The Criminal Justice System



*Supreme Court building, Washington, DC, USA.*

By Chris Jeub

*“One in every 31 Americans is either in prison or jail, on probation or on parole, according to the Pew Center on the States, and there are 2.3 million people in prison.”*

*Pew Public Safety Performance Project*

That’s the NCFCA Lincoln-Douglas debate this year: rehabilitation verses retribution. *Resolved: Rehabilitation ought to be valued above retribution in criminal justice systems.* You will need to understand all there is about both sides of the debate.

This article dials back from stated conflict in the resolution and instead focuses on the objective limitation: The criminal justice system itself. This is the framework from which you will build your debate cases. Debaters need to know its history before adequately addressing any solution for criminal behavior. In 2011, the NCFCA released a policy topic on the criminal justice system. The following is adapted from the history chapter of *Blue Book* that gave debaters a background understanding of the issue at hand. **Understanding the old, formidable, yet vulnerable US establishment of the criminal justice system, debaters will be able to weigh the proposed focus that the system ought to have, either rehabilitation or retribution.**

Criminal Law Up to the Birth of the United States

The concept of the government being the arbiter of societal justice is, historically speaking, a relatively new one. In ancient Greece and Rome, order was kept by the military or by groups of slaves. Investigating and punishing crime was considered a private matter. Under the reign of Augustus, Rome was divided into wards with men assigned to keep order. During the middle ages Europeans still settled things personally, hence the dueling culture that prevailed. With the rise of feudalism, the need for the local lords to keep order (and limit the number of people killing each other) also rose. Communities sometimes employed a constable or sheriff to enforce laws and keep the peace. In ancient China, they developed a prefecture system that employed individuals for set terms with limited authority to perform civil duties, enforce the law and report to local magistrates.

America is the great melting pot of cultures, languages, traditions and histories. The Native Americans had their own systems of justice and each new colony (French, English, Dutch, etc.) relied upon their sponsoring government for municipal services, law and justice. Ultimately, our national government was formed by the thirteen predominantly English colonies, thus giving our justice history a decidedly English flavor.

English “common law” is the concept of using previously decided cases to guide future proceedings, thus giving the impression that future similar cases will be decided in predictable ways. Sir William Blackstone was an English scholar who started writing these common law precepts down until he had developed his *Commentaries on the Laws of England*,[[1]](#footnote-2) which became the ultimate legal resource. The colonists brought the common law concept with them from England but left many of the practitioners, thus leading to local colonists filling legal roles and requiring somewhat more simplified proceedings. They relied heavily on the handy codification of the law of Blackstone’s epic tome, but the results were mixed. In large cities, most of the conventions were observed. In more rural areas, oftentimes the local magistrate alone decided if enough evidence existed to have a trial, over which the same magistrate would then preside. Very few people could afford to be represented by legal counsel and were at the mercy of the government for justice. Sentencing and punishment were still very much tied to personal, public concepts. Pillories, branding, public whipping and hanging were used regularly.[[2]](#footnote-3) At this point in time, jails were small places used to hold people before trial rather than as a punishment in and of itself.[[3]](#footnote-4)

This was a critical part of our history because many people developed very particular ideas of what was wrong with their previous system, a system that placed vast power in the hands of the oft absent government and possessed relatively few safeguards for the individual accused. It can be argued that retribution was the entire focus of English common law. The first system that began turning away from retribution was the US criminal justice system.

The Bill of Rights

The United States Constitution is a truly remarkable document on many levels, but what is particularly notable for the purposes of our discussion is its concept of *decentralizing power*. Separate branches of government, divided governing houses and a separate judiciary all make it more difficult for a few people to force their will upon the masses. While it may sound like common sense to us today, in its day it was a political struggle to get it ratified. It was done with the promise that it would be amended to include several specific provisions for enumerated personal rights.[[4]](#footnote-5) These rights were similar to the English bill of rights, but bore a strong resemblance to Virginia’s Declaration of Rights written by George Mason.

On December 15, 1791, the first ten amendments were approved and became the Bill of Rights we know today. Why is this so important? Most Americans take a great deal for granted. In most of the nations in the world today there is simply nothing approaching the rights we have as individuals vis-à-vis the government. Most of those rights, especially those that form the crux of what is commonly litigated as our current criminal justice system, extend from the Bill of Rights.

Keeping this historical perspective, let’s examine the gereral concepts of these rights, particularly those of the ~~Fourth,~~ Fifth, Sixth and Eighth Amendments. (The Seventh Amendment provides for a jury trial in *civil* cases. The right to a jury trial in *criminal* cases—which is what our resolution is limited to—is provided by the Constitution in Article III Section 2.)[[5]](#footnote-6)

The Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.[[6]](#footnote-7)

In terms of criminal law, there are several key provisions here. You cannot be tried for a felony without an indictment being issued by a Grand Jury. The prosecutor has to convince a group of citizens that there is enough evidence against you to warrant taking you to trial. Of course, the Grand Jury is typically held in secret without any right by the defendant to present evidence or even be present. Ninety-nine percent of grand jury presentations result in an indictment.[[7]](#footnote-8)

The Fifth Amendment also contains the “double jeopardy” clause that provides you cannot be tried twice for the same offense. This protection prevents the government from continually retrying someone who is found not guilty to attempt to get the guilty verdict they want.

This is different from a “hung jury.” When a jury is not able to come to either a conviction or an aquittal, the jury is “hung” and the case can be retried or dismissed. Double jeopardy means a person cannot be retried. Double jeopardy only applies if a verdict of “guilty” or “not guilty” is rendered (and not later overturned).

It should also be pointed out that double jeopardy is strictly tied to the jurisdiction. Although the Fourteenth Amendment makes it binding between state and federal courts, it is possible to try a person for the same crime at the state or federal level and in military court or tribal court since they are “separate sovereigns.” You may also be tried for different offenses stemming from the same act, as the police officers in the Rodney King case found out. Although the officers were acquitted of assault at the state level, they were convicted of having violated the civil rights of Rodney King at a later federal trial.

The next part of this amendment is the right against self-incrimination. This is where the notion of “taking the fifth” as a means of refusing to answer questions comes from. There are some exceptions to this rule, most notably when a defendant has been given full and formal immunity for anything they say.

This particular element has also created one of the more famous pieces of American jurisprudence in the form of “Miranda” rights. In a 5-4 decision the Supreme Court held that before a suspect can be interrogated they need to be informed of their right to remain silent and to have an attorney present during questioning. (*Miranda v. Arizona,* 384 US *436* (1966)). This substantially changed the way police work was to be done in this country from that point forward.

The last part of this amendment is the “due process” clause. What this means in theory is that you cannot be convicted unless all substantive laws and rules have been followed. It is typically invoked when someone has honored the *letter* of the rule but violated the *spirit* of the letter to someone’s detriment. Law enforcement and prosecutorial personnel are very innovative and creative, and often work on the edges of the rules to get convictions. The due process clause is sometimes used to better define where those lines are in terms of criminal prosecution.

The Sixth Amendment

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.[[8]](#footnote-9)*

This amendment is entirely about the criminal process. For the most part it seems completely intuitive to us that all of these measures would be followed. It should be noted, however, that throughout history and even today in many countries these are not rights that are afforded to the accused. Prisoners are sometimes locked away for months or years before they receive a trial—and some never get one at all. Being informed of the charges against you before trial is not always done. Being granted the right to present evidence or call witnesses is a powerful right.

Perhaps the most important right listed here is the right to have defense counsel. The Supreme Court has held that the Fourteenth Amendment makes the Sixth Amendment applicable to the states and that it is necessary to provide defense counsel for “serious” cases. (**Gideon v. Wainwright**, 372 US 335 (1963)). It is the right to have competent counsel representing you that brings all your other rights alive.

The Eighth Amendment

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.[[9]](#footnote-10)*

All three parts of this amendment apply in the criminal law arena. Over the years there have been several cases litigating the element of cruel and unusual punishment, but by far the most important is its application to the death penalty, commonly referred to as “capital punishment.”

Capital punishment is perhaps the most egregious example of retribution over rehabilitation. Putting someone to death for the crime he or she caused on another (usually the comparable death of the victim) was a regular part of the American criminal justice process from its beginning. In 1972, the Supreme Court put a halt to capital punishment with a mixed decision in *Furman v. Georgia* (408 US *238* (1972)). Several years later the process was reinstituted with a slightly different format for trials. Since then the Supreme Court has used the Eighth Amendment to disallow the execution of mentally deficient prisoners and people under eighteen.

Recently there have been new calls for a moratorium on execution based upon the growing number of death row acquittals based upon DNA and other improved forensic testing. In addition, the federal government can and does impose the federal death penalty for federal crimes committed even in states and jurisdictions that have abolished the death penalty.

Other Constitutional Amendments

There have been seventeen more amendments to the constitution since the Bill of Rights. In light of this year’s resolution, the following deserve a brief discussion.

* The Fourth Amendment limits the government in what it can search and seize from the accused criminal.
* The Eleventh Amendment limits the judicial power of the United States such that the states cannot sue each other nor can foreigners sue the United States or a state.
* The Thirteenth Amendment abolishes slavery “except as a punishment for crime whereof the party shall have been duly convicted.”
* The Fourteenth Amendment makes every citizen a citizen of the US and their state and as such their federal rights cannot be abridged by state law. The US Supreme Court has used this reference repeatedly to gain jurisdiction and spread uniformity of constitutional application of criminal law to all citizens regardless of the state law. This is also known as the “doctrine of federal supremacy.”
* The Sixteenth Amendment provides for the constitutional collection of income taxes by the Congress, thus providing the concomitant right to make the deliberate failure to pay income tax that is duly owed a federal crime.
* The Eighteenth Amendment made it illegal to make, sell or transport alcoholic beverages, better known as Prohibition. Since it did not make the *consumption* of alcohol illegal, it created an instant high demand for a product at high prices and virtually guaranteed an immediate increase in illegal activity to take advantage of the situation. It was repealed fourteen years later by the Twenty-first Amendment. There are some commentators who draw comparisons between Prohibition and the current war on drugs.

Beyond the Constitution

In the United States, a person generally cannot be guilty of a crime unless they meant to do something criminal. This “guilty mind” is called *mens rea*. If a person can prove they did not have the mental capacity to know right from wrong, they can argue that they could not form the *mens rea* to commit a crime and thus should be acquitted.

In general, there are two types of crimes. First, there are things which we all know are wrong like murder, larceny, etc. that are *malum in se* — wrong in and of themselves. Second, there are *malum prohibitum* crimes — those actions which are not criminal unless there is a law passed that forbids it*.* The act of cashing a check is not criminal in and of itself, but if you do so knowing there are no funds in the account and for the express purpose of obtaining money that does not belong to you, then a crime has been committed.

Over the past two decades more and more laws are being passed without a specific *mens rea* element which removes one of the hardest elements to prove and one of the fundamental defenses people rely on. The classic case of this was the federal law making possession of child pornography a crime regardless of how it came to be possessed. Even if a hacker penetrates your firewall and places a picture on your hard drive completely without your knowledge, you are liable to be convicted of a crime. In *Osborne v. Ohio* (495 US 103 (1990), the Supreme Court held that the government’s interest in stopping child pornography outweighed individual rights, including the intent element. To what extent *mens rea* is better defined or required in the future is an important question for the US criminal justice system.

The Sources of Federal Law

There are actually many sources of law in this country — not all of them are federal — that debaters should be aware. The starting point is the US Constitution. It sets the parameters of which branches of government (executive, legislative, judicial) may do what, and it is their ultimate source of law. If a law is found to be unconstitutional, that law is voided entirely or amended to make it constitutional.

American federal common law exists in the decisions of the US Supreme court and the various federal courts. Under the principle of *stare decisis*, courts are bound to apply settled law unless there is an extremely good reason to overrule it. (This is very rare.) The Supreme Court’s decisions always apply.[[10]](#footnote-11) Lesser federal courts are limited in their jurisdiction and their decisions are only binding on other federal courts. These lesser courts are only advisory for state courts.

Federal laws are passed by Congress and become part of the United States Code (USC). Most of the criminal sections are found in Title 18, but there are various criminal parts of other laws scattered throughout. Under Article II Section 2 of the Constitution, the president is allowed to have a cabinet and they in turn have departments who promulgate regulations under the Administrative Procedure Act. Once proper procedure is followed, these regulations are codified into the Code of Federal Regulations (CFR) and have the force of law. There are many regulations found in the CFR that have criminal sanctions or impact the criminal justice system.

The United States military is also part of the federal government with its own laws (Uniform Code of Military Justice or UCMJ) and courts. Native American reservations are federal lands (with federal jurisdiction) and their administration is done through the Department of the Interior’s Bureau of Indian Affairs.

The majority of criminal justice in this country is done at the state or local level with state and local laws. These are jurisdictions totally inside the purview of this year’s resolution.

The Trial Process

The criminal justice process starts with a crime. This can be a violation of a uniquely federal law or violation of the law that physically happens somewhere under federal jurisdiction. It is investigated by federal authorities, and if the evidence supports it, the alleged perpetrator is arrested and charged.

For lesser, misdemeanor crimes, there is an arraignment before a judge, a plea is entered, bail is set, and trial is scheduled. The evidence is developed by both sides through discovery. The trial is held and—if the defendant is convicted—there is a sentencing.

For more serious or felony crimes the case is taken by the prosecutor to the Grand Jury. If they believe enough evidence has been presented to warrant a trial, they return an indictment. (If they do not find enough evidence, they return a finding of “no true bill.”) The defendant is then arraigned and tried, and if found guilty is sentenced.

About 95% of criminal convictions in the United States happen because someone pleads guilty.[[11]](#footnote-12) The process involves standing in open court and confessing to having done the crime. The reasons for “pleading out” are numerous, but they usually involve an advantage to the defendant. Typically in criminal cases the government and defense will “plea bargain” to obtain a satisfactory result for both sides. For the government it means a guaranteed guilty verdict plus saving the expense of having a trial, bringing in witnesses, impanelling jurors, tying up resources, etc. For the defendant it usually means a sentencing agreement.

For example, in exchange for pleading guilty the prosecution will recommend a specific sentence or range of sentencing that the judge usually accepts, and which could be substantially less than the defendant would have received if he were tried and found guilty. Sometimes the defendant will agree to plead to a lesser offense if the more serious one is dropped. This is how sometimes “murder” becomes “manslaughter” (with a corresponding lighter sentence).

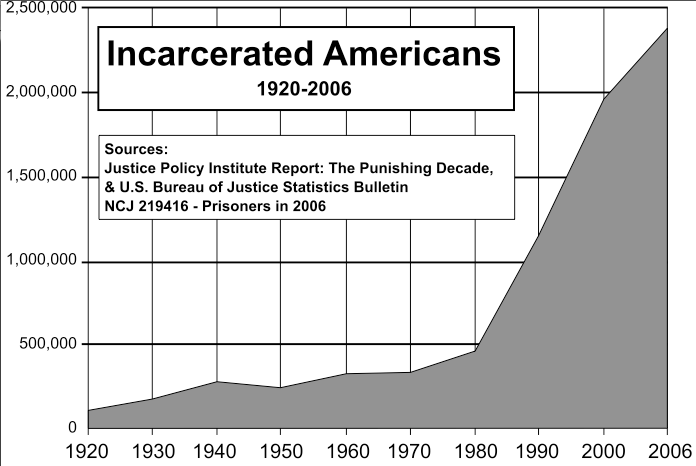
Plea bargaining is one of the more controversial practices in US criminal law, but arguably necessary to make it work. If prosecutors and public defenders were required to try every single indictment, the court system would collapse. The focus of plea bargaining, however, is inevitably on the criminal, not the victim. The defense opts for plea bargaining to avoid retribution, and a common sentencing alternative is for the criminal to undergo a rehabilitation program. The controversial practice in our system can be argued to be a misguided valuing of rehabilitation over retribution.

Another important element of the current process is the sentencing guidelines. Research compiled in the 1970s showed a great deal of disparity in sentencing prisoners who had committed similar offenses. In an effort to standardize sentences, the Sentencing Reform Act of 1984 was enacted to remove inappropriate factors from consideration in the sentencing of felonies and Class A misdemeanors. The concept was to use a standardized table that rated the severity of the convicted offense and the offender’s criminal record. The law went into effect in 1987 but quickly drew criticism for being so vague that it was little better than its predecessor. The law was amended in 2003 but provided little relief for defendants in terms of *reducing* a sentence and in the eyes of some encouraged higher sentences. In 2005 the Supreme Court held that making a particular sentence mandatory violated the Sixth Amendment right to trial by jury and that the guidelines could be continued, but only in an advisory role.[[12]](#footnote-13) As it currently stands there are a large number of aggravating factors in play, which gives the prosecution great leverage in demanding that defendants plead guilty in order to have certain facts excluded from the record to allow a reduced recommendation for sentence under the guidelines.[[13]](#footnote-14) The federal guilty plea rate in 1983 was 83%. It has grown to over 95%, due in large part to the role of sentencing guidelines. As a result the prison population has also grown disproportionately since the imposition of the guidelines.

Criminal forfeiture is usually part of a sentence once an individual has been found guilty of a crime and typically involves retribution. Civil forfeiture of property is a relatively new thing that started in the US in the late 1980s. The concept is that the government is allowed to seize property that is considered the proceeds or instrumentality of a crime. Proceeds of a crime might be cash or drugs, but it can also be a house or yacht that was purchased with money stolen in a robbery or from selling drugs. An instrumentality of a crime might be a plane or car that was used to transport drugs. Because it is civil the government actually sues the *property,* not a person. The owner is considered an interested third party. The government must prove that it has probable cause (a relatively low standard) to believe that the property is subject to forfeiture. The owner then has to prove by a “preponderance of the evidence” (a much higher standard) that the property was not involved. It is not necessary for the owner to be found guilty of a crime for the government to move to seize the property.

Needless to say, most of the time the owner loses. Asset forfeiture is big business in law enforcement. The US Marshals Service manages $1 billion of DOJ forfeitures annually. It also provides yet another tool for prosecutors to use against defendants, since they can offer to discontinue a civil forfeiture in exchange for a guilty plea to a criminal offense they might otherwise have difficulty proving in a court of law. Many have begun to question whether this process truly serves the purposes for which it was enacted.

The Political Landscape of Criminal Law

American politics drives a great number of issues, and criminal law is no different. There are a number of aspects of our current justice landscape which weigh the conflict between rehabilitation and retribution. Perhaps the most evidentiary example is drug abuse. Should the criminal justice system value the rehabilitation of the drug abuser who is convicted of possession crimes, or should retribution be instilled for the crime that the drug abuser inflicted on others or society? Good question, one that can be debated when you understand the history of America’s War on Drugs.

The War on Drugs was started by President Nixon in June 1971. During the decade of the 1970s there was a strong movement to decriminalize possession of small amounts of marijuana.[[14]](#footnote-15) During the 1980s crack cocaine was developed which brought about strong retaliation from the US government in the form of the Anti-Drug Abuse Act of 1986. This law created mandatory minimum sentences for even small amounts of drug possession. It also had a disparity which punished possession of crack (the drug of choice for lower income and minority offenders) up to 100 times more harshly as powdered cocaine. (The Fair Sentencing Act of 2010 reduced the ratio to approximately 18:1.) The result is an increase of incarcerations by almost 500 percent! According to the Pew Center on the States, there are 2.3 million people in prisons. That’s 1 in 31 Americans in prison, in jail, on probation or on parole.[[15]](#footnote-16)

The War on Drugs was clearly weighing retribution over rehabilitation, and a rational observation begs the question in its overall effectiveness in reducing crime. Combined with Mandatory Sentencing Guidelines and the rise of the “get tough on crime” approaches, the “war” has had the effect of creating a prison culture in this country. “While the U.S. contains roughly 5% of the world’s population, almost 25% of all the world’s prisoners are housed in U.S. prisons and jails. The vast majority of these individuals are in prison for non-violent crimes, often related to drugs and drug addiction.”[[16]](#footnote-17) This is the highest incarceration rate in the world. One of the results of prison overcrowding was the May 2011 decision by the Supreme Court to force the State of California to release as many as 37,000 inmates to bring their services to a constitutionally minimal standard.[[17]](#footnote-18)

Another consideration: the US prison population is not only growing, but aging. “The Bureau of Justice Statistics reports that between 1999 and 2007 the population of inmates aged 55 or older grew 76.9%.”[[18]](#footnote-19) Experts estimate the cost of maintaining a prisoner over 55 is almost three times as much and as a result, the medical and maintenance care costs per state are increasing exponentially.[[19]](#footnote-20) The US Bureau of Prisons falls under the Department of Justice and the expected BOP budget for 2012 is $8.3 billion.[[20]](#footnote-21) The aging of the prison population brings into question the retributive solution: is it rehabilitating the criminals?

Yet another consideration: the issue of corporate criminal sanctions. Should our criminal justice system value retribution when corporations commit crimes? Or should the system attempt to rehabilitate corporations, much like it does the common criminal? Corporations are legally-created “persons” that exist to centralize and/or secure assets and to shield individuals from liability. There are a number of laws in place that make certain corporate conduct illegal (Clean Air Act, Clean Water Act, SEC laws, etc.), but to what extent does the current system truly affect conduct? Profit can be a powerful individual motivator, especially in light of the limitation of liability the corporate shield provides.

In 1985 two companies merged to form the ENRON corporation. Key corporate officers used loopholes, misled their board of directors, and deliberately withheld information about their losses to inflate their stock prices and make themselves rich. In 2001 the SEC started an investigation and Enron’s stock value plummeted, costing the investors and employees (whose pension plan was made up of Enron stock) over $74 billion by the time they declared bankruptcy. Although some were convicted under SEC laws, clearly they were not enough to dissuade criminal conduct. The Sarbanes-Oxley Act was created to try to increase accounting accuracy and the accountability of chief officers, but the penalties are still financial in nature. There are commentators who are suggesting mechanisms to “pierce the corporate veil” and subject individual corporate officers to personal criminal liability for their actions (retribution). Still others believe this would not automatically self-correct corporate behavior (rehabilitation). Valuing one over the other can have a noticeable impact on all society creating an unwarranted dampening of corporate financial risk-taking that would be financially devastating in the entire economy.

Conclusion

The United States criminal justice system provides a broad canvas upon which to conduct this year’s debates. The system seeks to provide societal order by rehabilitating criminals while providing firm and fair retribution for their crimes. Which to value higher is your affirmative and negative duty, and the results can arguably define criminal behaviors and deterrence punishments.

1. The treatise was originally published by the [Clarendon Press](http://en.wikipedia.org/wiki/Clarendon_Press) at [Oxford](http://en.wikipedia.org/wiki/Oxford), 1765-1769. The work is divided into four volumes: the rights of persons, the rights of things, private wrongs and public wrongs. The fourth book dealt with what we would today call criminal law. It is here that we find the famous quote: “[It is better that ten guilty persons escape than one innocent suffer.](http://en.wikipedia.org/wiki/Blackstone%27s_formulation)” [↑](#footnote-ref-2)
2. It was the Quakers who began the idea of rehabilitation over retribution. They brought about the concept of imprisonment in a “penitentiary” – a place where the sinner could become “penitent” for his crimes while having a lengthy time to reflect on them. The view of corporal (but not capital) punishment as barbaric and imprisonment as enlightened sets up the modern need for a vast government-financed “industry” of facilities to warehouse convicted criminals. [↑](#footnote-ref-3)
3. The Law of Moses, given to ancient Israel ca. 1500 B.C. likewise contained no provision for imprisonment as a means for rehabilitation. It was meant only for holding until trial, followed by a corporal, capital, or monetary retribution. [↑](#footnote-ref-4)
4. There are only three personal civil rights enumerated in the text of the Constitution itself: habeas corpus, ex post facto, and bills of attainder. All the others are in the Amendments. [↑](#footnote-ref-5)
5. In this context, “civil” cases are lawsuits between private parties for damage caused by one to the other, while “criminal” cases are ones where the government has arrested someone for a crime and will punish them if they are convicted. Medical malpractice, for example, is a civil case. Murder, for example, is a criminal case. [↑](#footnote-ref-6)
6. Cornell University Law School, “United States Constitution: Bill of Rights.” http://topics.law.cornell.edu/constitution/billofrights [↑](#footnote-ref-7)
7. Suzanne Roe Neely. *American Criminal Law Review*. Winter, 2002, 39 Am. Crim. L. Review 171. [↑](#footnote-ref-8)
8. Cornell University Law School, “United States Constitution: Bill of Rights.” <http://topics.law.cornell.edu/constitution/billofrights> [↑](#footnote-ref-9)
9. *Ibid*. [↑](#footnote-ref-10)
10. There are 3 ways that a Supreme Court decision could be changed. First, the Court could later change its mind, go against *stare decisis,* and overrule its earlier decision when another similar case comes up. Though rare, this does happen (*Brown v. Board of Education,* 1954, for example). Second, a new Amendment could change the text of the Constitution that was the basis of the Court’s ruling. (The 16th Amendment was specifically written to reverse a Supreme Court decision that found the income tax unconstitutional.) Third, when a Court decision is made that merely interprets what a law means (rather than deciding whether it is constitutional or not), Congress can amend the law to clarify its meaning to be different from what the Court thought it meant. [↑](#footnote-ref-11)
11. U.S. Sentencing Commission, 2005-2009. [*http://www.ussc.gov/Data\_and\_Statistics/Annual\_Reports\_and\_Sourcebooks/2009/FigC.pdf*](http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2009/FigC.pdf) [↑](#footnote-ref-12)
12. US v. Booker, 543 US 220 (2005). [↑](#footnote-ref-13)
13. It should also be noted that there are a much higher number of laws on the books now that have their own mandatory sentencing components. i.e. The Anti-Drug Abuse Act of 1986. [↑](#footnote-ref-14)
14. Keep in mind that illegal drugs can be “illegal” at two different levels: state and federal. While some states may increase, decrease, or eliminate state penalties for small quantities of drugs, or for “medical” marijuana, the federal government continues to prosecute those who traffic it, regardless of state law. Even if your stash of drugs is legal under the law of the state where you live, you could still be a felon under federal law. [↑](#footnote-ref-15)
15. Smart On Crime Project, *The Constitution Project,* [*http://www.besmartoncrime.org/pdf/Complete.pdf*](http://www.besmartoncrime.org/pdf/Complete.pdf), 2011 p. 120. [↑](#footnote-ref-16)
16. Ibid, p. 166. [↑](#footnote-ref-17)
17. James Vicini. “Supreme Court orders California prisoner release.” *Reuters.* May 23, 2011. [*http://www.reuters.com/article/2011/05/23/us-california-prisons-court-idUSTRE74M3DQ20110523*](http://www.reuters.com/article/2011/05/23/us-california-prisons-court-idUSTRE74M3DQ20110523) [↑](#footnote-ref-18)
18. Smart On Crime Project, p. 129. [↑](#footnote-ref-19)
19. Ibid. [↑](#footnote-ref-20)
20. U.S. Department of Justice Overview. [*http://www.justice.gov/jmd/2012summary/pdf/fy12-bud-summary-request-performance.pdf*](http://www.justice.gov/jmd/2012summary/pdf/fy12-bud-summary-request-performance.pdf) [↑](#footnote-ref-21)