

Morality by the Numbers: A Look at Comprehensive Criminal Justice Reform Through Rule Utilitarianism

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Ethical Theory and Utilitarianism:

- Ethical Theory: Perceiving immorality requires; a wrongdoer, an action, and a victim (Sheskin & Baumard, 2016, p. 2)
- Utilitarianism: A system of ethics concerned with creating the most amount of good for the most amount of people
- Rule Utilitarianism: A form of utilitarianism which prioritizes simple rules in which generally following the rule maximizes utility

Ethical Theory in Law:

- Criminal Justice: A normative, formal, and predictable system which interprets local values to offer remedies to social problems with finality (Tallgren, 2002, p. 562)
- Need for Reform: The need for reform stems from when the public does not believe the system to be a fair, effective, and predictable authority (Tallgren, 2002, p. 567-568)

Problems with the Creation of Law:

- Federalism: Creates issues in both what laws exist and are enforced and jurisdictional issues
- The Constitution:
 - The Commerce Clause vs. Dred Scott v. Sandford (1857)
 - The 14th Amendment vs. Korematsu v. US (1944)

Problems with the Adoption of Law:

- The Executive Branch: In charge of the enforcement of legislation passed by the legislative branch and enforcing the rulings of the judicial
- Worcester v. Georgia (1832) vs. Andrew Jackson

Problems at Trial:

- Jury Selection: Jury members can be removed for any reason except for being a member of a protected class, the rule governing this stems from the Batson Challenge, which was created by the Batson v. Kentucky (1968) which disallowed using preemptory strikes against jurors based on their race

Problems with Sentencing:

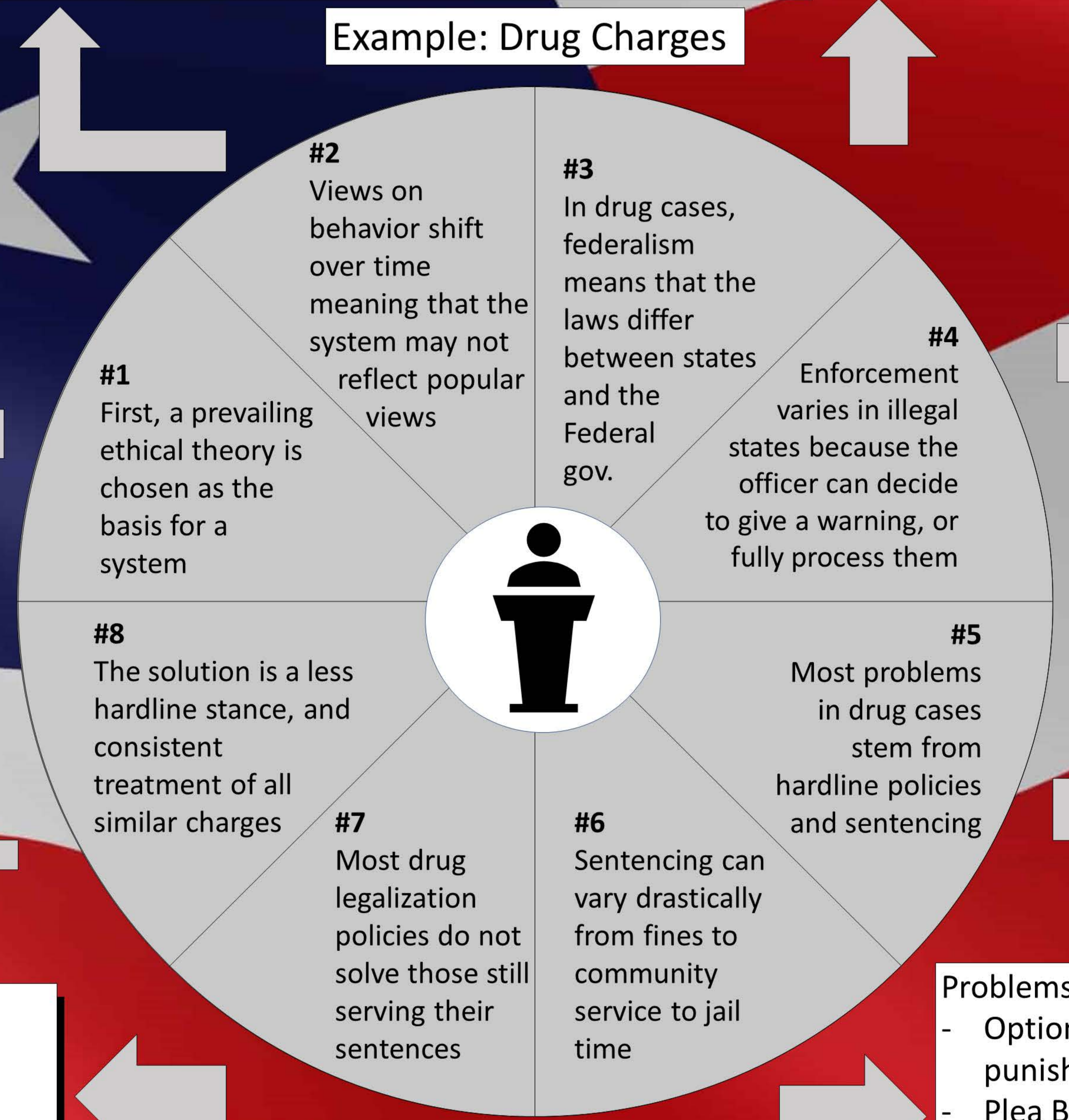
- Options for Punishment: The same crime can be punished via jail time, fines, or community service.
- Plea Bargaining: This is the process by which the prosecutor gives a reduced sentence offer in exchange for admission of guilt and not going to trial.

Solutions:

- Soft Adoption: Some small-scale adoption, but no rewrite/reset
- Hard Adoption: Systematic reset or constitutional rewrite

Problems with the Continuity of Law:

- Plessy v. Ferguson (1896) vs. Brown v. Board of Education (1954)
- Brown v. Board of Education (1954) vs. Milliken v. Bradley (1974)



Works Cited:
 Batson v. Kentucky, 476 U.S. 79 (U.S. 1986); Brown v. Board of Education, 347 U.S. 483 (U.S. 1954); Dred Scott v. Sandford, 60 U.S. 393 (U.S. 1857); Frankenberg, E. (2011). The authority of race in legal decisions: The district court opinions of Brown v. Board of Education. University of Pennsylvania Journal of Law and Social Change, 67(15), 67-84, Retrieved from 15 U. Pa. J. L. & Soc. Change 67; Hill Jr., T. E. (2005). Assessing moral rules: Utilitarian and Kantian perspectives. Philosophical Issues, 15(1), 158-178. DOI: 10.1111/j.1533-6077.2005.00059.x; Korematsu v. United States, 323 U.S. 214 (U.S. 1944); Martin, R. (2008). Two concepts of rule utilitarianism. Journal of Moral Philosophy 5(2), 227-255. DOI 10.1163/174552408X328993; Milliken v. Bradley, 418 U.S. 717 (U.S. 1974); Miranda v. Arizona, 384 U.S. 436, (U.S. 1966); Plessy v. Ferguson, 163 U.S. 537 (U.S. 1896); Sheskin, M. & Baumard, N. (2016). Switching away from utilitarianism: The limited role of utility calculations in moral judgment. PLoS ONE, 11(8), 1-14. DOI: 10.1371/journal.pone.0160084; Tallgren, I. (2002). The sensibility and sense of international criminal law. EJIL, 13(3), 561-595. DOI: 10.1093/ejil/13.3.561; Trump v. Hawaii, 138 S.Ct. 2392 (U.S. 2018); WNYC Studios. (2018, June 26). More Perfect: American Pendulum Reprise [Audio Podcast]. Retrieved from <https://www.wnycstudios.org/podcasts/radiolabmoreperfect/episodes/american-pendulum-reprise>; Worcester v. Georgia, 31 U.S. 515 (U.S. 1832)