

Purposes of Punishment

Society and individuals have the right to be protected by the law. People who break the law are punished in a way that, hopefully provided justice for both the offender and the community.

- Rehabilitation (reform)
- Deterrence (specific and general)
- Retribution (revenge)
- Incapacitation (gaoing)
- Reintegrative shaming (meeting the victims)

1. Rehabilitation (reform) – attempting to change the mindset and morals of the offender so they do not commit the same offence again.

To rehabilitate means to restore a person, or to make them better. This rehabilitation assumes that criminal behaviour is aberrant or not normal. Punishment then is aimed at restoring the criminal to more normal behaviour. This may come about from education and counselling programs. The aim of bringing victim's impact statements into court proceedings is in the hope that offenders will learn of the effects of their criminal behaviour on others and thus seek rehabilitation.

Many offenders become repeat offenders or **recidivists**. As a result of their criminal behaviour, offenders are counselled or gaoled with other offenders. This association of offenders with one another often reduces the effects of rehabilitation programs and encourage recidivism.

2. Deterrence (specific and general)

Deterrence works by stopping criminal behaviour because the prospect of gaol (or other punishment) deters would-be criminals from engaging in criminal activities. Thus, possible punishments deter people from committing illegal acts.

General deterrence occurs when wide media coverage of a case sets an example of the severity of punishment that may be imposed, this discouraging others from repeating behaviour.

Specific, or individual, deterrence works by imposing a punishment on the offender that is expected to make the offender never want to repeat the criminal behaviour.

55 years as a deterrent

Bilal Skaf was sentenced to 55 years of imprisonment following the abduction, threat and gang rape of young women in 2001. When the sentence of 55 years was imposed there was general agreement that it was a specific deterrent for a young man who showed no remorse at all. However, as a general deterrent the severity was questioned. A few questioned whether individual rights (that is, those of Skaf) had been forsaken in the process of creating a general deterrent.

Thus, they argued, severe penalties need to be moderated for their effect as a general deterrent.

3. Retribution

Retribution is concerned about 'getting even'. That is, people are so upset at their behaviour of the criminal that they seek revenge. As criminal law is a State matter, and the State both criminalises and punished certain behaviours, there is no need to victims to exact personal revenge. In this way that State takes on the role of obtaining retribution on behalf of the victim and the broader society.

Although many would argue that the legal system should not be a “vengeful system”, some have raised the concern that victims are not involved in any real decision making when it comes to the punishment imposed by the Courts. Thus, victims are onlookers to the process and may be frustrated by the penalties imposed.

Victims who talk ... Victim Impact Statements

Victims of violent crimes can now have Statements about the impact of the crime on their lives read out in NSW local courts. NSW Attorney General, Bob Debus said the new laws would help magistrates impose appropriate sentences.

“Victim Impact Statements provide an opportunity for victims of serious crime, violent crime to express their feelings about the harm they have suffered as a result of crime and allow proper public respect for those feelings”, he said.

Chief Magistrate Derek Price requested Statements be read out in Local Courts after legal changes last year allowing them to be heard in higher Courts.

Source: Sun Herald

4. Incapacitation (prison or home detention)

This means that imprisonment, or gaoling, of the offender. Incapacitation protects society and the community from criminal behaviour. The isolation of criminals in prisons is a serious punishment imposed by the judiciary. Once in custody, a criminal may be further isolated by being placed in solitary confinement. Whilst some criminals are so traumatised by prison and its effect that they never reoffend, may become hardened. Thus imprisonment can have a dual effect. It can remove a dangerous criminal from the community for a set period of time, and/or the harsh environment can have the unfortunate effect of creating recidivists.

5. Reintegrative shaming (restorative justice)

Shaming has been used by many cultures to encourage those who engage in anti-social and criminal behaviour to feel the effects of their behaviour from others. Reintegrative shaming is the process by which victims have the chance to be heard by the offender. This can take the form of face to face conferencing the offender must meet with the victim/s, apologise to them and in some way redress the damage they have caused. The offender discovered the first hand impact of their crime eg. arson.

For the victim reintegrative shaming provides a sense of being heard. For the offender, it allows them to empathise with, and take responsibility for, the victim's feelings. Furthermore it enables the possibility of remorse and provides the offender with an opportunity to remedy past wrongdoings (which can help in rehabilitation). Reintegrative shaming is largely used in relation to young offenders. (Circle Sentencing, Youth Justice Conferencing).

Review Questions – Enforcing the law through punishment

1. Define what is meant by ‘rehabilitation’.
2. Explain what recidivism is.
3. Distinguish between general and specific deterrence.
4. Briefly describe how retribution works with respect to punishment.
5. How does incapacitation (gaol) work to protect society from criminals?
6. Describe how reintegrative shaming works.