**Sociology 3395: Criminal Justice & Corrections**

**Class 17: Sentencing and Punishment**

\* Upon conviction, a court must come up with an appropriate sentence for an offender: options= prison, community service, fines & probation

\* Judges have much latitude since:

- usually only the maximum is specified

- community corrections are encouraged

\* Controversies have emerged about sentencing disparity, too much judicial discretion, & special sentencing provisions for Aboriginals

(e.g. Gladue case).

**The Purpose of Sentencing:**

\* Punishments cover a wide range of sentences / may be combined

\* How do we determine appropriate punishment?

\* Sentencing goals:

(1) Deterrence (general vs. specific)

(2) Selective incapacitation (e.g. chronic criminals)

(3) Rehabilitation (i.e. providing programs)

(4) Justice (seriousness of crime + prior record)

\* Judges’ ability to sentence an offender restricted by law (e.g. no life sentence for summary conviction offence)

\* However, within legal parameters (“range”), judges have discretion to tailor sentence to the case at hand.

\* Sentencing criteria are set out in the Criminal Code (e.g. maximum/ minimum sentence allowed). Case law also relevant in setting “range”

\* Judges must consider what sentencing goal they seek to accomplish (e.g. deterrence, selective incapacitation, justice or rehabilitation)

**Forms of Punishment:**

\* Judges may give the following punishments (or a combination thereof)

- imprisonment - probation

- intermittent sentences - restorative justice

- fines - absolute/ conditional

- restitution/ community service discharges

- community based sanctions

**The Sentencing Process:**

\* Usually involves judge’s consideration of:

- pre-sentence report

- the seriousness of the offence

- mitigating & aggravating circumstances

**Sentencing Law in Canada:**

\* Bill C-41 (1996): sentencing reform law:

- enhanced sentences for hate crimes, spousal & child abuse,

abusing position of trust, & organized crime

- advocated consistency, but sought to avoid, if possible,

incarceration (esp. Aboriginals) & unduly harsh sentences

\* Key principles: - denunciation - rehabilitation

- deterrence - accountability

- incapacitation - reparation

**Sentencing Patterns in Canada:**

\* Incarceration: 34% (stable). Median length 30 days (stable)

\* Most common offences: common assault (12%), drunk driving (12%)

\* Conviction rate: 61%

\* Most common sanction: probation (44%)

\* Characteristics of offenders: male (83%); under 35 (65%)

**Issues in Sentencing:**

\* Sentencing disparity:

- case to case: same offence but different penalty

- judge to judge: some judges harsher than others

- court to court (e.g. varying “courthouse norms”)

- province to province

- disparity vs. discrimination? (e.g. race)

\* Public opinion research:

- public thinks that sentences are too light

- when presented with sentencing options, public less punitive

- public is more punitive toward arson, assault on police, forgery,

theft & fraud

- judges are more punitive toward robbery, perjury, B+E

- support for sentencing goals depend on the type of crime

- GSS found few Canadians think courts are doing a good

job with offenders (varies with age, gender, & class)

\* Sentencing Guidelines:

(1)Meant to reduce judicial disparity by focusing only on the

seriousness of the offence & record of the offender

(2) Problems in Canadian sentencing (Canadian Sentencing

Commission, 1987):

- maximum penalties are too high

- mandatory minimums create injustice

- not enough information about sentencing practices

\* Recommendations of Canadian Sentencing Commission:

1. Develop a new rationale for sentencing

2. Eliminate mandatory minima (except murder)

3. Create new maxima of 12, 9, 6, 3, or 1 year, or 6 months

4. Eliminate full parole

5. Create time-off for good behavior

6. Increase use of community sanctions

7. Eliminate automatic jail for fine default

8. Create presumption of jail (or not) for specific offences

9. Create a presumption range for jail terms

10. Create a permanent Sentencing Commission to gather data &

review cases

\* Do sentencing guidelines work?

- Minnesota (1985): disparity based on race, employment & gender

declined. Greater emphasis on offence & use of weapons

- Follow-up research (1991, 1995): increased deviation from

guidelines. Prosecutors changed charging strategies instead

\* Victim impact statements:

- 1989: victims gained right to make impact statements in writing

- 2000: right to read statements in court

- Victims’ rights legislation (federal & provincial)

- Do these give dignity or vindictiveness to victims?

- There is somewhat better access to information

- Little measurable effect on victim attitudes

- Most victims held negative opinions before & after sentencing

- Greatest impact on sex offender sentencing

**Sentencing and Healing Circles:**

\* Aboriginals over-represented in prisons (e.g. denial of bail, non-payment of fines, less likely to get probation)

\* Sentencing and healing circles:

- combines traditional Aboriginal community justice & western

legal systems

- judge has final authority

- recommendations based on participation of victim, family,

friends, elders, police, prosecution & defense

\* Use of sentencing circles:

- mostly for minor offences

- accused has deep community roots

- all parties willing to participate

- victim not suffering from battered woman syndrome

- whether counseling/support needed/available for victims

- court approval/ agreed upon facts

\* Benefits:

- reducing monopoly of professionals

- encouraging lay participation

- increasing information flow

- creatively exploring new options

- promoting shared responsibility

- encouraging participation by offender

- involving the victim

- creating constructive environment

- promotes appreciation of limits of CJS

- extends the focus of the CJS

- mobilizes community resources

- integrates Aboriginal values

\* Problems: genuine reconciliation & negative victim experiences

**Conclusion:**

\* Sentencing an important part of criminal justice process (yet decisions not final given potential for appeal/ decisions of parole board)

\* Various crime control philosophies underlie sentencing decisions

\* Recent policy changes have been put in place to favor both broad consistency (sentencing guidelines) & special situations (Aboriginals)