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No More Punishment: A Template for a New Theory of Sanctioning

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Introduction

“I believe imprisonment is far worse than the death penalty.”- Nick Yarris, American writer, after being wrongfully imprisoned for murder for over 22 years.¹

Pluralism in punishment² is a widely contested specification of punishment theory. The scope is usually understood through exclusively applying punitive measures based on either deterrence, rehabilitation, or retribution. This thesis will attempt to deconstruct some views on these measures, on the prison market, capital punishment, and economic efficiency. The central question of this paper can be seen as:

What is the best specification of punishment from a moral and economic perspective?

This question will be further dissected to gather insights regarding the potential morality of the death penalty, new specifications of deterrence, rehabilitation, and prevention, and views on retribution. The main purpose of the present thesis is to change views on retribution, propose more efficient delegation of sanctions, and suggest a hybrid template for punishment. The model reached entirely discards retribution as an imprisonment theory, highlighting the moral superiority and cost efficiency of rehabilitation as compared to deterrence. Insights regarding government intervention, privatisation of prisons, and the morality of the death penalty will additionally be analysed to further polish the conclusion.

Section [I](#) will describe the evolution the prison market or more broadly, punishment. The history of the prison will be discussed after which key differences between the U.S and European prison systems will be analysed. Section [II](#) is a deconstruction of the death penalty and its implications. Section [III](#) is primarily concerned with views on deterrence and rehabilitation. It will explore the potential negatives and positives of either approach and additionally emphasise specifically targeted sanctioning and privatisation. Section [IV](#) will delve into the evolutionary explanation of cruelty and refute retribution as a theory of imprisonment, additionally discussing Thom Brooks' Unified Theory of Punishment. Section [V](#) is an attempt to conjure a template for a potentially better theory of punishment.

¹ Yarris, *Seven Days to Live: The Amazing True Story of How One Man Survived 21 Years on Death Row for a Crime He Didn't Commit*.

² Pluralism here refers to either applying more than one theory or a hybrid of the major theories of punishment, which are rather exhaustive by themselves.

I. Evolution of the Western Prison Market

History of Imprisonment

Scholars analysing the concept of punishment have generally divided the history of imprisonment into a number of dissimilar periods. These intervals are generally characterised by different viewpoints on aspects such as retributivism, deterrence, or incapacitation.³

Ashley T. Rubin efficiently organises these as six templates.⁴

We can trace the use of the prison institution back to the rise of statecraft in ancient Greece. Philosophers such as Plato advocated for the use of imprisonment as a means of deterrence rather than the pure engagement in punitive measures for the sake of crude hedonic enjoyment. Imprisonment was initially reserved for those who could not afford to pay their amends. The first time-limit ever set on sentencing happened when poor citizens of Athens were not able to pay their fines indefinitely.⁵ The Romans were one of the first developed empires to use prisons for punishment itself, rather than detention. Primitive forms of imprisonment involved house basements and metal cages. The Mamertine Prison was a more advanced system established around 640 B.C. and involved a large structure of dungeons under ancient Rome, where prisoners were kept in inhumane and unsanitary. Forced labour was additionally used by the Roman Empire as a form of punishment.⁶

The Roman Empire additionally employed galley slavery, reducing imprisoned citizens and prisoners of war to rowing their large fleets. This habit continued throughout Europe during the Middle Ages, where prisons were once again much more heavily reliant on capital and physical punishment, rather than deterrence. Government officials notably had the right to effectively and indiscriminately imprison locals during this historical era.⁷

The Middle Ages and the beginning of what we now call the modern era were marked by a focus on punitive measures rather than rehabilitation. Until modernity, prison history was generally marked by decentralized, small, and disorganized jails primarily reserved for homeless individuals, debtors, and political enemies. Despite that, most of these jails allowed for communication with relatives and easy bails by paying certain amounts of currency. The jailers themselves were private entrepreneurs that decided the criminal's stay based on

³ Goodman, Page, and Phelps, *Breaking the pendulum: The long struggle over criminal justice*, 20-42.

⁴ Rubin, "History of the Prison."

⁵ Allen, "Punishment in Ancient Athens," 2-10.

⁶ Ruyter, "A Dispatch from Rome: The Mamertine Prison."

⁷ Weiss, "Humanitarianism, labour exploitation, or social control? A critical survey of theory and research on the origin and development of prisons," 331-350.

payment⁸. Western-European colonial powers typically employed this type of imprisonment during the colonization of America, with added caveats. There was additional emphasis placed on transportation and forced labour, naturally spanning from the prevalence of the slave trade. Colonial powers had generally replaced the cell with the requirement of hard labour usually organised in camps.⁹ German and Dutch variations of this model in the seventeenth century involved surprisingly more humane conditions for prisoners that were organised in workhouses meant to increase household efficiency. This is the first ever recognised official model of imprisonment, the first prison. This pattern brought along reformists from many Western Nations and spawned the first incarceration facilities.¹⁰

The Enlightenment highlighted revolutionary ideals revolving around humanity, efficiency, and reason. The British sheriff John Howard was one key personality that wrote a treatise arguing for the reformation of incarceration. The main points of contention were the inhumane and barbaric conditions prisoners were kept in.¹¹ One of the first major figures to oppose the death penalty was the Italian aristocrat Cesare Beccaria, who argued that capital punishment is ineffective in deterring crime and that a more sensible response would be more efficient for reforming criminals.¹² The American revolution¹³ combined with increasing tensions in Europe¹⁴ regarding the sovereigns' sadistic displays of power through torture became catalysts for reforming prison systems, incentivising the enforcement of hard labour at the expense of capital punishment and physical torture. The resulting pre-modern prison would be generally organised as a state-ran facility, with salaries for the jailers and guards. Conditions were still rather poor compared to future imprisonment facilities. These new prisons were largely based previous reform and Bentham's utilitarian theory of the panopticon, a theory which stated that imprisonment can represent punishment in itself, rather than just a means of storing criminals awaiting trial. The Walnut Street was the most prolific example of such a facility during the eighteenth century. Considered the most advanced system yet implemented, this institution still ran into a couple problems. Overcrowding, arson attacks, and escaping convicts were major concerns during those times. Prisoners were sharing a number of large rooms together, which allowed for discussions revolving escape,

⁸ The Howard League for Penal Reform, "History of the Prison System."

⁹ Kann, *Punishment, prisons, and patriarchy: Liberty and power in the early American republic*, 130-151.

¹⁰ Spierenburg, "From Amsterdam to Auburn an Explanation for the Rise of the Prison in Seventeenth-Century Holland and Nineteenth-Century America," 439-461.

¹¹ Roberts, "John Howard, England's great prison reformer: His glimpse into hell," 136-139.

¹² Maestro, "A pioneer for the abolition of capital punishment: Cesare Beccaria," 463-468.

¹³ Denn, "Prison narratives of the American Revolution."

¹⁴ See Foucault, "Discipline and punish," 2-18.

gambling, alcohol abuse, and smuggling.¹⁵ The first ever attempt to make the prison a medium for rehabilitation came with the Auburn system. This system would keep inmates separately and prohibit communication during shared meals and labour. Schools and households were largely an inspiration for this model, and by the end of the nineteenth century the majority of U.S. and European prisons had implemented this approach.¹⁶

Prisons Today

This sub-section will be primarily concerned with describing prison statistics today in the most prominent prison systems in the Western world. For the purpose of this study and whenever there aren't any essential differences, the United States will be used as a proxy for the prison market. Around 0.15 percent of the entire world is incarcerated, with 7 percent of these prisoners being women.¹⁷

The United States is by far the system with the largest prison population in the world. As of 2022, twenty-seven out of the fifty U.S states still authorize capital punishment.¹⁸ The prosecutorial decision and the sentencing regarding this capital punishment take place in a manner decided by the commonly-known Anglo-Saxon legal system. This system involves an unbiased jury sampled from the population in the position of giving a verdict in penal cases.¹⁹ Capital crimes include but are not limited to murder, rape, and repeated drug offenses. The most popular means of administering the death penalty are the electric chair and the lethal injection.²⁰ There are significant discrepancies in prison demographics from a racial and ethnic standpoint., compared to the U.S. population distribution.²¹ The prisons themselves can be split into two categories. State prisons host inmates that have committed state crimes such as arson, burglary, or homicide. The administration of these prisons is left up to the state in which the crime took place. Criminals in federal prisons are charged with more serious crimes and federal prisons themselves have different levels of security. There are five levels of security, namely minimum, low security, medium security, high security, and administrative. The latter designation is only reserved for the most heinous criminals and is colloquially called "supermax". Whenever the state needs additional prison places, a private

¹⁵ DePuy, "The Walnut Street prison: Pennsylvania's first penitentiary," 130-144.

¹⁶ Barnes, "Historical origin of the prison system in America," 35.

¹⁷ National Institute of Corrections, "World Prison Population List |Eleventh Edition."

¹⁸ National Conference of State Legislatures, "States and capital punishment. "

¹⁹ Britannica," Anglo-Saxon Law."

²⁰ Death Penalty Information Center," History of the Death Penalty."

²¹ Federal Bureau of Investigation, "Crime in the United States."

contractor will be hired to run a private imprisonment facility.²² The privatisation of the prison market is a very contested matter in prison discussion. U.S prisons have been largely criticised for not being rehabilitative and for incentivising violent and criminal behaviour rather than discouraging it. The access inmates have to social situations and education is very limited and in-house crime is rampant.²³ The U.S.'s approach to imprisonment has been additionally scrutinised for being a rather lax deterrent when it comes to violent and organised crime. Permanent records and registries such as the sex-offender registry make it additionally difficult for freed inmates to successfully re-integrate into society, inducing most of them to resort to crime or homelessness.²⁴ Overcrowding in the American prison system has led to very advantageous monetary options that can exchange imprisonment for financial compensation, to certain extents.²⁵

For all intents and purposes and excluding the Scandinavian regions, prisons in Western and Northern Europe are mostly similar to American prison with a key exception, the death penalty. With the exception of the dictatorial country of Belarus, no European country applies capital punishment.²⁶ There is a much better chance of leaving prison early for good behaviour, although this incentivises cartel behaviour and disingenuous actions from prisoners. Countries like the Netherlands and Germany have a general goal of rehabilitating prisoners. This is even more apparent for countries in Northern Europe²⁷. Incarceration rates are much lower and the prison space is much more oriented towards therapy. Nonviolent crimes receive significantly lower sentences compared to American prisons and prisoners have more autonomy.²⁸ Prisoners are not exposed as abusively to solitary confinement and are allowed to maintain better connections to society and their families. Young offenders additionally receive much better treatment compared to adults.²⁹ Whilst these systems are evidently more adequate for a more inclusive world, this paper will bring forth some inconsistencies that refer to them as well. The United Kingdom is an atypical hybrid between Europe and the United States, generally allowing for more rehabilitative programs but still

²² Federal Bureau of Prisons, "About our Facilities."; [Brooks](#), "Breaking Down the Different Types of Prisons in America."

²³ Hopwood, "How Atrocious Prisons Conditions Make Us All Less Safe."

²⁴ United States Department of Justice, "Five Things about Deterrence."

²⁵ Baughman, *The Bail Book: A Comprehensive Look at Bail in America's Criminal Justice System*.

²⁶ Viasna-FIDH, "Death Penalty in Belarus: Murder on (Un)lawful grounds."

²⁷ Pratt and Eriksson, "'Mr. Larsson is walking out again'. The origins and development of Scandinavian prison systems," 7-23.

²⁸ Mauer, "Incarceration Rates in an International Perspective."

²⁹ Andersen, "Mental health in prison populations. A review—with special emphasis on a study of Danish prisoners on remand," 5-59.

possessing some Anglo-Saxon and colonial hang-ups such as the private prison and mass incarceration.

II. The Death Penalty

The death penalty is a state-sanctioned homicide in response to a crime. Crimes usually punishable by death are called capital crimes, which are usually severe crimes such as murder, rape, war crimes and child abuse. The primary methods of execution consist of hanging, electrocution, gas chamber, death by firing squad and lethal injection. The latter is predominant. Imprisonment or punishment refers to a state-sanctioned sentence to be served in a prison for a pre-determined amount of time.³⁰

When it comes to serious offenders only, locking them away is seen as more socially justifiable and desirable compared to applying capital punishment. This view has been generally accepted throughout the World, including in almost half of U.S states, where the death penalty was effectively abolished.³¹ Views that are not concerned with utility may overestimate the value of a human life in this computation, justifying the general rhetoric around the ineffectiveness of the death penalty in deterring crime. Due to non-economic views on the value of human life, increasingly positive results for the success of rehabilitation and the supposed ineffectiveness of the death penalty in deterring crime, society has been justifying serving time in prison rather than execution. There are two popular arguments for choosing incarceration over capital punishment.

The first argument stems from a moral judgement; it is split in two sub-points. The value of human life is considered to be unquantifiable. It is believed that simply removing someone from the public sphere is morally preferable to taking one's life. The judge and the jury associate more moral faults with also being the executioner. The jury seems to feel directly responsible for taking the prisoner's life, but only indirectly responsible for the potential recidivist behaviour of the criminal and imprisonment. The possibility of wrongful conviction also stems from this idea. To add to this, imprisonment is seen as less of an impediment on the prisoner's rights compared to capital punishment.³² However, many would argue that there is no moral difference between the two or even that the social consequences of imprisonment should be weighted higher on a moral scale. A breach of the

³⁰ Legal Information Institute, "Capital Offense."

³¹ Millhiser, "The decline and fall of the American death penalty."

³² Jones, "Americans now support life in prison over death penalty."

social contract should be met with the most efficient method of prevention, which is usually complete removal. Subjecting someone to a life of imprisonment and potential torture, whether physical or psychological, has no reason to be less immoral than offering a painless death. The potential of recidivist behaviour should be treated as a direct moral consequence of the initial legal decision, as allowing an offender to have moral agency is retrospectively not ideal for everyone involved.

The second reason is also split into two points; it has to do with socio-economic ramifications. It is argued that the death penalty does not deter crime,³³ and that rehabilitation is effective in changing criminals and re-integrating them into society. Rehabilitation is hypothesised to always reduce recidivism.³⁴ Three arguments will be made here: Rehabilitation only works when successfully implemented, whereas in reality it is rarely introduced in prisons. Secondly, the benefits of rehab at the expense of the social costs, expressed by tax-payer money and potential return to crime do generally pass an adjusted cost-benefit analysis. Lastly, even if the last two were to be dismissed, the moral argument for the death penalty outweighs the economic one.

Cost-Benefit Analysis

Former prison warden from Oklahoma, Randy Workman, said the following:

“Do we need to have the death penalty? Yeah I’m an advocate for it. I think we do. Is it cost effective? Gosh no. We spend millions of dollars on these cases and going through the process and the end result is the family, do they feel vindicated? I’d say 90 percent of the time the people I’ve seen don’t.” (2014)³⁵

Although an advocate of the death penalty, the warden highlights two main points that proponents of abolishment usually have. The death penalty is not cost effective in the short-run. The financial costs associated with legal expenses and chemical substances used in injections may make death penalty cases as much as twice as expensive as other cases.³⁶ This notably has to do only with the costs of processing and chemicals associated with imprisonment or execution. Purely suggesting to “relax bureaucracy” is reductive and

³³ Radelet and Akers, "Deterrence and the death penalty: The views of the experts," 1-7.

³⁴ Bonta, Wallace-Capretta, and Rooney, "A quasi-experimental evaluation of an intensive rehabilitation supervision program," 312-329.

³⁵ Fretland, "Oklahoma former prison Warden: Death penalty does not help families."

³⁶ The Nevada Legislature, "Financial Facts about the Death Penalty."

unrealistic as this would diminish the integrity of the justice system. Another argument made here is that the death penalty does not provide any additional consolation to the families of the victim. This is true to the extent that the death penalty is used to punish for the sake of the victims. This will be addressed in section [IV](#) of this paper.

Scott Turow, an attorney based in Illinois, argues that applying the death penalty reduces the costs paid by the average taxpayer drastically compared to life imprisonment.³⁷ The Bureau of Prisons reported in 2021 that the average cost for a federal inmate was around 39 thousand dollars per year.³⁸ Apply that to a life sentence and compare it with a one-shot cost of capital punishment and it can be clearly seen that from a cold, rigid, capitalistic perspective, the death penalty is justified. This stands even when including the increased costs of appealing that average around a hundred thousand dollars more for death penalty cases.³⁹

Another important consideration is evaluating the human life. The U.S Federal Emergency Management Agency estimates the average value of a statistical life at around 7.5 million dollars, with measurements between 1 and 10 million, depending on the country.⁴⁰ Although it is widely contested how much of this life serves the individual and what part comes as a service to society, the value of an average inmate would intuitively be somewhere lower. Nonetheless, if we consider a prisoner's life to be worth fifty years, which is rather conservative for the sake of this argument, using the previous per-year cost of the average inmate we would reach a sum of almost 2 million dollars. This primarily points in the direction that capital punishment is indeed not worth it from an economic perspective, but accounting for longer life-spans and a general lower self-appliance that a prisoner exerts, the waters become rather muddy.

³⁷ Turow, *Ultimate punishment: a lawyer's reflections on dealing with the death penalty*.

³⁸ Bureau of Prisons, "Annual Determination of Average Cost of Incarceration Fee (COIF)."

³⁹ The Nevada Legislature, "Financial Facts about the Death Penalty."

⁴⁰ The Federal Emergency Management Agency, "Benefit-Cost Analysis. " Category intervals suggest that depending on the type of life

Moral Considerations

Proponents of the capital punishment are also met with resistance. They are generally depicted in the media to be misinformed paroxysmal cynics. This stems from many religious and ethical considerations for human life, claiming that human life is unquantifiable when it comes to utility. Virtue moralists⁴¹ argue for rehabilitation's hopeful change, Utilitarians⁴² argue from a cost-benefit analysis perspective, although they usually place more weight on human lives in this case, whilst Kantians⁴³ would find themselves more easily advocating for capital punishment.

Sending someone to die, although indirect, makes some feel more moral guilt for his actions. We will explore the difference between direct and indirect intervention. A good example used to explore this dilemma is the widely known trolley thought experiment. A single moral agent is faced with the decision of passively allowing a train to run over 5 workers or actively pull a lever and have the train only kill one individual. It is argued by a lot of experts here that action incriminates. The direct involvement in taking someone's life impacts much harder than letting nature run its course.⁴⁴ Rather than arguing for the difference between passivity and action here, I will say that sentencing someone to life in prison is not passive; it is active involvement in the course of someone's life, which is arguably much worse. Years of torture, loneliness, monotonicity are somehow depicted as being much better than a quick death. A quick insight into behavioural economics shows that people's utility today does not align with their utility tomorrow⁴⁵, due to inherent present biases. Accounting for long-term efficiency and paternalistic preferences, the justice system could be even considered more humane seeing as many prisoners retrospectively prefer to have died. Attorney Joe Savitz said the following when asked why he advocated against the death penalty against offender Michael Passaro: "He does not see the death sentence as punishment. He sees it as an escape from punishment."⁴⁶ So if social justice and humanity is of utmost importance, why not choose the death penalty? In this case, for the prisoner rather than against him.

⁴¹ Hursthouse and Pettigrove, "Virtue Ethics."

⁴² Sinnott-Armstrong, "Consequentialism".

⁴³ Paton, *The categorical imperative: A study in Kant's moral philosophy*.

⁴⁴ Bruers and Braeckman, "A review and systematization of the trolley problem," 251-269.

⁴⁵ Berridge and O'Doherty, "From experienced utility to decision utility," 335-351.

⁴⁶ Robinson, "Death-Row Inmates Prefer Death to Life."

I would argue that imprisonment is more morally damaging to society than execution. To do this, the moral agents involved should be defined. Firstly, the victim's close circle and by extension, society. Secondly, the legal system along with the prison staff, the jury and executioner, implied to be detached and objective, and lastly, the prisoner himself. I would argue that the prisoner should be of no concern in this equation. From a Kantian perspective, committing an action is moral if and only if everyone should be able to do it in the same context i.e. it is universalizable. I would argue that breaching this imperative should place one outside of the boundaries of being with agency; their human rights should be of no consequence.⁴⁷ The judicial system should promote reward for those that did not break the rules as opposed to punishment for those that did. Punishment for the sake of punishment is animalistic and pointless. Society's reward should stem from knowing that the respective prisoner will never be able to negatively influence someone else's life. The prospect of rehabilitation and remorse brings with it potential recidivist behaviour and continued crime. Why should someone that willingly impeded on another's freedom get to be rewarded by being in placed in the system's care? Treating offenders as animals might initially sound brutal, but most moral laws and ethical behaviour disapprove of torture and humiliation while also acknowledging the lack of agency within them. Out of the dogs that get rabies, 47 percent survive⁴⁸. Should we hope that the dog recovers and adamantly refuse to put it down just because it might eventually survive? Where is the line drawn? Torture cannot be used as justification for potential recovery, especially when against the agent's autonomy.

A widely encountered counter argument for this view is the possibility of wrongful accusation. I have to concede the fact that imprisonment is widely advantageous in case of mistrials, at least for people that retain hope. Bypassing this issue could involve only applying the death penalty to very certain crimes, although the degree of certainty is questionable. The same argument used above can be applied here. Solving issues of wrongful incarceration is an a priori problem of the justice system. Ultimately, even for the wrongly accused, either life in prison and the death penalty are unjust ruinations of their lives.

The death penalty is said not to deter crime, which seems to be correct. Deterring crime is not the issue this section attempts to tackle. The death penalty is easily justified by reasons that have to do with mercy, moral efficiency and doing as much as one can to prevent

⁴⁷ While this may initially seem extreme, the importance of not engaging in pointless violence will be discussed throughout the study along with the notion of autonomy.

⁴⁸ Tepsumethanon, Lumlertdacha, Mitmoonpitak, Sitprija, Meslin, and Wilde, "Survival of naturally infected rabid dogs and cats."

the same individual from ever being an impediment again, as discussed above. The argument for rehabilitation is a very popular one. I will concede the fact that if rehabilitation in one's case were known to be 100 percent possible, there would be no obvious reason to oppose it. The issue is that there is no certainty of rehabilitation, and most prisons choose to simply put prisoners behind bars and wait⁴⁹, even in countries like the U.S. Most programs aim to not waste money on prisoners that lack the motivation. The afferent issue here then is why do the unmotivated ones still stay in prison, with no prospect of recovery? An answer to this is given by information asymmetries⁵⁰. A prisoner can easily pretend to comply with attempts to rehabilitate since that serves his best interest, leaving prison earlier and receiving better treatment. If this is the case, then how do rehab programs pick the right prisoners? Prisoners possess more information about their own nature and can use it to their advantage in order to be "recovered" at a quicker pace.⁵¹

The death penalty is also very expensive compared to imprisonment. The reason for this is over-bureaucratization is due to human rights issues such as the ones discussed above. The other reason has to do with manufacture of the injections used in execution. The long-winded legal and bureaucratic procedures would be automatically shortened if society were to adopt the moral views expressed above. The lethal injection does not have to be the means of execution. Justice Sonia Sotomayor, a critic of the death penalty, compares the lethal injection to a "hangman's poorly tied noose"⁵², arguing that the firing range might as well be a more humane option for execution, as well as a method less prone to error due to the training of the squad.

Lastly, the moral reason dominates the economic reason, or at least this is what the justice systems claims. On one hand it claims to be liberal by holding onto human life and on the other it is authoritarian in not allowing either society or the inmate to choose his punishment (provided a punishment of required severity is provided).

In truth, subjecting someone to a life in prison is much crueller than offering that person a quick death. The justice system justifiably deprives offender of his freedom, but stops when his life is involved. The view that punishment should not be concerned with the offender has been heard before. The view that even if the system wants to be as humane as

⁴⁹ Petersilia, "Beyond the prison bubble."

⁵⁰ Akerlof, "The market for "lemons": Quality uncertainty and the market mechanism."

⁵¹ Gonzalez, "Information Asymmetry in Private Prison Management: Monitoring and Oversight as the Basis for Private Prison Legitimacy," 379-393.

⁵² Konrad, "Lethal injection: A horrendous brutality," 1127-1136.

possible, the death penalty is warranted, is less common. This section aimed to highlight this main point. The death penalty is already allowed in some scenarios. The aim of this essay is not to completely replace imprisonment with capital punishment, but to start considering execution as less vile and primitive. I believe that for crimes with an arbitrarily high level of certainty and irreparability, capital punishment should be implemented in a responsible way as the choice for safeguarding society. This change might bring along unwanted economic changes, legal and bureaucratic stress, and an entire revolution of societal moral values. I believe that these changes can be overcome with better education and better media coverage.

A good solution to this dilemma is allowing the convict to choose his own fate. The justice system, with an assumed untethered focus on deterring crime, cannot let the criminal walk freely anymore, so based on the region's laws it will either offer life in prison or capital punishment. If the sole focus of this behaviour is deterring crime, why not allow the convicted to choose between life in prison and death? Although this goes against the economic argument, it is plausibly the safest way of incarcerating someone whilst impeding the least on the criminal's autonomy. This right is only blockaded by religious zealotry and lack of progressiveness in the field of assisted suicide.⁵³ Furthermore, this would prove as a viable solution for mistrials, where the prisoner is interested in holding on to life in hopes of an acquittal. Two main views may prove antithetic to the ideas expressed above in regards to the death penalty. One of them has to do with the idea of rehabilitation. The second is retribution theory. Both will be discussed in further paragraphs. The next section will elaborate on three theories of punishment.

⁵³ Reichstein, "A right to die for prisoners?"

III. Deterrence, Reformation, and Prevention

There are two types of deterrence applied in modern prisons. General deterrence is aimed at scaring the populous into submission in order to avoid future crime. The fear of the justice system's retaliation by making an example out of a convict may induce citizens to avoid breaking the law. Specific deterrence is aimed at the prisoners themselves.⁵⁴ It is the main precursor of rehabilitation, but has as its main purpose to induce a perceived disutility in the mind of the criminal. If the punishment is rather severe or lasts a very long time, the chance of recidivism is supposed to go down. Capital punishment was initially seen as a good deterrent, but due to reasons such as economic myopia when it comes to negative outcomes and predilection to risky behaviour it proved to be not very effective in limiting recidivism. Contemporary prisons systems that exclusively rely on deterrence can be considered rather primitive and antiquated, especially because the main method of imprisonment, reformation, does not go against the potential of limiting crime. For the purpose of this paper, incapacitation will be merged with deterrence, as it has similar outcomes despite its expressed lack of interest for reducing crime.

Reformation theory⁵⁵ or rehabilitation is the widely implemented in Western-European prison facilities. Rehabilitation centres concern themselves with re-integrating offenders into society. This may involve endeavours such as academic education, psychotherapy and psychiatry for addicts of any kind, and social and physical activities. The countries with the most progressive prison systems in terms of reformation also have the lowest recidivism rate, so the main purpose of deterrence is seemingly also achieved by educating the convict, with a higher rate of success.

Preventive theory is still consequentialist in nature, its primary intent being to eventually reduce crime rates.⁵⁶ This application does not involve imprisonment, but actions taken to prevent the crime from happening. It is rather contentious whether deterrence and rehabilitation can serve as preventions in themselves, but for the purpose of differentiating this notion, I will only refer to pre-imprisonment measures. A better social net, a more just distribution of income, better children's rights, immigration policy, and more accessible education are all factors that contribute to a lower crime rate. These may all be preventive measures that reduce the crime rate, but are not the key focus of this theory. Individuals that

⁵⁴ Stafford and Warr., "A reconceptualization of general and specific deterrence," 123-135.

⁵⁵ Hoskins and Duff, "Legal Punishment".

⁵⁶ Rai," Theories of punishment – a thorough study."

espouse preventive theory will generally defend actions such as removing emotionally unstable individuals from society. One good example is apprehending a potential school shooter or pedophile just for showing a predisposition towards committing a crime.

Paternalism

The justice system is not naturally paternalistic. A convict is deprived of his freedom in order to safeguard society according to the policy-maker's capability. Should the state be in charge of punishment? Why not the individuals close to the victims or the victims themselves? Should the state even attempt to rehabilitate? To answer the first and second questions, it is rather obvious why an unbiased authority decides what is best for society when it comes to imprisonment. It has been shown that biased views on judgement and emotional states such as hatred can influence punishment in a negative way. There are much more interesting insights to derive when it comes to the prisoners themselves.

Reforming prisoners is paternalistic and is one of the main arguments against the death penalty. If the individual has a chance to be rehabilitated then his added value may overcompensate for the cost paid, from an economic point of view. Not allowing prisoners to choose their own fate is the state's attempt to dictate what is best for the convict. It is a limitation of autonomy imposed on the individual. Naturally, most prisoners would prefer prison time in Sweden rather than the U.S, or more extremely, Belarus.⁵⁷ Would prisoners that choose capital punishment anyway not expect arduous and inhumane imprisonment conditions at all? I think they would.

Another breach of autonomy stems from the prisoner's reduction in social rights. In most prisons systems, with notable exceptions for Scandinavian ones, convicts with criminal convictions are not allowed to vote in electoral or local elections.⁵⁸ This restriction is rather hypocritical and without purpose. A concern when it comes to prisoners voting stems from technical requirements that would need to be facilitated. Many elections in the past have had to receive additional state support. Emigrants have historically received state support in order to vote in state and even city elections.⁵⁹ The only technical requirement needed to facilitate this for a prisoner would be distributing ballots and collecting them, a system that already has

⁵⁷ Subramanian, "How Some European Prisons Are Based on Dignity Instead of Dehumanization."

⁵⁸ Penal Reform International, "The right of prisoners to vote: a global overview".

⁵⁹ Østergaard-Nielsen, Ciornei, and Lafleur, "Why do parties support emigrant voting rights?" 377-394.

an infrastructure and security system in place because of the nature of the prison. Another concern has to do with politicians potentially enacting criminal-friendly laws that might induce prisoners to vote for them. This happens all around the world and is not a concern that applies exclusively to prisoners. Populist demagogues have historically appealed to masses based on education, age, and location. This is a risk that democracy has, is, and will always have to assume.

Further critique may have to do with the convict's perceived lack of moral character, intelligence, or political knowledge. It's easy for citizens to do away with the prisoner's morals, as the justice system essentially stamps them with the "criminal" nomenclature. To refute this perception, I will invoke the availability heuristic, or more specifically, imaginability, coined by behavioural economists Tversky and Kahneman.⁶⁰ Individuals assess probabilities based on the ease of constructing those instances in their memory. Despite dying of heart attack is more frequent, multiple surveyed sample of individuals declared that they would like to avoid dying in a terrorist incident or a shark attack, despite their very low probabilities of occurrence. This is explained by the media's emphasis on these events, justifiably because of their shock value and rare chance of occurrence. In prison markets, it is much easier for the populous to associate the image of a prisoner with a dangerous, bloody, and violent individual, despite the fact that most prison populations consist of people that committed petty and nonviolent crimes. Is a small drug dealer or someone that stole a radio significantly more morally compromised than the accountant that shirks whenever he is not monitored or the cashier that keeps more proceeds than it would be warranted? I think the differences are insignificant. Another heuristic that people employ when assessing characters is the fundamental attribution error. Because of the inherently egocentric nature of the human brain, it is impossible to perfectly relate to the other. This is the tendency to over-emphasize dispositional explanations for observed behaviour and under-emphasize situation-based explanations.⁶¹ My co-worker is late because he is lazy. I was late because I had an issue with my family that required immediate attention. I can easily contextualize my inadequate behaviour, but I do not offer others the same benefit of the doubt. Many prisoners did not engage in inherently evil misdeeds. Good examples for this are the rather unintelligent and immature adolescent and the desperate thief. While punishment is

⁶⁰ Tversky and Kahneman, "Availability: A heuristic for judging frequency and probability," 207-232.

⁶¹ Ross, "The intuitive psychologist and his shortcomings: Distortions in the attribution process," 173-220.

still warranted, this does not reflect as poorly on their moral character. Around 50 percent of the entire prison population is there for drug offenses and fraud.⁶²

What about intelligence and knowledge regarding the political habitat? Once again, not every prisoner is unintelligent or politically illiterate. Someone like Bernie Madoff is arguably a genius, despite serving one of the most severe sentences for creating the most laborious and complex Ponzi Scheme ever seen. By quotidian standards, most prisoners that committed accounting fraud would be considered more intelligent compared to the average truck driver. Furthermore, education can be fostered in rehabilitative mediums. What about non-criminals? A Reuters/Ipsos poll concluded that one third of American voters don't even know the names of their party's congressional candidates after voting.⁶³ Should they be allowed to vote? This essay is not necessarily a promoter of prisoner voting rights. That being said, if prisoners cannot vote, neither should around one third of the population.

Corruption

There is an easy solve to state involvement. Just remove the state from the equation. The private prison exploded in popularity during the war on drugs in 1980's America.⁶⁴ Overcrowded state and federal prisons meant that some of the imprisonment services had to be delegated to a third party. Having a private company run a prison comes with some dire consequences. One of those is the inherent nature of unregulated capitalism, which is profit. A prison will be run by a company if the profit margins are worth the hassle. The cofounder of the Corrections Corporation of America, Tom Beasley, famously said when referring to prisons: "You just sell like you were selling cars, or real estate, or hamburgers."⁶⁵

In order to understand how a private prison earns a profit, a few key notions have to be discussed. The bottom line is that private incarceration facilities are paid by the government. This is rather advantageous for the state, since it can outsource administrative operations and hopefully pay a low market price per-inmate, per-day. If it costs the government 200\$ per day to incarcerate someone, it would be more than willing to pay 150\$ for private services. But how can a private prison justify these lower price?

⁶² Federal Bureau of Prisons. "Offenses."

⁶³ Caspani, "What's in a name? One-third of U.S. voters don't know candidates: Reuters/Ipsos poll."

⁶⁴ Provine, "Race and inequality in the war on drugs," 41-60.

⁶⁵ Guenther, "Prison Beds and Compensated Man-Days," 31-54.

Intuitively, in a market that aims at rehabilitating individuals, the private prison market would run itself out of existence. Willingness to work for a lower price can be explained by two factors. One has to do with cutting costs. These costs are usually associated with lower salaries and security features which in turn incentivises corruption and smuggling among prisoners and guards. This also translates into a lower budget for rehabilitative features such as therapy. Another reason is the phenomenon known as economies of scale. Introduced by Adam Smith, this term reflects the idea that the more units one produces, the better the profit margin becomes because of reduced costs.⁶⁶ This is explained by fixed costs such as rent and fixed capital being spread over each unit of production. In the prison industry's case, a unit of production is a prisoner, and a fixed cost could be the prison facility or the land. This naturally incentivises the private prison owner to incarcerate as many individuals as possible. Aggressive laws with no focus on reformation further motivate mass incarceration which justifies the existence of this industry. Some thinkers have theorized that the war of drugs was partly initiated for this very reason.⁶⁷ The prison industry is one of the few that are crippled by the natural laws of capitalism, especially considering that some are even publicly traded on the stock market. A for-profit approach cripples the very idea of morally efficient sanctioning, turning prisons into meat markets. The lack of privatisation in many European prisons is another reason they are vastly superior to American ones.⁶⁸ From a quantitative standpoint, recidivism rates are somewhere between 16.7 percent and 22 percent for private prisons, compared to state and federal prisons.⁶⁹ The abolishment of the private prison should be a clear solution whenever moral and ethical considerations have to be made.

Federal and state prisons come with their issues too. Even in Europe, although to a lesser extent, imprisonment can be seen as an easy escape from responsibility for public figures in cases of fraud or embezzlement. The money wasn't found, the inmate leaves prison early because of good behaviour, and everything is forgotten. Some American prisons are known to turn in microcosms of the criminal world, with easily corruptible correction officers and entire cartels forming behind the walls of the facility. I believe this to be because of a dissonance in assigning the right punishments.

⁶⁶ Smith, *The wealth of nations*.

⁶⁷ Cummings, "All Eyez on Me: America's War on Drugs and the Prison-Industrial Complex," 417-423.

⁶⁸ Mason, "International Growth Trends in Prison Privatization."

⁶⁹ Mamun, Li, Horn, and Chermak, "Private vs. public prisons? A dynamic analysis of the long-term tradeoffs between cost-efficiency and recidivism in the US prison system," 4499-4511.

Should All Criminals Be Imprisoned?

Not everyone that steps outside the boundaries of the law should be imprisoned. For both the purposes of rehabilitation and deterrence, it is rather inefficient to imprison some groups of criminals. Some examples will be used here. A 2016 census shows that there is little rationale to imprison around 39 percent of the current U.S prison population,⁷⁰ and I would argue that number is higher given the specifications that will follow. The main purpose of the restrictive four walls that describe a jail is to safeguard society from a select group of offenders. A violent offender is kept away to prevent re-occurring violent crime. Should someone that engaged in accounting fraud receive the same treatment?

The sex offender registry is an application of a permanent record that shows one's community and potential employers the type of sexual crime that an individual has committed.⁷¹ Every conviction is followed by some type of permanent record. That permanent record follows a certain individual for the rest of his life. So what is the intuition behind locking away an embezzler? Is that type of person violent? Generally speaking, there is no reason to believe that. The only danger such an individual poses to society is associated with committing a similar crime. This essay suggests an application similar to the sex offender registry for different types of crimes. If Frank killed an unarmed individual and Maurice stole some funds from his company, Maurice should receive no imprisonment, but constant check-ups, obligatory rehabilitative courses and placement on a fraud registry that prohibits him to own any business and is a signal to any potential employer. This is good enough deterrent for Maurice when it comes to committing fraud again. Imprisonment with Frank types only seems inefficient and potentially dangerous for Maurice's criminal record. Prison environments can be conducive to violent crime even in individuals that seemingly pose no danger. For someone like Maurice, the prison system can serve the opposite effect of deterrence and serve as a crime inducer. Chemical castration has been shown to be a much more effective deterrent in non-violent sexual harassment and statutory rape situations.⁷² There is an often ignored gap between a pedophile and a violent pedophile. Drug dealers and consumers are more often-than-not either addicts or illegal sales people. Should they be treated as potentially violent? Besides rehabilitation for addiction, should a small town drug dealer serve a prison sentence? This essay takes the position that he should not.

⁷⁰ Eisen and Inimai, "39% of Prisoners Should Not Be in Prison".

⁷¹ The United States Department of Justice. "National sex offender public website."

⁷² Tullio, "Chemical castration for child predators: Practical, effective, and constitutional," 191-197.

One could argue that the bail system already accounts for these types of crimes. The issue with this system is that it is not very effective in deterring crime and effectively treats the act of breaking the law as an expense on an income statement. A registry is a more permanent solution that will prevent an individual from engaging in said behaviour again.

The Cost of Rehabilitation

While the financial costs are similar, especially when adopting a long-run perspective, there are other significant costs to rehabilitation. One of those is general deterrence. While rehabilitation has been argued to reduce recidivism more than deterrence, it is not as effective in inducing a fear of committing crime in the general populous. Rehabilitation centres and even prisons that rehabilitate are seen more as a compromise for prospective criminals. In some extreme cases such as Sweden, it can be argued that a homeless individual would even be incentivised to commit a crime in order to receive better housing conditions in prison. It can be inferred that prevention should account for this effect, but what about the cases in which it does not? We are faced with two costs, and it is rather ambiguous which one is larger. Financially, rehabilitation is associated with larger short-term spending, whilst deterrence has direr long-term consequences. Furthermore, rehabilitation is associated with a lower preventive power while deterrence results in a significantly higher recidivism rate and lower social output from offenders. I believe this can be resolved by diving deeper into reformation.

Two important economic effects that take place whenever rehabilitation is concerned are moral hazard and adverse selection. Prisoners that receive rehabilitation may self-select themselves into these programmes and some may be incentivised to feign collaboration in order to receive a shorter sentence.⁷³ A very progressive environment is not as conducive to the detection of fraudulent reformation. The system is faced with individuals that are considered to be rehabilitated and end up returning to a life of crime. Can these individuals be detected? There are some measures in place that detect whether these individuals are genuine such as frequent drug tests. For those that do end up leaving the system, the registry mechanism described earlier would be enough of a deterrent, despite their seemingly lacking rehabilitation.

⁷³ Silveira, "Bargaining with asymmetric information: An empirical study of plea negotiations," 419-452.

Should everyone be considered for rehabilitation? I believe that they should, but that not everyone should end up receiving it. Sweden is a rather good example of what ends up transpiring when a large population is considered for rehabilitative efforts. Some cannot be rehabilitated. The prison population is nearing capacity which in turn results in increased violence and smuggling, projecting a long-term return to the U.S system.⁷⁴ What should the system then do with those that cannot be rehabilitated? I believe that classic deterrence for violent offenders and a restrictive targeted non-imprisonment model should be applied here. In the case of deterrence cases, the death penalty should be heavily under consideration, as described in section [II](#).

IV. Retributivism

The idea that criminals deserve to be punished was intentionally ignored in this thesis so far. This essay takes a hard negative stance against punishment for the sake of retribution. This section will attempt to analyse the evolutionary need for cruelty and revenge as well as describe why it is morally and economically lacking to mentally and physically torture prisoners for the sake of revenge and enjoyment. The term punishment is also rather problematic, since it has been historically used to describe any means of imprisonment, although it definitionally refers to enacting revenge.

The Nature of Cruelty

Is there a biological explanation for cruelty? The need for the dehumanisation of others is not only agreed upon by biological essentialists. Dr. Robert Sapolsky has argued that what may initially seem as unnecessarily cruel behaviour used to pose an evolutionary advantage.⁷⁵ The community leader has to display shows of power and domination, which are further enforced by cruel behaviour. The need for supremacy and dominance presently translated to dictatorial and inhuman behaviour. Cats will torment mice until they are exhausted and sometimes intentionally leave them alive for unnecessarily prolonged amounts of time. Bears prefer eating their prey alive. Small children and even some adults find joy in squishing bugs and caterpillars. Subjugation based on race, ethnicity, and nationality can be easily explained by this, although it is additionally reinforced by conservation instincts displayed in nomadic tribes. The Roman coliseum is a clear example of enjoyment derived from cruel treatment.

⁷⁴ The Local, "Violence on the rise in Sweden's nearly-full prisons."

⁷⁵ Sapolsky, *The trouble with testosterone: And other essays on the biology of the human predicament*.

There is a clear evolutionary component of human nature that civilised society passively, or sometimes actively, chooses to ignore. The Stanford prison experiment is a clear example of barbaric torture displayed by regular members of society.⁷⁶ Even individuals with seemingly high moral standards devolve into animalistic brutes that enjoy tormenting other when assigned a position of power. Other instances of this experiment have proven the same ideas,⁷⁷ although it is widely contested whether the cruel displays were morally licensed by the experimenter.

Why Vengeance?

So what should be done? Do we just accept our nature as glorified primates that dress up for the occasion? Clear strides have been made throughout humanity's history when it comes to suppressing and sometimes outright morally outlawing biologically-induced behaviour. To further advance argumentation, the fourth theory of punishment, Retributivism, has to be described.

Retribution is the oldest method of punishment. It is a theory that can be boiled down into the "Tooth for tooth, eye for eye" statement.⁷⁸ It is morally Newtonian in the sense that it deems appropriate an equally opposite reaction to any criminal action. It is the main adversary of rehabilitation, deeming that prisoners do not deserve fair treatment since they have broken the law. They are the recipients of society's wrath and vengeance, irrespective of what sadistic enjoyment may be derived from such treatment. It is quite hard to reconcile retributivism with the other 3 major theories discussed, since it is the only one that can be considered deontological. What retributivism supports may run counter-intuitive to what is actually the better societal outcome, so proponents generally do not care much for utility-based argumentation. In order to refute this approach, categoricals and a priori moral statements have to be employed.

Outcome-wise, it has been already argued why it is generally economically and morally ineffectual to deter rather than rehabilitate. Retribution is even more extreme than deterrence, so it naturally results in unfavourable societal outcomes by means of recidivism and culture. Thom Brooks coins the term "retributivist desert" to describe the main desire that the prisoner acts upon. His Unified Theory of Punishment was revolutionary in the field of

⁷⁶ Zimbardo, Maslach, and Haney, "Reflections on the Stanford prison experiment: Genesis, transformations, consequences," 207-252.

⁷⁷ Stevens, "The Stanford Prison Experiment."

⁷⁸ Walen, "Retributive Justice."

prison literature and will be further analysed.⁷⁹ The target of punishment is decided on a retribution basis, whilst the amount of punishment is a combination between the acts of retribution and deterrence i.e. sentence has to reflect severity of revenge and deterrence potential. Brooks attempts to create a hybrid theory of punishment, unifying terms such as guilt, rehabilitation, deterrence, cost, and prevention. This framework is heavily contextualised to offer different types of punishment depending on the crime. Whilst this theory is very close to what this paper advocates, there are a few key issues. Brooks does not delve into what drives retribution, but attempts to integrate it in his theory anyway. Furthermore, an artificial differentiation seems to be made between rehabilitation and deterrence, when statistically it has been shown that rehabilitation delivers better on crime reduction. This rings familiar to Hegel's hybrid theory of punishment, another rather anachronistic framework that is once again heavily dependent on context and demands the offender be punished according to his moral and rational nature.⁸⁰ Whilst Brooks does not shy away from arguing against threats such as relativism and uncertainty, the pieces fall into place rather conveniently without much circumstantial scrutiny. The importance of financial costs is additionally under-emphasised. This is understandable when preaching morals, but costs more often than not translate into fuel for the implementation of ethics.

The present study proposes that retributivism be entirely removed from a hybrid theory of punishment. The desire for revenge is explainable and existentially valid, but it is rather antiquated and morally lacking. The father of deontology, Immanuel Kant would disagree with inflicting pain, no matter who receives it. While restricting autonomy is a given in preventing crime, there is a distorted view that modern society has on punishment. Whether it be our biological nature, media reinforcement, or the use of the word "punishment", imprisonment is more seen as offering the morally bankrupt criminal what he deserves rather than safeguarding society. Behavioural analysis on principal-agent relationships has shown that rewarding is better than punishment in inducing good work performance, although punishment initially showed better results. This was once again due to the Fundamental Attribution Error where the employer did not realize that bad performance may be heavily contextualized and not necessarily dependant on emotional and ethical disposition. Rewarding employees for high performance incentivises high performance, punishing employees for low performance would in theory work if that bad behaviour was

⁷⁹ Brooks, "The Unified Theory of Punishment."

⁸⁰ McTaggart, "Hegel's theory of punishment," 479-502.

dispositional and not situational.⁸¹ In reality, low performance is often induced by unpredictable situations such as bad weather or technical difficulties.

There are three categories of individuals that retributivism looks at. The first are innocent people by any means, those have not committed a crime and have not been accused of it. Retributivism agrees that punishment for the innocent is nothing more than gratuitous harm. Secondly, there are those that either have been accused of a crime and are innocent and those that have committed a crime but do not display bad moral character judged by a theoretically agreed upon sample of citizens. Retributivism advocates for punishing offenders with good moral character or offenders with genuine guilt. Abstracting from the issue of uncertainty, punishing a redeemed individual seems pointless and nothing more than, once again, gratuity in cruelty. Still yet, the unified theory of Thom Brooks would not focus on retribution in these cases. Finally, there are those that are guilty and are not morally redeemable at the present moment in time. This is where retribution roams freely. I would argue that an inherent dehumanisation has to take place for offenders. They have breached the social contract and have to bear the consequences of society's attempt to protect itself, but not its reckoning. Reckoning is pointless. Beating a rabid or violent dog can only be enjoyed by the primate lying dormant in every human. If hedonic enjoyment at the expense of the other's well-being can be justified in some cases, then why are there measures in place against racism, hard physical torture, or rape? Why are the more extreme versions of torture prohibited? They are certainly punitive and satisfactory from the perspective of vengeance. Retributivism is a historical and evolutionary hang-up that has to be ignored into civilised non-existence. The feeling of wrath is explainable and unavoidable, acting upon it is quite similar to other forms of primate judgement such as xenophobia. There is an inherent human need to stray away from the unknown, from the different that subconsciously dictates how one would behave in the presence of another race. Despite this, society has learned to more-or-less accept these feelings and educate itself to reason against them. The same can and should be done with the need for cruelty. If those criminals go through rehabilitation and are morally restored, is retribution not acting against the morally, but not causally, innocent? If they cannot be rehabilitated, deterrence will end up acting in the same way as vengeance, with the key exception that the focus is now on preventing crime. The hard stance taken by

⁸¹ Andreoni, Harbaugh, and Vesterlund, "The carrot or the stick: Rewards, punishments, and cooperation," 893-902.

this section is that vengeance is never justified outside of consequential considerations, where the sentiment of vengeance can still be considered inefficient.

V. A Template for a New Theory of Sanctioning

The present paper will maintain some modesty and only present a template for what I believe that a new theory of safeguarding society may look. The word “Punishment” is formally defined by Oxford Languages as “the infliction or imposition of a penalty as retribution for an offence”.⁸² For that reason and for the purpose of this essay, I will move away from this term in favour of the term “Sanctioning”. Retribution will be notably excluded from this framework. In a vacuum, a criminal does not “deserve” a punishment.

1. Guilt

Intuitively, only those that have committed a crime and are found guilty by the least-biased legal system should be considered for a sanction. Furthermore, financial incentives of agents that are present in the justice system should not bias nor influence sanctioning. This effectively implies that the private prisons should be abolished.

2. Reducing recidivism

Protecting society from known risk-cases of potential recidivism is important. Generally speaking, and where there are no concerns for retribution, rehabilitation is the best approach to achieving this condition. In those cases, where rehabilitation was shown to be ineffective by an exhaustive and as cost-effective as possible system, means of deterrence should be applied.

3. Cost to society

Even if from some outcome-fairness perspectives criminals may not have any true power to determine their future and despite rehabilitative efforts, this should all be approached in a consequential manner. While I may not want to enact harm on a prisoner, charging society for imprisonment services is the opposite of rewarding non-offenders and only serves to increase antipathy towards offenders and the system. The most cost-effective approach

⁸² Oxford Languages, “Punishment.”

should be enacted, in light of future benefits rehabilitated felons may bring to society. Cost-wise, rehabilitation is similar to deterrence, although not at the same points in time.

4.Rehabilitation

This paper proposes rehabilitation as a replacement for deterrence as it serves the same purpose, but better. For the sole concern of re-integrating offenders into society, rehabilitation should still be a need of the prison system, although not at the expense of safety.

5.Prevention

Accounting for general deterrence should not be the responsibility of the prison habitat. Education, therapy, detection, and human rights should be the forces that safeguard non-offenders from becoming future offenders. The next sub-sections will only be concerned with those that cannot be rehabilitated.

6. Type of crime

Where rehabilitation fails or is expected to fail, violent offenders should be treated as per classic deterrence that involves imprisonment or the death penalty whilst non-violent offenders should receive specific sanctions based on the type of crime they have committed, sanctions such as semi-permanent registries, exclusion from certain areas of the market, monitoring, chemical solutions etc. Some non-violent crimes may lack in severity even to the extent that rehabilitation is not warranted and only the methods above should be applied to a lesser extent.

7.Certainty of crime

Making the distinction of certainty may seem rather problematic in a court of law and may have different interpretations and implications. A certain crime may be defined as an accusation with exhaustive evidence that can only be refuted by outlandish hypotheticals. In these cases, the death penalty should be implemented for cost efficiency. The term uncertain is rather lax. It is meant to suggest even those crimes that are agreed upon to have been committed by a certain individual, where there is not explicit evidence against that certain agent. Realistically speaking, these represent most violent crimes by the criteria defined above. In these cases, the safest measure that restricts the least amount of autonomy should be adopted. Convicts may choose between the death penalty and imprisonment.

8. Restoration

This feature is not considered as important but needs discussion. Those that can be considered reformed should eventually have their permanent records or registries removed from the public eye for privacy and market concerns, depending on the severity of the crime. This should only apply sparingly, as the risks associated with re-instating a convict as a law-abiding citizen may not be worth it for the rest of society.

Conclusion

My inquiry aims to offer a modest analysis of the prison system and contentious terms such as capital punishment and retribution. Western-European prisons clearly have an advantage when it comes to limiting recidivism. The death penalty's cost effectiveness in the long run is relevant, and its moral implications are not as grim as one might initially consider. Despite that, rehabilitation is better at achieving the aims of deterrence than deterrence itself, with a few key exceptions that prevention should account for. For those that cannot achieve rehabilitation, capital punishment should be considered as per traditional deterrence. Financial costs are quite relevant, even from a moral perspective, especially given that some offenders do not require imprisonment. There is an inherent human need for cruelty that can and should be constrained by reason in order to achieve a more developed civilization. There is no room for retribution in modern theories as it is ineffective and morally dubious. The word punishment is rather problematic when it comes to society's general views on sanctioning. The new template for sanctioning is merely a prototype that aims to move discussion regarding imprisonment and sanctioning away from retribution and closer to redemption and efficiency. The central question of this paper is rather complex and warrants further investigation, but I do believe that a valid starting point has been offered.

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