

2ND EDITION CORRECTIONS

NEW & KEY FEATURES

"The ideas in this textbook are perfect for all CJ students. I would strongly recommend this textbook for anyone who wants an in-depth look into corrections."

—Nerissa James, *Miami Dade College*

Written by two academic scholars and former practitioners, **Corrections: From Research, to Policy, to Practice, Second Edition**, offers students a 21st-century look into the treatment and rehabilitative themes that drive modern-day corrections. Authors Mary K. Stohr and Anthony Walsh expertly weave together research, policy, and practice to give readers a foundational understanding of the field of corrections. Readers will gain a comprehensive and practical understanding of corrections, as well as exposure to often-overlooked topics, including correctional programming and treatment, special problem-solving courts, and comparative corrections.

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CORRECTIONS
2ND EDITION

MARY K. STOHR | ANTHONY WALSH

CORRECTIONS

FROM RESEARCH, TO POLICY, TO PRACTICE 2ND EDITION



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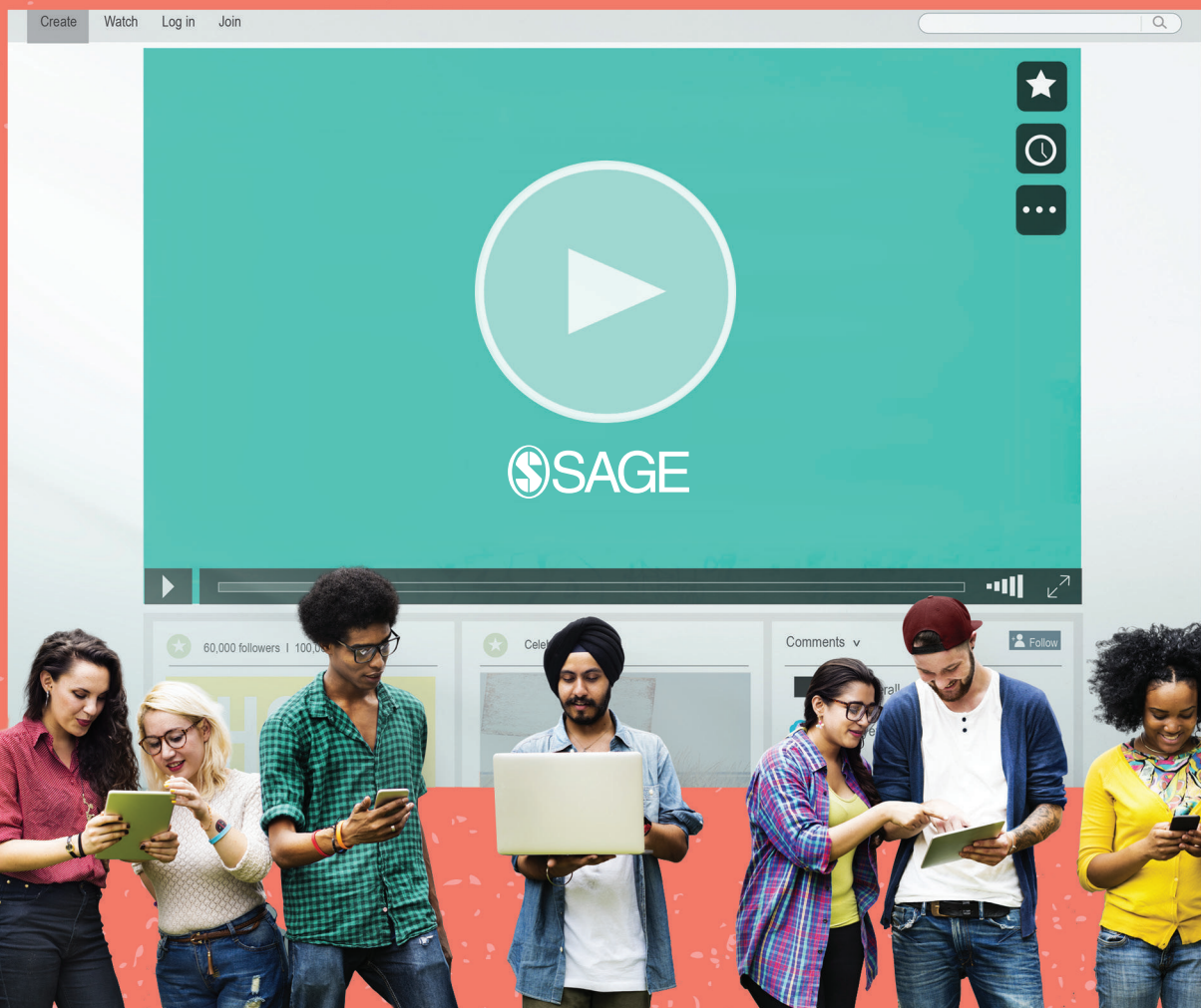


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Corrections

Second Edition

Dedication

Mary K. Stohr: To my dad and mom, the late Robert (Stanley) Stohr and Elizabeth (Betty) Stohr. They were so skilled and loving when “correcting” and guiding their own eight children (I was third) that much of what I know about love, forgiveness, and life comes from them. I will be forever grateful for the gift they were as parents. I would also like to acknowledge my husband, Craig Hemmens, and our daughter, Emily Rose Stohr-Gillmore, for their love and support; I could do nothing well without them.

Anthony Walsh: To my drop-dead gorgeous wife, Grace; my sons, Robert and Michael; my stepdaughters, Heidi and Kasey; my grandchildren, Robbie, Ryan, Mikey, Randy, Christopher, Ashlyn, Morgan, Stevie, Vivien, and Frankie; and my great grandchildren, Kaelyn, Logan, Keagan, Caleb, Luke, and Brayden. I also want to dedicate this to Mary and her husband, Craig. We have been colleagues, friends, and coauthors for so many years that I don’t know what I’ll do without them now that they have moved to Washington and to greener pastures.

Corrections

From Research, to Policy, to Practice

Second Edition

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Anthony Walsh is a professor of criminology at Boise State University. He received his PhD from Bowling Green State University at the ripe old age of 43. He has field experience in law enforcement and corrections and is the author of more than 150 journal articles and book chapters and 41 books, including *Biology and Criminology*; *Feminist Criminology Through a Biosocial Lens*; *Law, Justice, and Society* (with Hemmens); *Correctional Assessment, Casework, and Counseling* (with Stohr); *The Neurobiology of Criminal Behavior: Gene-Brain-Culture Interaction* (with Bolen, Ashgate); *Corrections: The Essentials* (with Stohr); *The Science Wars: The Politics of Gender and Race*; *Criminological Theory: Assessing Philosophical Assumptions*; *Biosociology: Bridging the Biology-Sociology Divide*; *Criminology: The Essentials* (with Jorgensen); and *Answering Atheists: How Science Points to God and the Benefits of Christianity*. His interests include biosocial criminology, statistics, and criminal justice assessment and counseling.

Preface

Welcome and Back Story

Much has changed about corrections since Tony and I began our careers as practitioners and then academics many years ago and even since the first edition of this book was published in 2017. We witnessed the shift from the bare-bones harsh warehousing of inmates to the full flowering of treatment- and rehabilitative-focused environments for correctional clients from the 1980s to the 2020s. This is not to say that all correctional facilities and community corrections departments were simply warehouses or intentionally cruel to their inhabitants in the 1980s and early 1990s or that they have been solely focused on beneficial programming since then. (The first priority for correctional institutions and community supervision remains security and safety, and deterrence and retribution have not gone out of fashion.) But official missions have changed, staff have been retrained, and money has shifted to more programming, particularly when it is evidence based and results in a change in practices, and as a consequence, corrections today is different, and that is, for the most part, a good thing, in our estimation.

One exception to this general move in a more positive direction at the federal level has been the formation of subsistence level and primarily private prisons for undocumented immigrants seeking refuge from South and Central American countries in collapse from crime and oppression. Such prisons, most located on our southern border, have been termed “concentration camps” by some commentators and politicians and are places where not just adults but the children separated from them have suffered untold harm and abuse. We have included more discussion of such prisons in this edition, and we have updated our discussion of private prisons overall.

This book is focused on corrections as it is in the 21st century and the treatment and rehabilitative themes that drive much of it, rather than the warehousing and penal harm sentiments of the 1980s and 1990s. In this edition, we continue to present the material in a lively and student friendly format and cover the typical topics in corrections and the research on corrections, but we also include five chapters on subjects not always (or never) covered in corrections texts: Chapter 7: Special Problem-Solving Courts in Corrections, Chapter 11: Correctional Programming and Treatment, Chapter 13: Correctional Organizations and Their Management, Chapter 19: The Death Penalty, and Chapter 20: Comparative Corrections: Punishment in Other Countries. The inclusion of these chapters makes this book both comparable to and distinct from other corrections textbooks. The organization and management and death penalty chapters are somewhat common to larger corrections textbooks, and that is one of the reasons why our book is similar to others. The inclusion of programming and treatment, special problem-solving courts, and comparative corrections, however, all reflect the changing policies and practices occurring in this newly made, evidence-focused world of corrections. These chapters provide a forum for the discussion of the freshest ideas emanating from and in use in the field. Finally, in the concluding chapter, we contextualize our age of corrections as one which is moving from a penal harm to a penal help perspective, with the notable exception of what is happening on the southern border in prisons for undocumented immigrants, and explore how this paradigmatic shift will affect correctional organizations, their clients, and their workers well into the future (Stohr, Jonson, & Cullen, 2014).

Structure of the Book

The structure of the book is much like that found in other textbooks on corrections, with the notable additions just mentioned. It is organized into five distinct sections: foundations of corrections, the correctional system, correctional administration, correctional clients, and special topics in corrections. We begin in the first chapter with an overview of corrections and some key concepts. We include two chapters on history, though many textbooks have only one. We include a chapter on ethics in corrections (Chapter 4), as it prepares students to review operations and institutional and individual actions through that kind of lens. We then follow the flow of the corrections system in the next eight chapters, ranging from sentencing to parole and prisoner reentry, with an emphasis on what is new in research and practice here. The organization and management of correctional institutions and how staff experience the correctional world are the focus of the next two chapters. In the three chapters that follow, we address the reality for women, minorities, and juveniles in corrections. We then focus attention in three chapters on legal issues, capital punishment, and comparative corrections. We end with a chapter devoted to a look to the future of corrections and what developments we might expect in the coming years, including a discussion of privatization in corrections, green prisons and jails, and the shift from penal harm to penal help in corrections.

New to This Edition

For this edition, we have completely revised the book. We have reorganized; reevaluated; and, when called for, rewritten the entire text, using the *Corrections: A Text/Reader* and *Corrections: The Essentials* textbooks and the first edition of this book as foundations for both the organization and the text. There are the same number of chapters as the first edition, but we have updated the material in them and added or deleted material when that made the book more relevant and its coverage of correctional topics more comprehensive. Some of the material includes discussions on the First Step Act, the “paradox of probation,” and key changes in the probation and parole practices in the United Kingdom.

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Feature Videos: In the Interactive eBook, these videos feature interviews with former inmates discussing their experiences in prison.

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We would also like to acknowledge each other. We were colleagues at Boise State University for many years, the last several with offices right next door to each other (before Mary and Craig moved to Missouri State University in 2011 and then Washington State University in 2013). Each of us has come to appreciate the work and perspectives of the other. This work was a true collaboration between us and reflects our shared belief in the possibilities for decency and justice as that is elaborated upon by social institutions and their workers, and by individuals willing to change.

We are also grateful to the reviewers from both editions who took the time to review early drafts of our work and who provided us with helpful suggestions for improving the chapters and the book as a whole. There is no doubt that their comments made the book much better than it would have otherwise been. Heartfelt thanks go to the following experts consulted on the first and second editions:

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Part I

Foundations of Corrections

- Chapter 1** The Philosophical and Ideological Underpinnings of Corrections
- Chapter 2** Early Corrections: From Ancient Times to Colonial Jails and Prisons
- Chapter 3** Correctional History: Early Prisons to Corrections Today
- Chapter 4** Ethics and Corrections



1

The Philosophical and Ideological Underpinnings of Corrections

TEST YOUR KNOWLEDGE

Test your present knowledge of corrections by answering the following questions as true or false. Check your answers on page 494 after reading the chapter.

1. Whatever we choose to call it, corrections is about punishment, and punishment requires philosophical justification.
2. The strongest deterrent against crime is the severity of punishment.
3. The fundamental principle of American justice is that the punishment should fit the crime; all other factors are irrelevant.
4. As bad as it may sound, people feel pleasure when wrongdoers are punished.
5. The law assumes that people are rational and possess freedom of choice.
6. Philosophies of punishment depend quite a bit on concepts of human nature. (Are we naturally good, bad, or just selfish?)
7. Studies find that when criminals are severely punished, they tend to be deterred from crime.
8. The U.S. criminal justice system operates primarily with a model that believes it more necessary to control crime than to preserve due process rights.

LEARNING OBJECTIVES

- Describe the function of corrections and its philosophical underpinnings.
- Differentiate between the classical and positivist schools in terms of their respective stances on punishment.
- Explain the function and justification of punishment.
- Define and describe the major punishment justifications.
- Explain the distinction between the crime control and due process models.

What Is Punishment?

Nathaniel Hawthorne's book *The Scarlet Letter*, first published in 1850 and read in high school by generations of Americans thereafter, opened with the following words: "The founders of a new colony, whatever Utopia of human virtue and happiness they might originally project, have invariably recognized it among their earliest practical necessities to allot a portion of the virgin soil as a cemetery, and another portion as the site of a prison" (1850/2003, p. 1). Hawthorne is reminding us of two things we cannot avoid—death and human moral fallibility—and that we must make provisions for both. Of course, punishment is not all about prisons since other forms are available. In Hawthorne's novel, Hester Prynne had been found guilty of adultery and of bearing a child out of wedlock. While all too common today, in the 17th-century Massachusetts Bay Colony, it was a major crime against "God and man." The colony was a very close-knit and homogeneous community, meaning that there was strong and widespread agreement about the norms of acceptable behavior. Hester's behavior was viewed as so outrageous that among the various penalties discussed by women viewing her trial were branding

with hot irons and death "for the shame she has brought on us all." However, she was sentenced to what we might call community corrections today. She was to forever endure the scorn of her community and to forever wear the badge of shame on her dress—an elaborately embroidered letter *A*, branding her as an adulteress.

Such a reaction to Hester's behavior was aimed just as much at onlookers as on Hester herself—"This could happen to me, too!" That is, the authorities not only wished to deter Hester from such behavior in the future but also to dissuade all others from similar behavior. Few people give much serious thought to why we need correctional systems, what state punishment is, why we do it, and why the urge to punish wrongdoers is universal and strong. How did such an urge get into us? What are the origins of punishment? What would society be like without it? How do we justify imposing harm on others, and what do our justifications assume about human nature? These are the issues we explore in this chapter.

Introduction: What Is Corrections?

As Hawthorne intimated in the opening vignette, the primary responsibility of any government is to protect its citizens from those who would harm them. The military protects us from foreign threats, and the criminal justice system protects us from domestic threats posed by criminals. The criminal justice system is divided into three major subsystems: the police, the courts, and corrections—which we may call the catch ‘em, convict ‘em, and correct ‘em trinity. Corrections is thus a system embedded in a broader collection of protection agencies, one that comes into play after the accused has been caught by law enforcement and prosecuted and convicted by the courts.

Corrections is a generic term covering a variety of functions carried out by government (and increasingly private) agencies having to do with the punishment, treatment, supervision, and management of individuals who have been convicted or accused of criminal offenses. These functions are implemented in prisons, jails, and other secure institutions as well as in community-based correctional agencies, such as probation and parole departments. Corrections is also the name we give to the field of academic study of the theories, missions, policies, systems, programs, and personnel that implement those functions as well as the behaviors and experiences of offenders. As the term implies, the correctional enterprise exists to “correct,” “amend,” or “put right” the attitudes and behavior of its “clientele.” This is a difficult task because many offenders have a psychological, emotional, or financial investment in their current lifestyles and have no intention of being “corrected” (Andrews & Bonta, 2007; Walsh & Stohr, 2010).

Cynics believe the correctional process should be called the “punishment process” (Logan & Gaes, 1993) because the correctional enterprise is primarily about punishment—which, as Hawthorne reminds us, is an unfortunate but necessary part of life. Earlier scholars called corrections what we now call **penology**, which means the study of the processes adopted for the punishment and prevention of crime. No matter what we call our prisons, jails, and other systems of formal social control, we are compelling people to do what they do not want to do, and such arm-twisting is experienced by them as punitive regardless of what name we use.

When the grandparents of today’s college students were in their youth, few thought of corrections as an issue of much importance. They certainly knew about prisons and jails, but few had any inkling of what probation or parole was. This blissful ignorance was a function of many things. The crime rate was much lower in the 1950s and early 1960s; thus, the correctional budget was a minor burden on their taxes, and fewer people probably knew anyone who had been in “the joint.” Today, the story is much different. The violent crime rate in 1963, for instance, was 168 per 100,000, and in 2017, it was 387, an increase of over 130% (Federal Bureau of Investigation [FBI], 2018). In 1963, there were just under 300,000 people in prison in the United States; in 2017, there were just under 1,541,000, an increase of 413% (The Sentencing Project, 2018). Much of this increase has been driven by the war on drugs. Because illicit drug use was extremely rare prior to the late 1960s, there was no war on drugs. Indeed, the only drugs familiar to folks in their prime during the 1950s and 1960s were those obtained at the drugstore by prescription.

Because of the increase in crime and imprisonment, most people in the United States probably know someone who is or has been in prison or in jail. In 2012, about 1 in every 35 adults in the United States was incarcerated or on probation or parole, and many more have been in the past (Glaze & Herberman, 2013). In some neighborhoods, it is not uncommon for almost everyone to know many people under correctional supervision. For instance, almost one in three African American males in their 20s are under some form of correctional control, and one in six has been to prison (Western, 2006). The expenditures for corrections in 2011 for all 50 states was approximately \$52 billion, with 88% going for prisons and 12% for probation and parole (Laudano, 2013).

Corrections: Functions carried out by government and private agencies having to do with the punishment, treatment, supervision, and management of individuals who have been accused and convicted of criminal offenses

Penology: The study of the processes and institutions involved in the punishment and prevention of crime

From Arrest to Punishment

Not everyone who commits a crime is punished. Many crimes are not reported, and even if they are, relatively few are solved. Figure 1.1 is based on data from the nation's 75 largest counties and indicates the typical outcomes of 100 felony arrestees (Cohen & Kyckelhahn, 2010). Only about two thirds of arrestees are prosecuted (sometimes because of lack of evidence). Of those prosecuted, some are found not guilty, and some are convicted of lesser (misdemeanor) offenses due to plea bargaining. This trip through the crime funnel typically results in less than 50% of arrests resulting in a jail or prison term. The impact of the war on drugs is evident in that just over 37% of these arrests were for drug-related crimes (Cohen & Kyckelhahn, 2010). Note that only 4 out of the 69 arrests resulted in an actual trial, meaning that 94% of all felony prosecutions in the nation's 75 most populous counties resulted in a plea bargain in which a lighter sentence is imposed in exchange for a guilty plea.



PHOTO 1.1 This photo shows prison cells.
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The Theoretical Underpinnings of Corrections

Just as all theories of crime contain a view of human nature, so do all models of corrections. Some thinkers (mostly influenced by sociology) assume that the human mind is basically a blank slate at birth and subsequently formed by cultural experiences. These individuals tend to see human nature as essentially good and believe that people learn to be antisocial. If people are essentially good, then the blame for criminal behavior must be located in the bad influences surrounding them.

Others (mostly influenced by evolutionary biology and the brain sciences) argue that there is an innate human nature that evolved, driven by the overwhelming concerns of all living things: to survive and reproduce. These theorists do not deny that specific behaviors are learned, but they maintain that certain traits evolved in response to survival and reproductive challenges faced by our ancestors that bias our learning in certain directions. Some of these traits, such as aggressiveness and low empathy, are useful in pursuing criminal goals (Quinsey,

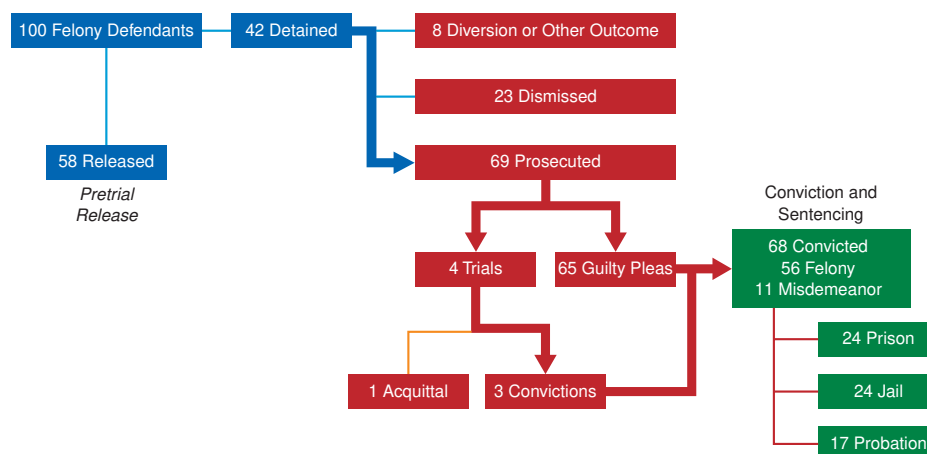


FIGURE 1.1 Typical Outcome of 100 Felony Defendants in the 75 Largest Counties in the United States

Source: Cohen and Kyckelhahn (2010).

2002; Walsh, 2006). This viewpoint also sees human nature as essentially selfish (not “bad,” just self-centered) and maintains that people must learn to be prosocial rather than antisocial via a socialization process that teaches us to value and respect the rights and property of others and to develop an orientation toward wanting to do good. Gwynn Nettler (1984) said it most colorfully on behalf of this position: “If we grow up ‘naturally,’ without cultivation, like weeds, we grow up like weeds—rank” (p. 313). In other words, we learn to be good, not to be bad; we will default to behaving badly in the absence of prosocial socialization (cultivation). The point we are making is that the assumptions about human nature we hold influence our ideas about how we should treat the accused or convicted once they enter the correctional system.

Before we get into the history of punishment, we want to present the first of many Perspective From a Practitioner sections. These sections are provided in each chapter for you to get a better sense of what the chapter is saying from the perspective of someone working in the field and perhaps also to provide the spark to make you want to go into that field. Our first perspective is from a long-serving prison warden, college professor, and prison consultant—who better to start our journey into the fascinating world of corrections?

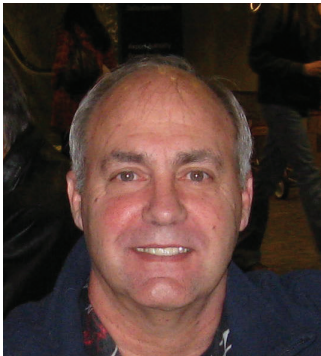
The Foundation of Correctional Punishment

Punishment: The act of imposing some unwanted burden, such as fines, probation, imprisonment, or death, on convicted persons in response to their crimes

Legal **punishment** may be defined as the state-authorized imposition of some form of deprivation—of liberty, resources, or life—upon a person justly convicted of a violation of the criminal law. The earliest existing written code of punishment was the Code of Ur-Nammu from Mesopotamia, although the Babylonian (also in Mesopotamia) Code of Hammurabi, created about 1780 BC, is more complete and better known. These laws recognized the natural inclination of individuals harmed by another to seek revenge, but they also acknowledged that personal revenge must be restrained if society is not to be fractured by a cycle of tit-for-tat blood feuds. The law seeks to contain uncontrolled vengeance by substituting controlled vengeance in the form of third-party (state) punishment.

Perspective From a Practitioner

**ROBERT BAYER, FORMER DIRECTOR OF CORRECTIONS AND PRISON WARDEN;
CURRENTLY AN ADJUNCT PROFESSOR AND PRISON CONSULTANT**



Location: Reno, Nevada

Education: BA and MA, English literature, State University of New York at Oswego; MPA and PhD, English and public administration, University of Nevada, Reno

What are the primary duties and responsibilities of a prison warden?

First, the warden is responsible for one facility in a much larger network of facilities. To some degree,

a warden can be considered the mayor of a city and the director or commissioner is the governor of the state in which the city resides, ensuring that facility policies, procedures, and general orders are fine-tuned for that specific facility within the guidelines of the department. Additionally, the warden is usually responsible for the human resources, safety and security operations, budget development and implementation, and the institution’s physical plant. He or she must manage critical incidents that arise and has the overall responsibility to ensure a positive work and living culture exists within that facility. To accomplish all of these tasks, the warden typically will bring extensive experience to the job. A warden is one of the highest-level management positions in a prison system and represents the “boots on the ground” administrator for the entire system.

What are the most helpful qualities or characteristics for one in this career?

The ability to be both an administrator and a leader, with a very thorough knowledge of how a prison functions and the laws, policies, and procedures promulgated by the system; the ability to see the overall big picture of corrections and how the facility functions within that picture; a comprehension of the budget process and calendar; and the ability to be politically sensitive, personable, approachable, intelligent, hardworking, and decisive yet thoughtful. As a leader, the warden's actions must reflect the best traditions of the agency and be completely ethical in his or her decisions and actions. The warden should reflect all of the attributes prized in the frontline employee—loyalty, dedication, honesty, and reliability—and should instill confidence in all levels of staff and inmates. Staff wants a warden who is steady under pressure and not prone to swings in mood or behavior. Ultimately, though staff members may perform an infinite variety of jobs in the facility itself, they look to the warden to ensure they have the proper orders and resources needed to keep them safe, day in and day out. Finally, the warden must be a skilled communicator at all levels, with good writing and verbal skills, as well as effective listening skills.

In general, what does a typical day for a practitioner in this career include?

Various functions, but the day should cover all three shifts to foster good communication. One should be at the facility during each shift change to ensure access to staff as they leave and enter the next shift, personally greeting or chatting with the support staff before the workday begins. An early morning staff meeting with the associate wardens and the maintenance supervisor is essential to review the last

24 hr of shift activities and develop a priority list of operational issues that need resolution. Next, items on the in-basket are reviewed, delegated, or responded to, and it is important to physically “walk the yard” (for about 2 hr) on a daily basis to make upper management accessible to staff and inmates and to provide the opportunity for personal observation of any issues. This is also a time to obtain firsthand feedback as to the morale, conditions, and security of the yard. Next are formally scheduled meetings with inmate families, employee group representatives, other agency representatives, and so on. Time is also spent reviewing new policies, reading inmate appeals and requests, responding to correspondence, and conducting any necessary interviews of staff. Work continues after 5:00 p.m., to complete paperwork, prepare court testimony, work on difficult personnel issues, and budget execution and construction. Once a week, do a facility inspection, looking at sanitation and security compliance while focusing on a different aspect of facility operations each week (such as fire suppression readiness).

What is your advice to someone either wishing to study or now studying criminal justice to become a practitioner in this career field?

Become a triple threat in the field, which includes having a solid understanding of operations, programs, and budget; knowing where you are going; and studying leadership and becoming a leader. Try to find a competent mentor in the field who will take an interest in your career and guide you on a path of experience and education that will facilitate achieving your goals. The best administrators become leaders in our field, and to succeed, one needs experience, training, and education.

Controlled vengeance means that the state takes away the responsibility for punishing wrongdoers from the individuals who were wronged and assumes it for itself. Early state-controlled punishment, however, was typically as uncontrolled and vengeful as any grieving parent might inflict on the murderer of his or her child. In many parts of the world, prior to the 18th century, human beings were considered born sinners because of the Christian legacy of original sin. Cruel tortures used on criminals to literally “beat the devil out of them” were justified by the need to save sinners’ souls. Earthly pain was temporary and certainly preferable to an eternity of torment if sinners died unrepentant. Punishment was often barbaric, regardless of whether those ordering it bothered to justify it with such arguments or even believed those arguments themselves.

The practice of brutal punishment and arbitrary legal codes began to wane with the beginning of a period historians call the **Enlightenment**, or age of reason. The Enlightenment encompassed the period roughly between the late 17th century and the late 18th century and was essentially a major shift in the way people began to view the world and their

Enlightenment: Period in history in which a major shift in the way people viewed the world and their place in it occurred, moving from a supernaturalistic to a naturalistic and rational worldview

place in it. It was also marked by the narrowing of the mental distance between people and the expanding of circles of individuals considered “just like us.”

The Emergence of the Classical School

Classical school: A nonempirical mode of inquiry similar to the philosophy practiced by the classical Greek philosophers—one based on logic and reason

Enlightenment ideas eventually led to a school of penology that has come to be known as the **classical school**. Italian nobleman and professor of law *Cesare Bonesana, Marchese di Beccaria* (1738–1794), the leader of this school, published what was to become the manifesto for the reform of judicial and penal systems throughout Europe, *Dei Delitti e delle Pene* (On Crimes and Punishments; 1764/1963). The book was a passionate plea to humanize and rationalize the law and to make punishment just and reasonable. Beccaria (as he is usually referred to) did not question the need for punishment, but he believed that laws should be designed to preserve public safety and order, not to avenge crime. He also took issue with the common practice of secret accusations, arguing that such practices led to general deceit and alienation in society. He argued that accused persons should be able to confront their accusers, to know the charges brought against them, and to be granted a public trial before an impartial judge as soon as possible after arrest and indictment.

Beccaria argued that punishments should be proportionate to the harm done, should be identical for identical crimes, and should be applied without reference to the social status of either offender or victim. Beccaria (1764/1963) made no effort to plumb the depths of criminal character or motivation, arguing that crime is simply the result of “the despotic spirit which is in every man” (p. 12). He also argued that the tendency of “man” to give in to the “despotic spirit” had to be countered by the threat of punishment, which had to be certain, swift, and severe enough to outweigh any benefits offenders get from crime if they are to be deterred from future crime. He elaborated on these three elements of punishment as follows:

Certainty: “The certainty of punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity.” (p. 58)

Swiftness: “The more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be.” (p. 55)

Severity: “For a punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime; in this excess of evil one should include the . . . loss of the good which the crime might have produced. All beyond this is superfluous and for that reason tyrannical.” (p. 43)

Beccaria made clear that punishments must outweigh any benefits offenders get from crime if they are to be deterred from future crime. But such punishment should be as certain and as swift as possible if it is to have a lasting impression on the criminal and to deter others.

Beccaria also asserted that to ensure a rational and fair penal structure, punishments for specific crimes must be decreed by written criminal codes, and the discretionary powers of judges must be severely limited. The judge’s task was to determine guilt or innocence and then to impose the legislatively prescribed punishment if the accused was found guilty. Many of Beccaria’s recommended reforms were implemented in a number of European countries within his lifetime (Durant & Durant, 1967). Such radical change over such a short period of time, across many different cultures, suggests that Beccaria’s rational reform ideas tapped into and broadened the scope of emotions such as sympathy and empathy among the political and intellectual elite of Enlightenment Europe. We tend to feel empathy for those whom we view as “like us,” and this leads to sympathy, which may lead to an active concern for their welfare. Thus, with cognition and emotion gelled into the Enlightenment ideal of the basic unity and worth of humanity, justice became both more refined and more diffuse (Walsh & Hemmens, 2014).

JEREMY BENTHAM

Another prominent figure was British lawyer and philosopher *Jeremy Bentham* (1748–1832). His major work, *Principles of Morals and Legislation* (1789/1948), is essentially a philosophy of social control based on the **principle of utility**, which posits that human actions should be judged moral or immoral by their effect on the happiness of the community. The proper function of the legislature is thus to make laws aimed at maximizing the pleasure and minimizing the pain of the largest number in society—“the greatest good for the greatest number” (p. 151).

If legislators are to legislate according to the principle of utility, they must understand human motivation, which for Bentham (1789/1948) was easily summed up: “Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do” (p. 125). This was essentially the Enlightenment concept of human nature, which was seen as hedonistic, rational, and endowed with free will. The classical explanation of criminal behavior and how to prevent it can be derived from these three assumptions.



PHOTO 1.2 Italian nobleman and professor of law Cesare Bonesana, Marchese di Beccaria (1738–1794), published what was to become the manifesto for the reform of judicial and penal systems throughout Europe, *Dei Delitti e delle Pene* (On Crimes and Punishments; 1764/1963). Wikimedia Commons, Public Domain

The Emergence of Positivism: Should Punishment Fit the Offender or the Offense?

Just as classicism arose from the 18th-century humanism of the Enlightenment, positivism arose from the 19th-century spirit of science. Classical thinkers were philosophers in the manner of the thinkers of classical Greece (hence the term *classical*), whereas **positivists** took upon themselves the methods of empirical science, from which more “positive” conclusions could be drawn (hence the term *positivism*). They were radical empiricists who insisted that only things that can be observed and measured should concern us. This being the case, they believed that concepts underlying classical thought, such as rationality, free will, motivation, conscience, and human nature, should be ignored as pure speculation about the unseen and immeasurable. An essential assumption of positivism is that human actions have causes and that these causes are to be found in the uniformities that typically precede those actions. The search for causes of human behavior led positivists to dismiss the classical notion that humans are free agents who alone are responsible for their actions.

Enrico Ferri, one of the early positivists, gave us perhaps the best short description of the differences between classical and positivist schools:

For them [the classicists] the facts should give place to syllogisms [reasoning from a taken-for-granted premise to a logical conclusion]; for us [positivists] the facts govern and no reasoning can occur without starting from the facts. For them science only needs paper, pen, and ink and the rest comes from a brain stuffed with abundant reading of books. . . . For us science requires spending a long time in examining the facts one by one, evaluating them, reducing them to a common denominator, [and] extracting the central idea from them. For them a syllogism or an anecdote suffices to demolish a myriad of facts gathered by years of observation and analysis; for us, the reverse is true. (Curran & Renzetti, 2001, p. 16)

Principle of utility: Positing that human action should be judged moral or immoral by its effects on the happiness of the community and that the proper function of the legislature is to make laws aimed at maximizing the pleasure and minimizing the pains of the population

Positivists: Those who believe that human actions have causes and that these causes are to be found in the thoughts and experiences that typically precede those actions



PHOTO 1.3 Jeremy Bentham's (1748–1832) major work, *Principles of Morals and Legislation* (1789/1948), is essentially a philosophy of social control based on the principle of utility, which posits that human actions should be judged moral or immoral by their effect on the happiness of the community.

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Early positivism espoused a hard form of determinism, such as that implied in the assertion that there are “born criminals.” Nevertheless, positivism slowly moved the criminal justice system away from a concentration on the criminal act as the sole determinant of the type of punishment to be meted out and toward an appraisal of the characteristics and circumstances of the offender as an additional determinant. Because human actions have causes that may be out of the actor's control, the concept of legal responsibility was called into question. For instance, Italian lawyer *Raffaele Garofalo* (1852–1934) believed that because human action is often evoked by circumstances beyond human control (temperament, extreme poverty, intelligence, and certain situations), the only thing to be considered at sentencing was the offender's “peculiarities,” or risk factors for crime.

Garofalo's (1885/1968) only concern for individualizing sentencing was the danger offenders posed to society, and his proposed sentences ranged from execution for those he called the extreme criminals (whom we might call psychopaths today), to transportation to penal colonies for impulsive criminals, to simply changing the law to deal with what he called endemic criminals (those who commit what we today might call victimless crimes). German criminal lawyer Franz von Liszt, on the other hand, campaigned for customized sentencing according to the rehabilitative potential of offenders, which was to be based on what scientists find out about the causes of crime (Sherman, 2005). Customized sentencing, based both on the seriousness of the crime and the history and characteristics of the criminal (thus satisfying both classicists and positivists), is routine in the United States today.

The Function of Punishment

Although most corrections scholars agree that punishment functions as a form of social control, some view it as a barbaric throwback to precivilized times (Menninger, 1968). But can you imagine a society where punishment did not exist? What would such a society be like? Could it survive? If you cannot realistically imagine such a society, you are not alone, for the desire to punish those who have harmed us or otherwise cheated on the social contract is as old as the species itself. Punishment aimed at discouraging cheats is observed in every social species of animal, leading evolutionary biologists to conclude that punishment of cheats is a strategy designed by natural selection for the emergence and maintenance of cooperative behavior (Alcock, 1998; Walsh, 2014). Cooperative behavior is important for all social species and is built on mutual trust, which is why violating that trust evokes moral outrage and results in punitive sanctions. Brain-imaging studies show that when subjects punish cheats, they have significantly increased blood flow to areas of the brain that respond to reward, suggesting that punishing those who have wronged us provides both emotional relief and reward (de Quervain et al., 2004; Fehr & Gächter, 2002). These studies imply that we are hardwired to “get even,” as suggested by the popular saying “Vengeance is sweet.”

Sociologist *Émile Durkheim* (1858–1917) contended that punishment is functional for society in that the rituals of punishment reaffirm the justness of the social norms and allow citizens to express their moral outrage when others transgress those moral norms. Durkheim also recognized that we can temper punishment with sympathy. He observed that over the course of social evolution, humankind has moved from *retributive* justice (characterized by

cruel and vengeful punishments) to *restitutive* justice (characterized by reparation—“making amends”). **Retributive justice** is driven by the natural passion for punitive revenge that “ceases only when exhausted . . . only after it has destroyed” (Durkheim, 1893/1964, p. 86). **Restitutive justice** is driven by simple deterrence and is more humanistic and tolerant, although it is still “at least in part, a work of vengeance” (pp. 88–89). For Durkheim, restitutive responses to wrongdoers offer a balance between calming moral outrage on the one hand and exciting the emotions of empathy and sympathy on the other.

Retributive justice: A philosophy of punishment driven by a passion for revenge

Restitutive justice: A philosophy of punishment driven by simple deterrence and a need to repair the wrongs done

The Philosophical Assumptions Behind Justifications for Punishment

A philosophy of punishment involves defining the concept of punishment and the values, attitudes, and beliefs contained in that definition as well as justifying the imposition of a painful burden on someone. When we speak of justifying something, we typically mean that we provide reasons for doing it both in terms of morality (“It’s the right thing to do”) and in terms of the goals we wish to achieve (“Do this, and we’ll get that”). In other words, we expect that punishment will have favorable consequences that justify its application.

Legal scholars have traditionally identified four major objectives or justifications for the practice of punishing criminals: retribution, deterrence, incapacitation, and rehabilitation. Criminal justice scholars have recently added a fifth purpose to the list: reintegration. All theories and systems of punishment are based on conceptions of basic human nature and thus, to a great extent, on ideology. The view of human nature on which the law in every country relies today is the same view enunciated by classical thinkers—Beccaria and Bentham, namely—that human beings are hedonistic, rational, and possessors of free will.

Hedonism is a doctrine that maintains that all life goals are desirable only as means to the end of achieving pleasure or avoiding pain. It goes without saying that pleasure is intrinsically desirable and pain is intrinsically undesirable, and we all seek to maximize the former and minimize the latter. We are assumed to pursue these goals in rational ways. **Rationality** is the state of having good sense and sound judgment. Rational sense and judgment is based (ideally) on the evidence before us at any given time, and the rational person revises his or her reasoning as new evidence arises. Rationality should not be confused with morality because its goal is self-interest, and self-interest is said to govern behavior whether in conforming or deviant directions. Crime is rational (at least in the short run) if criminals employ reason and act purposefully to gain desired ends. Rationality is thus the quality of thinking and behaving in accordance with logic and reason such that one’s reality is an ordered and intelligible system for achieving goals and solving problems. For the classical scholar, the ultimate goal of any human activity is self-interest, and self-interest is assumed to govern our behavior whether it takes us in prosocial or antisocial directions.

Hedonism: A doctrine maintaining that all goals in life are means to the end of achieving pleasure or avoiding pain

Rationality: The state of having good sense and sound judgment based on the evidence before us

Hedonism and rationality are combined in the concept of the hedonistic calculus, a concept introduced by Jeremy Bentham. The **hedonistic calculus** is a method by which individuals are assumed to logically weigh the anticipated benefits of a given course of action against its possible costs. If the balance of consequences of a contemplated action is thought to enhance pleasure, minimize pain, or both, then individuals will pursue it; if not, they will not. If people miscalculate, as they frequently do, it is because they are ignorant of the full range of consequences of a given course of action, not because they are irrational or stupid.

Hedonistic calculus: A method by which individuals are assumed to logically weigh the anticipated benefits of a given course of action against its possible costs

The final assumption about human nature is that humans have free will that enables them to purposely and deliberately choose to follow a calculated course of action. This is not a radical freewill position that views human will as unfettered by restraints but rather a free will in line with the concept of human agency. The concept of **human agency** maintains that humans have the capacity to make choices and the responsibility to make moral ones regardless of internal or external constraints on their ability to do so. This is a form of free will that is compatible with determinism because it recognizes both the internal and external constraints that limit our ability to do as we please. If we grant a criminal the dignity of possessing

Human agency: The capacity of humans to make choices and their responsibility to make moral ones regardless of internal or external constraints on their ability to do so

agency so he or she can purposely weigh options before deciding on a course of action, “he or she can be held responsible for that choice and can be legitimately punished” (Clarke & Cornish, 2001, p. 25). It is only with the concept of agency that we can justifiably assign praise and blame to individual actions.

The Major Punishment Justifications

Even though we assume that most people agree society has a right and a duty to punish those who harm it—because punishment involves the state depriving individuals of life or liberty—it always has been assumed that it is in need of ethical justification. Punishment justifications rise and fall in popularity with the ideology of the times, but there are five that have been dominant in the United States over the past century: retribution, deterrence, incapacitation, rehabilitation, and reintegration. We start with the most ancient: retribution.

Retribution

Retribution: A philosophy of punishment demanding that criminals’ punishments match the degree of harm they have inflicted on their victims—that is, what they justly deserve

Retribution is a “just deserts” model demanding that punishment matches as closely as possible the degree of harm criminals have inflicted on their victims—what they justly deserve. Those who commit minor crimes deserve minor punishments, and those who commit more serious crimes deserve more severe punishments. This is the most honestly stated justification for punishment because it both taps into our most primitive punitive urges and posits no secondary purpose for it, such as rehabilitation or deterrence. In other words, it does not require any favorable consequence to justify it except to maintain that justice has been served. Logan and Gaes (1993) went so far as to claim that only retributive punishment “is an affirmation of the autonomy, responsibility, and dignity of the individual” (p. 252). By holding offenders responsible and blameworthy for their actions, we are treating them as free moral agents, not as mindless rag dolls pushed here and there by negative environmental forces. California is among the states that have explicitly embraced this justification in their criminal code (California Penal Code Sec. 1170a): “The Legislature finds and declares that the purpose of imprisonment for a crime is punishment” (as cited in Barker, 2006, p. 12).

In his dissenting opinion in a famous death penalty case (*Furman v. Georgia*, 1972) in which the Supreme Court invalidated Georgia’s death penalty statute, Justice Potter Stewart noted the “naturalness” of retribution and why the state rather than individuals must assume the retributive role:

I cannot agree that retribution is a constitutionally impermissible ingredient in the imposition of punishment. The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they “deserve,” then there are sown the seeds of anarchy—of self-help, vigilante justice, and lynch law.

Deterrence

Deterrence: A philosophy of punishment aimed at the prevention of crime by the threat of punishment

Specific deterrence: The supposed effect of punishment on the future behavior of persons who experience the punishment

The principle behind **deterrence** is that people are deterred from crime by the threat of punishment. Deterrence may be either specific or general. **Specific deterrence** refers to the effect of punishment on the future behavior of persons who experience it. For specific deterrence to work, it is necessary that a previously punished person make a conscious connection between an intended criminal act and the punishment suffered as a result of similar acts committed in the past. Unfortunately, it is not always clear that such

connections are made or, if they are, that they have the desired effect. This is either because memories of the previous consequences were insufficiently potent or because they were discounted. The trouble is that short-term rewards (such as the fruits of a crime) are easier to appreciate than long-term consequences (punishment that may never come), and there is a tendency to abandon consideration of the latter when confronted with temptation unless a person has a well-developed conscience and is future oriented. The weak of conscience and the present oriented tend to consistently discount long-term consequences in favor of short-term rewards.

Committing further crimes after being punished is called **recidivism**, which is a lot more common among ex-inmates than rehabilitation. Recidivism refers only to crimes committed after release from prison and does not apply to crimes committed while incarcerated. A study of 404,638 state prisoners released in 2005 in 30 states found that 68% were arrested within 3 years of release, and 77% were arrested within 5 years (Durose, Cooper, & Snyder, 2014), and these are just the ones who are caught. The average number of arrests per offender was 2.9, which means that those 404,638 offenders were responsible for over 1,173,000 arrests in the 5 years from 2005 to 2010. Among those who do desist, a number of them cite the fear of additional punishment as a big factor (Wright, 1999).

As Beccaria insisted, for punishment to positively affect future behavior, there must be a relatively high degree of certainty that punishment will follow a criminal act, the punishment must be administered very soon after the act, and it must be painful. The most important of these is certainty, but as we see from Figure 1.2, showing clearance rates for major crimes in 2017, the probability of being arrested is very low, especially for property crimes—so much for certainty. Factoring out the immorality of the enterprise, burglary appears to be a rational career option for a capable criminal.

If a person is caught, the wheels of justice grind very slowly. Typically, many months pass between the act and the imposition of punishment—so much for swiftness. This leaves the law with severity as the only element it can realistically manipulate (it can increase or decrease statutory penalties almost at will), but it is unfortunately the least effective element (Reynolds, 1998). Studies from the United States and the United Kingdom find substantial negative correlations (as one factor goes up, the other goes down) between the likelihood of conviction (a measure of certainty) and crime rates but much weaker correlations in the same direction for the severity of punishment; that is, increased severity leads to lower offending rates (Langan & Farrington, 1998).

The effect of punishment on future behavior also depends on the **contrast effect**, defined as the contrast or comparison between the possible punishment for a given crime and the

Recidivism: Occurs when an ex-offender commits further crimes

Contrast effect: The effect of punishment on future behavior, which depends on how much the punishment and the usual life experience of the person being punished differ or contrast

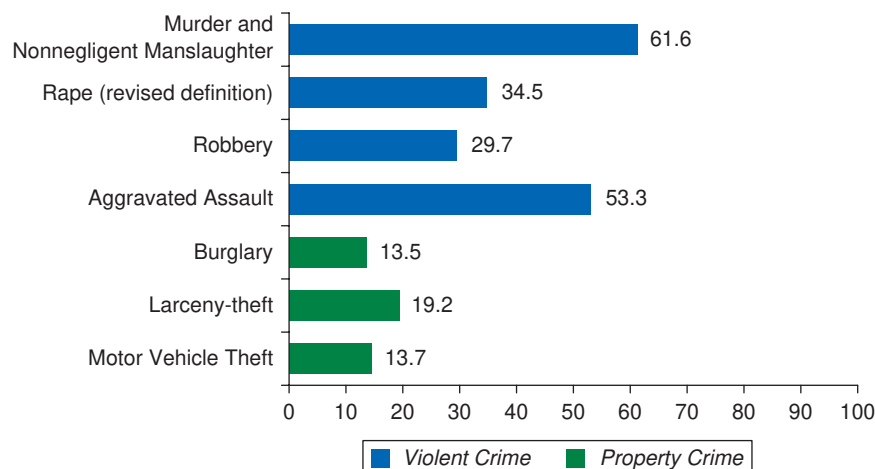


FIGURE 1.2 Percentage of Crimes Cleared by Arrest or Exceptional Means* in 2017

*A crime cleared by "exceptional means" occurs when the police have a strong suspect but something beyond their control precludes a physical arrest (e.g., death of suspect).

Source: FBI (2018). Courtesy of U.S. Government Printing Office. Most recent data available.

General deterrence: The presumed preventive effect of the threat of punishment on the general population

usual life experience of the person who may be punished. For people with little to lose, arrest and punishment may be perceived as merely an inconvenient occupational hazard. But for those who enjoy a loving family and the security of a valued career, the prospect of incarceration is a nightmarish contrast. Like so many other things in life, deterrence works least for those who need it the most (Austin & Irwin, 2001).

General deterrence refers to the preventive effect of the threat of punishment on the general population; it is thus aimed at *potential* offenders. Punishing offenders serves as an example to the rest of us of what may happen if we violate the law, as we noted in the opening vignette. As Radzinowicz and King (1979) put it, “People are not sent to prison primarily for their own good, or even in the hope that they will be cured of crime. . . . It is used as a warning and deterrent to others” (p. 296). The threat of punishment for law violators deters a large but unknown number of individuals who might commit crimes if no such system existed.

Are we putting too much faith in the ability of criminals and would-be criminals to calculate the costs and benefits of engaging in crime? Although many violent crimes are committed in the heat of passion or under the influence of mind-altering substances, there is evidence underscoring the classical idea that individuals do (subconsciously at least) calculate the ratio of expected pleasures to possible pains when contemplating their actions. Gary Becker (1997) dismissed the idea that criminals lack the knowledge and the foresight to take punitive probabilities into consideration when deciding whether or not to continue committing crimes. He said, “Interviews of young people in high crime areas who do engage in crime show an amazing understanding of what punishments are, what young people can get away with, [and] how to behave when going before a judge” (p. 20). Of course, incentives and disincentives to law-abiding or criminal behavior are perceived differently because of the contrast effect and ingrained habits. As Ernest van den Haag (2003) put it, “Law abiding people habitually ignore criminal opportunities. Law breakers habitually discount the risk of punishment. Neither calculates” (cited in Walsh, 2015, p. 93). This does not mean that criminals are impervious to realistic threats of punishment.

Deterrence theorists do not view people as calculating machines doing their mental math before engaging in any activity. They are simply saying that behavior is governed by its consequences. Our rational calculations are both subjective and bounded; all of us do not make the same calculations or arrive at the same game plan when pursuing the same goals. Think how the contrast effect would influence the calculations of a zero-income, 19-year-old high school dropout with a drug problem, as opposed to a 45-year-old married man with two children and a \$90,000 annual income. We all make calculations with less-than-perfect knowledge and with different mind-sets, temperaments, and cognitive abilities, but to say that criminals do not make such calculations is to strip them of their humanity and to make them pawns of fate.

More general reviews of deterrence research indicate that legal sanctions do have “substantial deterrent effect” (Nagin, 1998, p. 16; see also Wright, 1999), and some researchers have claimed that increased incarceration rates account for about 25% of the variance in the decline in violent crime over the last decade or so (Rosenfeld, 2000; Spelman, 2000). Pater-noster (2010) cited other studies demonstrating that 20% to 30% of the crime drop from its peak in the early 1990s is attributable to the approximately 52% increase in the imprisonment rate. He stated, “There is a general consensus that the decline in crime is, at least in part, due to more and longer prison sentences, with much of the controversy being over how much of an effect” (p. 801). Of course, this leaves 70% to 75% of the crime drop to be explained by other factors. Unfortunately, even for the 30% figure, we cannot determine if we are witnessing a *deterrent* effect (i.e., Has crime declined because more would-be criminals have perceived a greater punitive threat?) or an *incapacitation* effect (i.e., Has crime declined because more violent people are behind bars and thus not at liberty to commit violent crimes on the outside?). Of course, it does not have to be one or the other, since both effects may be operating. Society benefits from crime reduction regardless of why it occurs.

Incapacitation

Incapacitation refers to the inability of criminals to victimize people outside prison walls while they are locked up behind them. Its rationale is summarized in James Q. Wilson's (1975) remark: "Wicked people exist. Nothing avails except to set them apart from innocent people" (p. 391). The incapacitation justification probably originated with *Enrico Ferri's* (1897/1917) concept of social defense. For Ferri, in order to determine punishment, notions of culpability, moral responsibility, and intent were secondary to an assessment of offenders' strength of resistance to criminal impulses, with the express purpose of averting future danger to society. He believed that moral insensibility and lack of foresight, underscored by low intelligence, were criminals' most marked characteristics. For Ferri, the purpose of punishment is not to deter or to rehabilitate but to defend society from criminal predation. The characteristics of criminals prevented them from basing their behavior on rational calculus principles, so how could their behavior be deterred?

Incapacitation obviously "works" while criminals are incarcerated. Elliot Currie (1999) stated that in 1995, there were 135,000 inmates in prison whose most serious crime was robbery and that each robber on average commits five robberies per year. Had these robbers been left on the streets, they would have been responsible for an additional 675,000 robberies ($135,000 \times 5$) on top of the 580,000 actual robberies reported to the police in 1995. Additionally, Johnson and Raphael (2012) estimated that each additional year spent in prison in the United States prevented 2.5 violent crimes and 11.4 property crimes for the period between 1978 and 1990.

The incapacitation issue has produced some lively debates about the relative costs and benefits to society of incarceration. Attempts to estimate these have proven difficult and controversial. In 1987, economist Edwin Zedlewski (1987), using national crime data, calculated that the typical offender commits 187 crimes a year and that the typical crime costs \$2,300 in property losses or in physical injuries and human suffering. Multiplying these figures, Zedlewski estimated that the typical imprisoned felon is responsible for \$430,000 in monetary costs to society each year he remains free. He then divided that figure by the cost of incarceration in 1977 (\$25,000) and concluded that the social benefits of imprisonment outweigh the costs by 17 to 1.

Zedlewski's findings have been severely criticized, including a critical article by supporters of incarceration who argued that the typical offender commits 15 crimes in a year rather than 187 (DiIulio & Piehl, 1991), which reduces the cost-benefit ratio to 1.38 to 1 rather than 17 to 1. The different estimates of criminal activity are the result of Zedlewski using the mean number (arithmetic average) of crimes per year and DiIulio and Piehl using the median number (a measure of the "typical" in which half of criminals commit fewer than 15 crimes, and half commit more). Using the mean inflates the typical by averaging in the crimes committed by the most highly criminally involved offenders. Using only the dollar costs to estimate the social costs of crime, of course, ignores the tremendous physical and emotional costs to victims as well as other important considerations (Walker, 2001).

Selective Incapacitation

The difference between the "typical" offender and the heavily crime-involved career criminal brings up the idea of **selective incapacitation**, which is a punishment strategy that largely reserves prison for a select group of offenders composed primarily of violent repeat offenders, but it also may include other types of incorrigible offenders. Birth cohort studies (a *cohort* is a group composed of subjects having something in common,

Incapacitation: A philosophy of punishment that refers to the inability of criminals to victimize people outside prison walls while they are locked up

Selective incapacitation: Refers to a punishment strategy that largely reserves prison for a distinct group of offenders composed primarily of violent repeat offenders



PHOTO 1.4 While this person is locked up, he cannot victimize those outside the prison—incapacitation.

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such as being born within a given time frame or in a particular place) from a number of different locations find that about 6% to 10% of offenders commit the majority of all crimes. For instance, two large Philadelphia cohort studies of almost 10,000 boys each, born in 1945 (Wolfgang, Figlio, & Sellin, 1972) and 1958 (Figlio, Tracy, & Wolfgang, 1990), found that while about one third of young boys got caught up in the jaws of the criminal justice system, a very small proportion of them committed a highly disproportionate number of offenses. In the 1945 cohort, 6% of the cohort (18% of the offenders in the cohort) committed 71% of all of the homicides, 73% of the rapes, 82% of the robberies, and 69% of the aggravated assaults. In the 1958 cohort, 7.5% of the cohort (23% of the offenders) accounted for 61% of the homicides, 75% of the rapes, 73% of the robberies, and 65% of the aggravated assaults.

Saving prison space mostly for high-rate violent offenders better protects the community and saves it money. The problem with this strategy, however, involves identifying high-rate violent offenders *before* they become high-rate violent offenders; identifying them after the fact is easy. Generally speaking, individuals who begin committing predatory delinquent acts before they reach puberty are the ones who will continue to commit crimes across the life course (DeLisi, 2005; Moffitt & Walsh, 2003). The incapacitation effect is more starkly driven home by a study of the offenses of 39 convicted murderers committed *after* they had served their time for murder and were released from prison. Between 1996 and 2000, they had 122 arrests for serious violent crimes (including seven additional murders), 218 arrests for serious property crimes, and 863 other arrests among them (DeLisi, 2005, p. 165).

No one argues for an increase in the incarceration of low-rate, low-seriousness offenders. As we increase incarceration more and more, we quickly skim off the 5% to 10% of serious offenders and begin to incarcerate offenders who would best be dealt with within the community. In monetary (and other social cost) terms, we have a situation economists call the law of diminishing returns. In essence, this means that while we may get a big bang for our buck at first (incarcerating the most serious criminals), the bang quickly diminishes to a whimper and even turns to a net loss as we continue to reel in minor offenders, which is why it is imperative to develop methods of assessing and classifying offenders more effectively. It is for this reason that we have included important chapters on assessment, classification, and treatment.

Among other things, we have to consider relating to the incapacitation effect the criminogenic and labeling effects of incarceration. Yes, imprisonment takes criminals off the street for a period, but imprisonment also exposes the convict to greater levels of criminal attitudes and values and leads to increased friendships with other criminals and perhaps recruitment into prison gangs with “franchises” on the outside, which may ensnare the convict in a lifetime of crime. Even if the convict is not induced to further crime by the prison experience, the *ex-con* label is a major impediment to gaining legitimate employment upon release. Thus, the value of the incapacitation effect may be neutralized by these countervailing effects. Of course, this is not to say that people who have committed horrible violent crimes or who continuously victimize their communities with less onerous ones should not be incarcerated. But it bears thinking about when it comes to nonviolent, relatively minor offenders whose problems (typically drug abuse) may be addressed by community corrections agencies.

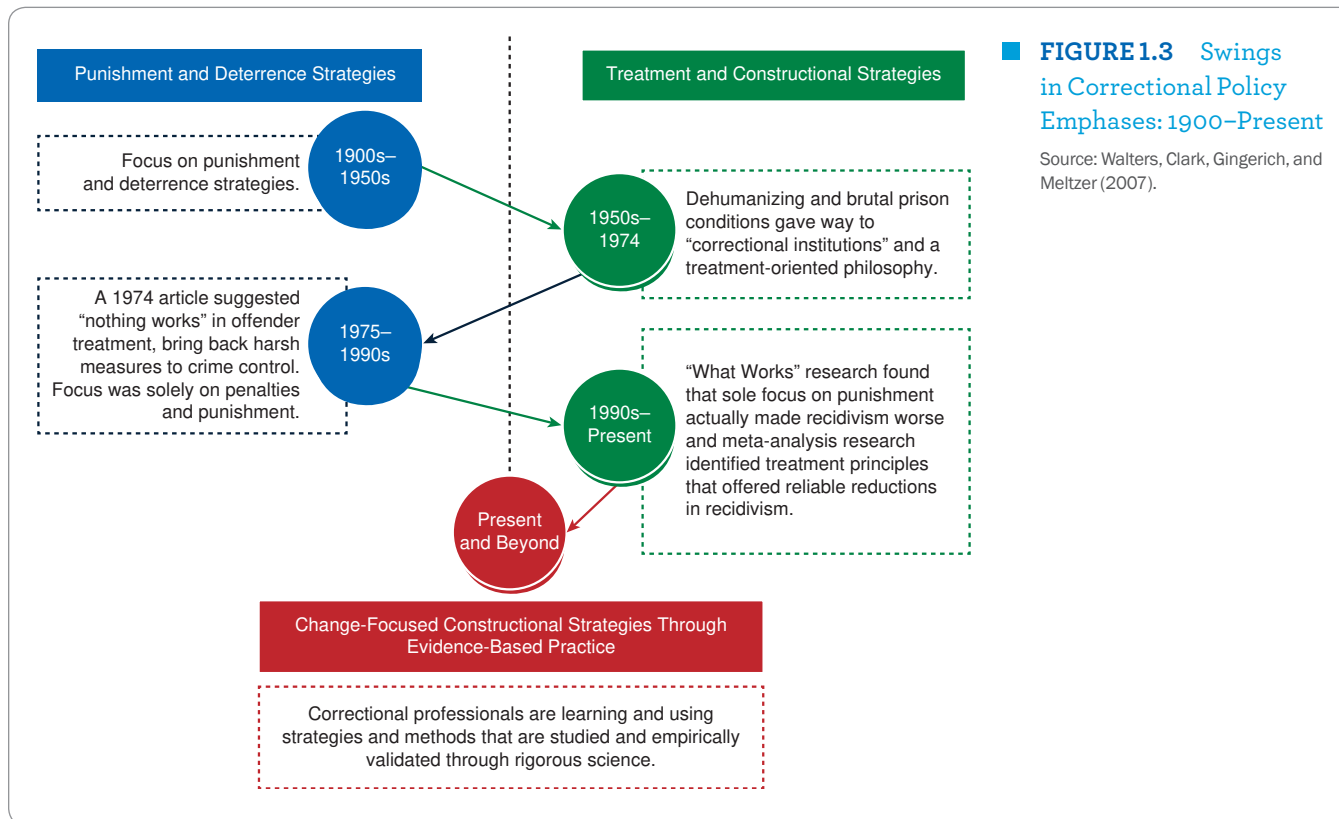
The problem is predicting which offenders should be selectively incapacitated. Although there are a number of excellent prediction scales in use today to assist us in estimating who will and who will not become a high-rate offender, the risk of too many false positives (predicting someone will become a high-rate offender when, in fact, he or she will not) is always present (Piquero & Blumstein, 2007). However, incarceration decisions are not made on predictions about the future but rather on knowledge of past behavior—the past is prologue, as Shakespeare said.

Rehabilitation

The term **rehabilitation** means to restore or return to constructive or healthy activity. The approach of this book is rehabilitation oriented. Your authors are not naive “bleeding heart” dreamers; we have both served in the criminal justice trenches as a correctional officer and

Rehabilitation: A philosophy of punishment aimed at “curing” criminals of their antisocial behavior

prison counselor (Stohr) and as a police officer and probation officer (Walsh), and we are well aware of the values, attitudes, and behaviors of criminals. Nevertheless, we consider it sound fiscal and criminal justice policy to be forward looking by trying to prevent crime from happening rather than simply punishing it when it does. Whereas deterrence and incapacitation are mainly justified on classical grounds, rehabilitation is primarily a positivist concept. The rehabilitative goal used to be based on a medical model that viewed criminal behavior as a moral sickness requiring treatment. Today, this model views criminality in terms of “faulty thinking” and criminals as in need of “programming” rather than “treatment.” Figure 1.3 highlights the shifts in correctional policy throughout the 20th century to the present.



Policy and Research

ECONOMISTS LOOK AT INCAPACITATION

Research drives correctional policy, and correctional policy drives research, but what is occurring outside of the correctional context in the broader society drives both. Concerns about the effectiveness of rehabilitation programs, rising crime rates, and the public’s outrage that resulted in the early 1970s sparked new interest in incapacitation as a crime prevention strategy. As a result of new incapacitation-based policies of the 1970s and 1980s, rates of imprisonment in the United States rose dramatically. This increase in imprisonment has generated its

own set of policy concerns, such as what to do about overcrowding and budgetary concerns over the costs of imprisonment.

While correctional researchers tend to look at punishment policies with their eyes on constitutional issues and the effects treatment programs on recidivism, economists cast their eyes on cost-benefit analyses seen in terms of dollars—the cost of incarcerating more offenders versus the monetary loss from crimes committed by criminals in the

(Continued)

(Continued)

community. Let's take an economist's view of the DeLisi (2005) study in the main body of this chapter. What would be the dollar cost saved had these 139 murderers not been released? The total social cost of a single murder has been estimated at \$8,982,907, and the average cost of other "serious violent crimes" (rape, aggravated assault, and robbery) has been estimated at \$130,035 (McCollister, French, & Fang, 2010). Seven murders (\$62,880,349) and 115 other serious violent crimes (\$14,954,063) yield a total of \$77,834,412, or \$15,566,882 per year over the 5-year period, and that is without adding in the 218 arrests for serious property crimes and the 863 "other" arrests.

In 2006, the Italian government passed the Collective Clemency Bill (CCB), ordering the release of one third of Italy's prisoners (about 22,000) with 3 years or less left to serve on their sentences. This would be roughly equivalent to the United States releasing 756,000 inmates into the community. The CCB resulted from budgetary prison overcrowding concerns, and it gave criminologists an excellent chance to gauge the effects of incapacitation by tracking released inmates. Buonanno and Raphael's (2013) analysis of released convicts found that the incapacitation effect was between 14 and 18 extra crimes committed per year per criminal. (They included only theft and robbery arrests in their analysis.)

Did the policy produce its stated goals? The answer depends on how you look at it. Prison overcrowding was eliminated, so that goal was realized. Prison authorities saved an estimated 245 million euros (\$316 million), so the policy "worked" for them. But what about Italian society? Buonanno and Raphael (2013) estimated that crime costs were between 466 million and 2.2 billion euros, or between approximately \$606 million and \$2.9 billion. They stated, "Overall, the pardon falls far short of passing cost-benefit analysis determining a 'social' cost between 10 and 60 thousand euros per prisoner per year" (p. 2463). Although this economic analysis shows a huge financial loss to society attributable to the CCB, it does not take into consideration other social costs of crimes committed by released prisoners, such as the emotional and physical costs of being victimized and the general feeling of the inadequacy of the state to protect its citizens.

An economic study of the effects of selective incapacitation policy in Holland concluded that

it reduced recidivism substantially and that "the social benefits of long-term incapacitation of prolific offenders outweighed the social costs" (Vollaard, 2013, p. 281). Surveys of these offenders showed that many of them "see the long-term prison sentence as an opportunity to break with a life dominated by drug use rather than as a severe punishment. . . . Some 60% of the convicted offenders state that they feel substantially better after the enhanced prison sentence" (p. 282). However, *long term* was defined as 2 years, which is less than most U.S. prison sentences for offenders, and these Dutch offenders were provided with intensive rehabilitation programs. Although the Dutch crime problem is less serious than that of the United States, there may be a lesson in the Dutch experiment with selective incapacitation of repeat nonviolent offenders with drug problems for the United States that may lead it to incarcerate more judiciously (selectively).

Discussion Questions

1. If these studies show that the financial costs of the crimes committed by released prisoners are greater than the costs of continued incarceration, why do we see people arguing that releasing more prisoners would save money?
2. Discuss the economic and social implications of Matt DeLisi's study of the recidivism of 139 murderers. Should such people ever be released?
3. What lessons does the Dutch study have for the United States, and what are the barriers to implementing them?

Sources

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- DeLisi, M. (2005). *Career criminals in society*. Thousand Oaks, CA: Sage.
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- Vollaard, B. (2013). Preventing crime through selective incapacitation. *Economic Journal*, 123, 262-284.

The present emphasis on rehabilitation is driven both by economics (it is cheaper) and by decades of research aimed at discovering "what works" in correctional assessment and treatment. The goal of rehabilitation is to change offenders' attitudes so that they come to accept that their behavior was wrong, not to deter them by the threat of further punishment. We defer further discussion of rehabilitation until Chapters 8 and 10, devoted to correctional assessment and classification as well as treatment and rehabilitation.

TABLE 1.1 Summary of Key Elements of Different Correctional Perspectives

	RETRIBUTION	DETERRENCE	INCAPACITATION	REHABILITATION	REINTEGRATION
Justification	Moral just deserts	Prevention of further crime	Risk control, community protection	Offenders have correctable deficiencies	Offenders have correctable deficiencies
Strategy	None: Offenders simply deserve to be punished	Make punishment more certain, swift, and severe	Offenders cannot offend while in prison	Treatment to reduce offenders' inclination to reoffend	Concrete programming to make for successful reentry into society
Focus of perspective	The offense and just deserts	Actual and potential offenders	Actual offenders	Needs of offenders	Needs of offenders
Image of offenders	Free agents whose humanity we affirm by holding them accountable	Rational beings who engage in cost-benefit calculations	Not to be trusted but to be constrained	Good people who have gone astray and will respond to treatment	Ordinary folk who require and will respond to concrete help

Ethical Issue 1.1

WHAT WOULD YOU DO?

You are the director of your state's department of corrections. The state governor trusts your judgment and gives you free rein to administer the state prisons as you see fit within the bounds of the state and U.S. constitutions. Your belief in human responsibility and autonomy has given you a philosophical and emotional attachment to the retribution justification for punishment. However, you have read the various studies on the successes of the Dutch experiment

with the rehabilitation of carefully selected offenders whose primary problem is substance abuse. Would you ignore them and stick with your "gut-level" beliefs in just deserts, or would you do whatever you could to identify candidates for a similar program, target resources there, and do what you could to secure their parole as timely as possible after two years? Give reasons why or why not.

Reintegration

The goal of **reintegration** is to use the time criminals are under correctional supervision to prepare them to reenter (or reintegrate with) the free community as well equipped to do so as possible. In effect, reintegration is not much different from rehabilitation, but it is more pragmatic, focusing on concrete programs such as job training rather than attitude change. There are many challenges associated with this process—so much so that, like rehabilitation, it warrants a chapter to itself and will be discussed in detail in the context of parole.

Table 1.1 is a summary of the key elements (justification, strategy, etc.) of the four punishment philosophies or perspectives discussed. The commonality that they all share to various extents is, of course, the prevention of crime.

Reintegration: A philosophy of punishment that aims to use the time criminals are under correctional supervision to prepare them to reenter the free community as well equipped to do so as possible

The Due Process and Crime Control Models

A useful way of grounding discussions about the correctional system is to see how it stacks up in terms of Herbert Packer's (1964/1997) crime control versus due process models. Packer proposed two *ideal-type models* (based on pure types that exaggerate differences) reflecting

different value choices undergirding the operation of the criminal justice system. The major tension between these two models is the emphasis on justice for an offended community and justice for those who offend against it. Equally moral individuals and cultures can hold very different conceptions of justice, with some placing an emphasis on justice for the offended community and others on justice for those who offend against it.

The Crime Control Model

Crime control model: A model of law that emphasizes community protection from criminals and stresses that civil liberties can only have real meaning in a safe, well-ordered society

The first model is the **crime control model**. This model emphasizes community protection from criminals and stresses that civil liberties can only have real meaning in a safe, well-ordered society. To achieve such a society, it is necessary to suppress criminal activity swiftly, efficiently, and with finality, and this demands a well-oiled criminal justice system where cases are handled informally and uniformly in assembly-line fashion. Police officers must arrest suspects, prosecutors must prosecute them, and judges must sentence them “uncluttered with ceremonious rituals that do not advance the progress of the case” (Packer, 1964/1997, p. 4). To achieve finality, the occasions for challenging the process (appeals) must be kept to a minimum. The assumption is that such a process will more efficiently screen out the innocent and that those who are not may be considered “probably guilty.” Packer does not want us to think of a presumption of guilt as the conceptual opposite of the presumption of innocence but rather “reduced to its barest essentials and when operating at its most successful pitch [the crime control model consists of two elements]: (a) an administrative fact-finding process leading to the exoneration of the suspect, or to (b) the entry of a plea of guilty” (p. 5).

The Due Process Model

Due process model: A model of law that stresses the accused’s rights more than the rights of the community

The **due process model** is the second model. Rather than a system run like an assembly line, the due process model is more like an obstacle course in which impediments to carrying the accused’s case further are encountered at every stage of processing. Police officers must obtain warrants when possible and must not interrogate suspects without the suspect’s consent; evidence may be suppressed, and various motions may be filed that may free a factually guilty person. These and other obstacles are placed in the way to prevent the efficient and speedy processing of cases. If the person is convicted, he or she may file numerous appeals, and it may take years to gain closure of the case. The due process model is more concerned with the integrity of the legal process than with its efficiency and with legal guilt rather than whether the accused is factually guilty. Factual guilt translates into legal guilt only if the evidence used to determine it was obtained in a procedurally correct fashion.

Choosing a Model

Which model do you prefer, and which model do you think best exemplifies the ideals of justice? It may be correct to say that under a crime control model, more innocent people may be convicted, but that depends on which country we are talking about and how far along the continuum it goes in its practices. It is also true that under a due process model, more (factually) guilty people will be set free, but again, that depends on the country and the extent to which the model is “pure.” In the first instance, the individual has been unjustly victimized, and in the second, the community has been unjustly victimized. It is clear that both models have their faults as well as their strengths. The



PHOTO 1.5 The crime control model avers that criminal cases should be processed in assembly-line fashion—efficiently and with finality.
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danger of a runaway crime control model is a return to the days when due process was nonexistent, and the danger of a runaway due process model is that truth and justice may get lost in a maze of legal ritualism. But remember that these are ideal-type models that do not exist in their pure form anywhere in the world; rather, all criminal justice systems lie on a continuum between the crime control and due process extremes.

Packer's models are more about the processes followed in the police and prosecution legs of criminal justice (the catch 'em and convict 'em legs), but they also apply to the third leg—the correct 'em leg—of the criminal justice system. While it may be true that there is less public concern for the rights of convicted criminals than for the rights of accused criminals and while it is also true that convicted criminals have fewer rights than do law-abiding folks, the criminal justice model followed by the police and the courts is also the model followed by its correctional system. The due process model has led to the existence and expansion of community alternatives to punitive institutionalization, such as probation and parole, halfway houses, community treatment centers, diagnostic models that assess offenders for probation or parole eligibility, rehabilitative programs, work release programs, and an enhanced concern for the rights of offenders who are incarcerated or under community supervision. All of these models, institutions, systems, and rights are examined throughout this book.



PHOTO 1.6 The due process model purposely puts obstacles in the way of processing criminal cases efficiently and with finality.
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SUMMARY

- Corrections is a social function designed to hold, punish, supervise, deter, and possibly rehabilitate the accused or convicted. Corrections is also the study of these functions.
- Although it is natural to want to exact revenge ourselves when people do us wrong, the state has taken over this responsibility for punishment to prevent endless tit-for-tat feuds. Through social evolution, the state has moved to more restitutive forms of punishment that, while serving to tone down the community's moral outrage, tempers it with sympathy.
- Much of the credit for the shift away from retributive punishment must go to the classical school of criminology, which was imbued with the humanistic spirit of the Enlightenment. The view of human nature (hedonistic, rational, and possessing free will) held by thinkers of the time was that punishment should primarily be used for deterrent purposes, that it should only just exceed the gains of crime, and that it should apply equally to all who have committed the same crime regardless of any individual differences.
- Opposing classical notions of punishment are those of the positivists, who rose to prominence during the 19th century and who were influenced by the spirit of science. Positivists rejected the philosophical underpinnings regarding human nature of the classicists and declared that punishment should fit the offender rather than the crime.
- The objectives of punishment are retribution, deterrence, incapacitation, rehabilitation, and reintegration—all of which have come in and out of favor over the years.
- Retribution is simply just deserts—getting the punishment one deserves—with no other justification needed.
- Deterrence is the assumption that the threat of punishment causes people not to commit crimes. We identified two kinds of deterrence: specific and general. The effects of deterrence on potential offenders depend to a great extent on the contrast between the conditions of punishment and the conditions of everyday life.
- Incapacitation means that the accused and convicted cannot commit further crimes (if they did so in the first place) against the innocent while incarcerated. Incapacitation works only while offenders are behind bars, but we should be more selective about whom we incarcerate.

- Rehabilitation centers on efforts to socialize offenders in prosocial directions while they are under correctional supervision, so they will not commit further crimes.
- Reintegration refers to efforts to provide offenders with concrete skills they can use that will give them a stake in conformity.
- Throughout this book, we will be offering comparative perspectives on corrections from other countries, focusing primarily on the United Kingdom, France, China, and Saudi Arabia. These countries best exemplify their respective legal traditions and are situated quite far apart on Packer's crime control–due process model of criminal justice.
- The United States leads the world in the proportion of its citizens that it has in prison. Whether this is indicative of hardness (more prison time for more people) or softness (imprisonment as an alternative to execution or mutilation) depends on how we view hardness versus softness and with which countries we compare the United States.

KEY TERMS Review key terms with eFlashcards at edge.sagepub.com/stohrcorrections2e

Classical school 8	Hedonistic calculus 11	Rehabilitation 16
Contrast effect 13	Human agency 11	Reintegration 19
Corrections 4	Incapacitation 15	Restitutive justice 11
Crime control model 20	Penology 4	Retribution 12
Deterrence 12	Positivists 9	Retributive justice 11
Due process model 20	Principle of utility 9	Selective incapacitation 15
Enlightenment 7	Punishment 6	Specific deterrence 12
General deterrence 14	Rationality 11	
Hedonism 11	Recidivism 13	

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1. Discuss the implications for a society that decides to eliminate all sorts of punishment in favor of forgiveness.
2. Why do we take pleasure in the punishment of wrongdoers? Is it a good or bad thing that we take pleasure in punishment? What evolutionary purpose does punishment serve?
3. Discuss the assumptions about human nature held by the classical thinkers. Are we rational, seekers of pleasure, and free moral agents? If so, does it make sense to try to rehabilitate criminals?
4. Discuss the assumptions underlying positivism in terms of the treatment of offenders. Do they support Garofalo's idea of individualized justice based on the danger the offender posed to society or von Liszt's idea of individualized justice based on the rehabilitative potential of the offender?
5. Which justification for punishment do you favor? Is it the one that you think works best in terms of preventing crime, or do you favor it because it fits your ideology?
6. What is your position on the hardness versus softness issue relating to the U.S. stance on crime? We are tougher than other democracies. Is that acceptable to you? We are also softer than more authoritarian countries. Is that also acceptable to you? Why, or why not?

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Corrections.com: <http://www.corrections.com>

A great source for all kinds of correctional topics. Best of all, unlike text books, the site is updated weekly.

Internet Encyclopedia of Philosophy: Punishment: <http://www.iep.utm.edu/punishme>

A large and diverse number of sites are devoted to the topic of punishment.



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