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1 The Philosophical and Ideological Underpinnings of Corrections

TEST YOUR KNOWLEDGE

Test your current knowledge of corrections by answering the following questions as true or false. Check your answers on page 385 after reading the chapter.

1. Whatever we choose to call it, corrections is about punishment, and punishment is considered to require philosophical justification.
2. The strongest deterrent against crime is the severity of punishment.
3. The fundamental principle of American justice is that punishment should fit the crime; all other factors are irrelevant.
4. As bad as it may sound, people feel pleasure when wrongdoers are punished.
5. The law assumes that people are rational and possess freedom of choice.
6. Philosophies of punishment depend quite a bit on concepts of human nature. (Are we naturally good, bad, or just selfish?)
7. Studies find that when criminals are punished they tend to be deterred from crime.
8. The United States incarcerates people at a higher rate than any other country in the world.

LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

1.1 Describe the function of corrections and its philosophical underpinnings.

1.2 Differentiate between the classical and positivist schools in terms of their respective stances on the function of punishment.

1.3 Define and describe retribution, deterrence, incapacitation, selective incapacitation, rehabilitation, and reintegration.

1.4 Explain the distinction between the crime control and due process models.

WHAT IS PUNISHMENT?

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

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

Introduction: What Is Corrections?

LO 1.1 Describe the function of corrections and its philosophical underpinnings.

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

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

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

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

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

When the grandparents of today's college students were in their youth, few thought of corrections as an issue of much importance. They certainly knew about prisons and jails, but few had any inkling of what probation or parole was. This blissful ignorance was a function of many things. The crime rate was much lower during the 1950s and early 1960s; thus, the correctional budget was a minor burden on their taxes, and fewer people probably knew anyone who had been in "the joint." Today the story is much different.

For instance, in 1963 the violent crime rate was 168 per 100,000, and in 2018 it was 369, an increase of almost 120% (Federal Bureau of Investigation, 2019). In 1963 there were just under 300,000 people in prison in the United States, and in 2018 there were just under 2.3 million, an increase of 466% (Jones, 2018). Much of this increase has been driven by the war on drugs. Because illicit drug use was extremely rare prior to the late 1960s, there was no war on drugs. Indeed, the only drugs familiar to folks in their prime during the 1950s and 1960s were those obtained at the drugstore by prescription.

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Photo 1.1 A multilevel cellblock of a large American prison.

Because of the increase in crime and imprisonment, most people in the United States probably know someone who is or has been in prison or jail. One in 55 U.S. adults (almost 2%) was on probation or parole in 2016 (the most recent year for which data are available; Kaeble, 2018), and many more have been in the past (Glaze & Herberman, 2013). In some neighborhoods, it is not uncommon for nearly everyone to know many people under correctional supervision. For instance, nearly 1 in 3 African American men in their 20s is under some form of correctional control, and 1 in 6 has been to prison (Ismaili, 2015). The expenditures for corrections in 2017 for all 50 states were approximately $81 billion, with 88% going for prisons and jails and 12% for probation and parole (Wagner & Rabuy, 2017).

From Arrest to Punishment

LO 1.2 Differentiate between the classical and positivist schools in terms of their respective stances on the function of punishment.

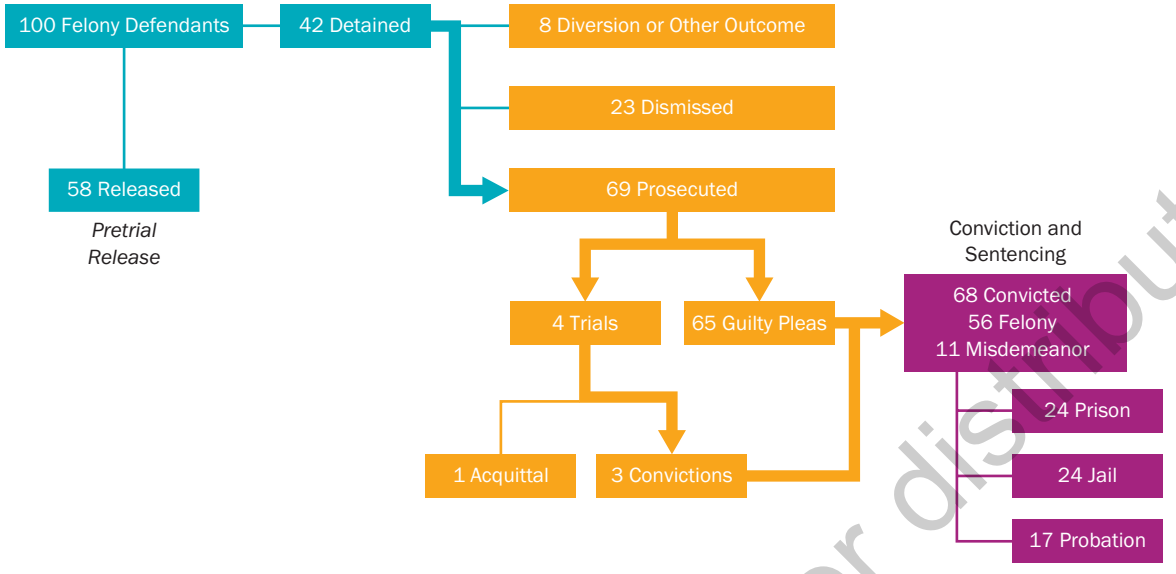
Not everyone who commits a crime is punished, of course. Many crimes are not reported, and even if they are, relatively few are solved. Figure 1.1 is based on data from the nation's 75 largest counties and indicates the typical outcomes of 100 felony arrestees (Cohen & Kyckelhahn, 2010). Only about two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

The Theoretical Underpinnings of Corrections

Just as all theories of crime contain a view of human nature, so do all models of corrections. Some thinkers (mostly influenced by sociology) assume human nature is socially constructed; that is, the human mind is basically a "blank slate" at birth and is subsequently

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

Source: Cohen and Kyckelhahn (2010).



formed by cultural experiences. These individuals tend to see human nature as essentially good and believe that people learn to be antisocial. If people are essentially good, then the blame for criminal behavior must be located in the bad influences surrounding them.

Others (mostly influenced by evolutionary biology and the brain sciences) argue that there is an innate human nature that evolved driven by the overwhelming concerns of all living things—to survive and reproduce. These theorists do not deny that specific behaviors are learned, but they maintain that certain traits evolved in response to survival and reproductive challenges faced by our species that bias our learning in certain directions. Some of these traits, such as aggressiveness and low empathy, are useful in pursuing criminal goals (Quinsey, 2002; Walsh, 2019). This viewpoint also sees human nature as essentially selfish (not "bad," just self-centered) and maintains that people must learn to be prosocial rather than antisocial through a socialization process that teaches us to value and respect the rights and property of others and to develop an orientation toward wanting to do good. Criminologist Gwynn Nettler (1984) said it most colorfully on behalf of this position: "If we grow up 'naturally,' without cultivation, like weeds, we grow up like weeds—rank" (p. 313). In other words, we learn to be good, not bad. Being bad is the default option if we do not receive a prosocial rearing. The point we are making is that the assumptions about human nature we hold influence our ideas about how we should treat the accused or convicted once they enter the correctional system.

A Short History of Correctional Punishment

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

Legal **punishment** may be defined as the state-authorized imposition of some form of deprivation—of liberty, resources, or even life—on a person justly convicted of a violation of the criminal law. The earliest known written code of punishment was the ancient Babylonian Code of Hammurabi, created circa 1780 BCE (the origin of "an eye for an eye, a tooth for a tooth"). These laws codified the natural inclination of individuals harmed by others to seek revenge, but they also recognized that personal revenge must be restrained if

society is not to be fractured by a cycle of tit-for-tat blood feuds. Blood feuds (revenge killings) perpetuate the injustice that "righteous" revenge was supposed to diminish. The law seeks to contain uncontrolled vengeance by substituting controlled vengeance in the form of third-party (state) punishment.

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

The practice of brutal punishment and arbitrary legal codes began to wane with the beginning of a period historians call the Enlightenment, or the Age of Reason. The **Enlightenment** encompassed the period roughly between the late 17th century and the late 18th century and was essentially a major shift in the way people began to view the world and their place in it. It was also marked by a narrowing of the mental distance between people and the expanding of circles of individuals considered to be "just like us."

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

The Emergence of the Classical School

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

Classical School: School of penology/criminology that was a nonempirical mode of inquiry similar to the philosophy practiced by the classical Greek philosophers—that is, "armchair philosophy."

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

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

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

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Photo 1.2 Italian nobleman and professor of law Cesare Bonesana, Marchese di Beccaria published what was to become the manifesto for the reform of judicial and penal systems throughout Europe, *Dei Delitti e Delle Pene* (*On Crimes and Punishments*) (Beccaria, 1764/1963).

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

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

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

Principle of utility: The supposition that human action should be judged moral or immoral by its effects on the happiness of the community and that the proper function of the legislature is to make laws aimed at maximizing the pleasure and minimizing the pain of the population—"the greatest happiness for the greatest number."

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

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

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

Just as classicism arose from the 18th-century humanism of the Enlightenment, positivism arose from the 19th-century spirit of science. Classical thinkers were philosophers in

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

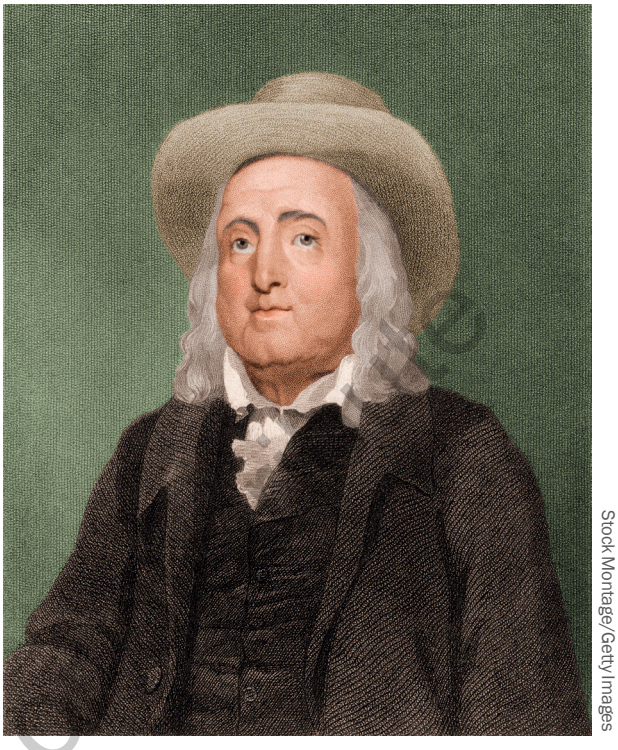

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Photo 1.3 Jeremy Bentham's major work, *Principles of Morals and Legislation* (Bentham, 1789/1948), is essentially a philosophy of social control based on the principle of utility, which posits that human actions should be judged as moral or immoral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

Early positivism went to extremes to espouse a hard form of determinism such as that implied in the assertion that there are "born criminals." Nevertheless, positivism slowly moved the criminal justice system away from a concentration on the criminal act as the sole determinant of the type of punishment to be meted out and toward an appraisal of the characteristics and circumstances of the offender as an additional determinant. Because human actions have causes that may be out of the actor's control, the concept of legal responsibility was called into question. For instance, Italian lawyer Raffaele Garofalo (1851–1934) believed that because human action is often evoked by circumstances beyond human control (e.g., temperament, extreme poverty, intelligence, certain situations), the only thing to be considered at sentencing was the offender's "peculiarities," or risk factors for crime.

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

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

The Function of Punishment

Although most corrections scholars agree that punishment functions as a form of social control, some view it as a barbaric throwback to precivilized times (Menninger, 1968). But can you imagine a society in which punishment did not exist? What would such a society be like? Could it survive? If you cannot realistically imagine such a society, you are not alone, given that the desire to punish those who have harmed us or otherwise cheated on the social contract is as old as the species itself. Punishment aimed at discouraging cheats is observed in every social species of animal, leading evolutionary biologists to conclude that punishment of cheats is a strategy designed by natural selection for the emergence and maintenance of cooperative behavior (Alcock, 1998; Walsh, 2014). Cooperative behavior

is important for all social species and is built on mutual trust, which is why violating that trust evokes moral outrage and results in punitive sanctions. Brain imaging studies show that when subjects punish cheats, they have significantly increased blood flow to areas of the brain that respond to reward, suggesting that punishing those who have wronged us provides both emotional relief and reward (de Quervain et al., 2004; Fehr & Gachter, 2002). These studies imply that we are hardwired to "get even," as suggested by the popular saying "Vengeance is sweet."

Sociologist Émile Durkheim (1858–1917) contended that punishment is functional for society in that the rituals of punishment reaffirm the justness of the social norms and allow citizens to express their moral outrage when others transgress those moral norms. Durkheim also recognized that we can temper punishment with sympathy. He observed that over the course of social evolution, humankind has moved from *retributive* justice (characterized by cruel and vengeful punishments) to *restitutive* justice (characterized by reparation—"making amends"). **Retributive justice** is driven by the natural passion for punitive revenge that "ceases only when exhausted . . . only after it has destroyed" (Durkheim, 1893/1964, p. 86). **Restitutive justice** is driven by simple deterrence and is more humanistic and tolerant, although it is still, "at least in part, a work of vengeance" (pp. 88–89). For Durkheim, restitutive responses to wrongdoers offer a balance between calming moral outrage, on one hand, and exciting the emotions of empathy and sympathy, on the other.

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

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

Perspective From a Practitioner

ROBERT BAYER, PRISON WARDEN

Position: Former director of corrections and prison warden; currently an adjunct professor and prison consultant

Location: Reno, Nevada

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

The primary duties and responsibilities of a prison warden are:

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

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

The ability to be both an administrator and a leader, with very thorough knowledge of how a prison functions and the laws, policies, and procedures promulgated by the system; the ability to see the big picture of corrections and how the facility functions within that picture; a comprehension of the budget process and calendar; and the ability to be politically sensitive, personable, approachable, intelligent, hardworking, and decisive yet thoughtful. As a leader, the warden's actions must reflect the best traditions of the agency and be completely ethical in his or her decisions

and actions. The warden should reflect all of the attributes prized in a frontline employee—loyalty, dedication, honesty, and reliability—and should instill confidence in all levels of staff and inmates. Staff members want a warden who is steady under pressure and not prone to swings in mood or behavior. Ultimately, though staff members may perform an infinite variety of jobs in the facility itself, they look to the warden to ensure that they have the proper orders and resources needed to keep them safe day in and day out. Finally, the warden must be a skilled communicator at all levels, with good writing and verbal skills as well as effective listening skills.

In general, a typical day for a practitioner in this career would include:

Various functions, but the day should cover all three shifts to foster good communication. One should be at the facility during each shift change to ensure access to staff members as they leave and enter the next shift, personally greeting or chatting with the support staff before the workday begins. An early-morning staff meeting with the associate wardens and the maintenance supervisor is essential to review the last 24 hours of shift activities and develop a priority list of operational issues that need resolution. Next, items in the in basket are reviewed, delegated, or responded to, and it is important to physically "walk the yard" (for about 2 hours) on a daily basis to make upper management accessible to staff and inmates and to provide the opportunity for personal observation of any issues. This is also a time to obtain firsthand feedback as to the morale, conditions, and security of the yard. Next are formally scheduled meetings with inmate families, employee group representatives, other agency representatives, and so on. Time is also spent reviewing new policies, reading inmate appeals and requests, responding to correspondence, and conducting any necessary interviews of staff. Work continues after 5 p.m. to complete paperwork, prepare court testimony, work on difficult personnel issues, and work on budget execution and construction. Once a week, do a facility inspection, looking at sanitation and security compliance, while focusing on a different aspect of facility operations each week (such as fire suppression readiness).

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

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

The Philosophical Assumptions Behind Justifications for Punishment

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

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

Hedonism is a doctrine maintaining that all life goals are desirable only as means to the end of achieving pleasure or avoiding pain. It goes without saying that pleasure is

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

intrinsically desirable and pain is intrinsically undesirable, and we all seek to maximize the former and minimize the latter. We are assumed to pursue these goals in rational ways. **Rationality** is the state of having good sense and sound judgment. Rational sense and judgment are based (ideally) on the evidence before us at any given time, and the rational person revises their reasoning as new evidence arises. Rationality should not be confused with morality, because its goal is self-interest, and self-interest is said to govern behavior whether in conforming or deviant directions. Crime is rational (at least in the short run) if criminals use reason and act purposely to gain desired ends. Thus, rationality is the quality of thinking and behaving in accordance with logic and reason such that one's reality is an ordered and intelligible system for achieving goals and solving problems. For the classical scholar, the ultimate goal of any human activity is self-interest, and self-interest is assumed to govern our behavior whether it takes us in prosocial or antisocial directions.

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

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

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

The final assumption about human nature is that humans have free will that enables them to purposely and deliberately choose to follow a calculated course of action. This is not a radical free will position that views human will as unfettered by restraints but rather a free will in line with the concept of human agency. The concept of **human agency** maintains that humans have the capacity to make choices and the responsibility to make moral ones regardless of internal or external constraints on their ability to do so. This is a form of free will that is compatible with determinism because it recognizes both the internal and external constraints that limit our ability to do as we please. If we grant criminals the dignity of possessing agency so that they purposely weigh options before deciding on a course of action, then they "can be held responsible for that choice and can be legitimately punished" (Clarke & Cornish, 2001, p. 25). It is only with the concept of agency that we can justifiably assign praise and blame to individual actions.

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

The Major Punishment Justifications

LO 1.3 Define and describe retribution, deterrence, incapacitation, selective incapacitation, rehabilitation, and reintegration.

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

Retribution

Retribution is a "just deserts" model demanding that punishment match as closely as possible the degree of harm criminals have inflicted on their victims—what they justly deserve. Those who commit minor crimes deserve minor punishments, and those who commit more serious crimes deserve more severe punishments. This is the most honestly stated justification for punishment because it both taps into our most primitive punitive urges and posits

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

no secondary purpose for it such as rehabilitation or deterrence. In other words, it does not require any favorable consequence to justify it except to maintain that justice has been served. Logan and Gaes (1993) went so far as to claim that only retributive punishment "is an affirmation of the autonomy, responsibility, and dignity of the individual" (p. 252). By holding offenders responsible and blameworthy for their actions, we are treating them as free moral agents, not as mindless rag dolls pushed here and there by negative environmental forces. California is among the states that have explicitly embraced this justification in their criminal code (California Penal Code Sec. 1170a): "The Legislature finds and declares that the purpose of imprisonment for a crime is punishment" (as cited in Barker, 2006, p. 12).

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

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

Deterrence

The principle behind **deterrence** is that people are discouraged from crime by the threat of punishment. Deterrence may be either specific or general. **Specific deterrence** refers to the effect of punishment on the future behavior of persons who experience it. For specific deterrence to work, it is necessary that a previously punished person make a conscious connection between an intended criminal act and the punishment suffered as a result of similar acts committed in the past. Unfortunately, it is not always clear that such connections are made or, if they are, have the desired effect. This is either because memories of the previous consequences were insufficiently potent or because they were discounted. The trouble is that short-term rewards (such as the fruits of a crime) are easier to appreciate than long-term consequences (punishment that may never come), and there is a tendency to abandon consideration of the latter when confronted with temptation unless a person has a well-developed conscience and is future oriented. The weak of conscience and the present oriented tend to consistently discount long-term consequences in favor of short-term rewards.

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

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

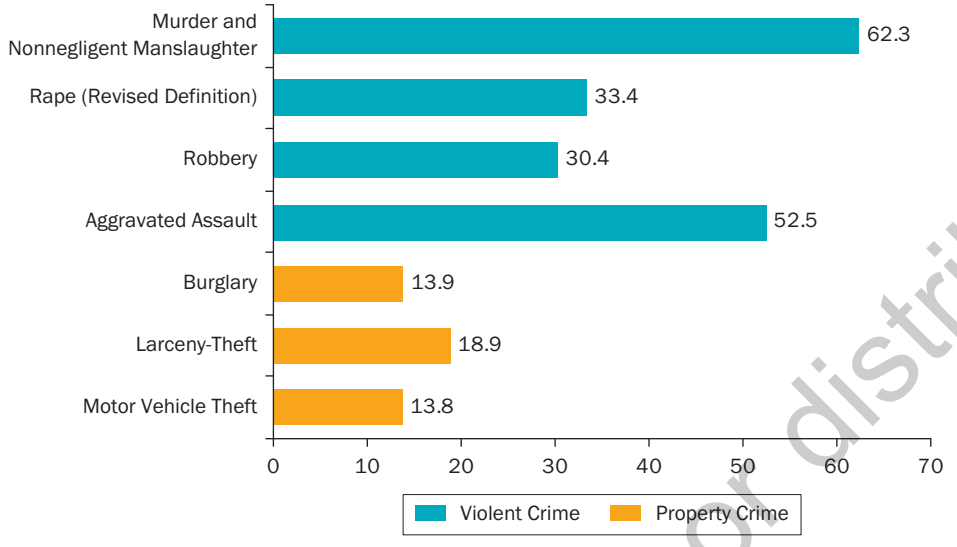
Committing further crimes after being punished is called **recidivism**, which is a lot more common than rehabilitation among ex-inmates. *Recidivism* refers only to crimes committed after release from prison and does not apply to crimes committed while incarcerated. Nationwide in the United States, about 33% of released prisoners recidivate within the first 6 months after release, 44% within the first year, 54% by the second year, and 67.5% by the third year (Robinson, 2005, p. 222), and these are just the ones who are caught (these figures are not updated annually, but there has been hardly any deviation over the years). Among those who do desist, a number of them cite the fear of additional punishment as a big factor (Wright, 1999). A systematic review of criminal recidivism rates worldwide found that although there were problems dealing with the different ways different countries defined recidivism (some by arrest, some by conviction only, and some only by reincarceration), the longer ex-inmates are free, the more likely they will reoffend. The study with the longest follow-up period was conducted in the United Kingdom and found that after 9 years, 78% of released offenders had reoffended (Yukhnenko, Sridhar, & Fazel, 2019).

Recidivism: When an ex-offender commits further crimes.

FIGURE 1.2 Percentage of Crimes Cleared by Arrest or Exceptional Means* in 2018

Source: Federal Bureau of Investigation (2019).

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



As Beccaria insisted, for punishment to positively affect future behavior, there must be a relatively high degree of certainty that punishment will follow a criminal act, the punishment must be administered very soon after the act, and it must be painful. The most important of these is certainty, but as we see from Figure 1.2, showing clearance rates for major crimes in 2018, the probability of being arrested is very low, especially for property crimes, and one in three murderers get away with it—so much for certainty. Factoring out the immorality of the enterprise, burglary appears to be a rational career option for a capable criminal.

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

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

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

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

General deterrence refers to the preventive effect of the threat of punishment on the general population; thus, it is aimed at *potential* offenders. Punishing offenders serves as an example to the rest of us of what may happen if we violate the law, as we noted in the

opening vignette. As Radzinowicz and King (1979) put it, "People are not sent to prison primarily for their own good, or even in the hope that they will be cured of crime. . . . It is used as a warning and deterrent to others" (p. 296). The threat of punishment for law violators deters a large but unknown number of individuals who might commit crimes if no such system existed.

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

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

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

Incapacitation

Incapacitation refers to the inability of criminals to victimize people outside prison walls while they are locked up. Its rationale is summarized in Wilson's (1975) remark, "Wicked people exist. Nothing avails except to set them apart from innocent people" (p. 391). The incapacitation justification probably originated with Enrico Ferri's concept of social defense.

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

For Ferri (1897/1917), to determine punishment, notions of culpability, moral responsibility, and intent were secondary to an assessment of offenders' strength of resistance to criminal impulses, with the express purpose of averting future danger to society. He believed that moral insensibility and lack of foresight, underscored by low intelligence, were criminals' most marked characteristics. For Ferri, the purpose of punishment is not to deter or rehabilitate but rather to defend society from criminal predation. The characteristics of criminals prevented them from basing their behavior on rational calculus principles, so how could their behavior be deterred?

Incapacitation obviously "works" while criminals are incarcerated. Currie (1999) stated that in 1995 there were 135,000 inmates in prison whose most serious crime was robbery and that each robber on average commits five robberies per year. Had these robbers been left on the streets, they would have been responsible for an additional 135,000 × 5, or 675,000, robberies on top of the 580,000 actual robberies reported to the police in 1995. Further evidence was provided by a "natural experiment" when the Italian government released one third (about 22,000) of Italy's prison inmates with 3 years or less left to serve on their sentences in 2006. This pardon resulted from budgetary concerns and prison overcrowding concerns. Buonanno and Raphael's (2013) analysis of released convicts found that the incapacitation effect was between 14 and 18 crimes committed per year (only theft and robbery arrests were included in the analysis) after release. In other words, the released offenders committed an average of about 16 robberies or thefts per year after release. The estimated saving of the collective pardon was 245 million euros (about $316 million), and the estimated crime cost was between 466 million and 2.2 billion euros (between about $606 million and $2.9 billion). Obviously, the pardons, while saving the prison system a substantial amount of money, cost Italian society as a whole dearly.

The incapacitation issue has produced some lively debates about the relative costs and benefits to society of incarceration. Attempts to estimate these have proved to be difficult and controversial. In 1987, economist Edwin Zedlewski used national crime data to calculate that the typical offender committed 187 crimes a year, and the typical crime exacted $2,300 in property losses or in physical injuries and human suffering. Multiplying these figures, Zedlewski (1987) estimated that the typical imprisoned felon was responsible for $430,000 in monetary costs to society for each year of freedom. He then divided that figure by the annual cost of incarceration in 1977 ($25,000) and concluded that the social benefits of imprisonment outweighed the costs by 17 to 1.

Zedlewski's (1987) findings were severely criticized, including a critical article by supporters of incarceration who argued that the typical offender commits 15 crimes in a year rather than 187 (DiIulio & Piehl, 1991), which reduces the benefit/cost ratio to 1.38 to 1 from 17 to 1. These different estimates of criminal activity are the result of Zedlewski's using the mean number (arithmetic average) of crimes per year and DiIulio and Piehl's using the median number (a measure of the "typical" in which half of criminals commit fewer than 15 crimes and half commit more). Using the mean inflates the typical by including in the calculation crimes committed by the most highly criminally involved offenders. Using only the dollar costs to estimate the social costs of crime, of course, ignores the tremendous physical and emotional cost to victims as well as other important considerations (Walker, 2001).

Selective Incapacitation

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

This brings up the idea of **selective incapacitation**, which is a punishment strategy that reserves prison largely for a select group of offenders composed primarily of violent repeat offenders but may also include other types of incorrigible offenders. Birth cohort studies (a *cohort* is a group composed of subjects having something in common, such as being born

within a given time frame or in a particular place) from a number of different locations find that about 6% to 10% of offenders commit the majority of all crimes. For instance, in the 1945 birth cohort studies of Wolfgang, Figlio, and Sellin (1972), 6.3% of the 9,945 cohort members committed 71% of the murders, 73% of the rapes, and 82% of the robberies attributed to members of the cohort.

Saving prison space mostly for high-rate violent offenders better protects the community and saves it money. The problem with this strategy, however, involves identifying high-rate violent offenders *before* they become high-rate violent offenders; identifying them after the fact is easy. Generally speaking, individuals who begin committing predatory delinquent acts before they reach puberty are the ones who will continue to commit crimes across the life course (DeLisi, 2005; Moffitt & Walsh, 2003). The incapacitation effect is more starkly driven home by a study of the offenses of 39 convicted murderers committed *after* they had served their time for murder and were released from prison. Between 1996 and 2000, they had 122 arrests for serious violent crimes (including 7 additional murders), 218 arrests for serious property crimes, and 863 other arrests among them (DeLisi, 2005, p. 165).

What would be the dollar costs saved had these 39 murderers not been released? The total social cost of a single murder has been estimated at $8,982,907, and the average cost of other "serious violent crimes" (rape, aggravated assault, and robbery) has been estimated at $130,035 (McCollister, French, & Fang, 2010). The 7 murders ($62,880,349) and 115 other serious violent crimes ($14,954,063) yield a total of $77,834,412, or $15,566,882 per year over the 5-year period, and that is without adding in the 218 arrests for serious property crimes and the 863 other arrests. Of course, the biggest loss of all is the grief suffered by the survivors of murder victims.

None of these authors was arguing for an increase in gross incarceration of low-rate or low-seriousness offenders. As we increase incarceration more and more, we quickly skim off the 5% to 10% of serious offenders and begin to incarcerate offenders who would best be dealt with within the community. In monetary (and other social cost) terms, we have a situation that economists call "the law of diminishing returns." In essence, this means that while we may get a big bang for our buck at first (incarcerating the most serious criminals), the bang quickly diminishes to a whimper and even turns to a net loss as we continue to reel in minor offenders.

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

Rehabilitation

Rehabilitation: A philosophy of punishment aimed at "curing" criminals of their antisocial behavior.

The term **rehabilitation** means to restore or return to constructive or healthy activity. Whereas deterrence and incapacitation are justified mainly on classical grounds, rehabilitation is primarily a positivist concept. The rehabilitative goal is based on a medical model that used to view criminal behavior as a moral sickness requiring treatment. Today this model views criminality in terms of "faulty thinking" and views criminals as in need of "programming" rather than "treatment." The goal of rehabilitation is to change offenders' attitudes so they come to accept that their behavior was wrong, not to deter them by the threat of further punishment. We defer further discussion of rehabilitation until Chapter 4, devoted to correctional treatment and rehabilitation.

Reintegration

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

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

Table 1.1 provides a summary of the key elements (justification, strategy, focus of perspective, and image of offenders) of the five punishment philosophies or perspectives discussed. The commonality that they all share to various extents is, of course, the prevention of crime.

TABLE 1.1 Summary of Key Elements of Different Correctional Perspectives

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

The Due Process and Crime Control Models and Cultural Comparisons

LO 1.4 Explain the distinction between the crime control and due process models.

A useful way of grounding our discussion of the different correctional systems in different countries is to see how they stack up in terms of Packer's (1964/1997) crime control versus due process models of criminal justice. Packer proposed two "ideal-type" models (pure types that exaggerate differences), reflecting different value choices undergirding the operation of the criminal justice system.

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

Comparative Corrections

THE FOUR LEGAL TRADITIONS AND WHY THEY ARE USEFUL TO KNOW

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

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

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

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

The **due process model** is the second model. Rather than a system run like an assembly line, the due process model is more like an obstacle course in which impediments to carrying the accused's case further are encountered at every stage of processing. Police officers must obtain warrants when possible and must not interrogate a suspect without the suspect's consent, evidence may be suppressed, and various motions may be filed that may

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

free a factually guilty person. These and other obstacles are placed in the way to ensure that evidence is obtained in a legal manner. If the person is convicted, they may file numerous appeals, and it may take years to gain closure of the case. The due process model is more concerned with the integrity of the legal process than with its efficiency and with legal guilt rather than whether the accused is factually guilty. Factual guilt translates into legal guilt only if the evidence used to determine it was obtained in a procedurally correct fashion.

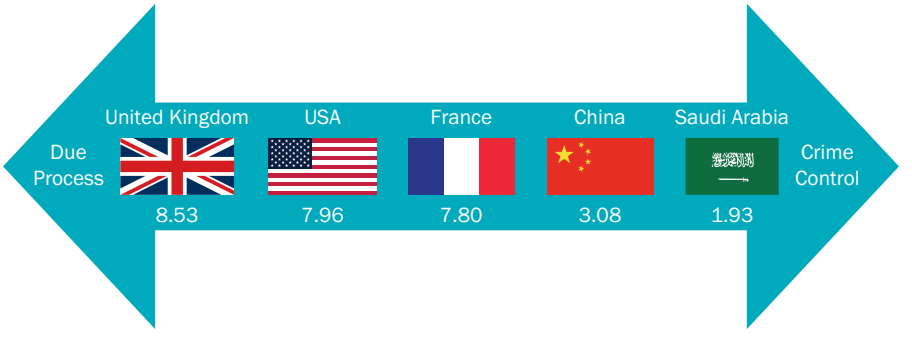
Which model do you prefer, and which model do you think best exemplifies the ideals of justice? It may be correct to say that under a crime control model more innocent people may be convicted, but that depends on which country we are talking about and how far along the continuum it goes in its practices. It is also true that under a due process model more (factually) guilty people will be set free, but again that depends on the country and the extent to which the model is "pure." In the first instance the individual has been unjustly victimized, and in the second instance the community has been unjustly victimized. It is clear that both models have their faults as well as their strengths. The danger of a runaway crime control model is a return to the days when due process was nonexistent, and the danger of a runaway due process model is that truth and justice may get lost in a maze of legal ritualism. But remember these are ideal-type models that do not exist in their "pure" form anywhere in the world; rather, all criminal justice systems lie on a continuum between the crime control and due process extremes.

Packer's models are more about the processes followed in the police and prosecution legs of criminal justice (the catch 'em and convict 'em legs), but they also apply to the third leg (the correct 'em leg) of the criminal justice system. While it may be true that there is less public concern for the rights of convicted criminals than for the rights of accused criminals, and while it is also true that convicted criminals have fewer rights than law-abiding folks, the criminal justice model followed by the police and the courts in a given nation is also the model followed by its correctional system.

Figure 1.3 places the countries to be primarily discussed on a due process–crime control continuum according to the degree to which they emphasize one model or the other. Terrill (2013) noted that the United States, the United Kingdom, and France "vacillate between the two models, but they are more sensitive to due process issues, [while China and Saudi Arabia] favor the crime control model and often show little regard for the due process model" (p. 15). Overall, the United States is closer to a pure due process model than our comparative nations, and Saudi Arabia is the closest to a pure crime control model.

FIGURE 1.3 Situating Comparative Countries on the Due Process–Crime Control Continuum and on Their Democracy Scores (Numbers Under Flags)

Source: Based on data from the Economist Intelligence Unit (2019).



In Focus 1.1

IS THE UNITED STATES HARD OR SOFT ON CRIME?

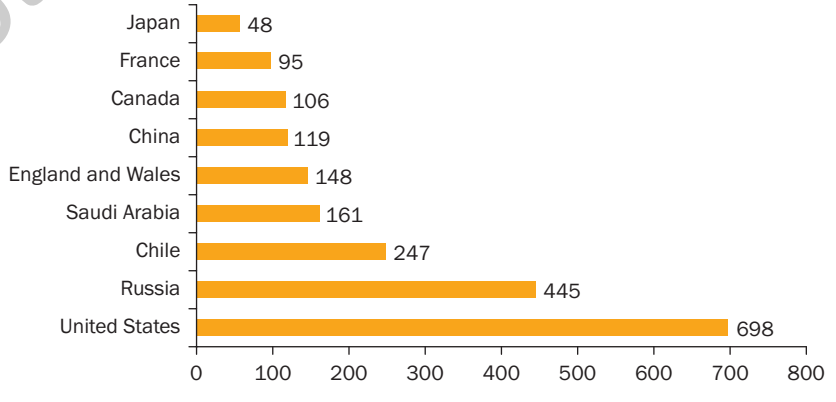
A frequently heard criticism of the criminal justice system in the United States to which we can apply the comparative perspective is that the United States is soft on crime. If we define hardness or softness on crime in terms of incarceration rates, the accompanying figure indicating incarceration rates per 100,000 for our comparison countries and certain other countries in 2015 conveys the opposite message. The retention of the death penalty by the United States, which has been eschewed by other "civilized" nations, also belies the contention that we are soft on crime. Only Russia, with a rate of 445 per 100,000, comes close to the American incarceration rate, and the closest any Western nations come to the U.S. rate are England and Wales, with a rate nearly 5 times lower. Comparisons among nations on this question are typically made using only Western democratic nations, leading to the conclusion that the United States is hard on crime. But if we are to make valid comparisons, we cannot cherry-pick our countries to arrive at a conclusion that fits our ideology.

If we define hardness and softness in terms of alternative punishments or the conditions of confinement, then the United States is soft on crime relative to many countries—although a better description would be *more humane*. For instance, although China is shown as having an incarceration rate more than 6 times lower than the U.S. rate, it is the world's leader in the proportion of its criminals it executes each year. Furthermore, punishment in some fundamentalist Islamic countries, such as Saudi Arabia and Afghanistan under the Taliban, has often included barbaric corporal punishments for offenses considered relatively minor in the West. Drinkers of alcohol may get 60 lashes, robbers may have an alternate-side hand and foot amputated, and women accused of "wifely disobedience" may be subjected to corporal punishment (Walsh & Hemmens, 2014).

Another problem is that crime rates are calculated per 100,000 *citizens*, which is not the same as the rate per 100,000 *criminals*. If the United States has more criminals than these other countries, then perhaps the greater incarceration rate is justified. No one knows how many criminals any country has, but we can get a rough estimate from a country's crime rates—that is, the incarceration rate per 1,000 recorded crimes. For instance, the U.S. homicide rate is about 5 times that of England and Wales, which roughly matches the 5 times greater incarceration rate in the United States. However, when it comes to property crimes, Americans are about in the middle of the pack of nations in terms of the probability of being victimized, yet burglars serve an average of 16.2 months in prison in the United States, compared

FIGURE 1.4 2015 Incarceration Rates per 100,000 Population for Comparative Countries and Selected Other Countries

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



(Continued)

(Continued)

with 6.8 months in Britain and 5.3 months in Canada (Mauer, 2005). On this measure, the United States is more on the crime control end of the due process–crime control continuum than France or England and Wales. Does this mean the United States is too hard, or Britain and Canada are too soft, on crime? From a crime control perspective, these nations can be seen as excessively soft on crime at the expense of rising crime rates, although crime has fallen in those countries since the 1990s, just as it has in the United States (Baumer & Wolff, 2014).

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

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

What are the criteria we used for placing our four countries on this continuum? One way of attempting to measure the degree to which a society has a due process versus a crime control model is the degree to which it respects the ideals of democracy. The numbers beneath the respective flags represent each country's "democracy score" on a scale of 1 to 10 according to the Economist Intelligence Unit (2019). This score is based on 63 different factors, such as public political participation and respect for civil rights, and their scores support our ordering of countries in the figure. We should note that on a world scale, neither the United Kingdom nor Saudi Arabia occupies the top or bottom place. Norway had the highest democracy score (9.87), and North Korea had the lowest (1.08), in 2018. The French system probably represents the "right" balance between the rights of the accused (due process) and the protection of society (crime control); others may disagree with this assessment.

SUMMARY

LO 1.1 Describe the function of corrections and its philosophical underpinnings.

- Corrections is a social function designed to hold, punish, supervise, deter, and possibly rehabilitate the accused or convicted. Corrections is also the study of these functions.
- Although it is natural to want to exact revenge ourselves when people do us wrong, the state has taken over this responsibility for punishment to prevent endless tit-for-tat feuds. Over social evolution, the state has moved to more restitutive forms of punishment that, while serving to tone down the community's moral outrage, tempers it with sympathy.

LO 1.2 Differentiate between the classical and positivist schools in terms of their respective stances on the function of punishment.

- Much of the credit for the shift away from retributive punishment must go to the Classical School of criminology, which was imbued with the

humanistic spirit of the Enlightenment. The view of human nature (hedonistic, rational, and possessing free will) held by thinkers of the time was that punishment should primarily be used for deterrent purposes, that it should only just exceed the gains of crime, and that it should apply equally to all who have committed the same crime regardless of any individual differences.

- Opposing classical notions of punishment are those of the positivists, who rose to prominence during the 19th century and who were influenced by the spirit of science. Positivists rejected the philosophical underpinnings regarding human nature of the classicists and declared that punishment should fit the offender rather than the crime.

LO 1.3 Define and describe retribution, deterrence, incapacitation, selective incapacitation, rehabilitation, and reintegration.

- The objectives of punishment are retribution, deterrence, incapacitation, rehabilitation, and reintegration, all of which have come in and out of favor over the years.
- Retribution is simply just deserts—getting the punishment one deserves with no other justification needed.
- Deterrence is the assumption that the threat of punishment causes people not to commit crimes. We identified two kinds of deterrence: specific and general. The effects of deterrence on potential offenders depend to a great extent on the contrast between the conditions of punishment and the conditions of everyday life.
- Incapacitation means that the accused and convicted cannot commit further crimes (if they did so in the first place) against the innocent while incarcerated. Incapacitation works only while offenders are behind bars, but we should be more selective about who we incarcerate.
- Rehabilitation centers on efforts to socialize offenders in prosocial directions while they are under correctional supervision so that they will not commit further crimes.
- Reintegration involves efforts to provide offenders with concrete skills they can use that will give them a stake in conformity.

LO 1.4 Explain the distinction between the crime control and due process models.

- Throughout this book, we will offer comparative perspectives on corrections from other countries, focusing primarily on the United Kingdom, France, China, and Saudi Arabia. These countries best exemplify their respective legal traditions and are situated quite far apart on Packer's crime control–due process model of criminal justice.
- The United States leads the world in the proportion of its citizens in prison. Whether this is indicative of hardness on crime (more prison time for more people) or softness on crime (imprisonment as an alternative to execution or mutilation) depends on how we view hardness versus softness and with which countries we compare the United States.

KEY TERMS

Classical School 5
Contrast effect 12
Corrections 2
Crime control model 17
Deterrence 11
Due process model 17
Enlightenment 5
General deterrence 12
Hedonism 9
Hedonistic calculus 10
Human agency 10
Incapacitation 13
Penology 2
Positivists 7
Principle of utility 6
Punishment 4
Rationality 10
Recidivism 11
Rehabilitation 15
Reintegration 16
Restitutive justice 8
Retribution 10
Retributive justice 8
Selective incapacitation 14
Specific deterrence 11

DISCUSSION QUESTIONS

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

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