

Crime and Punishment

by Robert McKnight, DSPE

*My object all sublime
I shall achieve in time —
To let the punishment fit the crime —
The punishment fit the crime;
And make each prisoner pent
Unwillingly represent
A source of innocent merriment!
Of innocent merriment!*
—W. S. Gilbert

Society has been punishing criminals for so long that we seldom question the philosophy that justifies such action by governmental authority. We probably *should* question it, however, because criminal justice systems are expensive to operate. If there is no good purpose for it all, that money might better be spent filling in potholes in the deteriorating roadways. Those who have written on the subject have offered four or five possible purposes in punishing criminals. The list of the four purposes that all of the authors agree on is:

Incapacitation: A felon in prison cannot commit crimes while imprisoned. An executed felon cannot commit a crime ever again.

Deterrence: The threat of punishment deters people from engaging in illegal acts.

Retribution: The felon harmed society; therefore, society (or the direct victims) is entitled to inflict harm in return.

Rehabilitation: The punishment changes the felon in order to make him a better citizen afterwards. (The punishment can include mandatory vocational training, counseling, drug treatment, etc.)¹

A principle governing the punishment dealt out to criminals in apparently every civilized society is *proportionality*—the principle by

which the severity of the punishment must be proportional to the seriousness of the crime. As W. S. Gilbert’s Mikado sang, “to let the punishment fit the crime.” This principle was described in the case of *R v Scott* (2005) as follows: “There is a fundamental and immutable principle of sentencing that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstance of the crime committed . . .”²

With this principle in mind, let’s consider each of the four purposes of punishment above to see how the principle affects them. The first one is incapacitation. Here, applying the principle of proportionality implies that we want to make crime impossible for a criminal only for a fixed time period, the length of which depends on the seriousness of his crime. We want him to be free sooner to again steal \$200 than to again steal \$2,000, say. We know that incapacitation is a sure-fire crime-prevention technique—that is, incapacitated persons cannot commit crimes against the general society—but we are more prone to tolerate petty theft by repeat offenders than grand theft by repeat offenders.

How does the principle of proportionality affect deterrence as a purpose of punishment? Well, if the threat of punishment deters crime at all, then the severity of the threatened punishment should determine the effectiveness of the deterrence. This suggests that, with proportionality in effect, minor crimes are deterred less than major crimes. Do we want minor crimes to be deterred less than major ones? If so, why?

The principle of proportionality, when applied to the retribution purpose, gives it the

attribute of the Old Testament rule of an eye for an eye, and a tooth for a tooth. There's something less than noble about retribution that makes us uncomfortable with the whole idea, but proportionality, being the essence of the biblical rule, seems natural here.

Should the amount of rehabilitation received be proportional to the seriousness of the crime committed? When you consider such rehabilitation as vocational training, counseling, and drug treatment, the education, psychological condition, and chemical addiction of the criminal seem more relevant than the seriousness of the crime.

I think that we should conclude, therefore, that, with the exception of retribution, proportionality is not a principle that enhances the chances of punishment accomplishing its purposes, but, on the contrary, can often reduce the effectiveness of the punishment. Why, then, should we apply such a principle? It must be because we want to appear to be *fair*. It is as if we consider this crime-and-punishment business to be some sort of a game that must be fair to both sides. An example of a rule applied for the sake of fairness—one that is as asymmetric as proportionality—occurs in football. The offensive players in a football game may *block* the opponents from tackling the runner, but they are not to use their hands and *tackle* their opponents.

Apparently, the criminal justice system is something we have established to see that the crime-and-punishment game is played fairly and squarely. We must want it to control the prices of crime like the OPA controlled sugar prices during World War II. Without these controls, not everyone could afford to break the law, don't you see? We must think that would not be fair. How far should we take this fairness thing? Wouldn't a fairer system of fines be one that sets the amount of the fine to a certain percentage of the offender's annual income?

And maybe a system of prepaid fines could be worked out. Or, for parking violations, there probably is a way that access to the violator's credit card could be indicated by something left under the windshield wiper. A double-parker could leave one of these on his car and not be inconvenienced with court appearances and the like, should he be charged. His fine could be collected by the parking officer with equal facility. Such a procedure would retain the excitement of a gambling game. The illegal parker would still be hoping that his offense would not be caught. But such schemes seem to lose sight of the incapacitation purpose of punishment. Let's dismiss proportionality for the moment, and consider the possible effects of applying severe punishments.

If we were serious about the *incapacitation* of the criminal, for instance, wouldn't the most severe punishment be the most effective? As mentioned earlier, capital punishment would prevent all repeat offenses. Life imprisonment with no parole would limit the criminal to crimes against the prison population.

What effects would very severe punishments have on the *deterrent* purpose of punishment? I think it would have limited success. Some crimes currently are likely to result in these extreme punishments, but these crimes are committed nonetheless. However, if jaywalkers were machine-gunned on the spot, that would make most of us think twice about not using the crosswalk.

If you have been the *victim* of a crime, the punishment probably couldn't be severe enough to satisfy your desire for *retribution*. You might like to personally deal out some corporal punishment to the moronic teenager who sprayed graffiti on the wall of your new house.

And can there be too much *rehabilitation*? You might not want to make PhDs out of every felon in prison, but how could

correcting character faults or curing
addictions be overdone?

In conclusion, there are reasons to believe
that the notion of making the severity of
punishment proportional to the seriousness

of the crime needs to be re-examined. That
would certainly seem to be the case if the
punishment of criminals is for the purposes
we say it is.

NOTES

1. Glenn Cassidy, "The Purposes of (Capital) Punishment," <http://home.page.ch/pub/rfm@vtx.ch/punishment.html>.
2. "Sentencing Bench Book," Judicial System of New South Wales, 2017, <http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/>.

What's the Difference?

by Frank Luger, DSPE

What's the difference between engineers, physicists, and mathematicians?

The engineer hopes that his equations approximate reality.

The physicist hopes that reality approximates his equations.

The mathematician couldn't care less either way.

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“ I do not believe in the collective wisdom
of individual ignorance. ”

– Thomas Carlyle