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Chapter 2: Why Do We Punish?

CHAPTER OVERVIEW

This chapter introduces five primary punishment philosophies or rationales and explains each in detail and under its own major heading. Review begins with deterrence—distinguishing specific and general. The importance of certainty, severity, and swiftness of punishment is highlighted to emphasize problems in effectively using deterrence as a punishment system. Incapacitation—both special and general—is reviewed with attention to its application through imprisonment but also in its contemporary use through technology. The various ways that rehabilitation has been implemented are noted with particular attention to its current use as part of reentry. Retribution as a punishment philosophy is distinguished from revenge and the importance of proportionality in punishment is emphasized. The chapter concludes with discussion of restorative justice and how it can be used during sentencing, in the community, and in prison.

CHAPTER LEARNING OUTCOMES

1. Describe the five primary punishment philosophies.
2. Discuss the deterrence philosophy of punishment by understanding the effects of specific and general deterrence.
3. Compare and contrast selective and general incapacitation.
4. Summarize rehabilitation's development from a reclamation focus to a reentry emphasis.
5. Explain the keys ways in which retribution differs from revenge.
6. Describe how restorative justice principles are used in sentencing, during community supervision, and in prison.

LECTURE OUTLINE

WHY PUNISH?

- This chapter's title makes a great discussion question for the first day of class. Simply ask students what reasons they can think of for punishing people. That is, what do they hope punishment will accomplish? After seven or eight have been offered, give each example the appropriate term from the textbook (e.g., "Keep people from committing another crime" = deterrence).

Teaching Note: This section points out that in our representative democracy, the people's will is expressed through elected legislators. That means we should be able to identify punishment philosophies in each state and at the federal level by finding the relevant statutes or other legislative documents. The text does this for Alabama, California, Colorado, and Texas. If you are teaching in another state, determine whether your state has provided similar statements regarding the purpose of punishment/sentencing and review those statements in class.

DETERRENCE

- This punishment philosophy seeks to prevent future offenses. Deterrence can be one of two types.

  Specific Deterrence

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- Punishment is applied to an offender with the goal of discouraging that person from misbehaving again.

General Deterrence

- Punishment is applied to an offender so that others who are thinking about committing a crime will decide not to in order to avoid being punished.

INCAPACITATION

- This punishment philosophy also has two aspects: selective incapacitation and general incapacitation. Distinguish each (see Figure 2-3) and discuss in class the strengths and weaknesses of each.

Incapacitation Through Technology

- Three types are discussed (see Figure 2-4): chemical treatment, critical organ surgery, and electronic monitoring.

REHABILITATION

- Rehabilitation is described as having progressed through four stages (see Figure 2-6), but its application as individualized treatment (Twentieth Century) and for purposes of reenty (Twenty-First Century) will be of most interest to students and should be highlighted in lecture.
- Include discussion of the iron law of imprisonment (i.e., essentially all prisoners will eventually return to free society) when discussing rehabilitation's contemporary role.

RETRIBUTION

- Retribution is a legitimate punishment philosophy, revenge less so. Explain why (see Table 2-1). Highlight retribution's non-utilitarian aspect and note that it is unique among the punishment philosophies in that it is applied simply because punishment is required of society when a crime has occurred.

RESTORATION

- This punishment philosophy provides a greater role for victim's than do the other rationales. Offender accountability is important, but so too are concerns for how best to reintegrate the offender into the community and to restore the balance that was upset by the crime.

Criticism of Restorative Justice

- Restorative justice is criticized for bringing people into the justice system who might otherwise have been handled informally outside the system (the problem of net widening) and for its potential to promote discrimination by perpetuating social inequities (e.g., subordinates may be pressured to accept less than they deserve because of the power discrepancy).

LIST OF CHANGES/TRANSITION GUIDE

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- The chapter now includes one of the new "Voices in Corrections" feature. In this case, a probation officer explains how GPS tracking of probationers affects the way probation officers do their job.
- The Timeline on surgical and chemical castration (Figure 2-5) has been updated to include Guam's adoption of chemical castration.
- Data on sentenced prisoners admitted and released (Figure 2-7) has been updated.

ADDITIONAL ASSIGNMENTS AND CLASS ACTIVITIES

1. Break the class into three evenly sized groups and assign—one to each group—the topics of "certainty," "severity," and "swiftness." Give the groups 15-20 minutes to prepare an example of how their assigned topic can be best implemented in society so that punishment can be an effective deterrent. Have one member of each group orally present that groups example to the rest of the class. Have everyone discuss any problems that might arise in implementing the group's example.
2. The chapter reviews the key requirements for an effective deterrence system: certainty, severity, and swiftness. Explain why each is necessary and why each is difficult to achieve. One technique is to ask students who amongst them has ever illegally parked on campus (or some other harmless offense). Get volunteers to provide their reason for illegally parking (e.g., had to get to class), whether they knew what the punishment would be (e.g., they thought it would be a $25 fine), and why they committed the offense anyway (e.g., didn't expect to be caught—lack of certainty; or, it was worth $25—lack of severity).
3. Assign students (or accept volunteers) to "pro" and "con" sides to debate the statement: "Chemical castration should be an available sentence for violent sex offenders." Find assistance using the search phrase *debate castration sex offenders* and at http://www.debate.org/opinions/isnt-castration-the-most-logical-solution-for-rehabilitating-repeat-sex-offenders
4. Determine if your community offers victim-offender mediation in its criminal courts and, if so, invite a person from that program to be a guest speaker in class.
5. A note on speakers. Speakers are recommended for many topics throughout this Instructor's Manual. Students typically enjoy hearing from practitioners and practitioners (especially your program graduates) usually enjoy telling about their work. Speakers do not expect compensation but it is appropriate to provide parking permits when parking requires payment. Also, many departments purchase coffee mugs, pens, or some other token of appreciation with the department and school name and these items make a nice "thank you" to your speaker.

SUGGESTED ANSWERS TO END-OF-CHAPTER LEARNING OUTCOME QUESTIONS

Learning Outcome 1

1. Which punishment philosophy is being used when a judge sentences a thief to three years in prison as a way to discourage other people from stealing?
   - Deterrence
2. Which punishment philosophies are reflected in the court rules for California?
   - Deterrence, incapacitation, rehabilitation, retribution, restoration

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3. Which punishment philosophy does Colorado emphasize that is not so clearly found in Alabama, California, or Texas?

- Restoration

Learning Outcome 2

1. How does specific deterrence differ from general deterrence?
    - Specific deterrence is punishment applied to the individual who has already committed an offense; general deterrence shows others what may happen if they commit a particular offense by the example of others.
2. Why would certainty of punishment require constant monitoring of people?
    - People would have to be monitored so all offenses are reported to the authorities when they occur.
3. If one person views probation as a minor nuisance and another person sees it as a major inconvenience, how can severity be achieved in sentencing?
    - It probably can't be. This addresses the point that deterrence is difficult to achieve precisely because individuals have differing opinions as to a punishment's severity.
4. Is it possible for punishment to be swift and still protect the rights of suspects and defendants?
    - Answers will vary.
5. Publicity is considered an important, but not a key, element for successful deterrence. Should it be given greater weight and actually be a fourth key element? Why or why not?
    - Answers will vary but should include reference to the need for persons to be aware of a punishment and its application in order for that punishment to influence behavior.

Learning Outcome 3

1. What is the common premise upon which both selective and general incapacitation is based?
    - A particular group of offenders is responsible for a large percentage of crime, and if that group (whether rather large or small) can be removed from society the crime rate will drop.
2. Name five personal characteristics you believe many or most criminals have in common. If these characteristics were used to identify people who should be sentenced to prison, could sentencing end up being unfair to a particular segment of society?
    - Answers will vary and characteristics selected will determine the resulting fairness or unfairness.
3. Would justice be served by using technological incapacitation to temporarily disable (for example, make blind or deaf, or confine to a wheelchair) a person as punishment for a crime?
    - Answers will vary but will likely include some ethical concerns as well as practical issues.

Learning Outcome 4

1. How did the belief in reclamation differ from the idea of reformation?
    - Reclamation dealt with Quaker desire to reclaim soul of offender; reformation deals with changing the offender to make them productive upon returning to society.
2. How could one argue that the twentieth-century view of rehabilitation followed a medical model?
    - Criminal behavior was viewed as a treatable illness so the offender was examined, diagnosed, and then treated much like a sick person would be handled.

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3. What is the “iron law of imprisonment,” and is it likely to always be true?

- Essentially all prisoners—except the few who die in custody—will return to live in free society. It will be true unless all prison sentences are for life without parole.

4. Is it possible to achieve the goal of rehabilitation while implementing the goal of incapacitation?

- Answers will vary but should include reference to the existence of treatment programs in prison contrasted with the difficulty of prisoners learning to adjust to life in the community while having to live in prison.

Learning Outcome 5

1. Should revenge, rather than retribution, be a punishment philosophy? Why or why not?

- Answers will vary but should emphasize that revenge, as a personal reaction, would probably mean less equity and more disproportionate punishment than civil society prefers.

2. Design your own ladder of proportionality and describe how you matched the rungs on the harm ladder with the proportional rungs on the penalty ladder.

- Answers will vary.

3. Some people argue that retributionists must favor the death penalty for homicide. Others suggest that as long as society’s most severe penalty is applied to its most serious crime, retribution is achieved. That could mean that a retributionist favors life imprisonment rather than death as a proportional punishment if society chose life imprisonment as its most severe penalty. Do you agree with this assessment of retribution?

- Answers will vary.

Learning Outcome 6

1. Explain the norm of reciprocity.

- The view of punishment as a natural response, or reciprocation, to a wrongful act.

2. Why is restorative justice said to place more emphasis on the victim than do other punishment philosophies?

- Victims are involved throughout the process in helping to restore the offender back to the community.

3. Why is victim–offender mediation considered a good way to achieve restorative justice?

- Answers will vary but should include reference to how the process involves victim, offender, and community representatives in the decision as to how best to restore than balance that was upset by the crime.

4. In what way can the use of restorative justice principles help make the community whole again after a crime has occurred?

- The involvement of all persons affected by the crime, including the offender, in order to return a balance in the community.

5. What is net widening and do you think it is a legitimate concern?

- Net widening occurs when programs designed as alternatives to the traditional process actually end up bringing more people into the system. Answers will vary on whether student feels it a legitimate concern.

6. Describe how restorative justice could be used even in situations where one of the involved parties is in a subordinate position to the other.

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- Answers should note how difficult this would be to achieve but will vary depending on the student's creativity in designing a process where subordinates' can set aside effects of the power imbalance.

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