The Psychological Role of Retribution in Justice-Related and Punitive Decision-Making

Avani Ghosh

Dublin Jerome High School, Dublin, OH, USA

ABSTRACT

Justice is the idea that fairness and moral righteousness is upheld in society. When individuals act in ways that contradict the rules or laws of society, they are punished by others so that society can achieve justice. However, justice is extremely subjective and varies between individuals. Based on their perception of these concepts, the way in which individuals and even societies punish also vary.

This paper aims to explore the role of retribution--a significant pillar of justice--in the perception of justice and punishment.

Through critical evaluation of psychological studies on the issue and reference to secondary sources for supplemental information, this review concludes that retribution significantly guides justice-related and punitive decision-making.

This is mainly because individuals rely on heuristic-based System 1 thinking, which is associated with retribution. Additionally, individuals are likely to have stronger emotional reactions in these situations, thereby allowing their amygdala to influence their decision-making with retribution. Finally, schemas play a significant role in one's behavior. When individuals have seen examples of others being motivated by retribution to punish and attain justice, they learn and develop scripts for how to punish and attain justice based on retribution as well.

Understanding the human psyche and personal motives for justice is important as the ideas that uphold justice can also encroach upon it. Through studying this topic more carefully, individuals can better understand and critically look at legal systems of justice and whether retribution truly helps achieve justice, or if it is simply a psychological reaction for vengeance.

Introduction

Justice is a fairly ubiquitous concept as every country has its own ways of attaining justice when immoral or illegal actions have been committed. Every person has their own methods of determining what an appropriate course of action would be when dealing with those who have immorally acted. That being said, those approaches and methods vary based on person to person (Cullen et al., 2000, pp. 1-4). This brings the question of what leads one to decide what appropriate punishments would be?

The Dual Processing Model is used to describe how individuals make general decisions. It suggests that there are two systems of thinking: System 1 and System 2. System 1 makes intuitive judgements by employing heuristics, or general rules that are applied to larger contexts and is a relatively fast mode of thinking. System 2 is a more rational way of thinking that requires a comprehensive understanding of a situation in order to make a decision (Djulbegovic et al., 2012). There are theories that suggest emotion plays an important factor in decision making as it could increase dependence on System 1 thinking and impair System 2 processing when doing so (Lerner et al., 2015).

In order to determine what guides justice-related decisions, one must define the various approaches to justice. Generally, there are five pillars of justice. The two most explored in this paper are retribution and deterrence. Retribution is an approach to justice wherein people who have intentionally committed immoral actions are punished "in proportion to the moral magnitude of their intentionally committed harms" (Carlsmith & Darley, 2007, pp. 194). Deterrence is focused on preventing future crime, either by making the individual less likely to commit the crime in the future, or by making the public less likely to commit the crime because they would be punished the same way ("What Are The Five Major Types of Criminal Punishment?", 2021).

While many claim that all five pillars are intrinsically essential to criminal punishment, generally, human beings have biases when it comes to making decisions about criminal punishment. Moreover, one's motive to punish often guides how they punish (Carlsmith & Darley, 2007).

This paper will examine the question: *To what extent does retribution affect justice-related decision-making?* This paper concludes that people generally favor retributive justice in making these decisions as retribution is strongly associated with System 1 thinking. At the same time, the structures that create the foundation of how society delivers justice may play a role in developing schemas for how one should deliver justice.

Theoretical Framework

In order to investigate the role of retribution in justice-related and punitive decision-making, a myriad of primary sources were extensively researched and analyzed. These include studies such as Oswald, Stucki, and Gollwitzer (2010), Carlsmith et al. (2002), Weiner, Graham, and Reyna (1997), Grizzard et al. (2019), Goodwin and Gromet (2014), and Pickett, Nix, and Roche (2018). It was ensured that each study either operationalized both retribution and deterrence as independent variables, or just retribution, but could be applied to larger contexts. They provided direct data to accurately synthesize a claim regarding the role of retribution in processing justice. These sources were deemed to be credible as they came from accredited journals and databases that extensively review each work prior to publication.

Secondary sources were then used to supplement background knowledge--justice-related terms and their definitions--and applicable cognitive psychology theories that were then used to support the claim. Much of the background information about justice itself came from various studies, both psychological and sociological, to completely understand justice in modern society and what would be relevant to operationalize in this paper.

Review of Literature

Generally, retribution is prevalent in traditional legal systems and justice-related policies. Many researchers argue that because retributive ideology forms the basis of much of how society operates, retribution naturally affects the psychological processing of justice more than deterrence. These researchers have also created a multitude of frameworks to better conceptualize how humans actually process justice. Keller, Oswald, Stucki, and Gollwitzer (2010) suggest that the three determinants of classifying punitive motive include who the punishment is directed toward, whether there is more of a focus on positive or negative aspects, and whether it is forward-oriented--focusing on future effects--or backward-oriented--focusing on how the past affected the present. Because retribution seeks perpetrators getting what they deserve, it directs punishment toward the perpetrator, focuses on negative aspects, and is generally backward-oriented. In contrast, deterrence, which aims to prevent future immorality by making an example out of current perpetrators, can direct punishment toward both the perpetrator, who faces direct consequences, and society as a whole, who witness the punishment for the action and are thereby discouraged from doing the act themselves (Fondacaro & O'Toole, 2015, pp. 477-505).

Supporting Evidence

This question was approached in a myriad of ways by researchers Carlsmith and Darley. A study by Carlsmith et al. (2002) aimed to see which ideology, retribution or deterrence, was more dominant when one was tasked with assigning punishment for criminal offenses. 336 university students were asked to read descriptions of a crime committed and recommend a sentence for the perpetrator. To generalize the results of the study, three different versions of this study were carried out. In the first version, the extent of harm was manipulated across the vignettes to test how significant retributive factors were. For example, embezzling small amounts of money from one's workplace--a low retributive factor, hence requiring less punishment--versus illegally dumping toxic chemicals in a town's water supply--a high retributive factor, hence requiring more punishment. The level of deterrence was also manipulated based on the crime's difficulty of detection. An easy to detect crime has a low deterrence factor, hence requires less punishment, whereas a harder to detect crime has a high deterrence factor, hence requiring more punishment. In the second version, the deterrence factor was held constant, but the retributive factor, or morality of the crime, varied. In the third version, the retributive factor remained the same, but the deterrence factor, or publicity that the sentence would receive, changed. A myriad of questions were asked to assess each participant's opinion on appropriate punishment severity. The researchers found that participants were most sensitive to retributive factors when making punishment decisions. As such, retribution would be more dominant that deterrence in determining justice (Carlsmith et al., 2002, pp. 288-292).

The use of structured interviews standardizes the experiment, making the findings more reliable as the study can and has been replicated with similar findings. However, even though the same questions were asked across all participants, each participant likely had slightly different interpretations of the questions asked, causing discrepancies in the data collected. Furthermore, participants were aware that their responses were being recorded, so they may have been subject to reactivity, hence responding differently than what they would normally do in a real-world situation. Even though the experiment was replicated, it was replicated by the same researchers, making the experiment subject to researcher bias as well. Nonetheless, the study still provides a valuable insight into the framework for predicting what punishment severity is based on: retributive factors, such as the seriousness of the crime and the lack of mitigating circumstances, leads to more moral outrage, which increases the severity of the punishment in comparison to deterrence factors, such as the probability of non-detection and amount of publicity the crime would receive.

To continue exploration in this field, Carlsmith conducted another study (2006) that aimed to examine what sort of information participants engaged with when required to make a punishment decision. At the beginning of the experiment, participants only knew that a crime had been committed and they were responsible for recommending a sentence for criminal punishment. Participants were given 9 potential pieces of information about the crime, each being uniquely relevant to one of three approaches to justice: deterrence, incapacitation, and retribution. Participants could select from these pieces of information to learn a detail of the case from the perspective of the justice-approach-category, but were unaware of the classification of the information into these categories. They found that participants mainly chose retributive-related items. They also only chose deterrence-related items as a last resort, when no other options were available (Carlsmith & Darley, 2007, pp. 193-236).

The use of over, non-participant observations--wherein researchers were not a part of the observed group and made participants aware that they were being observed--ensures that the study was ethical. However, because participants are highly aware that they are being observed, they may have been subject to reactivity, or behaving in ways that they normally would not. They may also be subject to demand characteristics such as the expectancy effect, wherein participants guess the aim of the study and provide responses to please the researchers, or the screw you effect, wherein participants guess the aim of the study and attempt to destroy its credibility. They may also be subject to the social desirability effect, wherein participants provide answers that they believe will impress researchers, rather than expressing their true perspective. Additionally, because Carlsmith has

worked on several studies investigating retributive and deterrent punitive motives, it is likely that the interpretation of data is heavily subject to researcher bias, drawing overwhelming connections to reject the null hypothesis, despite the correlation not being as strong or prevalent.

A study by researchers Weiner, Graham, and Reyna (1997) further examined this question with the aim of investigating cognitive processes that influence decisions on criminal punishment. Each participant was told that they were a judge tasked with determining an appropriate punishment for someone who committed murder. They found that retributive motives were related to intrapersonal traits of responsibility and control, which were associated with emotions of anger and some degree of apathy. In contrast, deterrent motives were related to the trait of stability and had minimal association with any emotional reaction. The researchers also concluded that temporary emotion and context of criminal behavior mainly drives motive to punish, rather than more long-term intrapersonal traits (Fondacaro & O'Toole, 2015, pp. 477-505).

Another study by Grizzard et al. (2019) explored subcategories of retribution: equitable-retribution, under-retribution, and over-retribution. Equitable-retribution is when punishment is equal to the immoral action committed. Under-retribution is when punishment is absent or lacking for an immoral action. Over-retribution is when punishment exceeds the severity of the immoral action. They conducted a study with the aim of seeing if individuals had a stronger affinity for over-retribution than under-retribution. Participants were presented with 15 scenarios with different endings, each belonging to one of the three subcategories of retribution. They then rated whether they thought the ending was under-retributive, equitably-retributive, or over-retributive. They also mentioned the extent to which they would enjoy or appreciate. They found that there was a preference for equitable or over-retributive endings in comparison to under-retributive endings. The preference for equitable- or over-retributive endings correlated to increased feelings of enjoyment, which is considered to be a "low order" emotional need or reactive response. In contrast, the preference for under-retributive endings were related to appreciation, which is considered to be a "high order" emotional need or a deeper, more conscious response (Grizzard et al., 2019, pp. 1-23).

This study is particularly strengthened by the fact that it is a replicative study of Lewis et al. (2014) and corroborates the findings of the study, hence being extremely reliable. It also allowed participants to evaluate their emotions regarding the narratives on a spectrum using a 7-point Likert scale, eliminating binary choices and presenting a more holistic representation of emotion in relation to ending preference. That being said, it also has its limitations. While participants denoted the emotion they felt as they read the narrative, it is difficult to discern whether this was the reaction because of the morality itself, or because of the effect the ending has on the story as a whole. Arguments could be made to suggest that equitable- or over-retribution may provide more definitive endings, whereas under-retribution may provide more ambiguity in endings. If that is the case, then it would imply that the order of emotion and punitive motive guided by retribution mainly affects the psychological processing of justice as most people prefer when they are able to get their vengeance, regardless of whether it is fair to the perpetrator of the immoral action or not.

Counter-Evidence

Researchers Goodwin and Gromet (2014) elaborated upon the ideas of Carlsmith. While they acknowledge that the theory proposed by Carlsmith is the dominant theory in the field, they also address some of their own criticisms that question the validity of the study. Carlsmith et al. (2002) obligated the participants to make binary choices in their baseline tests, where participants learned about the two respective perspectives and then classified certain aspects of crimes and punishments to either retribution or deterrence. Each feature considered to be relevant to one perspective, the researchers argue, could also be relevant to the other. "For example, people are likely to be more concerned with deterring highly harmful crimes and crimes committed without extenuating circumstances than they are with deterring less harmful ones committed with extenuating circumstances" (Goodwin & Grommet, 2014, pp. 564).

In order to see if the same results would be yielded in a more accurate setting, Goodwin and Gromet replicated the study with some methodological revisions. Instead of participants making binary choices regarding what elements were relevant to each perspective, they rated the relevance of each factor used in Carlsmith's study to both retribution and deterrence. These factors include "magnitude of harm, perpetrator motivation, detection rate of crime, publicity of crime and its punishment, with the addition of crime frequency" (Goodwin & Gromet, 2014, pp. 565). This change resulted in significant differences as both the magnitude of harm and perpetrator motivation were seen as highly relevant to deterrence than any of the other factors that Carlsmith et al. had deemed relevant to deterrence--detection rate, publicity, and crime frequency--which suggests that while participants may have been highly sensitive to the magnitude of harm and perpetrator motivation, this may have also stemmed from their concern for deterrence, not just retribution as previously thought (Goodwin & Gromet, 2014, pp. 561-572).

The use of face-to-face surveys allowed the researchers to understand participant attitudes toward retribution and deterrence. It also enables participants to ask clarifying questions, which increases the reliability of the data as participants could fully understand what was being asked of them. Nonetheless, this study has its own limitations. As they responded to the survey, participants were likely subject to the expectancy effect or the screw you effect. As the authors of the paper do not mention any participant characteristics, it is unclear which is more likely in this case. Finally, participants may have also been subject to the social desirability effect, suppressing their true perspective and thereby skewing data.

Despite their criticism of the Carlsmith et al. study, Goodwin and Gromet support the idea that retribution plays a significant role in processing justice and producing a punitive motive as they evaluate a myriad of studies supporting retribution guiding punishment towards companies as well as animals. Although they are unsure on whether retribution is the primary motive to punish, they argue that dominant methods and approaches have identified features of certain crimes to be distinctive of either retribution or deterrence. But, reality is much more ambiguous than that, hence why their conclusion is more applicable to the real-world (Goodwin & Gromet, 2014, pp. 561-572).

Discussion

Based on the research discussed, it can be concluded that retribution affects the psychological processing of justice and punishment more than deterrence.

The role that emotion plays in decision making and how it may cause individuals to use System 1 thinking would explain the findings of Weiner, Graham, and Reyna (1997). Since retribution is strongly associated with emotions arousal in comparison to deterrence, any strong emotional reaction to an immoral action would immediately impair the rationalism of deterrence to a significant degree, hence allowing retribution to guide punitive motive instead, It also supports the findings of Grizzard et al. (2019) as the correlation between ending preference and order of emotion suggest that humans process different levels of retribution differently, affecting punitive motive. When "low order" emotions, such as enjoyment, are triggered, retributive motive is most likely to affect judgment as it is most intertwined with emotion. System 1 thinking is likely employed to a greater extent because it takes less energy and time to process this information, hence why retribution significantly affects how justice is psychologically processed.

A study by Buckholtz et al. (2008) used an fMRI to investigate neural circuitry involved in decision making regarding criminal responsibility and punishment. 16 participants were scanned as they determined how much punishment was needed for the criminal offender in 50 scenarios on a 9-point Likert scale. They found a correlation between increased activity in the amygdala, a part of the brain involved in emotional arousal, and a higher rating of punishment deservingness (Buckholtz et al., 2008, pp. 930-940). This presents biological support for the relevance of emotion in enabling retribution to guide justice and punitive processing as opposed to

deterrence. It ensures that the conclusion drawn throughout this paper is not a reductionist theory, even though it focuses on the issue from a metacognitive lens.

Another theory that supports this conclusion would be schema theory. Schemas are extensive networks of learned behavior created from one's prior experience and knowledge. Schemas are used to organize knowledge, assist recall, guide behavior, and predict what the individual should expect in a certain situation (Shea & Wulf, 2005, pp. 85-101). Schemas are created for nearly every social interaction, educational opportunity, and more. So, it is highly probable that individuals have created their own networks to navigate what appropriate consequences would be for immoral actions and why the individual feels the need to uphold justice in their own way.

For example, researchers Pickett, Nix, and Roche (2018) conducted studies to see how one's experiences with authorities upholding justice affect the formation of relational justice schema--a type of schema that explores the extent to which people are unbiased, respectful, and fair in their interactions with others in society. Since an individual's experiences are encoded and stored in their memory, this information is likely retrieved when they find themselves interacting with authority figures upholding justice. As they gave 6 to 7 statements to participants and asked them to rate the extent to which they agree with each statement based on a 5-point Likert scale, they found that those who have experienced more police mistreatment believe that society is less fair in their interactions with others in comparison to those who have experienced less police mistreatment (Pickett et al., 2018, pp. 97-125). If individuals use what they have learned throughout their lives to form opinions regarding justice, it is extremely likely that they use that same information to guide how they would behave when being an authority figure upholding justice themselves. Considering that justice systems in the real world are depictions of most individuals' ideologies, it can be argued that people develop more intricate justice-related schemas with retribution rather than deterrence, However, there is bidirectional ambiguity with this theory. It is unclear whether ideology affects policies and systems instituted, or whether these policies and systems are so intrinsically related to the foundation of society that individuals mainly learn and internalize concepts related to retribution to guide their thinking.

A study by Twardawski et al. (2020), however, argues that the affinity of an individual for retribution in justice-related decision making stems from the salience of the information presented. As the researchers presented a crime to participants and manipulated the salience of either: the offenders, the setting of the crime, or the crime itself, they observed a significant difference in how participants determined appropriate punishments. When the salience of the setting or offender were manipulated, participants seemed to use deterrence as they decided. However, when the crime itself was salient, participants seemed to use retribution to guide their decision (Twardawski et al., 2020). In this case, however, there was no clear ranking of which approach to justice is most influential in punishment decision making without manipulating the salience of crime elements. Nonetheless, the study provides significant insight into how individuals often rank crime elements based on how subjectively prominent they are, which affects the decision they make and the ideology they choose in doing so.

That being said, the legal policy in question mainly pertains to western countries. In fact, most studies either don't mention participant characteristics or where they took place. Those that do took place in western countries and studied western principles of justices, such as retribution and deterrence. So, the findings of these studies and the conclusions drawn in this paper may not be applicable beyond individuals in western cultures. This brings to question whether examining this issue through just a cognitive lens suffices, or whether a more accurate conclusion could be drawn when accounting for cultural considerations through a sociocultural lens.

It is also important to note that morality itself forms the basis of much of these arguments and methodologies used to study this topic. However, morality is incredibly subjective. Researchers use morality to create paradigms for experiments, but what the researchers perceive to be moral in trying to increase or decrease moral outrage, for example, may not align with what participants perceive to be moral. This fundamental subjectivity may lead researchers to interpret data in ways they believe to be true based on their own beliefs, but

may not actually be true for the participants they are studying, all of which are important to consider for future exploration in this area.

Conclusion

In conclusion, there have been a myriad of studies that support the significance of retribution in guiding the psychological processing of justice and developing punitive motives. This is likely due to how intricately intertwined retribution is to strong emotional reactions. They influence decision making as the individual becomes more dependent on faster System 1 thinking as hypothesized by the Dual Processing Model. There is also biological evidence to support this theory, ensuring that this claim is not reductionist in nature.

The dominance of retribution in this process may also be due to the fact that everyone develops schemas throughout their lives for a variety of situations and relationships. This could be applied to justice, where individuals use what they have learned from authority figures who uphold justice to do so themselves. Considering that retribution is the foundation for traditional legal systems, which are reflections of dominating ideology, it can be concluded that retribution is the main value of justice being used to address immorality. As a result, individuals are more likely to have more experiences and knowledge to encode in their justice schemas regarding retribution, rather than deterrence.

Finally, the salience of certain elements in a crime presented to people may affect the justice-related ideology one uses in making a punitive decision. Considering that emotions and schemas play a significant role in shaping how one processes information, it is likely that they affect what one perceives as prominent or salient. As such, each of these three psychological concepts are important to understand because they are interconnected and seem to play a significant role in justice-related decision making.

That being said, most of the studies regarding this topic take place in western countries. In fact, it could be argued that retribution and deterrence being pillars of justice themselves are simply western ideas, rather than global ideas. This would mean that the significance of retribution in the psychological processing of justice would only apply to western cultures and cannot be generalized to other groups of people around the world. Further studies could investigate cultural differences that may account for legislative and systemic differences. Another interesting area of exploration would be the effect of these punitive motives on the perpetrator of immoral actions as well. This would explore whether more productive societies are created when perpetrators are punished with retributive motive, or if other motives, and therefore actions, would be more effective in creating positive contributors to society.

Acknowledgments

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