



MARY K. STOHR
ANTHONY WALSH

corrections

THIRD EDITION

*the
essentials*



Corrections

Third Edition

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 dedicate this to 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, and Luke. 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.

Sara Miller McCune founded SAGE Publishing in 1965 to support the dissemination of usable knowledge and educate a global community. SAGE publishes more than 1000 journals and over 800 new books each year, spanning a wide range of subject areas. Our growing selection of library products includes archives, data, case studies and video. SAGE remains majority owned by our founder and after her lifetime will become owned by a charitable trust that secures the company’s continued independence.

Los Angeles | London | New Delhi | Singapore | Washington DC | Melbourne

Corrections

The Essentials

Third Edition

MARY K. STOHR

Washington State University

ANTHONY WALSH

Boise State University



Los Angeles | London | New Delhi
Singapore | Washington DC | Melbourne



FOR INFORMATION:

SAGE Publications, Inc.
2455 Teller Road
Thousand Oaks, California 91320
E-mail: order@sagepub.com

SAGE Publications Ltd.
1 Oliver's Yard
55 City Road
London EC1Y 1SP
United Kingdom

SAGE Publications India Pvt. Ltd.
B 1/1 Mohan Cooperative Industrial Area
Mathura Road, New Delhi 110 044
India

SAGE Publications Asia-Pacific Pte. Ltd.
3 Church Street
#10-04 Samsung Hub
Singapore 049483

Acquisitions Editor: Jessica Miller
Content Development Editor: Laura Kirkhuff
Editorial Assistant: Rebecca Lee
Production Editor: Jane Haenel
Copy Editor: D. J. Peck
Typesetter: C&M Digital (P) Ltd.
Proofreader: Liann Lech
Indexer: Nancy Fulton
Cover Designer: Scott Van Atta
Marketing Manager: Jillian Olsen

Copyright © 2019 by SAGE Publications, Inc.

All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher.

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Names: Stohr, Mary K., author. | Walsh, Anthony, 1941– author.

Title: Corrections : the essentials / Mary K. Stohr, Washington State University, Anthony Walsh, Boise State University.

Description: Third Edition. | Thousand Oaks : SAGE Publications, Inc., [2018] | Revised edition of the authors' Corrections, [2016] | Includes bibliographical references and index.

Identifiers: LCCN 2017040349 | ISBN 9781506365268 (pbk. : alk. paper)

Subjects: LCSH: Corrections—United States. | Criminal justice, Administration of—United States. | Punishment—United States.

Classification: LCC HV9275 .C633 2018 | DDC 365/.973—dc23
LC record available at <https://lccn.loc.gov/2017040349>

This book is printed on acid-free paper.

18 19 20 21 22 10 9 8 7 6 5 4 3 2 1

BRIEF CONTENTS

Preface	xiii
Chapter 1. The Philosophical and Ideological Underpinnings of Corrections	xviii
Chapter 2. Correctional History: Ancient Times to Colonial Jails	22
Chapter 3. Correctional History: The 17th to 20th Centuries	42
Chapter 4. Ethics and Corrections	64
Chapter 5. Sentencing: The Application of Punishment	80
Chapter 6. Jails and Detention Centers	108
Chapter 7. Community Corrections: Probation and Intermediary Sanctions	134
Chapter 8. Prisons and the Correctional Client	156
Chapter 9. The Corrections Experience for Staff	188
Chapter 10. Community Corrections: Parole and Prisoner Reentry	212
Chapter 11. Women and Corrections	236
Chapter 12. Minorities and Corrections	260
Chapter 13. Juveniles and Corrections	284
Chapter 14. Legal Issues in Corrections	306
Chapter 15. Correctional Programming and Treatment	326
Chapter 16. The Death Penalty	346
Chapter 17. Corrections in the 21st Century	372
Answers to Test Your Knowledge	389
Glossary	G-1
References	R-1
Index	I-1
About the Authors	

DETAILED CONTENTS

Preface xiii

Chapter 1. The Philosophical and Ideological Underpinnings of Corrections xviii

- Test Your Knowledge 1
- Learning Objectives 1

Introduction: What Is Corrections? 2

From Arrest to Punishment 3

The Theoretical Underpinnings of Corrections 4

A Short History of Correctional Punishment 4

The Emergence of the Classical School 5

The Emergence of Positivism: Should Punishment Fit the Offender or the Offense? 6

The Function of Punishment 7

Perspective From a Practitioner: Robert Bayer, Prison Warden 8

The Philosophical Assumptions Behind Justifications for Punishment 9

The Major Punishment Justifications 10

Retribution 10

Deterrence 11

Incapacitation 13

Selective Incapacitation 14

Rehabilitation 15

Reintegration 15

Comparative Corrections: The Four Legal Traditions and Why They Are Useful to Know 16

The Due Process and Crime Control Models and Cultural Comparisons 16

In Focus 1.1. Is the United States Hard or Soft on Crime? 18

- Summary 20
- Key Terms 20
- Discussion Questions 21

Chapter 2. Correctional History: Ancient Times to Colonial Jails 22

- Test Your Knowledge 23
- Learning Objectives 23

Introduction: The Evolving Practice of Corrections 24

Themes: Truths That Underlie Correctional Practice 25

Early Punishments in Westernized Countries 26

The First Jails 26

Comparative Corrections: The Tower of London 28

Galley Slavery 29

Poverty and Bridewells, Debtors' Prisons, and Houses of Correction 29

Transportation 30

Enlightenment—Paradigm Shift 31

Spock Falls in Love 31

John Howard 32

In Focus 2.1. Modern-Day John Howard: Ken Kerle 33

Bentham and Beccaria 34

William Penn 35

Colonial Jails and Prisons 36

Perspective From a Practitioner: Marianne Fisher-Giorlando, Board Member of Louisiana State Penitentiary Museum Foundation 37

Comparative Corrections: Early European and British Prisons 38

- Summary 40
- Key Terms 40
- Discussion Questions 40

Chapter 3. Correctional History: The 17th to 20th Centuries 42

- Test Your Knowledge 43
- Learning Objectives 43

Introduction: The Grand Reforms 44

Early Modern Prisons and the Pennsylvania and New York Models 44

The Walnut Street Jail 44

Newgate Prison—New York City 45

*The Pennsylvania Prison Model
(Separate System) 46*

Comparative Corrections: The Pentonville Prison 47

*Auburn, Sing Sing, and the New York
(Congregate) System 49*

In Focus 3.1. Charles Dickens's Impressions of the Eastern Pennsylvania Prison and the Silent System in 1842 50

Early Prisons and Jails Not Reformed 52

*Prisons: "The Shame of Another
Generation" 53*

In Focus 3.2. Lewis E. Lawes's Observations About Sing Sing History and Discipline 53

*Dorothea Dix's Evaluation of Prisons and
Jails 54*

The Failure of Reform Is Noted 55

The Renewed Promise of Reform 56

The 1870 American Prison Congress 56

Elmira 57

The Creation of Probation and Parole 57

Southern and Northern Prisons, the Contract and Lease Systems, and Industrial Prisons 58

Industrial Prisons 58

Correctional Institutions or Warehouse Prisons? 58

Themes That Prevail in Correctional History 60

Perspective From a Practitioner: Pat Mahoney, Alcatraz Corrections Officer 61

- Summary 62
- Key Terms 62
- Discussion Questions 62

Chapter 4. Ethics and Corrections 64

- Test Your Knowledge 65
- Learning Objectives 65

Introduction: To Do the Right Thing! 66

*Defining Ethics: What Is Right (and
Wrong)? 66*

In Focus 4.1. A Lack of Ethics: Florida's YSI Private Prisons for Youths 67

Ethical Foundation for Professional Practice 68

Ethical Formalism 68

In Focus 4.2. Mentally Ill Inmate Dies at Rikers 69

Utilitarianism 70

Religious Perspective 70

Natural Law 70

Ethics of Virtue 71

Ethics of Care 71

Egoism 71

Why People Behave Unethically 71

Official Deviance 71

Noble Cause Corruption 72

Subculture 73

In Focus 4.3. Subcultural Values of Probation and Parole Officers 74

How to Prevent Unethical Behavior and Promote Ethical Work Practices 74

In Focus 4.4. The Abuse of Solitary Confinement in Florida 76

War on Drugs = Attack on Ethics? 77

- Summary 79
- Key Terms 79
- Discussion Questions 79

Chapter 5. Sentencing: The Application of Punishment 80

- Test Your Knowledge 81
- Learning Objectives 81

Introduction: What Is Sentencing? 82

Types of Sentences: Indeterminate, Determinate, and Mandatory 83

Habitual Offender Statutes 84

Other Types of Sentences: Shock, Split, and Non-custodial Sentences 85

Victim Impact Statements 86

Sentencing by Civil Commitment for Sex Offenders 86

Problem-Solving Courts 87

Drug Courts 88

Sentencing Disparity, Legitimate and Illegitimate 91

Structuring Sentencing: The Presentence Investigation Report 94

PSI Controversies 94

In Focus 5.1. Modern-Day John Howard—Dr. Ken Kerle Example of a PSI 95

Structured Sentencing: Sentencing Guidelines 97

Perspective From a Practitioner: Laura Kiehl, Presentence Investigator 101

In Focus 5.2. Policy Statement of the American Correctional Association Regarding Sentencing 102

The Future of Sentencing Guidelines 103

Comparative Corrections: Sentencing in Comparison Countries 104

- Summary 105
- Key Terms 105
- Discussion Questions 106

Chapter 6. Jails and Detention Centers 108

- Test Your Knowledge 109
- Learning Objectives 109

Introduction: The Community Institution 110

Jail Types 111

Jail Inmates and Their Processing 111

Trends in Jail Populations 112

Overcrowding 112

Gender, Juveniles, Race, and Ethnicity 113

Perspective From a Practitioner: Brian Cole, County Corrections Director 114

The Poor and the Mentally Ill 117

In Focus 6.1. High Schools in Jails 118

Medical Problems 120

Elderly Inmates 121

Female Inmates 121

Juvenile Inmates 121

Rights to Medical Care 121

Substance Abuse and Jails 122

Suicides, Gangs, and Sexual Violence in Jails 123

Suicides 123

Gangs 125

Sexual Violence 125

Innovations in Jails 127

New-Generation or Podular Direct-Supervision Jails 127

Community Jails 128

In Focus 6.2. Prison Rape Elimination Act Controversy 129

Coequal Staffing 130

Reentry Programs for Jails 131

- Summary 132
- Key Terms 132
- Discussion Questions 132

Chapter 7. Community Corrections: Probation and Intermediary Sanctions 134

- Test Your Knowledge 135
- Learning Objectives 135

Introduction: The Origins of Probation 136

Number and Demographic Characteristics of Offenders on Probation 137

Why Do We Need Community Corrections? 138

The Probation Officer Role 140

Models of Probation Supervision 140

Probation Violations and Graduated Sanctions 142

Perspective From a Practitioner: Brian Fallock, Probation and Parole Officer 143

Probation Officer Stress 144

Engaging the Community to Prevent Recidivism 146

Comparative Corrections: Community Corrections in the United Kingdom 147

Intermediate Sanctions 148

Work Release 148

Intensive Supervision Probation 149

Shock Probation/Parole and Boot Camps 149

Victim–Offender Reconciliation Programs 151

In Focus 7.1. Community Supervision and Recidivism 152

- Summary 153
- Key Terms 154
- Discussion Questions 154

Chapter 8. Prisons and the Correctional Client 156

- Test Your Knowledge 157
- Learning Objectives 157

Introduction: The State of Prisons 158

Prison Organizations 159

Classification 159

Prison Types and Levels 159

In Focus 8.1. False Imprisonment as a Result of Wage Slavery 161

In Focus 8.2. Alcatraz: The United States' First Supermax 164

Prison Value? 165

Attributes of the Prison That Shape the Experience 166

Total Institutions 166

Pains of Imprisonment 167

In Focus 8.3. Prison Debate Project 169

The Prison Subculture 169

Roles for Inmates and Staff 170

In Focus 8.4. Inmate Roles Identified by Sykes (1958) and Sykes and Messinger (1960) 171

Gangs and the Prison Subculture 171

Violence 173

Why Prisons Are Violent 173

The Amount of Violence 174

Sexual Assaults 174

Rioting 175

Solutions to Prison Violence 177

In Focus 8.5. The Story of Wilbert Rideau 179

Social Support 180

Special Populations 181

Elderly Inmates 181

Physically Ill Inmates 181

Mentally Ill Inmates 182

Gay, Lesbian, Bisexual, Transgender, and Intersex Inmates 182

Perspective From a Practitioner: Michael Klein, Former Correctional Officer 183

Perspective From a Former Inmate: Rex E. Hammond, Former Inmate and Doctoral Student 184

- Summary 186
- Key Terms 186
- Discussion Questions 186

Chapter 9. The Corrections Experience for Staff 188

- Test Your Knowledge 189
- Learning Objectives 189

Introduction: What Is a Profession? 190

The State of the Work in Correctional Institutions and Programs 191

Growth in Staff and Clients or Inmates 191

Perceived Benefits of Correctional Work 194

Collective Bargaining 195

Why Require More Education and Training? 196

Stanford Prison Experiment 196

Abu Ghraib 196

Ethics 198

In Focus 9.1. ACA Code of Ethics 199

Correctional Work Is Little Understood 200

Individual-Level Factors That Affect the Correctional Workplace 200

Race or Ethnicity and Gender 200

Perspective From a Practitioner: Michael Klein, Former Correctional Officer 201

Age 202

Prior Military Service 203

Correctional Roles 203

The Role Defined 203

Street-Level Bureaucrats 204

Hack Versus Human Service 205

The Subculture and Socialization 205

Subcultural Values 206

Staff Interactions With Inmates 206

The Defects of Total Power 206

In Focus 9.2. Staff Stress, Burnout, and Turnover 207

The Correctional Role When Supervising Children 208

Abuse of Power 208

Use of Force 209

- Summary 209
- Key Terms 210
- Discussion Questions 210

Chapter 10. Community Corrections: Parole and Prisoner Reentry 212

- Test Your Knowledge 213
- Learning Objectives 213

Introduction: What Is Parole? 214

Brief History of Parole 214

The Modern Parole System 216

Parolee Recidivism 217

In Focus 10.1. Example of Parole Conditions 218

Parole Boards 220

What Goes In Must Come Out: Prisoner Reentry Into the Community 222

The Impact of Imprisonment and Reentry on Communities 223

What Makes for a Successful Reentry? 224

Determining Parole "Success" 225

Perspective From a Practitioner: Lisa Growette Bostaph, Parole Commissioner 226

Parole Violations and Graduated Sanctions 227

Halfway Houses 227

House Arrest, Electronic Monitoring, and Global Positioning Systems 230

Comparative Corrections: Chinese Community Corrections 231

Concluding Remarks on Reentry and Recidivism 233

- Summary 233
- Key Terms 234
- Discussion Questions 234

Chapter 11. Women and Corrections 236

- Test Your Knowledge 237
- Learning Objectives 237

Introduction 238

History and Growth 238

The History of Women in Prisons 238

Race in Early Prisons 239

Discipline in Women's Prisons 240

Hiring of Female Matrons 240

Houses of Refuge for Girls and Boys 240

Growth in Numbers of Women and Girls 242

Women and Girls in Corrections Today 242

Female Correctional Clients 242

Feminism 243

Meeting Female Inmates' Needs and Providing Programming 245

In Focus 11.1. Orange Is the New Black (or Not) 247

Abuse 248

Adjustment, Misconduct, and Pseudofamilies 250

In Focus 11.2. Gender Pathways to Community Corrections, Jails, and Prisons 251

Female Correctional Officers 251

Female Staff 251

Perspective From a Practitioner: Kay Heinrich, Correctional Program Manager 252

Overcoming Employment Obstacles 253

Current Status 254

- Summary 257
- Key Terms 258
- Discussion Questions 258

Chapter 12. Minorities and Corrections 260

- Test Your Knowledge 261
- Learning Objectives 261

Introduction 262

Defining Race, Ethnicity, Disparity, and Discrimination 263

Race 263

Ethnicity 263

Disparity and Discrimination 263

A Legacy of Racism 264

African Americans 264

In Focus 12.1. Hate Groups in the United States 264

In Focus 12.2. The Scottsboro Case 265

In Focus 12.3. Fourteen Examples of Racism in the Criminal Justice System 266

Native Americans/American Indians 268

Hispanics/Latinos/Latinas 269

In Focus 12.4. Documented Lynchings of Mexican Americans 269

Asian Americans 270

The Connection Between Class and Race/Ethnicity 272

Minorities: Policies and Practices That Have Resulted in Increased Incarceration 273

The Drug War: The New Jim Crow? 273

Crack Versus Powder Cocaine 275

In Focus 12.5. Harsh Justice and the Scott Sisters 276

Racial Profiling and Driving While Black or Brown 277

Evidence-Driven Public Health Prosecution Used to Reduce Minority Group Correctional Populations 278

Minorities: Experiencing Incarceration 278

Victimization by Race and Ethnicity 279

Probation or Prison? 279

Perspective From a Practitioner: James Watkins, Classification Counselor 280

Minorities Working in Corrections 282

- Summary 282
- Key Terms 283
- Discussion Questions 283

Chapter 13. Juveniles and Corrections 284

- Test Your Knowledge 285
- Learning Objectives 285

Introduction: Delinquency and Status Offending 286

The Extent of Delinquency 286

The Juvenile Brain and Juvenile Behavior 287

History and Philosophy of Juvenile Justice 289

Childhood in the United States 290

The Beginning of the Juvenile Courts 291

Processing Juvenile Offenders 292

Juveniles Waived to Criminal Court 292

Extending Due Process to Juveniles 293

Juveniles and the Death Penalty 295

**Perspective From a Practitioner: Skyler Brouwer,
Juvenile Probation Officer 296**

Juvenile Community Corrections 297

Intensive Probation 299

**Residential and Institutional Juvenile
Corrections 300**

**Comparative Corrections: Juvenile Justice
Philosophies 302**

- Summary 302
- Key Terms 303
- Discussion Questions 303

Chapter 14. Legal Issues in Corrections 306

- Test Your Knowledge 307
- Learning Objectives 307

Introduction 308

The Rule of Law 308

The Hands-Off Period: 1866–1963 309

**The Prisoners' Rights Period:
1964–1978 310**

The Deference Period: 1997–Present 311

**Perspective From a Practitioner: Barbara Beldot,
Attorney 312**

First Amendment 313

Fourth Amendment 314

**In Focus 14.1. Any Complaints This
Morning? 315**

Eighth Amendment 316

Fourteenth Amendment 318

**The Civil Commitment of
Sex Offenders 318**

Curtailing Prisoner Petitions 319

Legal Issues in Probation and Parole 321

- Summary 322
- Key Terms 323
- Discussion Questions 323

Chapter 15. Correctional Programming and Treatment 326

- Test Your Knowledge 327
- Learning Objectives 327

**Introduction: The Rise and Fall (and Rise Again)
of Rehabilitation 328**

**In Focus 15.1. The American Correctional
Association's 1870 Declaration on Treatment 329**

The Shift From "Nothing Works" to "What Works?" 329

Evidence-Based Practices 330

Cognitive-Behavioral Therapy 332

Substance Abuse Programming 334

*Drug Treatment With Swift Consequences
for Failure: Hawaii's HOPE Program 335*

**Perspective From a Practitioner: Margaret Jackson,
Drug Treatment Specialist 336**

Therapeutic Communities 337

Pharmacological Treatment 338

Anger Management 339

Sex Offenders and Their Treatment 340

Mentally Ill Offenders 341

Comparative Corrections: Offender Treatment 344

- Summary 344
- Key Terms 345
- Discussion Questions 345

Chapter 16. The Death Penalty 346

- Test Your Knowledge 347
- Learning Objectives 347

**Introduction: The Death Penalty and
Public Opinion 348**

**Methods of Execution Used in
the United States 349**

Legal Challenges to the Death Penalty 351

Does the Death Penalty Deter? 352

Financial Costs and the Death Penalty 355

Racial Disparity in Death Sentences 356

The Issue of Victim's Race 357

**In Focus 16.1. Karl Marx on Capital
Punishment and Brutalization 358**

Women and the Death Penalty 360

The Chivalry Hypothesis 360

The Evil Woman Hypothesis 361

The Death Penalty and Mental Disability 361

The Death Penalty and Mental Illness 362

**Comparative Corrections: The Death Penalty in China
and Saudi Arabia 364**

The Innocence Revolution 365

Some Concerns With DNA Technology 366

**Perspective From a Practitioner: Ginny Hatch,
Investigator for Idaho Innocence Project 367**

Some Concerns With Neuroimaging Technology 368

- Summary 368
- Key Terms 369
- Discussion Questions 369

Chapter 17. Corrections in the 21st Century 372

- Test Your Knowledge 373
- Learning Objectives 373

Introduction: Learning From the Past So That We Have Hope for the Future 374

Punitive Policies Yield Overuse of Corrections 374

Decarceration 377

Explanations for the Decline in the Use of Corrections 378

The Recession, Cost Cutting, and the Decreased Use of Corrections 379

Implications of Decarceration and the Need for a Plan of Action 380

Penal Help Versus Penal Harm 381

Professionalization and Innovation 381

Corrections Is a Relationship Business 382

Green Prisons and Jails 383

Privatization 383

The Profit Motive in Corrections 383

Idaho's Own Private Prison 384

In Focus 17.1. Privatization and the Walnut Grove Correctional Facility 385

The Extent of Privatization and Its Problems 386

Concluding Thoughts 387

- Summary 387
- Key Terms 388
- Discussion Questions 388

Answers to Test Your Knowledge 389

Glossary G-1

References R-1

Index I-1

About the Authors

PREFACE

There are plenty of excellent corrections books available for use, but we think that this particular book fills a niche for professors and students in that it is comprehensive and relatively inexpensive. These twin ideas became our goals and guided our development and writing of this textbook. We wanted to cover the most interesting and compelling information currently available on all aspects of corrections while also keeping the page limit within reason and the book published as a paperback. We hope that readers will find this work both informative and accessible.

The information in this textbook is what you might expect from major texts. However, beyond the facts, figures, and concepts commonly contained in textbooks, this book also showcases the history and research on a number of aspects of corrections. We chose, despite the relative brevity of the book, to include two chapters on history, rather than one chapter, because a historical perspective provides the framework for all that follows in corrections as in so many other social, political, and cultural initiatives and enterprises. We also believe that the presentation of research findings from academic, government, and journalistic sources will provide the context for understanding policy decisions and their consequences, both past and present.

Other special features of the book, which are designed to develop perspective, include brief comparative corrections sections that highlight what other countries are doing in terms of correctional operation. This glimpse of corrections internationally is meant to provide readers with another way of viewing correctional practice in the United States while also giving them some insight into how alternative practices might work. In many of the chapters, we also include practitioner perspective sections on the topics in those chapters; doing so allows us to learn how policy and theory get translated into practice in the field. There are also ethical dilemmas presented in each chapter that challenge students to think critically about the material and to acknowledge the complexities of the correction system.

This book can serve as a primary text for an undergraduate course in corrections or as a supplemental text for a graduate course. The areas covered are comparable to those in other major texts, with the exceptions noted above regarding the inclusion of enhanced history, research, and the comparative perspectives. Undergraduates, we hope, will find this book informative and enlivening. Graduate students might use it as an introduction, overview, and backdrop for other, more specialized books or articles. Discussion questions appear at the end of each chapter and might be used by both types of students to spur thought about, and critique of, corrections.

●●● STRUCTURE OF THE BOOK

The structure of the book is much like that found in other textbooks on corrections. We begin with an overview of corrections and some key concepts. We include two chapters on history, although many textbooks have only one chapter. We then follow the flow of the corrections system, from sentencing, to jails, to probation, to prisons. We include a chapter on ethics in corrections, as the fourth chapter, to prepare students to review operations and institutional and individual actions through that kind of lens. We then stop and examine the correctional experience for staff after examining the experience for inmates and probationers in the preceding chapters. We finish the system

description with a discussion of parole and reentry. In the three chapters that follow, we address the reality for women, minorities, and juveniles in corrections. We then focus attention on legal issues, capital punishment, and correctional programming and treatment. We end with a look to the future of corrections and what developments we might expect during the coming years.

● ● ● NEW TO THIS EDITION

In this third edition of *Corrections: The Essentials*, we updated the coverage of ethical considerations, special populations, and the history of corrections to provide students with the context for understanding policy decisions and their consequences, both past and present. We also provided more coverage of disparities in sentencing and drug courts as a means of encouraging students to think critically about U.S. drug policies and the effectiveness of those policies. In fact, all chapters have been thoroughly updated to reflect the most current data, facts, figures, and research available, thus helping students understand the world of corrections today.

● ● ● DIGITAL RESOURCES

Take a look at the interactive eBook for premium videos and SAGE journal articles.

Learn more at edge.sagepub.com/stohressentials3e.



Career videos: Available only in the Interactive eBook, interviews with criminal justice professionals discussing their day-to-day work and current issues related to technology, diversity, and cutting-edge developments in their field are available.



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



SAGE news clips: Available only in the Interactive eBook, these curated Associated Press news clips showcase real-life examples to reinforce concepts.



Journal articles: Articles from highly ranked SAGE journals such as *Crime & Delinquency*, *Theoretical Criminology*, *Criminal Justice Review*, and more can be accessed.



<http://edge.sagepub.com/stohressentials3e>

SAGE edge offers a robust online environment featuring an impressive array of tools and resources for review, study, and further exploration, keeping both instructors and students on the cutting edge of teaching and learning. SAGE edge content is open access and available on demand. Learning and teaching have never been easier!

SAGE edge for Students provides a personalized approach to help students accomplish their coursework goals in an easy-to-use learning environment.

- Mobile-friendly **eFlashcards** strengthen understanding of key terms and concepts.
- Mobile-friendly practice **quizzes** allow for independent assessment by

- students of their mastery of course material.
- **Learning objectives** reinforce the most important material.
- Carefully selected chapter-by-chapter **video and multimedia content** that enhances classroom-based explorations of key topics.
- **EXCLUSIVE!** Access to certain full-text **SAGE journal articles** has been carefully selected for each chapter. Each article supports and expands on the concepts presented in the chapter. This feature also provides questions to focus and guide your interpretation.

SAGE edge for Instructors supports teaching by making it easy to integrate quality content and create a rich learning environment for students.

- **Test banks** that provide a diverse range of pre-written options as well as the opportunity to edit any question and/or insert personalized questions to effectively assess the students' progress and understanding.
- Editable, chapter-specific **PowerPoint® slides** offer complete flexibility for creating a multimedia presentation for the course.
- **Lecture Notes** summarize key concepts on a chapter-by-chapter basis to help with preparation for lectures and class discussions.
- **Class Activities** for individual or group projects provide lively and stimulating ideas for use in and out of class to reinforce active learning.
- A set of all the **graphics from the text**, including all of the maps, tables, and figures, in PowerPoint, .pdf, and .jpg formats for class presentations.
- Carefully selected chapter-by-chapter **video and multimedia content** that enhances classroom-based explorations of key topics.

●●● ACKNOWLEDGMENTS

We would like to thank executive editor Jessica Miller. We have worked with her on this edition and other corrections texts after Jerry Westby's retirement and have appreciated her support and patience with us as we updated the book for this third edition. We also would like to thank our development editor, Laura Kirkhuff, who helped to shepherd the book through the revision process. Our copy editor, D. J. Peck, ensured that the sentences were clean, the spelling correct, and every missing reference was found.

We would also like to acknowledge each other. We were colleagues at Boise State University for many years, the last several (before Mary moved to Missouri State in 2011 and then to Washington State in 2013) with offices right next door to each other. We each have 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 on by social institutions and their workers and by individuals willing to change.

We are also grateful to the reviewers 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, second, and third editions:

REVIEWERS OF THE THIRD EDITION

Samantha L. Carlo, Miami Dade College; Michael S. Caudy, University of Texas at San Antonio; Erin Graybill Ellis, Texas Woman's University; Barbara Peat, University of Texas at El Paso; Jo Ann M. Short, Northern Virginia Community College; and Karin J. Storm, Brandman University.

REVIEWERS OF THE SECOND EDITION

Andy Bain, University of Mount Union (Ohio); Nikki Banks, Grand Rapids Community College; Lisa M. Carter, Florida Southern College; Meghan E. Hollis, Michigan State University; Jennifer L. Lanterman, University of Nevada, Reno; Joe Marinello, James Kane Record, California University of Pennsylvania; Joel L. Carr, Texas A&M University-Kingsville; and Caryn E. Saxon, Missouri State University.

REVIEWERS OF THE FIRST EDITION

Deborah Baskin, California State University, Los Angeles; Laura Hansen, University of Massachusetts, Boston; George Costanza, University of South Alabama; Jessie Krienert, Illinois State University; Sheree Morgan, St. Cloud State University; Mario Paparozzi, University of North Carolina, Pembroke; Marie Griffin, Arizona State University; and Robert Homant, University of Detroit.

1

The Philosophical and Ideological Underpinnings of Corrections

© iStockphoto.com/Gatsi



TEST YOUR KNOWLEDGE

Test your current knowledge of corrections by answering the following questions as true or false. Check your answers on page 389 after reading the chapter.

1. Whatever we choose to call it, corrections is about punishment, and punishment is considered to require philosophical justification.
2. The strongest deterrent against crime is the severity of punishment.
3. The fundamental principle of American justice is that 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 punished they tend to be deterred from crime.
8. The United States incarcerates people at a higher rate than any other country in the world.

LEARNING OBJECTIVES

- Describe the function of corrections and its philosophical underpinnings
- Explain the function and justification of punishment
- Differentiate between the classical and positivist schools in terms of their respective stances on punishment
- Define and describe retribution, deterrence, incapacitation, rehabilitation, and reintegration
- Explain the distinction between the crime control and due process models
- Understand the usefulness of a comparative perspective

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" (Hawthorne, 1850/2003, p. 1). Hawthorne was 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 given that 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 at 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 wished 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. Thus, corrections is 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 think that the correctional process should be called the “punishment process” (Logan & Gaes, 1993) because the correctional enterprise is primarily about punishment—which, as Hawthorne reminded us, is an unfortunate but necessary part of life. Earlier scholars were more accurate in calling what we now call corrections **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 during 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. For instance, in 1963 the violent crime rate was 168 per 100,000, and in 2012 it was 387, an increase of more than 130% (Federal Bureau of Investigation [FBI], 2013). In 1963 there were just under 300,000 people in prison in the United States, and in 2012 there were just under 1,700,000, an increase of 466% (“Trends in U.S. Corrections,” 2013). Much of this increase has been driven by the war on drugs.

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 or convicted of criminal offenses.

Penology: Study of the processes and institutions involved in the punishment and prevention of crime.

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 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 nearly everyone to know many people under correctional supervision. For instance, nearly one in three African American men in their 20s is 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 were approximately \$52 billion, with 88% going for prisons and 12% going for probation and parole (Laudano, 2013).

© iStockphoto.com/Waynert



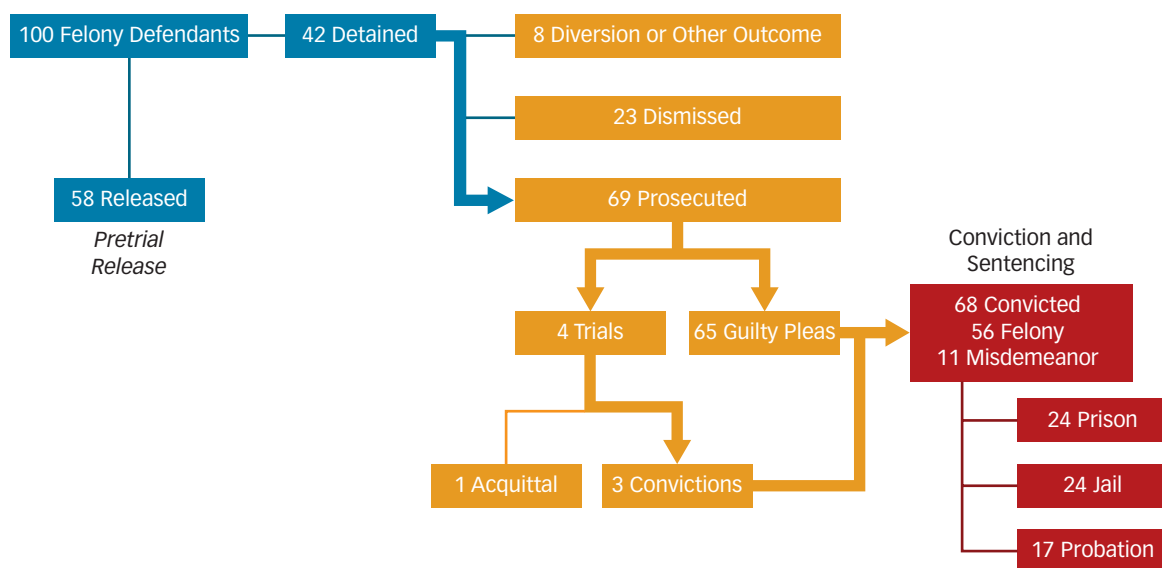
PHOTO 1.1: A multilevel cellblock of a large American prison.

FROM ARREST TO PUNISHMENT

Not everyone who commits a crime is punished, of course. 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

FIGURE 1.1

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



Source: Cohen and Kyckelhahn (2010).

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 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 was imposed in exchange for a guilty plea.

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 human nature is socially constructed; that is, 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 species that bias our learning in certain directions. Some of these traits, such as aggressiveness and low empathy, are useful in pursuing criminal goals (Quinsey, 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 as well as to develop an orientation toward wanting to do good. Criminologist Gwynn Nettler said it most colorfully on behalf of this position: “If we grow up ‘naturally,’ without cultivation, like weeds, we grow up like weeds—rank” (Nettler, 1984, p. 313). In other words, we learn to be bad or good. 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.

A SHORT HISTORY OF CORRECTIONAL PUNISHMENT

Legal **punishment** may be defined as the state-authorized imposition of some form of deprivation—of liberty, resources, or even life—on a person justly convicted of a violation of the criminal law. The earliest known written code of punishment was the ancient Babylonian Code of Hammurabi, created circa 1780 B.C. (the origin of “an eye for an eye, a tooth for a tooth”). These laws codified the natural inclination of individuals harmed by others to seek revenge, but they also recognized that personal revenge must be restrained if society is not to be fractured by a cycle of tit-for-tat blood feuds. Blood feuds (revenge killings) perpetuate the injustice that “righteous” revenge was supposed to diminish. The law seeks to contain uncontrolled vengeance by substituting controlled vengeance in the form of third-party (state) punishment.

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

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

THE EMERGENCE OF THE CLASSICAL SCHOOL

Enlightenment ideas eventually led to a school of penology that has come to be known as the **Classical School**. The leader of this school, 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*) (Beccaria, 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” needed to be countered by the threat of punishment, which needed 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).

Swiftess: “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.

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

Classical School: School of penology/criminology that was a nonempirical mode of inquiry similar to the philosophy practiced by the classical Greek philosophers—one based on logic and reason.



Wikimedia Commons, Public Domain

PHOTO 1.2: Italian nobleman and professor of law Cesare Bonesana, Marchese of 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*) (Beccaria, 1764/1963).

But such punishment should be as certain and 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 is 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).

Another prominent figure was British lawyer and philosopher *Jeremy Bentham* (1748–1832). His major work, *Principles of Morals and Legislation* (Bentham, 1789/1948), is essentially a philosophy of social control based on the **principle of utility**, which posits that human actions should be judged as 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" (Bentham, 1789/1948, 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.

THE EMERGENCE OF POSITIVISM: SHOULD PUNISHMENT FIT THE OFFENDER OR THE OFFENSE?

Principle of utility:

Positing that human action should be judged as 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 pain 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.

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*), while **positivists** took on 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 are alone responsible for their actions.

Early positivism went to extremes to espouse 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

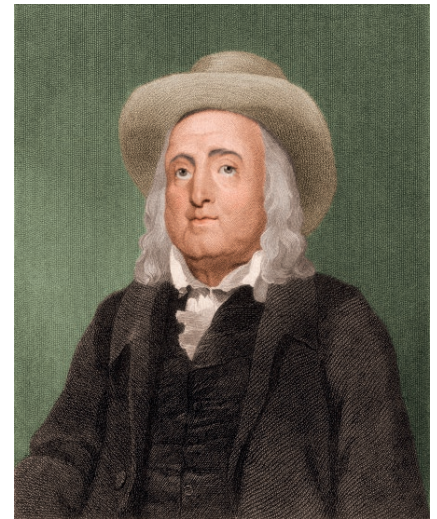
actions have causes that may be out of the actor's control, the concept of legal responsibility was called into question. For instance, Italian lawyer *Raffaele Garofalo* (1852–1934) believed that because human action is often evoked by circumstances beyond human control (e.g., temperament, extreme poverty, intelligence, 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 what he called the *extreme criminal* (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 might call victimless crimes today). 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 on both the seriousness of the crime and the history and characteristics of the criminal (thereby 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 pre-civilized 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 given that 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 animals, 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.



Stock Montage/Getty Images

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

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.

PERSPECTIVE FROM A PRACTITIONER



Robert Bayer, Prison Warden

Position: 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; Master of Public Administration and PhD in English/Public Administration, University of Nevada, Reno

The primary duties and responsibilities of a prison warden are:

First, being responsible for one facility in a much larger network of facilities. To some degree, a warden can be considered as the mayor of a city and the director/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.

The qualities/characteristics that are most helpful for one in this career include:

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, hard-working, 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 members want 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, a typical day for a practitioner in this career would 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 members 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 hours 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 hours) 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 work on 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).

My advice to someone either wishing to study or now studying criminal justice to become a practitioner in this career field would be:

Become a “triple threat” in the field, which includes a solid understanding of operations, programs, and budget; know where you are going; study leadership and become

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.

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, rehabilitation, and incapacitation. 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 humans are hedonistic, rational, and possessors of free will.

Hedonism is a doctrine maintaining 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 that 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 are 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 purposely to gain desired ends. Thus, rationality is 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 and rationality are combined in the concept of the **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. If the balance of consequences of a contemplated action is thought to enhance pleasure and/or minimize pain, then individuals will pursue it; if it is not, then 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.

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

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

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 free will 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 criminals the dignity of possessing agency so that they purposely weigh options before deciding on a course of action, then they “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 duty to punish those who harm it, because punishment involves the state depriving individuals of life or liberty, it has always 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 last century: retribution, deterrence, incapacitation, rehabilitation, and reintegration. We start with the most ancient—retribution.

RETRIBUTION

Retribution is a “just deserts” model demanding that punishment match 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 U.S. 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:

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.

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

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

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, 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 than rehabilitation among ex-inmates. Recidivism refers only to crimes committed after release from prison and does not apply to crimes committed while incarcerated. Nationwide in the United States, about 33% of released prisoners recidivate within the first 6 months after release, 44% within the first year, 54% by the second year, and 67.5% by the third year (M. Robinson, 2005, p. 222), and these are just the ones who are caught. Among those who do desist, a number of them cite the fear of additional punishment as a big factor (R. 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 2015, 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 (M. 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

Deterrence:

A philosophy of punishment aimed at the prevention of crime by the threat of punishment.

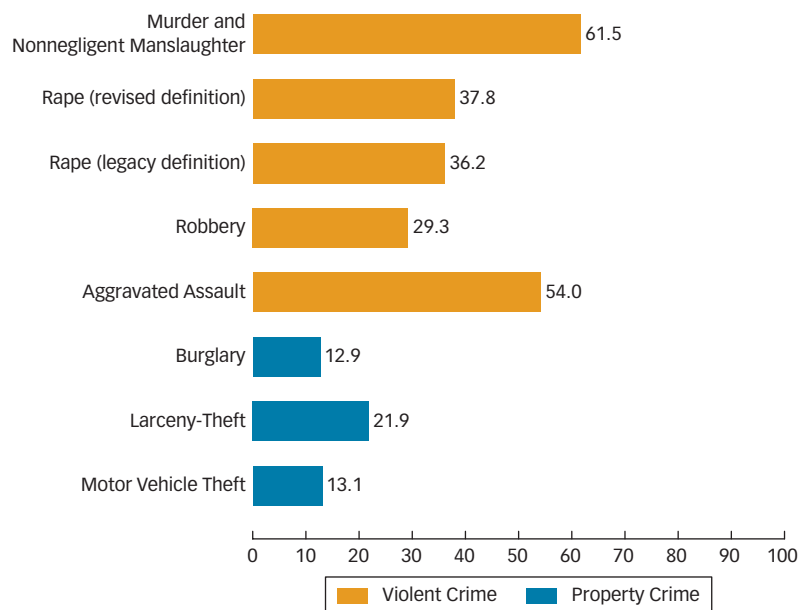
Specific deterrence:

The supposed effect of punishment on the future behavior of persons who experience the punishment.

Recidivism: When an ex-offender commits further crimes.

FIGURE 1.2

Percentage of Crimes Cleared by Arrest or Exceptional Means* in 2015



Source: Federal Bureau of Investigation (2016).

*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).

likelihood of conviction (a measure of certainty) and crime rates, but they find 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 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; thus, it is 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. Becker (1997) dismissed the idea that criminals lack the knowledge and foresight to take punitive probabilities into consideration when deciding whether or not to continue committing crimes. He stated, “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, 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: “Law abiding people habitually ignore criminal opportunities. Law breakers habitually discount the risk of punishment. Neither calculates” (van den Haag, 2003). 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; we do not all 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, different temperaments, and different 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 R. 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). Paternoster (2010) cited other studies demonstrating that 20%

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

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

to 30% of the crime drop from its peak during 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 whether 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 need to be one or the other given that 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. Its rationale is summarized in J. 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* concept of social defense. For Ferri (1897/1917), 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 rehabilitate but rather 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. 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 $135,000 \times 5$, or 675,000, robberies on top of the 580,000 actual robberies reported to the police in 1995. Further evidence was provided by a “natural experiment” when the Italian government released one-third (about 22,000) of Italy’s prison inmates with 3 years or less left to serve on their sentences in 2006. This pardon resulted from budgetary concerns and prison overcrowding concerns. Buonanno and Raphael’s (2013) analysis of released convicts found that the incapacitation effect was between 14 and 18 crimes committed per year (only theft and robbery arrests were included in the analysis) after release. The estimated saving of the collective pardon was 245 million euros (about \$316 million), and the estimated crime cost was between 466 million and 2.2 billion euros (between about \$606 million and \$2.9 billion).

The incapacitation issue has produced some lively debates about the relative costs and benefits to society of incarceration. Attempts to estimate these have proved to be difficult and controversial. In 1987, economist Edwin Zedlewski used national crime data to calculate that the typical offender commits 187 crimes a year and that the typical crime exacts \$2,300 in property losses or in physical injuries and human suffering. Multiplying these figures, Zedlewski (1987) estimated that the typical imprisoned felon is

Incapacitation:

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



PHOTO 1.4: An inmate waits in his cell.

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 (1987) findings were 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 benefit/cost ratio to 1.38 to 1 from 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 cost to victims as well as other important considerations (S. Walker, 2001).

SELECTIVE INCAPACITATION

This 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 may also include other types of incorrigible offenders. Birth cohort studies (a *cohort* is a group composed of subjects having something in common 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, in the 1945 birth cohort studies by Wolfgang, Figlio, and Sellin (1972), 6.3% of the 9,945 cohort members committed 71% of the murders, 73% of the rapes, and 82% of the robberies attributed to members of the cohort.

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 7 additional murders), 218 arrests for serious property crimes, and 863 other arrests among them (DeLisi, 2005, p. 165).

What would be the dollar costs saved had these 39 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 as \$130,035 (McCollister, French, & Fang, 2010). The 7 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. Of course, the biggest loss of all is the grief suffered by the survivors of murder victims.

Selective incapacitation:

A punishment strategy that largely reserves prison for a distinct group of offenders composed primarily of violent repeat offenders.

None of these authors was arguing for an increase in gross 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 that 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.

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; rather, they are made 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. Whereas deterrence and incapacitation are mainly justified on classical grounds, rehabilitation is primarily a positivist concept. The rehabilitative goal is based on a medical model that used to view criminal behavior as a moral sickness requiring treatment. Today this model views criminality in terms of “faulty thinking” and views criminals as in need of “programming” rather than “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 Chapter 5, devoted to correctional treatment and rehabilitation.

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, focus of perspective, and image of offenders) of the five punishment philosophies or perspectives discussed. The commonality that they all share to various extents is, of course, the prevention of crime.

Rehabilitation:

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

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.

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 folks who require and will respond to concrete help

COMPARATIVE CORRECTIONS

The Four Legal Traditions and Why They Are Useful to Know

All chapters in this book have a box providing a comparative perspective on topics discussed from correctional systems in other countries. There are many advantages to studying a familiar subject from a different vantage point. The great philosopher Aristotle once said that if you only know your own culture, you don't know your own culture. How true that is—we always need something different to compare with something familiar in order to really understand the familiar. After all, we cannot know what “up,” “tall,” “no,” and “true” mean without knowing what “down,” “short,” “yes,” and “false” mean. Of course, other countries' correctional systems have many things in common with ours—they all have jails and prisons—but their goals and practices may depart significantly from ours. Knowledge of systems other than our own provides us with a new understanding and appreciation of our own and will better equip us to identify both the strengths and weaknesses of the American system. Our aim is to examine a representative country of each of the four main families of law in the world today: common, civil or code, Islamic, and socialist.

The countries we primarily (but not exclusively) focus on are the United Kingdom (England and Wales; the other two

countries of the United Kingdom—Scotland and Northern Ireland—have separate correctional systems), France, China, and Saudi Arabia. These countries were chosen because each one best illustrates its respective family of law. The common law originated many centuries ago in England—the country with which the United States shares the heritage of law, language, and culture—and has slowly evolved over the centuries. We focus on France to examine the civil law tradition because modern civil (or code) law began under Napoleon in 1804. China was chosen because it is the largest socialist legal system in the world. Finally, Saudi Arabia was chosen to illustrate the Islamic legal tradition because the Koran (Islam's holy book) functions as the Saudi Arabian constitution (Walsh & Hemmens, 2014). The civil, socialist, and Islamic legal traditions are all code systems, which are systems that come “ready made” rather than systems that evolved slowly as did the common law. Judges in code countries cannot “make law” by precedent as they can in common law countries. Rather, they are supposed to act uniformly in accordance with the criminal code, and consequently there is less judicial oversight of the correctional system in those countries.

● ● ● THE DUE PROCESS AND CRIME CONTROL MODELS AND CULTURAL COMPARISONS

A useful way of grounding our discussion of the different correctional systems in different countries is to see how they stack up in terms of Packer's (1964/1997) crime control versus due process models of criminal justice. Packer proposed two “ideal-type” models (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 placing an emphasis on justice for those who offend against it.

The first model is the **crime control model**. This model emphasizes community protection from criminals and stresses that civil liberties can have real meaning only in a safe, well-ordered society. To achieve such a society, it is necessary to suppress criminal

Crime control model:

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

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 screened out may be considered “probably guilty.” Packer (1964/1997) did not want us to think of a presumption of guilt as the conceptual opposite of the presumption of innocence; 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** 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 a suspect 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 ensure that evidence is obtained in a legal manner. 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.

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 instance the community has been unjustly victimized. It is clear that both models have their faults as well as their strengths. The 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 law-abiding folks, the criminal justice model followed by the police and the courts in a given nation is also the model followed by its correctional system.

Figure 1.3 places the countries to be primarily discussed on a due process–crime control continuum according to the degree to which they emphasize one model or the other. Terrill (2013) noted that the United States, the United Kingdom, and France “vacillate between the two models, but they are more sensitive to due process issues, [while China and Saudi Arabia] favor the crime control model and often show little regard for the

Due process model:

A model of law that stresses the accused’s rights more than the rights of the community.

IN FOCUS 1.1

Is the United States Hard or Soft on Crime?

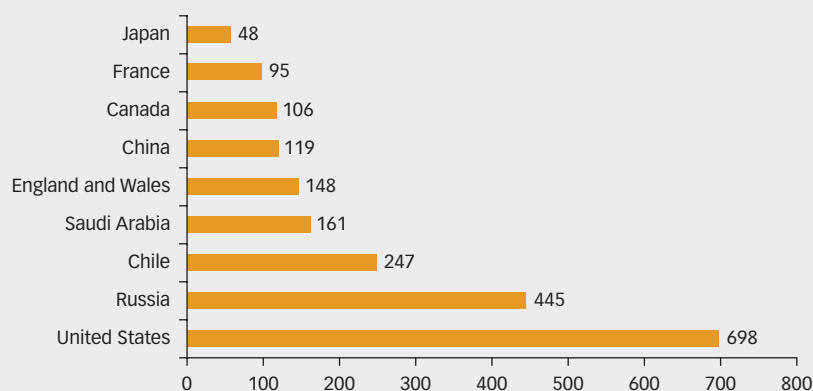
A frequently heard criticism of the criminal justice system in the United States to which we can apply the comparative perspective is that the United States is soft on crime. If we define hardness or softness on crime in terms of incarceration rates, the accompanying figure indicating incarceration rates per 100,000 for our comparison countries and certain other countries in 2015 conveys the opposite message. The retention of the death penalty by the United States, which has been eschewed by other “civilized” nations, also belies the contention that we are soft on crime. Only Russia, with a rate of 445 per 100,000, comes close to the American incarceration rate, and the closest any Western nations come to the U.S. rate are England and Wales, with a rate nearly five times lower. Comparisons among nations on this question are typically made using only Western democratic nations, leading to the conclusion that the United States is hard on crime. But if we are to make valid comparisons, we cannot cherry-pick our countries to arrive at a conclusion that fits our ideology.

If we define hardness/softness in terms of alternative punishments or the conditions of confinement, then the United States is soft on crime relative to many countries—although a better term would be *more humane*. For instance, although China is shown as having an incarceration rate more than six times lower than the U.S. rate, it is the world’s leader in the proportion of its criminals

it executes each year. Furthermore, punishment in some fundamentalist Islamic countries, such as Saudi Arabia and Afghanistan under the Taliban, has often included barbaric corporal punishments for offenses considered relatively minor in the West. Drinkers of alcohol may get 60 lashes, robbers may have an alternate side hand and foot amputated, and women accused of “wifely disobedience” may be subjected to corporal punishment (Walsh & Hemmens, 2014).

Another problem is that crime rates are calculated per 100,000 *citizens*, which is not the same as the rate per 100,000 *criminals*. If the United States has more criminals than these other countries, then perhaps the greater incarceration rate is justified. No one knows how many criminals any country has, but we can get a rough estimate from a country’s crime rates—that is, the incarceration rate per 1,000 recorded crimes. For instance, the U.S. homicide rate is about five times that of England and Wales, which roughly matches the five times greater incarceration rate in the United States. However, when it comes to property crimes, Americans are about in the middle of the pack of nations in terms of the probability of being victimized, yet burglars serve an average of 16.2 months in prison in the United States, compared with 6.8 months in Britain and 5.3 months in Canada (Mauer, 2005). On this measure, the United States is

2015 Incarceration Rates per 100,000 Population for Comparative Countries and Selected Other Countries



Source: Adapted from figures provided by Walmsley (2016).

more on the crime control end of the due process–crime control continuum than France or England and Wales. Does this mean that the United States is too hard, or Britain and Canada are too soft, on crime? From a crime control perspective, these nations can be seen as excessively soft on crime at the expense of rising crime rates, although crime has fallen in those countries since the 1990s just as it has in the United States (Baumer & Wolff, 2014).

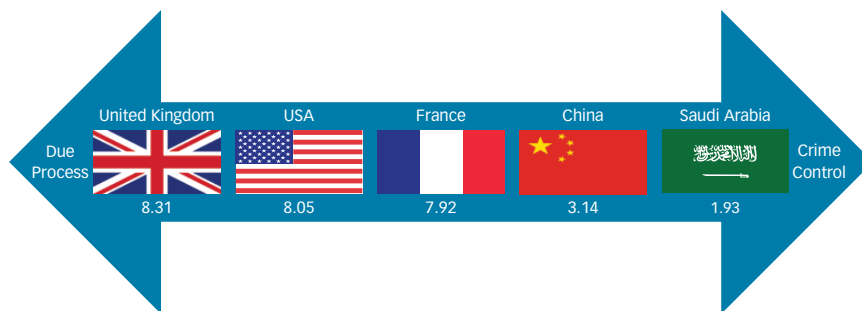
So is the United States softer or harder on crime than other

countries? The answer obviously depends on how we conceptualize and measure the concepts of hardness and softness and with which countries we compare ourselves. Compared with countries that share our democratic ideals, we are tough on crime (and because of our retention of the death penalty, some would even say barbaric); compared with countries most distant from Anglo-American ideals, we are soft on crime, and for that we should be grateful.

All societies develop rules for ensuring peace, order, predictability, and cultural survival and provide sanctions for those who do not follow them. These rules and the sanctions suffered by those accused and convicted of breaking them may differ significantly from society to society because they reflect a particular culture's history and its current social, political, and economic practices, philosophies, and ideals. This chapter briefly introduces you to correctional practices used in four societies other than the United States.

FIGURE 1.3

Situating Comparative Countries on the Due Process–Crime Control Continuum and on Their Democracy Scores (numbers under flags)



Source: Based on data from the Economist Intelligence Unit (2014).

due process model” (p. 15). Overall, the United States is closer to a pure due process model than our comparative nations, and Saudi Arabia is the closest to a pure crime control model.

What are the criteria we used for placing our four countries on this continuum? One way of attempting to measure the degree to which a society has a due process versus crime control model is the degree to which it respects the ideals of democracy. The numbers beneath the respective flags represent each country’s “democracy score” on a scale of 1 to 10 according to the Economist Intelligence Unit (2014). This score is based on 63 different factors, such as public political participation and respect for civil rights, and their scores support our ordering of countries in the figure. We should note that on a world scale, neither the United States nor Saudi Arabia occupies the top or bottom place. Norway had the highest democracy score (9.80), and North Korea had the lowest (1.08), in 2012. The French system probably represents the “right” balance between the rights of the accused (due process) and the protection of society (crime control); others may disagree with this assessment.

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. Over 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 who we incarcerate.
- Rehabilitation centers around efforts to socialize offenders in prosocial directions while they are under correctional supervision so that 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 offer 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 on crime (more prison time for more people) or softness on crime (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

Classical School, 5

Contrast effect, 12

Corrections, 2

Crime control model, 16

Deterrence, 11

Due process model, 17

Enlightenment, 5

General deterrence, 12

Hedonism, 9

Hedonistic calculus, 9

Human agency, 10

Incapacitation, 13

Penology, 2

Positivists, 6

Principle of utility, 6

Punishment, 4

Rationality, 9

Recidivism, 11

Rehabilitation, 15

Reintegration, 15

Restitutive justice, 7

Retribution, 10

Retributive justice, 7

Selective incapacitation, 14

Specific deterrence, 11

DISCUSSION QUESTIONS

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 poses 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/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 acceptable to you also? Why or why not?










Review → Practice → Improve

Sharpen your skills with SAGE edge at edge.sagepub.com/stohressentials3e.

SAGE edge offers a robust online environment featuring an impressive array of free tools and resources for review, study, and further exploration, keeping both instructors and students on the cutting edge of teaching and learning.

FOR FURTHER EXPLORATION AND APPLICATION, TAKE A LOOK AT THE INTERACTIVE EBOOK FOR THESE PREMIUM RESOURCES:

-  **Career Video 1.1** Jail Administrator
-  **Feature Video 1.1** Offense
-  **Feature Video 1.2** Deterrence Theory
-  **SAGE News Clip 1.1** U.S. Prison Acting
-  **SAGE News Clip 1.2** U.S. WH Snowden
-  **Journal Article 1.1** From Incapacitation to Criminal Careers
-  **Journal Article 1.2** Do More Police Lead to More Crime Deterrence?

2

Correctional History

Ancient Times to Colonial Jails

© iStockphoto.com/littlery



TEST YOUR KNOWLEDGE

Test your current knowledge of correctional history by answering the following questions (some as true or false). Check your answers on page 389 after reading the chapter.

1. Certain themes appear over and over in the history of corrections. (True or false?)
2. The kind of punishment one received for wronging others in ancient civilizations often depended on the wealth and status of the offended party and of the offender. (True or false?)
3. Which of the following was the first type of correctional facility: prisons, bridewells, debtors' prisons, or jails?
4. Galley slavery ended when the technological innovation of sails was employed to propel ships. (True or false?)
5. Transportation was a means of filling the colonies of Great Britain with wealthy merchants and businesspeople. (True or false?)
6. What was John Howard of 18th-century England best known for?
7. The concept of the "panopticon," devised by Jeremy Bentham, included the ingenious combination of labor and money to improve conditions of prisons. (True or false?)
8. William Penn's Great Law was based on Quaker principles and deemphasized the use of corporal and capital punishment. (True or false?)

LEARNING OBJECTIVES

- Understand the origins of corrections
- Appreciate that what we do now in corrections is often grounded in historical experience (or a repeat of it)
- Know the different types of corrections used historically
- Identify some of the key Enlightenment thinkers, their ideas, and how they changed corrections
- Describe colonial jails and early prisons in America and how they operated
- Understand historical innovations in corrections (e.g., the panopticon) and how they worked out

THREE MEN WERE FIRST PLACED IN THE MISSOURI STATE PRISON FOR HELPING SLAVES ESCAPE VIA THE UNDERGROUND RAILROAD (1847)

George Thompson

A multitude attended us to the prison; and the office was crowded while we were loosed from our chain, stripped, examined, recorded, one side of our hair cut close—arrayed in shining colors, and another chain put upon each of us. . . . We were treated very ungentlemanly (by the Warden and Overseer)—charged with lying when

we told the simple truth, in the honesty of our souls; and then threatened with punishment—denounced as worse than highway robbers, cut-throats, or wholesale murderers, and as meaner than chicken thieves—threatened with having our tongues wired—and other things too vile and wicked to repeat.

THE RULES

1. You must not speak to any prisoner, out of your cell, nor to each other in your cell.
2. You must not look at any visitor—if it is your own brother, if you do, I'll flog you.
3. You must always take off your cap, when speaking to an officer, or when an officer speaks to you.

4. You must call no convict "Mr."

Frequently afterwards, we were checked for applying Mr. to a convict. [This is the real-world narrative of what happened when three men were first placed in the Missouri State Prison for helping slaves escape via the Underground Railroad. This account of how they were treated that first night is by G. Thompson (1847, pp. 132–133), from his book *Prison Life and Reflections*.]

●●● INTRODUCTION: THE EVOLVING PRACTICE OF CORRECTIONS

The history of corrections is riddled with the best of intentions and the worst of abuses. Correctional practices and facilities (e.g., galley slavery, transportation, jails and prisons, community corrections) were created, in part, to remove the “riffraff”—both poor and criminal—from urban streets or at least to control and shape them. Prisons and community corrections were also created to avoid the use of more violent or coercive responses to such folks. In this chapter and the next, the focus is on exploring the history of the Western world’s correctional operations and then American corrections, specifically, and the recurring themes that run through this history and define it.

It is somewhat ironic that one of the best early analyses of themes and practices in American prisons and jails was completed by two French visitors to the United States—*Gustave de Beaumont* and *Alexis de Tocqueville*—who experienced the virtual birthing of prisons themselves while the country was in its relative infancy in 1831 (Beaumont & Tocqueville, 1833/1964). Tocqueville, as a 26-year-old French magistrate, brought along his friend

Beaumont supposedly to study America’s newly minted prisons for 9 months. They ended up also observing the workings of its law, its government and political system, and its race relations, among other things (Damrosch, 2010; Tocqueville & Goldhammer, 1835/2004). The irony is that, as outsiders and social critics, Beaumont and Tocqueville could so clearly see what others, namely Americans who were thought to have “invented prisons” and who worked in them, were blind to. In this chapter, we try to “see” what those early French visitors observed about Western, and specifically American, correctional operations.

Few visitors to the United States, or residents for that matter, explored or commented on the early correctional experience for women (*Dorothea Dix* was a notable exception, and there will be more about her and her observations about the state of corrections in 1845 in Chapter 3). Yet some of the themes that run through the practice of corrections apply to women and girls as well, but with a twist. Women have always represented only a small fraction of the correctional population in both prisons and jails, and the history of their experience with incarceration, as shaped by societal expectations of and for them, can be wholly different from that of men. As literal outsiders to what was the “norm” for inmates of prisons and jails, and as a group whose rights and abilities were legally and socially controlled on the outside more than that of men and boys, women’s experience in corrections history is worth studying and will be more fully explored in Chapter 11.



PHOTO 2.1: In 1831, Alexis de Tocqueville, as a 26-year-old French magistrate, brought along his friend, Gustave de Beaumont, to study America’s newly minted prisons.

What is clear from the Western history of corrections is that what was *intended* when prisons, jails, and reformatories were conceived and *how they actually operated*, then and now, were and are often two very different things (Rothman, 1980). As social critics ourselves, we can use the history of corrections to identify a series of “themes” that run through correctional practice even up to today. Such themes will reinforce the tried, yet true, maxim, “Those who cannot remember the past are condemned to repeat it” (Santayana, 1905, p. 284). Too often we do not know or understand our history of corrections, and as a consequence we are forever repeating it.

●●● THEMES: TRUTHS THAT UNDERLIE CORRECTIONAL PRACTICE

There are some themes that have been almost eerily constant, *vis-à-vis* corrections, over the decades and even centuries. Some of these themes are obvious, such as the influence that money, or the lack thereof, exerts over virtually all correctional policy decisions. Political sentiments and the desire to make changes also have had tremendous influence over the shape of corrections in the past. Other themes are less apparent, but no less potent, in their effect on correctional operation. For instance, there appears to be an evolving sense of compassion or humanity that, although not always clear in the short term, in practice, or in policy or statute, has underpinned reform-based decisions about corrections and its operation, at least in theory, throughout its history in the United States. The creation of the prison, with a philosophy of penitence (hence the *penitentiary*), was a grand reform itself, and as such it represented, in theory at least, a major improvement over the brutality of punishment that characterized early English and European law and practice (Orland, 1995).

Some social critics do note, however, that the prison and the expanded use of other such social institutions also served as a “social control” mechanism to remove punishment from public view while making the state appear to be more just (Foucault, 1979; Welch, 2004). This is not to argue that such grand reforms in their idealistic form, such as prisons, were not primarily constructed out of the need to control but rather that there were philanthropic, religious, and other forces aligned that also influenced their creation and design, if not so much their eventual and practical operation (Hirsch, 1992). Also of note, the social control function becomes most apparent when less powerful populations such as the poor, the minority, the young, and the female are involved, as will be discussed in the following chapters.

Other than the influence of money and politics and a sense of greater compassion/humanity in correctional operation, the following themes are also apparent in corrections history: the question of how to use labor and technology (which are hard to decouple from monetary considerations); a decided religious influence; the intersection of class, race, age, and gender in shaping one’s experience in corrections; architecture as it is intermingled with supervision; methods of control; overcrowding; and finally the fact that good intentions do not always translate into effective practice. Although far from exhaustive, this list contains some of the most salient issues that become apparent streams of influence as one reviews the history of corrections. As was discussed in Chapter 1, some of the larger philosophical (and political) issues, such as conceptions of right and wrong and whether it is best to engage in retribution or rehabilitation (or both, or neither, along with incapacitation, deterrence, and reintegration) using correctional sanctions, are also clearly associated with correctional change and operation.

● ● ● EARLY PUNISHMENTS IN WESTERNIZED COUNTRIES

Humans, throughout recorded history, have devised ingenious ways to punish their kind for real or perceived transgressions. Among tribal groups and in more developed civilizations, such punishment might include whipping, branding, mutilation, drowning, suffocation, execution, and banishment (which in remote areas was tantamount to a death sentence). The extent of the punishment often depended on the wealth and status of the offended party and the offender. Those accused or found guilty who were richer were often allowed to make amends by recompensing the victim or his or her family, while those who were poorer and of lesser status were likely to suffer some sort of bodily punishment. Whatever the approach, and for whatever the reason, some sort of punishment was often called for as a means of balancing the scales of justice, whether to appease a god or gods or, later, Lady Justice.

As D. Garland (1990) recounted, “Ancient societies and ‘primitive’ social groups often invested the penal process with a wholly religious meaning, so that punishment was understood as a necessary sacrifice to an aggrieved deity” (p. 203). As urbanization took hold, however, and transgressions were less tolerated among an increasingly diverse people, the ancients and their governing bodies were more likely to designate a structure as appropriate for holding people. For the most part, such buildings or other means of confining people were often used to ensure that the accused was held over for trial or sometimes just for punishment (Orland, 1975, p. 13). Fines, mutilation, drawing and quartering, and capital punishment were popular ways to handle those accused or convicted of crimes (Harris, 1973; Orland, 1975). Orland (1975) described practices in England:

Although mutilation ultimately disappeared from English law, the brutality of Anglo-Saxon criminal punishment continued unabated into the eighteenth century. In the thirteenth century, offenders were commonly broken on the wheel for treason. A 1530 act authorized poisoners to be boiled alive. Burning was the penalty for high treason and heresy, as well as for murder of a husband by a wife or of a master by a servant. Unlike the punishment of boiling, that of burning remained lawful in England until 1790. In practice, and as a kindness, women were strangled before they were burned. The right hand was taken off for aggravated murder. Ordinary hangings were frequent, and drawing and quartering, where the hanged offender was publicly disemboweled and his still-beating heart held up to a cheering multitude, was not uncommon.

In addition, until the mid-nineteenth century, English law permitted a variety of “summary” punishments. Both men and women (the latter until 1817) were flagellated in public for minor offenses. For more serious misdemeanors there was the pillory, which was not abolished in England until 1837. With his face protruding through its beams and his hands through the holes, the offender was helpless. Sometimes he was nailed through the ears to the framework of the pillory with the hair of his head and beard shaved; occasionally he was branded. Thereafter, some offenders were carried back to prison to endure additional tortures. (p. 15)

THE FIRST JAILS

Jails were the first type of correctional facility to develop, and in some form they have existed for several thousand years. Whether pits, dungeons, or caves were used

or the detained people were tied to a tree, ancient people all had ways of holding people until a judgment was made or implemented (Irwin, 1985; Mattick, 1974; Zupan, 1991).

According to Johnston (2009), punishment is referenced in a work written in 2000 B.C. and edited by Confucius. The Old Testament of the Bible refers to the use of imprisonment from 2040 to 164 B.C. in Egypt as well as in ancient Assyria and Babylon. Ancient Greece and Rome reserved harsher physical punishments for slaves, whereas citizens might be subjected to fines, exile, imprisonment, or death or some combination of these (Harris, 1973). As Harris (1973) described,

Ancient Roman society was a slave system. To punish wrongdoers, *capitis diminutio maxima*—the forfeiture of citizenship—was used. Criminals became penal slaves. Doomed men were sent to hard labor in the Carrara marble quarries, metal mines, and sulphur pits. The most common punishment was whipping—and in the case of free men, it was accompanied by the shaving of the head, for the shorn head was the mark of the slave. (p. 14)

Early versions of *gaols* (or jails) and prisons existed in English castle keeps and dungeons and Catholic monasteries. These prisons and jails (not always distinguishable in form or function) held political adversaries and common folks, either as a way to punish them or as a way to incapacitate them or hold them over for judgment by a secular or religious authority. Sometimes people might be held as a means of extorting a fine (Johnston, 2009). The use of these early forms of jail was reportedly widespread in England even a thousand years ago. By the 9th century, Alfred the Great had legally mandated that imprisonment might be used to punish (Irwin, 1985). King Henry II in 1166 required that where no gaol existed in English counties, one should be built (Zupan, 1991) “in walled towns and royal castles,” but only for the purpose of holding the accused for trial (Orland, 1975, pp. 15–16). In Elizabethan England, innkeepers made a profit by using their facilities as gaols.

Such imprisonment in these or other gaols was paid for by the prisoners or through their work. Those who were wealthy could pay for more comfortable accommodations while incarcerated. “When the Marquis de Sade was confined in the Bastille, he brought his own furnishings and paintings, his library, a live-in valet, and two dogs. His wife brought him gourmet food” (Johnston, 2009, p. 12S). The Catholic Church maintained its own jails and prison-like facilities across the European continent, administered by bishops or other church officials.

In fact, the Catholic Church’s influence on the development of Westernized corrections was intense during the Middle Ages (medieval Europe from the 5th to 15th centuries) and might be felt even today. As a means of shoring up its power base vis-à-vis feudal and medieval lords and kings, the Catholic Church maintained not only its own forms of prisons and jails but also its own ecclesiastical courts (D. Garland, 1990). Although proscribed from drawing blood, except during the Inquisition, the Catholic Church often turned its charges over to secular authorities for physical punishment. But while prisoners were in its care and in its monasteries for punishment, the Catholic Church required “solitude, reduced diet, and reflection, sometimes for extended periods of time” (Johnston, 2009, p. 14S). Centuries later, the first prisons in the United States and Europe, then heavily influenced by Quakers and Protestant denominations in the states, copied the Catholics’ monastic emphasis on silence, placing prisoners in small austere rooms where one’s penitence might be reflected on—practices and architecture that, to some extent, still resonate today.

COMPARATIVE CORRECTIONS

The Tower of London

© Mary Stohr



PHOTO 2.2: The infamous White Tower inside the Tower of London complex.

There are few international iconic prison images as prominent as that of the Tower of London, located on the River Thames in the center of London, England. Begun after 1066 when William the Conqueror captured the city of Saxon London in the Norman invasion, the centerpiece of this castle complex, the White Tower, was completed in roughly 1080 (Impey & Parnell, 2011). The Tower of London today has a number of buildings, including the White Tower, along with several towers and gates on its double walls. At one time it included a moat, which has since been filled in. Sited in Old London, today it is surrounded by modern buildings and near ancient structures alike. Over the centuries it has been added to by various kings and used to defend the city, as a royal palace and a symbol of power for royalty, as a mint for royal coinage, as an armory, as a treasury for the royal jewels, as a conservator of the King's Court's records, as a kind of zoo for exotic animals gifted to the royalty, as a tourist attraction for centuries, and (for our purposes) as a prison and place of execution.

The Tower of London's role as a prison began early in 1100, lasting until the 1820s, and then was a prison again during World War II (Impey & Parnell, 2011). For the most part, there were no separate prison quarters for its mostly

exalted prisoners other than a shed constructed in 1687 for prison soldiers. Therefore, political and other prisoners were accommodated in whatever quarters were available. For instance, Anne Boleyn, who was Henry the VIII's second wife, was married at the Tower, executed there 3 years later in 1526, and buried there. The young Princess Elizabeth (Anne's daughter) was also held at the Tower by her half-sister Queen Mary I until Elizabeth attained the throne as Elizabeth I. Sir Thomas More (1478–1535) spent a year imprisoned in the Tower before his execution and Sir Walter Raleigh (1554–1618) spent 15 years imprisoned in the Tower, both allegedly for treason. Notably, William Penn, discussed in other parts of this book, was imprisoned at the Tower for 7 months in 1668–1669 for pamphleteering about his Quaker religion. Their incarceration in the Tower, as well as many others of rank and wealth, was not as hard as it would have been if they had been sent to public prisons of the time—and even sometimes included luxurious accommodations and servants. Torture did happen at the Tower (the use of the rack and manacles, etc.), but its use was relatively rare because it needed to be sanctioned by a special council. Executions occurred inside the walls of the Tower of London, but most occurred on nearby Tower Hill or elsewhere near the complex.



© Mary Stohr

PHOTO 2.3: Side view of the Tower of London as it appears today.

GALLEY SLAVERY

Another form of “corrections,” **galley slavery**, was used sparingly by the ancient Greeks and Romans but more regularly during the late Middle Ages in Europe and England, and it stayed in use until roughly the 1700s. Under Elizabeth I in 1602, a sentence to galley servitude was decreed as an alternative to a death sentence (Orland, 1975). Pope Pius VI (who was pope from 1775 to 1799) also reportedly employed it (Johnston, 2009, p. 12S). Galley slavery was used as a sentence for crimes as a means of removing the poor from the streets. It also served the purpose of providing the requisite labor—rowing—needed to propel ships for seafaring nations interested in engagement in trade and warfare. For instance, galley slaves were reportedly used by Christopher Columbus (Johnston, 2009). The “slaves” were required to row the boat until they collapsed from exhaustion, hunger, or disease; often they sat in their own excrement (Welch, 2004). Under Pope Pius, galley slaves were entitled to bread each day, and their sentences ranged from 3 years to life (Johnston, 2009). Although we do not have detailed records of how such a sentence was carried out, and we can be sure that its implementation varied to some degree from vessel to vessel, the reports that do exist indicate that galley slavery was essentially a sentence of death. Galley slavery ended when the labor was no longer needed on ships because of the technological development of sails.

POVERTY AND BRIDEWELLS, DEBTORS’ PRISONS, AND HOUSES OF CORRECTION

However, galley slavery could absorb only a small number of the poor that began to congregate in towns and cities during the Middle Ages. Feudalism, and the order it imposed, was disintegrating; wars (particularly the Crusades prosecuted by the Catholic Church) and intermittent plagues did claim thousands of lives, but populations were stabilizing and increasing and there were not enough jobs, housing, or food for the poor. As the cities became more urbanized, and as more and more poor people congregated in them, governmental entities responded in an increasingly severe fashion to the poor’s demands for resources (Irwin, 1985). These responses were manifested in the harsh repression of dissent, the increased use of death sentences and other punishments as deterrence and spectacle, the increased use of jailing to guarantee the appearance of the accused at trial, the development of poorhouses or bridewells and debtors’ prisons, and the use of “transportation,” discussed below (Foucault, 1979; Irwin, 1985).

In 18th-century England, the number of crimes subject to capital punishment increased to as many as 225 for offenses such as rioting over wages or food (the Riot Act) and “blacking” one’s face so as to be camouflaged when killing deer in the king’s or a lord’s forest (the Black Act) (Ignatieff, 1978, p. 16). New laws regarding forgery resulted in two-thirds of those convicted of it being executed. Rather than impose the most serious sentence for many of these crimes, however, judges would often opt for the use of transportation, whipping, or branding. Juries would also balk at imposing the death sentence for a relatively minor offense and so would sometimes value property that was stolen at less than it was worth to ensure a lesser sentence for the defendant. In the latter part of the 1700s, a sentence of imprisonment might be used in lieu of, or in addition to, these other punishments.

Bridewells, or buildings constructed to hold and whip “beggars, prostitutes, and nightwalkers” (Orland, 1975, p. 16) and later as places of detention, filled this need; their use began in London in 1553 (Kerle, 2003). The name came from the first such institution, which was developed at Bishop Ridley’s place at St. Bridget’s Well; all subsequent similar facilities were known as bridewells.

Bridewells were also workhouses, used as leverage to extract fines or repayment of debts or the labor to replace them. Such facilities did not separate people by gender, age, or

Galley slavery:

A sentence forcing convicted criminals to work as rowers on a ship.

Bridewells:

Workhouses constructed to hold and whip or otherwise punish “beggars, prostitutes, and nightwalkers” and later as places of detention.

ETHICAL ISSUE



What Would You Do?

You are the manager of a bridewell in 17th-century England. Most of the people you house are desperately poor and displaced people (people from the countryside who have moved into the towns with few skills or connections to help them). Your income derives from charging the inmates of your bridewell for their keep, but many of them do not have the funds to pay you, so you have some difficulty in paying your own bills and are in danger of defaulting on debts and ending up in debtors' prison yourself. Yet if you do not feed and clothe them, some of your charges are likely to die of starvation, exposure, or typhus (gaol fever). What do you do? What do you think John Howard would recommend that you do?

criminal/noncriminal status, their inmates were not fed and clothed properly, and sanitary conditions were not maintained. As a consequence of these circumstances, bridewells were dangerous and diseased places where if one could not pay a "fee" for food, clothing, or release, the inmate, and possibly his or her family, might be doomed (Orland, 1975; Pugh, 1968). The use of bridewells spread throughout Europe and the British colonies because it provided a means of removing the poor and displaced from the streets while also making a profit (Kerle, 2003). Such a profit was made by the wardens, keepers, and gaolers—the administrators of bridewells, houses of correction (each county in England was authorized to build one in 1609), and gaols, who, although unpaid, lobbied for the job because it was so lucrative. They made money by extracting it from the inmates. If an inmate could not pay, he or she might be left to starve in filth or be tortured or murdered by the keeper for nonpayment (Orland, 1975, p. 17).

Notably, being sent to "debtors' prison" was something that still occurred even after the American Revolution. In fact, James Wilson, a signer of the Constitution (and reportedly one of its main architects) and a Supreme Court justice, was imprisoned in such a place twice while serving on the Court. He had speculated on land to the west and lost a fortune in the process (Davis, 2008).

TRANSPORTATION

Yet another means of "corrections" that was in use by Europeans for roughly 350 years, from the founding of the Virginia Colony in 1607, was **transportation** (Feeley, 1991). Also used to rid cities and towns of the chronically poor or the criminally inclined, transportation, as with bridewells and gaols, involved a form of privatized corrections, whereby those sentenced to transportation were sold to a ship's captain. He would in turn sell their labor as indentured servants, usually to do agricultural work, to colonials in America (Maryland, Virginia, and Georgia were partially populated through this method) and to white settlers in Australia. Transportation ended in the American colonies with the Revolutionary War, but it was practiced by France to populate Devil's Island in French Guiana until 1953 (Welch, 2004). Welch (2004) noted that transportation was a very popular sanction in Europe:

Russia made use of Siberia; Spain deported prisoners to Hispaniola; Portugal exiled convicts to North Africa, Brazil and Cape Verde; Italy herded inmates to Sicily; Denmark relied on Greenland as a penal colony; Holland shipped convicts to the Dutch East Indies. (p. 29)

In America, transportation provided needed labor to colonies desperate for it. "Following a 1718 law in England, all felons with sentences of 3 years or more were eligible for transport to America. Some were given a choice between hanging or transport" (Johnston, 2009, p. 135).

It is believed that about 50,000 convicts were deposited on American shores from English gaols. If they survived their servitude, which ranged from 1 to 5 years, they became free and might be given tools or even land to make their way in the New World (Orland, 1975, p. 18). Once the American Revolution started, such prisoners from England were transported to Australia, and when settlers there protested the number of entering offenders, the prisoners were sent to penal colonies in that country as well as in New Zealand and Gibraltar (Johnston, 2009).

Transportation:

A privatized sentence exiling convicts and transporting them to a penal colony. The sentenced were sold to ship captains, and in turn their labor as indentured servants was sold to colonials by the same captain.

One of the most well-documented such penal colonies was **Norfolk Island**, about 1,000 miles off the Australian coast. Established in 1788 as a place designated for prisoners from England and Australia, it was regarded as a brutal and violent island prison where inmates were poorly fed, clothed, and housed and were mistreated by staff and their fellow inmates (Morris, 2002). Morris, in his semi-fictional account of *Alexander Maconochie's* effort to reform Norfolk, noted that Maconochie, an ex-naval captain, asked to be transferred to Norfolk, usually an undesirable placement, so that he could put into practice some ideas he had about prison reform. He served as the warden there from 1840 to 1844. What was true in this story was that “in four years, Maconochie transformed what was one of the most brutal convict settlements in history into a controlled, stable, and productive environment that achieved such success that upon release his prisoners came to be called ‘Maconochie’s Gentlemen’” (Morris, 2002). Maconochie’s ideas included the belief that inmates should be rewarded for good behavior through a system of marks, which could lead to privileges and early release; that they should be treated with respect; and that they should be adequately fed and housed. Such revolutionary ideas, for their time, elicited alarm from Maconochie’s superiors, and he was removed from his position after only 4 years. His ideas, however, were adopted decades later when the concepts of “good time” and parole were developed in Ireland and the United States. In addition, his ideas about adequately feeding and clothing inmates were held in common by reformers who came before him, such as John Howard and William Penn, and those who came after him, such as Dorothea Dix.

●●● ENLIGHTENMENT—PARADIGM SHIFT

SPOCK FALLS IN LOVE

As noted in Chapter 1, the Enlightenment period, lasting roughly from the 17th century through the 18th century in England, Europe, and America, spelled major changes in thought about crime and corrections. But then, it was a time of paradigmatic shifts in many aspects of the Western experience as societies became more secular and open. Becoming a more secular culture meant that there was more focus on humans on Earth, rather than in the afterlife, and as a consequence the arts, sciences, and philosophy flourished. In such periods of human history, creativity manifests itself in innovations in all areas of experience; the orthodoxy in thought and practice is often challenged and sometimes overthrown in favor of new ideas and even radical ways of doing things (Davis, 2008). Whether in the sciences with Englishman Isaac Newton (1643–1727), philosophy and rationality with the Englishwoman Anne Viscountess Conway (1631–1679), feminist philosophy with the Englishwoman Damaris Cudworth Masham (1659–1708), philosophy and history with the Scotsman David Hume (1711–1776), literature and philosophy with the Frenchman Voltaire (1694–1778), literature and philosophy with the Briton Mary Wollstonecraft (1759–1797), or the Founding Fathers of the United States (e.g., Samuel Adams, James Madison, Benjamin Franklin, Thomas Paine, Thomas Jefferson), new ideas and beliefs were proposed and explored in every sphere of the intellectual enterprise (Duran, 1996; Frankel, 1996). Certainly, the writings of *John Locke* (1632–1704) and his conception of liberty and human rights provided the philosophical underpinnings for the Declaration of Independence as penned by Thomas Jefferson. As a result of the Enlightenment, the French Revolution beginning in 1789 was also about rejecting one form of government—the absolute monarchy—for something that was to be more democratic and liberty based. (Notably, the French path to

Norfolk Island: An English penal colony, about 1,000 miles off the Australian coast, regarded as a brutal and violent island prison where inmates were poorly fed, clothed, and housed and were mistreated by staff and their fellow inmates.

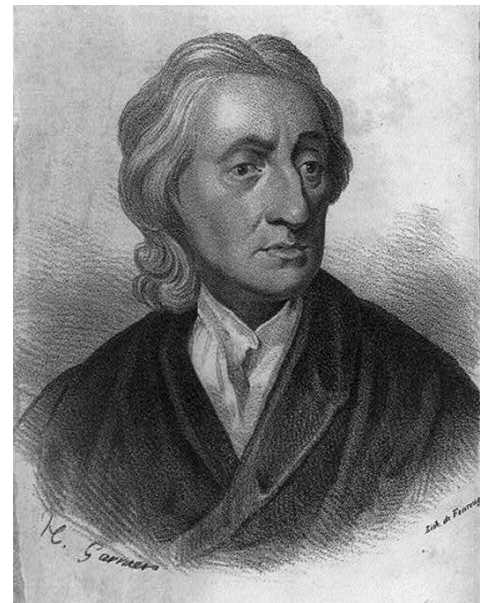


PHOTO 2.4: Philosopher John Locke’s writings and his conception of liberty and human rights helped to provide the philosophical underpinnings for the Declaration of Independence.

ETHICAL ISSUE



What Would You Do?

You are a Tory loyalist (to the Crown of England—King George III) in the Connecticut colony in 1777. Because you are an outspoken critic of the American Revolution, you are imprisoned in the Newgate Prison in Simsbury, Connecticut, for the duration of the war. Provisions in the prison are horrid, with minimal food and dark, dank conditions in the mine shaft; however, the people guarding you are decent and do what they can to make you and the other prisoners comfortable. Because of the distraction of the war, however, security is not as tight as it might be and you see an opportunity to escape. What do you think you would do? If you escaped, would you try to fight on the side of England? What will be the consequences for your family (you have a wife and four children at home) and your family business (you are tea manufacturers) should you do this? What do you think John Locke would recommend?

democracy was not straight and included a dalliance with other dictators such as Napoleon Bonaparte, who came to power in 1799.)

Such changes in worldviews or paradigms, as Thomas Kuhn explained in his well-known work *The Structure of Scientific Revolutions* (Kuhn, 1962) when discussing the nonlinear shifts in scientific theory, usually come after evidence mounts and the holes in old ways of perceiving become all too apparent. The old theory simply cannot accommodate the new evidence. Such an event was illustrated on a micro, or individual, level in an episode of the original *Star Trek* television show when Spock (the logical, unemotional, and unattached first officer) falls in love with a woman for the first time after breathing in the spores of a magical flower on a mysterious planet. Those who experienced the Enlightenment period, much like reformers and activists of the Progressive Era (1880s–1920s) and Civil Rights Era (1960s–1970s) in the United States that were to follow centuries later, experienced a paradigm shift regarding crime and justice. Suddenly, as if magic spores had fundamentally reshaped thought and suffused it with

kind regard if not love for others, humans seemed to realize that change in crime policy and practice was called for, and they set about devising ways to accomplish it.

JOHN HOWARD

John Howard (1726–1790) was one such person who acted as a change agent. As a sheriff of Bedford in England and as a man who had personally experienced incarceration as a prisoner of war himself (held captive by French privateers), he was *enlightened* enough to “see” that gaols in England and Europe should be different, and he spent the remainder of his life trying to reform them (Howard, 1775/2000; Johnston, 2009). Howard’s genius was his main insight regarding corrections—that corrections should not be privatized in the sense that jailers were “paid” by inmates a fee for their food, clothing, and housing (an inhumane and often illogical practice because most who were incarcerated were desperately poor, a circumstance that explained the incarceration of many in the first place). Howard believed that the state or government had a responsibility to provide sanitary and separate conditions and decent food and water for those it incarcerated. His message of reform included these central tenets:

1. The fee system for jails should be ended.
2. Inmates should be separated by gender and offense (single cells would be optimal).
3. Inmates should be provided with sanitary conditions and clean and healthful food and water.
4. Staff should serve as a moral model for inmates.
5. Jails and prisons should have a set of standards and be independently inspected to ensure that these standards are maintained.

Howard’s humanity was apparent in that he promoted these ideas in England and all over the European continent during his lifetime. He was able to do so because he inherited

money from his father, his sister, and his grandmother and used that money to improve the lives of the tenants on his land and the inmates in correctional facilities. Howard's (1775/2000) major written work, *The State of the Prisons in England and Wales, With Preliminary Observations, and an Account of Some Foreign Prisons*, detailed the horror that was experienced in the filthy and torturous gaols of England and Europe, noting that despite the fact that there were 200 crimes for which capital punishment might be prescribed, far more inmates died from diseases contracted while incarcerated. (Note to reader: The Old English used by Howard in the following quote and that in the next paragraph sometimes substitutes the letter "f" for the letter "s.")

I traveled again into the counties where I had been; and, indeed, into all the reft; examining Houfes of Correction, City and Town-Gaols. I beheld in many of them, as well as in the County-Gaols, a complication of diftreffs: but my attention was principally fixed by the gaol-fever, and the fmall-pox, which I faw prevailing to the deftruction of multitudes, not only of felons in their dungeons, but of debtors alfo. (p. 2)

Howard (1775/2000) found that gaol fever was widespread in all kinds of correctional institutions of the time—bridewells, gaols, debtors' prisons, and houses of correction. Notably, in larger cities there were clear distinctions among these facilities and who they held, but in smaller towns and counties there were not. In the neglect of inmates and the underfunding of the facilities, Howard found them all to be quite similar. He noted that in some bridewells there was no provision at all made for feeding inmates. Although inmates of bridewells were to be sentenced to hard labor, he found that in many there was little work to do and no tools provided to do it: "The prifoners have neither tools, nor materials of any kind; but fpend their time in floth, profanenefs and debauchery, to a degree which, in fome of thofe houfes that I have feen, is extremely flocking" (p. 8). He found that the allotment for food in county jails was not much better, remarking that in some there was none for debtors, the criminals, or the accused alike. He noted that these inmates, should they survive their suffering, would then enter communities or other facilities in rags and spread disease wherever they went.

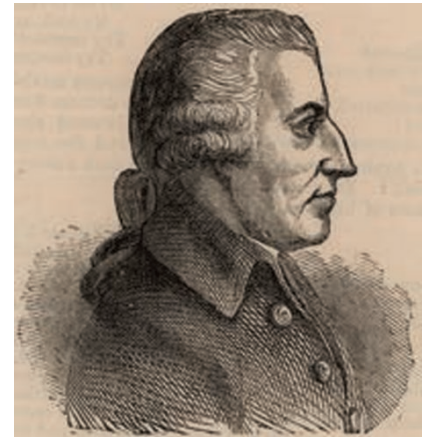


PHOTO 2.5: John Howard (1726–1790) believed that the state or government had a responsibility to provide sanitary conditions and decent food and water for those it incarcerated.

IN FOCUS 2.1

Modern-Day John Howard: Ken Kerle

The Corrections Section of the Academy of Criminal Justice Sciences (ACJS) established the "John Howard" Award in 2009 and gave the first one to a modern-day John Howard, Ken Kerle (retired managing editor of *American Jails* magazine). Kerle has spent much of his adult life trying to improve jail standards both here in the United States and abroad. As part of that effort, he has visited hundreds of jails in this country and around the world. He has advised countless jail managers

about how they might improve their operations. He has increased the transmission of information and the level of discussion between academicians and practitioners by encouraging the publication of scholars' work in *American Jails* magazine and their presentations at the American Jails Association meetings and by urging practitioners to attend ACJS meetings. Kerle (2003) also published a book on jails titled *Exploring Jail Operations*.

In his census of correctional facilities (including debtors' prisons, jails, and houses of correction or bridewells) in England and Wales, Howard (1775/2000) found that about 16% of inmates were petty offenders, about 60% were debtors, and about 24% were felons (which included those awaiting trial, those convicted and awaiting their execution or transportation, and those serving a sentence of imprisonment) (Ignatieff, 1978, p. 25). Ironically, Howard eventually died from typhus, also known as gaol fever, after touring several jails and prisons in Eastern Europe, specifically the prisons of Tsarist Russia.

BENTHAM AND BECCARIA

As mentioned in Chapter 1, the philosophers and reformers *Jeremy Bentham* (1748–1832) in England and *Cesare Beccaria* (1738–1794) in Italy separately, but both during the Enlightenment period, decried the harsh punishment meted out for relatively minor offenses in their respective countries and, as a consequence, emphasized “certainty” over the severity and celerity components of the deterrence theory they independently developed. Beccaria (1764/1963), in his classic work *On Crimes and Punishment*, wrote,

In order that punishment should not be an act of violence perpetrated by one or many upon a private citizen, it is essential that it should be public, speedy, necessary, the minimum possible in the given circumstances, proportionate to the crime, and determined by the law. (p. 113)

Beccaria argued that knowledge, such as that provided by the sciences and enlightenment, was the only effective antidote to “foul-mouthed ignorance” (p. 105).

Bentham (1789/1969) also proposed, in his *Plan of Construction of a Panopticon Penitentiary House* (although the funding of it was not signed off on by King George III), the building of a special type of prison. As per Bentham, the building of a private “prison”-like structure—the **panopticon**, which he would operate—that ingeniously melded the ideas of improved supervision with architecture (because of its rounded, open, and unobstructed views) would greatly enhance supervision of inmates. Such a recognition of the benefits of some architectural styles as complementary to enhanced supervision was indeed prescient in that it presaged modern jail and prison architecture. His proposed panopticon would be circular, with two tiers of cells on the outside and a guard tower in its center, with the central area also topped by a large skylight. The skylight and the correct angling of the tower were to ensure that the guard was able to observe all inmate behavior in the cells, although owing to a difference of level and the use of blinds the keeper would be invisible to the inmates. A chapel would also be located in the center of the rounded structure. The cells were to be airy and large enough to accommodate the whole life of the inmates in that the cells were to “serve all purposes: work, sleep, meals, punishment, devotion” (Bentham, 1811/2003, p. 194). Somehow, Bentham (1811/2003) noted in his plan without elaboration that the sexes were to be invisible to each other. He did not call for complete separation of all inmates, however, which becomes important when discussing the Pennsylvania and New York prisons in Chapter 3, but he did assert that the groups of inmates allowed to interact should be small, including only two to four persons (p. 195).

As an avowed admirer of John Howard, Bentham proposed that his panopticon penitentiary would include all of the reforms proposed by Howard and much more. Bentham (1811/2003) promised that inmates would be well fed, fully clothed, supplied with beds, supplied with warmth and light, and kept from “strong or spirituous liquors” and would have their spiritual and medical needs fulfilled, be provided with opportunities for labor and education (“to convert the prison into a school” and to incentivize the labor so that they got to “share in the produce”), be taught a trade so that they could survive once released, and be helped to save for old age (pp. 199–200). He would also personally pay a fine for every escape, insure inmates’ lives to prevent their deaths, and submit regular reports to the “Court of the King’s Bench” on the status of the prison’s operation (pp. 199–200). Moreover, he proposed that the prison would be open in many respects

Panopticon:

A rounded prison design in which multi-tiered cells are built around a hub so that correctional staff can view all inmates without being observed.

not just to dignitaries but also to regular citizens, and daily, as a means of preventing abuse that might occur in secret. Bentham also recommended the construction of his prisons on a large scale across England, such that one would be built every 30 miles, or a good day's walk by a man. He planned, as he wrote in his 1830 diatribe against King George III wryly titled “History of the War Between Jeremy Bentham and George the Third—By One of the Belligerents,” that “But for George the Third, all the prisoners in England would, years ago, have been under my management. But for George the Third, all the paupers in the country would, long ago, have been under my management” (p. 195).

Although his plan in theory was laudable and really visionary for his time, and ours, he hoped to make much coin as recompense for being a private prison manager—to the tune of 60 pounds sterling per prisoner, which when assigned to all inmates across England was a considerable sum (Bentham, 1811/2003, p. 195). What stopped him, and the reason why he was so angry with his sovereign, was King George's unwillingness to sign the bill that would have authorized the funding and construction of the first panopticon. Bentham alleged that the king would not sign because the powerful Lord Charles Spenser was concerned about the effect on the value of his property should a prison be located on or near it. Bentham's prison dream was dead, but eventually Bentham was awarded 23,000 pounds for his efforts (Bentham, 1811/2003, p. 207). It was left to others to build panopticon prisons in both Europe and the states during the coming years.

WILLIAM PENN

William Penn (1644–1718), a prominent Pennsylvania Colony governor and Quaker, was similarly influenced by Enlightenment thinking (although with the Quaker influence his views were not so secular). Much like Bentham and Beccaria, Penn was not a fan of the harsh punishments, even executions, for relatively minor offenses that were meted out during his lifetime. While in England, and as a result of his defense of religious freedom and practice, he was incarcerated in the local jails on more than one occasion, even in the Tower of London in 1669, for his promotion of the Quaker religion and defiance of the English crown. He was freed only because of his wealth and connections (Penn, 1679/1981). As a consequence, when he had the power to change the law and its protections, and reduce the severity of punishments, he did so. Many years later (in 1682) in Pennsylvania, he proposed and instituted his **Great Law**, which was based on Quaker principles and deemphasized the use of corporal and capital punishment for all crimes but the most serious ones (Clear, Cole, & Reisig, 2011; Johnston, 2009; Zupan, 1991). His reforms substituted fines and jail time for corporal punishment. He promoted Pennsylvania as a haven for Quakers, who were persecuted in England and Europe generally, and for a number of other religious minorities (Penn, 1679/1981). His ideas about juries, civil liberties, religious freedom, and the necessity of amending constitutions—so that they are adaptable to changing times—influenced a number of American revolutionaries, including Benjamin Franklin and Thomas Paine.

Many of Penn's contemporaries were not of the same frame of mind, however, and after his death the Great Law was repealed and harsher punishments were again instituted in Pennsylvania, much as they existed in the rest of the colonies (Johnston, 2009; Welch, 2004). But the mark of his influence lived on in the development of some of America's first prisons.

Much like Howard and Bentham, Penn was interested in reforming corrections, but he was particularly influenced by his Quaker sentiments regarding nonviolence and the value of quiet contemplation.

Great Law: William Penn's idea, based on Quaker principles, deemphasizing the use of corporal and capital punishment for all crimes but the most serious ones.



Photos.com/Thinkstock

PHOTO 2.6: William Penn proposed and instituted his Great Law, which was based on Quaker principles and deemphasized the use of corporal and capital punishment for all crimes but the most serious ones.

The early American prisons known as the **Pennsylvania prison system (Walnut Street Jail, Western and Eastern Pennsylvania prisons)** incorporated these ideas (Johnston, 2009). Even the **New York prison system (Auburn and Sing Sing)**, often juxtaposed with Pennsylvania prisons based on popular depiction by historians (see Beaumont & Tocqueville, 1833/1964), included contemplation time for inmates and a plan for single cells for inmates that reflected the same belief in the need for some solitude.

● ● ● COLONIAL JAILS AND PRISONS

The first jail in America was built in Jamestown, Virginia, soon after the colony's founding in 1606 (Burns, 1975; Zupan, 1991). Massachusetts built a jail in Boston in 1635, and Maryland built a jail for the colony in 1662 (Roberts, 1997). The oldest standing jail in the United States was built during the late 1600s and is located in Barnstable, Massachusetts (Library of Congress, 2010). It was used by the sheriff to hold both male and female inmates, along with the sheriff's family, in upstairs, basement, and barn rooms. Men and women were held in this and other jails like it, mostly before they were tried for both serious and minor offenses, as punishment for offenses or to ensure that they would be present for their own executions.

Such an arrangement as this—holding people in homes, inns, or other structures that were not originally designated or constructed as jails—was not uncommon in early colonial towns (Goldfarb, 1975; Irwin, 1985; Kerle, 2003). As in England, inmates of these early and colonial jails were required to pay a “fee” for their upkeep (the same fee system that John Howard opposed). Those who were wealthier could more easily buy their way out of incarceration, or if that was not possible because of the nature of the offense, they could at least ensure that they had more luxurious accommodations (Zupan, 1991). Even when jailers were paid a certain amount to feed and clothe inmates, they might be disinclined to do so, being that they were able to keep what they saved by not taking care of their charges (Zupan, 1991). As a result, inmates of early American jails were sometimes malnourished or starving. Moreover, in the larger facilities they were crammed into unsanitary rooms, often without regard to separation by age, gender, or offense, conditions that also led to disease and early death. Nonetheless, Irwin (1985) did remark that generally Americans fared better in colonial jails than in their English and European cousins because the arrangements were less formal and restrictive in the American jails and were more like rooming houses. Relatedly, Goldfarb (1975) remarked,

Jails that did exist in the eighteenth century were run on a household model with the jailer and his family residing on the premises. The inmates were free to dress as they liked, to walk around freely and to provide their own food and other necessities. (p. 9)

Pennsylvania prison system (Walnut Street Jail, Western and Eastern Pennsylvania prisons): Prisons that emphasized silence and isolated inmates in their cells, restricting their contact with others and reinforcing the need for penitence.

New York prison system (Auburn and Sing Sing): Prisons that included congregate work and eating arrangements but silent and separate housing.



PHOTO 2.7: Newgate Prison, a working copper mine, served as an early colonial prison.

As white people migrated across the continent of North America, the early western jails were much like their earlier eastern and colonial cousins, with makeshift structures and cobbled together supervision serving as a means of holding the accused over for trial (Moynihan, 2002). In post-Civil War midwestern cities, disconnected outlaw gangs (such as the Jesse James Gang) were treated in a harsh manner. Some communities even built *rotary jails*, which were like human squirrel cages. Inside a secure building, these rotating steel cages, segmented into small “pie-shaped cells,” were secured to the floor and could be spun at will by the sheriff (Goldfarb, 1975, p. 11).