

# The Philosophy and History of Corrections

## CHAPTER

# 2

### OBJECTIVES

- Understand natural law and the philosophical reasons why societies develop criminal justice and correctional systems.
- Compare deterrence, retribution, incapacitation, rehabilitation, and restoration as punishment philosophies and sentencing rationales.
- Trace the history of corrections to ancient societies and throughout various religious traditions.
- Follow the development of corrections in colonial America.
- Understand the penitentiary and reformatory movements and their relationship to social conditions and crime rates.
- Recognize key figures in correctional history, such as John Howard, Alexander Maconochie, Walter Crofton, Zebulon Brockway, John Augustus, and others.
- Identify the eras of correctional and prison history in the 20th and 21st centuries.
- Understand the current state of correctional philosophy and practice.

### FEATURES

Corrections Focus: Newgate of Connecticut

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Corrections Controversy: *Holt v. Hobbs*: A Unanimous Supreme Court Decision

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Corrections History: Principles from the 1870 National Congress on Penitentiary and Reformatory Discipline

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Corrections Research: Prison Policy as an Agent of Social Change

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*The respect for the law is the obverse side of our hatred for the criminal transgressor.*

(Mead, 1918, pp. 585–586)

*Penitentiaries were little more than holding bins for the dregs of society.*

(Meskell, 1999, p. 862)

## The Philosophy of Corrections

Throughout history, people and cultures have varied greatly in their beliefs about what is an appropriate response to violations of law. Of course, responding to violations of the law depends on what law is violated (presumably murder and shoplifting will elicit different responses) and the circumstances surrounding the offense, such as the age of the offender, whether the person acted purposely or negligently, and whether the person acted aggressively or in self-defense; however, different value systems result in different responses to crime. Some people and cultures are bleeding hearts and lenient; others are cold-hearted and harsh. Some are seemingly unable and unwilling to punish; others punish with zeal. Throughout this chapter, you will recognize that the history of corrections reflects ongoing changes in beliefs and practices about the best way to punish criminal offenders.

If corrections, or punishment, has vacillated between these poles of harshness and leniency, a more basic question is what do societies do to punish criminal offenders in the first place? Why do we punish? When do societies develop correctional systems to respond to law violators? A good place to start is natural law. **Natural law** is the belief that the human world is organized by a positive or good natural order that should be obeyed by all humans. First described by the Greek writer Sophocles, natural law is most famously attributed to Aristotle and its revival in the 13th century by philosopher St. Thomas Aquinas. Unlike the codified laws that we follow today, natural law is unwritten. Instead, it is tacitly understood and appreciated by human reason. As Aristotle indicated in *Politics*, “Just punishments and chastisements do indeed spring from a good principle, but they are good only because we cannot do without them—it would be better that neither individuals nor states should need anything of the sort” (1998, p. 13).

*Of all the justifications of criminal punishment, the desire to incapacitate is the least complicated, the least studied, and often the most important.*

(Zimring & Hawkins, 1995, p. v)

Natural law is authoritative or binding over human conduct, and the good of the order (referred to generally as “the good”) takes primacy over individual rights and concerns. In short, natural law is obvious and unequivocal that certain behaviors are wrong and intolerable and therefore must be punished. Evidence for natural law can be found in the universal human revulsion against specific negative behaviors or crimes. You would be hard pressed to find a society or group of people that did not morally condemn behaviors such as murder, incest, or even theft. These behaviors appear to be intrinsically wrong, or *mala in se*. Because of their severity, *mala in se* offenses have historically been punished in the most severe way—by a sentence of death. As human organizations became more complex and societies became more modern, the mode of punishment evolved (DeLisi, 2011). The range of behaviors that were defined as crimes broadened and included many acts that were deemed illegal. *Mala prohibita* offenses are crimes made illegal by legislation, not by natural law, and are punished in a variety of ways, such as fines or detention.

Along with evolving modes of punishment, different punishment philosophies have also ebbed and flowed throughout history and to the present. For instance, consider the following quotation:

*We conclude that the present prison system is antiquated and inefficient. It does not reform the criminal. It fails to protect society. There is reason to believe that it contributes to the increase of crime by hardening the prisoner. We are convinced that a new type of penal institution must be developed, one that is new in spirit, in method, and in objective.*

(Bates, 1932, p. 562)

While this seems like an editorial from a newspaper in the 21st century, it comes from an article by Sanford Bates, the first director of the federal Bureau of Prisons. Bates was echoing the conclusions of the Wickersham Commission, which convened in 1931 to assess the state of criminal justice in the United States. Then, as now, there was dissatisfaction with correctional policies and the inability of the correctional system to reduce crime and reform offenders. Because of this, different punishment philosophies have appeared in correctional history. The main punishment philosophies are deterrence, retribution, incapacitation, rehabilitation, and the newest one, restoration.

- **Deterrence** is the act of frightening the potential actor with the use of the threats of punishment. It is the discouragement of crime because of fear of its consequences. The two general types of deterrence are specific and general. **Specific deterrence** pertains to the individual offender being sentenced and punished. **General deterrence** pertains to the large number of potential criminals who might be discouraged from committing crime because of the punishments received by others. In short, deterrence is the use of punishment to send a message and speaks to the rationality of crime. If the correctional system is tough enough, people will decide that crime is too risky to commit for fear of the punishment. The spirit and logic of general deterrence is captured by the Chinese proverb: it is better to hang the wrong fellow than no fellow.
- **Retribution** is the payment of a debt to society and the expiation of one's criminal offense. **Expiation** is based upon the belief that crime arouses the anger of the gods against the entire community, and the only way to reduce the anger is to destroy the offender. Retribution is inherent in the biblical message of "an eye for an eye, a tooth for a tooth" and is utilized when offenders are punished harshly, such as with death or life imprisonment sentences. Those punished for retributive reasons are commonly described as getting their just deserts, meaning they get what they deserved because of their criminal violation. To the general public, the sense of vengeance or revenge directed at a criminal offender is consistent with the theory of retribution. However, retribution does seek to match severe punishment to the severity of the original offense. Revenge is simply bloodlust to punish a hated criminal. Walter Berns's statement that "anger is the passion that recognizes and cares about justice" conveys the sentiment of retribution (1979, p. 152).
- **Incapacitation** is the inability to act. In corrections, incapacitation refers to the use of imprisonment to preclude the ability of an offender to victimize members of society. Without question, American prisons are in the business of incapacitation, simply removing offenders from circulation so they cannot victimize members of mainstream society, a general process known as **collective incapacitation**. It is well known that less than 10 percent of criminals commit more than 50 percent of crimes and even higher

percentages of violent crimes. The policy designed to specifically target this group of habitual offenders for imprisonment is known as **selective incapacitation** (Zimring & Hawkins, 1995).

- **Rehabilitation** means to restore an offender to a law-abiding lifestyle. In corrections, the purpose of sentencing is to help the offender live a crime-free life in the community via mandated participation in programs, such as drug and alcohol treatment, psychiatric counseling, anger management training, life skills training, and other treatment modalities. Toward that end, correctional officials, such as a probation officer or parole officer, supervise clients to improve the offender's chances of being a productive and law-abiding citizen.
- **Restoration** is a theory of justice that emphasizes repairing the harm caused by crime. Restorative justice is accomplished through cooperative processes that include offenders, victims, and community residents. Restoration transforms the traditional relationship between communities and government in responding to crime by including all parties in an interactive, mediation-style process as opposed to the punitive, bureaucratic approaches of the courts. Examples of restorative justice are victim-offender mediation, offender reintegration, restitution, community service, and offender-victim-family conferencing (Restorative Justice, 2011). Restorative justice is ideologically similar to rehabilitation and dissimilar to retribution and incapacitation.

*Squandering our scarce correctional treatment program resources on low-risk offenders that do not need them is a waste of those resources.*

(Latessa & Lowenkamp, 2006, p. 522)

The next section provides a brief historical overview that showcases early approaches to corrections as a means to respond to criminals and crime.

## Historical Approaches to Corrections

Throughout history, corrections and criminal justice generally were largely one and the same. To be suspected or accused of a crime was to be considered guilty of a crime, and summary punishment was often the outcome. Punishment has historically been

swift and brutal, and victims of crime were encouraged and even expected to exact personal retaliation against criminals. Even families or kin groups engaged in this type of retributive justice in *blood feuds* with other families.

Fortunately, corrections and criminal justice have evolved in the following three important ways:

1. The ways that justice and punishment are administered have evolved from informal to formal or bureaucratic means. In earlier epochs, the criminal justice system did not exist. Instead, family and community members responded to, sanctioned, and judged crimes and other behaviors that were deemed inappropriate. This is called **informal social control**. Informal social control still exists today. The ways that parents, friends, and coworkers correct one's behavior are informal means of social control. Being grounded for 2 weeks by one's parents, lectured to by one's boss, or given a stern gaze by one's friends are just some methods that we use to police, judge, and punish others in everyday life.
2. Criminal justice and punishment have also evolved from a personal to an impersonal process, which is related to the first way corrections has evolved. Although informal social control can be effective, it is also susceptible to biases and abuses because of the emotional connections between offender and victim. If the judge and the judged are members of the same family, then it is likely that evaluations of criminal conduct will be subjective. Subjectivity can compromise the lawful, equitable, and proportional goals of justice. It is thought that objectivity better serves the pursuit of justice since it is based on fact, evidence, and procedure instead of raw emotion. This is an exceedingly important point. A dispassionate, formal, professional system of criminal justice has evolved from the visceral, informal, and personal methods of the past. This raises important questions about the ability of the modern, formal criminal justice system to harness and address the emotions elicited by criminal wrongdoing. Can formal criminal justice be as personally satisfying as former informal methods?
3. A dramatic shift from brutal, barbaric forms of punishment to what are thought to be civilized measures of reasoned punishment has occurred. A hallmark of the progression of civilization has been the diminution of violence as punishment. For example, although the United States still

employs capital punishment, the ultimate sanction is rarely imposed and is administered in what is supposed to be a humane, medical procedure. By comparison, historical approaches to criminal justice were draconian and used the penalty of death for scores of crimes, even minor ones. In short, a hallmark of civilization has been the transformation of justice from something that was retributive and repressive to something that is more rehabilitative and restitutive. By and large, the personal vengeance inherent in justice was replaced by an impersonal bureaucracy.

## Code of Hammurabi

Arguably the earliest important date in correctional history was the establishment of the **Code of Hammurabi** by the Babylonian King Hammurabi in 1780 BCE. The Code of Hammurabi was fairly sophisticated and contained 282 clauses or case laws pertaining to a variety of social and legal issues. The Code of Hammurabi was guided by the doctrine of *lex talionis*, meaning an eye for an eye, a tooth for a tooth. The *lex talionis* embodied three principles that are applicable to the present day. First, law and criminal punishment should be punitive and in part driven by vengeance. Second, crime and its punishment should be proportionate (i.e., a person convicted of murder should be executed because the punishment equals the severity of the underlying criminal conduct). Unfortunately, because many nonlethal behaviors were punishable by death, the Code of Hammurabi often was excessive and not proportionate. Third, punishment is inflicted in the name of the community or city-state, not the specific victim. The idea that all societal members suffer from crime, thus making it a social problem, is certainly salient to us today and is a basis of the restorative justice movement.

## Judeo-Christian Traditions

Between the 16th and 13th centuries BCE, the Judeo-Christian traditions weighed in on criminal justice. According to religious tradition, Moses received the Ten Commandments from God. Containing most famously the proscription against murder, the Ten Commandments have heavily influenced cultures and legal systems within the Judeo-Christian tradition, such as the United States. A noteworthy contribution during this era was the book of Deuteronomy attributed to Moses. Deuteronomy is

essentially a legal book containing the rights, laws, penalties, and protocriminal justice system of Israel.

*When Sodom and Gomorrah flouted God's will, his anger laid them waste.*

(Friedman, 1993, p. 34)

*To establish a prison environment which will not be a welcome asylum to the man who has lived in squalor and degradation and yet not be a place of continual torture and deprivation to a man of finer sensibilities is considerable of a task in itself.*

(Bates, 1932, p. 570)

Like the Babylonians, the Judaic and Christian traditions of criminal justice were punitive and viewed death as an appropriate penalty for many transgressions. Consider two verses from Deuteronomy 17:6–7 (from Carroll & Prickett, 2008):

*At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death. The hands of the witnesses shall be first upon him to put him to death, and afterward the hands of all the people. So thou shalt put the evil away from among you.*

An interesting side note is the reference to the notion of evil, and by extension, evil people. From the law of Moses to our modern concern about serial killers and other infamous criminals, people have struggled with the proper conceptualization and handling of criminals.

## Greek and Roman Traditions

The Greek and Roman societies also made significant early contributions to criminal justice. In 621 BCE, the Athenian politician and magistrate Draco compiled the first comprehensive set of laws in Greece. Prior to this time, criminal matters were viewed as private matters and were resolved by the injured party or victim's family. Draco's laws were noteworthy for their severity, as the penalty for many offenses was death. Poisoning, starvation, death by exposure, and banishment were just some of the sanctions employed during Draco's time. Indeed, the contemporary term **draconian**, often used to describe tough criminal justice policies, is derived from Draco and his legacy. Over the next century, as Greek society



**The Code of Hammurabi from 1780 BCE contains some of the earliest tenets of the punitive philosophy that underlies criminal punishment. In what ways do American correctional systems continue to embody the spirit of the Code of Hammurabi?**

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was plagued by dissent, the harsh criminal justice code of Draco was softened by reformists such as Solon and Cleisthenes. These progressive Greeks made only homicide a capital crime and instituted the widespread use of fines as a form of punishment. Fines served two purposes or constituencies. They were a form of restitution to the victim and served as a tax for the public good. By paying both victim and community, Solon's use of fines helped bridge the private and public interests of criminal justice.

From the founding of Rome in 750 BCE to 450 BCE, criminal justice was administered according to tradition of Roman patricians. Unfortunately, this informal, top-down form of justice was unfairly administered to nonelites. In 450 BCE, Roman magistrates created the **Law of the Twelve Tables**, a comprehensive and codified legal code to replace the oral, informal, and largely unfair prior tradition. The Twelve Tables remained in effect for nearly 1,000 years until the fall of Constantinople and the Eastern Roman Empire. An interesting facet of the

Twelve Tables was the establishment of two sets of laws, one exclusively for Roman citizens and the other for noncitizens. The idea that law and criminal justice are applied differently based on individual characteristics exists to the present day.

## Magna Carta

A centerpiece historical contribution to criminal justice and the rights of criminal defendants is the **Magna Carta**, or Great Charter. Signed by King John of England on June 15, 1215, the Magna Carta was a codified set of laws that both delineated the set of behaviors that citizens could not engage in and limited the powers of the throne. In many respects, the Magna Carta was the forerunner of the U.S. Constitution with its dual goals of cautiously empowering the state and granting rights and protections to the public.

In fact, the United States owes its entire criminal justice system and common law tradition to England. **Common law** is based on customs, traditions, unwritten norms, and general principles that ultimately find their way into codified or statutory law. Common law would characterize the burgeoning American colonies from the arrival of Columbus in 1492 to the Declaration of Independence in 1776 and the drafting of the U.S. Constitution from 1787 to 1789 to the ratification of the Bill of Rights in 1791. Colonial justice is described in greater detail later in this chapter.

## On Crimes and Punishment

American justice also owes a tremendous debt to **Cesare Beccaria's** masterpiece *Dei delitti e Delle Pene*, or *On Crimes and Punishments*, published in 1764. An Italian nobleman and jurist, Beccaria was disgusted with the arbitrary, discriminatory, and largely barbaric system of justice that typified 18th-century Italy. Beccaria believed in the Enlightenment idea that people were rational and thus their behavior followed an almost economic weighing of the costs and benefits or pains and pleasures of action. Commensurately, punishment should be swift, certain, and severe (but proportionate) to hopefully deter or dissuade people from choosing to engage in crime. According to Beccaria, "in order for punishment not to be, in every instance, an act of violence of one or of many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, dictated by the laws" (1994, p. 284).

*On Crimes and Punishments* contained a variety of ideas that seem obvious today but were revolutionary for their time. Some of these ideas were that laws should be rational, punishments should be in degree to the severity of the crime (thus capital punishment should not be widely applied), the presumption of innocence, that the law should apply equally to all people regardless of social class or other status, and that long imprisonment is a more powerful deterrent than condemnation (DeLisi, 2011).

## Corrections in Colonial America

In many respects, the colonial United States continued the historical approach to criminal justice by relying heavily on punishment. However, other forms of correction and punishment emerged, some of which are used in today's criminal justice system. For instance, the American colonies relied extensively on informal social controls, including public shaming and ridicule. Because communities were small and close-knit, the proclivity for gossip actually helped serve the purposes of keeping people in line and publicly humiliating them when they transgressed social norms.

The colonists also used fines for minor offenses, such as flirting or engaging in sexual contact that was considered improper, such as premarital kissing. For slightly more serious violations, **corporal punishment**, or the infliction of pain to correct and punish deviant behavior was used. *Pillories* were wooden frames with holes for an offender's head and hands. Offenders would stand attached to the pillory for hours as villagers ridiculed and at times threw rocks and garbage at them. *Stocks* were wooden frames with holes for the person's hands and feet and were basically a seated version of the pillory. Other accused persons were publicly whipped, receiving various numbers of lashes or whippings depending on the severity of the offense. Those who swore, engaged in questionable sexual conduct, were intemperate, associated with servants or slaves, or disrespected parents or village leaders received mutilation (cutting ears off was a common practice), water torture, whippings, beating, or even brandings. In addition to the extreme physical pain inflicted by branding, the brands also served the purpose of notifying the community what the criminal had done. Thieves were branded with *T* on their forehead; burglars and persons accused of blasphemy received a *B*; and, as immortalized in Nathaniel Hawthorne's classic *The Scarlet Letter*, adulterers were branded or forced to wear an *A*.

Noted legal historian and scholar Lawrence Friedman (1993) suggests:

*It was a paternal society—a society built on the model of a patriarchal house. Like a stern father, the authorities did not believe in sparing the rod. The courts enforced discipline. In a way, it was a crime just to be a bad citizen: not to conform to standards of good virtue and respectability.*

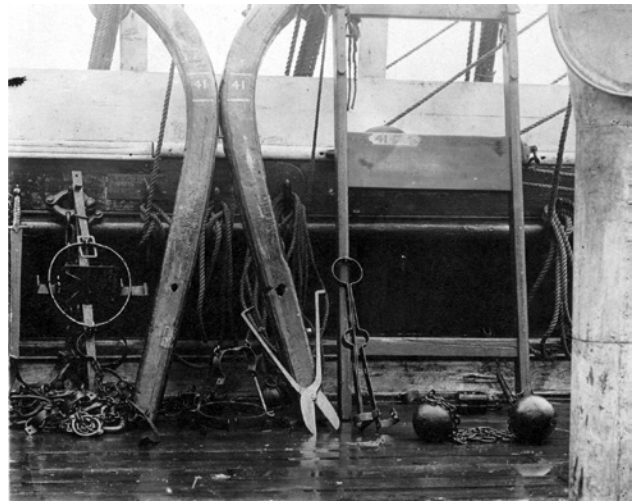
(p. 38)

An early form of incapacitation practiced by the colonists was **banishment**, in which wrongdoers were excommunicated or excluded from the community entirely. Repeat criminal offenders were a group commonly subjected to banishment (the same logic is used today). The colonial use of banishment is somewhat ironic because the burgeoning United States received thousands of English criminals who had been banished or transported from England. Transportation was used by England to export criminals since at least 1615, when James I ordered that clemency could be granted to lesser criminals, such as thieves, swindlers, and prostitutes, as long as they were banished to what is today the United States and Australia. The English Transportation Act of 1718 instituted banishment as the usual punishment for property offenders (violent offenders were simply executed), and it is estimated that between 50,000 and 100,000 criminals were banished to colonial America (Wadman & Allison, 2004). The ships used for transportation, which were little more than floating jails, were known as *hulks*.



**Transportation is a form of banishment in which criminals were sent away, such as the British practice of placing criminals on ships and sending them to colonial America and colonial Australia.**

Eastern Kentucky University Archives, Richmond, KY.



**Torture has historically been used to punish persons accused of crimes and was common on transportation ships.**

Eastern Kentucky University Archives, Richmond, KY.

*It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV.*

(Wendell Holmes, 1897)

It wasn't all physical punishment in the American colonies, however. As early as the 17th century, the beginnings of what would today be called pretrial supervision appear. (Bail was used in Roman law as early as 700 BCE.) Lawbreakers and other suspects had to post money or some other form of collateral as an enticement to obey the law while on "bond." This early type of bail release was known as the *fee system*. Early local jails were based on the common law tradition—the customary criminal justice and legal traditions or doctrines that the United States inherited from England. These early jails, known as *gaols*, held persons awaiting execution, whipping, or some other punishment. Gaols had been in place in English common law since the reign of King Henry II in 1166. It is interesting to note that the function, varied population, and overall squalor of jails has changed little since the 12th century. For nearly 1,000 years, jails have housed persons accused of crimes and awaiting trial, prisoners, the poor, displaced persons, the mentally ill, and others who could not be accommodated by some other party of social service agency (Goldfarb, 1976).

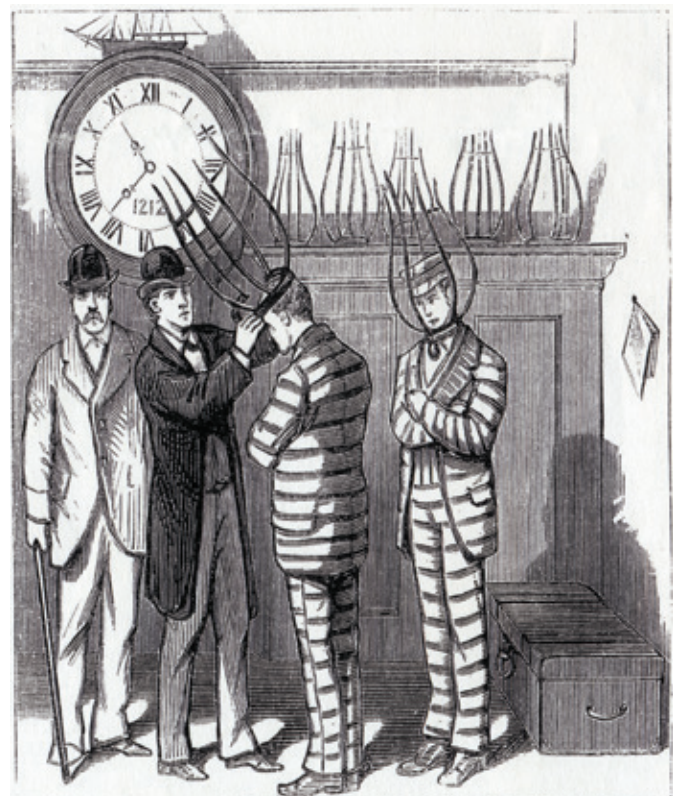
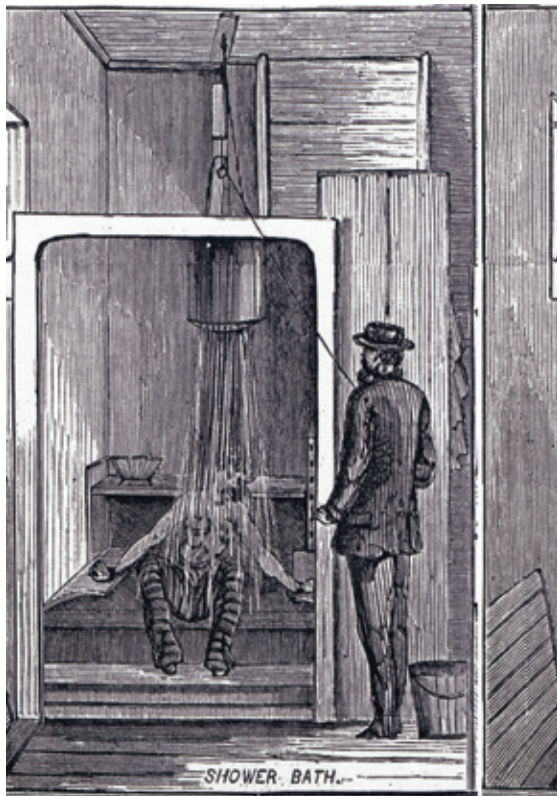
The colonial approach to corrections was effective for its time and worked because the colonies were relatively small and homogenous. Matthew Meskell (1999)

has suggested that three social forces created an inevitable decline in colonial corrections and necessitated reforms. First, as the 18th century progressed, populations increased dramatically in places such as New York, Massachusetts, and Pennsylvania. Punishments that worked well in small villages were almost totally ineffective in large, expansive settings where residents were more mobile. Second, Americans were repulsed by the violent harshness of English common law and in turn disliked the use of corporal and capital punishments in their own society. The following description of Pennsylvania jails in 1776 captures the colonial dissatisfaction with too tough a correctional system:

*In one corrupt and corrupting assemblage were to be found the disgusting objects of popular contempt, besmeared with filth from the pillory—the unhappy victims of the lash . . . the half-naked vagrant—the loathsome drunkard—the sick suffering from various bodily pains, and too often the unaneled malefactor.*

(Vaux, cited in Meskell, 1999, p. 839)

Third, there was an intellectual movement away from corporal and capital punishments (recall the contributions of Beccaria described earlier in this chapter). A major figure in this intellectual ferment was **John Howard**, who was appointed sheriff of Bedfordshire, England, in 1773. Howard had once been imprisoned in a French facility and was horrified at the conditions of confinement that characterized European jails. In 1777, Howard published *The State of Prisons in England and Wales*, a work that publicized the appalling conditions of English jails, the unfair use of the bail/fee system, and generally, an uncivilized correctional system. His work resulted in the passage of the Penitentiary Act in 1779, which required English prisons and jails to provide safe, sanitary facilities; conduct systematic inspections to ensure compliance with appropriate procedures; abolish charging fees to inmates; and oversee a healthy lifestyle regimen for prisoners. Howard is credited with coining the term *penitentiary*, and his work heavily influenced colonial intellectuals, including Benjamin Rush and Benjamin Franklin, and would lay the groundwork for the American



Various forms of corporal punishment, such as the shower bath and flogging, were common in early American prisons, such as Sing Sing. Over time, sheer confinement replaced the physical infliction of pain on prisoners.

Photo courtesy of Ron Arons, Author of *The Jews of Sing Sing*. Wood engraving from Cornelia Cotton Gallery.



penitentiary (for an overview of correctional history, see Blomberg & Lucken, 2000; Johnston, 2009).

## The Invention of the Penitentiary

Although confinement has existed in Western societies for centuries, prisons as they are understood today are considered an American invention. At their inception, prisons, then symbolically known as **penitentiaries**, were hailed as an outgrowth of the Enlightenment in which criminal offenders were confined and expected to contemplate their criminal behavior and work toward their rehabilitation and ultimate redemption. Indeed, inmates were expected to be **penitent**, defined as feeling or expressing remorse for one's misdeeds or sins.

Throughout American history, prisons have reflected the social conditions of the day, and early penitentiaries reflected the intense religiosity of the colonial era. The Pennsylvania Quakers led by William Penn initiated reforms of the colonial approach to correction in which physical punishment would be replaced by isolation. In 1787, Benjamin Franklin and Dr. Benjamin Rush (among other distinguished citizens) organized the Philadelphia Society for Alleviating the

Miseries of Public Prisons, which mobilized the Commonwealth of Pennsylvania to set the international standard in prison design. In 1790, the Philadelphia Society established what is often credited as the first penitentiary or prison in the United States at the Walnut Street Jail (see the Corrections Focus for a profile of the first American prison). It took decades to convince state leaders of the superiority of the penitentiary approach, but would culminate in the Western State Penitentiary in Pittsburgh in 1826 and the more famous Eastern State Penitentiary in Cherry Hill just outside Philadelphia in 1829.

Eastern State Penitentiary was the most expensive American building of its day (it had running water and central heat before the White House had such amenities), one of the most famous buildings in the world, and a major tourist attraction. As described earlier, the function of the penitentiary was not to simply punish but to move the criminal toward spiritual reflection and change. The Quaker-inspired **Pennsylvania system** involved the following (Eastern State Penitentiary, n.d.; The History Channel, 1996):

- Total isolation from other prisoners
- Labor in solitary confinement
- Strictly enforced silence

## CORRECTIONS FOCUS

### Newgate of Connecticut

The Walnut Street Jail in Philadelphia is often referred to as being the first prison in American history when it opened in 1790. However, the Connecticut General Assembly authorized the creation of Newgate in Connecticut in 1773, nearly 20 years before the founding of the Walnut Street Jail. Newgate was a colonial prison that was built in an abandoned copper mine and used to confine five specific types of offenders: robbers, burglars, forgers, counterfeiters, and horse thieves. The use of a prison for confinement purposes was a departure from the use of corporal punishment. Newgate received its first prisoner in December 1773 and housed political prisoners during the Revolutionary War. Beginning in 1824, Newgate also housed female inmates. Newgate was noteworthy for inmate escapes and generally inhumane conditions and was closed in 1827.

Several factors have been cited for the general anonymity of Newgate compared to more famous prisons

and prison systems in Pennsylvania and New York. For instance, Newgate was not administered by a progressive penologist who sought to rehabilitate prisoners into law-abiding citizens. Instead, Newgate was simply a confinement facility—one that was characterized by inefficiency and by what would today be considered barbaric conditions and treatment by correctional officials. Nevertheless, Newgate deserves its place in the history of the American prison.

**SOURCES:** A. M. Durham, III. (1989). Newgate of Connecticut: Origins and early days of an early American prison. *Justice Quarterly*, 6, 89–116. Retrieved July 1, 2011, from <http://www.cultureandtourism.org/cct/cwp/view.asp?a=2127&q=302258>; N. Johnston. (2009). Evolving function: Early use of imprisonment as punishment. *The Prison Journal*, 89, 10S–34S.

- Extraordinarily strict social control in which inmates were hooded whenever they were outside their cells
- Extreme isolation that would cause criminals to think about the wrongfulness of their crimes and become genuinely penitent.

Although the Pennsylvania system has enjoyed a staid reputation, particularly compared to more contemporary images of American prisons, incidents of disorder did occur. Norman Johnston's (2010) recent historical assessment found some evidence of alcohol use and sexual misconduct occurring among staff at the Walnut Street Jail and Eastern State Penitentiary. These isolated incidents caused significant embarrassment to the correctional system and were rare, but demonstrate that scandal is a timeless part of correctional lore.

As a punishment philosophy, the Pennsylvania system was developed in the 18th century; however, the **Auburn system** began in 1816 with the opening of the Auburn Prison in New York. Although heavily influenced by and similar to the Pennsylvania system, the Auburn system was a *congregate system* in which inmates ate and worked together during the day and were kept in solitary confinement at night with enforced silence at all times. The

Auburn system was viewed as more humanistic in the sense that it replaced the systemic use of solitary confinement. But the Auburn system also employed the *lockstep* (inmates marching in single file, placing the right hand on the shoulder of the man ahead, and facing toward the guard), the striped suit, 2-foot extensions of the walls between cells, and special seating arrangements at meals to ensure strict silence. Auburn also introduced the tier system with several floors or wings that have stacked cells over another and classified (and punished) inmates by their level of compliance. By the 1830s, the Auburn system generally replaced the Pennsylvania system, which was discontinued as a prison approach by 1913.

The goal of the Pennsylvania and Auburn systems was to reform inmates, but they used different methods. It is difficult to say which model was more effective. In fact, neither rehabilitated inmates very well. The reasons for their respective failures are many. Critics of the Pennsylvania system held that its prisons were too expensive to build and operate and that separate confinement led to widespread insanity within the prison population. Opponents of the Auburn system argued that the system was too cruel and inhumane to affect



In early American prisons, inmates walked in lock step, as shown in this historical photo from Sing Sing Prison in New York. Are inmate movements within facilities today similar or different from lock step approaches?

Courtesy of New York State Archives: Criminal Justice, B0095.

## CORRECTIONS CONTROVERSY

### *Holt v. Hobbs*: A Unanimous Supreme Court Decision

The public generally believes that political and legal opinions in the United States are deeply divided, and that that division also pertains to the Supreme Court. However, it should be noted that even if some correctional issues appear to be controversial, they are actually straightforward in legal terms. An example of this is the unanimous Supreme Court decision in *Holt v. Hobbs* (2015). The case involved a white inmate named Gregory Holt, a practicing Salafi Muslim who also went by the name Abdul Maalik Muhammad. Petitioner Holt, who was serving a life sentence for burglary and assault, wanted to grow a beard as a necessary practice of his religion. However, the Arkansas Department of Corrections did not allow men to have facial hair other than narrowly trimmed mustaches and quarter-inch beards in the case that an inmate had a diagnosed dermatological problem. Holt argued that the grooming policy was a violation of the Religious Land Use and Institutionalized Persons Act of 2000, which provides that “no government shall impose a substantial burden on the religious exercise of an institutionalized person unless the government demonstrates that the burden is the least means of furthering a compelling governmental interest.” The respondent in the case, Ray Hobbs, director of the Department of Corrections, argued that the hair policy was necessary as a security measure to prevent inmates from hiding weapons in their beards. Most states allow beards, but several states, including Alabama, Florida, Georgia, South Carolina, Texas, and Virginia, had similar proscriptive policies as Arkansas.

In the majority opinion authored by Justice Samuel Alito, the Court held that the Religious Land Use and Institutionalized Persons Act of 2000 allows prison official to test the sincerity of religious beliefs to prevent them from being used for illicit conduct. Holt met the standard for accommodation because he was neither slight nor idiosyncratic with the tenets of Islam. Justice Alito also concluded that the correctional concerns about security risks posed by the beards were hard to take seriously when the hair on inmates’ heads was longer, and thus could more easily obscure a weapon or contraband. Moreover, correctional officers could merely search the inmate’s beard if they have a genuine security concern. In addition, correctional officials also expressed concern that allowing beards would make it easier for inmates to alter their appearance which could contribute to identification problems where inmates live in congregate housing. Justice Alito reasoned that correctional officials should simply take pictures of inmates with and without beards to strengthen their identification of inmates.

Interestingly, although the decision was unanimous, Justice Sonia Sotomayor wrote a concurring opinion where she disagreed with the Court’s dismissal of the security explanation of the correctional officials.

**SOURCES:** *Holt v. Hobbs*, 574 U.S. \_\_\_ (2015); Liptak, A. (2015, January 21). Ban on prison beards violates Muslim rights, Supreme Court says. *The New York Times*. Retrieved May 15, 2017, from <https://www.nytimes.com/2015/01/21/us/prison-beard-ban-gregory-holt-ruling.html>

people’s lives positively. According to de Beaumont and de Tocqueville (1994):

*The Philadelphia [sic] system being also that which produces the deepest impressions on the soul of the convict, must effect more reformation than that of Auburn. The latter, however, is perhaps more conformable to the habits of men in society, and on this account effects a greater number of reformations, which might be called “legal,” inasmuch as they produce the external fulfillment of social obligations. . . . the Philadelphia system produces more honest men, and that of New York more obedient citizens.*

(p. 374)

Although the Pennsylvania system lost favor in the United States, it became widely imitated throughout the rest of the world. For instance, correctional systems in Belgium, China, England, France, Germany, Holland, Italy, Japan, and Spain adopted various methods of both the Pennsylvania and Auburn systems. Ultimately, the Auburn system was more widely adopted in the United States for one principal reason: it reinforced the emerging industrial philosophy that allowed states to use convict labor to defray prison costs.



Eastern State Penitentiary was once among the most famous structures in the world and is a symbol of the American prison.

The Library Company of Philadelphia.

## The Invention of the Reformatory

During the Jacksonian era spanning the first several decades of the 19th century, dissatisfaction with American prisons was widespread. In their 1833 masterwork, Gustave de Beaumont and Alexis de Tocqueville opined that “while society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism” (1994, p. 381). Upon visiting Eastern State Penitentiary in 1842, Charles Dickens wrote, “I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body” (The History Channel, 1996). In other words, the methods of correction inherent in the Pennsylvania and Auburn systems were viewed as cruel, counterproductive, and flagrantly in violation of basic tenets of human, civil, and due process rights (Skidmore, 1948).

Over time, American penologists were also influenced by the innovations of foreign correctional administrators, most notably Alexander Maconochie and Sir Walter Crofton. As a

consequence of the Revolutionary War, England stopped transporting criminals to the American colonies and instead shipped them to what is now Australia. Between 1840 and 1844, Captain Alexander Maconochie was placed in charge of one of the worst British penal colonies, located about 1,000 miles off Australia’s coast on Norfolk Island. This was where twice-condemned criminals—offenders who had committed felonies in England, been transported to Australia, and committed additional crimes there—were sent.

Like John Howard, Maconochie had previously been a prisoner—he was captured by the French while serving as a British naval officer, and was thus sensitive to the often deplorable conditions of confinement. Upon seeing the conditions under which most inmates lived, Maconochie introduced humane reforms that would give prisoners some degree of hope for their future. He proposed the following changes (Barry, 1956):

- Criminal sentences should not be for a specific period of time; rather release should be based on the performance of a specified quantity of labor.

In brief, fixed-time sentences should be abolished in favor of task sentences.

- The quantity of labor prisoners must perform should be expressed in a number of marks (see the discussion of the mark system that follows this list) that must be earned before release was possible.
- While in prison, inmates should earn everything they receive; all sustenance and indulgences should be added to their debts of mark.
- Prisoners should be required to work in groups of six or seven people, and the entire group should be held accountable for the behavior of each of its members.
- Prisoners, while still obliged to earn their daily tally of marks, should be given proprietary interest in their own labor and be subject to a less rigorous discipline in order to prepare them for release into society.

Maconochie developed a **mark system**, where marks were credits against a sentence that allowed inmates to be released once they earned the required number through good behavior. The mark system consisted of four stages. First, the *penal stage* was the harshest form of punishment and was typified by solitary confinement and meager living conditions. Second, the *associated stage* permitted inmates to associate with others and begin to earn marks by participating in programs, working, and abstaining from continued criminal behavior. The worse the inmate's behavior during this initial adjustment, the more marks that were required for release. Third, the *social stage* approximated community living so inmates could better function upon release. Fourth, the final stage of *ticket of leave* was achieved when all marks were earned and the offender was conditionally released to the community (Barry, 1958; Morris, 2002). Today, the use of good time toward an inmate's sentence and parole are familiar concepts; however, they were revolutionary in Maconochie's era. His progressive ideas were denigrated as coddling of criminals, and Maconochie was relieved of duty in 1844.

A disciple of Maconochie, Sir Walter Crofton was the chairman of the board of directors of the Irish prisons. Crofton instituted very similar protocols in Ireland, which were based on Maconochie's mark system. Under Crofton's direction, Irish prisons were characterized by:

- Reward, in which all advantages, including ultimate release, were dependent on industry and good conduct, as shown by daily records.

- Individuality, in which prisons were not permitted to house more than 300 inmates, thus avoiding the problems associated with overcrowding.
- Gradual approximation to freedom, in which every successive stage of discipline (like the mark system) was characterized by less restraint.
- Strict supervision after discharge and certain revocation of ticket to leave on any appearance of a relapse.

Despite these innovations, there was still the widespread public belief that crime threatened the stability and order of society, and prisons appeared to be doing little to reduce the crime rate. Even in the middle 19th century, the general public considered prisons as mere holding stations, regardless of how innovative their design, until criminals were released to offend again.

Edgaro Rotman (1998) described the state of American prisons as follows:

*The elements of the original penitentiary designed, based on regimentation, isolation, religious conversion, and steady labor, had been subverted by a pervasive overcrowding, corruption, and cruelty. Prisoners were often living three and four to a cell designed for one, and prison discipline was medieval-like in character, with bizarre and brutal punishments commonplace in state institutions. Wardens did not so much deny this awful reality as explain it away, attributing most of the blame not to those who administered the system but to those who experienced it. Because the prisons were filled with immigrants who were ostensibly hardened to a life of crime and impervious to American traditions, those in charge had no choice but to rule over inmates with an iron hand.*

(p. 152)

These concerns did not go unnoticed. The New York Prison Association commissioned Enoch Cobb Wines and Theodore Dwight to conduct a national survey of prisons and correctional methods. Their findings were grim. Wines and Dwight suggested an almost complete reconstruction of American prisons, including barring prison administration appointments based on politics, granting wardens the power to remove guards at will, abolishing prison labor for profit, increasing religious and academic training, and even redesigning the basic prison buildings (Meskell, 1999). Inspired by their report, the National Congress on Penitentiary and Reformatory Discipline (a forerunner of the contemporary American Correctional Association) met in October 1870

## CORRECTIONS HISTORY

### Principles from the 1870 National Congress on Penitentiary and Reformatory Discipline

- Punishment is inflicted on the criminal in expiation of the wrong done, and especially with a view to prevent his relapse by reformation.
- Treatment is directed at the criminal and his new birth to respect for the laws.
- Practice shall conform to theory and the process of public punishment be made in fact, as well as pretense, a process of reformation.
- A progressive classification should be established and include at least three stages: a penal stage, a reformatory stage, and a probationary stage worked on some mark system where they earn promotion, gaining at each successive step, increased comfort and privilege.
- Since hope is a more potent agent than fear, rewards more than punishments are essential to every good prison system.
- The prisoner's destiny during his incarceration should be put in his own hands.
- The two master forces opposed to the reform of the prison systems are political appointments and instability of administration.
- Prison officers need a special education for their work; special training schools should be instituted for them and prison administration should be raised to the dignity of a profession.
- Sentences limited only by satisfactory proof of reformation should be substituted for those measured by mere lapse of time.
- Of all the reformatory agencies religion is the first in importance.
- Education is a matter of primary importance in prisons.
- No prison can be made a school of reform until there is, on the part of officers, a hearty desire and intention to accomplish this effect.
- There must be a serious conviction in the minds of prison officers that the imprisoned criminals are capable of being reformed.
- A system of prison reform must gain the will of the convict.
- The interest of society and the interest of the convicted criminal are really identical. Society is best served by saving its criminal members.
- The prisoner's self-respect should be cultivated.
- In prison administration moral forces should be relied upon with as little mixture of physical force as possible.
- Steady honorable labor is the basis of all reformatory discipline. It not only aids information, it is essential to it.
- It is important that criminals be trained while in prison to the practice and love of labor.
- We regard the contract system of prison labor as prejudicial—alike to discipline, finance, and reformation.
- The stage of conditional leave is problematic to administer but we believe Yankee ingenuity is competent to devise some method of practical application among separate jurisdictions and the vast reach of our territory.
- Prisons, as well as prisoners, should be classified or graded. There shall be prisons for the untried; prisons for young criminals; prisons for women; for misdemeanants; male felons; and the incorrigible.
- It is believed that repeated short sentences are worse than useless.
- Greater use should be made of the social principal in prison discipline than is now. The criminal must be prepared for society in society.
- Public preventative institutions for the treatment of children constitute a true field of promise in which to labor for the repression of crime.
- More systematic and comprehensive methods should be adopted to serve discharged prisoners. Having raised him up, it has the further duty to aid in holding him up.
- The successful prosecution of crime requires the combined action of capital and labor.
- It is plainly the duty of society to indemnify the citizen who has been unjustly imprisoned.
- Our laws regarding insanity and its relationship to crime need revision.

- Does society take all the steps it easily might to change, or at least improve, the circumstances in our social state that thus lead to crime?
- The exercise of executive clemency is one of grave importance, and at the same time of great delicacy and difficulty.
- The proper duration for imprisonment for a violation of the laws of society is one of the most perplexing questions in criminal jurisprudence.
- The establishment of a National Prison Bureau or a National Prison Discipline Society is recommended.
- We declare our belief that the education and self-respect of the convict would be served by the establishment of a weekly newspaper to enable him to keep pace with passing events.
- Prison architecture is a matter of grave importance. The proper size of prisons is a point of much interest. In our judgment 300 inmates are enough to form the population of a single prison; and, in no case, would we have the number exceed five or six hundred.
- The organization and construction of prisons should be by the state.
- As a general rule, the maintenance of all penal institutions, above the county jail, should be from the earnings of their inmates, and without cost to the state.
- A right application of the principles of sanitary science in the construction and arrangements of prisons is another point of vital importance.
- The principle of the pecuniary responsibility of parents for the full or partial support of their criminal children in reformatory institutions, extensively applied in Europe, has been found to work well in practice.
- It is our intimate convictions that one of the most effective agencies in the repression of crime would be the enactment of laws, by which the education of all the children of the state should be made obligatory.
- It is our conviction that no prison system can be perfect or successful to the most desirable extent, without some central and supreme authority to sit at the helm, guiding, controlling, unifying, and vitalizing the whole.

**SOURCE:** American Correctional Association. (1970). *National congress on penitentiary and reformatory discipline, 1970 proceedings*. Alexandria, VA: American Correctional Association.

in Cincinnati, Ohio, and established principles of modern, humanistic correctional theory and practice (Wines & Dwight, 1867).

One of the most famous practitioners who placed the **reformatory** theory into practice was Zebulon Brockway. As warden of the Elmira (New York) Reformatory, Brockway infused educational programs, vocational training, an administrative and operating system based on military discipline, and a humanistic orientation into American corrections. In 1876, the Elmira Reformatory began receiving inmates. Elmira was built like Auburn with inside cell blocks for solitary confinement at night and communal workshops. Ten percent of Elmira's cells were built with outside courtyards, similar to those at Cherry Hill. This modified design allowed natural light to penetrate the building. Elmira also used more artificial light than the Auburn or Cherry Hill prisons and had more modern sanitary facilities.

Elmira also differed from the typical prison of this period in one other respect. Indeterminate sentencing meant that prisoners received a maximum sentence with early release on parole if they exhibited good behavior. At entry, all prisoners were placed in

the second grade. After 6 months of good conduct, they were promoted to the first grade, and 6 months of continued good conduct entitled them to parole. Prisoners who misbehaved were demoted to the third level, where a month's good conduct was required to restore them to the second grade. Inmates who regularly misbehaved were obliged to serve their maximum sentence.

Brockway believed that prisoners could be reformed only in an atmosphere conducive to rehabilitation. It was in that spirit that Brockway developed what became known as the Elmira model:

- Clothing that was not degradingly distinctive but uniform, and represented the respective grades or standing of the inmates
- A liberal prison diet designed to promote vigor
- A gymnasium completely equipped with baths and exercise equipment and facilities for field athletics
- Facilities for training about one-third of the population in mechanical and freehand drawing, wood- and metalworking, cardboard constructive form work, clay modeling, cabinetmaking, and iron molding



The Elmira Reformatory was the quintessential reformatory under the guidance of Warden Zebulon Brockway. In many respects, Brockway advanced the rehabilitative capacity of American corrections.

Eastern Kentucky University Archives, Richmond, KY.

- Trade or vocational instruction based on the needs and capacities of individual prisoners
- A school with a curriculum from an adaptation of the kindergarten to the usual high school course, and special classes in college subjects
- A library for circulation, consultation, and occasional social use
- A weekly institutional newspaper, in lieu of all outside newspapers, edited by prisoners
- Recreation and entertainment for the inmates
- Nondenominational religious opportunities

Between 1876 and 1901, the Elmira model was adopted in correctional systems in 12 states across the United States. However, by the time Brockway retired, the enthusiasm that had inspired the reformatory movement began to decline mainly because crime continued to be widespread. The reformatory did not appear to work. As a result, the enlightened concepts of the reformers gave way once more to a more control-oriented approach to corrections.

An inherent limitation of the Elmira system was that guards were unwilling to adjust to a correctional philosophy that provided inmates with autonomy. Emphasis on security remained their first priority, especially with the increasing populations of the institutions. Administrators were forced to create holding areas for more violent offenders, thus making

reform programs available only to a few. At Elmira and elsewhere, simple custody reemerged as the primary goal and punishment as the method for controlling prisoners (Brockway, 1994).

## Probation and Parole

While confinement tends to dominate the discussion (and budget) of corrections, interesting developments also were occurring in community corrections. Like the various eras of prison history, the historical development of sanctions, such as probation and parole, responded to social conditions, crime rates, and the philosophical movement of the era. For instance, *probation*, which is Latin for a period of proving or trial, began in 1841 and is credited as the invention of **John Augustus**. Augustus was a Bostonian shoemaker of financial means who secured the release of a confirmed alcoholic arrested for being a common drunk by acting as surety for him. At sentencing, Augustus asked the judge to defer sentencing for 3 weeks and release the defendant to his custody. After 3 weeks, the offender convinced the judge of his rehabilitation and received a fine. The period of community correction alleviated the need for jail, and probation was born. Until his death in 1859, Augustus bailed out 1,800 persons and was liable for nearly \$250,000 in secured bonds.



Augustus was selective as to who could be on his probationary caseload. The ideal candidate was a first-time offender for a nonserious charge who had moral character and demonstrated potential for reforming his or her criminal behavior. Augustus also developed the basic operating procedure of the modern probation system, which is:

- Conducting a presentence investigation
- Mandating probation conditions
- Developing a caseload
- Reporting to the court
- Revoking the sentence, if necessary

In 1878, Massachusetts became the first state to formally adopt probation for juveniles. All states followed between 1878 and 1938. By 1956, all states and the federal system had adult probation (Petersilia, 1997).

The 19th century also saw the development of parole (in addition to the work of Maconochie and Crofton). The history of parole in the United States can be understood by following the penal history of New York State. In the early 19th century, judges sentenced inmates to flat, determinate sentences, such as 30 years. Due to the inflexibility of these sentences, governors were forced to grant mass pardons to alleviate prison crowding. In 1817, New York introduced the nation's first good time law, which rewarded prison inmates with time off their period of imprisonment for good behavior. In 1876, Zebulon Brockway, mentioned earlier in this chapter, created parole and the indeterminate sentence whereby judges set a minimum and maximum term and permit parole release for those who have served the minimum. Both of Brockway's innovations were predicated on the belief that criminals could be reformed and that their punishment and correction should be individualized to fit the heterogeneity of the criminal population.

In 1930, the Division of Parole was established. In addition, a board of parole was created within the division and given the responsibility, formerly held by the New York Department of Corrections, for decisions on parole releases from prisons (Petersilia, 1998). From the late 19th century through the first decades of the 20th century, other states followed New York's lead and revamped their own sentencing structure and correctional approach to include indeterminate sentencing and parole.

Perhaps more than any other form of criminal punishment, parole has been the most susceptible to

fluctuations in public opinion regarding crime control. From its inception, parole was hailed as a mechanism to both permit criminal offenders an opportunity for reform and cost-effectively reduce the prison population. Over time, however, the general public grew tired of parole because the sanction was neither providing the necessary treatment or correction to reform criminals, nor were criminals serving meaningful terms behind bars. Due to indeterminate sentencing and parole, there was little truth in sentencing. Indeed, the changes in how parole is administered demonstrate how susceptible it is to political pressure. For instance, between 1980 and 2000, the discretionary parole release rate remained relatively constant. During the same period, mandatory parole releases increased five-fold (Travis & Lawrence, 2002). In other words, the discretionary freedom of parole boards has been severely curtailed, and these tensions continue to surround parole to the present day.

*Every modern Western society witnesses the conflict between a perceived necessity of punishment and uneasiness at its practice.*

(Spierenburg, 1984, p. 207)

## Recent Developments

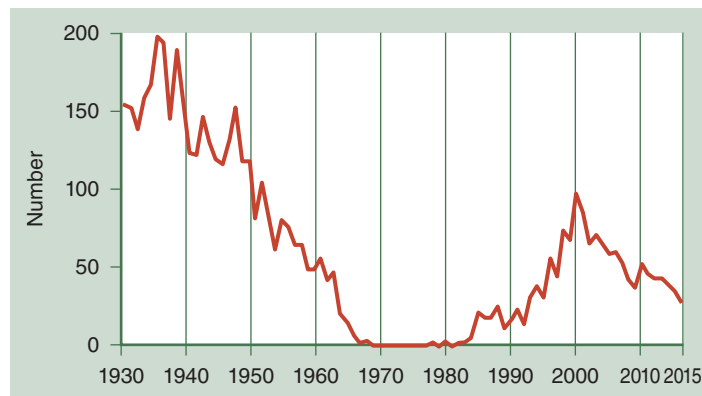
The first decades of the 20th century lacked the philosophical and intellectual power of the reformatory movement. Instead, the correctional system was pragmatic and not particularly designed, or perhaps even interested, in the rehabilitation of the offender. While the imprisonment rate remained steady for several decades, the absolute number of inmates increased substantially during this era, prompting the need for additional prison facilities. For instance, beginning with the enactment of the **Three Penitentiary Act** in 1891, which authorized the building of the first three federal prisons at Leavenworth; Atlanta; and McNeil Island, Washington, the federal government developed a formalized federal prison system. In 1930, the Bureau of Prisons (BOP) was established within the Department of Justice and charged with the management and regulation of all federal penal and correctional institutions. This responsibility covered the administration of the 11 federal prisons containing more than 13,000 inmates in operation at the time. By 1940, the BOP had grown to 24 facilities with 24,360 inmates. Except for a few fluctuations, the number of inmates did not change significantly

between 1940 and 1980, when the population was 24,252. However, the number of facilities almost doubled (from 24 to 44) as the BOP gradually moved from operating large facilities confining inmates of many security levels to operating smaller facilities that each confined inmates with similar security needs.

As a result of federal law enforcement efforts and new legislation that dramatically altered sentencing in the federal criminal justice system, the 1980s brought a significant increase in the number of federal inmates (Federal Bureau of Prisons, 2006). The Sentencing Reform Act of 1984 established determinate sentencing, abolished parole, and reduced good time; additionally, several mandatory minimum sentencing provisions were enacted in 1986, 1988, and 1990. From 1980 to 1989, the inmate population

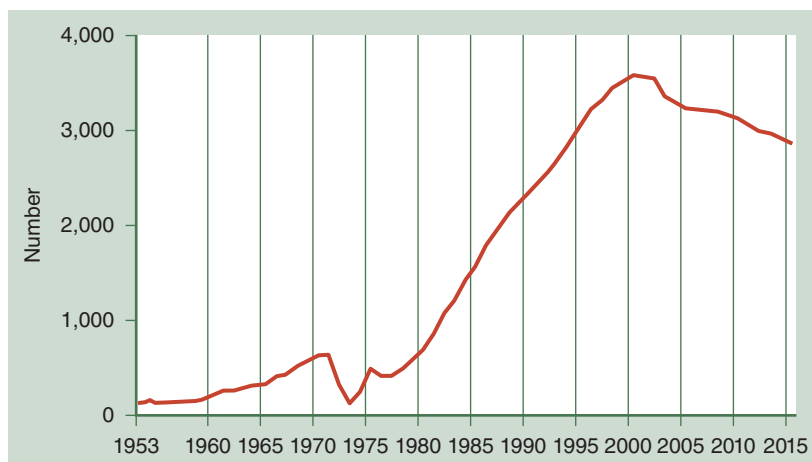
more than doubled, from just over 24,000 to almost 58,000. During the 1990s, the population more than doubled again. The explosive growth in the BOP is discussed in greater detail later in this chapter.

During the first decades of the 20th century, the correctional system was swifter, tougher, and unquestionably interested more in crime control than the treatment of inmates. A way to evaluate this era of correctional toughness is the speed with which condemned offenders were not only executed but also processed on death rows across the United States. As shown in **FIGURES 2-1** and **2-2**, it was once routine procedure for the states to execute between 100 and 200 inmates each year. Moreover, once sentenced to death, offenders were executed with considerable dispatch, unlike the prolonged appeal process that exists today.



**FIGURE 2-1** Trends in executions.

Reproduced from: Bureau of Justice Statistics. (2017). *Executions, 1930-2015*. Retrieved May 22, 2017, from <https://www.bjs.gov/content/pub/pdf/cp1415sb.pdf>.



**FIGURE 2-2** Trends in the death row population.

Reproduced from Bureau of Justice Statistics. (2017). *Prisoners on death row, 1953-2015*. Retrieved May 22, 2017, from <https://www.bjs.gov/content/pub/pdf/cp1415sb.pdf>.

## Industrial Prison Era

In addition to being crowded, prisons of this era were characterized as harsh, and inmates were utilized as free labor. The **industrial prison era**, spanning from approximately 1900 to 1935, placed an emphasis on inmate labor and commerce to such a degree that prisons were self-sustaining and even profitable. Five types of inmate labor systems were used (Regoli & Hewitt, 2008):

- *Contract labor system.* Private contractors provided prisons with machinery and raw materials in exchange for the inmate labor to produce finished products.
- *Piece-price system.* Contractors gave raw materials to prisons, which used convict labor to produce finished products. Once the goods were manufactured, they were sold by the piece to the contractor, who then resold them on the open market.
- *Lease system.* Contractors would bid against each other to own the rights to inmate labor. Inmates worked outside the prison facility, under the supervision of a private contractor, who was responsible for the inmates' food, shelter, and clothing.
- *Public account system.* The state retained control of inmate labor and provided convicts with the machinery and raw materials to produce finished products. The state sold the products on the open market and used the profits to defray the cost of prison operations.
- *State-use system.* Prison labor was used to produce goods for state-supported institutions, such as schools and hospitals.

During the Great Depression, prison labor and commerce came under scrutiny from organized labor. On January 29, 1929, the **Hawes–Cooper Act** enabled states to implement laws regarding the acceptance or prohibition of prison-made goods coming within its borders. It did not prohibit interstate transportation of prison-made goods, but made prison-made goods subject to the laws of any state just like other commercial goods. In 1935, the **Ashurst–Sumners Act** authorized federal prosecution of violations of state laws enacted pursuant to the Hawes–Cooper Act, and subsequent amendments to this law in 1940 strengthened federal enforcement authority by making any transport of prison-made goods in interstate commerce a

federal criminal offense. The **Walsh–Healey Act** passed by Congress in 1936 prohibited the use of inmate labor to fulfill certain federal contracts in excess of \$10,000.

## The Hands-off Doctrine, Deprivation, and Importation

One result of all of the previously mentioned legislation that addressed correctional labor was the swift end to inmate labor, which meant that formerly industrious inmates were mostly idle. Prisons were overcrowded, and most lacked any semblance of educational, trade, or therapeutic programs that would assist in the offender's reintegration to society. It was not uncommon for correctional facilities to experience violent and costly riots as inmates protested their conditions of confinement. From the Great Depression until the late 1960s, a **hands-off doctrine** characterized American corrections. The practices and operations of prisons and other sanctions received little judicial oversight, and they were largely shut off from the press and academia. In short, what went on in American prisons stayed in American prisons. Gradually, the Supreme Court recognized inmate grievances pertaining to the application of the Eighth Amendment to state prisoners in *Robinson v. State of California* (1962); whether an inmate could bring action under the Civil Rights Act in *Cooper v. Pate* (1964), the case that effectively ended the hands-off era; and others.

Another result of this doctrine was the entrenchment of antisocial attitudes, values, and behaviors by prisoners. By approximately 1940, academic criminologists began to gain entrée into American prisons, and what they described was unsettling. Donald Clemmer's *The Prison Community*, published in 1940, showed that prisons were wholly separate microsocieties that contained their own language or argot, values, beliefs, and norms and expectations of behavior. Clemmer developed the idea of **prisonization**, defined as the socialization process whereby inmates embrace the oppositional and antisocial culture of the prisoner population. According to Clemmer (1940, 1950), a variety of circumstances made prisonization more likely, such as:

- Serving a lengthy sentence
- Having an unstable personality
- Associating with similarly disturbed inmates
- Having few positive relations with those on the outside

- Readily integrating into prison culture
- Blindly accepting prison dogma
- Associating with hardened offenders or career criminals
- Continuing to engage in antisocial behavior while imprisoned

Norman Hayner and Ellis Ash (1980), two contemporaries of Clemmer, depicted prison conditions in the following way: “a clear realization of the degenerating influence of our present prison system should encourage more experiments aiming to devise a community for offenders that will actually rehabilitate” (p. 583).

In 1958, Gresham Sykes’s *The Society of Captives* portrayed the prison as a despotic, punitive, inhumane social organization designed purely for punishment, retribution, and retaliation, and not rehabilitation. This became known as the **deprivation model** of inmate behavior in which guards created a regime or social order that forced inmates to conform. The regime was totalitarian, not because guards felt this was the best way to proceed, but rather because of society’s desire to prevent escape and disorder. Sykes highlighted the deficiencies of this approach, including the lack of a sense of duty among those who were held captive, the obvious fallacies of coercion, the pathetic collection of rewards and punishments to induce compliance, and the strong pressures toward the corruption of the guard in the form of friendship, reciprocity, and the transfer of duties into the hands of trusted inmates.

According to Sykes (1958), the deprivation resulted in five *pains of imprisonment*, which were (1) deprivation of liberty, (2) deprivation of goods and services, (3) deprivation of heterosexual relationships, (4) deprivation of autonomy, and (5) deprivation of security. To adjust to this new environment, Sykes identified archetypal inmate roles, such as rats, center men (those who aligned with guards), gorillas, merchants, wolves, punks, real men, toughs, etc. Over time, criminologists have found that the deprivation model of inmate behavior is still relevant to the present day and that correctional facilities characterized by regimes of rigid social control tended to experience more inmate-related problems than facilities with a treatment or less repressive form of administrative control (Akers, Hayner, & Gruninger, 1977; Huebner, 2003; Jiang & Fisher-Giorlando, 2002; Poole & Regoli, 1983; Reisig & Lee, 2000; Walters, 2003; Wheeler, 1961).

Early critiques of prison centered on the deplorable conditions of confinement and the unjust and unconstitutional treatment of inmates and criminal offenders generally. Academic penologists usually attributed blame for the appalling state of American prisons toward the criminal justice system, such as wardens, prison administrators, and correctional officers, not the inmates. Ironically, it was a former prisoner turned academic named John Irwin, who, along with Donald Cressey, advanced a new explanation of prisoner behavior in 1962. The **importation model** argued that prisoner behavior and the conditions of prisons were mostly a function of the characteristics, values, beliefs, and behaviors that criminals employed on the outside of prison. In other words, inmates of varying degrees of criminality imported their behavioral repertoire and behaved accordingly. To connect to the earlier point, prison conditions were often horrendous because of the commensurate behavior that offenders brought to the facility. The importation model has received substantial empirical support evidenced by the continuity in criminal behavior among the most hardened offenders (Cao, Zhao, & Van Dine, 1997; DeLisi, 2003; DeLisi, Berg, & Hochstetler, 2004; Gaes, Wallace, Klein-Saffran, & Suppa, 2002; Gendreau, Goggin, & Law, 1997; Schrag, 1954).

During the late 1960s, the link between prisons and conventional society achieved its greatest synergy since the initial design of the penitentiary. The 1960s and 1970s were decades of great turmoil, malaise, and revolution that centered on civil rights, minority rights, women’s rights, worker’s rights, and overall a broadening liberalization of society. This social turmoil produced a different type of correctional client. The loosely bounded offender and inmate subcultures of the deprivation era were replaced by young, politicized, often gang-affiliated offenders (Jacobs, 1977).

Also occurring between 1965 and 1993 was an unprecedented increase in the crime rate (Wilson, 1983). Rising crime rates, particularly for violent crimes such as murder, rape, and robbery, became a primary concern of the general public and an increasingly important political item. As the nation’s criminal justice philosophy shifted to the right, so, too, did its thoughts on how to best supervise criminal offenders. Lawrence Sherman (2005) noted that during this era, “[conservatism] helped fuel a sea change from treating criminals as victims of society to treating society as the victim of criminals” (p. 126). To appear soft on crime was to virtually guarantee a

loss at election polls. American society generally shifted to the political right during the 1980s and 1990s, and correctional policy followed suit. As the 1980s arrived, the American correctional system was poised to explode in unprecedented ways.

The explosive growth of corrections in American society during the latter part of the 20th century can be understood in a number of ways. Glenn Walters (2012), a prominent criminologist and forensic psychologist, worked at the BOP for over 25 years and has offered the following insights. In 1984, the BOP consisted of 32,000 inmates, 12,000 staff, and 44 different institutions. By 2011, the BOP had grown to nearly 215,000 inmates, 35,000 staff, and 113 institutions. During this time span, the inmate population of the BOP increased nearly 575 percent, with only a 213 percent increase in staffing and a 157 percent increase in institutions. The density of institutions and the inmate–staff ratio more than doubled.

What might account for the dramatic increase in the BOP inmate population over this span? The **Sentencing Reform Act of 1984**, which established determinate sentencing, abolished parole, and reduced the amount of good time inmates could earn, and mandatory sentencing charters enacted in 1986, 1988, and 1990 both raised the number of inmates

entering prison and reduced the number of inmates leaving prison. However, these were not the only factors responsible for the rapid growth of the federal prison population between 1984 and 2011. America has been engaged in a war on drugs since the early 1900s, but the war gained new momentum in the late 1980s and early 1990s with the advent of several presidential initiatives. The drug war not only increased the BOP inmate population but also changed the population's composition. In 1984, 29 percent of the BOP inmate population was serving time for drug law violations; by 2011, the percentage had risen to 55 percent.

Federal statutes on gun control, immigration, child pornography, and carjacking as well as the Revitalization Act of 1997, in which the BOP took custody of all District of Columbia code felony offenders, not only increased the overall prison population but also introduced a new class of violent offender to the BOP. In 1984, the only violent crime the U.S. Attorneys office was prosecuting to any extent was bank robbery; by 2011, murderers, rapists, assaulters, burglars, and child molesters were entering the system in record numbers. Changes in both the size and composition of the federal prison population may have contributed to a rise in violence

## CORRECTIONS RESEARCH

### Prison Policy as an Agent of Social Change

Few people would cite a prison system in the southern United States as an agent of social change in terms of race relations. As noted in their landmark book *First Available Cell: Desegregation of the Texas Prison System*, Chad Trulson and James Marquart documented the historic *Lamar* decision that led to the desegregation of the Texas prison system. The case centered on the correctional odyssey of Allan Lamar, an African American career criminal who committed an array of crimes and was imprisoned in multiple states and the federal system from the 1950s until his death in 1998. During this era, the Texas prison system was segregated by race so that white, black, and Hispanic inmates would only be celled with same-race roommates. This created an interesting constitutional challenge. On the one hand, it is illegal to engage in unequal treatment and discrimination by

race. On the other hand, the majority of correctional staff and inmates—white, black, and Hispanic—feared that desegregation of cells in the Texas prisons would result in a firestorm of racially motivated violence. To everyone's surprise, it did not. Although racially motivated violence does occur in prisons, the overwhelming amount of violence is of an intraracial nature (just as crime in the general population is mostly intraracial). Today, more than 60 percent of double cells are desegregated in Texas prisons, and some units have over 80 percent interracial cells. In this way, the Texas prison system was a trailblazer in race relations in this context.

**SOURCE:** Trulson, C. R., & Marquart, J. W. (2009). *First available cell: Desegregation of the Texas prison system*. Austin, TX: University of Texas Press..

within the BOP, as exemplified by a nearly 200 percent increase in the number of inmate assaults on staff and the more than 206 percent increase in the rate of inmate assaults on other inmates between 1984 and 2011 (Walters, 2012).

## The New Penology and Beyond

As shown in **FIGURE 2-3**, the imprisonment rate has increased approximately fivefold since 1980, making it clear that imprisonment had become the standard method of punishing criminal offenders, with incapacitation the assumed rationale for confinement. Malcolm Feeley and Jonathan Simon (1992) dubbed this approach the **new penology**, defined as the management of groups or subpopulations of offenders based on their actuarial risk to society. The new penology involves shifts in the following three distinct areas:

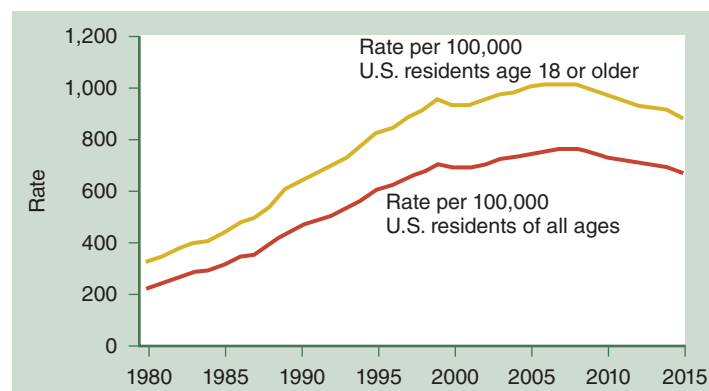
1. The emergence of new discourses. In particular, the language of probability and risk increasingly replaces earlier discourses of clinical diagnosis and retributive judgment.
2. The formation of new objectives for the system as increasing primacy is given to the efficient control of internal system processes in place of the traditional objectives of rehabilitation and crime control.
3. The deployment of new techniques. These techniques target offenders as an aggregate in place of traditional techniques for individualizing or creating equity.

According to Feeley and Simon (1992), the new penology emphasizes control and surveillance of

offenders, considers rehabilitation to be largely idealistic, and deemphasizes the likelihood of offender reintegration. In this sense, the new penology is portrayed negatively. Among academics and some elites, the increased reliance on imprisonment is seen as unjust and discriminatory. Nevertheless, it is *the* approach to corrections.

While it is true that in the public eye American corrections is today more than ever dominated by confinement and control, progressive advancements have been made at supervising offenders in the community. Evaluation researchers Edward Latessa and Christopher Lowenkamp (2006) have suggested that evidence-based practices demonstrate empirically that recidivism rates can be significantly reduced through theoretically sound, well-designed programs that appropriately apply the principles of effective intervention. The principles of effective intervention are risk, need, treatment, and fidelity:

- The *risk principle* is who to target. The most intensive correctional treatment and intervention sentence or program should be reserved for high-risk offenders, such as chronic or violent criminals. For low-risk offenders, simply holding them accountable for their actions and imposing minimal sanctions is usually sufficient to prevent recidivism.
- The *need principle* is what to target. Programs should target crime-producing needs, such as antisocial peer association, antisocial personality, drug use, alcoholism, self-control skills, and other factors that are highly correlated with crime.
- The *treatment principle* addresses how to target offenders' needs. The most effective programs are



**FIGURE 2-3** Trends in the incarceration rate.

Bureau of Justice Statistics. (2017). Incarceration rate, 1980-2015. Retrieved May 22, 2017, from <https://www.bjs.gov/index.cfm?ty-kfdetail&iid=493>

behavioral and center on present circumstances and risk factors that are responsible for the offender's behavior. Behavioral interventions are action rather than talk oriented and teach offenders new, prosocial skills to replace antisocial ones.

- The *fidelity principle* pertains to the integrity and quality of the program, intervention, or sentence. This includes making sure that the program has well-trained staff and that it closely monitors offenders, assists with other needs of the offender, ensures the program is delivered as designed through quality-assurance processes, and has structured aftercare.

When the principles of effective intervention are met, correctional clients of varying criminality serving various sentences respond better to the intervention. Recidivism is reduced and their antisocial behavior is more likely to be corrected. It is also important to note that correctional clients should be supervised according to their assorted risks and needs. Just as it is foolish to supervise a violent, dangerous, and recidivistic offender in the community, it is also foolish to overpunish an offender who is relatively low risk.

After centuries of innovation and practice, what do contemporary American prisons generally look like? They can be described as follows (Tonry & Petersilia, 1999):

- Compared with earlier eras, prisons are larger in terms of the number of inmates they house.
- Inmate populations and staffs are more diverse and disproportionately African American and Hispanic.
- Many more line and management staff are women.
- Gangs are larger and their influence more pervasive.
- More prison staff are unionized.
- A large and growing fraction of prisons (and sanctions generally) are under private management.
- The possibility of judicial oversight and intrusion is greater.
- Inmates serve increasingly lengthy sentences, which brings increased demands for medical care and other services for the aging and elderly.

Overall, compared to penitentiaries, reformatories, and prisons from any other era in American history, the correctional system in the 21st century is the most scientifically informed, safe, humane, treatment and program oriented, and transparent in terms of its openness to outside scrutiny. Contemporary

corrections uses scientifically influenced actuarial methods to appropriately classify, supervise, treat, and manage prisoners based on their level of risk. For instance, many states use the Client Management Classification (CMC) System to supervise correctional clients. The CMC addresses treatment and supervision needs in five ways. In ascending order of seriousness, these are (1) selective intervention-situational, (2) selective intervention-treatment, (3) casework/control, (4) environmental structure, and (5) limit-setting classifications (Harris, Gengerich, & Whittaker, 2004). More than ever, the correctional system knows what it is doing when dealing with correctional clients.

And there is continued good news. Distinguished penologists Anne Morrison Piehl and Bert Useem (2011) summarized the overall effects of the broad expansion of the use of incarceration and correctional systems generally in recent decades:

*The theory behind the prison buildup was that higher rates of incarceration would strengthen the predisposition to obey law and incapacitate those for whom this predisposition is especially weak. The theory was right. Crime rates did fall, due in part to the expanded use of prison. Critics of the buildup were certain that the country had embarked on a self-destructive course, arguing that the prison system would collapse under its own weight because of the flaws inherent to prisons. With the advantage of hindsight—buttressed by reasonably good data—we now know they were wrong. The prison buildup has been associated with a sharp decline in chaos behind bars. Prison riots have become rare, the homicide and suicide rates have declined dramatically, and a smaller proportion of inmates are held in segregation and protective custody. Escapes are less common. If Americans want to have mass-scale imprisonment, we can have it without out-of-control behind bars*

(p. 551)

The current chapter's historical look at corrections shows how public opinion and changing ideological and political views have resulted in interesting changes to various forms of punishment. For instance, some leading criminologists view the American prison system as very small compared to the magnitude of offending that occurs in the United States each year. For instance, John Wright and Matt DeLisi have shown that despite the rhetoric of criminologists who bemoan the mass incarceration movement, only about 0.51 percent of the U.S. population is in prison (DeLisi, 2015; Wright & DeLisi, 2016). To put that into perspective, research on criminal careers and Moffitt's

developmental taxonomy show that about 10 percent of the population comprises life-course-persistent or career criminals, many of whom are psychopaths. Given their disproportionate involvement in crime, it would seem prudent, at minimum, to incarcerate as many career criminals as possible. Even if state and federal correctional systems were only able to incarcerate half of the worst 10 percent, that would still be 10 times the current incarceration rate! Thus from a pure data standpoint on the most severe offenders, the United States actually underuses prison.

Still, vestiges of previous punishments remain and old motivations to punish ebb and flow. For instance, a cadre of criminal offenders exist who are thoroughly opposed to quitting crime and for whom there is no realistic chance of effective supervision, let alone rehabilitation (DeLisi, 2005). Many of the most serious criminals are intractably antisocial and are increasingly punished via solitary confinement. For instance, a study found that 55 percent of supermax inmates experience three or more episodes of placement in supermax isolation housing, suggesting that some

inmates simply do not comply with the rules of correctional facilities. Moreover, inmates' misconduct accounted for nearly 40 percent of the variance in decisions to place offenders in supermax housing (Mears & Bales, 2010).

In a study of nearly 4,000 inmates from 70 different prison units from a large state in the southern United States, Robert Morris (2016) found that short-term exposure to solitary confinement had no effect on the probability, timing, or development of future misconduct, suggesting that claims about the deleterious effects of the sanction were overblown. Unfortunately, the continual use of solitary confinement carries with it collateral costs in terms of psychologically damaging inmates. In this sense, the American prison has harkened to the methods of the Pennsylvania system to, if not force penitence, at least punish noncompliant prisoners. (For more on the deleterious effects of solitary confinement, see Anderson, Sestoft, Lillebaek, Gabrielsen, & Hemmingsen, 2003; Ahalt & Williams, 2017).



## Chapter Summary

- Throughout history, correctional systems have struggled with balancing the needs of punishment and correction.
- Depending on the severity of the offense and the seriousness of the offender, different punishment philosophies are utilized.
- The penitentiary of the Pennsylvania system was designed to force offenders to reflect in complete silence and isolation for their crimes.
- The reformatory of the Auburn system was a congregate system that entailed many progressive features to rehabilitate offenders.
- Correctional approaches, especially prisons, are susceptible to social conditions and perceptions about whether they correct behavior.
- The deprivation model suggests that the structures of the prison mold inmate behavior.
- The importation model suggests that offender characteristics determine inmate behavior.
- The imprisonment rate has increased by approximately 500 percent since 1980 due to sentencing changes and reflects a punitive correctional paradigm called the *new penology*.
- Although the American correctional system is considered tough, it also uses scientific principles to provide the best supervision and treatment of criminal offenders.

## Key Terms

**Ashurst-Sumners Act** Law that authorized federal prosecution of violations of state laws enacted pursuant to the Hawes–Cooper Act. Subsequent amendments to this law in 1940 strengthened federal enforcement authority by making any transport of prison-made goods in interstate commerce a federal criminal offense.

**Auburn system** Response to the Pennsylvania system; used congregate inmate organization.

**Augustus, John** Founder of probation in the United States.

**banishment** Penalty in which wrongdoers were excommunicated or excluded from the community entirely.

**Beccaria, Cesare** Philosopher who wrote *On Crimes and Punishments*, which liberalized criminal justice.

**Code of Hammurabi** Ancient body of laws during the reign of the Babylonian King Hammurabi in 1780 BCE.

**collective incapacitation** Criminals are prevented from committing crime because they are incarcerated.

**common law** The customary criminal justice and legal traditions or doctrines that the United States inherited from England.

**corporal punishment** Sanctions that inflict physical pain on the offender.

**Crofton, Sir Walter** Disciple of Maconochie who employed similar reforms in Irish prisons.

**deprivation model** Inmate behavior model that proposes that inmate behavior is primarily a function of the oppressive structural features posed by the prison facility itself.

**deterrence** The punishment philosophy that rests on the idea that people are rational thinkers endowed with free will who weigh the costs and benefits of each course of action in their lives and then choose to act.

**draconian** Tough criminal justice policies.

**expiation** Based upon the belief that crime arouses the anger of the gods against the entire community and that the only way to reduce the anger is to destroy the offender.

**general deterrence** The large number of potential criminals who might be discouraged from committing crime because of the punishments received by others.

**hands-off doctrine** Little judicial oversight of the practices and operations of prisons and other sanctions, which were largely shut off from the press and academia.

**Hawes-Cooper Act** Enabled states to implement laws regarding the acceptance or prohibition of prison-made goods coming within its borders.

**Howard, John** English sheriff who caused reforms of English jails and prisons.

**importation model** Argued that prisoner behavior and the conditions of prisons were mostly a function of the characteristics, values, beliefs, and behaviors that criminals employed on the outside of prison.

**incapacitation** The inability to act; refers to the use of imprisonment to preclude the ability of an offender to victimize members of society.

**industrial prison era** Time that spanned from approximately 1900 to 1935, during which an emphasis was placed on inmate labor and commerce.

**informal social control** Unofficial sanctions that arise from informal family and friendship networks.

**Law of the Twelve Tables** A comprehensive and codified legal code to replace the oral, informal, and largely unfair prior tradition.

**lex talionis** The law of retaliation such that punishment must be inflicted with an eye for an eye and a tooth for a tooth.

**Maconochie, Alexander** Administrator of Norfolk Island (Australia) penal colony who devised the mark system and other innovations that influenced American penology.

**Magna Carta** Codified set of laws from England in 1215 that was the forerunner of the U.S. Constitution with its dual goals of cautiously empowering the state and granting rights and protections to the public.

**mala in se** Acts that are intrinsically wrong and violations of natural law.

**mala prohibita** Offenses are crimes made illegal by legislation, not by natural law.

**mark system** System devised by Maconochie in which credits (marks) against a sentence allowed inmates to be released once they earned the required number of marks through good behavior.

**natural law** The belief that the human world is organized by a positive or good natural order that should be obeyed by all humans.

**new penology** The management of groups or sub-populations of offenders based on their actuarial risk to society.

**penitent** Feeling or expressing remorse for one's misdeeds or sins.

**penitentiaries** Early prison that used silence and isolation to force inmates to be penitent.

**Pennsylvania system** Quaker-inspired system that created the penitentiary.

**prisonization** The socialization process whereby inmates embrace the oppositional and antisocial culture of the prisoner population.

**reformatory** Response to penitentiary movement, popularized by the reforms of Zebulon Brockway.

**rehabilitation** Restoration of an offender to a law-abiding lifestyle.

**restoration** A theory of justice that emphasizes repairing the harm caused by crime.

**retribution** The philosophical rationale that implies the payment of a debt to society and the criminal offender's expiation and atonement for his or her crime.

**selective incapacitation** The use of prison to selectively target high-rate, career criminals.

**Sentencing Reform Act of 1984** Legislation that established determinate sentencing, abolished parole, and reduced the amount of good time inmates could earn.

**specific deterrence** The individual offender being sentenced and punished.

**Three Penitentiary Act** Legislation in 1891 that authorized the building of the first three federal prisons at Leavenworth, Kansas; Atlanta, Georgia; and McNeil Island, Washington.

**Walsh-Healey Act** Legislation passed by Congress in 1936; prohibited the use of inmate labor to fulfill certain federal contracts in excess of \$10,000.

## Critical Thinking Questions

1. Arguments for capital punishment usually center on deterrence. Is there an effective argument against retribution? Why is retribution not used as the philosophical basis for the death penalty?
2. How has religion shaped prisons since their inception and through today? What constitutional issues are raised by having religious or faith-based programs in prison? If the programs

are effective, should concerns about church and state be ignored?

3. Is the new penology a positive or negative development in corrections?
4. Have people really evolved beyond the barbaric methods of early correctional systems? What

elements of the current correctional system seem to represent retributive intentions?

5. In terms of inmate classification, correctional administration is fairly scientific. Does the field of corrections have a reputation for being scientifically rigorous?

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