8

After Conviction: The Sentencing Process

Key Terms and Concepts

community service
control of freedom
day fine
deterrence
diyya
electronic monitoring
exile
fine
flow design
forfeiture
house arrest
incapacitation
jail
noncustodial sanctions
penal populism
prison
probation
rehabilitation
remand prison
restitution
restoration
restorative justice
retribution
stock design
warnings

Chapter 8 Learning Objectives

Discuss the purposes of the five different criminal sanctions that are used to rationalize punishment.

Identify the different forms of criminal sanctions that are predominant around the world today.

Explore the reasons for the extreme nature of criminal punishments in Islamic countries.

Describe the major weaknesses in international prison data available in the world today.

Explain the general trend in the use of the death penalty on the international level.

e following:

convicted of murder in New Zealand has given a lighter sentence after his mother gized to the victim's family. The family forhim after a traditional Samoan apology in someone who has done wrong presents or herself, covered in fine mats, to the victim's. As the man was in prison, he was unable to ete the ceremony, so his mother stepped in e his place. The remorse shown and his er's actions were factors in the judge's ng to sentence him to life imprisonment with mum non-parole period of ten years, the st sentence he could have received in the circnces (Robinson, 2012)

bia's Constitutional Court has approved the ment's proposal to decriminalize the possesf small amounts of cocaine and marijuana for al use. Anyone caught with less than 20 of marijuana or one gram of cocaine may physical or psychological treatment dependtheir state of consumption, but may not be uted or detained. The move is part of a g trend in Latin America (Nadleman, 2012).

e in Saudi Arabia has asked doctors in the y whether they can damage a man's spinal cord as an "eye for an eye" punishment after he was convicted of paralyzing a fellow countryman in a cleaver attack. The punishment can be waived if the victim chooses to accept *diyya*, or "blood money," in reparation (Foxnews.com, 2010).

In these examples of sentencing practices in four different regions of the world, we see how different countries sentence criminal offenders. Such differences in sentencing practices can tell us a great deal about what individual societies feel about justice, crime, and criminal offenders. The decisions made about crime and criminals are sometimes influenced by an individual crime incident or troubling crime trends. For example, in the 1990s a "three strikes" policy was developed in California after the murder of two young females by former inmates on parole. In contrast, some countries, such as those in Scandinavia, have low rates of violent crime and a high tolerance toward offenders, and are more likely to support rehabilitation-based sanctions. In this chapter, we will look at the varieties of sentencing policies that are used around the world and the extent to which they are utilized. In the next chapter, we will concentrate more on the issues and problems surrounding imprisonment, especially in our model countries.

E PURPOSES OF CRIMINAL SANCTIONS

a society hope to gain from punishing s? The classic answer is that one or more wing should be accomplished:

- **bution**—The offender should "pay society for the harm he or she has done.
- **bilitation**—The offender should be med into a law-abiding person through programs of medical, psychological, economic, or educational improvement.
- **Deterrence**—The offender, or other possible offenders, through various methods , such as certainty of punishment or length or severity of punishment, should come to the conclusion that crime is not worth the risk of the resulting punishment.
- **Incapacitation**—The offender, usually through prison or exile, should be denied the opportunity to commit further crimes.

- **Restoration**—The community, victim, and offender are involved in the sentencing process with the aim of restoring the victim and the community to its previous state.

In practice, motives for imposing criminal punishment on offenders are usually mixed. At different times and places, however, one or the other of these purposes has been stressed (Clear, Cole, & Reisig, 2011). For centuries, deterrence and retribution were emphasized. During the nineteenth century, the "classical school" of criminologists saw simple retribution, applied equitably, as the major goal of sentencing in much of Europe. In the United States, where rehabilitation as a philosophy of punishment held sway for much of the twentieth century, there was an abrupt swing in sentencing theory and practice during the 1970s toward a more classic retributive approach. During the 1990s, the United States promoted incapacitation, as evidenced by the prison-building boom and longer sentences for drug and violent crimes. In Europe, the philosophy of rehabilitation developed in earnest in the later twentieth century, but an increase in crime has inspired some nations to call for more of a retributive philosophy. An exception is the Scandinavian countries, where "neoclassicism," as it is called there, developed parallel to the classical movement in the United States.

A recent trend in sentencing in a number of countries, which is in some ways one of the oldest sentencing methods, is **restorative justice**. Restorative justice is a revitalized paradigm that calls for participation by the offender, victim, and community in the sentencing process and allows the offender to atone for the offense and be restored to community life. Proponents of restorative justice believe that for the community, victim, and offender to be restored, the offender must understand the harm caused by the offense, accept responsibility for it, and repair the harm done. To accomplish this, it is imperative that all parties (offender, victim, and community) become involved in the criminal justice process (Pranis, 1993; Van Ness & Strong, 2010).

The idea of restoration has its roots in Judeo-Christian religious thought, dating back to ancient Middle Eastern civilization. Religious taught that those who offended against t bors could atone for their offenses and to community life if they made reparati misdeeds and promised to never repea fact, penitence, expiation, and forgivene tral concepts of Judeo-Christian moralit nial African societies adopted restorativ punishment aimed at resolving conse victims rather than punishing criminals. populations in North America, New Z Australia have used variations of this ide some time, and more recently numer from every continent have adopted pro a restorative intent. The decade has see tional bodies such as the United Natio European Union endorse restorative jus timeline of significant worldwide adv cerning restorative justice, see Van Ness 2010, pp. 33–35.) For example, the Unit Economic and Social Council adopted Principles on the Use of Restorative J grammes in Criminal Matters" with t encouraging member states to implem ative justice in juvenile justice.

Some non-Western countries see their own ideas about the goals of puni China, it is important that criminal o persuaded to reform not for themsel the good of their family, village, and esp ety. To promote public security thro country, China utilizes what are terme trative penalties" for a variety of crimes turbing social order, endangering pu infringing on the rights of others, and e upon public or private property. Ad penalties and more serious sanctions state purpose as one of rehabilitation or ret citizen to become a better-functioning Chinese society.

In countries that practice Islamic ju ishment is justified by deterrence, rehabilitation, and protection of the by incapacitating the offender (Al-Sagh Peters, 2005, p. 30). However, actual in tion of these practices in Islamic st

…erably depending on a number of factors, …ing the influence of Islamic law within the …apparatus and historical developments in spe… …ountries. While some have practiced Islamic …r decades and even centuries, others, such as a … in Northern Nigeria, that began implement… … Shari'a only in the last 12 years. For a sum… …description of the kinds of punishment …es implemented in our each of our model …es and the United States, see Table 8.1.

…e five purposes of criminal sanctions, as …ned above, all have to do with what happens …gdoers and with their capacity to be chan… …o do further damage. From a more global …ive, however, we discover that penal sanc… …ve had less acknowledged and less legitimate … in many societies at different times in his… …e of these has been the economic function …ding cheap labor that the society could not …r could not otherwise entice its citizens to … decades, transportation to penal colonies …encing to galleys, Siberian prison camps, … gangs all had a lot to do with economic …ment, as well as with penal sanctions … & Kirchheimer, 1939; Committee on …Affairs, 1984, p. 2).

…e recently, the same issue has arisen with … the fruits of Chinese prison labor. Prison… …ina are subject to institutions called *laogai* … to promote "thought reform through … the laogai, inmates are required to work at prison farms and factories to support the economic system in China. Even more disturbing, however, are the allegations that over 1,000 Chinese prisoners have been executed and then had their organs harvested for financial gain (Wu, 1995). In today's world, it is an infraction of international standards (see the International Labor Organization of the United Nations) to provide prison labor for economic development.

Another economic function that criminal sanctions may serve is that of social control, providing the kind of working class necessary for an organized, industrial society (Melossi & Pavarini, 1981). In his classic book about the historical foundation of prisons, David Garland explains how during the beginning of capitalist development, the United States used prisons as a storage facility for surplus laborers and as a school to spread capitalist values (Garland, 1990). The factories of Massachusetts and plantations of South Carolina in the late eighteenth and early nineteenth centuries are early examples of this concept (Hindus, 1980).

Finally, an illegitimate but much-practiced use of criminal sanctions that is also condemned in international law is punishment of a regime's political enemies. The twentieth century saw a number of examples of this abuse of criminal sanctions in countries such as Russia, China, and South Africa. Some have laid criticism for such violations on the United States for their ongoing internment of hundreds of al-Qaida supporters captured since the

…E 8.1 Purposes of Criminal Sanctions in Our Model Countries and in the United States

…try	Retribution	Rehabilitation	Deterrence	Incapacitation	Restoration
…d Wales		X		X	X*
	X	X			X
		X		X	X
		X		X	X*
	X	X			X*
…a	X	X	X		
	X	X	X	X	X*

…th juvenile offenders or as a supplement to rehabilitation events of 9/11 and the subsequent occupation of Iraq and Afghanistan. Often, it is difficult to draw the line between political persecution and simple diligence in carrying out the criminal law. For example, was it political repression or basic law enforcement to imprison antiwar demonstrators who, in defiance of the law, publicly burned their draft cards during the Vietnam War?

Political uses of the criminal law may also be tied to religious persecution, especially where a state-sponsored religion believes itself to be threatened by independent religious groups. Although religious fervor is not as likely to lead to criminal sanctions in today's secular nations as it was in earlier times, the example of countries such as Saudi Arabia, Iran, Pakistan, and now Nigeria, which apply Islamic law to promote religious tenets, shows that this practice continues. Any investigation into the purpose of criminal sanctions clearly reflects that it is an increasingly complex subject, one that does not allow for simple explanations. In most systems, a mixture of social, economic, and political factors is at work and needs to be analyzed to understand the criminal justice process.

SENTENCING PRACTICES

Despite the call for increasing punishments and the abuses that continue for some of those who are incarcerated, sentencing practices have generally become more humane over the centuries. We have only to compare the fate of would-be assassins or assassins of rulers in seventeenth-century France, the nineteenth-century United States, and the twentieth-century United States to illustrate this. After a crazed Frenchman made an unsuccessful attempt to murder King Louis XV, he was hanged, was cut down while still alive, had his intestines pulled out and roasted before him, and was then draw and quartered. When Charles Guiteau assassinated President James Garfield in 1881, he was hanged despite the fact that he suffered from delusions and displayed other symptoms of mental illness. On the other hand, when Lynette "Squeaky" Fromme, a follower of the notorious killer leader Charles Manson, attempted to kill I Gerald Ford, she received a life term in a C penitentiary with the possibility of par 15 years. John Hinckley, the delusional yo who attempted to kill President Ronald R 1980, was placed in a mental facility and in granted home visitation privileges.

In recent years many countries, especi in Europe, have actually made an effort t sentencing severity for a number o (Ashworth, 2000; Tonry, 2007). For ex Germany, prison sentences of less than si have been virtually eliminated in favor of nity sanctions. In Finland, policy makers l successful in forming penal policies more of other Scandinavian countries such as Sweden, and Denmark rather than thos eastern neighbors Russia and the Baltic (Lappi-Sceppala, 2006). There has als worldwide reduction in the number of that utilize the most severe penalty, capit ment. We will discuss this global tren detail later in this chapter.

The treatment of offenders after arr tencing has also been an important issue in the international community in rece Charters of human rights, including Universal Declaration of Human Righ Standard Rules for the Treatment of Pri the European Convention on Human among the international treaties and la outlaw the use of torture and inhuman of prisoners. Although the phrasing in ments is vague, subject to different inte and often ignored, we can safely say that ness of criminal punishment, and often i has become more lenient throughout m world over time. We will discuss these i standards further in the next chapter broach the issue of prisoner treatment.

It is difficult to clearly determine w one kind of criminal sanction is more o lent in the world today. One reason fo dearth of international data about the extent of punishments implemented in

Countries are very wary of reporting such r fear of being criticized for excessive punish- of criminals. But if we review the results of st United Nations Criminal Justice Surveys CJS), we can see some general patterns. The s indicate that the majority of adults were ed in the community through methods d to some control in freedom and through warnings, community service, and probation. one-third of countries still relied heavily on ation of freedom. The following is a list of ions that briefly describe some of the most on forms of punishments used in the world .

orporal punishment—any sentence in which a erson's body is subjected to physical pain, such s flogging, mutilation, electric shock, or anding.

e imprisonment—any sentence in which a erson is deprived of liberty in an institution of y kind for the duration of his or her natural e.

eprivation of liberty—a variety of forms of etention, including combined or split sen- nces, jail, and any period of incarceration ort of life imprisonment.

ontrol in freedom—includes probation, elec- onic monitoring, any conditional sentence th supervision requirements, and other forms f controlled liberty that have special quirements.

arnings—also called admonitions; suspended ntences, conditional sentences and dismissals, rmal and informal warnings with findings of ilt, and conditional discharges.

ines—all sentences that involve paying a sum f money.

urce: Weitekamp, 2003, p. 150.

is is not to imply that there is no variation individual countries when it comes to sen- . In some countries (such as Slovenia, Japan, ny, Finland, Austria, and Egypt), warnings, nd noncustodial sanctions account for up to 70 percent of total sentences; in others (such as Colombia, Singapore, and Moldova), more than 50 percent of sentences are custodial. At the same time, some countries show no preference for any one kind of punishment (Zvekic, 1997).

As we examine various sentencing practices, we can place them in four basic categories: (1) corporal punishment, (2) noncustodial sanctions, (3) imprisonment, and (4) the death penalty. In the following sections, we will explore these practices in more detail.

CORPORAL PUNISHMENT

Corporal punishments such as flogging, branding, dunking, and maiming have a long global history. The methods of corporal punishment most commonly used today are flogging and in rare cases amputation. Although these methods have gradually disappeared as official, court-imposed sanctions in most countries, especially in Western nations, this does not mean that corporal punishment is in disuse. From a variety of sources, we know that around 60 countries employ some form of the sanction and that such punishments are carried out even in a number of enlightened societies. Further, cross-national research on the use of such sanctions has shown that countries where economic disparity is greatest are more likely to employ corporal punishment as a possible sanction against criminal offenders (Gould and Pate, 2011).

Overall, such punishments are not sanctioned in most countries. Human rights instruments or conventions do not specifically prohibit or prevent corporal punishments as a sentence, although many countries exclude such penalties because they feel that they are included as part of the general definition of inhumane or degrading punishment (Kurki, 2001).

One major exception to the gradual disuse of corporal punishment sanctions is found in Islamic countries, where measures of punishment that seem extreme to most Americans can, and sometimes do, take place (Metz, 1993; Peters, 2005).

Since the Qur'an describes not only forbidden acts but also the penalties for engaging in these acts, societies that are faithful to Islamic law have little choice but to carry out these penalties. The force of such punishments is mitigated, however, by the fact that the standards of proof are so high that many of them are infrequently carried out. This is so especially in cases involving sexual misconduct, a most serious crime in Islamic law. People who are guilty of adultery are supposed to be stoned to death. But there must have been a valid confession or four witnesses to the crime. Further, the only witnesses who can be used, according to most interpretations, are male Muslims. Needless to say, convictions for adultery are extremely rare even in countries that follow Shari'a criminal law. It is not uncommon for a year to pass without an execution for adultery.

A Westerner who is appalled by the severity of punishments prescribed under Islamic law might also consider the following rationales for such punishments:

> The Hudud penalties are designed to avoid unreasonable limitations on individual freedom to the extent that they are "bodily penalties." They are executed in limited duration and cause momentarily severe physical pain to the criminal and remain unforgettable to him so that in most cases, he will refrain from future criminal conduct. These penalties contrast with prison sentences which the criminal becomes accustomed to, having experienced them for long periods of time. Thus, imprisonment soon loses its deterrent effect and prisoners lose their sense of responsibility. Often after being released, they return to prison to serve a longer sentence. Thus execution of the "bodily penalty" allows the criminal to resume his work immediately thereafter; he is also not prevented from supporting himself and his children. Similarly, Islam teaches that to undergo the Hudud punishment is in itself an act of penance and remission after which the offender resumes his normal life as a good citizen....
>
> In Islamic society, the reliance on Hudud penalties brings about peace, st bility, and security. When these were abandoned in favor of foreign theories penology, Islamic societies experienced increased crime rates. (Mansour, 1982, pp. 201–202)

An interesting point about sanctions Islamic law is that imprisonment is consi proper sanction only for recidivists, peop have not changed as a result of the mor corporal punishments. Thus, a person v been convicted of theft for the third o time is sentenced to prison. With the first tion, one hand is amputated by an au doctor; with the second conviction, th hand is amputated; with the third co however, the penalty may be either am of a foot or "imprisonment until rep (Lippman, McConville, & Yerushalmi, 198 Ghassemi, 2010). One might well ask, "\ preferable? Twenty years in the state pe or the loss of a hand or foot?"

Another extreme use of corporal pu has been used in the country of Malaysia. International (2010) has documented tha 10,000 persons per year are caned in that The cases of Malaysia and Islamic countrie general repugnance for visible violence l the application of corporal punishment n as a criminal sanction in modern Western

NONCUSTODIAL SANCTIC

The search for noncustodial sanctions is the practice of imprisonment itself. **Non sanctions**, also called alternatives to inca are legal sanctions handed out to offe do not require time served in a correction The call for such alternatives became in intense in the latter part of the nineteentl when European criminologists, assessi a century of experience with prison a vored mode of punishment, voiced v

reliance on
ut peace, sta-
these were
gn theories of
experienced
our, 1982,

t sanctions
ent is consid-
divists, people
of the more
a person wh
the third or
ith the first c
by an auth
viction, the
third conv
either amp
until repe
shalmi, 1988
well ask, "W
the state peni

corporal puni
f Malaysia. A
mented that
ned in that c
ic countries
violence h
nishment no
rn Western s

SANCTIONS

sanctions is a
itself. Noncu
ives to incarc
ut to offend
a correctional
became incr
e nineteenth c
ists, assessing
h prison as
, voiced wi

sionment with the practice. Declaring that did little to change or rehabilitate offenders, criminologists directed their attacks mainly at -term imprisonment of nondangerous offen- At that time, short-term sentences were by e punishment of choice for convicted offen- Franz von Liszt, a leading German criminolo- ummed up these sentiments in 1885: "The prison sentence in its present form is worth- deed harmful. It does not deter, it does not e, it contaminates" (Kalmthout & Tak, p. 3). Alternatives, including fines and special of juvenile justice, were the answer to the tional aspects of short-term imprisonment, ng to von Liszt and other European rs.

more modern times, the search for alterna- s both humanitarian and utilitarian motives. a humanitarian standpoint, minimization of rm imprisonment of nondangerous offen- creases the possibility of rehabilitation work programs, counseling, and restitution hereas imprisonment breeds further crime nation from conventional society. From a n standpoint, alternatives alleviate the and other problems involved in dealing ever-growing prison population, especially nd and the United States.

call for alternatives to incarceration is heard of the industrialized world, especially in Germany, for example, imposes fines as the ion on two-thirds of all property offenders, England the number is almost half. Commu- ce is commonly used for property offenses in untries in the European Union such as Sweden, the Netherlands, France, and As recently as 2011, courts in Ireland more community-based penalties than entences, with the number of commu- orders increasing by 40 percent. The followed legislation introduced in October ng for judges considering a sentence of s or less to first examine the appropriate- mmunity service (Lally, 2012).

United Nations has often promulgated s calling for alternatives to incarceration such as the Vienna Declaration and the Tokyo Rules, which was the most detailed international document to promote the use of community-based alternative sanctions. What are the alternatives? Because each country approaches the issue differently, it would require a book of considerable length to document the many options available today. To keep our discussion within the limits of this chapter, we will focus on the most commonly used alternatives within two general categories: (1) monetary payments and (2) community supervision.

It is important to mention here that our discussion of alternatives to incarceration will only include measures that are implemented subsequent to adjudication. Noncustodial sanctions prior to adjudication, such as pretrial detention, bail, release on recognizance, diversion programs, and related issues (such as promoting decriminalization and dealing with social conditions that help create crime), will not be addressed here.

Monetary Sanctions

Fines. The **fine** is a penalty imposed on a convicted offender by a court or, in some countries, by another arm of the criminal justice system, requiring that he or she pay a specified sum of money. Fines have been around for centuries and are among the most common noncustodial sanctions in the world (O'Malley). They are used in as many as 97 percent of cases in Japan and in more than 85 percent of cases in most of Western Europe; the percentages are much lower in countries in transition and in the developing world (Zvekic, 1997; Albrecht, 2001; Terrill, 2013).

Fines are not popular in the United States as punishment for felonies or serious misdemeanors, despite their extensive use for minor crimes. This is probably because judges have not found them to be very effective as a deterrent to crime or because of the difficulty in collecting the fines. Because judges are not required to assess fines rather than incarceration for many kinds of offenses, including cases of repeat offenders (as in Germany), and because they have little knowledge about or faith in offenders' ability to pay, they tend to use other options. Nevertheless, fines are often imposed in addition to other sanctions. In any case, many judges perceive conventional fines, which are legislatively determined by the nature of the crime rather than by a combination of this factor and the offender's ability to pay, as discriminatory against the poor.

Fines can serve many benefits for the criminal justice system and for society in general. Government coffers benefit from fines, especially given that fines are inexpensive to administer by the court system. Fines also can lower the numbers of persons in jails and prisons and thus save taxpayers money. Consider the example of the practical use of fines in the United States when the major investment banking firm Citigroup was fined over $100 million in connection with the collapse of Enron and also agreed to pay $2 billion to settle Enron investors' claims (Friedrichs, 2010).

In addition to providing economic benefits, fines can serve the correctional purposes of rehabilitation. When offenders are required to pay fines, they can learn to be more financially responsible and can also remain in the community to work and interact with family and friends.

There are two ways that fines can be determined. One is the fixed-sum rate system. In this system, specific offenses are allocated a certain "value," and offenders are fined according to the offenses they commit. This method appears easy to administer and rather equitable. However, not all offenders are able to pay the fines assessed for their crimes. Typically, offenders with more economic resources are able to pay the fines, whereas poorer offenders find themselves in violation of the court order, which can lead to further legal difficulties. A second fine-setting method is called the day fine.

Day Fines. In response to the concern that fines exact a heavier toll on the poor than on the wealthy, Scandinavian countries developed the **day fine** (also called the structured fine), a criminal penalty that is based on the amount of money an offender earns in a day's work. Day fines thus take into account the differing economic circumstances

of offenders who have committed the sa
In Germany day fines have been used as
ment for short- term imprisonment even
relatively serious offenses like burglary. Sc
countries that have made use of day fin
Europe are the United States, New
Australia, Mexico, Canada, Macau (Chi
Costa Rica, and Bolivia. Finland, which
this penal reform in 1921, uses only day
amount of the fine is calculated in a two-
cess. First, the number of units of puni
determined according to the seriousne
offense and such factors as the offenc
record. Second, the monetary value of
of punishment is established in ligh
offender's financial circumstances. Thus,
penalty—the degree of punishment—sh
an equivalent economic burden on offenc
fering means who are convicted of simila
For example, a person making $36,500
sentenced to 10 units of punishment v
$3,650; a person making $3,650 and rec
same penalty would pay $365.

Day fines have at least two advant
they provide a balance between the crim
ted and the offender's ability to pay for
Offenders are required literally to "pay
crimes" but not beyond what is possible
financially. This reduces discrimination o
ing and increases the likelihood of payn
ond, the day fine provides courts and c
officials with another alternative to inc
one that is more punitive than probatio
sion but less harsh than jail or prison. Da
generally not used for minor misd
because the basic intent is to make them
natives to incarceration.

Until recently, day fines were not
used in the United States as in Europ
need for alternatives to incarceration bec
greater because of prison crowding, ho
use of day fines is increasing. Day fines
promoted as a way to improve the use
sanctions in the United States. The conce
used in the federal system and in sever
states, including Arizona, Connecticut, I

the same cr
used as a rep
nt even for s
lary. Some o
day fines o
New Ze
u (China), C
which pion
nly day fines.
a two-stage
of punishm
riousness o
offender's
value of each
in light o
. Thus, the
ent—should
n offenders
of similar o
36,500 a ye
hment wou
and receiv

advantages.
the crime c
pay for the
to "pay fo
possible fo
ination of s
of paymen
ts and corre
e to incarce
probation s
rison. Day f
or misdem
ake them tru

were not as
in Europe.
ration becom
ding, howev
Day fines o
e the use of
The concept
in several
necticut, Iow

k, and Washington (Clear, Cole, & Reisig, 11).

However, fines and day fines are not a panacea, they have been criticized both in countries that refused to adopt them and in the countries re they are most used. Some claim that fines to overpenalize the poor, who still find their g standard appreciably lowered when they have y a fine. Day fines tend to be mechanically ed, and they leave little discretion to the sen- g judge. Also, the actual financial circum- es of offenders often are hard to determine, ertain categories of offenders, such as students, ewives, and the unemployed, are not amenable fine system.

scation and Forfeiture. The increase in nforcement measures to combat international trafficking and organized crime has resulted in ed form of economic sentences called confis- and forfeiture. Confiscation and **forfeiture** governmental seizure of property derived or used in criminal activity. In the United confiscation and forfeiture takes both civil criminal forms. Under civil law, property in criminal activity (e.g., equipment to cture illegal drugs, automobiles, or boats) seized without a finding of guilt. Under l law, forfeiture is imposed as a con- e of conviction and requires that the r relinquish various assets related to the Similar confiscation and forfeiture laws and tions have been passed in a number of es throughout the world due to the cooper- f the United Nations and regional organiza- ch as the Council of Europe (Albrecht, . 318).

tion and Community Service. When an r is required or volunteers to participate in nity service or to pay money to make repa- for harm resulting from a criminal offense, **stitution** is being made. With restitution, is made by the offender and is received ctim, his or her representative, or a public victims of crime.

The idea of paying crime victims for loss damage, or injuries is an ancient idea that actu predates formal criminal justice systems. Both Old Testament of the Bible and the 4, year-old Code of Hammurabi state that offender must repay crime victims "in kind or extent." In ancient times, Babylonian, Greek, Roman, and Jewish law all contained provisions for compensation to be paid by offenders. Our cur- rent conceptions about restitution have develope over many centuries. In prehistoric times, peopl acted on their own to punish others for transgres- sions against them. But as people began living large tribes, blood feuds between different gro surfaced, and vigilante groups developed for purpose of administering punishment. To res violent feuds between tribes, the crime or their families were given compensation crimes committed against them. Over family's role in the compensation proce ished, and by the thirteenth century the reigning monarch) had become the offen in criminal offenses. With this develop state assumed responsibility for punishing and collecting fines. As time passed, vict less and less involved in the punishment eighteenth-century England, the concep tion resurfaced when philosopher Jerem argued that payment of monetary fines to his idea that the punishment shou crime.

One form of restitution used in tries is called **diyya**, which is paid victim or his or her family as compen different *quesas* (retribution) crimes. technically a collective responsibility family or the government may be Many other rules regulate the pay including those related to the offense, iation, the sex of the victim, and the of the families involved (Jousten & p. 16; Souryal, 2004).

In **community service**, an to personally "pay back" the com forming a set number of hours of not-for-profit agency. Communi two historical traditions: (1) ordering offenders to make reparation for crimes and (2) requiring unpaid labor as punishment. Community service as part of restitution can be traced back to ancient times. The sanction also was used in the Middle Ages in Germany, when it was handed out in lieu of other punishments; tasks included building city walls and cleaning canals. In the early seventeenth century, offenders in England were persuaded to join the Royal Navy in lieu of more formal punishment. In some cases, they were transferred to English colonies to work as servants for free settlers (McDonald, 1992, p. 184). Reformers in nineteenth-century France mounted a crusade for the use of community service to replace detention for those who had defaulted on fines. Community service as a substitute for paying a fine was codified as early as 1889 in Italy, in 1902 in Norway, in Germany in 1924, in Portugal in 1929, and in Switzerland in 1942 (Kalmthout & Tak, 1988, p. 14). By the late 1990s, community service programs were accepted correctional practice in the England, Canada, Australia, New Zealand, Netherlands, Finland, Germany, and the United States (Tonry & Frase, 2001). In some cases, such as in the United States and the United Kingdom, community service has been used as both as an alternative to incarceration and as a supplement to probation in minor matters related to traffic, DWI, and juvenile justice.

Community Supervision

Probation. With **probation**, a criminal sanction given in lieu of imprisonment, the offender is given the chance to remain within the community and demonstrate a willingness to abide by its laws. Probation usually is accompanied by a suspended sentence and includes some form of supervision in the community. Probation sentences may also require the offender to pay restitution to the victim or provide free services to the community to compensate for the crime. Further, the probationer may be ordered to attend treatment programs to deal with problems that led to criminal involvement. On the international level, probation is generally referred to as **control of freedom**.

In this country, probation began innovative work of John Augustus, a Bc maker who was the first person to stan defendants under authority of the Bost Court. Augustus probably borrowed th probation from the British, who in the 1 bined the Common Law surety and rec systems by releasing young offenders into of employers (UNAFEI, 1997, p. 119).

Of all the forms of supervising offen community, probation is the most com form of noncustodial sanction is pr some form in almost all criminal justi in the world, although specific practices considerably. In some jurisdictions, off kept under close supervision to ensur conditions of probation are followed individuals are properly reintegrated int munity. In others, offenders have ve contact with their probation officers a little or no community support. Var exists in terms of who supervises the pı (volunteers or professionals) and wheth tion of probation conditions automatica revocation and incarceration (Jousten 1994).

Probation is generally administered l tion officer employed by the local ju some cases, probation departments are executive branch of government, run federal organizations. In China, probatic times supervised by the police or by many community units. In Indonesia, mented by the office of the prosecutor 1997, p. 232). In a few countries in Eur companies have been brought in by gov supervise and run probation agencies (v out & Durnescu, 2008).

In many regions of the world, the bation is increasing; in others, its use i According to results in the tenth UNCJS use has increased in a number of countri years. The countries with among the h of probation are the United States, C England. Table 8.2 gives data on the us tion in these three countries and Japan,

began with
tus, a Boston
n to stand ba
the Boston P
rowed the id
in the 1820s
and recogni
ders into the
p. 119).
ing offenders
most common.
n is practic
nal justice sy
practices ma
ions, offende
to ensure th
followed an
rated into the
have very
officers and
ort. Variatio
es the prob
d whether a
tomatically
Jousten & Z

nistered by a
local judic
ents are par
nt, run by
probation is
e or by one
donesia, it is
rosecutor (U
es in Europe,
in by govern
gencies (van K

orld, the use
its use is de
h UNCJS, pr
of countries i
ong the high
States, Cana
on the use of
nd Japan, wh

BLE 8.2 **Annual Probation Totals and Rate per 100,000 Population, 2000 and 2006**

	2000 Rate Per 100,000	2006 Rate Per 100,000	2000 Persons on Probation, Adult and Juvenile	2006 Persons on Probation, Adult and Juvenile
da	435.64[a]	358.44	132,869[b]	116,769
d and Wales	260.01[a]	257.12	137,000[b]	146,532
	42.85	33.29	54,416	42,593
any	N/A	210.80	N/A	174,207
	1,836	1,399	3,839,532	4,237,000

ne
only
Seventh and Tenth UNCJS.

ther model country included in the tenth
S.

obation is not only a sanction devised by gov-
s but also a general framework for a series of
s that can be developed to fit the needs of
rs and their communities. As a result, very
ects of probation are the same around the
A review of international probation procedures
eveal a diverse set of programs that reflect local
norms and political aims and provide a variety
cing options (Hamai et al., 1995).

Arrest. With **house arrest**, offenders are
d to terms of incarceration, but they serve
rms in their own homes. Some offenders
fter a time, be allowed to venture out to
ork or to run errands. Others might be
o maintain their employment for the entire
of their sentence. Whatever the details, the
as as its basic thrust the use of the offender's
as the place of punishment.
use of house arrest (also called home con-
, home detention, or home probation) is
novel form of punishment. Throughout
people have been confined to their homes
ing the laws of the land. These include
who was confined to his home for making
statements contrary to the teachings of the
Catholic Church, and, more recently, Lech
Poland and Winnie Mandela in South
There are at least three kinds of house arrest,
which can be best understood in terms of levels of restrictiveness. The lowest level involves a simple curfew, when an offender is required to be home after a certain hour. The next level is when an offender is allowed to be away from home during certain hours of the day for work, school, religious reasons, or counseling sessions; this is often called *home confinement*. The third and most punitive form of house arrest requires the person to be home at all times, unless a special situation arises such as medical or legal appointments.

Electronic Monitoring. One of the largest growing approaches to noncustodial supervision is the use of **electronic monitoring** (EM) to expand the surveillance capacity of supervision. The original goals of EM were to reduce crime, promote a therapeutic relationship with clients, and provide a humane alternative to incarceration (Schwitzgebel, 1969). The more common use of EM in the United States dates back to 1983, when a New Mexico judge, inspired by the *Spiderman* comic strip, placed a probation violator on EM for one month. Other states soon adopted the idea, and by 2005 an estimated 125,000 persons were being monitored in all 50 states and the federal government (Stacey, 2006). Recently, the use of global positioning systems (GPS), which use satellite tracking devices to monitor offenders while living in the community, has expanded the use of probation in the United States and is sure to catch on internationally.

EM ordinarily is combined with house arrest and is used to enforce its restrictions. However, EM has been utilized in many other ways in corrections. EM has been used for intensive probation supervision (IPS) programs, work furlough–home detention programs, temporary detention of juveniles, gang supervision, narcotic surveillance, traditional home detention, and the supervision of parolees and pretrial defendants. EM is now used in Canada, Taiwan, Singapore, Australia, New Zealand, Denmark, Finland, Sweden, the Netherlands, Germany, Belgium, Portugal, Italy, Argentina, Israel, England, France, Switzerland, and Scotland (Albrecht, 2001; Paterson, 2007).

Exile. Another time-honored sanction that has assumed various forms throughout recorded history is **exile**. Most of us are familiar with the tales of the Old West in which outlaws were ridden out of town and threatened with being shot on sight if they appeared again. In small tribal communities, banishment frequently was equivalent to a death sentence. Without a sustaining community, subject to attack by enemy peoples and wildlife of various kinds, and at the mercy of the elements, the offender often did not survive exile for very long. Exile to prison colonies was a widespread practice until the end of the nineteenth century. England had discontinued transportation in the middle of the nineteenth century.

Exile is rarely used today except in some indigenous cultures in remote areas of the world. When it is implemented, it is usually internal and accompanied by another alternative to incarceration. Such is the case in Italy, where offenders may be sent to a town far from where they committed their crimes but must remain under the supervision of the local police.

Andrei Sakharov, the Nobel Prize winner in physics, was no doubt the best known of the internal exiles in the former Soviet Union. After he became disillusioned with the Soviet regime and was vocally critical of its human rights abuses, Sakharov was convicted of undermining the state and sentenced to exile. Sakharov could not practice his vocation in exile or engage in the kind of political activity that had put him under s
suspicion. In effect, the Soviets removed h
the center of action, thinking (albeit wrong
Sakharov generated a lot of concern and j
even in exile) that he would no longer be
engage in activities embarrassing to the reg

Warnings. In many countries, espec
Europe, warnings are used in a large nu
cases. These **warnings** (also called admoni
are provided at the adjudication stage by t
and usually are accompanied by the threat
ceration if criminal behavior does not desi
United States, warnings are used extensive
juvenile justice system.

Other Punishments. In addition to t
common sentences mentioned here, t
some other forms of less frequently emplo
tencing options available around the glob
are imposed in connection with crime co
but are not often viewed as criminal penal
as loss of driver's license, cancellation of pr
licenses, mandatory notification of release
istration of sex offenders, loss of voting
citizenship, reduction of social service
and loss of employment (Kurki, 2001).

IMPRISONMENT

Imprisonment is today the severest pu
inflicted in most societies. It is also the m
lematic of punishments, in that so little o
short-term incapacitation appears to be
through its use. It is used almost unive
there are major differences among crimi
systems in duration of prison sentence
prison conditions and programs. Here, v
examine the extent of the use of prison
tence around the world. In the next ch
will consider prison policies more broadly
related to incarceration in our model co

It is important to note that we us
prison exclusively to describe any facili

...ate criminal offenders. Technically, at least ... United States, there is a difference between ... and jails. **Prisons** are used almost exclu... for serious offenders who receive sentences ... than one year; **jails** are facilities that ... less serious offenders who are generally sen... to less than one year or who are awaiting ... transfer to another institution. We use the ...on in these chapters because it is more rep...ve of the terminology used throughout the ... In many countries, due to lack of financial ..., untried prisoners are not separated from ...eady convicted. When a country separates ... it typically uses the term **remand prison** ...be the facility used to house unconvicted ...

International Prison Data

...stand the extent of the use of incarceration ...e world today, we turn to data provided ...nth edition of the *World Prison Population* ... *World Prison Population List,* prepared by ...msley, an English researcher and consul... United Nations, provides the number of ... in 218 independent countries and territo... May 2011 (Walmsley, 2011). The list ... differences in the levels of imprisonment ... world and provides the information nec... estimate the world prison population. ...om a variety of sources, the list specifi...des the number of those incarcerated in ...) or prison, the estimated national pop... rate of inmates per 100,000 population, ... of data compilation. The list does have ...ations, including missing data, some var... the dates, and limited information about ...gories of offenders such as remand, juve... mentally ill offenders. There is also some ... to what constitutes a prisoner from ... country (Walmsley, 2011). Even with ...ons, the list is the best comprehensive ... international prison data compiled to ...cond and regularly updated source called ... *Prison Brief,* prepared at the International ... Prison Studies (ICPS), provides a list of individual prison population rates for 222 countries rated from highest to lowest as of May 2012. We will utilize the *World Prison Brief* in the next chapter to discuss prisons in our model countries and issues related to prison crowding.

A review of the *World Prison Population List* indicates that as of 2011 there were over 10.1 million people in correctional institutions throughout the world as either pretrial (remand) or convicted and sentenced criminals, with the world prison population rate estimated at 146 per 100,000, a slight drop from 2009, when it was 150 per 100,000. The countries with the highest total number of inmates were in the United States (2.29 million), followed by China (1.65 million sentenced prisoners) and Russia (around 800,000). The highest prison population rate was in the United States (743 per 100,000 people) followed by the Rwanda (595 per 100,000) and Russia (568 per 100,000 people) For comparison, more than one half of the countries and territories around the world have rates below 150 per 100,000 (Walmsley, 2011). Walmsley and the ICPS data provide an excellent source of information for comparisons among countries at one period of time, in what is called **stock design**. But as we have come to learn more about comparative data, we now know that incarceration rates in a stock design are very limited in their scope. One suggestion for improvement would be to study the number of prison admissions over time, in what is called **flow design** (Lynch, 1988). This would allow us to separate the tendency to incarcerate and the length of time served. With this in mind, we address the issue of how international prison rates have changed over time.

If we look simply at the numbers provided by stock design, we can surmise that there has been an increase in prison populations in many parts of the world in recent years. More specifically, there has been an increase in the prison population in 78 percent of the world's countries, with a total increase of over 1.3 million inmates since previous *World Prison Population Lists* were compiled in 2010, 2008, 2003, and 1999. If we wish to further support the position of prison population growth over time, we can compare our current world prison population rate of 146 per 100,000 with data from the first UNCJS. Those data reveal that the rate in developing countries in 1972 was around 40 per 100,000 and the rate in developed countries was around 85 per 100,000 (Newman, 1999, p. 97). In addition to the total number of inmates incarcerated, two issues of concern for those who study international imprisonment rates are the increasing number of women and the rising number of minority groups that are incarcerated worldwide.

Women and Incarceration. The second *World Female Imprisonment List*, also published by Roy Walmsley, revealed that as of January 2012 more than 625,000 women and girls are in prison around the world and that the female prison population has grown 16% since 2006 (Walmsley, 2012). The rise in imprisonment for females is believed to be directly related to the international fight against drugs. This has been the case for years in the United States, but more recently the same has been true in other countries. For example, over 31,000 women across Europe and Central Asia are imprisoned for drug offenses, representing 28 percent of all women in prisons in these regions, according to a new report by Harm Reduction International (Iakobishvili, 2012).

Minorities and Incarceration. A second issue of concern relative to imprisonment around the world is the significant number of minorities incarcerated in the world today. It is probably safe to state that as of December 2010 the United States is the world leader in this category, with over 60% of its prison population being Black or Hispanic (BJS, 2012). This is troubling in light of the fact that Blacks and Hispanics make up only 13 and 16 percent of the U.S. population, respectively. However, the United States is not alone in the incarceration of disproportional number of minorities. Within our model countries alone, England and Wales, France, and Germany all have experienced an increase in minority incarcerations in recent years. In addition, many countries have a high percentage (at least 30 percent) of incarcerated foreigners, including Gambia, Qatar, Switzerland, United Arab Emirates, Austria, Belgium and Italy (Reichel, 2 reason for such a high number of minori is complicated and quite controversial. S that institutional and in some cases societ the reason, while others argue that certai nities commit more serious crimes. Ot people go to prison because of a comb social and economic factors that lead to tion (see Walker, Spohn, & DeLone, 2(Cole, & Reisig, 2011).

Prisons and Politics. There are many to why prison populations have soare throughout the world. The most comn the increase in prison populations is dire to the increase in the crime rate. Howev little data to support this assertion. In researchers have presented evidence th little or no relationship between in rates and crime rates (Young & Bro Newman, 1999, p. 91; Tonry & Fr p. 10; Brodeur, 2007).

Looking back at the last 35 years, w politics has had a major role in the p trends in many regions of the globe, e Western democratic countries. One tren to increase the use of punishment for ce and to increase the lengths of punishmen inal offenders. Although overall crime crime seriousness may have had some r in the development of harsher senten tures, it is now clear that conscious polic made by public officials are the major increased punishments (Kuhn, 1994; Frase, 2001). More specifically, the i the prison populations in England, the N and especially the United States hav because of the will of politicians to be crime" (Tonry, 2007b; Kury & Shea, 2(

Much of the call for increasing the the sentences has been fueled by **penal** This is a term given to criminal justice p are designed to appeal to the public a punitiveness with little concern for p fectiveness or the clear understanding nity views. Those who practice penal

...duals called penal populists, may exploit the ...formed opinion of the public in the pursuit of ...al advantage. Penal populism is in contrast to ...policies that are grounded in justice and draw ...body of sentencing research (Roberts et al., ... pp. 7–8; Pratt, 2007). The United States is ...ally vulnerable to penal populism because of ...phasis on the individual politician rather than ... party he or she is supporting, the role and ... of the American media, and a history of ...ans receiving pressure from single-issue ... (Roberts et al., 2003, p. 73).

... number of sentencing strategies and larger ... justice policies have developed interna-... as a result of penal populism and the will ... tough" on crime and criminals. They ... *mandatory sentencing* laws that eliminate any ... discretion in sentencing, *sentencing guidelines* ...vide strict limits on discretion, and the *trans-* ...*eniles* who commit serious crimes to the ...minal justice system. *Three-strikes* laws that ... lifetime sentence after the conviction for a ...rious offense, *truth-in-sentencing* laws that ...arole release, and the self-explanatory sen-... *life without parole* are examples of specific ... formulated by legislators in the United ... promote this kind of sentencing agenda.

...ould be noted that not all researchers agree ... incarceration rates are caused by penal ..., or that incarceration rates are in fact ris-...ywhere as some data reflect. A diverging ... by comparative penologist Michael Tonry ... further explication of the data reveals that ...carceration rates in many countries, espe-...se in Europe, have actually declined in ...ars and that penal populism is not in fact ...problem but one that is located primarily in ...ntries, the United States and England ...2007b).

...its of International Prison Data

...ternational crime data, there are a num-...falls to comparing international prison ... we noted in Chapter 2, one of the weak-... international crime data is that many countries fail to report or underreport their crime data. The same can be said for international prison data. Despite the best attempts by private researchers and international organizations to collect this data, many countries simply fail to respond truthfully or competently to inquiries about prison populations.

Prison data also suffer from a form of nonstandardization when it comes to definitions. The definitional problems involve what counts as a prison and who counts as a prisoner. Some countries include all correctional facilities in the statistics, whereas others exclude certain types of institutions such as remand facilities (jails), special work camps, and juvenile facilities. When counting inmates, some countries may not feel it necessary to include inmates who have yet to be tried. Others may exclude certain groups of inmates because they are mentally ill. For example, in the Netherlands, those convicted of murder or rape are sent to special mental hospitals run by health authorities (Stern, 1998).

Another larger methodological problem with incarceration figures is that they do not account for sentence length. Rates of incarceration are naturally tied to sentence length, since longer sentences tend to increase the rate at any one time (Young & Brown, 1993; Kuhn, 1996). The United States, for example, with longer sentences than other countries, will tend to have a higher rate of imprisonment.

Many researchers have presented possible ways to improve methods of collection and presentation of international prison data. As we have already mentioned, one option is the use of stock designs and flow designs to measure the number of prison admissions over time. Other options include the ideas that the incarceration rate should be determined by dividing the number of persons sentenced to prison by the number convicted during that same year, that we should compare the prison population to the number of prosecutions in the country, and that we should also take into account changes in criminal procedure (Rahim, 1986; Buck & Pease, 1993; Tonry, 2007b). Each of these methods may bring us closer to a more precise understanding of international incarceration rates.

International prison data serve as a reminder once again that even simple comparisons among countries with respect to some facet of the criminal justice process need to be scrutinized very closely. As with the even more problematic comparative crime rates, careful evaluations of multiple indicators of the extent of the phenomenon are preferable to unidimensional comparisons.

THE DEATH PENALTY

The penalty of death has been a sentencing option since the beginning of civilization. In biblical times, criminals were stoned to death and their bodies hung up as an act of deterrence. Ancient Athenian society restricted the use of the death penalty and actually humanized the process by allowing the condemned to drink poison. The Romans used many forms of execution, including burning, stoning, strangulation, drawing and quartering, crucifixion, and, famously, throwing the criminal to the lions. In medieval times, executions were conducted through the use of ordeals, in the belief that God would protect the innocent from extreme physical harm while permitting the guilty to succumb (Johnson, 1988). Hanging, shooting, electrocution, and lethal injection remain the major forms of execution throughout the world, although some countries (primarily Islamic nations) still resort to more ancient methods such as stoning and crucifixion.

Other regions of the world, including China, ancient India, Western Europe, and North America, all adopted the penalty of death hundreds if not thousands of years ago. The movement to abolish the death penalty began in the late 1700s, when European criminologists Cesare Beccaria (1748–1794) and Jeremy Bentham (1748–1832) first tried to persuade the English Parliament to abolish the death penalty for certain crimes (Simon & Blaskovich, 2002).

According to the human rights organization Amnesty International, 676 persons were officially reported executed in 20 countries in 2011. This number is an increase from 2010, when
documented. The actual number of
throughout the world is sure to be high
data are very difficult to determine. Som
do not publish these figures, and others d
accurate figures. In fact, the 676 known
do not include the numbers from Chi
refused to reveal how many were exec
in 2011. Amnesty International claims th
probably the country with the highest
executions in any given year and tha
from previous years and a number of curr
indicates that the figure remains in the
Other countries that remain in the t
known executions are Iran (360+), I
Saudi Arabia (82+), and the United State
Yemen (41+) (Amnesty International, 2

China has claimed that the number
tions has gone down since 2007, when
mandatory for a high court to review de
cases. And in February 2012 the Nation
Congress passed a law that removed the
alty as punishment for 13 crimes. At the
however, the Chinese added a numb
crimes and expanded the scope of othe
include the death penalty (Amnesty In
2012b). International death penalty sch
Hood has recently completed a key stud
death penalty in China that provides ho
litionists. He found that "despite secrecy
country's death penalty, no one can d
movement towards restriction and eve
tion has got under way." He attributes
attitudes on the death penalty to th
international narrative that suggests cap
ment should be treated not as "a
national criminal justice policy," but a
mental violation of universal human
only the right to life but the right to b
excessive, repressive and tortuous pu
including the risk that an innocent or
person may be executed" (Hood, 20
coming years, human rights activists
keep a close eye on China, seeing th
apparently the world leader in the e
criminals.

2010, when 5...
...umber of ex...
... to be higher ...
...rmine. Some ...
... and others do ...
...676 known ex...
...s from Chin...
... were execut...
...al claims tha...
... the highest n...
...ear and that ...
...mber of curre...
...mains in the ...
...n in the to...
... (360+), Ir...
... United State...
...ernational, 20...
... the number ...
... 2007, when ...
... to review de...
...2 the Natio...
... removed the ...
...rimes. At the ...
...ded a numbe...
...cope of othe...
... (Amnesty In...
... penalty sch...
...ed a key stud...
... provides ho...
... despite secrec...
... no one can ...
...tion and eve...
... He attribute...
...penalty to th...
... suggests ca...
... not as "a ...
... policy," but ...
...versal human ...
... the right to b...
... tortuous pu...
... innocent or ...
...d" (Hood, 20...
...rights activist...
... China, seeing ...
...ader in the ...

...e trend, however, is toward the worldwide ...n of the death penalty. As of March 2012, ...tries have abolished the death penalty for all ...8 have abolished it for ordinary crimes—the ...n being war crimes—and 36 exercise de ...olition, meaning they no longer implement ...h penalty in practice although it still exists ...aw. This means that by the end of 2012, ...ns in the world had outlawed the death ...y law or in practice while 57 retained its ...most recent country to abolish was Latvia ... To better understand the move toward ... consider that in 2004 the numbers were ...78 respectively (DPIC, 2012).

...on of the death penalty has also become ...nt issue for international bodies. One of ...mportant developments in recent years ... the adoption of international treaties ...the use and abolition of the death pen- ...most recent of these is the Treaty of ...ch was passed into law on December ...alling for all members of the European ...prohibit extradition to a country where ...hment might be imposed. The supra- ...inal tribunals established by the United ...the former Yugoslavia, Rwanda, Sierra ... Lebanon all exclude the death penalty; ...ernational Criminal Court may not ...death penalty (Hill, 2010). For a list of ... treaties on the death penalty and the ...countries that have ratified or signed ... http://www.amnesty.org/en/death ...cation-of-international-treaties.

...eral view of the United Nations rela- ...pic of capital punishment is quite clear. ... 2007 and 2008, the United Nations ...mbly adopted resolutions calling for a ...on the use of the death penalty. Since ...regional bodies or civil society coali- ... resolutions and declarations advocat- ...orium on executions as a step toward ...n of the death penalty. In December ... United Nations human rights official ... universal abolition of the death pen- ...host of reasons ranging from the fun- ... to life to the possibility of judicial errors. UN High Commissioner for Human Rights Navi Pillay said,

> I am opposed to the death penalty in all cases.... I hold this position for a number of reasons: these include the fundamental nature of the right to life; the unacceptable risk of executing innocent people by mistake; the absence of proof that the death penalty serves as a deterrent; and what is, to my mind, the inappropriately vengeful character of the sentence. (United Nations News Center, 2009)

Criminologists Franklin Zimring and Gordon Hawkins have asserted that the declining use of executions in some countries is part of a "long-term evolutionary process—the development process of civilization." Statutory abolition, they tell us, was preceded in each case by long periods in which no one was executed in normal times; in other words, de facto abolition preceded de jure abolition (1986, p. 8).

Research conducted on behalf of the United Nations has supported the position that countries are justified in the abolition of the death penalty. More specifically, the research consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments and found that there is no apparent relationship between the increase in crime rates and the reduction in the use of the death penalty. For example, in Canada the homicide rate per 100,000 population was 3.09 in 1975. In 2002, 26 years following the abolition of capital punishment in Canada, the homicide rate was 1.85 per 100,000 population (Hood, 2002). However, recent research in the United States has reached a slightly different conclusion. In short, the research on the deterrent effects of the death penalty has failed to reach a consensus. Some identify a strong deterrent effect, whereas others claim that any results in that direction are due to methodological anomalies (see Apel and Nagin, 2011).

It is important to make clear that, although the international trend is to abolish the death penalty, international courts have not specifically ruled that the death penalty is inhumane or degrading punishment. Also, abolition has not been accepted as customary international law, which means it is binding on all states regardless of whether the treaties have been ratified (Hodgkinson & Rutherford, 1996). At the same time, certain restrictions on the application of the death penalty have attained the status of customary law, such as those stated in the UN resolution Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty. Among the international standards that have become customary international law related to capital punishment are the following:

- Capital punishment may be imposed only for the most serious crimes.
- Capital punishment may not be applied retroactively.
- Capital punishment may not be imposed on juvenile offenders under 18 years old when they committed their crime.
- Capital punishment may not be imposed on mentally incompetent or insane persons.
- Capital punishment may not be imposed on pregnant women or new mothers.

Sources: Kurki, 2001; Amnesty International, 2012c.

One may well ask, in the face of these facts, why the United States and Japan, two of the most powerful modern nations in the world, continue to execute offenders. Various opinions exist concerning this phenomenon. Japan entered the company of democratic nations late in its history, and thus it may not yet have achieved the maturity in its criminal process that abolition would signify. The United States, on the other hand, has a history of violence, as reflected in the widespread possession and use of firearms, lynchings, and brutality in the case of the institution of slavery. Thus, there is greater tolerance for violence, including execution of convicted murderers, and executions serve a ritualistic function that responds to the cultural reality in the country. But it appears that even these two world powers may be softening in the application of the death penalty.

The number of those receiving the dea in Japan has fluctuated in recent years. From through March 2012 there were no exe Japan, the first time a year or more had pass an execution for 19 years. This respite ar move towards abolition was short-lived, and in 2012 three murderers were exec chance for total abolition is surely affected that 85 percent of the citizens of Japan penalty (Parry, 2009; McCurry, 2012).

It appears that the United States has ignored the international trend away death penalty. As of January 1, 2012, t States has executed 1,277 persons since penalty was reinstated in 1977. Despite to carry out executions, however, the Ur is showing some signs of turning against penalty. The total of executions in dropped to 43 executions during 2011, a drop since 1999, and the number of in tenced to death fell below 100 for the since 1977. Even in Texas the number tions dropped to 13, a drop of 46 perce two years (DPIC, 2012). In 2005, the Court in *Roper v. Simmons* struck down penalty for juveniles, and in January 20 became the sixteenth state to end the de when the state governor signed a new la 2011, Oregon called for a moratorium on penalty. There are at least three reaso United States' turn toward abolition.

First, the United States has received sure from the international community sider its stance on the death penalty. Th takes the form of being formally accused rights violations or having limits place and international business operations. A ous concern is the possible impact that support for the death penalty would h fight against transnational crime, includ ism. European countries such as Ge France, and even neighbors Canada an have begun to refuse to extradite crii have escaped to their countries as long alty of death is a possibility in the Ur (Dieter, 2003).

ving the death
years. From Ju
ere no execu
re had passed
s respite and
hort-lived, h
were execute
ly affected by
of Japan
2012).
States has no
nd away fr
1, 2012, the
sons since th
. Despite co
er, the Unit
ng against th
utions in th
g 2011, a 56
nber of inm
0 for the
number of
f 46 percent
2005, the
ruck down th
January 201
nd the deat
d a new law
atorium on t
three reason
olition.
received s
ommunity t
penalty. This
lly accused o
mits placed
rations. Als
mpact that c
would hav
me, includin
h as Germ
Canada and
radite crimi
s as long as
in the Unit

ond, the move toward abolition of the death in the United States may also be spurred by news of offenders who have had their con- overturned or sentences commuted because ities in the system or legal mistakes found in stigation or trial. Between 2000 and 2011, s an average of five such exonerations per the United States. In each case, inmates were from death row based on legal evidence of ocence (DPIC, 2012).

lly, it appears that the American public's toward the death penalty have also o change. In 2011 the National Gallup ected that 61 percent of Americans sup- the death penalty—down from a high of nt in 1994. And the same poll showed that if those questioned are provided with the option of life without parole instead of the death penalty, the number of those who support the death penalty sentence drops to 46 percent (Gallup, 2012). It is also important to mention that Americans are not alone in their general support for the death penalty. The World Millennium Study conducted by Gallup reflects that the majority of people living in the world today (52%) support the penalty of death (Unnever, 2010). Interestingly, however, statutory abolition has occurred in many countries *despite* public opinion in favor of continuing the death penalty. Only time will tell whether the pressures that bear on the American leaders will be enough to create any serious movement toward abolition.

SUMMARY

no doubt that many nations have come a from the cruel practices that constituted in earlier centuries. Ideas about human cluding rights of the convicted, although not honored universally, have achieved a egitimacy through the efforts of interna- nizations and gradually developing inter- andards.

nal sanctions have moved over the past from primary reliance on corporal pun- nd transportation, to heavy reliance on nal imprisonment, to the development tive sanctions. The most common of native sanctions include probation, fines, restitution, and community service. The n incarceration has increased over the last Corporal punishment and the death pen- n as sentencing alternatives around the countries that adhere to Islamic law, cor- shments are preferred to imprisonment, d in these societies imprisonment is a for truly intractable offenders. Although penalty has virtually been abolished in Europe and Latin America, it is still prac- any parts of the world, albeit usually on a very limited scale. In the United States, the use of the death penalty has remained a viable sentencing alternative although there is some evidence of its reduced use and reduced support in recent years.

The philosophy of sentencing also has undergone changes in the past 200 years. In the nineteenth century, the classical school of criminologists spearheaded the move toward rational sentencing linked to the severity of the crime. In the early twentieth century, under the influence of progressive reformers and with the United States in the lead, the philosophy of sentencing became increasingly rehabilitative. Over the past 30 years, however, there has been a backlash against the rehabilitative philosophy, again with the United States in the lead. The philosophy of sentencing and sentencing practice are important indicators of the mood of a country and its stage of development. Sometimes this mood is set, however, by those who are likely to benefit politically from a punitive punishment philosophy. The most troublesome aspect of corrections in many countries, however, remains the administration of actual imprisonment as a form of punishment. We will consider this topic in the next chapter.