

Indeterminate Sentencing

Indeterminate sentences operate when judges assign convicted offenders to terms of imprisonment identified only as a range—such as from one to five years—rather than naming a specific time period. In this context, indeterminacy refers to the unknown ultimate amount of the penalty (length of time) at **sentencing**. That is, one *cannot determine* at the time of **sentencing** the length of time that the convicted person shall actually serve. In fact, since **indeterminate sentencing** allows for a series of discretionary choices by prison officials leading to an eventual decision by a parole board, an individual may not be sure how long he or she has left in prison until near the end of the time actually served. Despite various movements toward determinacy beginning in the 1970s, **indeterminate sentencing** still prevails in the United States.

Debates over the case for and against indeterminacy or determinacy in **sentencing** raise complex questions about the purposes of criminal **sentencing** and corrections, what such regimes of control and surveillance achieve, and their political implications and consequences. Supporters of **indeterminate sentencing** typically believe that imprisonment can rehabilitate offenders, despite all of the known problems with penal facilities today.

HISTORY

Indeterminate sentencing dominated ideas about and practices of criminal **sentencing** and corrections in the United States from the late 19th to the late 20th centuries. It emerged in its modern form at the National Prison Association meeting in Cincinnati, Ohio, in 1870 as part of a series of social inventions spawned by reformers during the Progressive era, which ran from the late 1800s through the early 1900s. Throughout this time, rehabilitation prevailed as the official, professional, and reformist aim for corrections. Probation and parole emerged and developed as related institutions closely tied to the rehabilitative ideal and **indeterminate sentencing**.

Like other innovations or social inventions of the Progressive era, the **indeterminate sentence** grew out of reformers' faith in science, rationality, government benevolence, and human progress. Thus, the **indeterminate sentence** ideally would proceed via information gathering, prediction, treatment, and ongoing assessment and eventually would culminate in release of the prisoner after professional review of the evidence found him or her "cured." Reformers clearly saw utility in the less humane side of the **indeterminate sentence** as well; if never judged cured of their criminality, prisoners could languish in prison for the rest of their natural life.

Instead of the careful and thoughtful individualized treatment program envisioned by reformers, correctional institutions determined the actual experiences of inmates. In state after state during the Progressive era, **indeterminate sentencing** served as an expedient way of processing the dispossessed who had run afoul of the law. In particular, judges, prosecutors, wardens, and parole boards quickly adapted **indeterminate sentencing** to their own ends. Judges could appear tough on crime by pointing to the high end of the **indeterminate** range imposed. Prosecutors and defense attorneys could induce guilty pleas by emphasizing the possibility of early release. Wardens and correctional guards also had a ready means of eliciting inmate compliance with the reward of early release and the punishment of extended confinement contingent on institutional record, including discipline as well as program participation. Finally, parole boards depended for their existence on the whole mythology of indeterminacy and correctional treatment under coercion.

RECENT DEVELOPMENTS

Recent decades have witnessed the emergence of various challenges to **indeterminate sentencing**. The movement away from it and toward determinate **sentencing** began in the 1970s and has received considerable legislative, judicial, policy, and scholarly attention since then. As crime grew in the 1970s, forces on both sides of the political spectrum began to lose confidence in the possibility of reforming offenders. Given that **indeterminate sentences** were justified in large part by a belief that prisoners could be rehabilitated, this change in sentiment inevitably led toward determinate **sentencing**.

Nevertheless, indeterminacy still characterizes most of the **sentencing** policy and practice in the United States. This remains true in the adult (criminal) as well as juvenile (delinquent) arena where the majority of offenders are **sentenced** to a range of time in prison, rather than a fixed number of years. In large part, the continuing existence of **indeterminate sentencing** reflects the more general failure of the progressive social movements of the late 20th century to achieve more far-reaching structural societal transformations. Yet it also has more specific sources in the dynamics of criminal justice policy.

Why is that? Why does convenience dominate still even with the decline of the rehabilitative ideal? In part, it may reflect a kind of intellectual and cultural exhaustion with this issue. It likely indicates too the power of institutionalization. **Indeterminate sentencing** has become too much a feature of the correctional landscape to disappear completely without sufficient political resources and bureaucratic alternatives to make reform critiques more effective. Yet we must recognize the significant inroads that determinacy has made. Even though most states retain **indeterminate sentencing** rhetoric and associated institutional arrangements, almost all have incorporated various forms of determinacy such as mandatory minimum incarceration, repeat-offender laws, and **sentencing** guidelines. Thus, indeterminacy stays on more as a vestige rather than an ideological center.

SOCIAL CLASS, ETHNICITY, AND GENDER

Part of the impetus of the 19th-century penal reformers in the United States in crafting the interrelated institutions of **indeterminate sentencing**, probation, and parole was to reduce social class biases associated with the previous system. Thus, for example, frequent use by governors of the power to pardon produced a system in which those with means and connections presumably had greater access to freedom via this route. The new system, built around the **indeterminate sentence**, should then work more fairly, creating more access by less privileged prisoners to the release decisions made by professionals based on scientific reasoning rather than political influence.

Yet the new system often failed to produce such laudable outcomes. This becomes especially apparent when noting that **indeterminate sentencing** developed along with probation. Operating under the same rehabilitative philosophy, probation was designed to serve offenders in their own communities when criminal justice professionals felt that they need not be imprisoned. In practice, however, probation tended to function as a substitute for the suspended **sentence**. Yet probation, unlike the suspended **sentence**, gave judges the means to supervise and monitor offenders. This meant greater control, including the distinct possibility of revocation followed by incarceration. Since probation developed much more rapidly in urban than rural areas, this meant that convicted criminals in cities, disproportionately the disenfranchised (e.g., impoverished, immigrant, black, Catholic), tended to fall under the enhanced supervision of the state.

Similarly, multiple opportunities for discretionary decision making under **indeterminate sentencing** enhanced the prospects that ethnic, social class, and gender discrimination would occur. Indeed, when attacks on **indeterminate sentencing** and associated institutions arose in the 1960s and 1970s, they highlighted such concerns.

In general, **indeterminate sentencing** has reinforced the tendency of the criminal justice system to reinforce existing patterns of race, gender, and class domination and privilege. This **sentencing** strategy exists within a broader context of social control and contributes to its regulatory and oppressive impacts. Sometimes this

appears in patterns regarding social class and ethnicity, especially when recurrent low-visibility discretionary decisions allow bigotry room to affect individual fates. Likewise, indeterminacy often appears to institutionalize paternalistic treatment of women and girls, as female offenders who do not adhere to idealized gender norms frequently serve longer **sentences** than those who do.

CONCLUSION: INTERNATIONAL COMPARISONS

In criminal justice research literature and policy discourse, **sentencing** indeterminacy or determinacy remains largely a U.S. concern. Although its intellectual and cultural hegemony has characteristically influenced criminal justice discourse elsewhere, concerns about **sentencing** in Europe and in developing nations tend to center more on the broader themes of purposes, actual impact on persons, political consequences, and implications. In general, other nations have not embraced **indeterminate sentencing** to the same extent as in the United States.

—Douglas Thompson

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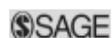
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