Chapter 12

The Ethics of Punishment and Corrections

Punishment

The five essential elements of punishment:
- Two people involved—the punisher and the one being punished
- The punisher inflicts harm on the one being punished
- The punisher is authorized by law to inflict the punishment
- The one being punished has been judged to be in violation of criminal law
- The inflicted harm is meted out specifically as punishment for that violation of criminal law

Treatment

In correctional terminology, the treatment is anything used to induce behavior change
- The goals of treatment are:
  - Elimination of dysfunctional or deviant behavior
  - Encouragement of productive, normal behavior
Punishment/Treatment

- Suggested guidelines for punishment:
  - Protection of individual liberty
  - Minimal intrusion in criminal’s lives
  - Justification of each intrusion
  - Crime should be prevented according to the requirements of justice

Punishment and Corrections

- Rationales:
  - The social contract provides the rationale for punishment and corrections
  - We avoid social chaos by giving the state the power to control us
  - The state is limited in the amount of control it can exert over individuals
  - For consistency with the social contract, the state should exert it power only to protect
  - Any further interventions with civil liberties are unwarranted

Punishment and Corrections

- Correctional Goals:
  - Retribution
  - Reform
  - Incapacitation
  - Deterrence
  - Rehabilitation
  - The two major justifications for punishment and treatment are retribution and prevention
    - Can treatment and punishment occur simultaneously?
    - Can a punishment system in which "just" punishment is relative and changes with time be ethical or moral?
During the Enlightenment, criminals were seen as sinners with no ability to change their behavior. Punishment and incapacitation were seen as the only logical ways to respond to crime. Bentham and Beccaria saw criminals as rational beings with free will; thus they saw punishment as a deterrent. The positivist school gave rise to the idea that all criminal acts were symptoms of an underlying disorder.

Treatment programs created in the last hundred years assume that offenders’ criminal activity can be reduced by:
- Treating psychological problems such as sociopathic or paranoid personalities
- Addressing social problems such as alcoholism or addiction
- Resolving more practical problems, such as chronic unemployment, with vocational training and job placement.

Retribution views punishment as an end in itself. Members of society implicitly agree to society’s rules and right to punish. Retributive rationale requires punishing individual offenders because they deserve it. Types of retribution:
- Negative
- Positive
- Permissive
Social contract theory states that the state, not the victim's family should execute a killer.

The criminal act distorts the balance and equality of social relationships.

Only punishment or similar deprivation can restore the balance that existed before the criminal act.

Bentham: Criminal offenses deserve punishment that balances the pleasure or profit of the offense.

Neoclassicists: Characteristics of the offender should influence the punishment decision.

In today's correctional climate:

- Determinate sentencing focuses on the seriousness of the offense.
- Indeterminate sentencing tailors the sentence to the individual offender.

Retributivists: Balance is restored when offenders have suffered as much as their victims.

The Justice Model of punishment:

- Promotes a degree of predictability and equality in sentencing.
- Reverts to earlier retributive goals of punishment.
- Restricts the states use of treatment as a release criterion.

The Just Deserts Model of punishment:

- Bases punishment on "commensurate desserts".
- Incorporates incapacitation.
- Equally punishes offenders who commit similar crimes.
**Prevention**

- Assumes that something should be done to the offender to prevent future criminal activity
- Preventive measures include:
  - Deterrence
  - Incapacitation
  - Treatment

**Deterrence**

- **Specific Deterrence:**
  - Preventing a particular offender from deciding to commit another offense
  - Teaching through punishment
- **General Deterrence:**
  - Prevent others in general from deciding to engage in wrongful behavior
  - Teaching by example

**Deterrence**

- Some say punishment does not deter because it is inconsistent, uncertain, and slow
- A deterrent effect would result if punishment was applied more consistently and with less delay
- If we know that a term of imprisonment will not deter an offender, can it be justified?
- Can we justify a prison term that is more than what is needed to deter one individual, on grounds that it will deter others?
Incapacitation

- Holding an offender until there is no risk of further crime
- Because incapacitation is predictive:
  - We might release an offender who commits further crimes
  - We might release an offender who would not commit further crimes

Incapacitation

- Selective incapacitation: The policy of incarcerating career criminals longer than others who commit similar offenses
- Effectively, we incarcerate career criminals not for their last offense, but to prevent future offenses
- Critics of three-strike laws—a form of selective incarceration—challenge:
  - Incarcerating well past their crime-prone years
  - The extraordinary expense of doing so

Incapacitation

- Some overestimate the amount of time an offender will serve in prison by failing to factor in good time, time served, and parole
- Some underestimate the amount of time an offender will serve in prison because states have drastically reduced the use of parole and other forms of discretionary release
**Treatment**

- Treatment is considered beneficial for both society and the individual offender
- The control over the individual is just as great as with treatment
- Courts define treatment as “that which constitutes accepted and standard practice and which could reasonably result in a ‘cure’”
- Much of the treatment in the correctional environment is either implicitly or directly coerced
- No single program works for all offenders

**Punishment**

- The American criminal justice system has adopted prison as a standard form of punishment
- Imprisonment does not carry the physical pains of flogging or mutilation
- Imprisonment is painful because it involves:
  - Banishment
  - Condemnation
  - Separation from loved ones
  - Deprivation of freedom
  - An assault on one’s self-esteem
- Prisons are extremely expensive

**Punishment**

- The urge to react to harm with hostility is part of human nature; thus, punishment is a natural law
- The principle of forfeiture:
  - When one intrudes on an innocent persons rights, one forfeits a proportional amount of one’s rights
  - By causing harm to another, one forfeits the right to be free from punishment
- Punishment should not be used as a means to any other end but retribution
Humane Punishment

- About cruel and unusual punishment:
  - *Unusual (by frequency)*: Punishments that are rarely used become unusual
  - *Evolving standards of decency*: Punishments acceptable in the past may not be acceptable in the future
  - *Shock the conscience*: A punishment is cruel and unusual if it repels the public conscience

Humane Punishment

- *Excessive or disproportionate*: Any punishment that is disproportionately administered or excessive to its purpose is considered wrong
- *Unnecessary*: If the purpose of the punishment is to deter crime, only the amount necessary to do so should be administered
- *Stigmatizing shaming*: Rejects the individual and may have negative results
- *Reintegrative shaming*: Rejects only the person's behavior, thus creating a healthier relationship between the individual and the community

Capital Punishment: Number of Executions 1976-2007

![Bar chart showing number of executions from 1976 to 2007.](chart.png)
Capital Punishment: Homicide Victims

In 2005, homicide victimization rates for blacks were 6 times higher than the rates for whites.

Capital Punishment: Homicide Offenders

In 2005, offending rates for blacks were more than 7 times higher than the rates for whites.

Capital Punishment: Relationship Between Victim & Offender

Stranger homicides are more likely to cross racial lines than those that involve friends or acquaintances.
Capital Punishment: Death Row by Race

Prisoners on death row by race, 1968-2008

Cannot be corrected in the event of error

A crime upsets the moral order, which can only be restored to balance by punishment equal to the seriousness of the offense

The U.S. Supreme Court has ruled against executing the mentally ill, the retarded, and people under the age of 18 when they committed their crimes
Capital Punishment

- Abolitionists emphasize the inherent worth and dignity of each individual
- Some view capital punishment as a cheapening of human and encouraging bloodlust
- The methods and procedures of capital punishment continue to evoke questions and concerns
- Should all murders be subject to capital punishment or do some deserve it and not other?

Private Corrections

- Private prisons are built by a private corporation, then leased to the state or actually run by the corporation, which bills the state for the service
- Ethical issues include:
  - Abuses of the bidding process
  - Limited economic benefit to local communities
- Private prisons have a history of substandard performance

Private Corrections

- Supporters claim private prisons save money by:
  - Greater efficiency
  - Reduced operational costs
  - Less red tape
  - Economies of scale
- A General Accounting Office study found that:
  - Private and public institutions cost about the same
  - Private corrections tend to pay lower salaries than state corrections departments
  - Officers often transfer to state corrections departments after they are trained
  - Turnover is high in both private and state corrections