Remorse and Sentencing: Cultural, Racial and Gender Implications

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A defendant who clearly accepts responsibility for the crime committed can be given reduced penalty under the United States Sentencing Guidelines. Should remorse be considered by trial judges when making sentencing decisions? What are the effects of culture, gender and race on the expression of remorse in the courtroom? Can you deduce character from courtroom demeanor? Do judges and jurors have the ability to perceive genuine remorse when it is expressed outside their own cultural orientations? These questions and many more have been addressed in this paper. There is no general agreement on how to correctly identify remorse in the courtroom. Gender, race, culture, age, and mental health status affect the expression of remorse.

Previous studies focused extensively on the advantages and disadvantages of considering remorse in sentencing. This paper goes further by unmasking the inherent and severe prejudicial aspects of a remorse policy. What happens when there is a culture clash? In some cases, the same behavior or demeanor can have different interpretations by different people based on their cultural orientations. This paper argues that the guideline/policy allowing for the consideration of remorse in judicial decisions is flawed and should be abolished. Does the expression of remorse imply better chance of rehabilitation?

Based on a critical analysis of several criminal cases where defendants expressed remorse and where defendants did not express remorse, this paper concludes that the policy of
considering remorse in sentencing undercuts the idea of punishment fitting the offender and/or the offense. What is happening now is that some offenders use this policy to their advantage. This policy has become a ‘game.’ A policy that also puts innocent defendants under pressure to show remorse for crimes they did not commit is not a good policy. This paper concludes that remorse should not be considered in making judicial decisions. Is there an alternative? This question has been addressed in this paper.