

# **CHAPTER 14**

## **PUNISHMENT AND SENTENCING**

### **CHAPTER OUTLINE**

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### **LECTURE OUTLINE**

#### I. Introduction

Sentencing is the final stage of a criminal trial. Review the case of Lance Conway Wood and discuss with students why his trial would have ended the way it did.

#### II. Sentencing Rationales

Crimes are distinguished from other wrongs in society based upon the consequences. The government blames, convicts, and punishes the wrongdoer, fulfilling the expectations of society. There are five rationales for imposing a sentence upon a wrongdoer.

##### A. Retribution

This is the most punishment-oriented of all sentencing goals, with a simple rationale that the offender deserves to be punished. Eye for an eye philosophy.

##### B. Deterrence

Keeping behavior in line, both with specific deterrence, intended to deter the offender from committing future offenses, and general deterrence, which uses the punishment as an example to others of what happens to those who break the law.

##### C. Rehabilitation

The philosophy of reforming a criminal offender. Though previously a popular theory for re-socializing offenders, it has been criticized as ineffective to deter crime based upon studies of recidivism.

##### D. Restoration

This focuses upon the emotional and financial toll crime has to a victim and seeks to restore the victim and community to be whole. This may include restitution to compensate the victim for his/her loss (Review chart comparing retributive and restorative justice models).

## E. Incapacitation

This theory seeks to incapacitate the offender who is likely and capable of committing future offenses. Habitual offender statutes, including the three strikes legislation, mandate long prison sentences for repeat offenders. This can be an extremely costly measure of punishment.

## III. Constitutional Limitations

Several constitutional provisions come into play during sentencing and punishment. The most significant provisions in the Constitution in regard to sentencing and punishment can be found in the Eighth Amendment.

The excessive bail clause in the Eighth Amendment is the only to have not been incorporated, which means that it does not apply to the states.

In regard to cruel and unusual punishments, the Supreme Court has held that the concept of cruelty is changing, which has resulted in an explosion of in Eighth Amendment jurisprudence in recent decades.

## IV. Imposing Criminal Sanctions

The philosophy for sentencing has also changed in the type of commitment imposed. An indeterminate sentence provides a range of time that can be lessened by good behavior. A consecutive sentence is one imposed to be served in sequence with another sentence. A concurrent sentence is one served at the same time another sentence is being served. Many states and the federal government now have determinate sentencing, where a definite period of time is imposed.

Discuss proportionality of sentence to crime, the concept of equity, and the principle of social debt, accounting for past criminal history when imposing a sentence. Review chart with aggravating and mitigating factors.

### A. Federal Sentencing Practices

The federal system led the movement toward determinate sentences. These are outlined in the federal sentencing guidelines in Table 14.2. The law provides, among other goals, the need to consider the seriousness of the offense, promote respect for the law, and to provide just punishment for the offense.

### B. The Role of the Jury in Sentencing

Review recent case decisions of *Apprendi*, *Harris*, *Cotton* and *Ring*, for the role of the jury in finding certain factors to exist before a more severe sentence could be imposed. Recent decisions have held that federal sentencing guidelines are advisory and the sentencing judge may consider a range of other factors.

### C. Truth in Sentencing

While sentences have been reduced by good time credit as a means of controlling the prison population, crime victims felt betrayed and misled by the sentencing process. Truth in sentencing is the idea that the sentence imposed should closely match the time served by a prison inmate. Many states have adopted legislation (based upon government financial incentives) to require an offender serve at least 85 percent of the time imposed.

## V. Plea Bargaining

Studies show that more than 90 percent of all convictions are the result of plea bargaining. It has been compared to the civil settlement process, and called a necessary evil in dealing with clogged court dockets where numerous persons await trial in a system that is simply unable to accommodate everyone the right to a trial.

Since the Constitution guarantees the right to trial by jury, the plea process requires that the accused make a knowing, intelligent, and voluntary waiver of the rights guaranteed by the Sixth Amendment. The court will generally address the accused to assure the plea is valid.

Once a negotiated plea has been entered, it can usually be withdrawn at any time before sentencing. Courts have scrutinized this process more in recent years, and a mere change of heart is usually not a sufficient basis for withdrawing a plea. Witnesses may be released from service, evidence may be disposed of, or the terms of a plea bargain for testimony may be breached.

Discuss the danger of an innocent person pleading to a charge to avoid the risk of a more serious offense and punishment.

## VI. Traditional Sentencing Options

Four traditional sanctions include incarceration (prison or jail), probation, fines, and the death penalty. Probation is a deferred or suspended sentence with conditions that must be followed to avoid imposition of incarceration.

Less traditional options include community service, but also chain gangs, tent city incarcerations, and other forms of discomfort. However, they must not inflict more pain or punishment than necessary to achieve a legitimate purpose.

## VII. Sentence Enhancements.

State and federal laws that increase the penalty for a stated offense based upon some characteristic of the defendant, victim, or the nature of the offense, are said to be sentencing enhancements. Generally these laws have been held by the courts to be consonant with the Eighth Amendment even when they impose life imprisonment for lesser felonies because the offenders have been convicted of multiple offenses. Habitual offenders, elderly victims, and hate crimes motivated by bias or prejudice are examples of such offenses.

## VIII. Capital Punishment

Capital punishment, or a death sentence, can be analyzed from three different perspectives: 1) The legal perspective, which includes a Constitutional analysis. 2) The philosophical, moral, and ethical perspective. 3) The analysis of empirical data on deterrence, public opinion, etc.

### A. The Eighth Amendment and Capital Punishment

Review the history of how capital punishment was imposed, from *Wilkinson* to *Kennedy*, from firing squad to lethal injection. Discuss the impact of *Furman*, which commuted death sentences across the country (including Charles Manson) to life imprisonment, and the two step process upheld in the *Gregg* decision that prevails today in states that still have capital punishment.

Today, long delays between conviction and imposition of sentence have provided the question of whether that delay, not necessarily caused by frivolous appeals by the defendant, is unconstitutional.

Review types of cases and types of defendants where capital punishment may not be imposed (juvenile offender, mentally retarded offender, or the accomplice who does not have a direct hand in causing the death).

### B. Limits on Death Row Appeals

Review the writ of habeas corpus, a Constitutional remedy brought in court for the purpose of determining the legality of the prisoner's detention.

Court decisions have held that the repeated filing of appeals and petitions to delay execution should be limited. A defendant must show good cause why the present claim was not made in previous filings, and how the absence of this claim prejudiced the ability to mount an effective defense. Procedural issues, such as failure to meet filing deadlines, are no basis for an appeal.

### C. Cruel and Unusual Punishments

The constitutionality of the death sentence under Eighth Amendment analysis continues to be a controversial legal issue. Some members of the court have felt that it is a barbaric punishment that has no place in a civilized society. Others have taken the view that the mention of capital crimes in the Fifth Amendment is sufficient evidence that the imposition of capital punishment is constitutionally permissible under appropriate circumstances.

Discuss firing squad, hanging, electric chair, gas chamber, and lethal injection, and the deference the Court given to states in making that determination based upon “new developments to ensure humane capital punishment.”

Today lethal injection is the primary method of executing offenders in the United States. Although it is intended to be more humane than former methods, it is still imperfect. Despite the problems that have occurred relating to lethal injection, however, the Supreme Court, as administered at the time, found it to be consonant with the Eighth Amendment in *Baze v Rees* (2008).

#### IV. Intermediate Sanctions

Alternative or intermediate sanctions may be permitted within a legislatively derived sentencing scheme. These may include split sentences, shock probation, shock incarceration (e.g., boot camps), mixed sentences, intensive supervised probation, and home confinement or house arrest. Discuss the pros and cons of these intermediate alternatives.

### RESEARCH PAPER TOPICS

1. Crime statistics seem to show that many types of crimes are actually decreasing, yet prison populations continue to increase. What causal factors can be identified for increased prison populations if there is actually less crime?
2. What states provide for capital punishment and for what types of offenses? What is the method proscribed for the imposition of death, and what state has had the most executions since the *Gregg* decision? The least?

### STUDENT ACTIVITIES

1. In the year that *Gideon v. Wainwright* was decided, there were roughly 7,800 prison inmates in Florida. Find what that prison population is today. How did the general population compare in the state back in 1963 to today? Are there any states where the population has remained constant, yet the prison population has increased?

## **CASE STUDIES**

1. The Sheriff of Maricopa County, Arizona, has a philosophy that punishment should be harsh and humiliating. Is this a legitimate penal strategy, or a public relations tactic aimed at achieving political stature? Find articles and studies to determine the effectiveness of this strategy.

## **REFERENCES AND RESOURCES**

1. Any research on capital punishment must begin at the Death Penalty Information Center website. The site provides extensive information related to capital punishment including history, statistics, court information, and issues that these cases challenge and confront across the country:

[www.deathpenaltyinfo.org/home](http://www.deathpenaltyinfo.org/home)