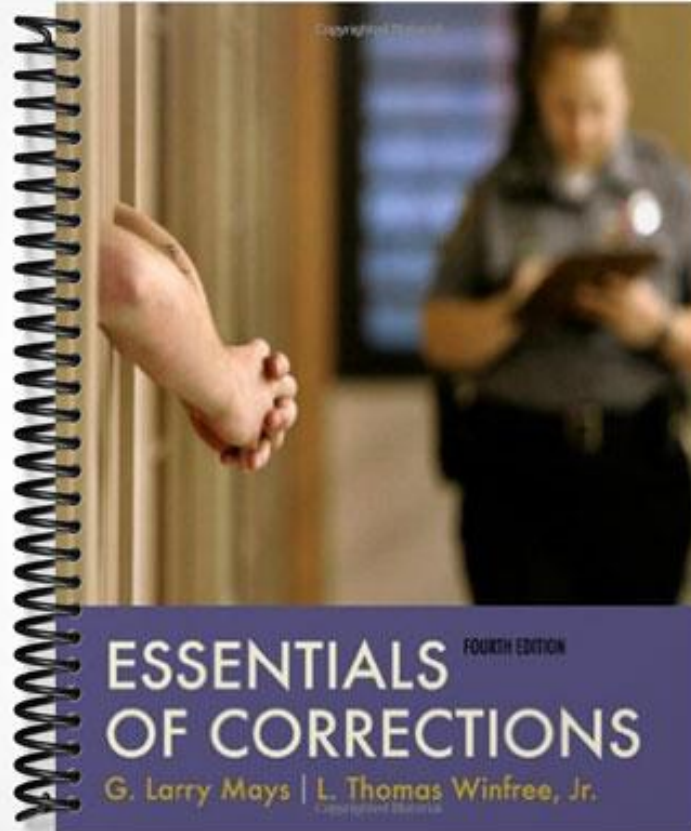


TEST BANK



Chapter 2

A Brief History of Punishments and Corrections

Chapter Objectives

- To orient the student as to the role of corrections in human history
- To provide the student with an understanding of how civilized nations refined their penal sanctions, leading to the creation of prisons and penitentiaries
- To acquaint the student with the various 19th-century reform movements
- To reveal to the student the importance of understanding the significance of the movement away from the rehabilitative ideal to the justice model for correctional practice

Chapter Outline

I Early History

- A. Crime and Punishment in Prehistoric Context
- B. Babylonian and Judaic Views on Punishment
- C. Greek and Roman Laws
- D. The Law of Europe in the Middle Ages
- E. European Law in the 15th through 17th Centuries

II The Age of Enlightenment, the State, and Criminal Sanctions

- A. Montesquieu
- B. Cesare Beccaria

III Prison Reform and Penitentiaries

IV The Pennsylvania System versus the Auburn System

- A. Eastern Penitentiary and the Pennsylvania System
- B. The Auburn System

V Penitentiary Reform in the 19th Century

- A. Alternatives to Prison
- B. Foreign Opponents and Proponents
- C. The Cincinnati Meeting of the National Prison Association

VI From Rehabilitation Ideal to Justice Model

- A. From Medical Model to Rehabilitation
- B. “Just Deserts” and the Justice Model of Punishment
- C. Implications for Contemporary Corrections

What were we thinking?

As George Santayana wrote in *The Life of Reason*, “Those who cannot remember the past are condemned to repeat it.” In the case of correctional philosophies and practices, the price of failing to remember the past may be quite high.

In this chapter, we adopt a Euro-centric view, although at times we provide, through “Spotlight on International Corrections,” exemplars from nations outside of Europe. We encourage you to consider integrating non-European views into your class (see suggested readings). However, the chapter’s approach is warranted because the U.S. correctional system derives largely, if not exclusively, from the practices found in Europe.

Do your students know the fictional stories of Lew Wallace’s *Ben Hur* or Charles Dickens’s *A Tale of Two Cities*? How about the real lives of Devil’s Island residents Alfred Dreyfus and Henri (“Papillon”) Charrière and Arkansas prison warden Tom Murton? You might want to elaborate on their lives (or ask them to use a Web search engine to look up information about them).

The opening descriptions of punishments, as graphic as they may appear, only scratch the surface of the history of punishments. This chapter reviews several thousand years of penal sanctions and the ideas that supported them. The crimes and punishments of prehistory are instructive as they help to explain the retributive nature of many contemporary sanctions. Interestingly, however, the ancients also believed strongly in restitution and restoration, something we have forgotten in recent times. These latter ideas were overwhelmed by retributive justice ideals with the emergence of the city-states and the movement away from the justice of extended families, clans and tribes.

Critical Review Question: (1) The goal of early tribal punishments was to restore balance in the community. To that end, social groups relied primarily on rituals of reconciliation, in particular restitution. To what extent was this goal similar to or different from the goals of restorative justice? (Be sure to address the issues of blood revenge and banishment in your answer.) Would these rituals work today?

Early History

Some students are unprepared for the idea that prescriptions and proscriptions on punishments found in the Pentateuch (the first five chapters of the Old Testament) have historical ties to the rules found in the Code of Hammurabi in ancient Babylonia. We suggest that you either complete the exercise below or delve into the critical review questions with them as a way of dealing with these feelings.

In-Class/Out-of-Class Exercise: Religious and political positions on crimes and punishments often intermingle. Have your students consider, by way of example, the Code of Hammurabi and the Law of Moses as state religions. Both are examples of *lex talionis*. Perhaps your students would care to speculate as to why such laws were necessary. As an out-of-class exercise, suggest that your students explore the exile of the ancient Jews to Babylon and their exposure to the Code of Hammurabi. This exercise may stimulate discussions about how, even in current times, law, crimes, and punishments reflect the social and political realities of contemporary life.

Critical Review Question: (2) The Code of Hammurabi and the Law of Moses have both been described as *lex talionis*. How are they similar? How are they different?

Greek and Roman laws are also instructive. It is interesting to consider the fate of reformers such as Draco, who created a system of laws and punishments and whose legacy is a name forever

associated with inhumanely cruel and severe measures, as in *draconian* laws. Solon, who was elected nearly 30 years later, tried to interject humanity into the sanctions of ancient Athens. The Athenians responded at first by bitterly opposing his sweeping reforms. They later embraced the changes instituted by Solon. In fact, they became the basis for the Athenian state.

Out-of-class exercise: Consult your library to determine whether it contains a translation of the Roman Twelve Tables or use the Web to find a version. Then assign your students the task of finding how the Romans responded to various kinds of misbehavior. Have your students find their “favorite” misdeeds. For example, Table VIII deals with what the Romans called Torts or *Delicts*, that is, wrongdoings. In some cases, depending on who did the deed, the malefactor could be executed in a most horrific fashion. Then there is the case of thieves who were not caught in the act: they would be required to pay double damages. Roman law was arcane and, in many cases, quite interesting.

Greece “created” the idea of democracy, but Rome gave us an enduring legal system. Students often enjoy the distinctions between *jus civile* and *jus gentium*, one set of laws for citizens of Rome and another set for foreigners. After being exposed to this information, students may find it hard to dismiss history as old ideas in musty books.

Critical Review Question: (3) Did the ancient Greeks and Romans place a value on human life? In this sense, how were the laws in those societies different from the laws in prelegal and protolegal societies?

Similar examinations of the laws and sanctions created in Europe during the Middle Ages enlighten students as to the origins of punishment, and also how old ideas often are reborn in later times (consider, for example, the “codification” of tribal law in the *lex salica* after the “fall” of the Roman Empire in Western Europe). You may wish to explore with your students the establishment of feudalism’s peace of the king. This practice—like the Code of Hammurabi and the Law of Moses before it—served to consolidate the power of the state. Moreover, peace of the king redefined who was harmed. Consider reviewing with your students the Domesday Book and its accompanying descriptions of cultural practices and traditions, norms and rules, and punishments. (Again, most libraries contain a copy of this work, or it may be available as an on-line document.)

Critical Review Question: (4) “Feudal law favored the rich and powerful.” Is this statement accurate? Explain your answer.

Penal sanctions in the years prior to the Enlightenment are also instructive. Corporal and capital punishments became more common, along with the newly created workhouses like Bridewell. War and disease ravaged Europe during the late Middle Ages. England and colonial powers had immense and growing labor needs. Executions, while instructive to the general public, were also counterproductive. Hence, they resorted to forced colonization through transportation. New ideas were to find full bloom in the Age of Enlightenment, but the old ones remained powerful cultural icons and resisted change for centuries.

The Age of Enlightenment, the State, and Criminal Sanctions

After reviewing the contributions of Montesquieu and Beccaria, have your students consider the irony of each man’s class origins. (The titles in front of their names provide a hint.) Moreover, the fact that Beccaria first had to publish his work anonymously tells a great deal about how threatening his ideas were to those in power during the 18th century. As for Montesquieu, consider the fact that most historians believe that his *Spirit of Laws* formed the philosophical basis of the U.S. Constitution.

Prison Reform and Penitentiaries

The legacies of Howard and Rush are not limited to developments in their respective nations. Ask your student to look up the John Howard Society or the American Society of Friends (Quakers) on the Web to determine whether the views originally espoused by these men more than 200 years ago are found in 21st century practices. The information they find may surprise them.

The Pennsylvania System versus the Auburn System

The Pennsylvania and Auburn Systems provide many lessons for contemporary corrections. Each system’s proponents tried to establish control and dominion over their respective inmate populations. One system emphasized change through inner contemplation and repentance; the other placed far greater importance on regimentation as the precursor for inmate discipline and control. Both systems saw work as important, but they implemented very different system of work, neither of which was very successful. Have your students consider each of these systems in terms of their short-term impact on 19th century corrections and their lasting legacies. One approach is to ask your students to indicate in which type of facility they would rather spend 5 years as an inmate and to explain their respective choices.

Penitentiary Reform in the 19th Century

This section deals with a number of critical topics. The first reveals that at the same time various states considered the relative attractiveness of the Auburn and Pennsylvania systems, other nations were exploring alternatives to incarceration. Moreover, European opinions about the

U.S. institutions were mixed, but generally positive. Europeans preferred the Pennsylvania model to that promulgated at Auburn, but this endorsement was far from universal.

Critical Review Questions: (5) Who are the de Tocquevilles and Dickens of today? What forces shape our society's responses to issues of crime and punishment? (6) In your opinion, who was the greater reformer, Enoch Wines or Zebulon Brockway? Explain your answer.

From Rehabilitation Idea to Justice Model

What do your students think of the medical model? This idea is important as it has strong ties to the deterministic model and generally denies free will; however, it also suggests that something positive can be done to and for inmates. It is another expression of rehabilitation both as a philosophy and a practice. Moreover, in the 1970s it was merged with the idea of reintegration, another of the goals discussed in Chapter 1.

To place the Martinson report in historical context, you might want to revisit the mid-1970s: the aftermath of the Civil Rights and Antiwar Movements, the collapse of the Nixon presidency, and the wave of political conservatism that was sweeping the nation. Ronald Reagan's election in 1980 sealed the end of the optimism and idealism of the 1960s and 1970s (which is ironic since Reagan was known for being optimistic, but not about what we can do with and for criminals). It also signaled the ascendancy of just deserts and the beginning of the penal harm philosophy.

Out-of-Class Exercise: Make available a copy of Martinson's 1974 *Public Interest* article. See if your students can find the study to which Martinson refers. They may even learn Martinson's fate. (He committed suicide.) Then ask them to find references to "evidence-based corrections" on the Web. This is a topic to which we return in Chapter 14.

The motives of the reformers of the 1970s and early 1980s were praiseworthy. Can your students fault Morris for his support for just deserts? What about Fogel's criticisms of discretion? Von Hirsch's call for punishment for its own sake still rings true for many students. Describe the combined effect of these philosophical treatises and the research on selective incapacitation and career criminals. Students rarely view philosophy and empirical research as having real consequences; however, that is precisely what happened in the present instance.

Critical Review Question: (7) Some suggest that the dramatic increase in the United States over the last two decades in both the number of prisons and the inmate population point to a “punishment binge.” Do you agree with this assessment? If yes, how do you feel about a corrections system that is becoming increasingly punitive? If not, how would you explain the country’s preoccupation with building prisons and populating them?

Recommended Readings

Fogel, David. 1975. “... *We are living proof...*” *The justice model for corrections*. Cincinnati: Anderson. The book that defines the justice model; a clear articulation of what is meant by just deserts and how to accomplish it.

Johnson, Herbert A., and Nancy Travis Wolfe. 1996. *History of criminal justice*. 2nd ed. Cincinnati: Anderson. One of the few comprehensive history textbooks dedicated to criminal justice.

McKelvey, Blake. 1936. *American prisons: A study in American social history prior to 1915*. Chicago: University of Chicago Press. McKelvey’s work is perhaps the finest summary of the social history of prisons in the United States, although it is limited in that it covers the period from the first prisons to 1915.

Murton, Thomas O. 1976. *The dilemma of prison reform*. This book provides an excellent examination of prisons and prison reform from the founding of penology in the United States to the era of Attica in the 1970s.

Roth, Mitchell P. 2005. *Crime and punishment: A history of the criminal justice system*. Belmont, CA: Wadsworth. This comprehensive presentation of the history of criminal justice in the United States contains many references to penal sanctions. It is an excellent compendium for historical origins and linkages to contemporary practices.

Sheldon, Randall G. 2001. *Controlling the dangerous classes: A critical introduction to the history of criminal justice*. Boston: Allyn and Bacon. The word critical in the title refers to the author’s political ideology and perspective on the topic. He shows the system for what it is, warts and all. In particular, the chapter on the emergence and growth of the prison system is especially instructive.

Chapter 2 - Test Items

Multiple Choice Questions

1. Societies that operate under tribal rules illustrate _____ systems.
 - a. extra-legal
 - b. retro-legal
 - *c. pre-legal (p. 30)
 - d. crypto-legal

2. _____ describes restoring balance within tribal societies once an offense was committed.
 - a. Reformation
 - b. Restitution
 - *c. Reconciliation (p. 30)
 - d. Rehabilitation

3. The most severe form of punishment for most tribal or kinship societies was:
 - a. torture
 - b. imprisonment
 - c. hanging
 - *d. banishment (p. 30)

4. The ancient law of retribution expressed in the Code of Hammurabi and the Law of Moses often is known as:
 - *a. *lex talionis* (p. 31)
 - b. customary law
 - c. *habeas corpus*
 - d. restorative justice

5. Which of the following is the ancient king who developed a comprehensive legal code that influences our laws even today?
 - a. Xerxes
 - *b. Hammurabi (p. 31)
 - c. Hannibal
 - d. Solomon

6. The Twelve Tables were the first major civil and criminal code for:

- *a. Rome (p. 32)
- b. Greece
- c. Babylon
- d. Assyria

7. The legal system that dealt with relations among Roman citizens was the:

- a. *jus gentium*
- *b. *jus civile* (p. 33)
- c. *jus regnum*
- d. canon law

8. Roman law that dealt with relationships with foreigners was classified as:

- a. *jus honorarium*
- b. *jus civile*
- c. *jus regnum*
- *d. *jus gentium* (p. 33)

9. Which of the following Roman emperors commissioned twelve scholars to create the *Corpus Juris Civilis*?

- a. Augustus
- *b. Justinian (p. 33)
- c. Hadrian
- d. Claudius

10. The *lex salica*, or customary law of ancient Germanic tribes, provided for compensation for wrongdoing. These payments were called:

- *a. *botes* (p. 34)
- b. bounties
- c. bonds
- d. fines

11. King William I collected English laws into royal proclamations that were called:

- a. guilds
- b. statutes
- c. canons
- *d. dooms (p. 35)

12. When the English banished their prisoners to faraway colonies, this was called:
- a. just deserts
 - b. capital punishment
 - *c. transportation (p. 37)
 - d. corporal punishment
13. In seventeenth century England nearly all felonies were punishable by:
- *a. death (p. 35)
 - b. fines
 - c. property forfeiture
 - d. imprisonment
14. The form of law based on the idea that certain rules are fundamental to human nature is expressed in:
- a. criminal law
 - b. civil law
 - c. canon law
 - *d. natural law (p. 37)
15. Which of the following is *not* a form of corporal punishment?
- *a. banishment (p. 38)
 - b. public whipping
 - c. the pillory
 - d. the stocks
16. Which of the following people was a doctor, prison reformer, and signer of the Declaration of Independence?
- a. John Locke
 - b. John Howard
 - *c. Benjamin Rush (p. 39)
 - d. Zebulon Brockway
17. Which Englishman was the sheriff of Bedfordshire and an early prisoner reformer?
- a. John Adams
 - b. Benjamin Rush
 - c. Jeremy Bentham
 - *d. John Howard (p. 39)

18. The Walnut Street Jail was the prototype for early American prisons. It was opened and operated in:

- a. Boston
- *b. Philadelphia (p. 40)
- c. New York
- d. Chicago

19. The _____ prison system emphasized security and solitary confinement to prevent interaction among inmates.

- a. New York
- *b. Pennsylvania (p. 40)
- c. Roman
- d. early colonial

20. Which prison system competed with the Pennsylvania system for dominance in the U.S. prison world of the 1800s?

- *a. the Auburn system (p. 42)
- b. the colonial system
- c. the Quaker system
- d. the New Jersey system

21. An English navy officer by the name of _____ was the superintendent of the Van Diemen's Island and Norfolk Island penal colonies in Australia.

- a. John Howard
- b. Jeremy Bentham
- c. Walter Crofton
- *d. Alexander Maconochie (p. 44)

22. The idea of early prison release based on "tickets-of-leave" was developed by:

- a. Elam Lynds
- b. Zebulon Brockway
- *c. Alexander Maconochie (p. 45)
- d. Benjamin Rush

23. Which of the following individuals was commissioned by the British Home Office to study (and later run) the Irish prison system?
- a. Sir Walter Raleigh
 - *b. Sir Walter Crofton (p. 45)
 - c. Sir Walter Scott
 - d. Elam Lynds
24. The National Prison Association, which later became the American Correctional Association, met for the first time in:
- *a. Cincinnati (p. 47)
 - b. Chicago
 - c. Washington, DC
 - d. New York
25. The first president of the National Prison Association was:
- a. Enoch Cobb Wines
 - *b. Rutherford B. Hayes (p. 47)
 - c. Zebulon Brockway
 - d. Charles Dickens
26. Throughout most of the twentieth century, the _____ model of corrections dominated in the United States.
- a. supplementary
 - b. elementary
 - *c. medical (p. 49)
 - d. justice
27. The idea that offenders should be punished in proportion to the harm they caused is expressed in the _____ model.
- a. medical
 - b. retributive
 - *c. justice (p. 51)
 - d. treatment

28. The justice model of punishment is also known as the _____ model.
- a. fair and square
 - b. medical
 - c. due process
 - *d. just deserts (p. 51)
29. Which of the following approaches resulted from the work of Marvin Wolfgang and his colleagues in career criminal research?
- a. shock therapy
 - b. reality therapy
 - c. drug treatment
 - *d. selective incapacitation (p. 51)

True/False Questions

1. During the Middle Ages, one of the most common punishments was forfeiture of property.
- *a. True (p. 29)
 - b. False
2. The idea of restitution as a form of punishment is of relatively recent origin.
- a. True
 - *b. False (p. 30)
3. A French doctor, Joseph Guillotin, invented a device for crucifying criminals.
- a. True
 - *b. False (p. 29)
4. The Athenian politician and magistrate named Draco made almost all offenses capital crimes.
- *a. True (p. 31–32)
 - b. False
5. A *wergild* was a price paid by a killer's family to avoid a blood feud with the victim's family.
- *a. True (p. 34)
 - b. False

6. In England, by the seventeenth century nearly all felonies called for capital punishment.

*a. True (p. 35)

b. False

7. Cesare Beccaria's view was that punishments would deter crimes if they were certain, swift, and severe.

*a. True (p. 39)

b. False

8. Sir Arthur Conan Doyle observed, commented on, and criticized the American prison system.

a. True

*b. False (p. 46)

Essay Questions

1. The text describes the *lex talionis* as being proscriptive rather than prescriptive. What does this mean? Explain. (p. 31)
2. Why might a society choose banishment as a way of dealing with criminals rather than corporal or capital punishment? Is banishment more or less humane than corporal or capital punishment? Explain your answer. (p. 37)
3. Compare and contrast the Pennsylvania and Auburn prison systems. What are the elements of each? In the end, which won out and why? (pp. 40–44)
4. The Elmira Reformatory gave rise to a number of correctional concepts and practices. Are some of these still in use today? If so, which and why? (p. 48)
5. Is the medical model of corrections still a viable notion? Why or why not? (p. 49)
6. Some critics have suggested that rehabilitation cannot work, because so many prison inmates never were *habilitated* to begin with. What is your reaction to this viewpoint? Explain your answer. (pp. 49–51)
7. What are the key elements of the justice, or just deserts, model of corrections? (pp. 50–51)
8. What are some of the fundamental assumptions of career criminal programs? What limitations might these assumptions present in our efforts to identify and punish career criminals? (pp. 51–52)