

The effects of punishment and sentencing



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The role of sentencing plays an integral part in the criminal justice system process because it is how criminals are punished. And by punishing the criminals sentencing serves two ultimate purposes. Those purposes are: “deserved infliction of suffering on evildoers” and “the prevention of crime” (Professor Herbert Packer, 2006 *Criminal Justice in Action: The Core*).

Sentencing affects society today because if there were no sentencing in the criminal justice system, then all of the criminals would be roaming free and that would make the world even worse than it is already. In the purpose of sentencing, there are four fundamental philosophies. Those are retribution, deterrence, incapacitation, and rehabilitation. Retribution is the philosophy that people who commit crimes should be punished based on the severity of the crime and that other factors need to be considered. Retribution relies on the principle of just desert which holds the severity of the punishment must be in proportion of the severity of the actual crime.

The next philosophy is deterrence. This is a strategy of preventing crime through the threat of punishment. By setting an example, this is sending a message to potential criminals that certain actions will not be tolerated. The third philosophy is incapacitation.

Incapacitation is a strategy for preventing crime by detaining wrongdoers in prison, thereby separating them from the community and reducing criminal opportunities. John Q. Wilson uses a blunt statement to summarize the justification for incapacitation. “Wicked people exist. Nothing avails except to set them apart from innocent people” (*Thinking about Crime* 1975). The last of the philosophies is rehabilitation.

Rehabilitation is the philosophy that society is best served when wrongdoers are not simply punished, but provided the resources needed to eliminate criminality from their behavioral patterns. There are different factors that go into the determination of specific sentences. The first one is on the Legislative authority. When the public opinion moves toward more severe strategies of retribution, deterrence, and incapacitation, the legislatures have responded to this by asserting their power over the sentencing guidelines. Because they are responsible for making up the laws, they are also responsible for passing the criminal code that will determine the length of ones sentence.

Within the Legislative Sentencing Authority, there are three different types of sentencing. First you have the indeterminate sentencing. This is a term of incarceration in which a judge determines the minimum and maximum terms of imprisonment. When the minimum term is reached, the prisoner becomes eligible for parole. The next type is determinate sentencing.

This is when a period of incarceration that is fixed by a sentencing authority and cannot be reduced by judges or other corrections officials. Another name for this sentence is fixed sentence. As the names implies, the offender serves exactly the amount of time to which she or he is sentenced. Another legislative sentencing is good time and truth in sentencing.

A good time is a reduction of time served for good behavior. This kind of program promotes discipline within a correctional institution. It is also a way to prevent overcrowding of jails. The truth in sentence is when the legislative

attempts to assure that convicts will serve approximately the terms to which they were initially sentenced.

This type of sentencing was passed by legislature due to pressure they received from victims' groups. This requires those who commit serious crimes such as murder to complete at least 85 percent of their original sentence without time off for good behavior. Another factor that goes into the determination of specific sentences is that of the Judicial Sentencing Authority. This is a direct encroachment on the long-recognized power of judges to make the final decision on a offenders sentence. The last factor is the Administrative Sentencing Authority.

The ultimate sentence for any criminal is capital punishment. The debate about capital punishment, also known as the death penalty, is highly controversial. This debate is present in countries with a decent freedom of speech, where the death penalty is abolished or used only for convicted murderers. Opponents argue that it leads to miscarriages of justice, that it violates the criminal's right to life, that the life imprisonment without parole works as a deterrent for murder, and moreover, that the death penalty is ineffective because it does not reduce the number of crimes. These arguments are opposed to the principle of retribution — “ an eye for an eye”.

It also opposes the argument that sanctity life is affirmed by the death penalty, which puts to death those who commit murder. On a more factual point on view, the main question is: Are death penalty or life imprisonment effective deterrence's for murder and other brutal crimes? What are the advantages and drawbacks of each compared to the other? The practice of

capital punishment is as old as government itself. For most of history, it has not been considered controversial. Since ancient times most governments have punished a wide variety of crimes by death and have conducted executions as a routine part of the administration of criminal law. However, in the mid-18th century, social commentators in Europe began to emphasize the worth of the individual and to criticize government practices they considered unjust, including capital punishment. The controversy and debate over whether governments should utilize the death penalty continue today.

The first significant movement to abolish the death penalty began during the era known as the Age of Enlightenment. In 1764 Italian jurist and philosopher Cesare Beccaria published *Tratto dei delitti e delle pene* (1764; translated as *Essay on Crimes and Punishments*, 1880). Many consider this influential work the leading document in the early campaign against capital punishment. Other individuals who campaigned against executions during this period include French authors Voltaire and Denis Diderot, British philosophers David Hume and Adam Smith, and political theorist Thomas Paine in the United States. Critics of capital punishment contend that it is brutal and degrading, while supporters consider it a necessary form of retribution (revenge) for terrible crimes.

Those who advocate the death penalty assert that it is a uniquely effective punishment that deters crime. However, advocates and opponents of the death penalty dispute the proper interpretation of statistical analyses of its deterrent effect. Opponents of capital punishment see the death penalty as a human rights issue involving the proper limits of governmental power. In

contrast, those who want governments to continue to execute tend to regard capital punishment as an issue of criminal justice policy.

Because of these alternative viewpoints, there is a profound difference of opinion not only about what is the right answer on capital punishment, but about what type of question is being asked when the death penalty becomes a public issue. John Q. Wilson, *Thinking about Crime* (New York: Basic Books, 1975), 235.