

The
DILEMMAS
Of
PUNISHMENT

Readings in
Contemporary
Corrections

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Waveland Press, Inc.
P.O. Box 400
Prospect Heights, Illinois 60070
(312) 634-0081

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ISBN 0-88133-230-5

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Printed in the United States of America

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Preface

Prisons, as they were established in the United States, were to be positive contributions to the New World. They were to be institutions in which the idle, the unmotivated, the hooligans, and the cruel were sent to be transformed into active, energetic, useful, and kind members of our society. Somehow, somewhere, something went wrong. Critics have offered too few constructive solutions for change and too many quick-fixes. One of the more insightful comments was made by George Bernard Shaw (1924: 80-81) who noted:

Although public vindictiveness and public dread are largely responsible for (the cruelty), some of the most cruel features of the prison system are not understood by the public, and have not been deliberately invented or contrived for the purpose of increasing the prisoner's torment. The worst of these are (a) unsuccessful attempts at reform, (b) successful attempts to make the working of the prison cheaper for the state and easier for the officials, and (c)... the new state prisons.

Shaw directs our attention to problems with prisons that he observed in the early 1900s. Unfortunately, these problems still prevail in the mid-1980s and they exist for more prisoners in more prisons than Shaw ever imagined. On June 30, 1985, 490,041 men and women were confined to state and federal prisons, approximately 250,000 were locked up in local and county jails, and more than two million others were under some type of correctional supervision.

Our purpose in bringing together the readings in *The Dilemmas of Punishment* is to present to students a useful, issue-oriented perspective on corrections. From the vast number of articles on corrections, we have chosen 27 articles which demonstrate what Shaw noted so many years ago: there have been unsuccessful attempts to reform shabby prison operations, there have been recurring attempts to find simple answers for complex penal problems, and more and bigger

prisons have been constructed. What George Bernard Shaw also told us is that these attempts are nearly always well-intentioned and nearly always leave a legacy of failure.

A close analysis of the literature on corrections reveals a trend to criticize each and every aspect. What is written about jails and prisons tends to leave the reader with the impression that practitioners do nothing at all, or actively and maliciously oppress a selected segment of society. While it may be a trend to damn every aspect of corrections, it is in many ways unfair. As we read these articles, we can reflect upon Shaw's comments and keep in mind that most line staff and administrators want to do what is right and what is decent. Unfortunately, neither scholars nor public officials have provided the behavioral insight and organizational expertise needed to train effectively for the proper handling of prisoners or the managing of prisons.

Our compilation of materials includes some of the outstanding statements and studies that have been published in books and professional journals. In addition, we have brought together new material from several of the best criminologists in the country. These original contributions offer readers the most recent theories and research findings in the field of corrections. Part I provides an overview of the scope and structure of the American correctional system and addresses the all-important question: Who goes to prison? Our second section describes the pains of imprisonment felt by those who are incarcerated. What really happens when the bars slam shut? Part III examines the impact the judiciary has had on the correctional system and the prisoners. No book on corrections would be complete without a chapter on rehabilitation, and our fourth section offers an up-to-date overview of the continuing debate over the effectiveness of correctional treatment programs. The fifth and final section explores the theory and practice of what has come to be called community-based corrections. Corrections outside the traditional walls and fences may be a sensible alternative to warehousing criminals, but the movement toward community corrections has not succeeded in reducing the nation's reliance upon prisons.

The choice of readings has been made with the student-reader in mind. A great deal of the literature on corrections has been written by professors for professors, and often this work has included an overabundance of the obligatory social science jargon. We have specifically eliminated such articles. Instead, we have selected essays, articles, and research reports that are both scholarly and highly readable.

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Part I

Who Goes to Prison?

Many Americans undoubtedly believe that the United States is one of the most lenient nations in the world in punishing offenders. However, the U.S. imprisonment rate is the third highest in the world and it is rising rapidly. As of 1984, only the Soviet Union and South Africa imprisoned their populations at higher rates than the United States. Moreover, the best available data indicate that American prisoners serve longer terms than their counterparts anywhere else in the world. With nearly 750,000 adults incarcerated in local jails and state or federal prisons by mid-year 1985, it is important to find out who is selected to be placed in these facilities and who is not. Our first group of readings addresses these and related issues.

The first article is taken from the *Report to the Nation on Crime and Justice*, issued in October 1983 by the U.S. Department of Justice Bureau of Justice Statistics. The "Sentencing and Corrections" segment of the *Report* first examines the objectives and principles of various sentencing alternatives, with the emphasis on how recent sentencing reforms have contributed to striking increases in prison populations. Next, the article describes some of the most noteworthy characteristics of America's jails, prisons, and community-based facilities. It concludes with a discussion of why it remains difficult to evaluate the effectiveness of correctional programs in reducing crime.

Michael Sherman is the author of our second article, "Prisons in the Theater of American Justice." Sherman stresses the intellectual and cultural setting of American prisons by discussing three major "strands of thought" about prisons—rehabilitation, crime control, and

society's need for a symbol of its commitment to a just and lawful social order. Sherman's analysis of who belongs in prison and for how long is both insightful and logical, and his thoughts on the funding of prison construction are provocative.

It has frequently been hypothesized that serious criminal behavior and subsequent imprisonment are often an outgrowth of childhood abuse. For example, in his classic book, *The Crime of Punishment*, Karl Menninger asserted that "the violent destructiveness of the criminal is ...often a reflection of the cruel and violent way he was treated as a child." Nevertheless, there have been very few systematic, empirical studies of the relationship between childhood abuse and later adult criminality. In "Child Abuse and Violent Crime," Matthew Zingraff and Michael Belyea discuss their study of the childhood histories of nearly 19,000 inmates admitted to North Carolina prisons in the years 1979 to 1981. Their findings cast some doubt on the notion that child abuse breeds violent criminality, in that prisoners who reported a history of childhood abuse were *less* likely than nonabused prisoners to have been convicted of a violent (as opposed to a nonviolent crime). Clearly a great deal of additional research on the backgrounds of both prisoner and non-prisoner populations will have to be done if we are to gain a better understanding of the psychological and environmental correlates of crime and punishment.

However, little new research is necessary to document the fact that race and ethnicity are of major importance in determining who goes to prison. It is irrefutable that blacks and other minorities have long been greatly overrepresented in American prisons. In "Our Black Prisons," Scott Christianson demonstrates that the problem of vastly disproportionate rates of imprisonment for blacks and whites is much worse than previously realized. Moreover, he shows that the disparity has increased markedly in recent years. Christianson discusses the social, political, economic, and legal implications of black overrepresentation in American prisons. He urges scholars, criminal justice officials, and concerned citizens to work together in documenting the causes, extent, and effects of racial disproportionality in criminal sentencing.

In the final article in this section, Jessica Mitford offers some explanations for minority overrepresentation in America's prisons. She invites readers to consider the history of society's efforts to pinpoint a criminal type. This chapter has been reprinted from Mitford's controversial, hard-eyed examination of the inadequacies and hypocrisies of the American prison system, *Kind and Usual Punishment: The Prison Business*. Her thesis in "The Criminal Type" is that although crimes are committed at all levels of society, the criminal justice process sees to it that the prisons are overwhelmingly filled with the young, the poor, the black, the Chicano, and the Puerto Rican.

Report to the Nation on Crime and Justice Sentencing and Corrections

Society Expresses its Objectives for the Correctional Process Through Sentencing

The sentencing of criminal offenders is a reflection of multiple and often conflicting social objectives. These objectives are:

- **Rehabilitation**—removing or remediating presumed causes of crime by providing economic, psychological, or socialization assistance to offenders to reduce the likelihood of continuing in crime.
- **Deterrence**—sanctioning convicted offenders to reduce crime by making the public and the offender aware of the certainty and severity of punishment for criminal behavior.
- **Incapacitation**—separating offenders from the community to reduce the opportunity for further commission of crime.
- **Retribution**—punishing offenders to express societal disapproval of criminal behavior without specific regard to prevention of crime by the offender or among the general public.

Source: *Report to the Nation on Crime and Justice* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics), October 1983, pp. 71-85.

Attitudes about sentencing reflect multiple objectives and other factors. Hogarth's research on judicial sentencing attitudes and practices has shown that judges vary greatly in their commitment to one or more of these objectives when imposing sentences. Public opinion, as well, shows considerable divergence about the objectives to be served in sentencing. Like judges and the general public, legislators and the criminal penalties they fashion tend to mirror this lack of consensus.

Further complicating sentencing laws is the need for such penalties to be grounded in concerns for:

- **Fairness**—the severity of the punishment should be commensurate with the crime.
- **Equity**—like crimes should be treated alike.
- **Social debt**—the severity of punishment should take into account prior criminal behavior.

Judges are usually given a wide range of discretion in sentencing offenders. Maximum sentences are generally set by law, but judges can sometimes impose:

- Alternatives to imprisonment such as probation, fines, restitution to victims, or community service (such as cleaning up a public park).
- Combined sentences of a short period in a local jail (or prison in some States) followed by probation in the community.
- Sentences to prison with a minimum time to be served in confinement or they can leave the sentence duration indeterminate (to be set by paroling authorities).

Disparity and uncertainty resulted from the lack of consensus over sentencing goals. By the early 1970's, researchers and critics of the justice system began to reveal that the mixed goals of the justice system and the discretionary opportunities for judges to fashion sanctions had:

- Reduced the *certainty* of sanctions, thereby presumably eroding the deterrent effect of corrections.
- Resulted in disparity in the *severity* of punishment with differences in the length and duration of sentences.
- Been based on assumptions that could not be validated about the ability of various programs to change offender behavior or predict future criminality.

Sentencing reforms of the 1970's took two approaches—administrative and statutory. The administrative approach called on judges and parole boards to accept and apply voluntary guidelines for the

kind and duration of punishment to be imposed on offenders for each type of crime and to regularize the sentencing adjustments made for such factors as the seriousness of the offense and the offender's criminal record.

The statutory approach called for laws that specify mandatory prison terms for specific crimes and fixed terms of imprisonment for certain classes of crimes.

Reforms of the 1970's sought to:

- Clarify the aims of sentencing.
- Reduce disparity and discretion
- Channel limited resources into a more predictable penalty system.
- Provide sanctions consistent with the "just deserts" concept.

Between 1975 and 1982:

- 10 states, beginning with Maine, abolished their parole boards.
- Several states established administrative guidelines for determining parole release to minimize disparities in the length of prison stay.
- More than 35 states enacted laws that require minimum sentences to incarceration for specified crimes.
- Many states began to experiment with new forms of sentencing guidelines designed by the judiciary or by appointed sentencing commissions.

States primarily use three strategies for sentencing.

Indeterminate sentences usually provide a minimum and a maximum term, either of which may be reduced by "good time" (time credits gained by inmates for good conduct or special achievement) or by a decision of the paroling authorities. The maximum sentence may be set as a range (for example, 5 to 10 years) rather than a specific number of years.

Determinate sentences usually provide a fixed term that may be reduced by good time or parole. Judicial discretion may be available to grant probation or suspend the sentence. Sentencing laws generally provide a maximum (or a range) for sentence duration. Determinate systems are usually based on a definite length for a sentence that can be increased or decreased for aggravating or mitigating factors or on guidelines that define sentence lengths, deviations from which must be justified by sentencing judges.

Mandatory prison sentences are defined by law and must be given upon conviction; the judge is not permitted to grant probation or to suspend the sentence.

Most States have some mandatory sentencing provisions

	Type of sentencing	Mandatory sentencing	Mandatory offenses
Alabama	Determinate	Yes	Repeat felony
Alaska	Determinate, presumptive	Yes	Murder, kidnaping, firearms, repeat felony
Arizona	Determinate, presumptive	Yes	Firearms, prior felony convictions
Arkansas	Determinate	Yes	Robbery, deadly weapons
California	Determinate, presumptive	No	
Colorado	Determinate, presumptive	No	
Connecticut	Determinate	Yes	Sex assault with firearm, burglary, repeat felony, assault on elderly
Delaware	Determinate	Yes	Murder, kidnaping, prison assault, robbery, narcotics, deadly weapon, habitual criminal, obscenity, others
Florida	Indeterminate	Yes	Drug
Georgia	Determinate	Yes	Armed robbery, burglary, drugs
Hawaii	Indeterminate	No	
Idaho	Determinate	Yes	Firearm, repeat extortion, kidnap or rape with bodily injury
Illinois	Determinate	Yes	Major offenses, specified felonies and offenses, repeaters, weapons
Indiana	Determinate, presumptive	Yes	Repeat felony, violent crime, deadly weapons
Iowa	Indeterminate	Yes	Forcible felonies, firearms, habitual offenders, drugs
Kansas	Indeterminate	Yes	Sex offense, firearms
Kentucky	Indeterminate	No	
Louisiana	Indeterminate	Yes	Drugs, violent crime
Maine	Determinate	No	
Maryland	Determinate, guidelines	Yes	Repeat violent offenders, handgun
Massachusetts	Indeterminate	Yes	Firearm, auto theft, drug trafficking
Michigan	Indeterminate	Yes	Murder, armed robbery, treason, firearms
Minnesota	Guidelines	No	
Mississippi	Determinate	Yes	Armed robbery, repeat felony
Missouri	Determinate	Yes	Dangerous weapon, repeat felony
Montana	Indeterminate	Yes	Firearms
Nebraska	Indeterminate	No	
Nevada	Determinate	Yes	2nd degree murder, 1st degree kidnaping, sexual assault, firearm, repeat felony
New Hampshire	Indeterminate	Yes	Firearms
New Jersey	Determinate, presumptive	Yes	Sexual assault, firearms
New Mexico	Determinate, presumptive	Yes	Firearms
New York	Indeterminate	Yes	Specified violent and nonviolent felonies
North Carolina	Determinate, presumptive	Yes	Armed robbery, 1st degree burglary, repeat felony with firearm
North Dakota	Determinate	Yes	Firearm
Ohio	Indeterminate	Yes	Rape, drug trafficking
Oklahoma	Determinate	Yes	Repeat felony
Oregon	Guidelines, indeterminate	Yes	Drugs
Pennsylvania*	Guidelines, indeterminate	Yes	Selected felonies with firearms, within 7 years of prior convictions, in or near public transportation
Rhode Island	Indeterminate	No	
South Carolina	Determinate	Yes	Armed robbery, drugs, bomb threat
South Dakota	Indeterminate	No	
Tennessee	Determinate, indeterminate	Yes	Specified felonies, firearms, repeat felony
Texas	Determinate	Yes	Repeat felony, violent offenses
Utah	Indeterminate	No	
Vermont	Indeterminate	Yes	Drugs, violent crime
Virginia	Indeterminate	No	
Washington	Indeterminate	Yes	Firearms, rape, repeat felony
West Virginia	Indeterminate	Yes	Firearms in felony
Wisconsin	Indeterminate	No	
Wyoming	Indeterminate	No	

*Pennsylvania updated as of December 1982.

Sources: A survey of mandatory sentencing in the U.S., Richard S. Morelli, Craig Edelman, Roy Willoughby, Pennsylvania Commission on Crime and Delinquency, September 1981. *Judicial and executive discretion in the sentencing process: Analysis of felony State code*

provisions, Criminal Courts Technical Assistance Project (Washington: American University, January (1982). A national survey of parole-related legislation, Michael Kanvensohn, (San Francisco: Uniform Parole Reports, December 1979).

Most states apply a combination of sentencing strategies. Many states may have a predominant orientation toward one strategy (for example, indeterminate) and require another strategy (for example, mandatory sentences) for specific offenses. The strategies utilized by states are constantly evolving, thus complicating overall classification. As of September 1981, for example, some states that required mandatory prison sentences for certain offenses used a predominantly indeterminate strategy while others used a determinate strategy.

Current Sentencing Alternatives Reflect Multiple Objectives

What types of sentences are usually given to offenders?

Death Penalty. In some states for certain crimes such as murder, the courts may sentence an offender to death by electrocution, exposure to lethal gas, hanging, lethal injection, or other method specified by State law.

- As of 1982, 37 states had death penalty provisions in law.
- Most death penalty sentences have been for murder.
- As of yearend 1982, six persons had been executed since 1977; and 1,050 inmates in 31 states were under a sentence of death.

Incarceration. The confinement of a convicted criminal in a Federal or State prison or a local jail to serve a court-imposed sentence. Custody is usually within a jail, administered locally, or a prison, operated by the State or the Federal government. In many states, offenders sentenced to less than one year are held in a jail; those sentenced to longer terms are committed to the state prison.

- More than 4,300 correctional facilities are maintained by federal, state, or local governments including 43 federal facilities, 791 state-operated adult confinement and community-based correctional facilities, and 3,500 local jails which are usually county-operated.
- On a given day in 1982, approximately 412,000 persons were confined in state and federal prisons and approximately 210,000 persons were confined in local jails.

Probation. The sentencing of an offender to community supervision by a probation agency, often as a result of suspending a sentence to confinement. Such supervision normally entails the provision of specific rules of conduct while in the community. If violated, a

sentencing judge may impose a sentence to confinement. It is the most widely used correctional disposition in the United States.

- State or local governments operate more than 2,000 probation agencies. These agencies supervise nearly 1.6 million adults and juveniles on probation.

Split sentences and shock probation. A penalty that explicitly requires the convicted person to serve a period of confinement in a local, state or federal facility ("the shock") followed by a period of probation. This penalty attempts to combine the use of community supervision with a short incarceration experience.

- 1977 and 1978 California data reveal that by far the most common disposition in felony cases was a combined sentence of jail and probation.

Restitution. The requirement that the offender provide financial remuneration for the losses incurred by the victim.

- By 1979, nearly all States had statutory provisions for the collection and disbursement of restitution funds. In late 1982, a restitution law was enacted at the Federal level.

Community Service. The requirement that the offender provide a specified number of hours of public service work, such as collecting trash in parks or other public facilities.

- By 1979, nearly a third of the States authorized community service work orders. Community service is often imposed as a specific condition of probation.

Fines. An economic penalty that requires the offender to pay a specific sum of money within the limit set by law. Fines are imposed in addition to probation or as an alternative to incarceration.

- Many laws that govern the imposition of fines are undergoing revision. These revisions often provide for more flexible means of ensuring equality in the imposition of fines, flexible fine schedules, "day fines" geared to the offender's daily wage, installment payment of fines, and a restriction on confinement to situations that amount to intentional refusal to pay.

Changes in sentencing have resulted in changes in correctional practices. The growth of determinate and mandatory sentences over the past decade and dissatisfaction with the uncertainties of indeterminate sentences (particularly the concept of linking sentence duration to rehabilitative progress or predictions of future behavior by paroling authorities) have led, perhaps most important, to modifications of the

parole decision. Many states are experimenting with parole guidelines systems and amendments to good-time and other incentives for controlling behavior during confinement and determining a release date.

New administrative requirements have also been attached to such traditional correctional practices as collecting victim restitution funds; imposing fees for probation supervision, room and board, and services provided; and operating community-service punishments.

The various sentencing reforms have led to small changes in the correctional clientele, such as lowering the age of juvenile court jurisdiction in some states; enactment of guilty but mentally ill provisions in a few states; and, in a small number of jurisdictions, the recent advent of laws providing for life sentences without parole.

Most prisoners are released before serving their maximum sentence. Release from prison generally occurs as the result of the decision of a paroling authority, mandatory release, or expiration of sentence. In 1978 and 1979, four out of every five releases from prison were by parole.

Parole is the release of a prisoner by the decision of a paroling authority. The offender is placed under the supervision of a parole officer who monitors the offender's compliance with rules of conduct imposed by the paroling authority.

Mandatory release is based on earned "good time" (days earned for good behavior) or other statutory sentence-reduction measures and, though supervision is required after release, does not usually depend on the discretionary decision of a parole board.

Expiration of sentence occurs when the maximum term imposed by the court is served and the offender must be released without further conditions or supervision.

The release-from-prison process varies among jurisdictions. How much time a prisoner will serve for a given offense usually depends on a long chain of decisionmaking processes that begin with the types of sentencing standards set by the State law, the degree of discretion allowed to a sentencing judge, and factors intrinsic to the particular prison system and paroling authority.

Persons conditionally released from prison spend about a third of their maximum sentence in confinement. Supervision by a parole agency is normally imposed on 75% to 80% of all persons released from prison. Data on persons entering such supervision in 1979 reveal that in half the cases the maximum sentence was at least 65 months but the average stay in confinement was only slightly more than 20 months. For those exiting parole, the average period of supervision in the community was about 21 months. Sentences to imprisonment appear to result in about equal lengths of confinement time and community