

ESSAYS IN CRIMINAL
AND FORENSIC
PSYCHOLOGY NO. 5

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ISBN: 978-1-904542-60-5

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1. PRE-TRIAL PUBLICITY AND JURY BIAS

- 1.1. Introduction
- 1.2. Example of mock trial experiment
- 1.3. References

1.1. INTRODUCTION

Pre-trial publicity (PTP) refers to the information in the media about a trial before it begins. PTP may include facts about the crime and suspect (including details of past offences) (factual PTP) as well as comments and opinions (emotive PTP) (Brewer 2000). For individuals who will act as jurors in such trials, it means that they are not naive to the case.

Especially in high profile cases, it is almost impossible for the jurors to have not seen the PTP. Linz and Penrod (1992), using newspaper cuttings with a mock jury, found that PTP, including prior convictions and "sensational" reporting impacted on the juror decision. There is a legal question of whether jurors should know about the prior convictions of the defendant.

Padawer-Singer and Barton (1974) found 50% more "guilty" decisions by jurors aware of a past criminal record and retracted confession of the defendant, compared to not knowing this information. The judge's instructions to ignore this has little effect (Brewer 2000).

1.2. EXAMPLE OF MOCK TRIAL EXPERIMENT

Concern over the effects of PTP has led to experiments with mock trials to test different variables.

For example, Ruva et al (2007) investigated PTP and juror bias using 558 students at the University of South Florida, USA. The participants were placed into groups of 4-6 (juries) randomly. There were twenty-five juries for each of the four conditions of the unrelated design experiment (ie: participants in one condition only). Juries were either given negative PTP about the defendant or unrelated crime articles (first independent variable), and the decision about guilt was made individually or as a group decision (second independent variable).

The mock trial involved a real videotaped criminal trial, lasting thirty minutes, about Daniel Bias pleading not guilty to murdering his wife, Lise (NJ v Bias). He claimed that she was accidentally shot while he was trying to stop her commit suicide.

The negative PTP was created from real stories about

the trial from a local newspaper ¹, and included information not presented at the trial (table 1.1). The non-PTP group were given crime stories from the same newspaper. There was 4-7 days between exposure to the PTP and the "trial".

1. Lise did not know how to use guns and disliked them.
2. Daniel Bias has a bad temper.
3. Lise Bias' body was found in the doorway of the couple's bedroom.
4. The prosecutor questioned why Daniel Bias kept a loaded gun in the house if he believed that his wife was suicidal.
5. Daniel Bias had been drinking alcohol on the night of his wife's death.
6. Just prior to her death Lise had received a promotion at her work.
7. Lise Bias did not leave a suicide note.
8. On the day of her death Daniel and Lise had an argument about Lise buying new clothes.
9. Daniel Bias was also charged with resisting arrest.
10. Daniel had wanted Lise to quit her job and start a family.

(Source: Ruva et al 2007 Appendix A p65)

Table 1.1 - Information only in PTP and not in trial video.

The dependent variables were measured in a number of ways:

- i) Verdict - not guilty, hung/undecided, guilty.
- ii) Length of prison sentence if guilty - between 30 to 45 years.
- iii) Credibility of defendant - this was measured on seven-point Likert scales (table 1.2).

- How biased was defendant's testimony?
- How intelligent did the defendant appear to be?
- How likely is it that the defendant had ulterior motives for giving his testimony?
- In your opinion, how accurate was the defendant's testimony?
- How honest did the defendant appear to be?
- How credible did the defendant appear to be?
- How believable was the defendant?

(Source: Ruva et al 2007 Appendix C p 67)

Table 1.2 - Examples of measures of credibility of defendant.

¹ "Morning Call" in Allentown, Pennsylvania.

iv) Source memory - a memory test about whether information appeared in the trial or the PTP.

It was found that jurors exposed to the PTP were significantly more likely to vote guilty than non-PTP jurors ($p < 0.01$) (figure 1.1).

	NOT GUILTY (1) -----	HUNG (2) -----	GUILTY (3)
Pre-deliberation:	1.78 non-PTP		2.38 PTP
Post-deliberation:	1.72 non-PTP		2.25 PTP

Figure 1.1 - Mean verdicts for PTP and non-PTP conditions.

Where the verdict was guilty, participants in the PTP condition gave significantly longer sentences (mean: 40 vs 37 years; $p < 0.01$). The PTP condition rated the defendant as significantly less credible (mean: 41 vs 50 out of 87).

Jurors in the PTP condition were significantly more likely to attribute information in the PTP to the trial (ie: more source memory errors). In other words, jurors not exposed to PTP identified more information as coming from the trial correctly.

The validity of mock trial experiments has been questioned in a number of ways:

a) Ecological validity

- Are the findings from such experiments applicable to real-life juries?

b) External validity

- Is the behaviour of university students the same as general population jury members?
- Are the findings from smaller groups (4-6 persons) applicable to 12-person juries used in many courts?
- Are the findings from US studies applicable to juries in other countries?
- Experiments are different to trials - eg: shorter; limited exposure to PTP.

c) Internal validity

- Do the participants take the mock trial as seriously as real jurors?

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2. JURORS' BELIEFS AND THE DEATH PENALTY

- 2.1. Introduction
- 2.2. "Death qualified" and personality
- 2.3. References

2.1. INTRODUCTION

The beliefs of jury members can influence how they behave during jury service. In the USA, the system of "voir dire" allows the potential jurors to be questioned about particular beliefs before the trial. One belief in particular relates to capital punishment. In order to sit on a jury for a trial involving the possibility of the death penalty ("capital trials"), individuals must be willing to consider the different legal penalties available including the death penalty. Such "open-minded" individuals are classed as "death qualified" (Butler and Moran 2007) ².

During voir dire jurors have to consider the penalty before the trial has begun (eg: thinking about the emotional issues related to it), and to publicly state their position.

In reality, "death qualified" jurors tend to be pro-capital punishment, and can be categorised as (Butler and Moran 2007):

- Male.
- Caucasian.
- Politically conservative.
- Catholic or Protestant.
- More likely to trust prosecutors, and view prosecution witnesses favourably.
- More likely to infer a defendant's guilt from them not taking the witness stand.
- More receptive to pre-trial publicity.
- More likely to believe in the infallibility of the criminal justice system.
- Less receptive to mitigating circumstances for the offender.

Ellsworth (1993), in a mock murder trial experiment, used jury-eligible California residents and showed them part of a video of a police officer's and the defendant's testimony in an assault trial.

Ellsworth found that supporters of the death penalty

² "In *Wainwright vs Witt* (1985), the court ruled that if a potential juror feels so strongly about the death penalty that (his/her) belief would 'prevent or substantially impair the performance of his duties as a juror, it is grounds for dismissal for cause'" (Butler and Moran 2007 p58).

were more likely to vote guilty immediately before jury deliberations had taken place. Ellsworth argued that attitudes come in a "bundle". Death penalty supporters tended to show more trust in police practices, and to be more sceptical of the defendant's case, compared to those opposed to the death penalty (table 2.1).

	SUPPORTERS	NON-SUPPORTERS
Officer's truthfulness	4.55	3.44 *
Defendant's truthfulness	3.69	3.05
Accuracy of witnesses	4.35	3.25 **

(Scale ranged from 1 to 6; higher number indicates more favourable to evaluation;
* = significant difference at $p < 0.05$; ** = $p < 0.01$)

Table 2.1 - Mean evaluation of evidence by supporters and non-supporters of the death penalty

The death qualification process produces unrepresentative juries, which has been contested legally in the USA.

2.2. "DEATH QUALIFIED" AND PERSONALITY

Not all jurors who are accepted as "death qualified" will automatically choose the death penalty for guilty defendants (as opposed to life imprisonment). Researchers have been interested in personality variables that may predict who will choose which penalty (ie: take into account mitigating circumstances to not recommend the death penalty).

Butler and Moran (2007) investigated three personality variables among 212 individuals on jury duty ³ in one district of Florida, USA. The variables were:

i) Belief in a just world (Lerner 1980) - This is the belief that the world is basically a fair place and individuals get what they deserve. High scorers tend to attribute blame to the victim. This was measured by the Belief in Just World scale (BJW) (Rubin and Peplau 1975) which contains twenty items rated on a five-point scale.

ii) Legal authoritarianism (Boehm 1968) - Authoritarianism involves the view that the world is "black" and "white", submission to authorities, conformity to society's rules and norms, and being

³ Known as venirepersons until they are "death qualified" or not.

critical of those who challenge society's status quo ⁴. Legal authoritarianism is a specific version of this which manifests for high scorers as feeling that the rights of the government outweigh the rights of the individual in legal issues. Such individuals are more likely to convict, and more likely to recommend the death penalty.

This was measured by the Revised Legal Attitudes Questionnaire (RLAQ-23) (Kravitz et al 1993) containing 23 items scored 1-6 (table 2.2).

- Unfair treatment of underprivileged groups and classes is the chief cause of crime.
- Too many obviously guilty persons escape punishment because of legal technicalities.
- The Supreme Court is, by and large, an effective guardian of the Constitution.
- Evidence illegally obtained should be admissible in court if such evidence is the only way of obtaining a conviction.
- Most prosecuting attorneys have a strong sadistic streak.

(Source: Kravitz et al 1993 p666)

Table 2.2 - Example of items from RLAQ-23.

iii) Locus of control - Individuals' perceptions of control over their lives (internal locus of control) or that circumstances control them (external locus of control). The Nowicki-Strickland Locus of Control scale (Nowicki and Duke 1983) was used. This comprised forty items answered "yes" or "no".

It was predicted that "death qualified" jurors would be high scorers on just world belief and legal authoritarianism, and have an internal locus of control.

The participants read details of a trial involving the robbery and murder at a convenience store (table 2.3), and the arguments for mitigating and aggravating circumstances presented by the lawyers.

In the scenario, three eyewitnesses saw a man enter the convenience store and demand money from the cashier. When the cashier turned around to open the register, the perpetrator shouted at him to "hurry up". The cashier fumbled with the register, and the perpetrator shot

⁴ The "authoritarian personality" (Adorno et al 1950) is a personality type which is very narrow-minded, against change, and holds strict conservative views. It is usually measured using a questionnaire called the "California F Scale". Chapdelaine and Griffin (1997), using the O.J Simpson trial, found a correlation between the "California F Scale", and the belief in Simpson's guilt, the perception of the fairness of the trial, and the severity of the recommended sentence. Thus the "authoritarian personality" type were more likely to see Simpson as guilty, believe the trial was fair, and recommend longer sentences.

him once, killing him instantly. The perpetrator then took the money out of the register (amounting to \$300) and fled. A short time later, the police found a man who matched the description of the murderer walking near the convenience store. The man, Andrew Jones, did not have an alibi for his whereabouts at the time of the crime. They searched him and found \$300. The police arrested Mr. Jones and took him to the police station. In a subsequent line-up, the three eyewitnesses positively identified Mr. Jones as the person they had seen murder the convenience store clerk. His fingerprints were also found at the scene of the crime.

(Source: Butler and Moran 2007 p62)

Table 2.3 - Scenario used by Butler and Moran (2007).

The attitude towards the death penalty was measured by agreement with these statements:

- (1) The death penalty is never an appropriate punishment for the crime of first-degree murder;
- (2) I am opposed to the death penalty, but would consider it under certain circumstances for the crime of first-degree murder;
- (3) I favour the death penalty, but would not consider it under certain circumstances for the crime of first-degree murder;
- (4) The death penalty is the only appropriate punishment for the crime of first-degree murder.

Of the respondents, 8% agreed with statement (1), 27% with (2), 41% with (3), and 23% with (4). A quarter of the participants felt so strongly about the death penalty (either for or against) that they would not have been acceptable for a trial.

Attitude towards the death penalty was significantly positive correlated with BJW and RLAQ scores. Thus individuals who supported the death penalty had high belief in a just world, and high legal authoritarianism. "Death qualified" participants also had an internal locus of control (figure 2.1).

Such individuals paid more attention to aggravating factors in the scenario, while participants with high BJW scores and an external locus of control responded more to mitigating circumstances.

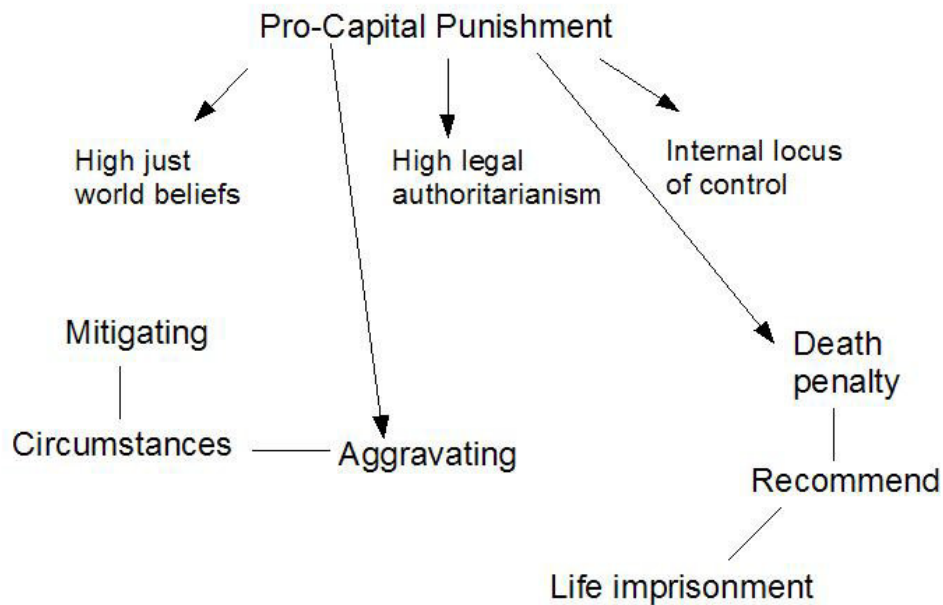


Figure 2.1 - The significant relationship between variables found by Butler and Moran (2007).

Butler and Moran (2007) noted the implication of their findings: "capital defendants appear to be at a significant disadvantage: They are having their fate determined by a homogenous, unrepresentative subgroup of the population that is prone to accepting arguments for death and rejecting arguments for life. Perhaps, more importantly, these attitudes translated into behaviour: Death-qualified venirepersons and legal authoritarian participants were significantly more likely to recommend the death sentence than were their excludable and civil libertarian counterparts" (p66).

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3. BIOLOGICAL BASIS TO CRIME

- 3.1. Introduction
- 3.2. Cesare Lombroso
- 3.3. Brain differences
- 3.4. Sexual offending
 - 3.4.1. Sexual violence
 - 3.4.2. Paedophiles/child sexual offenders
- 3.5. Implications of biological basis to crime
- 3.6. References

3.1. INTRODUCTION

The biological basis to crime assumes that individuals who commit criminal acts are in some way different to the general population who does not commit such acts. This idea is appealing and has been so historically. For example, Lombroso in 1876 argued that criminals were a separate species between modern and primitive humans.

Research has become more sophisticated over time, and the search for physical differences between criminals and non-criminals has continued. The development of neuroimaging technology has led to the focus on differences in the structure or function of the brain.

3.2. CESARE LOMBROSO

In his book "L'Uomo Delinquente" (Criminal Man), Lombroso collected the physical measurements of Italian prisoners and non-criminal military personnel. He argued that the physical shape of the head and face determined the "born criminal" (or what he called "homo delinquens"). These people, he believed, were primitive and could not adapt to modern morality.

The underlying basis of the difference was genetic. The atavist (primitive genetic forms) had large jaws, high cheekbones, large ears, extra nipples, toes or fingers, and were insensitive to pain (figure 3.1).



1. C. M. de Rober.



2. Marat.



3. Louis Riel.



4. Allix.



5. Cavalot.



6. Louis Michel.



7. Passaniti.



8. Bazzaretti.



9. Carrier.



10. Jourdan.



11. Pischel.



12. Piro.



13. Gargotte.



14. Steinschneider.



15. Hammerer.



16. Reinsdorf.



17. Hoedel.



18. Brady.



19. Hanlon.



20. Fitzharris.

RÉVOLUTIONNAIRES ET CRIMINELS POLITIQUES. — MATTOÏDES ET FOUS MORAUX.

(Source: In public domain)

Figure 3.1 - Examples of criminal faces.

The greatest challenge to any theory is the replication or not of the original findings. Goring (1913) compared the physical measurements of 3000 English convicts and 3000 non-convicts, and found no support for Lombroso. Both studies, though, had methodological flaws as we would view them today. For example, much of Lombroso's criminal sample included individuals with severe learning difficulties. Furthermore, it ignored the fact that poverty could be the cause of the physical appearance rather than genetics.

One big problem with the hunt for the "criminal face" is the existence of stereotypes of what a criminal looks like. The most obvious stereotype is that physical unattractiveness equals criminal, though there may be little evidence for this in real life. However, studies have found disproportionately more facially unattractive individuals among the prison population. But here it could be social expectations that are causing this behaviour. For example, constantly being rejected and stereotyped in a negative way as a child with an unattractive face could cause this individual to become marginalised, and turn to crime for acceptance among a delinquent sub-culture (Brewer 2000).

The most recent variation on the constitutional theory of crime has focused on "minor physical anomalies" (MPAS). These anomalies would be, for example, asymmetrical ears or webbed toes. There is evidence of correlations between MPAS and behaviour problems in children.

Firstly, though, this is only a correlation and we cannot talk of causation. Secondly, many MPAS are caused by physical complications, which may influence the central nervous system, and this is what causes the behaviour problems (Brewer 2000).

3.3. BRAIN DIFFERENCES

Post-mortem examinations of violent criminals have looked for some difference in the structure of the brain (neurophysiology) to account for the violent behaviour. Usually there is no difference except for rare cases, like Charles Whitman, who shot sixteen passersby from a university tower. He was found to have a large tumour in the amygdala (Mark and Ervin 1970). This part of the brain is associated with emotions, and with aggression in animal studies. However, it is not clear whether the tumour was the cause of the violent behaviour.

In a large scale study of 2000 persistent offenders in Canada, it was found that 90% had some minor damage in

the frontal or temporal regions of the brain (Yeudall 1982). In another study involving the analysis of PET scans of the living brains of impulsive killers damage was found in the prefrontal cortex (which tends to control impulsive behaviour) (Raine 1994). The technique used is one of sustained attention. It involves watching a screen for 32 minutes and responding every time a zero appears. The lack of prefrontal activity can be seen on the PET scan while this task is being performed, plus the fact that impulsive individuals miss many of the zeros.

While elsewhere, Okasha et al (1975) found that around half of 76 Egyptian murderers had electroencephalography (EEG) abnormalities. This figure was over 70% for cases where the murder was apparently motiveless.

3.4. SEXUAL OFFENDING

3.4.1. Sexual Violence

Briken et al (2005) used forensic psychiatric court reports on 166 sexually motivated murderers. Fifty of the group had obvious brain abnormalities, and these individuals differed from the others on certain criteria:

- Higher incidence of childhood behaviour problems;
- Higher number of paraphilias, particularly diagnoses of transvestitic fetishism and paraphilias NOS (not otherwise specified);
- Younger victims, particularly six years old or below.

Briken et al (2006) looked at a similar population for the incidence of the chromosome abnormality XYY. The rate among sexually motivated homicide perpetrators was 1.8%, which is higher than the rate in male offenders generally and in the general population (0.01%) (Bradford 2006). The individuals with XYY were rated as sexually sadistic as well as psychopathic.

3.4.2. Paedophiles/Child Sex Offenders

There is interest in finding the brain differences (or neuroanatomical basis) in paedophiles, especially males. Two areas of focus exist (Cantor et al 2008):

- Frontal-Dysexecutive Theories - the problem relates to the frontal cortex, and thus poor behaviour inhibition and control.

- Temporal-Limbic Theories - damage to areas deep in the temporal lobe and in the limbic system linked to sexual urges.

The Dual Dysfunction Theories combine both of the above.

Cantor et al (2008) compared sixty-five men with sexual interest towards children and sixty-two men who had committed non-sexual offences in Toronto, Canada. All the men underwent magnetic resonance imaging (MRI) which showed the grey and white matter in the brain ⁵ (ie: differences in brain structure).

The paedophile men showed lower white matter volume in certain areas of the brain (ie: smaller, less connections). Such differences would manifest as lower IQ and poorer memory, for example, which was the case as compared to the control group. The MRI produced a correlation between physiological differences and behaviour, but this could have three possible explanations:

i) Brain abnormality causes behaviour (ie: low white matter causes paedophilia) - Cantor et al (2008) argued that the brain abnormality related to interconnections of brain regions which respond to sexual stimuli, and, specifically, insufficient connections in the brain.

A hard or deterministic version of this idea sees the malfunctioning of the brain as the cause of paedophilia, while a softer version accepts that a susceptibility to developing paedophilia is created which requires environmental triggers, like experiencing childhood sexual abuse.

ii) The behaviour causes the brain abnormality (ie: paedophilia causes low white matter) - White matter can be reduced by alcoholism as well as ageing. However, Cantor et al (2008) argued that the paedophilic men showed behaviours associated with the brain abnormality in early life (ie: before alcoholism or ageing could be involved).

iii) Both the brain abnormality and the behaviour are caused by a third variable - For example, a pathogen while in the womb could cause the brain abnormality and the sexual interest in children. However, Cantor et al (2008) argued that other brain differences should be evident if this was the case.

⁵ Grey matter refers to the densely packed cell bodies, and the white matter is the connections between the cells (axons) (Romero 2004).

3.5. IMPLICATIONS OF BIOLOGICAL BASIS TO CRIME

If criminals are physiologically or biologically different to non-criminals, then there are implications of these theories.

1. The most important implication is that of determinism, and thus responsibility. If the smaller brain volume, for example, causes the behaviour, can the offender be held responsible for their actions which they had no conscious control over?

Hughes (2010) reported on the increasing use of neuroimaging evidence in US courts, if not to show innocence, to use as mitigating circumstances against the death penalty in murder cases.

2. How to conceptualise criminals and non-criminals?

i) Two separate clearly distinct groups (figure 3.2a) - Biological theories would suggest that criminals and non-criminals are entirely different, and only through a brain injury, for example, could a non-criminal become a criminal.

ii) Two clearly distinctive groups with overlapping (figure 3.2b) - This conceptualisation allows for some common ground between criminals and non-criminals. For example, physiological differences that need environmental triggers to cause criminal behaviour.

iii) A continuum from non-criminal to criminal (figure 3.2c) - This idea challenges the above conceptualisations and suggests that criminal behaviour is a version of non-criminal behaviour. So criminals and non-criminals are not that different, and it may be environmental and social factors that make the difference.

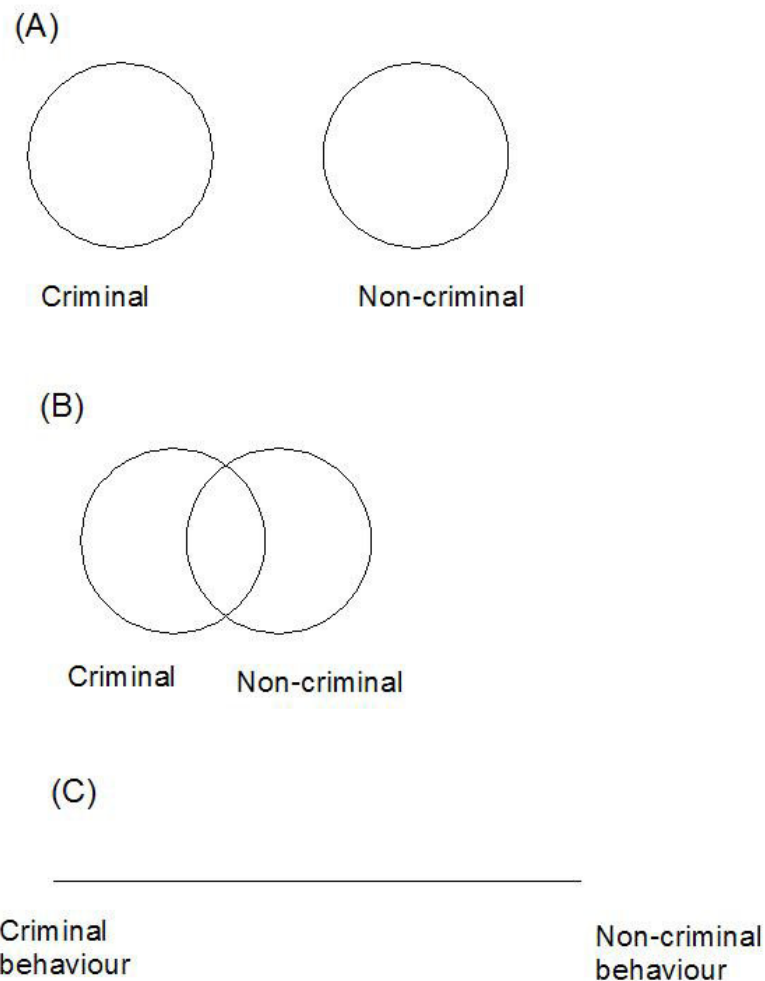


Figure 3.2 - Three ways of conceptualising criminals and non-criminals.

3. The nature of the relationship between biology and behaviour. There is evidence that violent individuals are biologically different to the rest of the population, but it may be the environment that leads to those biological differences. For example, violence experienced leads to "footprints" (changes) in the brain (possibly short term, possibly long term) (Brewer 2000).

4. Social implications of the biological basis to crime. It should be noted that biological explanations fit with the views of the time that the individual is responsible for their own behaviour. In other words, the family, poverty or the environment are of limited importance. It is also easier politically to give drugs to solve problem

behaviour than to face the fact that it is poverty which causes crime. This is particularly the case in the USA (Brewer 2000).

Many people are concerned with the implications of finding a biological basis to crime. This reminds many of eugenics, which was popular at the beginning of the 20th century, and formed the philosophical basis of Nazi ideas. It suggested that controlling who could have children (and for the Nazis even killing), would make society a better place. In the first half of the 20th century, in the USA, there were approximately 70 000 sterilisations of mothers with low IQ. By 1931, 27 US states had compulsory sterilisation laws for "feeble-minded", insane and habitual criminals (Gibbs 1995).

5. A biological approach is reductionist ignoring the complexity of behaviour and the multiple causes for criminal behaviour.

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4. NON-CUSTODIAL PUNISHMENT FOR OFFENDERS

- 4.1. Introduction
- 4.2. Fines
- 4.3. Community orders
- 4.4. Effectiveness of non-custodial methods
- 4.5. References

4.1. INTRODUCTION

Any system of punishment for offenders used by society must achieve four aims (Billingham et al 2008):

- Retribution - punishment of the individual for breaking the rules.
- Deterrence - as a threat to deter the individual from re-offending, and to deter the population as a whole.
- Rehabilitation (or reform) - to "cure" the offender of their "deviance", or at least to help them with a second chance.
- Protection of society - to protect individuals in society from becoming victims.

Punishment tends to be either custodial (imprisonment) or non-custodial. Two types of non-custodial punishment are included here - fines and community orders.

4.2. FINES

The punishment for the offender involves the payment of a sum of money to the State.

ADVANTAGES

1. Most common form of non-custodial punishment, particularly for minor offences.
2. Costs the State very little compared to imprisonment.
3. The offender does not experience prison.
4. The offender is not removed from their everyday life.
5. Aids in situations where there is prison overcrowding.

6. Most appropriate means of punishment for minor offences (eg: littering) or certain types of offences (eg: copyright infringement or plagiarism).

DISADVANTAGES

1. Depending on the level of the fine, it may not be retribution for rich offenders.
2. The level of the fine may be too high for poor offenders, and cause them to commit more crime to pay it.
3. Does not involve rehabilitation.
4. Does not protect society from the offender.
5. Young offenders may have the fine paid for them by parents, and so do not feel the punish.
6. The problem of setting fines at the correct level, and for the correct crimes.

4.3. COMMUNITY ORDERS

These involve specific restrictions being placed on the offender (eg: curfews in community rehabilitation orders) and/or the offender being required to undertake unpaid work for the benefit of the community (community punishment orders).

ADVANTAGES

1. Clear retribution for offender in terms of restrictions and work required to undertake.
2. Keeps the offender within their everyday life and community.
3. Costs the State less than imprisonment.
4. The visible presence of individuals on community punishment orders is a deterrent to others as well as the community seeing justice being done.
5. Community rehabilitation orders can aid offenders to reform; eg: compulsory drug and alcohol treatment.
6. Aids in situations where there is prison overcrowding.
7. The offender does not experience prison.

DISADVANTAGES

1. Victims may not feel that they are protected to see the offender still around.
2. The problem of checking that the offender obeys the curfew etc.
3. It may not feel like retribution for some offenders.
4. The problem of setting the penalty at the correct level (eg: length of order, time of curfew).
5. Not appropriate for some types of crimes.
6. Attempts to change individual's behaviour (eg: drug treatment) may be limited if they return to behaviour as soon as community order stops.
7. Like imprisonment, the success of community orders in stopping future offending (recidivism) depends on what happens after the sentence completed. For example, does the individual have a job?

4.4. EFFECTIVENESS OF NON-CUSTODIAL METHODS

The big issue with non-custodial methods is whether they are as effective as custodial sentences in reducing re-offending.

Killias et al (2000) reported an experiment in the Swiss Canton of Vaud to randomly assign minor offenders to jail (up to fourteen days) or to community service between 1993 and 1995. One day in jail was viewed as the equivalent to eight hours of community service (which included unpaid work in nursing homes or schools, or "cleaning" the environment). The focus was upon 84 individuals undertaking community work and 39 sent to prison.

There was no significant difference between the two groups in number of re-convictions, but the figure was higher for jail (25.6% vs 21.4%). It was found that a few individuals (drug addicts) increased their offending after their custodial sentence.

Killias and Villettaz (2008) produced a meta-analysis based on twenty-three studies (27 comparisons) that compared custodial ⁶ and non-custodial methods ⁷. Eleven

⁶ Custodial sentences involved the deprivation of liberty as in prison, but also "boot camps" or closed therapeutic settings.

out of the 27 comparisons showed significantly more re-offending after a custodial sentence, and only two for non-custodial sanctions. The other studies showed no significant differences.

However, there are a number of problems with the studies used which limit the applicability of the findings (Killias and Villettaz 2008):

i) Most of the studies were quasi-experiments which meant the offenders were not randomised to custodial or non-custodial sentencing. In reality, decisions were made by judges, for example, to incarcerate certain individuals (seen as more dangerous, say) than others. Thus the two groups are not comparable.

ii) Most studies have follow-up periods of two years or less to see who re-offended.

iii) Re-offending is usually based on official records (ie: re-arrest or re-conviction), and thus ignores re-offending not caught.

iv) Re-offending tends to be measured as "yes" or "no" rather than amount of re-offending which could be affected by the sentence. "Some studies have shown that most offenders reduce offending rates after whatever type of intervention... Thus, the relevant question may be to what extent they improve differently by type of sanction. Therefore, it would be urgent to look in future studies at rates of improvement (or reductions in offending) rather than merely at recidivism as such" (Killias and Villettaz 2008 p32).

v) Other measures of success of type of sentencing could be used, like social integration (eg: finding work, lack of family problems).

vi) Individuals receiving non-custodial sentences may feel that they have been treated better than expected, and change their behaviour as a consequence. This can be viewed as a "placebo effect".

Any calculation of the success of a sentencing technique based on reconviction rates must take into

⁷ Non-custodial sentences included community work, electronic monitoring, financial penalties, and suspended sanctions (probation).

account the type of crime, previous convictions, and age of the offender. For example, Walker et al (1981) observed that different techniques had no effect for multiple recidivists with five or more previous convictions among men in the UK and offences related to violence, criminal damage, and theft. While for "first offenders", imprisonment followed by fines followed by probation and suspended sentence reduced re-offending.

4.5. REFERENCES

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5. ZERO TOLERANCE AND THE BROKEN WINDOW THEORY

- 5.1. Introduction
- 5.2. Broken window theory
- 5.3. Keizer et al (2008)
 - 5.3.1. Evaluation
- 5.4. References

5.1. INTRODUCTION

The concept of zero tolerance has developed recently, particularly in American cities, and involves a police crackdown on any and every crime. The assumption being that to stop small crimes will also reduce bigger ones. Or alternatively, letting the small crimes go unpunished leads to disorder and bigger crimes. The original idea (Broken Window Theory; BWT) was formulated in March 1982 in an article called "Broken Windows" in the "Atlantic Monthly" magazine by James Wilson and George Kelling.

For example, the presence of graffiti leads to the belief, so the argument goes, that people do not care for the neighbourhood, and there are few inhibitions to further crime.

So what is the evidence for the proposition that signs of disorder or minor crime like litter and broken windows encourage further disorder and crime. The problem is that the relationship between signs of disorder and further crime is only a correlation, and causation is hard to establish in real-life (Keizer et al 2008). A correlation means three possible relationships between the variables (figure 5.1).

In New York, zero tolerance was introduced in 1992 as part of the Mayor's "Quality of life campaign", and produced a 25% increase in arrests, but a reduction in serious crimes. The number of homicides fell from 2166 in 1991 to 767 in 1997.

Why does such a policy reduce serious crime? It is probably a combination of factors - increased police effort and resources are available, and an increased number of offenders locked away. In fact, part of New York's success is due to an extra 7000 police officers introduced with the zero tolerance policy, in a city that already had a high ratio of police to public (Brewer 2000).

Bowling (1999) argued that part of the success in reducing homicides was due to the decline in the "crack market" which had peaked in the mid-1990s. He also argued

1. Broken windows cause other crimes

BROKEN ⇒ OTHER
WINDOWS CRIMES

2. Other crimes causes broken windows

BROKEN ← OTHER
WINDOWS CRIMES

3. A third variable causes both broken windows and other crimes

BROKEN OTHER
WINDOWS CRIMES

 ↑ ↑
 OTHER VARIABLE

Figure 5.1 - Three possible relationships of a correlation.

that the politicians claimed responsibility for the success of zero tolerance, and ignored the community crime preventions organised by ordinary New Yorkers, like citizen patrols, or shopping escorts for older people.

5.2. BROKEN WINDOW THEORY

The theoretical idea behind BWT relates to norms of behaviour. In any situation there are general social norms about how to behave (called "injunctive norms") and specific norms of the situation (called "descriptive norms") (Keizer et al 2008). There is no problem when the two types of norms are in agreement. For example, an injunctive norm that dropping litter is unacceptable, and a descriptive norm where individuals put their litter in a bin.

The BWT is concerned with the situation where there is conflict between the two types - eg: an injunctive norm of anti-littering versus a situation where there is a lot of litter (descriptive norm). The BWT predicts that the descriptive norm is more influential and it inhibits the injunctive norm. So, "if everybody's doing it, I might as well do it too". Keizer et al (2008) called it the "Cialdini effect" after the psychologist who described the process. More generally, signs of disorder (descriptive norms) weaken the concern for appropriate behaviour (injunctive norms), and "strengthens the goal to do what makes them feel good (for example, by being lazy and throwing paper on the street) or the goal to gain resources (say, by stealing). Thus people do not necessarily copy the inappropriate behaviour they

observe but let concerns other than appropriateness take centre stage. In this way, one norm violation fosters violations of other norms, and disorder spreads from one kind of inappropriate behaviour to other kinds" ⁸ (Keizer et al 2008 p1682).

5.3. KEIZER ET AL (2008)

Keizer et al (2008) tested the BWT in six small field experiments in Groningen, Netherlands. Using local public spaces the researchers set up situations where there was a clear injunctive norm (eg: "no litter" sign) and noticeable evidence of violation (eg: litter). The dependent variable was the number of passersby who violated another injunctive norm in that situation.

Experiment 1

This was experiment based around an alley near a shopping area where bicycles were parked. On the wall was a sign saying "no graffiti". In the "clean condition" (control group) there was no graffiti on the wall, and in the "disorder condition" (experimental group) the wall was covered with graffiti ⁹.

For seventy-seven bicycles in each condition, the researchers attached a flyer to the handlebars ^{10 11}. There was no litter bin in the alley, so what would the participants do with the flyer? The BWT predicts that they would drop it as litter in the disorder condition, but not in the clean condition ¹².

Significantly more participants were observed to litter in the disorder condition (69%) than in the clean condition (33%) ($p < 0.001$). This experiment showed that the BWT is correct for a simple situation of conflict between injunctive and description norms.

⁸ Also called "cross-norm inhibition effect" (Keizer et al 2008).

⁹ The night before the clean condition the researchers painted the wall to cover any already present graffiti, and added simple graffiti the night before the disorder condition.

¹⁰ The flyer said "We wish everybody happy holidays" and was from a non-existent sportswear shop.

¹¹ The two conditions were carried out at the same period of the day, and in the same weather conditions. Any flyers that got wet from rain were removed from the bicycle handlebars.

¹² Flyers were picked up inconspicuously by the researchers to avoid a confounding variable of littering and graffiti. In an experiment it is important to have one clear difference between the control and the experimental condition, and that is the independent variable. In this case, the presence or absence of graffiti.

Experiment 2

This experiment explored the BWT further with another scenario involving a conflict. The researchers set up a police sign saying "no entry"¹³ on a temporary fence by a car park, which meant that the participants had to walk 200 metres to another entrance. It was possible to squeeze through a 50cm gap in the fence. On the fence was another sign forbidding the locking of bicycles to the fence¹⁴.

In the clean condition four bicycles were parked one metre from the fence, and in the disorder condition the bicycles were locked to the fence. The BWT predicts that more participants would squeeze through the fence in the disorder condition.

Significantly more of the 49 individuals observed in the disorder condition went through the fence (82%) than in the clean condition (27% of 44 individuals) ($p < 0.001$).

Experiment 3

In this experiment an indoor supermarket car park was observed with the norm to return the shopping carts to an appropriate area as detailed by a clearly visible sign. The car park was either littered with carts (disorder condition¹⁵) or not (clean condition). Flyers, as in experiment 1, were attached to the cars' windscreen wipers. The dependent variable was whether the flyer was dropped on the ground or not.

Significantly more participants (of the sixty in each condition) dropped the flyer in the disorder condition (58% vs 30%) ($p = 0.002$). This experiment showed that the BWT applied to private companies as well as to police/official notices in the earlier experiments.

Experiment 4

This experiment studied the flyer littering scenario as used in experiment 1 when the violation of the injunctive norm was not explicit. The previous three experiments had used signs to clearly state what was appropriate behaviour. In this experiment a generally known law was used. In the Netherlands it is prohibited to let off fireworks in the weeks before New Year's Eve.

Observations of a bicycle shed at a train station

¹³ In Dutch: "Geen doorgang" (Keizer et al 2008 p1683).

¹⁴ The sign read in Dutch, "Geen fietsen aan het hek vastmaken" (Keizer et al 2008 p1683).

¹⁵ To discourage individuals from using the carts left around, the researchers smeared the handlebars with Vaseline.

was made while there was the sound of fireworks nearly two weeks before New Year's Eve (disorder condition; n = 46) or not (clean condition; n = 50). It was found that 80% of participants dropped the flyer in the disorder condition and 52% in the order condition ($p=0.003$). So just hearing a norm violation was enough to encourage littering behaviour too was the researchers' conclusion.

Experiment 5

The previous experiments were minor violations of the law which involved little thought (ie: littering), whereas this experiment used a slightly more serious case. An envelope visibly containing a five Euro note was left hanging out of a postbox. Would individuals steal the money? The disorder condition involved the postbox being covered in graffiti. The participants were individuals who singly passed the postbox on foot (n = 71 in the clean condition and sixty in the disorder condition). It was found that 27% of individuals stole the money in the disorder condition compared to 13% ($p=0.035$).

Experiment 6

This was the same as experiment 5 except that the disorder condition involved litter (paper, orange peels, cigarette butts, and empty cans) around the postbox and not graffiti. Here 25% of the 72 participants stole the envelope in this condition ($p=0.047$).

Keizer et al (2008) concluded that: "The most likely interpretation of these results is, as before, that one disorder (graffiti or littering) actually fostered a new disorder (stealing) by weakening the goal of acting appropriately" (p1684).

Figure 5.2 summarises the results from the six experiments.

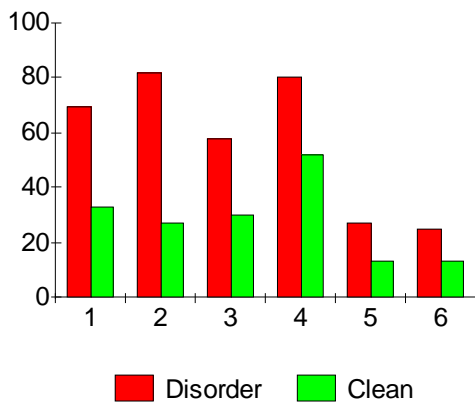


Figure 5.2 - Participants (%) committing "crime" in disorder and clean conditions of each experiment.

5.3.1. Evaluation

1. Ethical issues

There are a number of ethical issues related to this research. These include:

a) Informed consent - As with all research in public places, it is difficult to gain informed consent before participation in the study. It may be possible to gain post-hoc consent by asking the participants after the event.

b) Right to non-participation - Individuals did not have the right to not participate as participants were chosen by their presence at a particular time and place.

c) Deception - The individuals were deceived because they did not know that the situations were experiments. The researchers would argue that the deception was not that serious, and was necessary in order to gain a picture of "real-life behaviour".

d) Psychological stress - The last two experiments in particular involved the participants in a stressful situation (whether to take the money or not). It was only a small amount of money, but it was a good way to test for criminal behaviour. It is not possible to design an experiment to test for major crimes. Such crimes can only be studied after the event or with statistics.

This is the type of research where it could be argued that "the end justifies the means".

2. Field experiment

These studies were field experiments which have advantages and disadvantages compared to laboratory experiments (table 5.1).

ADVANTAGES	DISADVANTAGES
<p>1. Studied individuals in their own environment, which should mean that they are behaving typically (eg: not changing behaviour to please experimenter).</p> <p>2. Still able to maintain control of variables that are needed in an experiment.</p> <p>3. Difficult to study such behaviour in a laboratory environment.</p>	<p>1. Much less control than a laboratory experiment, particularly of extraneous variables, like weather.</p> <p>2. Difficult to obtain informed consent beforehand. Also involves deception as participants do not know that they are part of an experiment.</p> <p>3. Tends to use opportunity sampling (ie: those who there at time).</p>

Table 5.1 - Main advantages and disadvantages of the field experiment compared to the laboratory experiment.

5.4. REFERENCES

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