Crime and Punishment

A cooperative society has historically been willing to create laws designed to govern right behavior and punish wrong behavior.

What constitutes "wrong behavior" is culturally dependent, however usually reflects:

- Society's definition of authoritative norms of right and wrong behavior.
- Defines which behaviors are public enough to be socially proscribed conduct.
- The political community enacts defining laws which reflect the social norms of behavior and moral expectations of the society.
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If a crime is committed, there are two separate and distinct philosophical "camps" on how society's punishment of wrong doers will affect society:

- Consequentialism (utilitarianism), in which punishment is justified only to the extent it serves the goal of reducing future wrong behavior.
- Retributive (deontological), in which punishment serves as an end in itself.
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To a consequentialist approach to punishment is not whether a given punishment is right or wrong but if the outcome of the punishment is of benefit to the greater society.

- Deterrence
- Restraint
- Rehabilitation

John Stuart Mill states the consequentialist approach to punishment in the essay 'On Liberty' in which he states,

"The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."
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The retributivist approach to punishment focuses not on whether society will be better, but whether justice is served by the act of punishment itself.

Emanuel Kant in the book 'Metaphysics of Morals' states that,

"Juridical Punishment can never be administered merely as a means for promoting another Good either with regard to the Criminal himself or to Civil Society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a Crime."
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A 2-y-o child was taken from his mother at a shopping mall by two abductors. After several hours of abuse he was weighted down with stones and placed on a train track. Some of the abuse included:

- Having paint placed in the eyes.
- Kicking and hitting with bricks and stones.
- Being hit with an iron bar.
- Had batteries placed in the mouth.
- Some evidence of sexual abuse.

There were so many injuries inflicted on the child that the case pathologist could not identify which was the fatal injury.
The two abductors were caught, tried, and convicted and face serious lifetime consequences.

- Consequentism: Does this satisfy the test of punishment satisfy a benefit to the greater good of the society?
- Retributism: Does this satisfy the test of punishment for the sake of justice for the crime committed?
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What if the abductors were 10-y-o at the time of the crime? Does the punishment benefit society or serve justice?
Legal responsibility for a crime usually hinges on whether there is an understanding of right and wrong at the time of the crime.

- The 10-y-o's were judged to have an adequate understanding of right and wrong.
- They were tried as adults.
- Appropriate punishment for the crime was determined accordingly.
- The boys were incarcerated until their 18th year and face 'lifetime' parole.
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The question is how the state determines whether the punishment for children who commit serious crimes satisfy:

Constructivist approach that benefits society

1) Prevent other 10-y-o from committing the same crime?
2) Prevent these 10-y-o from repeating the crime?
3) Rehabilitate the children?

Retributive approach

1) Provide adequate punishment for the crime
The questions:

1) Do the rules, or should the rules, change when specifying punishment for children who commit serious crimes?

2) Considering the extended life a child could be expected to live, when is long enough, a long enough punishment to satisfy the justice aspect of the retributive approach?

3) Again considering the extended life, with the constructivist approach how long a time is adequate to a) deter others from committing the same crime, b) restraint in committing the same crime, or c) define how long is long enough to accomplish rehabilitation?