



# History and Development of Community-Based Corrections

## Section Highlights

- Community Corrections Defined
- Early Alternative Sanctions
- Philosophical Basis of Community Corrections—Both Probation and Parole
- Suggested Theoretical Approach to Reintegration and Offender Treatment
- Legislative Response to the Community
- Conclusion

## Learning Objectives

1. Define **community corrections** and understand the reasons for its emergence.
2. Identify early historical precursors to probation and parole.
3. Identify and discuss the various philosophical underpinnings associated with sentencing and the administration of offender supervision within the community.
4. Understand the various suggested theoretical approaches to reintegrating the offender in the community.
5. Identify some of the more recent legislative responses to supervising offenders in the community.
6. Identify the four main purposes of punishment and explain how each serves as a guide in agency **policy** and practice.

As states and the federal government continue to experience an unprecedented growth in the prison population with diminished resources, the development of alternative-based punishments both before and after incarceration have become a necessity rather than a luxury (Steen & Bandy, 2007). Also known as community-based corrections, the necessity for these alternatives and best practices comes at a time when our knowledge of those programs most effective at reducing recidivism while addressing the individual needs of the offender is at an all-time high. Unlike other correctional options, community corrections are designed to minimize the penetration of the offender into the correctional system. At year-end 2008, more than 7.3 million adults (1 in every 31) were under some form of correctional supervision (Glaze & Bonczar, 2009; Sabol, West, & Cooper, 2009). This number included more than 5 million supervised in the community (probation and parole) and over 2.3 million confined in either prison or jail (Glaze & Bonczar, 2009). The term *community corrections* itself elicits many different thoughts and perceptions of individuals depending upon your personal experiences, backgrounds, traditions, and the social context of the day (Rothman, 1980). For instance, some people may view community corrections as consisting of only probation and parole while others might see community corrections as being more related to community service and other such programs. Yet others tend to equate community corrections with being “easy” on crime. Certainly, the first two examples are (objectively speaking) actual tools used within the field of community corrections. However, the third example demonstrates that perceptions may negatively impact the notion of community corrections, even when the term is considered on a mere conceptual level. This is important because the perceptions that persons have of community corrections will, in fact, have a direct impact on how effective community-based programs are likely to be. Thus, a positive community perception is actually quite relevant and important for evidence-based programs especially in a time when “get tough” policies continue to get political representatives elected and being seen as “soft” on crime equates to a political death sentence. As noted by Michael Tonry (1999), the United States has a tendency to be so egocentric that we fail to examine what policies have been successful in other countries that may be useful and easily transferrable to the United States. Community-based alternatives such as day fines, prosecutorial fines, community service orders, and sentencing guidelines have offered options for courts, offenders, victims, and the communities that meet the **goals of retribution** while advancing rehabilitative strategies (Tonry, 1999). These various alternatives and their relative policy impacts will be discussed throughout the text using both materials and the selected readings to accomplish these goals.

## Community Corrections Defined

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With it being clear that community perceptions are important to the overall effectiveness of community corrections, this begs the question: How does the community envision a community corrections program, and how would we define such a program? Therefore, what is meant by the term *community corrections*? For purposes of this text/reader, community corrections includes all non-incarcerating correctional sanctions imposed upon an offender for the purposes of reintegrating that offender within the community. The use of this definition is important for several reasons.

First, this definition acknowledges that community corrections consists of those programs that do not employ incarceration. Yet this definition does not contend that these sanctions simply exist due to a need for alternatives to incarceration. This is a very important point that deserves elaboration. It is undoubtedly true that there is a need for alternatives to jail and/or prison simply due to the fact that both types of facilities tend to be overcrowded in various areas of the United States. In truth, the need for options to avoid further jail and prison construction is probably the main impetus behind the proliferation of community corrections

programs that occurred during the later 1990s and has continued on into the 21st century. As states continue to struggle for the appropriate resources to house those offenders sentenced to longer periods of incarceration, the need to explore alternatives that allow for the goals of punishment and **rehabilitation** to be met point to an increased use of reintegration strategies that include programs such as work release and community transition. Community corrections, therefore, provides alternatives at both the front end and the back end of the correctional system. With respect to front end alternatives, probation has been used as a means of avoiding further crowding in jails and prisons. Indeed, many chief judges and court administrators are acutely aware of population capacities in the jails that are run by their corresponding sheriff's office. At the back end of the correctional process, parole systems have continued to act as release valves upon prison system populations, allowing correctional systems to ease overcrowding through the use of early release mechanisms that keep offenders under supervision until the expiration of their original sentence. Additionally, many states have begun to use **split sentencing** alternatives that allow for the offenders to be sentenced to a term of imprisonment and probation to be served at the end of the confinement period rather than being placed on parole. Again, this action serves to reduce the need for a separate supervising agency while continuing to meet the public's perception of "getting tough" on crime.

Thus, to say that community correction provides an alternative to incarceration is not necessarily wrong, but it limits the intent and use of community corrections sanctions. This also further implies that if there were enough prison space community corrections might not exist. This is simply not the case since community corrections is often implemented in jurisdictions that do not have overcrowding problems. Rather, community corrections, in and of itself, holds value as a *primary* sanction, regardless of whether jail or prison space is abundant. In times past, this may not have been the case: such sanctions being restricted to a set of options only used in lieu of prison sanctions. However, it should instead be considered that the contemporary use of community corrections often exists as a first choice among sanctions and that these programs are now used because they have been shown to be more effective than sentencing schemes that are over-reliant on incarceration. Thus, almost by accident, the criminal justice system has found that community-based programs actually work better than incarceration and are therefore the preferred modality of sanctioning in many cases of offender processing. Through data-driven analyses of outcomes and comparisons in recidivism rates, it has been found that these programs are often superior in promoting long-term public safety agendas. This is largely due to the fact that these sanctions tend to work better with the less serious offender population, particularly those who are not violent. The nonviolent offender population happens to be the larger segment of those on community supervision. To be sure, jails and prisons do still have their place in corrections, but there are a large number of offenders who fare better in terms of recidivism if they are spared the debilitating effects of prison but yet are made to be accountable for their crime to the community. This then derives a quasi-therapeutic benefit that leads to a long-term reduction in future criminality. This also leads into the second aspect of the community corrections definition that was provided by this text/reader; community corrections has a definite reintegration component.

The reintegrative nature of community corrections is important from both society's perspective and the perspective of the offender. First, if the offender is successfully reintegrated, it is more likely that the offender will produce something of material value (through gainful employment) for society. The mere payment of taxes, coupled with a lack of further cost to society from the commission of further crimes, itself is a benefit extending to the whole of society. Further, offenders who are employed are able to generate payment for court fines, treatment programs, and victim compensation—none of these benefits are realized within the prison environment. Likewise, a truly reintegrated offender can provide contributions through effective parenting of one's own children. This is actually a very important issue. **Female offenders** are

often the primary caretakers of their children (with at least 70% of such offenders having children) while male offenders are often absent from the lives of their children (further adding to problems associated with father absenteeism). Known as collateral consequences of incarceration, the social costs associated with foster homes are staggering, not to mention the fact that these children are likely to have a number of emotional problems that stem from their chaotic childhoods (Parke & Clarke-Stewart, 2003). Offenders who are reintegrated can stop this trend and can perhaps counter intergenerational cycles that persist in some family systems (Eddy & Reid, 2003). This alone is a substantial social benefit that makes reintegrative aspects all the more valuable.

Additional social benefits might also come in the way of offender community **involvement**. Reintegrated offenders may be involved in religious institutions, volunteer **activities**, or even anti-crime activities with youth who might be at risk of crime (prior offenders can provide insight on the hazards of criminal lifestyles in school or other settings). The potential benefits for society may not be apparent from a budgetary perspective, but they can reap enormous benefits in the way of relationships that build community cohesion. Further, prevention efforts can be aided through the input of prior offenders involved with various community programs. Thus, it is clear that there are financial, familial, and community benefits associated with offender reintegration that can be realized by society.

From the perspective of the offender, the potential benefits should be clear. Such offenders do not have their liberty as restricted as is the case while being incarcerated. Further, such offenders are still able to maintain contact with family (particularly their children), and these offenders are able to maintain meaningful connections with the community. This is exclusive of the fact that these individuals are spared the trauma and debilitating effects associated with prison life. Rather, such offenders are spared the pains of imprisonment, being able to develop relations with significant others, maintain contact with their children, pursue vocational and educational goals, and so forth. It is clear that such options are likely to be perceived as more beneficial by nonviolent offenders than a prison sentence might be. Thus, the reintegrative nature of community corrections holds value in and of itself, regardless of the holding capacity of incarcerating facilities.

When talking about the development of community corrections, there are several historical antecedents that occurred that are important to understand. This section will provide the student with an examination of some alternatives to incarceration that existed in the early history of corrections and punishment sentencing. Just like the evolution of the legal system and law enforcement, much of what we do in modern day community-based corrections is derived from European methodologies, in particular England. In providing this broad historical backdrop, it will be made apparent that early alternatives to incarceration had a therapeutic or reintegrative intent rather than a desire to save space or resources in correctional programs. Indeed, overcrowding was not a concern in the early history of corrections since there were no regulations regarding an inmate's quality of life and since deplorable conditions were (at one time) considered standard fare within a prison setting. In essence, unhealthy and unsafe conditions were considered part and parcel to any jail or prison. Thus, the desire to save space or expenses was not of any appreciable concern when providing offenders with alternatives to incarceration. Although probation was one of the earliest uses of genuine community supervision in the United States, a cursory review of this sanction will be included in this section while a more in-depth discussion on the historical development of this sanction will be reserved for Section VI.

## Early Alternative Sanctions

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The historical development of community-based alternatives can be traced back to the four specific sanctions used in European countries: **sanctuary**, **benefit of clergy**, **judicial reprieve**, and **recognizance**. Each of these sanctions along with a brief discussion of their origins will be presented in this section.

## Sanctuary

One of the earliest forms of leniency was known as sanctuary. Sanctuary came in two forms—one that was largely secular in nature and the other that had its roots in Christian religion. The secular form of sanctuary existed through the identification of various cities or regions (most often cities) that were set aside as a form of neutral ground from criminal prosecution. Accused criminals could escape prosecution by fleeing to these cities and maintaining their residence there. Though it might have been a bit difficult to reach these cities of sanctuary, they were widely known by the populace to be places of refuge for suspected criminals and provided a means for accused criminals to essentially “self-select” themselves for a self-imposed banishment within these neutral regions. Thus, it is clear that this type of sanctuary was mainly intended to protect the accused from capricious forms of punishment, but this also indicates that some crimes required mitigation efforts that eliminated the need for incarcerative sanctions.

The second type of sanctuary began during the 4th century and was grounded in European Christian **beliefs** that appealed to the kind mercy of the church. This type of sanctuary consisted of a place—usually a church—where the king’s soldiers were forbidden to enter for purposes of taking an accused criminal into custody. In such cases, sanctuary was provided until some form of negotiation could be arranged or until the accused was ultimately smuggled out of the area. If while in sanctuary the accused confessed to their crime, they were typically granted abjuration (Cromwell, Del Carmen, & Alarid, 2002). Abjuration required that the offender promise to leave England with the understanding that any return to England without explicit permission from the Crown would lead to immediate punishment (Cromwell et al., 2002).

This form of leniency lasted for well over a thousand years in European history and was apparently quite common in England. Even if they did not confess to their crime as a means of seeking abjuration, the accused could still be granted sanctuary. Over time, however, specific rules were placed upon the use of this form of leniency. For instance, during the 13th century, felons who sought sanctuary could stay up to 40 days or, before the expiration of that time, could agree to leave the kingdom. If they remained past the 40 days, “they risked being forced out of sanctuary through starvation” (Sahagun, 2007, p. 1). Eventually, sanctuary lost its appeal in Europe and, “in the 15th century, several parliamentary petitions sought to restrict the right of sanctuary in England. In the next century, King Henry VIII reduced the number of sanctuaries by about half” (Sahagun, 2007, p. 1). From roughly 1750 onward, countries throughout Europe began to abolish sanctuary provisions as secular courts gained power over ecclesiastical courts. The process of eliminating sanctuary was a long and protracted one that took nearly 100 years before sanctuary ultimately disappeared as an option of leniency for accused offenders (Sahagun, 2007, p. 1).

## Benefit of Clergy

The second early alternative sanction, benefit of clergy, was initially a form of exemption to criminal punishment that was provided for clergy in Europe during the 12th century. This benefit was originally



▲ **Photo 1.1** Before the separation of church and state, churches were sometimes a source of temporary sanctuary for many offenders.

implemented for the benefit of members of various churches, including clerics, monks, and nuns who might be accused of crimes. This alternative to typical punishment required church representatives to be delivered to church authorities for punishment, avoiding criminal processing through the secular court system. When originally implemented, the ecclesiastical courts (church courts) were very powerful (particularly in regard to religious matters or issues that could be connected to matters of religion), and these courts had the power to enact life sentences, if so desired. This was, however, a rarity since the church clergy members involved in crimes (clerics, monks, nuns) were often purported to have religious convictions, moral considerations, or ethical binds that mitigated their various offenses.

In addition, the ecclesiastical courts viewed negative behavior as being more a result of sin—thereby being an offense against God—rather than being purely a crime that was an offense against men or the Crown. Given this fact, and that the biblical leanings toward repentance, forgiveness, and mercy might sometimes be provided as the underlying basis for sentencing, it was common that church clergy members would be given sentences that were less punitive and more reformative in nature.

Though this might seem to be an effort to simply integrate compassion in the sentencing process, the origins of benefit of clergy had their genesis in a feudal power struggle between the Crown and the Holy Roman Catholic Church in England (Dressler, 1962). During this period, King Henry II desired more control over the church in England and wished to diminish the influence that the ecclesiastical church had on the decision-making powers of the Crown (Dressler, 1962). It was the specific desire of Henry II to subject the clerics and monks of the church to the will of the king's court (Dressler, 1962; Latessa & Allen, 1999). In doing so, the Crown would then hold dominion over the church, and power would be centralized under a secular court controlled by the king. Thus, the benefit of clergy was the churches' attempt to thwart the efforts of King Henry II and to maintain power within England. This is interesting because this is an early example of how political power struggles can impact justice-making decisions. As will be seen in later sections of this text, many of the programs that are implemented in both prison and community corrections systems are steeped in ideology or have their beginnings attributed to some form of political debate over crime and punishment. The benefit of clergy is a very early example of how ideology and public policy become intertwined and how both are shaped and crafted due to power struggles between opposing parties. This also demonstrates that justice, in its purest form, is manipulated by the underlying desires of those in power. Further, this demonstrates that social forces can impact sanctions that are utilized on a widespread basis. This will be an important point in later sections as well, demonstrating that history does indeed repeat itself and likewise makes clear the fact that community corrections does not operate in a social vacuum.

Through benefit of clergy, ordained clerics, monks, and nuns were transferred to what was referred to as the bishop's court of the Holy Roman Catholic Church. Though it was initially reserved for church clergy members, by the 14th century this form of leniency had been made available to all who were literate (Latessa & Allen, 1999). Judges in secular courts provided this option but required offenders to demonstrate that they were indeed literate. The test of literacy required that the offender read the text of Psalm 51 out loud in front of the judge. However, criminals being a fairly wily and crafty lot began to memorize the verse. Many criminals who were not literate at all but were able to stand before a judge looked at the page with Psalm 51 and recited the verses from memory, all without being able to actually read the verses in front of them. Presuming the criminal could master the verses—word for word—and could recite them when before witnesses, a lighter sentence was theirs to be had. Naturally, one could test their ability to read by requiring the accused to point at specific words within the text, and this is precisely what occurred in later years as judges became aware of the past deception that had occurred in their courts.

However, it is the case that most who were literate at this time were also financially well off. Thus, this benefit tended to aid those who had power meanwhile ignoring the plight of the poor who were more vulnerable. Rather, it was typically the poor and the underclasses who were most often given incarcerative sanctions (not much different from today's socioeconomic sentencing demographic). This was an especially important option given England's penchant for the death penalty during the centuries that followed. Benefit of clergy was thus a means of escaping a very tough sentencing scheme for minor crimes. Over time, the English criminal law did achieve a much better sense of parity or proportionality. Because of these changes, the benefit of clergy was effectively abolished in 1827 since it was no longer necessary to safeguard persons from an unwieldy and brutal sentencing structure.

## Judicial Reprieve

Later, during the last part of the 1700s, it became increasingly common for judges in England to utilize the third alternative method of punishment known as judicial reprieve. The use of judicial reprieves was actually at the full discretion of judges, and they were used in cases where judges did not believe that incarceration was proportionate to the crime or in cases where no productive benefit was expected. The judicial reprieve simply suspended sentences of incarceration as an act of mercy or leniency. Naturally, as might be expected, this option was reserved for offenders who had committed minor infractions of the law and who did not have prior records. While the offender was on reprieve, the offender retained their liberties and freedoms. Upon the expiration of a specified period of time, the offender was then able to apply to the Crown of England for a full pardon (Cromwell et al., 2002).

In these cases, judges made decisions based on their own hunches as to the likelihood of offender outcomes, and this was regardless of the number of inmates in their local jail. In fact, jailers often received a substantial income from fees obtained through the provision of goods and services to inmates within their charge. In a literal sense, a jailer's income was enhanced when they had high numbers of inmates in their facility; therefore, the more inmates in a facility, the more income that was produced for the jailer. Thus, it was not at all in the jailer's best interest to limit the number of inmates, particularly when one considers that there were no standards of care that jailers had to meet. Simply put, inmates could be crammed into jail facilities without any concern of public or court reprisal. Therefore, jailers had everything to gain and nothing at all to lose when overcrowding their jail facility.

Then, it is clear that jailers would not have desired widespread use of reprieves since this would essentially block their income. Thus, when judges did use reprieves it was simply due to their own genuine concern for the inmate's welfare rather than pressure related to overfilled facilities. Cromwell et al. (2002) went so far as to note that judicial reprieves were a method by which judges "recognized



▲ **Photo 1.2** Stan Davis (left), Brother Jim Fogerty (middle), and Willie J. R. Fleming all work in an area of Chicago known as Cabrini Green. This area has been plagued with high crime and has a disproportionate amount of it. Cabrini Green is known for having serious gang problems. These three men work with gang offenders, providing faith-based and community-based interventions. These men are prime examples of how church-based interventions work with modern day offender populations.

that not all offenders are dangerous, evil persons” (p. 27) and thus sought to avoid prescribing the specified punishment when such punishment was simply out of sync with the judge’s perception of the offender’s temperament or demeanor. This is again important because it demonstrates that, at base, reprieves were actually provided as a form of compassion in the hope that the offender would be deterred from criminal activity in the future. Such a perspective is nothing less than a rehabilitative perspective whereby the reintegration of the offender is given priority over mere desires for punishment.

## Recognizance

Finally, recognizance in the United States is often traced to the case of *Commonwealth v. Chase* (1830) in which Judge Thacher of Boston, Massachusetts, found a woman named Jerusha Chase guilty of stealing from inside a home (Grinnel, 1941). Ms. Chase pleaded her guilt but did have numerous friends who also pleaded for mercy from the court. This resulted in her release “at large” on her own recognizance until which time she was called to appear before the court (Begnaud, 2007). The accused was likewise acquitted before the same court of another charge of larceny and was only sentenced for her prior 1830 crime (Begnaud, 2007; Grinnel, 1941).

Begnaud (2007) contended that this use of recognizance in the United States is the first antecedent to probation given that the convicted was released into society but if subsequent criminal act were charged could then be charged further for the original crime that led to their initial contact with the court. Latessa and Allen (1999) supported this contention by demonstrating that ever more aspects of modern probation began to also appear in the use of recognizance in England. This practice, also known as “binding over,” involved the use of

a bond or obligation entered into by a defendant, who is bound to refrain from doing, or is bound to do, something for a stipulated period, and to appear in court on a specified date for trial or for final disposition of the case. (Dressler, 1962, p. 9; Latessa & Allen, 1999, p. 108)

As with judicial reprieves, this alternative to incarceration was usually only used with offenders who had committed petty crimes. If the offender violated the terms of this agreement, the binding was claimed by the state, and the offender might then face incarceration or some other form of punishment—often including physical sanctions (Latessa & Allen, 1999).

Latessa and Allen (1999) noted that this sanction has sometimes been thought to consist of the very beginnings of community supervision because this sanction included the supervision of a sentence and provided conditional freedom that was leveraged against possible revocation of the offender’s recognizant release.

## Philosophical Basis of Community Corrections—Both Probation and Parole

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Within the field of corrections itself, four goals or philosophical orientations of punishment are generally recognized. These are retribution, **deterrence** (both general and specific), **incapacitation**, and rehabilitation. Two of these orientations focus on the offender (rehabilitation and **specific deterrence**) while the other orientations (**general deterrence**, retribution, and incapacitation) are thought to generally focus more on the crime that was committed. The diversity and interaction of these goals typically reflect



not only the desire to punish the offender but also serve as a reflection of the true causes of criminal behavior (Woodahl & Garland, 2009). The intent of this section is to present philosophical bases specifically related to community corrections and offender reintegration. However, it is useful to first provide a quick and general overview of the four primary philosophical bases of punishment. Each of these philosophical bases of punishment will be discussed in greater detail in Section IV of this text, but a quick introduction to these concepts is provided here for student reference when completing the remainder of the current section.

Retribution is often referred to as the “eye for an eye” mentality and simply 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 that they have committed. In other words, retribution implies proportionality of punishments to the seriousness of the crime committed. Deterrence includes general and specific deterrence. General deterrence is intended to cause vicarious learning whereby observers see that offenders are punished for a given crime and therefore themselves are discouraged from committing a like mannered crime due to fear of similar punishment. Specific deterrence is simply the infliction of a punishment upon a specific offender in the hope that the particular offender will be discouraged from committing future crimes. Incapacitation simply deprives the offender of their liberty and removes them from society with the intent of ensuring that society cannot be further victimized by that offender during the offender’s term of incarceration. Lastly, rehabilitation implies that an offender should be provided the means to fulfill 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.

Numerous authors and researchers associated with the field of community corrections have noted that the underlying philosophical basis of both probation and parole is that of rehabilitating offenders and reintegrating them into society (Abadinsky, 2003; Clear & Cole, 2003; Latessa & Allen, 1999). As we go through the text, it will become more clear that notable figures such as John Augustus (the Father of Probation) and Alexander Maconochie (the Father of Parole) were more concerned with the potential reformation of the offender when determining suitability for either sanction. The earliest theoretical and philosophical bases for both probation and parole lie in the work of Cesare Beccaria’s classic treatise entitled *An Essay on Crimes and Punishments* (1764). Beccaria is also held out to be the Father of Classical Criminology, which was instrumental in shifting views on crime and punishment toward a more humanistic means of response. Among other things, Beccaria advocated for proportionality between the crime that was committed by an offender and the specific sanction that was given. Since not all crimes are equal, the use of progressively greater sanctions becomes an instrumental component in achieving this proportionality. Naturally, community-based perspectives that utilize a continuum of sanctions (Clear & Cole, 2003) fit well with the tenets of proportionality.

The key differences between earlier approaches in processing offenders (i.e., harsh and publicly displayed punishments) and the emerging reformation emphasis that occurred during the last part of the late 1700s were grounded in the way that offenders were viewed as well as the decided intent of the criminal law (Latessa & Allen, 1999). Specifically, “the focus shifted to dealing with individual offenders, rather than focusing on the crime that had been committed” (Latessa & Allen, 1999, p. 111). The need for individualization of treatment and punishment began to be realized, with the tenets of classical criminology being central to the implementation of treatment and punishment schemes.

Classical criminology, in addition to proportionality, emphasized that punishments must be useful, purposeful, and reasonable. Rather than employing barbaric public displays (itself being a deterrent

approach) designed to frighten people into obedience through deterrence, reformers called for more moderate correctional responses. Beccaria, in advocating this shift in offender processing, contended that 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. Behavioral and learning theories will likewise be presented as the primary theoretical bases to effective community corrections interventions since they gibe well with the tenets of classical criminology, are easily assessed and evaluated, and are able to be easily integrated with most criminal justice program **objectives**.

### **Applied Theory Section 1.1**

#### **Classical Criminology, Behavioral Psychology, and Community Corrections**

In addition to Cesare Beccaria, another noteworthy figure associated with classical criminology was Jeremy Bentham. Bentham is known for advocating that punishments should be swift, severe, and certain. This has been widely touted by classical criminologists and even by many modern day criminologists who have leanings toward classical and/or rational choice theories on crime. Essentially, Bentham believed that a delay in the amount of time between the crime and the punishment impaired the likely deterrent value of the punishment in the future. Likewise, Bentham held that punishments must be severe enough in consequence as to deter persons from engaging in criminal behavior. Lastly, Bentham noted that the punishment must be assured, otherwise people will simply become more clever at hiding their crimes once they know that the punishment can be avoided.

Current research actually supports some aspects of classical criminology while refuting other points. In particular, it has been found that the certainty of the punishment does indeed lower the likelihood of recidivism. Likewise, the less time between the crime and the punishment, the less likely offenders will reoffend in the future. However, it has not been found to be true that the severity of the punishment is successful in reducing crime. In fact, there has been substantial historical research on the death penalty that seems to indicate that general deterrence is not achieved with the death penalty, even though it is the most severe punishment that can be given.

Further, research on the use of prisons has shown that prisons may actually increase the likelihood of future recidivism for many offenders. Obviously, this is counterproductive to the desire of the criminal justice system. While some offenders are simply too dangerous to have released into the community, others who are not so dangerous will ultimately be returned. Among those, the goal of any sanction should be to reduce the likelihood that they will commit crime—not increase that likelihood. The research of Smith, Goggin, and Gendreau (2002) provides evidence that the prison environment may simply increase the likelihood for recidivism among many offenders. Smith et al. (2002) conducted a meta-analysis of various recidivism studies and concluded that prisons could indeed be considered “schools of crime” (p. 21). Further, they found that the longer the term of imprisonment, the more likely offenders were to recidivate. Thus, severity of the punishment does not reduce crime, and in actuality it does indeed increase the likelihood of future crime. Other studies substantiate this research.

This alone presents a valid argument against the unnecessary use of prisons—particularly when community corrections can provide effective supervision and sanctions without the reliance on prison facilities. Community corrections sanctions can be swifter in implementation, and they are much more certain in their application. For example, many offenders may be given a certain number of years in prison but will later be released early, reducing the certainty (and severity) that they will be held to serve their intended punishment. Further, the plea bargaining system in the United States provides the opportunity for the convicted to avoid incarceration entirely, even though a prison sentence would have been given for the crime that they had committed. It is then clear that the use of such pleas detracts from the certainty of the sentence.

In addition, overcrowding may delay the time during which an offender may be placed in prison, with law enforcement jail facilities holding the offender during the interim. Further, offenders are able to avoid the assumption of responsibility for their crimes when they are simply given a sentence and allowed to serve their time without being accountable to the victim and/or society. Community corrections sentencing, on the other hand, has a number of additional conditions and programs that often require that the offender make restitution, provide services, and/or pay fines to victims and/or the community (examples of these conditions will be presented in later sections). Thus, the flexibility of this type of sanctioning provides an element of certainty that offenders will be held accountable and these types of sanctions can be administered quite quickly.

In addition, many behavioral **psychologists** note that if punishment is to be effective, certain considerations must be taken into account. These considerations, summarized by Davis and Palladino (2002), are presented here:

1. The punishment should be delivered immediately after the undesirable behavior occurs (similar to the “swiftness” requirement of classical criminologists).
2. The punishment should be strong enough to make a real difference to that particular organism. This is similar to the “severity” requirement of classical criminologists, but this point also illustrates that “severity” may be perceived differently from one person to another.
3. The punishment should be administered after each and every undesired response. *This is similar to the “certainty” requirement of classical criminologists.*
4. The punishment must be applied uniformly with no chance of undermining or escaping the punishment. When considering our justice system, it is clear that this consideration is undermined by the plea-bargaining process.
5. If excessive punishment occurs and/or is not proportional to the aberrant behavior committed, the likelihood of aggressive responding increases. *In a similar vein and as noted earlier, excessive prison sentences simply increase crime, including violent crime.*

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6. To ensure that positive changes are permanent, provide an alternative behavior that can gain reinforcement for the person. In other words, the use of reintegrative efforts to instill positive behaviors and activities must be supplemented for those that are criminal in nature. (pp. 262–263)

From this presentation it can be seen that there is a great deal of similarities between classical criminologists and behavioral psychologists on the dynamics associated with the use of punishment. This is actually important because it demonstrates that both criminological and psychological **theory** can provide a clear basis as to how correctional practices (particularly community corrections practices) should be implemented. The second consideration demonstrates the need for severity, but it illustrates a point often overlooked; severity of a punishment is in the eye of the beholder. For instance, some offenders would prefer to simply “do flat time” in prison rather than complete the various requirements of community supervision. This is particularly true for offenders who have become habituated to prison life. In these cases, the goal should not be to acclimate the offender to prison life but instead should be to have them acclimated to community life as responsible and productive citizens. Community corrections encourages this outcome and utilizes a range of sanctions that can be calibrated to be more or less “severe” as is needed by the individual offender. In other words, community corrections utilizes techniques from behavioral psychology/classical criminology in a manner that individualizes punishment for the offender. It is this aspect that makes community corrections a superior punishment and reintegration tool over prison. It is also for this reason that prison should be utilized only for those offenders who are simply not receptive to change and/or the assumption of responsibility for their crimes.

Though it is certain that there are exceptions, classical criminology does continue to serve 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 institutional and community-based corrections may provide. Not only was this presumed by John Augustus when implementing the beginning prototypes of what would later be known as formal probation, but Alexander Maconochie and Sir Walter Crofton likewise held similar beliefs when using their mark systems and methods of classifying offenders, as we will see in later sections.

It is not at all surprising that these forefathers of community corrections were affected by the work of Cesare Beccaria. Beccaria’s treatise was highly regarded and publicized throughout Europe and the United States and predated each of these person’s own innovations. In fact, classical criminology and Beccaria’s own thoughts on crime and punishment served as the primary theoretical and philosophical basis to all forms of community corrections that existed during their time. Further, as will be seen, the works of Beccaria, the tenets of classical criminology, the contentions of each of the father figures in the early history of community corrections, the use of indeterminate forms of sanctioning as leverage and motivation in obtaining offender compliance, and the later developments in behavioral and learning psychology all share

views that complement one another and are likewise congruent in nature. This then provides the primary set of theoretical and philosophical perspectives on community corrections for this text, thereby providing a consistent connection between the past and present practice of community corrections.

Thus, community corrections (probation and parole) was initially implemented to reform or reintegrate the offender. Further, if assessment of likely offender reformation is accurate, then public safety will be automatically enhanced. The job of the criminal justice system in general and that of the correctional section in particular is public safety. When further dividing the correctional section of the criminal justice system between institutional and community-based corrections, it is perhaps best explained that institutional corrections seeks public safety through incapacitation while community corrections seeks public safety through reintegration. Both are tasked with public safety as the primary function, yet each goes about achieving such protection in a different manner. Thus, as with all criminal justice functions, protection of the public is paramount, and when community corrections is concerned, the primary function is the reintegration/rehabilitation of the offender to achieve this goal.

If probation and parole are the pre- and post-incarcerative sanctions most frequently associated with community corrections, and if the philosophical basis for each is primarily one of reintegration or rehabilitation, then one must ascertain the specific theoretical approaches that should be used when achieving this function. Abadinsky (2003), in describing rehabilitation as the primary function of probation and parole, notes that there are three basic theoretical models for rehabilitation in probation and parole. These are (1) the social casework model, (2) the use of reality therapy, and (3) behavioral and/or learning theory. This text will, for the most part, incorporate Abadinsky's theoretical perspective on probation and parole for two reasons. First, the author of this current book has noted in previous publications that clinical/mental health perspectives used in the community are the best choice to use when reintegrating offenders (Hanser, 2007a). Second, the author of this text has previously pointed toward the importance of assessment and evaluation in improving current community-based correctional programs (Hanser, 2007a). Abadinsky (2003) also emphasized these points when providing his own theoretical perspective on probation and parole.

## Suggested Theoretical Approach to Reintegration and Offender Treatment

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According to Abadinsky, social casework provides concrete services to persons in need as a means of solving problems. The importance of social casework in probation and parole starts with theory and extends into the very skills and professional training that helping professionals are provided. These skills include such factors as effective interviewing, fact-finding in the offender's background, and the ability to identify and distinguish surface from underlying problems. These skills aid the clinician in getting a good baseline of the offender's challenges to effective reintegration. With this in mind, Abadinsky (2003) noted that there are three key components practiced in social casework, which are as follows:

1. Assessment: Gathering and analyzing relevant information upon which a treatment and a supervision plan should be based
2. Evaluation: Consisting of the organization of facts into a meaningful goal-oriented explanation
3. Intervention: Implementing the treatment plan. (p. 295)

Assessment is intended to provide the clinician and the community supervision officer (CSO) with a clear understanding of the client's current level of functioning. The presentence investigation report (PSI)—which

will be discussed later in this text—is perhaps a very effective and pragmatic assessment, being a compilation of numerous areas of functioning that must be considered for each offender. This is also a good example of how supervision and treatment plans may work hand in hand to augment one another (Hanser, 2007a). Assessment includes the gathering of information from documents and through interviews with the offender as well as other persons who are familiar with the offender (Abadinsky, 2003). The need for effective assessment will be discussed in greater detail later in this text, but for the time being it is sufficient to state that assessment serves as the foundation to everything else that follows, both in relation to treatment and public safety. Thus, assessment is the cornerstone to meeting the manifest factor related to offender reintegration and the latent factor of public safety.

Evaluation is the process whereby assessment data are incorporated into the planning process to assist in goal setting for the offender. Perlman (1957) suggested that this phase of social casework includes

1. The nature of the problem and the goals sought by the client, in their relationship to
2. The nature of the person who bears the problem, his or her social and psychological situation and functioning, and who needs help with his or her problem, in relation to
3. The nature and purpose of the agency and the kind of help it can offer or make available. (pp. 168–169)

The evaluation plan takes into account both the processes and the desired outcomes for effective offender reintegration. These components must be clearly defined at the outset and both require consistent monitoring throughout the entire period of offender supervision. The most effective form of evaluation design will include a pretest (once the offender begins supervision) and a posttest (when the offender has successfully completed their sentence) to determine progress that can be attributed to either interventions that are employed or supervision regimens that are maintained.

Lastly, intervention involves activities, assignments, and routines that are designed to bring about behavior change in a systematic manner, resulting in goal-directed behavior toward the desired community supervision outcome. The specific relationship between the CSO and the offender is actually quite important. One might be surprised to find that many offenders do develop some degree of affinity for their supervision officer. Naturally, the CSO does have authority over the client and must ensure that the client maintains requirements of their supervision. Regardless of any collaboration between the offender and the officer, it is the officer's task to maintain close watch over the offender and ensure that compliance is maintained.

Reality therapy is based on the notion that all persons have two specific psychological needs: (1) the need to belong and (2) the need for self-worth and recognition. Therapists operating from a reality therapy theoretical perspective seek to engage the offender in various social groups and to motivate them in achievement-oriented activities. Each of these helps meet the two psychological needs that are at the heart of most all human beings. Further, therapists maintain a warm and caring approach, but reality therapy rejects irresponsible behavior. Therapists are expected to confront irresponsible or maladaptive behavior and are even expected to set the tone for “right” or “wrong” behavior. This is an unorthodox approach when compared to other theoretical perspectives in counseling and psychotherapy since it is often thought that therapy should be self-directed by the client. Reality therapy encourages—indeed it expects—the therapist to be directive.

In addition, reality therapy has been used in a number of correctional contexts, both institutional and community based. Indeed, the tenets of reality therapy are complementary to community supervision

where direct interventions are often necessary and where a client may have to be told that they have committed a “wrong” behavior. Lastly, William Glasser (the founder of reality therapy) has expressed a great deal of support for correctional agencies in general and for CSOs in particular, but he does caution against the excessive use of punishments to correct offender behavior, especially among juvenile offenders (note that this is consistent with classical criminological concepts). This is because punishment can often serve as a justification or rationalization for further antisocial behavior, particularly if it is not proportional to the offense (especially technical offenses) and the criminogenic peer group will likely reinforce these faulty justifications. On the other hand, when a given penalty is actually proportional and is consistent with the listed sanctions, such countereffects do not seem to occur.

Lastly, one primary theoretical orientation used in nearly all treatment programs associated with community corrections 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 that other consequences tend to lessen the likelihood that a given behavior is repeated. A primary category of behavior modification occurs through operant conditioning. Those consequences that strengthen a given behavior are called reinforcers. Reinforcers can be both positive and negative, with **positive reinforcers** being rewards for a desired behavior. An example might be if we provided a certificate of achievement for offenders who completed a life skills program. **Negative reinforcers** are unpleasant stimuli that are removed when a desired behavior occurs. An example might be if we agreed to remove the requirement of wearing **electronic monitoring** (EM) devices when offenders successfully maintained their scheduled meetings and appointments for one 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 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. For instance, we might require the offender to pay an additional late fee if they are late in paying their restitution to the victim of their crime. A **negative punishment** is the removal of a valued stimulus when the offender commits an undesired behavior. An example might be when we remove the offender’s ability to leave their domicile for recreational or personal purposes (placed 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.

Operant conditioning tends to work best if the reinforcer or the punishment is applied immediately after the behavior (again, similar to classical criminology). Likewise, reinforcers work best when they are intermittent in nature rather than continual since the offender must exhibit a desired behavior with reward given at unpredictable points, thereby instilling a sense of delayed gratification (rather than instant gratification). Punishments, on the other hand, have been found to work best when they are in close proximal time of the undesired behavior (swift), sufficient enough to prevent repeating the behavior (severe), and when there is no means of escaping the punisher (certain). These findings have been determined through empirical research and are consistent with the notions of classical criminology, which was previously discussed. Lastly, behavioral psychologists have found that excessive punishments can (and often do) breed hostility among subjects: specific hostility toward the punisher in particular and general hostility that is generalized within the environment. Thus, this is support for Beccaria’s point that punishments should not be excessive but should be proportional to the crime. To do more may unwittingly create a more hostile future offender.

## Legislative Response to the Community

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Although the classical school may provide the foundation for many of the sentencing policies we currently utilize, legislature and policy makers continue to look for options that allow for the punishment of offenders combined with continued community safety. In spite of community sentiment that limits the ability for legislators to get reelected if seen as being too “soft on crime,” no individual wants to support mechanisms that may in fact enhance criminal activity once the offender is released from an institution. Therefore, in an effort to enhance the reintegration of offenders into communities, two specific acts hold particular importance in these efforts: the Community Corrections Act (CCA) and the Second Chance Act. Each of these acts will briefly be reviewed next.

### Community Corrections Act

During the early 1970s, as part of a larger commitment to involving local communities in handling offenders and an overall loss of faith by both conservatives and liberals to trust state governments to uphold rehabilitative efforts, CCAs were developed and passed. These acts specifically attempt to address the needs of local communities and the value of partnerships between state and local governments (Cromwell et al., 2002; Harris, 1996). Harris (1996) defined CCAs as “a statewide mechanism included in legislation for involving citizens and granting funds to local units of government and community agencies to plan, to develop, and to deliver correctional sanctions and services at the local level” (p. 199). The first CCA was passed in Minnesota in 1973 (Harris, 1996). Since that time, nearly all states have enacted legislation to implement community corrections agencies at the local level. Four models have been offered for states to follow: Minnesota model, Iowa model, Colorado model, and “Southern” model. There are common explicit and implicit goals within each of these models. The common goals include the following:

- Increasing public safety
- Improving local programs
- Promoting collaboration between states and the local communities
- Promoting creative options and flexibility within the community
- Providing a wide range of options within the community

Likewise, a central component of these programs is to decentralize the authority so that programs can be tailored to the local needs and citizens. CCAs also provide opportunities for local citizen involvement. For example, the state of Indiana’s Community Correction legislation allows for probation and parole to be governed by the Department of Correction (DOC) directly, and these services are provided in support of that mission. (See Section VII for an example of Indiana’s Community Corrections Program Elements—Indiana Criminal Code 11-12-1 et. seq.) These components require local planning supported by state funding (Harris, 1996). Although these agencies differ in terms of their responsibilities, they are designed to provide alternative reintegration strategies both at the front end and back end of the system.

### Second Chance Act

Every year, over 600,000 prisoners reenter communities. In 2007, the then president Bush signed the Second Chance Act into legislation as a way to provide local communities with support in assisting offenders in a safe



and successful transition back into the community from the prison. The focus of this effort is on “job training, housing, and mental health and substance abuse treatment” (Schultz, 2006, p. 22). The Second Chance Act is specifically designed to expand upon previous efforts related to offender reentry projects. Federal funds have been designated to establish the National Adult and Juvenile Offender Reentry Resource Center. Grant monies are to be distributed to local communities to assist with reducing the overlap in services, enhance mentoring programs for offenders returning to their communities, provide more drug treatment at the local level, and enhance family bonds particularly with children. Because this act is so new, no research on the effectiveness of these legislative efforts has been conducted. This effort does, however, demonstrate the commitment by federal, state, and local officials to address the needs of overcrowding within the correctional system and the need for responding to the families of those incarcerated in an effort to reduce future offending.

## Community-Based Options

Fortunately for offenders and the community, alternatives to incarceration and ways to enhance reintegration back into communities continue to evolve rather than remain stagnant. As mentioned previously in this section, the need to supervise offenders in the community derives not only from issues addressing overcrowding but also the recognition that 95% of individuals entering prison return to their communities. Ultimately, the question that arises is what type of offender do you want in your community? Do you want someone with skill sets such as job retraining and who has received mental health and substance abuse counseling, when necessary, or someone who essentially was forgotten by society for an extended time period and expected to reintegrate flawlessly? Additionally, as you have seen, communities have increased the number of alternatives that give offenders the opportunities to remain in residence. Known as a continuum of sanctions, the options available allow those in the criminal justice system the opportunity to oversee these offenders in such a way to simultaneously ensure the successful reintegration of offenders and ensure community safety. Throughout this text you will be presented with a variety of different ideologies and responses to criminal behavior. DiMascio (1997) offered a general description of potential continuum of sanctions offered in communities.

First, **probation** is viewed as the least severe sanction. This option may be used in conjunction with a suspended sentence and any other options. For this sanction, offenders meet with their probation officer periodically, albeit in person or via call-in supervision.

**Intensive supervision** is an enhanced version of regular probation. With this option, offenders have increased contacts with their probation officer. Typically, these contacts begin with three to five times a week with regular drug and alcohol screenings. Contacts are diminished as the offender demonstrates success on this option.

**Restitution** and **finances** are typically used in conjunction with probation, although they may be used as stand-alone sanctions. Fines are the most frequently used sanction. European countries have begun to expand the use of this sanction with the concept of proportionality in mind with the creation of day fines.

**Community service** is one sanction also used as a stand-alone option or in conjunction with other community-based alternatives. This option requires offenders to voluntarily donate their time back to serving their community in many unique ways.

**Substance abuse treatment** referrals are often provided when the offense either includes some substance or there is evidence during the intake process that an offender needs such a referral.

**Day reporting centers** in theory require that offenders report to a centralized location on a daily basis to receive treatment and/or education. This alternative provides increased supervision of the offender without incarceration.

**House confinement** and EM programs are typically used in conjunction with some form of intensive probation supervision. Offenders are monitored very closely, being required to remain in their homes unless leaving for work, school, doctor appointments, or court appointments.

**Halfway houses** are used in residential settings. Although based in the community, offenders are required to remain in the house at night but are allowed to obtain employment in their respective communities. This option provides assistance for a seemingly seamless transition back into the community.

**Boot camp** alternatives incorporate the rigorous military style punishments. These programs are designed as short-term residential options whereby offenders are given acceptable punishments and discipline.

Prisons and **jails** serve as the final option on the continuum of sanctions. This option is used as a last resort, whereby offenders who are unable to successfully navigate the community-based options may have their sentences revoked with a short- or long-term stay in a confined setting.

Each of these options will be covered in more detail throughout the text. They are to be used as a basis for understanding the types of sanctions and alternatives utilized in the community.

## Conclusion

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It is clear that community corrections have gone through a long and complicated process of development. Throughout this process, the specific purpose of community corrections has not always been clear. Indeed, many recognized experts, authors, and researchers offer competing views on the purpose of community corrections, resulting in a great deal of confusion and uncertainty related to the effectiveness of community-based sanctions. The importance of a clear definition as well as a clear rationale for the use of community corrections sanctions has been illustrated. Further, this section has traced the historical developments and philosophical precursors to both probation and parole. These developments help to make sense of the various challenges associated with community corrections sanctions and also provide guidance for future uses of these sanctions. Lastly, it is clear that there is a great deal of variety from state to state in regard to the community supervision process. The implementation of probation and parole comes in many shapes, forms, and methods, creating a rich yet challenging process of offender supervision in communities throughout the United States.

## Section Summary

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- Community-based corrections includes all non-incarcerating correctional sanctions imposed upon an offender for the purposes of reintegrating that offender within the community.
- Community corrections extends beyond an alternative to incarceration to include primary sanctions as well as alternatives.

- Individuals who are reintegrated back into their communities are more likely to produce something of material value: pay restitution, court fines, victim compensation, etc. In addition, they may be involved in prosocial activities. Their informal social controls are enhanced, and their liberty is not restricted. Offenders will be able to maintain or obtain employment and seek treatment, and the effects of collateral consequences are diminished.
- The historical development of community-based corrections can be traced back to four European sanctions: (1) sanctuary, (2) benefit of clergy, (3) judicial reprieve, and (4) recognizance.
- Community-based corrections has a grounding in the four philosophies of punishment: (1) retribution, (2) deterrence, (3) incapacitation, and (4) rehabilitation. Rehabilitation and specific deterrence are geared toward the offender while general deterrence, retribution, and incapacitation are aimed toward the crime.
- Community-based correctional sanctions should incorporate the elements of social casework, which include assessment, evaluation, and intervention.
- Two legislative acts were highlighted as those influencing community-based corrections in the 21st century: CCA and the Second Chance Act.
- Community-based corrections operates on the assumption of a continuum of sanctions whereby offenders depending upon their actions may be moved up or down the continuum of level of supervision/intrusiveness.

### KEY TERMS

Benefit of clergy	Incapacitation	Recognizance
Cesare Beccaria	John Augustus	Rehabilitation
Community corrections	Judicial reprieve	Retribution
Community Corrections Act (CCA)	Negative punishment	Sanctuary
	Negative reinforcers	Second Chance Act
Continuum of sanctions	Positive punishment	Specific deterrence
General deterrence	Positive reinforcers	

### DISCUSSION QUESTIONS

1. How did early alternative sanctions administered in Europe influence community-based corrections as we know it today?
2. Which philosophy of punishment best describes community-based corrections? Why?
3. It can be argued that the skills necessary to supervise offenders in the community are based on the social casework model of assessment, evaluation, and intervention. What are these elements, and why are they important to incorporate into community-based corrections?

4. What are CCAs? Does your state have a CCA/division? If so, how is it structured?
5. When thinking about community-based corrections, what does it mean to say that a continuum of sanctions is used for keeping offenders within your community?

## WEB RESOURCES

*Council on Crime and Justice:*

<http://crimeandjustice.org/>

*Center for Community Corrections:*

[http://centerforcommunitycorrections.org/?page\\_id=78](http://centerforcommunitycorrections.org/?page_id=78)

*ACT Community Coalition on Corrections:*

<http://www.correctionscoalitionact.org.au/>

*Comprehensive Community Corrections Act and Pretrial Services Act Annual Report to the Legislature July 2005–June 2006:*

<http://www.dcs.virginia.gov/corrections/pretrial/annualReportFY2006.pdf>

*Second Chance Act—Reentry Policy:*

[http://www.reentrypolicy.org/government\\_affairs/second\\_chance\\_act](http://www.reentrypolicy.org/government_affairs/second_chance_act)

*Second Chance Act of 2007:*

<http://www.govtrack.us/congress/bill.xpd?bill=h110-1593>

*National Reentry Resource Center—Second Chance Act:*

<http://nationalreentryresourcecenter.org/about/second-chance-act>

*States Want Second Chance Act Funded:*

<http://www.stateline.org/live/details/story?contentId=357802>

*Families Against Mandatory Minimums:*

[http://www.famm.org/Repository/Files/032008\\_FAQ\\_Second\\_Chance\\_ActFINAL.pdf](http://www.famm.org/Repository/Files/032008_FAQ_Second_Chance_ActFINAL.pdf)

*Criminon of Maine:*

<http://criminalrehabilitation.org/>

Please refer to the student study site for web resources and additional resources.

## How To Read A Research Article

As you travel through your criminal justice and criminology studies, you will soon learn that some of the best-known and emerging explanations of crime and criminal behavior come from research articles in academic journals. This book is full of research articles, and you may be asking yourself, how do I read a research article? It is my hope to answer this question with a quick summary of the key elements of any research article, followed by the questions you should be answering as you read through the assigned sections.

Every research article published in a social science journal will have the following elements: (1) introduction, (2) literature review, (3) methodology, (4) results, and (5) discussion/conclusion.

In the introduction, you will find an overview of the purpose of the research. Within the introduction, you will also find the **hypothesis** or hypotheses. A hypothesis is most easily defined as an educated statement or guess. In most hypotheses, you will find that the format usually followed is if X, Y will occur. For example, a simple hypothesis may be the following: If the price of gas increases, more people will ride bikes. This is a testable statement that the researcher wants to address in his or her study. Usually authors will state the hypothesis directly but not always. Therefore, you must be aware of what the author is actually testing in the research project. If you are unable to find the hypothesis, ask yourself what is being tested or manipulated and what are the expected results.

The next section of the research article is the literature review. At times, the literature review will be separated from the text in its own section, and at other times, it will be found within the introduction. In any case, the literature review is an examination of what other researchers have already produced in terms of the research question on prices and bike riding; we may find that five researchers have previously conducted studies on the increase of gas prices. In the literature review, the author will discuss their findings and then discuss what his or her study will add to the existing research. The literature review may also be used as a platform of support for the hypothesis. For example, one researcher may have already determined that an increase in gas prices causes more people to roller-skate to work. The author can use this study as evidence to support his or her hypothesis that increased gas prices will lead to more bike riding.

The methods used in the research design are found in the next section of the research article. In the methodology section, you will find the following: who/what was studied, how many subjects were studied, the research tool (e.g., interview, survey, or observation), how long the subjects were studied, and how the data that were collected were processed. The methods section is usually very concise, with every step of the research project recorded. This is important because a major goal of the researcher is **reliability**; describing exactly how the research was done allows it to be repeated. Reliability is determined by whether the results are the same.

The results section is an analysis of the researcher's findings. If the researcher conducted a quantitative study, using numbers or statistics to explain the research, you will find statistical tables and analyses that explain whether or not the researcher's hypothesis is supported. If the researcher conducted a qualitative study—non-numerical research for the purpose of theory construction—the results will usually be displayed as a theoretical analysis or interpretation of the research question.

The research article will conclude with a discussion and summary of the study. In the discussion, you will find that the hypothesis is usually restated, and there may be a small discussion of why this was the hypothesis. You will also find a brief overview of the methodology and results. Finally, the discussion section looks at the implications of the research and what future research is still needed.

Now that you know the key elements of a research article, let us examine a sample article from your text.

## **What Influences Offenders' Willingness to Serve Alternative Sanctions?**

**David C. May and Peter B. Wood**

1. What is the thesis, or main idea, from this article?
  - The thesis, or main idea, of this article can be found in the introductory paragraph. In this study, the authors argue that much of the literature relative to offenders serving their sentence in the community is related to community satisfaction. In this study, the authors contend that successful completion of a sentence may be contingent upon the offenders' perception of the severity of the sanction, therefore calling into question the viability of a continuum of sanctions that is being used within community-based corrections.
2. What is the hypothesis?
  - Again, the hypothesis can be found in the introductory paragraph and later at the end of the literature review in the form of research questions. In this study, the hypothesis is stated as "What demographic, correctional experience, and attitudinal indicators make one more likely to avoid a sanction altogether?" and "What demographic, correctional experience, and attitudinal indicators help predict the amount of an alternative offenders will endure to avoid one year of imprisonment?"
3. Is there any prior literature related to the hypothesis?
  - This article does have a section devoted to the previous literature. Albeit brief, May and Wood select those studies that have assessed offenders' willingness to serve non-incarcerative sanctions. They use the previous works to identify the weaknesses in the research and to develop their research questions and hypotheses.
4. What methods are used to support the hypothesis?
  - May and Woods' research methodology is referred to as cross-sectional survey methodology. In this study, they identify 800 offenders serving nonviolent sentences in the Oklahoma DOC for inclusion on the study. A survey was administered to each of these offenders by their case managers. Just over 51% agreed to participate ( $n = 415$ ). The authors argue that this is a comparative sample to other studies conducted on this subject.

5. Is this a qualitative study or quantitative study?
  - To determine whether the study is qualitative or quantitative, you must look to the statistical analysis and the results. In this study, the authors use a multivariate statistical analysis to explore what influences the offenders' willingness to serve. Because May and Wood use numerical statistics to examine the hypothesis, it is safe to say that this study is quantitative.
6. What are the results, and how do the authors present the results?
  - Because this is a quantitative study, the results are found in the results section, the discussion, and further summarized in the conclusion. The results are presented in the original article in table format with detailed explanation in the text of how the authors conducted the statistics and the results. The results are then interpreted in the discussion section by variable. For this study, the key findings suggested that younger inmates, those with higher levels of education, women, those who were married, and those who had served the proposed alternative previously were more likely to agree to the various presented sanctions than their counterparts. This study points to the need to further examine community-based sanctions as being viewed as "soft" on crime. As illustrated by one fourth of participants refusing to serve any time in the community and the mixed results of those who consider it, the overall intrusion in the lives of offenders combined with relatively generous good time and release policies may be worth the gamble to offenders to avoid being supervised in the community. Likewise, those with the greatest bonds to their communities and those with the most to lose if incarcerated appear to be willing to make the sacrifice of serving their sanction in the community and avoiding the stigmatization of serving time behind bars.
7. Do you believe that the authors provided a persuasive argument? Why or why not?
  - This answer is ultimately up to the reader to decide by examining the research questions/hypotheses, the methods employed, and the ultimate findings. We believe based upon the methodology and the results that the authors do present a persuasive argument that the idea of a continuum of sanctions may not truly exist. Further, with an understanding of other theoretical literature, the finding that those offenders who have the greatest bonds to society are most willing to serve the sentences there are also those offenders who are least likely to recidivate.
8. Who is the intended audience of this article?
  - When reading the article, you must ask yourself who/whom is/are the authors intending to read this study and how might it inform those individuals. After reading this article, you should be able to ascertain that May and Wood are writing for students, professors, criminologists, agency personnel, and policy makers.
9. What does the article add to your knowledge of the subject?
  - Again, this question is best left to the reader to decide. However, one way to answer the question is as such: Previous research has explored the public satisfaction with offenders serving

their sentences in the community. This study expands that literature by asking those serving these sentences not only were they willing to serve them but what factors increased their likelihood of willingness to serve a particular sentence. The results offer some insight to policy makers on how to reconcile not only community sentiment for punishment but increase the likelihood for successful reintegration and rehabilitation of the offender.

10. What are the implications for criminal justice policy that can be derived from this article?
  - The implications of the study can be found in the conclusion. In this study, the authors explicitly identify three policy implications. To summarize, first, they contend that the results call into question whether a continuum of sanctions actually exists and whether it is successful. Second, they find that perceptions of the sanction may differ based upon which sanctions are being proposed to a particular offender. The offenders' willingness to serve a particular sanction may be based more on their personal circumstances (e.g., job, family, or physical prowess) than the mere existence of options. So these external circumstances should be taken into consideration. The third and final implication of the research addresses the use of multivariate statistics and the ability to expand the literature by exploring the relationship between factors such as demographics, education, etc., and the offenders' willingness to serve. The results reveal that the relationship is rather complex and the administering of sanctions should not be completed with a one size fits all mentality.

Now that we have gone through the elements of a research article, it is your turn to continue through your text, reading the various articles and answering the same questions. You may find that some articles are easier to follow than others, but do not be dissuaded. Remember that each article will follow the same format: introduction, literature review, methods, results, and discussion. If you have any problems, refer to this introduction for guidance.



## READING

In this essay, Andrew von Hirsch explored the ethical dilemmas faced by increasing the use of noncustodial sanctions. The author identified two specific areas of ethical concerns faced by those administering noncustodial sanctions: (1) proportionality (just deserts) and (2) the level of intrusiveness into the privacy of one's life—particularly for third parties. In terms of proportionality, von Hirsch pointed to the disjuncture between what “works” and the severity of the sanction. As illustrated by the previous research, most programs are considered effective if the offender does not return to the attention of the system. This, however, does not consider the punitiveness of the sanction relative to the harm caused to society. This is particularly troublesome when the use of alternatives such as intermediate sanctions essentially turns the individuals' home into a prison. Although attractive in their presentation, these sentences may not serve to meet the proportionality needs of the system, the victim, or the offender.

When considering the fallacies of intrusiveness, von Hirsch pointed to the flaws in the arguments that anything is better than prison and that intrusiveness is a matter of technology and issue of legalism. Based upon his review of both the proportionality of sanctions and the intrusiveness into the daily lives of individuals, von Hirsch devised what he termed the acceptable penal content. It is within this framework that he argued we should consider both custodial and noncustodial sanctions. In his conclusion, von Hirsch cautioned policy makers to consider as we further develop the use of community-based alternatives that we may in fact be creating a mechanism for further humiliating and damaging the lives of offenders than the use of incarceration strategies.

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### ***The Ethics of Community-Based Sanctions***

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Andrew von Hirsch

**I**mprisonment is a severe punishment, suited only for grave offenses. Crimes of lesser and intermediate gravity should receive nonincarcerative sanctions. Such sanctions long were underdeveloped in the United States, and it is gratifying that they are now attracting interest. Noncustodial penalties, however, raise their own ethical questions. Is the sanction proportionate to the gravity of the crime? Is it unduly intrusive, upon either defendants' human dignity or the privacy of third persons?

In the enthusiasm for community-based sanctions, such issues are easily overlooked. Harsh as imprisonment is, its deprivations are manifest—and so, therefore, is the need for limits on its use. Noncustodial penalties seem humane by comparison, and their apparent humanity can lead us to ignore the moral issues. As Allen (1964) warned us two decades ago, it is precisely when we seem to ourselves to be “doing good” for offenders that we most need to safeguard their rights.

This essay will address two kinds of ethical issues involved in noncustodial sanctions. One concerns just deserts: that is, the proportionality of the sanction to the gravity of the crime of conviction. The other issue—or, as we will see, cluster of issues—concerns the “intrusiveness” of the sanction, that is, the constraints that are needed to prevent punishments in the community from degrading the offender or threatening the rights of third parties.

## Proportionality and Desert

The issue of proportionality in community-based sanctions has suffered a double neglect. Desert theorists, when writing on proportionality and its requirements, tended to focus on the use and limits of imprisonment, paying little attention to community sanctions. Reformers involved in developing these sanctions, meanwhile, gave little thought to proportionality.

The disregard of proportionality has reinforced a tendency to assess community-based sanctions principally in terms of their effectiveness. If a program (e.g., an intensive supervision scheme) seems to “work” in the sense of its participants having a low rate of return to crime, then it is said to be a good program. Seldom considered are questions of the sanction’s severity and of the seriousness of the crimes of those recruited into the program.

Imprisonment is obviously a severe punishment, and its manifestly punitive character brings questions of proportionality into sharp relief. Noncustodial measures, however, are also punishments—whether their proponents characterize them as such or not. A sanction levied in the community, like any other punishment, visits deprivation on the offender under circumstances that convey disapproval or censure of his or her conduct. Like any other blaming sanction, its degree of severity should reflect the degree of blameworthiness of the criminal conduct.<sup>1</sup> In other words, the punishment should comport with the seriousness of the crime.

The punitive character of noncustodial sanctions, however, is often less visible to those who espouse them. Because these sanctions are often advertised as more humane alternatives to the harsh sanction of imprisonment, the deprivations they themselves

involve are often overlooked. Because the offender no longer has to suffer the pains of confinement, why cavil at the pains the new program makes him or her suffer in the community?

Such attitudes are particularly worrisome when it comes to the newer noncustodial sanctions, which include such measures as intensive supervision, community service, home detention, and day-fines.<sup>2</sup> These sanctions often involve substantial deprivations: intensive supervision and home detention curtail an offender’s freedom of movement, a community-service program exacts enforced labor, a day-fine may inflict substantial economic losses. Part of the attraction of these programs has been that their more punitive character gives them greater public credibility than routine probation and, hence, makes them plausible substitutes for imprisonment. In short, these are sanctions of intermediate severity. But then it must be asked: Are the offenses involved serious enough to make the sanction a proportionate response? Often, the answer to this question is no. Clear (this issue) points out that intensive supervision programs tend to be applied to offenders convicted of the least serious felonies because program organizers feel that such persons would be more likely to “cooperate.”

When devising community penalties, reformers should ask themselves about the proportionality of the sanction. They might begin by posing a few simple questions. First, how serious are the crimes that the proposed sanction would punish? Seriousness is a complex topic (see von Hirsch, 1985, ch. 6), but rough-and-ready assessments should be possible. For example, several sentencing commissions (most notably, those of Minnesota, Washington, and Pennsylvania) have explicitly ranked the gravity of crimes on a rating scale (von Hirsch, Knapp, and Tonry, 1987); those rankings could be drawn upon, supplemented by common-sense arguments about the appropriateness of particular rankings.

Second, how severe is the proposed sanction? Severity is likewise a complex topic (see von Hirsch, Wasik, and Greene, 1989), but, again, a common-sense assessment is possible. If one assumes routine probation to be lenient and imprisonment to be severe, one can make a comparative judgment of the onerousness of the

proposed sanction. This would involve inquiring about the extent of restriction of freedom of movement, of monetary deprivation, etc., and it should yield a rough assessment of whether the sanction is mild, intermediate, or more severe. In assessing severity, the preventive as well as punitive aspects of the sanction should be considered. An intensive supervision program that, for example, involves curfews or periods of home detention invades personal liberty to a significant extent, and is therefore quite severe. This holds true whether the purpose of the detention is to punish or to restrain or cure.

Asking such questions will put reformers in the position to begin to make judgments about commensurability. Potential mismatches will begin to become apparent, for example, the imposition of sanctions of intermediate or higher severity on lesser crimes.

There are more sophisticated models available for gauging commensurability that are applicable to non-custodial penalties. One actual project—the Vera Institute’s day-fine project in Staten Island, New York—has developed explicit standards: Crimes are rated on a seriousness scale, and monetary penalties are arrayed accordingly (Greene, 1988). Theoretical models are also beginning to develop. I refer interested readers to a general account of how desert principles apply to community punishments (von Hirsch et al., 1989), as space does not permit me to summarize these views here.

## Common Fallacies of “Intrusiveness”

When we consider the potential intrusiveness of sanctions, we enter less-explored territory. Whereas an extensive literature on desert exists,<sup>3</sup> less thought has been devoted to what makes a punishment unacceptably humiliating or violative of others’ privacy. We might begin by clearing away the underbrush, that is, putting aside some commonly heard fallacies.

One fallacy is the anything-but-prison theory. Intervention in the community is tolerable irrespective of its intrusiveness, this theory asserts, as long as the resulting sanction is less onerous than imprisonment. This is tantamount to a *carte blanche*: Because imprisonment (at least for protracted periods) is harsher than

almost any other community punishment, one could virtually never object.

The anything-but-prison theory is a version of the wider misconception that an individual cannot complain about how he or she is being punished if there is something still worse that might have been done instead. The idea bedeviled prison policy for years: Prisoners should not complain of conditions because they might have fared worse—been held longer or in nastier conditions, or even been executed. The short answer is that a sanction needs to be justified in its own right, not merely by comparison with another—possibly more onerous—punishment.

The theory also rests on the mistaken factual supposition that all those who receive the proposed community sanction would otherwise have been imprisoned. That is almost never the case. Many, if not the bulk, of those receiving the new community sanctions are likely to be persons who otherwise would have received a conventional noncustodial sanction such as probation instead.

A second fallacy is that intrusiveness is a matter of technology. The installation of an electronic monitor on an offender’s telephone elicits comparisons to “Big Brother,” but no similar issues of privacy are assumed to arise from home visits by enforcement agents. The mistake should be obvious: Orwell’s totalitarian state may have relied on two-way television screens, but the Czarist secret police achieved plenty of intrusion without newfangled gadgetry. The same point holds for noncustodial sanctions. Intrusion depends not on technology but on the extent to which the practice affects the dignity and privacy of those intruded upon. Frequent, unannounced home visits may be more disturbing than an electronic telephone monitor that verifies the offender’s presence in the home but cannot see into it.

A third fallacy is legalism. Intrusiveness, in this view, is a matter of whether the practice infringes on specific constitutional requirements. The U.S. Constitution does not give much consideration to the treatment of convicted offenders, and such provisions as are germane have been restrictively interpreted. Those provisions do not exhaust the ethical requirements the state should abide by in the treatment of offenders. This has been understood where proportionality is concerned. The Eighth Amendment (as now

construed) outlaws only the most grossly disproportionate punishments,<sup>4</sup> but the state should (and some jurisdictions have) gone further in safeguarding desert requirements.<sup>5</sup> The same should hold true for the present issues of “intrusiveness.” When a program is developed, its sponsors should ask themselves not only whether it passes constitutional muster but whether there are any substantial ethical grounds for considering it humiliating or intrusive.

## Dignity and “Acceptable Penal Content”

The idea of “intrusiveness” is actually a cluster of concepts, and we need to identify its component elements. One important element is the idea of dignity—that offenders should not be treated in a humiliating or degrading fashion. We need to inquire why convicted criminals should be punished with dignity and how this idea can be put into operation in fashioning punishments.

### The Rationale for “Dignity” in Punishment

To inquire into the rationale for the idea, we might begin with a passage from the philosopher Jeffrie Murphy:

A punishment will be unjust (and thus banned on principle) if it is of such a nature as to be degrading or dehumanizing (inconsistent with human dignity). The values of justice, rights and desert make sense, after all, only on the assumption that we are dealing with creatures who are autonomous, responsible, and deserving of the special kind of treatment due that status. . . . A theory of just punishment, then, must keep this special status of persons and the respect it deserves at the center of attention. (Murphy, 1979, p. 233)

What this passage reflects is the idea that convicted offenders are still members of the moral community and that they remain persons and should

be treated as such. Someone’s status as a person would ordinarily militate against any sort of insulting or demeaning treatment. With offenders, however, there is a complication—the nature of punishment itself. Punishment not only serves as a deprivation but also conveys blame or censure (von Hirsch, 1985, ch. 3). Blame, because it embodies disapproval of the offender for his or her conduct, is necessarily unflattering. What is left, then, of the idea that punishment should not humiliate its recipient?

The answer lies in the communicative character of blaming. Blame, Duff (1986) has pointed out, conveys disapproval addressed to a rational agent. The function of the disapproval is not only to express our judgment of the wrongfulness of the act but to communicate that judgment to offenders in the hope that they will reflect upon it and reevaluate their actions. We may wish offenders to feel ashamed of what they have done, but the shame we are trying to elicit is their own shame at the conduct, not merely a sense of being abused by what we are doing to them. The more one treats wrongdoers in a demeaning fashion, the more this entire moral process is short-circuited. When prisoners are made to walk the lockstep—to shuffle forward, with head down and eyes averted—they are humiliated irrespective of any judgment they might make about the propriety of their conduct. The shame comes not from any acceptance of the social judgment of censure but simply from the fact that they are being treated as inferior beings.

Punishments, therefore, should be of the kind that can be endured with self-possession by persons of reasonable fortitude. These individuals should be able to undergo the penalty (unpleasant as it inevitably is) with dignity, protesting their innocence if they feel they are innocent or acknowledging their guilt if they feel guilty—but acknowledging it as a person, not a slave, would do. A person can endure the deprivation of various goods and liberties with dignity, but it is hard to be dignified while having to carry out rituals of self-abasement, whether the lockstep, the stocks, or newer rituals.

### Acceptable Penal Content

How do we apply this idea of dignity? One way would be to try to identify and list the various kinds of

intrusions we wish to rule out as undignified. But as intrusion on dignity is a matter of degree, this would be no easy task. It would be particularly difficult for non-custodial sanctions because these may be so numerous and variable in character.

A better approach, I think, is through the idea of “acceptable penal content.” The penal content of a sanction consists of those deprivations imposed in order to achieve its punitive and preventive ends. Acceptable penal content, then, is the idea that a sanction should be devised so that its intended penal deprivations are those that can be administered in a manner that is clearly consistent with the offender’s dignity. If the penal deprivation includes a given imposition, X, then one must ask whether that can be undergone by offenders in a reasonably self-possessed fashion. Unless one is confident that it can, it should not be a part of the sanction.

Where prisons are concerned, we already have the kernel of this idea, expressed in the maxim that imprisonment should be imposed as punishment but not for punishment. The idea is that the deprivation of freedom of movement should be the main intended penal deprivation—that while it is severe (and hence suitable only for serious crimes), such deprivation per se can be endured without self-abasement. According to this maxim, the intended penal content should not include various possible sanctions within the prison because we have no guarantee that these can be undergone with dignity. It thus would be inappropriate, for example, to prescribe solitary confinement as the punishment for designated crimes. And notice that one need not determine whether each possible sanction-within-the-prison is unduly humiliating. The idea that prison exists only as and not for punishment serves precisely as a prophylactic rule, to endorse only that deprivation—of liberty—that we think can be decently imposed and not to authorize all kinds of further impositions whose moral acceptability is in doubt. Granted, the reality of American prisons is different, with numerous unconscionable deprivations occurring. But we consider them unconscionable precisely because they lie outside the sanction’s acceptable penal content.

Once we have specified the acceptable penal content of the sanction, we may also have to permit certain

ancillary deprivations as necessary to carry the sanction out. Imprisonment, for example, involves maintaining congregate institutions and preventing escapes or attacks on other inmates and staff. Segregation of some violent or easily victimized offenders for limited periods may be necessary for such purposes, even if not appropriate as part of the intended penal content in the first place. But these ancillary deprivations must truly be essential to maintaining the sanction.

Can these ideas be carried over to noncustodial penalties? I think they can. The first step would be to try to identify the acceptable penal content for such penalties. Certain kinds of impositions, I think, can be undergone with a modicum of self-possession, and thus would qualify. These would include deprivations of property (if not impoverishing); compulsory labor, if served under humane conditions (community service, but not chain-gang work); and limitation of freedom of movement. Clearly excluded, for example, would be punitive regimes purposely designed to make the offender appear humbled or ridiculous. An example is compulsory self-accusation, e.g., making convicted drunken drivers carry bumper stickers indicating their drinking habits. There is no way a person can, with dignity, go about in public with a sign admitting himself or herself to be a moral pariah. We may wish the offender to feel ashamed of what he or she has done—but not act as though he or she is ashamed, whatever he or she actually feels. This list of acceptable and unacceptable intrusions is far from complete, and I shall not try to complete it. I am merely suggesting a mode of analysis.

That analysis should be applied not only to the expressly punitive but also to the supposed rehabilitative features of a program. Deprivations administered for treatment are still penal deprivations and can be no less degrading than deprivations imposed for expressly punitive or deterrent ends. I would, for example, consider suspect a drug program in the community that involves compulsory attitudinizing. One may wish to persuade the offender of the evils of drug use and, for that purpose, deny him or her access to drugs or other stimulants. But if we try to compel the offender, as part of the program, to endorse attitudes about drug use that he or she does not necessarily subscribe to, we are bypassing his or her status as a rational agent.

After we have specified the acceptable penal content, there comes the question of ancillary enforcement measures. These are measures that are not part of the primary sanction—the intended penal deprivation—but are necessary to ensure that that sanction is carried out. An example is home visits. Such visits are not a part of acceptable penal content: It is not plausible to assert that, without any other need for it, the punishment for a given type of crime should be that state agents will periodically snoop into one’s home. The visits could be justified only as a mechanism to help enforce another sanction that does meet our suggested standard of acceptable penal content.

What might such a sanction be? Consider the sanction of community service, which I have suggested does meet the primary standard. To assure attendance at work sites and check on excuses for absences, occasional home visits may be necessary and indeed are part of the enforcement routine of the Vera Institute’s community service project (McDonald, 1986). Because home visits are justified only as an ancillary enforcement mechanism, their scope must be limited accordingly, that is, be no more intrusive than necessary to enforce the primary sanction. If home visits are ancillary to community service, they should occur only when the participant has failed to appear for work, and their use should be restricted to ascertaining the offender’s whereabouts and checking on any claimed excuse. The less connected the visits are with such enforcement and the more intrusive they become, the more they are suspect. General, periodic searches of the offender’s home could not be sustained on this theory.

Telephone monitoring can be analyzed in similar fashion. A phone monitor, used to enforce a sentence of home detention, would be an acceptable ancillary measure if designed so that the defendant can simply register his or her presence. Repeated and searching verbal phone inquiries would be another matter.

## Unresolved Issues

The analysis still has a number of loose ends. Thus:

1. Are there any principled limits on the ancillary enforcement sanctions, other than their being essential to enforce the primary penalty? Enforcement sanctions that are grossly humiliating should be ruled out, even if

needed as an enforcement tool for a particular kind of primary sanction. If X is an acceptable sanction but needs Y—a morally repulsive one—to enforce it, then the appropriate solution would be to give up X in favor of some other sanction that can be enforced less intrusively. I leave to future discussion how we might specify more clearly such a limit on enforcement measures.

2. Can one ever argue for intrusions on dignity in order to create noncustodial sanctions with a punitive “bite” comparable to that of imprisonment? Consider a range of fairly serious crimes for which imprisonment would normally be the sanction. May one substitute home detention, with specially intrusive conditions designed to make the sanction “equivalent” to the prison? My instinct would be to resist such a suggestion if those conditions are sufficiently demeaning to infringe on the principles just described. For here, imprisonment is not an undeserved response, given the seriousness of the conduct. The alternative is objectionable because of its degrading character.
3. What of choices of evils? Suppose a jurisdiction inappropriately uses imprisonment for crimes of intermediate or lesser severity and is prepared to substitute a noncustodial sentence only if it is made highly intrusive. Here, proportionality concerns collide with concerns about dignity—and may require one to decide which value should be accorded higher importance. Such an apparent choice, however, is most likely to arise in poorly regulated sentencing systems in which proportionality constraints and controls over discretion are weak. That, however, is precisely the kind of system in which such purported “alternatives” to incarceration so easily become, instead, substitutes for traditional and less noxious noncustodial penalties.

## The Rights of Third Parties

The prison segregates the offender. The segregation, whatever its other ills, means the rights of third parties

are not directly affected. If X goes to prison, this does not restrain Y's rights of movement, privacy, etc. Granted, Y still suffers if he or she is attached to X or economically dependent. But Y, nevertheless, is not restrained.

Noncustodial penalties reintroduce the punished offender into settings in which others live their own existence. As a result, the offender's punishment spills over into the lives of others. Home visits, or an electronic telephone monitor ringing at all hours of the day, affects not only the defendant but any other persons residing at the apartment—and it is their as well as his or her dwelling place.<sup>6</sup>

The third-party question is distinct from the issue of the offender's dignity, as discussed earlier. That is true even when the latter issue is affected by the presence of third parties. Consider home visits. Such visits may be potentially shaming to the defendant in part because of the presence of unconvicted third-party witnesses, that is, the other residents of the home. But the visits also affect those other residents, diminishing their own sense of privacy.

However, such other persons, are often affected because they have some consensual<sup>7</sup> relation to the defendant, for example, they share the defendant's home. Here lies the difficulty: Granted that the quality of their lives may suffer, but have they not in some sense assumed that risk? When A chooses to live with B, will not A inevitably suffer indirectly from whatever adverse consequences legitimately befall B as a consequence of his or her behavior? It is this issue—the extent to which third parties lose their right to complain—that requires more reflection. I have not been able to think of a general answer to this relinquishment-of-rights question. The following modest steps, however, might help to reduce the impact of noncustodial punishments on third parties:

1. Often, it is not the primary sanction itself but its ancillary enforcement mechanism that intrudes into the lives of third parties (to cite a previous example, home visits used to enforce community service). In such cases, the enforcement mechanism should be limited to enforcing the primary sanction and should not be used to investigate the general extent to which other

persons abide by the law. When the defendant's home is visited to check on his or her excuse for being absent at the work site, for example, that should not be used as an occasion to gather evidence of law violations by others in the apartment.

2. The impact on third persons should be one of the criteria used in choosing among noncustodial penalties. Often, the sanctioners may have several sanctions of approximately equal severity to choose from, any of which would comport with crimes of a given degree of seriousness. Where that choice is available, the sanctioner should, other things being equal, choose the sanction that affects third parties least. Suppose, for example, that the choice lies between home detention (enforced by a telephone monitor) and a fairly stiff schedule of community service (enforced by home visits to check the offender's presence, but only when he or she fails to appear at the work site). Suppose, for the sake of argument, that the penalties have been calibrated to be of approximately equal severity (see von Hirsch et al., 1989). If we conclude that the occasional home visits used to enforce community service are less disturbing to other residents than a (frequently ringing) telephone monitor used with home detention, that would be reason for preferring community service.

## Conclusions

This essay provides more questions than answers. Concerning the first issue, that of proportionality, I have some sense of confidence because there has been an extensive literature on desert. Concerning the second issue, that relating to dignity and humiliation, I have tried to offer the rudiments of a theory, but it stands in need of development. Concerning the third, intrusion into the rights of third parties, I have done little more than raise some issues.

Because innovative noncustodial penalties are only beginning to be explored in this country, little thought has been devoted to limits on their use. Such thinking is now urgently

necessary. With adequate ethical limits, community-based sanctions may become a means of creating a less inhumane and unjust penal system. Without adequate limits, however, they could become just another menace and extend the network of state intrusion into citizens' lives. We should not, to paraphrase David Rothman,<sup>8</sup> decarcerate the prisons to make a prison of our society.

## Notes

1. For a discussion of how the idea of censure or blame underlies the principle of proportionality, see von Hirsch (1985, chs. 3, 5).
2. For a survey of such penalties, see Tonry & Will (1989).
3. See e.g., von Hirsch (1976, 1985), Singer (1979), and Duff (1986).
4. See e.g., *Rummel v. Estelle*, 445 U.S. 263 (1980), *Solem v. Helm*, 463 U.S. 277 (1983).
5. In particular, the states that have adopted sentencing guidelines that emphasize desert principles. See von Hirsch, Knapp, and Tonry (1987, chs. 2, 5). Some foreign jurisdictions—most notably Sweden—have also adopted statutes on choice of sentence, stressing ideas of proportionality and desert. See von Hirsch (1987) and, for the English-language text of the statute as enacted, von Hirsch and Jareborg (1989).
6. For a brief previous discussion of this question of third parties, see von Hirsch and Hanrahan (1979, pp. 109–12).
7. Any children present will not have actually consented, however.
8. The original quotation appears in von Hirsch (1976, pp. xxxv–xxxvi).

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## DISCUSSION QUESTIONS

1. What does von Hirsch mean by the use of "acceptable penal content"? According to the author, how should this shape the current sentencing structure in the United States?
2. According to von Hirsch, how do noncustodial sentences impact third parties?
3. What can be done to increase the privacy of third parties when noncustodial sentences are administered?
4. Given that individuals who are sentenced have committed offenses not only against the victim but society as a whole, why should we be concerned with the ethics of community-based sanctions?





## READING

In their seminal work, May and Wood explored the impact of demographic, correctional experience, and attitudinal indicators on the willingness of offenders to serve community-based sanctions in lieu of one year of incarceration. A total of 800 offenders serving time in the Oklahoma correctional system were surveyed with 415 (51%; 181 male, 224 female, and 10 not reporting sex) agreeing to participate. Because at the time of the study Oklahoma had the third highest female incarceration rate in the United States, women were oversampled by 50%. Survey participants were presented with descriptions of alternatives to incarceration and asked to report how many months of the alternative sanction they would be willing to serve to avoid incarceration. Overall, the results indicate that 25% of the survey participants (1 in 4) refused to participate in any form of community-based alternative. Of those who did agree, results suggested that education, age, sex, the amount of time served, previous experience with the alternative, and reported bonds to their community influenced their decisions to participate and the overall reported length of time. Younger inmates, those with higher levels of education, women, those who were married, and those who had served the proposed alternative previously were more likely to agree to the various presented sanctions than their counterparts. This study points to the need to further examine community-based sanctions as being viewed as “soft” on crime. As illustrated by one fourth of participants refusing to serve any time in the community and the mixed results of those who consider it, the overall intrusion in the lives of offenders combined with relatively generous good time and release policies may be worth the gamble to offenders to avoid being supervised in the community. Likewise, those with the greatest bonds to their communities and those with the most to lose if incarcerated appear to be willing to make the sacrifice of serving their sanction in the community and avoiding the stigmatization of serving time behind bars.

### ***What Influences Offenders' Willingness to Serve Alternative Sanctions?***

David C. May and Peter B. Wood

**A**lternatives to incarceration have become increasingly popular in an attempt to deal with rising costs and overcrowded conditions of prisons in the United States. Although many alternative sanctions are no more effective in reducing recidivism than prison (see Marion, 2002, for review), lawmakers,

judges, and the public generally support the notion of a continuum of punishment options with graduated levels of supervision and punishment severity (Morris & Tonry, 1990; Petersen & Palumbo, 1997). To date, few studies have examined the opinions of those most affected by the punishment continuum, the offenders

(Apospori & Alpert, 1993; Crouch, 1993; McClelland & Alpert, 1985; Petersilia, 1990; Petersilia & Deschenes, 1994a, 1994b; Spelman, 1995; Wood & Grasmick, 1999; Wood & May, 2003). Prior research has tended to present uni- and bivariate data analysis that focuses on demographic correlates of offenders' perceptions of the relative severity of a wide range of sanctions when compared to imprisonment. As such, the available literature (with the possible exception of Spelman, 1995) does not include the study of offenders' perceptions of the severity of alternative sanctions in a multivariate context. The current study helps fill this gap in the literature by using demographic, correctional experience, and attitudinal indicators to predict the amount of regular probation, community service, and boot camp that offenders will serve to avoid 1 year of actual imprisonment. Analysis is based on a survey of 415 male and female inmates serving prison terms for nonviolent crimes.

Experience in correctional settings—their longest sentence served and the total amount of time they have spent in prisons and jails—was also collected. We also included a race identification item in the pretest survey but were counseled by personnel from the Oklahoma Department of Corrections (ODOC) to delete it. At the time of the survey, the ODOC was conducting a racial balance study of its inmate population. ODOC personnel were concerned that race-specific findings might be politically sensitive and might discourage some inmates from participating in the survey. Although the inclusion of race-specific findings was of interest to us, we submitted to their request and removed the race item from the instrument. Finally, based on offenders' comments regarding their reluctance to enroll in alternative sanctions, we included items examining reasons why an offender might participate in an alternative and reasons why an offender might avoid participation.

By the end of 1955 (the year of the survey), there were 17,983 inmates serving time in Oklahoma correctional centers. Approximately 2,800 of these inmates met our selection criteria. Our initial sample of 875 accounts for approximately 31% of these inmates, and approximately 5% of the total inmate population.

Although the sample consisted of 875 male and female inmates who met our criteria (nonviolent controlling offense, no history of violence, and less than a 5-year sentence), we determined that slightly fewer than 800 inmates were available to participate in the survey. Some had been released by the time the survey was administered, some had been transferred to another institution, and some were serving an administrative sanction and were unable to participate in the survey. Many inmates who were eligible simply refused to participate in the survey. We concluded data collection with 415 respondents (181 men, 224 women, and 10 who did not report their gender) representing better than a 50% response rate based on those inmates available for participation. This response rate compares very favorably with other voluntary, self-administered surveys conducted in correctional centers (Wood & Grasmick, 1999).

In 1995, Oklahoma claimed the third highest incarceration rate in the nation, and the highest female incarceration rate of all 50 states—a distinction we felt was significant enough to warrant special attention. Furthermore, a review of the published literature on the relative punitiveness of punishments revealed no previous work examining female offenders' perceptions of the severity of alternative sanctions. Consequently, we oversampled women so they made up one half of our sample and just more than 50% of our survey respondents.

During October, the survey was administered in classroom settings to small groups of inmates who met the selection criteria, had been randomly sampled, and who voluntarily agreed to participate. All data analysis reported here is based on an initial sample of 415 inmates.

## **Dependent Variable**

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Respondents were presented with descriptions of several alternative sanctions and then were asked to consider how many months of the alternative they were willing to serve to avoid 12 months of actual imprisonment. In the current study, we focused on respondents' perceptions of the relative

severity of probation, community service, and boot camp when compared to 12 months incarceration in a medium-security prison. We assume that if a respondent will serve fewer than 12 months of an alternative sanction to avoid 12 months of imprisonment, the alternative is perceived as more punitive than prison. If the respondent will serve more than 12 months of the alternative to avoid 12 months of imprisonment, then imprisonment is viewed as more punitive.

Recent work (Wood & Grasmick, 1999; Wood & May, 2003) suggests that the alternatives examined in the current study are viewed by people under correctional supervision as among the least punitive (regular probation and community service) and among the most punitive (boot camp) alternatives available. As the primary purpose of the current study was to examine offenders' perceptions of the severity of sanctions in a multivariate context, we felt it would be useful to compare sanctions viewed as less and more severe than prison to see if the impact of demographic, experiential, and attitudinal indicators varies by type of alternative.

## Demographic and Correctional Experience Predictors

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A number of demographic and experiential variables are represented in the models that follow. These include respondents' gender, age, education (years), marital status, number of children, total time spent in prison (months), and the length of their longest prison stay (months). In addition, we controlled for whether the respondent had previously served the alternative in question (regular probation, community service, or boot camp), and the total number of different alternatives they have ever served. We hypothesized that those respondents who are female, older, married, more educated, have children, have less prison experience, and have previous experience with the sanction in question will (a) be more likely to serve an alternative and (b) endure a longer duration of each alternative rather than serve 1 year of imprisonment.

## Attitudinal Predictors

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Three scales were created to reflect offenders' attitudes about alternative sanctions. First, respondents were asked to indicate the importance of eight statements as reasons for choosing to avoid participation in an alternative sanction. Responses to the statements were coded so that a higher score on the Avoidance Scale reflects greater agreement with reasons to avoid alternative sanctions. We expect those scoring at the high end of the Avoidance Scale will be more likely to avoid alternative sanctions and will view alternative sanctions as more punitive when compared to prison than those scoring at the lower end of the scale.

Second, respondents were asked to indicate the importance of six statements (very important, pretty important, somewhat important, not at all important) as reasons for choosing to participate in an alternative sanction. Response to the statements were coded so that a higher score on the Participation Scale reflects greater agreement with reasons to participate in alternative sanctions. We expect those scoring at the high end of the Participation Scale will be more likely to participate in alternative sanctions and will view alternative sanctions as less punitive when compared to prison than those scoring at the lower end of the scale.

Third, respondents were asked to rate the importance (very important, pretty important, somewhat important, not at all important) of three community bonds (i.e., having a job, spouse, and/or children outside prison) as reasons to participate in alternatives. Responses to the statements were coded so that a higher score on the Community Bond Scale reflects greater agreement that such bonds are important reasons to participate in alternatives. We expect those scoring at the high end of the Community Bond Scale will be more willing to participate in alternative sanctions and will view alternative sanctions as less punitive than those scoring at the lower end of the scale.

## Multivariate Results

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Recent work suggests that some offenders view alternative sanctions as unacceptable options, no matter what the length of the sentence, and would rather be sentenced to prison than serve any length of an alternative (Spelman, 1995; Wood & Grasmick, 1999; Wood & May, 2003). Given

this finding, it seems important to determine what factors contribute to an offender's refusal to serve any amount of an alternative sanction, or conversely, to agree to participate in an alternative.

Logistic regression results suggest that, as expected, offenders with higher levels of education were significantly more likely to choose to participate in probation and boot camp than their counterparts who were less educated. Furthermore, younger respondents were significantly more likely to agree to participate in regular probation, community service, and boot camp. In addition, those with prior experience serving boot camp and community service (but not probation) were significantly more likely to agree to participate in those sanctions compared to offenders with no prior experience while those respondents who scored higher on the Participation Scale were significantly more likely to agree to participate in boot camp and community service (but not probation). Respondents who had served fewer alternatives were also significantly more likely to indicate that they would participate in community service, as were those who scored higher on the Community Bond Scale. Neither of these variables had a significant association with the choice to participate in either probation or boot camp.

Finally, offenders who scored higher on the Avoidance Scale were significantly less likely to participate in all of the alternative sanctions in question. Thus, the associations between the demographic, experiential, and attitudinal predictors and the respondent's choice to participate in alternatives were in the hypothesized direction, and with the exception of gender and total prison time, each variable had a statistically significant impact on the decision to participate in at least one of the alternative sanctions under study. The only notable exception involves married individuals, who were significantly more likely to say they would serve some probation, but significantly less likely to say they would participate in boot camp—an association likely due to the restrictive visitation and home visit regulations governing boot camp. More will be said of this finding in the concluding section.

It appears, then, that the variables included in the models do a better job of predicting the choice to

participate in community service than probation and boot camp. Furthermore, the impact of the demographic, experiential, and attitudinal predictors—with the exception of age and the Avoidance Scale—appears contingent on the type of sanction in question.

The OLS regression results from the reduced model predicting the duration of each alternative (measured in months) that respondents would serve to avoid 12 months imprisonment. Offenders who refused to serve any duration of the alternative were deleted from the analysis. It is immediately obvious that while gender had no effect on whether an individual chose to participate in an alternative sanction, it is one of the better predictors of the amount of each alternative offenders are willing to serve, as females would serve longer durations of probation, community service, and boot camp to avoid 12 months in prison than would males.

In addition, the results indicate that offenders with higher levels of education will serve fewer months of probation to avoid 12 months imprisonment than those with less education. Similarly, older prisoners will serve fewer months of community service to avoid 12 months imprisonment than their younger counterparts. Both of these associations achieve statistical significance.

Regarding correctional experience indicators, inmates with more time in prison were willing to serve more community service than offenders with less cumulative time in prison. In addition, those inmates who had served a greater variety of alternative sanctions will serve fewer months of probation and community service to avoid imprisonment than those who had experienced fewer alternative sanctions.

The association between the amount of an alternative sanction the individual was willing to serve and the three attitudinal scale measures (avoidance, participation, and community bond) also proved to be interesting. Offenders who scored higher on the Avoidance Scale would serve fewer months of probation than those with more favorable views of alternative sanctions but were willing to serve more months of boot camp to avoid 12 months imprisonment. Although this

may appear counterintuitive, the discussion below makes a number of suggestions for its occurrence. In addition, while the Participation Scale and the Community Bond Scale were important predictors of whether offenders chose to serve any duration of certain alternative sanctions, their explanatory power diminishes greatly when considering the length of time an individual would serve to avoid imprisonment. Analysis generated only one significant—and potentially counterintuitive—association as those individuals who scored higher on the Participation Scale were likely to serve fewer months of boot camp to avoid imprisonment than those with less favorable views of alternatives. This finding is discussed below.

## Discussion

This research offers the first multivariate study of offenders' perceptions of the severity of alternative sanctions compared to prison and, by extension, identifies some of the factors that influence offenders' willingness to serve alternatives. Based on the review of the research in this area, a number of hypotheses were tested in this study. Of those hypotheses, most were supported for at least one alternative sanction and, in some cases, for all three alternative sanctions. The effects of demographic, experiential, and attitudinal predictors on offenders' perceptions of the punitiveness of probation, boot camp, and community service are presented below.

### Education

No previous research has examined the relationship between the education level of a person under correctional supervision and her or his perception of the relative severity of criminal justice sanctions while controlling for other relevant factors. Results indicate that inmates with higher levels of education were significantly more likely to agree to participate in boot camp and probation but not community service. However, when asked to compare the length of time they would be willing to serve to avoid 1 year of imprisonment, those with higher levels of education would

endure fewer months of probation than their less educated counterparts. This inverse relationship contrasts directly with the expected relationship between education and the choice of whether to participate in probation. It is apparent those inmates with greater levels of education are willing to serve some probation but would not serve as much of it as those with less education. Possibly these individuals are more discriminating in realizing the value of serving an alternative while also recognizing that the risk of revocation increases with time spent serving an alternative (see Wood & Grasmick, 1999; Wood & May, 2003). As such, it may be that inmates with more education employ a more conservative cost-benefit analysis that encourages them to participate in probation to avoid prison but also takes into account the gamble associated with serving more time in an alternative.

### Age

Results indicate that age affects both the decision to engage in alternative sanctions and the amount of an alternative offenders are willing to serve to avoid imprisonment. Younger inmates are significantly more likely to agree to participate in all the alternative sanctions and more likely to agree to serve more community service than older inmates. We suggest two possible explanations for this finding. First, older prisoners may view alternative sanctions as more of a gamble than younger ones. They may feel that the chances of revocation are too high and realize that if they fail to complete the sanction they will be returned to prison to serve out their original sentence, thus extending their time under correctional supervision. Consequently, they may feel that their total time under correctional supervision may be shorter if they avoid alternative sanctions altogether and go directly to prison to serve out their term. An alternative explanation is that older prisoners may have become accustomed to incarceration, now view it as less severe compared to when they were younger, and thus feel more comfortable serving their time incarcerated than in the community. This analysis does not offer a conclusive finding in this regard, and future research should attempt to explore the intricacies of this dynamic.

## Gender

One of the most interesting findings from the current study concerns the relationship between gender and our dependent variables. While gender had no significant impact on whether an inmate decided to participate in an alternative sanction, it had a significant effect on the length of time an individual was willing to serve to avoid imprisonment. Females were willing to serve more months of each of the three sanctions to avoid imprisonment than were men. Multivariate analyses suggest that the impact of gender on an offender's choice to engage in alternative sanctions is mediated by other variables in the model, while the impact of gender on the amount of the alternative remains, even when controlling for other relevant factors. Thus, these findings lend qualified support to the widely accepted belief that females may prefer alternative sanctions because they tend to have stronger ties to family and community than do men. For example, 79.5% of the women in our sample have children; however, only 19.3% are married. It is possible that many women may opt for longer durations of alternatives to avoid imprisonment to retain custody of or contact with children. Further study of the unique circumstances of female inmates may shed light on this issue.

## Marital Status

Married respondents were significantly more likely to agree to participate in probation but significantly less likely to agree to do any amount of time in boot camp. Thus, something about either marriage, boot camp, or probation induces married respondents to refuse to serve boot camp but not probation. Among those willing to serve an alternative sanction, marital status had no impact on the length of time an individual was willing to serve in that alternative sanction. We suspect that the restrictive nature of boot camp (limited visitation rights, limited or no phone calls, limited or no mail privileges, no community release, etc.) may discourage married persons who wish to maintain regular community ties from participating. The married inmate may view boot camp as much harsher than prison and choose not to engage in any duration of that sanction. Thus, it could be that although married respondents

are more likely to agree to participate in some alternative sanctions, the fact that boot camp requires that the offender be separated from family in a highly stressful environment may affect the decision to participate in boot camp. Inmates in the sample were twice as likely to refuse to participate in boot camp as the other two sanctions. We suggest that the more intrusive nature of boot camp makes it more likely to be an unpopular alternative sanction among inmates in general, but particularly among married inmates.

## Total Prison Time Served

Individuals with more experience in a prison setting were more likely to agree to participate in community service; however, the overall impact of incarceration does not make an individual more likely to agree to participate in alternative sanctions than those with less prison experience. We suspect the effect of total time served is highly associated with the effect of age. As noted above, older inmates are less likely to serve alternatives, and it is those inmates who have served more time. Findings indicate that persons with more prison experience are less willing to serve alternative sanctions and would prefer to serve prison instead. This finding contradicts the idea of the traditional probation to prison severity continuum; if prison were perceived by inmates as significantly more punitive than alternatives, then persons with more prison experience should be more willing to serve alternative sanctions and to serve longer lengths of alternative sanctions to avoid imprisonment. With the exception of the length of time inmates would endure on community service, this was not the case.

## Number and/or Variety of Alternative Sanctions Served

Those individuals who had the most experience with alternative sanctions were significantly less likely to agree to participate in any length of community service than their counterparts who had less experience with alternative sanctions. In addition, when those who refused to participate in alternative sanctions were excluded, those who had the most experience with a variety of intermediate sanctions would serve less time

in probation and community service than offenders who had less experience with alternative sanctions. This finding again challenges the concept of the probation to prison severity continuum.

### Avoidance Scale

As expected, results indicate that inmates who agreed most strongly with reasons to avoid alternative sanctions were significantly less likely to participate in probation, community service, and boot camp. When asked how much of an alternative they would serve to avoid imprisonment, however, those who scored higher on the avoidance index would serve shorter lengths of probation but longer lengths of boot camp. Although this relationship may appear to be counterintuitive, there is at least one possible explanation. Those individuals with more negative views toward alternative sanctions were less likely to agree to participate in them; nevertheless, this model included those respondents willing to serve some duration of the alternative sanction. As such, it may be that when individuals who refuse to serve the three alternatives are removed from the analysis (23.6% for boot camp, 12.3% for probation, and 9.4% for community service), the equation changes somewhat. It may be that although still opposed to boot camp for the reasons mentioned in the index, the offender understands that the time served in boot camp will be much shorter than 12 months in prison if he or she successfully completes the sentence. Only 4% of the sample agreed to do as much as 12 months boot camp to avoid 12 months imprisonment while almost two thirds (64.8%) of the sample said they would be willing to do less than seven months boot camp to avoid 12 months in prison. It seems likely that some offenders who oppose alternative sanctions are willing to spend a few months in boot camp simply because they want the extra 2 to 5 months of their life they would gain in comparison to 12 months imprisonment. Future studies should explore exactly why offenders choose to avoid alternative sanctions in an attempt to provide substantive explanations for findings such as this.

### Participation Scale

As expected, inmates who agreed more strongly with reasons to participate in alternative sanctions were

significantly more likely to participate in boot camp and community service. However, after removing those offenders who refused to participate in any amount of boot camp, offenders scoring higher on the participation scale would serve fewer months of boot camp. This again appears counterintuitive. It could be that the negative stigma and conditions that surround boot camp discussed earlier make it an anomaly when it comes to alternative sanctions. The statements used to compose the index do not deal directly with any specific alternative sanction; as such, when the inmates were stating their views of alternative sanctions in general, they may not have been thinking about boot camp as one of the alternative sanctions. Consequently, when asked about their willingness to participate in boot camp specifically, they agreed to do so but are not willing to invest a large amount of time in boot camp when compared to the alternative of prison. Although prison still carries a negative stigma, it may not be as negative as that attached to boot camp, and offenders may believe that the so-called "easier" time might be in prison than in boot camp.

### Community Bond Scale

As expected, inmates who were more likely to agree that community bonds were important reasons to serve alternative sanctions were more willing to participate in community service. However, contrary to expectations, this index had nonsignificant effects on all other dependent variables. Thus, the nature of the offender's social bond may not be as important in structuring the decision to participate in alternative sanctions as the other elements included in the pro-alternative sanctions scale. However, there may be other dimensions of community and family ties that are not represented in our measure, and more effort should be made to identify community and family bonds that might influence offenders' perceptions of alternative sanctions.

### Previous Experience With the Alternative in Question

Having served the particular alternative sanction in question influences the decision whether to serve that

alternative again and the amount of time the offender is willing to invest in that sanction (except in the case of probation). Individuals with prior boot camp experience were significantly more likely to agree to participate in boot camp and to serve more of it to avoid imprisonment than their counterparts who had not previously served boot camp; these relationships were replicated for community service. This may be due to at least two reasons: (a) inmates with prior experience with the sanction had success with the specific sanction previously and are willing to try it again and/or (b) inmates are now more willing to participate in the alternative sanction because it is no longer an unknown. Inmates with no prior experience may fear an unknown alternative sanction. These relationships deserve to be examined in future studies.

## Conclusion

Implications from the current study are threefold. First, the findings presented here again call into question the idea of a continuum of alternative sanctions with probation as the least punitive sanction and prison as the most punitive sanction. One in four inmates refused to participate in any amount of boot camp to avoid 12 months in prison; furthermore, in certain circumstances, some offenders would rather do prison than either probation or community service, two sanctions most often placed at the lenient end of the sanction continuum. At the very least, results call for further exploration into the perceived severity of criminal justice sanctions.

Second, it appears that the associations between demographic, experiential, and attitudinal predictors and perceptions of sanction severity are contingent on the type of sanction in question. Boot camp is perceived by inmates as a significant gamble, with a high likelihood of revocation, and 23.6% of inmates in the sample refused to serve any duration of boot camp to avoid a brief prison term. One of the reasons boot camp is such an unpopular option is probably due to the nature of boot camps in general. At least one former inmate has suggested that boot camp amounted to “institutionalized embarrassment” wherein one’s very

manhood is questioned constantly by being forced to do things one would not do otherwise. The military regimen and the total authority, and influence boot camp drill instructors have over prisoners (even more than prison) also play a role. Many prisoners view boot camp as the embodiment of every forced treatment program they have encountered and will avoid it at all cost. According to some inmates, those who volunteer for boot camp are “punks” who are willing to subject themselves to institutionalized embarrassment and who are afraid to serve time in the general prison population. Relatedly, one might expect that persons with no prior prison experience might be more willing to do boot camp, and to do more of it to avoid imprisonment. Boot camp, therefore, is not only viewed as highly punitive with a strong likelihood of revocation but also carries a strong stigma among many inmates. As one ex-convict responded when questioned about boot camp, asking a prisoner to choose between prison and boot camp is similar to asking a political scientist from a democracy to choose between communism and fascism; in one, you lose control over your economic situation (prison) and in the other, you lose control over every aspect of your life (boot camp). Differences in offenders’ perceptions of alternative sanctions may, therefore, depend partly on the type of sanction in question. In this respect, boot camp may be deserving of a special category when speaking of alternative sanctions.

Finally, use of multivariate procedures like those used in the current study allows a more comprehensive look at factors that influence offenders’ perceptions of the severity of a range of criminal justice sanctions. Larger samples across several jurisdictions and the inclusion of a wider variety of predictors are likely to offer a better understanding of these dynamics. Furthermore, we would argue that the nature of the relationships uncovered in the current study is complex; as such, future research should attempt to include open-ended, qualitative research to more fully understand offenders’ reasons to choose to participate in or avoid alternative sanctions. In sum, then, as the popularity and application of alternative sanctions increases, it might help judges, prosecutors, and legislators to be cognizant of how offenders view the severity



of prison when compared to alternative sanction. By doing so, sentencing strategies could be devised that protect society, potentially deter crime, and reduce the cost to taxpayers to fund imprisonment.

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## DISCUSSION QUESTIONS

1. What factors specifically influenced an offenders' decision to serve alternative sanctions?
2. What significance was there in the finding that one quarter of all survey respondents reported they would not choose to serve any form of community-based alternative to imprisonment?
3. Based upon the findings of the study, should offenders be allowed to serve the same community-based sanction? Why or why not?
4. Based upon the findings, should offenders be given different sanctions based upon their sex, age, race, and education level?
5. What do the findings suggest for judges when sentencing offenders to community-based alternatives?



## READING

In this reading, the authors pointed to the necessary conversations that states need to entertain regarding the need for policy reform in light of diminishing resources and the pursuit of punishment and enhanced public safety. More specifically, the authors overviewed the three goals of punishment (expressive, utilitarian, and managerial) and combine those with the current state of punishment. A sample of six states that at the time of the study were considering reforming their sentencing laws as well as their responses to crime was taken. A review of major newspapers revealed a shift in policy approaches from a more retributive response of increased imprisonment to considerations for budgetary and economic responses to crime. The authors further pointed to the opportunities for reformers to enter into conversations with legislative bodies about how to reform the system in difficult economic times.

### *When the Policy Becomes the Problem*

#### Criminal Justice in the New Millennium

Sara Steen and Rachel Bandy

#### Introduction

The importance of state legislatures in the development, oversight, and funding of US criminal justice policy cannot be overstated. Over the past 30 years, legislatures have become increasingly responsible for setting crime and punishment agendas, agendas that have been marked by a return to a corrections model based on the philosophy of retributive justice. Because most crimes fall under state jurisdictions, state legislatures' development of policies reflective of retributive justice has had far-reaching consequences, most notably the unprecedented growth in incarceration rates and the concomitant growth in state corrections expenditures (Snell et al., 2003). As many states today face their largest budget crises in recent history, legislators are now forced to consider whether, and if so how, adherence to a criminal justice philosophy of retribution can be sustained in light of diminishing resources.

The scope of the criminal justice enterprise in the United States has increased dramatically since the mid-1970s. The incarceration rate for state and federal prisoners (excluding offenders held in local jails) has almost doubled each decade, increasing from 135 per 100,000 US residents in 1978 to 244 in 1988 to 460 in 1998. Growth has slowed since then, reaching a national incarceration rate of 482 in 2003 (Harrison and Beck, 2004). Including prisoners held in local jails, the incarceration rate reached 714 in 2003, which translates into one in every 140 US residents being confined in a state or federal prison or a local jail. As a result of this rapid expansion in incarceration, state corrections expenditures were the second fastest growing component of state budgets during the 1990s (Snell et al., 2003).

In 1970, spending on prisons accounted for 1.5 per cent of state and local spending, compared to 4.3 per cent in 2000 (Ziedenberg and Schiraldi, 2002). Throughout this period, there were also national shifts

in the philosophy of punishment away from rehabilitation and treatment toward just deserts and retribution. Grasmick et al. (1992) identify two watershed cases that served to augur in an era of retributive crime policy: *Furman v. Georgia* in 1972 and *Gregg v. Georgia* in 1976. Both of these cases were argued before the US Supreme Court and addressed, specifically, the use of capital punishment and, broadly, the role of retribution in punishment. While the *Furman* ruling invalidated the use of capital punishment and later the *Gregg* ruling reinstated its use, at the core of each ruling (and found in both majority and dissenting opinions) was the appropriate role of retribution in US penal policy. While the role of retribution in deciding penal policy was a divisive issue for the justices, the prevailing sentiment was that ‘public opinion, including the public’s presumed desire for retribution, can be a legitimate basis for penal policy’ (Grasmick et al., 1992: 21). From this point in modern history, Grasmick et al. mark the formal adoption of retribution as a guiding principle in criminal justice policy-making.

The rise in retribution as a guiding principle for punishment contributed to the development of, support for, and ultimately passage of state policies such as Three-Strikes and mandatory sentencing laws, both of which have generated great costs to corrections budgets. In addition, the federal government encouraged retributive policies by offering states financial incentives to implement certain laws (e.g., Truth in Sentencing laws) and to construct new prisons.

It is increasingly clear that, left unchecked and unchallenged, retributive sentiments can easily result in extremely costly systems of punishment; systems that in the current economic climate have proven to be no longer sustainable. This article originated with the recognition that economic concerns may have reopened conversations about the wisdom and viability of retributive policies, conversations that have been stifled for almost three decades. Legislators who spent the cash-rich ’90s passing ‘Tough on Crime’ policies based almost exclusively on concerns about retribution and public safety are now having to revisit those policies to determine whether or not they represent a fiscally appropriate response to crime. We begin with the

proposition that the economic crisis of the early 21st century has created a context in which old ideas about punishment may have become unconvincing, and new ideas (or old ideas that have been ignored in recent decades) may have newfound validity.

Our primary interest in this article is in how advocates for reform speak about less retributive sentencing practices in a time of fiscal constraint, and in how this might be changing public discourse about crime and punishment more generally. To analyze conversations about reform, we identify the terms and issues used to frame recent debates in a sample of newspaper articles published during 2003 legislative sessions in six sample states. Specifically, we examine arguments set forth by a variety of reform advocates in states which are seeking to change their sentencing structures in times of fiscal constraint.

## Theoretical Background

Recent scholarship has begun to explore what Stanley Cohen (1985) termed ‘visions’ of social control. David Garland (1990: 180) argues that historically there have been two dominant visions of social control—‘the passionate desire to punish’ (expressive in nature) and ‘the rationalistic concern to manage’ (instrumental in nature). While there are elements of each vision in any system of punishment, Garland argues that, at any given time and place, one vision is more likely to resonate with the populace than the other. For the purpose of this article, the issue is not whether penal policy itself is expressive or instrumental, but rather whether under present budgetary circumstances policymakers perceive certain types of reform arguments as likely to be more palatable than others to a public that has become accustomed to retributive rhetoric.

In this section of the article, we first briefly contrast the beliefs underlying both expressive/passionate and instrumental/rational policies as a way of framing our analyses of conversations about punishment. We also briefly review recent scholarship on the managerial model of punishment, which provides a third way to think about punishment. We then describe the conclusions reached

by scholars about the relative weight of instrumental and expressive concerns in our system of punishment over the past 30 years as a point of departure for our analyses of public conversations about legislative reforms taking place in 2003.

## Goals of Punishment

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### Expressive Goals

From a Durkheimian perspective, punishment is first and foremost a mechanism through which moral values are taught and enforced. Durkheim theorized that ‘the essence of punishment is not rationality or instrumental control—though these ends are superimposed upon it—the essence of punishment is irrational, unthinking emotion fixed by a sense of the sacred and its violation’ (Garland, 1990: 32). Indeed, whether a particular form of punishment is successful in reducing crime is essentially irrelevant according to Durkheim. It is the cultural content of punishment, rather than its outcome, that is its defining feature, and cost is not a logical consideration.

The expressive mode [of reasoning] is . . . overtly moralistic, uncompromising, and concerned to assert the force of sovereign power. The penal measures associated with this expressive, sovereign approach tend to be fueled by collective outrage and a concern for symbolic statement. . . . [This way of thinking] presses the imperatives of punishing criminals and protecting the public, ‘whatever the cost’. (Garland, 1990: 191)

According to legal scholar and former justice Robert Bork, the need to express moral outrage and to seek retribution is:

indispensable . . . in the criminal justice system. The mixture of reprobation and expiation in retribution is sometimes required as a dramatic mark of our sense of great evil and to reinforce our respect for ourselves and the dignity of others. (2005)

### Utilitarian Goals

In contrast to the expressive mode of reasoning, utilitarian models recognize crime control as the paramount goal of punishment. Utilitarian reasoning does not privilege one form of punishment over another; rather, it advocates for punishment that most effectively and efficiently controls crime. Absent knowledge regarding their efficacy in controlling crime, rehabilitation, deterrence, and incapacitation are all, therefore, equally viable goals and strategies. In summarizing the relationship between utilitarianism and justice, Nolan (2001: 162) says that ‘the principal aim of punishment is the utilitarian concern of promoting the well-being of society, not justice *pet se*’.

### Managerial Goals

Managerial goals privilege the management of an offender population over all other punishment goals. While frequently consistent with utilitarian models of punishment, an emphasis on management shifts the focus from the individual offender to offenders in the aggregate, with the task for criminal justice agents being to sort those offenders according to their risk to society and then manage them accordingly. Cohen (1985: 147) says that:

For some time, now, the few criminologists who have looked into the future have argued that ‘the game is up’ for all policies directed to the criminal as an individual, either in terms of detection (blaming and punishing) or causation (finding motivational and causal chains). The technological paraphernalia previously directed at the individual will now be invested in cybernetics, management, systems analysis, surveillance, information gathering, and opportunity reduction.

## The Current State of Punishment

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In trying to understand the dramatic increase in rates of incarceration that has occurred over the past three

decades, a number of scholars have pointed to ideological shifts in popular and professional views of punishment (Tonry, 1996; Beckett, 1997; Garland, 2001). Garland (2001), for example, talks about recent laws as representing attempts to act out ‘punitive urges’ (p. 173), and suggests that the prison has become much more explicitly a mechanism of exclusion and control’ (p. 177). Similarly, Tonry (1996: 3) argues that virtually all states and the federal government have passed laws since the 1980s based on ‘the premise that harsher penalties will reduce crime rates’. This premise is supported by a shift in the underlying view of punishment:

Some other governing rationale for sentencing policy was bound to take the place left empty when rehabilitation lost favor. In both academic and policy circles, that place was taken (sometimes implicitly) by retribution or ‘just deserts’. (Tonry 1996: 3)

Most accounts suggest that, between the 1970s and the beginning of the 21st century, systems of punishment in the United States moved sharply away from utilitarian goals (such as rehabilitation) toward more expressive goals of punishment (specifically, retribution). This shift—toward retribution and a concomitant shift in the power to punish away from criminal justice decision-makers to popularly elected legislative bodies (Garland, 2001)—resulted in unprecedented increases in the scope of the punishment apparatus in the United States.

In the 1970s, all state and federal systems were based on indeterminate sentencing. In an indeterminate system, decision makers (both judges and correctional officials) have a great deal of discretion, allowing them to tailor sentences to individual offenders. Under indeterminate sentencing, the primary goal of punishment is generally rehabilitation, so sentence type and length vary depending on the needs and progress of the individual. In the mid-1970s, amidst growing disillusionment with treatment and growing distrust of the state correctional system, a justice or just deserts model of punishment began to gain support (MacKenzie, 2001). Under this model, the driving ideal was that the punishment should fit the crime rather than the criminal.

While at its purest, this model is strictly retributionist and punishment is not required to serve any utilitarian purpose (von Hirsch et al., 1976), many viewed the justice model (particularly in relation to the treatment model that preceded it) as serving the utilitarian goal of deterrence. By mandating certain penalties for crimes, reformers hoped to increase the deterrent capacity of the law, thereby increasing effective crime control. While one of the fundamental principles of the justice model was ‘a commitment to the most stringent limits on incarceration’ (von Hirsch et al., 1976: xxxix), the model was more frequently used to justify harsher penalties in the name of deterrence.

With the move from rehabilitation to just deserts came shifts at both the state and federal levels of government from indeterminate sentencing systems to determinate sentencing systems, whereby specific crimes warranted specific sentences and judicial discretion was sharply reduced. Both a cause and a result of this change was the shift in the power to punish away from criminal justice decision makers toward legislative bodies. It was at this juncture, according to Franklin Zimring, that ‘punishment became a political issue’ (Beiser, 2001). In a study of the politics of law and order, for example, Stuart Scheingold (1991: 15) talks about ‘the cultural resonance of punitive values’ and argues that politicians have increasingly turned to crime policy as a venue for increasing their political currency. David Garland (2001) argues that the intensified role of legislators in the conversations pertaining to the goals of justice and the means of achieving them increased the likelihood that expressive goals would supersede instrumental goals. He argues that, as the criminal justice system ‘became more politicized in the 1980s and 1990s, the balance of forces often shifted away from the logic of administration and expert decision-making towards a more political and populist style’ (Garland, 2001: 113).

The importance of this shift in explaining the retributive policies passed in the 1980s and 1990s cannot be overstated. Expressive policies designed to convince the disgruntled American public that something was being done to address the crime problem rendered the symbolic functions of punishment (what people believe about punishment) more important than its instrumental functions (what punishment actually

accomplishes). With widespread disillusionment about the ability of the criminal justice system to accomplish such lofty goals as rehabilitation, attention shifted to incapacitation as a means of controlling crime (if offenders are locked up, they cannot commit crimes on the outside). Incapacitation was appealing in that it also served the symbolic function of establishing criminal offenders as ‘others’ and removing them from law-abiding society. Indeed, Zimring and Hawkins argue that, during the 1980s, incapacitation came to be seen as ‘the *dominant justifying aim* of all incarceration’ (Zimring and Hawkins, 1991: 88, italics added).

Numerous examples of criminal justice reforms passed over the past 25 years could be characterized as explicitly expressive reforms, and many are also focused on incapacitating offenders. Garland (2001: 173) argues that:

[Laws like Megan’s Law and Three Strikes] represent a kind of retaliatory law-making, acting out the punitive urges and controlling anxieties of expressive justice. Its chief aims are to assuage popular outrage, reassure the public, and restore the credibility of the system, all of which are political rather than penological concerns.

These political concerns are derived largely from an increased fear of crime and a belief in what Scheingold (1984) calls ‘the myth of crime and punishment’. Harkening back to Durkheim, Scheingold suggests that ‘there is . . . a strong affective side to the attractions of the myth of crime and punishment, and this affective component provides the real key to understanding the attractions of the myth of crime and punishment in times of crisis’ (1984: 65).

In this article we look at the possibility that the sense of crisis (as it relates specifically to crime) may have abated enough to allow for consideration of non-retributive policies. We also explore the possibility that the economic crisis faced by most states in the early 21st century has eclipsed the earlier crisis, and that conversations about crime and punishment have expanded to explicitly consider the costs of punishment as a relevant factor in sentencing policy.

## Data and Methods

### Sample

For the current study, we have chosen six states on which to focus our attention. We used a number of criteria to select these states. First, and most importantly, we wanted to find states in which a reasonable amount of sentencing reform activity was happening during the 2003 legislative session. This required that more than one or two isolated sentencing reform bills were introduced and debated. Using summary reports from the Justice Policy Institute, the Sentencing Project, and the Drug Policy Alliance, we identified those states entertaining sentencing reform measures and sought to build a sample that consisted of diverse reform initiatives. We also wanted a sample that was geographically representative, leading us to select at least one state each from the Northeast, the Southeast, the Midwest/Central region, the Pacific Northwest, and the West. Our sample states include New York, Arkansas, Wisconsin, Iowa, Washington, and Nevada.

The newspapers chosen as data sources were selected based on the following criteria: they posted their articles on Lexus Nexus, they had a wide readership (relative to other newspapers in the state), and they regularly covered the legislative session. Several newspapers per state were reviewed for data.

While most states started their legislative sessions in early to mid-January, the ending dates varied across sample states. This is important because it means that our sampling frame varied, and we gathered more articles from some states (particularly NY and WI) than others (particularly AR and WA). Additionally, we see that only the states of Wisconsin and Iowa did not call for special legislative sessions; a move made by the other sample states so that budget issues could be finalized. Legislative discussions which occurred during special sessions were considered within this research.

While not included as formal criteria for inclusion in the sample, we also looked at the size of state prison populations, state rankings of budget crises, and the extent of prison overcrowding in each state to get a sense of the context in which these legislative conversations were occurring.

The states in our sample vary widely in the number of state prisoners they house (ranging from approximately 8000 in Iowa to over 67,000 in New York). Part of this difference, of course, is related to differences in population. Prison population rates (column 3) adjust for state population, and show states ranging from 259 prisoners per 100,000 population (WA) to almost 500 prisoners per 100,000 population (NV). There is less variation in prison capacity—only two states in our sample (AR and NV) were not operating their prisons over their allotted capacity at the end of 2002. We also see considerable variation in the level of fiscal stress these states face; two of our sample states (NV and NY) ranked numbers 4 and 5 in terms of their budget deficits going into fiscal year 2003, while one of our other sample states (AR) ranked number 41.

Table 1.1 displays changes over time (1970–2003) in the amount of money spent in our sample states on corrections. All of our sample states saw huge increases in correctional expenditures during this time period, though the timing of the largest increases varies across states. Growth has slowed in recent years, however, particularly between 2000 and 2003, with the largest percentage growth being in Arkansas (11 per cent), and the smallest in Nevada (–2 per cent). Indeed, with one exception (New York between 1995 and 2000), this is the only time period

in which ANY state experienced growth of less than 10 per cent. The largest increase occurred in Arkansas between 1970 and 1975 (335 per cent increase), but increases of more than 100 per cent over a 5-year period are not unusual. In the next section we describe the reform efforts being considered in each of our sample states as each state legislature worked to manage the collision between large prison populations and large budget deficits.

## Data

The primary data sources for this article are newspaper articles pertaining to criminal justice reforms proposed during the 2003 legislative session in the six study states. We used a national database (Lexis Nexus Academic Universe) to identify relevant articles. For each state, the sample time frame is from 1 January 2003 (prior to the beginning of the legislative session) until one week after the end of each state’s legislative session. Because we are specifically interested in the ways that state budgetary issues influence the conversation about punishment, we included the term ‘budget’ in all of our searches. We searched for articles with budget and one of several other search terms (‘prison’ or ‘sentencing’ or ‘criminal justice’). Our search yielded 308 articles. From this, we narrowed our sample by excluding articles that were

**Table 1.1** Department of Corrections Expenditures, per State, in Thousands of Dollars, 1970–2003

	1970	1975	1980	1985	1990	1995	2000	2003
AR	3255	14,159	28,254	53,182	81,060	160,878	275,158	305,803
IA	13,811	20,227	51,787	84,181	131,015	176,666	279,196	294,911
NV	5206	12,179	29,257	44,887	115,224	135,987	220,695	216,356
NY	128,236	240,059	462,952	1,139,288	1,858,799	2,272,887	2,440,336	2,535,996
WA	32,935	49,872	97,287	221,626	275,687	482,761	731,277	786,781
WI	35,083	45,604	92,536	186,159	274,736	509,551	837,496	906,725

SOURCES: “State Government Finances in 1970, 1975, 1980, 1985.” U.S. Department of Commerce, Bureau of the Census, GF70, GF75, GF80, GF85. No. 3; <http://www.census.gov/govs/www/state95.html>; [www.census.gov/govs/www/state00.html](http://www.census.gov/govs/www/state00.html); <http://www.census.gov/govs/www/state03.html>

repeated across newspapers (i.e., articles that appeared in one newspaper one day and another the following day) and articles that contained our search terms but were not actually about sentencing reform. Our final sample consists of 150 articles.

## Analytic Method

To identify themes appearing in these articles, we utilized Atlas-ti, a program designed to aid researchers in qualitative analysis.

We have two different types of main codes. First, we coded information on the substance of the debate (i.e., what people were talking about). For this stage, we coded information in the following categories: Problem driving the need for reform; Nature of the problem; Implied/proposed solution; Support for proposed solution (Arguments, Types of support); Opposition to proposed solution (Arguments, Barriers to reform); and Outcome.

More importantly, we coded information on the nature of the debate (i.e., how people were talking about various reforms). For this stage, we coded arguments as falling into the following broad categories (all relating to punishment and reform): arguments about economics (cost), arguments about equity and fairness, arguments about effectiveness, and arguments about the impact of reform on the criminal justice system.

## Results

In this section, we outline the most prominent themes arising in published conversations about sentencing reform. While this represents only a snapshot of conversations about reform happening during the 2003 legislative session, it provides a window into some of the ways in which these conversations may be shifting. We first put the conversation in context by providing evidence that many reformers view the budget crisis as a welcome opportunity to discuss what they perceive as over reliance on incarceration in the United States. We then turn to pro-reform arguments based on critiques of existing laws (arguments about the effectiveness and fairness of these laws). We conclude with arguments justifying particular types of reforms (focusing primarily on treatment and reintegration). Throughout

this section, quotes that are not within quotation marks are directly from the article's author, while quotes within quotation marks are attributed to a source to whom the author spoke.

## Timing of Conversation About Reform

Our results suggest that many reformers view the budget crisis as an opportunity to have an important conversation that is long overdue. States have made dramatic changes to their sentencing and corrections policies over the past three decades, changes that have almost universally toughened existing laws and increased reliance on incarceration as a response to crime. During this time, crime also moved to the forefront of public concerns, and politicians learned quickly that it could be politically lethal to question whether this heavy emphasis on incarceration was affordable, effective, or desirable (Garland, 2001; Beckett and Sasson, 2004).

In a 1995 article appearing in *Time* magazine, when an official in the Clinton administration was asked about why the president had not suggested any real alternative to the Tough on Crime proposals put forth in the Omnibus Crime Bill, the reply was:

You can't appear soft on crime when crime hysteria is sweeping the country. Maybe the national temper will change, and maybe, if it does, we'll do it right later. (Kramer, 1994: 29)

We see similar statements in our sample of articles from 2003. Some public officials state explicitly that political concerns have prevented open discussion about punishment:

[Wisconsin Attorney General Peg] Lautenschlager said one hurdle to an open discussion of revising sentencing practices is the fear that support of alternatives to prison will be seen as being soft on crime. 'In a way, this fear of political repercussion has stifled the debate about what's right and what's wrong'. (Associated Press, 2003a)

Vincent Schiraldi of the Justice Policy Institute, an organization that tracks sentencing policy, believes that lawmakers are now receptive to opening the discussion



about punishment in ways that they have not been in the past. Indeed, Schiraldi stated that ‘the atmosphere among state officials was the most receptive he’d seen during 23 years in the field’ (Crary, Wisconsin, 6 March 2003).

## Critiques of Current Policies

### Current Policies Are Ineffective

With the conversation about sentencing opening up to include voices critical of existing policies, some officials are publicly re-evaluating the utility of prisons. People are asking whether prisons accomplish the goals set out for them, and also whether the costs of incarceration (both financial and human) are worth the benefits. For example, Iowa Senator Jeff Angelo (R) is quoted as saying that ‘Right now, we are just warehousing people’ (Clayton, Nebraska, 1 November 2003), a statement that likely would have been politically difficult, if not impossible, to make during the 1990s. Similarly, Arkansas Senator Dave Bisbee (R) asked, ‘Is society really getting this much worse, or are we doing something wrong with our prisons?’ (Jefferson, Arkansas, 24 April 2003).

Others argue that we are over-incarcerating: that prison is an important tool, but that we are using it indiscriminately. Proponents of this position argue that we need to make distinctions between those who pose a real risk to public safety, and those who do not, and that prison should be reserved for the former group. This view is articulated by Nicholas Turner of the Vera Institute of Justice, and reiterated by the League of Women Voters.

Those we are afraid of belong behind bars, but those we are angry at we can sanction in a different way that is less expensive. For the past 20 years, we’ve just relied on prisons to deal with both groups. (Broder, New York, 19 January 2003)

The League believes jails and prisons must be viewed as a scarce and expensive resource, to be used only when necessary—i.e., to protect the public from violent and repeat offenders. (League of Women Voters, New York, 18 June 2003)

The suggestion that we should view prison cells as scarce resources flies in the face of many of the reforms passed over the past three decades, when legislators passed numerous policies that increased prison populations on the assumption that society would build as many prisons as are necessary to house the criminals deemed a threat to society (a category that expanded dramatically during this period).

Another area of concern for critics of current policies focuses on the drawbacks of incarceration of drug offenders and the tradeoffs that may be involved in this strategy. This piece of the conversation centers around the appropriate scope of punishment—questions about who should be punished, and how we can most rationally allocate our crime control resources. Reformers argue that we should focus our attention and resources on dangerous offenders, rather than taking up space and using resources to lock up nonviolent drug offenders. These arguments play on public fear of crime and suggest that the current response to crime actually has the potential to decrease public safety by wasting resources on drug offenders (particularly drug users—individuals engaged in so-called ‘victimless crimes’). Arkansas state representative Sam Ledbetter (D) argued that:

The cost of having someone in prison transcends the \$ 15,000-a-year cost [of holding an inmate] to prisons. . . . If we don’t be careful with the way we are doing this, we are going to end up with dangerous people that we don’t have room for and people with an addiction taking up space. (Wickline, Arkansas, 17 March 2003)

In virtually all of the instances where arguments about the appropriate scope of punishment were made in our sample, reformers turned to images of danger and threat, images that have been used so successfully by people using the Tough on Crime rhetoric for the past 30 years. It is interesting to note that what are essentially scare tactics are being employed by reformers to fight many of the same laws that were created with the use of similar scare tactics.

### Current Policies Are Unfair

Another criticism of current policies is that, regardless of their effectiveness, they are fundamentally unfair. The Rockefeller Drug Laws, in particular, are described time and time again as unjust (though notably not by legislators):

‘The laws are so demonstrably a disastrous experiment . . . [and represent an] egregious miscarriage of justice’ [said New York Court of Appeals Judge Joseph W. Bellacosa] (Caher, New York, 15 June 2003)

There are at least two strains of arguments about why the laws are so unfair. First, some argue that the laws themselves are unfair either because the punishment is disproportionate to the offense, or because judges are not allowed to take individual factors into account in sentencing. Others argue that it is the consequences of the laws that are unjust, in part because the individuals sentenced under the laws are not the offenders originally targeted by lawmakers, and in part because the laws have a disproportionately harsh impact on minority offenders and minority communities.

### Punishment Is Unfair

One concern raised by opponents of the Rockefeller Drug Laws is that small-time drug offenders receive sentences that are much harsher than sentences handed out to serious violent offenders. In New York, individuals on both sides of reform efforts agree that the drug laws have produced disproportionate sentences:

The Legislature and Gov. George E. Pataki have agreed that the Rockefeller-era drug laws are unduly harsh, mandating longer minimum sentences for some first-time, nonviolent drug offenses than for rape and manslaughter. (Purdy, New York, 12 February 2003)

A similar concern about disproportionality arises in comparing sentences for different drug offenders. The laws are structured so that it is the possession and/or sale of a drug that matters, not the amount of

drug involved. Proponents of reform often evoke individual stories to illustrate the injustices.

A second set of concerns regarding the fairness of the Rockefeller Drug Laws has to do with judicial discretion. One of the primary goals behind the mandatory sentencing movement was to take discretionary power away from judges in order both to reduce sentencing disparities (e.g., by race) and to ensure that defendants were not receiving overly lenient sentences. To achieve these goals, reformers created laws designed to take the ability to consider individual circumstances of a particular case away from judges.

Some proponents of reform argue that one of the consequences of such laws has been a decrease in public faith in the criminal justice system:

These statutes have had a deleterious effect on public trust in the justice system by imposing unduly harsh sentences on non-violent drug offenders, and by limiting the discretion of trial judges to address the unique circumstances of each case [said Lorraine Power Tharp, President of New York Bar Association.] (The Daily Record, 2003)

Concerns about the negative effects of restraining judicial discretion suggest that the distrust of the judiciary that led to sentencing guidelines and other reforms may have backfired, producing a system in which judgments are made by distant lawmakers, rather than by judges present to hear the circumstances of an individual case.

### Consequences Are Unfair

Others have focused on the unfair consequences of the law. Referring again to the Rockefeller Drug Laws described above, one says:

The tough terms were meant to nail drug kingpins, but instead they more commonly locked away lower-level drug carriers and users. (Buffalo News, 2003)

One consequence of these laws, then, has been to capture and harshly punish low-level drug offenders.

Indeed, one reformer, Robert Gangi, executive director of the Correctional Association of New York, argues that the laws actually create incentives for law enforcement personnel to focus on petty drug offenders rather than spending time going after the big dealers.

Another unjust consequence of drug laws (both in New York and elsewhere) has been the disproportionately harsh impact they have had on minorities. Claims of racial disproportionality tied specifically to drug laws arose in three of our study states (Iowa, Wisconsin, and New York). It is not only minority offenders who are hardest hit by the apparent differential enforcement of these laws. Critics also claim that minority communities are impacted as well.

### Advantages of Reforms: Smart on Crime

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One theme that we see tying together a number of different arguments for reform is the claim that, by looking at the current costs and the future consequences of punishment, we can create criminal justice policies that are more rational than those passed under the Tough on Crime regime. Specifically, reformers argue that we should be more rational about how we allocate resources in the War on Crime. Part of the argument about rationality focuses on crime control, as described in the earlier section about the effectiveness of incarceration, while another frames proposed reforms as ‘good investments’. Reformers argue that focusing more resources on treatment and reintegration of offenders will both reduce recidivism and help ex-offenders to become productive citizens and, specifically, taxpayers.

The program, included in Doyle’s proposed budget, would sentence certain nonviolent offenders who violate their probation or parole to 90 days of intensive reform and rehabilitation efforts. The plan seeks to avoid ‘the most expensive and less-productive option of sending them to prison’ according to Doyle’s budget proposal. (Sheehan, Wisconsin, 9 March 2003)

### Focusing on Treatment

In each of our six sample states, reformers were talking about changing laws dealing with drug offenders. The War on Drugs emerged in the 1970s and gained steam in the 1980s, with a number of states passing laws that mandated incarceration for relatively minor drug crimes (Baum, 1996). Reformers have targeted drug laws for a variety of reasons, one of which is the argument that incarceration is particularly ineffective at reforming drug offenders, many of whom commit crimes to support their addiction. A shift away from punishment toward treatment would more effectively address the underlying problem of addiction while also saving taxpayer dollars, a clear example of a policy that would be ‘Smart on Crime’.

Our analysis shows reformers tying arguments for treatment to arguments about cost effectiveness as a way of communicating their message. For example, Kathryn Sowards, a senior research associate at the Center for Community Alternatives in Syracuse, frames her support for treatment in economic terms:

Treatment is a highly profitable investment for society and is one of the most effective weapons in the real war on crime. (Sowards, New York, 17 April 2003)

The following summary of the proposal put forth by Wisconsin governor Doyle provides a clear example of how arguments for treatment combine assertions about economics with reassurances about public safety.

Doyle wants to reduce the state’s reliance on prisons by offering flexible sentencing and rehabilitation upturns. He said, by doing so, the state would make the justice system more effective and affordable while making residents safer. (Associated Press, 2003b)

### Focusing on Reintegration

While arguments for treatment suggest replacing our current response to drug crime (incarceration) with a qualitatively different response, other reformers have focused on what happens after offenders are released from

prison, and advocate increasing resources for reintegration. Whereas most policy reforms over the past 30 years have been highly exclusionary (e.g., by increasing reliance on incarceration and decreasing the services available to offenders to reintegrate after release), some reformers suggest that we should be more inclusionary when we think about the role of ex-offenders in society. Proponents of this view are pushing for concerns about the future to become a central consideration in criminal justice policy decisions. Referring to prisoner reintegration, Wisconsin DOC administrator, Kenneth Morgan, said:

Not only is it part of the budget solution, it is part of what we're trying to do with offenders, and that's to make them valuable citizens and getting them back to where they belong. (Kertscher, Wisconsin, 23 March 2003)

Part of the impetus for this concern comes from rapidly escalating rates of parole revocation and recidivism in recent years.

Wisconsin prisons released more than 7,600 men and women last year. But 3,087 ex-prisoners returned on parole revocations. Sure, some were incorrigible bad guys destined for another cell no matter how many touchy-feely support groups they attended on the outside. But others are caught in a cycle of release and revocation that has more to do with the many obstacles to rejoining community life than their own darker impulses. (Kelley, Wisconsin, 2 March 2003)

This excerpt clearly promotes the idea that recidivism is not simply the result of bad choices ('darker impulses') made by ex-offenders, but that it is also impacted by the resources a community devotes to reintegration.

Truth in Sentencing laws, one of the primary types of reform under the Tough on Crime regime, have had the unintended consequence of reducing the amount of time offenders spend on parole after being released from prison, and thereby decreasing opportunities to

provide them with assistance in reintegration. One of the ways Iowa lawmakers justified softening mandatory minimums for certain drug offenders was by talking about the importance of successful reintegration:

[Iowa Republican Senator] Larson would support lowering the 85 percent mandatory sentence to 70 percent and require prisoners to serve the final part of their sentence being reintroduced into society. (Clayton, Nebraska, 11 January 2003)

Supporters say reducing the mandatory minimum would allow offenders to transition back to society through the community corrections system rather than then being released without supervision, which occurs under the current 85 per cent law (Eby, Iowa, 30 April 2003).

Part of the strategy behind focusing on reintegration seems to lie in shifting public attention away from the problem of crime onto a new problem (i.e., that of prisoner re-entry).

A final justification for encouraging more inclusionary policies is purely economic. Some lawmakers argue that policies should be designed with successful reintegration for offenders as a central goal in part so that ex-offenders can become taxpayers.

'In my view, something could be done' (director of the Arkansas DOC Larry] Norris said. 'It would save us a good deal of money. I think they should be locked up long enough to get cleaned up, straightened out and get an opportunity to go out and pay taxes'. (Blomeley, Arkansas, 20 February 2003)

## Discussion and Conclusions

This article documents some of the shifts that occurred in public conversations about punishment during a period when both the costs of punishment and state budget deficits reached critical levels. While many of the reforms passed during the 1970s, 1980s, and 1990s were based largely on retributive principles with little attention paid to cost or effectiveness, reformers in the

early 21st century have brought the economics of punishment back into the conversation. In this final section of the article, we describe what we see as the most significant themes coming out of the 2003 legislative session in six states, and speculate on how shifts in public conversations might impact criminal justice reform in the coming years.

One way to characterize changes in these conversations is to say that expressive goals of punishment are no longer being mobilized to the exclusion of economic concerns. Some of the extremely expensive criminal justice reforms passed in prior decades were justified almost entirely by their expressive aims. Garland (2001: 191) has argued that:

This way of responding to crime confounds the cost-effectiveness considerations of the economic framework. The War on Drugs is a prominent example of this. So, too, are the mandatory sentences of the California Three Strikes laws, the recent prison works' policy of the UK government, and zero tolerance policing policies, all of which are very costly and, in crime control terms, of doubtful effectiveness. The adoption of a war mentality altogether defeats economic reasoning.

Because a war mentality encourages spending at virtually any cost, we believe legislators are rethinking the War on Drugs. Our analysis suggests that, while public officials who support sentencing reform are not actively working to deconstruct the War on Drugs, they are working to reconstruct drug crimes so that they come to be seen as different kinds of issues, in the hopes that a more effective, less costly, response will be seen as superior to widespread incarceration. What people in the articles we analyzed are arguing about drug offenders is not that what they are doing is not so wrong, but rather that they are not particularly dangerous and that they are taking up space and that this space is then not available for truly dangerous offenders. This kind of argument is consistent with the trend toward managerial goals playing a role in decision-making—that is, people are making decisions about what to do with individual

offenders by looking at the criminal population at the aggregate level.

We would argue that budget issues have served as a catalyst for more widespread acceptance of the principles behind new penology, which 'replaces consideration of fault with predictions of dangerousness and safety management' (Feeley and Simon, 1992: 457). The argument that, rather than being 'tough on crime' we need to be 'smart on crime' is central to this shift. Reformers argue that, by moving toward treating rather than punishing drug offenders, we can reallocate resources so that our prison spending is going toward those offenders who present a danger to public safety, not toward those who are committing moral offenses.

Part of this shift toward new penology involves what we would call a redistribution of danger talk. Public officials interested in reform are trying to effect a change in the way we think about crime and danger by encouraging a symbolic separation between drug offenders and other (particularly violent offenders). In recent decades, public officials have been hugely successful at minimizing such a separation; drug offenders have been rhetorically paired with violent offenders as a threat to public safety for many years. One of the things we see in this article is that reformers are trying hard to decouple drug offenders from other criminals, and to establish them as a different kind of problem. It is highly relevant that the strategy for doing so relies heavily on 'danger talk' and that, rather than trying to diminish the sense of threat the public feels from criminals, reformers work to underline the threat posed by non-drug offenders, and to argue that this threat is exacerbated by incarcerating drug offenders.

This shift also involves a shift in focus toward the future. Retribution is oriented toward the past, with little concern for the future—people must be punished for the wrongs they have committed. Reformers suggest that a 'smart' response to crime involves thinking about what happens with offenders when their incarceration (or treatment) is complete. Significantly, one of the most common ways for this argument to be put forth is for reformers to talk about ex-offenders becoming productive citizens and, specifically, taxpayers. Indeed, one

of our key findings is that reformers regularly connect proposals for qualitatively different ways of responding to crime to arguments about cost effectiveness.

This article started with curiosity about whether, and if so, how, a severe economic downturn would affect conversations about punishment that have been stuck in retributive mode for so many years. What our analyses show is that the economic crises of the early 21st century were, for many, a welcome opportunity to talk about the fairness, effectiveness, and cost of our current system of punishment. What we cannot conclude is that economic concerns caused these conversations to happen. We do not include in our analysis other possible explanatory variables, and can therefore not definitively assert a causal relationship between the economy and conversations about punishment. While prior research suggests that explanatory variables such as changes in the crime rate or fear of victimization are unlikely to effect such changes (e.g., Scheingold, 1984, 1991), it is possible that there were cultural changes in the early 21st century that changed the tenor of conversations about crime and punishment. For example, Scheingold's (1984: 38) argument that 'our response to crime may have less to do with the actual impact of crime on our lives than with the symbolic importance of crime in American culture' raises the possibility that, if crime decreased in symbolic importance, conversations about crime policy would also change. Unfortunately, our data do not allow us to evaluate this claim beside the claim that economic concerns were instrumental in shifting conversations about punishment.

One of the things that gives us confidence in our claim that the relationship between the economy and opportunities for reforming punishment, however, is that many of the reform advocates referred specifically to the economy in making their case for reform. Whether or not the economy opened the door to the conversations, reformers perceived it as a tool with which to convince people that reform was appropriate. The fact that reformers perceived economic problems as the element that allowed them the opportunity for talking about reform seems to us a crucial point. Furthermore, the reality is that four of our six sample

states found it necessary to enter into special legislative session to determine how to balance rising costs of corrections with diminished state resources. These two factors contribute to our confidence in concluding that there is an important relationship between the economy and the ways we talk about punishment.

We see compelling possibilities for furthering this research, and specifically for examining the questions about causality raised earlier. Perhaps the most effective way to answer the question about whether economic concerns drive conversations about punishment would be to conduct a longitudinal study in which reform conversations are tracked over time. This would allow researchers, for example, to tentatively answer the question of whether a return to a bull economy would silence reform conversations. If economic concerns are the primary catalyst for reform, we would predict that a sharp economic upturn would have the effect of muting conversations about reform. We strongly suspect, however, that the relationship between the economy and punishment is a complicated one, and that such research would not produce definitive results. Indeed, while punishment has proved to be extraordinarily expensive, it continues to respond to the discontents of the public (Scheingold, 1984), and may therefore be exceedingly resistant to change.

This article represents a snapshot of a time when politicians are struggling to reconcile new economic conditions with old rhetoric about punishment, and it remains to be seen where this will lead. The fact that some of the reforms being debated in our analysis passed while others did not suggests that the effectiveness of the rhetorical shifts we document here is yet to be determined.

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## DISCUSSION QUESTIONS

1. According to the authors, what role does the economic system play in shaping our societal response to crime?
2. Given the importance of the budget and the downward economic trend, how might community-based alternatives seek to meet all of the punitive goals outlined in the article?
3. According to the authors, what is the current state of punishment in the United States?
4. Based on the current study, how might a review of newspaper articles before and after legislative hearings reveal information about the current state of punishment?

