INCARCERATE OR EXTERMINATE?

CONTEMPORARY APPLICATIONS OF PUNISHMENT
AND DETERRENCE THEORY

Punishment is not inflicted by a rational man for the sake of the crime that has been committed – after all one cannot undo what is past – but for the sake of the future, to prevent either the same man or, by the spectacle of his punishment, someone else, from doing wrong again.

Plato, Protagoras

INTRODUCTION

Notions of punishment as a deterrent of crime have a rich philosophical and theoretical history and are used in criminology and behavioural psychology. They explain the control of actions or behaviours through fear of punishment or retribution, and have shaped criminal justice systems in the Western world. Deterrence may be divided into two categories: specific and general. Specific deterrence imposes consequences for antisocial behaviour onto the offender, thus deterring them from re-offending. This may include incapacitation, which physically prevents an individual from committing criminal acts via incarceration, execution or physical impairment. General deterrence is the widespread discouragement of crime by making examples of specific individuals. Public punishment is seen to deter others from criminal behaviour. Deterrence assumes that changing the severity or likelihood of punishment being imposed will alter the cost/benefit analysis conducted by a rational individual considering criminal activity, either as a sanction imposed on an individual or the perceptions of the wider community. Whilst the retributive aspects of punishment and alternatives such as rehabilitation and education are beyond the scope of this essay, it is important to recognise that punishment in itself is not the only aspect of deterrence.

1 The argument that deterrence, rather than retribution, is the principle justification of punishment is the hallmark of Rational Choice theorists such as Beccaria (1995).
DETERRENCE THEORY

Several theoretical perspectives of crime have incorporated the concept of the deterrence effect of legal punishment. Classical and functional theories see humans as rational actors, evaluating the risk of apprehension and punishment before committing a criminal act; the focus is on the criminal act itself and how to most effectively deter potential criminal activity. Such reasoning began with Beccaria and Bentham, and their critiques of France's Criminal Justice System. These concepts have been highly critiqued, as several groups of individuals cannot clearly be described as rational actors. The fundamental problem with Classical theory, in terms of punishment, is that it assumes equality. Clearly this is not the case, as contemporary society is unegalitarian on every level. Nevertheless, the deterrence of crime has been a justification for the punishment of criminals for centuries. In order to determine whether legal punishments deter criminal activity, and to what extent, legal punishment must be defined and its components evaluated in terms of effectiveness.

LEGAL PUNISHMENT

As a society we need social control to maintain order and sustainability. One type of social control is formal social control which encompasses agents of the Criminal Justice system who enforce the law. These agents are generally the police, courts and prison systems who administer and enforce legally sanctioned punishments. Legal punishments have varied greatly across culturally and historically. Criminal justice systems and legal punishments vary globally. Almost every conceivable method of punishment is practiced, and these are beyond the scope of this paper. As such, the forms of legal punishment which will be assessed for their deterrence value will be those most common in Western society: incarceration and capital punishment.

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2 Garland (2001),
3 Beccaria (1995),
4 These include children, the aged, the mentally impaired and insane persons (Mason 1996).
5 Mason (1996),
6 For a contemporary overview see Garland (2001),
Capital Punishment

Capital punishment is often envisaged as the ultimate deterrent, however proof of this conclusion has been elusive. Research proving the deterrent effect of capital punishment exists, as does research condemning the death penalty as a failure for crime prevention. Some have even suggested that capital punishment is inflammatory and that its presence is inflammatory to homicide rates in states which do not execute enough offenders. It has been suggested that a failure to envisage the relationship between execution risk and murder rates as reciprocal has devalued the quality of analysis of capital punishment. Katz et al suggest prison conditions have a much greater deterrent effect on criminal activity than capital punishment. Theoretically, the well known, pervasive and immediate nature of terrible prison conditions will effectively deter potential criminals, rather than the death penalty, which is seen as removed and statistically unlikely. Other research suggests capital punishment has a deterrent effect provided the actual execution rates are high enough. Liu’s research suggests that the “effect of deterrence measures other than capital punishment on murder is systematically related with the status of the death penalty.” This raises the moral dilemma of whether it is acceptable to conduct capital punishment as a general crime deterrent, even though its effect on murder rates is questionable. When considering the deterrent effect of capital punishment the opposing views held by economic, legal, sociological and criminological researchers may reflect core differences in ideology, but are more likely indicative of the plethora of components of the ethics, methodologies and consequences of the death penalty.

Incarceration

Beccaria discouraged the use of capital punishment, describing it as a momentary spectacle; he preferred incarceration for its deterrent value. Others, such as Foucault,
criticised the maintenance of the prison system despite its complete failure to repress crime. Recently, many criminologists have challenged current penal policies, particularly in the United States of America. The incarceration rate in the USA grew from 139 per 100,000 to 486 between 1980 and 2004. Theorists argue that, far from being a deterrent, prisons are failing to reduce crime rates and have created atmospheres of degradation and evil associated with overcrowding. Garland argues that rehabilitation has been usurped as the aim of incarceration, and has been replaced with the management of risks and resources. There are interesting debates regarding the connection between prisons and capital punishment. On one hand, if prison conditions were greatly improved the deterrent effect of the death penalty would be much higher according to Clement. Alternatively, if the incarceration experience were far more unpleasant its deterrence value could rise, removing the need for capital punishment.

**Punishment Alternatives**

New, alternative methods of punishment are gaining increased attention in contemporary society, as concerns about traditional methods of punishment grow. These methods are arguably less about deterrence and more about social control through conformity. When discussing modern surveillance techniques, Staples argues, "Like those subjected to the gaze of the Panopticon, we are increasingly 'awed to silence', systematically manipulated and progressively unable to question private authority, challenge public officials, or engage in political dissent." Foucault saw the development of disciplinary technologies which controlled the mind and body of individuals, as one of the defining characteristics of modern society. This idea was also expressed by Stanley Cohen, who critiqued the shift from the control of...
individual deviants to the logic of 'community control'\textsuperscript{23}. David Garland has investigated the idea of altering criminogenic situations and thus making them less inviting to criminal offenders; he suggests that this is part of the extension of governmental reach in order to exert social control\textsuperscript{24}.

It has been suggested that new crime prevention strategies, such as long-term perspectives which recognise links between crime policy, employment, family cohesion, social and geographical organisation, should replace incarceration\textsuperscript{25}. Such policies are not without their detractors. For example, community-based corrections which aim to “intervene without dominating and disregarding rights” appear to have as much for-and-against research as capital punishment\textsuperscript{26}. Particularly, the treatment of juvenile offenders has caused concern, with many calling for sanctions and intensive interventions, rather than detentions and confinement\textsuperscript{27}. It is clear that double standards exist in the treatment of criminals; white collar crime is an example of disparate policing, processing and punishment procedures being afforded to select members of society. As predicted by various theories, the deterrent effect of such selectivity is minimal, as there is little fear of punishment\textsuperscript{28}. Reiman suggests that the Criminal Justice System has failed to reduce crime in order to divert “public discontent and opposition away from the rich and powerful and onto the poor and powerless”\textsuperscript{29}.

CONCLUSION

In considering issues of social control we must ask whether the rules will guarantee a peaceful existence, and who will enforce these rules. The current deterrent measures imposed by contemporary justice systems cannot deter all crime, if for no other reason that there are some individuals who cannot be deterred. Clearly, the attraction of classical deterrence theory lies in its implications for methods of application. Manipulations of the Criminal Justice System are much more appealing to those in

\textsuperscript{23} Innes (2003)
\textsuperscript{24} Garland (2001)
\textsuperscript{25} Laub & Sampson (2001)
\textsuperscript{26} Tomaiso (2000)
\textsuperscript{27} Garland (2001)
\textsuperscript{28} Tomaiso (2000)
\textsuperscript{29} Reiman (1998, p. 5)
positions of power, than fundamental changes to social structures and institutions. Proponents of educational, employment and egalitarian methods of addressing the crime issue struggle to be heard when incarceration and execution are advertised as acceptable 'solutions'. Unfortunately, the Criminal Justice System has not been conclusively proven to be effective in deterring potential criminal activity. Even if one could conclusively establish the deterrent value of capital punishment, the ethical implications of its use are questionable at best. Legal punishment cannot deter all potential criminal activity; the structural, cultural and institutional conditions conducive to crime must be addressed if there are to be any sustainable changes in crime rates.
REFERENCES


ASSESSMENT TWO: MINOR ESSAY

NOTE: Marks are gained by meeting the criteria in Section A and lost for not meeting criteria in Section B.

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<th>SECTION A</th>
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GENERAL COMMENTS:

Excellent work.
Note the footnotes!!

GRADE: HP
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