

Sociology 3395: Criminal Justice & Corrections
Class 17: Sentencing and Punishment

* Upon conviction, a court must come up with an appropriate sentence for an offender: options= prison, community service, fines & probation

* Judges have much latitude since:

- usually only the maximum is specified
- community corrections are encouraged

* Controversies have emerged about sentencing disparity, too much judicial discretion, & special sentencing provisions for Aboriginals (e.g. Gladue case).

The Purpose of Sentencing:

* Punishments cover a wide range of sentences / may be combined

* How do we determine appropriate punishment?

* Sentencing goals:

- (1) Deterrence (general vs. specific)
- (2) Selective incapacitation (e.g. chronic criminals)
- (3) Rehabilitation (i.e. providing programs)
- (4) Justice (seriousness of crime + prior record)

* Judges' ability to sentence an offender restricted by law (e.g. no life sentence for summary conviction offence)

* However, within legal parameters ("range"), judges have discretion to tailor sentence to the case at hand.

* Sentencing criteria are set out in the Criminal Code (e.g. maximum/minimum sentence allowed). Case law also relevant in setting “range”

* Judges must consider what sentencing goal they seek to accomplish (e.g. deterrence, selective incapacitation, justice or rehabilitation)

Forms of Punishment:

* Judges may give the following punishments (or a combination thereof)

- imprisonment
- intermittent sentences
- fines
- restitution/ community service
- probation
- restorative justice
- absolute/ conditional discharges
- community based sanctions

The Sentencing Process:

* Usually involves judge’s consideration of:

- pre-sentence report
- the seriousness of the offence
- mitigating & aggravating circumstances

Sentencing Law in Canada:

* Bill C-41 (1996): sentencing reform law:

- enhanced sentences for hate crimes, spousal & child abuse, abusing position of trust, & organized crime
- advocated consistency, but sought to avoid, if possible, incarceration (esp. Aboriginals) & unduly harsh sentences

- * Key principles:
 - denunciation
 - deterrence
 - incapacitation
 - rehabilitation
 - accountability
 - reparation

Sentencing Patterns in Canada (2000-01):

- * Incarceration: 34% (stable). Median length 30 days (stable)
- * Most common offences: common assault (12%), drunk driving (12%)
- * Conviction rate: 61%
- * Most common sanction: probation (44%)
- * Characteristics of offenders: male (83%); under 35 (65%)

Issues in Sentencing:

- * Sentencing disparity:
 - case to case: same offence but different penalty
 - judge to judge: some judges harsher than others
 - court to court (e.g. varying “courthouse norms”)
 - province to province
 - disparity vs. discrimination? (e.g. race)

- * Public opinion research:
 - public thinks that sentences are too light
 - when presented with sentencing options, public less punitive
 - public is more punitive toward arson, assault on police, forgery, theft & fraud
 - judges are more punitive toward robbery, perjury, B+E
 - support for sentencing goals depend on the type of crime
 - GSS (1999) found few Canadians think courts are doing a good job with offenders (varies with age, gender, & class)

* Sentencing Guidelines:

(1) Meant to reduce judicial disparity by focusing only on the seriousness of the offence & record of the offender

(2) Problems in Canadian sentencing (Canadian Sentencing Commission, 1987):

- maximum penalties are too high
- mandatory minimums create injustice
- not enough information about sentencing practices

* Recommendations of Canadian Sentencing Commission:

1. Develop a new rationale for sentencing
2. Eliminate mandatory minima (except murder)
3. Create new maxima of 12, 9, 6, 3, or 1 year, or 6 months
4. Eliminate full parole
5. Create time-off for good behavior
6. Increase use of community sanctions
7. Eliminate automatic jail for fine default
8. Create presumption of jail (or not) for specific offences
9. Create a presumption range for jail terms
10. Create a permanent Sentencing Commission to gather data & review cases

* Do sentencing guidelines work?

- Minnesota (1985): disparity based on race, employment & gender declined. Greater emphasis on offence & use of weapons
- Follow-up research (1991, 1995): increased deviation from guidelines. Prosecutors changed charging strategies instead

* Victim impact statements:

- 1989: victims gained right to make impact statements in writing
- 2000: right to read statements in court
- Victims' rights legislation (federal & provincial)
- Do these give dignity or vindictiveness to victims?
- There is somewhat better access to information
- Little measurable effect on victim attitudes
- Most victims held negative opinions before & after sentencing
- Greatest impact on sex offender sentencing

Sentencing and Healing Circles:

* Aboriginals over-represented in prisons (e.g. denial of bail, non-payment of fines, less likely to get probation)

* Sentencing and healing circles:

- combines traditional Aboriginal community justice & western legal systems
- judge has final authority
- recommendations based on participation of victim, family, friends, elders, police, prosecution & defense

* Use of sentencing circles:

- mostly for minor offences
- accused has deep community roots
- all parties willing to participate
- victim not suffering from battered woman syndrome
- whether counseling/support needed/available for victims
- court approval/ agreed upon facts

* Benefits:

- reducing monopoly of professionals
- encouraging lay participation
- increasing information flow
- creatively exploring new options
- promoting shared responsibility
- encouraging participation by offender
- involving the victim
- creating constructive environment
- promotes appreciation of limits of CJS
- extends the focus of the CJS
- mobilizes community resources
- integrates Aboriginal values

* Problems: genuine reconciliation & negative victim experiences

Conclusion:

* Sentencing an important part of criminal justice process (yet decisions not final given potential for appeal/ decisions of parole board)

* Various crime control philosophies underlie sentencing decisions

* Recent policy changes have been put in place to favor both broad consistency (sentencing guidelines) & special situations (Aboriginals)