American Corrections in Brief 3rd edition Clear Solutions Manual

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CHAPTER 2
The Punishment of Offenders

Learning Objectives

After reading this chapter, students should be able to:

1. Know about the "Age of Reason" and its effect on corrections.
2. Understand the major goals of punishment.
3. Be familiar with the different criminal sanctions that are used.
4. Explain the types of sentences that judges hand down.
5. Discuss the problem of unjust punishment.

Chapter Outline

I. Punishment from the Middle Ages to the American Revolution

Learning Objective 1: Know about the "Age of Reason" and its effect on corrections.

A. The Hammurabic Code, the Sumerian law of Mesopotamia, and other ancient codes were some of the first comprehensive statements of prohibited behavior

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1. *Lex talionis* was the law of retaliation and was the basis for the laws of Anglo-Saxon society during the early Middle Ages; crime was a private affair; vengeance was a duty to be carried out by the person or family wronged

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What If Scenario

What if…..the concept of *lex talionis* remained the primary philosophy in criminal law? Would this result in an increase or decrease in criminality? How would this philosophy impact social order? Explain.

2. In later Middle Ages, the government grew and criminal law evolved
3. In addition to fines, five punishments dominated both Europe and America before the 1800s
   a. Corporal punishment: inflicting pain on an offender's body
   b. Galley Slavery: forcing men to row large ships
   c. Transportation: banishing the convicted to another country
   d. Imprisonment: locking up those awaiting trial
   e. Death

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B. The Age of Reason and Correctional Reform
   1. In the late 1700s, the Enlightenment or Age of Reason challenged and replaced traditional assumptions with new ideas based on rationalism and science
   2. Cesare Beccaria and Jeremy Bentham were key influences during this period

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C. Cesare Beccaria and the Classical School

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1. Cesare Beccaria—influenced the Classical School, which stated the only justification for punishment is utility: the safety it affords society by preventing crime
2. Beccaria advocated principles from which the classical school of criminology emerged
   a. The basis of all social action must be the utilitarian concept of the greatest good for the greatest number
   b. Crime must be considered an injury to society
   c. Prevention of crime is more important than punishment for crimes
   d. The accused have a right to speedy trials and humane treatment
   e. The purpose of punishment is deterrence, not revenge
   f. Imprisonment should be widely employed with better quarters based on age, sex, and degree of criminality

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D. Jeremy Bentham and the "Hedonistic Calculus"

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1. English social and legal reformer, stated rational persons behave in ways that achieve the most pleasure while bringing the least pain; they are constantly calculating the pluses and minuses of potential actions. Bentham sought to reform criminal law so it emphasized deterrence and prevention

E. European Influences on Punishment in America
1. Although reformers offered penal policies, corrections in America followed ideas of England
2. Although ties have continued, sentencing practices have adapted to decidedly American ways

II. The Purpose of Corrections

Learning Objective 2: Understand the major goals of punishment

A. What is Punishment?

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1. Herbert Packer argues that punishment has three elements: a) an offense; b) the infliction of some pain in response; c) a dominant purpose of either inflicting pain or preventing future offenses
2. There are generally acknowledged to be four specific goals or justifications for the criminal sanction (retribution, deterrence, incapacitation, rehabilitation)

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B. Retribution (Deserved Punishment)
1. Punishment inflicted on a person who has broken the law and deserves to be punished

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C. Deterrence
1. Punishment provides a basis for affecting future choices and behavior of individuals. There are essentially two types of deterrence:
2. General: presumes that members of the general public will be deterred by observing punishments of others
3. Specific: targets the decisions and behavior of offenders who have already been convicted; punishment will deter future criminal acts

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D. Incapacitation
1. This assumes society can remove an offender's capacity to commit further crimes by detention in prison or by execution

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2. Imprisonment is the usual method of incapacitation; capital punishment is the ultimate method of incapacitation

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E. Rehabilitation
   1. Refers to restoring a convicted offender to a constructive place in society through training, therapy or education; treat, not punish
   2. Judges who view rehabilitation as a primary goal should not set a fixed sentence

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Discussion Questions
Discuss which goal of corrections is most effective in the long term. Why is this the most effective goal?

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F. New approach to punishing
   1. *Restoration*—punishment designed to repair the damage done to the victim and community by an offender's criminal act
   2. There is growing evidence that shows these programs work

Media Tool
"Center for Restorative Justice Works"
http://www.crjw.us/

- The Center for Restorative Justice Works (CRJW) highlights some of their program initiatives
- Discussion: Select one of the three program overviews on the homepage. Discuss the effectiveness of such programs in the community where you reside.

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G. Criminal Sanctions: A Mixed Bag?
   1. How should society justify criminal sanctions?
   2. Trial judges carry out a difficult task of crafting sentences with different goals for each case

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III. Forms of the Criminal Sanction

Learning Objective 3: Be familiar with the different criminal sanctions that are used.

A. Incarceration:
   1. Nearly 6.9 million men and women are under correctional supervision with about 2.2 million incarcerated
   2. Three basic sentencing structures exist:

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      a. Indeterminate
      b. Determinate
      c. Mandatory

Discussion Questions
Should the United States corrections systems – at the state or federal level – adopt one specific sentencing structure? What sentencing structure is currently the most popular in the U.S.? Why?

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B. The Sentence versus Actual Time Served

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1. Parole boards have broad discretion in release decisions once the offender has served the minimum portion of the sentence
2. Good time credits can reduce prison sentences

What If Scenario

What if…..good time credits were eliminated in the correctional setting? What impact would this have on the criminal justice system overall? How would this impact the larger society?

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C. Intermediate Sanctions
   1. Sanctions that are less severe and costly than prison but more restrictive than traditional probation.
   2. Examples include fines, home confinement, and restitution

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D. Probation
   1. An offender serves a sentence in the community under supervision
      a. 57 percent of adults under supervision are on probation
      b. Conditions are imposed specifying offender's behavior while on probation
      c. If the conditions are not met, it can be revoked
   2. Shock probation is also used
      a. An offender on probation may be required to spend intermittent periods in jail

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E. Death—capital punishment
   1. U.S. is one of the few Western democracies to use this penalty
   2. 3,035 people were awaiting execution on death row as of 2014
   3. Over 81% of all U.S. death sentence executions since 1976 have occurred in the southern states

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   4. Methods of execution have included hanging, firing squad, gas chamber, electric chair, and lethal injection

What If Scenario

What if…the U.S. Supreme Court declared the death penalty unconstitutional pursuant to the Eighth Amendment? Would you support the position of the Court? Why or why not? Would you like to have the death penalty available as a punishment in the event a criminal harmed your family or you?

Media Tool

"Is the Death Penalty a Deterrent?"
http://video.msnbc.msn.com/up/51851513#51851513

- A video from MSN discussing the effectiveness of the death penalty as a deterrent
- Discussion: Discuss whether the death penalty has a deterrent effect on criminal behavior. Why or why not?

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F. Forms and Goals of Sanctions
   1. Not all punishments are as visible to the general public as prisons

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2. Invisible punishments include:
   a. Denying felons the right to vote
   b. Allowing termination of parental rights
   c. Establishing felony conviction as grounds for divorce
   d. Restricting access to certain occupation s
   e. Barring felons from welfare programs

See Assignments 1-3

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IV. The Sentencing Process

Learning Objective 4: Explain the types of sentences that judges hand down.

A. The Attitudes of Judges
   1. Differences in sentencing can be explained by
      a. Conflicting goals of criminal justice
      b. Administrative pressures
      c. Influence of community values
      d. Judicial determinations regarding blameworthiness

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Discussion Questions

Discuss pressures encountered by judges when sentencing criminals. What ethical difficulties are common to judges in this situation?

Media Tool

"Woman Gets Month in Jail for Flipping Off Judge"
http://usnews.nbcnews.com/_news/2013/02/04/16840659-woman-gets-month-in-jail-for-flipping-off-florida-judge?lite

- A video from NBC News showing a judge's discretion in sentencing.
- Discussion: Discuss whether the conduct of the judge, the offender, or both was inappropriate in this case. Do you support the judge's decision in this case? Why or why not?

B. The Administrative Context
   1. Judges have responsibility for imposing sentencing in most cases
   2. Judges are significantly influenced by the context within which they impose sentences; differences are found between the assembly-line style of misdemeanor courts and the more formal proceeding found in felony courts

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C. The Presentence Report
   1. Written by probation officer for the judges
   2. Primary purpose—to help the judge select the sentence, but it also assists in the classification of probationers, prisoners, and parolees with respect to treatment planning and risk assessment

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D. Sentencing Guidelines

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1. Designed to indicate to judges the expected sanction for particular types of offenses; intended to limit sentencing discretion and reduce the disparity for similar offenses
2. Judges may go outside the guidelines if aggravating or mitigating circumstances exist, but must provide a written explanation for it

What If Scenario

What if…..sentencing guidelines were not used to assist judges in determining sentences? Would other factors, such as gender, race, or socio-economics, impact determinations and result in disparate sentencing? Why or why not?

V. Unjust Punishments

Learning Objective 5: Discuss the problem of unjust punishment.

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A. May result due to sentencing disparities and wrongful convictions
B. Sentencing Disparity
   1. Sentencing disparity occurs when divergent penalties are imposed on offenders with similar backgrounds, committing the same offense, with no discernible or reasonable justification for the disparity. In short, the difference in sentences cannot be explained by "legal" factors, but only by "extra-legal factors

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C. Wrongful Convictions
   1. Wrongful convictions occur when an innocent person is found guilty by either a plea or verdict
      a. DNA testing has had profound consequences
      b. As of January 2015, 325 people have been released from prison after DNA testing had excluded them as perpetrators
      c. 65% of the people exonerated by DNA testing have been financially compensated
   2. Wrongful convictions occur because of eyewitness error, unethical conduct, community pressure, false accusations, inadequacy of counsel, and plea bargaining pressures

Media Tool

"300th Person Exonerated by DNA in the U.S."
http://blog.amnestyusa.org/us/300th-person-exonerated-by-dna-evidence-in-us/

- This story from Amnesty International details the story of Damon Thibodeaux, wrongfully convicted of the rape and murder of his 14-year-old step-cousin.
- Discussion: Consider the perspective of Damon Thibodeaux. After undergoing nine hours of interrogation, is it reasonably foreseeable that a person may admit to crimes they have not committed? Why or why not?

Discussion Questions

Discuss wrongful convictions and the criminal justice process. What factors inherent to our criminal justice system may influence an innocent person to admit to a crime?

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See Assignments 4-5

Chapter Summary

In the latter part of the eighteenth century, the Enlightenment (Age of Reason) brought change in penal policy. Rather than stressing physical punishment of the offender, influential thinkers sought methods for the reforming of offenders.

The four major goals of punishment are retribution (or deserved punishment), deterrence (both general and specific), incapacitation, and rehabilitation. These goals differ in focus. Rehabilitation and specific deterrence focus on the offender. Retribution, general deterrence, and incapacitation focus on the crime. An emerging goal of punishment, restorative justice, focuses on the needs of the crime victim and the community.

Criminal sanctions can be placed along a continuum, ranging from probation to incarceration. Although far less common, the death penalty is also used in the United States. *Intermediate sanctions* is a term used to describe penalties, such as fines and community service, that are more severe than probation but less punitive than incarceration.

Judges generally hand down three types of sentences. Indeterminate sentences stipulate a minimum and maximum term to which convicted offenders will serve in prison. For example, a prisoner may receive a sentence ranging from 2 to 10 years. The prisoner's release is usually determined by a parole board. Determinate sentences result in a fixed period of incarceration, such as 5 years. Once the specified amount of time has been served, the inmate is automatically released. Mandatory sentences (or "mandatory- minimum sentences") require that an inmate serve a minimum amount of time. "Three strikes and you're out" laws are one example of a mandatory sentence.

Unjust punishments can occur because of sentencing disparities and wrongful convictions. Sentencing disparities occur when offenders with similar criminal histories who commit the same offense receive different penalties without explanation. Disparities are considered discriminatory when judges base their decisions to hand down different sentences on the race, ethnicity, class, and/or gender of the offender. Wrongful convictions occur when an innocent person is found guilty by either plea or verdict. DNA evidence has helped exonerate innocent people who have been wrongly convicted. To create a system that is more just, reformers want to reduce sentencing disparities and wrongful convictions.

Key Terms

Blameworthiness: The amount of blame the offender deserves for the crime. (p. 49)

Determinate sentence: A period of incarceration with minimum and maximum terms stipulated so that parole eligibility depends on the time necessary for treatment; closely associated with the concept of rehabilitation. (p. 44)

Enlightenment (Age of Reason): The 1700s in Europe, when concepts of liberalism, rationality, equality, and individualism dominated social and political thinking. (p. 34)

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General deterrence: Punishment of criminals that is intended to be an example to the general public and to discourage crime by others. (p. 38)

Good time: A reduction of an inmate's prison sentence, at the discretion of the prison administrator, for good behavior or for participation in vocational, educational, and treatment programs. (p. 45)

Incapacitation: Depriving an offender of the ability to commit crimes, usually by detaining the offender in prison. (p. 38)

Indeterminate sentence: A period of incarceration with minimum and maximum terms stipulated so that parole eligibility depends on the time necessary for treatment; closely associated with the concept of rehabilitation. (p. 43)

Intermediate sanctions: Punishments that are more restrictive than traditional probation but less severe and costly than incarceration. (p. 45)

Lex talionis: Law of retaliation; the principle that punishment should correspond in degree and kind to the offense ("an eye for an eye, a tooth for a tooth"). (p. 33)

Mandatory sentence: A sentence stipulating that some minimum period of incarceration must be served by people convicted of selected crimes, regardless of background or circumstances. (p. 44)

Presentence report: Report prepared by a probation officer, who investigates a convicted offender's background to help the judge select an appropriate sentence. (p. 50)

Presumptive sentence: A sentence for which the legislature or a commission sets a minimum and maximum range of months or years. Judges are to fix the length of the sentence within that range, allowing for special circumstances. (p. 44)

Probation: A sentence allowing the offender to serve the sanctions imposed by the court while living in the community under supervision. (p. 46)

Rehabilitation: The goal of restoring the convicted offender to a constructive place in society through vocational training, educational services, and/or therapy. (p. 39)

Restoration: Punishment designed to repair the damage done to the victim and community by an offender's criminal act. (p. 40)

Retribution: Punishment inflicted on a person who has infringed the rights of others and so deserves to be penalized. The severity of the sanction should fit the seriousness of the crime. (p. 37)

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Selective incapacitation: Making the best use of expensive and limited prison space by targeting for incarceration those offenders whose incapacity will do the most to reduce crime in society. (p. 39)

Sentencing disparity: Divergence in the length and types of sentences imposed for the same crime or for crimes of comparable seriousness when no reasonable justification can be discerned. (p. 52)

Sentencing guidelines: An instrument developed for judges indicating the usual sanctions given previously to particular offenses. (p. 50)

Shock probation: A sentence in which the offender is released after a short incarceration and resentenced to probation. (p. 46)

Specific deterrence: Punishment inflicted on criminals to discourage them from committing future crimes. (p. 38)

Utilitarianism: The doctrine that the aim of all action should be the greatest possible balance of pleasure over pain, hence the belief that a punishment inflicted on an offender must achieve enough good to outweigh the pain inflicted. (p. 36)

Wrongful conviction: Occurs when an innocent person is found guilty by either plea or verdict. (p. 53)

Assignments

1. First, divide your class into groups of two or three. Second, assign each group an individual U.S. state. Third, have each group research the rates of incarceration for crack cocaine and powdered cocaine in their assigned state. Finally, have the students identify whether or not there is a sentencing disparity regarding these two forms of cocaine. Request they fully explain their answers.

2. Separate the students in class into several groups. Request they research the Part I property and Part I violent index crimes and prepare a report on sentence length vs. actual time served. For instance, some statistics point to the average sentence for rape being 11 years. However, the actual time served is only 4 years with good time credit.

3. Ask the students to select a position – pro-death penalty or anti-death penalty – and separate into distinct groups. Next, have the students defend the opposite sides (anti-death penalty argues for pro-death penalty and vice versa) in a presentation for class in the upcoming weeks.

4. Divide your class into teams of three and assign each team a U.S. state. Next, have them research the history of that state's particular sentencing structure(s) starting from 1970 to the present. Be sure to emphasize key sentencing strategies from the chapter (e.g. determinate,

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indeterminate, mandatory). Have each group present their findings in a formal oral presentation to the class.

5. Assign each student in your class a different U.S. state. Have each student research whether or not any person from their state has ever been released from prison because of DNA technology. Finally, have the student put their findings in writing and present them to the class.

Discussion

1. What should be the dominant goal of the criminal sanction? Why?

Answers will vary / Opinion
See The Purpose of Corrections for discussion of this question.

2. What are the prospects for rehabilitating offenders? Should we assume that all offenders can be rehabilitated?

Answers will vary / Opinion
See Rehabilitation for discussion of this question.

3. How much discretion should judges have when imposing sentences? What justifies the latitude given to judges?

Answers will vary / Opinion
See The Sentencing Process for discussion of this question.

4. Suppose that you are a state lawmaker. What considerations will influence your vote on the process by which criminal sanctions are set?

Answers will vary / Opinion
See Unjust Punishment for discussion of this question.

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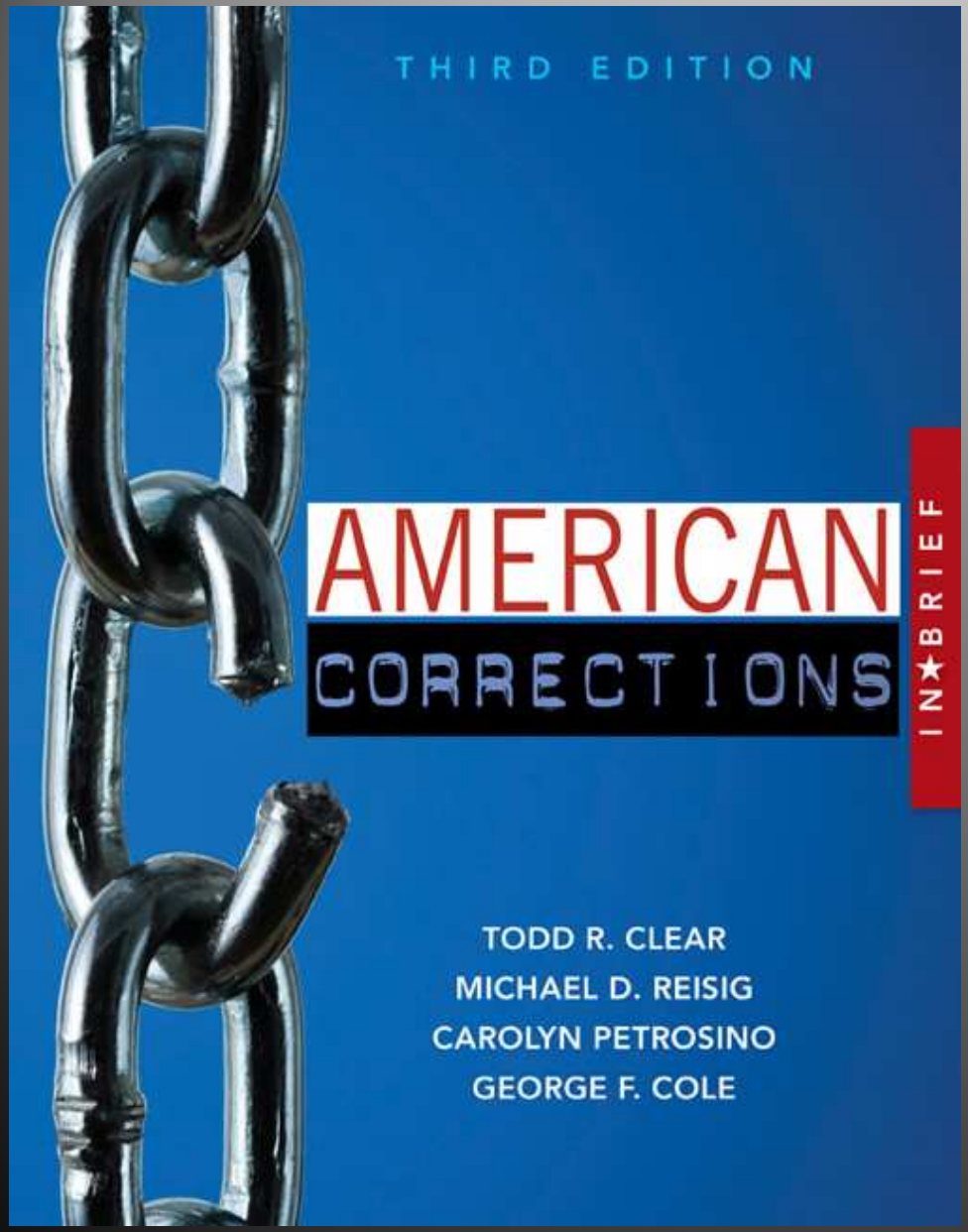

Chapter 2

The Punishment of Offenders

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Punishment from the Middles Ages to the American Revolution

- Middle Ages to the American Revolution
  - Sumerian Law of Mesopotamia
  - Code of Hammurabi
  - *Lex talionis* was the law of retaliation and underlay the laws of Anglo-Saxon society during the early Middle Ages; crime was a private affair; vengeance was a duty to be carried out by the person or family wronged

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Discussion Question

- What if…..the concept of *lex talionis* remained the primary philosophy in criminal law? Would this result in an increase or decrease in criminality? How would this philosophy impact social order? Explain.

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Punishment from the Middles Ages to the American Revolution

- The Age of Reason and Correctional Reform
  - Enlightenment
    - Liberalism, rationality, equality, individualism dominated social and political thinking
    - Punishment
    - Correction

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Punishment from the Middles Ages to the American Revolution

- Cesare Beccaria and the Classical School
  - Utility
  - Rational link between crime and punishment
  - Six principles created

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Punishment from the Middles Ages to the American Revolution

- The Six Principles of Cesare Beccaria:
  - Greatest good for the greatest number of people
  - Crime is an injury to society
  - Prevention of crime
  - Accused have rights
  - Deterrence as punishment
  - Imprisonment

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Punishment from the Middles Ages to the American Revolution

- Jeremy Bentham and the "Hedonic Calculus"
  - Utilitarianism
  - Deterrence
  - Prevention
- European Influences on Punishment in America
  - Corrections in colonial America followed English ideas and practices

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What is Punishment?

- Punishment is marked by three elements (Packer):
  - An offense
  - Infliction of pain because of the offense
  - Purpose is not to compensate someone injured by the offense nor better offender's condition but to prevent further offenses or to inflict what is thought to be deserved pain on the offender

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The Purpose of Corrections

- Retribution
  - Deserved punishment
  - "An eye for an eye, a tooth for a tooth"
  - Basic human emotion
  - Helps society uphold standards
  - Pay their debt to society
  - "Just desserts"

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The Purpose of Corrections

- Deterrence
  - General deterrence
  - Specific deterrence
  - Assumes rationality of actor

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The Purpose of Corrections

- Incapacitation
  - Eliminate offender's ability to commit further crimes
    - Imprisonment
    - Execution
  - Selective incapacitation
  - "Lock 'em up and throw away the key"

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The Purpose of Corrections

- Rehabilitation
  - Goal of restoring the convicted offender to society
  - Vocational/educational therapy
  - Focus on the offender
  - Inconsistent relationship between crime and sentence
  - Judge should not set a fixed sentence

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Discussion Question

- Discuss which goal of corrections is most effective in the long-term. Why is this the most effective goal?

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The Purpose of Corrections

- New Approaches to Punishment
  - Restoration—punishment designed to repair the damage done to the victim and community by an offender's criminal act
  - There is growing evidence that shows these programs work

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Criminal Sanctions: A Mixed Bag?

Table 2.1 Hypothetical Punishments for Bob Bashara

At sentencing, the judge usually gives reasons for the punishment imposed. Here are some statements Judge Vonda Evans *might* have made, depending on the correctional goal she wanted to promote.

Goal	Judge's Statement
Retribution	I am imposing this sentence because you deserve to be punished for the crimes committed against a woman who trusted you. Your criminal behavior in this case is the basis for your punishment. Justice requires me to impose a sanction that reflects the value the community places on right conduct.
Deterrence	I am imposing this sentence so that your punishment will serve as an example and deter others who may contemplate similar actions. In addition, I hope that the sentence will deter you from ever again committing such an act.
Incapacitation	I am imposing this sentence so that you will be unable to violate the law while imprisoned. Because you have not been convicted of prior offenses, selective incapacitation is not warranted.
Rehabilitation	The trial testimony of your psychiatrists and the information contained in the presentence report make me believe that aspects of your personality led you to violate the law. I am therefore imposing this sentence so that you can be treated in ways that will rectify your behavior so you will not break the law again.

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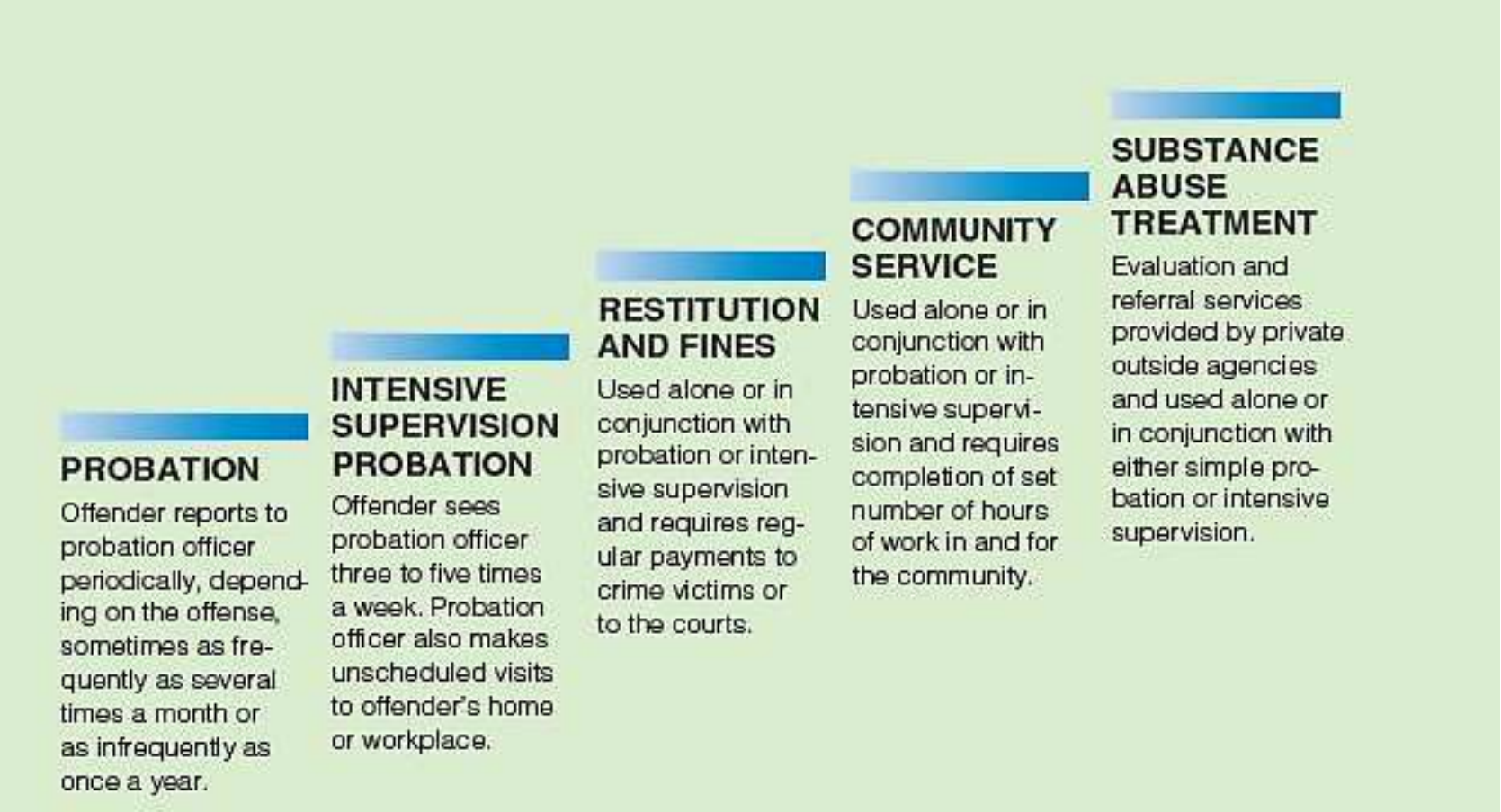
Escalating Punishments to Fit the Crime



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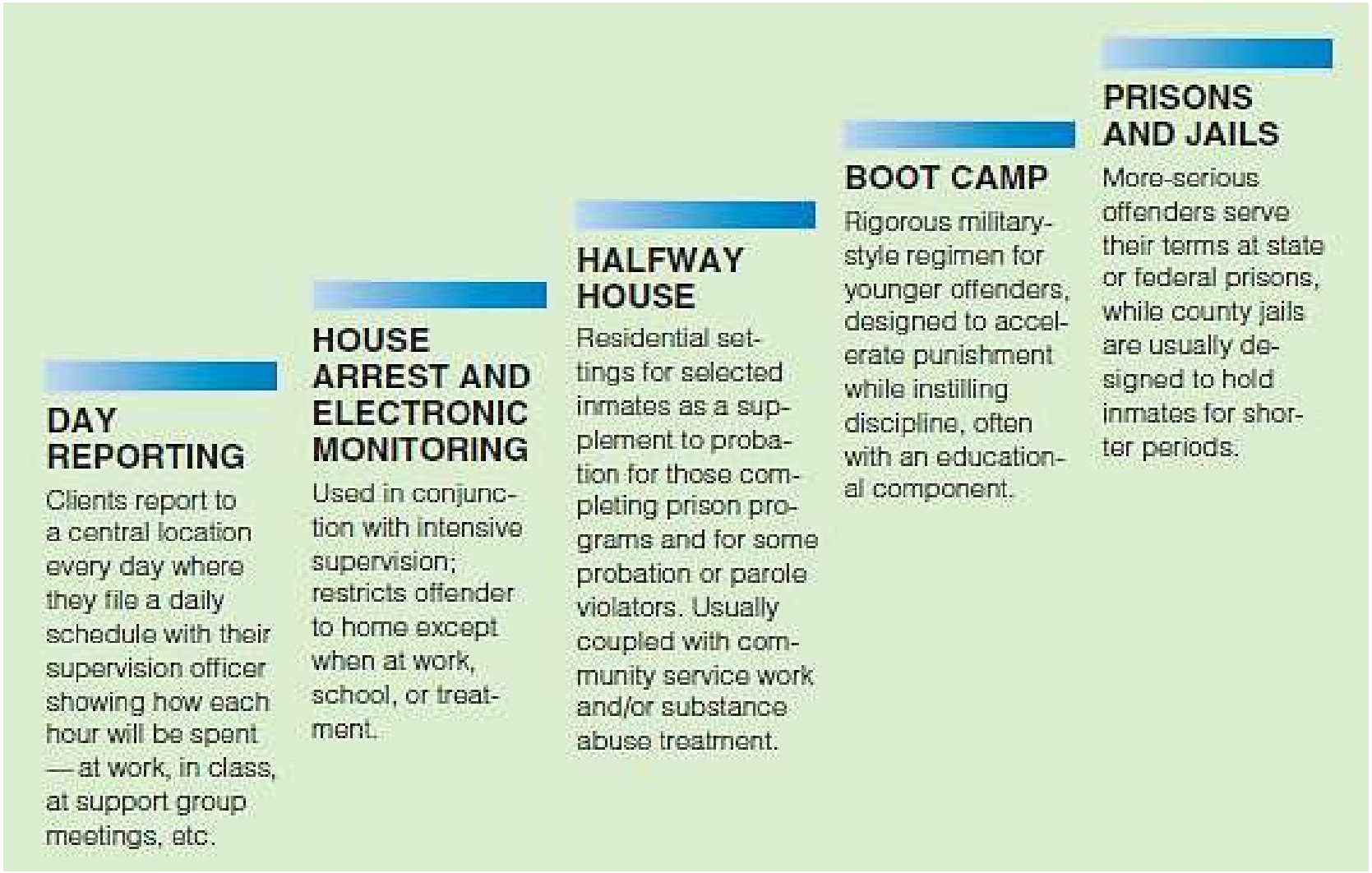
Escalating Punishments to Fit the Crime



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Forms of the Criminal Sanction

- Incarceration– nearly 6.9 million men and women in the US currently under correctional supervision
  - Indeterminate sentences
  - Determinate sentences
  - Presumptive sentences
  - Mandatory sentences

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Discussion Question

- Should the United States corrections systems – at the state or federal level – adopt one specific sentencing structure? What sentencing structure is currently the most popular in the U.S.? Why?

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Forms of the Criminal Sanction

- Intermediate Sanctions
  - Monetary sanctions
    - Fines
    - Restitution
    - Forfeiture
  - Home confinement
  - Intensive supervision probation

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Forms of the Criminal Sanction

- Probation
  - Most frequent criminal sanction in the United States
  - Community supervision
    - Drug tests, curfews, job
  - Shock probation

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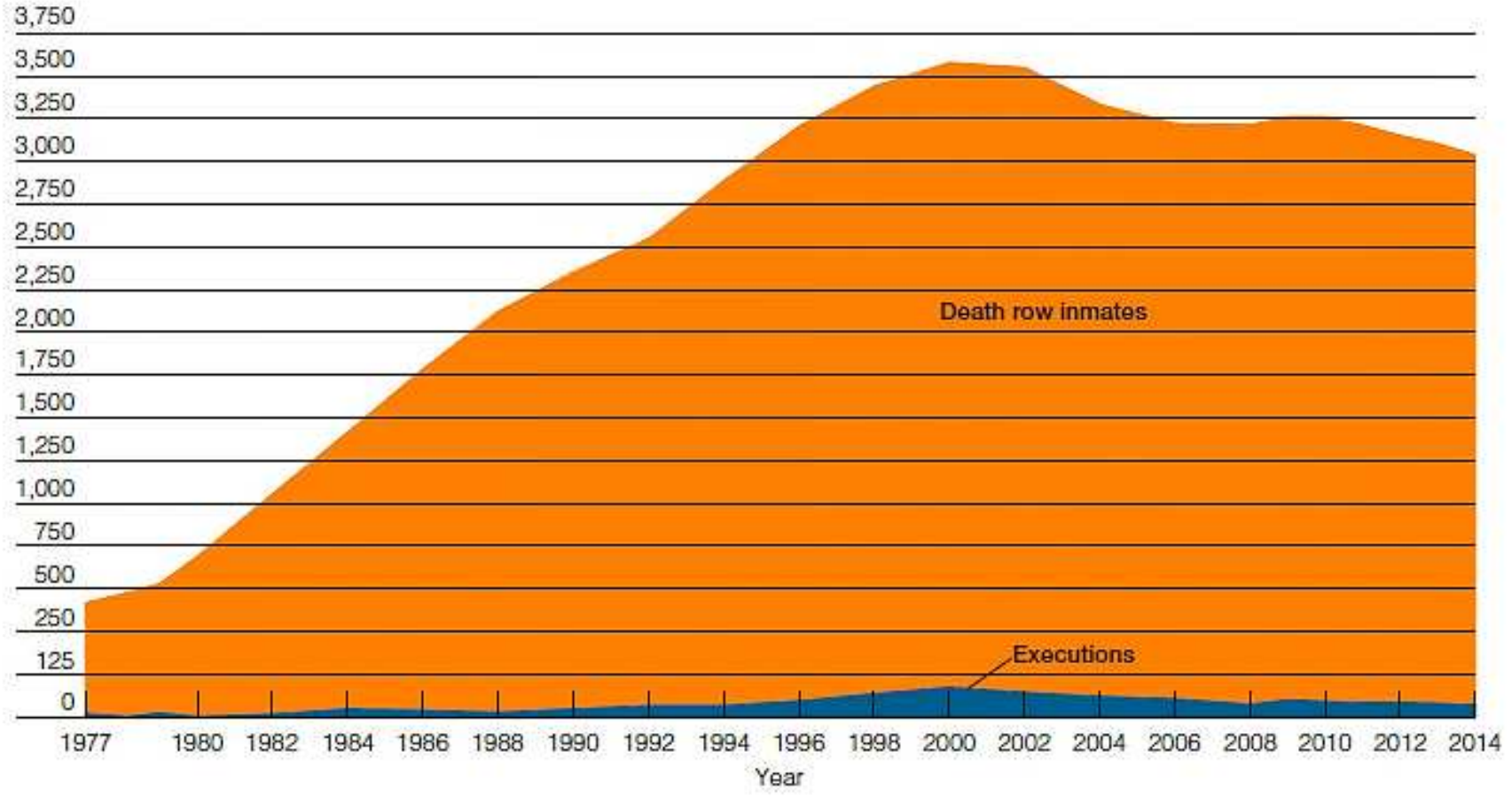
People Under Sentence of Death and People Executed



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Discussion Question

- What if…the U.S. Supreme Court declared the death penalty unconstitutional pursuant to the 8th Amendment? Would you support the position of the Court? Why or why not? Would you like to have the death penalty available as a punishment in the event a criminal harmed your family or you?

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Forms of the Criminal Sanction

- Forms and Goals of Sanctions
  - "Invisible punishments"
    - Denying felons the right to vote
    - Allowing termination of parental rights
    - Establishing felony conviction as grounds for divorce
    - Restricting access to certain occupations
    - Barring felons from public welfare programs and benefits

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The Sentencing Process

- Factors influencing judicial discretion
  - Attitudes of the judge
    - Blameworthiness, protecting the community, practical implications of sentence
  - Administrative context
    - Misdemeanor, felonies

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Discussion Question

- Discuss pressures encountered by judges when sentencing criminals. What ethical difficulties are common to judges in this situation?

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The Sentencing Process

- The Presentence Report
  - Background
  - Criminal record
  - Job status
  - Mental health

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The Sentencing Process

- Sentencing Guidelines
  - Federal and state
  - Goals
    - Reduce disparity in sentencing
    - Increase/decrease punishment for certain offenses/offenders
    - Reduce prison overcrowding
    - Truth-in-sentencing
    - Sentencing process more rational

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Unjust Punishment

- Sentencing Disparity
  - Different punishments for similar crimes
  - Race
  - Ethnicity
  - Class
  - Gender

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Unjust Punishment

- Wrongful Conviction
  - DNA technology
  - Eyewitness testimony
  - Unethical conduct
  - Community pressure
  - False accusations
  - Inadequate counsel
  - Plea bargaining pressures

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