

Which Questions Matter?



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Old questions about the death penalty

1. Is the death penalty cruel (or more cruel than life imprisonment)?
2. Does the death penalty deter crime (better than life imprisonment does)?
3. Is the death penalty discriminatory?

New questions about the death penalty (there may be many others...)

4. How is the death penalty carried out?
5. Is the death penalty expensive (or more expensive than life imprisonment)?
6. Do people who are convicted deserve the death penalty?

In deciding whether a state should abolish the death penalty, which of the above are the most important questions? Why?

It Depends...

Each Questions is Guided by a Certain Type of Concern

*Economic and
budgetary
concerns*

Is the death
penalty
expensive?

*Justice and
morality concerns*

Does the
convict deserve
the death
penalty?

*Social safety
concerns*

Does the death
penalty deter
crime?

*Humanitarian
concerns*

Is the death
penalty cruel?

In order to decide which questions are the most important, we need to agree on which concerns are the most important in deciding whether a state should abolish the death penalty or not.

Two Very Important Questions

Does the death penalty
deter crime?

Do people who are
convicted **deserve** the
death penalty?

Social Safety

*Justice and
morality*

Two Justifications of Punishment (and Two Questions)

Deterrence. Punishment is justified because it prevents future crime. This is a **forward looking** criterion for the justification of punishment—i.e. the punishment is justified because of the positive effect it will bring **in the future**.

Does the death penalty deter crime?

Retribution. Punishment is justified because the criminal deserves it. This is a **backward looking** justification of punishment—i.e. the punishment is justified because of what the criminal did **in the past**.

Do people who are convicted deserve the death penalty?

Retribution *versus* Deterrence

*We threaten punishments in order to deter crime. We impose them not only to make the threats credible but also as retribution (justice) for the crimes that were not deterred. Threats and punishments are necessary to deter and **deterrence is a sufficient practical justification** for them. **Retribution is an independent moral justification...***

Ernest van den Haag, "The Ultimate Punishment: A Defense"

Immanuel Kant (1724-1804) on Retribution and the Death Penalty

What kind and what degree of punishment does public legal justice adopt as its principle and standard? None other than the principle of equality ...

*Accordingly, any undeserved evil that you inflict on someone else among the people is one that you do to yourself. **If you vilify him, you vilify yourself; if you steal from him, you steal from yourself; if you kill him, you kill yourself.** Only the Law of retribution (*jus talionis*) can determine exactly the kind and degree of punishment ...*

If ... [one] has committed a murder, he must die. In this case, there is no substitute that will satisfy the requirements of legal justice. There is no ... equality between the crime and the retribution unless the criminal is judicially condemned and put to death.

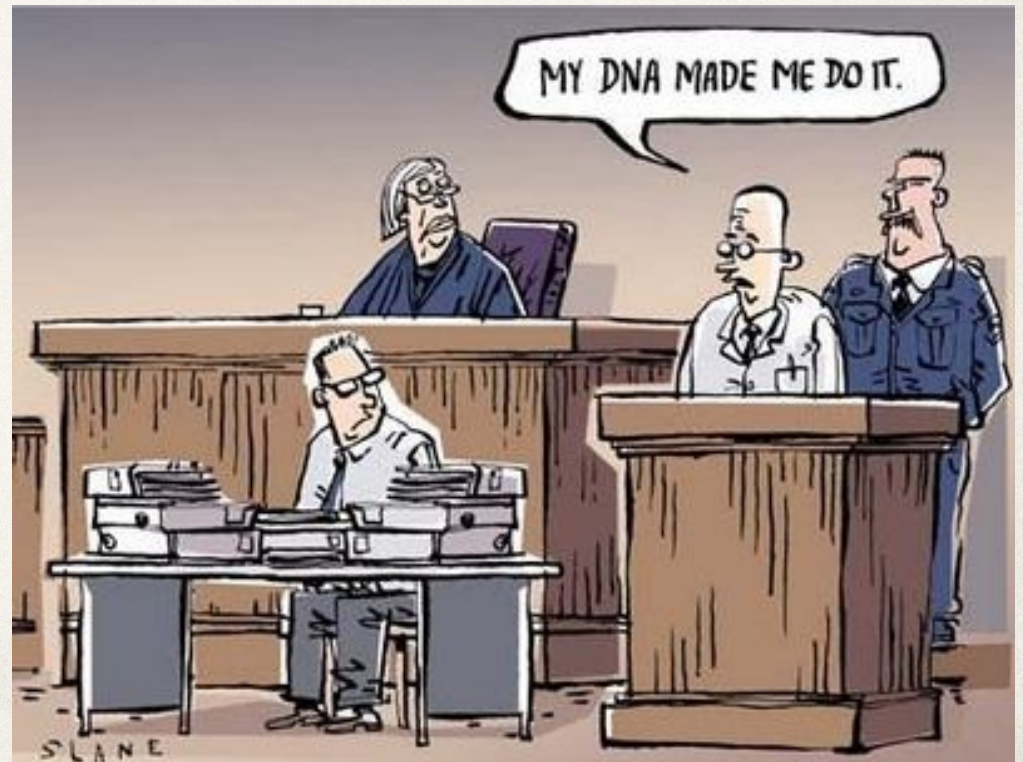
How Can We Decide Whether Retribution or Deterrence Is More Important?

Deterrence. Punishment is justified because it prevents future crime.

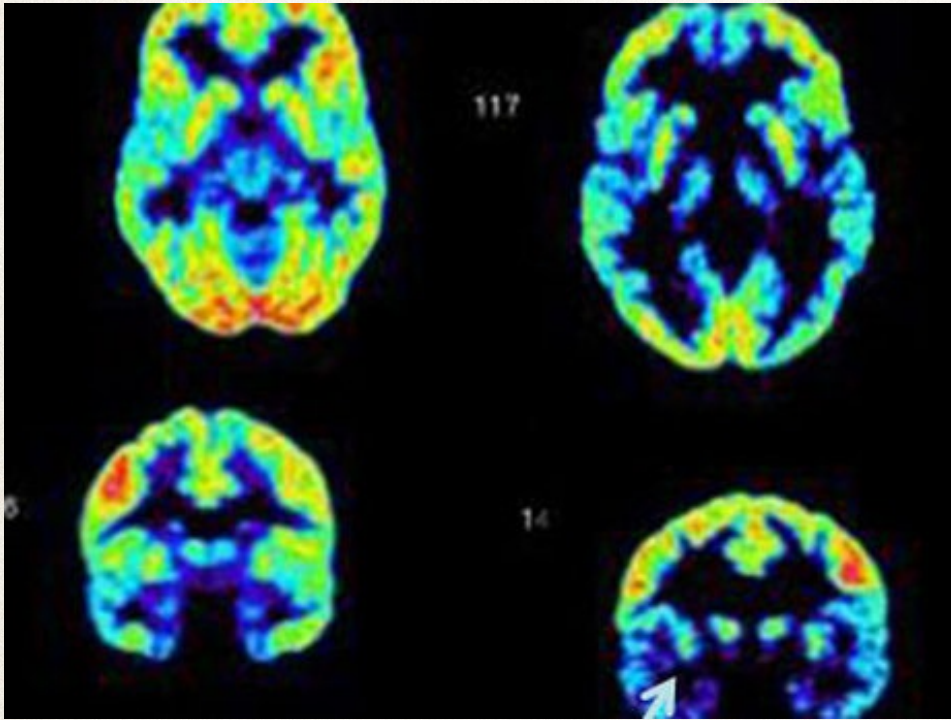
Retribution. Punishment is justified because the criminal deserves it.

We Can Look at Findings from Genetics and Neuroscience

This is just a suggestion of how we can go about answering the question in the previous slides. Do not take the slides that follow as the only way to proceed.



Findings from Neuroscience



Jim Fallon from the University of California at Irvine studied the brains of people who committed violent crimes. He compared their brains with the brains of non-criminals. *He found a correlation between brain activity and crime.* The brain on the right belongs to a criminal and the brain on the left belongs to a non-criminal.

Findings from Genetics

Jim Fallon from the University of California at Irvine (*same guy*) also found that those who committed violent crimes typically have what has been called the "**warrior gene**"—a particular gene that is associated with violent behavior.

Jim Fallon, however, also found that he himself has the warrior gene, although he has never committed a crime!

So, one's genetic makeup is not sufficient to trigger violent behavior. The warrior gene simply *predisposes* one to violence.

Still, the combination of the warrior gene *plus* a certain social environment might very well be sufficient to trigger criminal behavior.

Warrior Gene Predicts Violent Behavior in Response to Provocation

*“There is some evidence of a main effect for genotype and some evidence for a gene by environment interaction, such that MAOA [=warrior gene] is less associated with the occurrence of aggression in a low provocation condition, but **significantly predicts such behavior in a high provocation situation.**”*

“Monoamine oxidase A gene (MAOA) predicts behavioral aggression following provocation” by McDermotta, Tingleyb, Cowdenc, Frazzettod and Johnstone in Proceeding of the National Academy of Science of USA, 2009

In other words, people with the warrior gene are more likely to behave violently than people without the warrior gene, provided they are provoked.

Neuroscience and the Warrior Gene in the Courtroom

2009 Tennessee. Bradley Waldroup was accused of murder but the jury convicted him of a less severe crime because experts for the defense testified that Waldroup, *first*, had the warrior gene, and *second*, was abused as a child.

“Do Our Genes Excuse Immoral Behavior?”

<http://www.youtube.com/watch?v=4JldJFUgWyw>

But can we let pedophiles, rapists and murderers off the hook because they have the warrior gene and grew up in a violent environment?

SIMPLE
PICTURE

Free
will

Criminal act

COMPLEX
PICTURE

Genetics

Brain
activity

Social
environment

Criminal act

If criminal acts are **mostly** determined by genetics, brain activity and social environment, does it make sense to say that one *deserves* to be punished for his or her wrongdoings? *Seems not.*

If so, retribution cannot be an adequate justification of punishment.