Do People Really Care About Retribution When There Are Societal Consequences at Stake?

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Abstract

When asked why they punish, people state both retributive and consequentialist reasons. However, previous research by Carlsmith has shown that when people actually punish criminals, they essentially ignore factors that are important to a consequentialist theory of punishment, such as publicity of crime and probability of detecting the crime. Instead, people punish in ways that reflect how serious they find a crime to be and how morally outraged they are. In this study, I show that even though people may desire to punish in a retributive way, they will choose to punish as consequentialists if they are aware of the outcomes of their punishment.

Introduction

If one of society's goals is to reduce the amount of crime that takes place, then there are multiple reasons for punishing wrongdoers. Punishment disincentivizes people from committing acts that are deemed unacceptable in the first place (general deterrence; Loewy). And if someone does indeed break the law, then punishment serves as a conditioning tool that deters the lawbreaker from committing more offensive acts in the future (specific deterrence).

However, some view punishment as "an eye for an eye"-- if you do something wrong, you deserve to be punished, regardless of what effects the punishment may have. This Kantian view of punishment is called retributivism, and only makes sense if those who receive punishment also act of their own free will (Rauscher, 2017, Greene & Cohen, 2004). The former view, which focuses on future crime and does not mandate that people have free will, is known as consequentialism or utilitarianism (Crimmins, 2017).

Some argue that as new knowledge of neuroscience removes our conception of free will, it no longer makes sense to punish people out of retribution; a consequentialist approach is necessary (Greene & Cohen, 2004). If a shift in how and why we punish is to be made in real life then, the general public must be ready to accept it. Therefore, it is important to consider what intuitions most people have about punishment.

When people are questioned as to why they punish, they state both retributive and consequentialist reasoning (Weiner, 1997, Carlsmith et al., 2002). However, Carlsmith et al. show that when put to the test, people actually punish in a retributive

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manner. They found that test subjects who are presented with vignettes of criminals

breaking the law choose to punish those criminals in ways that correlate with how

serious they find the offense and how morally outraged they are, two factors that are

important to retributivists. But if people also see from a consequentialist lens, they

should punish more harshly when a crime has a low probability of being detected, as

well as when a crime is quite public (both heightening general deterrence). Yet both of

these factors have little to no effect on how severely participants choose to punish.

Similar research confirms this result (Carlsmith, 2008).

Carlsmith concludes that people don't punish from a consequentialist framework

and only care about giving people the punishment they deserve. However, I believe the

real conclusion from these studies is simply that when meting out punishment, people

aren't sensitive to factors that don't directly measure deterrence (in this case, the

publicity of a crime and the probability of detecting a crime). Moreover, when oblivious

to the effects their punishment may have, people act as retributivists.

I predict that if participants are aware of the consequences of their punishment,

they will not act purely out of vengeance, but instead act as consequentialists. It is not

punishing that people care so much about. What is important is what societal outcomes

their punishment will cause.

Study Overview

The purpose of this study is to see if people care more about giving a criminal

what they deserve (harsh punishment vs. gentle punishment) or whether people care

more about what consequences a punishment may have on future crime (high

recidivism vs. low recidivism). I predict that regardless of harshness, people will choose

to punish in a way that minimizes future crime.

Method

Participants: 88 university students were asked to complete short surveys

digitally. The average age was 19.3 years; 44% were female.

Procedure and materials: All participants read a short vignette describing an

intentionally committed harm, assessed how serious they found the offense, provided a

recommended punishment of their own, and then picked between two different

punishments which included information about the recidivism rate following each

punishment. The independent variable being tested was whether harshness of

punishment was directly related to or inversely related to recidivism rate.

Two versions of the survey were given out to participants. Both versions shared

the following vignette of a criminal act:

"Harry started out as a clerk in a middle sized independently owned store near
where he lived. He spent quite a lot of money going out to bars at night and placing bets
on football games. Once he ran low on money, he decided to rob a local family in order
to secure money to spend on his nightlife. In the middle of the night, he entered the
home of a local family and started to go through drawers looking for jewelry. However,
the adults of the household heard noise and went downstairs to investigate the sound.
Harry pulled out a gun and murdered both of them. The next day, he was caught and
found guilty."

Both versions included the following two options for punishing Harry: "18 years

in Prison A" or "5 years in Prison B." In order to make one punishment clearly harsher

than the other, a longer prison sentence was paired with an uncomfortable prison and a

shorter prison sentence was paired with a very comfortable, perhaps enjoyable, prison.

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The prisons were described accordingly:

"Prison A is a high-security prison. Prisoners live in their own cells and are allowed out of their cells for only a few hours a day. Food at Prison A is bland, prison cells are cold, bathrooms are in public view, and overall living conditions are poor.

Prison B is a minimum-security prison. Prisoners are allowed out of their cells any time they desire. There are tennis courts and saunas, the food is flavorful, and overall living conditions are comfortable."

In one version of the survey, participants were told that "Murderers who are sent to Prison A for 18 years are much more likely to commit a violent act once they return to society when compared to murderers who are sent to Prison B for 5 years." In the other version, participants were told the reverse--that murderers who are sent to Prison B for 5 years are more likely to reoffend. To guarantee that participants avoided picking a prison sentence because they believed it promoted greater general deterrence, subjects were told that their "decision will not have any influence on whether other citizens besides Harry will commit crimes."

Measures: The first two questions were "How serious was this crime?" and "How morally outraged were you by this offense?" Participants answered using a 7-point Likert scale ranging from 1 (Not at All) to 7 (Extremely). They were then asked how severely they would like to punish Harry using a 7-point Likert scale ranging from 1 (Not at All Severe) to 7 (Extremely Severe).

In order to ensure that only the description of the crime affected participants' answers to these first three questions, the survey was split into two pages. The second page contained the description of the prisons, the ability to choose between the two given prison sentences, and an opportunity to explain why they chose the sentence they did.

Results

    37 people took Version 1 of the survey in which the harsher, 18-year sentence in

Prison A was paired with a smaller chance of reoffending (harshness of punishment and

recidivism rate are inversely related). The majority of test subjects, 87% (32/37), chose

to sentence Harry to the 18-year sentence in Prison A.

    51 people took Version 2 in which the gentler, 5-year sentence in Prison B was

paired with a smaller chance of reoffending (harshness of punishment and recidivism

rate are directly related). In this version, the majority of test subjects, 65% (33/51),

chose to sentence Harry to the 5-year sentence in Prison B.

    As expected, both versions saw nearly identical responses to the first three

questions because test subjects were presented with the same vignette. However,

participants who chose the harsh sentence in each version answered the third question

(on punishment) with a higher score than those who selected the gentle sentence. The

average results of every question asked can be seen in Figure 1.

	Prison Sentence Chosen	Q1 - How serious was this crime?	Q2 - How morally outraged were you by this offense?	Q3 - How severely would you like to punish?
Version 1	Harsh (N = 32)	M=6.6, SD=0.6	M=6.2, SD=1.2	M=6.2, SD=1.0
	Gentle (N = 5)	M=6.6, SD=0.5	M=6.2, SD=0.8	M=5.4, SD=0.5
Version 2	Harsh (N = 18)	M=6.6, SD=0.7	M=6.5, SD=0.6	M=6.4, SD=0.7
	Gentle (N = 33)	M=6.6, SD=0.6	M=6.1, SD=1.3	M=5.7, SD-1.5

Figure 1

Analysis & Discussion

Version 1 of the survey was used to verify the assumption that people will

overwhelmingly endorse a harsh punishment with a low recidivism rate. Of the five

subjects (5/37) who chose otherwise, two ignored the given statistics about recidivism

and wrote that Harry had a better chance of reforming in Prison B. One participant

ignored the options given and came up with their own unique prison sentence in their

written response. By removing these subjects, we find that 94% (32/34) of subjects

chose a punishment that satisfied both retributivist and consequentialist motives.

In Version 2, the central research question is addressed. As predicted, most

people (33/51) chose to give a punishment (5 years in Prison B) that satisfied

consequentialist goals even if it meant sacrificing retributivist ones. One subject who

chose a sentence of 18 years in Prison A ignored the given statistics about recidivism and

wrote that Harry had a better chance of reforming in Prison A. By removing this subject,

we find that 66% (33/50) of subjects chose a punishment that only makes sense from a

utilitarian perspective. Additionally, three subjects who chose the more punitive

sentence mentioned in their response that they would hope that Prison A works to

create a better rehabilitation program.

Carlsmith was correct in his findings that, when people view a criminal act to be

extremely serious and morally outrageous, they desire to punish that criminal severely.

However, I have shown that when people are aware of the outcomes of punishments,

most choose to punish in whatever way minimizes future harm to society and others.

In order to confirm this result, the experiment can be repeated using a vignette of a less serious, nonviolent crime. My prediction is that a story of this nature would produce a much smaller emotional response in participants, leading to a smaller desire to punish punitively, and an even larger majority of people choosing to punish on the basis of consequentialist principles.

It would also be wise to repeat this study on a demographically different group of people. The university students involved in this study (many from Harvard) may be more liberal than the general population and may have different intuitions about punishment.

Conclusion

The findings of this study show that retribution matters a lot less than what previous research has suggested. It would be extreme to say that everyone punishes with consequentialism in mind, but ultimately, it seems that the majority of people care less about seeing criminals get what they deserve and more about the effect a particular punishment has on future crime.

This is important for two reasons. First, if new information in neuroscience pushes us away from a retributivist theory of "punishment for the sake of punishment," then it seems that we will be okay leaving retribution behind.

Second, it means that today, Americans are intuitively at odds with the current criminal justice system. It turns out that Prison B is a real prison: Bastøy Prison in Norway (Sutter, 2012). Every detail used in this study to describe Prison B truthfully describes Bastøy. It is a prison that rehabilitates more than it punishes. The recidivism

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rate of Bastøy is 16%, which is much lower than Norway's overall 12-month recidivism rate of 30% (Nilsen, 2016, Skardhamar & Telle, 2012). Both of these rates are lower than the US 12-month recidivism rate of 43.4% (Durose et al., 2014).

If people desire a reduction of crime more than retribution, then today, society is punishing people the wrong way. American prisons should be more like Bastøy and less like Prison A. Rehabilitation should be prioritized over retribution. We should punish people in ways that produce the least amount of crime, and currently, we do not.

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