

# The Philosophical and Ideological Underpinnings of Corrections

## Learning Objectives

- Describe the function of corrections and its philosophical underpinnings
- Explain the function and justification of punishment
- Differentiate between the classical and positivist schools in terms of their respective stances on punishment
- Define and describe retribution, deterrence, incapacitation, rehabilitation, and reintegration
- Explain the distinction between the crime control and due process models
- Understand the usefulness of a comparative perspective

Nathaniel Hawthorne's book *The Scarlet Letter*, first published in 1850 and read in high school by generations of Americans thereafter, opens with these 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" (1850/2003, p. 1). Hawthorne is 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 since 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 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 strong and widespread agreement existed 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.

This punitive reaction to Hester's behavior was aimed just as much at onlookers as at Hester herself, causing them to think, "This could happen to me too!" That is, the authorities not only wished to deter Hester from such behavior in the future but also 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 punish, and why the urge to punish wrongdoers is universal and strong. How did such an urge come upon 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 section.

## Introduction: What Is Corrections?

As Hawthorne intimates 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. Corrections is thus 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** 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 lifestyles and have no intention of being "corrected" (Andrews & Bonta, 2007; Walsh & Stohr, 2010).

Cynics think that the correctional process should be called the "punishment process" (Logan & Gaes, 1993) because the correctional enterprise is primarily about punishment—which, Hawthorne reminds 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 such arm-twisting is experienced by them 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 in 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. The violent crime rate in 1963, for instance, was 168 per 100,000 U.S. inhabitants, but in 2012 it was 387, an increase of over 130% (Federal



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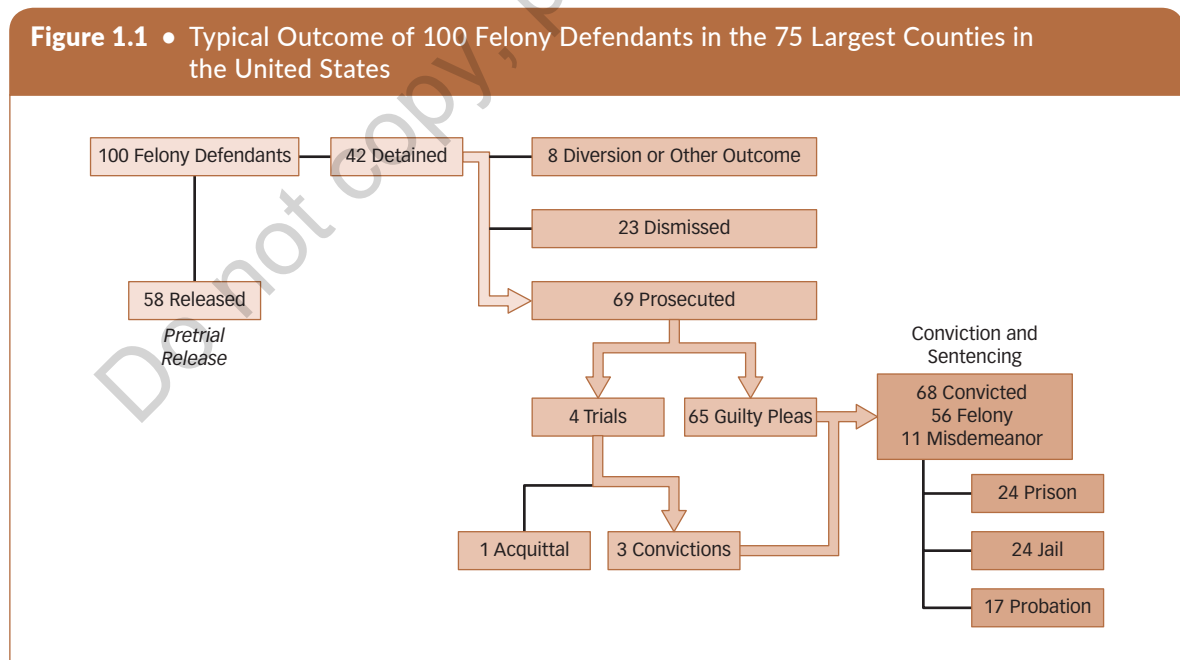
▲ **Photo 1.1** A multilevel cellblock of a large American prison.

Bureau of Investigation [FBI], 2013a). In 1963, just under 300,000 people were in prison in the United States; in 2012, that number was just under 1,700,000, an increase of 466% (The Sentencing Project, 2013). 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 drug store by prescription.

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 in jail. In 2012, about 1 in every 35 adults in the United States was incarcerated or on probation or parole, and many more had been in the past (Glaze & Herberman, 2013). In some neighborhoods, it is not uncommon for almost everyone to know many people under correctional supervision. For instance, almost 1 in every 3 African American males in their twenties is under some form of correctional control, and 1 in 6 has been to prison (Western, 2006). The expenditures for corrections in 2011 for all 50 states was approximately \$52 billion, with 88% going for prisons and 12% for probation and parole (Laudano, 2013).

## From Arrest to 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 in one year (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 due to plea bargaining. This trip through the crime funnel typically results in less than 50% of arrests resulting in a jail or prison term. The impact of the war on drugs is evident in that just over 37% of the arrests referenced in the figure were for drug-related crimes (Cohen & Kyckelhahn, 2010).



Source: U.S. Department of Justice (2010).

Note that only 4 out of the 69 arrests resulted in an actual trial, meaning that 94% of all felony prosecutions in the nation's 75 most populous counties resulted in a plea bargain in which a lighter sentence was imposed in exchange for a guilty plea.

## 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 that human nature is socially constructed; that is, the human mind is basically a “blank slate” at birth and is subsequently 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 due to 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, 2006). 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 via a socialization process that teaches us to value and respect the rights and property of others as well as to develop an orientation toward wanting to do good. Criminologist Gwynn Nettler said it most colorfully on behalf of this position: “If we grow up ‘naturally,’ without cultivation, like weeds, we grow up like weeds—rank” (1984, p. 313). In other words, we learn to be bad or good. 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

Legal **punishment** may be defined as the state-authorized imposition of some form of deprivation—of liberty, resources, or even life—upon 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 about 1780 B.C. (the origin of “an eye for an eye, a tooth for a tooth”). These laws codified the natural inclination of an individual harmed by another 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 that responsibility for itself. Early state-controlled punishment, however, was typically as uncontrolled and vengeful as any grieving parent might inflict on the murderer of his or her child. In many parts of the world, prior to the 18th century human beings 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 Age of Reason. The **Enlightenment** roughly encompassed the period 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 the narrowing of the mental distance between people and the expanding of circles of individuals considered “just like us.”

## 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*) (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 referred to) 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.

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 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” (1963, p. 12). He also argued that the tendency of “man” to give in to the “despotic spirit” had to be countered by the threat of punishment, which had 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” (1963, p. 58).

**Swiftiness:** “The more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be” (1963, p. 55).

**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” (1963, 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 as 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 should be to determine guilt or innocence and then to impose the legislatively prescribed punishment if the accused is 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).

### Jeremy Bentham

Another prominent figure of the Classical School was British lawyer and philosopher *Jeremy Bentham* (1748–1832). His major work, *Principles of Morals and Legislation* (1789/1948), is essentially a philosophy of social control based on the



**principle of utility**, which posits that human actions should be judged moral or immoral by their effect 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” (p. 151).

If legislators are to legislate according to the principle of utility, they must understand human motivation, which for Bentham 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” (1789/1948, 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 upon 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.

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* (1852–1934) believed that because human action is often evoked by circumstances beyond human control (temperament, extreme poverty, intelligence, certain situations), the only thing to be considered at sentencing was the offenders’ “peculiarities,” or risk factors for crime.

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 today might call victimless crimes). 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 found out about the causes of crime (Sherman, 2005). Customized sentencing based both on the seriousness of the crime and the history and characteristics of the criminal (thus 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 where 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, for 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 animals, 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 & Gächter, 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 the one hand and exciting the emotions of empathy and sympathy on the other.

## 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 human beings are hedonistic, rational, and possessors of free will.

**Hedonism** is a doctrine that maintains 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 intrinsically desirable and pain is intrinsically undesirable and that 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 his or her 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 employ reason and act purposely to gain desired ends. Rationality is thus 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.

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, then individuals will pursue that action; if 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.

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 they purposely weigh options before deciding on a course of action, 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.

## The Major Punishment Justifications

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Even though we assume that most people agree society has a right and a duty to punish those who harm it, because punishment involves the state 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 last 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 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 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 deterred 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.

Committing further crimes after being punished is called **recidivism**, which is a lot more common among ex-inmates than rehabilitation. 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 (M. Robinson, 2005, p. 222), and these are just the ones who are caught. Among those who do desist, a number of them cite the fear of additional punishment as a big factor (R. Wright, 1999).

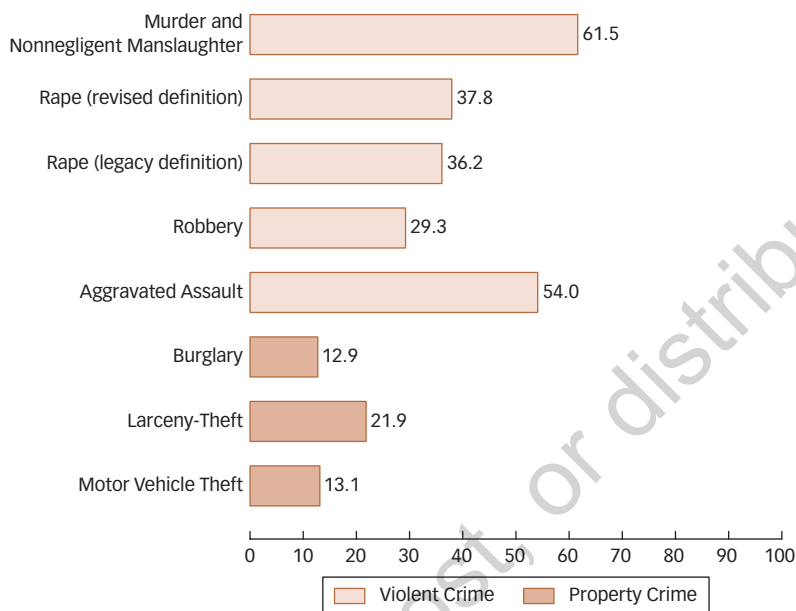
As Beccaria insisted, for punishment to positively affect future behavior there must be a relatively high degree of certainty that punishment will follow a criminal act, the punishment must be administered very soon after the act, and it must be painful. The most important of these is certainty, but as we see from Figure 1.2 showing clearance rates for major crimes in 2015, the probability of being arrested is very low, especially for property crimes—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 (M. O. 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 much weaker correlations in the same direction for the severity of punishment; that is, increased severity leads to lower offending rates (Langan & Farrington, 1998).

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** refers to the preventive effect of the threat of punishment on the general population; it is thus 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 while under the influence of mind-altering substances, there is evidence underscoring the classical idea that individuals do (subconsciously at least)

**Figure 1.2** • Percentage of Crimes Cleared by Arrest or Exceptional Means\* in 2015

\*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).

**Source:** *Crime in the United States, 2015*. Federal Bureau of Investigation (2016). Courtesy of U.S. Government Printing Office.

calculate the ratio of expected pleasures to possible pains when contemplating their actions. Gary Becker (1997) dismissed the idea that criminals lack the knowledge and the foresight to take punitive probabilities into consideration when deciding whether or not to continue committing crimes. He said, "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.

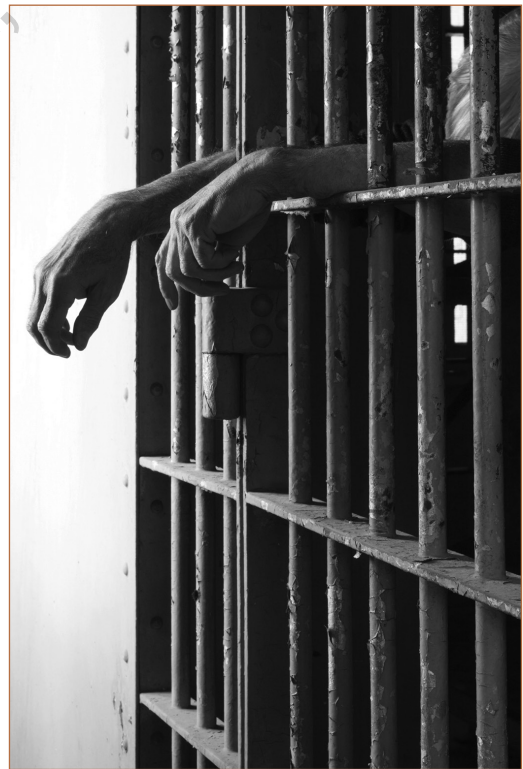
Deterrence theorists do not view people as calculating machines doing their mental math before engaging in any activity. They are simply saying that behavior is governed by its consequences. Our rational calculations are both subjective and bounded; we do not all make the same calculations or arrive 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, 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.

More general reviews of deterrence research indicate that legal sanctions do have “substantial deterrent effect” (Nagin, 1998, p. 16; see also R. 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 last decade or so (Spelman, 2000; Rosenfeld, 2000). Paternoster (2010) cited other studies demonstrating that 20% to 30% of the crime drop from its peak in 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” (2010, p. 801). Of course, this leaves 70% to 75% of the crime drop to be explained by other factors. Unfortunately, even for the 30% figure, we cannot determine if 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 have to be one or the other since 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 James Q. 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. For Ferri (1897/1917), in order 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 to rehabilitate but to defend society from criminal predation. The characteristics of criminals prevent them from basing their behavior on rational calculus principles, so how can their behavior be deterred?

Incapacitation obviously “works” while criminals are incarcerated. Elliot 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  $135,000 \times 5$ , or 675,000, robberies on top of the 580,000 actual robberies reported to the police in 1995. Further evidence is provided by a “natural experiment” in 2006 in which 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. This pardon resulted from budgetary considerations and concerns about prison overcrowding. Buonanno and Raphael’s (2013) analysis of the released convicts found that the incapacitation effect was between 14 and 18 crimes committed per year after release (only theft and robbery arrests were included in the analysis). The estimated cost savings of the collective



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▲ Photo 1.2 An inmate waits in his cell.

pardon was 245 million euros (about \$316 million), and the estimated crime cost was between 466 million and 2.2 billion euros (approximately \$606 million to \$2.9 billion dollars).

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

Zedlewski's findings have been severely criticized, including in one 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 rather than 17 to 1. The different estimates of criminal activity are the result of Zedlewski using the mean number (arithmetic average) of crimes per year and DiIulio and Piehl 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 averaging in the crimes committed by the most highly criminally involved offenders. Using only dollar amounts to estimate the social costs of crime, of course, ignores the tremendous physical and emotional impact to victims, as well as other important considerations (S. Walker, 2001).

### Selective Incapacitation

This brings up the idea of **selective incapacitation**, which is a punishment strategy that largely reserves prison for a select group of offenders composed primarily of violent repeat offenders but that 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 and/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 by 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 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 seven additional murders), 218 arrests for serious property crimes, and 863 other arrests between them (DeLisi, 2005, p. 165).

What would be the monetary savings 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 as \$130,035 per crime (McCollister, French, & Fang, 2010). Seven murders (\$62,880,349) and 115 other serious violent crimes (\$14,954,025) yields a total of \$77,834,374, or \$15,566,874 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 are arguing for an increase in gross incarceration of low-rate/low-seriousness offenders. As incarceration rates increase 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 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 someone will become a high-rate offender when in fact he or she will not) is always present (Piquero & Blumstein, 2007). However, incarceration decisions are not made on predictions about the future but rather on knowledge of past behavior—the past is prologue, as Shakespeare said.

## Rehabilitation

The term **rehabilitation** means to restore or return to constructive or healthy activity. Whereas deterrence and incapacitation are mainly justified 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 criminals as in need of “programming” rather than “treatment.” The goal of rehabilitation is to change offenders’ attitudes so that 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 Section V, which is devoted to correctional treatment and rehabilitation.

## Reintegration

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 section to itself and will be discussed in detail in the context of parole.

Table 1.1 is a summary of the key elements (justification, strategy, etc.) of the five punishment philosophies or perspectives we have discussed. The commonality that they all share to some degree is, of course, the prevention of crime.

**Table 1.1 • Summary of Key Elements of Different Correctional Perspectives**

	<b>Retribution</b>	<b>Deterrence</b>	<b>Incapacitation</b>	<b>Rehabilitation</b>	<b>Reintegration</b>
<b>Justification</b>	Moral Just deserts	Prevention of further crime	Risk control Community protection	Offenders have correctable deficiencies	Offenders have correctable deficiencies
<b>Strategy</b>	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 facilitate successful reentry into society
<b>Focus of perspective</b>	The offense and just deserts	Actual and potential offenders	Actual offenders	Needs of offenders	Needs of offenders
<b>Image of offenders</b>	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 folk who require and will respond to concrete help



The reading by Misty Kifer, Craig Hemmens, and Mary K. Stohr examines how professional correctional workers view four different goals of correctional punishment: retribution, deterrence, incapacitation, and rehabilitation. The data come from staff in three prisons, two jails, and a jail academy. The results show that jail and prison officers are more likely than not to perceive the primary goal of corrections as incapacitation. Respondents generally ranked incapacitation first, followed by deterrence, rehabilitation, and retribution. Age, years of service, military background, and facility type (prison or jail) were significant predictors of staff orientation toward rehabilitation. For jail staff, only gender was related to a rehabilitation orientation. For prison staff, only age and years of service were related to a rehabilitation orientation. The authors concluded that role perceptions are colored by a variety of factors, including age, gender, years of service, facility type, and prior military service.

## SUMMARY

- 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 the course of social evolution, the state has moved to more restitutive forms of punishment that serve to tone down the community's moral outrage and temper it with sympathy.
- 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 commit the same crime regardless of any individual differences.
- Opposing classical notions of punishment were 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.
- 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 against the innocent while incarcerated. Incapacitation works only while offenders are behind bars, but many believe we should be more selective about whom we incarcerate.
- Rehabilitation centers on efforts to steer offenders in prosocial directions while they are under correctional supervision so they will not commit further crimes.
- Reintegration refers to efforts to provide offenders with concrete skills they can use that will give them a stake in conformity.

## KEY TERMS

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

## 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 this pleasure a good or bad thing? 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 that you think "works" best in terms of preventing crime, or do you favor it because it fits your ideology?



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