

Evaluating the case of Joseph McCann using the rehabilitation and retribution philosophies of punishment.

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Abstract:

Joseph McCann can be described as a ruthless and heartless serial rapist who was imprisoned after committing countless acts of sexual assault and abduction. However, had the probation service not been mismanaged leading to false recordings of McCann's risk, this outcome could have been different. McCann's case highlights probation officers' responsibilities and suggests that rehabilitation does not always work. From its continuing developments in criminology, rehabilitation has been effective in some cases for low-risk individuals who have drug and alcohol problems. Though it begs the question – why is it being used for the most dangerous offenders? This is where retribution would enact proportionality, believing the offender should receive their just deserts. Being more abundantly accepted by society for removing criminals from the streets, this approach would punish the offender instead of helping them. These two contrasting paradigms are often reflected by social and political changes over time. With rehabilitation emerging after World War 2, the medical model was formed to treat offenders, though with critiques of its failures and being a soft approach, retribution gained popularity following Kantian ideals. Overall, Joseph McCann's case could have been handled better if a retributivist approach was taken though it is also evident that not one punishment philosophy is perfect. This article will examine the case of Joseph McCann and assess to what extent rehabilitation was an appropriate punishment philosophy and whether retribution would be more appropriate.

Keywords: Retribution, rehabilitation, risk, probation, proportionality

Between April and May 2019, Joseph McCann 'abducted, raped, digitally penetrated and sexually assaulted' several victims (Ministry of Justice, 2020: 1). After failing to imprison McCann in 2008 for burglary, he continued to commit 'seven counts of rape', 'three counts of assault', and 'one count of sexual assault' due to mismanagement in the probation service and prison system due to budget cuts (Dodd, 2019). This issue led to inexperienced and confused probation staff inaccurately reporting McCann's risk whereby his 'interpersonal skills and ability to manipulate

staff were underestimated' (Inspectorate of Probation, 2020: 11), leading to his release from prison when he was still a risk to society. There will be a comparison between retributivist and rehabilitative punishment philosophies to determine their effectiveness. The methods of reducing reoffending will be assessed with retribution proportionately punishing the offender and rehabilitation reintegrating them back into society. These contrasting punishment philosophies are important as they govern how offenders are managed and penalised. In this article, the causes of McCann's crimes will be assessed, and the case outcomes will be reviewed. There will be an account of any social and political circumstances that influenced criminal justice legislation and policies. An evaluation will be made to decipher whether the punishments are justified and how they impact McCann's case and society. Accommodating merits and withdrawals of the philosophies, a conclusion will be made regarding which is more appropriate for Joseph McCann.

Rehabilitation is an optimistic punishment philosophy that attempts to reform offenders to make them law-abiding citizens and rejects traditional crime management strategies. It aims to 'reduce crime', 'the fear of crime' and 'reoffending' (Home Office, 2006: 10) and rests on utilitarian principles. Founded by Jeremy Bentham in the 18th century, utilitarianism ensures the 'greatest happiness of the greatest number' by balancing pain and pleasure (Bentham and Mill, 2004). Contemporary utilitarianism is both consequentialist, in justifying individual actions and institutional law by consequences, and reductivist, in which it is forward-looking to prevent future crimes.

After World War 2 and governmental concern with the economy, rehabilitation grew alongside the welfare state. The medical model in the 1950s was created and aimed to 'diagnose and treat offenders both in prisons and in the community' (Mair, 2013). Individuals' 'drug and alcohol abuse or mental health problems' were believed to be symptoms of criminogenesis. (Brooks, 2021: 78). As a result, this left-realist therapeutic intervention was recognised which caused a societal focus on individual needs. By analysing similar criminogenic profiles, rehabilitation provides employment, family connections, and housing, also attributing offenders to 'harnessing and developing their strengths and assets' (Raynor and Robinson, 2009: 13). Not only does rehabilitation highlight causes of crime, but it also reintegrates offenders free from recidivism. Due to its social perception of being a "soft" approach and a lack of empirical evidence its reputation as a "punishment" agency was damaged.

In the 1970s, there was a shift from the welfare model to crime control whereby right-wing critics contrasted rehabilitation with incapacitation, arguing for a 'get tough approach' (Hudson, 1987: 28). The impact of these Thatcherite years authorized the justification of other punishment philosophies. By the 1990s, the 'what works' movement resurged rehabilitative ideals, aiming to

do more to prevent and reduce crime by managing risk. Providing guidelines on ‘who to target (risk), what to target (needs), and how to target (responsivity and treatment)’, the “new rehabilitation” was created (Latessa et al, 2014: 238). Since this renewed approach does not punish offenders and prioritises fairness under due process, it was socially rejected for not being novel. However, it allowed offenders to be supported, enabling them to feel comfortable. It also collated empirical data formed from risk assessments proving useful in preventing further instances of crime.

Intending to rehabilitate offenders, the Criminal Justice Act 2003 introduced risk management prioritization of criminogenic needs into legislation, strengthening rehabilitation as a punishment philosophy. These high-risk individuals receive exponentially more probation resources so to combat this, the National Probation Service (NPS) launched privatised Community Rehabilitation Companies (CRCs) that manage ‘medium- and low-risk offenders’ (Walker et al, 2019: 114). This provides a cheaper and cost-effective solution to assessing risk over traditional punishment agencies. Though maintaining the resource equilibrium is difficult since high-risk individuals are more dangerous whilst low-risk individuals are more populous and prolific. In summary, rehabilitation works. It provides help and reforms individuals and does not assume the offender’s rationality which situates it as a core punishment philosophy. Though incorrect risk assessments, resource management and anomaly cases of recidivism question if everyone is reformable.

In the case of Joseph McCann, rehabilitation considers his criminogenic needs as the cause of crime. McGuire (2003: 114) categorised social and individual factors such as ‘unemployment’, ‘drug trafficking’, ‘aggressive tendencies’ and ‘drug addiction’ as needs seen as causing criminal behaviour. In the 1990s, probation moved away from treatment via ‘assist, advise and befriend’ to the new penology of risk management (Garland, 2001: 177). Following the critique of welfare, the public favoured harsher punishment which meant McCann was being assessed based on his risk rather than the old penology of treatment. Firstly, interventions McCann partook in 2013 ‘appeared to be having a positive impact’, which categorised him as a medium-risk to the public and a high-risk to known adults (Ministry of Justice, 2020: 4). Despite being credited for highlighting McCann’s disturbing letters and manipulative behaviour, the assessment underestimated McCann’s interpersonal skills.

McCann grew up in a criminogenic family with his two siblings, Sean and Michael, dubbed as the 'Brothers from Hell' for ‘terrorising neighbours, shoplifting and setting cars alight’ (Hicks, 2019). When McCann was situated with his family it provided an unsafe environment that could ‘increase his risk of reoffending’ (Inspectorate of Probation, 2020: 28) when he should have been

relocated. McCann also received no medication assessment and was not transferred to a mental health institution when required to do so. Clearly, McCann's needs were not being met due to poor practice and ignorance of potential risk by the management team.

With increasing social demand for the crime prevention methodology that circumvents illegal acts before they happen, the Criminal Justice Act 2003 provided a greater focus on assessing criminogenic needs. Yet, displayed risk factors such as a 'planned escape attempt', a 'threatening letter' and McCann 'using a weapon' were responded to negligently (Inspectorate of Probation, 2020: 18-22). OASys was built upon What Works in 2001 helping 'to achieve greater consistency across probation and MAPPA risk assessments' (Kemshall, 2008: 70). But McCann's OASys 2014 review failed to assess him at the appropriate level. One explanation is that 'the Ministry of Justice... left the probation services underfunded' (Bamford and Bilton, 2020: 181) which 'impacted their ability to comprehensively review JMc's historical record' (Ministry of Justice, 2020: 6). So, McCann was not seen as a risk due to his low-risk crimes of burglary and signs of improvements through attended programmes and thus did not receive the criminogenic needs to be reformed. Moreover, McCann was issued an IPP statement for aggravated burglary in 2008 for two and a half years endorsed by the Criminal Justice Act 2003. It was suggested that 'had his IPP licence been revoked [in July 2017] ... he would not have been released' in February 2019, months before his final conviction. (Inspectorate of Probation, 2020: 31). These oversights 'demonstrates a lack of professional curiosity' by the officers constituting the NPS to recommend 'professional training... to enhance skills in interviewing' (Inspectorate of Probation, 2020: 50).

These failures by the staff and the underfunded agencies demonstrate the dangers of implementing a risk discourse system to rehabilitate high-level offenders. In summary, although rehabilitation is broadly viable, it did not work for McCann. It did not achieve utilitarian principles since McCann's release provided more danger to the individual, the public and society – in that it is a waste of money and resources – than a benefit. This asserted risk highlights the public's precaution for welfare, believing it to be a "soft" approach and preferring methods like retribution.

Retribution follows a belief of merit and demerit whereby 'criminals deserve punishment in proportion to their crime' (Brooks, 2012: 15). With the belief that everyone has free will – reflected by classical theorists such as Cesare Beccaria – retributive justice seeks to punish those who have committed wrongful but illegal acts. Crime is retributively believed to be caused by the individual calculating 'the likely costs and benefits' to achieve their self-interest (Scott, 2000). This rightist belief was developed into the rational choice theory which provided guidelines for understanding behaviour. Consequentially, in assuming that everyone is rational, retributivism neglects irrationality present in neurodivergent people or those with personal and social

background factors that influence the pursuit of crime. This reactive punishment philosophy saw an upsurge in the 1960s and 1970s after society's critiques of rehabilitative ideals, the failures of the welfare state in reducing poverty and improving education, and the ever-increasing crime rate. The shift to the crime control model prioritized social order and brought along Kantian ideas such as the "just deserts" principle that 'whatever undeserved evil you inflict upon another... you inflict upon yourself' (Kant, 2017: 115).

Contrary to contemporary utilitarianism, this offence-focused approach attributes punishment to offenders in reaction to their crimes rather than those showing pre-meditation. They are managed according to pre-determined rules of crime severity to protect the larger population of society. Overall, this approach has been credited for allowing society to feel safer by issuing justice to the victims involved.

The Criminal Justice Act 1991 supported just desert beliefs, bringing longer custodial sentences along with the twin-track approach for violent and sexual criminals which strengthens it as a punishment philosophy. Proportionality is calculated as 'equal to the harm of punishment' guiding a reflective penalty that acquires justice (Brooks, 2012: 30). However, the concept of harm is subjective and thus crimes could be disproportionately sentenced. The harm caused is often proportionally unquantifiable in rape victims and deaths by serial killers. Additionally, crimes such as traffic or drug offences are not seen as immoral thus proportionating the harm to the crime is difficult. Not everyone wants revenge either; some victims may want to see the individual learn from what they committed. Retribution tends to be related to imprisonment and corporal punishment to equate the harm caused to attain proportionality. With society moving towards a stricter attitude to crime, the greater the chances of enacting the death penalty, but this too has had critiques for its inaccuracies, immorality and exorbitant cost.

The 'just deserts' philosophy was further reinstated with the Criminal Justice Act 2003 which introduced extended sentences and showcased that retribution works to an extent. Though crimes such as theft are often harshly punished despite their socially renowned mundaneness. Recent policies have extended criminal responsibility for manslaughter to 18 years old (Police Crime, Sentencing and Courts Act, 2022). Whilst beneficial under society's limited legislature consciousness, retributivist practices highlight the far-right ideology of managing society to a point where it feels too controlling. With 20.6% of prisoners being held in crowded accommodations as of 2022 (Justice Data, 2022), more controlling environments may lead to riots, further overcrowding and policy readjustments. Though retribution's get-tough approach satisfies the societal balance of the public feeling safe and the justified proportionate sentencing of offenders for their crimes.

Retribution follows Kantian ideals of just deserts which allow for public safety by removing the offender. The socio-political climate at the time of the case was guided more towards the new penology of risk management thus retributive ideals were not considered in the management of McCann. In consideration of McCann's initial crimes of burglary as wrongful and illegal, they should have been punished greatly from a retributive standpoint to deter him from further burglaries despite their mundaneness. Furthermore, the early release of McCann does not follow the just deserts principle whereby he should have been punished. Considered primarily responsible for causing his crimes as a 'rational thinker', retribution justifies a proportional sentence for the 'abducted, raped, digitally penetrated and sexually assaulted' victims (Ministry of Justice, 2020: 1). Though, this is debatable judging by his upbringing in a criminogenic family that may allude to his criminogenesis – to which is not retributively considered.

McCann 'raped and kidnapped 11 people', with one victim explaining that 'she suffers PTSD as a result' whereby he 'replaced a life of thriving with one of surviving' (Dirnhuber and Christodoulou, 2019). He received the equivalent of 33 life sentences for his crimes though this does not achieve just deserts since it is impossible to proportionally punish him for the harm caused. In response to criticisms of rehabilitative ideals, the Criminal Justice Act 1991 emphasised just deserts principles and the twin-track approach for violent and sexual offences. However, one of the senior judges for McCann, Lord Burnett, explained that he was not given the whole life tariff to 'ensure that the most severe sentence' is reserved for 'loss of life' and instances involving a 'plan to murder' (Abbit, 2020). This punishment is not proportional to the crimes committed and the long-term harm inflicted. In comparison to murder, in which retribution would assert the cost of a life for a life, rape is difficult to quantify to an equivalent sentence and even more difficult to proportionally punish the offender.

The Criminal Justice Act 2003 imposed harsher penalties for persistent offenders and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) created new EDS licenses requiring violent and sexual offenders to serve 'at least two-thirds of their sentence' before they can be released (Easton and Piper, 2016: 148). These provisions were highlighted and the court 'imposed an extended determinate sentence of 45 years' – over the minimum sentence of 30 years – regarding 'the seriousness of all the offences taken together' and the 'previous criminal offending' (Judiciary of England and Wales, 2019: 3). This highlights retribution's valuable revenge perspective of giving the offender what they deserve. Rejecting the whole life order does not attain an 'eye for an eye' and the pursuit of extended sentences is disproportionate due to their foundation of risk. However, the Sentencing Act 2020 enforced just deserts whereby early release provisions such as the release of a contained 'life prisoner on licence' would no longer apply (Crime

Sentences Act, 1997). This assures the victims that McCann will not be a risk due to the permanent licence he received, though still not proportional to the harm caused.

The HM Prisons and Probation Service ‘apologised for failings’ (Dodd, 2019), though this only highlights the withdrawals of rehabilitative methods – often focusing more on the individual than public safety. Retribution ensures the guilty are punished and the innocent are protected therefore it is the only appropriate moral justification for punishment. In summary, if just deserts principles were considered more in legislation, proportionality could have been achieved in McCann’s case though it is arguably impossible to equate the harm caused. Being abundantly definable, retribution is generally accepted by the public, however, it does not identify criminogenesis or help the offender back into society and thus the offender and the offender’s family and loved ones suffer.

Rehabilitation and retribution are polar-opposite punishment philosophies. Where leftist rehabilitation centres on treatment and considers criminogenic needs to prevent future crimes, rightist retribution centres on punishment and holds the individual accountable in reaction to their crimes. Rehabilitation is most successful at reforming individuals and being cost-effective while retribution is expensive. However, the public disputes rehabilitation as “soft”, favouring retribution that ensures public safety by locking offenders away and deterring them from further crime. Though, retribution assumes the offender is rational and in favouring imprisonment it may destabilise the ‘offender’s skills and life prospects’ to fall further behind (Brooks, 2021), which could have influenced McCann’s failure to reform. The risk management methods used in McCann’s case were not up to rehabilitative standards.

In this case, McCann’s risk and criminogenic needs were not assessed appropriately, which failed to reform him, made him a danger to the public and failed to achieve the rehabilitative ‘greatest happiness for the greatest number’ principle (Bentham and Mill, 2004). Retributive ideals were partially achieved as the punishment was set at the highest it could have been collating his previous criminal history and danger to society. Though if retribution had a greater influence, it would not have enabled McCann to commit the ‘seven counts of rape’, ‘three counts of sexual assault’ and other offences between April and May 2019 (Ministry of Justice, 2020). This is due to retribution providing a safer assessment of McCann whereby he can receive his just deserts without the risk of releasing him to re-offend. Even in retribution’s weakness of disproportionality, other punishment methods do not come close to providing equivalent justice. For example, rehabilitation decides to reform the offender, but ‘offenders may not be punished beyond their desert’ (Canton, 2017: 118) which highlights the public’s concern for probation’s soft approach founded on rehabilitative principles. In this context, retribution is a considerably better approach.

As for the future of the probation system, the McCann case highlighted the problems needing to be solved to provide better assessments of risk.

In June 2020, the NPS stated improvements to the risk management guidelines, promoting 'changes to Offender Assessment Systems (OASys)', allowing for more effective assessments of risk factors in violent and sexual offenders (HM Prison & Probation Service, 2020). However, the prison and punishment agencies, founded on retributive principles, recently integrated rehabilitative methods such as 'Resettlement Passports', 'Employment Hubs' and 'Intelligence Management' to reduce crime whilst still ensuring just deserts (Ministry of Justice, 2021). This means the two approaches can be united despite being in direct opposition to one another. Both philosophies offer a managerial and reactionary responses to crime, contributing to the decrease in crime rates, in victimisation, in prison populations and recidivism, while allowing for more individuals contributing to the economy. Although it can be acknowledged that rehabilitation has taken greater strides in reforming offenders and the newly classified prison strategy, the McCann case, the public and governmental legislation have benefitted more from retributive justice.

In conclusion, the case of Joseph McCann was treated very unprofessionally by those involved. With the shift between the welfare state and crime control, it is understandable that some officers may have been perplexed by the changing landscape, however, it enabled a serial rapist to run rampant. Rehabilitation and retribution were criminologically compared in the context of McCann's case, assessing the treatment's appropriateness. These punishment philosophies influence how offenders are managed and punished. Rehabilitation is effective in its application but evident in McCann's case it is sometimes insufficient for some offenders. With a risk assessment of 'systemic failure' and mismanagement evaluating his 'extensive criminal history', rehabilitation had failed at supporting McCann with the appropriate resources (Dodd, 2019). There should have been more acknowledgement of criminogenic factors before assessing him as his treatment failed to reform him and ended up putting the public at risk. Retribution justified McCann's harsh punishment for his crimes due to the inflicted harm he had caused. Though criminogenic factors are ignored whereby rationality is assumed in offenders. Retributivist ideals of proportionality warrant greater consequences than the 34 life sentences for the 'worried and insecure' victims affected by the tragedy (Dirnhuber and Christodoulou, 2019). McCann was given the longest sentence that could have been applied for the crimes committed. Thus, a greater focus on retributive justice could have avoided these tragedies, through McCann receiving a more justified sentence and being equivalently punished for the initial crimes that he committed. The future may see improvements in rehabilitative treatment and risk-managing methods, retributive corporal punishment or the overlap of both to collaborate their criminological impact on treating

and punishing offenders for a more cost-effective and socially accepted advanced study of crime and criminals.

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