Criminal Justice in America
CJ 2600

Chapter 13
James J. Drylie, Ph.D.
Punishment

• Prisons, unlike jails, are for convicted felons who are serving time in an institution as a form of punishment.

• Prisons have been in use in the United States over the past 200 years.

• Before the use of prisons punishment was more corporal in nature – the use of cruel and even torturous methods of inflicting pain and humiliation.
Corporal punishment

• The use of corporal or physical punishment is found in the vast majority of cultures throughout the world.
  – Some were/are more proficient than others.

• *Lex talionis* – the law of retaliation.
  – The principal is “an eye for an eye” originated as a punishment that in essence duplicated the crime.
Early forms of punishment

• Flogging
  – Historically, this was the most widely used form of physical punishment.
    • The last officially sanctioned flogging in the United States was in 1952 in the state of Delaware.

• Mutilation
  – This strategy is a specific form of deterrence that makes it difficult or impossible to commit future crimes.
    • Amputation
    • Castration
    • Blinding
    • Removal of the tongue
• Branding
  – Often used to identify convicted offenders.
  – Used tattooing
  – Markings
    • Body
    • Clothing

• Workhouses
  – Originated in Europe in the sixteenth century

• Public humiliation
  – Stocks
  – Pillory
    • Placed over the head and hands while standing.
  – Dunking

• Exile/banishment
  – Devil’s Island
  – Australia
The Emergence of Prisons

• Prisons in the United States were originally based on the concept of a *penitentiary*.
  – Originated with the Quakers in Pennsylvania in 1790.
  – The Quakers viewed incarceration as an opportunity for penance and the prison would allow for the offender to make amends.

• We will examine the evolution of prisons in the United States.
The Penitentiary Era 1790-1825

• The Walnut Street Jail in Philadelphia was converted into a prison in 1790 by the Quakers.

• This early approach was based on a philosophy that is still evident today in many prison systems:
  – Rehabilitation
  – Deterrence

• Relied on solitary confinement.
The Mass Prison Era 1825-1876

• Several eastern States built institutions based on the Pennsylvania model.
• The growth in the number of prisons in the country resulted in a new approach, one that abandoned solitary confinement for humanitarian and functional reasons.
• The *Auburn system* depended on mass numbers of prisons that held inmates in congregate fashion, but still required the silence associated with the Pennsylvania model.
The Reformatory Era 1876-1890

- Prior to this era, the Pennsylvania and Auburn systems were both in use.
- By the late-nineteenth century there was an emerging belief that offenders, particularly juveniles, could be rehabilitated.
- Influenced by experiences in Australia and Ireland that developed systems recognizing **good behavior** as a consideration for early release.
• In the 1840s Capt. Alexander Maconochie, the warden of Norfolk Island, Australia, developed a system wherein prisoners could buy their freedom by earning a certain number of credits thru good behavior.

• Sir Walter Crofton built upon this with a four-stage process:
  – Solitary
  – Hard work
  – Supervised field-work in the community
  – Limited supervision, living in the community
• Reformatory Era goals included
  – Educational
    • Schooling was mandatory
  – Behavioral
  – Work related
    • Technical skills and training
The development of Parole

- The success of the Irish model had direct influence on the American system, moving toward the reformatory model.
- By the late-nineteenth century the course of corrections would move toward intermediate sentencing, with the collateral development of early release, or parole.
The Industrial Era 1890-1935

• The Reformatory Era was deemed a failure.
  – Likely due to poor/inadequate follow-up.
  – Many returned to offending.

• With this failure there were the concerns of
  – Security
  – Discipline

• Costs to run/operate prisons increased.
• The potential profitability of prison labor was seen as a way to make prisons to
  – Self-sufficient
  – Self-sustaining

• By the early twentieth century inmate labor was found in various institutions:
  – Contract system
  – Piece-price systems
  – Lease system
  – Public-account
  – State-use
  – Public works system
• Contract
  – Private businesses paid to use inmate labor and produced products within the prison.

• Piece-price
  – Goods were produced for private businesses.

• Lease
  – Inmates were transported and supervised by guards at the point of production.

• Public-account
  – The prison owned and operated the production facility.

• State-use
  – Inmates produced products solely for state use.

• Public-works
  – Inmates provided the physical labor for maintaining public roads, facilities, etc.
  • The Chain Gang
The Ashurst-Summers Act (1935)

• Federal legislation that effectively ended the industrial prison era by restricting interstate commerce in prison-made goods. Influenced in part as post-depression response to economic pressures.
  – State and federal run programs still exist, but are generally limited to manufacturing and maintaining government products and facilities.
    • UNICOR – federal
    • DEPCOR – NJ
The Punitive Era 1935-1945

- On the heels of the Industrial Era, prison administrators “seized” on
  - Custody
  - Institutional security
- Large maximum-security institutions were the new norm.
- With this came a change in inmate life
  - Monotony
  - Frustration
    - The term stir-crazy originated during this time.
    - Positive alternatives were non-existent.
    - Riot and escape were the new “norms”
The Treatment Era 1945-1967

• Nationally, the economy was strong once again.
• America was a world leader
• The post-WWII era was productive.
• Renewed interests in corrections saw a resurgence in the concept of reformation.
• A new era, one grounded in a medical model, or treatment, emerged.
• This approach viewed the offender as “sick” someone who could be treated.
  – Much like the reduced stigma associated with the treatment of juveniles, terms replaced inmate
    • Resident
    • Group member
  – Treatment assisted inmates to mature
  – Assume responsibility
  – The use of group therapy
Therapy involved

- Behavior modification
- Drug therapy
- Neurosurgery
- Sensory deprivation
- Aversion therapy

Not all of this was openly supported by the inmates.

Civil suits resulted in the banning of federal funds to be used for psychosurgery, medical research, chemotherapy, or behavior modification.
The Community-Based Era 1967-1980

- Nationally, there were efforts that began a transformation to community-based corrections.
- New terminology
  - Deinstitutionalization
  - Diversion
  - Decarceration
- These concepts were based on the premise that rehabilitation could not occur in isolation from society.
- Inmates are expected to return to society.
- **Work release** allowed for temporary release into the community to meet job responsibilities.
The Warehousing Era 1980-1995

• By the late 1970s into the 1980s, recidivism had risen to levels that resulted in public disappointment.

• A new strategy was developed that was based on the desire to prevent recurrent crime, abandoning all hope of rehabilitation.
The *Nothing-works* Doctrine

- Robert Martinson popularized a belief in the 1970s that correctional treatment programs had little success in rehabilitating offenders.
- This doctrine resulted in new sentencing schemes
  - Mandatory minimum
  - Truth-in sentencing
  - Three strikes laws
The Just Deserts Era 1995-Present

- The warehousing philosophy is one of two parts of the **justice model**.
- Just deserts is the second prong of the justice model.
- The emphasis here is on individual responsibility.
- This approach is grounded in the philosophy that imprisonment is deserved and consequence of irresponsible behavior.
Prisons Today

- Over 1300 state prisons
- 84 federal prisons
- The prison system is a growth industry
- Incarceration rates is a record 501 for 100,000 residents.
- Disproportionately, blacks are imprisoned at higher rates that any other group.
Facts and figures

• Sentenced
  – Males
    • 501/100,000
  – Females
    • 1,538/100,000
  – Those born in 2001
    • 6.6% will serve time

• Violent crime
  – 50.5%

• Property crime
  – 20.4%

• Drug offenses
  – 21.4%
  – Largest single group of federal inmates
    • 55%
Race

- Whites in their late 20s
  - 1,172 men

- Blacks
  - 8,367
  - This is 7xs greater than for White males.
  - This is grossly disproportionate based on the overall population (13%).

- Almost 17% of black men have served time in prison.

- Hispanic males
  - 7.7% overall
Prisons at Capacity

• With the advent of the just deserts model the rate of incarceration in the United States has progressed (per 100,000)
  – 1990
    • 292
  – 1995
    • 399
  – 2007
    • 501
  – Current trends by 2011
    • 562
• Capacity
  – The size of the population that the institution can effectively hold.
  – Three types
    • Rated
    • Operational
    • Design

• Rated capacity
  – The number of inmates a prison can handle based on expert judgment.

• Operational capacity
  – The number is based on management considerations.

• Design capacity
  – The number that the facility was built/designed to hold.
Collective vs. Selective incapacitation

• Collective
  – A strategy that would imprison almost ALL serious offenders.
  – Found today in systems that rely on sentences that are
    • Predetermined
    • Fixed

• Selective
  – Seeks to identify the most dangerous criminals with the goal of removing them from society.
Prison Classifications

• Minimum-security
  – House all types of inmates

• Medium-security
  – The nature of the offense
  – Behavioral concerns

• Maximum-security
  – Serious violent offenders
  – Significant behavioral concerns
Jails

• Locally operated
• Short-term
• Hold suspects following arrest or pending trial.
• Receive individuals pending arraignment
• Temporarily detain those awaiting transfer
  – Juveniles
  – Mentally ill
• Protective custody
• Contempt of court
• Pending release from prison
• House inmates due to prison overcrowding
• Community-based corrections
• Hold inmates for periods generally less than year.
Data on Jails

• Roughly half of all jail inmates are held by roughly 6% of the facilities.
  – LA
  – NYC
  – Chicago
  – Texas
  – Arizona

• Females account for close to 13% of inmates
  – Largest growing group nationwide