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# Rethinking the Goal of Imprisonment

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## **ABSTRACT**

Upon completing a prison sentence and returning to society, an incarcerated individual is oftentimes not equipped to return to society. There are extenuating circumstances that lead a person to commit crime, such as poverty, mental illness, class and race disparities. However, an individual cannot act outside the circumstances within hir life. In order for an individual to change hir actions, the individual must receive what I call positive causation in order to replace the negative causation that led hir to commit a crime. However, the current system of imprisonment does not effectively address those extenuating circumstances. This is not effective for it does not teach people the reasons behind why they should not commit crime. On the other hand, rehabilitation teaches people to reform their actions and better prepares them for proper functioning in society. It is better for society overall if the ill-functioning members of society (which are ill-functioning largely because of the structure of society) are taught the proper lessons to return to society.

## **KEYWORDS**

Philosophy of action, positive and negative causation, rehabilitation, incarceration, punishment

## INTRODUCTION

Contemporary American imprisonment serves two purposes. One is to remove the convicted individual from society for the sake of other members of society. The second is to punish individuals through imprisonment in order for them to pay for their transgressions.<sup>1</sup> I find a major flaw in the second purpose. The current prison system mainly focuses on placing the individual in prison for a set amount of time, which implies that once the time served is completed, the convicted individual will have supposedly paid hir<sup>2</sup> debt to society, and is subsequently released from prison. The prison system, thus, operates by an implied goal of change, because upon release, a convicted individual is not supposed to commit crime again. Although, upon completing a prison sentence and returning to society, in many cases the convicted individual is not equipped to return to the community, for imprisonment by itself does not correct an individual.

In consideration of the unfortunate situation of the inefficacy of the prison system, society would benefit from redirecting the focus from punishment to focusing more heavily on rehabilitating the convicted individual during and after imprisonment. I argue from the perspective of our current American prison system, and therefore do not focus on changing current laws, but rather how the laws are implemented. However, there are definitely problematic laws, such as it is illegal to sell milk in a liquor store or it is against the law to pass a horse on the street, both in the state of Indiana. Instead, I argue for increasing the efficacy of the goal of imprisonment for the sake of the convicted individual, and hir friends and family, and society. We should make individuals face the consequences of their actions but discontinue punishing individuals, and as an alternative, insert what I deem positive causation to replace negative causation. I hope to argue convincingly for a shift in the goal of imprisonment by putting convicted individuals' situations and backgrounds into perspective, by questioning why we punish as well as flaws in implementation of punishment, by explicating how free will fits in this picture, and examining some examples of positive causation.

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1. I do not examine any contention with current laws or reasons for incarceration, such as possession of drugs. For the purpose of this paper, I leave alone the debate about what ought and ought not to be punishable by law, as well as what deems an incarcerated individual a threat to society.

2. I utilize gender-neutral pronouns ze (subject) and hir (object).

## LOOKING AT THE SITUATION

Class, economic, and racial inequalities are some of those factors which shape an individual. These inequalities are the very kind of negative causation that I find drives an individual to criminal propensities. Bruce Western and Becky Pettit conducted a survey in particular on social inequality and imprisonment (Western and Pettit 2010, 8–19). First, it is no surprise that many of the individuals who commit crimes disproportionately suffer from economic and social disparity. Not to mention, the imprisonment of particular individuals has an effect on their families and contributes to perpetuating disparities (14). Men are imprisoned at far higher rates than women, leaving families without fathers, partners, and brothers (9). In particular, the sons of imprisoned fathers are more likely to end up in jail as well (15). Furthermore, Latino men and black men are arrested at rates far more than white men, which has an effect on racial inequality (10). Those who have been imprisoned also are significantly more likely to have been high school dropouts (10). Those who are imprisoned are more likely to come from poverty, and upon release, face higher unemployment, which is more pronounced for black men (13–14). Bruce Western and Becky Pettit conclude, “[o]ur perspective, focused on the social and economic inequalities of American life, suggests that social policy improving opportunity and employment, for young men in particular, holds special promise as an instrument for public safety” (18). Moving away from statistics, I would like to examine the problem through philosophical theories.

## THE PROBLEM

Jeremy Bentham argues from his utilitarian perspective maintaining there are several reasons why we should not punish at all, based on the expected utility from punishing an individual (Bentham 1995, 541–546). While I do not espouse utilitarianism as the basis for my proposal, I do find that Bentham has some quite useful critiques. I will focus on just one of his, which is that punishment may be ineffective from deterring future undesirable actions, and hence the guilty individual should not be punished. Bentham states, “where, though the penal clause might exercise a full and prevailing influence, were it to act alone, yet by the *predominant* influence of some opposite cause upon the will, it must necessarily be ineffectual; because the evil which he sets himself about to undergo, in the case of his *not* engaging in the act, is so great, that the evil denounced by the penal clause, in the case of his engaging in it, cannot appear greater [sic] (543–

544). Bentham is saying, in cases where there is a stronger motivation to commit the crime rather than not, punishing the individual does no good because it does not deter the individual from committing a crime. Hence, if a punishment were insufficient to overcome the temptation to reoffend, then it would be prudent to direct our focus to interventions that target the underlying motivations of criminal behavior instead of imposing disincentives that merely hinder criminal propensities. Bentham is speaking of punishment in a different sense than I am, for while I think it is still necessary to incarcerate persons, the incarceration need not be “punishment.”

Unfortunately, it is common in our contemporary prison system to incarcerate without reference to underlying criminal propensities in many individuals’ lives, such as poverty, mental illness, class and race inequalities, among other issues, which led individuals to commit crimes. This is not to say that if we identify the influences that contributed to someone committing a crime, that we will become sympathetic to the extent that we excuse individuals from facing consequences. Instead, the individual would be convicted of the crime, and receive rehabilitation appropriate to the individual’s situation. This would involve psychological and psychiatric treatment, as well as participation in support groups and 12-step programs, both during and after incarceration. In this way, imprisonment would remove the threatening individual from society and address the criminal propensities underpinning their illicit behaviors. On the other side, today’s prison sentences entail treating the surface issue and hastily labeling individuals as criminals, which does not get to the causes of the unlawful act, and is thus ineffective, as countless studies of high recidivism rates demonstrate.

### **OBJECTION**

Now, it might be that fear of punishment has an important role for society, namely, it deters individuals from committing crimes, and insofar as it accomplishes this goal, it can be said to have some efficacy. Nonetheless this concern comes from the perspective of general and specific deterrence, the two theories of deterrence in philosophy, both of which are ineffective through the prison system (Hinman 2013, 138–139). General deterrence is punishment that intends to prevent members in society from committing crimes due to negative consequences, such as prison. However, general deterrence is also enforced by “family, religious institutions, schools, teams, [and] civic organizations,” which encourage group

members to be law-abiding citizens, and often these groups are the primary form of deterrence in an individual's life, rather than the prison system (138). Specific deterrence is punishment that intends to prevent a convicted individual from committing crime again. Specific deterrence has more potential for decreasing crime, for it focuses on the individual, and coupled with positive causation, can reduce the propensity for criminal activity. This is a way in which the prison system can address the issue directly. On the other hand, fear of punishment is better realized by groups outside the prison system.

### **THE "CRIMINAL"**

Now, I want to take a look at the "criminal" who commits a crime. Not surprisingly, almost all of us break the law occasionally, whether it is an illegal U-turn, neglecting to wear seatbelts, or remaining quiet when a store clerk makes a monetary error in our favor. A couple more serious laws that are commonly broken are consuming alcohol and using nicotine before the legal age. These acts are illegal, and truly portray many of us as criminals. However, it does not seem quite right to compare minor departures from the law with more severe crimes. Most of us draw a line between minor crimes and severe crimes.

Karl Menninger provides some insight in the matter of why some individuals are lead to commit more severe crimes (Menninger 1991, 478–485) He says, "Why aren't we all criminals? We all have the impulses; we all have the provocations. But becoming civilized, which is repeated ontologically in the process of social education, teaches us what we may do with impunity" (480). That is, we all have impulses to break rules when the rules contrast with our desires. While some individuals give into impulses and speed or consume alcohol before the legal age limit, a few individuals commit more heinous crimes, which many of us find unacceptable. I find that we all experience different series of causation in our lives, some more negative than others, which can help clarify why some commit more heinous crimes.

Menninger states, "rape and other sexual offenses are acts of violence so repulsive to our sense of decency and order that it is easy to think of rapists in general as raging, oversexed, ruthless brutes...some rapists are. But most sex crimes are committed by undersexed rather than oversexed individuals, often undersized rather than oversized, and impelled less by lust than by a need for reassurance regarding an impaired masculinity" (481). It might not sit well with

some individuals to see the perpetrators of crimes as suffering individuals, at times even victims; but I believe this is exactly the case. In fact, many sex offenders were sexually abused at one point in their life. This is not to say that all individuals commit crime and harm others merely as a result of previous harm done to them. However, there is a prevailing tendency among criminals that suggests this effect, and this should be addressed in the prison system. Effectively deterring and rehabilitating convicted individuals based on previous causation in their lives should be the goal with the prison system.

### **DETERMINED TO CRIMINAL LIVES?**

Now, as I have been claiming, the circumstances of our lives affect our propensities later in life, and I have been speaking in terms of inserting positive causation to undue negative causation, but to examine this more closely I must engage in issues concerning free or unfree choices to criminal lives. In philosophy of action, the debate is between free will and hard determinism, with compatibilism as a middle ground. I will focus on hard and soft determinism for this paper. Hard determinism says all actions are due to previous causes and an individual could not have acted otherwise in that situation, while soft determinism (compatibilism) says actions are due to previous causes though that does not exclude free will.

W. T. Stace, a compatibilist, states that "*common usage is the criterion for deciding whether a definition is correct or not*" [sic] (Chaffee 2013, 186). He argues that our lived experiences reflect that we think of our choices as being free, and hence hard determinism cannot truly be accepted since we think and talk as if we make free choices (185–186). I quite agree with this point, especially since free will is a term invented by humans to describe particular human phenomena, I see the term free will as relative. Free will points out that there are some actions that are carried out with more control of the agent, which would be called free, and others carried out with more control of the agent, which would not be deemed free choices and actions.

Stace uses an example of Gandhi fasting and a man in the desert fasting (186). There is some sense in which Gandhi has more control to fast compared to the man in the desert. For Stace, free choices "are those that are not compelled by forces or circumstances external to the individual" (189). Another example is one in which a jury deliberates about the guilt of a prisoner (187). The prisoner confesses due to beatings received from the police. The prisoner claims he did

not sign of his own free will, and one jury member objects that there is no free will and it does not matter that prisoner was determined to sign the confession, for everyone is determined. These examples demonstrate that there is something amiss about discussing free will and determinism in this traditional sense. Hard determinism has to face the claim that since all actions are determined, it makes no difference that the prisoner was forced to sign the confession. Gandhi's fasting is just as determined as a man fasting in the desert, so one can make no judgment about Gandhi's fast.

Feminist literature dealing with enforcement of patriarchal standards adds to the picture of a relative use of the term free will. There are many relevant and powerful feminist insights, which I will summarize as the following (216).<sup>3</sup> Critiques of patriarchy claim that while an individual may make a decision without direct external forces, that individual may still choose and not act freely due to internalized roles of oppression. For example, an oppressed woman may internalize male standards of beauty and dress accordingly, though it is not true to say that this is always an autonomous decision. Through a lack of autonomy from internalized oppression, the individual is still not acting freely. Likewise, an individual who experiences poverty, abuse, family troubles, lack of opportunity, no support and encouragement, and so forth, does not actualize autonomy to the same extent that other individuals do. And these types of individuals often end up in less advantageous situations, like being unemployed or not furthering their education, all of which are heavily correlated with committing crime. Thus, while someone may commit an action without direct manipulation, there are factors that shape an individual that severely limit the ability to make a free choice.

Overall, I find that a relative use of the term free will, which takes into account both external and internal constraint, provides a more accurate description of what we mean when we talk about free choices. It remains highly debatable whether the logistics of every choice and action is uncontrollably determined by previous choices and actions, and the solution does not seem obvious. But there is still a sense in which some individuals actualize more autonomous decisions compared to others. Many individuals who commit crimes from internalized systems of oppression will greatly benefit from rehabilitation. Thus, many convicted individuals are not acting freely compared to other individuals. The

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3. See Marilyn Frye and *The Politics of Reality* for more information.

solution for many of these convicted individuals is to give them autonomy and enable free choices and actions.

### **WHY DO WE PUNISH?**

At this point, someone might respond with a Kantian concept of right and wrong, claiming that wrong actions should be punished by virtue of the action being wrong, regardless of how autonomous an agent is. An unjust act is punished merely because of the guilt of the individual, which does not allow punishing for the sake of the convicted individual or the sake of society (Rauscher 2012). While an intuitive definition of justice seems to be that justice is served merely by punishing wrong actions, and rehabilitation may function as a byproduct, I argue for the exact opposite. A convicted individual should face consequences for the sake of the individual, other individuals affected by the crime, and society, with punishment as a byproduct. This is because the laws in a society do not exist for the excuse to punish those who break the laws; rather, the laws are intended to foster a well-functioning society. Solely punishing actions because they are wrong does not foster a well-functioning society, which is demonstrated by continuing criminal propensities in convicted individuals and high recidivism. My shift in the goal of imprisonment involves making individuals face consequences for their actions, not punishing those essentialized to criminal status, along with correcting propensities through rehabilitation, which is more on target with the intention of having a well-functioning society.

Furthermore, the principles of justice that support punishing wrong actions are unfeasible. Equivalent proportionality is one such principle we currently hold in the American justice system (Hinman 2013, 136). Equivalent proportionality says that the individual who breaks the law receives punishment in a manner equal to harm done, such as the idiom "an eye for an eye," which Kant supports. While equivalent proportionality has some merit, ultimately it does not work as a guiding principle. If a thief takes one million dollars, then the principle of equivalent proportionality would mean that the individual should return the million dollars, but should ze pay interest as well? How much interest? If an individual kidnaps someone, is the penalty to kidnap the kidnapper? Alternatively, consider a case of murder. Some people argue proportional punishment is death. However, should it be death in the way that the victim was murdered? What if ze had multiple



victims? The principle of equivalent proportionality, though it may serve some purpose, is inherently flawed, for we rarely actualize it.

Another prominent principle is the principle of retribution (136). An individual makes restitution to society by serving a particular amount of time in prison, so called "paying one's debt to society." Again, while this principle does have a degree of truth, it is quite arbitrary, for we cannot measure what counts as retribution. First, we cannot reasonably connect a particular act such as stealing with a particular sentence of X amount of years. It would be true to say individual who steals a candy bar should receive a shorter sentence than stealing a car. However, with the principle of retribution we also need to factor in the age of the individual, the ease with which the money or goods were taken, the level of premeditation, the number of individuals harmed, how severely each individual was harmed, and the overall damage of the crime. Thus, when we get into discussions of evaluating restitution for breaking the law, we use arbitrary methods of measuring what is the fair amount of incarceration.

Therefore, the principles of equivalent proportionality and retribution are flawed. They are abstracted from the reality of the situation and do not foster an efficacious justice system. Punishment can never undo a past action, and while victims' friends and family may call for justice to be served by those principles, in most, if not all cases, that type of punishment does not offer the healing that is needed, because punishment is not a source of recompense. So while these voices should be heard, they are not the only judges in the matter. We need to take into consideration the factors that led an individual to commit a crime, for the sake of reducing crime rates and bettering the individual during and after imprisonment. The reason to do this is not only for convicted individuals, but also for the sake of preventing the propagation of more crimes and convicted individuals.

### **REAL EXAMPLES OF INSERTING POSITIVE CAUSATION**

Now I would like to provide a few examples of inserting positive causation which attempts to deal with issues of inequalities, which are an improvement over current mainstream principles of justice. In Brownsville, Brooklyn and in East Harlem, there is a rehabilitation program ran by the NYPD called (JRIP) Juvenile Robbery Intervention Program ("NYPD Offer Last Chance Justice by Monitoring Teens" 2013). The JRIP involves preventative action in which the officers follow-up on juveniles arrested for stealing to make sure they stay out of trouble. Joanne

Jafee, the housing bureau chief for the NYPD, started this program in 2007 to respond to large amounts of robberies in public housing units, mostly robberies committed by teenagers. The program is meant to inform the previously arrested minors that if they steal again, the consequence is more jail time. And, those involved with the program also seek to give resources to the minors and their families. Joanne Jaffe states: "we're talking about young kids, young adults that have an opportunity...[and]... we have an opportunity to help them and their families change their lives." The police officers who visit the members of the program provide opportunities by encouraging them to apply for jobs and finish school, as well as by connecting families with childcare options. A small-scale program with just a little over 300 teenagers, JRIP is one type of rehabilitation that is needed for those convicted of crimes. In poor neighbors with little resources for change, these officers insert positive causation into the lives of individuals dominated by negative causation. I think it is summed up well by a member of JRIP, who said "I don't see things the way I used to. I see the bigger picture in life basically the typical stuff, get a job go to school. I wasn't really thinking like that at the time. I was just a moment type of guy. If I want it, I take it. But not no more. Not no more" [sic].

An initiative for individuals currently in prison, called (RSVP) The Resolve to Stop the Violence Project, is another instance of inserting positive causation, which resulted in significant drop in recidivism rates (Gilligan and Lee 2005, 145). In 1997 the San Francisco County Sherriff's Department started the initiative to reduce recidivism rates and to promote offender accountability which included victim restoration and community involvement. The programme groups spent 8, 12, or 16 weeks in RSVP and the recidivism rates for programme groups were lower for each period of participation compared to the control group (146). Gilligan and Lee state that, "all factors were stacked against RSVP: its subjects were of a lower age group, of a greater racial minority constitution, longer in lengths of incarceration, lower in age of first arrest, and higher in rate of arrests for violent charges" (147). However, overall the RSVP showed that participants benefited by a significant decrease in recidivism, which according to RAND must exceed 10% (147). The recidivism rates were less significant for drug-related arrests, as well as for released individuals who were not able to find a job or did not participate in follow-up programs after release.

Fortunately, there is also hope for those who retain high recidivism rates due to drug use. Judge Steven Alm initiated a program called HOPE, Hawaii's Opportunity Probation with Enforcement, which he describes as "parenting 101" ("A New Probation Program in Hawaii Beats the Statistics" 2013). "A lotta the folks in the program, I think, grew up in families...where there wasn't a lotta structure" [sic]. This program focuses on those at highest risk of repeating offenses, which means 80% of those in the program are addicted to alcohol and drugs. HOPE, then, imposes regular and random drug tests with immediate consequences for failing a drug test or failing to report into a supervisor at appointed times. Also, when someone fails a drug test and admits their mistake, judge Alm will show more leniency. A study conducted 5 years after the program began found that "HOPE probationers were half as likely to be arrested for new crimes, or have their probation revoked. They ended up spending about half as much time in prison. And were 72% less likely to use drugs." John Kema, a participant of the program, said that his experience in HOPE was the first time he was held accountable for his actions and consequently decided to turn his life around, and now he mentors others in need of turning their life around due to addictions. Kema is one prime example of an individual who was influenced by negative causation, but through HOPE received the proper positive causation that changed his actions and propensities.

## **CONCLUSION**

These studies as well as numerous other studies have shown that the attempt to give individuals positive causation results in lower recidivism rates compared to those imprisoned without rehabilitation programs. This use of rehabilitation programs can give individuals options besides crime, such as providing job opportunities and assistance pursuing educational opportunities. Other common issues among prisoners, such as mental illnesses and addictions, can be aided through psychological and psychiatric treatment. Inequalities such as class, race, and family issues, all set up a series of negative causation in an individual's life. While it is less clearly the case that one is determined to a life a crime, it is clear that an individual has less autonomy. These individuals did not choose a life of disadvantage that lead them to crime anymore then certain people of privilege chose a life of advantages. Thus, the line between being born among advantages or disadvantages is quite thin, and to me it is quite sensible to help individuals who

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have been unfortunately disadvantaged. Our current prison system is ineffective, and the implied goal of change should be brought to the forefront. We should no longer have the mentality of punishment, but rather of making individuals face the consequences of their actions and insert positive causation. We need to address the influences that drove individuals to commit crime, and then to incorporate effective methods for change, for the good of society and the good of the convicted individuals. I'd like to close with some wise words from the infamous Bertrand Russell in A.J. Ayer's biography of the wise man. "The only justification for praise or blame, reward or punishment, is that we expect to influence future choices...What is not justifiable is any retributive idea of punishment" (Ayer 1988, 121).

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