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How to Punish a Corporation: Insights from Social and Behavioral Science

by [Benjamin van Rooij](#) and [Adam Fine](#)

“Justice cannot mean a prison sentence for a teenager who steals a car, but nothing more than a sideways glance at a C.E.O. who quietly engineers the theft of billions of dollars,” wrote U.S. Senator Elizabeth Warren in a *New York Times* [op-ed](#). When she calls for stronger action against corporate crime, she’s not alone. Calls resound, particularly on the political left. In 2015, the Department of Justice, under then-Deputy Attorney General Sally Q. Yates, issued a [new policy \(PDF: 448.14 KB\)](#) prioritizing prosecuting corporate criminals.

Punishing corporate executives more strongly may be justified. Punishment rarely occurs, and, when it does, it is often too weak to constitute “justice.” But once we agree that more punishment is warranted, the next question is how we can make punishment more effective in preventing corporate crime?

When we think of changing misbehavior through punishment, the core mechanism that often comes to mind is deterrence. It is assumed that people will refrain from wrongdoing when they experience the pain of punishment. Better yet, when people simply hear about someone *else* being punished, the hope is that they will think twice about breaking the law. The notion that punishment deters misbehavior is nothing new. It has roots in writings from around the globe, dating back to ancient China and Classical Greece, and spanning from Hinduism to the Judeo-Christian traditions.

The question is whether punishment *actually* deters crime. The best

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research we have focuses on individuals committing street crime and violence. Over four decades of study, we have found that the [death penalty \(PDF: 936.48 KB\)](#), the [recidivism](#), and whether [sentence](#)

Unfortunately, this body of work reveals that, for many behaviors, there is substantial doubt about whether punishment deters crime. A handful of findings support that stronger punishment does not enhance crime through “[brutalization](#)” and criminogenic effects. All in all, the deterrence literature on individual crime appears largely inconclusive.

Yet, out of this empirical fog, two things emerge.

First, certainty matters more than severity. Increasing the probability of getting caught, indicted, convicted, and sentenced is far more important than making fines larger or lengthening prison sentences. Furthermore, studies show us that punishment may only begin to deter once a certain [threshold level](#) of certainty has been established. Threatening to “throw the book” at them doesn’t work if you can’t catch them.

Second, we know that deterrence is subjective. Punishment can only deter would-be criminals if they perceive a threat. Unfortunately, [research reveals \(PDF: 455.08 KB\)](#) that would-be offenders largely underestimate the chances of getting caught and punished.

Naturally, we cannot assume that this body of work on individual street and violent crime applies directly to corporate misconduct. Luckily, there is a growing body of research about deterrence in corporate contexts, ranging from the environment to occupational health, from antitrust and securities violations to general forms of fraud. A recent [paper \(PDF: 939.85 KB\)](#) by Sally Simpson and her colleagues provides the most comprehensive analysis of the scientific evidence about corporate deterrence. After systematically analyzing 116 studies, Simpson and her colleagues came to (what might no longer be) a shocking conclusion: “[t]he evidence fails to show a consistent deterrent effect of punitive sanctions on individual offending, company-level offending, geographic-level offending, or offending among studies using an ‘other’ unit of analysis.” Not only do they fail to find that sanctions have deterrent

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effects across a wide range of corporate crimes, but also that the available scientific evidence about the frequency of inspections, and thus the certainty of punishment, on offending is too mixed to offer clear conclusions.

Simpson's work shows that stronger punishment, and even more certain punishment, may not deter corporations. Moreover, deterrent effects are even weaker in newer, better-designed studies.

These perplexing findings force us, at the very least, not to assume that more severe corporate punishment will deter corporate wrongdoing. Does that mean we should stop sanctioning? Not at all. Rather, we must think about how best to use punishment to prevent corporate wrongdoing. The general and corporate criminological literatures provide two core insights that can help law enforcement officials strengthen the deterrent effect of their sanctions.

The first insight is to focus on certainty. Some evidence suggests that a [certainty threshold \(1.03 MB\)](#) has to be met: if the probability of punishment is too low, deterrence is doomed to fail. Therefore, it may be that enhancing certainty in prior studies did not yield a clear deterrent effect because the punishments were simply too infrequent. Rather than get "tough" on corporate crime we must get "certain" on it. This begins with finding the illegal conduct, often through ramping up procedurally just inspections and audits. Yet, inspections are not sufficient. [Research \(PDF: 713 KB\)](#) shows how easily corporations can hide violations and that more enforcement can create more evasion, resulting in a [cat-and-mouse \(PDF: 415 KB\)](#) game between regulator and regulated. Moreover, certainty requires successful prosecution and sanctioning, which is difficult if highly technical evidence must be presented to lay-juries, as is often the case in the U.S. Finally, all too often, enforcement authorities fail to collect the fines they issued. Fine collection rates have been well below 50% across different enforcement agencies, with the DOJ only collecting 4% of penalties [imposed](#).

A second insight is that effective corporate punishment relies on careful communication. [Research](#) in corporate settings shows that, just like other types of offenders, corporate criminals do not know how the law is enforced, do not recognize major enforcement cases, and are unaware

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of the certainty and severity of punishments. If communication shows that punishment is [rare](#) or reveals procedural unfairness, it may undermine the [legitimacy \(PDF: 551 KB\)](#) of the law and increase rule breaking. The right messaging about punishment, then, is key, both to deterring and creating violations.

To truly create effective corporate deterrence, we don't just need stronger punishment. Scientific experimentation can help correct and fine-tune inspection and monitoring efforts, as well as hone communication strategies following sanctions to maximize their impact. Law enforcement officials and researchers must collaborate to punish smarter and more effectively.

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