

Prompt: Which of the penological principles (recidivism, retribution, deterrence, incapacitation) do you think the criminal justice system focuses on today? How can the criminal justice system refocus to better address some of these principles?

(Propose some ideas for reform to better address the important penological principles)

Throughout Eighth Amendment and criminal law jurisprudence, United States law has focused on four penological principles: Recidivism, retribution, deterrence, and incapacitation. American courts treat these principles as dispositive, requiring only one penological interest to justify a sentence. The criminal justice system currently focuses on incapacitation and deterrence, and to a lesser extent retribution, but inadequately focuses on recidivism.

The primary goal of today's American criminal justice system is incapacitation. A prison's most obvious and sustained function is to hold individuals who have committed crimes for the duration of their sentence. The majority opinion in *Florida v Graham* rightly pointed out that recidivism, the tendency of a convicted criminal to reoffend, poses "a serious risk to public safety", making incapacitation an important goal. Society reasonably agrees and expects to be safer because individuals who have broken the social contract and harmed others are separated from the public. As the criminal justice system has worked to uphold this penological principle, incarceration rates have skyrocketed.

The United States has had the world's highest incarceration rate since 2002, which has increased by 500 percent in the last 40 years. Though the correctional population has declined in the past 10 years, the Department of Justice's Bureau of Justice Statistics estimates there were 5,500,600 persons under correctional supervision in 2020. As crime has increased, we have responded accordingly by imprisoning offenders to incapacitate them and protect public safety.

Deterrence and retribution are both linked to incapacitation and laws that have been made to support it. Three-strikes laws and the federal 1994 Violent Crime Control and Law Enforcement Act both demonstrate this relationship. Three-strikes laws target habitual offenders and increase their sentence for each additional crime. These laws' intent and effect value incapacitation by targeting the most clearly incorrigible criminals and keeping them behind bars increasingly longer as they demonstrate their inclination to continue violent, criminal behavior. Additionally, the Violent Crime Control and Law Enforcement Act provided for the hiring of 100,000 new police officers and allocated \$9.7 billion for prisons. This enables cities to arrest offenders and hold them in prisons due to public outcry at the time about the need to improve public safety, supporting the penological principle of incapacitation. Both laws also support deterrence, as the threat of ever-increasing penalties and mobilization of the government's power is meant to incentivize avoiding continued, worsening punishment. Heightening penalties suggest a notion that continued crime makes one more culpable for their actions, thus subject to

retribution, and the forced forfeiture of liberty and punitive nature of prison inherently uphold the principle of retribution.

The criminal justice system currently devotes its primary attention to incapacitation, deterrence, and retribution, but should instead turn to recidivism. It is inevitable that people will commit crimes, but it is in society's best long-term interest to prevent recidivism. Recidivism is closely linked to another penological principle in American jurisprudence, affirmed in cases such as *Florida v Graham*, *Harmelin v Michigan*, and *Roper v Simmons*: rehabilitation.

The United States spends \$182 billion per year on prisons, which constitutes a massive expense for taxpayers and a large social cost. The United States has the highest fraction of the world's incarcerated population, yet we are not demonstrably safer than other developed nations. The criminal justice system can reduce recidivism by trading the sledgehammer of incapacitation, deterrence, and retribution for the scalpel of rehabilitation. The United States also recoups part of the social cost of spending billions on prisons where individuals' capacity to make their best contributions to society will be lost by enabling and incentivizing them to live a more productive and meaningful life outside of prison.

To rehabilitate corrigible prisoners, the criminal justice system should divert some offenders from prison facilities, invest in safer prison conditions, and invest in more programs within prisons to prepare inmates for life beyond bars. According to the Federal Bureau of Prisons, 45.1% of inmates are incarcerated for drug offenses. Addicts who are not highly involved in large-scale drug trafficking should not be imprisoned; they should be diverted to drug rehabilitation to receive help overcoming their addiction. Community service is more suitable to uphold the other penological principles than prison. Investing in safer prison conditions will prevent lesser offenders from becoming hardened criminals during their sentence, which will make them more receptive to rehabilitation and better citizens once released. Resources being invested in private prisons and building more prisons should be diverted to previously mentioned rehabilitation programs and programming within prisons to help inmates prepare for life after release, such as GED programs, job training, and counseling. Hardened criminals are more likely to continue a criminal lifestyle after prison, and undervaluing rehabilitation makes prisoners more likely to leave prison worse than they entered, rather than as, if not more capable of leading a more responsible, law-abiding life outside of prison.

To lessen the effects of the school-to-prison pipeline, juvenile intervention is critically valuable. Eighth amendment precedent holds that no juvenile is incorrigible, and recognizes their immature nature, lessened culpability, and struggle to fully understand the consequences of their action. The criminal justice system should heighten these efforts among juvenile prisoners to capitalize on their impressionable nature and corrigibility because these traits enable society to receive the highest marginal return for rehabilitation efforts.

As Justice Kennedy wrote in his concurrence in *Harmelin v Michigan*, “The federal and state criminal systems have accorded different weights at different times to the penological goals.” We must balance the weight of penological principles with the context of our times to sustain a criminal justice system that effectively punishes crime while rehabilitating former prisoners to avoid recidivism. Applying Kennedy’s idea at a societal level, we can think bigger than focusing on achieving one penological goal in every case. We must continue to incapacitate individuals who are dangerous to society, but we can do this while working towards a better future with a heightened focus on recidivism and rehabilitation to reduce repeat offenses and use all individuals’ potential for societal good.

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