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# 2

## Ideological and Theoretical Underpinnings to Sentencing and Correctional Policy

### Learning Objectives

1. Identify and discuss the philosophical underpinnings associated with correctional processes.
2. Identify and discuss different types of sanctions used in correctional operations.
3. Evaluate the outcomes of different sentencing schemes.
4. Apply criminological theories to different correctional processes.
5. Integrate philosophical underpinnings, types of sanctions, sentencing schemes, and criminological theories to develop a multifaceted understanding of corrections.

## The Original Gangsta

It was about 3:00 a.m., and Desmond's cellie, Tederick, was up on the top bunk, keeping watch. Desmond took out the shank hidden behind the toilet and worked it back and forth against his metal bunk. The noise from the continuous friction was loud enough to be heard in the cell but not so loud as to resonate throughout the entire cellblock.

Tederick continued to look out the cell onto the run below to see if the guard or anyone else was listening or aware of what was happening. All was quiet, including the cells next to theirs. The other inmates knew what was going on and minded their own business if they were awake; others slept through the noise.

Tederick asked Desmond, "So, you gonna get him in the rec yard or in the dayroom?"

Desmond replied, "I'm going to hit him in the rec yard."

Desmond thought about the situation and how he was going to get the blade to the rec yard. The inmate that he was going to "hit," Cedric Jackson, was a member of an opposing gang who had been talking smack. Both Desmond and Cedric were members of small, local gangs in New Orleans; neither was affiliated with large gangs like the Crips or the Bloods.

Desmond had lived a life of poverty in New Orleans, and his father had died in prison. His mother did her best, working odd jobs and raising three kids as a single mom. Desmond's cousin, Nate, always had a strong influence on Desmond. Nate had a car with really fly rims, he had women, he had dope, and he had respect on the streets. But now Nate was at Angola, doing real time, and he was writing letters to Desmond to take care of some "business" for him.

Tederick looked down at Desmond and said, "I thought that you wanted to go to school and hook up with that girl?"

"Yeah, that's what I wanna do," Desmond responded.

"Then if you make this hit on Cedric to get even for Nate, you gonna be in here for a long time; maybe you should forget about ole girl and just go to school a few years from now."

Desmond thought about this. He considered how Nate had always had "stuff" when on the streets but was now stuck in Angola for at least another 15 years.

Desmond also thought about his "ole girl," Angela, and all the letters she had sent him. His mom thought well of Angela, and they both had seen to it that when he got out he would be able to get settled and get a job with a nearby warehouse (his mom worked there in the administrative office). Angela would even help him get started in school.

Tederick spoke again. "You know that they are really looking at giving more good time for the drug treatment programs, don't you? The feds and the state are reducing sentences, giving more good time, and closing down prisons. . . . This is a good time to be doing time 'cause you can get out early, right?"

Desmond frowned. "Yeah, I guess so. What are you trying to say?"

Tederick shook his head. "Man, I am saying to hell with Nate and to hell with doing time for Nate. . . . You gotta do you, man, and get on with your life. Let Nate take care of his own business. Let Cedric run his mouth. He is getting shipped soon, anyway, and you can be out in 6 months if you play your cards right." Locking eyes with Desmond, Tederick urged, "Look man, you got a girl on the outside who cares about you, a mom who can get you a job, and

you might be in school within a year, or you can sit and rot some more in here. That might be what you want, but it ain't for me, no sir!" His voice rose and he slapped his hand down on his mattress. "I am not lettin' THE MAN take my life from me, and I ain't letting all the wrong learning I got from the streets decide my life for me! You shouldn't either, homie!"

Desmond snorted. "Fine, so I let him make it; I give him a break. . . . What then; what about the gang?"

"You give me the steel and I can get rid of it. I got 3 more years, but you can be out in 6 months. Do the drug program that just accepted you and do it *for real*; then get a real life, not this hell hole. Forget the gang; right now you do not owe them. . . . It is all square business at this point. Go further with it, and you won't ever get out of it."

Desmond turned the shank over in his hands as he considered Tederick's words. He stood, looked at his cellie, and said, "You know, I ain't never had many real friends." After only a moment's hesitation, he extended the homemade blade, handle first, and dropped it onto Tederick's open palm.

Tederick smiled. "My brother, you are doing the right thing; trust me."

## INTRODUCTION

This chapter focuses on the reasons for providing correctional services in today's society. In considering these reasons, it is important to understand two key aspects related to corrections. First, it is helpful to be familiar with the historical developments related to punishment and corrections. Chapter 1 provided information about how our current views on correctional practices have evolved. Understanding the history of corrections helps us to make sense of today's correctional system. This is true for legal precedent that shapes correctional policies as well as philosophical and/or political motives behind our use of correctional resources. Thus, it is the rich history of corrections that has shaped it into what we know today.

The second aspect is the need for a clear definition of the term *corrections*. As demonstrated in Chapter 1, this term can have many different meanings to many different practitioners, scholars, and researchers around the world. Nevertheless, it is important to be able to define the term in a clear and succinct manner so that one can correctly connect it with the means by which correctional practices are implemented and the reasons for implementing them. This is essential since this is what will provide clarity in purpose, which, in turn, should lead to clarity in action.

## PHILOSOPHICAL UNDERPINNINGS

Within the field of corrections itself, four goals or philosophical orientations of punishment are generally recognized. These are retribution, deterrence, incapacitation, and treatment (rehabilitation). Two of these orientations focus on the offender (treatment and specific deterrence), while the others (general deterrence, retribution, and incapacitation) are thought to focus more on the crime that was committed. The intent of this section of the chapter is to present philosophical bases related to the correctional process. In doing this, it is useful to first provide a quick and general overview of the four primary philosophical bases of punishment (see Table 2.1). These bases were touched upon in Chapter 1 but are now provided in more detail and with the purpose of elucidating the true purposes and rationales behind the correctional process.

**Retribution:** Offenders committing a crime should be punished in a way that is equal to the severity of the crime they committed.

### Retribution

**Retribution** is often referred to as the "eye for an eye" mentality, and it simply implies that offenders committing a crime should be punished in a like fashion or in a manner

TABLE 2.1

## Philosophical Underpinnings in Corrections

PHILOSOPHICAL UNDERPINNING	PREMISE
Retribution	Implies that offenders committing a crime should be punished in a like fashion or in a manner that is commensurate with the severity of the crime.
Incapacitation	Deprives offenders of their liberty and removes them from society with the intent of ensuring that society cannot be further victimized.
Deterrence (general and specific)	General deterrence occurs when observers see that offenders are punished for a given crime and are themselves discouraged from committing crime. Specific deterrence is punishment upon a specific offender in the hope that the offender will be discouraged from committing future crimes.
Rehabilitation	Offenders will be deterred from reoffending due to their having worthwhile stakes in legitimate society.
Restorative justice	Interventions that focus on restoring the health of the community, repairing the harm done, meeting victims' needs, and emphasizing that the offender can and must contribute to those repairs.
Reintegration	Focused on the reentry of the offender into society.

that is commensurate with the severity of the crime that they have committed. As discussed in Chapter 1, retribution is the justification for punishment by the concept of *lex talionis*. It is a “just deserts” model that demands that punishments match the degree of harm that criminals have inflicted on their victims (Stohr, Walsh, & Hemmens, 2013). Thus, those who commit minor crimes deserve minor sentences, and those who commit serious crimes deserve more severe punishments (Stohr et al., 2013). This model of punishment is grounded in the idea that, regardless of any secondary purpose that punishment might be intended to serve, it is right to punish offenders because justice demands it. In essence, society has an ethical duty and obligation to enforce the prescribed punishment; otherwise the sentencing process is based on lies and exceptions.

It is important that students not equate retribution with the mere practice of primitive revenge; retribution has many distinctions that set it apart from such a simplistic understanding. Retribution is constrained revenge that is tempered with proportionality and enacted by a neutral party. This neutral party is required to stay within the bounds of laws that afford offenders certain rights despite the fact that they are to be punished. As we have seen in Chapter 1, the use of this formalized method of punishment emerged out of the chaotic times where blood feuds and retaliation for private wrongs abounded. Retribution was grounded in the notion that the offender (or the offender’s family) must pay for the crime committed. The need to keep feuds from escalating between aggrieved families was important among the ruling class. Thus, retribution was designed to adhere to a rational process of progressive sanctions, separating it from mere retaliation.

In addition, when we hold offenders accountable for their actions, we make the statement that we (as a society) believe that offenders are free moral agents who have self-will.



**PHOTO 2.1** One example of retribution would be having someone who vandalized property work to repair the damage he or she caused.

Joe Sohm Visions of America/  
Newscom



**PHOTO 2.2** It is hoped that placing offenders in such noxious circumstances will deter them from further criminal behavior. There is no actual empirical proof that this is the case.

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**Incapacitation:** Deprives offenders of their liberty and removes them from society, ensuring that they cannot further victimize society for a time.

**Selective incapacitation:** Identifying inmates who are of particular concern to public safety and providing them with much longer sentences.

**General deterrence:** Punishing an offender in public so other observers will refrain from criminal behavior.

**Specific deterrence:** The infliction of a punishment upon a specific offender in the hope that he or she will be discouraged from committing future crimes.

It is the responsibility of the offender, not society, to pay for the crime that has been committed. Once this payment (whatever the sanction might be) has been made, there is no further need for punishment. While this type of approach works well in justifying punishment of offenders who are culpable and cognizant of their crime, it is not appropriate for offenders who have mental deficiencies and/or mitigating circumstances that remove fault from them. It is in these cases where retribution loses its logical application within the punishment or correctional process.

## Incapacitation

**Incapacitation** simply deprives offenders of their liberty and removes them from society with the intent of ensuring that society cannot be further victimized by them during their term of incarceration. The widespread use of incapacitation techniques during the 1990s is purported by some experts to be the cause for the drop in crime that was witnessed after the year 2000. Though this has not been proven, the argument does seem to possess some potential validity. Regardless, it has become increasingly clear that the use of mass incarceration efforts simply cannot be afforded by most state budgets. This has led to more increased use of community corrections techniques and techniques of selective incapacitation.

**Selective incapacitation** is implemented by identifying inmates who are of particular concern to public safety and by providing those specific offenders with much longer sentences than would be given to other inmates. The idea is to improve the use of incapacitation through more accurate identification of those offenders who present the greatest risk to society. This then maximizes the use of prison space and likely creates the most cost-effective reduction in crime since monies are not spent housing less dangerous inmates.

## Deterrence

Deterrence is the prevention of crime by the threat of punishment (Stohr et al., 2013). Deterrence can be general or specific. **General deterrence** is intended to cause vicarious learning whereby observers see that offenders are punished for a given crime and so they are discouraged from committing a similar crime due to fear of punishment. **Specific deterrence** is simply the infliction of a punishment upon a specific offender in the hope that that particular offender will be discouraged from committing future crimes. For specific deterrence to be effective, it is necessary that a punished offender make a conscious connection between an intended criminal act and the punishment suffered as a result of similar acts committed in the past.

Stohr and Walsh (2011) note that the effect of punishment on future behavior also must account for the contrast effect, a notion that distinguishes between the circumstances of the possible punishment and the life experience of the person who is likely to get punished. As they explain it,

For people with little or nothing to lose, arrest and punishment may be perceived as merely an inconvenient occupational hazard, an opportunity for a little rest and recreation, and a chance to renew old friendships. But for those who enjoy a loving family and the security of a valued career, the prospect of incarceration is a nightmarish contrast. Like so many other things in life, deterrence works least for those who need it the most. (p. 10)

Thus, it appears that deterrence has as much to do with *who* is being deterred as it does with *how* deterrence is being implemented. However, research on the effectiveness of deterrence has generally been mixed, even during the mid-1990s to about 2006 (Kohen & Jolly, 2006), when the use of increased incarceration was touted to be the

primary cause for lowered crime rates. It is still seemingly impossible to determine whether a deterrent effect, or simply an incapacitation effect, was being observed.

## Rehabilitation

**Rehabilitation** implies that an offender should be provided the means to achieve a constructive level of functioning in society, with an implicit expectation that such offenders will be deterred from reoffending due to their having worthwhile stakes in legitimate society—stakes that they will not wish to lose as a consequence of criminal offending. Vocational training, educational attainment, and/or therapeutic interventions are used to improve the offender's stakes in prosocial behavior. The primary purpose of rehabilitation is solely the recovery of the offender, regardless of the crime that was committed. In other words, if it is deemed that offenders are treatable, and they are successfully treated to refrain from future criminal behavior, rehabilitation is considered a success, and concern over the severity of the past crime is not considered important. With this approach, it is feasible that offenders with lesser crimes may end up serving more time behind bars than a person with a more serious crime if it is determined that they are not amenable to rehabilitative efforts.

The rehabilitative approach is based on the notion that offenders are provided treatment rather than punishment. Punitive techniques are completely alien to the rehabilitative model; the goal is to cure the offenders of their criminal behavior, much as would be done with a medical or mental health issue. As a result, sentencing schemes under a rehabilitation orientation would be *indeterminate*, a term that will be discussed in more detail later in this chapter. Indeterminate sentences have no specific amount of time provided upon which offenders are released from custody. Rather, a minimum and maximum amount of time is awarded, and, based on offenders' treatment progress, they are released prior to the maximum duration of their sentence once rehabilitative efforts have been determined a success.

**Rehabilitation:** Offenders will be deterred from reoffending due to their having worthwhile stakes in legitimate society.

## Restorative Justice

**Restorative justice** is a term for interventions that focus on restoring the health of the community, repairing the harm done, meeting victims' needs, and emphasizing that the offender can and must contribute to those repairs. This definition was adapted from restorative justice advocate Thomas Quinn during his interview with the National Institute of Justice in 1998. More specifically, restorative justice considers the victims, communities, and offenders (in that order) as participants in the justice process. These participants are placed in active roles to work together to do the following: (1) empower victims in their search for closure, (2) impress upon offenders the real human impact of their behavior, and (3) promote restitution to victims and communities.

Dialogue and negotiation are central to restorative justice, and problem solving for the future is seen as more important than simply establishing blame for past behavior. Another key factor to this type of correctional processing is that the victim is included in the process. Indeed, the victim is given priority consideration, yet, at the same time, the process is correctional in nature, as offenders must face the person whom they victimized and the offenders must be accountable for the crimes that they committed against the victim.

**Restorative justice:** Interventions that focus on restoring the community and the victim with involvement from the offender.

## Reintegration

**Reintegration** is focused on the reentry of the offender into society. The ultimate goal of reintegration programs is to connect offenders to legitimate areas of society in a manner that is gainful and productive. When used inside correctional institutions, this approach emphasizes continued contact between offenders and their families, their friends, and even the community. This approach is set against the backdrop realization that the overwhelming majority of offenders will ultimately return to society. While reintegration efforts do emphasize offender accountability, the use of reintegration processes is focused on ensuring that the offender has a maximal set of circumstances that, at least initially, diminish the need or desire to engage in crime by cultivating the connections

**Reintegration:** Focused on the reentry of the offender into society by connecting offenders to legitimate areas of society that are gainful and productive.



**PHOTO 2.3** No-contact visitation often consists of a glass partition between both parties. Each person uses the phone receiver as a means of communicating with one another.

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***United States v. Booker:***

Determined judges no longer had to follow the sentencing guidelines that had been in place since 1987.

that the offender has to legitimate society. Reintegration efforts are intended to reduce recidivism among offenders. During the past few years, there has been an upsurge in national interest in offender reentry programs, which, inherently, are all reintegrative in nature.

## TYPES OF SANCTIONS

It is through the use of intermediate (graduated) sanctions, various types of probation, incarceration, and the death penalty that various types of punishments (also known as sanctions) are meted out. While the public perhaps identifies prison as the final outcome for criminal offenders, the reality is that few offenders go to prison. Rather, the overwhelming majority are placed on probation or on some type of community supervision. Indeed, prisons and jails tend to hold only one fifth to one fourth of the entire offender population. However, chronic offenders and those who commit serious crimes tend to be given some period of incarceration.

Problems in determining the appropriate sentence for offenders are noted in the literature and have been the focus of at least one influential Supreme Court ruling. In 2005, the Court held in ***United States v. Booker*** that federal judges no longer were required to follow the sentencing guidelines that had been in effect since 1987. The Court held that federal judges now must only consider these guidelines with certain other sentencing criteria when deciding a defendant's punishment. Because of this ruling, and because of the trend toward alternative sanctions, there has been an observed trend toward more use of indeterminate sentencing (Debro, 2008). This also is consistent with much of the push for reintegrative efforts that has been observed throughout the nation.

### The Continuum of Sanctions

The continuum of sanctions refers to a broad array of sentencing and punishment options that range from simple fines to incarceration and ultimately end with the death penalty. Between each of these visible points in the sentencing/sanctioning process (fines, incarceration, and the death penalty) is a variety of options that are used throughout the United States. The reasons for this variety of sanctions are manifold. Perhaps chief among them is the desire to calibrate the sanction in a manner that is commensurate with the type of criminal behavior.

When using the term *calibrate*, it is meant that sanctions can be selected in such a manner that allows us to, through an additive process, weigh the seriousness and number of the sanction(s) that are given so that the punishment effect is as proportional to the crime as can be arranged. The desire to establish proportionality harkens back to the thinking of classical criminologists, and this should not be surprising. Classical criminologists appealed to the use of reason in applying punishments, and that is precisely what a continuum seeks to achieve as well: a reasonable, commensurate, and gradual progression of sanctions that can be consistently additive in nature so as to be logically proportional to the frequency and seriousness of the criminal behavior in question (Lilly, Cullen, & Ball, 2014).

In addition to the desire for proportionality, there is another reason for the use of varied sanctions, particularly intermediate sanctions: the desire to save beds in prisons. As noted earlier in this chapter, there is a push for reintegration efforts in the federal government and in many states throughout the nation. The reason for this has to do with both a shift in ideologies and, more specifically, the rising costs of imprisonment. The national and international economic crisis that began in 2008 negatively impacted numerous state budgets throughout the United States. A slow recovery is underway, but many states are still more cash-strapped than usual, making the use of alternatives in sentencing all the more appealing.

Another rationale for this continuum is associated with treatment purposes. While we have noted that rehabilitation efforts are typically not contingent on the sentence that is imposed, the fact that indeterminate sentences tend to be used with a rehabilitation orientation demonstrates the need for incentives to exist so that offenders will change their behavior. Without an indeterminate sentence, offenders might not find their efforts toward reform to have any substantive reward; thus, early release provides a strong incentive that encourages offenders to actively work toward behavior change. The use of alternative sanctions follows this same logic, where lesser sanctions can be given to those offenders who show progress in treatment, and more serious sanctions can be administered to offenders who prove to be dangerous or a nuisance to a given facility.

From this point, we move to a description of some of the more common versions of sanctions. In providing these descriptions, we will progress from the least severe to the most severe types of sanctions that are usually encountered. The list of sanctions that follows is not all-encompassing but simply is intended to provide the student with an understanding of the types used and the means by which they are categorized. We begin with sanctions that involve fines or monetary penalties and progress to the ultimate form of punishment: the death penalty.

### PRACTITIONER'S PERSPECTIVE

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## Monetary

Most monetary sanctions come in the form of fines. Most offenders convicted of a criminal offense are assessed a fine as a punishment for committing the offense. A **fine** can be defined as a monetary penalty imposed by a judge or magistrate as a punishment for being convicted of an offense. In most cases, the fine is a certain dollar amount established either by the judge or according to a set schedule dependent upon the offense committed. The logic behind the fine is that it will deter the offender from committing another offense in the future for fear of being fined again. In most jurisdictions, the fines are assessed and paid in monthly payments to the receiving agency.

**Fine:** A monetary penalty imposed as a punishment for having committed an offense.

## Probation and Intermediate Sanctions

The use of probation and other community-based sanctions accounts for all the varied types of sentencing punishments available short of a jail or prison sentence. When on probation, offenders will report to a probation officer (in most cases) on a scheduled routine that varies with the seriousness of their crime and their expected risk of recidivism. Additional community-based sanctions, tacked on to a probation sentence, further allow for the calibration of the sentence with respect to the crime that was committed and the



offender who is on supervision. Intermediate sanctions are a range of sentencing options that fall between incarceration and probation and are designed to allow for the crafting of sentences that respond to the offender or the offense, with the intended outcome of the case being a primary consideration. The purpose of intermediate sanctions is to make available a continuum of sanctions scaled around one or more sanctioning goals. Such a continuum permits the court or corrections authority to tailor sanctions that are meaningful with respect both to their purposes and to the kinds of offenders that come before them.

## Incarceration

Though imprisonment is the most visible penalty to the public eye, its ability to deter crime is questionable at best (National Institute of Justice [NIJ], 2016). Though the majority of offenders under supervision are on community supervision rather than in prisons or jails, the incarcerative type of sentence still draws public interest due to its ominous nature. This punishment remains the most commonly used for serious offenders. This remains true despite research that has found that in many respects the likelihood of recidivism increases once an offender is incarcerated (NIJ, 2016). Thus, the effectiveness of incarceration to change potential criminal behavior is questionable. Because of this, it is recommended that incarceration be viewed as best suited for meeting the goals of incapacitation (and perhaps retribution) rather than rehabilitation, deterrence, or crime reduction.

### Incarceration Options

Among incarceration options, the jail facility is considered the first stage of incarceration for the offender. Jail facilities come in a variety of sizes and designs, but all are generally intended to hold offenders for sentences that are short. Aside from those persons who are held for only brief periods (such as immediately after an arrest), jails tend to hold offenders who are sentenced to a year or less of incarceration. In most cases, jail facilities are the first point at which an offender is officially classified as being in the correctional component of the criminal justice system. In simple terms, a jail is a confinement facility, usually operated and controlled by county-level law enforcement, that is designed to hold persons charged with a crime who are either awaiting adjudication or serving a short sentence of 1 year or less after the point of adjudication. Similarly, the Bureau of Justice Statistics (2019) defines jails as “locally-operated correctional facilities that confine persons before or after adjudication. Inmates sentenced to jails usually have a sentence of a year or less, but jails also incarcerate persons in a wide variety of other categories.” Thus, there is some degree of variance in the means by which jails are utilized, but they tend to be short-term facilities in most cases.

On the other extreme, consider the use of the supermax prison. The supermax prison is perhaps the epitome of incarceration-based sentences. There are some prison administrators who contend that supermax facilities have a general deterrent effect. However, this is unlikely because inmates in supermax facilities do not form bonds with persons in the prison or outside of the prison. Further, the disruptive inmates who will be kept in supermax facilities are least likely to care about the consequences of their actions and/or their ability to bond with other people. Deterrence as a philosophical orientation targets those inmates who would engage in antisocial behavior if not for the deterring mechanism. However, the inmates typically channeled into a supermax facility are those who have not been deterred when incarcerated in less secure environments, such as minimum-, medium-, and maximum-security facilities. Thus, these inmates are unlikely to be among those who would commit crimes were it not for the penalty of incarceration; they are impervious to the threat of incarceration and the deprivations that this sanction entails. Thus, supermax facilities act as simple holding spaces for the most incorrigible of inmates and are devoid of any deterrent and/or therapeutic value.

Because much of this text later involves coverage of the prison environment, further discussion related to specific aspects of incarceration schemes will not be provided at this time. It is sufficient to say that incarceration, while accounting for no more than 30% of the entire correctional population, tends to draw substantial public and media attention. Further, the offenders who are kept incarcerated are among those who are

either repetitive or violent, or both. Therefore, the correctional process within institutions is one that deals with harder-core offenders than might be encountered among community supervision personnel.

## The Death Penalty

The most extreme outcome when offenders are at the end of the correctional process: the death penalty, which is also referred to as **capital punishment**. Obviously, the death penalty results in the end of the offender's journey through the correctional process and entails no true rehabilitative efforts on the part of the correctional facility.

**Capital punishment:**  
Putting the offender to death.

## ARGUMENTS FOR AND AGAINST THE DEATH PENALTY

The debate over the death penalty has been active in the United States for generations. Generally, it is not difficult to find people who have strong views regarding this sanction, both pro and con. These arguments generally focus on one of three common philosophical perspectives on punishment: deterrence, retribution, and arbitrariness. Each of these three have been discussed in this chapter but are independently discussed in the following sections in reference to the death penalty itself.

### Deterrence

Opponents of the death penalty who argue against deterrence as a rationale for using the death penalty note that while numerous statistical studies have been conducted, there is no conclusive evidence that the death penalty lowers crime. Table 2.2 provides an overview of findings regarding the deterrent effect of the death penalty. The outcomes, as one will see, are mixed, at best, and sometimes indicate that the death penalty *increases* the likelihood of future acts of homicide. Support for this can be seen when comparing states that do not employ the death penalty with those that do; generally crime rates and murder rates are lower in states that do not have the death penalty. Interestingly, the United States, an ardent proponent of the death penalty, has a higher murder rate than do countries in Europe and Canada, which do not have the death penalty.

Further, most people who commit murders do not usually plan on being caught, and most commit their crimes due to fits of anger when in impaired states, such as when they are drunk or high on drugs. These types of circumstances do not allow for an offender to contemplate the outcome of his or her actions, and, depending on the offender's emotional framework at the time of the crime commission, it may be doubtful that the knowledge of this sanction would be a deterrent. Since these factors—the unpremeditated nature of the crime and the offender's altered state of mind due to the substance abuse—are often cited as reasons to mitigate the punishment an offender may receive, it is clear that such circumstances may not truly justify the death penalty, at least not on a logical basis.

Lastly, life sentences without the possibility of parole are just as effective as death sentences. Both can arguably deter crime in a general and specific manner. However, the life sentence allows for remediation in cases where it may later be found that an offender was, in fact, innocent. In addition, life sentences tend to be less expensive for prison administrators (and taxpayers) than death sentences. It is also worth noting that most murderers on death row are very well mannered and do not represent an institutional hazard.

### Retribution

While retribution has been couched as a logical approach, there is an emotional component that is also addressed: Families of the victim can see that, if nothing else, there is some connection between the action and the consequences received. In addition, the death penalty can help to facilitate the grieving process as some families may desire reciprocation commensurate to the loss that they have incurred. To ask for a payment of

TABLE 2.2

## Selected Studies of the Deterrent Effect of the Death Penalty

STUDY	UNIT OF ANALYSIS	PERIOD	RESULT
Sellin, 1959	Matched state comparison	1920–1962	No deterrent
Ehrlich, 1975	U.S. (aggregate)	1933–1969	7–8 fewer murders per execution (C.I. 0–24)
Bowers and Pierce, 1980	New York state	1907–1963	2 more homicides per month after an execution
Mocan and Gittings, 2003	State-level	1977–1997	5 fewer homicides per execution
Katz, Levitt, and Shustorovich, 2003	State-level	1950–1990	No systematic evidence of a deterrent (+3.1 to -5.6)
Dezhbakhsh, Rubin, and Shepherd, 2003	Country-level	1977–1996	16 fewer homicides per execution
Shepherd, 2004	State-level	1977–1999	3 fewer murders per execution
Zimmerman, 2004	State-level	1978–1997	14 fewer murders per execution
Shepherd, 2005	Country-level	1977–1996	21 states have brutalization effect 6 states have deterrent effect 23 states have no effect Overall, 4.5 fewer murders per execution
Donohue and Wolfers, 2005	Canada vs. U.S.	1950–2003	No deterrent
Martin, 2016	Country-level	2016	No deterrent

Source: Kohen, A., & Jolly, S. J. (2006). *Deterrence reconsidered: A theoretical and empirical case against the death penalty*. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL.

anything less than the offender's life would seem to indicate that the life of the victim was somehow less valuable. Thus, there may indeed be an emotional sense of justice that is fulfilled. While many critiques of retribution might not find this adequate as a rationale, supporters may contend that families of murder victims have a right to feel as they do and, correspondingly, are entitled to seek relief as they are allowed within the law.

Opponents of retribution may hold that at its base, retribution is simply a form of revenge. The contention is that retribution simply provides a reason and rationale behind the pursuit of unbridled revenge. In fact, opponents of retribution tend to believe that the use of the death penalty itself contradicts the "evolving standards of decency" espoused by the Supreme Court. The mark of a civilization is how it aids those who are troubled, which many believe should not be through the eradication of their existence. This is even truer when the offender has a diminished capacity and/or acted in an altered state of mind. Critics often claim the use of the death penalty is simply barbaric and that justifications based on retribution do not make this penalty more civilized.

### Arbitrariness

Many opponents of the death penalty point to the arbitrary nature of the application of the death penalty. Supporters of the death penalty argue that it is not arbitrarily applied and even note that more Caucasian offenders are executed than minority offenders. On the other hand, the number of African Americans on death row tends to be disproportionately high when compared to their overall population numbers. Thus, this racial disparity can seem to point to some degree of arbitrariness in the use of this sanction.

Regardless of whether racial disparities do indicate arbitrariness, there is general consensus that no matter how much we try, we can never perfectly calibrate a sanction

to be exactly commensurate with the crime that is committed. The inability to ensure proportionality, therefore, undermines the argument for retribution and instead further illustrates how we, as a society, are at risk of enabling arbitrary practices.

## BRUTALIZATION HYPOTHESIS

There is some evidence that the death penalty may not only be a failure at deterring crime but may actually increase homicide levels in areas where executions occur. This observation is often based on the notion that violence begets violence and is referred to as the brutalization hypothesis. The brutalization hypothesis, first introduced in Chapter 1, contends that the death penalty may actually cause an increase in murders because it reinforces the use of violence. Because of this, researchers such as Bowers and Pierce (1980) contend that “the lesson of the execution then, may be to devalue life by the example of human sacrifice” (p. 457).

Cochran, Chamlin, and Seth (1994) examined the reinstatement of the death penalty in Oklahoma. They found “no evidence that Oklahoma’s reintroduction of the execution produced a significant decrease in the level of criminal homicides during the period under investigation” (p. 129). Even further, they noted that the death penalty seemed to produce a brutalizing effect that further encouraged offenders to commit murders if they had feelings that their own life or circumstances were fundamentally unfair.

Further still, the recent work of Mann (2017) shows that not only is it questionable as to whether the death penalty deters crime, but there may be some evidence that it actually aggravates the likelihood of future crime. Using a 5-year longitudinal design, Mann compared death penalty states that actively utilized the death penalty with other states that did not utilize the death penalty. He found that those states using the death penalty “on average over the five-year period demonstrated a statistically significantly higher violent crime rate, per capita” than states not using the death penalty (p. 48). These findings led Mann to provide the following additional comments:

Law makers should consider alternate theories focused on social issues, economics, opportunity and other control theories in crime control policy. Based on this study, it is possible that the death penalty has an opposite effect to deterrence. (p. 49)

What this means is that the legal system and our society should discard our deterrence rationale for the death penalty because deterrence theory has questionable validity. Rather, we should instead simply acknowledge that we keep the death penalty simply because we like it. Simply put, we keep the death penalty for emotional reasons, not logical ones.

Regardless of the argument that one believes, no one can seem to prove whether “it works” at doing anything in the manner that is intended, and both advocates and opponents are able to generate evidence for their views. This makes the entire issue difficult to resolve. Work by Kohen and Jolly (2006) demonstrates the mixed state of affairs in researching the efficacy of the death penalty. When looking at Table 2.2, it can be seen that there are numerous studies that have had different results. Some studies find support for deterrence, and some do not; others occasionally find support for the brutalization effect. While Kohen and Jolly were making a case against the death penalty in their review of the research, the key point for this chapter is to simply understand that it seems that there is no airtight case for *or* against the death penalty despite years of debate.

## SENTENCING MODELS

Sentencing involves a two-stage decision-making process. After the offender is convicted of a crime, the initial decision is made as to whether probation should or should not be granted. The chief probation officer or his or her designee will typically make this decision based on the presentence investigation (PSI). The presentence investigation report is a thorough file that includes a wide range of background information on the offender.



**PHOTO 2.4** For judges, deciding the length of a sentence requires difficult calculations that take into account the possibility for rehabilitation, the need to protect society, the need to fulfill the demand of retribution, and the implementation of deterrence strategies.

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**Mitigating factors:**

Circumstances that make a crime more understandable and help to reduce the level of culpability that an offender might have.

**Aggravating**

**circumstances:** Magnify the offensive nature of a crime and tend to result in longer sentences.

of the crime. Sentencing on the basis of seriousness is one key way that courts attempt to arrive at consistent sentences. Once the seriousness of the crime has been determined, the next factor to consider is the prior record of the offender. The worse the prior record, the more likely the offender will receive a lengthy sentence. The last few issues considered in the sentencing process are mitigating and aggravating factors. **Mitigating factors** do not exonerate an offender but do make the commission of the crime more understandable and also help to reduce the level of culpability that the offender might have had. **Aggravating circumstances**, on the other hand, magnify the offensive nature of the crime and tend to result in longer sentences. Each of these factors can impact the outcome of the sentence. It is with this in mind that we turn our attention to the two types of sentencing: indeterminate and determinate sentencing.

## Indeterminate Sentences

Indeterminate sentencing is sentencing that includes a range of years that will be potentially served by the offender. The offender is released during some point in the range of years that are assigned by the sentencing judge. Both the minimum and maximum times can be modified by a number of factors, such as offender behavior and offender work ethic. Under the most liberal of approaches using indeterminate sentences, judges will assign custody of the offender to the department of corrections, and the release of the offender is completely dependent on the agency's determination if he or she is ready to function appropriately in society. This type of sentence is typically associated with treatment-based programming and community supervision objectives. In such cases, indeterminate sentencing provides correctional officials a good deal of control over the amount of time that an offender will serve.

Penal codes with indeterminate sentencing stipulate minimum and maximum sentences that must be served in prison (2 to 9 years, 3 to 5 years, and so forth). At the time of sentencing, the judge will explain to the offender the time frame that the offender may potentially be in prison. The offender is also informed of any potential eligibility for parole once the minimum amount of time has been served. However, the actual release date is determined by the parole board, not the judge. Note that this particular sentence is different from the determinate *discretionary* sentence that will be described in the following subsection. The difference is that while the determinate discretionary sentence has a range of time to be served, the specific sentence to be served within that range is decided by the judge at the point of initial sentencing. Once this specific amount of time has been decided, there is no further modification to the sentence, regardless of the offender's progress within the institution.

## Determinate Sentences

Determinate sentencing consists of fixed periods of incarceration with no later flexibility in the term that is served. This type of sentencing is grounded in notions of retribution,

This file will typically include demographic, vocational, educational, and personal information on the offender as well as records on his or her prior offending patterns and the probation department's recommendation as to the appropriate type of sentencing for the offender.

If incarceration is chosen, the second decision involves determining the length of the sentence. For many judges, deciding the length of the sentence (when they are required to do so) is not an easy task. They must consider several factors, such as the possibility for rehabilitation, the need to protect society, the need to fulfill the demand of retribution, and the implementation of deterrence strategies. The most important factor in deciding on a sanction is the seriousness

just deserts, and incapacitation. These types of sentences came into vogue due to disappointments with the use of rehabilitation and due to increased support for retribution. When offenders are given a determinate sentence, they are imprisoned for a specific period of time. Once that time has expired, the inmate is released from prison.

It should be pointed out that in many states inmates may be given “good time” if they maintain good behavior while in the correctional facility (Schriro, 2009). Generally, this entails a willingness to work in the prison, engage in educational and therapeutic programs, and participate in other prosocial activities. Good time earned is taken off the total sentence that inmates must serve, thereby allowing them to be released early from prison. While this does add some degree of variability to the total time that offenders serve in the institution, the actual sentence given to the inmates is not connected to their level of participation in treatment or to the likelihood of parole or early release (Schriro, 2009).

One variant of the determinate sentence is the determinate presumptive sentence. The **determinate presumptive sentence** specifies the exact length of the sentence to be served by the inmate. Judges are required to impose these sentences unless there are aggravating or mitigating circumstances, in which case they may lengthen or shorten the sentences within narrow boundaries and with written justification. This type of sentence is perhaps more realistic than a pure determinate sentencing model because it accounts for the variety of circumstances that are different from one case to another. In fact, very few criminal cases are exactly alike even when the charge is the same. The circumstances associated with each type of criminal case (e.g., theft) tend to vary, with different motivations, different outcomes, and different issues, and this may make the crime seem more or less severe in nature, especially on a human level (Carter, 1996).

To further demonstrate the potential complexity of sentencing schemes, consider also the determinate discretionary sentence. The **determinate discretionary sentence** (discussed briefly in the prior subsection) sets a stated range of time that must be served. This range of time (e.g., 3 to 5 years) is not subject to modification by judges who impose a sentence under this model (Carter, 1996). However, the judge is able to use his or her own discretion in determining the exact sentence so long as it falls within the range that has been predetermined by legislative bodies. Thus, the sentence is determinate in nature with parameters being set (in our example, a minimum of 3 years and a maximum of 5 years), but it is also discretionary since it allows the judge to select the exact time that will be served. Note that this sentence is different from the indeterminate sentence that was presented in the prior subsection. The difference is that while the indeterminate sentence often has a range of time to be served, the eventual date of release for the offender is decided by correctional officials who work with the offender and determine his or her progress toward and suitability for reintegration into society. Thus, the exact amount of time served depends on an offender’s progress within the correctional treatment regimen.

## Mandatory Minimum Sentences

**Mandatory minimum** sentences require that some minimum length of incarceration be served by offenders who commit certain specified crimes, such as drug-related crimes. In these cases, judges are extremely limited in their consideration of the offender’s background or circumstances, and the use of community-based sanctions is out of the question. One type of mandatory minimum sentence is the “three strikes and you’re out” law. This law requires that judges award a long-term prison sentence (in some cases life in prison) to offenders who have three felony convictions. This has resulted in the growth of prison populations around the nation and has also resulted in a graying of the prison population in the United States. As more and more inmates serve lengthy mandatory minimum sentences, the proportion of inmates who are elderly continues to climb. Since elderly inmates are more costly to house than younger inmates (due to medical care and other related costs), this has proven to be a serious drain on many state-level prison systems.

Indeed, this issue has been given considerable attention in recent years, with Texas, California, Florida, New York, and Louisiana all experiencing a rise in per capita elderly inmates that are incarcerated. Each of the states just mentioned has either one of the largest prison populations or one of the highest rates of incarceration in the United States. In all cases, the costs that are associated with the elderly inmate are exponentially

### **Determinate presumptive sentence:**

This type of sentence specifies the exact length of the sentence to be served by the inmate.

### **Determinate discretionary sentence:**

Type of sentence with a range of time to be served; the specific sentence to be served within that range is decided by the judge.

### **Mandatory minimum:**

A minimum amount of time or a minimum percentage of a sentence must be served with no good time or early release modifications.



**PHOTO 2.5** When sentencing occurs, the result can be disastrous for the defendant, who now must cope with the reality of the punishment that will be meted out.

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higher than those associated with the average inmate. This has led to other issues for administrators to consider, such as the possibility of early release of inmates who are expected to die, the implementation of human caregiver programs such as hospice, and accountability to the public. It is this accountability that places prison administrators in a dilemma since public safety is the primary concern for all custodial programs. Thus, in one generation, mandatory minimum, three strikes, habitual offender, and other enhanced sentences have created a new crisis that looms on the correctional horizon of the United States. This outcome is likely to affect sentencing patterns in the future, which, in turn, will impact the state of corrections.

## Sentencing Has Become More Indeterminate in Nature

At the time that the first edition of this text was written, evolution in sentencing practices pointed to the possibility of a more indeterminate nature. While it was not clear then, and is perhaps no clearer now, whether this was the best approach from a public safety perspective, it was obvious that the 1990s had been reflective of a crime control model of criminal justice with an emphasis on mandatory minimums for sentencing and purely determinate sentencing schemes. This led to a swelling of the offender population behind bars. Many of these inmates were drug offenders rather than violent offenders, calling into question for many whether this type of mass incarceration was truly warranted.

Crime has not increased during the past few years and, in fact, has gone down. This further begs the question, is this level of mass imprisonment really necessary? It would appear that the federal government has started to ask this question of itself as well, as can be seen with recent recommendations from the U.S. Sentencing Commission. The U.S. Sentencing Commission is an independent agency in the judicial branch of government intended to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes. It also advises Congress and the executive branch on effective crime policy and sentencing issues.

In 2014, the commission unanimously voted to reduce sentencing terms for drug traffickers who are already in prison. This meant that approximately 46,000 drug offenders would be eligible for early release (Greenblatt, 2014). Before any other discussion is provided, it should be pointed out that this recommendation included *drug traffickers*, not just drug users. Typically, drug traffickers are given stiffer sentences because they often are viewed as part of the cause of drug use. Given that this is a more serious charge than possession or consumption of drugs, this makes the recommendation by the commission even more noteworthy.

The commission intends for these recommendations to be indeterminate in nature, depending on the facts and circumstances of each case. Indeed, Greenblatt (2014) notes that not all offenders will be released. Rather, petitions for each will be considered on an individual basis by federal judges, reflecting the indeterminate feature to these recommendations. In addition, this process has not moved quickly; the reduction was instituted in 2014, but none of the affected offenders were released until November 2015, which allowed an 18-month process for judges to review offender petitions before any were released.

Interestingly, the commission cited “fundamental fairness” as the primary motivation behind these sentencing changes (Greenblatt, 2014). Indeed, it has become a goal of the Department of Justice to seek leniency with nonviolent drug offenders as a means of reducing the sentencing disparities that date back to the mass incarceration of crack cocaine users in the 1980s and 1990s (Greenblatt, 2014). The Sentencing Commission,

on the other hand, has gone forward with a more aggressive plan for sentence reduction that is fully retroactive, going beyond the initial efforts of the Department of Justice in reducing drug-related sentences (U.S. Sentencing Commission, 2014a).

It is important for students to understand that aside from theoretical and philosophical reasons for reducing sentencing disparities, there is a more pragmatic and mercenary reason for the commission to make such aggressive recommendations. As cited in the commission's official news release, one key priority is to reduce the inmate population in the nation's federal prisons (U.S. Sentencing Commission, 2014a). Indeed, Judge Patti Saris, the chair of the commission, noted that "this modest reduction in drug penalties is an important step toward reducing the problem of prison overcrowding at the federal level in a proportionate and fair manner" (U.S. Sentencing Commission, 2014a, p. 1). She went on to add that "reducing the federal prison population has become urgent, with that population almost three times where it was in 1991" (p. 1).

What is important to understand is that regardless of the moral, philosophical, or theoretical reasons given for many criminal justice policies, the reality is that economics always plays a strong role in how the system can and does operate. In fact, the economic circumstances of the times may not only shape sentencing processes and correctional system operations, but also are important in determining what law enforcement agencies can and will enforce. Students should understand that despite the philosophical and theoretical perspectives on punishment that may come under consideration, as discussed in Chapter 1, economics is often the "trump card" variable in determining correctional policy. This has historically been true in American corrections, as we saw when the Pennsylvania system (grounded in theories of reformation) competed with the Auburn system (grounded in terms of profit and loss). The author wants to make clear to students that in the world of the practitioner, theoretical perspectives and philosophy often take a back seat to economic pressures.

## Sentencing Disparities

In the previous subsection, we referred to the term *disparities* and noted that the U.S. Department of Justice has made efforts to reduce these incongruous elements within sentencing policies and among the incarcerated population. The term *disparity* should be held distinct from the better-known term *discrimination*. **Disparity** refers to inconsistencies in sentencing and/or sanctions that result from the decision-making process. This typically results when the criminal justice system provides an unequal response toward one group as compared with the response given to other groups. Distinct from this is **discrimination**, which focuses on attributes of offenders when providing a given sentence. This usually results in a differential response toward a group without providing any legally legitimate reference to the reasons for that differential response. According to Neubauer (2019), the most commonly cited forms of disparity in sentencing involve geography and judicial attitudes. We now proceed with a discussion of these two types of disparity and will further explore how disparities impact corrections throughout the United States.

Geographical disparity in sentencing patterns has been tied to various areas of the United States and reflects the cultural and historical development of correctional thought in those regions. Neubauer (2019) notes that geographical differences in justice are the product of a variety of factors, such as the amount of crime, the types of crime affecting a given area, the effectiveness of police enforcement, and media attention given to criminal activity in the region. Overall, it is clear that the South imposes more harsh sentences than other areas of the nation, and the western part of the United States seems to follow suit. Interestingly, executions are concentrated in these regions as well. When one considers our discussions in Chapter 1 regarding southern penology and the development of corrections in the West, this observation may not be too surprising.

Lastly, a discussion regarding disparity in sentencing would not be complete without at least some reference to observed disparity in death penalty sentences. The use of this sentence and problems regarding racial disparity in its application help to illustrate why disparity in sentencing is an important issue to the field of corrections. This also helps to illustrate a philosophical or ideological influence on the sentencing process that is at least perceived to be true by many in the public arena. This then may undermine punishment schemes that are intended to rehabilitate and/or deter offenders. Rather,

**Disparity:** Inconsistencies in sentencing and/or sanctions that result from the decision-making process.

**Discrimination:** A differential response toward a group without providing any legally legitimate reasons for that response.



the cultural impact and/or influence from individuals of influence in the justice system may obscure and impair the intended outcome of various sentencing and punishment schemes. In regard to rehabilitation, this can create additional distrust of helping professionals from a given group that has been marginalized. From a deterrence viewpoint, these factors may only deter one group while giving the impression that criminal activity will be tolerated among other groups. It is clear that these impressions undermine the correctional process and, as a result, further complicate the process as a whole.

## Smarter Sentencing Act: Sentence Leniency to Relieve Disparities

**Smarter Sentencing Act of 2014:** A bill that adjusts federal mandatory sentencing guidelines in an effort to reduce the size of the U.S. prison population.

Increased political support in recent years to reduce many of the mandatory minimums that were enacted during the 1990s led to the **Smarter Sentencing Act of 2014**. According to GovTrack.us (2015, p. 2), the act adjusts federal mandatory sentencing guidelines for a variety of crimes in an effort to reduce the size of the current U.S. prison population and costs associated with it. This bill has spawned substantial discussion. While the reasons for this are many, for academic purposes, the author will point out once again that this legislation is simply a reflection of the “pendulum” of justice whereby criminal justice policy goes back and forth between harder and softer approaches to crime. As we saw in Chapter 1, different eras in modern corrections reflect an ebb and flow between more stern approaches to criminal offending followed after a time by more humane approaches.

One of the main advocates of this legislation is Senator Ted Cruz of Texas, who in 2015 gave a speech that captures the essence of what is current and common sentiment in regard to sentencing reform in general and the Smarter Sentencing Act of 2014 specifically. According to Cruz (2005),

The issue that brings us together today is fairness. What brings us together is justice. What brings us together is common sense. This is as diverse and bipartisan array of members of Congress as you will see on any topic and yet we are all unified in saying commonsense reforms need to be enacted to our criminal justice system. Right now today far too many young men, in particular African American young men, find their lives drawn in with the criminal justice system, find themselves subject to sentences of many decades for relatively minor non-violent drug infractions. (p. 1)

Again, what is important for students to understand is that despite comments such as Cruz’s plea for justice, fairness, and common sense, there is nevertheless an ulterior purpose grounded in economics behind much of this proposed sentencing reform. For example, consider that this legislation affirms that the proposed changes are consistent with the U.S. Sentencing Commission mandate to *minimize the likelihood that the federal prison population will exceed the capacity of the federal prisons*. This legislation also directed the Justice Department to issue a report outlining the reduced expenditures and cost savings as a result of the Smarter Sentencing Act within a 6-month period of its enactment. It should be clear from these facts that the undergirding concern for the federal government is money. Indeed, it would appear that the push for smarter sentencing comes at a time when the economy has been ailing, and public leaders do not consider it a smart practice to spend money on prisons—money that society does not have. Whether a criminal behavior is more or less wrong today than it was in prior years and/or whether racial disparities exist within our sentencing processes and prison systems is of secondary concern. The primary concern revolves around money and the economic conditions of the time.

## CRIMINOLOGICAL THEORIES AND CORRECTIONS

If a correctional program is to be effective it must have a clear theoretical and philosophical grounding. Numerous criminological theories exist that are used to explain why

crime occurs and how one might predict crime. The ability to predict crime allows us to find those factors that lead to crime and therefore give us guidance on what should be done to prevent crime. Further, if we are able to explain why crime occurs, we can better determine those factors that must be addressed to correct aberrant tendencies toward criminal behavior. Thus, appropriate grounding in theoretical underpinnings to criminal behavior can improve any correctional effort. However, theoretical applications may not always be quite so clear in the day-to-day practice of corrections.

The specific theoretical applications to institutional corrections may not be clear to many students. Therefore, a discussion on some of the more common theories of criminal behavior is presented so that students can connect philosophies on correctional intervention, the use of different sentencing characteristics, and theories on criminal behavior as a means of understanding the many different bases to the field. Further, the philosophical underpinnings behind punishment are important to understand since this will often shape official reactions to criminal offending. Both sociological and psychological theories are important for this process and are thus included in the pages that follow.

## Individual Traits

According to some theorists, criminal behavior can be directly connected to specific personality characteristics that offenders tend to possess. **Individual personality traits** that are associated with criminal behavior include defiance, self-assertiveness, extroversion, impulsivity, narcissism, mental instability, a tendency toward hostility, a lack of concern for others, resentment, and a distrust of authority. These traits are, quite naturally, psychological in nature, and, presuming that these characteristics are the root causal factor behind an offender's criminal behavior, correctional interventions along the line of the medical model would be most appropriate. In such circumstances, criminal behavior would be treated as a form of pathology and would be treated with a correctional scheme that integrates mental health interventions (Lilly et al., 2014).

**Individual personality traits:** Traits associated with criminal behavior.

## Classical Theory and Behavioral Psychology

Students will recall from Chapter 1 that classical criminologists contend that punishment must be proportional, purposeful, and reasonable. Beccaria, in advocating this shift in offender processing, contended humans were hedonistic—seeking pleasure while wishing to avoid pain—and that this required an appropriate amount of punishment to counterbalance the rewards derived from criminal behavior. It will become clear in subsequent pages that this emphasis on proportional rewards and punishments dovetails well with behavioral psychology's views on the use of reinforcements (rewards) and punishments.

Though our correctional system today is much more complicated than in times past, classical criminology serves as the basic underlying theoretical foundation of our criminal justice system in the United States, including the correctional components. It is indeed presumed that offenders can (and do) learn from their transgressions through a variety of reinforcement and punishment schedules that corrections may provide.

## Operant Conditioning

One primary theoretical orientation used in nearly all programs associated with correctional treatment is operant conditioning. This form of behavioral modification is based on the notion that certain environmental consequences occur that strengthen the likelihood of a given behavior, and other consequences tend to lessen the likelihood that a given behavior is repeated. We now turn our attention to those consequences that impact human behavior, for better or worse.

## Reinforcers and Punishments

Those consequences that strengthen a given behavior are called reinforcers. Reinforcers can be both positive and negative, with **positive reinforcers** being a reward for a desired behavior (Davis, Palladino, & Christopherson, 2012). An example might be if we provided a certificate of achievement for offenders who completed a life skills program. **Negative reinforcers**

**Positive reinforcers:** Rewards for a desired behavior.

**Negative reinforcers:** Unpleasant stimuli that are removed when a desired behavior occurs.



**PHOTO 2.6** Carlos Valdez, district attorney in Nueces County, Texas, holds one of the signs that a judge ordered posted outside the homes of registered sex offenders.

AP Photo/Corpus Christi Caller-Times, Paul Iverson

**Positive punishment:**

Punishment where a stimulus is applied to the offender when the offender commits an undesired behavior.

**Negative punishment:**

The removal of a valued stimulus when the offender commits an undesired behavior.

**Social learning theory:**

Contends that offenders learn to engage in crime through exposure to and adoption of definitions that are favorable to the commission of crime.

**Strain theory/  
institutional anomie:**

Denotes that when individuals cannot obtain success goals, they will tend to experience a sense of pressure often called *strain*.

**Labeling theory:**

Contends that individuals become stabilized in criminal roles when they are labeled as criminals.

are unpleasant stimuli that are removed when a desired behavior occurs (Davis et al., 2012). An example might be if we agreed to remove the requirement of wearing electronic monitoring devices when offenders successfully maintained their scheduled meetings and appointments for a full year without any lapse in attendance.

Consequences that weaken a given behavior are known as punishments. Punishments, as odd as this may sound, can also be either positive or negative. A **positive punishment** is one where a stimulus is applied to the offender when the offender commits an undesired behavior (Davis et al., 2012). For instance, we might require offenders to pay an additional fee if they are late in paying restitution to the victim of their crime. A **negative punishment** is the removal of a valued stimulus when the offender commits an undesired behavior (Davis et al., 2012). An example might be when we remove offenders' ability to leave their domicile for recreational or personal purposes (i.e., place them on house arrest) if they miss any of their scheduled appointments or meetings.

The key in distinguishing between reinforcers and punishments to keep in mind is that reinforcers are intended to *increase* the likelihood of a *desired* behavior whereas punishments are intended to *decrease* the likelihood of an *undesired* behavior. In operant conditioning, the term *positive* refers to the addition of a stimulus rather than the notion that something is good or beneficial. Likewise, the term *negative* refers to the removal of a stimulus rather than being used to denote something that is bad or harmful.

## Social Learning

Social learning theory and differential association theory are presented together because they have a common history and because many of their basic precepts are similar (Ronald Akers's social learning theory was spawned from Edwin Sutherland's differential association theory). As with differential association theory, **social learning theory** contends that offenders learn to engage in crime through exposure to and adoption of definitions that are favorable to the commission of crime (Lilly et al., 2014). While both theories contend that exposure to normative definitions that are favorable to crime commission can influence others to commit crime (through vicarious learning and/or reinforcement for repeating similar acts), social learning explicitly articulates the manner by which such definitions are learned by criminals. Differential association, on the other hand, does not clarify this point, and this is the primary distinction between the two theories.

## Anomie/Strain

The next theory to be examined is **strain theory/institutional anomie**. This theory denotes that when individuals cannot obtain success goals (money, status, and so forth), they will tend to experience a sense of pressure often called *strain*. Under certain conditions, they are likely to respond to this strain by engaging in criminal behavior. Merton (1938) and Messner and Rosenfeld (2001) note that this is often aggravated in American society by the continued emphasis on material (monetary) success and the corresponding lack of emphasis on the means by which such material accumulation is obtained. In other words, these authors contend that society in the United States emphasizes winning the game (of life) much more than how the game (of life) is played.

## Labeling and Social Reaction

Another theoretical application that is relevant to the correctional process is **labeling theory**. This theory contends that individuals become stabilized in criminal roles when

they are labeled as criminals, are stigmatized, develop criminal identities, are sent to prison, and are excluded from conventional roles (Cullen & Agnew, 2006). In essence, the label of “criminal offender” or “convict” stands in the way of the offender reintegrating back into society. Such labels impair the offender’s ability to obtain employment, housing, and/or other goods or services necessary to achieve success. Tracking and labeling often result from the need to ensure public safety (as with pedophiles) and thus are simply a necessary aspect of the punishment, incapacitation, and public safety objectives of many community corrections programs. However, it may be that these functions can be achieved in a manner that aids public safety but does not prevent the offender from achieving reintegration.

The desire to allow for an offender’s past errors to be public information (due to a need to achieve public safety) without undo blockage of the offender’s ability to reintegrate has been directly addressed by labeling theory scholars. One particular labeling theorist, John Braithwaite, provided a particularly insightful addition to the labeling theory literature that is specifically suited for the field of community supervision. In his work *Crime, Shame, and Reintegration*, Braithwaite (1989) holds that crime is higher when shaming is stigmatizing and criminal activity is lower when shaming effects serve a reintegrative purpose.

According to Braithwaite (1989), the negative effects of stigmatization are most pronounced among offenders who have few prosocial bonds to conventional society (such as family, religious institutions, and civic activities). This would place young males who are unmarried and unemployed at the greatest risk of being thrust further into criminality due to shaming effects. Due to their lack of resources, connections, and general social capital, these offenders find themselves further removed from effective participation in legitimate society. Over time, these offenders will find that it is much easier to join criminal subcultures where tangible reinforcements for their activities can be found. Thus, a cycle is created where a given segment of the offender population is further encouraged to repeat criminal activity simply due to the fact that other options have essentially been knifed away from them.

## Conflict Criminology

According to **conflict theory**, the concepts of inequality and power are the central issues underlying crime and its control. This theory is derived from the work of Karl Marx (Lilly et al., 2014). Conflict criminologists note that capitalism perpetuates a system that benefits the rich. In the process, the poor are denied access to economic opportunities and are therefore prevented from improving their social standing. Thus, the wide economic gap between the social classes is increased and perpetuated with each successive generation. In a similar vein, the state—which includes the criminal law and the criminal justice system—operates to protect social arrangements that benefit those profiting from capitalism (Lilly et al., 2014). In general, the injurious acts committed by the poor and powerless are defined as crime, but the injurious acts committed by the rich and powerful are not brought within the reach of the criminal law. One can see this in sentencing practices that tend to mete out harsher terms to those groups who lack wealth and the ability to hire expensive defense attorneys but assign comparatively light sentences to those who are wealthy. Thus, critical criminologists point at the social system itself as the chief cause of America’s growing prison population.

**Conflict theory:** Maintains that concepts of inequality and power are the central issues underlying crime and its control.

## CONCLUSION

This chapter began with a review of the purpose of corrections as a process whereby practitioners from a variety of agencies and programs use tools, techniques, and facilities to engage in organized security and treatment functions intended to correct criminal tendencies among the offender population. It is with this purpose in mind that a variety of philosophical underpinnings were presented, including retribution, incapacitation, deterrence, rehabilitation, restorative justice, and reintegration. As can be seen, each of these philosophical approaches has held sway throughout the history of corrections at

one time or another. However, it is clear from the definition of corrections, as provided in this text, that the ultimate and modern philosophy of corrections is one that likely includes elements of rehabilitation, restorative justice, and reintegration more than it does retribution, incapacitation, and deterrence.

Though modern corrections is considered more reintegrative in nature, the reality cannot be ignored: Prisons are not effective instruments of rehabilitation or reintegration. Research demonstrates that incarceration is not likely to lower recidivism and, in some cases, may actually increase it. Thus, other philosophical uses of prisons, such as incapacitation and deterrence, continue to proliferate among correctional agencies.

Similarly, the most serious sentence that can be meted out, the death penalty, also seems to not be a very effective form of punishment. Just as with prisons, there is serious doubt as to the deterrent value of the death penalty. Also, just as with prisons, there is some research that shows that the death penalty may actually increase the commission of future crime, not lower it. As with prisons, the philosophical views on the use of the death penalty were discussed, providing pros and cons associated with this sanction.

Because one criminal offense is not always equal to another, there has emerged the need for a continuum of sanctions. This continuum provides for a number of punishments (sanctions) that have varying levels of severity. Monetary fines are perhaps the least serious of sanctions, followed by a very wide range of intermediate community-based sanctions. Community-based sanctions are given extensive coverage due to their variability in administration and their effectiveness in calibrating the punishment to the criminal offense and the criminal offender. Discussion regarding the use of incarceration as a primary tool of punishment was provided, as was an explanation of the different types of custody arrangements when using incarceration with serious offenders. Next, three types of sentencing models were presented: indeterminate, determinate, and mandatory minimum sentences. The reasons for using these types of sentences were provided, as were the pitfalls to each one. While intentions may be good, the outcomes of each of these types of sentencing schemes have not necessarily been effective in achieving the desired goal of their application. Further still, despite the use of complicated sentencing approaches and philosophical approaches to administering punishments, it is clear that sentencing disparities exist throughout America. Disparities were noted to be especially problematic in the southern and western parts of the United States, and it has been found that disparities with punishments exist with both prison sentences and the application of the death penalty. In discussion of the issue of disparity, the distinction between disparity and discrimination was made clear.

It would seem that a degree of fervor has developed regarding the sentencing schemes used in recent decades. In particular, the federal system is overcrowded with drug offenders, which has prompted the development of policies to release these offenders early from prison. To a lesser extent, this has been true in some state systems as well, where effects of the War on Drugs that have resulted in widespread racial disparities in the sentencing of African American men is promoted as the rationale for the reduction of time served. While this may seem like an altruistic concern, the reality is that these prison systems are financially broke and the use of sentence reductions can help alleviate overcrowding.





Lastly, a number of criminological theories were presented with an emphasis on their application to the field of corrections. An understanding of the theoretical bases of the criminal justice discipline in general and the correctional system in particular will aid in the correctional process. Indeed, if we are able to explain why different types of crime occur, we can then determine those factors that should be addressed to eliminate the likelihood of criminal behavior. This means that an understanding of the theoretical underpinnings to criminal behavior can improve any correctional effort. Though a diverse number of theories were presented, each provides its own vantage on how and why crime exists, and each provides a framework from which correctional agents can approach the task of providing organized security and treatment functions intended to correct criminal tendencies among the offender population and, in the process, enhance public safety.

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**DISCUSSION QUESTIONS**

1. Compare and contrast the two philosophical orientations of *incapacitation* and *deterrence*. In your opinion, which one is the better approach to correctional practice?
2. Compare and contrast the two philosophical orientations of *rehabilitation* and *retribution*. In your opinion, which one is the better approach to correctional practice?
3. Provide a topical overview of the different types of informal sanctions discussed in this chapter. Also, explain what is meant by the "continuum of sanctions" when talking about informal sanctions.
4. Compare and contrast the terms *disparity* and *discrimination*. Which one do you think is most appropriate to explaining the overwhelming proportion of minority inmates behind bars?
5. Compare and contrast indeterminate and determinate sentencing. What are the pros and cons of each?
6. What is restorative justice and how is it unique from many other perspectives on the resolution of crime?
7. According to the chapter, in what ways are classical criminology and operant conditioning similar to one another in their orientations on shaping human behavior?

Review key terms with eFlashcards at [edge.sagepub.com/hanserbrief](http://edge.sagepub.com/hanserbrief).

**KEY TERMS**

Aggravating circumstances, 40	Incapacitation, 32	Rehabilitation, 33
Capital punishment, 37	Individual personality traits, 45	Reintegration, 33
Conflict theory, 47	Labeling theory, 46	Restorative justice, 33
Determinate discretionary sentence, 41	Mandatory minimum, 41	Retribution, 30
Determinate presumptive sentence, 41	Mitigating factors, 40	Selective incapacitation, 32
Discrimination, 43	Negative punishment, 46	Smarter Sentencing Act of 2014, 44
Disparity, 43	Negative reinforcers, 45	Social learning theory, 46
Fine, 35	Positive punishment, 46	Specific deterrence, 32
General deterrence, 32	Positive reinforcers, 45	Strain theory/institutional anomie, 46

**KEY CASE***United States v. Booker* (2005), 34**APPLIED EXERCISE 2.1**

Match each of the following modern-day programs with its appropriate philosophical underpinning, sentencing scheme, or theoretical orientation.

PROGRAM	IDEOLOGY OR PHILOSOPHY OF ORIGIN
1. You are sentenced to 10 years in prison and must serve no less than 80% of that time (8 years) without the benefit of early release or parole	A. Restorative justice
2. Laws that select specific types of offenders and provide enhanced penalties to ensure that they are effectively removed from society (habitual offender laws, three-strikes laws, etc.)	B. General deterrence
3. Punishing an offender in public so other observers will refrain from criminal behavior	C. Negative punishment
4. Providing the offender an opportunity to restore damages done to the victim and minimizing stigma/shame for the offender	D. Treatment
5. Removal of visitation privileges because an offender commits the undesired criminal behavior of child abuse	E. Indeterminate sentencing
6. Exacting a fine for undesired behavior	F. Mandatory minimum
7. Treats crime similar to a mental health issue or along the medical model perspective	G. Determinate sentencing
8. Providing substance abusers with certificates of graduation when completing an addiction treatment program	H. Positive reinforcement
9. Sentencing has no flexibility in terms	I. Positive punishment
10. Sentencing with variable terms, affected by the context of the crime and later behavior of offenders while serving their sentence	J. Incapacitation

**WHAT WOULD YOU DO?**

You are the judge in a small-town court. In this town, everybody knows each other, and things are usually fairly informal. Your position and title carry a great deal of respect throughout the town, and because of this you take your role in the community very seriously. You have recently had a case appear on your docket that is very troubling. A mentally challenged man, 19 years old, is in the county jail; he bludgeoned another man to death with a ball-peen hammer, hitting the victim repeatedly across the head to the point that the deceased victim was barely recognizable. The defendant, Lenny Gratzowskowitz, was in a fit of fury during the crime and continued pounding the skull of the deceased well beyond the point of death.

The police who arrested Lenny were careful to ensure their behavior was well within ethical boundaries, and the agency ensured that legal representation was present before any questions were asked of Lenny. In fact, many of the police officers (including the chief of police) know Lenny on a semipersonal basis because of the tight-knit nature of the town. Generally, Lenny is not problematic, and he has never been known to be violent. However, throughout his history, from childhood on up, he has been subjected to ridicule and embarrassment by a handful of town residents who are of a fairly unsavory disposition.

In fact, the victim, Butch Wurstenberger, had been a childhood bully in grade school, and he had terrorized Lenny on numerous occasions. Now, as an adult, Butch was known to be an abrupt and sarcastic man, but not violent. Both Butch and Lenny had obtained jobs with a general contractor to complete construction of a Walmart supercenter that was slated for a grand opening during the upcoming year. Each had worked in the construction field: Butch had become known for his skill with foundation work and drywall setting and his experience with industrial air-conditioning and refrigeration systems; Lenny had been hired due to his routine dependability on other job sites and his willingness to work, regardless of the circumstances.

Once both arrived on the job site, Butch heckled Lenny on a few but sparing occasions. Most other members of the work crew were from out of town and were not aware of the history between Butch and Lenny. None of them had noticed any serious problems between the two men—that is, not until they reported to work one morning to find that both Butch and Lenny had arrived at the work scene early, and one of them (Butch) was dead while the other (Lenny) was bloody from the act of violence that he had committed.

Consider this situation and determine which philosophical orientation you would use when sentencing Lenny. Select only *one* of the following philosophical orientations: retribution, deterrence, incapacitation, treatment, restorative justice, or reintegration. Consider why you selected that orientation and why each of the other orientations might not be as appropriate as the one that you chose. Write this down as an essay that answers the following question:

***What would you do?***

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