



Punishment

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Retributivism is a deontological theory of punishment that calls for the deserved punishment of a guilty offender in proportion with his moral blameworthiness for a past offense. It is often referred to as punishment based on ‘just deserts’, and it contrasts with consequentialist theories that ground punishment in its potentially beneficial future consequences. Rich philosophical debate surrounds the appropriateness of retributivism. From a psychological perspective, the key question concerns whether retributivism underlies ordinary individuals’ desire for the legal punishment of wrongdoers. Past research in social psychology has answered this question in the affirmative. However, much of this existing evidence requires a new look, because it is premised on a fundamental ambiguity. We review alternative evidence for the existence of retributive motives from lesser-known correlational studies, and from studies of the punishment of companies and animals. We also explore the links between retributivism and restorative justice—an alternative justice approach that focuses on repairing the harms caused by an offense. Although often cast as diametrically opposed to one another, retributive and restorative justice in fact share more in common than is often supposed. Both are premised on notions of deservingness, and their goals can be achieved by the same action (i.e., retributive punishment can restore victims). In all areas of the research we review, more work is needed to better understand: retributivism directed at human offenders, the commonalities and discontinuities between retributive and restorative justice, and how the notion of desert structures moral life and thought more generally.

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INTRODUCTION

Punishment is a pervasive and ancient feature of human societies. In modern society, punishment occurs in multiple guises and for multiple purposes. Parents and teachers punish children to educate them. Authority figures punish subordinates to discipline them. Friends and acquaintances employ social punishment to communicate disapproval. Punishment occurs even in sports, such as soccer, when referees send players off for violent fouls, or in baseball, when players retaliate against the opposition with pitches

aimed at the body.¹ And, of course, courts of law punish criminal offenders, potentially for a variety of reasons. Punishment is therefore a multi-faceted and complex social phenomenon, and it naturally calls for understanding by psychologists and other social scientists.

The focus of this article is on legal punishment, namely, the ‘imposition of something that is intended to be burdensome and reprobative, on a supposed offender for a supposed crime, by a person or body who claims authority to do so’.² In particular, the focus is on why ordinary individuals see such punishment as justified, what drives their desire to see it enacted, and what alternative means of achieving justice they also find acceptable.

Legal punishment has sometimes been thought to require special justification, because it can impose severe harm on an offender, and therefore constitutes an evil in its own right. Jeremy Bentham famously

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thought that because punishment added to the total misery of the world, it must be outweighed by a countervailing benefit. Accordingly, a variety of forward-looking consequentialist justifications for legal punishment have been developed which focus on its potential future benefits: its ability to deter, incapacitate, and rehabilitate offenders. In addition, a range of more subsidiary consequentialist benefits have also been articulated, including that punishment provides victims and society restoration or catharsis, that it communicates disapproval of wrongdoing and reinforces important norms, and that it quells desires for revenge and retaliation.³

However, others have argued that legal punishment requires no potential future benefit. This perspective is based on very different, backward-looking considerations,^{4,5} namely that punishment is justified because it provides retribution—i.e., just deserts to offenders for what they have done in the past. This basis for legal punishment has intuitive appeal for some theorists, but it is also controversial due to its lack of concern for future benefits and its potential legitimization of darker human impulses for revenge and retaliation. But, as we shall argue presently, the wholesale rejection of retribution on these grounds neglects how deeply retribution (specifically the notion of just deserts) is entangled in our moral psychology as part of an overall orientation toward justice.

Retributive punishment provides a means of providing just deserts to the *offender*, by giving him what he deserves for his harmful actions. However, retribution can also deliver a different kind of desert: punishing the offender may (at least partially) repair the harm that has been caused, thereby providing just deserts to the *victim* (and his family and local community).^{6–8} The ‘restorative justice’ movement has typically not advocated punishment as a means of providing restoration, and has favored, other, non-punitive means of doing so, including mediated conferences between victims and offenders.^{9,10} And indeed, the motivation for restorative justice appears entirely consequentialist at first glance—restoration is a future benefit—and restorative justice is usually cast in opposition to retribution. But, as we argue, restoration is also premised on a notion of desert—the victim *deserves* to be made whole—meaning that there are also strong links between restoration and retribution. As a consequence, punishment itself can also serve this restorative aim, at least to some extent, which some evidence supports.^{11–13}

Tracking these philosophical distinctions in the motivations underlying punishment, a key question underlying psychological research on punishment is what drives ordinary individuals’ desire to see

offenders punished for acts of wrongdoing. This question is important for psychologists and philosophers who seek to understand human moral cognition. But it is also potentially important in a more practical way—some scholars have argued that aligning legal punishment with ordinary citizens’ moral intuitions provides an effective means of gaining their compliance with, and respect for, the criminal law.^{14,15} This practical goal also necessitates a deep understanding of those moral intuitions.

The aim of this article is thus to review existing evidence pertaining to the question of why we punish, with a specific focus on retribution and restoration. We first aim to define retributive punishment. Next, we critically examine existing evidence in support of the idea that ordinary individuals favor retributive punishment. We then explore recent evidence investigating people’s desire for restorative justice, drawing links to research on retribution. Finally, we synthesize the state of existing research and provide suggestions for areas ripe for research.

WHAT IS RETRIBUTIVE PUNISHMENT?

In this article, we proceed with the following notion of retribution: deserved punishment of a guilty offender, in proportion with his moral blameworthiness for a past offense. This conception highlights four key factors of retribution. First, retribution is backward-looking in that it aims to provide justice for acts carried out in the past.^{4,5} In this sense, it is very different from consequentialist punishment, which is forward-looking (i.e., what future utility might punishment achieve?). Second, retribution rests on a notion of *desert*—it concerns punishment that is in some sense owed to an offender based on how he has treated others.¹⁶ Third, retribution is directed only at guilty parties; in other words, guilt is a necessary condition of retributive punishment and may also be sufficient.^{16–19} Fourth, following a famous Kantian idea, retribution is (roughly, if not exactly) proportional, in that it scales with an offender’s moral blameworthiness.²⁰ The combination of these elements leads to a view of retribution as being a kind of ‘repayment’ for an offender’s wickedness.²¹

Among these elements of retribution, desert is one that has received special attention from philosophers. It presupposes moral responsibility, and in turn, the freedom for an offender to have acted otherwise (see Ref 3, for links between freedom and responsibility). Critics have sometimes seized on this feature of retribution as grounds for rejecting it as an appropriate basis for punishment. For instance, Greene and Cohen (Ref 22) argued that emerging

findings in neuroscience promise to undercut the notions of freedom and moral responsibility to such an extent that retribution will have to be rejected as a basis for legal punishment.

On this view, no criminal punishment can properly be seen as deserved. However, while this perspective may have philosophical merit, it flies in the face of common-sense morality. Ordinary individuals typically do not deny the existence of free will or moral responsibility.²³ And they may be inclined toward retribution because of the central role that desert plays in their conceptions of justice more generally. The idea that justice involves getting what one deserves is an ‘ancient view’,^{24,25} and a number of modern philosophers have likewise conceptualized justice as centrally involving desert,^{26–29} notwithstanding that it also involves other elements that can sometimes conflict with desert, such as fairness and liberty^{25,a}. Thus, as justice is clearly a fundamental human concern,^{30–37} views that dispense with the notion of desert appear unlikely to capture ordinary intuitions regarding the appropriateness of retribution.

Moreover, the influence of desert in our ordinary moral psychology is not limited to retribution and punishment. Many other positive social and moral practices are built on the notion of desert as well. We offer praise and reward because it is deserved.³⁸ We lend help to those in need because they deserve it.^{39–41} And we feel gratitude because someone did something for us we do not feel they owed to us.⁴² James Rachels (Ref 16) expresses how fundamental desert is to our moral psychology, as follows:

The key idea is that people deserve to be treated in the same way that they choose to treat others – thus, those who treat other people badly deserve to be treated badly in return. Retributivism is just the application of this idea to the special case of punishment. If this were only a view about punishment, it would not be very compelling. But the idea that people should be treated according to their deserts is a central component of our general moral understanding, with applications in many different areas of life. If we were to stop thinking of people as deserving or undeserving of special treatments, our moral outlook would be unrecognizably different.

Critics of retribution have rarely squared their analyses with this insight that desert is central to justice generally rather than just to retribution specifically. A rejection of desert as a basis for punishment appears to entail the rejection of desert as it underlies all of our other moral practices as well (such as praise, reward, gratitude, aid, etc.). Of particular interest, as we argue below, retributive punishment may

sometimes also serve a specifically restorative function. Thus, on this view, retribution as a basis for punishment is not an unsightly callous that calls for removal. Rather, it seamlessly integrates with the rest of our moral psychology (see also Ref 43).

WHAT IS THE EVIDENCE FOR RETRIBUTIVE PUNISHMENT?

The Current Dominant Perspective

Given the powerful intuitive appeal of retribution as a basis for legal punishment, it would appear that revealing retributivism as the basis of ordinary individuals’ desire for punishment should be a straightforward task. Alas, it has proved elusive and complex because of the difficulty of credibly removing deterrence motivations from the punishment context. In what follows, we review prominent strands of existing evidence that have addressed this question.

The most well-known investigation of the motivational basis for legal punishment is due to Carlsmith and his colleagues. In studies carried out by these researchers, individuals were presented with descriptions of crimes that varied across a number of different features (e.g., how severe the harm was and how difficult the crime was to detect) and were asked to assign punishment amounts for these crimes. The features of the crimes were pre-tested as being differentially relevant to either retributive or deterrence concerns. For instance, in one scenario (Study 1, Ref 44), an offender was described as having embezzled company funds (low harm), or alternatively, as having dumped toxic waste (high harm). This variable, magnitude of harm (or seriousness) was argued to be specifically relevant to retributive concerns. Crossed with this manipulation was a variable that was relevant to deterrence concerns—how difficult the crime was to detect (more difficult to detect crimes ought to be punished more severely). In a separate scenario, the factor relevant to retribution was the offender’s motive—whether he had either embezzled money in order to funnel it to underpaid overseas workers (low culpability), or instead, for personal profit (high culpability). Other factors thought to be relevant to deterrence were manipulated in additional studies, including how much publicity the offender’s sentence would receive (with the deterrence-based logic being that if an offender’s sentence is highly public, it ought to be more severe). The results from these studies were very clear—participants’ punitive reactions and sentencing decisions were most strongly influenced by crime severity and offender motivation. They were hardly influenced at all by the probability of detection or by

the publicity of punishment. These results led Carlsmith and colleagues to argue that retribution is the primary driver of ordinary individuals' desire to punish criminal offenders—people are lay retributivists.

These findings dovetailed with those from earlier studies in social psychology, which had been interpreted similarly. For instance, using a correlational design, Roberts and Gebotys (Ref 45) had found that individuals' sentencing recommendations were best predicted by offense severity, which was a more potent predictor than other factors, such as the offender's probability of recidivism (relevant to incapacitation), the offender's probability of rehabilitation (relevant to rehabilitation), and the overall frequency of the offense (relevant to general deterrence). These authors also argued that the strong influence of offense severity reflected punishment based on just deserts.

Much follow-up work by Carlsmith and colleagues followed the basic logic of these initial studies, and further substantiated their findings. Carlsmith (Ref 46) showed that when participants were given an abstract, content-free description of a crime and asked to select the information they would need to know in order to provide a sentence, they tended to select information pertaining to the magnitude of the harm, the perpetrator's intent, and whether any extenuating circumstances existed—factors again argued to be relevant to retribution. Participants did not so readily seek information pertaining to the offender's past criminal record (relevant to incapacitation), nor did they seek information relevant to the overall frequency of the offense, its detection rate, or the publicity of the sentence (factors relevant to deterrence). Moreover, when participants were explicitly instructed to adopt a retributivist punishment philosophy, their information seeking was highly similar to what it had been when they were not instructed to adopt any particular perspective, whereas it changed markedly when they were instructed to adopt an incapacitation or deterrence-based perspective. A final study showed that participants' confidence in their sentencing decisions increased the most when they had received retribution-related information. Several other recent extensions of this work have also been made that rely on the same underlying logic of the initial Carlsmith studies^{47–50} (for a comprehensive review of work based on this framework, see Ref 51). This impressive body of research has led to the conclusion that retributivism is the primary driver of ordinary individuals' punishment decisions.

Critique of the Current Perspective

The findings yielded by this dominant line of work are undoubtedly important. They do indeed show

that magnitude of harm, perpetrator motivation, and extenuating circumstances are the consistent drivers of individuals' punishment decisions, and that many deterrence-related factors are considerably less relevant (although see Ref 52 for evidence that these factors can be influential as well). Moreover, extensions of this work have shown that these influences on punitive reactions are highly consistent across individuals, at least within the United States. For instance, there is a high degree of concordance in individuals' intuitions of blameworthiness across a wide range of legally relevant offenses that vary in features such as degree of harm and perpetrator motivation.⁵³ However, we question whether these findings in fact provide clear-cut evidence for retributivism.

The linchpin of the retributivist interpretation of these past findings is that participants themselves see magnitude of harm, offender motivation, and extenuating circumstances as specifically relevant to retribution. Carlsmith and colleagues had conducted an initial study, which appeared to validate this assumption, and which formed the basis of their subsequent work. In this study, participants were first presented with general descriptions of both just deserts (retribution) and deterrence punishment philosophies. Their task was to classify a variety of crime features: magnitude of harm, extenuating circumstances (essentially, the perpetrator's motivation), publicity of sentence, and detection rate; in terms of whether they were relevant primarily to retribution or to deterrence. Participants were forced to make binary choices: Each feature could be classified as relevant only to one punishment philosophy. The results of this study corroborated Carlsmith et al.'s *a priori* predictions: magnitude of harm and extenuating circumstances were classified as relevant to retribution the majority of the time, whereas detection rate and the publicity of the sentence were categorized as relevant to deterrence the majority of the time (see Ref 46, for an extension of this method to a wider range of features).

On the surface, these results appear to corroborate Carlsmith et al.'s interpretation of their punishment data. There is a major interpretational problem with this method, however. As we have argued elsewhere,⁵⁴ the use of a forced choice method prevents subjects from classifying a single feature as relevant to both retribution and deterrence. This method is problematic because each of the retributive features appears highly relevant to deterrence as well. 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.

To address this issue, we conducted a methodologically revised version of this validation study (see Ref 54), which called for participants simply to rate the relevance of each factor investigated by Carlsmith et al. (magnitude of harm, perpetrator motivation, detection rate of crime, publicity of crime and its punishment, with the addition of crime frequency) to the respective punishment philosophies (retribution and deterrence). This simple change obviates the problem described above with a forced choice method. And it revealed strikingly different results. Both magnitude of harm and perpetrator motivation were rated as equally (and highly) relevant to retribution and to general deterrence. For both harm and motivation, there were no significant differences in participants' ratings of their relevance to the two punishment philosophies. Moreover, magnitude of harm and perpetrator motivation were rated as more relevant to general deterrence than were any of the other 'deterrence' factors (detection rate, crime frequency, and publicity of punishment). These results thus strongly challenge the retributivist interpretation of the previous results from Carlsmith and colleagues' research. Participants' documented sensitivity to magnitude of harm and to perpetrator motivation in those earlier studies cannot be regarded as providing unambiguous evidence for the existence of retributive motivations, because it remains possible that this sensitivity instead reflects a dominant concern with deterrence. And, because this ambiguity is pervasive throughout Carlsmith et al.'s work, this revised validation study substantially complicates the inferences drawn from this body of research.

Clearer Evidence for Retribution

We next review results that we regard as providing clearer evidence for the existence of retributive motivations in the context of legal punishment. Some of this research is recent work we have conducted. But there are also important, though less well-known, studies that provide evidence for retribution. One early study conducted by McFatter (Ref 55) provides suggestive evidence for retributive legal punishment and does so in a way that does not rely on the logic that underpins the Carlsmith et al.'s studies. Participants were provided with descriptions of four different offenses (assault, car theft, rape, and murder). For each one, they were asked to rate the appropriateness of a number of possible sentences (all things considered), starting at 1 month, and extending to life imprisonment and death. Separately, they also indicated how well each sentence would achieve a number of different punishment goals, including general deterrence,

special (specific) deterrence, rehabilitation, incapacitation, and just deserts (retribution). Participants tended to think that greater punishment would achieve the deterrent and incapacitative goals of punishment in a roughly linear way (more punishment, more deterrence/incapacitation). In stark contrast, they saw punishment as fulfilling retributive goals only up to a certain point, at which point its usefulness for fulfilling this goal began sharply to decline. In other words, punishment must fit the crime to provide retribution. Moreover, participants' judgments of the appropriateness of various punishments also increased only up to a certain point, before these judgments also declined sharply, in a way that matched their beliefs about the extent to which the punishment would achieve retribution. Accordingly, overall perceptions of the appropriateness of punishment were much better predicted by beliefs about how well the punishment would achieve just deserts, than by beliefs about how well it would achieve deterrence, incapacitation, or rehabilitation. Of course, a limitation with this evidence is that it is only correlational, and so it cannot license a causal claim in the way that Carlsmith's research can.

Studies conducted by Jonathan Baron and Ilana Ritov also provide some support for retributive punishment directed at companies. In one study, Baron and Ritov (Ref 56) investigated reactions to companies that had produced malfunctioning medical products (e.g., birth control pills that sometimes caused sterility or flu vaccines that sometimes caused death). The large majority of participants, including a group of judges, assigned punishments that were completely insensitive to whether the punishment would have a deterrent effect (which was explicitly varied in the description of the scenario, i.e., participants were told in one case that the punishment would have a large deterrent effect, but in another, that it would have no such deterrent effect; this was varied within-subjects). Furthermore, even when the punishment was described as being completely private and as being accounted for by the company's insurance, thus having no deterrent effect whatsoever (either for the company in question or for other companies), a majority of participants were not inclined to adjust the punishment compared with when the punishment would have a deterrent effect. Even when the principle of deterrence was specifically brought to participants' attention, they were no more likely to tailor their punishments in light of it (for related evidence of nonconsequentialist punishment toward companies that produce environmental damage, see Ref 57).

These interesting findings therefore demonstrate a striking rejection of the principle of deterrence

in determining punishment, and they highlight nonconsequentialist elements of people's punitive decision-making. However, there are two limitations in interpreting these results as clearly indexing retributivism in standard cases of legal punishment. First, because they concern punishment (or penalties) directed at companies, it is unclear whether similar factors influence peoples' decision-making with respect to individual offenders who have committed criminal actions, and whose punishment causes considerably more direct personal suffering than does a fine to a company. Second, these are essentially 'negative' results in that they demonstrate a failure to incorporate deterrence-related factors without showing positively that participants' punishments reflect retribution.

Accordingly, in recent work we have conducted, we have developed a novel means of investigating retributive punishment by investigating people's desire to punish animals for acts of harm they have carried out against human victims.⁵⁴ For instance, to what extent do people support relevant authorities punishing a shark for killing an innocent swimmer or surfer; or a bear, for attacking and mauling a hiker? The motivation for looking at this issue was that people are unlikely to think that animals, such as sharks, can be generally deterred by the punishment of a conspecific. General deterrence depends on a sophisticated network of communication and inference, in which news of a particular offender's punishment, and the reason for it, is broadcasted to the offender's community, thereby activating an inferential process that deters other would-be offenders. This process is so complex that it appears entirely beyond the capabilities of most animals—which means that individuals are unlikely to be motivated to punish animals because of general deterrence considerations. Moreover, in the case of wild animals, such as sharks, there is no way that punishment might be conceived of as sending a message to the animal's human owner. The desire to incapacitate the relevant animals, as well as a desire for retribution, remains as viable motivations for punishment, but the task of isolating retribution is much simpler when deterrence is not also tangled in the web.

At first glance, retribution may appear like a somewhat unlikely motivation for punishing harmful animals. However, there is a long history of punishing animals throughout modern and ancient cultures, in ways that closely match the punishment of humans.^{58–64} The appropriateness of punishing animals for retributive reasons is enshrined in ancient religious and legal codes.⁶⁵ And, of particular historical note, in some cases, animals have been sentenced to receive injuries that match those they inflicted on their

victims, seemingly in accordance with a retributive principle of 'an eye for an eye' (*lex talionis*).⁵⁹ Thus, there appears to be at least some suggestive historical evidence attesting to the desire to punish animals retributively. And, while some forms of disciplining or killing animals cannot be considered legal punishment (e.g., the disciplining of pets or the killing of invasive species of animals), some cases of killing clearly do fit the notion of legal punishment described above (and we focused on only these sorts of cases in our studies).

To examine whether people indeed desire retribution for animals in a more conclusive way, we sought to find experimental evidence for two separate aspects of retributivism. First, we investigated whether a proportional principle of punishment holds for animal offenders by manipulating the victim of the attack. In some cases, the animal's victim was highly sympathetic, such as a 10-year-old girl; whereas in other cases, the victim was less sympathetic, such as an adult male, or a dog. Across a series of studies, we consistently found evidence that people more strongly support the punishment (i.e., killing) by local authorities of an animal that kills a highly sympathetic victim than the same punishment of an animal that kills a less sympathetic victim—in accordance with a retributive principle of proportionality. People also believed that this punishment was more deserved in the case where the animal killed a sympathetic victim. These results cannot be accounted for by the deterrent effect of killing the animal, which is entirely implausible for most animal offenders (moreover, the killing cannot deter the specific offender, who is killed by the punishment). Nor can the results be accounted for in terms of the desire to incapacitate the offending animal. A desire for incapacitation should primarily reflect concerns with the dangerousness of the animal in question. Yet, we specifically chose the victims such that the more sympathetic victims should not be any more difficult for the animal to kill (e.g., a girl should be no easier to kill than a man or a dog)—thus, an animal that does succeed in killing the more sympathetic victim should not be seen as more dangerous than one that kills a less sympathetic victim. Moreover, this 'victim identity' effect remained highly significant even once participants' perceptions of the dangerousness of the attacker had been statistically accounted for.

The second means of examining retribution directed toward animals focused on the extent to which individuals desired punishment as a function of the animal's guilt, which is another key feature of retributive punishment (see Refs 16–19). By contrast, guilt is a less essential (though still important) feature of consequentialist punishment. Indeed, a frequent charge made against consequentialist justifications of

punishment is that they would seemingly allow (or even require) the punishment of an entirely innocent person if doing so had a sufficiently beneficial future consequence. We therefore focused on how concerned participants were to track down and punish the actual guilty animal in the wake of its fatal attack on a human. For a retributivist, this should be a key concern. But for someone interested only in incapacitation, tracking down the actual guilty party is only indirectly important: an animal's guilt might provide information about its likelihood of attacking again in the future. Thus, while killing a guilty animal might be justified on this incapacitacionist perspective, it should be just as important to track down and kill other equally dangerous animals that may be lurking in the vicinity of the original attack.

The evidence showed that participants were highly concerned with whether the animal in question was guilty of a prior attack. They were more supportive of killing a guilty animal than an innocent animal, and thought killings of guilty animals were more deserved. Of course, as we just noted, guilt may also be a signal of the animal's dangerousness. However, inferences from guilt to dangerousness appear to explain only part of the overall effect. Critically, this effect (which we refer to as the 'targeted punishment' effect) was robust even when accounting for participants' differential perceptions of the dangerousness of the guilty and innocent animals in question.

Skeptics of these findings may retort that this evidence for retribution is itself ambiguous, and that alternative explanations may account for these results. For instance, in relation to the victim identity effect, it might be thought that greater harm has been caused when an animal kills a more sympathetic victim, which could justify a greater need to incapacitate it. In relation to the targeted punishment effect, it might be argued that the effects reflect the greater desire to kill, and thereby incapacitate dangerous animals, notwithstanding the statistical controls for dangerousness information.

In relation to the first of these objections, while more harm could well be caused by the killing of a more sympathetic victim (e.g., in terms of grief caused to family members and others), in the case of animal (though not human) offenders, this cannot mount a plausible incapacitacionist justification for treating the animal more harshly. Animals, unlike humans, do not self-consciously choose their victims in a way that has any implications for their overall dangerousness.

More broadly, to address these and other alternative explanations more comprehensively, in subsequent studies, we introduced three methodological changes that more definitively preclude such

consequentialist interpretations. First, as the primary dependent measure, we assessed participants' acceptance of a painful method of killing the animal. In all cases, the animal's death was assured, thus defusing incapacitacion as a relevant concern—these pain measures thus provide a more clear-cut measure of retributive punishment. Second, we introduced potential mediating variables that directly assessed participants' retributive sentiments toward the offending animals (i.e., the importance of killing the animal to avenge, make amends for, and provide justice for the victim's death, and to make the animal pay for what it did). Third, we introduced new control variables that assessed not just the animal's dangerousness, but also the overall importance of incapacitacioning it, and of preventing it from carrying out future attacks. If the desire to punish the animal ultimately stems from consequentialist motivations pertaining to the desire to prevent it from killing again, these measures should mediate the punishment effects better than measures that directly assess retributive sentiment.

With these methodological safeguards in place, we again found support for the existence of the retributive motive, as both the victim identity effect and the targeted retribution effect extended to the pain measure—participants were more accepting of the painful punishment of animals that had killed more sympathetic victims (victim identity), and they were more accepting of the punishment of guilty animals as opposed to innocent animals (targeted punishment). Moreover, these effects were both mediated by the direct measures of retributive sentiment, whereas neither effect was mediated to any extent by measures of the animal's dangerousness, nor the overall importance of incapacitacioning it. Thus, these later studies provide the most definitive evidence that these two effects ('victim identity' and 'targeted punishment') index retributive motivations.

In summary, these studies provide new, experimental evidence for the existence of retributive motives in a way that sidesteps some of the problems that exist when retribution is examined for human offenders. These findings are complemented by other recent work that has demonstrated retributive motivations in the context of economic games (see Box 1). They also show that retributive motivations extend to entities that are not normally considered the proper targets of retribution (i.e., wild animals). In this respect, they should give pause to theorists who have argued that the criminal law ought to be grounded in ordinary citizens' conceptions of desert.^{14,15} If such conceptions encompass animals as the appropriate recipients of desert, it calls into question how rational these conceptions are, and how reliably they can

serve as a benchmark for the criminal law. Of course, because these findings deal primarily with animal offenders, they do not speak directly to the legal punishment of human offenders. Yet, if retributive motivations extend to animals then it would appear highly likely that they can be directed toward humans too. But, this existing work does not address this question directly. New, more definitive ways to examine the retributive legal punishment of human offenders are yet to be devised, and are thus an important goal for future work.

BOX 1. RETRIBUTIVISM IN THE CONTEXT OF ECONOMIC GAMES

Recently, Nadelhoffer and colleagues have conducted a series of studies in which they explored the possibility that retributivism guides responses in economic games. Prior research had shown that people pay to punish others who do not contribute to a public good, despite knowing that there is no future personal benefit in doing so (i.e., they will not play another game with the punishee and so cannot benefit from the punishee's reformed behavior).⁶⁶ Additional research extended these findings to third-party punishment (mere observers of such games also inflicted such punishment) and showed that punishment activates reward centers of the brain.⁶⁷ These findings appear to suggest that participants are motivated to punish retributively. But, in fact, as Nadelhoffer et al. argued, these findings do not unambiguously provide evidence of retributivism because they do not control for the possibility that the punishee may nonetheless learn that they have been punished, which may in turn reform their behavior in future contexts that do not involve the punisher. However, in both hypothetical and fully incentivized versions of these games, Nadelhoffer et al. ingeniously addressed this worry by showing that people still desire such punishment even when the procedures of the game guarantee that the potential recipient will never know of the punishment or its absence. These results therefore provide the best existing evidence for the role of retributivism in such public goods games.

RESTORATIVE JUSTICE AND RETRIBUTIVE PUNISHMENT

One parallel account of the animal punishment findings just reviewed is that people desire the punishment of animal offenders not just for the sake of

retribution in and of itself, but also because the act of punishing retributively provides restoration to victims, and to their families for the loss of their loved one. However, unlike the alternative explanations just reviewed, this construal would not undermine the role of desert-based motivations. Rather, on this interpretation, retribution and restoration would work together—with retribution being necessary to achieve the restorative goal. Restorative and retributive justice are usually not seen as bedfellows, but as this example illustrates, we think they are closer than it may initially appear. In this final section of this review, we consider the relation between punishment, specifically retributive punishment, and restorative justice, both in terms of their shared motivational basis, and the shared ways they may be achieved.

Restorative justice is usually conceived as a means of achieving reconciliation between an offender and his victim, to repair the harm caused by the offender's actions. It focuses on making victims whole by returning them to the position they were in (at least symbolically) before the offense occurred.^{10,68} Methods of achieving restorative justice include mediated conferences between offender and victim, which usually involve some form of apology by the offender. There is increasingly persuasive evidence that such methods can produce beneficial outcomes, particularly for victims of crime^{69–71} and that they can provide fairer processes for both offenders and victims than traditional punishment.^{72–74} Restorative justice can also be conceived in a broader sense, in which the target of restoration is the victim's family, or the victim's community.^{9,10} Advocates of restorative justice have typically framed it as both a conceptual and a practical alternative to retributive justice. Whereas retribution is backward looking, nonconsequentialist, focused on offenders, and punitive, restorative justice is forward looking, consequentialist, focused on victims, and reparative.⁷⁵ Indeed, more committed, 'abolitionist' advocates of restorative justice have sometimes seen it as an alternative to punishment altogether.⁷⁶

While there is undoubtedly truth to these broad claims about the nature of restorative justice, we believe they exaggerate the differences between restoration and retribution. In particular, at the *motivational* level, we suggest that restorative justice is premised on basic intuitions about justice, in parallel to the way retribution is premised on justice intuitions.⁷⁷ Just as retribution focuses on what is owed to the offender, restorative justice, we argue, is premised on beliefs about what is owed to the victim (or alternatively, the victim's family or community)—i.e., beliefs about what the victim

deserves. Therefore, in the same way that retribution is backward looking and focuses on paying back the offender, there is also an important aspect of restorative justice which is backward looking, and that focuses on providing a specific, compensatory response (to the victim) for a past act of harm. In summary, the retributivist concern with a specific offender's past *guilt* is paralleled by the focus in restorative justice on the past *harm* to a specific victim. This basis in desert need not impinge on the fact that restorative justice also has a forward looking, consequentialist component, and that it may also sometimes be achieved in ways that do not involve retribution.

As yet, the evidence that retributive and restorative justice do indeed draw upon a common motivational basis rooted in desert is still under-developed. Of pressing interest is the extent to which support for restorative procedures is based on backward looking, desert-based motivations, in addition to forward looking, consequentialist motivations. This important question has not yet been addressed.

A separate and arguably more specific link between restoration and retribution is that the way in which they can be *achieved* is often highly similar. That is, the retributive punishment of an offender may sometimes serve the goal of restoring the victim. This idea is highlighted by those who have argued that harm repair cannot occur without the offender being punished for his actions,^{78,79} and it is reflected in people's documented belief that punitive sanctions can be used to achieve restorative ends and vice versa.^{8,11,12,80} And it is important because it suggests that retribution and restoration both comprise part of individuals' overall sense of what it means to do justice in the wake of transgressions.^{8,81,82} Indeed, when victim restoration successfully occurs, it diminishes individuals' desire to inflict punishment on offenders.^{7,83} For example, when individuals learn that victims are satisfied with their restorative proceedings, they assign less severe punishment to offenders than when victims are dissatisfied.⁸⁴ These findings demonstrate that people view retribution and restoration as complementary justice approaches (as the fulfilling of victim restoration necessitates a lessened amount of punishment), and provide further support for the idea that retribution and restoration share a basis in intuitions about justice: what is fair and right to do after transgressions have occurred.

CONCLUSION

This review has examined the motivational basis of retributive legal punishment. Retribution consists of the deserved punishment of a guilty offender,

in proportion with his moral blameworthiness for a past offense. At the philosophical level, the idea that retribution provides grounds for legal punishment has attracted considerable criticism, which has often focused on how the notion of desert conflicts with skeptical accounts of freedom and responsibility. Yet, it often goes unmentioned how this notion of desert underpins a great deal of our moral thinking and practice, much of which is not punitive. Desert also encompasses our desire to repair the harm caused to victims of crime. This understanding of desert as appealing directly to people's conceptions of justice makes the idea of abandoning retribution particularly problematic from a psychological perspective.

Psychological investigations have aimed to pinpoint retributivist motivations, but the task is not straightforward. The dominant approach has been to manipulate features of offenses that are thought selectively to relate to retributivist or to more consequentialist philosophies of punishment. But, when carried out with human offenders, this method rests on a fundamental ambiguity that recent work has highlighted. Consequently, this research tradition, although undoubtedly important, has too swiftly concluded that retributivism is the primary basis of ordinary individuals' punitive intuitions. We do not know whether retributivism is the primary basis of the desire for legal punishment. But we do have good evidence that it drives this desire at least in part. In our view, the best evidence for this more moderate conclusion comes from older, neglected studies within social psychology,⁵² studies of the punishment of companies,⁵⁶ and studies of the punishment of animals.⁵⁴ More conclusive demonstrations of the role of retribution in underpinning punitive reactions toward human offenders are still called for, however.

Retributivism, although sometimes cast in opposition to restorative justice, shares more in common with it than is commonly recognized. Both retributivism and restorative justice arguably rest on fundamental intuitions about justice and desert—what is owed to offenders in the case of retributivism, and what is owed to in the case of restorative justice. Separately, retribution may also sometimes serve the goal of achieving restoration, as has been corroborated in recent research. But here too, further work must be performed properly to explore the continuities and discontinuities between retributivism and restoration. Moral psychologists may find a fruitful new line of inquiry in this area. More generally, we suggest that exploring the role of desert in other areas beyond punishment will offer important new insights into human moral psychology.

NOTE

^a For instance, as McLeod notes, desert may be cleaved from fairness when, e.g., all of the students in a class turn in C grade work, with all awarded a C except one, who is inexplicably given an A grade—in

this case, the students given C grades will have been given what they deserve, despite having been treated unfairly with respect to the student who received an A grade.²⁵

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