Learning Objectives

1. Understand the goals of punishment.
2. Be familiar with the different forms of the criminal sanction.
3. Explain how different factors affect the sentencing process.
4. Discuss the problem of unjust punishment.

Punishment

- Three elements:
  - An offense
  - The infliction of pain because of the commission of the offense.
  - A dominant purpose that is neither to compensate someone injured by the offense nor to better the offender's condition but to prevent further offenses or to inflict what is thought to be deserved pain on the offender.
Learning Objective 1

- Learning objective 1: Understand the goals of punishment.

Goals of Punishment

1. Retribution (Deserved Punishment)
2. Deterrence
3. Incapacitation
4. Rehabilitation

Retribution

- Retribution:
  - Punishment inflicted on a person who has infringed on the rights of others and so deserves to be penalized. The severity of the sanction should fit the seriousness of the crime.
- Underlying philosophy
  - “Eye for an eye, tooth for a tooth”
- Deserved punishment
Retribution

- Pay their debts
  - Focuses on the offense alone
- Offenders penalized for wrongful acts
- Retribution lost influence during age of reason
- Since late 1970’s has aroused new interest
  - Dissatisfaction with the philosophical basis and practical results of rehabilitation

Deterrence

- General:
  - Punishment of criminals that is intended to be an example to the general public and to discourage the commission of offenses by others.
- Specific
  - Punishment inflicted on criminals to discourage them from committing future crimes.

Deterrence

- Assumes that all people act rationally and think before they act.
- Ignores affects of:
  - Drugs or alcohol
  - Psychological illness
- Low probability of being caught defeats deterrence philosophy.
Deterrence

- Punishment must be perceived as:
  - Fast
  - Certain
  - Severe
- Difficult to measure results of deterrence

Incapacitation

- Incapacitation:
  - Depriving an offender of the ability to commit crimes against society, usually by detailing the offender in prison.
  - Banishment early form of incapacitation
  - Focuses on characteristics of the offenders instead of characteristics of the offense.

- Selective Incapacitation:
  - Making the best use of expensive and limited prison space by targeting for incarceration those offenders whose incapacity will do the most to reduce crime in society.
  - Policy makers tend to focus on cost-benefit comparisons, disregarding issues of:
    - Justice
    - Individual freedom
    - Civil liberties
Rehabilitation

- Rehabilitation:
  - The goal of restoring a convicted offender to a constructive place in society through some form of vocational or educational training or therapy.
  - Goal is oriented solely toward the offender.
  - Severity of punishment and gravity of crime not related.
  - Offenders “treated” not punished.

Rehabilitation

- Indeterminate sentences
- Recently some have abandoned concept of rehabilitation goal in favor of:
  - Retribution
  - Deterrence
  - Incapacitation

Learning Objective 2

- Learning objective 2: Be familiar with the different forms of the criminal sanction.
Forms of the Criminal Sanction

- Incarceration
- Intermediate sanctions
- Probation
- Death

- Judges have discretion in determining the appropriate sentence

Incarceration

- Most visible penalty imposed by U.S. courts.
- 2006, nearly 2.3 million Americans in prison or jail.
- Three basic sentencing structures:
  - Indeterminate sentences
  - Determinate sentences
  - Mandatory sentences

Incarceration

- Indeterminate sentence:
  - A period of incarceration with minimum and maximum terms stipulated, so that parole eligibility depends on the time necessary for treatment; closely associated with the rehabilitation concept.
Incarceration

- **Determinate sentence:**
  - A fixed period of incarceration imposed by a court; associated with the concept of retribution or deserved punishment.

- **Presumptive sentence:**
  - A sentence for which the legislature or a commission sets a minimum and maximum range of months or years, judges are to fix the length of the sentence within that range, allowing for special circumstances.

Incarceration

- **Mandatory sentence:**
  - A sentence stipulating that some minimum period of incarceration must be served by people convicted of selected crimes, regardless of background circumstances.
  - Most often specified for:
    - Violent crimes
    - Drug violations
    - Habitual offenders
    - Crimes with a firearm

Incarceration

- “Three strikes and you’re out”
  - Have little impact on reducing rates of serious crime.

- **Sentence versus actual time served:**
  - Good time:
    - A reduction of an inmate’s prison sentence, at the discretion of the prison administrator, for good behavior or for participation in vocational, educational, and treatment programs.
Incarceration

- Truth-in-Sentencing:
  - Laws that require offenders to serve a substantial proportion of their prison sentence before being released on parole.
- Three goals:
  - Providing the public with more-accurate information about the actual length of sentences.
  - Reducing crime by keeping offenders in prison for longer periods.
  - Achieving a rational allocation of prison space by prioritizing the incarceration of particular classes of criminals.

Intermediate Sanctions

- Intermediate sanctions:
  - A variety of punishments that are more restrictive than traditional probation by less severe than incarceration.
  - Fines
  - Home confinement
  - Intensive probation supervision
  - Restitution to victims
  - Community service
  - Boot camp
  - Forfeiture

Probation

- Probation
  - A sentence allowing the offender to serve the sanctions imposed by the court while he or she lives in the community under supervision
  - 60 percent of adults under correctional supervision are on probation.
  - Not extended to offenders as a right
  - Conditions set forth how an offender is to behave
Probation

• Probationers may be ordered to:
  ◦ Undergo regular drug tests
  ◦ Abide by curfews
  ◦ Enroll in educational programs
  ◦ Remain employed
  ◦ Stay away from certain parts of town or certain people
  ◦ Meet regularly with probation officers

Probation

• Shock probation:
  ◦ Sentence in which the offender is released after a short incarceration and resentenced to probation.
  ◦ Probation generally advocated or rehabilitating offenders whose crimes less serious or who have clean records
  ◦ Viewed as less expensive and more effective than imprisonment

Death

• Number of people facing death penalty increased dramatically over last 2 decades.
  ◦ In 2007 only 122 people added to death row.
  ◦ In 2008, 37 people executed.
Learning Objective 3

- Learning objective 3: Explain how different factors affect the sentencing process.

Factors that influence the sentencing process:
- The administrative context of the courts
- The attitudes and values of judges
- The presentence report
- Sentencing guidelines

Administrative Context

- Misdemeanor court
  - Hear 90 percent of criminal cases
  - Only minority of cases end in jail sentences
  - Judicial decisions mass produced
  - Most cases result in:
    - Fines
    - Probation
    - Community service
    - Restitution
    - Combination of above
Administrative Context

- Felony courts
  - Atmosphere more formal and lacks the chaotic, assembly-line environment of misdemeanor courts.
  - Exchange relationships facilitate plea bargains
  - Sentencing decisions shaped by relationships, negotiations, and agreements among:
    - Prosecutors
    - Defense attorneys
    - Judges

Attitudes and Values of Judges

- Blameworthiness of offender:
  - Offense severity
  - Criminal history
  - Role in commission of crime
- Practicality of sentence
- Impact of offender's family

The Presentence Report

- Presentence report:
  - Report prepared by a probation officer, who investigates a convicted offender's background to help the judge select an appropriate sentence.
  - Also investigates offender's job status, mental condition.
  - Assists in classification of probationers, prisoners, and parolees for treatment planning and risk assessment.
The Presentence Report

- Should judges rely so much on the presentence report?
- Does the time spent preparing it represent the best use of probation officers’ time?

Learning Objective 4

- Learning objective 4: Discuss the problem of unjust punishment.

- Unjust punishment can be result of:
  - Sentencing disparities
  - Wrongful convictions
Sentencing Disparity

- Sentencing disparity:
  - Divergence in the lengths and types of sentences imposed for the same crime or for crimes of comparable seriousness when no reasonable justification can be discerned.
  - Discrimination occurs when criminal justice officials either directly or indirectly treat someone differently because of their race, ethnicity, gender, or class.

Wrongful Convictions

- Wrongful conviction:
  - Occurs when an innocent person is found guilty by either plea or verdict.
  - DNA convictions/exonerations
  - Why do wrongful convictions occur?
    - Eyewitness error
    - Unethical conduct by police/prosecutors
    - Community pressure
    - False accusations
    - Inadequacy of counsel
    - Plea-bargaining pressures

Chapter Five

The Law of Corrections
Learning Objectives

1. Discuss the foundations that support the legal rights of prisoners.
2. Explain the role of the U.S. Supreme Court in interpreting correctional law.
3. Understand the constitutional rights of prisoners.
4. Be familiar with the alternatives to litigation.
5. Explain the rights of offenders under community supervision.
6. Discuss how the law affects correctional personnel.

Learning Objective 1

- Learning objective 1: Discuss the foundations that support the legal rights of prisoners.

- Four foundations support the legal rights of prisoners:
  - Constitutions
  - Statutes
  - Case law
  - Regulations
Constitutions

- **Constitution:**
  - Fundamental law contained in a state or federal document that provides a design of government and lists basic rights for individuals.
  - States have their own constitutions
  - Courts of each state empowered to declare correctional conditions and practices in violation of either the state or federal constitution.

Constitutions

- Courts have recognized three specific interests in justifying some restrictions on the constitutional rights of prisoners:
  - The maintenance of institutional order
  - The maintenance of institutional security
  - The rehabilitation of inmates

Statutes

- **Statutes:**
  - Law created by the people’s elected representatives in legislatures
  - Written in more specific terms than constitutions
  - State legislatures may grant specific rights to inmates beyond those conferred by the state constitutions or the U.S. Constitution.
Case Law

• Case law (court decisions):
  • Legal rules produced by judges’ decisions
• Precedent:
  • Legal rules created in judges’ decisions that serve to guide the decisions of other judges in subsequent similar cases.

Regulations

• Regulations:
  • Legal rules, usually set by an agency of the executive branch, designed to implement in detail the policies of that agency.
  • Legislature, president, or governor gives agencies the power to make detailed regulations governing specific policy in areas such as:
    • Health
    • Safety
    • Environment

Learning Objective 2

• Learning objective 2: Explain the role of the U.S. Supreme Court in interpreting correctional law.
U.S. Supreme Court

- Hands-off policy:
  - A judicial policy of noninterference concerning the internal administration of prisons.
- Ruffin v. Commonwealth (1871):
  - Prisoners did not have rights
  - Separation of powers

- 1960’s
  - End of the hands-off policy
    - Cooper v. Pate (1964)
- Civil Rights Act of 1871 – Section 1983
  - Civil liability:
    - Responsibility for the provision of monetary or other compensation awarded to a plaintiff in a civil action.

U.S. Supreme Court

- Habeas Corpus:
  - A writ (judicial order) asking a person to produce the prisoner and to give reasons to justify continued confinement.
  - 1996:
    - Anti-Terrorism Act
- Access to Courts:
  - Johnson v. Avery (1969)
  - Bounds v. Smith (1977)
Learning Objective 3

• Learning objective 3: Understand the constitutional rights of prisoners.

Constitutional Rights of Prisoners

• Least restrictive method:
  ◦ Means of ensuring a legitimate state interest (such as security) that impose fewer limits to prisoners' rights than do alternative means of securing that end.

• Compelling state interest:
  ◦ An interest of the state that must take precedence over rights guaranteed by the First Amendment.

Constitutional Rights of Prisoners

• Clear and Present Danger:
  ◦ Any threat to security or to the safety of individuals that is so obvious and compelling that the need to counter it overrides the guarantees of the First Amendment.
Constitutional Rights of Prisoners

- Rational basis test
  - Requires that a regulation provide a reasonable, rational method of advancing a legitimate institutional goal:
    - There must be a rational connection between the regulation and the legitimate interest put forward to justify it.
    - There must be alternative means of exercising the right that remain open to prison inmates.
    - There must be a minimal impact of the regulation on correctional officers and other inmates.
    - There must be no less-restrictive alternative available.

Constitutional Rights of Prisoners

- The First Amendment:
  - Speech
  - Religion

Constitutional Rights of Prisoners

- The Fourth Amendment:
  - Prohibits only unreasonable searches and seizures.
Constitutional Rights of Prisoners

- **Eighth Amendment:**
  - Cruel and unusual punishment
    - Three principle tests to determine unconstitutional conditions:
      - Whether the punishment shocks the conscience of a civilized society.
      - Whether the punishment is unnecessarily cruel.
      - Whether the punishment goes beyond legitimate penal aims.

Constitutional Rights of Prisoners

- **Totality of conditions:**
  - The aggregate of circumstances in a correctional facility that, when considered as a whole, may violate the protections guaranteed by the Eighth Amendment, even though such guarantees are not violated by any single condition in the institution.

Constitutional Rights of Prisoners

- **Fourteenth Amendment**
  - Procedural due process:
    - The constitutional guarantee that no agent or instrumentality of government will use any procedures other than those procedures prescribed by law to arrest, prosecute, try, or punish any person.
  - Equal protection:
    - The constitutional guarantee that the law will be applied equally to all people, without regard for such individual characteristics as gender, race, and religion.
### Constitutional Rights of Prisoners

- Minimum procedures for serious prisoner disciplinary action:
  - The prisoner must be given 24-hour written notice of the charges.
  - The prisoner has the right to present witnesses and documentary evidence in defense against the charges.
  - The prisoner has the right to a hearing before an impartial jury.
  - The prisoner has the right to receive a written statement from the body concerning the outcome of the hearing.

### Learning Objective 4

- Learning objective 4: Be familiar with the alternatives to litigation.

### Alternatives to Litigation

- Prisoners face 3 problems concerning litigation:
  - They generally lack legal representation
  - Constitutional standards are difficult to meet
  - Even if a suit succeeds, changes in policies or financial compensation may take a long time.
Alternatives to Litigation

- Four alternatives:
  - Inmate grievance procedures
  - Ombudsman
    - A public official who investigates complaints against government officials and recommends corrective measures.
  - Mediation
    - Intervention, in a dispute, by a third party to whom the parties in conflict submit their differences for resolution and whose decision (in the correctional setting) is binding on both parties.
  - Legal assistance

Learning Objective 5

- Learning objective 5: Explain the rights of offenders under community supervision.

Rights of Offenders, Community Supervision

- No right to parole
  - Probationer had the right to counsel in revocation and sentencing hearings before a deferred prison sentence could be imposed.
  - Parolees facing revocation must be given due process through a prompt informal inquiry before an impartial hearing officer.
Rights of Offenders, Community Supervision
- Two-step revocation hearing process:
  - Hearing officer determines whether there is probable cause that a violation has occurred.
  - Right to be notified of charges
  - Know evidence against them
  - Allowed to speak on own behalf
  - Parolee must receive a notice of charges and the disclosed evidence of the violation
  - Parolee may cross-examine witnesses

Learning Objective 6
- Learning objective 6: Discuss how the law affects correctional personnel.

Correctional Personnel
- Civil service:
  - Sets procedure for:
    - Hiring
    - Promotion
    - Assignments
    - Discipline
    - Dismissal
    - Unions
    - Collective bargaining
Correctional Personnel

- United States Code, Section 1983
  - Any person who deprives others of their constitutional rights while acting under the authority of law
  - Few cases go to trial
  - Very few correctional employees personally pay financial awards to plaintiffs

Chapter Six

The Correctional Client

Learning Objectives

1. Understand how the criminal justice system operates as a large selection process to determine who ends up in the corrections system.
2. Describe some of the main similarities among and differences between the general population and people who end up under correctional authority.
3. Identify different types of offenders in the corrections system and the kinds of problems they pose for corrections.
Learning Objectives

4. Describe the classification process for people under correctional authority and known why it is important.
5. Understand important problems and limitations in classifying people under correctional authority.

Learning Objective 1

- Learning objective 1: Understand how the criminal justice system operates as a large selection process to determine who ends up in the corrections system.

CJ Selection Process

- Factors:
  - Policy decision that street crimes warrant more police attention than white collar or corporate crimes.
  - Decision to grant bail
  - Range of punishments for convicted offenders
Learning Objective 2

• Learning objective 2: Describe some of the main similarities among and differences between the general population and people who end up under correctional authority.

• Since Civil War, African Americans have consistently made up the largest group in southern prisons.
• Now prisons and jails undeniably hold disproportionate numbers of poor, disadvantaged, and minorities.

Learning Objective 3

• Learning objective 3: Identify different types of offenders in the corrections system and the kinds of problems they pose for corrections.
The Situational Offender
- A person who in a particular set of circumstances has violated the law but who is not given to criminal behavior under normal circumstances and is unlikely to repeat the offense.
  - Situational offender made a mistake and paid a debt to society for that mistake

The Situational Offender
- Problem for corrections:
  - Crime is usually a serious violent crime:
    - Murder
    - Aggravated assault
  - Offender likely knew the victim
  - Lengthy incarceration sentence
  - Little for corrections to do

The Career Criminal
- A person who sees crime as a way of earning a living, who has numerous contacts with the criminal justice system over time, and who may view the criminal sanction as a normal part of life.
  - Crime is his way of earning a living, his main occupation
  - He develops technical skills useful to the commission of his crimes.
  - He started as a delinquent child and progressed toward criminality.
  - He expects to do some time in prison as a “cost” of doing this type of work.
  - He is psychologically normal.
The Career Criminal

- Problems for corrections:
  - Extra costs
  - Nonprofessional but intermittent offenders being misclassified as career criminals.
  - Contributes to prison overcrowding

The Sex Offender

- A person who has committed a sexual act prohibited by law, such as rape, child molestation, or prostitution, for economic, psychological, or situational reasons.
  - Problems for corrections:
    - Four times more likely than other offenders to be rearrested for a sex offense within three years of release, not for another sex crime however.
    - Longer terms of intense supervision.

The Substance Abuser

- Drug abuser:
  - A person whose use of illegal chemical substances disrupts normal living patterns to the extent that social problems develop, often leading to criminal behavior.
  - Problems for corrections:
    - Personnel must address the effects of drug dependency while client is in detention, on probation, in prison, or on parole.
    - High likelihood of rearrest.
    - Treatment programs, that do not have high success rates.
### The Substance Abuser

**Alcohol Abuser:**
- A person whose use of alcohol is difficult to control, disrupting normal living patterns and frequently leading to violations of the law while under the influence of alcohol or in attempting to secure it.
- Problems with corrections:
  - Tend to become assaultive when they drink
  - Treatment programs

### The Mentally Ill Offender

- A “disturbed” person whose criminal behavior may be traced to diminished or otherwise abnormal capacity to think or reason, as a result of psychological or neurological disturbance.
- Problems for corrections:
  - Classifying most violent offenders as mentally ill
  - Overlap between career criminal and psychopath
  - Psychopath lacks attachment to people or rules
  - Mental issue is often a separate issue from criminality

### The Mentally Handicapped Offender

- A person whose limited mental development prevents adjustment to the rules of society.
- Problems for corrections:
  - Usual routines of probation, diversion, incarceration, and community service will not work.
  - Not comfortable with change.
  - Not likely to improve significantly in terms of mental condition or social habits.
  - Tend to violate probation or break prison rules.
  - Segregated from other prisoners.
The Offender with HIV/AIDS

- Problems for corrections:
  - Policy issues concerning prison employees.
  - Prevention
  - Housing
  - Medical care

The Elderly Offender

- Nearly 1 in 5 prisoners is over the age of 44 because of:
  - U.S. population in general is aging
  - Longer prison sentences
- Problems for corrections:
  - Need for increased medical care
  - Different social interests than younger offenders
  - Greater per-inmate operating costs

The Long-Term Prisoner

- A person who serves a lengthy period in prison, such as 10 years or more, before his or her first release.
- Problems for corrections:
  - Have to make prison live livable for a long time
  - Maximizing opportunities for the inmate to exercise choice in living circumstances
  - Creating opportunities for meaningful living
  - Helping the inmate maintain contact with the outside world
Learning Objective 4

- Learning objective 4: Describe the classification process for people under correctional authority and known why it is important.

  Classification systems:
  - Specific sets of objective criteria, such as offense history, previous experience in the justice system, and substance abuse patterns, applied to all inmates to determine an appropriate classification.
  - Offense criteria classify offenders as to the seriousness of the crime committed.
  - Risk criteria classify offenders as to the probability of future criminal conduct.
  - Program criteria classify offenders as to the nature of correctional treatment appropriate to the person's need and situation.

Learning Objective 5

- Learning objective 5: Understand important problems and limitations in classifying people under correctional authority.
Learning Objective 5

- Overlap and ambiguity in offender classifications
- Offense classification and correctional programming
- Behavioral probabilities
- Sociopolitical pressures
- Distinctions in classification criteria

THE END

NEXT WEEK – CHAPTERS 7 – 9
REVIEW FOR MIDTERM