



ECOSO6002: Restoration & Equality

CRIME & DEVIANCE VERSUS
POWER & CONTROL

Punishment: For What Purpose?

[Why Should We Punish? Theories of Punishment – YouTube](#) (3:26)

[Moving on - a short film about restorative justice – YouTube](#) (1:52)

[What is Restorative Justice? – YouTube](#) (2:04)

[A Restorative Justice Meeting \(Short Version\) – YouTube](#) (8:44)

Models of Justice

The Purpose of Punishment

Utilitarianism

Deterrence

Incapacitation

Determinism

Rehabilitation

Retribution

Just Deserts

Reparation

Restitution



The Purpose of Punishment

The Purpose of Punishment

Punishment is an institution in almost every society.

Only very small and very isolated communities are at a loss about what to do with the transgressors and even they recognise the punishment of children by parents.

It is an institution which is exemplified in transactions involving individuals, transactions which are controlled by rules, laying down what form it is to take, who may order it and for what

(Walker, 1991, p. 1).

The Purpose of Punishment

Punishment, however, has different names.

When imposed by English-Speaking courts it is called

- ‘sentencing’.

In the Christian Church it is ‘penance’. In Schools, colleges, professional organisations, clubs, trade unions, and armed forces its name is

- ‘disciplining’ or ‘penalising’.

(Walker, 1991, p. 1).

Punishment

Punishment can be defined as:

- A deliberately negative response to an action that is deemed wrongful, inappropriate or criminal
 - It is rule breaking behaviour followed by possibly unpleasant and definitely unwanted infliction
 - Often referred to as 'pain and suffering' imposed on an offender

- Primoratz (1989) and other find this view too marrow,
 - Especially in the context of an increasingly optimistic discourse concerning humanitarian prison
 - Punishment thus need not inflict pain, physical or mental

The Seven Features of Punishment

Walker (1989) proposes that these 'seven points' establish the main tenets of punishment

It is thus unpleasant and deliberate, carried out by an authorised human agency (the criminal justice system) because a rule or a law has been broken.

1) Infliction of something which is assumed to be unwelcome to the recipient¹

2) The infliction is intentional and applied for a reason

3) Those who order it are regarded, by the members of society, organisations or family, as having the right to do so

4) The occasion for the infliction is an action or omission that infringes a law, rule or custom

5) The person punished has played a voluntary part in the infringement or at least their punishers believe or pretend to believe that they have done so

6) The punisher's reasons for punishing is such as to offer a justification for doing so

7) It is the belief or intention of the person who orders something to be done, and not the belief or intention of the person to whom it is done, that settles the question of whether it is punishment



Utilitarianism

Utilitarianism

All punishment is mischief If it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil

Human actions should be evaluated in terms of their consequences
Thus is the only way to ensure that decisions which are made are:
Rational
Objective
Clear

(Bentham, 1970, originally 1789: 15).

Utilitarianism: Act Based

Bentham and Beccaria considered that the behaviour of human beings to be motivated by two masters

- Pain
- Pleasure

Thus, utility exists when pleasure

- Which for utilitarians means
 - Benefit
 - Advantage
 - Good
 - Or happiness
- are maximised
 - and pain is minimised

(Burke, 2012)

Utilitarianism: Rule Based

Proposes that rules of conduct

- Including the criminal laws of society
- Should be formulated with regard to what will best serve the general welfare of society

And once formulated

- The laws should be enforced strictly and consistently
- Without exception

Utilitarianism: Goal-Based Theory

Goal-based theory

- It assesses actions in terms of propensity to generate and maximise happiness

(Davies & Holdcroft, 1991)

Often described as

- The greatest good for the greatest number'
- A particular punishment
- Whether for a group of individual
- Has utility if it benefits the greater consensus
- For example society.

Utilitarianisms: Consequentialist



Although punishment inherently means that someone will experience unhappiness or unpleasantness,



the act of punishing has utility if it is inflicted to lessen or exclude a greater 'Evil'



The utilitarian thus views

crime as being 'an evil' which will lead to greater 'evil' if left unpunished and punishment is therefore essential.

Utilitarianism: Criticisms

Utility leaves very little room for

- Mercy

And/or mitigating circumstances

Smart (1969, p. 224-225) observed that for the utilitarian mitigation can never be legitimate,

There is no point for the statement

- *I shall act mercifully*

It can only mean

- *I shall impose a penalty less than the one which will produce the most good*

Which in turn can only mean

- *I shall impose a penalty less than the one which will produce most good because this action is the one which will produce most good*



Deterrence

Deterrence

The central justification for

- punishment favoured by Utilitarians
- is thus the concept of Deterrence
- where the primary aim is to
- increase the costs of involvement in criminality to the offender

This is achieved by

- Making the negative consequences of crime greater than the available rewards

ultimately

- The potential offender is deterred and stops offending

Deterrence: Cost Benefit Analysis

The basis of deterrence is thus the
produce of a cost/benefit analysis



People are deterred from actions
when they refrain from them
because they dislike what they
believe to be the possible
consequences of those actions



(Walker, 1991, p. 13).

Deterrence: External and Internal Forces

There are a number of reasons
why people might be deterred
from committing crime:

these are both internal and
external in nature

The moral commitment to society and the internalisation of legal norms through the process of socialisation

There is social disapproval and the fear of informal sanctions by peers

The threat of punishment and the fear of physical, mental or material pain or deprivation (Grasmick & Green, 1980)

That of physical obstacles which prevent the practical commission of crime (Walker, 1991)

Deterrence

GENERAL DETERRENCE

The general population is

- deterred from committing crime due to
- the awareness of both the threat of punishment
- and the knowledge of particular individuals who have been punished

It involves calculating penalties on the basis of what might be expected to deter others from committing similar acts

SPECIFIC OR INDIVIDUAL DETERRENCE

When an individual who has

- committed a crime is deterred from committing further offences
- by the punishment that they have experienced.

The experience of

- punishment has resulted in the individual concluding that
- the costs of the crime
- outweigh the benefits

Deterrence: Fear of Punishment

The aim of general deterrence is

- To create a fear of punishment in others
- And as part of this process it may sometimes be necessary for the innocent to be punished in order to achieve the greater social impact



In some ways the use of exemplary sentences

- where the offender is punished not for their own past behaviour
- but for the possible future behaviour of others



Is then justifiable

General Deterrence: Criticisms

The evidence for general
deterrence effect of
punishment is

- inconclusive

General deterrence
works

- selectively
- Only has an impact on
 - some people

While it is not only the

- severity of the punishment that is important
- but its certainty and immediacy

Individual Deterrence: Criticisms

Deterrence is difficult to establish with these factors and become particularly important when we consider that most offenders, however, persistent, stop offending by the age of 25

Individual Deterrence

- Underestimates mitigating or 'extra-legal' factors

It does not differentiate between the impact of the punishment and other factors such as

- Age
- Family ties
- Social bonds (von Hirschi, 1969)

If we take mitigating factors such as

- Abuse in the home,
- Unemployment
- The need for conformity in certain spheres or indeed extra-legal characteristics
- That may affect the chances of being arrested
- Such as ethnicity
- Gender
- Attitude
- Personal hygiene
- And so forth



Incapacitation

Incapacitation

Incapacitation

- removes offenders from society so
- preventing them from committing offences in the future

Selective incapacitation means that

- Offenders who are identified as the most likely to commit further offences
- If they were to be released
- Continue to be incarcerated or their liberty is restricted in some other way

Incapacitation: Effectiveness

James Wilson (1983) argues that incapacitation is a plausible and desirable justification for punishment based on the possible effectiveness of the following three assumptions

Incapacitation: Effectiveness

Assumptions	Impact	However . . .
1) some offenders are recidivists	Wilson (1983) argues that this is a truism and supported by empirical data	In the case of organised crime, prostitution and the movement of drugs this would be false
2) offenders are not immediately replaced by other criminals upon being imprisoned		
3) prison does not increase crime by changing offenders in the ways that outweigh the reductive effects of incapacitation	Wilson (1983) argues that although open to debate this assumption outweighs the other two.	

Incapacitation: Identification of Offenders

Society
needs
to

- identify offenders who are likely to do
- serious harm in the future

There
needs
to be a
way of

- identify individuals for
- their dangerousness
- and risk to the public

Incapacitation: Effectiveness

Von Hirsch (1984) argues that three things are necessary to ensure that incapacitation is an effective penal strategy

1) a definition of dangerousness

2) valid prediction methods

3) a known link between dangerousness and violence

Incapacitation: The Floud Report 1981

This report reviewed the law and practices relating to dangerous offenders

Did not define dangerous

But did outline what was

- Acceptable and unacceptable
- RISK

◦ (Baker, 1993)

Incapacitation: The Floud Report 1981

*There is no such
psychological or
medical entity as a
dangerous person*

*It is not an
objective concept.*

*Dangers are
unacceptable risks
...*

*Risk is, in
principle, a matter
of fact:*

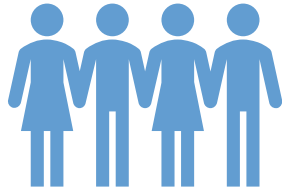
*But danger is a
matter of
judgement or
opinion*

*A question of what
we are prepared to
put up with*

*People tolerate
enormous risks
without perceiving
them as dangers,*

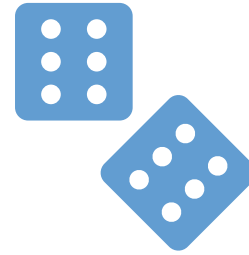
*When fears are not
aroused or when it
suits their
convenience*

Incapacitation: Predictability



The Floud Report (1981) found that

statistical forecasting can identify groups of offenders who are at a higher than average risk of reoffending



But the incidence of 'False Positives' are high

Incapacitation: Criticisms

There are offenders
who are classified as

- potential recidivists
- but who never reoffender

There is a tendance
to

- overpredict

Which is especially
high when forecasting

- serious criminality

Between 55% and
70% of those
classified as

- risks
- were mistakenly identified

Which means that
predictions were
more likely to be

- Wrong
- than Right!

(Floud & Youn, 1981)

Incapacitation: Criticism

Incapacitation has a certain

- ‘gut level’ appeal which is often heard expressed by the populist sentiments
- “*Lock ‘em up and throw away the key*”

Attempting to justify incapacitation

- Predicting human behaviour to an acceptable degree
- As well as dealing with problems within the prison
- Which will eventually become displaced to the outside world
- Is a much harder task.



Determinism

Determinism

Determinism is not a theory of punishment

- Rather a way of viewing the offender
- But its relevance is in its compatibility with theories of punishment

We will now explore:

- Early Causal Determinism
- Later Causal Determinism

Early Causal Determinism

Popular in the 1930s

Proposed that every event in

- nature,
- including human thoughts,
- words and deeds
- has a cause that is both necessary and sufficient

Given event A

- There is a subsequent event B
- That cannot fail to result from event A

Correlatively

- Event B could not occur without event A having caused it!

Early Causal Determinism

For every action there is an equal and opposite reaction

Determinists believe that although

- individual do have the power to make choices
- that this power is strictly limited because
- each person has been caused to make the choices that they makes

Past experiences,

- The environment,
- and so on,
- all have a starting point for the determinist
- and every action is viewed as being
- traceable ultimately to the point of
- birth and perhaps before

(Davies, 1971)

Later Causal Determinism

Popular in the 1930s through to the 1960s

Proposed that individuals are not able to express free will at any time

Hospers (1932), Foot (1957) and Hobart (XXX)

- Felt that although it was an empirical impossibility that every action had a necessary and sufficient cause
- It was not essential to prove this for determinism to have relevance

This strand of causal determinism asserted that even

- if some events result from chance
- therefore were not caused
- it can still be illustrated that
- all events are ultimately attributable to either
- causal
- or chance factors
- beyond the control of the individuals

Later Causal Determinism

For any given action or decision to occur there are only three possibilities and at no point does free will ever enter into the equation

1) if the even happens by chance then there is no free will

2) if it is caused by external factors then no free will is involved

3) if it is the choice of the individual then there are only three possible reasons why that could be the case

- a) A is caused to occur by the agent themselves resulting from a choice that the individual has made
- b) A is caused by some external factor of factors
- c) A is not caused by anything at all and it is a chance event

This is a circular argument where **FREE WILL** is theoretically never an option

Determinism: Criticisms

Few people today consider that human beings' actions are totally determined

- But if human action is in some way predetermined,
- Albeit in a limited sense
- Then this would greatly affect the level of punishment that can be legitimately be imposed

Determinism has nevertheless unfortunately been historically discussed in an 'all or nothing fashion'

Much of the controversy surrounding determinism focuses on the apparent limitlessness of the concept

- When taken to a logical conclusion
- Would mean that offenders can be completely excused from any blame and reasonability for their actions
- Such a position would be politically unacceptable in any society with pretensions to be a democracy or otherwise

Rehabilitation



Rehabilitation

Re:

- French for 'return' or 'repetition'

Habilis:

- Latin for 'competent'

Rehabilitation thus means:

- Return to competence

In the context of punishment,

- Rehabilitation is aimed at
- Reforming the character of the offender
- So preventing reoffending

The intention is to

- 'cure' offenders of their criminal tendencies
- By changing their personality,
- Outlook
- Habits or opportunities

So that they are less inclined to commit crime

Rehabilitation

Popular from 1900-1960s in UK and USA

This dominance followed a gradual movement

- away from a purely punitive philosophy
- towards the ideal of rehabilitation

Thus signalled a move

- away from the ideas of the rational actor model of crime and criminal behaviour
- towards the predestined actor model

Rehabilitation: Linked to Determinism

The Role of Positive Science

Determinisms took over from the ideas of

- 'Free Will'
- And the role of the 'positive science' was emphasised
- This was linked to the rise of belief that human sciences
 - Psychology,
 - psychiatry,
 - sociology,
 - economics
 - and medicine
- Would soon be able to discover the root cause of crime
 - The criminal '**gene**'

Human motivation is

- not rational function

But is caused by

- **antecedent** factors in the environment
- and **heredity** of the person,
- as was seen in **Determinism**

(Restrict, 2021)

Rehabilitation: Medical Model

Determinism, Individualism & Pathology

Crime is seen to be

- caused by something
- outside the control of the offender

The criminal justice process should concentrate on

- the offender
- rather than the offence

This idea was to be juxtaposed with the

- Medical model

That proposed that criminals were to be

- 'treated' in order to
- prevent reoffending

The

- level of treatment that was required,
- rather than the seriousness of the offence,
- was to determine the type and length of sentence

(Weaver, 2019)

Rehabilitation: The State's Role

The state now had an obligation to intervene in the lives of its citizens who had committed a crime in order to 'cure' them of their criminal tendencies (Hudson, 1987).

It was assumed that Crime was caused by something outside the control of the

Individual

The role of the state was to

Prevent these causes

The dominance of rehabilitation as a

- Paradigmatic Orthodoxy

Was to coincide during the 1950s and 1960s with the

- expansion of the role of the state
- in general
- and the welfare state in particular

A consensus was to develop which proposed that

- crime was a problem that
- could be overcome
- if the state direct more resources to
- the treatment of offenders (Hudson, 1987).

Rehabilitation: **Start Here** Crime and Deprivation

Rehabilitation reached its peak of popularity in 1967

- After the UK Royal Commission on the Penal System in England and Wales, 1967

This Report focused on a

- social democratic perspective
- argued that crime was the result of some form of deprivation
- the solution was to increase state activity in the areas of
- crime prevention and rehabilitation of offenders

Rehabilitation: Main Tenants

1) Individualised sentences were promoted where the type and level of punishment were to be customised to the needs of the individual

- Not purely determined by the nature of the offence

2) Where prison was found to be necessary indeterminate sentences were proposed and release would be subsequently depend upon the progress of the individual in response to a 'cure'

- The decision to release an offender should
 - Not lie with the judiciary
 - But with type penal administrators and experiences
 - Who had day-to-day contact with the inmate
 - Could judge the optimum release time

Rehabilitation: Main Tenants

3) Treatment programmes such as

- group theory
- counselling
- CBT
- and educational and vocational training
- were expected to be available to offenders both inside and outside prison

4) The principals of individual

- diagnosis
- classification
- and treatment
- were accepted as the best ways of dealing with offenders

In short

- Offenders were to be treated as individuals

Rehabilitation: Progressive and Humanitarian

The aim was to

- Return offenders to the community as abiding citizens
- And the underlying principle of this approach apparently theoretically explained by the politically neutral social progress model of criminal justice development was

*To return the offender to society not with
the negative vacuum of
punishment induced fear,
but with
affirmative and constrictive equipment:
Physical, Mental and moral law
abidingness
(Wiehofen, 1971, p. 261
cited in Hudson, 1987, p. 13)*

Rehabilitation: Criticisms

Challenges by the

Rational Actor Model of Crime and Criminal
Behaviour

Supported by the emerging political

- New Right in the 1970s
- Thatcherism

3 Main Criticism from the New Right

Rehabilitation: Criticisms from the New Right

Criticisms:

1) Rehabilitation was founded on determinism meant there was an **unequivocal assumption that people had no choice in their behaviour** and were **manipulated and controlled by circumstances outside their control**, which was seen to be **disrespectful of the individual** (Hudson, 1987)

2) It was argued that individuals had a **right to retain their personality** even if this conflicted with the views of the state or fellow citizens

3) rehabilitation enabled the state **to intervene in the lives of people**, to a greater extent than was considered to be legitimately permissible, and involved **the manipulation of individuals**

Rehabilitation: Further Criticisms

1) the rise of **Labelling Theory** and the **Victimised Actor Model** of crime and criminal behaviour which proposed that treatment and intervention could actually **produce** rather than reduce criminal behaviour

2) There was the rapidly increasing crime rate and disturbances in prisons, which resulted in serious **doubts about the competence of the state to successfully tackle these problems**

3) there was an identified need to **reduce public expenditure** along with mounting arguments supporting the '**rolling back of the state**' proposed by the political 'New Right'.

- *It might sound familiar with Jacob Rees-Moggs new role in Boris Johnson's government reshuffle and the reduction of government role in society (2022)*

Rehabilitation: Criticisms

There were also criticisms from:

- 1) **Civil Libertarian Critique** which concentrated on the **nature and extent of the intervention in the lives of people** who were the subjects of rehabilitation as they were concerned that sentences were **'open to abuse'**
- 2) Lawyers observed that concentrating **attention on the individual** offender rather than on **the offence** that had been committed had led to huge **disparities in the sentences** that had been administered for the same crime committed by two different people.

3) The 'New Right' Law and Order Lobby argued that the **treatment approach** was both **ineffective at reducing crime** and at the same time, **soft on crime**, not least because it advocated the **use of prison only as a last resort.**

Rehabilitation: From Nothing Works to What Works

Martinson (1974) was cited as saying

- Nothing works

He actually said,

- ‘**nothing or almost nothing works**’

This fed into the New Right ideology to support

- **Retributive justification** for punishment of offenders

The Nothing Works agenda was criticised for being

- **1) Not supported by the data**
 - However, for some offences/offenders this did hold true e.g. addiction or aggressiveness (Hudson, 1987)
- **2) treatment programmes were never fully implemented** while evaluations of partial schemes are of limited value

(Cullen & Gilbert, 1982; Hudson, 1987)

Rehabilitation: The Revised Model

The criminal justice process should not only punish offenders but, at the same time, seek to redress social inequality

A purely punitive approach would **not reduce crime**

- Because it does nothing to tackle the causes of crime

State-obligated rehabilitation is based on the assumption that

- Personal and social circumstances in some way contribute to crime

Thus it was suggested that the aim of the penal system should be

- Rehabilitative but also work in conjunction with other aims of
 - Desert
 - Deterrence
 - Reparation
 - An reintegration

Rehabilitation: State Obligation

Rights:

- The right of the state to punish
- The rights of offenders not to be punished unduly harshly by the use of determinate sentences fixed by desert while taking account of social circumstances

A humanitarian approach is never the less preserved

- a desire to help rather than to hurt,
- to reintegrate rather than to segregate
- ‘to promote good rather than to impede evil’

(Carlen, 1989, p. 20)



Retribution

Retribution

“When someone who delights in annoying and vexing peace-loving folk receives at last a right good beating . . . Everyone approves of it and considers it as a good in itself even if nothing further results from it; nay even he who gets the beating must acknowledge in his reason, that justice has been done to him, because he sees the proportion between welfare and well-ding”

(Kant, 1956 originally 1788)

Retribution

18th century,

- prior to Beccaria and the rise of the rational actor model of crime and criminal behaviour,
- philosophers such as Immanuel Kant (1724-1804) had predominantly supposed that
- law-breakers should be
- punished in proportion to
- their moral desert,

Even if this was to produce more harm than good in the long term

Retribution: Two Wills

The 'Arbitrary Will'

- Completely free of all external forces and
- Is subject to instincts
- Urges
- and passions

The 'True Will'

- Is subject to the general will of others

Retribution: Just, Right and Necessary

When in conflict,

- The arbitrary will of the individual may suppress the true will
- Leading the person to become involved in criminal activity

Those who support retribution

- See it as a justification for punishment as being
- Just, Right and necessary to punish
- And perhaps to do so severely

Retribution

It is felt to be unfair that a man's grievous fault should make no difference to the treatment he receives and that he should be treated just as favourable as if he had done now wrong.

It is reasonable that we should do unto others as we would wish them to do unto us. But conversely, it is fitting and proper that, what others are to do to us, should be affected for better or worse by the quality of what we have done to them

(Moberly, 1968, p. 72)

Retribution: The Balance of Reciprocity

This perspective
proposes that
punishment is

- Just
- Because it is
- Deserved
- It fulfils a balance of reciprocity

And can be seen to
have similarities to
the doctrine of

- *Lex talionis*
 - More commonly referred to as
 - ‘an eye for an eye, a tooth for a tooth’.

Retribution: This is NOT Revenge

	Retribution is . . .	Whereas Revenge . . .
1	. . . carried out to atone for a wrong	. . . May be exacted for an injury, harm or slight and need not be a wrong
2	. . . sets an internal limit to the amount of punishment that is considered to be proportionate to the seriousness of the wrong	 Need set no limits
3	. . . NOT personal	. . . Is personal
4	. . . NOT an emotional act	. . . Involves a particular emotional tone, pleasure in the suffering of another
5	. . . meted out to everyone who commits the same type of crime	. . . Need not be general in that it does not commit the person to seeking vengeance again in similar circumstances
6	. . . Only inflicted on the wrongdoers	. . . Sometimes inflicted on an innocent person near to the incident

Retribution: They Deserve It!

*Essentially, retribution consists of
the deliberate infliction of death, suffering, hardship, or at least, inconvenience,
not because of any hope for benefit such as the reduction of misbehaviour
but simply because the misbehaviour
deserves it.*

(Walker, 1985, p. 108)



Retribution. Poetic justice.
Just deserts. Comeuppance.

Alex Flinn

quote fancy

Just Deserts

Just Deserts: Linked to Retribution

By the 1970s the emergence and prominence given to the idea of

- Deserts

This followed the demise of Rehabilitation

Rising social panic and desperation with the recognition that the medical model had done nothing to slow the ever-increasing crime rates

The vacuum left from Rehabilitation was filled by

- The resurgence of punitive ideologies
- Strongly influenced by the now classic text commissioned by the
- Committee for the Study of Incarceration
- *Doing Justice* (Von Hirsch, 1976).

Just Deserts: Justice Model

The argument went

- That extraordinarily long sentences imposed under the guise of rehabilitation were unacceptable
- Consistency in sentencing and the notion of the rational offender
- Were viewed to be vastly superior to the deterministic perspective on which the rehabilitative ideal was founded.

Just Deserts: Reasons of Morality

The reasoning for Just Deserts focuses on:

- *‘certain things are simply wrong and ought to be unpunished’*

(Walker, 1980, p. 24)

Just Deserts:

Proposes an intuitive connection
between

crime and punishment

there is thus a moral justification for
the administration of
punishment

Crime prevention is
a further justification for
punishment



Punishment as

a disincentive to engage in
certain conduct

and there must be an element
of general deterrence



Deterrence nevertheless requires

the concept of desert

to limit the severity of the
punishment

so that the individual is not
excessively punished

for the sake of greater social
gain

Just Deserts: Due Process

Just deserts does support

- Due process
- And the rights of the offenders and victims
- Mitigation and aggravating factors
- May be taken into account

Just Deserts: Criticisms

The perception that retribution is nothing more than a rationalisation of revenge

It ignores the social causes of crime

Treats everybody the same

Ignores the unintended consequences of punishment such as stigma, loss of employment or accommodation and the impact on the family of the offender

Just Deserts: Criticisms

Questions that are difficult to answer:

- How do you measure, harm, seriousness, the severity of the sentence and blameworthiness?
- How do you deal with multiple offences?
- The fact that the offender has repented or made amends to the victim?
- How does the notion of 'making the punishment fit the crime' become quantifiable in real terms?



Reparation

Reparation

“If reparation were
more consistently pursued
we should have a much more
civilised and morally acceptable
penal system than the present one”

(Cavadino & Dignan, 2006, p. 43).

Reparation: Repairing

Therefore the offender
acknowledges their law-
breaking behaviour

In being brought face-to-face with
the consequences of their actions
it is hoped that offenders will see
the error of their ways

Repartition or repairing

- the damage done through the commission of
- an offence

The reparation maybe to the

- victim
- or to the community

The intention is not only to

- redress the balance between the offender and the victim or society
- but that offenders should also be made aware of the harm they have caused

(Burke, 2012).

Reparation: Restorative Justice

Part of Community Service Orders

- Introduced in 1972
- The punishment is designed to
- 'pay back the community'

This is achieved by undertaking

- Unpaid work at an approved community agency/organisations
- May also involve the payment of compensation either to the victim or the community

A clear focus on the victim and the harm that the victim has suffered

It seeks

- Not only redress the balance
- But to illustrate to the offender directly
- The harm that they have caused (Cavadino & Dignan, 2006).



Restitution

Restitution

Restitution
recognises

rights in the victim

and this is a
principal source of
its strength.

The nature and
limit of the victim's
right to restitution
at the same time

defines the nature
and limit of the
criminal liability.

In this way, the
aggressive action
of the criminal

creates a debt to
the victim.

Restitution: Redressing the Balance

Similar to Reparation

- But focused on redressing the balance of a 'wrong'
- The philosophical underpinnings of the theories are different
- Restitution can be seen as simply the righting of a wrong

Restitution: Pure Form

Crime as being an offence by one individual that has been perpetrated on another

Which leads to the rights of the latter individual being taken away, violated or in some way lessened

The focus is on the individuals involved, not society or the social contract

In its pure form it does not even focus on 'punishment' as such

There is no feeling that the offender

- Deserves to suffer

Or that they must be

- Deterred
- Reformed
- Incapacitated
- Or treated

Restitution: Punitive Form

Involves the same consideration as

- the purist variant

But also encompasses the idea of

- punishment

Views the offender as having to

- compensate the victim in a way that is
- entirely burdensome on the offender

They must

- suffer while paying their debt

For both Reparation and Restitution

It is more difficult to enact when there is no property is involved e.g.

- Violence against the person
- Sexual offences

In these specific instances it becomes

- seriously problematic to
- practically redress the balance (Barnett, 1985).

Reference List

- Baker, E (1993) 'Dangerousness, Rights and Criminal Justice', The Modern Law Review Limited, Available at: [Dangerousness, Rights and Criminal Justice - Baker - 1993 - The Modern Law Review - Wiley Online Library](#) (Accessed on: 15/02/2022).
- Barnett, R. (1985) 'Restitution: A New Paradigm of Criminal Justice', in J. Murphy (eds.) Punishment and Rehabilitation, 2nd ed., London; Wadsworth Publishing
- Bentham, J. (1970, originally 1789) An Introduction to the principles of Morals and Legislation, ed. J.H. Burns & H.L.A. Hart. London: Athlone Press.
- Brezina, T (2021) 'Agency, Reciprocal Determinism, and Desistance from Crime: A Reply to Thomas, Pogarsky, and Loughran', Journal of Development and Life-Course Criminology, Available at: [Agency, Reciprocal Determinism, and Desistance from Crime: a Reply to Thomas, Pogarsky, and Loughran \(springer.com\)](#) (Accessed: 15/02/2022).
- Burke, R.H. (2012) Criminal Justice Theory: An Introduction, Abingdon, Oxon: Routledge.
- Carlen, P. (1989) 'Crime, Inequality and Sentencing', in P. Carlen & D. Cook (eds) Paying for Crime, Milton Keynes: Open University Press.
- Cavadino, M. & Dignan, J. (2006) The Penal System: An Introduction, London: Sage.
- Cullen, F. & Gilbert, K. (1982) Reaffirming Rehabilitation, Cincinnati: Anderson.
- Davies, H & Holdcroft, D (1991) Jurisprudence: Text and Commentary, London: Butterworth.

-
- Davies, W. (1971) *The Freewill Question*, New York: Nijhoff.
- Floud, J. & Young, W. (1981) *Dangerousness and Criminal Justice*, London: Heinemann Education Books.
- Foot, P. (1957) 'Free Will as Involving Determinism', *Philosophical Review*, Vol. 66., pp. 439-450.
- Franklin, R.L. (1969) *Freewill and Determinism*, London: Routledge.
- Glaser, D (1977) 'The Compatibility of Free Will and Determinism in Criminology: Comments on an Allied Problem', *The Journal of Criminal Law and Criminology*, Vol, 67., No., 4., pp. 486-
- Grasmick, H.E. & Green, G.D. (1980) 'Legal Punishment, Social Disapproval and Internalisation as Inhibitors of Illegal Behaviour', *Journal of Criminal Law and Criminology*, Vol. 71, pp. 325-335.
- Hirschi, T. (1969) *The Causes of Delinquency*, Berkeley, CA: University of California Press.
- Hospers, J. (1932) *An Introduction to Philosophical Analysis*, New York: Prentice-Hall.
- Hudson, B. (1987) *Justice through Punishment: A Critique of the Justice Model of Corrections*, Basingstoke: Macmillan.

-
- Kant, I. (1956 originally 1788) *Critique of Practical Reason*, trans. L.W. Beck, London: Bobbs-Merrill.
- Martinson, R. (1974) 'Wat Works? – Questions and Answers about Prison Reform', *The Public Interest*, Vol. 35., pp. 22-54.
- Ministry of Justice (1974) *What is the Rehabilitation of Offenders Act 1974?* Available at: [Rehabilitation of Offenders \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) (Accessed: 15/02/2022).
- Moberly, W. (1968) *The Ethics of Punishment*, London: Faber & Faber.
- Nozick, R. (1981) *Philosophical Explanations*, Oxford: Oxford University Press.
- Pifferi, M (2022) 'Introduction. An Historiographical Reassessment of Criminological Positivism.' In *The Limits of Criminological Positivism The Movement for Criminal Law Reform in the West, 1870-1940* (2022) Available at: [Pifferi_Intro_first_proofs_copia-with-cover-page-v2.pdf \(d1wqtxts1xzle7.cloudfront.net\)](https://d1wqtxts1xzle7.cloudfront.net) (Accessed: 15/02/2022).
- Primoratz, I (1989) *Justifying Legal Punishment*, London: Humanists Press International.
- Restrict, B (2021) 'Theories of responsibility and Punishment in a Causally Determined World' Thesis, Available at: [Theories of Responsibility and Punishment in a Causally Determined World \(wm.edu\)](https://wm.edu) (Accessed: 15/02/2022).
- Smart, A. (1969) 'Mercy', in H.B. Acton (ed.) *The Philosophy of Punishment*, Basingstoke: Macmillan.

Ten, C.L. (1987) *Crime, Guilt and Punishment*, Oxford: Oxford University Press.

The Floud Report 1981

The Royal Commission 1967

Von Hirsch, A. (1976) *Doing Justice: The Choice of Punishments, Report of the Committee for the Study of Incarceration*, New York: Hill & Wang.

Walker, N. (1980) *Punishment, Danger and Stigma: The Morality of Criminal Justice*, Oxford: Basil Blackwell.

Walker, N. (1985) *Sentencing – Theory, Law and Practice*, London: Butterworths.

Walker, N. (1991) *Why Punish?*, Oxford: Oxford University Press.

Ward, T & Langlans R (2009) 'Repairing the rupture: Restorative justice and the rehabilitation of offenders', *Aggression and Violent Behaviour*, Vol., 14., pp. 205-214. Available at: [Ward_2009.pdf](#) ([antoniocasella.eu](#)) (Accessed: 15/02/2022).

Weaver, B (2019) 'Understanding Desistance: A Critical Review of Theories of Desistance' *Psychology, Crime & Law*, Vol, 23., No. 6., pp. 641-658. Available at: [Understanding desistance: a critical review of theories of desistance: Psychology, Crime & Law: Vol 25, No 6](#) ([tandfonline.com](#)) (Accessed: 15/02/2022).

Wilson, J.Q. (1963) *The Plague in Shakespeare's London*, London: Oxford University Press.