

Should Paris Hilton Receive a Lighter Prison Sentence Because She's Rich? An Experimental Study

Josef Montag^{*} and Tomáš Sobek[†]

August 2014

Abstract

The 'equal punishment for the same crime' principle is generally agreed upon—yet its implementation differs radically depending on whether the punishment is measured purely in nominal terms or the subjective perspective of the punishee is accounted for. This is simply because different people may experience the same punishment with differing intensity.

Legal scholars have recently been proposing that improvements in scientific knowledge and advancing technologies (such as functional magnetic resonance imaging), which allow us to measure subjective perceptions and feelings, need and should be incorporated in our penal systems. This would facilitate calibrating the punishment not only to the crime but also to the offender's persona, so that different people experience equally tough punishment for the same crime.

However, such a substantial change in criminal law and policy necessitates a certain amount of public legitimacy and understanding among constituents. We run a simple experiment in order to learn how people understand punishment and to ascertain whether such legitimacy exists.

We find that it may be, in the case of pecuniary punishments. With regard to incarceration policies, however, the likelihood of popular acceptance of proposed innovations is rather remote. Our findings therefore point out a serious challenge to the existing literature and may complicate the implementation of suggested reforms, even if legal scholars find them worthwhile.

Keywords: Punishment, objectivism, subjectivism.

JEL classification: K14.

^{*} Corresponding author. Faculty of Business and Economics, Mendel University. Address: Zemědělská 1, 613 00 Brno, Czech Republic. Email: josef.montag@mendelu.cz.

[†] Faculty of Law, Masaryk University and the Institute of State and Law, the Academy of Sciences of the Czech Republic.

We have received valuable comments and criticisms from Jan Broulík, Libor Dušek, Peter Huber, Lucca Pieroni, and Vladimir Kozlov, as well as participants at the 2013 meeting of the European Association of Law and Economics at the University of Warsaw, the 2013 meeting of the German Law and Economics Association at the Free University of Bolzano, and seminar participants at Tilburg Law School. Any remaining mistakes and imperfections are our responsibility and we hope that any associated punishments will be determined so as to take into account our diverging personalities and individual sensitivities. We would like to thank Peter Bolcha, Marek Hudík, and Martina Urbanová for providing access to student respondents. The article is forthcoming in the *Kentucky Law Journal*, Volume 103, Issue 1.

Abstrakt

Princip, že za stejný trestný čin má být stejný trest, je předmětem širokého konsenzu, nicméně jeho použití se může velmi výrazně odlišovat v závislosti na tom, zda je výše trestu chápána pouze nominálně, nebo podle toho, jak ji subjektivně pociťuje potrestaný. A to prostě proto, že různí lidé mohou stejný trest vnímat s různou intenzitou.

Někteří teoretici práva v současné době argumentují, že trestní politika by měla využít pokroky ve vědeckém poznání a rozvoj technologií (např. zobrazování pomocí magnetické resonance), které nám umožňují sledovat procesy v mozku a potažmo i subjektivní vjemy a pocity. To by usnadnilo přizpůsobit trest nejen povaze trestného činu, ale i osobnosti pachatele, a to tak, aby různí lidé za stejný čin pociťovali trest se stejnou intenzitou.

Nicméně, taková reforma trestního práva vyžaduje politickou legitimitu a širokou akceptaci mezi občany. Připravili jsme jednoduchý experiment, jehož cílem je přezkoumat, jak lidé chápou účel trestání a jeho spravedlnost, abychom zjistili, zda se případná reforma o takovou legitimitu může opřít.

V případě finančních trestů jsme dospěli k pozitivní odpovědi, ale ohledně trestu odnětí svobody se veřejná akceptace subjektivního přístupu ukazuje jako nepravděpodobná. Naše závěry lze proto chápat nejen jako námitku proti globálnímu subjektivismu na poli teorie práva, ale také jako možný argument proti případné reformě v této oblasti.

INTRODUCTION	3
A. <i>The Debate: Objective versus Subjective Punishment</i>	3
B. <i>This Study</i>	7
I. STUDY DESIGN	9
A. <i>The Scenarios</i>	10
B. <i>Experimental Variation and Its Interpretation</i>	10
C. <i>Implementation</i>	11
II. DATA	12
A. <i>Summary Statistics</i>	12
B. <i>Randomization Checks</i>	13
III. RESULTS: RULES AND ATTITUDES	14
A. <i>Within-Subject Results: The Rules</i>	14
B. <i>Between-Group Results: The Attitudes</i>	16
C. <i>Debriefing</i>	17
1. <i>Motives and Purposes of Punishment</i>	17
2. <i>Respondents' Opinions on Subjective Aspects of Punishment</i>	19
IV. WHAT EXPLAINS THE RULES? POLITICS VERSUS WEALTH	21
CONCLUSIONS	26
APPENDIX	28
A. <i>Randomization Checks</i>	28
B. <i>Instructions and the Scenarios</i>	29
1. <i>The Car Accident Scenario – Rich Defendant in the First Case</i>	30
2. <i>The Bar Battery Scenario – Poor Defendant in the First Case</i>	32