

Correctional Management and the Law

A Penological Approach

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*For their continuing love and support,
which is the fuel to our doing,
we dedicate this book to our families—
Hila Shalev-Gideon, Jonathan and Eithan Gideon,
Vanessa Woodward Griffin, and
Asher and Evan Caspi*

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Preface

Correctional practices and management are constantly changing and evolving. Such a process reflects changes in penological ideologies and perceptions of judicial interpretations of these ideologies. As such, changes in correctional management policies and practices can be viewed as a direct result of inmates' litigation that evoked judicial response to existing correctional policies and practices.

Many believe that upon conviction, offenders should lose their rights. These offenders should be punished and incapacitated by being removed from society, and if placed on community supervision, such supervision should restrict their basic rights. After all, those who side with a severe punitive approach will argue, these are convicted offenders and they deserve to suffer. Furthermore, many agree that convicted offenders do not deserve to be treated fairly, and many more will argue that inmates today receive far too many rights; rights that cost taxpayers enormous sums of money that could be funneled to more deserving populations. These advocates of harsher punitive policies and practices will also argue that our penal system is too soft. While people may disagree about issues that aim to protect the rights of convicted offenders, the Supreme Court has held that offenders retain certain procedural and substantive rights. However, such a judicial approach has experienced numerous shifts during the past four decades during which the Supreme Court began to defend the civil rights of the incarcerated by extending some form of the protections guaranteed by the U.S. Constitution to people under correctional control. The impact of these decisions has significantly influenced correctional practices. Moreover, the issues of prisoner rights continue to evolve and thus continue to shape current and future correctional practices while guarding basic rights and dignity. It is within this context that *Correctional Management and the Law: A Penological Approach* offers readers an in-depth penological examination of the issues and challenges related to the constitutional and legal aspects of correctional management and the ways in which current correctional practice has been shaped by the various rulings of the U.S. Supreme Court in its quest to protect the constitutional rights of a powerless and unpopular minority, while also debating serving the needs of correctional administrators tasked to deliver prescribed court punishments.

Accordingly, *Correctional Management and the Law: A Penological Approach* explores and discusses the legal challenges that affect correctional practices and management. It does so by analyzing how key Constitutional provisions, landmark and significant Supreme Court decisions, and important Federal and State laws have impacted current correctional practice, and the ways in which convicted offenders are treated by the system.

The Current Book in Context

Prisons, in one form or another, have been in existence throughout the centuries. After the American Revolutionary War, the United States adopted not only Britain's common law legal system but also its correctional practices. While American prisons have changed and evolved over the years in terms of objectives, methods, and philosophical foundations, prisons, by and large, have been used to punish and incapacitate offenders.

Once in prison, inmates become members of a self-contained society where their lives are controlled by the state or federal government, as provided by the 13th Amendment to the U.S. Constitution. Prison administrators, as agents of the government, not only deprive the inmates of liberty but also dictate the details of daily life, including the administering of discipline for those inmates who violate prison rules. The fact that prison personnel control virtually every aspect of an inmate's life raises a number of questions and concerns. Should prison administrators have unfettered control and freedom to act as they deem fit, or do prisoners have rights that must be respected? If prisoners have rights, what is the justification for such rights? Where do these rights come from? Who is responsible for deciding the rights to which a prisoner is entitled? How will such rights be enforced? Whose responsibility is it to protect those sentenced from arbitrary and capricious conducted? Who is to decide when a punishment is cruel and unusual and why?

If you ask the average American citizen, you will likely find that most are not overly concerned with these questions and with issues concerning prisoners' rights. In fact, many would probably indicate that a prisoner should have no rights at all, as this is the price that one must pay for violating the law and harming society. The Supreme Court, however, has held that prisoners do in fact have certain constitutionally protected rights, even if not as broad as those rights belonging to free citizens. Prisoners are considered to be a minority group, and an unpopular minority group at that; the exact type of minority group that needs protecting.

Federal courts and state courts did not always see themselves as the proper guardians of prisoner rights. Prior to the 1960s, for a variety of reasons (federalism, separation of powers, work load concerns, etc.), courts were reluctant to hear prisoner complaints of inhumane conditions or treatment. This is known as the "hands off" era. Consequently, prisoners could do no more than complain to prison officials who had little incentive to listen or respond. Similarly, legislatures also had little motivation to address prisoner concerns. The 1960s ushered in the civil rights era which provided more receptive courts and prisoner legal aid groups staffed with attorneys who knew how to properly draft and file a legal complaint. In 1964, the Supreme Court in *Cooper v. Pate* (378 U.S. 546) held that the Civil Rights Act of 1871 (42 U.S.C. § 1983) applies to state inmates thereby giving state inmates standing to sue in federal courts when a constitutional right was denied by an agent of the state. Considering that 90% of inmates are held in state prisons (Fliter, 2001), this was an important procedural holding. Subsequent cases, as will be discussed throughout the chapters of this book,

reinforced the Supreme Court's view that federal courts had a duty to protect prisoner procedural and substantive constitutional rights (see *Wolf v. McDonnell*; *Procunier v. Martinez*; *Palmigiano v. Garrahy*; *Kahane v. Carlson*; and *Ruiz v. Estelle*).

The newfound accessibility to courts, along with a continually increasing prison population, resulted in a dramatic surge in inmate initiated lawsuits. In 1975 there were 6,600 lawsuits filed in federal courts, but by 1995 there were nearly 40,000 new federal civil lawsuits, which represented nineteen percent of the civil docket (Wall Street Journal, 1996). Access to the courts provided an important means by which prisoners could seek redress for inhumane treatment or denial of protected rights. Unfortunately, many of the lawsuits lacked merit. These so-called "frivolous" lawsuits were perceived by many as clogging up court dockets and wasting taxpayer dollars. One estimate, by the National Association of Attorney Generals, found that the states spent over \$80 million dollars addressing frivolous lawsuits (Kuzinski, 1998). This led to the period known as the "Retrenchment Period" where Congress began to take steps towards curtailing the number of prisoner initiated lawsuits. In 1996, the Prison Reform Litigation Act (PRLA) was enacted. This act was designed to limit access to the courts and reduce the number of frivolous lawsuits.

Prisoner rights and correctional law are dynamic and evolving areas of law that extend not only to the incarcerated but to others under the control of the criminal justice system as well, such as those on probation and parole. In light of the millions of individuals under the criminal justice system on any given day and in light of the fact that this number is on the rise, prisoner rights is a highly relevant topic to the general study of criminal justice, and to the study of corrections in particular. Prisoner rights, in addition to affecting the incarcerated, also impact correction officers, institutional administrators, courts, judges, legislatures, taxpayers, and the executive branches of federal and state government. Rights given to prisoners and guaranteed under our Bill of Rights are also a mirror that reflect our society and the level of humanity by which we value the life of others, and expect our government to treat us. Consequently, the aim of this book is to present a comprehensive examination of prisoners' rights and correctional law in a penological context, and their impact on others within the broader criminal justice system.

Innovation of the Current Book

Most existing books about prisoners' rights and correctional law are fairly narrow in scope and do not situate the discussion of prisoner rights into a broader penological context of corrections or criminal justice. Other texts are appropriate for law students but too sophisticated for an introductory level college course. Furthermore, those texts that do integrate prisoner rights and correctional law into a broader discussion of corrections tend to do so in a cursory manner, thus leaving out many important legal issues, relevant federal statutes, and significant cases. Furthermore, a theoretical framework that will enable readers to better understand the rationale behind the laws that pertain to correctional practice is absent.

With over two million individuals currently incarcerated and another 5.1 million under community supervision (both probation and parole), the nation's correctional population reaches an astonishing number of over 7.3 million people under some form of correctional supervision/treatment. This is about 1 in every 31 adults. As a consequence of this reality, there are tens of thousands of lawsuits, both civil rights and torts based, filed every year by convicted criminals. Aside from the impact on the prisoners, the holdings of those cases with merit (as well as the sheer number of lawsuits) affects the lives of correction officers, correction administrators, judges, attorneys, and the general public. In this regard, a comprehensive discussion of prisoner rights is necessary to any textbook on corrections. *Correctional Management and the Law: A Penological Approach* integrates a broad and detailed discussion of prisoner rights in a manner not previously offered, while proposing a theoretical framework that will enable readers to better understand the social, penological and administrative rationale behind relevant laws and judicial decisions, as well as their impact on current and future correctional practices.

In terms of prisoner rights, *Correctional Management and the Law: A Penological Approach* begins with a short discussion on the goals of punishment, and those of corrections. Such discussion is followed by a chapter that will discuss the history of correctional law in the United States. It then discusses the structure and issues that revolve around community supervision — probation and parole — as well as issues of jail and prison structure and administration. The following chapters then address the constitutional issues and relevant legal cases as they pertain to prisoners and prisons, making distinctions between substantive rights and procedural rights. Next, chapters discuss relevant federal statutes that have been used to broaden or limit prisoner rights while explaining the context of prisoner rights, the relationship between federal and state court rulings as well as the applicability of federal and state statutes. A special chapter is then devoted to the discussion of prisoners with “special needs” (i.e., mentally and chronically ill, prisoners with HIV/AIDS, women with special needs, LGBTQ, and the elderly). Two separate chapters discuss the impact of prisoner rights litigation on correction officers (including liability), correction administrators, courts, and the costs to general public. These chapters also examine the political context of judicial interventions as well as issues of race and its effect of judicial intervention. These chapters further address legal issues associated with correctional operations. The final chapter examines the importance of judicial intervention in correctional management while integrating knowledge acquired from previous chapters in an effort to develop a theoretical framework that will enable readers to better understand the rationale behind the laws, and court decisions affect and shape current and future correctional practices. This chapter closes a circle to the first discussion of the goals of punishment and the aims of corrections presented early on in the book.

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Acknowledgments

Teaching correctional courses for over fifteen years often require us to expand the discussion beyond the boundaries of the course curricula. Many times, students are eager to understand why some policies and practices are the way they are, and why some Justices decided the way they did. Attempting to explain such decisions always leads back to basic penological explanations and basic correctional concepts. It is within this context that the idea of this book came to life. For this, we are thankful to all our corrections and penology students who challenged us through the years, and placed their intellect and curiosity in the forefront of their learning. We are also thankful to our colleagues at John Jay College of Criminal Justice, and the University of Alabama at Birmingham for their mental support and advice during the daunting stages of writing.

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