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A Preface

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United States Senate

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THE TASKS OF PENOLOGY:

A SYMPOSIUM ON PRISONS AND CORRECTIONAL LAW (PART I)

A PREFACE

ROMAN L. HRUSKA

CORRECTIONS IN TRANSITION

MYRL E. ALEXANDER

THE CRIMINAL LAW SYSTEM

KARL MENNINGER, M.D.

WHAT IS WRONG WITH THE PRISON SYSTEM? NATHAN LEOPOLD

PUNISHMENT, CORRECTIONS AND THE LAW

GERHARD O.W. MUELLER

To no other institutions of learning in the world do so many postgraduates return for advanced instruction as to those colleges of crime which a still unenlightened civilization has erected for a quite different purpose.

Franklin D. Roosevelt

A PREFACE

Senator Roman L. Hruska*

The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country.

Winston Churchill, 1910

No one can fault the observation that "in corrections, as in every other field, one can never afford to stop learning."¹ Presumably the advice was for the benefit of penologists. However, it could be heeded just as well by lawyers, judges, legislators, newspaper editors, employers, and desk sergeants, all of whom at one time or another have wondered about the workings of our prisons and the practice of punishment.

In his book, *Prisons and Beyond*, Sanford Bates asked the question, can we improve our prisons and yet deter the potential criminal?² In one sense it might be said that the purpose of this symposium is to probe that precise question. I suspect that in the process further proof will be forthcoming supporting Bates' lifelong conviction that it can be done.

Prisons as an apparatus for handling the offender will be with us for a long time to come, simply because in many situations we do not know what else to do with him. In almost every case, however, sooner or later the prisoner must be returned to society. If the public is actually to be protected—beyond the matter of temporary removal and isolation—presumably the prisoner should emerge from prison a better man than when he entered. Whether and how the offender can be changed become matters of primary importance. Meanwhile, during the time the offender is in prison, he must be controlled. Control is necessarily such a major part of the day-by-day operation of a prison that it has been said "imprisonment is very likely to be defined as a success if only it does not make the offender worse."³ This dilemma between the demands of control and the desires for change—as it were, between punishment and rehabilitation—is what places the correctional apparatus, in the words of one writer, in an "uneasy and irra-

* LL.B. 1929, Creighton University; United States Senator.

¹ GLASER, *THE EFFECTIVENESS OF A PRISON AND PAROLE SYSTEM* 497 (1964).

² BATES, *PRISONS AND BEYOND* 73 (1936).

³ SYKES, *THE SOCIETY OF CAPTIVES* 35 (1958).

tional equilibrium."⁴ James V. Bennett, until recently Director of the United States Bureau of Prisons, described the warden's dilemma perfectly:

On the one hand, prisons are expected to punish; on the other, they are supposed to reform. They are expected to discipline rigorously at the same time that they teach self-reliance. They are built to be operated like vast impersonal machines, yet they are expected to fit men to live normal community lives. They operate in accordance with a strict automatic routine, yet they are expected to develop individual initiative. All too frequently restrictive laws force prisoners into idleness despite the fact that one of their primary objectives is to teach men how to earn an honest living. They refuse a prisoner a voice in self-government, but they expect him to become a thinking citizen in a democratic society. To some, prisons are nothing but 'country clubs' catering to the whims and fancies of inmates. To others the prison atmosphere seems charged with bitterness, rancor and an all-pervading sense of defeat. And so the whole paradoxical scheme continues, because our ideas and views regarding the function of correctional institutions in our society are confused, fuzzy and nebulous.⁵

It would seem quite essential, therefore, to reassess our expectations in the interest of formulating clearer and more realistic policies. Eventually, in that regard, we must pose the question, what is the future of punishment? We know that historically punishment has been relegated to a role of lesser importance. One only has to browse the writings of Beaumont and Tocqueville to measure in such terms the progress in penology in this country over the past twelve decades. Their carefully documented travels and reports led inescapably to the appalling conclusion that "while society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism."⁶

Control in the present state does not imply cruelty. Humane policies and compassionate attitudes long ago rid our prisons of such practices. I do not mean to imply that the "pains of imprisonment"⁷ are imaginary, but we no longer send offenders to prison for punishment, but as punishment.⁸ It is in this sense that the new era of penology finds its challenge. Expressed by John Conrad: "What is the minimum punishment needed to main-

⁴ CONRAD, *CRIME AND ITS CORRECTION* 57 (1965).

⁵ Bennett, *A Report of the Work of the Federal Bureau of Prisons, Federal Prisons*, 3 (1948).

⁶ BEAUMONT & TOCQUEVILLE, *ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND THE APPLICATION IN FRANCE* 79 (reprint 1964).

⁷ SYKES, *op. cit. supra* note 3, at 63.

⁸ BATES, *op. cit. supra* note 2, at 35.

tain control and the maximum which can be tolerated by the objective of social restoration?"⁹

The prerequisites of change in the "new penology"¹⁰ contemplate more than humane control. Desirable and necessary as it is to seek more diversified facilities, better trained staffs and a wider range of inmate programs, these alone will not resolve the dilemma existent in the prison world. Other measures must be available as practical alternatives. As a start, for example, the correctional apparatus should be able to reach beyond its own walls in its programs of rehabilitation. This step in the direction of prison improvement was taken this year when Congress enacted the Work Release Bill.¹¹ This law was described by the new Director of the United States Bureau of Prisons, Myrl E. Alexander, as the most important legislation affecting the prison system in the past thirty years. Essentially, it authorizes the use of residential community treatment centers ("half-way houses"), emergency furloughs and community employment or training to provide opportunities for prisoners to get started in productive careers before they are released from their terms of imprisonment.

The law grew out of recommendations of the Senate's National Penitentiaries Subcommittee on which I serve. Its provisions were drafted on the basis of studies that the period immediately following release from prison is most critical. "It is during this period that all too many offenders get back into trouble as a result of an almost total lack of resources, guidance, employment, and even food and shelter."¹² The measure by its terms should enhance the prospects of rehabilitation and in turn promote the essential interests of society—crime prevention.

In entering this new field of corrections, there is more learning to do. Understandably the reforms will be gradual, for the field is "overcrowded with uncertainty."¹³ Yet the consequence of inaction is clear. The lessons of history aside, empirically it has been demonstrated that to stand pat will not only defy the consensus, it will court disaster. This symposium sponsored by the law college is most timely as new attention is being given to what lies beyond once an offender is brought to justice.

⁹ CONRAD, *op. cit. supra* note 4, at 302.

¹⁰ Schnur, *The New Penology: Fact or Fiction?* 49 J. CRIM. L., C. & P.S. 331 (1958).

¹¹ Pub. L. No. 176, 89th Cong., 1st Sess. (Sept. 10, 1965).

¹² S. REP. No. 613, 89th Cong., 1st Sess. 2 (1965). See also GLASER, *op. cit. supra* note 1, at 488-89.

¹³ EATON, *STONE WALLS NOT A PRISON MAKE* 24 (1962).