitarian argument for this because reformatory justice improves the general quality of life in society. I also would argue that reformatory justice is also trying to right the inequality between the rich and poor. People from less well-off backgrounds are more likely to commit crimes due to them having fewer opportunities and less education.

Poorer people are also more likely to come from violent backgrounds and therefore are more likely to be violent themselves. Therefore reformatory justice helps make up for this lack of opportunities by offering classes inside prisons for example. Although there are many good things about reformatory punishments, there are also many problems. Reformation takes away the responsibility for our actions and it does not attempt to right the wrong. This causes problems in itself because if there is no 'punishment' other than reformation then there is no incentive for people not to commit crime, in fact there is almost an incentive to commit a crime!

And why someone in prison should be getting opportunities that people outside the prison do not get. I would like to think that there is good in everyone but it would simply be impractical to think that we can rehabilitate  
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everyone as some people are simply too far gone and do not want to change. Hobbes philosophised about why we want/need laws in society and he came up with an idea called the social contract theory. This idea was based on his notion that government is an agreement between a group of people where they agree not to hurt each other.

This is fuelled by the motivation of self-interest which according to Hobbes is pertinent because human beings are selfish creatures and therefore seek collective protection. i. e. If I promise not to hurt you and you promise not to hurt me then neither of us gets hurt and we're both happy. And this is what Hobbes believes to be the basis of our desire to keep the laws set out by the state - we should avoid chaos because it is not in our best interests therefore we should keep the laws. Kant had a similar conclusion i. e. that we should keep the laws but for a different reason.

Kant said that we should 'act so that you treat humanity, both in your own person and in that of another, always as an end' i. e. we should keep the laws so that we do not treat others as means to an end. His idea of kingdom of ends states 'act in accordance with the maxims of a member giving universal laws for a merely possible kingdom of ends' where the kingdom of ends is a perfect community where all members respect each other as ends in themselves. This is what we should strive to achieve, and to be successful at this we should keep the laws of the community.

Therefore we should keep the laws and to keep the laws means that we must punish those that break the law.. Evaluate the view that objectivity and relativism pose problems for the concept of law and punishment. Objectivity states that there are ethical principles that are always wrong or always right  
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and they are normally established a priori i. e. without experience. Therefore as there are certain things that are always wrong we need a law to stop people from doing it. This law may be objectively right and its punishment for breaking the law may also be objectively right.

Objectivity might support retributive justice; Retributive justice is when someone pays back for their crime. This could support objectivity because it needs to be imposed with the consistency that objectivity provides therefore you could argue that Retributive justice only works with the objectivity and as retributive justice tends to be favoured in western societies perhaps objectivity does not pose such a problem with law and punishment. Having said this there are still the problems it does cause.

Objective ethical principles are established a priori therefore we cannot know them through experience. If we do not know them through experience, how can we truly know if something is right or wrong and therefore how do we know if a law is right whilst using objectivity. Objectivity also does not allow for individual cases, it runs the risk of using a 'one size fits all' policy towards law and punishment and whilst we do need some consistency amongst crimes, one size does not exactly fit all because not every crime is exactly the same!

Normative relativism states that truth and morality is relative to the country/society that one is in and therefore we cannot criticize other cultures as to how they do things. With regards to law and punishment this leads us to the face that there are no definite truths or morals that can be applied in every situation around the world so Punishment is determined according to

the country and, if we take it relativism further, according to the circumstances of the case.

Hobbes took a relativist view because he said that justice cannot be fixed, and each country/community has different ideas of what law and punishment should be all we should do is aim not be in chaos, not because it is wrong in an objective sense but because it does not serve or self-interest. Relativism may be a good thing because it allows each country to organise punishment as they see fit and there is merit in the systems that other countries have for example some people believe that Iraq was justified in the hanging of Saddam Hussein even though in our society the death penalty is not used.

However it does have problems because it means that all forms of punishment are right as long as it is accepted by society e. g. it would be right to hang a small child for stealing sweets if society thought it was the correct punishment. If punishment is decided relative to the circumstance and there is no consistency we could end up with a justice system where only some people would be punished and this could easily lead to corruption, sexism and racism within the punishment system.

It also means that there may be little point of having punishment because if only some cases lead to punishment then punishment would be pointless! It would serve no deterrent or retributive purpose. Objectivity and Relativism both have merits and cause problems for law and punishment and I do not think either can work solely on their own because they have too many problems by themselves, but on the other hand I do not know if it is possible for Objectivity and Relativism to work together.

Perhaps if the laws are objective but how we punish people is relative to each country, case and persons involved. For example although killing may be objectively wrong it may not be appropriate to treat a child who killed someone, an adult who killed someone by accident and an adult who killed someone out of hate all In the same way although they have all broken the same objective rule.