

1966

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Recommended Citation

Myrl E. Alexander, *Corrections in Transition*, 45 Neb. L. Rev. 10 (1966)

Available at: <https://digitalcommons.unl.edu/nlr/vol45/iss1/4>

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CORRECTIONS IN TRANSITION

Myrl E. Alexander*

Problems of crime and punishment have been among the dilemmas of mankind since the days of Adam and Eve. The use of imprisonment, as a form of punishment, is one of them.

Jails, lock-ups and prisons of various kinds have been in existence for centuries, but until fairly recent times these were used mostly as places of detention for offenders until some other disposition could be made of them. More popular than imprisonment were such barbarous punishments as public execution, mutilation, branding, and banishment. About the time of the French Revolution, waves of public indignation over such indiscriminate atrocities set the stage for a series of prison reforms that particularly affected the countries of Western Europe.

Out of the same kind of humanitarianism that had carried them into other ventures, the Quakers of Philadelphia conceived of a new purpose for prisons. At a time when crime of any kind was looked upon as sinful behavior, the Quakers became convinced that criminals could be redeemed if only they were placed in solitude where they could pray, meditate their sins, and reconstruct their lives through patient religious guidance. This reasoning was given enough popular support that the old Walnut Street Jail in Philadelphia was converted for this purpose. Prisoners were confined in complete isolation from the outside world and from each other. While some may have been redeemed, it is known that many others deteriorated both physically and emotionally, and some went completely insane. Man is a social animal, albeit a sinful one at times, who cannot endure the privation of complete solitude for long intervals of time.

This experiment in penitence (from which derives the word "penitentiary") as an exclusive means of redeeming criminals was a failure. Yet, this failure has been of great significance in the nearly 200 years that have elapsed since then. The experience of the Walnut Street Jail led to modifications and further experimentation in the use of prisons, both here and in many other parts of the world. It gave rise to a belief which has become basic to sentencing and a wide range of correctional practices: namely, that criminal behavior can be redirected.

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Thus, imprisonment, as it is used today in this country and in others throughout the world began as an experiment in punishment and reformation less than 200 years ago. It is still an experiment, and, unfortunately, it will remain an experiment for a long time to come. As a means of punishment and as an instrument with which to change criminal behavior, imprisonment still is a failure when it must be acknowledged that even among the best correctional institutions at least thirty per cent of their inmates become repeaters. Why is this so? Is it that prisons and other correctional institutions, as devices for the treatment and control of offenders, have never been fully tested?

BASIC CORRECTIONAL PROBLEMS

There are no direct answers to these questions, and none are possible without an appreciation of the problems and limitations under which prisons and indeed all other correctional devices, have functioned up to the present time. Among the many, I should like to examine four of them with you.

By far the greatest handicap to correctional practice, from the very beginning, has been the lack of an acceptable theory of criminal behavior. Why some people commit crimes today is little better understood than the explanations that were sought for violations of primitive tribal customs and mores. To add to the dilemma, there is widespread tendency to view all deviant behavior as being criminal behavior when, in fact, a crime is a crime only when a particular act is declared to be unlawful by statute.

Any review of the theories which have contributed most heavily to such understanding as we have—the ones which also have figured prominently in the systems of criminal justice with which we are acquainted—must recognize that a theory of criminal behavior is not a theory of crime. It does not explain why the behavior in question is criminal or non-criminal. This is determined by the law. Thus, we are concerned with two groups of factors: Those which are thought to determine criminal behavior and those which are society's definitions of what it considers to be criminal. It must be remembered, too, that both groups of factors are influenced by time, place, and the kind of society in which we live.

I wish that time would permit us to explore in depth the many theories of crime and the causes of criminal behavior. It is a fascinating study in itself. The prolonged "classical" era of criminology, which straddled much of the eighteenth and nineteenth centuries, was one of numerous particularistic theories

which attempted to explain crime and criminals largely on the basis of speculation. Many of these theories were in conflict with each other and were not easily reconcilable. In 1915, William Healey published a study of individual case histories. This started an ever-widening attempt to discover the relationship of this or that factor to crime and delinquency. These studies have provided a background of knowledge from which latter-day theories have emerged and have permitted numbers of reformulations which have inspired the thoughts of sociologists, criminologists, and psychologists alike. The one characteristic common to nearly all of them is the principle of multiple causation among individual offenders in contrast to single causation for crime or criminals in general.

Examples: The theory of "anomie" (meaning lawlessness or the absence of norms) sees crime and delinquency resulting from breakdowns in the regulation of personal goals to the extent that men's aspirations become unlimited. A long popular theory of motivation saw criminal and delinquent behavior as being related to basic wishes which for the most part are conscious and predicated upon social values as well as upon organic needs. Because it has been impossible to explain adequately why one person commits a specific crime while another, with almost identical traits, experience, and social situations, does not, a theory of differential association has evolved which sees criminal behavior stemming from the same processes that produce lawful behavior. The difference lies in the associations that are formed with persons who do or do not commit crimes. Other theories view criminal behavior as being related to personality types, the processes of growing up, or the neuroses and reactions to the lack of opportunity.

The judgment seems inescapable that existing theories do a much better job of describing delinquent and criminal behavior and the circumstances in which it occurs than of explaining why it exists at all. We are left fairly close to dead center with an unclear, bewildering, and sometimes controversial theoretical framework for understanding causes and relationships and for establishing the basis for prevention, treatment, and control of crime and delinquency. This is a unique situation among the social problems of our times, and it accounts for the many dilemmas that arise from the feeling of necessity to do something about an intolerable over-all problem about which much is unknown. In the resultant confusion and disagreement, it is a wonder that we are not more ineffective in our efforts to cope with the rising tide of crime and delinquency than we are.

A second underlying handicap for correctional practitioners has been described as the "circle of rejection". This describes the "natural" reaction of people who view irrational, irresponsible, and at times, unpredictable and threatening behavior with a mixture of fear, frustration, and frank bewilderment. As applied to the field of mental health, until very recent times, it was thought that such behavior could only be the work of the devil and that when an insane person was committed this was God's punishment for the commission of sin. In our field, we live with the reality that there is no love lost on offenders, especially if they are adults. The term "offender" alone, conveys the feeling of rejection of people who have committed unlawful acts. The fact of imprisonment is in reality a form of rejection or temporary banishment of offenders from community life in free society. This is keenly felt by correctional practitioners, by the inmates themselves, and by the general public.

Correctional workers of all kinds, whether they be members of institutional staffs, probation officers, or parole officers, come from all walks of life. Along with their talents and capabilities, they bring to their work a body of attitudes, beliefs and prejudices that relate to the cultural values inherent in our society. Often included among them are rejective attitudes toward offenders. Through training and experience these become modified. However, correctional workers are still active, participating members of community life where, by association, they may be looked upon as inferior people. Why else would anyone choose to work with convicts? This identification is one of the many sources of emotional stress with which one learns to adjust.

For inmates, the constant awareness of rejection tends to re-enforce already uncomfortable feelings of inferiority. When coupled with the equally uncomfortable feelings of guilt which the majority of inmates experience the burden of emotional stress becomes heavy indeed. A psychiatrist could explain more adequately than I the nature and effects of intense and persistent emotional stress on the human mind and body. Suffice it to say here, that it is little wonder some prisoners react to stress by cynicism, hostility, and at times, violent counter-aggression, thus completing the "circle of rejection".

This problem is seen, also, in what is so often called public apathy. I doubt that seeming indifference is apathy at all. True, each of us is concerned over those things which affect us most, but we can become concerned about anything only to the extent that we understand it and perceive that we are either affected directly or are convinced that we have some fairly clear-cut re-

sponsibility. It is quite possible that what is seen as public apathy is, in reality, a feeling of rejection toward offenders which has not yet been replaced by a sense of personal commitment to a rationale that has greater meaning.

Another concept, "he who sins must suffer" has been a self-evident axiom of justice throughout the ages. Belief in a direct connection between wrong-doing and reprisal has been embodied in several of the great religions of the world, including Christianity. Transgressors and the wayward have been punished in many ways and for many reasons. Typically, a rationale of the punishment has come after the fact. Thus, punishment has been justified as retaliation or retribution, as a deterrent to the offender and others, and for the purpose of "teaching a lesson" or rehabilitation.

The argument for retribution has been weakened by increasing evidence that criminal behavior is neither the exclusive nor direct result of the exercise of "free will". Even so, the desire for vengeance as an "instinctive sense of justice" in the ordinary man remains strong. The avowed purpose of deterrence at least recognizes protection of society as the aim of punishment. But, if punishment, or the fear of it, deters, as its proponents claim, it follows that the more severe the punishment, the more effective the deterrence. It has been amply demonstrated that this is not so. The ideal of rehabilitation has been advanced as the most effective way to protect society against later relapses into crime and is based both on belief in the worth and dignity of every human being and a willingness to expend effort to reclaim him. The objective is to change the offender's attitudes, help him cope with the realities of his existence, acquire an understanding of his problems and needs, redirect his goals, redevelop his sense of values, and achieve a greater measure of self-discipline. The methods by which this is attempted comprise the universe of correctional practice, of which prisons and correctional institutions are a small part.

But, correctional efforts are not applied in a vacuum. There are many correctional issues in the law and in our courts. To cite a few: Through the enactment of legislation, society determines for itself what kinds of acts are unlawful and what are not. The laws that define criminal behavior are intended, generally, to protect persons, property, and the common good. How well this is accomplished depends on many factors. The law also defines the areas of function for all aspects of the administration of criminal justice and grants the authority under which these functions are carried on. The law sets limits. The criminal courts are assigned

the primary task of protecting society by controlling crime and delinquency, as far as this can be accomplished by sentencing. Not only is this function sometimes misunderstood, but numerous difficulties stand in the way of this function being performed as effectively as it should be.

Statistics and research, or rather, the lack of them, have been among the great areas of neglect in the entire correctional scene. From many sources we pick up conflicting ideas about the size of the problem of crime and delinquency, its nature, where the blame lies, and what should be done about it. The FBI, for example, reports statistics on how many crimes are committed by the hour or minute across the nation and points to the alarming rate of increase. Others in authority would have us believe that there really is no cause for alarm; the increase merely reflects population growth. With equal conviction, depending upon the source or the purpose to be served, the finger of blame is pointed to parents, the church, the school, poverty, moral decay, or whatever. We may happen to read that, at a budget hearing in support of a request for higher salaries, a Commissioner of Corrections testified as to the dangers of working with hostile and aggressive prisoners. At another hearing on the same day he argued for the establishment of another minimum security camp because it is so wasteful, unnecessary, and possibly damaging to confine so many inmates in a maximum security prison.

The need for information has been known for a long time, but, until recently, the resources necessary for gathering, processing, and reporting statistics and the development of research have been viewed as intangible luxuries—something we can do without, especially when confronted with the need to economize. In the business world such concepts and services as market analysis, quality control, production efficiency, computation of "break-even points," and research and development are considered essential to successful competitive enterprise. A bit of thought would identify readily the equivalents of these in the correctional world. It is a common failing of all of us that we tend to see things as we like to see them, rationalize our prejudices and hunches, and ignore unpleasant facts. In the correctional field, as in the business world, we can no longer afford to do this.

TRENDS

With even such limited appreciation of basic problems we have some insights which will help us grasp the significance of correctional development since the days of the old Walnut Street Jail. We will review these briefly as they relate to prisons and correc-

tional institutions, other correctional programs, and the administration of criminal justice generally.

We have already seen that despite its high purpose, prisoners could not endure the total isolation that was central to the "penitentiary" concept of the Walnut Street Jail. It was then thought that the isolation could be modified by permitting prisoners to work in congregate shops during the day. With extraordinary security precautions, including the most rigid regimentation, such a plan was introduced at the state prison in Auburn, New York. It was widely hailed and became the prototype for the design and operation of prisons from the early 1800's onward. With less regimentation and broader programs, the principle is basic to maximum security institutions even today.

About the time of the Civil War the "reformatory" idea emerged in recognition that younger offenders should be separated from the older confirmed criminals. Essential elements of this concept included emphasis on training and a merit system by which the prisoners could reduce their length of stay through achievement. The reformatory at Elmira, New York, became the prototype for this new approach, and, again, these principles have remained basic to correctional institution programming up to the present time.

Thirty-five years ago the concept of individualized treatment began to take hold. This idea, which recognized multiple causation of crime and individual personal characteristics was aptly expressed by Congress in legislation establishing the United States Bureau of Prisons:

It is hereby declared to be the policy of the Congress that the said institutions be so planned and limited in size as to facilitate the development of an integrated Federal penal and correctional system which will assure the proper classification and segregation of Federal prisoners according to their character, the nature of the crime they have committed, their mental condition, and such other factors as should be taken into consideration in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.¹

By the 1940's, correctional administrators became concerned with the setting in which rehabilitation or correctional treatment took place. Various described as institutional climate or treatment milieu, efforts began to break down traditional regimentation, develop a continuum of programs and treatment services, and

¹ Act of May 27, 1930, ch. 339, § 7, 46 Stat. 390 (now 18 U.S.C. § 4081 (1964)).

encourage citizen participation. The new concepts recognized that correctional treatment in an institution is the total impact on the offender of all programs and services and that these must be geared to community resources following release.

It was only logical that these developments would lead to the establishment of "half-way houses" or community residential treatment centers. The experimental "Highfields Project", started on July 12, 1950, provided an intermediate level of correctional programming between supervision in the community under ordinary probation and full institutionalization. At the other end of the spectrum, a number of "half-way houses", such as our own Pre-Release Guidance Centers for youthful offenders, have provided an intermediate step to parole. Both kinds of residential centers are proliferating rapidly, especially for young offenders.

While all of this was going on, probation and parole became the "other" correctional programs to which I referred. The concept of probation grew out of the enlightened humanitarianism of a Boston shoemaker who, around 1846, convinced the judge of the Magistrate's Court that certain offenders would respond well to his supervision if committed to his care rather than to jail. Probation, as it is practiced today, is a procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the court, without imprisonment, subject to conditions imposed by the court and subject to the supervision of the probation service. Thus, probation in criminal courts is, first, a service which provides investigation of defendants found guilty of crime, and supervision of defendants who are placed under court supervision. Second, probation is a sentence establishing the defendant's legal status, under which his freedom in the community is continued subject to the court's supervision and conditions imposed by the court.

The advent of parole is not so clear, but it came into existence around 1900. As it is practiced today, parole is the release of a prisoner to the community by a paroling authority prior to the expiration of his term, subject to conditions imposed by the paroling authority and to its supervision. Parole has the dual purpose of protecting society on the one hand, and rehabilitating the offender on the other. The two goals are inseparable. A rehabilitated offender insures protection to the community; the safety of the community requires successful readjustment of offenders.

It is not possible here to examine the many interrelationships between probation, correctional institutions, and parole. Ideally,

they add up to a continuous sequence of specialized efforts directed toward the treatment and control of offenders. Suffice it to say here that probation keeps people *out* of prison. By releasing people *from* prison, parole is, in effect, the drain that keeps the tub from overflowing.

On the periphery of evolving correctional practice have been a number of significant developments in the broad field of the administration of criminal justice. Many of these are of more recent origin than those just reviewed, and a number of them have a direct bearing on corrections.

One of the earliest and most significant has been the juvenile court movement which extends further the early Elmira Reformatory principle that youthful offenders should be separated from the more sophisticated, adult criminals. The first juvenile court in the world was established in Chicago around 1900. Its purpose, and that of similar courts which have been created in nearly all of the civilized countries, is based upon these important principles: Among children who commit offenses, a fine line must be drawn between neglect and criminal responsibility; juvenile proceedings are civil, rather than criminal, and lead to an adjudication, rather than a conviction; in the role of substitute parent, the dispositions of a juvenile court are aimed directly at the control, training, and guidance of youngsters who need help.

In a very real sense, the criminal court is the crossroad of corrections. At the outset, the flow of cases through a criminal court is a process of selection which separates those offenders who will be subjected to the treatment and control of correctional agencies from those who will not. Further selection is made in the discretionary use of probation, institutionalization, and other dispositions. The concern of correctional agencies is with the numbers and kinds of offenders referred to them, the reasons for such referrals or sentences, and the various kinds of sentences. These have far-reaching correctional implications, and it can readily be seen that such collateral issues as the selection and training of judges and the exact purpose of sentences have great relevance to correctional problems. These and related matters are receiving a great deal more attention now than ever before, as evidenced by changing concepts in the treatment and control of narcotics offenders and bail reform.

One of the newest series of developments is based on the concept of crime and delinquency prevention, that is, intervention in criminal careers. At the primary level, vast efforts are being made to intervene before delinquent and criminal careers begin.

The advent of the massive "war on poverty" has much to do with this because there is convincing evidence that a great deal of crime and delinquency is rooted in the broader social problems of poverty, lack of opportunity, limited education, and deprivation. At a secondary level of prevention greater emphasis must be placed on making a first court appearance the last through the kinds and intensity of intervention that will be possible with new correctional tools and more effective use of those that have become standard.

OUTLOOK — PRESENT AND FUTURE

Clearly, the developments in correctional practice and broader improvements in the administration of criminal justice referred to so briefly here could not have been possible without courageous and enlightened leadership, backed up by at least the tacit public support of enabling legislation and tax dollars. The truth is that current public support is anything but tacit. It reflects a concern over mounting crime rates and over apparent failures of past methods of coping with the problem. There is a sense of urgency that more effective measures be found. These attitudes were expressed with remarkable clarity and force by President Johnson in his message to the Congress March 8, 1965:

Crime has become a malignant enemy in America's midst. . . . We must arrest and reverse the trend toward lawlessness. . . . We cannot tolerate an endless, self-defeating cycle of imprisonment, release, and reimprisonment which fails to alter undesirable attitudes and behavior. We must find ways to help the first offender avoid a continuing career of crime.²

There are many signs of renewed effort, further development, and innovation in the offing: Multi-service community correctional centers, more flexible sentences, better integration of all correctional efforts, and more exacting and sophisticated evaluation and research. I should like to comment on the one which, to my mind, is the most significant and far-reaching of all—federal leadership. For the first time in the history of the United States, our national government has taken a massive, determined leadership role in all major aspects of the broad field of crime, delinquency, and the administration of criminal justice. Enormous, concerted effort and millions of dollars will be committed to this endeavor under three laws enacted by the Congress only a few weeks ago.

Even while these bills were pending in Congress, the President took the initiative in appointing a special Commission on Law Enforcement and Administration of Justice. No agency of govern-

² 111 CONG. REC. 4165 (daily ed. March 8, 1965).

ment has ever undertaken to probe so fully and deeply into the problems of crime in our nation. Its mandate is broad, and its purpose is to lead the way to answering such troublesome questions as:

How can law enforcement be organized to meet present needs?

What steps can be taken to create greater understanding of the efforts of federal courts to insure protection of individual rights by those involved in the administration of justice at the state and local level?

Is the nation as a whole providing adequate education and training opportunities for those who administer the criminal laws?

What correctional programs are most promising in preventing a first offense from leading to a career in crime?

The new statute which most directly affects the operations for which I am responsible is Public Law 89-176,³ with its provisions for furloughs, work release, and adult half-way houses. This law is both a milestone in corrections and a monumental challenge in which means are now available for building all-important bridges between correctional institutions and community resources. As we begin to implement this law, the nature and missions of some of our institutions inevitably will change. New direction and emphasis will be given existing programs of education, vocational training, guidance, and counseling. For hundreds of inmates, eventually, the parole board no longer will have to guess whether a grant of parole is a safe risk.

Under this law we have already started sending deserving inmates to attend funerals and the sick-beds of close relatives. Formerly we could do this only when the inmate could be accompanied by an officer and when a family was able to pay all of the travel, per diem, and overtime expenses of the officer as well as the inmate's transportation. Inmates selected for work release will be able to work at regular jobs at regular rates of pay in nearby communities and return to the institution after work. This is a valuable device which will enable deserving inmates to apply newly-acquired work skills, to test their ability while still under institutional control, and to adjust to community expectations. Our experimentation with pre-release guidance centers for youthful offenders has been successful, and we can now apply this experience to selected adult offenders, as we are able to develop essential programs and services.

³ Pub. L. No. 176, 89th Cong., 1st Sess. (Sept. 10, 1965).

The Law Enforcement Assistance Act of 1965,⁴ was enacted in response to the President's message on crime. This law will be administered by the Department of Justice and, for the first time, enables the Department to award financial grants for study, training, and demonstration in the broad field of law enforcement, including corrections. It is more than likely that the resources of the Bureau of Prisons will be used for consultations and a number of collaborative demonstration projects.

The Correctional Rehabilitation Study Act of 1965,⁵ focuses on the problems and needs of correctional manpower. Studies and evaluations have been projected over the next five years which will probe, and eventually recommend standards for the training and recruitment of persons entering the correctional field, determinations of staff organization, functions, and personnel development.

At this juncture all that is past can be viewed as prologue to new, exciting, and challenging things to come. In a very real sense we stand at the threshold of a new era in penology and corrections. There are many unresolved issues, such as those mentioned plus the opposite orientations of law and behavioral science, that interfere with effective correctional practice. But there is greater interest than ever before in such matters. There is a genuine inquisitiveness that has replaced mild curiosity and there is also an effort to conceptualize the forces at work and to do something about them, rather than accept things as they are. In addition, there is much evidence of a greater courage and willingness to experiment and to "nail down" demonstrable facts as they become known. Withal, the outlook for the future of corrections is anything but grim.

⁴ Pub. L. No. 197, 89th Cong., 1st Sess. (Sept. 22, 1965).

⁵ Pub. L. No. 178, 89th Cong., 1st Sess. (Sept. 10, 1965).