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What are the theories of punishment and explain the reformative theory

When it comes to criminal sanctions, what people believe to be appropriate is largely determined by the theory of punishment to which they subscribe. That is, people tend to agree with the theory of punishment that is most likely to generate the outcome they believe is the correct one. This system of beliefs about the purposes of punishment often spills over into the political arena. Politics and correctional policy are intricately related. Many of the changes seen in corrections policy in the United States during this time were a reflection of the political climate of the day. During the more liberal times of the 1960s and 1970s, criminal sentences were largely the domain of the judicial and executive branches of government. The role of the legislatures during this period was to design sentencing laws with rehabilitation as the primary goal. During the politically conservative era of the 1980s and 1990s, lawmakers took much of that power away from the judicial and executive branches. Much of the political rhetoric of this time was about "getting tough on crime." The correctional goals of retribution, incapacitation, and deterrence became dominate, and rehabilitation was shifted to a distant position. Deterrence It has been a popular notion throughout the ages that fear of punishment can reduce or eliminate undesirable behavior. This notion has always been popular among criminal justice thinkers. These ideas have been formalized in several different ways. The Utilitarian philosopher Jeremy Bentham is credited with articulating the three elements that must be present if deterrence is to work: The punishment must be administered with celerity, certainty, and appropriate severity. These elements are applied under a type rational choice theory. Rational choice theory is the simple idea that people think about committing a crime before they do it. If the rewards of the crime outweigh the punishment, then they do the prohibited act. If the punishment is seen as outweighing the rewards, then they do not do it. Sometimes criminologists borrow the phrase cost-benefit analysis from economists to describe this sort of decision-making process. When evaluating whether deterrence works or not, it is important to differentiate between general deterrence and specific deterrence. General deterrence is the idea that every person punished by the law serves as an example to others contemplating the same unlawful act. Specific deterrence is the idea that the individuals punished by the law will not commit their crimes again because they "learned a lesson." Critics of deterrence theory point to high recidivism rates as proof that the theory does not work. Recidivism means a relapse into crime. In other words, those who are punished by the criminal justice system tend to reoffend at a very high rate. Some critics also argue that rational choice theory does not work. They argue that such things as crimes of passion and crimes committed by those under the influence of drugs and alcohol are not the product of a rational cost-benefit analysis. As unpopular as rational choice theories may be with particular schools of modern academic criminology, they are critically important to understanding how the criminal justice system works. This is because nearly the entire criminal justice system is based on rational choice theory. The idea that people commit crimes because they decide to do so is the very foundation of criminal law in the United States. In fact, the intent element must be proven beyond a reasonable doubt in almost every felony known to American criminal law before a conviction can be secured. Without a culpable mental state, there is no crime (with very few exceptions). Incapacitation Incapacitation is a very pragmatic goal of criminal justice. The idea is that if criminals are locked up in a secure environment, they cannot go around victimizing everyday citizens. The weakness of incapacitation is that it works only as long as the offender is locked up. There is no real question that incapacitation reduces crime by some degree. The biggest problems with incapacitation is the cost. There are high social and moral costs when the criminal justice system takes people out of their homes, away from their families, and out of the workforce and lock them up for a protracted period. In addition, there are very heavy financial costs with this model. Very long prison sentences result in very large prison populations which require a very large prison industrial complex. These expenses have placed a crippling financial burden on many states. Rehabilitation Rehabilitation is a noble goal of punishment by the state that seeks to help the offender become a productive, noncriminal member of society. Throughout history, there have been several different notions as to how this help should be administered. When our modern correctional system was forming, this was the dominate model. We can see by the very name corrections that the idea was to help the offender become a non-offender. Education programs, faith-based programs, drug treatment programs, anger management programs, and many others are aimed at helping the offender "get better." Overall, rehabilitation efforts have had poor results when measured by looking at recidivism rates. Those that the criminal justice system tried to help tend to reoffend at about the same rate as those who serve prison time without any kind of treatment. Advocates of rehabilitation point out that past efforts failed because they were underfunded, ill-conceived, or poorly executed. Today's drug courts are an example of how we may be moving back toward a more rehabilitative model, especially with first time and nonviolent offenders. Retribution Retribution means giving offenders the punishment they deserve. Most adherents to this idea believe that the punishment should fit the offense. This idea is known as the doctrine of proportionality. Such a doctrine was advocated by early Italian criminologist Cesare Beccaria who viewed the harsh punishments of his day as being disproportionate to many of the crimes committed. The term just desert is often used to describe a deserved punishment that is proportionate to the crime committed. In reality, the doctrine of proportionality is difficult to achieve. There is no way that the various legislatures can go about objectively measuring criminal culpability. The process is one of legislative consensus, and is imprecise at best. A Racist System? The United States today can be described as both multiracial and multiethnic. This has led to racism. Racism is the belief that members of one race are inferior to members of another race. Because white Americans of European heritage are the majority, racism in America usually takes on the character of whites against racial and ethnic minorities. Historically, these ethnic minorities have not been given equal footing on such important aspects of life as employment, housing, education, healthcare, and criminal justice. When this unequal treatment is willful, it can be referred to as racial discrimination. The law forbids racial discrimination in the criminal justice system, just as it does in the workplace. Disproportionate minority contact refers to the disproportionate number of minorities who come into contact with the criminal justice system. Disproportionate minority contact is a problem in both the adult and juvenile systems at every level of those systems. As the gatekeepers of the criminal justice system, the police are often accused of discriminatory practices. Courts are not immune to cries of racism from individuals and politically active groups. The American Civil Liberties Union (2014), for example, states, "African-Americans are incarcerated for drug offenses at a rate that is 10 times greater than that of whites." The literature on disproportionate minority sentencing distinguishes between legal and extralegal factors. Legal factors are those things that we accept as legitimately, as a matter of law, mitigating or aggravating criminal sentences. Such things as the seriousness of the offense and the defendant's prior criminal record fall into this category. Extralegal factors include things like class, race, and gender. These are regarded as illegitimate factors in determining criminal sentences. They have nothing to do with the defendant's criminal behavior, and everything to do with the defendant's status as a member of a particular group. One way to measure racial disparity is to compare the proportion of people that are members of a particular group (their proportion in the general population) with the proportion or that group at a particular stage in the criminal justice system. In 2013, the Bureau of the Census (Bureau of the Census, 2014) estimated that African-Americans made up 13.2% of the population of the United States. According to the FBI, 28.4% of all arrestees were African-American. From this information we can see that the proportion of African-Americans arrested was just over double what one would expect. The disparity is more pronounced when it comes to drug crime. According to the NAACP (2014), "African Americans represent 12% of the total population of drug users, but 38% of those arrested for drug offenses, and 59% of those in state prison for a drug offense." There are three basic explanations for these disparities in the criminal justice system. The first is individual racism. Individual racism refers to a particular person's beliefs, assumptions, and behaviors. This type of racism manifests itself when the individual police officer, defense attorney, prosecutor, judge, parole board member, or parole officer is bigoted. Another explanation of racial disparities in the criminal justice system is institutional racism. Institutional racism manifests itself when departmental policies (both formal and informal), regulations, and laws result in unfair treatment of a particular group. A third (and controversial) explanation is differential involvement in crime. The basic idea is that African-Americans and Hispanics are involved in more criminal activity. Often this is tied to social problems such as poor education, poverty, and unemployment. While it does not seem that bigotry is present in every facet of the criminal and juvenile justice systems, it does appear that there are pockets of prejudice within both systems. It is difficult to deny the data: Discrimination does take place in such areas as use of force by police and the imposition of the death penalty. Historically, nowhere was the disparity more discussed and debated than in federal drug policy. While much has recently changed with the passage of the Fair Sentencing Act of 2010, federal drug law was a prime example of institutional racism at work. Under former law, crimes involving crack cocaine were punished much, much more severely than powder cocaine. The law had certain harsh penalties that were triggered by weight, and a provision that required one hundred times more powder than crack. Many deemed the law racist because the majority of arrests for crack cocaine were of African-Americans, and the majority of arrests for powder cocaine were white. African-American defendants have appealed their sentences based on Fourteenth Amendment equal protection claims. Key Terms Celerity, Certainty, Cesare Beccaria, Cost Benefit Analysis, Culpable Mental State, Deterrence, Disproportionate Minority Contact, Drug Court, Fair Sentencing Act of 2010, General Deterrence, Incapacitation, Individual Racism, Institutional Racism, Multiethnic, Multiracial, NAACP, Racial Discrimination, Racism, Rational Choice Theory, Recidivism, Rehabilitation, Retribution, Severity, Specific Deterrence

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