

The background of the cover features a close-up of the American flag, showing the red and white stripes on the left and the blue field with white stars on the right. A pair of silver metal handcuffs is positioned on the right side, with one cuff partially overlapping the flag's blue field. The handcuffs are open, and the chain is visible.

Corrections *in* America

AN INTRODUCTION

Fourteenth Edition

HARRY E. ALLEN

EDWARD J. LATESSA

BRUCE S. PONDER

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edition 14

Corrections in America

An Introduction

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dedication

To brother Joseph Hunter Allen, Bishop, and
his sons

Harry Allen

To my family—Sally, Amy, Jennifer, Michael, Allison,
and Denise, for always being there for me

Edward Latessa

To James and Gertrude Watts and my grandfather Warren
White for providing the intellectual guidance to excel

Bruce S. Ponder

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new to this edition

The field of corrections is undergoing rapid and significant changes, occasioned by court decisions, changes in correctional populations, the fiscal crises in many states, and legislative demands. Sentencing smarter and introducing evidence-based practices have exerted important impacts on practice, policies, and personnel. The results are problems unforeseen in the history of corrections. In this edition, we identify those major change factors and the effects they are having on the field. In addition, we have attempted to provide projections through the next three years. These improvements are designed to enhance student understanding and learning about this dynamic field. They include the following:

- About 25 percent of the research cited is new.
- Photographs have been updated.
- New or expanded coverage is included on such issues as prison recidivism rates, effects of court decisions on correctional practices, new techniques to improve community supervision, a leveling off of prison populations, strategies and innovative solutions for decreasing prison overpopulation, what works in corrections, and institutional threat groups.
- An extensive examination of the California Realignment effort, which will have major impacts on the field in the coming decades, is included.
- Approximately 80 percent of the charts, graphs, and figures are new or updated, and many are projected to 2015.
- More detailed biographical data are provided on major actors in the field of corrections.
- Almost 40 new Policy Position, Correctional Practice, and Correctional Profile features have been added to provide in-depth coverage of selected topics.
- Chapter objectives have been updated and enhanced.
- The Glossary has grown to include definitions and descriptions of all key words in this edition.
- Two new chapters have been included: *Security Threat Groups and Prison Gangs* (Chapter 8) and *Facilities for Juveniles* (Chapter 20).
- Correctional careers have been identified and described in a new appendix.

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We would like to acknowledge the great assistance of the people who merit special recognition in the 14th edition of *Corrections in America*. Instructors, former students, colleagues, and doctoral graduates were generous in pointing out the strengths and weaknesses of the 13th edition, and they made considerable suggestions for improving the textbook. Fortunately, we took them seriously and have benefited from their expertise. Our formal reviewers heaped praise where there might be praise and uniformly agreed on subjects deserving more attention, such as the chapters on security threat groups and facilities for juveniles. We would like to thank these conscientious reviewers: Lisa Cason, Columbia College; Scott Chenault, University of Central Missouri; Dana C. De Witt, Mount Marty College; Thomas A. Dreffein, Triton College; Lisa A. Hoston, Allegany College of Maryland; Patricia Nunally, Southwest Tennessee Community College; Patrick Patterson, Eastfield College; Mari Pierce, Penn State University; Russ Pomrenke, Gwinnett Technical College; and Jason Smith, New Hampshire Technical Institute.

We are also very pleased to welcome Gary Bauer as our new editor. He was very responsive to our needs and is a great editor with whom to work. A special thanks as well goes to Elisa Rogers, who took on the job of assisting with the original manuscript, tables, charts, and figures and manuscript preparation chores, and to Susan Hannahs at Pearson and Vinolia Benedict Fernando at S4Carlisle Publishing Services, who handled the production of the work. Gary's team contributed in many ways to the improvement of the 14th edition of this work, the longest continuously published textbook on corrections in the nation.

We wish to thank and acknowledge the recently deceased Clifford Simonsen, on whose shoulders we stand. Finally, we acknowledge our families, who endured our absences, humored us, handled our human needs, bolstered us in despondency, and were there when we needed them. We could not have done it without you.

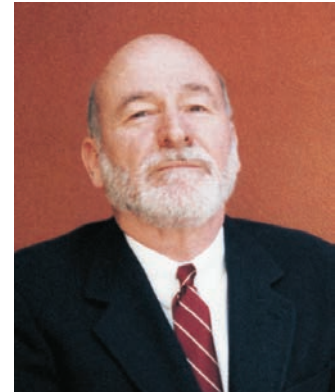
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Professor Allen is the author or coauthor of numerous articles, chapters in books, essays, and textbooks, including the first 10 editions of *Corrections in America* with Clifford E. Simonsen, the 11th edition with Drs. Simonsen and Edward J. Latessa, and the last three with Professor Latessa and Bruce S. Ponder. He also coauthored the first three editions of *Corrections in the Community* with Edward J. Latessa. He has been very active in professional associations and was the first criminologist to serve as president of both the American Society of Criminology (1982) and the Academy of Criminal Justice Sciences (1994). He received the Herbert Block Award for service to the American Society of Criminology and the Founder's Award for contributions to the Academy of Criminal Justice Sciences. He is a fellow in both the Western and the American Society of Criminology and was the most frequently cited criminologist in the field of correctional textbooks. He was a Humana Scholar at the University of Louisville (2001) and for the past 14 years has been designing and instructing online courses for the University of Louisville in the areas of corrections, ethics, substance abuse, community corrections, terrorism, alternatives to incarceration, and capital punishment.



Edward J. Latessa received his Ph.D. from The Ohio State University in 1979 and is a professor and director of the School of Criminal Justice at the University of Cincinnati. Dr. Latessa has published over 140 works in the area of criminal justice, corrections, and juvenile justice. He is coauthor of eight books, including *Corrections in the Community* and *Corrections in America*. Professor Latessa has directed over 150 funded research projects, including studies of day reporting centers, juvenile justice programs, drug courts, prison programs, intensive supervision programs, halfway houses, and drug programs. He and his staff have also assessed over 600 correctional programs throughout the United States, and he has provided assistance and workshops in over 45 states. Dr. Latessa served as president of the Academy of Criminal Justice Sciences (1989–1990). He has also received several awards, including the Marguerite Q. Warren and Ted B. Palmer Differential Intervention Award presented by the Division of Corrections and Sentencing of the American Society of Criminology (2010); the Outstanding Community Partner Award from the Arizona Department of Juvenile Corrections (2010); the Maud Booth Correctional Services Award in recognition of dedicated service and leadership presented by the Volunteers of America (2010); the Community Hero Award presented by Community Resources for Justice (2010); the Bruce Smith Award for outstanding contributions to criminal justice by the Academy of Criminal Justice Sciences (2010); the George Beto Scholar, College of Criminal Justice, Sam Houston State University (2009); the Mark Hatfield Award for Contributions in public policy research by the Hatfield School of Government at Portland State University (2008); the Outstanding Achievement Award by the National Juvenile Justice Court Services Association (2007); the August Vollmer Award from the American Society of Criminology (2004); the Simon Dinitz Criminal Justice Research Award from the Ohio Department of Rehabilitation and Correction (2002); the Margaret Mead Award for dedicated service to the causes of social justice and humanitarian advancement by the International Community Corrections Association (2001); the Peter P. Lejins Award for Research from the American Correctional Association (1999); the ACJS Fellow Award (1998); the ACJS Founders Award (1992); and the



Simon Dinitz Award by the Ohio Community Corrections Organization. In 2013, he was identified as one of the most innovative people in criminal justice by a national survey conducted by the Center for Court Innovation in partnership with the Bureau of Justice Assistance and the U.S. Department of Justice. He has been married to his beautiful wife, Sally, for over 35 years and has four wonderful children, all of whom grew up too fast.



Bruce S. Ponder grew up in part on the raj of the Maharaja of Dharbhanaga and in Europe. He was a professional race car driver in the 1970s, winning major competitions including the “12 Hours of Sebring” (1972). He was formally trained in political science, computer information systems, and computer sciences. He also studied terrorism extensively and team-taught in-service training programs at the Southern Police Institute. Currently, he is Internet coordinator/online course developer and team instructor in a variety of courses at the Justice Administration Department at the University of Louisville, particularly in terrorism, intelligence and homeland security, and corrections.

part 1

Historical Perspectives

Overview

A crucial question in corrections is, "Who are offenders and what shall we do with them?" Part 1 deals with the process by which punishment originated as a private matter between an offending party and the victim but later came to be an official state function. Significant changes over time are examined, starting with 2000 B.C. and continuing through contemporary efforts to construct places of punishment and reform. Behind each of the four major answers to the crucial question lay assumptions about the nature of offenders and what to do with them. Part 1 details these perceptions, assumptions, and answers, as well as corresponding correctional practices and fads that have emerged during the last 4,000 years.



chapter 1

Early History
(2000 B.C. to A.D.
1800)



chapter 2

Prisons
(1800 to the Present)



chapter 3

**Correctional
Ideologies:**
The Pendulum Swings



chapter 4

**The Sentencing
and Appeals Process**



Erich Lessing/Art Resource

Objectives

- Summarize the definition, mission, and role of corrections.
- Summarize early responses to crime prior to the development of prisons.
- Describe how secular law emerged.
- Summarize sentencing goals and primary punishment philosophies.
- Outline the development of the prison.

chapter 1

Early History (2000 B.C. to A.D. 1800)

Outline

Redress of Wrongs

- Retaliation
- Fines and Punishments

Early Codes

- Babylonian and Sumerian Codes
- Crime and Sin
- Roman and Greek Codes
- The Middle Ages

Punishment

- Capital and Corporal Punishment
- Deterrence
- Emergence of Secular Law
- Early Prisons
- Workhouses

The Age of Enlightenment and Reform

- Montesquieu and Voltaire: The French Humanists
- Bentham and the Hedonistic Calculus
- John Howard

Houses of Correction, Workhouses, and Gaols

Transportation Systems

- Deportation to the American Colonies and Australia
- Hulks: A Sordid Episode

Early Cellular Prisons

- The Maison de Force at Ghent and the Hospice of San Michele
- William Penn and the "Great Law"
- The Walnut Street Jail

"The descent to hell is easy. The gates stand open day and night. But to reascend the slope and escape to the upper air: this is labor."

—Virgil,
Aeneid, Book 6

Overview

This textbook is not intended to be an in-depth history of corrections nor a dissertation on its legal aspects. It is helpful, however, to know at least a little of the fascinating historical background (legal and social) to gain an improved understanding of the concepts, practices, and operations that we will discuss later and how we got to where corrections is today as we progress into the twenty-first century. In describing this background, we avoid technical jargon to keep misunderstanding to a minimum. Where appropriate, specific individuals and events that have influenced the history of corrections are detailed in the chapter.

It is important to study the growing field of corrections for a variety of reasons. This dynamic field is undergoing rapid, mind-boggling change. In the interest of reducing crime, protecting children, salvaging redeemable offenders, and increasing citizen and society safety, the nation has invested unprecedented amounts of time and money in the correctional system. Between 1972 and 2008, the number of state inmates grew 705 percent before beginning to drop in 2009. The growth of corrections has not been limited to prisons; the number of offenders reentering society as well as the jail and probation populations have never been higher.

Corrections is a major industry, annually costing over \$75 billion recently,¹ and as such needs to be able to find and hire competent, educated, and motivated persons.

Never have so many Americans been in the arms of the law and under correctional control; never has the percentage of the citizenry incarcerated been as high as it is today (although U.S. Supreme Court decisions have recently forced some states to reduce their prison population). The size of corrections is rapidly increasing and—measured by the number of employees, offenders, and budgets—still undergoing significant growth.

Corrections affects the lives of ordinary people almost daily. Employees of prisons (as well as probation and parole officers) are in immediate contact with frequently violent and aggressive offenders, much more so than the typical municipal police officer who, in a busy week, may interact once with such an offender. The populace in general and students of corrections in particular must understand the dynamics that affect all forms of correctional work. They also must understand criminal behavior to better cope with the variety of offenders and to deal effectively with problematic clients. These factors are explored throughout this textbook, and your instructor will help you gain the necessary knowledge to begin your journey into this fascinating field. We begin now by tracing the roots of corrections back to the early beginnings of civilization as we know it.

key term

Retaliation

Act designed to repay (as an injury) in kind or to return like for like, *especially* “to get revenge.”

key term

Blood feud or vendetta

An often-prolonged series of retaliatory, vengeful, or hostile acts or exchange of such acts.

key term

Lex salica

The custom of atonement for wrongs against a victim by payment to appease the victim’s family.

key term

Wergeld

The European word denoting *lex salica*.

key term

Friedensgeld

The practice of paying restitution for crime to both the victim and the Crown.

REDRESS OF WRONGS

Retaliation

The earliest remedy for wrongs done to one’s person or property was simply to retaliate against the wrongdoer. In early primitive societies, personal **retaliation** was accepted and even encouraged by members of the tribal group. This ancient concept of personal revenge could hardly be considered “law.” Yet it has influenced the development of most legal systems, especially English criminal law, from which most American criminal law derives.

The practice of personal retaliation was later augmented by the **blood feud**, in which the victim’s family or tribe took revenge on the offender’s family or tribe. Because this form of retaliation could easily escalate and result in an endless battle or **vendetta** between the injured factions, some method of control had to be devised to make blood feuds less costly and damaging.

The practice of retaliation usually begins to develop into a system of criminal law when it becomes customary for the victim of the wrongdoing to accept money or property in place of blood vengeance. This custom, when established, is usually dictated by tribal tradition and the relative positions of power between the injured party and the wrongdoer. Custom has always exerted great force among primitive societies. The acceptance of vengeance in the form of a payment (such as cattle, food, or personal services) was usually not compulsory, however, and victims were still free to take whatever vengeance they wished. Legal historians Albert Kocourek and John Wigmore described this pressure to retaliate:

It must not be forgotten that the right of personal revenge was also in many cases a duty. A man was bound by all the force of religion to avenge the death of his kinsman. This duty was by universal practice imposed upon the nearest male relative—the avenger of blood, as he is called in the Scripture accounts.²

The custom of atonement for wrongs by payment to appease the victim’s family or tribe became known as **lex salica** (or **wergeld** in Europe). It is still in effect in many Middle Eastern and Far Eastern countries, with the amount of payment based on the injured person’s rank and position in the social group. The practice of paying restitution for crimes to the Crown, in addition to victims, was known as **friedensgeld**. With fines, the victim disappeared from

the criminal justice system, becoming the ignored component of the crime. The victim has reappeared in the restorative justice movement, described in Chapter 5.

Fines and Punishments

How did these simple, voluntary programs become part of an official system of fines and punishments? As tribal leaders, elders, and (later) kings came into power,³ they began to exert their authority on the negotiations. Wrongdoers could choose to stay away from the proceedings; this was their right. But if they refused to abide by the imposed sentence, they were declared to be outside the law of the tribe (nation, family), or an **outlaw**. There is little doubt that outlawry, or exile, was the first punishment imposed by society,⁴ and it heralded the beginning of criminal law as we now know it.

Criminal law, even primitive criminal law, requires an element of public action against the wrongdoer—as in a pronouncement of outlawry. Before this element of public action, the backgrounds of criminal law and sanctions seem to have been parallel in most legal systems. The subsequent creation of legal codes and sanctions for different crimes either stressed or refined the vengeance factor, according to the particular society's values.

key term

Outlaw

Declared to be outside the law of the tribe (nation, family).

EARLY CODES

Babylonian and Sumerian Codes

Even primitive ethics demanded that a society express its vengeance within a system of regulations and rules. Moses was advised to follow the “eye for eye and tooth for tooth” doctrine stated in Exodus 21:24, but this concept of *lex talionis* is far older than the Bible; it appears in the Sumerian codes (1860 B.C.) and in the 1750 B.C. code of King Hammurabi of Babylon, compiled more than 500 years before the *Book of the Covenant* (1250 B.C.).

As early societies developed language and writing skills, they began attempting to record the laws of their nations. While most historians view the Hammurabic Code as the first comprehensive attempt at codifying social interaction, the Sumerian codes preceded it by about a century, and the principle of *lex talionis* was evident in both. The punishments handed out under these codes were harsh and based on vengeance (or *talion*), in many cases being inflicted by the injured party. In the Babylonian code, more than 24 offenses called for the penalty of death. Both codes also prescribed mutilation, whipping, or forced labor as punishments for numerous crimes.

The kinds of punishments applied to slaves and bonded servants have been cited by many scholars⁵ as the origin of the punishments that in later law applied to all offenders. As stated by historian Gustav Radbruch,

Applied earlier almost exclusively to slaves, [the mutilating penalties] became used more and more on freemen during the Carolingian period [A.D. 640–1012] and especially for offenses that betokened a base and servile mentality. Up to the end of the Carolingian era, punishments “to hide and hair” were overwhelmingly reserved for slaves. Even death penalties occurred as slave punishments and account for the growing popularity of such penalties in Carolingian times. The aggravated death penalties, combining corporal and capital punishments, have their roots in the penal law governing slaves.⁶

The early punishments were considered synonymous with slavery; those punished even had their heads shaved, indicating the “mark of the slave.”⁷ In Roman days, the extensive use of penal servitude was spurred by the need for workers to perform hard labor in the great public works. The sentence to penal servitude was generally reserved for the lower classes; it usually meant life in chains, working in the mines or rowing in the galleys or ships, or building the public works planned by the government. The sentences carried with them the complete loss of citizenship and liberty until they died and were classed, along with exile

key term

Lex talionis

The act of repaying in kind, such as “an eye for an eye, a tooth for a tooth.”

key term

Civil death

The status of a living person equivalent in its legal consequences to natural death; loss of all rights and powers as if dead.

key term

“Get right with God”

Directive that the offender must make peace with God through repentance and atonement.

and death, as capital punishment. Penal servitude, or **civil death**, meant that the offender’s property was confiscated in the name of the state and that his wife was declared a widow, eligible to remarry. To society, the criminal sentenced to penal servitude was, in effect, “dead.”

Crime and Sin

Punishment of the individual in the name of the state also included the concept of superstitious revenge. Here crime was entangled with sin, and punishment in the form of *wergeld* (payment to the victim) or *friedensgeld* (payment to the state) was not sufficient. If society believed the crime might have offended a divinity, the accused had to undergo a long period of progressively harsher punishment to appease the gods. As time passed, the zone between church law and state law became more blurred, and the concept of personal responsibility for one’s act was combined with the need to “**get right with God.**”⁸ The early codes, even the Ten Commandments, were designed to make the offender’s punishment acceptable to both society and God.

Roman and Greek Codes

In the sixth century A.D., Emperor Justinian of Rome wrote his code of laws, one of the most ambitious early efforts to match a desirable amount of punishment with all possible crimes. Roman art of the period depicts the “scales of justice,” a metaphor demanding that the punishment balance the crime. Justinian’s effort, as might be expected, bogged down in the far-flung empire’s morass of administrative details that were required to enforce it. The Code of Justinian did not survive the fall of the Roman Empire, but it left the foundation on which most of the Western world’s legal codes were eventually built.

In Greece, the harsh Code of Draco provided the same penalties for both citizens and slaves, incorporating many of the concepts used in primitive societies (for example, vengeance, outlawry, and blood feuds). The Greeks were the first society to allow any of their citizens to prosecute an offender in the name of the injured party. This clearly illustrates that during the Greek period, public interest and protection of the social order were becoming more important than individual injury and individual vengeance.

The Middle Ages

The Middle Ages was a long period of general social disorder. Vast changes in the social structure and the growing influence of the church on everyday life resulted in a divided system of justice. Reformation was viewed as a process of religious, not secular, redemption. As in early civilizations, the sinner had to pay two debts, one to society and another to God. The “ordeal” was the church’s substitute for a trial by the leadership of the secular group, until the practice was abolished in A.D. 1215. In trials by ordeal, the accused were subjected to impossible, dangerous, or painful tests, in the belief that those who were truly innocent would emerge unscathed, whereas the guilty would suffer agonies and die; this process determined guilt or innocence. The brutality of most trials by ordeal ensured a very high percentage of convictions.

The church expanded the concept of crime to include some new areas, still reflected in modern codes. During the Middle Ages, sexual activity other than for the purpose of procreation was seen as especially sinful. Sexual offenses usually involved either public or “unnatural” acts, and they provoked horrible punishments, as did heresy and witchcraft. The church justified cruel reprisals as a means of saving the unfortunate sinner from the clutches of Satan. The zealous movement to stamp out heresy brought on the **Inquisition** and its use of the most vicious tortures imaginable to gain “confessions” and “repentance” from alleged heretics. Thousands upon thousands of persons died at the hands of the Inquisition in Spain and Holland, where these sometimes inhumane methods were the most extensively used. Punishment was viewed not as an end in itself but as the offender’s only hope of pacifying a wrathful God.

key term

Inquisition

A former Roman Catholic tribunal for the discovery and punishment of heresy; an investigation conducted with little regard for individual rights through a severe questioning.

The Inquisition was a tribunal, established by the Catholic Church in the Middle Ages, with very wide powers for the suppression of heresy. The tribunal searched out heretics and other offenders rather than waiting for charges to be brought forward. Emperor Frederick II made the Inquisition a formal institution in 1224, and it lasted until 1834. The main contribution of the medieval church to our study of corrections is the concept of free will. This idea assumes that individuals choose their actions, good or bad, and thus can be held fully responsible for them. The religious doctrines of eternal punishment, atonement, and spiritual conversion rest on the assumption that individuals who commit sins could have acted differently if they had chosen to do so.

The early codes and their administration were usually based on the belief that punishment was necessary to avenge the victim, or to satisfy God. In early, small tribal groups and less complex societies, direct compensation to the victim was used in place of revenge to prevent disintegration of the social structure through extended blood feuds. When those groups concentrated their power in a king or similar ruler with another title, the concept of crime as an offense against the victim gave way to the idea that crime (however lowly the victim) was an offense against the state and society in general. In the process, *wergeld* was replaced by *friedensgeld*, and the administration of punishment became the responsibility of the king. Concentrating that power also led to a tendency to ignore victims and their losses while concentrating on the crime and the criminal.

PUNISHMENT

Capital and Corporal Punishment

The most common forms of state punishment over the centuries have been death, torture, mutilation, branding, public humiliation, fines, forfeiture of property, banishment, imprisonment, and transportation.⁹ These acts and numerous variations on them have always symbolized retribution for crimes. (Imprisonment and transportation are relatively modern penal practices and will be discussed in later chapters.)

The death penalty (killing the offender) was the most universal form of punishment among early societies. There was little knowledge of behavior modification and other modern techniques to control violent persons, and often the feared offenders were condemned to death by hanging, crucifixion, burning at the stake, drowning, being drawn and quartered, and any other cruel and unusual method the human mind could conceive. As technology advanced, methods for killing offenders became more sophisticated. In the belief that punishment, especially capital punishment, would act as a deterrent to others, societies carried out executions and lesser punishments in public.

Torture, mutilation, and branding fall in the general category of **corporal punishment** (any physical pain inflicted short of death). Many tortures were used to extract a “confession” from the accused, often resulting in the death penalty for an innocent person. Mutilation was often used in an attempt to match the crime with an “appropriate” punishment. (A liar’s tongue was ripped out, a rapist’s genitals were removed, and a thief’s hands were cut off.) Branding was still practiced as late as the nineteenth century in many countries, including America. Corporal punishment was considered to be an example and a deterrent to other potential offenders.

The public humiliation of offenders was a popular practice in early America, utilizing such devices as the stocks, the pillory, ducking stools, the brank, and branding. The most significant aspect of those punishments was their public nature. Offenders were placed in the stocks (sitting down, hands and feet fastened into a locked frame) or in the pillory (standing, with head and hands fastened into a locked frame) and then flogged, spat upon, heaped with garbage, and reviled by passersby.

The ducking stool and the brank were used as common public punishments for gossips. The ducking stool was a chair or platform placed at the end of a long lever, allowing the operator on the bank of a stream to dunk the victim. The **brank** was a birdcage-like

key term

Corporal punishment

Any physical pain inflicted short of death; common methods include crucifixion, whipping, torture, mutilation, branding, and caning.

key term

Brank

A birdcage-like instrument placed on the offender’s head with sharp-edged iron plates that would cut tongues and mouths of the gossipers.

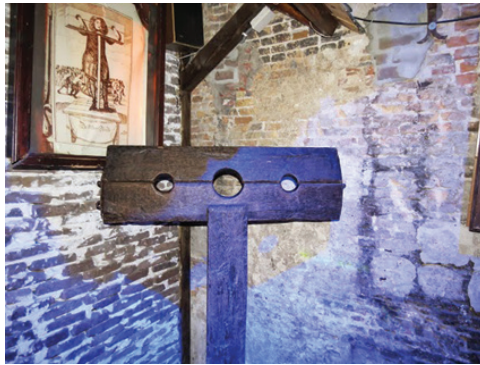


photo 1.1

The pillory was a way to provide public humiliation.

Michael Latessa



photo 1.2

The skull cracker was used for interrogations.

Harry Allen

key term

Cat-o'-nine-tails

Torture device for whipping or flogging.

instrument placed over the offender's head, containing a plate of iron with sharp spikes in it that extended into the subject's mouth. Any movement of the mouth or tongue would result in painful injury.

Flogging (or whipping) became a common punishment in almost all Western civilizations. The method was used particularly to preserve discipline in domestic, military, and academic settings. It was usually administered by a short lash at the end of a solid

handle about three feet long or by a whip made of nine knotted wires, lines, or cords fastened to a handle (the famed **cat-o'-nine-tails**), sometimes with barbed-wire spikes worked into the knots. Flogging was a popular method of inducing confessions at heresy trials because few victims could stand up long under the tongue of the lash. Caning remains a legal punishment in the modern world in countries such as Malaysia, Saudi Arabia, Singapore, and South Africa.¹⁰



photo 1.3

The pear was used for interrogations and was inserted into an orifice of both men and women.

Michael Latessa

Deterrence

The extensive use of capital and corporal punishment during the Middle Ages reflected, in part, a belief that public punishment would deter potential wrongdoers—a belief that the passing years have refuted: “It is plain that, however futile it may be, social revenge is the only honest, straightforward, and logical justification for punishing criminals. The claim for deterrence is belied by both history and logic.” No matter how society tried to “beat the devil” out of offenders, the only criminals who seemed to be deterred were the ones who had

been tortured to death. Later, enlightened thinkers began to seek more rational deterrents for crime by investigating its cause.

Emergence of Secular Law

The problem of drawing up a set of laws that applied to the actions of men and women in earthly communities was compounded by Christian philosophers who insisted that law was made in heaven. In the fourth century A.D., St. Augustine recognized the need for justice, but only as decreed by God. The issue was somewhat clarified by Thomas Aquinas in the thirteenth century, when he distinguished among three laws: eternal law (*lex eterna*), natural law (*lex naturalis*), and human law (*lex humana*), all intended for the common good. The last was considered valid only if it did not conflict with the other two.

As time passed and the secular leaders (kings and other types of monarchs) became more powerful, they wanted to detach themselves from the divine legal order and its restrictions on their power. In the early fourteenth century, many scholars advocated the independence of the monarchy from the pope. England's lord chancellor Sir Thomas More opposed the forces advocating the unification of church and state and died on the executioner's block as a result. He refused to bend ecclesiastical law to suit the marital whims of his king, the fickle King Henry VIII. Sir Thomas More was out of step with his times in another sense as well. As an advocate of the seemingly radical theory that punishment could not prevent crime, he was one of the first to see that prevention might require a close look at the social conditions that gave rise to crime. In the sixteenth century, unfortunately, this line of thought was too far ahead of its time, but Sir Thomas More's ideas persisted and eventually contributed much to the foundation of modern theories in **criminology** and penology.

The early background of law and punishment points up the significance of social revenge as a justification for individual or societal punishment against an offender. This rationale allowed the development of penal slavery and civil death as retaliation for wrongs against the Crown. The idea of correcting an offender was entirely incidental to punishment. Imprisonment served purely for detention. Offenders who were condemned to the galleys or the sulfur mines suffered a form of social vengeance, often including the lash and other physical abuse, far more painful than was the loss of freedom alone. The offender

key term

Lex eterna

One of the major terms describing eternal law, intended for the common good. It cannot be changed by humans.

key term

Lex naturalis

Legal theory that there are laws that occur naturally and across all cultures.

key term

Lex humana

Laws that are enacted by human beings.

key term

Criminology

Looks at the reasons for and consequences of crime.



photo 1.4

The "rack" was used for punishment.

Harry Allen