

# CHAPTER 2

## The Early History of Correctional Thought and Practice

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### LEARNING OBJECTIVES

After reading this chapter, students should be able to:

1. Understand the major forms of punishment from the Middle Ages to the American Revolution.
2. Discuss the Age of Reason, and how it affected corrections.
3. Understand the contribution of Cesare Beccaria and the classical school
4. Explain the contribution of Jeremy Bentham and the utilitarians.
5. Discuss the work of John Howard and its influence on correctional reform.

### KEY TERMS

#### **Lex talionis**

Law of retaliation; the principle that punishment should correspond in degree and kind to the offense (“an eye for an eye and a tooth for a tooth”).

#### **Secular law**

The law of the civil society as distinguished from church law.

#### **Wergild**

“Man money”; money paid to relatives of a murdered person or to the victim of a crime to compensate them and to prevent a blood feud.

#### **Benefit of clergy**

The right to be tried in an ecclesiastical court, where punishments were less severe than those meted out by civil courts, given the religious focus on penance and salvation.

#### **Galley slavery**

Forced rowing of large ships or galleys.

#### **House of correction**

Detention facility that combined the major elements of a workhouse, poorhouse, and penal industry by both disciplining inmates and setting them to work.

#### **Transportation**

The practice of transplanting offenders from the community to another region or land, often a penal colony.

### **Hulks**

Abandoned ships the English converted to hold convicts during a period of prison crowding between 1776 and 1790.

### **Corporal punishment**

Punishment inflicted on the offender's body with whips or other devices that cause pain.

### **The Enlightenment, or the Age of Reason**

The 1700s in England and France, when concepts of liberalism, rationality, equality, and individualism dominated social and political thinking.

### **Classical criminology**

A school of criminology that views behavior as stemming from free will, that demands responsibility and accountability of all perpetrators, and that stresses the need for punishments severe enough to deter others.

### **Utilitarianism**

The doctrine that the aim of all action should be the greatest possible balance of pleasure over pain, hence the belief that a punishment inflicted on an offender must achieve enough good to outweigh the pain inflicted.

## **CHAPTER OUTLINE**

- I. **From the Middle Ages to the American Revolution**
  - A. The Hammurabic Code, the Sumerian law of Mesopotamia, and other ancient codes form some of the first comprehensive statements of prohibited behavior.
    1. *Lex talionis* was the law of retaliation and underlay the laws of Anglo-Saxon society until the time of the Norman Conquest in 1066 in England.
      - a. Crime was a private affair; vengeance was a duty to be carried out by the person or family wronged.
  - B. *Secular law* developed in England and Europe in the absence of an organized government. Crime among neighbors took the character of war and public peace was endangered.
  - C. In the year 1200, England developed a system of *wergild*, or payment of money as compensation for a wrong as a way of reducing the frequency of violent blood feuds.
  - D. The main emphasis of criminal law was on maintaining public order among people of equal status and wealth; the main criminal punishments were penance and the payment of fines or restitution, while lower-class offenders received physical punishment at the hands of their masters.
  - E. The church, the dominant social institution of the time, maintained ecclesiastical punishments; benefit of clergy was eventually granted to all literate persons.
  - F. Galley slavery was the practice of forcing men to power ships by rowing; it was not formally abolished in Europe until the mid-1700s.

- G. Imprisonment—Until the Middle Ages, jails were used primarily for the detention of people awaiting trial.
- H. Bridewells—Houses of Correction, Milan House of Correction, Maison de Force.
- I. Transportation—From ancient times, people who have disobeyed the rules of a community have been cast out or banished.
  - 1. English prisoners could choose transportation instead of gallows or whipping posts; by 1606 with the settlement of Virginia, the transportation of convicts to North America became economically important for the colonial companies for whom they labored for the remainder of their terms. It also helped to relieve the overcrowded prisons of England.
  - 2. Transportation was so successful that, in 1717, a statute was passed allowing convicts to be given over to private contractors, who then shipped them to the colonies and sold their services; this made transportation the standard sanction for non-capital offenses.
  - 3. The Transportation Act of 1718 made transportation the standard penalty for noncapital offenses.
  - 4. From 1787 for the next 80 years, 160,000 prisoners were transported from Great Britain and Ireland to New South Wales and other parts of Australia.
- J. Corporal Punishment and Death.
  - 1. Although corporal punishment and death have been used throughout history, the 16th–18th centuries in England and Europe were particularly brutal.
  - 2. The reasons for the rise in the severity of punishments are thought to reflect the expansion of criminal law. The number of crimes for which the English authorized the death penalty swelled from 50 in 1688 to 160 in 1765 and reached 225 by 1800.

## II. **On the Eve of Reform**

- A. By the middle of the 18th century, economic and social factors (particularly with regard to labor), altered political relationships, changes in the power of the church, and the organization of secular authority combined with revolution in the American colonies, liberal ideas about the relationship between citizen and government, and a belief in human perfectibility, set the stage for a shift in penal policies.
- B. Because each of these forces was in place by 1770, it is arbitrarily designated as the eve of a crucial period of correctional reform on both sides of the North Atlantic.

## III. **The Age of Reason and Correctional Reform**

- A. During the 18th century, The Enlightenment or the Age of Reason challenged and replaced traditional assumptions with new ideas based on rationalism, the importance of the individual, and the limitation of government.
  - 1. Advances in scientific thinking led to a questioning attitude that emphasized observation, experimentation, and technological development.
  - 2. In the 18th century, people in England and America and on the European continent began to rethink such matters as the procedures to be used to

- determine guilt, the limits on a government's power to punish, the nature of criminal behavior, and the best ways to correct offenders.
3. They began to reconsider how criminal law should be administered and how to redefine the goals and practices of corrections.
- B. Cesare Beccaria and the Classical School put forth the idea that the true aim and only justification for punishment is utility: the safety it affords society by preventing crime. This perspective was particularly concerned with establishing a rational link between the gravity of a crime and the severity of punishment.
- C. Jeremy Bentham and the "Hedonic Calculus."
1. Bentham was one of the most provocative thinkers and reformers of English criminal law and best known for his utilitarian theories, often referred to as his hedonic calculus.
  2. According to Bentham, rational persons behave in ways that achieve the most pleasure while bringing the least pain; they are constantly calculating the pluses and minuses of potential actions.
  3. Bentham developed plans for a penitentiary based on his utilitarian principles called the Panopticon, or "inspection house."
- D. John Howard and the Birth of the Penitentiary—probably no individual did more for penal reform in England than John Howard—county squire, social activist, and sheriff of Bedfordshire.
1. Along with Sir William Blackstone and William Eden, Howard drafted the Penitentiary Act of 1779, which called for the creation of houses of hard labor where people convicted of crimes that would otherwise have earned them a sentence of transportation would be imprisoned for up to two years.
  2. The twofold purpose of the penitentiary was to punish and to reform offenders through solitary confinement between intervals of work, the inculcation of good habits, and religious instruction so that inmates could reflect on their moral duties.

**IV. What Really Motivated Correctional Reform?**

- A. Reform was brought about as much by the emergence of the middle class as by the humanistic concerns of the Quakers and individuals like Bentham and Howard.
- B. New industrialists may have been concerned about the existing criminal law because its harshness was helping some offenders escape punishment.
- C. Politicians wanted swift and certain sanctions, and their demands agreed with the moral indignation of Bentham, Howard, and their fellow reformers.
- D. Revisionists suggest that, until 1700, the size of the incarcerated population in England was linked to the economic demand for workers; thus the penitentiary may represent a way to discipline the working class to serve a new industrial society.

**SUMMARY**

The earliest known comprehensive statements of prohibited behavior appear in the

Sumerian Law of Mesopotamia (3100 B.C.) and the Code of Hammurabi (1750 B.C.) From the Middle Ages to the American Revolution, corrections consisted primarily of galley slavery, imprisonment, transportation, corporal punishment, and death. With the onset of the American Revolution, transportation from England was temporarily halted and convicts were held in “hulks” (abandoned ships). After 1787 British prisoners were transported to New South Wales, Tasmania, and Australia. In the latter part of the 18th century, the Enlightenment (Age of Reason) brought changes in penal policy. Rather than stressing physical punishment of the offender, influential Enlightenment thinkers such as Beccaria, Bentham, and Howard sought methods for the reforming offenders. These thinkers brought about classical criminology, hedonic calculus and penitentiaries. The reforms were first proposed in Europe and later fully developed in America.

## **MEDIA LINKS**

You can find an excellent **medieval legal history** resource site at:

<http://www.fordham.edu/halsall/sbook-law.html>.

Visit the **Torture Museum Amsterdam** at <http://www.torturemuseum.com>.

For a **Victorian's description of a hulk**, see: <http://www.victorianlondon.org/prisons/hulks.htm>

For more on the transportation of English convicts to Australia, see the corresponding link at <http://www.convictcentral.com>.

Information about **England's methods of execution** from the late-1600s can be found at : <http://www.oldbaileyonline.org/static/Punishment.jsp>

Learn more about **Cesare Beccaria** at: <http://www.iep.utm.edu/beccaria/>

You can find additional information about **Jeremy Bentham** at: <http://www.historyguide.org/intellect/bentham.html>

Learn more about **John Howard** at [http://www.bbc.co.uk/history/historic\\_figures/howard\\_john.shtml](http://www.bbc.co.uk/history/historic_figures/howard_john.shtml).

## **CRITICAL THINKING ACTIVITIES AND PROJECTS**

1. Divide the class into three groups. Each group will research Jeremy Bentham, Cesare Beccaria or John Howard. Each group will then defend the works, research, and studies of this particular person. The group will present their findings to the rest of the class and a debate will begin based on this information.

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2. Have students research their current states department of corrections to obtain their mission, values and goal statements. Compare and contrast these with the ideas of early correctional reformers.
3. Invite a speaker from a division of corrections who has worked in the system for a long period of time. Have them speak to the changes in the goals, philosophies, and policies of the department that they have seen throughout their career. Have students comment on how the changes have shaped the handling of prisoners over time.
4. Have students go read the section “Focus On: Correctional Practice, Early Methods of Execution.” After reading each method have them discuss how these would apply today both positively and negatively towards the overall deterrence of criminal activity. Would these forms even make a difference if still in use today? Open this up to a classroom discussion.
5. Divide your class into discussion groups of four to five students. Ask them to identify the critical political, social, economic, and global forces that are serving to define correctional philosophy in the 21st Century in the United States. How do these compare with those forces prior to the Enlightenment? After the Enlightenment? Should these forces influence policy in the manner in which they do? Why or why not?