

Criminal Justice *in* America

EIGHTH EDITION



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9

Punishment and Sentencing

LEARNING OBJECTIVES

- LO1 - Name the goals of punishment.
- LO2 - Describe the types of sentences judges can impose.
- LO3 - Identify the influences on sentencing.
- LO4 - Explain how the system may treat wrongdoers unequally.

CASE OF LAURYN HILL

- In May 2013, singer Lauryn Hill pled guilty to failing to file income tax returns for three years; or \$1.8 million in income. Her attorney argued she should get probation since she had paid all the back taxes. She was sentenced to three months in prison followed by three months of house arrest.
- Did she receive an appropriate sentence? Was it too harsh, or was it too lenient because she is an affluent celebrity who could afford to pay what she owed quickly after admitting guilt?

4 BASIC GOALS OF PUNISHMENT

- Retribution
- Deterrence
- Incapacitation
- Rehabilitation

RETRIBUTION

- Punishment inflicted on a person who has infringed on the rights of others and so deserves to be penalized
 - This approach rests on the philosophical view that punishment is a moral response to harm inflicted on society

DETERRENCE

- **There are two types of deterrence:**
 - **General deterrence**
 - Punishment of criminals that is intended to be an example to the general public and to discourage the commission of offenses
 - **Specific deterrence**
 - Punishment inflicted on criminals to discourage them from committing future crimes

DETERRENCE

- Assumes all people think before they act, but does not account for:
 - Those who commit crimes under the influence of alcohol and drugs
 - Those who commit crimes who suffer from a mental illness
 - Those who act impulsively

DETERRENCE

- In 2011, Wall Street business multimillionaire Raj Rajaratnam was convicted of using illegal inside information from tipsters within a corporation as a basis for investment decisions. He was sentenced to 11 years in federal prison, a \$10 million fine, and a forfeiture of \$53.8 million.
- Do you think this sentence will serve as a deterrent for other white collar criminals who are considering committing similar crimes? Why or why not?

INCAPACITATION

- Depriving an offender of the ability to commit crimes against society, usually by detaining the offender in prison
- Selective Incapacitation
 - Making the best use of expensive and limited prison space by targeting for incarceration those individuals whose incapacity will do the most to reduce crime in society

INCAPACITATION

- Incapacitation looks at the offender's potential actions.
 - A woman who kills her abusive husband as an emotional reaction could receive a lighter sentence because she is not likely to commit more crimes. By contrast, a woman who shoplifts merchandise and has been convicted 10 previous times could receive a much more severe sentence because of the likelihood she will shoplift again.
- Does it offend your sense of justice that a person could receive a more severe sentence for shoplifting than manslaughter?

REHABILITATION

- The goal of restoring a convicted offender to a constructive place in society through some form of vocational or educational training or therapy

RESTORATIVE JUSTICE

- Punishment designed to repair the damage done to the victim and community by an offender's criminal act
 - A three-way approach that involves the offender, the victim, and the community
 - This approach may include mediation in which the three actors devise ways that all agree are fair and just for the offender to repair the harm done to victim and community

GOALS OF PUNISHMENT

TABLE 9.1 The Goals of Punishment

At sentencing, the judge usually gives reasons for the punishments imposed. Here are statements that Magistrate Judge Arleo might have given singer Lauryn Hill, each promoting a different goal for the sanction.

Goal	Judge's Possible Statement
Retribution	I am imposing this sentence because you deserve to be punished for the harm caused to society by failing to make your fair, required contribution to support government programs that benefit people, including you and your family. Your criminal behavior is the basis of the punishment. Justice requires that I impose a sanction at a level that illustrates the importance that the community places on respecting the law and contributing as a member of society.
Deterrence	I am imposing this sentence so that your punishment for failing to fulfill your legal duty to pay taxes will serve as an example and deter others who may contemplate similar actions. In addition, I hope that this sentence will deter you from ever again committing an illegal act.
Incapacitation	I am imposing this sentence so that you will be incapacitated and hence unable to make the decision to fail to fulfill your legal duty as a taxpayer.
Rehabilitation	The pretrial record and information contained in the presentence report make me believe that there are aspects of your personality that led to the failure to fulfill your legal duty. I am therefore imposing this short sentence so that you can reflect on your decisions, receive counseling, and correct your behavior in the future.

FORMS OF CRIMINAL SANCTION

- **Basic ways criminal sanction, or punishment, is applied:**
 - Incarceration
 - Intermediate sanctions
 - Probation
 - Death
- **The United States does not have a single, uniform set of sentencing laws**
 - The criminal codes of each of the states and of the federal government specify the punishments
 - Judges often receive wide discretion in determining the appropriate sentence

INCARCERATION

- Imprisonment is the most visible penalty imposed by U.S. courts
 - Although less than 30% of people under correctional supervision are in prisons and jails, incarceration remains the standard for punishing those who commit serious crimes



Ann Johansson/Corbis

INCARCERATION

- Three basic sentencing structures are used:
 - Indeterminate sentences (36 states)
 - Determinate sentences (14 states)
 - Mandatory sentences (all states)

INDETERMINATE SENTENCE

- A period, set by a judge, that specifies a minimum and a maximum time to be served in prison. Sometime after the minimum, the offender may be eligible for parole.
 - Because it is based on the idea that the time necessary for treatment cannot be set, the indeterminate sentence is closely associated with rehabilitation

DETERMINATE SENTENCE

- A sentence that fixes the term of imprisonment at a specific period
 - Some determinate-sentencing states have adopted penal codes that stipulate a specific term for each crime category
 - Others allow the judge to choose a range of time to be served
 - Some states emphasize a presumptive sentence; the legislature, or often a commission, specifies a minimum and maximum range of months or years.
 - Judges are to fix the length of sentence within that range, allowing for special circumstances.

MANDATORY SENTENCE

- A sentence determined by statutes and requiring that a certain penalty be imposed and carried out for convicted offenders who meet certain criteria
 - The judge may not consider the circumstances of the offense or the background of the offender
 - The judge may not impose non-incarcerative sentences
 - Examples: mandatory minimum sentences and three-strikes laws

THREE-STRIKES LAWS

- These laws require that judges sentence offenders with three felony convictions (in some states two or four convictions) to long prison terms, sometimes to life without parole
 - Adopted by 26 states and the federal government
 - In some states, these laws have inadvertently clogged the courts, lowered the rates of plea bargaining, and caused desperate offenders to violently resist arrest

SENTENCE V. ACTUAL TIME SERVED

- **Good Time**

- A reduction of an inmate's prison sentence, at the discretion of the prison administrator, for good behavior or participation in vocational, educational, or treatment programs.
 - Good time is critical to preserving peace inside prisons

- **Earned Time**

- A reduction of prison time as a reward for participation in educational or other rehabilitation programs, and for work assignments, such as disaster relief and conservation projects.

- **Truth in Sentencing**

- Requiring prisoners to serve a minimum (85%) of sentence no matter what

INTERMEDIATE SANCTIONS

- Punishments that are less severe and costly than prison but more restrictive than traditional probation
 - Intermediate sanctions provide a variety of restrictions on freedom

EXAMPLES OF INTERMEDIATE SANCTIONS

- Fines
- Home confinement
- Intensive probation supervision
- Restitution to victims
- Community service
- Boot camp
- Forfeiture of possessions or stolen property

ESTIMATED COST SAVINGS

TABLE 9.2 Estimated Cost Savings for Florida from Increased Use of Intermediate Sanctions (based on 2009 costs)

Sanction	First-Year Cost per Offender	Total First-Year Cost for 100 Offenders*	Potential Savings per 100 Offenders
Prison	\$20,272	\$2,027,200	—
Supervision with GPS monitoring	\$5,121	\$806,954	\$1,220,246
Probation and restitution centers	\$9,492	\$1,639,211	\$387,989
Day reporting	\$4,191	\$917,823	\$1,109,377
Residential drug treatment	\$10,539	\$1,419,529	\$607,671

Source: Florida Office of Program Policy Analysis and Government Accountability, *Intermediate Sanctions for Non-Violent Offenders Could Produce Savings*, Report No. 10-27, March 2010, p. 3.

*Includes additional costs for those who fail program and are imprisoned during first year.

PROBATION

- A sentence that the offender is allowed to serve under supervision in the community
 - Most frequently applied criminal sanction
 - Nearly 60% of adults under correctional supervision are on probation
 - Conditions are imposed specifying how an offender will behave through the length of the sentence
 - Probation is not extended as a right to the offender
- Shock probation
 - Offender released after short incarceration and resentenced to probation

THE DEATH PENALTY

- Most Western democracies have abolished the death penalty
- The Supreme Court has ruled the death penalty constitutional
 - Typically the U.S. executes 70 – 90 persons per year, sentences have fallen since the 1990s
 - 57% on death row are minorities
 - 98% on death row are males

THE DEATH PENALTY

- In March 2014, Glen Ford was released after spending more than 30 years on death row in Louisiana after courts determined that prosecutors had hidden evidence and had excluded African Americans from the jury, plus local officials had testified falsely about evidence, and defense attorneys had failed to present expert witnesses to rebut the prosecution's case. The current prosecutor admitted that Ford had been victimized by an erroneous conviction. Ford was the 144th person released from death row since 1973 as a result of later being found not guilty.
- What should happen to the courtroom actors that perpetuated this injustice? Does it change your opinion regarding the death penalty when you hear about cases such as this?

THE DEATH PENALTY

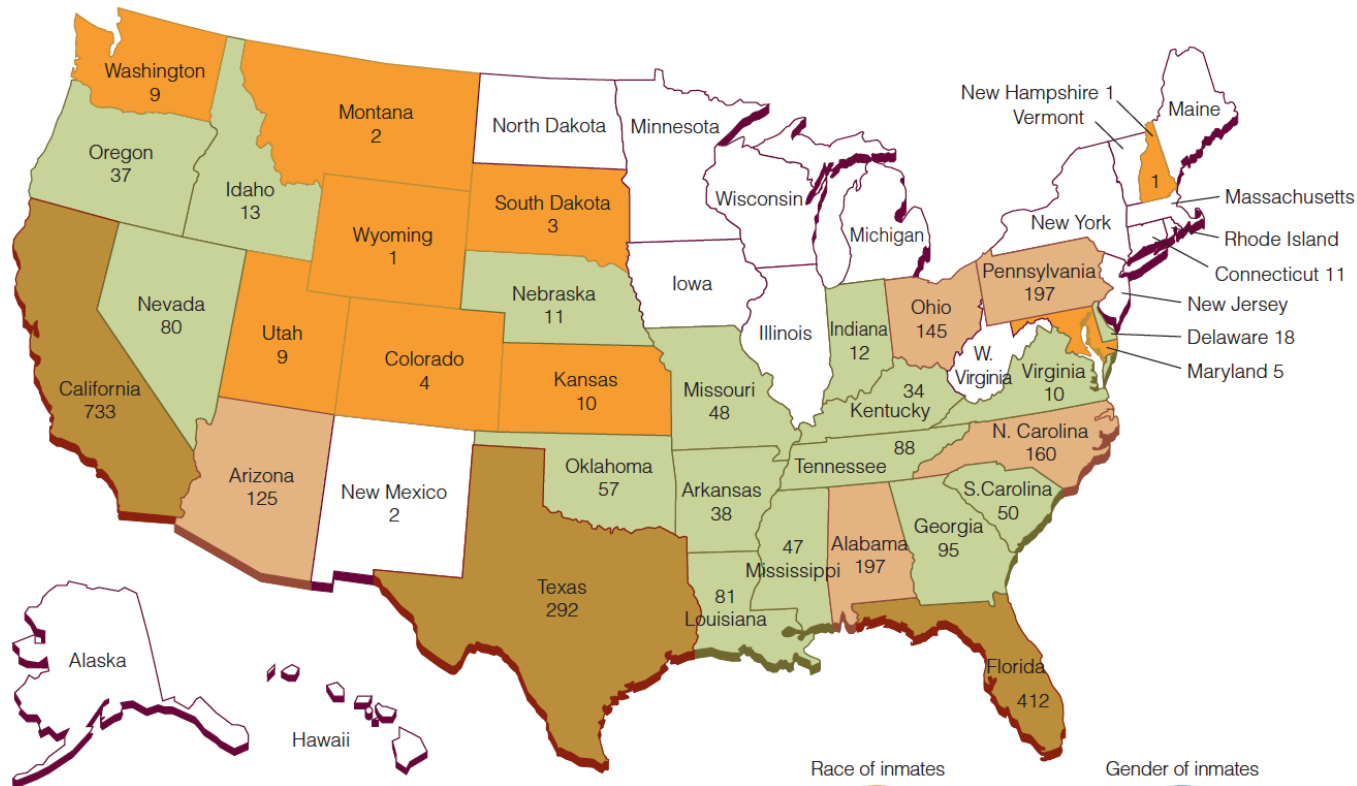
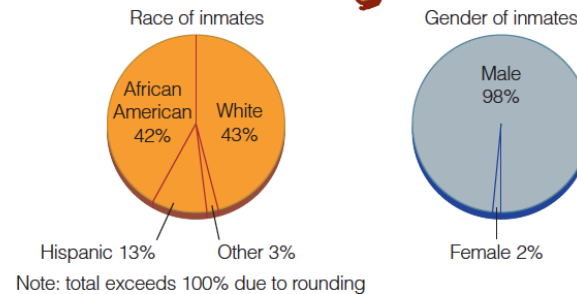
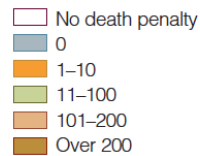


FIGURE 9.2

Death Row Census, 2013 Many of the inmates on death row are concentrated in certain states. African Americans make up about 13 percent of the U.S. population but 42 percent of the death row population. How might you explain the higher percentage of death sentences in proportion to the population?

Note: The death penalty was abolished for future crimes in New Mexico (2009), Connecticut (2012), and Maryland (2013), yet a small number of offenders remain on death row in those states for murder convictions prior to the elimination of capital punishment.

Source: Death Penalty Information Center, *Facts about the Death Penalty*, March 21, 2014, p. 2.



THE DEATH PENALTY AND THE CONSTITUTION

- **Death differs from other punishments in that it is final and irreversible**
 - Because life is in the balance, capital cases must be conducted according to higher standards of fairness and more-careful procedures than are other kinds of cases
 - Several important Supreme Court cases illustrate this concern

THE DEATH PENALTY AND THE CONSTITUTION

- **Furman v. Georgia (1972)**
 - The death penalty, as administered, constitutes cruel and unusual punishment
- **Gregg v. Georgia (1976)**
 - Judge and jury must consider certain mitigating and aggravating circumstances in deciding which convicted murderers should be sentenced to death. Proceedings must also be divided into a trial phase and a punishment phase, and there must be opportunities for appeal.
- **McCleskey v. Kemp (1987)**
 - The Supreme Court rejects a challenge of Georgia's death penalty on grounds of racial discrimination

THE DEATH PENALTY AND THE CONSTITUTION

- *Witherspoon v. Illinois* (1968)
 - Potential jurors who object to the death penalty cannot be automatically excluded from jury service; however, during voir dire, those who feel so strongly about capital punishment that they could not give an impartial verdict may be excluded.
- *Atkins v. Virginia* (2002)
 - Execution of the mentally retarded is unconstitutional
- *Roper v. Simmons* (2005)
 - Execution of offenders for crimes committed while under the age of 18 is unconstitutional

CONTINUING LEGAL ISSUES

- Execution of the mentally ill
- Effective counsel
- Death-qualified juries
- Appeals
- International law

ARGUMENTS IN FAVOR OF THE DEATH PENALTY

- The death penalty deters criminals from committing violent acts
- The death penalty achieves justice by paying killers back for their horrible crimes
- The death penalty prevents criminals from doing further harm while on parole
- The death penalty is less expensive than holding murderers in prison for life

ARGUMENTS AGAINST THE DEATH PENALTY

- No hard evidence proves that the death penalty is a deterrent
- It is wrong for a government to participate in the intentional killing of citizens
- The death penalty is applied in a discriminatory fashion
- Innocent people have been sentenced to death
- Some methods of execution are inhumane, causing painful, lingering deaths

THE SENTENCING PROCESS

- Within the discretion allowed by the code, various elements influence the decisions of judges:
 - The administrative context of the courts
 - The attitudes and values of judges
 - The presentence report
 - Sentencing guidelines

ADMINISTRATIVE CONTEXT OF COURTS

- **Misdemeanors**

- Typically an 'assembly line' system of conviction
 - Few immediate penalties, but lost work, time and criminal record can be serious

- **Felony**

- More serious and structured



AP Images/Dan Joling

ADMINISTRATIVE CONTEXT OF COURTS

TABLE 9.4 Types of Felony Sentences Imposed by State Courts

Although a felony conviction is often equated with a prison sentence, almost a third of felony offenders receive probation.

Most Serious Conviction Offense	Percentage of Felons Sentenced to		
	Prison	Jail	Probation
All offenses	41	28	27
Murder	93	2	3
Rape	72	15	10
Robbery	71	14	13
Burglary	49	24	24
Larceny	34	34	28
Drug possession	33	31	30
Drug trafficking	41	26	29
Weapons offenses	45	28	25

Note: For persons receiving a combination of sanctions, the sentence designation came from the most severe penalty imposed—prison being the most severe, followed by jail and then probation. Rows do not add up to 100% because a small percentage of offenders for each crime were sentenced to other nonincarceration sanctions.

Source: Sean Rosenmerkel, Matthew R. Durose, and Donald Farole Jr., "Felony Sentences in State Courts, 2006—Statistical Tables," *Bureau of Justice Statistics Statistical Tables*, December 2009, p. 4.

SENTENCES

- **Presentence report**

- Prepared by probation officer with offenders background, used by judge in imposing sentence

- **Sentence Guidelines**

- A mechanism to indicate to judges the expected sanction for certain offenses in order to reduce disparities in sentencing.
 - Typically presumptive sentences for crimes are set by legislature
 - Judge may increase or decrease sentence but only in limited cases
 - Not popular with judges or attorneys

JUDGES AND SENTENCING

- In 2011, Andrew Stein, a former President of the NYC Council and former candidate for Congress pled guilty for failure to pay income taxes from 2003 – 2008, and \$1 million for 2008. He was sentenced to 3 years probation and 500 hours community service.
- In 2008, Wesley Snipes went to trial for failure to pay taxes on \$58 million for over a decade, and was acquitted of serious conspiracy and tax fraud charges, but was convicted of 3 misdemeanor counts of failing to pay taxes for 3 years after federal government had told him to do so. He was given three years in prison.
- Were these sentences fair? Are they comparable? Did Snipes receive extra punishment for refusing to plead guilty? Did Stein receive leniency for having 14 letters from prominent friends write letters to the judge?

WHO GETS THE HARSHEST PUNISHMENT?

- Why do African Americans and Hispanics receive longer and harsher sentences?
 - Could be because of racial prejudice at different levels:
 - Arrest
 - Prosecution
 - Conviction
- Why do wrongful convictions occur?
- What can be done to correct the problem?

WRONGFUL CONVICTIONS

- Development of DNA technology has increased the number of people being exonerated after being convicted.

