

CHAPTER TWO

Punishment Philosophies and Types of Sanctions

Punishments vary in their underlying philosophy and form. Major punishment philosophies include retribution, deterrence, rehabilitation, incapacitation, and restoration. The form of punishment may be classified as either formal or informal in terms of the organization and legitimate authority of the sanctioning body. Sanctions also vary in their valence or direction. Positive sanctions for “good behavior” include various types of praise, awards, and rewards, whereas negative sanctions are associated with various types of punishments. Our focus on punishment dictates an emphasis on negative sanctions.

This chapter reviews these punishment philosophies and the types of punishment within a comparative historical context. Detailed comparisons of current practices across world regions and case studies in particular countries will be conducted in later chapters. Here, our focus is on the general philosophical orientations and justifications for punishment and their various forms.

PHILOSOPHIES OF PUNISHMENT

Punishment serves numerous social-control functions, but it is usually justified on the principles of retribution, incapacitation, deterrence, rehabilitation, and/or restoration. The specific principles that underlie these dominant philosophies for punishment are summarized below.

RETRIBUTION

One of the oldest and most basic justifications for punishment involves the principles of revenge and retribution. This equation of punishment with the

gravity of the offense is embedded in the Judeo-Christian tradition in the Mosaic laws of the Old Testament that emphasize the idea of “an eye for an eye.” Neither constrained by questions of offender culpability nor directed at preventing future wrongdoing, offenders under a retributive philosophy simply get what they deserve. Punishment is justified on its own grounds, a general principle that has remained popular throughout Western history in both law and widespread public beliefs about how justice should be dispensed in democratic societies.

The classical retributive principle of “let the punishment fit the crime” was the primary basis for criminal sentencing practices in much of Western Europe in the nineteenth century. This principle of punishment was subsequently modified in neoclassical thought to recognize that some offenders who commit similar offenses may be less blameworthy or culpable due to factors outside of their control (e.g., diminished capacity, mental disease or defect, immaturity). Under this revised retributive theory of just deserts, punishment should fit primarily the moral gravity of the crime and, to a lesser extent, the characteristics of the offender.

A current example of retributive principles being used as the basis for punishment involves mandatory sentencing policies and sentencing guidelines systems in the United States. Mandatory sentences dictate uniform sanctions for persons who commit particular types of offenses (e.g., enhanced penalties for crimes committed with firearms), whereas determinate sentencing guidelines prescribe specific punishments based on the severity of the criminal offense and the extensiveness of the offender’s prior criminal record. Consistent with a retributive philosophy, punishment under these sentencing systems focuses primarily on the seriousness and characteristics of the criminal act rather than the offender.

Although retribution is often linked to criminal sanctions, it is equally applicable to other types of legal sanctions and informal sanctions. For example, civil litigation that is based on the principle of strict liability is similar to retributive philosophy in that compensatory and punitive damages focus on the gravity of the prohibited act rather than characteristics of the offender. Lethal and nonlethal sanctions that derive from blood feuds between rival families, range wars in agrarian communities, terrorist attacks on civilian and government targets, and acts of “street justice” by vigilante groups and other extrajudicial bodies are often fueled by the twin motives of revenge and

retribution. Various economic punishments and sanctions that restrict business practices (e.g., asset forfeitures, injunctions, product boycotts, worker strikes and slowdowns, revocation of licenses, decertification of programs, cease-and-desist orders, denial of benefits) may be justified on various utilitarian grounds like protecting society or deterring wrongdoing, but they may ultimately reflect the widespread belief in letting the punishment fit the crime.

Retribution as a penal philosophy has been criticized on several fronts when it is actually applied in practice. First, strict retributive sanctions based solely on the nature of the offense (e.g., mandatory sentences for drug trafficking, the use of firearms in the commission of crimes) are often criticized as being overly rigid, especially in societies that recognize degrees of individual culpability and blameworthiness. Second, the principle of *lex talionis* (i.e., the “eye for an eye” dictum that punishment should correspond in degree and kind to the offense) has limited applicability. For example, how do you sanction in kind acts of drunkenness, drug abuse, adultery, prostitution, and/or traffic violations like speeding? Third, the assumption of proportionality of punishments (i.e., that punishment should be commensurate or proportional to the moral gravity of the offense) is untenable in most pluralistic societies because there is often widespread public disagreement on the severity of particular offenses.¹ Under these conditions, a retributive sentencing system that espouses proportional sanctions would be based on the erroneous assumption that there is public consensus in the rankings of the moral gravity of particular types of crime.

Even with these criticisms, however, the retributive principle of *lex talionis* and proportionality of sanctions remains a dominant justification of punishment in most Western cultures. Retribution under a Judeo-Christian religious tradition offers a divine justification for strict sanctions and it clearly fits popular notions of justice (e.g., “he got what was coming to him”). The dictum of “let the punishment fit the crime” also has some appeal as a principled, proportional, and commensurate form of societal revenge for various types of misconduct.

INCAPACITATION

A primary utilitarian purpose for punishment involves various actions designed to decrease the physical capacity of a person to commit criminal or

deviant acts. This principle of incapacitation focuses on the elimination of individuals' opportunity for crime and deviance through different types of physical restraints on their actions. The conditions of confinement may be so deplorable that they reduce the offender's subsequent desire to engage in misconduct, but such a deterrent effect is not a necessary component of incapacitation in its pure and earliest form. In other words, a night in the "drunk tank," confinement in the military stockade, or the "grounding" of a wayward adolescent are often considered useful incapacitative strategies even when these practices do not lead to subsequent reform in one's behavior.

A plethora of devices, techniques, and structures have been used throughout history as means for incapacitation. The early tribal practices of banishment to the wilderness, the English system of "transportation" of convicts to other colonies in the seventeenth and eighteenth centuries, the exile of citizens in ancient Greek society, and political exile in more modern times are examples of incapacitative sanctions because they involve the physical removal of persons from their former communities, thereby restricting their physical opportunity for misconduct in the original setting. The stocks and pillory in English history and Colonial America were devices used for both public ridicule and incapacitation. Other types of incapacitating hardware are as diverse as electronic shackles for monitoring offenders in open spaces, Breathalysers that prevent drunk drivers from starting their cars, "kiddie harnesses" to restrict the movement of young children in public places, and chastity belts for limiting sexual promiscuity.

The function of incapacitation may also be served by other types of legal and extralegal restrictions on one's behavior. Other legal forms of incapacitation involving civil or administrative decrees include court-ordered injunctions, federal boycotts and restraint-of-trade agreements, restraining orders in domestic violence cases, cease-and-desist orders, revocations of licenses, foreclosures, and the passage of certification requirements to perform particular tasks (e.g., college degree requirements for teaching, passing medical board and bar exams for practicing medicine or law). Many of these actions are economic sanctions in that they carry financial consequences for those involved, but these civil and administrative rules can also be seen as incapacitative in that they place physical restrictions on one's possible actions. Ostracism, the spreading of adverse publicity, "lumping" (i.e., doing nothing and not responding to one's inquiries), and censorship are some of the extralegal and informal means of physically restricting one's behavioral opportunities.

The most widely known type of incapacitation involves some form of incarceration, or what others have termed “penal bondage.”² Aside from their incapacitative effect on restricting immediate criminal opportunities, penal bondage of criminals, vagrants, debtors, social misfits, and other disadvantaged groups across time periods and geographical contexts has often included a component of forced labor (e.g., public works projects, forced servitude in military campaigns) as a condition of confinement.

Physical structures for incapacitation may have different purposes or functions besides the physical restraint of the body. These places of confinement are described across time and space in context-specific terms like dungeons, towers, workhouses, gulags, jails, prisons, labor camps, “readjustment” centers, correctional or treatment facilities, cottages, sanitariums, and mental institutions. The specific language used for descriptive purposes also signifies their functions beyond physical incapacitation.

During the last half century, several new forms of incapacitation have emerged. For example, shock incarceration programs involve short-term incarceration of juvenile offenders to show them the pains of imprisonment and scare them into a future life of conformity. Work release programs and placement in halfway houses are temporary incapacitation programs designed to maintain community ties and ease the adjustment from prison to conventional life. Another variant of incapacitation, intensive-supervision probation (ISP), leaves adjudicated criminals in their community but under the watchful eye of probation officers or other legal authorities.

The recent model of selective incapacitation in the United States is designed to target criminal offenders thought to have the greatest probability of repeat offending and place greater restraints on the nature and conditions of confinement for these “high-risk” offenders. Although research suggests that a small pool of people commits the predominant share of violent and property crime, efforts to successfully predict these high-risk offenders suffer from numerous ethical and practical problems, including high rates of both “false positives” (i.e., falsely labeling someone as a high-risk offender) and “false negatives” (i.e., releasing high-risk offenders because they were erroneously characterized as low-risk).³

Contrary to early historical patterns of incapacitation that emphasized the reduction of the physical opportunity for crime and deviance, modern versions of this philosophy are more “forward-looking” in terms of focusing on the utility of punishments for changing offenders’ criminal motivations

once they are no longer physically restrained from committing deviance. In this way, incapacitation is united with other utilitarian philosophies for punishment. Different types of incapacitative sanctions may serve as the initial framework for establishing successful programs of deterrence and rehabilitation.

DETERRENCE

The doctrine of deterrence asks a fundamental question about the relationship between sanctions and human behavior: Are legal and extralegal sanctions effective in reducing deviance and achieving conformity? Punishment is said to have a deterrent effect when the fear or actual imposition of punishment leads to conformity.⁴ The deterrent value of punishments is directly linked to the characteristics of those punishments. Specifically, punishments have the greatest potential for deterring misconduct when they are severe, certain, and swift in their application. Punishments are also widely assumed to be most effective for instrumental conduct (i.e., deliberate actions directed at the achievement of some explicit goal) and for potential offenders who have low commitment to deviance as a livelihood (e.g., the person is not a professional criminal).⁵

Deterrence is based on a rational conception of human behavior in which individuals freely choose between alternative courses of action to maximize pleasure and minimize pain. From this classical perspective on crime and punishment, criminal solutions to problems become an unattractive option when the costs of this conduct exceed its expected benefit. Swift, certain, and severe sanctions are costs that are assumed to impede the likelihood of engaging in deviant behavior. From a deterrence standpoint, any type of punishment (e.g., monetary, informal, incapacitative, corporal) has a potential deterrent effect as long as it is perceived as a severe, certain, and swift sanction.

The research literature on the effectiveness of criminal punishments outlines the four major types of deterrence, which include the following:

- *Specific deterrence* involves the effectiveness of punishment on that particular individual's future behavior. Recidivism rates (e.g., rates of repeat offending among prior offenders) are often used to measure the specific deterrent value of punishments.

- *General deterrence* asks whether the punishment of particular offenders deters other people from committing deviance. A comparison of crime rates over time or across jurisdictions is typically used to ascertain the general deterrent value of punishment.
- *Marginal deterrence* focuses on the relative effectiveness of different types of punishments as either general or specific deterrents. For example, if recidivism rates for drunk drivers are higher for those who receive monetary fines than those who received jail time, jail time would be rated higher in its marginal deterrent value as a specific deterrent for drunk driving. Similarly, debates about capital punishment often focus on the marginal deterrent value of life imprisonment compared to the death penalty as a general deterrent for murder.
- *Partial deterrence* refers to situations in which the threat of sanction has some deterrent value even when the sanction threats do not lead to law-abiding behavior. For example, if a thief picked or “lifted” someone’s wallet rather than robbing them at gunpoint (because the thief was fearful of the more serious penalty for committing an armed robbery), the thief would be treated as a “successful” case of partial deterrence. Similarly, tougher fines for speeding passed in a jurisdiction would serve as a partial deterrent under these two conditions: (1) the average motorist under the new law exceeded the speed limit by 5 miles an hour and (2) the average motorist under the old law exceeded the speed limit by 10 miles an hour. The average motorist is still exceeding the speed limit but he or she nonetheless is driving slower.

When the philosophy of deterrence is used in the context of penal reform, it is often as a justification for increasing the severity of sanctions, particularly in Western developed countries.⁶ Legislative responses to terrorist attacks, drug trafficking, child abductions, and violent crimes on school property have been directed primarily at increasing the severity and/or duration of punishments (e.g., being a drug “kingpin” and participation in lethal terrorist attacks are now capital crimes under U.S. federal law). Although these greater punitive measures may serve to pacify widespread public demands to “get tough” on crime, the specific and general deterrent effect of such efforts is probably limited without attention to the other necessary

conditions for effective deterrence (i.e., high certainty and high celerity of punishments).⁷

Empirical efforts to assess the effectiveness of deterrence are limited by several basic factors. First, persons may abide by laws or desist in deviant behavior for a variety of reasons other than the looming threat or fear of legal sanctions. Some of these nondeterrence constraints on behavior include one's moral/ethical principles, religious beliefs, physical inability to commit the deviant act, and lack of opportunity. Second, neither swift nor certain punishment exists in most legal systems in the contemporary world. The majority of criminal offenses are typically unknown to the legal authorities and, even among the known offenses, only a small proportion result in an arrest and conviction. The typical criminal penalty and civil suits are often imposed or resolved months, if not years, after the initial violation. Third, the severity of punishment actually received by offenders is often far less than mandated by law, due to the operation of such factors as plea bargaining, charge reductions, jury nullifications, executive clemency and pardons, and "good time" provisions. Under these conditions, it is unsurprising that the deterrent effect of criminal and civil sanctions has not been clearly demonstrated across a variety of contexts.

REHABILITATION

Although it may seem contradictory or at least somewhat odd to assert that we punish for the treatment and reform of offenders, this basic principle underlies the rehabilitation purpose of punishment. The ultimate goal of rehabilitation is to restore a convicted offender to a constructive place in society through some combination of treatment, education, and training.⁸ The salience of rehabilitation as a punishment philosophy is indicated by the contemporary jargon of "correctional facilities," "reformatories," and "therapeutic community" now used to describe jails, prisons, and other institutions of incapacitation.

The link between places of incapacitation and reform is established throughout much of written history. The earliest forms of penal confinement in dungeons, towers, caves, and other dark and dreary places were largely incapacitative in their primary function, but some degree of moral and spiritual enlightenment was expected of those condemned to long periods of solitary confinement. This idea of restraint to reform is evident within the context

of religious penance in Judeo-Christian practices in Western Europe and the British colonies in North America and elsewhere. It is also manifested in U.S. history in the early development of reformatories and penitentiaries. These large-scale incarceration structures punished misguided youth and criminals by isolating them so they could reflect on their deviant actions, repent, and subsequently reform their behavior. Confinement and reflection for spiritual reform are also of central importance in the religious principles found in Hinduism and Buddhism.

In contrast to retribution that emphasizes uniform punishments based on the gravity of the misconduct, rehabilitation focuses on the particular characteristics of individual offenders that require treatment and intervention. This individualized treatment approach is logically consistent with indeterminate sentencing structures that give judges enormous discretion to tailor punishments for the greatest good to the individual offender and provide parole boards with equally high discretion to release or retain offenders for future treatment. Through the application of current theories of human behavior and the latest therapeutic techniques for behavioral modification, rehabilitation experienced growing acceptance in many countries throughout much of the twentieth century.⁹

Even though “correctional” institutions continue to espouse the benefits of rehabilitation and specific treatment programs (e.g., drug treatment, anger management, job training), support for rehabilitation in the United States was dealt a major blow in the mid-1970s with publication of a report that concluded that rehabilitation efforts had no appreciable effect on recidivism.¹⁰ National fiscal restraints, declines in correctional budgets for program development, high public outcry for more severe and longer prison sentences, and a growing crime-control political ideology that focuses on suppression of criminal behavior rather than its early prevention are current conditions in Western societies that are largely antithetical to the ideas of treatment and rehabilitation.¹¹

RESTORATION

One of the most recent goals of punishment derives from the principles of restoration. As an alternative to other punishment philosophies (e.g., retribution, incapacitation, rehabilitation), restorative justice fundamentally challenges our way of thinking about crime and justice. The global victims’ rights

movement is a relatively new phenomenon, but, the general roots of restorative justice can be traced back to the early legal systems of Western Europe, ancient Hebrew justice, and precolonial African societies.¹²

Restorative justice literally involves the process of returning to their previous condition all parties involved in or affected by the original misconduct, including victims, offenders, the community, and even possibly the government.¹³ Under this punishment philosophy, the offender takes full responsibility for the wrongdoing and initiates restitution to the victim. The victim and offender are brought together to develop a mutually beneficial program that helps the victim in the recovery process and provides the offender a means of reducing their risks of re-offending.

The theory of reintegrative shaming developed by John Braithwaite is based on the principles of restorative justice.¹⁴ Offenders take personal responsibility for their actions and condemnation is focused on the deviant act, rather than the offender, and its impact on the victim and the community. Both the offender and the community need to be reintegrated as a result of the harm caused by the criminal behavior. Community mediation groups, neighborhood councils, local support groups, and victim–offender conferences are the primary means of achieving these restorative efforts.

The principles of restorative justice have been applied to the study of both criminal and civil sanctions. For example, the institutionalized practice of “written apology” and “letter of forgiveness” in the Japanese criminal justice system is designed to express remorse and make restitution. By accepting the apology, the victim forgives the offender.¹⁵ In all cases of restorative justice, the goal is to restore both the individual parties and their community’s sense of wholeness.

TYPES OF FORMAL AND INFORMAL SANCTIONS

The various philosophies of punishment are manifested in practice by the allocation of various types of formal and informal sanctions. Formal legal punishments involve pain or other consequences normally considered unpleasant that are intentionally administered by officials with the legitimate authority to do so.¹⁶ Legal officials in this context are judges, government agencies, administrative bodies, executive boards, councils, tribunals, and other individuals and groups that are formally authorized to impose these

sanctions. In contrast, informal sanctions are those imposed by individuals or groups that lack this legitimate authority. Friends, family members, vigilante committees and civilian “regulators,” paramilitary organizations, and law enforcement personnel operating outside their official capacity are examples of informal sanctioning bodies. Regardless of their formal or informal status, punishment is a ubiquitous feature of social control in the modern world.

There are various ways to classify the enormous variety of formal and informal punishments.¹⁷ We group these sanctions into three major categories: (1) *economic punishments* that involve direct financial consequences to offenders, (2) *incapacitative sanctions* that physically restrain behavioral patterns, and (3) *corporal punishments* that involve death or physical suffering through the direct application of physical force on the human body. Sanctions that cover multiple types of punishment are classified here according to their primary consequences to the offender (e.g., economic boycotts are classified as economic sanctions even though they may physically incapacitate and harm residents of the affected area).¹⁸ The nature of specific punishments within these general categories is highlighted below.

ECONOMIC SANCTIONS

Economic sanctions are financial penalties imposed for wrongdoing. As such, these sanctions are used around the world for purposes of retribution, deterrence, and restoration.¹⁹ Large fines levied against persons who commit economic crimes such as embezzlement, stock fraud, and insider trading may be viewed as an appropriate retributive response for these offenses. Given that their crimes involve economic activities, severe financial penalties for misconduct seem especially salient for many white-collar offenders, and there is some evidence that such offenders are most likely to be deterred by economic punishments.²⁰ Financial restitution by offenders to their victims is an obvious example of economic punishments based on restorative principles. The most common types of economic sanctions are described below.

Monetary Fines

In many countries, monetary fines are commonly used to sanction traffic violations and less serious criminal offenses (e.g., public drunkenness, disorderly conduct, petty theft). A particular monetary amount can also be paid in lieu

of jail or prison sentences for particular offenses. Fines are often imposed in addition to other sentences as well. For example, Michael Fay, an American teenager, received a sentence of \$1,400 fine, four months in jail, and six lashes for vandalizing several cars in Singapore in 1994.

Given social class disparities in the ability to pay financial penalties, a number of European countries (e.g., Finland, Sweden, Germany) have developed a structured system of economic sanctions called “day fines,”

ECONOMIC SANCTIONS:

- monetary fines/bail
- civil suits
- asset forfeiture/foreclosure
- denial of financial benefits
- injunctions/boycotts/strikes
- license revocation

based on the amount of money an offender earns in a day’s work. Day fine programs have been praised for reducing discrimination in sentencing (because the fine is relative to one’s income) and for being fair and just (because offenders literally “pay for their crimes,” but not beyond what is financially feasible).²¹

Sanctions involving monetary fines are also commonly found within the context of white-collar crime. Upon successful criminal prosecution, corporations and their agents are often levied with large financial penalties that are deemed commensurate with the gravity of the misconduct. However, for most types of corporate crime (e.g., unlawful regulatory practices, environmental crimes, prohibitive personnel practices, crimes against investors/competitors), it is often the threat of criminal prosecutions and adverse publicity that leads to out-of-court settlements that involve fines and other monetary sanctions. A federal regulatory agency (like the U.S. Internal Revenue Service, Environmental Protection Agency, or Securities and Exchange Commission) commonly serves as the enforcement and sanctioning body for these corporate offenses.

Financial Sanctions in Civil Litigation

Financial sanctions within the context of civil litigation involve economic settlements and the awarding of compensatory and punitive damages in civil suits. Both alimony payments and child support are types of financial sanctions that evolve from civil litigation among former family members. Civil suits involving many types of personal injury (e.g., product liability, medical malpractice, prohibited personnel practices such as discriminatory hiring/firing) are economic sanctions with both restorative and deterrence components. Specifically, compensatory damages in civil litigation is designed for

restorative purposes (i.e. to return and “make whole” the situation before the wrongful conduct was done), whereas punitive damages are directed at deterring similar misconduct in the future by the offending party.

Although assessing compensatory damages is a common goal in civil courts throughout the world, economic sanctions involving punitive damages are usually found only in developed countries. However, even within developed countries, great variation is found in the use of these practices as well as the size of awards. For example, the German civil courts do not award punitive damages by law, and compensatory awards for “pain and suffering” are relatively small compared to American practices.²²

The civil litigation “explosion” in the United States in the last quarter century has been blamed for a variety of societal ills. These include: (1) the rising cost of health care, (2) decreased availability of particular types of medical doctors (e.g., obstetricians) because of the onerous cost of medical malpractice insurance, (3) the increased price of consumer goods due to companies offsetting their losses in product liability suits, and (4) an erosion of trust in fellow citizens due to fears of being sued. Both federal and state legislation has been proposed to limit the size of jury awards in personal injury cases.

The effectiveness of civil litigation in controlling organizational misconduct depends on both the nature of the economic sanction and the organizational response. For many companies, severe economic sanctions should send a clear message about the unacceptability of particular practices. If, however, financial sanctions are viewed as just “one of the costs of doing business,” they will largely be ineffective. For example, the multibillion-dollar settlement levied against the tobacco industry in the United States for misleading both Congress and the American public about the dangers of tobacco use has increased the price of cigarettes and other tobacco products. However, this litigation has had negligible effects on the tobacco industry’s desire to restrict production and distribution of their product.

Other Economic Sanctions

Several other types of economic sanctions are used for purposes of social control. They include asset forfeiture and foreclosure, denials of financial benefits, and economic restraints on practices such as injunctions, boycotts, protests, and strikes. This class of economic sanctions is imposed within different formal settings (e.g., they may be criminal penalties, civil judgments,

or decrees by administrative or regulatory agencies) and within informal contexts of daily life (e.g., individuals may choose to boycott a particular store because they were poorly treated).

Asset forfeiture as an economic sanction has received recent attention in the United States in the context of prosecution of drug offenders and organized crime syndicates. Under both federal and state laws, offenders' property can be seized and their assets forfeited to the government if they were involved in a criminal enterprise and that property was purchased or received from their material participation in this criminal enterprise. For example, financial institutions that "launder" money received from illegal activities (e.g., drug trafficking, off-track betting) may have some of their profits and the specific building in which these illegal transactions took place seized and forfeited to the U.S. government. Foreclosures by financial institutions are similar types of asset forfeiture. A person's car, home, and/or business becomes the property of the financial institution that provided the economic backing or loan for this property. Asset forfeiture has been increasingly used in China as a supplementary criminal penalty for persons convicted of bribery and corruption.

The denial of financial benefits is another form of economic sanctions. These sanctions may involve government benefits (e.g., welfare payments, unemployment compensation, living in government-subsidized housing, food vouchers, education grants and scholarships) and benefits provided by one's employer (e.g., pension funds, sick leave, paid vacations, lower insurance premiums). The withholding or denial of these material benefits may dramatically impact the quality of one's life. Hence, the mere threat of denial of these benefits is an insidious but often effective method of social control.

Finally, various physical restraints on practices may serve as both incapacitative and economic sanctions. These include the following legal and extralegal actions: injunctions, embargoes and boycotts, cease-and-desist orders, revocation of licenses, the invocation of licensing and certification requirements, suspensions, and expulsions. These sanctions have been applied to individuals, various groups, and even to entire nations (see Table 2.1). Their economic basis derives from the fact that such physical restraints will ultimately have direct consequences on the economic well-being of those so affected. Accordingly, they can be treated as somewhat special forms of economic sanctions.

TABLE 2.1: International economic sanctions (examples)

Country and decade	Actions
18 th and 19 th Centuries:	
1765: American colonists vs. Britain	Boycott of English goods because of the Stamp Act.
1883–85: France vs. China	France declared rice contraband.
1930s and 1940s:	
1935 League of Nations vs. Italy	Trade embargo/restrictions for Invasion of Abyssinia.
1939–41: USA, UK, and others vs. Japan	Trade boycott/financial restriction to prevent Japan's movement toward southern Indo-China.
1946–48: The Arab League vs. Zionist movement in Palestine/Israel	Trade embargo in opposition to creation of an Israeli state.
1950s and 1960s:	
1951: UK vs. Iran	Oil import embargo for nationalizing Anglo-Iranian Oil Co.
1954: USSR vs. Australia	Import boycott of wool for not extraditing Soviet defector.
1960: USA vs. Cuba	Trade embargo and cessation of economic aid for Cuba's drawing closer to Soviet Union.
1962: West Germany vs. USSR	Trade embargo and cessation of economic aid for construction of Berlin Wall by East Germany.
1966: United Nations (UN) vs. Rhodesia	Trade embargo to end racial discrimination policies and the unilateral declaration of independence.
1970s and 1980s:	
1971: France vs. Algeria	Oil import boycott for nationalizing a French oil company.
1977: United Nations vs. South Africa	Arms embargo against apartheid.
1980: USA vs. USSR	Grain export embargo for invasion of Afghanistan.
1990s and 2000s:	
1990: United Nations vs. Iraq	Trade embargo and financial restrictions for Iraq's invasion and occupation of Kuwait.
2000: USA vs. North Korea	Continuation of trade embargo.

Source: Simons (1999); Miyagawa (1992)

INCAPACITATIVE SANCTIONS

Sanctions that confine individuals or limit their physical opportunities for unacceptable behavior are ubiquitous over time and geographical context. These incapacitative sanctions may be justified solely on their preventive value, but they can also serve multiple functions when the conditions of confinement are so deplorable that they deter the individual from future deviant behavior. As illustrated below, numerous devices, techniques, and physical structures have been employed throughout history for purposes of incapacitation.

Banishment and Exile

One of the most basic means of social control is the physical removal of deviants and dissidents through banishment and exile. Exile is the physical banishment of dissidents and persons of higher social status in a society (e.g., political rivals, religious leaders, social reformers).

Banishment and exile have several obvious advantages compared to other methods of physical restraint. For example, they are both cheap and

INCAPACITATIVE SANCTIONS:

- banishment/exile/transportation
- chains/stocks/pillory/handcuffs
- electronic anklets/bracelets
- dungeons/hulks/jails/prisons/reformatories/labor camps
- supervised probation
- "grounding"/school detention

efficient methods of social control, involving in most cases little more cost than the proverbial "one-way ticket out of town." Acts of banishment and exile also have strong symbolic value as punishments and may uniquely enhance community solidarity. The public degradation ceremonies in which these sanctions are pronounced may serve to dramatize the evil of the offender and the offense, ultimately leading to greater community solidarity and reinforcing the prevailing power relations in the community. Ironically, these punishments are often considered more

humane and less likely to create martyrs than alternative sanctions (e.g., death, penal servitude) even though banishment and exile to hostile lands often result in the same outcomes.

Banishment in various forms has been practiced in a variety of different cultures and societies. Anthropological accounts of life in early tribal societies reveal that banishment was used for serious breaches of customs and folkways. Both the Greek and Roman civilizations practiced banishment, as did

later European communities. During the eighteenth century, an estimated 97 percent of the noncapital sentences in Amsterdam included banishment.²³

The practice of banishment reached an unprecedented level in England through the system called “transportation.” For over 200 years starting at the end of the sixteenth century, England used transportation to its colonies as a means to rid the homeland of criminal felons and various “rogues, vagabonds, and beggars.”²⁴ An estimated 50,000 English prisoners were sent to the American colonies prior to the Revolutionary War.²⁵ The annual number of convicts shipped to Australia and other British colonies peaked at 5,000 per year in the early 1830s, representing about one-third of convicted offenders in English courts.²⁶

Banishment to other countries has shifted in the modern world from the removal of a criminal underclass to the expulsion of political exiles and other dissidents. Foreign nationals and ethnic minorities have often been the targets of organized “relocation” campaigns and lethal violence in nearly all regions of the world, including Southeast Europe (e.g., the ethnic conflict in Bosnia, Croatia, Serbia), the Middle East (e.g., the Kurds in Iraq, the Palestinians on the Gaza Strip), the Caribbean and Central American (e.g., the persecution of Dominican nationals of Haitian origin, attacks on the indigenous community of Acteal in Mexico), and Asia (e.g., the Uighurs and Falun Gong in China). Rather than transportation to distant countries, many of the new types of banishment involve segregation in geographical regions within the same country. These segregation areas are similar to the reservations used to control the indigenous native populations in North America during the nineteenth and twentieth centuries.

Incapacitative Devices

The earliest physical restraints on offenders reflected elements of both incapacitative and corporal punishment. Confinement in chains, stocks (i.e. a wooden frame that binds the person's hands and feet in a locked position), or yokes around the person's neck were physically uncomfortable and caused pain to the body. The pillory (i.e., a device that forced the wearer to stand with head and hands locked in place) was even more notorious for extracting physical pain, as it often involved nailing the person's ears to the wooden blocks. Technological advances in the modern world have led to the emergence of incapacitative devices that do not impose corporal punishment. Electronic

monitoring ankle bracelets, handcuffs, and handcuffs are examples of these less invasive restraint devices.

Stocks and the pillory were commonly displayed in cities and towns throughout medieval Europe and in Colonial America. These incapacitation devices were located in open public places to ridicule or humiliate the offender and to serve as a visible deterrent for other potential offenders. Public scorn for some offenders was met with verbal and physical abuse of the prisoner, frequently involving a barrage of attacks with rotten eggs and fruit. The potential specific and general deterrent effect of public shaming was probably a more important purpose underlying these punishments than their incapacitative effects *per se*.

Modern incapacitative devices provide less stigmatizing and more reintegrative punishments. Persons under electronic monitoring remain in the community and are encouraged to maintain and enhance family relations and employment opportunities. As punishments that promote social integration rather than isolation of the offender, the theory of reintegrative shaming would predict that these sanctioning devices should be more effective than their historical counterparts in reducing future criminal behavior.²⁷

Incapacitative Structures

Popular images of incapacitation focus on the physical facilities or structures for penal confinement. From this perspective, incapacitation is equated primarily with the notion of institutional confinement. Physical structures for incapacitation for particular offenses at various times and in different countries are described by the following terms: dungeons, gaols (i.e., jails), towers, hulks (i.e., abandoned ships), workhouses, penitentiaries, prisons, reformatories, labor camps, centers and cottages, halfway houses, sanitariums, mental institutions/hospitals, correctional facilities, and therapeutic communities/environments.

The particular language used to describe these penal structures is instructive because it reflects through time a movement toward rehabilitation and treatment as a major goal within these incapacitative structures. Ironically, the term “warehousing” is now being used to describe the overall correctional philosophy in the United States, a word that is more synonymous with an

incapacitative function and far removed from the language of rehabilitation and treatment.

Current incapacitative facilities for criminal offenders in most countries involve temporary holding institutions (e.g., jails) and long-term facilities (e.g., prisons). Jails in the United States are restricted to misdemeanors and felony sentences of less than one year. Prisons are reserved for commitments of longer than one year. Some correctional institutions like drug treatment centers and mental hospitals involve both voluntary commitments and court-ordered commitments. Both jails and prisons involve court-ordered incapacitation. The length of such confinement in these latter facilities depends in most jurisdictions on the seriousness of the offense and the offender's prior criminal record.

Other Types of Incapacitation

The final type of incapacitation involves short-term incapacitation and confinement that monitors offenders within the community. Shock incarceration is a temporary incapacitation program in which the convicted offender is given a brief period of confinement in an institution (e.g., one day to one week) and then released back to the community. Types of supervised probation involve monitoring within the community by legal officials (e.g., police, correctional officers, probation officers). Supervised probation is considered an incapacitative sanction because there are conditions of confinement placed on those given probationary sentences (e.g., restrictions on contact with particular people, restrictions on travel, mandatory curfews, prohibitions against alcohol use). Other types of short-term incapacitative sanctions include after-school detention and the confinement of troubled youth at home through "grounding."

CORPORAL PUNISHMENT

Corporal punishment involves the infliction of pain on the offender's body. Pain and suffering are the primary and immediate goal of corporal punishment. This type of punishment is used for various purposes, including retribution (e.g., removing the tongue of a liar or hands of a thief), specific and general deterrence, the rehabilitation of the offender, and the extraction of

confessions. In other words, most corporal sanctions are also “future-directed,” designed to change the behavior of those punished and to send a strong message to other potential offenders of the price of wrongdoing.

The particular means of inflicting corporal punishment are virtually limitless, restricted only by the imagination and standards of human decency. However, the methods of choice for torture and inflicting pain are also linked to customs, rituals, and the availability of technology within particular countries at particular times. The outcome of corporal punishment ranges from short-term pain, to permanent disfiguration and injury, to death. Death has been both an intentional and unintentional outcome of corporal

CORPORAL PUNISHMENT:

- flogging/whipping
- branding
- stretching (racking)
- keel-hauling
- dunking stools
- electric shock
- raping/sodomizing
- amputations
- other disfigurements/mutilations
- capital punishment

punishment throughout history. Mistakes caused by the inexperience or overzealousness of the sanctioner and poor medical treatment are common reasons why nonlethal corporal sanctions sometimes have deadly consequences.

Corporal punishments are popular in the modern world in particular contexts (e.g., the spanking of children by parents, coerced confessions for wrongdoing, the use of physical punishments under Islamic law and in developing countries). However, corporal punishment gained its greatest notoriety in earlier historical periods. The most infamous periods of corporal punishment occurred during the Spanish Inquisition (1478–1834), the reign of Henry VIII (1509–1547) and the Elizabethan period (1558–1603) in England, the “reign of terror” (1793–4) during the French Revolution, the Puritan settlements of the seventeenth century, and the mass genocides and democides of the twentieth century (e.g., the Holocaust in Nazi Germany, Khmer Rouge in Cambodia, the Turk–Armenian genocides, the slaughter and torture of different groups in Africa [Sudan, Burundi, Uganda, Nigeria]).²⁸

Flogging

Flogging involves the whipping of the body with some object (e.g., stick, leather straps, branches, cords). Flogging is a common form of corporal

punishment used by parents on their children and state authorities to inflict injury on offenders and dissidents.

Early legal codes (e.g., Mosaic codes, Roman laws, the Tang Code in Imperial China) and military decrees specified the types of offenses punishable by whipping (e.g., petty theft, vagrancy, blasphemy) and the particular number of lashes to be inflicted. Under Henry VIII, England passed the Whipping Act of 1530. This law was directed at vagrants whose idleness was considered an economic threat and “revenue problem” for the Crown.²⁹ Public floggings in the early American colonies were used to enforce discipline, vilify evil and enhance community solidarity, and to deter others. Whipping was especially common in Virginia and other southern colonies to punish slaves and to prevent slave revolts. As a mechanism for gaining compliance to institutional rules, flogging has a long history within the context of prisons and labor camps.

An especially cruel form of flogging involved the Russian knout. It was made of leather strips fitted with fishhooks. During the whipping, the hooks would dig into the body and rip away pieces of flesh. Death sometimes occurred because of the gravity of blood loss.

Source: Schmallenger & Ortiz (2001:67)

One of the most publicized floggings in recent times involved the caning of Michael Fay. Fay was an American teenager given six lashes for vandalizing cars in Singapore in 1994. The incident created a major international uproar, regarding the subjugation of a foreign teenager to such a severe corporal punishment.

Branding

Another type of corporal punishment is the practice of branding. Criminals and dissidents in various historical contexts have been physically branded with a mark or letter on the body that signifies their offense (e.g., “T” for thieves, “B” for blasphemers, “R” for rogues, “A” for adultery). Branding served primarily as a means of public stigmatization or shaming of the accused. The branding on the forehead or other parts of the face was an especially vivid warning to others of the offender’s previous behavior.

Depending on the particular historical context, branding varied both in its form and location on the body. The French branded criminals with the royal emblem on the shoulder. This practice was later changed to the burning of a letter on the shoulder to represent the convicted offense.³⁰ Facial branding in England was replaced with hand branding around the early 1700s. The early American colonists also burned particular letters on offenders’ hands and forehead. Facial branding was more often imposed on more serious offenses at this time (e.g., blasphemy) and for repeat offenders. Rather than being

physically branded, female offenders were forced to wear letters symbolizing their crimes on their clothing. This practice of sewing letters on garments of criminals was called the “scarlet letter.”³¹

The practice of physical branding by state authorities has been largely abolished in modern industrial societies. However, these practices continue in many developing countries and in the extrajudicial sanctions by vigilante groups and paramilitary forces against other civilians. Various “hazing” incidents of particular people and groups also sometimes result in temporary types of branding (e.g., spray painting letters directly on individuals and their clothing, graffiti on personal property). These latter forms of branding may be less intrusive than actual physical branding, but they are similar in terms of their goals of stigmatization and social control.

Mutilations

As a type of corporal punishment, physical branding falls under the more general category of mutilations. Some societies justified mutilations on the grounds of retribution and the law of retaliation (*lex talionis*). For example, the removal of particular body parts may be deemed to “fit the crime” (e.g., the hands of thieves, tongues of liars, genitals of sex offenders, eyes of spies, feet of deserters, or ears of eavesdroppers). However, some cultures justify bodily mutilations in terms of their incapacitative and deterrent function.

Regardless of their philosophical rationale, mutilations carry enormous symbolic weight in a society. State-sponsored mutilations are “theatrical” punishments that dramatize to citizens the evils of the original misconduct.³² They also demonstrate the supreme power of the prevailing authority to exact incredible pain and physical suffering on its subjects. The gravity of public humiliation and shaming of the offender associated with mutilation is best represented by the practice of hand amputations for particular misconduct in different cultures. Aside from the physical incapacitation caused by amputation, this type of mutilation has symbolic importance for public degradation because it leaves the offender permanently tainted with only one hand for both eating and cleaning body parts after bodily secretions.

Many of the most gruesome and appalling types of bodily mutilation emerged during the Middle Ages. The Holy Inquisition era in medieval Europe was instrumental in the development of numerous devices and techniques

to extract confessions and punish heretics and nonbelievers. Stretching machines like the rack, presses and other crushing devices, bludgeoning tools, cages with spikes to impale the occupant, and specially designed cutting tools to slowly bleed and disembowel (i.e., removing internal organs) were some of the common tools of inquisitors of this era.

Disemboweling involves the tearing out of internal organs. Hearts and kidneys were common targets of these mutilations because they were seen as the roots of the criminal's wicked disposition.

Source: Newman (1978:47)

Earlier civilizations (e.g., ancient Greece, the Roman Empire, and the Song Dynasty in China) also used mutilation as forms of corporal punishment. These involved such practices as slicing, whipping, and beating. As with other methods of mutilation (e.g., boiling in oil or water, burning, cutting off the ears of offenders in the pillory), death often resulted from the most serious types of bodily mutilations. Bodily desecrations and mutilations were often conducted posthumously for particularly notorious offenders (e.g., rival leaders, political dissidents). These post-death mutilations included the bludgeoning, burning, dismemberment, and subsequent display of body parts in public places.

Bodily mutilations in various forms have continued in many countries in the modern world. Islamic countries like Saudi Arabia, Iran, and Iraq continue to perform amputations on particular offenders. Genital mutilation (e.g., removal of the female clitoris) is practiced in many countries of Africa and the Middle East to control sexual pleasure and promiscuity.³³ During civil wars and other types of civil strife across the last half of the twentieth century, both migrants and the indigenous populations have been physically mutilated through acts of torture, rape, and bludgeoning. Even with greater international scrutiny of these practices, physical mutilations in many countries continue to take place in the process of police interrogations of criminal suspects and in the context of maintaining discipline and control of prison inmates.

Capital Punishment

Because it results in the death of the accused, capital punishment is the ultimate corporal sanction. The wide variety of methods of execution used over time and place can be distinguished according to whether they involve instant or slow death. Beheadings, hangings, and strangulations have

**MERCIFUL AND INSTANT
EXECUTION METHODS:**

- beheading
- hanging
- strangulation/garroting
- burying alive
- drowning/"walking the plank"
- dropping from high places
- shootings/firing squads
- gas chambers
- electrocutions
- lethal injections

**SLOW AND LINGERING EXECUTION
METHODS:**

- burning
- boiling
- slicing
- crucifixion
- draw and quartering
- "broken on the wheel"

been identified as the most common means for merciful or instant death.³⁴ The use of firing squads, gas chambers, and lethal injections are modern forms of instant death. In contrast, lethal methods associated with a slow or lingering death included the acts of burning, boiling, stoning, crucifixion, draw and quartering, and being "broken on the wheel." These methods of capital punishments and the context in which they have been used are described below.³⁵

BEHEADING. Beheading is a quick death that occurs when the head is separated from the body using an ax, sword, or machine. It was considered an honorable form of punishment for nobles and conquered enemies in ancient China and early Egypt. However, it has been applied in most countries to nobles and commoners alike. An ax and chopping block were the basic tools for decapitation in medieval Europe. A sword was the tool for samurai warriors and "field" executions in civil wars in early historical periods.

The guillotine, invented at the beginning of the French Revolution, was the method of beheading used almost exclusively in Europe. Comparable beheading machines in England and Scotland in the 1500s were nicknamed the "Halifax Gibbet" and the "Scottish Maiden." These machines were developed to provide a reliable, efficient, and cheap method for mass numbers of executions. Thousands of French citizens lost their heads in the guillotine during the "reign of terror" of 1793–4. The guillotine represented a major technological advancement over other beheading machines in that it stabilized the head and used a tilted blade for a cleaner decapitation.

HANGING AND STRANGULATION. These methods of instant death include various types of executions by ropes and cords around the neck. Condemned persons across history have been hung from trees, walls, horses, lampposts, bridges, and physical structures erected for these executions. A lynching is often considered an extrajudicial hanging, meaning that it is committed by

vigilante groups and other parties that do not have the formal legal authority to do so. The practice of garroting is strangulation by a double cord passed through a hole in an upright post. Strangulations in Imperial China were committed in the following way: The executioner threw the victim down upon his face, then straddled the victim and began twisting a cord around his neck until the victim died. Compared to other methods such as beheading, hanging has always been considered a more lowly and less dignified form of capital punishment in Western societies.

Public hangings have been major public spectacles throughout history.³⁶ “Hanging days” often created a carnival-like atmosphere that drew huge crowds. These executions were ritualistic events, involving processions from the jail to the gallows, fiery orations that whipped up the frenzy of the crowd, and fairly elaborate protocol for the preparation of the condemned for hanging (e.g., the recording of their “last words,” constraints on the body) and postexecution practices (e.g., the nature of bodily desecration, whether autopsies were performed).

The public hanging was designed for both retributive and deterrence purposes. However, many countries abolished public executions in their early history due to the unpredictability of the public reaction (i.e., applause or condemnation). As a result of social class differences, many witnesses of public executions had more in common with the condemned than the ruling authority and violent riots would break out during the execution in response to perceived injustices. By weakening the potential general deterrent value of punishment and the legitimacy of the ruling authority, public executions became a liability. England abolished public executions in 1868.³⁷ With some exceptions in particular states, public executions in the United States have been largely discontinued since the end of the 1800s.³⁸

Lynchings by extrajudicial bodies have been widely-used methods of informal social control in various societies. Thousands of blacks in the post-Civil War period in the United States were victims of these hangings by members of vigilante groups such as the Ku Klux Klan and other self-appointed regulators. During this same period, lynchings of suspected horse thieves, cattle rustlers, and other deviants were also commonly performed by

It has been said that some 72,000 people were hanged during the reign of Henry VIII (1509–47) and that vagabonds were strung up in rows of 300–400 at a time in the Elizabethan period (1558–1603) in English history.

Source: Rusche and Kirchheimer (1939:19)

quasi-government officials and citizens on the lawless western frontier. Various “death squads” in other countries have also used lynchings for “ethnic cleansing,” distributing “street justice,” and other purposes. Based on reports from human rights groups like Amnesty International, these types of extrajudicial executions still occur in all major continents and regions of the world.

SHOOTINGS AND FIRING SQUADS. Another type of instant death involves executions by shootings and firing squads. In China, these executions are conducted by the firing of a single bullet at point-blank range to the back of the head. Firing squads of different numbers of shooters are used in other countries. The condemned is shot from a distance and a target (e.g., a white patch over the heart) is often used for directing the executioners’ aim. When practiced in the United States, some members of the firing squad receive “blanks” so that the specific person who fires the fatal shot is unknown.

Firing squads are common in military summary judgments throughout history. However, numerous citizens have been executed by this method in both legal and extrajudicial punishments. The wider availability of guns in contemporary society has led to the greater choice of shootings as a

Shooting as a method of execution received notoriety in the United States with the death of Gary Gilmore in Utah by firing squad in 1977. This was the first execution in the United States since a temporary moratorium was placed on the death penalty as a result of the *Furman v. Georgia* ruling of 1972. Gilmore was an exceptional case because he actually fought efforts to appeal his death sentence. Firing squads are now used in only three states – Idaho, Oklahoma, and Utah.

means of dispensing “street justice.” Ironically, one of the reasons why Dr. Joseph Ignace Guillotine was commissioned by the French government to develop his machine for mass executions was to “preserve precious materials such as bullets which were wasted with a firing squad.”³⁹

GAS CHAMBER. The use of lethal gas as a state-sponsored sanction achieved its greatest notoriety within the context of the mass extermination of Jews in the Holocaust of Nazi Germany. Several million citizens were killed by gas in concentration camps and by other methods during this period. Lethal gas attacks have been used as corporal punishment more recently in the ethnic genocide of the Kurds in Iraq.

As a form of punishment for criminal misconduct, lethal gas has been restricted to practices within the United States. The gas chamber was developed in this country in the mid-1920s, primarily as a response to adverse public

reactions to the brutality of electrocutions and hangings. The first person to die in the gas chamber was a Chinese–American murderer named Gee Jon in 1924. Cyanide gas pellets are dropped into a pan of distilled water and sulfuric acid. Upon breathing these fumes, the person dies within minutes.

Over the past three decades, lethal gas has been used for executions in several U.S. states (Arizona, California, Maryland, Missouri, Wyoming). During the 1950s and early 1960s, about a third of all U.S. executions were conducted in gas chambers.⁴⁰

ELECTROCUTION. Instant death for convicted criminals by electrocution has been used exclusively in the United States. It began in the late 1800s and was the dominant method of state-sponsored execution in this country for most of the twentieth century. Although recently replaced by lethal injection as the dominant method, electrocution remains a possible method of execution in twelve states.⁴¹ During the execution, the accused is strapped to the chair (often wooden, but some are metal) and the executioner throws a switch that sends cycles of about 2,000 volts of electricity through the body.

Aside from its use in legal executions, electricity has been widely applied as both a method of treatment and torture. “Shock” therapy is a behavioral modification approach that seeks to change one’s behavior through the pairing of a stimulus (e.g., cigarettes, alcohol, sexual lust) with an immediate painful response (i.e., electric shock). As nonlethal corporal punishment, electric nodes are attached to sensitive body parts (e.g., genitals) and volts of electricity are passed through the body. Torture through electric shock is most commonly used by military and quasi-military organizations, law enforcement personnel, and prison authorities for extracting confessions, maintaining discipline, and dispensing “justice.”

LETHAL INJECTION. A relatively new means of instant death involves lethal injections. This type of capital punishment began in the United States in 1982 and has been used in only a few other countries (e.g., Guatemala, China). Over 90 percent of the legal executions in the United States are now conducted by lethal injection.⁴² The process of lethal injection typically involves strapping down condemned persons on a stretcher or hospital gurney, moving them to the death chamber, and then giving them three lethal chemicals through an intravenous injection.

Compared to other lethal methods that disfigure and desecrate the body, lethal injection is often seen as a more humane and “therapeutic” punishment. It is often described by its advocates as similar to “falling asleep.” Ironically, this approach is often viewed as too painless by those who believe that “doing justice” and general deterrence require more lingering and excruciating pain before death.

CRUCIFIXION. Used mainly in the Roman republic, crucifixion involved a slow death through the hanging of the accused on a cross. The person was first whipped to bring about a loss of blood and weakness, and then attached to a cross with leather cords or nails to the hands and feet. A crucified person sometimes survived for several days before finally dying of thirst, exposure, or blood poisoning from the nails. The crosses were placed on hills and along well-traveled roads to send a message to others.

BOILING TO DEATH. Boiling in oil or water was a multipurpose form of corporal punishment. It was used as an execution method, torture technique, and as a way to stun the person before hanging. Boiling was instituted as a legal punishment in England by King Henry VIII in the 1500s. Boiling to death in oil or water were specifically inflicted upon those passing false coin (i.e., counterfeiters and forgers) in France until the late 1700s. The pouring of boiling metal down the throat of persons during hanging is a variation on this basic method.

BREAKING ON THE WHEEL. An especially torturous and agonizing method of capital punishment in early historical periods involved the “wheel.” The victim of this method was stretched on a wooden wheel and his or her overhanging limbs broken by the executioner with a metal rod or pole. After pulverizing the bones so they fit around the outside of the wheel, the executioner would often roll the victim around town. Death came from a blow to the rib cage with the metal rod.

The first reported case of being “broken at the wheel” was in fourth century Egypt. The original device was named “the Catherine Wheel” and involved strapping the accused to a wheel that was then lowered on another wheel with metal spikes, disemboweling the victim. Modifications of the device were popularized across Europe during the Middle Ages.

BURNING AT THE STAKE. Fire as a method of execution has been used throughout history. It was included in the “eye for eye” doctrine of the Hammurabi Code of 2000 B.C. as the punishment for anyone who destroyed a neighbor’s possessions through arson. The Assyrians, the French and Spanish Inquisitors, and the Puritans of early New England colonies used burning as an instrument of terror and the punishment for various offenders including witches and heretics. The burning of the body had great symbolic value within some religious contexts. For example, burning carried a special horror for medieval Christians because it destroyed the body, scattered the ashes, and thereby made it impossible to have a proper burial. Even among the worst criminals of this era, it was believed that hopes of forgiveness for their sins and the prospects of eternity in paradise were unattainable without a proper Christian burial.⁴³

DRAWING AND QUARTERING. The act of drawing and quartering is often viewed as one of the most brutal methods of execution. Offenders sentenced to this death were first hanged until near death, taken down from the gallows, their limbs tied to horses, and then pulled apart as the horses ran in different directions. Disembowelment (i.e., the ripping out of internal organs) and the removal of genitals often occurred while the accused was still alive prior to the drawing and quartering. The body parts were usually shown to the offender and then burned in a fire.

Sir William Wallace, the Scottish patriot, was executed by this method in 1305. His body parts were strewn over all corners of Great Britain as a warning to others of the consequences of dissension. Robert-Francois Damien was killed by drawing and quartering for his attempt to assassinate King Louis XV of France in 1757. The following sentence pronounced in the courthouse in which Damien was convicted graphically illustrates the brutality of this method in combination with other torture:

the flesh will be torn from his breasts, arms, thighs, and calves with red-hot pinchers, his right hand, holding the knife with which he committed the said parricide, burnt with sulphur, and, on those places where the flesh will be torn away, poured with molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds.⁴⁴

Given the various desecrations inflicted on Damien's body prior to drawing and quartering, it is remarkable to note that newspaper accounts indicate that the physical strength of Damien prevented the horses from separating his limbs. The executioner was forced to hack off Damien's arms and legs. This quartering occurred while he was still alive. Possibly because of this gruesome public spectacle, Damien was the last person in France executed by the method of drawing and quartering.

STONING. The method of lapidation (i.e., stoning) involved the tossing of heavy rocks and stones at the victim until death. Stoning was recognized in the Mosaic code and is still used in a few countries (e.g., Afghanistan and Iran). "Pressing" is another type of stoning that involves placing large stones on the chests of victims until the weight crushes them. Historically, stoning was a common method of execution for women who committed adultery.

SUMMARY

Punishment for misconduct is ubiquitous over time and place. It is justified on the philosophical basis of retribution, incapacitation, deterrence, rehabilitation, and restoration. It takes various forms. These general forms of punishment include economic sanctions (e.g., monetary fines), incapacitative sanctions (e.g., imprisonment), and corporal sanctions (e.g., capital punishment).

Although sanctions are primary instruments of social control, they vary in their form, duration, and intensity over different contexts. The similarities and differences in sanctioning practices across world regions in contemporary society are described in the next chapter.

Notes

1. For example, public surveys in the United States on the seriousness of particular offenses reveal enormous variation across individuals and social groups in their ratings of the perceived seriousness of many white-collar offenses (e.g., employee theft, stock fraud), ordinary property offenses (e.g., breaking/entering, shoplifting), and victimless crimes (e.g., prostitution, gambling, drug use). See, for studies of public ratings of the seriousness of crime, Peter Rossi, Emily Waite, Christine Bose, and Richard Berk. 1974. "The Seriousness of Crime: Normative Structure and Individual Differences." *American Sociological Review* 39: 224–37; Terance D. Miethe. 1984. "Types of Consensus in Public Evaluations of Crime: An Illustration of Strategies for Measuring 'Consensus.'" *Journal of Criminal Law and Criminology* 75(2): 459–73; Francis Cullen, Bruce Link, and Craig

- Polanzi. 1982. "The Seriousness of Crime Revisited: Have Attitudes toward White-Collar Crime Changed?" *Criminology* 20: 83–102.
2. Pieter Spierenburg. 1995. "The Body and the State: Early Modern Europe." In Norval Morris and David J. Rothman (eds.), *The Oxford History of the Prison*. New York: Oxford University Press. Pages 49–77.
 3. See Joan Petersilia, Peter W. Greenwood, and Marvin Lavin. 1978. *Criminal Careers of Habitual Felons*. Santa Monica, CA: Rand Corp. Page 5; Peter Greenwood. 1982. *Selective Incapacitation*. Santa Monica, CA: Rand Corp.; Stephen D. Gottfredson and Don M. Gottfredson. 1992. *Incapacitation Strategies and the Criminal Career*. Sacramento, CA: Information Center, California Division of Law Enforcement.
 4. It is important to note that conformity after the imposition of punishment may be due to deterrence or a wide variety of other factors (e.g., decreased opportunity to commit offenses, maturation, the development of alternative interests). Accordingly, a reduction in criminal behavior after the threat or application of punishment should be treated as a necessary but not a sufficient condition for the demonstration of a deterrent effect. For a comprehensive treatment of deterrence and the difficulties with testing this idea, see Jack Gibbs. 1975. *Crime, Punishment, and Deterrence*. New York: Elsevier.
 5. See William J. Chambliss. 1967. "Types of Deviance and the Effectiveness of Legal Sanctions." *Wisconsin Law Review* Summer: 703–19. For a review of the more recent literature on deterrence, see Daniel S. Nagin. 1998. "Criminal Deterrence Research at the Outset of the Twenty-First Century." In Michael Tonry (ed.), *Crime and Justice: A Review of Research* Volume 23, pages 1–42; Raymond Paternoster. 1987. "The Deterrent Effect of the Perceived Certainty and Severity of Punishment: A Review of the Evidence and Issues." *Justice Quarterly* 4(2): 173–217.
 6. Developing countries, in contrast, often have less emphasis on procedural justice considerations, allowing for a swifter, more certain, and more punitive response to particular types of civil unrest or disorder. For example, in a series of "strike-hard" campaigns to crack down on crime, the Chinese courts were granted authority to forgo many legal requirements by quickly processing criminal cases and executing the sentence.
 7. In fact, the available empirical evidence strongly supports the contention that all three elements are important for deterrence, but that the certainty of punishment is even more important than severity in leading to law-abiding behavior. See Jack P. Gibbs. 1975. *Crime, Punishment, and Deterrence*. New York: Elsevier; Raymond Paternoster. 1987. "The Deterrent Effect of the Perceived Certainty and Severity of Punishment: A Review of the Evidence and Issues." *Justice Quarterly* 4(2): 173–217; Daniel S. Nagin. 1998. "Criminal Deterrence Research at the Outset of the Twenty-First Century." In Michael Tonry (ed.), *Crime and Justice: A Review of Research* Volume 23, pages 1–42.
 8. See Todd R. Clear and George F. Cole. 2000. *American Corrections*. 5th ed. Belmont, CA: West/Wadsworth. Page 513.
 9. The "He Ara Hou" program in New Zealand is a recent penal initiative designed specifically to rehabilitate members of its Maori minority who are in the prison population. To help rehabilitate these offenders, the "He Ara Hou" program emphasizes case management, individualized help, and academic skills. Prison activities are flexibly scheduled, and officers are given wide discretion to help encourage offenders to achieve their goals. See Greg Newbold and Chris W. Eskridge. 1996. "History and Development of Modern

Correctional Practices in New Zealand." In Charles B. Fields and Richter H. Moore, Jr. (eds.), *Comparative Criminal Justice – Traditional and Nontraditional Systems of Law and Control*. Prospect Heights, IL: Waveland. Pages 453–78.

10. See Robert Martinson. 1974. "What Works? Questions and Answers About Prison Reform." *The Public Interest* 35 (Spring): 22. Martinson acknowledged the limitations of making generalizations from his work (given that only a few programs were actually evaluated and their research designs were flawed) and that other programs worked, but it was not clear why they worked. However, as pointed out by a reviewer of our book, the continual restatement of the overgeneralization from Martinson's original report has reified it.

Aside from the Martinson report, there were also political and ideological factors associated with the decline in rehabilitation. These factors are represented by the "get tough on crime" mentality that led to such policies as mandatory sentencing and "three strikes and you're out" legislation.

11. This does not necessarily imply that rehabilitation is ineffective. In fact, some rehabilitation programs have recently shown positive results. For example, there was a threefold increase in the number of inmates completing educational coursework in the inaugural year of "He Ara Hou" program in New Zealand in 1990. Significantly more inmates are enrolling in education programs, and there has been a huge reduction in misconduct, suicides, and assaults among inmates in this program. See Greg Newbold and Chris Eskridge. 1996. "History and Development of Modern Correctional Practices in New Zealand." In Charles B. Fields and Richter H. Moore, Jr. (eds.), *Comparative Criminal Justice – Traditional and Nontraditional Systems of Law and Control*. Prospect Heights, IL: Waveland. Page 472. For a general discussion of "what works" in corrections, see D. A. Andrews, I. Zinger, J. Bonta, R. D. Hoge, P. Gendreau, and F. T. Cullen. 1990. "Does Correctional Treatment Work? A Psychologically Informed Meta-Analysis." *Criminology* 28: 369–404; R. Izzo and R. R. Ross. 1990. "Meta-Analysis of Rehabilitation Programs for Juveniles: A Brief Report." *Criminal Justice and Behavior* 17: 134–42.
12. See Evelyn Zellere and Joanna B. Cannon. 2000. "Restorative Justice, Reparation, and the Southside Project." In David R. Karp and Todd R. Clear, *What is Community Justice*. Thousand Oaks, CA: Sage. Pages 89–107.
13. Frank Schmalleger and John Ortiz Smyka. 2001. *Corrections in the 21st Century*. New York: Glencoe McGraw Hill. Page 486.
14. John Braithwaite. 1989. *Crime, Shame, and Reintegration*. Cambridge, UK: Cambridge University Press.
15. Philip L. Reichel. 1999. *Comparative Criminal Justice Systems*. 2nd ed. Upper Saddle River, NJ: Prentice-Hall.
16. Graeme Newman. 1978. *The Punishment Response*. Philadelphia: J. P. Lippincott. Page 7.
17. For example, Jeremy Bentham in the late 1700s identified eleven different types of punishment. These included capital punishment, afflictive punishments (e.g., whipping, starvation), indelible punishments (e.g., branding, amputation, mutilation), ignominious punishments (e.g., stocks, pillories, and other public sanctions), penitential punishments (e.g., censured by one's community), chronic punishments (e.g., banishment, exile, imprisonment), restrictive punishments (e.g., license revocation, administrative sanctions), compulsive punishments (e.g., restitution, requiring periodic meetings with

court officials), pecuniary punishments (e.g., fines), quasi-pecuniary punishments (e.g., denial of service), and characteristic punishments (e.g., mandating the wearing of prison uniforms by incarcerated offenders). Jeremy Bentham. 1789. *An Introduction to the Principles of Morals and Legislation*. London: T. Payne.

18. It is recognized that these three types of sanctions are not exhaustive of all possible types of sanctions (e.g., community service and "symbolic" sanctions that ridicule or humiliate the offender are not included) and that the categories are not mutually exclusive (e.g., injunctions are economic sanctions that may be physically incapacitating; amputation is corporal punishment that is incapacitative both physically and economically). However, within our classification scheme, we have attempted to classify and describe sanctions that cover multiple dimensions of punishment based on their primary consequences (i.e., is it financial, restrictive of movement, or corporal punishment of the body). The idea of "symbolic" sanctions can be discussed within the context of any of these three major forms of punishment because they all have symbolic value to the state and the individual.
19. It is also possible to argue that monetary sanctions also serve an incapacitative function when the sanctions are so severe that they place extraordinary physical restrictions on the offender's subsequent behavior. The proverbial "fall from grace" of corporate executives who become bankrupt from financial injunctions and penalties for misconduct would be an example of the possible incapacitative effects of monetary sanctions.
20. White-collar crimes are typically defined as crimes committed by people of high respectability or high social status in the course of their occupations. The term "corporate crime" is used to describe criminal misconduct that is done for the benefit of the corporation, whereas the term "occupational" crime is used to describe white-collar crimes that are committed for personal goals of the individual offender. For a discussion of the deterrent effect on economic sanctions on corporate crime, see Charles A. Moore. 1987. "Taming the Giant Corporation: Some Cautionary Remarks on the Deterrability of Corporate Crime." *Crime and Delinquency* 33: 379–402.
21. Erika Fairchild and Harry R. Dammer. 2001. *Comparative Criminal Justice Systems*. 2nd ed. Belmont, CA: Wadsworth/Thomson Learning. Page 224.
22. See Anthony J. Sebok. 2001. "How Germany views U.S. Tort Law: Duties, Damages, Dumb Luck and the Differences in the Two Countries' Systems." tsebok@findlaw.com. Monday, July 23, 2001.
23. See Pieter Spierenburg. 1995. "The Body and the State: Early Modern Europe." In Norval Morris and David J. Rothman (eds.), *The Oxford History of the Prison*. New York: Oxford University Press. Page 53.
24. For a description of these classes of people in England, see Lionel Rose. 1988. *Rogues and Vagabonds: Vagrant Underworld in Britain 1815–1985*. London: Routledge Press.
25. Abbott Emerson Smith. 1947. *Colonists in Bondage*. Chapel Hill: University of North Carolina Press.
26. Clive Emsley. 1987. *Crime and Society in England, 1750–1900*. London: Longman. Page 223.
27. John Braithwaite. 1989. *Crime, Shame, and Reintegration*. Cambridge, UK: Cambridge University Press.

28. Genocide is often defined as "a form of one-side mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator." See Frank Chalk and Kurt Jonassohn. 1990. *A History and Sociology of Genocide*. New Haven, CT: Yale University Press. Democide is the killing of members of the general population by the state that do not target a particular ethnic, racial, or religious group. See Gerald Scully. 1997. *Murder by the State*. Washington, D.C.: National Center for Policy Analysis.
29. Vagrancy was considered a revenue problem for most British monarchs because their expenditures for war, personal protection, and pleasure were subsidized primarily from taxes and labor of ordinary people. The threat of public whipping under this law was designed to help Henry VIII generate revenue and preserve his power.
30. Frank Schmalleger and John Ortiz Smyka. 2001. *Corrections in the 21st Century*. New York: Glencoe McGraw Hill. Page 68.
31. See Graeme Newman. 1978. *The Punishment Response*. Philadelphia: J. P. Lippincott. Page 119.
32. See Pieter Spierenburg. 1995. "The Body and the State: Early Modern Europe." In Norval Morris and David J. Rothman (eds.), *The Oxford History of the Prison*. New York: Oxford University Press. Pages 52–3.
33. Amnesty International reports that an estimated 135 million of the world's girls and women have undergone genital mutilation, and 2 million girls a year are at risk of mutilation – approximately 6,000 per day. It is practiced extensively in twenty eight countries in Africa and is common in some countries in the Middle East (e.g., Egypt, Oman, Yemen, the United Arab Emirates). Female genital mutilation also occurs, mainly among immigrant communities, in parts of Asia and the Pacific, North and Latin America, and Europe. Amnesty International. 1997. *Female Genital Mutilation: A Human Rights Information Pack* [AI Index: ACT 77/05/97].
34. Pieter Spierenburg. 1995. "The Body and the State: Early Modern Europe." In Norval Morris and David J. Rothman (eds.), *The Oxford History of the Prison*. New York: Oxford University Press. Page 53.
35. For a good source of information on the different methods of capital punishment, see Mark Grossman. 1998. *Encyclopedia of Capital Punishment*. Santa Barbara, CA: ABC-CLIO Publishers. Our general descriptions of particular methods of capital punishment are derived from this book and other sources.
36. The same arguments apply to beheadings and other types of executions that have taken place in public settings. Crowds in the thousands witnessed the beheading of dissidents and citizens via the guillotine in the French Revolution. Similar size crowds are common in public executions in contemporary China.
37. Graeme Newman. 1978. *The Punishment Response*. Philadelphia: J. P. Lippincott. Page 144.
38. See Raymond Paternoster. 1991. *Capital Punishment in America*. New York: Lexington Books. Page 7.
39. Mark Grossman. 1998. *Encyclopedia of Capital Punishment*. Santa Barbara, CA: ABC-CLIO Publishers. Page 106.
40. See M. Watt Espy and John Ortiz Smykla. 1991. *Executions in the United States, 1608–1991: The Espy File*. [Data File]. Inter-University Consortium for Social and Political Research. Ann Arbor: University of Michigan.

41. See Bureau of Justice Statistics. 2002. *Capital Punishment 2001*. Washington, D.C. December 2002. NCJ 197020.
42. Ibid.
43. Michael Kronenwetter. 2001. *Capital Punishment: A Reference Handbook*. 2nd ed. Santa Barbara, CA: ABC-CLIO.
44. Michel Foucault. 1977. *Discipline and Punish*. New York: Pantheon. Page 4.

Suggested Readings

- Frank Chalk and Kurt Jonassohn. 1990. *A History and Sociology of Genocide*. New Haven, CT: Yale University Press.
- Michel Foucault. 1977. *Discipline and Punish*. New York: Pantheon.
- David Garland. 1990. *Punishment and Modern Society: A Study in Social Theory*. Chicago: University of Chicago Press.
- Jack P. Gibbs. 1975. *Crime, Punishment, and Deterrence*. New York: Elsevier.
- Norval Morris and David J. Rothman. 1995. *The Oxford History of the Prison*. New York: Oxford University Press.
- Graeme Newman. 1978. *The Punishment Response*. Philadelphia: J. P. Lippincott.
- Geoff Simons. 1999. *Imposing Economic Sanctions: Legal Remedy or Genocidal Tool?* London: Pluto Press.