

CHAPTER 3

Punishment and Criminology: An Historical Perspective

OVERVIEW

This chapter examines the tenuous relationship of punishment to prevailing theories of criminology and its connection instead to social structure (productive relations) and culture. Punishment refers to criminal sanctions, but also includes gendered mechanisms of power such as surveillance and discipline that are used to recreate the privileges and inequality of the social order.

Barak reviews the main moral justifications for punishment, which he divides into backward looking ones (revenge and retribution) tied to the character of the offense and forward looking ones (deterrence, incapacitation and rehabilitation) tied to utilitarian consequences. The work of Durkheim, Rusche and Kirchheimer, and Foucault is reviewed to show the relationship of punishment to ideology/solidarity, systems of production, larger issues of 'political technologies of the body' (power, knowledge, and the body).

The nature of the contemporary state of American punishment ('corrections') is reviewed and found to be large, expensive and rapidly growing. The current bureaucratic/administrative rationales offer no vision of a better future, but promise an expanded 'prison industrial complex' and a political economy of punishment that promises to perpetuate the unequal enforcement and application of the penal law.

OUTLINE

I Introduction

A. Definition of punishment

1. Loss or deprivation, but also death, forced labor, training, treatment, rehabilitation, surveillance, and monitoring

* The Instructor's Manual for *Integrating Criminologies* is available as a downloadable Adobe .pdf file by chapter or in complete form through <http://paulsjusticepage.com/IntegratingCrim/index.htm>. The author's website is <http://greggbarak.com>. The website for [Amazon.com](#) has additional information about the book, and the [publisher's website](#) accepts requests for academic desk copies.

2. Punishment goes beyond criminal justice to a variety of strategies of domination and discipline that preserve the state and social order

II Ideology and the Rationale of Punishment

- A. Ideology helps people make sense of world and (can) provide a rationale for punishment
 1. Free will/rational thought suggests changing punishments; environmentalism suggests education or changes in socioeconomic conditions
 2. At end of 20th century, basis for punishment not obvious or self-evidently rational
- B. Rationales for punishment
 1. Backward-looking: morally proper responses to crime (offense, not perpetrator)
 - a. Retribution: measured response to restore moral balance upset by offense
 - b. Revenge: passionate sometimes excessive 'getting back'
 2. Forward looking: utilitarian consequences on future criminality (not solely dependent on the nature of the offense)
 - a. Deterrence: crime prevention through fear of future suffering
 - 1) Specific: preventing further crime by offender
 - 2) General: preventing crime by other potential offenders
 - b. Incapacitation: predicated on the claim that crime reduction efficacy occurs by keeping likely reoffenders out of circulation; requires little understanding of etiology
 - 1) Collective: applied to categories of offenders -- drug dealers -- without regard to their personal characteristics
 - 2) Selective: efforts to identify high risk offenders
 - c. Rehabilitation: reduce the offender's preference for criminality by changing them or their character

III Punishment at the Turn of the 21st Century

- A. Lack of future alternative other than jailhouse state that condemns taxpayers, governments and prisoners
 1. Only expanding 'public housing' program is a 'socialism of the right'
 2. An increasingly for profit criminal justice system fosters a prison-industrial complex
 3. Opportunity cost is social services that could help prevent the reproduction of criminality
- B. The U.S. system
 1. Largest: 455/100,000 (South Africa - 311; Netherlands - 40)
 2. Fastest growing: 1970 to 1994 population quadrupled to one million state and federal inmates, plus 500,000 in jail

3. Expensive: one inmate one year in NYC is \$58,000, plus higher expenses for aging population and HIV infected
 4. Construction lags behind capacity demanded by harsher sentences
- C. Race and the drug war
1. Blacks make up 54% of prisoners, a rate of 1,860/100,000 v 289 /100,000 for whites
 2. War on drugs = war on black people
 - a. One gram of crack = 1 year in prison, but same amount of pure cocaine = 1 year on probation

IV Changing Explanations of Punishment

- A. Objective is to integrate the study of moral values with the study of mechanisms of power, while appreciating that criminal punishment targets men but other mechanisms disproportionately discipline women
- B. 'Founding Fathers': understanding dimensions of punishment other than retribution and deterrence
 1. Durkheim: crime is normal and punishment has ideological value by reinforcing solidarity
 2. Rusche and Kirchheimer: materialist conception that related punishment to the system of production
 3. Foucault: critical of process of 'civilization'; corporal punishment transformed into more efficient economy of power based on surveillance/discipline, a 'political technology of the body' having application well beyond state punishment

V Differential Application of the Penal Law

- A. Cultural meaning: treatment of others changes with historical sensibilities ('civilizing process')
- B. Social meaning: treatment based on status (race, class, gender)
 1. Class: 'high' and 'low' justice
 - a. In application/enforcement: rich pay fine, poor do time
 - b. In definition: theft of resources from third world not a crime but individual stealing from neighbor is
 2. Gender
 - a. Larger social net that goes beyond criminal law
 - b. More informal means of social control that revolve around bodies and personal freedoms

LEARNING OBJECTIVES

- 1] Review of moral rationales for punishment

2] Overview of punishment today, with special attention to 'actuarial' justice and prison-industrial complex

3] Understanding of relationship of punishment to social structure, productive relations and cultural sensibilities

4] Appreciation of differential application of punishment, especially non-penal disciplinary mechanisms focusing on women

IDEAS FOR LECTURES & DISCUSSION

Foucault's *Discipline and Punish* starts off with a dramatic description of a drawing and quartering, then describes the regimented/disciplined day at a prison. Ask students why the change occurred. Was it because of a civilizing process and cultural sensibilities? A more efficient way of securing the social order by creating 'docile bodies'? Barak suggests it is both, and the discussion can deal with the question of why the argument needs to be either/or. Interestingly, Johnson's excellent work on executions (1997) finds the sanction to be increasingly bureaucratic and a process of administration -- a dynamic Barak finds to be dominant in current criminology and which Ritzer describes more generally in his book *The MacDonalidization of Society* (1996).

Foucault argues that the model of power based on surveillance and discipline overflowed the banks of the prison and 'disciplined space' (Fillingham 1993) increasingly permeated society. He has been taken to task for not mentioning computers and databases or dealing with the issue of surveillance, privacy and discipline in an information processing society. This aspect of the problem -- or the larger issues of technology and social control raised in the Unabomber's manifesto - - could become part of the class lecture. Foucault has also been criticized for not analyzing gender issues after pointing out the large amount of discipline that our society has. Bartky (1990)* does an excellent job of explaining the disciplinary process as she explains the feminist overlay.

The *Sourcebook of Criminal Justice Statistics* contains a rather striking graph of the incarceration rate since 1925. The line rises sharply in the early 1970s and becomes quite vertical starting in 1980 (1995: Figure 6.4, p 555). This provocative graphic could be used to ask about the rationales, social forces, etc that created the trend and the current state of imprisonment. Because of book production schedules, the incarceration rate figures given in the text may need updating either from the *Sourcebook* or the latest *Correctional Populations in the U.S.* (available from the National Criminal Justice Reference Service or through the Internet: <http://www.ncjrs.org>).

Miller's (1994) book *Search and Destroy: African American Males in the Criminal Justice System* is probably the best analysis and critique of racial imbalances. *The Real War on Crime* (Donziger 1996), along with Irwin and Austin's (1996) book, provides good information about the costs of current imprisonment policy and the growing prison-industrial complex.

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See also: Gregg Barak, Jeanne Flavin & Paul Leighton. *Class, Race, Gender & Crime: Social Realities of Justice in America*. Roxbury, 2001. More info available, <http://paulsjusticepage.com/reality-of-justice.htm>.