

Sentencing Handout

Philosophies of Punishment

Criminal punishment is informed by a number of different philosophies. Some of these philosophies have come into greater prominence than others at particular historical moments, but in general all have simultaneously been considered part of the purpose of sentencing within various punishment regimes. The most common principles behind sentencing are:

Denunciation: Punishment imposed to demonstrate society's disapproval for a particular action, thereby reinforcing its moral boundaries, such as branding.

Deterrence: Punishment imposed in order to discourage the individual from committing further offences and/or dissuade the general public from committing similar offences, such as corporal punishment.

Incapacitation: Sentence imposed to protect society by making the offender unable to commit further offences, such as electronic surveillance.

Rehabilitation: Sentence imposed with the object of reforming the offender's behaviour and re-integrating them into the community successfully, such as supervised probation or court-mandated counselling.

Reparation: Sentence imposed to oblige offender to make recompense to victims or the community for their crimes, such as fines, community services or paying damages to victim.

Retribution: Punishment imposed to restore the balance disturbed by an offence being committed, or enact community vengeance proportionate to the crime committed.

Types of Sentences

The types of sentences imposed upon offenders have likewise varied across time and culture. The main forms of sentencing include:

Capital punishment: Historically, death sentences were used to punish those offences considered most serious. Capital punishment was abolished across Australia's jurisdictions between 1922 and 1985; the last execution was of Ronald Ryan in Victoria in 1967.

Community service: Courts can order offenders to perform work on behalf of the community either as an alternative or in addition to other punishment. Such sentencing was introduced from the 1970s.

Corporal punishment: Physical punishments, such as flogging or branding, were historically a common response to both minor and major offences. Their use declined in European jurisdictions across the nineteenth century, when Foucault describes the processes of discipline being transferred from the body to the mind. However, corporal punishment of criminal offenders was not entirely abandoned in Australia until the second half of the twentieth century.

Custodial sentences: While imprisonment has long been used as a criminal punishment, it only became the major way that courts disposed of offenders in the nineteenth century. Typically, offenders have been given a defined prison term (e.g. 6 months, 10 years, life). Offenders who have been convicted of multiple crimes simultaneously can also be given multiple custodial sentences to be served either concurrently or consecutively. Sometimes offenders can also be issued with indefinite detention orders with no fixed period for release. In the early twentieth century legislation was introduced in different Australian jurisdictions that allowed courts to declare an offender a 'habitual criminal', based upon either their having a set number of previous convictions (usually 3) or, in some jurisdictions, even simply having a general reputation as a delinquent. It has been common to remit part of the prisoner's sentence in recognition of good behaviour or due to other factors such as prison overcrowding. (In the past sentence remissions were also given to

prisoners in commemoration of notable events having occurred, such as Australia's Federation in 1901 and the end of wartime hostilities in 1945.) Historically decisions to allow the early release of prisoners were typically made by the head of the prison service, but more recently such decisions have been made by standing parole boards.

Discharge: If a court feels that the purposes of sentencing will not be served by punishment, they may discharge an offender despite conviction. Such discharges can be absolute, or conditional upon the offender agreeing to particular court mandates, such as requiring the offender to undergo counselling or drug and alcohol rehabilitation. Historically, courts sometimes discharged minor offenders upon their agreeing to be released into the care of a refuge or charity home.

Exile: Banishment from a particular jurisdiction or country was historically a common form of punishment. Britain's transportation of convicts to the Australian colonies in the eighteenth and nineteenth centuries was intended as a form of exile. While this later fell into disuse as a formal type of punishment, courts have sometimes issued conditional pardons to offenders who have agreed to leave the town or area where they were convicted, or have sought to deport foreign nationals convicted of an offence rather than have the State bear the cost of their imprisonment.

Fine: Fines have been a major sentencing disposition used by courts both in the past and today. During the nineteenth and early twentieth century most minor offences were punished with a fine that carried the 'option' of a set term of imprisonment if the offender could not or chose not to pay the fine. Although this style of sentencing does not persist, unpaid fines remain a significant cause of imprisonment in a number of jurisdictions.

Probation: Probation is a period in which an offender – as an alternative to imprisonment – is placed under supervision within the community, usually under conditions that restrict their behaviour (such as having to abstain from alcohol or the company of criminal associates). A form of probation known as the conditional pardon was used under the convict transportation system. A number of Australian jurisdictions introduced probation in relation to first-time offenders specifically from the 1880s, and during the twentieth century its use was extended to low-risk offenders more generally.

Restitution: Offenders can be ordered to make restitution (financial or otherwise) to their victims, such as by returning stolen goods, fixing damaged property or paying medical expenses. Historically, restitution could also include things like extending an offer of marriage to rape victims.

Restorative justice: Restorative justice is an approach introduced in the late 1970s as an alternative or addition to traditional sentencing. It involves establishing a dialogue between victim and offender, and sometimes other community members, about what happened, the harm it caused and what actions can be taken to repair that harm and prevent future harm.

Suspended sentences: Judges can impose a sentence (usually a term of imprisonment), but suspend that sentence from being enforced provided an offender is of good behaviour or meets other conditions during a set period of time.