**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)