

Motives for punishment – different cultures, same answers.

In the late 18th century there were two justifications of punishment – retributive and utilitarian. Immanuel Kant, being retributivist, argued that “punishment can never be administered merely as a means for promoting another good” and that punishment ought to be “pronounced over all criminals proportionate to their internal wickedness”. So, according to the retributive view, punishment is appropriate if the severity of a sentence is proportionate to the magnitude of harm and to the offender’s criminal intent.

Contrary, Jeremy Bentham saw punishment as an evil, which “ought only to be admitted in as far as it promises to exclude some greater evil”. Following the utilitarian stance, the principal aim of punishment is to prevent future crimes by deterrence.

Nowadays, punishment justifications can be differentiated beyond the dichotomy of retribution and utilitarianism. There are different dimensions of classification. For example, refer to which social agent the punishment is directed at there are the punishments on the perpetrator, on the victim, or on the general public. Darley, Carlsmith and Robinson after conducting four studies concluded that the retribution aims at the perpetrator.

Utilitarian view and economics

Utilitarians as it was mentioned before attach great importance to deterrence. Economists have adopted this idea and offer the way of counting the cost of deterrence.

The law and economics vision of crime suggests that individuals choose to engage in certain behavior because the benefits outweigh the costs and that criminal law provides a set of deterrents against engaging in specific behavior. This deterrence provides society with a way to prevent crime by increasing the costs of criminal behavior.

An important assumption of deterrence theory is that individuals will weigh the costs of their behavior (punishment) against the benefits. Economists call it cost-benefit analysis. In theory there is the most famous moral dilemma “trolley problem”. Authors provide different variations of it. For instance, Zamir Eyal and Medina Barak offer to consider what will be your choice (1) deliberately killing one innocent person to save 101 people; (2) spending \$10,000 000 to save the same 101 people; and (3) letting the 101 people die. Doing this you have to calculate following: (1) net saving of 100 lives; (2) saving of 101 lives at a cost of \$10,000 000; and (3) no lives saved and no costs borne.

At this point, using cost-benefit analysis you monetize the value of a person's life, and choose between options (1) and (2), according to whether one life is valued at more or less than \$10,000 000. In this “trolley problem” authors didn't calculate the cost of punishment, because it was substituted by the cost of human life and the punishment became moral and depended on your intent. In other words, if you choose (1) and (3), will it be the murder? Can we engage in criminal behavior making this choice?

I have tried to find answer in the utilitarian theory. The utilitarian view presumes that most people will engage in this rational calculation and decide not to engage in criminal behavior. But we may object that there are still crimes in the world: it means that somebody chooses to commit a crime in spite of it's cost. The economists try to explain why it so. The first idea is the crime was appropriately committed because its benefits did outweigh its harms. Another reason is that society failed to provide the appropriate level of deterrence. The group of ideas which “blame” the individual in his bad action provides several explanation of it: he miscalculated the cost-benefit equation, the individual had incomplete, wrong information about the costs and benefits, or he correctly calculated the equation but was unable to bring his behavior in line with the appropriate choice.

Retributive theory and morality.

The retributive model “requires some notion of free will that attributes to humans responsibility for doing wrong in a way that is not attributed to other animals”. Notably, Hegel suggests that punishment for criminal acts honors the criminal as a rational being. Retributive justice is premised on the idea that someone ought to be punished for his wrongful act when that person knew that what he was doing was wrong and did it anyway. This raises the question of morality in criminal law.

Moral theorists suggest that the law punishes a set of behaviors that can be categorized as morally wrong: when people choose to engage in morally wrong acts, they ought to be punished. A moral punishment for wrongdoing makes no sense when the actor did not understand that the act was wrongful or did not mean to engage in a wrongful act.

However, in my opinion, more controversial question is the morality really influences the punishment? I have found the set of studies provided by John M. Darley and others, who concluded that in USA the morality influences the punishment.

Adam L. Alter, Julia Kernochan, John M. Darley carried out four studies to understand how morality influences laypeople apply the ignorance of the law. Their choice of providing the research on laypeople can be explained in this way: laypersons had traditionally thought of the criminal justice system as being in the business of doing justice: punishing offenders for the crimes they commit. In other words, it is interesting, what if laypeople can punish offenders, what would they choose?

As I said there were four studies which context slightly differs, but the design of research remain the same during all studies: the laypeople answered the questions after reading cases in which defendant behaves in moral, immoral and moral-neutral way. Also, in the second, the third and the fourth study authors checked the condition of ignorance (defendant knew about the law he breaks). For example, the text of case with immoral defendant:

Fred has been working at a mortuary in Los Angeles for five years. Shortly after Fred started working at the mortuary, he heard from some of the other mortuary staff that it was legal to have sex with dead bodies in California. According to the rumor, although judicial authorities were aware of isolated cases of necrophilia (the practice of having sex with dead bodies), there was no law in place specifically prohibiting necrophilia.

After hearing the rumor, Fred began more and more frequently to work night shifts. He had sex with a number of corpses first infrequently and then more and more often. Several prosecutors in California tried to convict people who had engaged in necrophilia. They discovered that there was no law banning necrophilia, so they petitioned a law reform committee to have a law enacted. The Californian legislature was concerned that the new law would attract unwanted media attention, so they passed the law amongst 100 other new bills on the last day of the congressional session. The law was enacted as an obscure addition to a statute called the Miscellaneous Provisions Act. They were successful in preventing the media from discovering and publicizing the law.

One evening, a security guard who was warned of the new law walked into a room while Fred was engaged in sexual intercourse with a corpse. The guard reported Fred's behavior to the police, who seized the opportunity to implement the new law. Although he argued that he thought necrophilia was legal, Fred was charged with the offense of engaging in sexual intercourse with a dead body.

The main feature of this research is the use of controversial cases, which help to check the laypeople motives for punishment. What do you think reading the aforesaid case? Do you think Fred should be convicted for committing the offense with which he was charged? The authors collected the answers and made the manipulation check.

I think that the researchers got some amazing results. First of all, their main hypothesis was confirmed – participants in the four studies convicted immoral defendants more often and sentenced more harshly than neutral or moral defendants. The second conclusion is that importance of the law and assumed knowledge of the law partially accounted for the effects of morality on sentencing. The third, the ignorance of law and morality play distinct roles in sentencing. And finally, the most significant fact for this essay is that the results confirmed the principle, according to which “just deserts” is the primary motive that drives

ordinary people's sentencing judgments. Other considerations, such as deterrence, do not have as great an effect on laypeople's sentencing preferences.

So, in the USA (the country with common law system) authors found the tendency to punish in retributive way.

The authors indicated the possible directions for further research: 1. explore whatever and in what ways, intuitions about the ignorance defense are affected by a defendant's status as a professional; 2. evaluate theory of punishment in other countries.

I wonder if I conduct the same research in Russia which results I would get. So I decided to continue their research: evaluate theory of punishment in Russia. Also I tried to find out how lawyers apply the ignorance of the law defense. I want to offer the detailed comparison of US and Russian laypeople's results and concluded why there are some differences and similarities.

During the research I used the same method, material, design and procedure as the American researchers. Also I provided all manipulation checks. The results were surprising. First of all, Russian laypeople do not think that morality influences the punishment. They chose the same punishment for immoral, moral and moral-neutral defendants. There are several explanations of it. First of all, the cultural features of Russians and Americans and their historical development form the different morality. Also, there is no doubt that Russian and Americans have different sense of justice. And finally the diverse legislation in Russia and the USA influences the morality and the conception of law.

However, the most amazing result is that in Russia laypeople followed the Americans' tendency to punish in retributive way. It reflects the modernization which takes part in recent years: the humanization and the tendency of legal identity. Also, it is necessary to outline that common law and continental law become closer. In my essay, I tried to explain that in spite of some differences the main laypeople's motive for punishment is the same. This conclusion permits to predict that the retributive theory of punishment is leading not only in the USA and Russia but in other countries, especially in Europe.

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