

# Crime and justice

## Many argue: 'Why punish?'

**(EDITOR'S NOTE: This is the seventh of 15 articles on crime and justice in America. They constitute the text for an Oakland University course taught by Prof. Jesse Pitts. The series was written for Courses by Newspaper, a program of the University of California, San Diego.)**

**By GERTRUDE EZORSKY**  
Criminal law is often seen as an instrument of social justice by persons who are not really aware of its limits or of the philosophical disputes concerning its proper purpose.

The criminal law is only a part of a broader system of legal justice. When a worker is injured on the job, the civil law may require that the employer compensate the worker. But when individuals commit "crimes"—assault, arson or murder—they are liable also to the penalty of imprisonment.

**IMPRISONMENT** of the convicted lawbreaker symbolizes moral condemnation by society of the crime. Such punitive treatment is intended not merely to confine, but also to cast the criminal so confined into disgrace.

Hence, offenders who do not deserve them—for example the insane or children—are usually not condemned as criminals but excused from punishment.

Criminal law, say some philosophers, contributes to the moral education of humanity. The moral denunciation expressed by imprisonment presumably deepens our awareness that acts such as murder, arson or kidnapping are morally reprehensible.

But critics claim criminal law induces an opposite effect: It encourages feelings of vengeance and—in places of imprisonment—outside of society—brutality at home.

Moreover, our law is not even-handed. An innocent defendant, falsely accused, is, if unable to pay for skilled counsel, more likely to be convicted.

**SHOULD ALL ACTS** believed immoral by the community be prohibited, as crimes, by law? Remember that in the past, witchcraft was believed immoral by some communities and punished dreadfully, by law, as a crime.

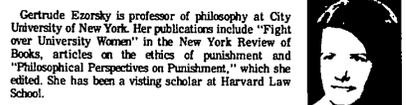
Today criminal law lags behind changing moral attitudes, especially in such matters as sex and drug-taking. In many states, most forms of gambling are still a criminal offense.

Should the law, like a parent, coerce an individual for his or her own good? Some state laws, for example, require a motorcyclist to wear a helmet. But the attorney general of New Mexico dissented from such "legal paternalism" by stating that a bare-headed cyclist may injure himself but not "his fellow man."

OR, AS THE 18th century philosopher John Stuart Mill declared, law may coerce a person "to prevent harm to others." But "over himself, the individual is sovereign."

Mill would insist that "victimless crimes"—gambling, homosexual acts, drug-taking—are private matters, "not the law's business."

But is it true that cyclists who refuse



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helmets can only hurt themselves. . . . If injured, they—like motorists who disdain seat belts—may cause suffering to their families or need hospital care at public expense.

Similarly, one's use of hair sprays may hurt others if such sprays contaminate the atmosphere. Should their use be made a criminal act. There may be far fewer private matters in our society than are dreamt of in Mill's philosophy.

**ACCORDING TO** the utilitarian philosopher Jeremy Bentham, the criminal law, like all human institutions, should be fashioned to yield "the greatest happiness," or the least unhappiness, for the community. The threat of punishment, utilitarians hope, would deter a rational person tempted to break the law. Hence that threat reduces the misery and insecurity wrought by crime.

A utilitarian, appraising the value of legal punishment, is like an individual contemplating a painful dental procedure. By submitting to pain now, the dental patient avoids greater pain in the future.

The utilitarian view punishment in a similar fashion: By inflicting misery on criminals now, society prevents greater future misery to potential victims of crime.

Many persons measure the success or failure of legal punishment by its effectiveness in reducing crime. But it is hard to tell whether legal punishment is effective as a deterrent. How often does the threat of imprisonment stop the criminal (once punished), or the ordinary citizen (never punished), from breaking the law.

Do you know how many crimes you would commit in a society without legal punishment. Even if punishment accomplished the deterrent task

punished because they deserve it, and for another reason. Some critics see retributive punishment as vengeance—an uncivilized response. But for a retributivist philosopher, punishment is administered not to take vengeance but to balance the scales of justice. Even the punished criminal, claims Kant, knows in his heart that justice has been done.

On some occasions, most of us think like retributivists. Recall the Nazi war criminals convicted at Nuremberg. Suppose that punishing them did not prevent similar crimes or, indeed, do any future good for society. Should they have been excused from punishment.

Many would, in this case, join with the retributivist: Punish them because they deserve it. **BUT SHOULD** ordinary offenders be punished, just because they deserve it? Suppose, for the sake of argument, it were proven that punishment did not really reduce the extent of crime. Yet temporary crime reduction

accomplished by isolating offenders in prison was canceled by the tendency of former criminals—to employable retributivists. Recall the Nazi war criminals convicted at Nuremberg. Suppose that punishing them did not prevent similar crimes or, indeed, do any future good for society. Should they have been excused from punishment.

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Israel Karp, 58, is released from a New York State prison where he served 51 years for a second-degree murder committed when he was 17. Philosophers disagree on whether such punishment can be justified.

obligation to pay for penal institutions. Why support a prison instead of a hospital unless prisons, like hospitals, are necessary to prevent human misery, more crimes, society has no moral

(Continued on page 11A)

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