

## Instructional Plan

### Chapter 2

#### A Brief History of

#### Punishments and Corrections

### Chapter Outline

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## VI. Summary

### The Last Legally Sanctioned Public Execution in America

#### What were we thinking?

Learning about the execution of Rainey Bethea enables us to ask some important questions about punishment, public interest in punishment, and as note in the critical questions: issues of gender and modernizing execution methods. Both of these issues re-emerge in subsequent chapters. Another important issue is making executions a private act rather than a public spectacle, and how executions relates to deterrence.

Throughout this chapter we tackle the issue of how arrangements in the justice systems going back several hundred years ago laid the foundation for today's criminal justice system. As George Santayana wrote in *The Life of Reason*, “Those who cannot remember the past are condemned to repeat it.” In the case of correctional philosophies and practices, the price of failing to remember the past may be quite high.

In this chapter, we adopt a Euro-centric view, although at times we provide, through our examples of Comparative Corrections, exemplars from nations outside of Europe. We encourage you to consider integrating non-European views into your class (see suggested readings).

However, the chapter's approach is warranted since the U.S. correctional system derives largely,

if not exclusively, from the practices found in Europe. We end the case study by mentioning that public executions are still carried out in China, Iran, and Saudi Arabia. One question that you might ask your class is why public executions are still taking place in the 2020s.

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

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

### **A History of Punishments**

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

*Critical Review Question:* (1) The goal of early tribal punishments was to restore balance in the community. To that end, social groups relied primarily on reconciliation rituals and restitution. To what extent was this goal similar to or different from the goals of restorative justice? Would these rituals work today: why or why not? (2) The Code of Hammurabi and the Law of Moses both have been described as examples of *lax talionis*. How are they similar? How do they differ?

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

Greek and Roman laws are also instructive. It is interesting to consider the fate of reformers such as Draco, who created a system of laws and punishments whose legacy is to associate forever his name with inhumanely cruel and severe measures, as in draconian laws. Solon, elected nearly 30 years later, tried to interject humanity into the sanctions of ancient Athens. The response of the Athenians: His sweeping reforms were bitterly opposed at first. Late, the residents of Athens embraced the changes instituted by Solon. In fact, they became the basis for the Athenian state.

*Out-of-class exercise:* Consult your library to determine whether it contains a translation of the

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

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

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

Similar examinations of the laws and sanctions created in Europe during the Middle Ages enlighten students as to the origins of punishment, and also how old ideas often are reborn in later times (consider, for example, the “codification” of tribal law in the *lex salica* after the “Fall” of the Roman Empire in Western Europe). You may wish to explore with your students the establishment of feudalism’s peace of the king. This practice—like the Code of Hammurabi and the Law of Moses before it—served to consolidate the power of the state. Moreover, peace of the king redefined who was harmed. Consider reviewing with your students the Domesday Book

and its accompanying descriptions of cultural practices and traditions, norms and rules, and punishments. (Again, most libraries contain a copy of this work, or it may be available as an on-line document.)

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

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

*Critical Review Question:* (6) While corporal punishments were eliminated in prisons school children are still subject to corporal punishment in 19 states, and over 100,000 youths received these punishments in 2013-14 (U.S. Department of Education Civil Rights Data Collection, 2017). Discuss why corporal punishments are suitable for children but not adults?

### **The Origins and Evolution of American Jails**

The American jail is a fairly unique product of Anglo-American culture. English gaols were quite horrific in their construction and operation. American gaols/jails were not far removed from them. The regional nature of jails in the colonies and pre-20<sup>th</sup> century America is often a

new topic for students. The fact that they changed so little is also troubling for many of them.

*Critical Review Questions:* (8) Why did the colonists import approaches such as jails that were already recognized as failing institutions from England?

### **The Development of the Penitentiary**

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

### **The Pennsylvania System and the Auburn System**

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

### **Chain Gangs and Convict Leasing: Southern Alternatives to the Penitentiary**

Given its largely agrarian economy, the idea of local jails or even prisons placed near urban centers did not immediately take off in the southern United States. Moreover, as labor was critical to farming, a system of punishment known as “convict leasing” was widely adopted. After the Civil War, southern states, but notably Louisiana, Mississippi and Arkansas, created plantation-style prisons. In the case of Louisiana’s Angola Penitentiary, it was a former plantation located on a bend in the Mississippi River, which made escape difficult if not impossible. Two outgrowths of this system were the chain gang and the trustee system, the latter which led to abuses, such as those chronicled by Tom Murton and the fictional account that became the basis of the 1980 Robert Redford film “Brubaker.”

*Critical Review Questions:* (7) Provide some reasons why punishment in Southern states evolved differently than what occurred in the Northeastern states. (9) Can you think of some economic, social, and political reasons that led to the creation of prisons?

### **Prison Reform**

This section deals with a number of critical topics. The first reveals that at the same time various states considered the relative merits of the Auburn and Pennsylvania systems, other nations too were exploring alternatives to incarceration. Moreover, European opinion about the U.S. institutions was mixed, but generally positive. Europeans preferred the Pennsylvania model to that promulgated at Auburn, but this endorsement was far from universal.

*Critical Review Questions:* (5) Who are the voices of prison reform today?

What do your students think of the medical model? This idea is important as it has strong ties to the deterministic model and generally denies free will; however, it also suggests that



something positive can be done to and for inmates. It is another expression of rehabilitation both as a philosophy and a practice. Moreover, in the 1970s it was merged with the idea of reintegration, another of the goals discussed in Chapter 1.

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

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

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

*Critical Review Questions:* (10) What do history's lessons tell us about our current and future

approaches to “correcting” the behaviors of criminals?
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### Recommended Readings

Fogel, D. (1975). “... *We are living proof...*” *The justice model for corrections*. Cincinnati:

Anderson. The book that defines the justice model; a clear articulation of what is meant by just deserts and how to accomplish it.

Jones, M., & Johnstone, P. (2012). *History of criminal justice*. 5<sup>th</sup> edition. Cincinnati: Anderson.

One of the few comprehensive history textbooks dedicated to criminal justice.

McKelvey, B. (1936). *American prisons: A study in American social history prior to 1915*. Chicago:

University of Chicago Press. McKelvey’s work is a summary of the social history of prisons in the United States, although it is limited in that it covers the period from the first prisons to 1915.

Murton, T. O. (1976). *The dilemma of prison reform*. This book provides an excellent

examination of prisons and prison reform from the founding of penology in the United States to the era of Attica in the 1970s, as well as an understanding of what happens to the reformers.

Roth, M. P. (2011). *Crime and punishment: A history of the criminal justice system*. 2<sup>nd</sup> edition.

Belmont, CA: Wadsworth. This comprehensive presentation of the history of criminal justice in the United States contains many references to penal sanctions. It is an excellent compendium for historical origins and linkages to contemporary practices.

Rubin, A. T. (2020). *The deviant prison: Philadelphia's eastern state penitentiary and the origins of America's modern penal system, 1829-1913*. New York: Cambridge University Press. This book is forthcoming as we write the Instructor's Manual – and our recommendation is based on early reviews of this book (rather than having read this material).

Sheldon, R. G. (2007). *Controlling the dangerous classes: A critical introduction to the history of criminal justice*. 2<sup>nd</sup> edition. Upper Saddle Creek, NJ: Prentice-Hall. The word critical in the title refers to the author's political ideology and perspective on the topic. He shows the system for what it is, warts and all. In particular, the chapter on the emergence and growth the prison system—housing the dangerous classes—is especially instructive.

## Chapter 2 – A Brief History of Punishments and Corrections

### Multiple choice

1. According to the book, the ancient Greeks used all of the following methods of execution except:
  - a. stoning
  - b. crucifixion
  - c. drowning
  - d. hanging
2. The common-law system was introduced to the North American colonies by the:
  - a. Dutch
  - b. French
  - c. Spanish
  - d. English
3. Repayment of to a victim for losses suffered describes:
  - a. restitution
  - b. retribution
  - c. rehabilitation
  - d. reintegration
4. \_\_\_\_\_ was one of the worst punishments that could be imposed by tribal societies.
  - a. A fine
  - b. Restitution
  - c. Banishment
  - d. Restorative justice
5. The Code of Hammurabi proposed penalties and punishments for the kingdom of:
  - a. Babylon
  - b. Assyria
  - c. Judea
  - d. Egypt
6. Church law is also known as:
  - a. equity
  - b. criminal law
  - c. canon law
  - d. civil law
7. \_\_\_\_\_ used to publicly shame offenders were constructed of wood with spaces for the individual's head and hands.
  - a. Restraints
  - b. Gallows
  - c. Shackles
  - d. Pillories
8. Originally in England jails were known as:
  - a. workhouses
  - b. gaols
  - c. debtors' prisons

- d. penitentiaries
9. The English often used decommissioned ships known as \_\_\_\_\_ to house jails inmates.
- a. barges
  - b. dungeons
  - c. husks
  - d. hulks
10. For most of U.S. history local jails have been operated by which of the following?
- a. jail administrators
  - b. state corrections departments
  - c. county sheriffs
  - d. town councils
11. Which of the following has been associated with the reform of jails in England?
- a. Sir Walter Raleigh
  - b. Zebulon Brockway
  - c. John Howard
  - d. Charles Dickens
12. Which of the following early U.S. prison systems was associated with inmate silence and isolation?
- a. the Pennsylvania system
  - b. the Auburn system
  - c. the Maryland system
  - d. the Georgia system
13. In the early twentieth century the \_\_\_\_\_ model became the dominant approach to prisoner management.
- a. remedial
  - b. medical
  - c. restorative
  - d. integrative
14. The \_\_\_\_\_ model rests on the assumption that individuals commit crimes of their own free will and, thus, deserve to be punished.
- a. justice
  - b. reintegration
  - c. humanitarian
  - d. socialist
15. Which of the following individuals was associated with his role as the superintendent of the Elmira Reformatory in New York?
- a. Benjamin Rush
  - b. Zebulon Brockway
  - c. John Howard
  - d. Cesare Beccaria

**True/false**

1. A community's informal rules governing everyday life are called norms.
- a. true

- b. false
2. The punishment described as an “eye for an eye and a tooth for a tooth” is associated with the Roman law provided for in the Twelve Tables.
- a. true  
b. false
3. Most former British colonies operate under a system of law known as the Napoleonic Code.
- a. true  
b. false
4. History demonstrates that the poor are almost always disadvantaged before the legal system.
- a. true  
b. false
5. Historically some offenders were branded with letters that indicated the offenses they committed.
- a. true  
b. false
6. Transportation to penal colonies was one way the English and French dealt with convicted offenders.
- a. true  
b. false
7. Early American jails often were operated under what was called a fee system.
- a. true  
b. false
8. The Auburn prison system required inmates to be housed in isolation and to maintain silence.
- a. true  
b. false
9. Prison chain gangs largely emerged in Northern states along the Atlantic seaboard.
- a. true  
b. false
10. In the early twentieth century some Southern states used inmate guards called trustees to carry out many of the jobs in prisons.
- a. true  
b. false

**Essay questions**

1. When penitentiaries first emerged they were hailed as great innovations in the history of punishment. What were the purposes for which these institutions were established, and what were some of the assumptions or principles on which they were based?
2. The English (and others) used banishment to penal colonies as a form of punishment for a considerable period of time. What factors lead to the use of such punishment?
3. Some people have suggested the return of corporal (physical) punishment such as the stocks or caning would be as effective as and less costly than imprisonment. How do you react to this proposal and why?
4. Compare and contrast the Pennsylvania and Auburn prison systems. What are the strengths and weaknesses of each?

5. What is meant by the medical model of corrections? What are the assumptions upon which such a model is based?

## Chapter 2 – test key

### Multiple choice

1. d
2. d
3. a
4. c
5. a
6. c
7. d
8. b
9. d
10. c
11. c
12. a
13. b
14. a
15. b

### True/false

1. a
2. b
3. b
4. a
5. a
6. a
7. a
8. b
9. b
10. a