DOES CRIMINAL LAW DETER? pdf

1: Crime, Punishment, and the Psychology of Self-Control |

Abstract. Having a criminal justice system that imposes sanctions no doubt does deter criminal conduct. But available social science research suggests that manipulating criminal law rules within that system to achieve heightened deterrence effects generally will be ineffective.

Offenses known to police , Table 3. Estimated number of arrests , Table 4. Disposition of cases terminated in U. District Courts , Table 5. Felony convictions in State courts , Table 5. Defendants sentenced in U. Felony sentences imposed by State courts , Table 5. Sentences imposed in cases terminated in U. Mean and median length of felony sentences imposed by State Courts , Table 5. Time served to first release by Federal prisoners , Table 6. Consider those two bars. Assume that the affect associated with a day in prison is a negative 1. We will now drop the negative sign, since it will be constant in all of the calculations. That means that a larger number represents an experience that is affectively worse than an experience with a smaller number. Therefore, under what we have called the naive calculation system in Bar 1 a jail term of days is registered as negative units, since we assume the affect associated with a day in prison is always about the same as the affect associated with any other day in prison. Under the assumption of Bar 1, if we double the length of prison sentence we double the punishment achieved. But the empirical findings we cite above hold that the perceived negativity of each objectively equally awful day of punishment experience perceptually declines somewhat over the period of time that the person spends in confinement. This is shown for the day period in Bar 2 below. Note the implication for the total punishment amount of the longer period. By the end of the 50th day of the sentence, the intensity of the punishment experienced is less than it was at the start of the sentence. The next 50 days does not accomplish a doubling of the punishment, because the intensity of the punishment has already declined and continues to decline over the remaining period. Without attempting to assign a precise value in punishment units, the value of the day prison experience will be significantly less that the punishment units experienced under the naive assumptions in Bar 1.

DOES CRIMINAL LAW DETER? pdf

2: Differences between Civil and Criminal Law

This is the second in a two-part series looking at Robinson and Darley's article "Does Criminal Law Deter?A Behavioural Science Investigation".It is commonly thought that changes to the substantive criminal law (i.e. the rules about counts as a crime and how much punishment should be attached to the commission of crime) can have a deterrent effect.

In talking with people about law, I find that they often misapply principles from criminal law to situations in civil e. They are surprised when they learn the actual legal principles that apply to a problem. The purpose of this essay is to compare and contrast criminal and civil law. In civil law, a private party e. In criminal law, the litigation is always filed by the government, who is called the prosecution. Crimes are divided into two broad classes: So-called punitive damages are never awarded in a civil case under contract law. The use of punitive damages makes a public example of the defendant and supposedly deters future wrongful conduct by others. Punitive damages are particularly important in torts involving dignitary harms e. In this way, large awards for plaintiffs in tort cases are often an illusion. In practice, criminals are either impulsive i. Therefore, the threat of punishment does not deter criminal conduct, as one is reminded every day by reading reports of journalists. Legal theory considers the possibility of loss of freedom i. As a result of this high value placed on personal freedom, legal dogma is that criminal litigation is more serious than civil litigation, therefore criminal defendants have more rights and protections than civil defendants, as explained later in this essay. The economic reality is that most people would prefer to spend, for example, one year in prison, than pay a million dollars from their personal assets. The state must prove that the defendant is guilty. The defendant is assumed to be innocent; the defendant needs to prove nothing. Other exceptions include defendants who claim self-defense or duress. However, there are a number of technical situations in which the burden shifts to the defendant. In civil litigation, the plaintiff wins if the preponderance of the evidence favors the plaintiff. This is a very low standard, compared to criminal law. In my personal view, it is too low a standard, especially considering that the defendant could be ordered to pay millions of dollars to the plaintiff s. A few tort claims e. No ex post facto law. This protection takes two forms: A defendant who is found "not guilty" of a more serious charge can not have a second trial on a lesser included offense. For example, if D is found "not guilty" on a charge of felony murder e. The prosecution can not appeal a "not guilty" verdict. However, it is possible to try a defendant in criminal court and then try the same defendant again in civil court, for the same event. The most common example of such two trials is a criminal prosecution for homicide and then have a second trial for the same defendant for the tort of wrongful death: While legal scholars carefully explain the distinction between criminal and civil law, the plain fact is that one can be tried twice for the same event. Another situation in which one can have two trials for the same event is a prosecution under state law e. Amendment V the right to a speedy trial. Amendment VI the right to the assistance of counsel. Amendment VI, as interpreted in, among other cases, Scott v. Indigent defendants have the right to an attorney who is paid by the state, even during custodial questioning by police. It may come as a surprise to know that these protections are not available in civil law. The standard in tort cases is what a reasonable and prudent man would have done, the details of applying this standard to the facts of the case is decided by the jury, and unknown to the defendant until the end of the trial. In civil law, an attorney may request documents or a visit inside a building. In civil law, an attorney may demand information from the opposing party about any matter that is relevant to the case, provided that information is not privileged. In civil law, an attorney may properly demand information that would be inadmissible at trial, if such demand "appears reasonably calculated to lead to the discovery of admissible evidence". An attorney may even take the deposition of nonparties in a civil case, and require them to bring documents with them. The prohibition against double jeopardy applies only to criminal trials. In a criminal case, the suspect or defendant has the right to remain silent during questioning by police and prosecuting attorneys. However, in a civil case, the defendant must be available and cooperative for depositions and testimony as a witness in the trial. And, at trial, if a party invokes their fifth amendment privilege against self-incrimination, then the judge will instruct the jury that they may make an adverse inference against the party who refused to testify. There are often several years between the filing of a

complaint in a civil case and the trial. So much for "speedy trial"! The one notable exception is in tort law, where attorneys for plaintiffs often take cases with the possibility of large awards e. However, the plaintiff usually pays for expert witnesses, deposition transcripts, and other expenses. These expenses can be tens of thousands of dollars. John Selden , posthumously published in Table Talk, So the doctrine is a practical necessity. This doctrine still has vitality and validity today. See, for example, Ratzlaf v. However, the law in the USA has swelled to a size that is unknowable even by experts. Who can know all that is within these pages? The only solution seems to be a detailed search of statutes and cases in a database on a computer e. A related concept in law is "wilful blindness": The law regards "wilful blindness" as equivalent to knowledge. Cited with approval in U.

DOES CRIMINAL LAW DETER? pdf

3: Deterrence (legal) - Wikipedia

Does criminal law deter? Given available behavioral science data, the short answer is: generally, no. Having a criminal justice system that imposes liability and punishment for violations deters

It is commonly thought that changes to the substantive criminal law i. At least, many policy debates and legislative changes proceed on that assumption. But how plausible is it really? While they accept that a criminal justice system, with conspicuous mechanisms of enforcement, can have a deterrent effect, they argue that it is unlikely that the substantive criminal law adds to that effect. And, certainly, the effects are nowhere near as fine-grained or precise as policy debates would typically have us presume. As reviewed in part one, their argument for this conclusion is fairly simple. They claim that in order for the substantive criminal law to have a deterrent effect, three conditions must be met: Robinson and Darley think it unlikely that all three of these conditions can be met. This means their argument looks something like this: We reviewed the case for premises 2 and 3 the last day. The Rational Choice Model and the Weighting Condition The deterrence assumption tends to work with a rationalistic approach to criminal behaviour. Still, there is a distinction to be made between two kinds of rational choice model of criminal behaviour. The first, which focuses on the actual costs and benefits the crime, and the second, which focuses on the perceived costs and benefits. Any model focusing on the former is likely to be well off the mark, since potential offenders may not be able to appreciate the actual costs and benefits. But a model based on the latter could get off the ground, since the perceived costs and benefits are what presumably guide any particular decision. They hold that the following inequality is needed if the deterrence assumption is to prove correct: Their claim is that behavioural science has revealed that the effect of each of these variables on perceived cost is far more complex and sometimes more counterintuitive than is often believed to be the case. They support this by looking at a range of studies. Of course, as they note at the outset, good controlled studies on the effects of each variable on perceived cost are hard to come by: Evidence Relating to the Probability of Punishment When it comes to assessing the impact of punishment probabilities on behaviour, Robinson and Darley turn to conditioning studies. These are the classic animal-in-a-box experiments, which were so heavily associated with the behaviouralist movement in psychology. The typical set-up in such an experiment is that an animal is trained to perform or already predisposed to perform some kind of action e. In this experimental set-up, it is easy to vary the rate of punishment and see what effect this has on discouraging the action. Such that have been done on this suggest that once the probability of punishment drops below a certain threshold, it has practically no deterrent effect. One problem with these studies, however, seems to have been that the punishments were not randomised i. In other words, the experimental subjects engaged in more of the relevant behaviour after having been punished. You can imagine where all this is going. Robinson and Darley argue that these studies have worrying implications for the criminal law. Citing actual conviction rates across all crimes of 1. This is because the actual punishment rate is below the rate at which it will have a deterrent effect. So Robinson and Darley seem to support the following argument: There are a several criticisms one could make of this argument. Robinson and Darley only address the most obvious: What if people think the punishment rate is above the relevant threshold? I have some other problems with the argument. First, I think it hangs too much on animal conditioning studies. Second, the relevant thresholds are little too vague for my liking. Their original claim was about the deterrent effect of the substantive criminal law. But this argument really has to do with the effectiveness of the criminal justice system as a whole, not the rules of criminal law. This is surprising given that they originally supported the deterrent effect of the criminal justice system as a whole. Evidence Relating to the Amount of Punishment One of the assumptions shared by proponents of the deterrence hypothesis is that fine-grained modulation of the total amount of punishment attaching to an offence can make a real difference to how frequently that crime is committed. Thus, for example, increasing the sentence length for theft from five to ten years in prison is thought to make a difference to behaviour. One can see the attraction of this assumption. Simple cost-benefit reasoning tells us that ten years in jail is worse than five years in jail approximately twice as worse , ergo potential criminals should think twice as hard about committing theft if

the sentence is increased to ten years. As attractive as this reasoning is, there are several problems with it. Again, the all-important factor here is how increases in the duration or amount of punishment are perceived by potential criminals, not what the reality is. Behavioural evidence suggests that these perceptions may be out of line with reality. Robinson and Darley review several strands of evidence in support of this contention. They start with conditioning studies. The primary conclusion from these studies they mention a few is that increases in the severity of punishment do indeed increase deterrence. But there are some interesting nuances. It has been found that animals can adapt to the intensity of punishment. Thus, for example, you could start out giving a pigeon electric shocks below 60 volts and then gradually increase it, even up to volts, and find that the pigeon continued with the behaviour you were trying to deter. This would not be true if you started out punishing at the more intense level. It is common for first-time offenders to given more lenient punishments. Indeed, sometimes their punishments are completely suspended. Robinson and Darley argue that two distinct types of adaptation could occur in the prison environment: The first type of adaptation arises when the prisoner adjusts their affective baseline to cope with what was initially felt to be a highly punitive state. Thus, the punitive effect of, say, prison is neutralised over time. This means that they will continue to experience positive and negative changes to their affective state, but those changes will be relative to the new lower baseline. They cite in support of this claim studies showing that the risk of suicide among prisoners is much higher in the first 24 hours of incarceration. Thus, as they go along, they are less affected by positive and negative events. Both of these types of adaptation could undermine the deterrent effect of punishment, particularly imprisonment, for repeat offenders. Another problem has to do with the discrepancy between remembered pain and the actual duration of a punitive experience. Instead, it seems to be a function of the most intense pain experienced and the most recent painful experience. The result being that short, but intensely unpleasant, punishment is remembered as being much worse than long, moderately unpleasant, punishment. The upshot of all this is that there are diminishing deterrent returns to be had by increasing the duration of punishment, and maybe no returns at all to be had from modulating the severity of the punishment in proportion to the gravity of the offence and the offender due to adaptation effects. Robinson and Darley wave this objection off by arguing that many of those who commit crimes are repeat offenders. The general population will not have been privy to the kinds of experiences that lead to adaptation effects, so maybe they could be genuinely deterred by increases in the total amount of punishment? The discussion of discounting below may provide some response to this criticism. Robinson and Darley also go on to argue that the social milieu from which many offenders are drawn can affect how they perceive the total amount of punishment. Furthermore, many come from deprived backgrounds and so the costs of punishment may seem much less to them than to someone from a more affluent background. Again, these factors may combine to undermine the deterrent effect. Evidence Relating to the Delay of Punishment The final factor that affects the perceived cost of punishment is the delay between carrying out the act that is to be punished and the actual administration of punishment. Robinson and Darley are brief on this point since the behavioural evidence seems to be pretty clearcut: Perhaps one of the most widely-popularised models of this argues that humans and other animals hyperbolically discount the value of future rewards and losses relative to more immediate rewards and losses. This is thought to account for addictive behaviours like cigarette smoking. Even though people are often aware of the long-term costs of smoking, and the long-term rewards of not-smoking, their internal valuation mechanisms are such that the immediate reward of smoking seems more attractive than the long-term reward of quitting. The diagram below provides a representation of hyperbolic discounting curves for human preferences. Note how the value of the smaller reward exceeds that of the larger reward at a certain point. The relevance of this to criminal behaviour and punishment should be obvious. Since there is often a significant delay between the commission of a crime and the punishment if any of that crime, the short term rewards of the crime will often seem more attractive to a potential criminal than the long-term costs of the punishment. Consequently, the delay undermines the deterrent effect. After all, substantive criminal laws tend not to stipulate that there must be a significant delay between the commission of crime and the imposition of punishment. To briefly recap, their central thesis is that the substantive criminal law is unlikely to deter criminal behaviour. This is because in order for the substantive law to have a deterrent effect it must satisfy

three conditions: Drawing from a range of behavioural science research, Robinson and Darley argue that it is unlikely that all three conditions are met. Their argument is plausible, and brings together some interesting strands in the behavioural science literature, but it still contains points of weakness. The most annoying of which is, perhaps, its tendency to stray from the central thesis â€" which was supposed to be about the substantive criminal law â€" into more general concerns about the criminal justice system.

DOES CRIMINAL LAW DETER? pdf

4: Philosophical Disquisitions: Does Criminal Law Deter? (Part Two)

DOES CRIMINAL LAW DETER? A BEHAVIORAL SCIENCE INVESTIGATION (24 Oxford Journal of Legal Studies ()) PAUL H. ROBINSON & JOHN M. DARLEY APPENDIX Contents Abstract Table 1: The Problem of Low Punishment Rates.

Abstract Does criminal law deter? Given available behavioral science data, the short answer is: Having a criminal justice system that imposes liability and punishment for violations deters. But criminal law the substantive rules governing the distribution of criminal liability and punishment does not materially effect deterrence, we will argue, contrary to what law- and policy-makers have assumed for decades. Our claim is not that criminal law formulation can never influence behavior but rather that the conditions under which it can do so are not typical. By contrast, criminal law makers and adjudicators formulate and apply criminal law rules on the assumption that they nearly always influence conduct. And it is that working assumption that we find so disturbing and so dangerous. That critique finds that the transmission of influence faces so many hurdles and is so unlikely to clear them all that it will be the unusual instance in which the doctrine can ultimately influence conduct. Yet this is a startling conclusion because it contradicts the common wisdom and standard practice of law makers and scholars. If, as appears to be the case, doctrinal formulation does not affect conduct, then most of the criminal analysis of the past forty years has been misguided. Where doctrine has been formulated to maximize deterrence, overriding other goals, such as doing justice, such deterrence analysis has frustrated those other goals for no apparent benefit. Let us briefly sketch our line of argument: Potential offenders commonly do not know the legal rules, either directly or indirectly, even those rules that have been explicitly formulated to produce a behavioral effect. Even if they know the rules, the cost-benefit analysis potential offenders perceive which is the only cost-benefit analysis that matters commonly leads to a conclusion suggesting violation rather than compliance, either because the perceived likelihood of punishment is so small, or because it is so distant as to be highly discounted, or for a variety of other or a combination of reasons. And, even if they know the legal rules and perceive a cost-benefit analysis that urges compliance, potential offenders commonly cannot or will not bring such knowledge to bear to guide their conduct in their own best interests, such failure stemming from a variety of social, situational, or chemical influences. Part I reviews the behavioral science evidence. We can test this argument by looking at the effect of specific doctrinal formulations on the crime rates they are intended to lower. A majority of these studies find no discernible deterrent effect of doctrinal formulation, which does not surprise us. But others claim to find such an effect and we must explain these results. We find that some of the aggregated-effect studies are simply poorly done and cannot reliably support a conclusion that doctrine affects crime rates. Others seem undeniably to have found an effect on crime rate, but we suspect that much if not most of this is the result of incapacitative rather than deterrent effects. Increasing prison terms, for example, could be taken as providing a greater deterrent threat, but a resulting reduction in crime may be the result of the isolating effect of longer incarcerations rather than their deterrent effect. But even if one concludes that some of these studies show a deterrent effect from doctrinal formulation, which we do, the specific circumstances of those studies serve generally to affirm our points about the prerequisites of deterrence. That is, these studies involve rules and target audiences that do what is rarely done: The circumstances of these studies only serve to illustrate that the existence of such prerequisites are not typical. Part II reviews these aggregated effect studies.

DOES CRIMINAL LAW DETER? pdf

5: Does Criminal Law Deter_ a Behavioral Science Investigation - www.enganchecubano.com

This chapter examines that fundamental question of whether criminal law deters. Topics discussed include the prerequisites to deterrence, aggregated-effect studies, and the possibilities and impossibilities of improving deterrent effect.

Thanks also to Elizabeth Chen for terrific research assistance. Abstract Criminal law, by design, assigns culpability for intentional, volitional action. Mostly, the law presumes that individuals can exercise self-control; in special cases, culpability and punishment are lessened because of impaired self-control. Yet despite this central role for self-control, previous scholarship has not examined the implications for criminal law of decades of research in social psychology. This Article presents and explores the implications of the most important findings of recent social psychology research on self-control: The psychology of self-control has important implications for our understanding of the behavior that leads to particular criminal conduct and our conceptions of appropriate punishment. Introduction Criminal law rests on the assumption that individualsâ€”most of the timeâ€”have free will. United States, U. They are capable of conforming their actions to the requirements of the law, and of appreciating the consequences of failing to do so. Indeed, modern philosophers and social scientists have suggested that an assumption of free will is critical to the successful functioning of society, regardless of whether or not it is true. They act in ways that they choose to act, exercising control over their own behavior. Criminal law is not generally a system of strict liability: Despite this central role of free will and self-control in the conceptualization of criminal responsibility, criminal law scholars have not, to date, considered the implications of decades of research in social psychology on the mechanisms of self-control. Decision Making Criminal law scholars conceptualize self-control and its role in the law in a variety of ways, depending on their disciplinary focus. Others have joined in a more philosophical age-old debate between free will and determinism, exploring the degree to whichâ€”if at allâ€”individuals have free will and can exert it in various circumstances. Morse, Culpability and Control, U. In contrast to both of these approaches, still others use economic principles to characterize criminal behavior as the product of a utility calculation in which a potential criminal actor weighs the costs and benefits of his actions in deciding whether to proceed. Becker, Crime and Punishment: An Economic Approach, 76 J. Such a characterization only makes explanatory sense if a prospective criminal actor can bring his actions into line with the dictates of the equationâ€”that is, he has free will and can exercise self-control. These approaches to criminal lawâ€”neurological, philosophical, and economicâ€”differ in their visions of human behavior and their implications for self-determinism. I mean only to indicate that several prominent trends in criminal law scholarship share a set of assumptions about the centrality if not the meaning of self-control. But all three approaches rest on a shared belief that whether or not individuals have control over their own actions when they engage in criminal acts matters. Yet even as criminal law and criminal law theorists rely profoundly on the concepts of free will and self-control, there is rigorous debate over what these terms really meanâ€”and what they really mean for criminal law. Modern social psychology research on self-control has developed a working model of how an individual controls her behavior and has offered several intriguing findings. First, one of the most recent theories of self-regulation suggests that systematic differences in the way individuals think about near-term and long-term events and actions may help to explain self-control failures and successes. People tend to construe near-future and distant-future events differently, and this has a direct effect on their efforts to bring their behavior into line with their rational choices. This work has compared the seeming paradox of self-control to a muscleâ€”that is, self-control grows weaker with use in the short term but stronger with use in the long term. What this means for the individual is that, when she has used her self-control in one setting, she will find it harder to exert self-control in a situation that immediately follows. But when she practices controlling her behavior over time, her self-control will eventually grow stronger and will be less subject to quick depletion. Two important broad insights come from examining this psychological research. First, by considering self-control failure at the micro levelâ€”in a particular moment of action or inactionâ€”psychological research on self-control helps uncouple self-control questions from broader

questions about the existence of free will. Psychological research supports the idea that individuals differ in the degree to which they can control their own actions. A person either controls herself by acting in a way that is consistent with a particular set of norms 9For further discussion of what psychologists mean by acting in a controlled or uncontrolled manner, see infra Part II. Second, taking psychological research on self-control seriously indicates that criminal law may vastly underdescribe the scope of situations in which an individual lacks the ability to control her actions. The mismatch between the scope of self-control as described by psychology and criminal law helps to highlight that notions of self-control in the law are inherently constructed by the law itself, rather than reflecting some empirical reality, and that any efforts to define and understand the concept and role of self-control in law as purely positive, rather than normative, are misguided. In Part I, I briefly demonstrate the ways in which the concept of self-control permeates criminal law, beginning with criminal law theory and then considering criminal law doctrine. Part II provides a concise overview of psychological research on self-control. Part III examines in greater depth psychological research on how information processing about events that occur at different times may intersect with self-control and considers the implications of this research on criminal law. Part V offers some preliminary thoughts about potential implications in particular areas of criminal law doctrine and in criminal law theory. Self-Control and Criminal Responsibility Efforts to neatly classify and bring order to criminal law theory and doctrine are stymied by the scope and complexity of the field. Criminal law scholars consider crime from diverse angles, including moral, theoretical, philosophical, economic, sociological, neurological, and biological perspectives. They consider not only the scope of what ought to constitute criminal behavior but also what causes criminal behavior and what appropriate punishment ought to be. And criminal law doctrine encompasses crimes as diverse as assault and embezzlement, homicide and tax fraud. Yet in a field as frustratingly diverse as criminal law, one constant theme is the critical role of human self-control. In the following sections, I show how self-control cuts across diverse theoretical and doctrinal perspectives, forming an insistent motif at the core of criminal law. I analyze self-control first in the context of criminal law theory and then in criminal law doctrine, and in each setting I further subdivide my analysis into broad conceptual groupings. For criminal law theory, I consider three popular areas of scholarly focus: For criminal law doctrine, I consider involuntary acts, duress, and mens rea; insanity; justification and excuse; and mitigation of punishment. However, there may be significant overlap among these categories, and some scholarly perspectives cut across, unite, or simply defy them. Although these divisions are somewhat blunt, my point here is not to articulate a clear and comprehensive topography of criminal law scholarship but rather to demonstrate the cross-cutting nature of the concept of self-control across the field as a whole. My brief examination of these areas leaves many nuanced issues, debated by those who write in these domains, to the sideâ€”not because they are unimportant but rather because they are beyond the scope of this project. My purpose here, again, is simple: Criminal Law Theory In this section, I explore three prominent strands of thought in current criminal law theory scholarship: In each of these, scholars grapple with the question of when and how individuals control their behavior and what such control, or lack thereof, means for criminal law. I explain the central role that notions of self-control play in each perspective in turn below. Neuroscience Perspective Self-control is perhaps the most acute topic of debate in criminal law and neuroscience scholarship, a field that encompasses brain science, brain imaging, and genetics. Growing developments in neuroscience have prompted challenges to classic notions of responsibility. So, too, scholars have suggested that potential solutions to the problem of criminal behavior may be pharmacologically or surgically possible in some of these cases. Greely, Neuroscience and Criminal Justice: Not Responsibility but Treatment, 56 U. But see John F. Stinneford, Incapacitation Through Maiming: Others seek to use neuroscience less at the abnormal margins and more in the mainstream of criminal activity, suggesting that when we understand the process by which individuals make decisions about criminal conduct, we might better understand and prevent it. Redding, The Brain-Disordered Defendant: Efforts to convince courts to adopt this perspective have been almost completely unsuccessful. Nonetheless, these challenges based on brain imaging and genetics have generated a robust response from criminal law scholars, even those who are enthusiastic about the possible implications of neuroscience on law. The intersection of neuroscience and criminal law is, indeed, a textbook example of the tensions at issue in defining the scope of free will,

self-control, and voluntariness. The retributive justification for criminal law is simple: Recent research has added social science data into the discussion of how we determine commensurate punishmentâ€”that is, how we understand desert. Darley, Intuitions of Justice: To preserve such moral order, Kant insists that society has a duty to punish those who have done wrong. Immanuel Kant, The Philosophy of Law: Kelley Publishers Notably, Hegel suggests that punishment for criminal acts honors the criminal as a rational being. Retributive justice is premised on the idea that someone ought to be punished for his wrongful act when that person knew that what he was doing was wrong and did it anyway. A moral punishment for wrongdoing makes no sense when the actor did not understand that the act was wrongful or did not mean to engage in a wrongful act. When individuals act without volition, they are not liable for their actions. Conviction and punishment are justified only if the defendant deserves them. Any condition or circumstance that sufficiently compromises responsibility must therefore negate desert; a just criminal law will incorporate such conditions and circumstances in its doctrines of excuse. Morse, Excusing the Crazy: The Insanity Defense Reconsidered, 58 S. A critical assumption behind retribution is thus that an individual could have chosen not to engage in the actâ€”could have controlled his own behaviorâ€”but instead chose to act despite an understanding that the behavior was wrong. Retributivists find no use for punishing someone who did not have the capacity to control himself or to choose his actions. However, when someone has the capacity to control himself, but simply does not do so, he is culpable. Thus deterrence provides society with a way to prevent crime by increasing the costs of criminal behavior. An important assumption of deterrence theory is that individuals will weigh the costs of their behavior punishment against the benefits. Hart, Punishment and Responsibility 2d ed. This utilitarian theory is embraced by law and economics scholars who presume a rational actor who seeks to maximize utility. This rational actor will engage in an activity only when its benefits outweigh its costs. Thus the key challenge for criminal law is calibrating the punishment appropriately, as weighed against the benefits, to deter crime. And volumes have been written on creating an optimal level of sanctions for deterrence purposes. Buell, The Upside of Overbreadth, 83 N. But deterrence only makes sense when, as a general matter, individuals can assess the consequences of their outcomes and choose their course of action accordingly: The utilitarian view presumes that most people will engage in this rational calculation and decide not to engage in criminal behavior. Those who do engage in the prohibited behavior thus represent a problem for the utilitarian that must be explained in one of several ways: For example, in considering the case of an impulsive, heat of passion crime, Posner suggests not that the individual knew that the costs outweighed the benefits and yet could not control himself, but rather that the impulsive individual merely requires a higher level of sanctions in order to balance the equation properly. Heat of passion, that is, does not eliminate the possibility of self-control.

DOES CRIMINAL LAW DETER? pdf

6: Philosophical Disquisitions: Does Criminal Law Deter? (Part One)

But criminal law the substantive rules governing the distribution of criminal liability and punishment does not materially effect deterrence, we will argue, contrary to what law- and policy-makers have assumed for decades.

Tweet My title is drawn from a article by the criminal law theorists Paul Robinson and John Darley. Contrary to this view, Robinson and Darley argue that although the criminal justice system as a whole may deter criminal behaviour, the substantive rules of criminal law do not. Over the course of the next two posts, I want to review and engage with their defence of this thesis. Consequently, this series of posts gives me a good excuse to review some of interesting empirical findings. The remainder of this post will do two things. Then it will look at the evidence they present in support of two of the key premises in that argument. Part two will wrap things up by looking at the evidence supporting the third key premise. The Anti-Deterrence Argument It is often assumed that the substantive rules of criminal law â€" i. Certainly, many debates among theorists and policy makers proceed on this assumption. They consider whether new rules should be created in order to deter different sorts of behaviour and they try to increase the severity of the punishment in order to increase the deterrent effect of the rules. To be sure, alterations to the substantive rules are proposed for other reasons too justice, consistency, political optics etc. Robinson and Darley claim the assumption of the deterrent effect is flawed. The criminal justice system as whole may indeed have a deterrent effect. That is to say, having a system that polices, enforces, prosecutes and punishes crime may have a deterrent effect. But the role of the substantive rules of criminal law in securing that deterrent effect is rather more questionable. This is because three conditions be met if the substantive rules are going to be capable of deterrence. They are the names are mine, not those of the original authors: The potential offender must know, directly or indirectly, what the substantive rule actually is. The potential offender must be able to bring that knowledge to bear on the immediate context in which they are deciding whether or not to commit a crime. The problem is that it is very difficult for all three of these conditions to be met. The remainder of this series will be dedicated to premises 2 - 4. Before getting to them, however, a word or two about premise 1 would seem to be in order. There are two kinds of deterrent effect that the law could have. It could have a general deterrent effect, which means it could deter the general population from committing a crime; or it could have a special deterrent effect, which means it could discourage a particular person or group of persons who have usually already been subjected to the rules from committing a crime again in the future. Empirical evidence can, of course, be drafted in to support a deterrent effect. This is typically done by comparing data on different populations living under different legal rules and trying to make some inference from this data. But this is often of limited utility. For example, attempts to do this when trying to prove that the death penalty has a deterrent effect are very messy, despite the fact that the presence or absence of the death penalty is one of the better known facts about the legal system. Donohue and Wolfers paper. Establishing a special deterrent effect is more plausible. In fact, many proponents of the deterrence thesis limit their focus to a special group of potential offenders: Thus, their first premise can be interpreted as laying down a plausible set of conditions that would have to be met in order for the substantive criminal law to have an effect on such people. That might be a problem insofar as the evidence adduced sometimes fails to consider the general deterrent effect. Does the Knowledge Condition Fail? The first condition claims that in order for the substantive rules to have a deterrent effect, the potential criminal must actually know what the rules demand. Which means they either have to look them up for themselves, or they have to imbibe the information from others. The problem with this is twofold. First, people typically do not look up the substantive criminal law, and second their acquisition of the relevant information from others is often misleading. This is true even among the population with the most incentive to learn the substantive rules. Empirical studies of the knowledge condition seem to confirm it. Robinson and Darley report on a study that they themselves carried out. The findings were stark. Instead, people believed the content of the rule to be that which according with their own moral intuitions. That study covered a sample of all citizens within a given U. Other studies have looked at beliefs among people who have been convicted of felonies. Robinson and Darley cite one study in particular from David Anderson , which tested convicted felons knowledge of the

punishments that attached to their crimes. The last result is worth remarking on since it feeds into the immediacy condition, which we will discuss below. Robinson and Darley also cite studies suggesting that indirect acquisition of information relating to criminal law can be misleading. Surveys reveal that people think this defence is far more widely applicable and far more successful than it actually is. There are a couple of counterarguments to consider here. First, it could be that certain substantive rules are well-known and really could therefore have a deterrent effect. For example, pretty much everybody knows the rules relating to murder, theft and rape although the last one is certainly more contentious and might be dissuaded from doing these things as a result. Furthermore, pretty much everybody knows that the severity of punishment increases once you reach a certain age e. But these, for Robison and Darley are rare exceptions and, indeed, may be explicable because the substantive law tracks intuitive moral norms. A second problem with the argument is that it over-intellectualises deterrence. As the authors themselves put it: This is undoubtedly true. But as the authors also point out, the perceived threat of punishment has more to do with perceived enforcement practices e. Indeed, one could probably increase enforcement, without changing the substantive rules, and achieve a significant deterrent effect. That said, evidence for such a systematic bias is lacking and, indeed, other evidence suggests the opposite may be true. Does the Immediacy Condition Fail? The second condition for achieving a deterrent effect is the immediacy condition. This condition claims that potential criminals must be able to bring their knowledge of the criminal law to bear on their crime-relevant decisions. It is important to note that this condition only really becomes a factor if we assume that the knowledge condition has already been met. But even if we assume they have the correct knowledge, Robinson and Darley point to a range of factors suggesting that they are unlikely to be able to bring this knowledge to bear on any particular decision to commit a crime. The factors that prevent this from happening break down into two categories: Personality-based factors concern the people who commit crimes. Robinson and Darley cite a range of research suggesting that potential offenders, as a class, tend to be more risk-seeking and more impulsive than the rest of the population. Consequently they are less likely to engage in the kind of forward-planning demanded by the deterrence assumption. The problem with impulse control and risk-seeking are exacerbated by recent drug and alcohol abuse, which is common among offenders though there may be some selection effect here since there are so many drug-related offences. There are also mental disorders that can affect criminal behaviour, such as paranoia and mania. These personality-based impediments to the use of knowledge are supplemented by other contextual impediments. These emotions tend to swamp any rational analysis of the costs and benefits of crime. Furthermore, many potential offenders differentially associate with other criminals in gangs and so forth. This creates a group context in which there is often short-term pressure to commit crimes in order to win group acceptance and in which the long-term costs of crime tend to be downplayed. The net result is that knowledge of the criminal law, even if it is correct, is often obscured in the immediate context of a crime. That condition forces us to consider the rational choice model of criminal decision-making in more detail, and to investigate how potential offenders perceive the costs and benefits of their decisions.

DOES CRIMINAL LAW DETER? pdf

7: Does Criminal Law Deter? A Behavioral Science Investigation

Abstract. Does criminal law deter? Given available behavioral science data, the short answer is: generally, no. The behavioral sciences increasingly call into question the assumption of criminal law's ex ante influence on conduct.

Categories[edit] Deterrence can be divided into three separate categories. Specific deterrence focuses on the individual in question. The aim of these punishments is to discourage the criminal from future criminal acts by instilling an understanding of the consequences. General or indirect deterrence focuses on general prevention of crime by making examples of specific deviants. The individual actor is not the focus of the attempt at behavioral change, but rather receives punishment in public view in order to deter other individuals from deviance in the future. The argument that deterrence, rather than retribution, is the main justification for punishment is a hallmark of the rational choice theory and can be traced to Cesare Beccaria whose well-known treatise On Crimes and Punishments condemned torture and the death penalty , and Jeremy Bentham who made two distinct attempts during his life to critique the death penalty. Incapacitation aims to prevent future crimes not by rehabilitating the individual but rather from taking away his ability to commit such acts. Under this theory, criminals are put in jail not so that they will learn the consequence of their actions but rather so that while they are there, they will be unable to engage in crime. Not all crime deterrence comes from a criminal justice system, rather it also comes from social forces. Controversial academic Gary Kleck goes further to conclude that evidence suggests that private gun ownership and use significantly deter crime, [3] although many academics have concluded otherwise. Without marginal deterrence, a criminal could benefit from committing additional crimes or using illegal methods to suppress law enforcement, witnesses or evidence. As an example, if robbery without force resulted in the same punishment as robbery by murder, a robber could make a rational choice to kill the victims to evade their testimonies. Marginal deterrence is therefore similar in conclusion but different in the justifying rationale from the doctrine of proportionality often invoked in discussions of retributive justice. Effectiveness[edit] Measuring and estimating the effects of criminal sanction on subsequent criminal behavior is the historic and conceptual core of criminology. There are extensive reviews of this literature with somewhat conflicting assessments. The recidivism rate for offenders who were imprisoned as opposed to given a community sanction was similar. In addition, longer sentences were not associated with reduced recidivism. In fact the opposite was found. This happens as the fine replaces a previous set of moral or ethical norms, and if it is low enough, it is going to be easier to overcome than the non-monetary criticism was. In other words, putting a price on something previously not on a market changes its perception drastically, and on occasion it can change it contradictory to what a deterrence theory would predict. A study by Prof. Abrams found that when one uses "the introduction of state add-on gun laws, which enhance sentences for defendants possessing a firearm during the commission of a felony, to isolate the deterrent effect of incarceration. Defendants subject to add-ons would be incarcerated in the absence of the law change, so any short-term impact on crime can be attributed solely to deterrence. Using cross-state variation in the timing of law passage dates, I find that the average add-on gun law results in a roughly 5 percent decline in gun robberies within the first three years. This result is robust to a number of specification tests and does not appear to be associated with large spillovers to other types of crime. By construction, this collective pardon generated a very significant discontinuity in the relationship between time served in prison and prospective date of release. Evidence from a Natural Experiment, J.

8: Does Gun Control Reduce Crime?

SUMMER Does Criminal Law Deter? seem undeniably to have found an eVect on crime rate, but we suspect that much, if not most, of this is the result of incapacitative rather than deterrent.

9: "Does Criminal Law Deter? A Behavioral Science Investigation" by Paul Robinson

DOES CRIMINAL LAW DETER? pdf

My title is drawn from a article by the criminal law theorists Paul Robinson and John Darley. The article critiques the common view â€" at least, common among proponents of an economic/consequentialist approach to law â€" that the criminal law can deter criminal behaviour.

DOES CRIMINAL LAW DETER? pdf

Understanding and Paying Less Property Tax For Dummies 7 Penny and Nicholas The Numismatists Bedside Companion (The Numismatists Companion Series) History of racism in america Invisible history Under Milk Wood: account of an action to recover the original manuscript Week 5: be the change Combat Aircraft of WWII 1938-3 Beads for All Seasons Urban walks and town trails Scottish universities, the case for devolution Rocky Mountain birds The Great Man: Sir Robert Walpole Digidesign 0 0 2 user guide The fighter, by Gardner Jackson. The racial imagination in the writings of (ex-)conversos Our battalion organization should not be as volunters [sic but as a militia active force Significance of the Higgins Boat To The Edge of the World Vol. I (To the Edge of the World) Evaluation of dyspnea Flow of incompressible fluids New Caledonia palms in cultivation J.L. Dowe. Colombia: Democracy Under Assault (Nations of the Modern World: Latin America) Ecological principles Construction contract law and management Harley hahns emacs field guide Disorders of the adrenal cortex and medualla Stargazing at Lowell Observatory Aipmt syllabus 2018 The environment, pristine, and common sense Hapi.js in action They Shall Not Have Me The Capture, Forced Labor And Escape Of A French Prisoner Of War Arabian Horses (Eye to Eye With Horses) Basics of ratio and proportion Education of the architect Ancient Engineers Corporate responses to import competition in the U.S. apparel industry The Usborne Picture Dictionary in Spanish (Everyday Words) The kosher gourmet The Meadow-Brook Girls in the Hills (Large Print Edition)