

Criminology:

Punishment and Social Control

CRIM20006 REVISION NOTES

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Revision Notes

Lecture 1: Introducing Imprisonment

Lecture Content:

- Punishment and its justification
- Locating imprisonment – the Victorian CJS
- Sentencing – punishment in practice
- The contemporary penal landscape
- The continuing appeal of the prison

What is punishment?

- Not the same as other forms of pain/suffering
- *Moral justifications* for punishment → *legitimacy*
- Feinberg (1994): “punishment is a conventional device for the expression of attitudes of resentment and indignation, punishment, in short, has a symbolic significance...” (in Easton & Piper 2005: 4).
- Must stem from an authoritative source, usually the State.
- Intentionally imposed by the State ∴ requires justification

Elaboration:

- Punishment is **NOT** the same as other forms of pain & suffering
- There are **MORAL JUSTIFICATIONS** for punishment – these are the basis for its perceived *legitimacy*
- Why is legitimacy important? Because if punishment is not *perceived as legitimate*, it will not be accepted and will therefore not be *effective*.
- Feinberg’s definition: “*device for the expression of attitudes*”, i.e. *symbolic* and also *communicative*.
- **Authoritative source** – i.e. the State
- It’s because it is *intentionally imposed* by the State upon its people that it requires *justification*
- So what we’re talking about in this subject is **justified punishment**.

What needs justifying?

- Two fundamental elements of punishment (Zedner 2016): **censure + sanction**
- A working definition of justified punishment:
 - i) The censure of an offender for an offence
 - ii) The intentional imposition of hard treatment on the offender for the offence (Ashworth and Zedner, 2014a: 14 in Zedner 2016: 6).
- ‘To prioritize censure is to recognize that punishment is first and foremost communicative.’ (Zedner 2016: 6)
- **Sanction** ‘requires separate, more robust justification.’ (p.7)

Two fundamental elements: *Censure + Sanction*

- “Duff (2001) defines sanction as ‘something intended to be burdensome or painful, imposed on a (supposed) offender for a (supposed) offence by someone who (supposedly) has authority to do so’.
- The repeated use of ‘supposed’ here is a sharp reminder of the fallibility of the criminal justice process.” (Zedner 2016: 7)

Victoria's sentencing hierarchy



Other orders that can be added to a sentence include:

- Restitution Order
- Compensation Order
- Confiscation & Forfeiture of Property
- Disqualification & Suspension from Driving
- Sex Offender Registration:
 - Under the *Sex Offenders Registration Act 2004*, offenders convicted of certain sexual offences are automatically registered as sex offenders. For other sexual offences, the court can decide whether or not to register an offender.

Drug Treatment Order (DTO):

- A drug treatment order (DTO) combines a term of imprisonment with drug treatment, but with the term of imprisonment suspended. The court imposes a sentence of up to two years' imprisonment but defers the term of imprisonment while the offender undergoes treatment and supervision.
- A drug treatment order can only be ordered by the Victorian Drug Court, which is a venue of the Magistrates' Court. A drug treatment order cannot be given to offenders who have committed sexual or violent crimes.

Custodial sentencing outcomes

- Imprisonment is 10 times more common an outcome in Victoria's higher courts than in the Magistrates' Court.
- Imprisonment was ordered in:
 - **49.1% of cases** sentenced in the **County & Supreme Courts** in the 15-year period ending June 2015
 - **4.9% of cases** sentenced in **Magistrates' Courts** in the eleven-year period ending June 2015.

(Sentencing Advisory Council 2016: 16)

"Imprisonment is about 10 times more common as a sentencing outcome in Victoria's higher courts (County and Supreme Courts) than it is in the Magistrates' Court. Imprisonment was ordered in about half (49.1%) of cases sentenced in Victoria's higher courts in the fifteen-year period ending June 2015, compared with 4.9% of cases sentenced in the Magistrates' Court in the eleven-year period ending June 2015." **Sentencing Advisory Council 2016**

What are the purposes of sentencing?

1. Just punishment
2. Deterrence (specific & general)
3. Rehabilitation
4. Denunciation
5. Community protection (incapacitation)

Section 5(1) of the *Sentencing Act 1991 (Vic.)* specifies the only purposes for sentences are:

- Just punishment – to punish the offender to an extent and in a way that is just in all the circumstances
- Deterrence – to deter the offender (specific deterrence) or other people (general deterrence) from committing offences of the same or a similar character
- Rehabilitation – to establish conditions that the court considers will enable the offender's rehabilitation
- Denunciation – to denounce, condemn, or censure the type of conduct engaged in by the offender
- Community protection – to protect the community from the offender
- A combination of two or more of these purposes.
- Just punishment & denunciation may be seen as '**just deserts**' or **retributive purposes**.
- Deterrence, rehabilitation & incapacitation can be seen as **utilitarian purposes**.

Sentencing principles

- Parsimony
- Proportionality
- Parity
- Totality

→ These principles form the basis of sentencing decisions

Sentencing principles have developed through legislation and court decisions (common law).

These principles form the basis of sentencing decisions:

- **Parsimony** – the sentence must be no more severe than is necessary to meet the purposes of sentencing
- **Proportionality** – the overall punishment must be proportionate to the gravity of the offending behaviour
- **Parity** – similar sentences should be imposed for similar offences committed by offenders in similar circumstances
- **Totality** – where an offender is to serve more than one sentence, the overall sentence must be just and appropriate in light of the overall offending behaviour.



Power – Knowledge

- ‘...power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.’
 - ‘...it is not the activity of the subject of knowledge that produces a corpus of knowledge, useful or resistant to power, but **power-knowledge**, the processes and struggles that traverse it and of which it is made up, that **determines the forms and possible domains of knowledge.**’
- ‘Power produces knowledge’ (1977: 27)
- i.e. **power and knowledge are inextricably related—knowledge is always an exercise of power and power always a function of knowledge.**

Disciplinary Power

- A new mode of power relations: **disciplinary power**
- The prison: paradigmatic example
- Body remains central but **target shifts** from body to **mind/’soul’**
- Recall: ‘*from...unbearable sensations’ to ‘suspended rights’* (1977:11)

Technologies of power:

1. **Sovereign** power – pre-modern, monarchical, divine, control through violence & appropriation
2. **Disciplinary** power – control of bodies, through institutions
3. **Bio-politics** – control /regulation of populations, through health, reproduction, sexuality; e.g. births, deaths & marriages.
4. Discipline + bio-politics → **bio-power**
 - Challenges a certain rhetoric of reform and the ‘humanisation’ of punitive practices – punishment becomes hidden (e.g. imprisonment, death row, lethal injection)

The prison = a paradigm

- Foucault’s model for the way other institutions function:
 - ‘...an important mechanism, for it automatizes and disindividualizes power’
 - abstracts power from individual level...
 - ...to a ‘*distribution of bodies, surfaces, lights, gazes; in an arrangement whose internal mechanisms produce the relation in which individuals are caught up*’ (Foucault 1977: 202)
 - For Foucault the Panopticon "is an important mechanism, for it automatizes and deindividualises power. Power has its principle not so much in a person as in a certain concerted distribution of bodies, surfaces, lights, gazes; in an arrangement whose internal mechanisms produce the relation in which individuals are caught up" (1977: 202)
- Bureaucracies, like disciplines, also contribute to the process of deindividuation

Bentham’s panopticon

- Late 18thC
- **Threat of surveillance**
- ‘Authoritarian gaze’ is central → becomes internalised, normalised
- ‘*power of mind over mind*’ (Bentham 1843)
- Self-discipline
- Practice of penitence → principle of rehabilitation
- Bentham described the Panopticon as "**a new mode of obtaining power of mind over mind, in a quantity hitherto without example.**" Elsewhere, in a letter, he described the Panopticon prison as "a mill for grinding rogues honest". (1843)