

# Why Punishment Doesn't Work to Produce Lasting Change

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## What is Punishment?

Punishment is inflicting harm on others in response to a perceived harm. It is a form of aversive conditioning used to deter harmful behavior and encourage prosocial cooperation.

Punishment is rooted in blame and judgment, and satisfies a deep neurobiological impulse for retribution. Sometimes society scapegoats victims of punishment as a simple solution to complex problems. This reduces anxiety and can justify oppression and exploitation. Punishment can also help the punisher to avoid personal responsibility and blame. The satisfaction of revenge gives a sense of justice and fairness, but does not resolve grief.

Punishment can be beneficial to a society in deterring harm when it is certain, proportional to the crime, and immediate. Given the profound interdependence of the human species, systems of social control are necessary for our survival. Like other social species, we have evolved punishment as a "tit for tat" algorithm for social control that lies at the root of our retributive justice system.

## The Morality of Punishment

Philosophers disagree about the morality of punishment. Hegel, Bosanquet, Kant, and Bradley argue that punishment "annuls the crime" and for the virtue of an "eye for an eye" approach to addressing harm. They argue that punishment restores the moral order and sanctifies the victim's anger.

A far greater number of philosophers now argue that punishment is immoral, in part based on the argument that there is no free will. Taylor (author of "The Deceptive Brain") and Sapolsky (author of "Determined") argue that the lack of free will and the illusion of agency make punishment immoral. Stephens, Libet, Pinker, Metzinger, Dennett, Seth, Shjalot and Gazzaniga all point out from neurobiological, and physics perspectives that determinism drives behavior with 95-99% of neural activity being unconscious, and the experience of agency arising milliseconds after the brain has initiated action. These philosophers and scientists argue for locating "evil" in the external conditions and stimuli that triggered harmful behavior. Regarding criminality, they point to an interaction between temperament and environment, and to criminality research that locates the etiology of criminality largely in social conditions and conditioning: "Society creates thieves and then punishes them."

These scientists and philosophers argue for a compassionate response to criminality as a social illness that may require "quarantine" to protect society, along with treatment (if possible), reparation and restitution. They argue for practicing "blameless accountability" where the person is not blamed for their actions, but the person and their brain are held accountable for their actions. In this compassionate, evidenced-based, and reasoned approach, living free in an interdependent society and benefitting from civilization is a privilege given to those who follow the law and do not harm others. Rather than punishing people who harm, the privilege of freedom can be restricted to protect public safety.

Other moral philosophers argue that, regardless of the illusion of free will, that all punishment is evil, as it is simply wrong to harm other people. Bentham argues that “two wrongs don’t make a right. Punishment is demeaning and goes against the principle that all persons are of equal value.” While the harm of a crime cannot be undone, we can refrain from making things worse by inflicting further harm.

Nor does punishment heal. It doesn’t expiate the wrong or restore relationships. It doesn’t address the underlying trauma and social conditioning, and psychiatric vulnerabilities that contributed to crime. Punishment doesn’t undo the harm done to victims regardless of the gratification of revenge.

Social factors that promote criminality include social injustice, social insecurity (lack of a social safety net), family and community trauma, cultural norms that link status and satisfaction to material wealth when no path to such wealth exists, the indirect effects of the erosion of democracy, and genetic/epigenetic vulnerability. The poet and philosopher Kahlil Gibran speaks of the “Interconnectedness of all things,” referring to our collective responsibility for harm done. Punishment unjustly deflects all accountability on the wrongdoer for their actions. “Moral luck” contributes to crime in that people who offend often are extremely unlucky regarding their genetics and developmental familial and social life circumstances and histories.

### [Apart from morality, does a retributive justice system based on punishment work?](#)

Evidence indicates that judicial punishment is both ineffective and often actually increases criminality and crime. Imprisonment can protect the public through quarantining dangerous people, but punishment does not cultivate prosocial attitudes, thinking, beliefs, values, and behaviors. The US has the highest incarceration rate in the world, with 2 million people behind bars. There is a racial bias towards incarceration, with 1/3 of Black males being incarcerated vs. 1/17 of White males. Over the past several decades, there has been no change in crime rates despite a 4x increase in incarceration. Instead, incarceration cultivates criminality and crime. Reincarceration rates are as high as 80%, whereas nonpunitive restorative justice approaches currently result in a 10-40% reduction in reoffending.

While incarceration has temporary benefits to society by containing harmful people, it inflicts pain on inmates and their loved ones and reinforces negative attitudes and beliefs. Most people who offend have a trauma history, and the majority of inmates experience further trauma while incarcerated.

Punishment is ineffective for people suffering from antisocial personality disorder, who do not modify behavior when experiencing adverse consequences of their behavior.

Prisons are toxic environments that poison the capacity to respond to treatment, perpetuate a cycle of violence and harm, and contribute to social destitution upon release. Once released, former inmates experience social stigma, and adverse “gotcha” parole regulations that can increase recidivism.

### [Beyond Punishment—Creating a punishment-free justice system](#)

If punishment doesn’t work, how do we reduce criminality and increase public safety?

One action is to raise awareness and change social attitudes—Education can help to shift social attitudes from blame, judgment and retaliation to compassionate discernment and wise intervention. We can highlight the harms and lack of efficacy of punishment, educate the public on the morality/immorality of punishment, and the dynamics of blaming and scapegoating. We can encourage public policies that hold people who offend accountable without blame (“Blameless Responsibility—Greene and Cohen) while taking collective responsibility for reducing crime and promoting safety.

We need to provide a vision of a more effective, nonpunitive way to reduce, prevent, and address crime. Rather than punishment, we can engage in constructive, solution-focused reframing, promote forgiveness and repair, provide support to victims, and engage in processes of “Truth and Reconciliation.” Policymakers need to adopt a range of restorative justice approaches.

We all need to do the inner work to move from blame and judgment to compassionate discernment and responsibility. We relocate “evil” in the act, not the person.

### Address Roots of Crime

Society needs to address the roots of crime to prevent crime. These include shifting cultural values: Deemphasize material wealth. (Messner and Rosenfield). Reduce individualism. Prevent subordination of family to the needs of the workplace. Address harms of late-stage capitalism: Promote progressive taxation; Provide labor protections; create environmental regulations; Promote democratic ownership; prevent exploitation; provide universal basic income; create a hybrid of democracy, social welfare programs and regulated capitalism.

Strain theory suggests: Reduce stress, hopelessness, disempowerment, lack of options.

Address social injustice: Matt Matravers: Most crime rates are influenced by social policies that promote crime. Poverty: income inequality contributes to increased harm: Trauma; children 3x more likely to experience abuse and neglect; children more likely to witness community violence; low-income women more likely to experience intimate partner violence; poor people more likely to be victims of violent crime. Address exploitation of the poor: economic—low wages. unpaid labor; labor exploitation; social exploitation; financial exploitation. Address economic deprivation, lack of opportunity, social exclusion, lack of social support.

Mitigate racism, which has contributed to: Intergenerational trauma; Violence exposure: 3x higher among African American children; Police violence: Blacks 2x more likely to be killed by police; Discrimination, aggression, and microaggressions.

Other social injustice issues that contribute to crime: Regressive taxation; limited access to affordable housing; insufficient funding for housing and social services.

Other ways to reduce crime include to provide education and job training. Provide parental support and treatment. Identify and prevent abuse and neglect, prevent and treat childhood trauma and neglect; Trauma contributes to crime via: emotional dysregulation, Impaired self-awareness, impaired social skills, increased substance use, impaired self-worth and resultant isolation or socialization with gangs, lower functioning peer groups.

Addressing community disintegration reduces crime. Restoring supportive community institutions. Create “circles of support.” Involvement of all those involved in crime. Promote communitarianism. Encourage civic engagement. Volunteerism. Invest in social welfare programs. Incentivize social responsibility—volunteering, ethical behavior. Support and invest in community institutions. Educate public on social justice issues. Empower communities. Address homelessness.

### Preventive Treatment

Preventive interventions include:

1. Parenting classes and supports.
2. Mental Health (including SUD) Treatment
  - a. Early identification and treatment of psychopathy: roughly 50% of crime. (Moffitt 1993)
  - b. More assertive commitment and treatment laws for those who lack capacity. Hidden stigma of libertarian views on this. Balancing individual civil liberties with collective public safety. False dichotomy. Choice between illness and personal safety. Assisted outpatient treatment.
  - c. Early identification and treatment of MI, conduct d/o in children:
    - i. Anger management
    - ii. Social skills training
    - iii. Problem solving skills training.
    - iv. Empathy training
      1. Emotion recognition training program (Dadds et al 2012)
    - v. DBT
    - vi. CRAFT (Community Reinforcement and Family Training)
    - vii. Avoid violent video games
    - viii. Parent Management Training (PMT). Contingent Reinforcement with parent training. Increased warmth. Reduced inconsistency, neglect, coercion. Increased respect and availability to attunement.
      1. The Incredible years (Webster-Stratton and Reid 2003)
      2. Parent Child Interaction Therapy (PCIT) (Brinkmeyer and Eyberg 2003).
      3. PCIT-callous-unemotional intervention (Kimonis et al 2019).
      4. Oregon Model (Chamberlain and Smith 2003, Forgatch and Patterson 2010).
      5. Triple P Positive Parenting Programs (Sanders 1999)
      6. But: LIMITED Outcomes
        - a. 50% attrition rate
        - b. Unequal access—need for online delivery.
        - c. Fails to address larger social issues and other contributing factors (Frick 2012)
        - d. Need for individualization of treatment
        - e. Limited generalizability.
        - f. Limited efficacy for callous unemotional traits
    - ix. Increased supervision and structure.
    - x. Prosocial group activities—sports.
    - xi. Big Brothers, Big Sisters
    - xii. Multisystemic therapy (MST) (Henggeler et al 2009).
    - xiii. School: Good Behavior Game (Barrish et al 1969)
    - xiv. Last resort: detention/containment.
    - xv. Pharmacotherapy. Stimulants, SGs, adrenergic agents, lithium, VPA,
  - d. Early identification and intervention for abuse and neglect.
    - i. Parental support, education, treatment.
    - ii. Address intergenerational trauma

## Constructive consequences to harm—Restorative Justice

Evidence for Restorative justice efficacy: Shaplan, Robinson, Sorsby: metaanalysis of 83 studies. Small but significant benefits. Community-based corrections. Jaynes and Williams. More effective than incarceration. Good Lives Model. Harper and Ward.

Reframing of sanctions as management of privileges. Sanctions become a loss of a privilege that is no longer earned.

- Contingent reinforcement of prosocial behavior
- Marlowe & Wong 2008. Management of Sanctions. Calibration. Escalation. Avoidance of habituation. Combined with reinforcers 4:1 ratio). undesirable behaviors often return precipitously after the sanctions are withdrawn (Marlowe & Kirby, 1999; Marlowe & Wong, 2008)

Repair: reframe fines as reparative.

- “Reintegrative Shaming” programs. John Braithwaite. Break down rationalizations. Address criminal thinking. Convey message of worth and value and desire to have back in community.

Natural social consequences: Stigma. Rejection. Shame. Surveillance. Reduced trust. Acknowledge and formally condemn harms without blame or shame.

Offer Victim-Offender reconciliation. Empower individuals and communities in restorative process. Promote dialogue between offenders and victims (as indicated/desired). Facilitate apologies and the making of amends. Help people who have offended to acknowledge and take accountability for harm. Help them to develop empathy. Validate victims. Facilitate forgiveness and healing. Create ways for people who have offended to repair harm. This might include: paying for costs of crimes; put collection costs and collection of civil judgments in the hands of government; have state pursue evasive offenders; brainstorm other forms of reparation. For serious offenses, expiation may be a lifelong practice.

Impose containment as needed: Humane, safe, sober, supportive, destigmatizing.

## Prison Reform—preventing the cultivation of criminality and reducing recidivism

Shift as able to community-based programs with monitoring, supervision, and containment as needed.

Reduce overcrowding and understaffing. Provide greater educational and vocational training. Provide better mental health, trauma and SUD treatment. Implement sentencing reform; link quarantining to safety as is practical. Provide safe alternatives to incarceration. Make prisons safe and sober; address drugs and gangs.

Norway System—Restorative Containment: Nonpunitive; focus on social welfare of inmates; rehabilitative communities; autonomy with accountability; dignity and respect; community approach.

## Legal Reform

“Outlaw Punishment”; expand treatment courts; containment as last resort; sentencing reform: revision of sentencing and release criteria.

## Barriers to Moving Beyond Punishment and Reducing crime

Our evolutionary neurobiology; Cultural Values and World Views; Community fragmentation; Poverty and exploitation of the poor; Late-Stage Capitalism; Erosion of democracy?; Lack of resources-Social,

community, cultural capital; Victim reluctance; resistance of person who offended; Potential for revictimization, particularly if person who offended shows lack of empathy or remorse; Limited scope: Limited current systems for addressing severe and violent offenses; Lack of a coherent mental health treatment system: lack of social rehabilitative components; neglect of the severely mentally ill; criminalization of the mentally ill; less than perfect efficacy for restorative interventions under ideal circumstances; problems of engagement, motivation, and treatability.