

Criminal Justice Masterworks

**A History of Ideas about Crime,
Law, Police, and Corrections**

REVISED PRINTING

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Preface

Masterworks, the History of Ideas, and Critical Thinking

This selection of masterworks in the field of criminal justice was intended primarily for use as a capstone seminar for college undergraduates majoring in criminal justice studies. It is also useful as a brief survey of great writings in criminal justice for any advanced undergraduate or beginning graduate student or criminal justice professional. The editors' approach weaves together three strands of intellectual pursuit: an acquaintance with great writings on criminal justice, the perspective provided by a history of ideas, and the skills of critical thinking.

The selections provide a taste of classic works usually known to students only through textbook summaries, short excerpts, or references elsewhere. Although there are other anthologies which present selections from some of these same classics in the field of criminal justice, they offer only very short selections which are not sufficient to give the student a grasp of the work or a basis for critical analysis of it. The selections offered here are extensive enough to convey the main ideas, display the logical and empirical foundations of the works, and allow for critical thinking on the enduring fundamental issues in the field of criminal justice.

These masterworks in criminal justice are separated into four areas: criminology, legal studies, police studies, and correctional studies. One could add other areas, such as victimology or forensic science. However, this is not intended to be an exhaustive or even comprehensive survey of the field of criminal justice. It is only a sampling of some of the most prominent works in the most prominent traditional areas of criminal justice studies. Hopefully, it will give the reader a handle on some masterworks and some material for critical thinking about the most important issues in the field.

The selections are set in the context of the history of ideas. Political, economic and social events provide a distant background for these masterworks.

But their immediate background is the history of ideas, especially the ideas of the Age of Enlightenment and such subsequent ideas as biological, economic and social evolution, changing notions of society, and varying conceptions of human nature. A Historical Introduction summarizes the history of ideas of justice prior to the Age of Enlightenment and the key ideas of the Age of Enlightenment itself. Short introductions to the various selections provide information about the authors and the surfacing of their ideas in the intellectual currents of their times.

Masterworks can be read on either of two levels. To appreciate them on a fairly simple level, one could read them only for the purpose of discovering what their authors wrote. For example, one could read Beccaria to learn what his position was with regard to the death penalty. This would not be an especially challenging way to read, or teach, the masterworks. On a more sophisticated and more challenging level, one could read the masterworks as an exercise in critical thinking. On this level one would examine the specific arguments Beccaria presented in discussing the death penalty, what evidence he offered to support his arguments, and what assumptions he may have been making.

Some things have been deliberately excluded from the introductions to the individual masterworks. The introductions do not contain summaries of the masterworks. Hence, an introduction is no substitute for reading the masterwork itself. The introductions do not provide critiques of the masterworks. The masterworks can be criticized in places for vagueness, lack of adequate evidence for certain conclusions, questionable assumptions or loose logic. Including critiques in the introductions would deprive the reader of the opportunity and challenge to do the critical thinking. The book would be less useful for developing critical thinking skills. However, the introduction to each reading does provide background information which may be very helpful for an understanding and critique of the particular masterwork. The introductions are starting points.

One of the hallmarks of a masterwork is that it sheds light on issues which remain urgent despite the passage of decades or even centuries. Masterworks encourage a critical analysis of ideas or practices which were significant at the time of their writing and remain significant today. The enduring relevance of masterworks invites critical thinking on contemporary issues in criminal justice. The introduction to each selection alerts the reader to some of the persisting issues related to each of the readings in this book.

The editors of this anthology believe that critical thinking requires at least four ingredients. The first essential is pinning down “operational definitions”

of key words or phrases. An “operational definition” is a precise definition of what a word or phrase means in the context of a particular reading. For example, in the reading from Beccaria the concept of the “death penalty” includes the detail that it is an execution carried out in public view in a public place. That is quite different from the “death penalty” as understood in the United States today. But if a reader does not take into account the public aspect of the death penalty as understood by Beccaria, the reader will not really grasp Beccaria’s arguments. By the end of a course stressing critical thinking, students should acquire the annoying habit of asking, What exactly does that word or phrase mean? Besides bringing precision to a discussion, operational definitions sometimes expose assumptions and lead to further critical thinking. For example, recognizing the public character of the death penalty in Beccaria’s understanding of it invariably provokes animated discussion of the assumptions underlying modern theory and practice of the death penalty.

The second requirement for critical thinking is a firm grip on an author’s *ideas*. Ideas go beyond mere facts known then or now. Ideas consist of interpretations of the facts, the articulation of relationships between facts or events, and the implications of facts as perceived by the author. Sometimes the facts presented in a masterwork were discovered by the author; sometimes the facts were taken from research done by others. Particular facts may even have been wrong, yet an author’s ideas may be valid on the basis of other facts to be found elsewhere. What is special about a masterwork is how the author has used diverse facts to generate new ideas. The selections have been deliberately chosen to highlight the new ideas expressed in the masterwork.

The third ingredient in critical thinking is an assessment of an author’s ideas in terms of the evidence for the ideas presented by the author. The evidence presented to support an idea may be some form of reasoning, historical evidence, documents or records, analysis of texts, evidence from empirical research done by the author or cited by the author, case histories, or an author’s personal observations or experiences. What constitutes acceptable evidence has been different at different moments in history and varies from one discipline to another. The type of evidence and kind of reasoning used in a law reading may be quite different from the type of evidence and kind of thinking used in a criminology reading from a social science study. No matter what the reader’s own style of reasoning or taste in types of evidence, critical thinking requires the reader to know and judge the adequacy of an author’s evidence and reasoning for each key idea. It is the presentation of the evidence along with the ideas which makes critical thinking possible. Thus the selections in this collection include whatever presentation of evidence for the ideas was included in a masterwork.

Finally, critical thinking calls for digging out the unstated assumptions underlying an author's ideas. Discovering assumptions may be the most challenging aspect of critical thinking. Assumptions are notions so basic that an author takes them for granted, and so does the reader usually. The assumptions are common beliefs which are such an integral part of a culture that they are seldom held up for inspection and rarely challenged. For example, in a culture where it is generally agreed and therefore assumed that a legal system is a system of justice, it is rare for someone to demand an explanation of how a legal system can be called "justice." The assumptions made by authors, and often by readers too, are assumptions about human nature, about the causes of behavior, about society, about the necessity or adequacy of institutions or systems, about the effectiveness of common practices, and so on. Often the author of a masterwork has challenged basic assumptions of the world in which they lived, and it requires as much fresh thinking now for a reader to challenge assumptions of the author and of the world in which we live. The introductions to the selections do not deprive readers of the opportunity to discover on their own an author's assumptions. But the introductions do point a finger in the direction of some of the assumptions which may underlie the main ideas in a masterwork.

It is, then, with these three impulses that the reader should proceed: an appetite for some great works in the field of criminal justice, an eye on the history of ideas, and an urge to do some critical thinking.

Criminal Justice Masterworks

Historical Introduction: Criminal Justice and the Age of Enlightenment

The study of modern European and American ideas about crime and justice begins with the radical new ideas of the Age of Enlightenment. But to grasp how radical these new ideas were it is necessary to understand how people thought about crime and justice in earlier times. Ordinarily ideas evolve over the course of many centuries or even thousands of years. However, the Age of Enlightenment was a period of only about two hundred years, roughly the seventeenth and eighteenth centuries. It was essentially the time when Europeans began to take a strictly rational approach to everything, relying on reason rather than religion and tradition. It was an intellectual revolution because instead of adding to earlier ideas, it was a time when earlier ideas were rejected to a large extent and replaced with a whole new way of looking at everything. The new way emphasized reason.

Changing Concepts of Crime and Justice

Primitive societies consisted of small tribes or clans. In a society which lived by hunting and gathering food, a clan might consist of about thirty people with a patriarch or matriarch. With the introduction of farming a greater number of people could live in one place, and then there might be a more formal leader or a council of elders. People knew what was right and what was wrong from custom. There were no formal laws, and there were no lawmakers. There was only the ordinary way of living in the clan. The first “laws” in any sense were the decisions made by deciding disputes. Disputes within a clan or tribe were usually settled by the head of the clan or by a group of elders.

If there was an act of violence between individuals from different tribes or clans, it was likely to trigger a blood feud. Justice was a clan matter, not an individual matter. If a person from clan A killed a person from clan B, then somebody from clan B would revenge the act by killing someone from clan A. It was not necessary to kill the individual who committed the crime. The crime could be avenged by anybody from clan B killing anybody from clan A. In society based on separate clans, doing vengeance was the greatest of all virtues. The mark of a hero in ancient sagas, such as the tale of Beowulf, was his readiness to take vengeance for his clan, knowing full well that by doing so he probably condemned himself to become the next to die in the cycle of vengeance. Such was the custom and unwritten law of many ancient societies. Different clans lived in separate places, which put some natural limits on blood feuds until the dis-

tances between them were reduced by population increases and the development of agriculture.

Justice meant vengeance for a wrong. This idea of justice was refined with the maxim, "An eye for an eye, and a tooth for a tooth." This was a more refined sense of justice than an unspecified demand for unlimited vengeance. This maxim was intended to keep the violence of vengeance from escalating. It meant, "Only one eye for one eye, and only one tooth for one tooth." Excessive vengeance itself became a wrong. Equal retribution was justice; excessive retribution was injustice. This was a more advanced concept of justice.

A revolution in the idea of "justice" occurred when justice based on personal or clan revenge was outlawed entirely and replaced by punishment administered by government. This development may have been prompted by several factors. The practice of allowing people to get their own personal justice may have seemed inefficient because sometimes the innocent were not capable of getting their own revenge, and sometimes the revenge set off a chain reaction of people from different clans taking turns killing one another without any way to stop it. Also, as societies grew larger, personal revenge as justice may have become less necessary and less practical.

The concept of justice changed when clan responsibility began to be replaced by individual responsibility. The idea of the individual is itself an idea which has evolved very slowly and is still not fully accepted. In ancient societies people were seen by others, and by themselves, as part of their clan rather than as individuals. One's entire life was lived as a member of a clan. One's good or bad fortune was only a share in the good or bad fortune of the clan. One bore responsibility for whatever was done by any member of the clan. A person lived a whole lifetime within the same clan, and within the clan itself one's place was settled. A hallmark of the Renaissance in fourteenth and fifteenth century Italy was the development of a sense of individual self apart from one's identity as part of a group. Before the Renaissance a person was regarded as a Florentine or Venetian or Roman and only later as an individual. Even today some parents and teachers may punish all children for something done by only one member of the family or class, and in modern warfare whole villages may be destroyed because one or a few individuals have done something. Still, the idea of the individual and the corollary of individual responsibility have evolved notably since ancient times. The evolving sense of the individual redefines the meaning of justice.

Larger societies led to the development of government institutions, even such simple government as a king and the king's strong-arm men. The most ancient writings and depictions of kings portray them as protectors of their

people. Kings were also portrayed as spokesmen for deities and sometimes as themselves deities. These notions about kings, fostered by kings themselves, promoted general acceptance of the ruler's authority and thus provided legitimacy for government to intervene in the affairs of individuals. Once the authority of kings was established, justice by means of personal revenge not only threatened to undermine public order but also to undermine the king's right to decide what is just. Still, at first it may have seemed strange to let some government official, a person not even involved in the matter, take over the role of avenger. But kings may have demanded this as a right, and people may have been ready to accept it or unable to resist it. No matter the explanation, the old act of justice—personal revenge for some wrong done—became a crime. Justice was redefined as some sort of punishment administered by government.

In addition to the ancient ideas of a king as protector of the people and as the deity's spokesperson, from ancient to modern times various other ideas have been promoted to give legitimacy to government interventions in personal affairs. A purely secular philosophical argument in favor of justice as decided by government can be found as early as the fourth century B.C. in Plato's *Crito*. In that dialogue Socrates explained to his old friend Crito that, having been found guilty at his trial and having refused the penalty of banishment from Athens, Socrates must accept death according to the laws of Athens. Although in this case, said Socrates, the law reflected the will of the foolish multitude instead of the judgment of a wise man, the laws provided for the well-being of all citizens on the whole. Socrates argued that the laws bestowed such great benefits, in general, that one must accept even the unwise law and the unwise verdict of a particular trial, such as his own. The benefits of a lawful society outweighed any particular mistakes.

In England in the Middle Ages the legal idea which was used to support government intervention instead of personal vengeance was the idea that all people were the personal property of the king. Once kings claimed sovereignty over all their subjects, no one could take it upon himself to damage the property of the king. Only the king himself could do injury to his own property. Hence, if a person had a complaint against another person, it was necessary to bring the accused person before the king, or a representative of the king, for trial and punishment. A matter could not be settled between two individuals themselves. In keeping with this doctrine, "crime" became an offense against society, not just against another person. Eventually this also led to the doctrine that something could be a crime against society even if no individual seemed to be a victim of it. Thus, loitering or gambling could be-

come a crime. It was society, or at least the rules of society, which determined what was a crime and how it should be dealt with. In the Age of Enlightenment some of the older doctrines, such as the people being the property of the king, were challenged and some new rationales were formulated to give legitimacy to the notion that justice means trial and punishment by government for an offense against society.

In ancient writings one also finds a few suggestions that there could be justice without punishment. Some ancient religious traditions introduced the concepts of repentance and forgiveness. These traditions provided a basis for redefining justice as restoring peace and order instead of exacting revenge. From this point of view, the goal of reforming people could replace the goal of punishing them. Justice could be defined anew as restoring peace and order. But ideas can take ages to soak into a culture, they may follow a crooked path, and there is no guarantee that any particular idea will ever win general acceptance. Although the notion that people might reform themselves or be reformed by others was important in some ancient religions, it was not a part of the administration of justice. Repentance and preaching repentance to others could straighten out one's relationship to the deity but could not restore balance to the scales of justice in this world. Only retribution could do that. The need for retribution became a core concept in Christianity, especially in the eleventh century doctrine developed by St. Anselm of Canterbury that only the death of the son of the deity could atone for mankind's offenses against the deity. Punishment could not be waived. Understandably, an earthly system of justice, following the divine model, could demand no less. Crimes had to be punished before repentance could count.

Religious traditions also fostered the development of the idea that people should be judged by their intentions as well as by their actions. Twelfth century Irish monks developed the doctrine that one's intentions were even more important than one's deeds. The important thing was not what a person did, either good or bad, but what a person intended. The doctrine of Irish monks was able to influence all of European society because Irish monks served as personal confessors to popes. The idea that intentions outweigh deeds was so popular by the fifteenth century that a disgusted Dante wrote in *The Inferno*, "The road to hell is paved with good intentions." Dante wanted to hold onto the older idea that people should be held responsible for their actions regardless of their intentions. But the idea that intentions count, and could count more than actual deeds, gradually worked its way into the administration of justice. Lack of clear, deliberate intention could mitigate criminal charges; for example, killing someone might not be a crime if it was not intended. On the

other hand, intentions even without deeds, such as a conspiracy, could be crimes.

Ideas about the importance of people's intentions, together with the idea of justice as reforming individuals and restoring peace, found new voices in the Age of Enlightenment, particularly in the writings of Montesquieu (1689–1755), Jean Jacques Rousseau (1712–1778), and Cesare Beccaria (1738–1794). It was not on the basis of religion but on the basis of reason that Enlightenment thinkers thought it necessary to rethink the question, What is justice? They began with the premise that all governments and all laws are man-made and should be limited to what is reasonably necessary for the safety and happiness of people. The purpose of government was to provide for the greatest possible good of the greatest possible number of people.

The Enlightenment thinkers believed in “the pursuit of happiness.” This phrase carried the idea that individuals should seek self-advancement and happiness by whatever means do not interfere with the happiness of others. It was a rejection of the religious idea that happiness is to be sought in an afterlife. As far as crime was concerned, the important thing was a person's mental state. They questioned the need for punishment and whether punishment itself could reform. Starting with the Age of Enlightenment, the idea of reforming offenders became more prevalent both in criminal justice theory and in practice.

Thus the concepts of crime and justice developed over thousands of years. This was probably due to increasing populations, the need to check the spread of personal vengeance, the development of more organized and powerful governments, the potent influence of religious ideas, and finally the rational and humanitarian values of the Age of Enlightenment.

The Emergence of Law Codes and Commentaries

The first written law code was the Code of Hammurabi of Babylon about 2100 B.C. Hammurabi's Code was about 4,000 lines long, inscribed on a stone pillar erected in the marketplace. The Code contained laws about crimes, including sorcery, as well as laws about family issues, property rights and social order. It laid down the principle of “an eye for an eye, a tooth for a tooth.” As an ancient ruler Hammurabi was more than a king. Ancient kings were the religious leaders of their societies. Whatever earthly power the king had was derived from the belief that the king was a visible representative of the deity, perhaps even a deity himself. The ancient world was a religious world. Events were controlled by deities, society and government were established by deities, and the conduct of individuals had to conform to the wills of the deities. The Code assumed that the conduct of individuals would be

guided by the necessity to keep oaths sworn to the deities. Hence, at trials people were made to swear oaths that they would tell the truth. The people of ancient societies would dread the consequences of violating oaths to the deities.

The law code which Moses inscribed on stone for the Hebrews about three centuries later was the much simpler code of only ten commandments. The biblical narrative makes it clear that this code was prompted by the need to establish some uniform rules to bring order and govern a society which was verging towards chaos. But again it was considered a code which was the word of the deity. Moses was both the representative of the deity and the leader of the tribes of Israel. However this code of only ten commandments was so short and simple that before long a great many smaller, more specific laws were developed in order to apply the code to all aspects of life. In addition, over the centuries scholars wrote commentaries on the law and wrote about how the law was applied in particular cases, so that the ten simple commandments became only the bedrock of a mountain of written laws and commentaries covering all aspects of life. One of the ten basic laws was, Thou shalt not bear false witness. Again, those who might break the law learned to fear not only the vengeance of men but also the wrath of the deity.

In 593 B.C. Solon, the chief magistrate of Athens, composed the first written code of laws among the Greeks. Solon's code of laws was more like a constitution. It divided the people into distinct social classes based on their property, provided different rights for people of different classes but granted the rights of citizenship to all free people, and prohibited settling debts by selling a person into slavery. Although Solon's laws were not said to come from the deities, obeying the laws was seen as essential to keep from offending the deities. Even the government of Athens, where reason was so important, was considered a reflection of the wills of the deities. People who were accused of committing crimes but claimed to be innocent had to swear oaths of innocence, believing that false oaths would be punished severely by the deities.

In ancient Rome, about 500 B.C., a group of ten distinguished men was appointed to create a written law code based on existing customs. Their code was written on ten tablets and put on display in the marketplace. Another two tablets were added later. In Rome too, the authority of the deities as well as punishment by the authorities were the forces behind the laws. Every Roman boy had to memorize the tables of the law. The Roman laws, spreading with the Roman Empire, infiltrated the laws and customs of the various peoples in the empire and became the basic law code for most of Europe. Like the Mosaic code, the Roman code grew as commentators recorded spe-

cific examples of how the laws were applied in various situations and how the laws were adapted to changing conditions. By the sixth century A.D. the Roman code had become so unwieldy that the Emperor Justinian ordered a comprehensive revision and compilation of the laws, which became known as the Justinian Code. However, with the fall of the Roman Empire, ancient local laws and customs reasserted themselves in the nations of Europe. It was not until the rediscovery of the Justinian law code in the eleventh century that Roman law was revived and overtook local laws in most of the countries of Europe.

Under ancient law codes not all people were equal. Solon's code was most explicit in dividing society into distinct social classes. All ancient codes assumed and cemented the idea that different classes of people had different duties and rights. For example, in the Roman Empire citizens of the City of Rome had more rights than anyone else. Hence there were practical advantages for someone born elsewhere to be granted Roman citizenship. But the system contained its own time bomb. Merchants throughout the empire would refuse to do business with citizens of Rome because these merchants did not have equal rights if a business matter ended up in court. Eventually Rome had to grant equal rights to all merchants, Roman or not. This was just the first step in the development of equal rights under law for everyone. Still, as late as the time of the French Revolution, it was common to have separate laws and separate courts for different classes of people in the same society.

The real importance of the development of a written law code was that the law could then be known to everyone, and therefore it had to be applied in the same manner to everyone. The existence of a written law code reduced the power of a king to make arbitrary decisions. However, kings themselves could still change the laws, and kings themselves stood above the laws, similar to the way parents might make rules for their children. It was thousands of years later, in the Age of Enlightenment, that the development of law codes reached its peak when even kings were made subject to a code of law.

Law codes were themselves transformed by the development of lawyers and courts. Written law codes made it possible for lawyers to develop as a profession separate from lawmakers. Before the twentieth century most people could not read or write. They became dependent on lawyers as far as law was concerned. Written law codes also made it possible for courts to multiply like franchises with a common set of rules and procedures. The written codes provided some uniformity throughout a kingdom, however large. With many courts and many lawyers, eventually law took on a life of its own separate from rulers. In the hands of judges and lawyers dealing

with the problems of ordinary people, laws returned to their earliest origins in the common customs and morals of society as a whole. Lacking the authority and mystique of kings, judges and lawyers had to justify their legal system by showing that it was an expression of accepted customs and values. Laws came to be seen as the rules of society, not merely the will of the king.

The development of Middle Eastern and European law codes suggests that codes of law developed and were put into writing due to societies becoming larger and more complex. Laws were accepted because they defined people's places in society and created consistency throughout a kingdom. Over time laws enabled even the lowest classes of people to be more secure and free from the whims of capricious rulers. In time, government with law evolved into government under law.

Trials and Punishments

The earliest trials consisted of an accused person and, when possible, the victim being brought before a ruler to determine if the accused was guilty and what punishment was appropriate. Among the Greeks and Romans magistrates were appointed to settle cases. A single magistrate or a group of magistrates together might conduct the trial. In the early days a citizen who did not trust the magistrates could have a trial brought before an assembly of all the citizens of Athens or Rome, although later these citizen "juries" were reduced to a group of fifty in Athens and to a varying number up to seventy-five in Rome. In Rome there was a final appeal to the emperor, as in the earliest days.

Witnesses and evidence might be presented at trials. But the principal feature of trials, and sometimes the only basis for a trial, was the swearing of oaths. If the accused wanted to claim innocence, the accused had to swear a formal oath of innocence. The accuser has to swear a formal oath that the charges were true, not false accusations. The suspect had to get other people to also swear oaths that they believed the suspect was telling the truth in claiming to be innocent. The accuser got other people to swear that the accuser was telling the truth in making the accusations. Basically, whichever side got more people to swear oaths won the case. This procedure was not so strange in the ancient world where people grew up and lived together all their lives in small villages. The witnesses swearing oaths were well known to everyone in the village; they, together with the accused and the accuser, would continue to live in the village in almost every case. The system depended on the oath takers fearing the wrath of the deities as well as the retribution of their fellow citizens if their oaths were false.

Swearing of oaths remained the core of trials for noble people until well into the nineteenth century. But other kinds of trials were devised for ordinary people. At various times omens were used to get a judgment from the deities. In the Middle Ages, particularly in northern Europe, ordeals were developed, such as making a person walk on hot embers or dunking a person in a river with his hands tied behind his back, with the idea that the deity would not allow an innocent person to be harmed much by such ordeals. In practice most of a “trial” was the inquiry which took place beforehand to decide if an ordeal would be necessary. Also, historical records tell that people were often rescued from ordeals after only a few minutes; that was enough time to determine the deity’s judgment in the case. Eventually trials began to depend mostly on confessions. But, since guilty people could not be expected to confess readily, torture was used to induce an individual to make a confession. However, one by one these various ways of getting at the truth proved unsatisfactory. The history of trials is a history of disillusionment. People lost confidence in various procedures one after another. Disillusionment paved the path from oaths and omens to ordeals and then to torture.

Contrary to what one might imagine, the most sadistic punishments were not generally found in primitive societies. In small primitive societies punishments tended to be mild. The punishments for serious crimes were mostly banishments and limited mutilations which marked the person as a criminal for everyone to see, as in the biblical story of Cain who was punished for murdering his brother by being marked in some way and made to wander over the face of the earth. However, banishment was almost a death sentence; it meant that the person had to survive alone in the wilderness or had to try to gain acceptance among some other people at a time when in many languages the word for “stranger” was the same as the word for “enemy.” If the offender was not banished, punishment often consisted of shunning the offender or demanding some form of compensation. Perhaps the leniency of punishments in primitive societies was a consequence of everybody knowing everybody else, everybody living as a single small community, and nobody wanting to trigger a blood feud. Sadistic punishments were more characteristic of such societies as the Roman Empire, the empire of Alexander the Great, and the societies of medieval Europe. Sadistic punishments tended to begin as an aspect of empires, which imposed cruel punishments on the conquered peoples. But eventually the same treatments were applied to the people of the homeland also. It was the sadistic punishments of European societies that prompted outcries against cruel punishments in the Age of Enlightenment.

Punishments for crimes have changed over the centuries. Punishment by banishment continued to more modern times, but the banishment might be to some dreadful place, such as the French penal colony on Devil's Island or the English penal colony in Australia. In ancient and medieval times the most common type of mutilation was branding, usually on the face. Sometimes part of an ear or nose would be cut off, or a hand as in Islamic law for hardcore thieves. Fines were common in Roman law. Being reduced to servitude or outright sold as a slave was a way to handle the crime of not paying debts. A criminal might be sentenced to some kind of harsh public service, such as being a rower on a galley or a forced laborer in mines or on roads, for a number of years.

Ancient and medieval treatments of criminals emphasized punishment because punishment was seen as a necessary and effective way to deal with crime and criminals. To start with, punishment satisfied the necessity for vengeance in order to balance the scales of justice. Ancient western philosophers like Aristotle believed that justice was a cosmic matter, not merely a human matter. Aristotle considered the universe to be eternal, without beginning and without end, but sustained by a "prime mover" who is the architect of the universe. He believed that the universe reflects the perfection of the prime mover and, therefore, is of itself a just world. This is a fundamental assumption of Aristotle's treatise known as *The Nicomachean Ethics*. Acts of injustice by humans upset the just order of the universe. Order must be restored by some equivalent act which restores the inherent justice of the universe. From this point of view injustices could not be simply forgotten or forgiven.

Punishment was seen as a deterrent to turn other people away from crime. Finally, for those who believed that criminals should be reformed, punishment was seen as the most effective way to reform offenders. A strong belief in the efficacy of punishment enabled people to believe that punishment itself was a good thing. This belief was so deeply rooted in ancient and medieval religious traditions that even self punishment was viewed as a way of becoming a holier and better person. However, the philosophers of the Age of Enlightenment began to question the basic premise that a person can be made better by punishment.

Prisons were not used as a punishment in ancient times. A person might be held prisoner briefly before a trial. A person might also be held in a prison after a trial while awaiting punishment or banishment. But one would not be sentenced to prison as the punishment for a crime unless it was for nonpayment of a debt, with the expectation that some relative or friend would be induced to pay the debt and then the prisoner could be released. A prisoner was not clothed, fed, or kept warm at public expense. It was up to the pris-

oner's family or friends to bring food, clothes and any other necessities. From ancient times there were some people who brought food or clothing to prisoners as an act of charity. The only obligation of the authorities was to keep the person locked up. Prison conditions were horrendous until prison reform became an issue in the Age of Enlightenment.

The Ages of Renaissance, Discovery, and Enlightenment

The Age of Enlightenment was the culmination of the Renaissance and the Age of Discovery. The Renaissance, starting in Italy in the fourteenth century and spreading to northern Europe over the next two centuries, was the time when Europe rediscovered the ancient Greek and Roman cultures. Ideals of beauty were rediscovered in ancient sculpture, poetry and painting. Ideals of truth were rediscovered in the works of ancient philosophers, historians and scientists. The thinkers of the Renaissance were amazed that reason and experience alone, not Christian revelation, had produced such works as Plato's *Republic*, Aristotle's *Ethics*, Aristotle's studies of botany and Ptolemy's *Geography*. The invention of the printing press suddenly made these rare and nearly forgotten old works available to intellectuals throughout Europe. The result was a new faith in reason and an optimistic view of the capabilities of human nature. Part of this was a new view of nature as something governed by some sort of laws. These laws could be used to explain various events in nature, so that one no longer needed to explain events as acts of a deity. An earthquake or a stroke of lightning could be seen as a purely natural event rather than as an act of a deity punishing sinners.

The new Renaissance view of the world included a new view of human beings. Instead of thinking of human beings as bodies with souls infused directly by a deity, human beings were seen as simply another part of nature. When Copernicus and then Galileo published studies of astronomy and proposed the theories that the sun did not revolve around the earth and that man was not the center of the universe, the religious authorities correctly perceived that they were attacking the established Christian view of the world. The scientific studies of people like Copernicus and Galileo undermined the basic beliefs which were the foundation of society. Society could not remain the same if a purely natural view of the universe and of human nature replaced the Christian view of the world. Even ideas of the deity had to be made more rational and more compatible with the perceived laws of nature. Renaissance thinkers implied that genuine truth could be determined better by studies of nature instead of study of the Bible.

It was especially English scientists and philosophers, such as Isaac Newton and John Locke, who pushed the idea of laws of nature to the limits. Locke explained the human mind and the processes of thinking in terms of natural laws. He explained how physical sensations give rise to mental perceptions and how perceptions then combine into thoughts, following natural laws governing the connections between impressions. It was a law of the mind, for example, that two perceptions which often occur together, such as the brightness of the sun and the warmth of the air, would become associated with one another in the mind. The old view of the divinely infused soul as the distinguishing feature of a human being was replaced by a view of the human being as an entirely natural creature, part and parcel with the rest of nature and following natural laws like the rest of nature. Even the mind was a purely natural thing, following its own natural laws of sensory impressions and mental associations.

The Renaissance flowed into and mingled with the Age of Discovery. In the fifteenth and sixteenth centuries European navigators, inspired by the extraordinary tales of earlier merchant travelers like Marco Polo, pushed beyond the limits of the known world in quests for the gold of Africa and, later, for the spices of the Orient. Portuguese mariners pushed first down the coast of Africa and then around the Cape to India, where they connected to the trading routes from the Orient. The ancient Greek geographers Strabo and Ptolemy had pointed out that the earth is round, but seafaring adventurer Christopher Columbus believed (mistakenly) that it was smaller than Portuguese royal geographers had calculated, and hence Columbus thought that his little ships could make it all the way around to China by sailing west. The Portuguese said no to Columbus, but the Spanish authorities were willing, reluctantly, to sponsor his voyage on a low budget. When Columbus returned to Spain after his first voyage across the Atlantic, he still thought he had been to some islands and a peninsula of China. It was only on his second voyage that he realized it was a New World.

Columbus' voyages provoked not only a revolution in geography but also a revolution in ideas. By chance, Columbus' first voyage took him to islands of the northern Caribbean, where he encountered Taino Indians. The Tainos were extremely peaceful people whose traditions included sharing everything with others. They took their livelihood directly from the land and sea, which produced abundant food without much labor. The warm climate demanded only minimal clothing and shelter. Columbus' sailors were delighted that the natives gave them as presents anything the sailors took a fancy to, cheerfully brought food to them, built simple houses for them, did chores for them, and brought women to them as companions and helpers. When Columbus returned to Spain, his account of his first journey was published and read with

wonder throughout Europe. People concluded that these Tainos were proof that all human beings were originally gentle and loving beings living in idyllic harmony with a bountiful nature. The tale of the innocent, happy savage was a direct challenge to the traditional Christian view accepted throughout Europe that human beings were born sinners, selfish, ignorant, and prone to violence as a result of original sin. It was not until later voyages that Columbus encountered the fierce Arawaks and the bellicose cannibalistic Caribs of the eastern Caribbean islands. But later voyages were not so well publicized and could not uproot the new belief that human nature was innocent, kind, and sociable unless corrupted by modern civilization.

The new belief in the innocent savage implied that human nature could be trusted. The complex societies and cultures of the New World signaled that people were not by nature ignorant although they might be uninformed about many things. A society could be built on the basis of natural reason and skills without any divine intervention. The lessons of the Renaissance about the ability of unaided human nature to create a great civilization were reinforced by the Age of Discovery.

Medieval social order was based on the idea that each person was born into a particular place in society, whether a noble or a craftsman or a serf, and everyone should stay in their place. Even in the same noble family, there was the firstborn son who would inherit everything and the other children who would get only the charity of the firstborn. The Spanish conquistadors of the New World were individuals with little or no social standing in Spain who embarked on their voyages to win the wealth and power they could not have in Spain. They took advantage of the ocean separating the New World from Spain to create for themselves a lifestyle with huge estates and compulsory native laborers. By their own efforts they made themselves the equals of the Old World aristocratic families, as did the later Englishmen with Caribbean sugar plantations. An Old World assumption that people were born into a particular station in life in accordance with the will of the deity and that people should stay in their proper places crumbled before the New World assertion that the individual could become whatever individual enterprise could attain.

The conquistadors' belief that they could seize, slaughter or subjugate the natives of the New World was based on the belief that the conquerors were spreading Christianity by whatever means were necessary. This rationale kept the Old World authorities from interfering with the conquest. Farther to the north in this New World the British, Dutch and French were basing their conquests on the principle that the natives had failed to develop the land

whereas the Europeans had the skills and the means to develop the land and plant a higher civilization. This also defied Old World traditions about people staying in their place. The American colonists embodied a new belief in the rightness and proper rewards of individual industry as opposed to the traditional rights of hereditary estates and entitlements of nobility. Groups like the Puritans had made themselves unwelcome in the Old World by demanding that lower classes of people—but not the very lowest—be given rights previously reserved to upper classes. A new belief in the right of the individual to defy the established social order and seize any opportunity for self-advancement in the pursuit of happiness became the basis for a new social order in which people were created equal in some sense.

New Ideas about Government

During the French Revolution (1789–1799) the revolutionaries took over the churches and set up a statue of the goddess of reason in Notre Dame Cathedral in Paris. This act epitomized the Age of Enlightenment—the deity of the Enlightenment was a deity of reason. The Enlightenment challenged not only the basic institutions of European society but also the most fundamental beliefs and assumptions of society.

Seventeenth century Enlightenment thinkers, like the English philosopher Thomas Hobbes and the French philosopher Jean Jacques Rousseau, also began saying that society and government were the results of natural causes, not divinely ordained. If people formed a government it was because natural situations and basic human needs, such as the need for security, prompted people to develop forms of collective society and governments. Henceforward it became necessary for governments to explain themselves and to show what right they had to rule over people. It became a new faith that governments derived their powers from the people, not from a deity.

The Constitution of the United States, a product of the Age of Enlightenment, was conspicuous for making no mention at all of a deity. Although “In God We Trust” later appeared on American money and “under God” was added to the American “Pledge of Allegiance” in 1954, the ideas which were the foundation of the Constitution, as well as its text, began with, “We the People...” In theory, at least for the moment, the state was separated from religion.

The discovery of the New World presented a challenge to the system of government of the Old World. European countries were monarchies. Kings and queens were crowned in cathedrals to symbolize the belief that they were the representatives of the deity in ruling the earthly kingdoms. When the conquistadors discovered the Aztec, Mayan and Inca kingdoms, it provoked great

debate among the theologians at the University of Salamanca in Spain. These theologians could not imagine anything happening which was not the will of the deity. Their conclusion was that the New World kings also must have been chosen by the deity even if those kings did not have the Christian revelation. This led to a new theory about a natural world and a natural society which were not Christian but were not evil. From that time on, even for Christians there could be a legitimate natural society separate from any particular church or religion.

The monarchs of Spain, Ferdinand and Isabella, ordered the conquistadors to show the New World kings all the respect due to royalty. They knew that if people were allowed to abuse one king, they would soon abuse another. However, the conquistadors, always mindful of the ocean between themselves and Spain, ignored the royal commands and slaughtered the New World kings for their gold and lands. Henceforward kings were no longer regarded as sacred. The English beheaded their King Charles I in 1649, although in 1660 they restored the monarchy by accepting his son as King Charles II. However, the New World soon and permanently rejected kings. The American Revolution against the king of England also echoed back across the Atlantic in 1789, adding inspiration to the tumult of the French revolution.

A speech by King Louis XVI of France summarized the Old World view of government. The Parlement of Paris, a judicial and administrative body of the city, had attempted to block some new laws which the King had decided upon. Although these assemblies did not make laws, they were expected to approve laws before laws were put into effect. The King personally appeared before the Parlement and reminded them:

It is in my person alone that sovereign power resides.... It is from me alone that my courts derive their authority; and the plenitude of this authority, which they exercise only in my name, remains always in me.... It is to me alone that legislative power belongs, without any dependence and without any division.... The whole public order emanates from me, and the rights and interests of the nation ... are necessarily joined with mine and rest only in my hands. (Doyle, 1989, p. 38.)

King Louis XVI had supported and supplied the American Revolution against the British, but he was not ready for such a change in France. In the course of the civil disorders of the French Revolution, King Louis XVI was eventually beheaded. All the members of his family were also killed, so that there could be no direct heir to the throne. Henceforth the power of rulers depended on the will of the people. Lawmaking also passed from kings to

citizen lawmakers elected by the people. Soon afterwards Napoleon Bonaparte rose to power and had himself made emperor, and later in the nineteenth century a monarchy was reestablished in France for a time with the consent of the people. But European monarchies were no longer absolute. With limited functions left in the hands of the monarch, they became another form of democracy.

After the Enlightenment: Progress, Retreat, and Tolerance

A quick glance at the Renaissance, the Age of Discovery, and the Enlightenment might give the impression that there is an inevitable onward march of progress over the course of history. In the nineteenth century, after the Enlightenment, many people did believe in such a march of progress. But history is full of uncertainties, starts and stops, advances and retreats, and zigzags. On top of it all there are debates about what constitutes “progress,” especially when one considers cultural and social changes as well as technological developments. The Renaissance, for example, held and advanced scientific technology but retreated 1,500 years and more to recover basic ideas about the nature of the universe, human nature, society, government, and the pursuit of earthly happiness. The centuries between the fall of Rome and the Renaissance were viewed as “the Dark Ages.” Progress was found in a retreat to the ancient cultures of Greece and Rome before lurching forward in the Age of Discovery.

The Enlightenment thinkers of the seventeenth century tried to usher in an “age of reason.” They believed that the human mind, working carefully with the raw material supplied by the senses, could know reality. They trusted the mind more than the senses. Logic was the best proof of anything. However, nineteenth century concepts of science played down reason as a means of finding the truth; the “scientific method” demanded objective evidence, not just reasoning, to support any conclusion. Not only could the senses be deceived, but the mind also was subject to misperceptions, biases, false conclusions, and even unconscious aberrations. The scientists of the nineteenth century were not alone in questioning the adequacy of reason. Popular philosophers abandoned reason for “idealism” and “romanticism.” Idealism, recalling Plato, taught that the human mind can know only sense impressions and mental perceptions rather than reality itself. Romanticism elevated emotions above reason, emphasizing “knowing” through intuition and feeling. For melancholic beauty, the wealthy adorned their estates with imitation ancient ruins. For educated people the Enlightenment had provided mostly books of illuminating essays about the world, history and society. For the growing number of literate people the nineteenth century ro-

manics provided a new kind of literature consisting of mostly novels of love and tales of horror, whatever aroused the emotions most. The Enlightenment was in retreat.

For religion the Enlightenment offered “deism” in place of the miracles and ancient dualism of supernatural powers of good and evil contending for the souls of humans. Deism was belief in a deity of reason who created an orderly universe governed by laws of nature. The laws of nature were so grounded in reason that a deity of reason would not interfere with natural laws. It would be unreasonable to do so.

The Enlightenment was upstaged in the nineteenth century by a revival of religious fundamentalism in Europe and America with a reaffirmation of some earlier beliefs about the deity, the devil, miracles, and justice in an afterlife. The first seven presidents of the United States were deists; all of them believed in a deity of reason and natural law, but none of them professed belief in traditional Christianity. Their speeches included only vague occasional allusions to Christianity, apparently for political reasons. They may have held a common Enlightenment opinion that traditional Christianity was necessary for uneducated common people, who would form a more stable society because of their belief in submission to authority in this life and justice to be achieved in an afterlife. But by the middle of the nineteenth century, religious revivalism was so strong that no one could aspire to political office in the United States without professing traditional Christian beliefs. Revival meetings, stirred by great preachers, attracted vast crowds, and traditional churches flourished in the nineteenth century. Faith rose up again and challenged reason.

The seeds of a new development in society and in ideas about human nature had been planted in the seventeenth century in the colony of Rhode Island. This colony had been founded by Roger Williams, an extremely religious man who had fled for his life from the Massachusetts colony. He had excellent connections with England’s King Charles I; then with Oliver Cromwell, the leader of the revolutionary government which beheaded King Charles I; and after that even with King Charles II, who had Cromwell’s corpse removed from a tomb in Westminster Abbey and beheaded. Williams gave up his family inheritance rather than submit to a simple court procedure to claim it, because he considered it a debasement of religion to swear on a Bible to tell the truth in court. He also considered it a debasement of religion that the colony of Massachusetts was ruled as a theocracy by a committee of ten religious leaders. He wanted absolute separation of religion from government and politics. It especially annoyed the religious powers in

Massachusetts that Williams had obtained a royal charter to set up a colony next to them in which there would be no government affiliated religion. It meant, as Williams had spelled out in his colony's charter, that people of every religion would be welcome and legally equal in his colony, including various Christian sects, Jews, Moslems (called "Turks" in those days), and, most offensive of all, atheists. Perhaps as a consequence of this official tolerance, his colony's charter was the only one to include a Bill of Rights. Williams' good connections in England enabled him to hold onto his colony and its charter despite the efforts of the Massachusetts group to have him imprisoned or executed and to annex his colony. In fact, his connections were good enough for him to tell the English rulers that they had no right to give land in America to anyone because it belonged to the natives of the place. His colony was the only one created by purchasing the land from the native tribes, among whom he was known as a great peace maker.

Roger Williams is credited as the inventor of the idea of "tolerance." His colony was the first place in the world to give equality to all faiths and even to atheism. He lived in a world where most people were convinced that being a true believer included believing that all other religions were false and should be stamped out. It was an accepted fact that if one is right, the others must be wrong, and any true believer would do all that one could to promote the right and oppose the wrong. But Williams thought that a person could be a true believer and still live peacefully in society with other people who had different beliefs.

A tolerant society prompted a new idea about the human mind and human nature. If different faiths could live peacefully side by side in society, different ideas could live peacefully side by side in the human mind. The mind itself could become tolerant. Contrary to Enlightenment notions about human beings as purely rational beings, a person could hold firmly to beliefs which appeared to be contradictory, believing in both a natural and a supernatural world and keeping the two separate from one another. Thus an individual could be both rational and faith-based at the same time. A person could be rational in some aspects of life and faith-based in other aspects of life. One need not exclude the other. A wall of separation between church and state found a parallel in the mind: a wall of separation between faith and reason.

The revival of religion which took place in the nineteenth century had major impacts on criminal justice. Religious convictions and religious organizations played supporting roles and sometimes leading roles in lawmaking, court decisions, correctional institutions, and correctional philosophies. Criminology, too, gave some acknowledgment to the role of churches in

forming the law-abiding habits of citizens. Religious individuals and religious organizations led the way in developing humane penitentiaries and modern probation policies. Concepts of tolerance and individual rights informed not only lawmaking and court decisions but also philosophies and practices of policing. The Enlightenment thinkers generally assumed that human beings were the same everywhere, and so they did not give much thought to cultural diversity. However, the intensified contacts between cultures and the great population movements of the nineteenth and twentieth centuries have demanded a greater role for tolerance in the institutions of government, especially in criminal justice institutions.

The new-found tolerance of the nineteenth and twentieth centuries made it possible for the ideas of the Enlightenment to continue to exercise their influence despite the competing beliefs of reaffirmed traditional religions. The Age of Enlightenment had put on the table a new set of beliefs about human nature, society, government, and law. Some of the ideas of the Age of Enlightenment have become so widely accepted that they are now assumptions. It is taken for granted that ordinary people should choose their rulers and lawmakers. Where hereditary monarchs survive, what little power they may exercise is determined by citizens. The idea that people were born a certain way and that this determined their place in life has been replaced by the assumption that people have the right to become whatever they can. The idea that laws represent the will of a deity following the outlines of a revealed morality has been supplanted by the belief that laws are the products of human legislators and ought to be based on reason. The idea that all people should be equal as far as law is concerned is no longer debated. Since the Age of Enlightenment criminal justice has been viewed as an entirely natural, human creation which should be guided by reason and subject to the collective will of the people. Modern criminal justice writers seldom discuss these fundamental beliefs. The modern history of criminal justice begins with these basic ideas of the Age of Enlightenment.

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