

TERANCE D. MIETHE

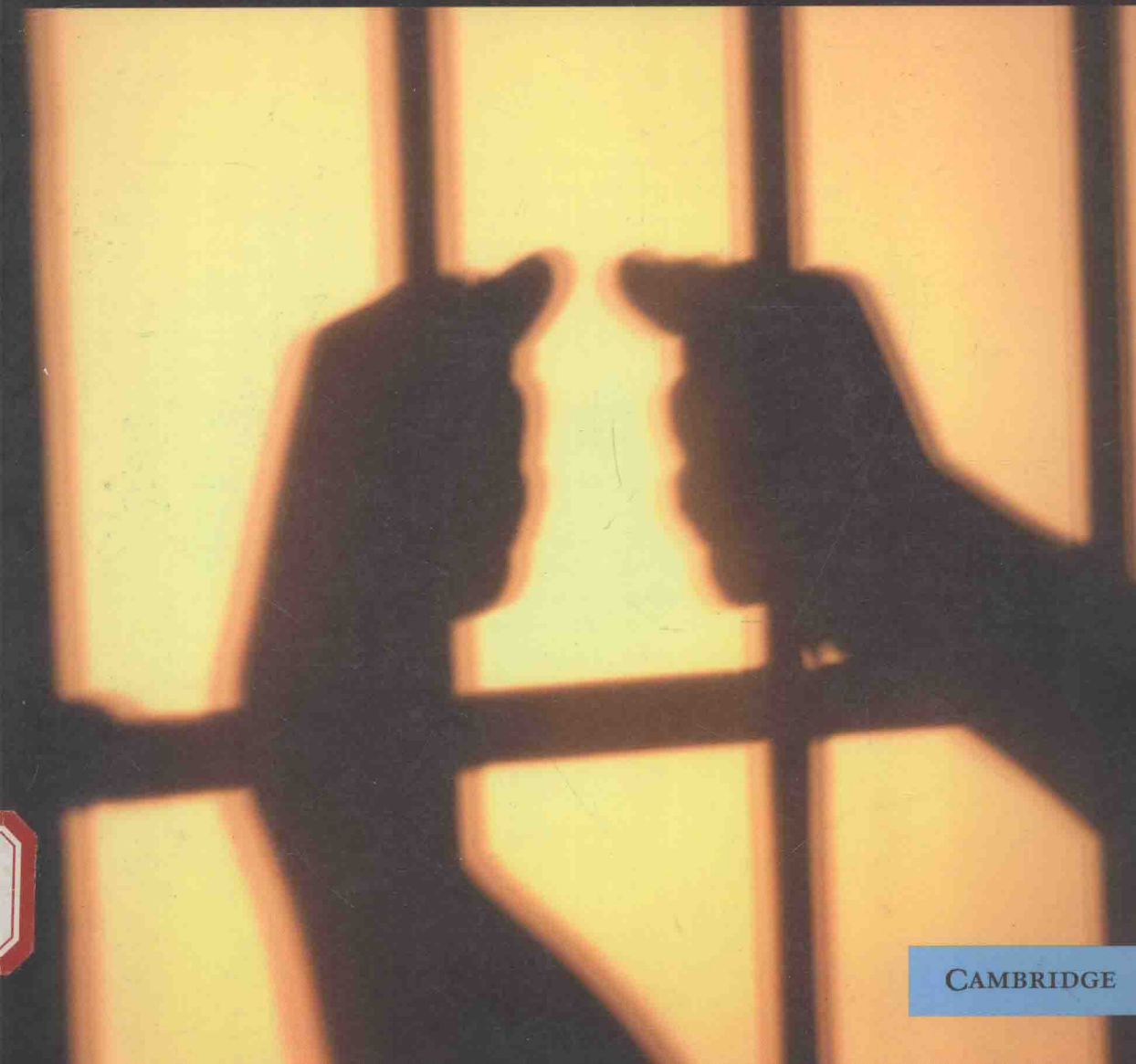
HONG LU

PUNISHMENT

A COMPARATIVE

HISTORICAL

PERSPECTIVE



CAMBRIDGE

PUNISHMENT

A Comparative Historical Perspective

Terance D. Miethe

University of Nevada, Las Vegas

Hong Lu

University of Nevada, Las Vegas



CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge CB2 2RU, UK
40 West 20th Street, New York, NY 10011-4211, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa
<http://www.cambridge.org>

© Terance D. Miethe and Hong Lu 2005

This book is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2005

Printed in the United States of America

Typefaces Poppl-Pontifex 9.5/14.5 pt. and Poppl-Laudatio *System* \TeX 2 ϵ [TB]

A catalog record for this book is available from the British Library.

Library of Congress Cataloging in Publication Data

Miethe, Terance D.

Punishment : a comparative historical perspective / Terance D. Miethe, Hong Lu.
p. cm.

Includes bibliographical references and index.

ISBN 0-521-84407-X – ISBN 0-521-60516-4 (pbk.)

1. Punishment. 2. Punishment – Cross-cultural studies. 3. Punishment – History.
I. Lu, Hong, 1966– II. Title.

HV8693.M54 2005
364.6 – dc22

2004049271

ISBN 0 521 84407 X hardback
ISBN 0 521 60516 4 paperback

PUNISHMENT

"In this unique textbook, which is scholarly yet accessible to students, Miethe and Lu approach punishment from a perspective that is both historical and comparative, addressing the global dimensions of punishment as few authors do."

Gray Cavender, Arizona State University

Informed by current scholarship, yet tailored to the needs of undergraduate students, this textbook presents a broad perspective on one of the most fundamental social practices. Punishment is the common response to crime and deviance in all societies. However, its particular form and purpose are also linked to specific structural features of these societies in a particular time and place. Through a comparative historical analysis, the authors identify and examine the sources of similarity and difference in types of economic punishments, incapacitation devices and structures, and lethal and nonlethal forms of corporal punishment over time and place. They look closely at punishment responses to crime and deviance across different regions of the world and in specific countries like the United States, China, and Saudi Arabia. In this way readers gain an appreciation for both the universal and context-specific nature of punishment and its use for purposes of social control, social change, and the elimination of threat to the prevailing authorities.

Terance D. Miethe is Professor of Criminal Justice at the University of Nevada, Las Vegas. He has authored six books in the areas of criminology and legal studies, including *Crime and Its Social Context* (1994); *Whistleblowing at Work: Tough Choices in Exposing Fraud, Waste, and Abuse on the Job* (1999); *Crime Profiles: The Anatomy of Dangerous Persons, Places, and Situations*, 2nd ed. (2001); *Panic: The Social Construction of the Youth Gang Problem* (2002); *The Mismeasure of Crime* (2002); and *Rethinking Homicide: Exploring the Structure and Process Underlying Deadly Situations* (2004, Cambridge). His research articles have been published in all the major journals in criminology and sociology, including *Criminology*, *British Journal of Criminology*, *Law and Society Review*, *American Sociological Review*, and *Social Forces*.

Hong Lu is Associate Professor of Criminal Justice at the University of Nevada, Las Vegas. She has authored numerous articles in the areas of criminology and comparative legal studies appearing in journals such as *Law and Society Review*, *British Journal of Criminology*, *Crime and Delinquency*, and *Justice Quarterly*.

FIGURES AND TABLES

FIGURES

3.1 Number of Abolitionist Countries over Time	page 59
4.1 Executions in Colonial America (1608–1800)	93
4.2 Proportion of Executions for Murder in Early Colonies	93
4.3 Social Profile of the Executed in 1800s	97
4.4 Lynchings and State-Based Executions	98
4.5 U.S. Incarceration Rates in Twentieth Century	103
4.6 Executions in U.S. History (Twentieth Century)	105
5.1 Death Sentences Given and Executions in Modern China	143
5.2 Prison Rates in China and Other Asian/Socialist Countries	144
6.1 Imprisonment Rates in Select Muslim Countries	184
7.1 U.S. Executions and Public Opinion over Time	197

TABLES

1.1 Types of Sanctions (Examples)	3
2.1 International Economic Sanctions (Examples)	29
3.1 Recent Embargoes and Boycotts (Examples)	54
3.2 Incarceration Rates for Select Countries	56
3.3 Death Penalty Across World Regions	60
4.1 Proportion of Superior Court Sentences in Massachusetts (1750–1796) Involving Monetary Penalties	89
6.1 <i>Hudud</i> Crimes and Punishments	167
6.2 Crime in Arab Countries in the 1970s	179
6.3 Executions in Select Muslim Countries	182
7.1 U.S. Execution Rates per Million Population over Time	207

PREFACE AND ACKNOWLEDGMENTS

Punishment is a basic fact of human life. We impose punishment in formal and informal settings for a variety of purposes of social control, social change, and order maintenance. Previous studies of punishment also indicate that its nature and prevalence vary over time and place.

Using a comparative historical approach, the goal in this book is to illustrate the similarities and differences in punishment responses over time and place. We review current punishment practices across world regions and use case studies of the United States, China, and Saudi Arabia for detailed investigation of the comparative and historical contexts of punishment. Through this comparative historical perspective, the reader should gain an appreciation of the universal and context-specific nature of punishment practices.

There is an enormous academic and popular literature on punishment. Sociologists and other social scientists have long been interested in the topic of punishment, social control, and the structure of society. Various human rights organizations like Amnesty International and Human Rights Watch also provide current reports and commentary about punishment practices throughout most countries of the world. By providing detailed references to this previous research and a list of suggested readings in each chapter, we hope this book will serve as a research guide and inspire others to further examine the nature and effectiveness of punishment responses to crime and deviance across a wide range of social, political, and economic contexts.

Our views about punishment expressed in this book are a reflection of our personal experiences and academic training. We are especially appreciative of the insights of colleagues and mentors that have shaped our perspective and challenged us to go beyond the conventional wisdom. While we are

responsible for any errors of omission and commission in this book, our colleagues have contributed to the potential insights about punishment that derive from this comparative historical study.

The authors would also like to acknowledge the assistance provided by Ed Parsons at Cambridge University Press. He has kept this project on pace and has treated us with dignity, respect, and good humor throughout the publication process.

CONTENTS

<i>List of Figures and Tables</i>	<i>page</i> ix
<i>Preface and Acknowledgments</i>	xi
1 Introduction: The Punishment Response	1
Punishment and Types of Sanctions	2
The Functions of Punishment	4
The Nature of Punishment and Societal Complexity	6
Effectiveness of Criminal and Civil Sanctions	8
Disparities in Criminal and Civil Sanctions	9
The Value of a Comparative Historical Approach	10
The Current Approach	11
Suggested Readings	14
2 Punishment Philosophies and Types of Sanctions	15
Philosophies of Punishment	15
Retribution	15
Incapacitation	17
Deterrence	20
Rehabilitation	22
Restoration	23
Types of Formal and Informal Sanctions	24
Economic Sanctions	25
Monetary Fines, 25 • Financial Sanctions in Civil Litigation, 26 • Other Economic Sanctions, 27	
Incapacitative Sanctions	30
Banishment and Exile, 30 • Incapacitative Devices, 31 • Incapacitative Structures, 32 • Other Types of Incapacitation, 33	

Corporal Punishment	33
Flogging, 34 • Branding, 35 • Mutilations, 36 • Capital Punishment, 37	
Summary	44
Suggested Readings	49
3 Contemporary Punishments in Comparative Perspective	50
Basic Problems in Comparative Studies	50
Economic Sanctions	53
Incapacitative Sanctions	55
Corporal Punishment	58
Geographical Differences in Capital Punishment	58
The Middle East, 63 • Caribbean Countries, 64 • Asian Countries, 65 • Africa, 69 • North America, 70 • Central America, 71 • South America, 72 • Europe, 72 • Oceania, 73	
Level of Economic Development	73
State-Sponsored Violence and Civil Unrest	74
Summary	75
Suggested Readings	80
4 Punishment in American History	82
Overview of Structural Features	82
Historical Context for Sanctions	85
Colonial America	85
Economic Punishment, 88 • Incapacitative Sanctions, 90 • Corporal Punishment in Colonial Times, 91	
Statehood, Slavery, and the Western Frontier	94
Capital Punishment, 96 • Lynchings in the Nineteenth and Early Twentieth Centuries, 97 • Social Control on the American Frontier, 99	
Twentieth-Century Practices	100
Economic Sanctions, 101 • Incapacitative Sanctions, 102 • Corporal Punishment, 104	
Comparative Analysis with Other Western Societies	106
Similarities with Western European Traditions	106
Differences with Western European Practices	107
Summary	109
Suggested Readings	114

5 The History of Punishment in China	115
Overview of Structural Features	116
Historical Context for Sanctions	118
The Feudal Tradition up to the Late Qing Dynasty	118
Economic Punishment, 121 • Incapacitative Punishment, 123 • Corporal Punishment, 124	
Nineteenth Century and Early Twentieth Century (1840s to the 1940s)	128
Economic Sanctions, 130 • Corporal Punishment, 130 • Incapacitative Punishment, 132	
Socialist China from 1949 to the Twenty-first Century	133
Economic Sanctions, 135 • Incapacitative Sanctions, 138 • Corporal Punishment, 141	
Comparative Analysis with Other Asian and Socialist Societies	143
Summary	145
Suggested Readings	153
6 Punishment Under Islamic Law	155
Overview of Islamic Faith and Law	155
Historical Development of Islam and Islamic Law	158
The Early History of Islam	158
Islamic Rule and Law, 632 A.D. to the Mid-twentieth Century	160
The Resurgence of Islamic Fundamentalism in the Twentieth Century	162
Social Control in Islamic Societies	163
Punishments Under Islamic Law: Their Purpose and Nature	164
<i>Hudud</i> Offenses, 165 • <i>Qesas</i> Offenses, 171 • <i>Ta'azir</i> Offenses, 172	
Procedural Rules and Evidentiary Requirements	174
Other Control Mechanisms and Sanctioning Bodies	175
Saudi Arabia	176
Crime Trends in Saudi Arabia and Other Islamic Countries	178
Criminal Punishments in Saudi Arabia and Other Islamic Countries	180
Corporal Sanctions, 180 • Incapacitative and Economic Sanctions, 183	
Summary	185
Suggested Readings	193

7 Issues in the Sociology of Punishments	194
Theories of Law and Society	194
Consensus and Conflict Views of Social Order	195
Legal Evolution and Societal Complexity	197
The Effectiveness of State-Sponsored Punishments	199
Social Engineering	199
Punishment and Minority Group Threat	200
The Deterrent Value of Punishment	204
Socioeconomic Disparities and Punishment	206
Cultural Values and Perceptions of "Evil" Societies	208
Universal and Context-Specific Patterns	210
Summary and Conclusions	212
<i>References</i>	217
<i>Author Index</i>	231
<i>Subject Index</i>	235

Introduction: The Punishment Response

Punishment is the universal response to crime and deviance in all societies. As such, it takes various forms. Criminal sanctions like imprisonment and death sentences are allocated and dispensed by state authorities. Other formal punishments involve civil lawsuits and administrative decrees to either reconcile or restore relations among the parties, compensate for personal injuries, and/or prevent further wrongful conduct through restrictions of ongoing practices. Punishment may also involve various types of informal sanctions by family, peers, and extralegal groups like vigilante committees and paramilitary organizations to promote their own interests.

Different types of punishments are used for different purposes. Criminal sanctions serve to reinforce cherished values and beliefs, incapacitate and deter those who may be considering criminal misconduct, and often function to maintain power relations in a society and to eliminate threats to the prevailing social order. The regulation and maintenance of social order is also an important function of civil and administrative sanctions. Both formal and informal punishments may further serve to dramatize the evil of particular conduct in a society, enhance communal solidarity against external threats, and provide the means for social engineering efforts directed at improving the quality of life.

Even a cursory look at punishments, however, reveals that they vary widely over time and place. Formal sanctions by the state or other "official" bodies were largely unknown in earlier agrarian societies, whereas social order in modern industrial societies is possible in many cases only by an elaborate system of formal sanctions. Variation also occurs in the use of particular sanctions within countries over time. A comparative historical approach

offers a valuable way to more fully understand this variation in punishment over time and place.

An investigation of punishments from a comparative historical perspective becomes even more important within the current context of global economies, world systems, and multinational penetration. Within this increasingly smaller and interconnected world system, a comparative historical approach challenges our ethnocentric beliefs of "good" and "bad" practices based on our particular cultural and national experiences. The potential discovery of punishment responses and principles that transcend boundaries of time and space provides an empirical basis for improving our understanding of criminal sanctions and punishments in Western and non-Western societies alike.

The purpose of this book is to explore punishments from a comparative historical perspective. We describe the purposes and types of punishments over time and place. By exploring the use of lethal and nonlethal punishments across different historical periods in particular countries, we illustrate the similarities and differences in punishment responses across contexts. We anticipate doing so will demonstrate the value of a comparative historical perspective for studying crime, deviance, and punishment.

PUNISHMENT AND TYPES OF SANCTIONS

All societies and social groups develop ways to control behavior that violates norms. Socialization is a basic type of social control that seeks conformity through learning processes and the subsequent internalization of group norms as personal preferences. Social control is also achieved directly through external sources that compel individuals to conform through the threat of societal reaction. Regardless of whether conformity results from personal desires or external compulsion, conformity is ultimately achieved through the use and threat of sanctions.

As an instrument of social control, sanctions vary in their nature and source. Positive sanctions are rewards meant to encourage conformity to norms, whereas negative sanctions are punishments to discourage norm violations.¹ Based on their source, sanctions are considered "formal" when they are imposed by the state or by other organizations that have the legitimate authority to do so (e.g., churches, educational institutions, business

TABLE 1.1: Types of Sanctions (examples)

	Positive (rewards)	Negative (punishments)
Formal	Promotions Bonuses Awards/medals Honorary titles	Fines/forfeitures Probation/revocations Incarceration Torture/death penalty
Informal	Kiss/hugs Praise Respect Trust	Gossip Ridicule Ostracism "Street justice"

Source: Adapted from Clinard and Meier (1985)

organizations). In contrast, informal sanctions are unofficial actions by groups and individuals. These include sanctions imposed by family, friends, and quasi-legal bodies such as vigilante groups, paramilitary forces, and local "regulators."

Sanctions also vary according to their magnitude and form (see Table 1.1). As punishments designed to inflict pain, negative sanctions can vary in intensity from minor inconveniences (e.g., small fines) to death (i.e., capital punishment). The form of these sanctions may also differ, involving economic costs, physical restraints, and/or corporal punishment. For example, parents may choose to discipline their children through the denial of their allowance (an economic sanction), "grounding" them to their home (an incapacitative sanction), or by spanking them (corporal punishment). Governments may assign criminal penalties that also include monetary fines, imprisonment, and death sentences.

Positive sanctions also vary in their magnitude. The continuum for positive sanctions may range from a pat on the back and word of praise, to large monetary raises and promotions for high work performance, to the awarding of multimillion-dollar mergers and acquisitions. It is more difficult to view forms of incapacitation and corporal punishment as positive sanctions, unless one considers criminal penalties like suspended jail sentences, the earning of "good time" credits while in prison, pardons of death sentences, and/or the reduction in the number of lashes with a whip as a "reward."

Although both positive and negative sanctions are important for understanding social control in societies, our focus on punishments necessitates

an emphasis on negative sanctions. Within the area of negative sanctions, we also focus primarily on state-sponsored sanctions (e.g., criminal penalties, civil litigation judgments) and the actions of various quasi-governmental groups that impose extralegal sanctions. By focusing on these punishment responses in different times and places, we hope to learn about convergent and divergent aspects of societal reaction to deviance in various comparative historical contexts.

THE FUNCTIONS OF PUNISHMENT

The functions of criminal and civil punishments in any society depend largely on the prevailing social, economic, and political conditions in that society. In small, undifferentiated societies characterized by value consensus, sanctions are used to preserve social order by maintaining the status quo and regulating and controlling social relations. In contrast, criminal and civil sanctions in more diversified societies are often viewed as both sources of order maintenance and instruments for the protection of special interests.

Across different times and places, criminal sanctions have been designed to serve multiple purposes. These purposes include the reinforcement of collective values, the protection of the community through the physical

Criminal punishments are used to reinforce collective values, physically incapacitate and rehabilitate offenders, deter misconduct, provide restoration or compensation, and eliminate threats to the prevailing social order.

incapacitation of convicted offenders, the rehabilitation of the offender, the deterrence of individuals from repeat offending (known as specific deterrence), and serving as an example to deter others from committing crime (known as general deterrence). Some criminal and civil sanctions (e.g., monetary fines, victim compensation) are designed for restorative purposes. In addition, sanctions administered in public places often

provide important symbolic functions by either dramatizing the evil of particular conduct or illustrating the fairness of legal proceedings.

According to the conflict perspective on law and society, the primary function of legal sanctions is to preserve and protect the interests of those in power. This is done in various ways through the development and application of civil and criminal laws. For example, it has long been argued that the criminal law is designed to criminalize the greedy actions of the powerless and to legitimate the same activities by the powerful.² Machiavelli's comment in

the seventeenth century that “who steals a handkerchief goes to jail; who steals a country becomes a duke” conveys the same idea.³ More generally, social control is a major purpose of the law for conflict theorists, both as a mechanism of gaining control over goods or services and as a means of controlling dissent.

The use of legal sanctions to maintain one’s cumulative advantage is reflected in a wide range of civil, administrative, regulatory, and criminal laws. For example, the American Medical Association (AMA) in the United States has long been opposed to alternative medical providers (e.g., chiropractors, herbalists) to maintain their financial interests from the monopolistic control of medical treatment and practice. Primary opponents of legalizing marijuana are often groups like the tobacco and distillers industries that desire to preserve their control over the legal drug market. Oil companies are usually the major opposition to mass transit for similar economic reasons. The widespread use of licensing, external auditors and inspectors, building codes and ordinances, and other regulatory activities serves a manifest function of providing some protection to the public, but these same activities are often proposed and developed to preserve a particular group’s cumulative advantage.

The primary ways in which legal sanctions serve to control dissent are through various selection processes, civil actions, and the application of criminal sanctions. Access to political power in most countries is limited by money and contacts, and individuals or groups who pose a threat to the prevailing regime may be controlled through adverse publicity, denial of material benefits (e.g., student dissent is controlled by cutting back of student aid programs), civil commitments to mental institutions and rehabilitation centers, and imprisonment for criminal offenses. Federal agencies like the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and the Internal Revenue Service (IRS) provide a largely covert but equally effective method of controlling dissent in the United States. The use of secret police organizations and death squads are coercive social control responses to dissent in other countries.

Criminal and civil sanctions also function as a tool for social engineering, or “purposive, planned, and directed social change initiated, guided, and supported by the law.”⁴ However, the ultimate goal of social engineering varies across theoretical perspectives. Achieving maximum harmony for the

greatest good and social integration are the goals of social engineering within a functionalist perspective that emphasizes stability, collective solidarity, and interdependency among the units and institutions within social systems. Social integration is important in conflict theories of social order only when efforts at social engineering result in maintaining one's position. To conflict theorists, the control of dissent and those who pose a serious threat to prevailing interest groups is the role of the social engineering function of both criminal and civil sanctions.

THE NATURE OF PUNISHMENT AND SOCIETAL COMPLEXITY

It is a widely held belief among sociolegal scholars that criminal and civil sanctions are developed and shaped by the prevailing social conditions in a society. This link between punishments and the structure of society is reflected in Emile Durkheim's views about punishment and types of solidarity in societies; Philippe Nonet and Philip Selnick's analysis of transitional legal systems and the movement from repressive to responsive law; Donald Black's work on the behavior of law; Michel Foucault's treatise on changes over time in the state's power to control the body, mind, and "souls" of its subjects; and Norbert Elias's argument about the growth of "civilized sensibilities" in modern society that shape how punishment is dispensed.⁵ Although these authors vary in their focus on particular elements, there is a general agreement that the nature of punishment changes through the historical transition from primitive or early tribal law to the development of modern legal systems.

Early tribal law or what is also called "primitive" legal systems is linked to small, homogeneous, and undifferentiated societies. Social order is maintained through informal sanctions that are connected to shared customs, norms, and traditions. Laws reflect and protect these most cherished values and beliefs. Although punishment is often viewed as a simple, automatic response to deviance, Durkheim contends that punishments under certain conditions also serve as social rituals to bring together community members and provide a forum for reaffirming and intensifying their commitment to these shared values and a common identity.⁶ Repressive justice is often administered in these homogeneous societies characterized by what Durkheim calls mechanical solidarity, with diffuse forms of ritual punishments being used to reaffirm collective values and denounce "evil."⁷