

## Part I

# The Philosophy and History of Prisons

### Poetic Justice

Build prisons  
Not day-care  
Lock 'em up  
What do we care?  
Hire cops, not counselors  
Staff courts, not clinics  
Wage warfare  
Not welfare  
Invest in felons  
Ripen 'em like melons  
Eat 'em raw, then  
Ask for more  
More poverty  
More crime  
More men in prison  
More fear in the street  
More ex-cons among us  
"Poetic Justice"

—*Courtesy of Robert Johnson*





## Chapter 1

# The Rationale for Imprisonment

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### Chapter Objectives

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- Be able to define punishment and articulate the retributive and utilitarian rationales for punishment.
  - Understand the social contract and how it supports the right of society to punish.
  - Describe the cycles of retribution and reformation that have existed throughout history.
  - Describe economic analyses of prison.
  - Understand the restorative justice philosophy.
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In 2009 there were 1,613,749 people in prison in the United States. This number represents an incredible increase over the last 30 years. About 139 out of every 100,000 people were incarcerated in prison in 1980, but by 2009, this rate had climbed to 502 per 100,000 (West, Sabol, & Greenman, 2010). Interestingly, the rate of incarceration has continued to increase despite the dramatic decline in crime that began in the mid-1990s.

Before we can begin to understand why the use of prison has increased so dramatically, it is important to stop and consider why we imprison and what it is supposed to accomplish. The rationale behind prison may seem obvious, but the philosophy and justification for prison has changed over time. In this chapter we will consider the rhetoric associated with, and the stated goals of, prisons, as well as offer summaries of other theories of why imprisonment has become such a common form of punishment. First, however, we will discuss punishment in general.

## Philosophy of Punishment

**Punishment** is defined by Newman (1978) as follows: “Punishment is a pain or other unpleasant consequence that results from an offense against a rule and that is administered by others, who represent legal authority, to the offender who broke the rule” (pp. 6–7). Thus, by definition, punishment involves the infliction of pain or discomfort. Generally, inflicting pain on someone would be wrong; however, the following two rationales justify punishment’s infliction of pain, although they do so in very different ways. Under a **retributive rationale**, the infliction of pain is justified as long as the punishment is deserved. A **utilitarian rationale** justifies punishment’s infliction of pain as the means to the “greater good” of reduced crime through deterrence, incapacitation, or rehabilitation.

**punishment**—a painful or unpleasant experience inflicted upon an individual in response to a violation of a rule or law by a person or persons who have lawful authority to do so.

**retributive rationale**—the justification for punishment that proposes that society has a right to punish, as long as it is done lawfully and proportionally to the wrong committed by the offender.

**utilitarian rationale**—the justification for punishment that proposes that society has a right to punish, as long as it results in a greater good for the majority of the population.

**retribution**—the proportional infliction of pain or punishment in response to a wrong.

**social contract**—a heuristic device that illustrates how individuals give up liberties to act with aggression in return for safety.

### *Retributive Rationale*

**Retribution** is a term that means balancing a wrong through punishment. Whereas revenge is personal and not necessarily proportional to the victim’s injury, retribution is impersonal and balanced. It must be done by a lawfully authorized party and it must be done only after procedural due process. Note that the definition of punishment strictly limits what can be done, to whom, and by whom; otherwise, inflicting pain or discomfort would not be justified under the retributive rationale.

The right of society to punish is said to lie in the **social contract**. Although this idea dates back to the ancient Greeks, it gained its greatest currency during the Age of Enlightenment in the 17th and 18th centuries and is associated with Thomas Hobbes’s *Leviathan* (1651), John Locke’s *Two Treatises on Government* (1690), and Jean-Jacques Rousseau’s *Du Contrat Social* (1762). Basically, the concept proposes that all people freely and willingly enter into an agreement to form society by giving up a portion of their individual freedom for the return benefit of protection. If one transgresses against the rights of others, one has broken the social contract, and society has the right to punish (Mickunas, 1990).

One problematic element to the social contract theory of punishment is the fiction that everyone willingly plays a part or had a part in the agreement to abide by society’s laws. Many authors have suggested that certain groups in society are, in effect, disenfranchised from the legal system and play no part in its creation. Those who believe that our political process, and even our justice system, is operated for the benefit of only certain groups of citizens argue that the social contract is a weak rationale for punishment.

### Box 1-1 Philosophers of Punishment and Penology

*Cesare Beccaria (1738–1794).* Beccaria was an Italian writer during the Enlightenment, a historical era marked by great advances in political and social thought. He wrote a treatise on criminal law that was highly critical of the practices of the day, and advocated major reforms that included ideas that were widely adopted, such as the right to defend oneself against one's accusers. The philosophical rationale for these reforms was utilitarianism. He believed that the objective of punishment should be deterrence, and that the effectiveness of punishment was based on certainty, not severity. He was largely responsible for major criminal law reforms in Europe and America.

*Jeremy Bentham (1748–1832).* Bentham was an English philosopher, economist, and theoretician. Among his many works was *The Rationale of Punishment* (1830), in which he proposed a utilitarian rationale for punishment. Mankind, according to Bentham, was governed by the pursuit of pleasure and the avoidance of pain. These two masters affected all behavior decisions and could be utilized to deter criminal behavior through a careful application of criminal law. He is also known for his design of the Panopticon prison.

*Immanuel Kant (1724–1804).* Kant was a German philosopher who wrote in the areas of metaphysics, ethics, and knowledge. He is the founder of Kantianism, a philosophical tradition that explores the limits of human reason and establishes a philosophy of morality based on duty. His views on punishment would be considered purely retributive. He believed that the criminal deserved to be punished, but that to punish for other purposes, such as deterrence, was to violate the “categorical imperative,” specifically, that one should not use others for one's own end.

Another argument, however, as noted by French sociologist Émile Durkheim, is that punishment is a primitive, almost instinctual, response of humankind (cited in Durham, 1994, p. 22). Punishment is believed to be an essential feature of civilization. When the state takes over the act of revenge, it elevates it to something noble rather than base, something proportional rather than unlimited. Immanuel Kant (1724–1804) supported a retributive rationale:

Juridical punishment . . . can be inflicted on a criminal, never just as instrumental to the achievement of some other good for the criminal himself or for the civil society, but only because he has committed a crime: for a man may never be used just as a means to the end of another person. . . . Penal law is a categorical imperative. . . . Thus, whatever undeserved evil you inflict on another person, you inflict on yourself. (Kant, as cited in Borchert & Stewart, 1986, p. 322)

In short, punishment, as long as it is inflicted upon wrongdoers in proportion to their crime, is a natural response and a societal right.

### *Utilitarian Rationale*

The utilitarian rationale defines punishment as essentially evil (because of the infliction of pain or discomfort), but justified by the greater benefits that result. Under **utilitarianism**, what is good is that which benefits the majority.

**utilitarianism**—the ethical system whereby good is defined as that which results in the greatest good for the greatest number.

**deterrence**—the capacity to prevent or discourage an individual or individuals from committing an act.

**general deterrence**—what is done to prevent or discourage an individual or individuals from committing an act.

**specific deterrence**—what is done to a specific person to prevent or discourage that individual from committing an act.

**hedonistic calculus**—Jeremy Bentham’s concept that the potential profit or pleasure from a criminal act can be counterbalanced with the risk of slightly more pain or punishment. If this is done then rational people will choose not to commit the act.

**principle of less eligibility**—the belief that if the poorhouses were too comfortable, then men would choose to be idle over work; therefore, conditions had to be worse than the life of the lowest paid worker.

Only if punishment did not deter, incapacitate, or facilitate rehabilitation would it be considered wrong under utilitarianism.

This rationale for punishment is ancient. Plato argued that punishment is a benefit to the person because it improves their soul or character (cited in Murphy, 1995, p. 17). The most common justification for punishment is **deterrence**. **General deterrence** is when what is done to one person influences others not to commit crime; **specific deterrence** is when the individual him- or herself does not commit further crime because of the punishment. Jeremy Bentham (1748–1832), the classical advocate of utilitarian punishment, believed that punishment could be calibrated to deter crime. His idea of a **hedonistic calculus** involved two concepts: first, that mankind was essentially rational and hedonistic (pleasure seeking), and would seek to maximize pleasure and reduce pain in all behavior decisions; and second, that a legal system could accurately determine exactly what measure of punishment was necessary to slightly outweigh the potential pleasure or profit from any criminal act. Thus, if done correctly, the potential pain of punishment would be sufficient to outweigh the potential pleasure or profit from crime, and all people would rationally choose to be law abiding.

Bentham also is credited as the author of the **principle of less eligibility**; originally, this concept applied to the poorhouses. He believed that if the poorhouses were too comfortable, then men would choose to be idle over work;

therefore, conditions had to be worse than the life of the lowest paid worker (as cited in Sieh, 1989, p. 162). The principle also applied (and continues to apply) to prisons; there is a belief that prisons must be worse than the poorest person, otherwise individuals will choose crime over law abidingness. One sees this idea influencing the programs and architecture of prisons. There is always public antipathy toward prisons that are considered too “luxurious.” Consistent with this idea, perhaps, is the fact that some of the best prisons

(on a variety of standards) exist in Scandinavian countries, which also have some of the highest standards of living (Sieh, 1989).

Cesare Beccaria (1738–1794), another utilitarian thinker, suggested that in some instances the benefits of punishment did not outweigh the evil, as illustrated by the following quote:

But all punishment is mischief: all punishment in itself is evil. Upon the principle of utility, if it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil. . . . It is plain, therefore, that in the following cases punishment ought not to be inflicted.

- Where it is groundless: where there is no mischief for it to prevent; the act not being mischievous upon the whole.
- Where it must be inefficacious: where it cannot act so as to prevent the mischief.
- Where it is unprofitable, or too expensive: where the mischief it would produce would be greater than what it prevented.
- Where it is needless: where the mischief may be prevented, or cease of itself, without it: that is, at a cheaper rate. (Beccaria, as cited in Murphy, 1995, p. 24)

Situations in which punishment does not deter include **ex post facto laws** (because people cannot be deterred from some action they do not know to be illegal when they decide to do it), and infancy or insanity (because people cannot be deterred if they cannot control their behavior). This approach views prevention of future harm as the only justifiable purpose of punishment, with retribution having no place because “what is done can never be undone” (Hirsch, 1987, p. 361).

The social contract is also the basis for a utilitarian rationale for punishment. In this case, the social contract gives society the right to punish—not because of the offender’s violation, but rather, to protect all members of society against future harms. The right of society to punish comes from the responsibility of society to protect. The utilitarian approach of punishment sees it as a means to an end—the end being deterrence (general or specific), incapacitation, or rehabilitation (reform).

**Incapacitation** refers to preventing an individual from inflicting further harm for at least as long as the individual is under control. Strictly speaking, it does not necessarily imply pain. To put all criminals under a drug that induced sleep would be a form of incapacitation that did not involve pain. House arrest, electronic bracelets, or other means of monitoring the movements of criminals have all been suggested as less expensive alternatives to incapacitating criminals in prisons. Prison, of course, has become synonymous with incapacitation because as long as the person is incarcerated, they cannot commit crimes against the rest of us. Of course, prisoners continue to commit crimes in prison against other inmates, and there is also at least some limited ability to continue to commit

**ex post facto laws**—laws that make an act criminal “after the fact,” so that individuals would not have received due notice that the behavior would be punished. The U.S. Constitution prohibits these laws.

**incapacitation**—a state of incapacity or being unable to be fully active or free.

some crimes, for instance, credit card abuse over prison phones or computer fraud using computers provided in vocational programs.

**selective incapacitation**—the concept that we can predict who is going to be highly recidivistic or violent and incarcerate these individuals longer than others.

**rehabilitation**—the process of internal change brought about by external agents.

**corporal punishment**—pain or punishment inflicted “to the body”; in other words, physical punishment.

One issue of incapacitation is how long to hold the individual. **Selective incapacitation** is the policy of holding some offenders longer because of their likelihood of recidivism. Unfortunately, there is little confidence in our ability to predict how long someone may be dangerous or who may continue to commit crime. Auerhahn (1999) found that even the best predictions had an error rate of 48 to 55%, meaning that the prediction would be wrong about half the time—in effect, no different from chance. There have been continued efforts to estimate whether and how much incapacitation reduces crime. Indeed, many have attempted to estimate how much of the dramatic reduction in crime has been due to increased

imprisonment; however, researchers hotly debate the methodology and findings in this area (Reuter & Bushway, 2007).

Because incapacitation is forward looking, it is assumed that the incapacitative period should last as long as the risk exists. This may be inconsistent with principles of justice, even assuming we could predict risk accurately. For instance, forgers have high recidivism rates but are not especially dangerous; should we hold them longer than murderers, who have lower recidivism rates? Again, this discussion assumes that we can accurately predict risk, an extremely problematic assumption. Although, strictly speaking, incapacitation is not punishment, it usually does involve some deprivation of liberty, and therefore is painful to those who value liberty and autonomy.

Rehabilitation is not punishment either, although punishment may be used as a tool, as in, for instance, aversive conditioning programs. **Rehabilitation** is defined as internal change that results in a cessation of the targeted negative behavior. It may be achieved by inflicting pain as a learning tool (behavior modification) or by other interventions that are not painful at all (for example, self-esteem groups, education, or religion).

To conclude, the utilitarian rationale for punishment must determine that the good coming from punishment outweighs the inherent evil of the punishment itself. The beneficial aspects of punishment include deterrence, incapacitation, and rehabilitation or reform.

## Methods of Punishment

Punishments throughout the ages have been directed either to one’s body (through pain or loss of liberty) or to one’s possessions (forfeiture or fines). Methods of **corporal punishment** (meaning “to the body”) have included drawing and quartering, flaying, whipping, beheading, dismembering, and numerous other means of torture or death (Newman, 1978). Conley (1992) writes that fines were more common than physical torture during



many time periods. Execution was an economic as well as a corporal punishment because the person's estate was forfeited to the monarch.

Economic and physical sanctions have gradually given way to imprisonment or lesser deprivations of liberty (probation or parole). We have reached the point today (at least in the United States) where punishment is almost synonymous with imprisonment.

As early as the end of the 14th century, imprisonment was sometimes used as a form of punishment (rather than simply to hold people until they were either executed, paid their fines, or were subjected to some form of corporal punishment) (Conley, 1992). However, it wasn't until the 1700s that imprisonment for minor crimes became common. In fact, **gaols** for minor offenders were almost indistinguishable from the **bridewells** and workhouses that developed for vagrants and idlers. All of these institutions were societal responses to the same class of citizens, the itinerant poor: individuals who often were forced into petty crime because of their poverty.

**gaols**—early English jails.

**bridewells**—early English institutions that held the itinerant poor, many of whom probably had committed petty crimes. The name derived from the location of the first such institution.

## Philosophy of Imprisonment

Of all punishments, prison is perhaps the most complex. It affects prisoners' material possessions because they can earn little or no income while incarcerated, they may lose their job or livelihood, spend their life savings, and have their total lifetime earning capacity affected. It affects the prisoner's body because he or she is under the control of others and very little freedom exists. Imprisonment may result in actual physical harm, from attacks by correctional officers or other inmates or from illnesses or injuries left untreated. Prison also attacks the psyche by attempts at reformation and through the mental deterioration that occurs because of the negative environment of the prison. Due to this, many describe prison as a "psychological punishment" (Mickunas, 1990, p. 78).

According to some, prison in its most severe form attacks "the soul"; it acts on the "heart, the thoughts, the will, the inclinations of the prisoner" (Howe, 1994, p. 87). Prison critics allege that the most detrimental effects are not physical deterioration, but mental and moral deterioration. "You are nothing!" is a theme that prison inmates live with during the course of their imprisonment, and the mental toll that prison takes on its population is very difficult to measure.

As mentioned earlier, a retributive rationale for prison would require that imprisonment be inflicted in proportion to the severity of the offense. The utilitarian rationale for imprisonment would require that it serve some greater good in that it deters the individual or others from committing crime, it incapacitates the offender from committing more crime, or it rehabilitates the offender so that he or she does not reoffend when released. The relative success of prison at doing any of these is a subject of debate.

### *Historical Eras in Prison Philosophy*

The retributive and utilitarian rationales, specifically, elements of deterrence and incapacitation, were strong throughout pre-Jacksonian America and Europe. The justification of all punishment and, specifically, imprisonment in gaols and houses of correction, was to deter and punish.

[C]learly the colonists relied on societal retribution as the basis for punishment and viewed the execution of punishment as a right of the society to protect itself and to wage war against individual sin. Deviance was the fault of the offender, not the breakdown of society or the community. . . . (Conley, 1992, p. 42)

The use of imprisonment in the late 1700s was seen as a more humane form of punishment than earlier corporal punishments, but it was not necessarily viewed as reformative. The individual was seen as evil or weak, someone that society needed to protect itself against. Although gaols were built in the community and looked no different than other residences, the penitentiary, as it emerged in the early 1800s, was a type of banishment. Earlier societies had banished wrongdoers to the wilderness; penitentiaries (which were isolated far away from urban areas) became the “new wilderness.” At the least, society was protected as long as the offender was away (incapacitation).

However, the new penitentiary was also viewed by some as redemptive and capable of changing the individuals within to become better people (Conley, 1992). Thus, the rationale shifted from deterrence and incapacitation to reformation or rehabilitation. David Rothman (1971), one of the definitive authorities on the reformative origins of the prison, proposes that the idea of reforming the individual criminal replaced the earlier Calvinist

**expiation**—the process of making amends or atoning for bad acts.

doctrine of original sin. Before the 1800s, punishment was purely retributive and was associated with **expiation** (a religious term meaning personal redemption through suffering). People were viewed as not capable of reform. Once the possibility of individual change was born, the idea of prison developed as the site of the “reform.” Hirsch

(1987) and others (McKelvey, 1987) describe this shift in penal philosophy as unique to the U.S. penal philosophy, with Europeans later looking to U.S. models of punishment.

Separation, obedience, and labor became the trinity around which officials managed the penitentiary. Convicts were “men of idle habits, vicious propensities, and depraved passions,” who had to be taught obedience as part of their reformation (Rothman, 1971, p. 579). By teaching convicts these virtues, prison officials reinforced their value for all of society. The penitentiary would reawaken the public to these “virtues,” and “promote a new respect for order and authority” (Rothman, 1971, p. 585). There was a great optimism in the early 1800s that prison could change society. In fact, Rothman (1971) cites a Reverend Finley, who believed that prisons would be good for everyone, not just offenders:

Could we all be put on prison fare, for the space of two or three generations, the world would ultimately be the better for it. Indeed, should society change places with the

prisoners, so far as habits are concerned, taking to itself the regularity, and temperance, and sobriety of a good prison, then the grandiose goals of peace, right, and Christianity would be furthered. (p. 84)

The two systems that emerged in penitentiary architecture—the Philadelphia or silent system, and the Auburn system, which utilized the congregate approach—both adhered to separation and obedience concepts. Even after the Civil War, reformation was the dominant theme of the 1870 Prison Congress, which laid out the “Principles of Corrections.” These same principles were endorsed again, almost without change, in the 1970 Prison Congress. The 1870 and 1970 Prison Congresses endorsed such philosophical principles as:

- “corrections must demonstrate integrity, respect, dignity, fairness . . .”
- “sanctions imposed by the court shall be commensurate with the seriousness of the offense”
- “offenders . . . shall be afforded the opportunity to engage in productive work, participate in programs . . . and other activities that will enhance self worth, community integration, and economic status” (American Correctional Association, 1970/2002)

Although the origin of the penitentiary in the 1800s was tied up with religious reformation, hence the “penitence” in “penitentiary,” by the **Progressive Era** (early 1900s), educated professionals entered penology believing that science would solve individual prisoners’ problems. Indeterminate sentences and individualized treatment were the tools to accomplish this task. Scientific objectivity and professionalism replaced the missionary zeal of earlier penologists. The prison was no longer viewed as a utopia for society to emulate. It was viewed instead as a laboratory in which social work and psychiatry would work to help change people’s behavior.

**Progressive Era**—refers to the early 1900s when there was an explosive growth of the sciences and the optimism that humans could, through science, understand and control the world.

Foucault (1973) offered a slightly different view of prison. In his history of the emergence of the prison, he sees the creation of prison as one part of the institutionalization of society—the prison housed the poor and criminal, the mental institutions housed those who couldn’t take care of themselves, and poorhouses housed those without economic means. All controlled and contained the class of people who were considered expendable. All normalized the idea of containment and deprivation of liberty as a natural right of society.

The philosophy of imprisonment began with retribution and deterrence, moved to reformation, and then drifted back to retribution after the Progressive Era. In the 1970s, however, the general philosophy and mission of prisons swung back to reformation and rehabilitation. Even the name of the prison changed to “correctional institution,” and correctional programs proliferated. However, the rehabilitative era was short lived; by the 1980s, as prison systems struggled to house rising numbers of prisoners, penal

institutions once again settled back into a less ambitious mission of retribution and incapacitation.

The first and most vocal critics of the rehabilitation ethic were Von Hirsch (1976) and Fogel and Hudson (1981). Although different in tone, they all critiqued the idea that prison should be anything more than a measure of punishment. Their approach blended a curious mixture of utilitarianism and retributivism to form a new type of retributivism. Von Hirsch justified and limited the role of punishment by retributive proportionality:

- The liberty of each individual is to be protected so long as it is consistent with the liberty of others.
- The state is obligated to observe strict parsimony in intervening in criminals' lives.
- The state must justify each intrusion.
- The requirements of justice ought to constrain the pursuit of crime prevention (that is, deterrence and rehabilitation). (p. 5)

**just-desserts model**—views retribution as the sole rationale for punishment. What is done to the individual criminal should be based solely on the wrong that was committed and measured accordingly.

**penal-harm movement**—a term coined to describe the punitive approach that has characterized the justice system and corrections since the 1980s when rehabilitation and reform were, to a great extent, abandoned.

The so-called **just-desserts model** also viewed punishment as being justified solely by retributive ends rather than utilitarian ones. This view utilized the social contract again to justify punishment for those who break the law. It promoted the idea that the only goal of the justice system should be justice, not reform of the individual (Fogel & Hudson, 1981). This view advocated using determinate forms of sentencing rather than indeterminate, separating treatment options from release decisions, and circumscribing the goals of custody to retribution rather than reformation. It found popular and political favor with both liberals (because it limited punishment) and conservatives (because it promoted punishment).

The current correctional philosophy continues to be retributive, even to the point where Clear (1994) and others refer to this era as the “**penal-harm movement**.” The phrase encapsulates the idea that, far from rehabilitation, the philosophical rationale of prisons since the late 1970s has been almost purely retributive with little redeeming reformation promised. This philosophy has been pervasive in the politics and rhetoric surrounding corrections, and no doubt has contributed to the phenomenal growth of the incarceration rate and the proliferation of prisons.

## Prison and Economics

Although some historians, such as Rothman (1971), seemed to accept the goals and objectives of prison reformers at face value, others have interpreted the stated goals as mere rhetoric, masking a more subtle and insidious philosophy of imprisonment, one based on economics rather than reformation, and on power rather than benevolence. In

this view, prisons emerged when there was a need to confine a large population of poor who could not be absorbed into the labor force, or, alternatively, when there was a need to shape and exploit a labor force. For instance, Rusche and Kirchheimer (1939) suggested that imprisonment emerged as the dominant method of punishment because of a desire to exploit and train captive labor. A scarcity of labor served as the impetus for the modern prison because of its role in training and exploiting labor reserves.

The so-called **severity hypothesis** of Rusche and Kirchheimer (1939) proposes that punishment of convicts becomes more severe when there is a surplus of labor and more lenient when labor is scarce and convicts are more valuable as a labor force. This does not mean an increase in the rate of incarceration, but rather, more severe punishment of those already incarcerated because they are not valued as a labor force. Some authors have not found any support for the theory, at least not measurable by standard methods (de Haan, 1990; Gardner, 1987).

However, even critics of Rusche and Kirchheimer mention economic elements in their explanations of motivations for the development of prison. The earliest origins of prison are tied to economics because prisons targeted the “idle poor” and were first cousins to the bridewells and workhouses, institutions that absorbed the vagrant classes of Europe and early American cities. Gardner (1987) notes the promises of prison officials that prisons could be self-supporting and provide an economic boon to a local economy. In fact, he points to the economic benefits of the prison to certain interest groups as the reason for “the persistence and expansion of an otherwise politically and economically anachronistic form of punishment” (Gardner, 1987, p. 106).

An economic analysis of prisons would include the lease labor system of the American South: “The lease-holders were interested in making as large a return as possible for the least outlay of money” (Crosley, 1986, p. 21). In the North, economics favored the **“factory prison” model**. Inmates were housed and worked together, and were better utilized in factory-like labor conditions (Melossi & Pavarini, 1981). These geographic differences had everything to do with the different economies of the North and South and the South’s need for a labor class to replace the newly freed slaves after the Civil War, while the North contended with waves of immigrants by constructing prisons that resembled the factories where they were needed.

More recent economic analyses of prisons exist. Spelman (2009), for instance, has proposed that the imprisonment binge occurred partially because of a rise in capital expenditures by governments (both state and federal). He argues that we spend more on prisons because of the availability of public funds. His research found that public capital availability explains about one-third of the increase (with crime explaining up to 44% and sentencing policy explaining no more than 20%) (Spelman, 2009, p. 67). Others argue that

**severity hypothesis**—Rusche and Kirchheimer’s proposition that punishment becomes more severe when there is a surplus of labor.

**“factory prison” model**—derived from the Auburn Prison in New York, and was more common in the Northeast. These prisons utilized prison labor in factory settings.

Spelman's theory doesn't explain why other countries that experienced the same degree of wealth generation did not also experience a rise in incarceration; also, economic growth in this country during other time periods did not result in an increase in imprisonment (Raphael, 2009). Gottschalk (2009) also disputes the correlation between societal wealth and prison growth, pointing out that the climb in imprisonment rates began much earlier than the 1994 Omnibus Crime Bill, which offered federal incentives to build prisons. She points out that the population that had been housed in mental facilities in the 1950s was similar per capita to the number in prison today, and argues that a change in policy, as occurred with mental facilities, can also change prison rates.

Today, some offer the economic view that the "prison-industrial complex" is a political power that contributes to the high rates of incarceration. Private prisons and/or prison services, such as medical and treatment services, have emerged as a profit-generating industry. Powerful companies such as Corrections Corporation of America (CCA, doing business now as Prison Realty Trust) and GEO Group are public companies, and their stock is traded on the New York Stock Exchange. Some argue that because prisons generate profits, those who benefit manipulate public policy to ensure continued growth in the prison population (Justice Policy Institute, 2011).

The biggest growth in private prison construction has been in small towns that have seen manufacturing jobs disappear. It is not an exaggeration to say that the towns' very economic livelihoods depend on a continuing stream of prisoners to fill the prisons to provide the jobs for the townspeople. On the other hand, some research indicates that the promises of private prison providers to these towns did not match the reality and the economic "boom" was really a bust. King, Mauer, and Huling (2003) compared counties in New York where private prisons were built to those that did not have a prison and found that there was little difference in unemployment or other indicators. In fact, income rose higher in the nonprison counties. The economic view would hold that the continued existence and, perhaps, growth of prisons is ensured when they generate profits—at least for someone, if only those who obtain profits from prisons.

## **Restorative Justice: An Alternative Philosophy and Rationale for Punishment?**

Restorative justice has emerged in criminal justice as an alternative to retribution or deterrence. The roots of such a philosophy might be found in the ethics of care (Pollock, 2011) and, to some extent, in utilitarianism. Adherents also find support in religion, arguing that in the Bible, the "eye for an eye" reference is to reparation, not restitution (Schweigert, 2002, p. 29).

Much of the concept has been borrowed from aboriginal peoples, including the Inuit, Maori, and Navajo (Perry, 2002, p. 5). Basically, the idea of restorative justice is that the objective is not to inflict punishment on the offender, but rather, to restore all parties to a prior state of "wholeness." This philosophy can also be called reparative justice or peacemaking justice.

One basic tenet of restorative justice is the involvement of victims in a search for a resolution that meets the needs of all parties (Van Ness & Strong, 1997). The idea of restorative justice is that victims must be made whole; however, part of the solution might be meeting the needs of the offender as well. An important component of this philosophy is that the offender is not to be condemned, but rather, is helped to see how he or she can repair the damage. The idea that the offender continues to be a part of the community is very important. Far from being banished or stigmatized by the experience, the offender should feel more fully integrated into his or her community (Braithwaite, 1989).

Mediations and conferences between the victim and offender are often a part of restorative justice efforts (Bazemore & Maloney, 1994; Braithwaite, 1989). Restitution is also consistent with the ideals of restorative justice, but only if it is tied with the specific needs of a victim and is meaningful to both (Schweigert, 2002, p. 21). Adherents of this approach see it as a return to older forms of justice rather than as a new philosophy of justice. They note that the oldest forms of justice were concerned with restoring loss and repairing injury rather than with punishment. Further, justice was administered by and kept within the community, not abdicated to a higher state authority (Schweigert, 2002, p. 25).

So, how do prisons fit with restorative justice? Actually, they don't. In the majority of cases where prison is used as the response to an offense, a restorative justice rationale would argue that community service, restitution, or some type of mediation would be a better alternative. Only in cases of serious violent crime would mediation and restitution not be appropriate. Prison is banishment. Individuals who are banished and feel pain via imprisonment are not likely to feel close to the community that banished them; thus, the "circle" of society has been broken. Prison not only injures the individual, but also injures the community because of the loss of the individual from his or her community. Thus, prison is basically inconsistent with a restorative justice philosophy; however, some argue that prison might become restorative if it were to fundamentally shift its emphasis and objective to reparations to specific victims and to safeguarding the dignity and humanity of the offenders (Perry, 2002, p. 14). In fact, some argue that restorative justice must be included in the philosophy and rationale of prisons in order for them to be a worthwhile endeavor (Pollock, Hogan, Lambert, Ross, & Sundt, 2012). Programs do exist in prisons around the world that subscribe to restorative justice principles (Liebmann, 2006). These prisons offer programming aimed at undoing victims' harms, such as asking inmates to participate in victim-offender reconciliation programs, or making amends to the community, such as laboring to produce materials for charitable organizations like Habitat for Humanity or training service animals (Liebmann, 2006; Pollock et al., 2012).

## Looking to the Future

Recently we have seen a renewed attention to the needs of prisoners reentering society (Mauer, Chesney-Lind, & Clear, 2002). Interestingly, in the late 1970s, this problem was addressed and the term **reintegration** was coined.

**reintegration**—the reentry of prisoners into society.

After an almost complete absence of public attention for over 20 years, the problem of prisoners reentering society emerged again in the mid-2000s. The federal government has initiated and funded reentry initiatives, no doubt due to the recognition that more than 650,000 prisoners are reentering our society every year (see, for instance, Council of State Governments, Justice Center, n.d.). Further, some studies also indicate that the recidivism rate is worse today than it was 20 years ago (Murphy, 2002), whereas others find recidivism rates worse in some states and better in others (Pew Center on the States, 2011).

Reentry initiatives can be justified under a utilitarian rationale as long as the public is not hurt or does not pay more for such programs. If prison costs \$45 a day compared to \$2 for probation (Ward, 2004), and there is no substantial risk in choosing the cheaper alternative, then the alternative is best for the offender, but more importantly, it is best for us all. Similarly, if a parolee's violation can be dealt with by a community sanction rather than a return to prison, that is the better option and one that reentry initiatives across the country are promoting during these times of fiscal austerity.

## Conclusions

In this chapter, we have surveyed some historical and current philosophies of punishment and prison. An implicit assumption is that what we do has some relationship to what we believe. One benefit of this exercise is that we become clearer about what we expect from prison. For instance, many people, including many inmates, believe that the prison's main function is to rehabilitate. In reality, this has not been a major element in the mission of prisons for more than three decades.

Another issue to consider is whether there is any evidence in support of the rationales for punishment discussed in this chapter. If one believes in a penal philosophy based on utilitarian deterrence, is it not important to have evidence that prison deters? How does one know whether prison has deterred someone from committing crime? Some argue that the declining crime rates point to prison's effectiveness in deterrence. However, others point out that crime rates and prison rates (both of which vary among the states) bear no relationship to each other, thus undercutting the assumption that it is imprisonment that has led to the decline in crime. Similarly, some indicate that there is little or no evidence that treatment programs reduce crime, whereas others argue that there are positive effects. The same mixed findings are found in evaluations of education and vocational training.

The penal enterprise has always had more than one philosophy or rationale. It is a slippery fish: if we criticize it for not rehabilitating, we are told it deters; if we ask for evidence of deterrence, we are told it is retributive. If the public is at all squeamish about locking up their brethren in cages, we are taken on tours of educational buildings and carpentry-apprentice programs to show that it is "for their own good." If the public rails against prison as the "Holiday Inn for criminals," one can show them prison chain gangs. One prevailing aspect of penal philosophy may be its shifting content. It seems impossible to envision a society without prison; therefore, it is crucial to come to some shared understanding of what we expect from it.



## Key Terms

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bridewells—early English institutions that held the itinerant poor, many of whom probably had committed petty crimes. The name derived from the location of the first such institution.

corporal punishment—pain or punishment inflicted “to the body”; in other words, physical punishment.

deterrence—the capacity to prevent or discourage an individual or individuals from committing an act.

expiation—the process of making amends or atoning for bad acts.

ex post facto laws—laws that make an act criminal “after the fact,” so that individuals would not have received due notice that the behavior would be punished. The U.S. Constitution prohibits such laws.

“factory prison” model—derived from the Auburn Prison in New York, and was more common in the Northeast. These prisons utilized prison labor in factory settings.

gaols—early English jails.

general deterrence—what is done to prevent or discourage an individual or individuals from committing an act.

hedonistic calculus—Jeremy Bentham’s concept that the potential profit or pleasure from a criminal act can be counterbalanced with the risk of slightly more pain or punishment. If this is done then rational people will choose not to commit the act.

incapacitation—a state of incapacity or being unable to be fully active or free.

just-deserts model—views retribution as the sole rationale for punishment. What is done to the individual criminal should be based solely on the wrong that was committed and measured accordingly.

penal-harm movement—a term coined to describe the punitive approach that has characterized the justice system and corrections since the 1980s when rehabilitation and reform were, to a great extent, abandoned.

principle of less eligibility—the belief that if the poorhouses were too comfortable, then men would choose to be idle over work; therefore, conditions had to be worse than the life of the lowest paid worker.

Progressive Era—refers to the early 1900s when there was an explosive growth of the sciences and the optimism that humans could, through science, understand and control the world.

punishment—a painful or unpleasant experience inflicted upon an individual in response to a violation of a rule or law by a person or persons who have lawful authority to do so.

rehabilitation—the process of positive internal change brought about by external agents.

reintegration—the reentry of prisoners into society.

retribution—the proportional infliction of pain or punishment in response to a wrong.

retributive rationale—the justification for punishment that proposes that society has a right to punish, as long as it is done lawfully and proportionally to the wrong committed by the offender.

selective incapacitation—the concept that we can predict who is going to be highly recidivistic or violent and incarcerate these individuals longer than others.

severity hypothesis—Rusche and Kirchheimer’s proposition that punishment becomes more severe when there is a surplus of labor.

social contract—a heuristic device that illustrates how individuals give up individual liberties to act with aggression in return for safety.

specific deterrence—what is done to a specific person to prevent or discourage that individual from committing an act.

utilitarian rationale—the justification for punishment that proposes that society has a right to punish, as long as it results in a greater good for the majority of the population.

utilitarianism—the ethical system whereby good is defined as that which results in the greatest good for the greatest number.

## Review Questions

1. Explain the difference between the retributive rationale for punishment and the utilitarian rationale.
2. What is the social contract?
3. Discuss the three benefits of prison under the utilitarian rationale of punishment.
4. How were early prisons similar to workhouses and bridewells?
5. What is the importance of “separation, obedience, and labor”?
6. Explain the just-desserts model.
7. Describe the severity hypothesis and the economic theories of penal philosophy.
8. Discuss restorative justice and how this approach is or is not consistent with imprisonment.
9. Discuss the philosophical rationale for reintegration efforts.
10. Describe the two most common rationales for prison.

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