

Correctional History

Ancient Times to Colonial Jails

Learning Objectives

- Understand the origins of corrections
- Appreciate that what we do now in corrections is often grounded in historical experience (or a repeat of it)
- Know the different types of corrections used historically
- Be familiar with some of the key Enlightenment thinkers, their ideas, and how they changed corrections
- Understand historical innovations in corrections (e.g., the panopticon) and be aware of how they succeeded or failed
- Be familiar with colonial jails and early prisons in America and how they operated

“Narrative of What Happened When Three Men Were First Placed in the Missouri State Prison for Helping Slaves Escape via the Underground Railroad.”

(This is the real-world narrative of what happened when three men were first placed in the Missouri State Prison for helping slaves escape via the Underground Railroad. This account of how they were treated that first night is by George Thompson, from his 1847 book *Prison Life and Reflections*, pp. 132–133.)

A multitude attended us to the prison; and the office was crowded while we were loosed from our chain, stripped, examined, recorded, one side of our hair cut close—arrayed in shining colors, and another chain put upon each of us. . . . We were treated very ungentlemanly (by the Warden and Overseer)—charged with lying when we told the simple truth, in the honesty of our souls; and then threatened with punishment—denounced as worse than highway robbers, cut-throats, or wholesale murderers, and as meaner than chicken thieves—threatened with having our tongues wired—and other things too vile and wicked to repeat.

The Rules

1. You must not speak to any prisoner, out of your cell, nor to each other in your cell.
2. You must not look at any visitor—if it is your own brother, if you do, I'll flog you.
3. You must always take off your cap, when speaking to an officer, or when an officer speaks to you.
4. You must call no convict "Mr."

Frequently afterwards, we were checked for applying Mr. to a convict.

Introduction: The Evolving Practice of Corrections

The history of corrections is riddled with the best of intentions and the worst of abuses. Correctional practices and facilities (e.g., galley slavery, transportation, jails and prisons, community corrections) were created, in part, to remove the "riffraff"—both poor and criminal—from urban streets, or at least to control and shape them. Prisons and community corrections were also created to avoid the use of more violent or coercive responses to such folk. In this section and the next, the focus is on exploring the history of the Western world's correctional operations and then on American corrections, specifically, and the recurring themes that run through this history and define it.

It is somewhat ironic that one of the best early analyses of themes and practices in American prisons and jails was completed by two French visitors to the United States—*Gustave de Beaumont* and *Alexis de Tocqueville*—who experienced the virtual birthing of prisons themselves in 1831 while the country was in its relative infancy (Beaumont & Tocqueville, 1833/1964). Tocqueville, as a 26-year-old French magistrate, brought along his friend Beaumont, supposedly to study America's newly minted prisons for 9 months. They ended up also observing the workings of its law, its government and political system, and its race relations, among other things (Damrosch, 2010; Tocqueville & Goldhammer, 1835/2004). The irony is that, as outsiders and social critics, Beaumont and Tocqueville could so clearly see what others, namely Americans who were thought to have "invented prisons" and who worked in them, were blind to. In this section we will try to "see" what those early French visitors observed about Western and specifically American correctional operations.

Few visitors to the United States, or residents for that matter, explored or commented on the early correctional experience for women (*Dorothea Dix* being a notable exception—there will be more about her and her observations about the state of corrections in 1845 in Section III). Yet some of the themes that run through the practice of corrections apply to women and girls as well, but with a twist. Women have always represented only a small fraction of the correctional population in both prisons and jails, and the history of their experience with incarceration, as shaped by societal expectations of and for them, can be wholly different from that of men. As literal outsiders to what was the "norm" for inmates of prisons and jails, and as a group whose rights and abilities were legally and socially controlled on the outside more than that of men and boys, women's experience in corrections history is worth studying and will be more fully explored in Section XI.

What is clear from the Western history of corrections is that what was *intended* when prisons, jails, and reformatories were conceived, and *how they actually operated*, then and now, were and are often two very different things (Rothman, 1980). As social critics ourselves, we can use the history of corrections to identify a series of "themes" that run through correctional practice, even up to today. Such themes will reinforce the tried yet true maxim, "Those who cannot remember the past are condemned to repeat it" (Santayana, 1905, p. 284). Too often we do not know or understand our history of corrections, and consequently we are forever repeating it.

Themes: Truths That Underlie Correctional Practice

There are some themes that have been almost eerily constant, vis-à-vis corrections, over the decades and even centuries. Some such themes are obvious, such as the influence that money, or the lack thereof, exerts over virtually all correctional policy decisions. Political sentiments and the desire to make changes also have had tremendous influence over the shape of corrections in the past. Other themes are less apparent but no less potent in their effect on correctional operation. For instance, there appears to be an evolving sense of compassion or humanity that, though not always clear in the short term, in practice, or in policy or statute, has underpinned reform-based decisions about corrections and its operation, at least in theory, throughout its history in the United States. The creation of the prison, with a philosophy of penitence (hence the *penitentiary*), was a grand reform itself, and as such it represented, in theory, at least, a major improvement over the brutality of punishment that characterized early English and European law and practice (Orland, 1995).

Some social critics do note, however, that the prison and the expanded use of other such social institutions also served as a “social control” mechanism to remove punishment from public view while making the state appear more just (Foucault, 1979; M. Welch, 2004). This is not to argue that such grand reforms in their idealistic form, such as prisons, were not primarily constructed out of the need to control but rather that there were philanthropic, religious, and other forces aligned that also influenced their creation and design, if not so much their eventual and practical operation (Hirsch, 1992). Also of note, the social control function becomes most apparent when less powerful populations, such as the poor, the minority, the young, or the female, are involved, as will be discussed in the following sections.

Other than the influence of money and politics and a sense of greater compassion/humanity in correctional operation, the following themes are also apparent in corrections history: the question of how to use labor and technology (which are hard to decouple from monetary considerations); a decided religious influence; the intersection of class, race, age, and gender in shaping one’s experience in corrections; architecture as it is intermingled with supervision; methods of control; overcrowding; and finally the fact that good intentions do not always translate into effective practice. Though far from exhaustive, this list contains some of the most salient issues that become apparent streams of influence as one reviews the history of corrections. As was discussed in Section I, some of the larger philosophical (and political) issues, such as conceptions of right and wrong and whether it is best to engage in retribution or rehabilitation (or both, or neither, along with incapacitation, deterrence, and reintegration) using correctional sanctions, are also clearly associated with correctional change and operation.

Early Punishments in Westernized Countries

Human beings throughout recorded history have devised ingenious ways to punish their kind for real or perceived transgressions. Among tribal groups and in more developed civilizations, such punishment might include, among other tortures, whipping, branding, mutilation, drowning, suffocation, executions, and banishment (which in remote areas was tantamount to a death sentence). The extent of the punishment often depended on the wealth and status of the offended party and the offender. Those accused or found guilty and who were richer were often allowed to make amends by recompensing the victim or his or her family, while those who were poorer and of lesser status were likely to suffer some sort of bodily punishment. Whatever the approach, and for whatever the reason, some sort of punishment was often called for as a means of balancing the scales of justice, whether to appease a god or gods or, later, Lady Justice.

As David Garland (1990) recounted, “Ancient societies and ‘primitive’ social groups often invested the penal process with a wholly religious meaning, so that punishment was understood as a necessary sacrifice to an aggrieved deity” (p. 203). As urbanization took hold, however, and transgressions were less tolerated among an increasingly diverse people, the ancients and their governing bodies were more likely to designate a structure as appropriate for

holding people. For the most part, such buildings or other means of confining people were often used to ensure that the accused was held over for trial or sometimes just for punishment (Orland, 1975, p. 13). Fines, mutilation, drawing and quartering, and capital punishment were popular ways to handle those accused or convicted of crimes (Harris, 1973; Orland, 1975).

Although mutilation ultimately disappeared from English law, the brutality of Anglo-Saxon criminal punishment continued unabated into the 18th century. In the 13th century, offenders were commonly broken on the wheel for treason. A 1530 act authorized poisoners to be boiled alive. Burning was the penalty for high treason and heresy, as well as for murder of a husband by a wife or of a master by a servant. Unlike the punishment of boiling, that of burning remained lawful in England until 1790. In practice, and as a kindness, women were strangled before they were burned. The right hand was taken off for aggravated murder. Ordinary hangings were frequent, and drawing and quartering, in which the hanged offender was publicly disemboweled and his still-beating heart held up to a cheering multitude, was not uncommon.

In addition, until the mid-19th century, English law permitted a variety of “summary” punishments. Both men and women (the latter until 1817) were flagellated in public for minor offenses. For more serious misdemeanors there was the pillory, which was not abolished in England until 1837:

With his face protruding through its beams and his hands through the holes, the offender was helpless. Sometimes he was nailed through the ears to the framework of the pillory with the hair of his head and beard shaved; occasionally he was branded. Thereafter, some offenders were carried back to prison to endure additional tortures. (Orland, 1975, p. 15)

The First Jails

Jails were the first type of correctional facility to develop, and in some form they have existed for several thousand years. Whether pits or dungeons or caves were used, or the detained was tied to a tree, ancient people all had ways of holding people until a judgment was made or implemented (Irwin, 1985; Mattick, 1974; Zupan, 1991).

According to Johnston (2009), punishment is referenced in a work written in 2000 B.C. and edited by Confucius. The Old Testament of the Bible refers to the use of imprisonment from 2040–164 B.C. in Egypt, as well as in ancient Assyria and Babylon. Ancient Greece and Rome reserved harsher physical punishments for slaves, whereas citizens might be subjected to fines, exile, imprisonment, or death, or some combination of these (Harris, 1973).

Ancient Roman society was a slave system. To punish wrongdoers, *capitis diminutio maxima*—the forfeiture of citizenship—was used. Criminals became penal slaves. Doomed men were sent to hard labor in the Carrara marble quarries, metal mines, and sulphur pits. The most common punishment was whipping—and in the case of free men, it was accompanied by the shaving of the head, for the shorn head was the mark of the slave. (Harris, 1973, p. 14)

Early versions of *gaols* (or jails) and prisons existed in English castle keeps and dungeons and Catholic monasteries. These prisons and jails (not always distinguishable in form or function) held political adversaries and common folk, either as a way to punish them or incapacitate them or to hold them over for judgment by a secular or religious authority. Sometimes people might be held as a means of extorting a fine (Johnston, 2009). The use of these early forms of jail was reportedly widespread in England, even a thousand years ago. By the 9th century, Alfred the Great had legally mandated that imprisonment might be used to punish (Irwin, 1985). King Henry II in 1166 required that where no gaol existed in English counties, one should be built (Zupan, 1991) “in walled towns and royal castles,” but only for the purpose of holding the accused for trial (Orland, 1975, pp. 15–16). In Elizabethan England, innkeepers made a profit by using their facilities as gaols.

Such imprisonment in these or other gaols was paid for by the prisoners or through their work. Those who were wealthy could pay for more comfortable accommodations while incarcerated. “When the Marquis de Sade was confined in the Bastille, he brought his own furnishings and paintings, his library, a live-in valet, and two dogs. His wife brought him gourmet food” (Johnston, 2009, p. 12S). The Catholic Church maintained its own jails and prison-like facilities across the European continent, administered by bishops or other church officials.

In fact, the Catholic Church’s influence on the development of Westernized corrections was intense in the Middle Ages (medieval Europe from the 5th to the 15th centuries) and might be felt even today. As a means of shoring up its power base vis-à-vis feudal and medieval lords and kings, the Catholic Church maintained not only its own forms of prisons and jails but also its own ecclesiastical courts (Garland, 1990). Though proscribed from drawing blood, except during the Inquisition, the Church often turned its charges over to secular authorities for physical punishment. But while offenders were in its care and in its monasteries for punishment, the Catholic Church required “solitude, reduced diet, and reflection, sometimes for extended periods of time” (Johnston, 2009, p. 14S). Centuries later, the first prisons in the United States and Europe, then heavily influenced by Quakers and Protestant denominations in the states, copied the Catholics’ monastic emphasis on silence, placing prisoners in small, austere rooms where one’s penitence might be reflected upon—practices and architecture that, to some extent, still exist today.

Galley Slavery

Another form of “corrections,” **galley slavery**, was used sparingly by the ancient Greeks and Romans but more regularly in the late Middle Ages in Europe and England, and it stayed in use until roughly the 1700s. Under Elizabeth I in 1602, a sentence to galley servitude was decreed as an alternative to the death sentence (Orland, 1975). Pope Pius VI (who was pope from 1775–1799) also reportedly employed it (Johnston, 2009, p. 12S). Galley slavery was used as a sentence for crimes as a means of removing the poor from the streets. It also served the purpose of providing the requisite labor—rowing—needed to propel ships for seafaring nations interested in engagement in trade and warfare. For instance, galley slaves were reportedly used by Columbus (Johnston, 2009). The “slaves” were required to row the boat until they collapsed from exhaustion, hunger, or disease; often they sat in their own excrement (M. Welch, 2004). Under Pope Pius, galley slaves were entitled to bread each day, and their sentences ranged from 3 years to life (Johnston, 2009). Though we do not have detailed records of how such a sentence was carried out, and we can be sure that its implementation varied to some degree from vessel to vessel, the reports that do exist indicate that galley slavery was essentially a sentence to death. Galley slavery ended when the labor was no longer needed on ships because of the technological development of sails.

Poverty and Bridewells, Debtors’ Prisons, and Houses of Correction

However, galley slavery could only absorb a small number of the poor that began to congregate in towns and cities in the Middle Ages. Feudalism, and the order it imposed, was disintegrating; wars (particularly the Crusades prosecuted by the Catholic Church) and intermittent plagues did claim thousands of lives, but populations were stabilizing and increasing and there were not enough jobs, housing, or food for the poor. As the cities became more urbanized and as more and more poor people congregated in them, governmental entities responded in an increasingly severe fashion to the poor’s demands for resources (Irwin, 1985). These responses were manifested in the harsh repression of dissent, increased use of death sentences and other punishments as deterrence and spectacle, the increased use of jailing to guarantee the appearance of the accused at trial, the development of poorhouses or bridewells and debtors’ prisons, and the use of transportation, discussed below (Foucault, 1979; Irwin, 1985).

Eighteenth-century England saw the number of crimes subject to capital punishment increase to as many as 225, including such offenses as rioting over wages or food (the Riot Act) and “blacking” one’s face so as to be camouflaged when killing deer in the king’s or a lord’s forest (the Black Act) (Ignatieff, 1978, p. 16). New laws regarding forgery resulted in two-thirds of those convicted of it being executed. Rather than impose the most serious sentence

for many of these crimes, however, judges would often opt for the use of transportation, whipping, or branding. Juries would also balk at imposing the death sentence for a relatively minor offense and so would sometimes value property that was stolen at less than it was worth in order to ensure a lesser sentence for the defendant. In the latter part of the 1700s, a sentence of imprisonment might be used in lieu of, or in addition to, these other punishments.

Bridewells, or buildings constructed to hold and whip “beggars, prostitutes, and nightwalkers” (Orland, 1975, p. 16) and later used as places of detention, filled this need; their use began in London in 1553 (Kerle, 2003). The name came from the first such institution, which was developed at Bishop Ridley’s place at St. Bridget’s Well; all subsequent similar facilities were known as bridewells.

Bridewells were also workhouses, used as leverage to extract fines or repayment of debt or the labor to replace them. Such facilities did not separate people by gender, age, or criminal/noncriminal status, their inmates were not fed and clothed properly, and sanitary conditions were not maintained. As a consequence of these circumstances, bridewells were dangerous and diseased places where if one could not pay a “fee” for food, clothing, or release, the inmate, and possibly his or her family, might be doomed (Orland, 1975; Pugh, 1968). The use of bridewells spread throughout Europe and the British colonies because it provided a means of removing the poor and displaced from the streets while also making a profit (Kerle, 2003). Such a profit was made by the wardens, keepers, and gaolers—the administrators of bridewells, houses of correction (each county in England was authorized to build one in 1609), and gaols, who, though unpaid, lobbied for the job as it was so lucrative. They made money by extracting it from their inmates. If an inmate could not pay, he or she might be left to starve in filth or be tortured or murdered by the keeper for nonpayment (Orland, 1975, p. 17).

Notably, being sent to debtors’ prison was something that still occurred even after the American Revolution. In fact, James Wilson, a signer of the Constitution (and reportedly one of its main architects) and a Supreme Court justice, was imprisoned in such a place twice while serving on the Court. He had speculated on land to the west and lost a fortune in the process (Davis, 2008).

Transportation

Yet another means of “corrections” that was in use by Europeans for roughly 350 years, from the founding of the Virginia Colony in 1607, was **transportation** (Feeley, 1991). Also used to rid cities and towns of the chronically poor or the criminally inclined, transportation, as with bridewells and gaols, involved a form of privatized corrections, whereby those sentenced to transportation were sold to a ship’s captain. He would in turn sell their labor as indentured servants, usually to do agricultural work, to colonials in America (Maryland, Virginia, and Georgia were partially populated through this method) and to white settlers in Australia. Transportation ended in the American colonies with the Revolutionary War but was practiced by France to populate Devil’s Island in French Guiana until 1953 (M. Welch, 2004). M. Welch noted that transportation was a very popular sanction in Europe:

Russia made use of Siberia; Spain deported prisoners to Hispaniola; Portugal exiled convicts to North Africa, Brazil and Cape Verde; Italy herded inmates to Sicily; Denmark relied on Greenland as a penal colony; Holland shipped convicts to the Dutch East Indies. (p. 29)

In America, transportation provided needed labor to colonies desperate for it. “Following a 1718 law in England, all felons with sentences of 3 years or more were eligible for transport to America. Some were given a choice between hanging or transport” (Johnston, 2009, p. 13S).

It is believed that about 50,000 convicts were deposited on American shores from English gaols. If they survived their servitude, which ranged from 1 to 5 years, they became free and might be given tools or even land to make their way in the new world (Orland, 1975, p. 18). Once the American Revolution started, such prisoners from England were transported to Australia, and when settlers there protested the number of entering offenders, the prisoners were sent to penal colonies in that country as well as in New Zealand and Gibraltar (Johnston, 2009).

One of the most well-documented such penal colonies was **Norfolk Island**, 1,000 miles off the Australian coast. Established in 1788 as a place designated for prisoners from England and Australia, it was regarded as a brutal and violent island prison where inmates were poorly fed, clothed, and housed and were mistreated by staff and their fellow inmates (Morris, 2002). Morris, in his semifictional account of *Alexander Maconochie's* effort to reform Norfolk, noted that Maconochie, an ex-naval captain, asked to be transferred to Norfolk, usually an undesirable placement, so that he could put into practice some ideas he had about prison reform. He served as the warden there from 1840 to 1844, and “in four years, Maconochie transformed what was one of the most brutal convict settlements in history into a controlled, stable, and productive environment that achieved such success that upon release his prisoners came to be called ‘Maconochie’s Gentlemen’” (Morris, 2002, book jacket). Maconochie believed that inmates should be rewarded for good behavior through a system of marks, which could lead to privileges and early release; that they should be treated with respect; and that they should be adequately fed and housed. Such revolutionary ideas (for their time) alarmed Maconochie’s superiors, and he was removed from his position after only 4 years. His ideas, however, were adopted decades later when the concepts of “good time” and parole were developed in Ireland and the United States. In addition, his beliefs about adequately feeding and clothing inmates were also held by reformers who came before him, such as John Howard and William Penn, and after him, such as Dorothea Dix.

Enlightenment—Paradigm Shift

Spock Falls in Love

As noted in Section I, the Enlightenment period, which lasted roughly from the 17th through the 18th century in England, Europe, and America, spelled major changes in thought about crime and corrections. But then, it was a time of paradigmatic shifts in many aspects of the Western experience as societies became more secular and open. Becoming a more secular culture meant that there was more focus on humans on earth, rather than in the afterlife, and, as a consequence, the arts, sciences, and philosophy flourished. In such periods of human history, creativity manifests itself in innovations in all areas of experience; the orthodoxy in thought and practice is often challenged and sometimes overthrown in favor of new ideas and even radical ways of doing things (Davis, 2008). New ideas and beliefs were proposed and explored in every sphere of the intellectual enterprise—in the sciences with Englishman Isaac Newton (1643–1727), philosophy and rationality with Englishwoman Anne Viscountess Conway (1631–1679), feminist philosophy with Englishwoman Damaris Cudworth Masham (1659–1708), philosophy and history with Scotsman David Hume (1711–1776), literature and philosophy with the Frenchman Voltaire (1694–1778), literature and philosophy with the Briton Mary Wollstonecraft (1759–1797), or the founding fathers of the United States (e.g., Samuel Adams, James Madison, Benjamin Franklin, Thomas Paine, and Thomas Jefferson) (Duran, 1996; Frankel, 1996). Certainly, the writings of *John Locke* (1632–1704) and his conception of liberty and human rights provided the philosophical underpinnings for the Declaration of Independence as penned by Thomas Jefferson. As a result of the Enlightenment, the French Revolution, which began in 1789, was also about rejecting one form of government—the absolute monarchy—for something that was to be more democratic and liberty based. (Notably, the French path to democracy was not straight and included a dalliance with other dictators, such as Napoleon Bonaparte, who came to power in 1799.)

Nonlinear shifts in scientific theory, such changes in worldviews or paradigms, as Thomas Kuhn explained in his well-known work *The Structure of Scientific Revolutions* (1962), usually come after evidence mounts and the holes in old ways of perceiving become all too apparent. The old theory simply cannot accommodate the new evidence. Such an event was illustrated on a micro, or individual, level in an episode of the original *Star Trek* television show when Spock (the logical, unemotional, and unattached second officer) falls in love with a woman for the first time after breathing in the spores of a magical flower on a mysterious planet. Those who experienced the Enlightenment period, much like reformers and activists of the Progressive Era (1880s to the 1920s) and Civil Rights

Era (1960s and 1970s) in the United States that followed centuries later, experienced a paradigm shift regarding crime and justice. Suddenly, as if magic spores had fundamentally reshaped thought and suffused it with kind regard, if not love, for others, humans seemed to realize that change in crime policy and practice was called for, and they set about devising ways to accomplish it.

John Howard

John Howard (1726–1790) was one such person who acted as a change agent. As a sheriff of Bedford in England and as a man who had personally experienced incarceration as a prisoner of war himself (he was held captive by French privateers), he was *enlightened* enough to see that gaols in England and Europe should be different, and he spent the remainder of his life trying to reform them (Howard, 1775/2000; Johnston, 2009). Howard's genius was his main insight regarding corrections: that corrections should not be privatized in the sense that jailers were “paid” a fee by inmates for their food, clothing, and housing—an inhumane and often illogical practice since most who were incarcerated were desperately poor, a circumstance that explained the incarceration of many in the first place. Howard believed that the state or government had a responsibility to provide sanitary and separate conditions and decent food and water for those it incarcerated. His message of reform included these central tenets:

1. The fee system for jails should be ended.
2. Inmates should be separated by gender and offense (single celling would be optimal).
3. Inmates should be provided with sanitary conditions and clean and healthful food and water.
4. Staff should serve as a moral model for inmates.
5. Jails and prisons should have a set of standards and be independently inspected to ensure these standards are maintained.

Howard promoted these ideas in England and all over the European continent during his lifetime. He was able to do so because he inherited money from his father, his sister, and his grandmother and used those monies to improve the lives of the tenants on his land and the inmates in correctional facilities. His major written work, *The State of the Prisons in England and Wales, With Preliminary Observations, and an Account of Some Foreign Prisons* (1775/2000), detailed the horror that was experienced in the filthy and torturous gaols of England and Europe; in his book he noted that although there were 200 crimes for which capital punishment might be prescribed, far more inmates died from diseases contracted while incarcerated. (Note to reader: The Old English used by Howard in the following quote sometimes substitutes the letter *f* for the letter *s*.)

I traveled again into the counties where I had been; and, indeed, into all the reft; examining Houfes of Correction, City and Town-Gaols. I beheld in many of them, as well as in the County-Gaols, a complication of diftrefs: but my attention was principally fixed by the gaol-fever, and the fmall-pox, which I faw prevailing to the deftruction of multitudes, not only of felons in their dungeons, but of debtors alfo. (p. 2)

Howard (1775/2000) found that gaol fever was widespread in all kinds of correctional institutions of the time: bridewells, gaols, debtors' prisons, and houses of correction. Notably, in larger cities there were clear distinctions among these facilities and whom they held, but in smaller towns and counties these distinctions were often absent. In the neglect of inmates and the underfunding of the facilities, however, Howard found them all to be quite similar. He noted that in some bridewells no provision at all was made for feeding inmates. Though inmates of bridewells were to be sentenced to hard labor, he found that in many there was little work to do and no tools provided

to do it: “The prifoners have neither tools, nor materials of any kind; but fpend their time in floth, profanenefs and debauchery, to a degree which, in fome of thofe houfes that I have feen, is extremely fhocking” (p. 8). He found that the allotment for food in county jails was not much better, and he remarked that in some there was none for debtors, the criminal, or the accused alike. He noted that these inmates, should they survive their suffering, would then enter communities or other facilities in rags and spread disease wherever they went.

In his census of correctional facilities (including debtors’ prisons, jails, and houses of correction or bridewells) in England and Wales, Howard (1775/2000) found that petty offenders comprised about 16% of inmates, about 60% were debtors, and about 24% were felons (which included those awaiting trial, those convicted and awaiting their execution or transportation, and those serving a sentence of imprisonment) (Ignatieff, 1978, p. 25). Ironically, Howard eventually died from typhus, also known as gaol fever, after touring several jails and prisons in Eastern Europe, specifically the prisons of Tsarist Russia.

Bentham and Beccaria

As mentioned in Section I, the philosophers and reformers *Jeremy Bentham* (1748–1832) in England and *Cesare Beccaria* (1738–1794) in Italy separately, but both during the Enlightenment period, decried the harsh punishment meted out for relatively minor offenses in their respective countries and, as a consequence, emphasized certainty over the severity and celerity components of the deterrence theory they independently developed. Beccaria, in his classic work *On Crimes and Punishments* (1764/1963), wrote,

In order that punishment should not be an act of violence perpetrated by one or many upon a private citizen, it is essential that it should be public, speedy, necessary, the minimum possible in the given circumstances, proportionate to the crime, and determined by the law. (p. 113)

He argued that knowledge, such as that provided by the sciences and enlightenment, was the only effective antidote to “foul-mouthed ignorance” (p. 105).

In his *Plan of Construction of a Panopticon Penitentiary House* (1789/1969), Bentham also proposed—though the funding of it was not signed off on by King George III—the building of a special type of prison. As per Bentham, the building of a private prison-like structure—the **panopticon**, which he would operate—that ingeniously melded the ideas of improved supervision with architecture (because of its rounded, open, and unobstructed views) would greatly enhance supervision of inmates. This recognition of the benefits of some architectural styles for enhanced supervision was indeed prescient in that it presaged modern jail and prison architecture. His proposed panopticon would be circular, with two tiers of cells on the outside and a guard tower in its center, with the central area also topped by a large skylight. The skylight and the correct angling of the tower were to ensure that the guard was able to observe all inmate behavior in the cells, although owing to a difference of level and the use of blinds the keeper would be invisible to the inmates. A chapel would also be located in the center of the rounded structure. The cells were to be airy and large enough to “serve all purposes: work, sleep, meals, punishment, devotion” (Bentham, 1811/2003, p. 194). Somehow, Bentham noted in his plan without elaboration, the sexes were to be invisible to each other. He did not call for complete separation of all inmates, however, which becomes important when discussing the Pennsylvania and New York prisons in Section III, but he did assert that the groups of inmates allowed to interact should be small, including only two to four persons (Bentham, 1811/2003, p. 195).

As an avowed admirer of John Howard, Bentham proposed that his panopticon penitentiary would include all of the reforms proposed by Howard and much more. Bentham (1811/2003) promised that inmates would be well fed, fully clothed, supplied with beds, supplied with warmth and light, kept from “strong or spirituous liquors,” have their spiritual and medical needs fulfilled, be provided with opportunities for labor and education (“to convert the prison into a school”), have their labor incentivized so that they got to “share in the produce,” be taught a trade so that they could survive once released, and be helped to save for old age (pp. 199–200). He would also personally pay

a fine for every escape, insure inmates' lives to prevent their deaths, and submit regular reports to the "Court of the King's Bench" on the status of the prison's operation (pp. 199–200). Moreover, he proposed that the prison would be open in many respects not just to dignitaries but to regular citizens, and daily, as a means of preventing abuse that might occur in secret. Bentham also recommended the construction of his prisons on a large scale across England, such that one would be built every 30 miles, or a good day's walk by a man. He planned, as he wrote in his 1830 diatribe against King George III, wryly titled "History of the War Between Jeremy Bentham and George the Third—by One of the Belligerents," that "but for George the Third, all the prisoners in England would, years ago, have been under my management. But for George the Third, all the paupers in the country would, long ago, have been under my management" (Bentham, 1811/2003, p. 195).

Though his plan in theory was laudable and really visionary for his time—and ours—he hoped to make much coin as recompense for being a private prison manager, to the tune of 60 pounds sterling per prisoner, which, when assigned to all inmates across England, was a considerable sum (Bentham, 1811/2003, p. 195). What stopped him, and the reason why he was so angry with his sovereign, was King George's unwillingness to sign the bill that would have authorized the funding and construction of the first panopticon. Bentham alleged that the king would not sign because the powerful Lord Charles Spenser was concerned about the effect on the value of his property should a prison be located on or near it. Bentham's prison dream was dead, but eventually he was awarded 23,000 pounds for his efforts (p. 207). It was left to others to build panopticon prisons in both Europe and the states in the coming years.

William Penn

William Penn (1644–1718), a prominent Pennsylvania Colony governor and Quaker, was similarly influenced by Enlightenment thinking (though with the Quaker influence, his views were not so secular). Much like Bentham and Beccaria, Penn was not a fan of the harsh punishments and even executions for relatively minor offenses that were meted out during his lifetime. While in England, as a result of his defense of religious freedom and practice, he was incarcerated in the local jails on more than one occasion; he was even held in the Tower of London in 1669 for his promotion of the Quaker religion and defiance of the English crown. He was freed only because of his wealth and connections (Penn, 1679/1981). As a consequence, when he had the power to change the law and its protections and reduce the severity of punishments, he did so. Many years later (in 1682) in Pennsylvania, he proposed and instituted his **Great Law**, which was based on Quaker principles and de-emphasized the use of corporal and capital punishment for all crimes but the most serious (Clear, Cole, & Reisig, 2011; Johnston, 2009; Zupan, 1991). His reforms substituted fines and jail time for corporal punishment. He promoted Pennsylvania as a haven for Quakers, who were persecuted in England and Europe generally, and for a number of other religious minorities (Penn, 1679/1981). His ideas about juries, civil liberties, religious freedom, and the necessity of amending constitutions—so they are adaptable to changing times—influenced a number of American revolutionaries, including Benjamin Franklin and Thomas Paine.

Many of Penn's contemporaries were not of the same frame of mind, however, and after his death, the Great Law was repealed and harsher punishments were again instituted in Pennsylvania, much as they existed in the rest of the colonies (Johnston, 2009; M. Welch, 2004). But the mark of his influence lived on in the development of some of America's first prisons.

Much like Howard and Bentham, Penn was interested in reforming corrections, but he was particularly influenced by his Quaker sentiments regarding nonviolence and the value of quiet contemplation. The early American prisons known as the **Pennsylvania model prisons**—the Walnut Street Jail (1790) in Philadelphia, the Western Pennsylvania Prison (1826) in Pittsburgh, and the Eastern Pennsylvania Prison (1829) in Philadelphia—incorporated these ideas (Johnston, 2009). Even the **New York prison system** (Auburn and Sing Sing), often juxtaposed with Pennsylvania prisons based on popular depiction by historians (see Beaumont and Tocqueville, 1833/1964), included contemplation time for inmates and a plan for single cells for inmates that reflected the same belief in the need for some solitude.

Colonial Jails and Prisons

The first jail in America was built in Jamestown, Virginia, soon after the colony's founding in 1606 (Burns, 1975; Zupan, 1991). Massachusetts built a jail in Boston in 1635, and Maryland built a jail for the colony in 1662 (Roberts, 1997). The oldest standing jail in the United States was built in the late 1600s and is located in Barnstable, Massachusetts (Library of Congress, 2010). It was used by the sheriff to hold both males and females, along with his family, in upstairs, basement, and barn rooms. Men and women were held in this and other jails like it, mostly before they were tried for both serious and minor offenses, as punishment for offenses, or to ensure they were present for their own execution.

Such an arrangement as this—holding people in homes, inns, or other structures not originally designated or constructed as jails—was not uncommon in early colonial towns (Goldfarb, 1975; Irwin, 1985; Kerle, 2003). As in England, inmates of these early and colonial jails were required to pay a “fee” for their upkeep (the same fee system that John Howard opposed). Those who were wealthier could more easily buy their way out of incarceration, or if that was not possible because of the nature of the offense, they could at least ensure that they had more luxurious accommodations (Zupan, 1991). Even when jailers were paid a certain amount to feed and clothe inmates, they might be disinclined to do so because what they saved by not taking care of their charges they were able to keep (Zupan, 1991). As a result, inmates in early American jails were sometimes malnourished or starving. Moreover, in the larger facilities they were crammed into unsanitary rooms, often without regard to separation by age, gender, or offense—conditions that also led to disease and early death. Nonetheless Irwin (1985) does remark that generally Americans fared better in colonial jails than their English and European cousins did in their own because the arrangements were less formal and restrictive in the American jails and they were more like rooming houses. Relatedly, Goldfarb (1975) remarked,

Jails that did exist in the eighteenth century were run on a household model with the jailer and his family residing on the premises. The inmates were free to dress as they liked, to walk around freely and to provide their own food and other necessities. (p. 9)

As white people migrated across the continent of North America, the first western jails were much like their earlier eastern and colonial cousins, with makeshift structures and cobbled-together supervision serving as a means of holding the accused over for trial (Moynihan, 2002). In post–Civil War Midwestern cities, disconnected outlaw gangs (such as the Jesse James gang) were treated in a harsh manner. Some communities even built rotary jails, which were like human squirrel cages. Located inside a secure building, these rotating steel cages, which were segmented into small pie-shaped cells, were secured to the floor and could be spun at will by the sheriff (Goldfarb, 1975, p. 11).

Of course, without prisons in existence per se (we will discuss the versions of such institutions that *did* exist shortly), most punishments for crimes constituted relatively short terms in jails, public shaming (as in the stocks), physical punishments



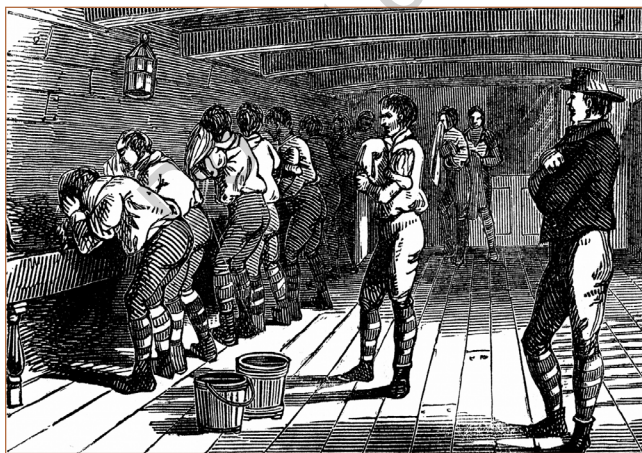
▲ **Photo 2.1** Newgate Prison, a working copper mine, served as an early colonial prison.

Source: Postcard depicting Old Newgate Prison, a prison/mine in East Granby, Connecticut, in the area of Hartford, Connecticut. Wikimedia Commons. Pre-1923.

like flogging or the pillory, or banishment. Executions were also carried out, usually but not always for the most horrific of crimes, such as murder or rape, though in colonial America many more crimes qualified for this punishment (Zupan, 1991). As in Europe and England at this time, those who were poorer or enslaved were more likely to experience the harshest punishments (Irwin, 1985; Zupan, 1991). Also similar to Europe and England in this era, jails also held the mentally ill, along with debtors, drifters, transients, the inebriated, runaway slaves or servants, and the criminally involved (usually pretrial) (Cornelius, 2007).

Though the Walnut Street Jail, a portion of which was converted to a prison, is often cited as the first prison in the world, there were, as this recounting of history demonstrates, many precursors that were arguably prisons as well. One such facility, which also illustrates the makeshift nature of early prisons, was the **Newgate Prison in Simsbury, Connecticut** (named after the Newgate Prison in London). According to Phelps (1860/1996), this early colonial prison started as a copper mine, and during its 54 years of operation (from 1773 to 1827), some 800 inmates passed through its doors. The mine was originally worked in 1705, and one-third of the taxes it paid to the town of Simsbury at that time were used to support Yale College (p. 15). “Burglary, robbery, and counterfeiting were punished for the first offense with imprisonment not exceeding ten years; second offence for life” (p. 26). Later, those loyal to the English crown during the American Revolution (Tories) were held at Newgate as well. Punishments by the “keeper of the prison” could range from shackles and fetters as restraints to “moderate whipping, not to exceed ten stripes” (p. 26). The inmates of Newgate prison were held—stored, really—in the bowels of the mine during the evening (by themselves and with no supervision), and during the day were forced to work the mine or were allowed to come to the surface to labor around the facility and in the community. Over the course of the history of this facility, there were several escapes, a number of riots, and the burning of the topside buildings by its inmates. Early versions of prisons also existed in other countries.

Incarcerated nobles who could pay the heftiest fees lived in comparative comfort with a modicum of privacy; less affluent prisoners were confined in large common rooms; the poorest inmates, and those who were considered the most dangerous, had to endure squalid dungeons. It was not unusual for men, women, and children, the sane and the mentally ill, felons and misdemeanants, all to be crowded indiscriminately in group cells. (Roberts, 1997, p. 5)



▲ Photo 2.2 Drawing of inmates in the hulk prison washroom.

Another less enlightened type of prison existed in England in the form of **hulks**, derelict naval vessels transformed into prisons for the country’s overflowing inmates. Hulks were used in tandem with transportation and other forms of incarceration in the mid-1700s and then increasingly in the gap between the end of transportation to the American colonies with the Revolutionary War and the beginning of transportation to Australia. The last hulk was used on the coast of Gibraltar in 1875 (Roberts, 1997, p. 9). The English even confined some prisoners of war in a Hudson River hulk during the Revolutionary War. Inmates of these hulks were taken off to labor during the day for either public works or private contractors. The conditions of confinement were, predictably,

horrible: “The hulks were filthy, crowded, unventilated, disease-ridden, and infested with vermin. The food was inadequate and the discipline was harsh” (Roberts, 1997, p. 11). Some inmates housed on the lower decks even drowned from water taken on by these broken-down ships.

A major proponent of reform of English prisons, and also a Quaker, was Elizabeth Gurney Fry (1780–1845). She was an advocate for improved conditions, guidelines, training, and work skills for women inmates (Roberts, 1997). She provided the religious instruction herself to women inmates.

SUMMARY

- Human beings have been inventive in their development of punishments and ways in which to hold and keep people.
- Correctional history is riddled with efforts to improve means of correction and reform.
- Those accused or convicted of crimes who had more means were less likely to be treated harshly or punished severely.
- Sometimes the old worldviews (paradigms) are challenged by new evidence and ideas and are then discarded for new paradigms. The Enlightenment period in Europe was a time for rethinking old ideas and beliefs.
- Jeremy Bentham, Cesare Beccaria, John Howard, and William Penn were all especially influential in changing our ideas about crime, punishment, and corrections.
- Correctional reforms, whether meant to increase the humane treatment of inmates or to increase their secure control, often led to unintended consequences.
- Some early European and English versions of prisons and juvenile facilities were very close in mission and operation to America’s earliest prisons.

KEY TERMS

Bridewells 60

Galley slavery 59

Great Law 64

Hulks 66

New York prison system 64

Newgate Prison in Simsbury,
Connecticut 66

Norfolk Island 61

Panopticon 63

Pennsylvania model prisons 64

Transportation 60

DISCUSSION QUESTIONS

1. Identify examples of some themes that run throughout the history of corrections. What types of punishments tend to be used and for what types of crimes? What sorts of issues influence the choice of actions taken against offenders?
2. How were people of different social classes treated in early jails and bridewells?
3. We know that transportation ended because of the development of sails, which was an improvement in technology. Can you think of other types of correctional practices that have been developed, improved upon, or stopped because of advances in technology?
4. What role has religion played in the development of corrections in the past?

5. What types of things have remained the same in corrections over the years and what types of things have changed? Why do you think things have changed or remained the same?
6. Several historical figures mentioned in this section advanced ideas that were viewed as radical for their day. Why do you think such ideas were eventually adopted? Can you think of similar sorts of seemingly “radical” ideas for reforming corrections that might be adopted in the future?



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READING /// 3

This book chapter excerpt by Gustave de Beaumont (a prosecutor) and Alexis de Tocqueville (a lawyer) is of great historical interest because these two French aristocrats came to the United States in 1831 purposely to observe and report upon America's experiment with the penitentiary system. Beaumont and Tocqueville studied the Cherry Hill Prison in Philadelphia and the Auburn Prison in New York, as well as some others. They found these prisons somewhat different from older American prisons and European prisons; for example, prisoners were kept in isolation so that they could not corrupt one another and were required to work throughout their sentences. The biggest innovation was that attempts were made to reform prisoners morally and spiritually (hence the term penitentiary).

An Historical Outline of the Penitentiary System

Gustave de Beaumont and Alexis de Tocqueville

Though the penitentiary system in the United States is a new institution, its origin must be traced back to times already long gone by. The first idea of a reform in the American prisons, belongs to a religious sect in Pennsylvania. The Quakers, who abhor all shedding of blood, had always protested against the barbarous laws which the colonies inherited from their mother country. In 1786, their voice succeeded in finding due attention, and from this period, punishment of death, mutilation and the whip were successively abolished in almost all cases by the Legislature of Pennsylvania. A less cruel fate awaited the convicts from this period. The punishment of imprisonment was substituted for corporal punishment, and the law authorized the courts to inflict solitary confinement in a cell during day and night, upon those guilty of capital crimes. It was then that the Walnut Street prison was established in Philadelphia. Here the convicts were classed according to the nature of their crimes, and separate cells were constructed for those whom the courts of justice had sentenced to absolute isolation. These cells also served to curb the resistance of individuals, unwilling to submit to the discipline of the prison. The solitary prisoners did not work.

This innovation was good but incomplete. The impossibility of subjecting criminals to a useful classification, has since been acknowledged, and solitary confinement without labor has been condemned by experience. It is nevertheless just to say, that the trial of this theory has not been made long enough to be decisive. The authority given to the judges of Pennsylvania, by the law of April 5, 1790, and of March 22, to send criminals to the prison in Walnut Street, who formerly would have been sent to the different county jails, soon produced in this prison such a crowd of convicts, that the difficulty of classification increased in the same degree as the cells became insufficient.

To say the truth there did not yet exist a penitentiary system in the United States. If it be asked why this name was given to the system of imprisonment which had been established, we would answer, that then as well as now, the abolition of the punishment of death was confounded in America, with the penitentiary system. People said—*instead of killing the guilty, our laws put them in prison; hence we have a penitentiary system.*

The conclusion was not correct. It is very true that the punishment of death applied to the greater part of crimes, is irreconcilable with a system of imprisonment; but this

Source: An Historical Outline of The Penitentiary System," pages 37–52; originally published in *On the Penitentiary System in the United States and its Application in France* by Gustave de Beaumont and Alexis de Tocqueville. © 1964 by Southern Illinois University Press

punishment abolished, the penitentiary system does not yet necessarily exist; it is further necessary, that the criminal whose life has been spared, be placed in a prison, whose discipline renders him better. Because, if the system, instead of reforming, should only tend to corrupt him still more, this would not be any longer a penitentiary system, but only a bad system of imprisonment.

This mistake of the Americans has for a long time been shared in France. In 1794, the Duke de la Rochefoucauld-Liancourt published an interesting notice on the prison of Philadelphia: he declared that this city had an excellent prison system, and all the world repeated it. However, the Walnut Street prison could produce none of the effects which are expected from this system. It had two principal faults: it corrupted by contamination those who worked together. It corrupted by indolence, the individuals who were plunged into solitude.

The true merit of its founders was the abolition of the sanguinary laws of Pennsylvania, and by introducing a new system of imprisonment, the direction of public attention to this important point. Unfortunately that which in this innovation deserved praise, was not immediately distinguished from that which was untenable.

Solitude applied to the criminal, in order to conduct him to reformation by reflection, rests upon a philosophical and true conception. But the authors of this theory had not yet founded its application upon those means which alone could render it practical and salutary. Yet their mistake was not immediately perceived, and the success of Walnut Street prison boasted of in the United States still more than in Europe, biased public opinion in favor of its faults, as well as its advantages.

The first state which showed itself zealous to imitate Pennsylvania, was that of New York, which in 1797, adopted both new penal laws and a new prison system.

Solitary confinement without labor, was admitted here as in Philadelphia, but, as in Walnut Street, it was reserved for those who especially were sentenced to undergo it by the courts of justice, and for those who opposed the established order of the prison. Solitary confinement, therefore, was not the ordinary system of the establishment; it awaited only those great criminals who, before the reform of the penal laws, would have been condemned to death. Those who were guilty of lesser offenses were put indiscriminately together in the prison. They, different from the inmates of the solitary cells, had to work during the day, and the only

disciplinary punishment which their keeper had a right to inflict, in case of breach of the order of the prison, was solitary confinement, with bread and water.

The Walnut Street prison was imitated by others: Maryland, Massachusetts, Maine, New Jersey, Virginia, etc., adopted successively, the principle of solitary confinement, applied only to a certain class of criminals in each of these states. The reform of criminal laws preceded that of the prisons.

Nowhere was this system of imprisonment crowned with the hoped-for success. In general it was ruinous to the public treasury; it never effected the reformation of the prisoners. Every year the legislature of each state voted considerable funds towards the support of the penitentiaries, and the continued return of the same individuals into the prisons, proved the inefficiency of the system to which they were submitted.

Such results seem to prove the insufficiency of the whole system; however instead of accusing the theory itself, its execution was attacked. It was believed that the whole evil resulted from the paucity of cells, and the crowding of the prisoners; and that the system, such as it was established, would be fertile in happy results, if some new buildings were added to the prisons already existing. New expenses therefore, and new efforts were made.

Such was the origin of the Auburn prison [1816]. This prison, which has become so celebrated since, was at first founded upon a plan essentially erroneous. It limited itself to some classifications, and each of these cells was destined to receive two convicts: it was of all combinations the most unfortunate; it would have been better to throw together fifty criminals in the same room, than to separate them two by two. This inconvenience was soon felt, and in 1819 the Legislature of the State of New York, ordered the erection of a new building at Auburn (the northern wing) in order to increase the number of solitary cells. However, it must be observed, that no idea as yet existed of the system which has prevailed since. It was not intended to subject all the convicts to the system of cells, but its application was only to be made to a greater number. At the same time the same theories produced the same trials in Philadelphia, where the little success of the Walnut Street prison would have convinced the inhabitants of Pennsylvania of its inefficiency, if the latter, like the citizens of the State of New York, had not been led to seek in the faults of execution, a motive for allowing the principle to be correct.

In 1817, the Legislature of Pennsylvania decreed the erection of the penitentiary at Pittsburgh, for the western counties, and in 1821, that of the penitentiary of Cherry Hill, for the city of Philadelphia and the eastern counties. The principles to be followed in the construction of these two establishments were, however, not entirely the same as those on which the Walnut Street prison had been erected. In the latter, classification formed the predominant system, to which solitary confinement was but secondary. In the new prisons the classifications were abandoned, and a solitary cell was to be prepared for each convict. The criminal was not to leave his cell day or night, and all labor was denied to him in his solitude. Thus absolute solitary confinement, which in Walnut Street was but accidental, was now to become the foundation of the system adopted for Pittsburgh and Cherry Hill. The experiment which was to be made, promised to be decisive; no expense was spared to construct these new establishments worthy of their object, and the edifices which were elevated, resembled prisons less than palaces.

In the meantime, before even the laws which ordered their erection, were executed, the Auburn prison had been tried in the State of New York. Lively debates ensued on this occasion, in the legislature, and the public was impatient to know the result of the new trials, which had just been made. The northern wing having been nearly finished in 1821, eighty prisoners were placed there, and a separate cell was given to each. This trial, from which so happy a result had been anticipated, was fatal to the greater part of the convicts. In order to reform them, they had been submitted to complete isolation; but this absolute solitude, if nothing interrupts it, is beyond the strength of man; it destroys the criminal without intermission and without pity; it does not reform, it kills.

The unfortunates on whom this experiment was made fell into a state of depression, so manifest, that their keepers were struck with it; their lives seemed in danger, if they remained longer in this situation; five of them had already succumbed during a single year; their moral state was not less alarming; one of them had become insane; another, in a fit of despair, had embraced the opportunity when the keeper brought him something, to precipitate himself from his cell, running the almost certain chance of a mortal fall.

Upon similar effects the system was finally judged. The Governor of the State of New York pardoned twenty-six of those in solitary confinement; the others to whom

this favor was not extended, were allowed to leave the cells during day, and to work in the common workshops of the prison. From this period, (1823) the system of unmodified isolation ceased entirely to be practiced at Auburn. Proofs were soon afforded that this system, fatal to the health of the criminals, was likewise inefficient in producing their reform. Of twenty-six convicts, pardoned by the governor, fourteen returned a short time after into the prison, in consequence of new offenses.

This experiment, so fatal to those who were selected to undergo it, was of a nature to endanger the success of the penitentiary system altogether. After the melancholy effects of isolation, it was to be feared that the whole principle would be rejected; it would have been a natural reaction. The Americans were wiser: the idea was not given up, that the solitude, which causes the criminal to reflect, exercises a beneficial influence; and the problem was, to find the means by which the evil effect of total solitude could be avoided without giving up its advantages. It was believed that this end could be attained, by leaving the convicts in their cells during night, and by making them work during the day, in the common workshops, obliging them at the same time to observe absolute silence. Messrs. Allen, Hopkins, and Tibbits, who, in 1824, were directed by the Legislature of New York to inspect the Auburn prison, found this new discipline established in that prison. They praised it much in their report, and the Legislature sanctioned this new system by its formal approbation.

Here an obscurity exists which it has not been in our power to dissipate. We see the renowned Auburn system suddenly spring up, and proceed from the ingenious combination of two elements, which seem at first glance incompatible, isolation and reunion. But that which we do not clearly see, is the creator of this system, of which nevertheless some one must necessarily have formed the first idea.

Does the State of New York owe it to Governor Clinton, whose name in the United States is connected with so many useful and beneficial enterprises? Does the honor belong to Mr. Cray, one of the directors of Auburn, to whom Judge Powers, who himself was at the head of that establishment, seems to attribute the merit? Lastly, Mr. Elam Lynds, who has contributed so much to put the new system into practice, does the glory also of the invention belong to him? We shall not attempt to solve this question, interesting to the persons whom we have mentioned, and the country to which they belong, but of little

importance to us. In fine, does not experience teach us that there are innovations, the honor of which belongs to nobody in particular, because they are the effects of simultaneous efforts, and of the progress of time?

The establishment of Auburn has, since its commencement, obtained extraordinary success. It soon excited public attention in the highest degree. A remarkable revolution took place at that time in the opinions of many. The direction of a prison, formerly confided to obscure keepers, was now sought for by persons of high standing, and Mr. Elam Lynds, formerly a captain in the army of the United States, and Judge Powers, a magistrate of rare merit, were seen, with honor to themselves, filling the office of directors of Auburn.

However, the adoption of the system of cells for all convicts in the state of New York, rendered the Auburn prison insufficient, as it contained but 550 cells after all the successive additions which it had received. The want of a new prison, therefore, was felt. It was then that the plan of Sing Sing was resolved upon by the legislature (1825) and the way in which it was executed is of a kind that deserves to be reported.

Mr. Elam Lynds, who had made his trials at Auburn, of which he was the superintendent, left this establishment; took one hundred convicts, accustomed to obey, with him, led them to the place where the projected prison was to be erected; there, encamped on the bank of the Hudson, without a place to receive, and without walls to lock up his dangerous companions; he sets them to work, making of every one a mason or a carpenter, and having no other means to keep them in obedience, than the firmness of his character and the energy of his will.

During several years, the convicts, whose number was gradually increased, were at work in building their own prison, and at present the penitentiary of Sing Sing contains one thousand cells, all of which have been built by their criminal inmates. At the same time (1825) an establishment of another nature was reared in the city of New York, but which occupies not a less important place among the improvements, the history of which we attempt to trace. We mean the house of refuge, founded for juvenile offenders.

There exists no establishment, the usefulness of which, experience has warranted in a higher degree. It is well known that most of those individuals on whom the criminal law inflicts punishments, have been unfortunate

before they became guilty. Misfortune is particularly dangerous for those whom it befalls in a tender age; and it is very rare that an orphan without inheritance and without friends, or a child abandoned by its parents, avoids the snares laid for his inexperience, and does not pass within a short time from misery to crime. Affected by the fate of juvenile delinquents, several charitable individuals of the city of New York conceived the plan of a house of refuge, destined to serve as an asylum, and to procure for them an education and the means of existence, which fortune had refused. Thirty thousand dollars were the produce of a first subscription. Thus by the sole power of a charitable association, an establishment eminently useful, was founded, which, perhaps, is still more important than the penitentiaries, because the latter punish crime, while the house of refuge tends to prevent it.

The experiment made at Auburn in the state of New York (the fatal effects of isolation without labor) did not prevent Pennsylvania from continuing the trial of solitary confinement, and in the year 1827, the penitentiary of Pittsburgh began to receive prisoners. Each one was shut up, day and night, in a cell, in which no labor was allowed to him. This solitude, which in principle was to be absolute, was not such in fact. The construction of this penitentiary is so defective, that it is very easy to hear in one cell what is going on in another; so that each prisoner found in the communication with his neighbor a daily recreation, i.e., an opportunity of inevitable corruption. As these criminals did not work, we may say that their sole occupation consisted in mutual corruption. This prison, therefore, was worse than even that of Walnut Street, because, owing to the communication with each other, the prisoners at Pittsburgh were as little occupied with their reformation, as those at Walnut Street. And while the latter indemnified society in a degree by the produce of their labor, the others spent their whole time in idleness, injurious to themselves, and burdensome to the public treasury.

The bad success of this establishment proved nothing against the system which had called it into existence, because defects in the construction of the prison, rendered the execution of the system impossible. Nevertheless, the advocates of the theories on which it was founded, began to grow cool. This impression became still more general in Pennsylvania, when the melancholy effects caused by solitude without labor in the Auburn prison, became known,

as well as the happy success of the new discipline, founded on isolation by night, with common labor during the day.

Warned by such striking results, Pennsylvania was fearful she had pursued a dangerous course. She felt the necessity of submitting to a new investigation the question of solitary imprisonment without labor, practiced at Pittsburgh and introduced into the penitentiary of Cherry Hill, the construction of which was already much advanced.

The legislature of this state, therefore, appointed a committee in order to examine which was the better system of imprisonment. Messrs. Charles Shaler, Edward King, and T. I. Wharton, commissioners charged with this mission, have exhibited, in a very remarkable report, the different systems then in practice (December 20, 1827), and they conclude the discussion by recommending the new Auburn discipline, which they pronounce the best. The authority of this inquiry had a powerful effect on public opinion. It however met with powerful opposition: Roberts Vaux, in Pennsylvania and Edward Livingston, in Louisiana, continued to support the system of complete solitude for criminals. The latter, whose writings are imbued with so elevated a philosophy, had prepared a criminal code, and a code of Prison Discipline for Louisiana, his native state. His profound theories, little understood by those for whom they were destined, had more success in Pennsylvania, for which they had not been intended. In this superior work, Mr. Livingston admitted, for most cases, the principle of *labor of the convicts*. Altogether, he showed himself less the advocate of the Pittsburgh prison, than the adversary of the Auburn system. He acknowledged the good discipline of the latter, but powerfully opposed himself to corporal punishment used to maintain it. Mr. Livingston, and those who supported the same doctrines, had to combat a powerful fact: this was the uncertainty of their theories, not yet tested, and the proven success of the system they attacked. Auburn went on prospering; everywhere its wonderful effects were praised, and they were found traced each year with great spirit, in a work justly celebrated in America, and which has essentially co-operated to bring public opinion in the United States, on the penitentiary system, to that point where it now is. We mean the annual publications of the Prison Discipline Society at Boston. These annual reports—the work of Mr. Louis Dwight, give a decided preference to the Auburn system.

All the states of the Union were attentive witnesses of the controversy respecting the two systems. In this fortunate country, which has neither troublesome neighbors, who disturb it from without, nor internal dissensions which distract it within, nothing more is necessary, in order to excite public attention in the highest degree, than an essay on some principle of social economy. As the existence of society is not put in jeopardy, the question is not how to live, but how to improve.

Pennsylvania was, perhaps, more than any other state, interested in the controversy. The rival of New York, it was natural she should show herself jealous to retain, in every respect, the rank to which her advanced civilization entitles her among the most enlightened states of the Union. She adopted a system which at once agreed with the austerity of her manners, and her philanthropical sensibility. She rejected solitude without labor, the fatal effects of which experience had proved everywhere, and she retained the absolute separation of the prisoners—a severe punishment, which, in order to be inflicted, needs not the support of corporal chastisement.

The penitentiary of Cherry Hill, founded on these principles, is therefore a combination of Pittsburgh and Auburn. Isolation during night and day, has been retained from the Pittsburgh system: and, into the solitary cell, the labor of Auburn has been introduced. This revolution in the prison discipline of Pennsylvania, was immediately followed by a general reform of her criminal laws. All punishments were made milder; the severity of solitary imprisonment permitted an abridgment of its duration; capital punishment was abolished in all cases, except that of premeditated murder.

While the states of New York and Pennsylvania made important reforms in their laws, and each adopted a different system of imprisonment, the other states of the Union did not remain inactive, in presence of the grand spectacle before them.

Since the year 1825, the plan of a new prison on the Auburn model, has been adopted by the legislature of Connecticut; and the penitentiary at Wethersfield has succeeded the old prison of Newgate. In spite of the weight which Pennsylvania threw into the balance, in favor of absolute solitude with labor, the Auburn system, i.e., common labor during the day, with isolation during night, continued to obtain a preference. Massachusetts, Maryland, Tennessee, Kentucky, Maine, and Vermont, have gradually adopted the

Auburn plan, and have taken the Auburn prison as a model for those which they have caused to be erected.

Several states have not stopped here, but have also founded houses of refuge for juvenile offenders, as an addition, in some measure, to the penitentiary system, in imitation of New York. These latter establishments have been founded in Boston in 1826, and in Philadelphia in 1828. There is every indication that Baltimore also, will soon have its house of refuge.

It is easy to foresee, that the impulse of reform given by New York and Pennsylvania, will not remain confined to the states mentioned above. From the happy rivalry which exists among all the states of the Union, each state follows the reforms which have been effected by the others, and shows itself impatient to imitate them. It would be wrong to judge all the United States by the picture which we have presented of the improvements adopted by some of them.

Accustomed as we are to see our central government attract everything, and propel in the various provinces all the parts of the administration in a uniform direction, we sometimes suppose that the same is the case in other countries; and comparing the centralization of government at Washington with that at Paris, the different states of the Union to our departments, we are tempted to believe that innovations made in one state, take, of necessity, place in the others. There is, however, nothing like in the United States.

These states, united by the federal tie into one family, are in respect to everything which concerns their common interests, subjected to one single authority. But besides these general interests, they preserve their entire individual independence, and each of them is sovereign master to rule itself according to its own pleasure. We have spoken of nine states which have adopted a new system of prisons; there are fifteen more which have as yet made no change.

In these latter, the ancient system prevails in its whole force; the crowding of prisoners, confusion of crimes, ages, and sometimes sexes, mixture of indicted and convicted prisoners, of criminals and debtors, guilty persons and witnesses; considerable mortality; frequent escapes; absence of all discipline, no silence which leads the criminals to reflection; no labor which accustoms them to an honest mode of subsistence; insalubrity of the place which destroys health; ignominy of the conversations which corrupt; idleness that depraves; the assemblage, in one word, of all vices and all

immoralities—such is the picture offered by the prisons which have not yet entered into the way of reform.

By the side of one state, the penitentiaries of which might serve as a model, we find another, whose jails present the example of everything which ought to be avoided. Thus the State of New York is without contradiction one of the most advanced in the path of reform, while New Jersey, which is separated from it but by a river, has retained all the vices of the ancient system.

Ohio, which possesses a penal code remarkable for the mildness and humanity of its provisions, has barbarous prisons. We have deeply sighed when at Cincinnati, visiting the prison. We found half of the imprisoned charged with irons, and the rest plunged into an infected dungeon; and are unable to describe the painful impression which we experienced, when, examining the prison of New Orleans, we found men together with hogs, in the midst of all odors and nuisances. In locking up the criminals, nobody thinks of rendering them better, but only of taming their malice; they are put in chains like ferocious beasts; and instead of being corrected, they are rendered brutal.

If it is true that the penitentiary system is entirely unknown in that part which we mentioned, it is equally true that this system is incomplete in those states even where it is in vigor. Thus at New York, at Philadelphia, and Boston, there are new prisons for convicts, whose punishment exceeds one or two years' imprisonment; but establishments of a similar nature do not exist to receive individuals who are sentenced for a shorter time, or who are indicted only. In respect to the latter, nothing has been changed; disorder, confusion, mixture of different ages and moral characters, all vices of the old system still exist for them: we have seen in the house of arrest in New York (Bridewell) more than fifty indicted persons in one room. These arrested persons are precisely those for whom well-regulated prisons ought to have been built. It is easy in fact to conceive, that he who has not yet been pronounced guilty, and he who has committed but a crime or misdemeanor comparatively slight, ought to be surrounded by much greater protection than such as are more advanced in crime, and whose guilt has been acknowledged.

Arrested persons are sometimes innocent and always supposed to be so. How is it that we should suffer them to find in the prison a corruption which they did not bring with them? If they are guilty, why place them first in a house of

arrest, fitted to corrupt them still more, except to reform them afterwards in a penitentiary, to which they will be sent after their conviction? There is evidently a deficiency in a prison system which offers anomalies of this kind. These shocking contradictions proceed chiefly from the want of unison in the various parts of government in the United States.

The larger prisons (state prisons) corresponding to our *maisons centrales*, belong to the state, which directs them; after these follow the county jails, directed by the county; and at last the prisons of the city, superintended by the city itself.

The various branches of government in the United States being almost as independent of each other, as the states themselves, it results that they hardly ever act uniformly and simultaneously. While one makes a useful reform in the circle of its powers, the other remains inactive, and attached to ancient abuses.

We shall see below, how this independence of the individual parts, which is injurious to the uniform action of all their powers, has nevertheless a beneficial influence, by giving to each a more prompt and energetic progress in the direction which it follows freely and unimpeded.

We shall say nothing more of the defective parts in the prison system in the United States. If at some future period France shall imitate the penitentiaries of America, the most important thing for her will be to know those which may serve as models. The new establishments then, will form the only object of our further inquiry.

We have seen, in the preceding remarks, that few states have as yet changed entirely their system of imprisonment; the number of those which have modified their penal laws is still less. Several among them yet possess part of the barbarous laws which they have received from England.

We shall not speak of the Southern states, where slavery still exists. In every place where one-half of the community is cruelly oppressed by the other, we must expect to find in the law of the oppressor, a weapon always ready to strike nature which revolts or humanity that complains. Punishment of death and stripes—these form the whole penal code for the slaves. But if we throw a glance at those states even which have abolished slavery, and which are most advanced in civilization, we shall see this civilization uniting itself, in some, with penal laws full of mildness, and in others, with all the rigor of a code of Draco.

Let us but compare the laws of Pennsylvania with those of New England, which is, perhaps, the most enlightened part of the American Union. In Massachusetts, there

are ten different crimes punished by death—among others, rape and burglary. Maine, Rhode Island, and Connecticut, count the same number of capital crimes. Among these laws, some contain the most degrading punishments, such as the pillory; others revolting cruelties, as branding and mutilation. There are also some which order fines equal to confiscations. While we find the remains of barbarism in some states, with an old population, there are others, which, risen since yesterday, have banished from their laws all cruel punishments not called for by the interest of society. Thus, Ohio, which certainly is not as enlightened as New England, has a penal code much more humane than those of Massachusetts or Connecticut.

Close by a state where the reform of the penal laws seems to have arrived at its summit, we find another, the criminal laws of which are stamped with all the brutalities of the ancient system. It is thus that the States of Delaware and New Jersey, so far behind in the path of improvement, border on Pennsylvania, which, in this respect, marches at the head of all others.

We should forget the object of our report were we to dwell any longer on this point. We were obliged to present a sketch of the penal legislation of the United States, because it exercises a necessary influence on the question before us. In fact it is easy to conceive to what point the punishments which degrade the guilty, are incompatible with a penitentiary system, the object of which is to reform them. How can we hope to awaken the moral sense of an individual who carries on his body the indelible sign of infamy, when the mutilation of his limbs reminds others incessantly of his crime, or the sign imprinted on his forehead, perpetuates its memory?

Must we not ardently wish, that the last traces of such barbarism should disappear from all the United States, and particularly from those which have adopted the penitentiary system, with which they are irreconcilable, and whose existence renders them still more shocking? Besides, let us not blame these people for advancing slowly on the path of innovation. Ought not similar changes to be the work of time, and of public opinion? There are in the United States a certain number of philosophical minds, who, full of theories and systems, are impatient to put them into practice; and if they had the power themselves to make the law of the land, they would efface with one dash, all the old customs, and supplant them by the creations of their genius, and the decrees of their wisdom. Whether right or wrong the people do not move so quickly. They consent to changes, but they

wish to see them progressive and partial. This prudent and reserved reform, effected by a whole nation, all of whose customs are practical, is, perhaps, more beneficial than the precipitated trials which would result, had the enthusiasm of ardent minds and enticing theories free play.

Whatever may be the difficulties yet to be overcome, we do not hesitate to declare that the cause of reform and of progress in the United States, seem to us certain and safe. Slavery, the shame of a free nation, is expelled every day from some districts over which it held its sway; and those persons themselves who possess most slaves, are convinced that slavery will not last much longer. Every day punishments which wound humanity, become supplanted by milder ones; and in the most civilized states of the north, where these punishments continue in the written laws, their application has

become so rare that they are to be considered as fallen into disuse. The impulse of improvement is given. Those states which have as yet done nothing, are conscious of their deficiency; they envy those which have preceded them in this career, and are impatient to imitate them.

Finally, it is a fact worth remarking, that the modification of the penal laws and that of prison discipline, are two reforms intimately associated with each other, and never separated in the United States. Our special task is not to enlarge on the first; the second alone shall fix our attention. The various states in which we have found a penitentiary system, pursue all the same end: the amelioration of the prison discipline. But they employ different means to arrive at their object. These different means have formed the subject of our inquiry.

DISCUSSION QUESTIONS

1. Discuss the relative benefits and drawbacks of the Pennsylvania versus the New York model of early prisons. What did Beaumont and Tocqueville think of these models and why? Which type of prison would you rather work in—or be incarcerated in—and why?
2. According to Beaumont and Tocqueville, what was it about America that made its approach to prisons different from that of Europe?
3. In what ways has prison reform changed since the era of Beaumont and Tocqueville?