

## JUSTICE OR CORRECTION? CHANGING EMPHASES IN PENOLOGY.\*

The degree of change, even in fundamental aspects of penology, is high. What were accepted as truths a little time ago might today be generally scorned; and what we espouse as desirable today might have been unthinkable until recently. Changes in penology are bidding fair to rival the more notorious rapidity of technological change. In this flux one thing is certain: Dogmatism ill becomes any of us.

In just the last century or so, we may discern two great movements setting a framework within which all else has been developing. The first of these has been the humanitarian drift away from a deprivative disabling punitive system of sentencing towards an ameliorative enabling corrective system. I say humanitarian "drift" because the movement has been poorly organized in both thought and administration. Such force as it has it owes to the efforts of warmhearted thinking individuals, but of individuals lacking the time or the support to devise a completely self-sufficient humanitarian system. Humanitarians have asked for mercy, for mitigation of excessive severity; they have sought clemency on the ground of extenuating circumstances. That has been their shortcoming. The casual interpolation of exceptional kindnesses into an otherwise uniformly harsh system has been mischievously destructive. It is not surprising then to find that prisoners' aid agencies, civil rehabilitation committees, and Howard prison reform leagues—proceeding, as they have, from an excess of caution—are not yet the popular movements they deserve to be. Not uncommonly have the personnel of these agencies been curtly typified, together with their negatively critical philosophy, as feeble rebels without courage, background grumblers with a "rhubarb intellect", than whom none would be more shocked if taken seriously. The mischief lies not so much in what humanitarian agencies *have* done, but in what they have not yet had the courage or the time to do, namely, to develop their thinking to its logical limits, to subvert and put to rout the inhumane *basis* of the old system, and replace it with a thoroughgoing humane foundation.

Long ago Beccaria foresaw that as punishments became milder there would be less need for pardons. And perhaps in Australia today we are approaching an era in which there will be no call for mercy,

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no place for mitigation, because there will be no disabling punishments to mitigate. Talk of the sentence as being lenient or heavy, merciful or extreme, will give way to the sole issue of whether the sentence is appropriate or inappropriate, effectively direct or pointlessly out of touch, for the forward-looking purpose of encouraging the offender to abide by the law henceforth. That yardstick to measure the propriety of sentencing does not yet command universal agreement. But it is surely the central aim of the humanitarians.

If the governmental processes are truly correctional, what scope can there be for voluntary and after-care agencies? Of course, as a matter of instant fact, those processes do not even pretend to be correctional. But even ideally, it is likely that there will be a continuing need for the active assistance of private non-authoritative agencies. When, for falling short of the legal norms of behaviour, the offender gets into the clutches of correctional authorities, he may ordinarily be expected to go involuntarily, at least at the outset. During the variable length of time this sense of rebellion persists, it is desirable that some unofficial agency interpret society to the offender, and (as at the moment) interpret the man to society. At the immediately practical level, it is not unlikely that offenders will resist governmental benefits which involve their becoming a detailed public file available to just what manner and number of persons they do not know. We shall always need someone ready on call to bridge the gap deliberately created by society's declaration of war upon the offender. In the highly organized social welfare state, this need will be even greater. The very solidarity of the modern community, its relentless determination to "get places", might render it insensitive to the cry of one who just cannot keep up the pace. The need for the humanitarians actively to organize themselves as efficient monitors without official rank was perhaps never greater, if we are to avoid society's becoming so confident of itself that it would achieve its ends even at the cost of the welfare of some of its members. In the name of humanity itself, humanitarians may soon be moved to a new courage and a higher plane of activity. For the sentence and its authoritative application are never innocuous; if any aspect of correctional processing is inappropriate, somebody suffers—the prisoner, his family, past victims or future victims.

The second major contemporary trend is one, already alluded to, which we remark daily; the growing power and activity of the executive arm of the modern central government, whatever its political shade. In particular, we are now it seems on the threshold of an in-

crease of executive action in the field of social welfare. By a happy succession of events the social climate is softening to permit such an increase. We are at peace, and basking in unprecedented prosperity. Our social conscience is waking from a long winter sleep, induced (if I may mix the metaphor) as an anaesthetic to the social upheavals occasioned by the industrial revolution. Community attitudes to those suffering from infectious and mental diseases have been transformed from contemptuous rejection to constructive help; and our attitudes are now changing in much the same way with respect to criminals. We are in the springtime of social welfare, witnessing the early cautious budding of social control.

Lest we become apprehensive at travelling too far in this direction, it is worth observing, and bracing ourselves against, the probability that things are going to be "worse" before they are better again. For of the two great determinants of human personality, heredity and environment, all our social welfare efforts to date have been restricted to a manipulation of the second, the environment. If and when social scientists demonstrate skill in manipulating environmental factors, the community may then be disposed to turn to the field which promises to be more fruitful; control of heredity through a science of eugenics. Because of the recent and predicted growth in the world's population, some measures of birth control may be forced upon us very soon—even before we have laid such plans for them as will justify the appellation "eugenics."

These two great movements—the humanitarian drift and the growth of the executive—might be running their parallel courses by pure accident. But it is arguable that they are not unconnected, that in fact the first of them is dependent upon the second. Indeed, if we want a key to history's startling somersaults in community reaction to criminal behaviour, we might seek it in the high correlation between, on the one hand, a community's social security, and on the other, the indulgence that that community shows to its enemies. In a secure social order, where the discipline of police and courts and prisons is reliable, and where as a consequence social disturbances are few and small, it is *possible* to show kindness to those who would menace the social order, because their challenge is manifestly ineffectual—no bodyblow that might spell an end to the order. It seems that compassion is a mark of the comfortable. As Shakespeare put it—

The eagle suffers little birds to sing  
And is not careful what they mean thereby.

*Titus Andronicus*, Act IV, line 82.

But under an inefficient government, where officials are unreliable or are predictably corrupt, a certain amount of fear of your neighbour, and the readiness to combat him smartly, is very healthy. Such is the position during a serious strike or a revolution, and such the attitude in the early aftermath of a successful revolution, when (as we have now seen from eighteenth century France to twentieth century China) *ad hoc* people's courts take excessively cruel reprisals. That was the position on the western frontier of the United States of America in the last century. It is a danger in any community suffering acute economic distress. In a disaster-stricken town like Agadir or Santiago after the recent earthquakes (February and May 1960), or Fréjus after the bursting of the dam in December 1959, the surviving police, busy with rescue work, have no practical alternative to shooting looters and other trouble-makers on sight. The emphases we make in comparative calm in Australia today would similarly "regress" if our cities sustained a nuclear attack. Despite the indication of events, in South Africa and South Korea recently, and in the deep south of the United States perennially, the governments in those places cannot be taken to be wilfully malicious in handling their social problems. They are in a state of genuine fear, perhaps for good reason. Their reaction is like that of a wounded tiger at bay which in its blind desperation can see no course other than a frenzied biting and scratching. That such a course might be suicidal matters not; fear has stopped its reasoning.

The world today is not as secure as it might yet come to be. Above all, the threat of disastrous war will persist until the instruments of war—not armaments, but national sovereignties—are surrendered to an authoritative world government. Study of the international situation is instructive both as a parallel to, and a determinant of, the municipal situation. What of our well-meaning talk of national disarmament? In any local scene lacking the reliable discipline of law enforcement, failure to arm oneself adequately would be an abandonment of the moral duty of self-preservation. The householder can only safely give up his gun when he is assured of police protection, in which event it is not a matter of great importance whether he gives it up or not. Similarly on the world front, where we still lack the discipline of an authoritative lawgiver, it is either wicked or misguided to relinquish the means of national protection. That those means happen also to be potentially offensive is not to the point. The first step to world peace would be world law. With that achieved, the control of armaments would be a small matter; without it, even the

attempt at disarmament is a fantasy that brands governments as either naive or knavish. One of the illusions to which in hope we are prone is that there exists today a body of world law. We speak quite soberly of "international" law, unaware of the innate poverty of the concept. Are international treaties any more law than "inter-personal" agreements which lack either recognition by the law, or a superior lawgiver capable of recognizing and enforcing them? Possibly only a world government will now afford us that degree of peace and social security which made it socially feasible for Christ—living under the worldwide domination of the Caesars' Roman Empire, the *pax Romana*—to urge a confident outspoken love of enemies and criminals, turning the Old Testament god of *fear*, as He did, into a god of *love*.

By contrast with the general world situation, Australia is enjoying a high level of security. Government leaders, more or less democratically elected, enjoy repeated terms of office, with the more or less willing support of the whole country, minorities prizing social order above a radical display of their differences. Virtually our only experiences of serious threats to the peace have been the Eureka Stockade in 1854 and the Police Strike in 1923, both in Victoria.

Yet an overlay of fear still exercises a decisive influence on our disposition of criminals. Why? Our attitude to world affairs will of course be transferred to, and find expression in, our treatment of internal problems. But of equal importance perhaps is the fact that as a community we are much given to a ghoulish preoccupation with the sordid detail of serious crimes. With a heartless pennywise exploitation of the emotion of fear, mass media merchants exaggerate the threat of crime to our minds, and whip us into a needless frenzy. The gory details of serious diseases or accidents, and the threat of these, are no less terrible. In fact, it is common experience that the risk of death, and of injury or property loss, resulting from criminal behaviour is light, compared with the same risks from other causes. Crime is not even listed amongst the usual causes of death. When it is more generally realised that crime is not high on the list of things to be feared in the Australian community, the publicity spotlight may be turned to more positive and sympathetic facets of the phenomenon.

We make frequent use of the word "punishment" and ought to define it precisely. Perhaps we can accept Mannheim's definition of punishment as "a form of treatment intended to be an evil to the person treated" and thus usually an evil to society as well. If so, then it is not every deprivation of liberty, every restriction, every incapaci-

tation or every pain that is punitive. They are only punitive and evil when inflicted as ends in themselves. Pain suffered in the surgery of the doctor or dentist, and isolation of the infectious and mentally diseased who are dangers to society, are not punitive, because the deprivation and hardship in those cases are not sought as desirable in themselves. They are just part of the means, regrettably the best we have yet devised, to an ameliorative goal beyond. As better, less painful means are devised, so the harsh techniques will be thrown into the discard, just as we are now replacing the straitjacket with tranquilising drugs.

There was a time when punishment was thought to be the sole object of the criminal process. But such has been the change of emphasis that the community seems lately to be swinging full circle. Now we are almost in the position of saying we shall achieve the ends of the criminal law without any recourse to punishment, *i.e.*, without the deliberate infliction of evil.

In the eighteenth century such a somersault in penal philosophy would have been inconceivable. In the England of Dr. Samuel Johnson cruel capital and corporal punishments took English penology to an all-time low. It is interesting that the word "humanitarian" did not appear in Johnson's first English dictionary; it must have been coined subsequently. The seventeenth-century innovation of imprisonment in the workhouse for lesser offences fell into desuetude; and out of a wide range of repressive sanctions employed in the following age, for most practical purposes we use only one today—the fine. Such is the extent of change. We have yet, however, to match the ingenuity of the eighteenth century in devising for the twentieth century a comparable range of kinder enabling disposition, although we are moving toward that point.

The explanation for that old harshness might be that just then England was swept to the crest of a wave of revolutionary change from which we are still recovering our breath. The industrial revolution, enclosure of the land, unprecedented migration to the cities, wretched conditions of employment, an economy that barely provided subsistence, the hustling of life from the parish pump to the national lobby—all combined to challenge at its roots the established rural economy and land-based social hierarchy. It was natural that anybody would get short shrift who offended against even the doubtfully sensible laws and customs of the day, the only social order they felt they could cling to. This too was in the time of the local part-time constables of

the hue and cry variety; for it was not to be until 1829 that Peel would introduce his metropolitan police force, and until some years after that before it would prove itself.

In retrospect, we may feel we have ridden that wave of change with variable but on the whole moderate aplomb. Looking at the lie of the land we have reached, we find that sentences are no longer the short sharp punishments customary until the eighteenth century. This in turn has led to two material changes of emphasis. In the first place, the final disposition of offenders after the finding of guilt is no longer a matter purely for the court. The sentence is not over and done with in a few hours or days of its being passed. And offenders undergoing longer sentences constitute continuing problems of control and disposition. So there has been perforce a shift of power from the courts to the administration; and we are only in the middle stages of this transition. The courts have failed to adapt to the new order partly because the legislation they apply is still cast generally in the retributive moulds of the eighteenth century, but even more because they have been overborne by the weight of the doctrine which has been the strength of the common law, the doctrine of binding precedent. In the result, the competence of the courts in this field is diminishing.

The community's handling of the infectiously diseased, of the dangerously insane, and of children likely to be a danger to the community, involves in each case mandatory interference with the liberty of the subject in a manner which can only be described as correctional. Yet these are all coming to be matters within the almost exclusive control of the executive arm. A hundred years ago it was a more serious business than it is today to be locked away in a lunatic asylum; and this was seldom done except upon the order of a court. But now, because we have more confidence in mental hospitals, and because a mistaken certification will shortly be remedied by a sensitive, self-correcting treatment system, we are content to give the dangerously psychotic what amounts in effect to an indeterminate sentence merely on the say of two medical practitioners whose examination of the fact situation is a matter entirely between them and their gods. It is apparent to those who make contact with children's courts, and particularly to counsel accustomed to the adult courts' emphasis upon trial procedure, that the primary question asked in juvenile courts today is, "What treatment would be most beneficial to this child?" rather than, "Has this child committed an offence, and so rendered himself liable to the sanction of the court?" Confidence in our treat-

ment processes is already leading to treatment without trial, undermining the rule of a rigid law, and bringing us closer to "1984."

Mr. Justice John V. Barry of Victoria, in his report of the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, wrote:—

"The [non-punitive] theory of social defence may have a good deal to recommend it if applied wisely and judiciously, but if it be carried too far and used unselectively (and there is more than a little risk of some of its advocates doing so) it may produce a state of affairs very dangerous to the legitimate freedom of the individual."

The waning punitive system, however, produces a state of affairs very definitely and deliberately dangerous to the convicted criminal. Thus it was that George Bernard Shaw spoke of "the crime of imprisonment." If we would preserve what we still understand but vaguely by the expression civil rights, we will frankly appraise and accept the new order. As judicial safeguards of liberty become less effective, we shall require the executive to institute constitutional safeguards for the subject against its unwarranted interferences, or against the prolongation of its unwarranted interferences, with liberty. In penology this might even entail renunciation of the fixed sentencing system, not piecemeal as we are doing now, but completely, to make the system sensitive and capable of correcting official errors early.

Even with adult criminals the role of the court is coming more and more to be limited to that of guilt-finding—a role which may soon be compared with the signing of a certificate of insanity by two medical practitioners. However, the instant worldwide trend is towards a system in which the courts are setting the broad limits of a sentence, and the administration in applying it is feeling ever freer to vary it to meet altering circumstances. Exercise of the administration's supervisory or quasi-judicial powers is subsumed under new concepts like pre-sentence reporting, prison classification committees, good time remitting, trial leave, pre-release leave, probation, parole, indeterminate sentence boards, and parole boards; apart from the longstanding royal prerogative of mercy. A basic difference of approach is that the administration tends to regard the prisoner's personality as a whole, whilst the courts tend not to look closely at anything beyond the laboriously proven offence. Generally speaking, the administration looks at the present and the future, whilst the function of the courts is exhausted after they have fulfilled their obligation to look at the past.

The community is growing fickle in its adoration of the blind-folded goddess of Justice, whose sensitivity runs only to an appreciation of the nature of the offence, and who accordingly gives equal sentences for equal offences without discriminating between offenders. It is not impossible, if the term "British justice" is to remain intransigently tied to the indiscriminate meting out of punishments, that it will become a term of opprobrium. Justice really has no more to do with correction than it had to do with the father's redeeming welcome to the prodigal son, or with the householder's paying a full day's wage to labourers hired *during* the day, in Christ's parables. The cynic may spell out of the elaborate procedure and romance of the modern criminal trial no more than a suspicious concern to avoid in all but the most clearly guilty cases the inflexible application of civil sanctions. This is a view which regards the punitive machine into which we used to throw offenders as probably no less horrible than the one forecast for us by Orwell.

The offence, the grave social danger, is of course the very *raison d'être* of the criminal law; but soon it may be no more than a key to the correctional system. No longer will it be the sole determinant of the corrective process to be pursued when the key is turned. Just as the morbid data of *lunatic* behaviour now hold no particular fascination for us, so—when we gain more confidence in the administration's processing of *criminals*—the microscopic study by courts and press of the fact situations of criminality may also be relaxed, and even substantially abandoned. The fact situation, the crime, is but one trait of the total personality requiring correction, and not necessarily a reliable index to that personality. In other words, the social danger constituted by the criminal (or by the diseased or otherwise defective citizen) is not by any means the only measure for our official disposition of him; it may bear no useful relation to his correctional or curative needs.

The second practical change entailed by a more humane sentencing system has been a change in the function of prisons. When capital and corporal punishments were executed on the spot—a while-u-wait job, as it were—prisons were generally expected to provide only short-term security pending trial, and more latterly, pending exile or transportation. But having elected at least to keep our criminals alive, prisons are faced today with a long-term custodial task. Loeb and Leopold were each sentenced to "life plus 99 years." Robert Stroud, widely known as the "Birdman of Alcatraz", has now completed 51 years in prison. Martin Dalton died on 23rd March 1960

in an American prison, having served 63 continuous years there. As usual, Australian records do not compare with America's! Still, prison terms here, particularly in New South Wales, are substantial compared with the negligible terms served in most prisons until last century. In Victoria, J. A. Peters, whose death sentence was commuted to "life without the benefit of remissions", was released by special authority in 1948 at the age of 65 after having served 25 years 8 months. Skerritt, whose sentence was similarly commuted, died in gaol at the age of 75 in 1953, having served 23 years. A formula now coming into use for such commutations is "life within the meaning of the *Gaols Regulations* 1931; and no consideration shall be given to any application for release by special authority, or to be paroled, until the term of . . . years has been served." Under that formula, Mede in December 1957 and Willgoss in March 1960 received minimum terms of 30 years; and in May 1960 Attwood was ordered a minimum of 25 years. William John O'Meally, born on 25th November 1920, had his death sentence commuted on 27th January 1953 to imprisonment "for the full term of his life without the benefit of any remissions whatever", and on paper therefore should die in prison. These comparatively long terms are all alternatives to death, and are all decisions of the Executive Council of the day. Except for the rare common law misdemeanour, the sentence for which is still discretionary, the courts in Victoria do not have power to sentence to terms longer than 20 years.

Without anything more, *i.e.*, without a correctional programme, long terms in prison are calculated to produce mental and moral deterioration; to *create* personal and family problems, and to exacerbate pre-existing problems; to drain the community's resources for the upkeep of an unproductive non-taxpaying club; in short, to make us worse off as a community than when we dispatched offenders swiftly with the axe or noose. And for a time it seemed that this was the intended result of long prison sentences. Deprived of the safety valve of spectacular punishments, the public were left in an emotional vacuum which they proceeded to fill in their own way—a way then dictated still by widespread social insecurity. From custody pending a quick dispatch, we moved to custody for the purpose of punishment. The Rev. Sydney Smith was voicing the predominant feeling of his age when he said in 1822:—

"I would banish all the looms of Preston Gaol, and substitute nothing but the treadmill or the capstern or some species of labour where the labourer could not see the results of his toil—

where it is as monotonous, irksome and dull as possible—pulling and pushing, instead of reading and writing—no share in the profits, not a single shilling. There should be no tea and sugar, no assemblage of female felons round the washing tub—nothing but beating hemp and pulling oakum and pounding bricks—no work but was tedious, unusual and unfeminine. . . . A prison should be a place of punishment from which men recoil with horror—a place of real suffering painful to the memory, terrible to the imagination . . . a place of sorrow and wailing, which should be entered with horror and quitted with earnest resolution never to return to such misery; with that deep impression, in short, of the evil which breaks out into perpetual warning and exhortation to others.”

Such has been the change of public opinion that a man who spoke like that today would surely be accounted sick, a gruesome sadist.

William Morris it was who said that “No man is fit to be another man’s master.” In spite of that, in the highly socialised and specialised communities of today, in what we are pleased to call civilization, we have agreed, much daring, to invest correctional officers with the responsibility of mastering other men, at least for a term. It is a high, sacred trust if ever there was one; the power, in peacetime, to coerce the very person of a fellow-citizen.

But power corrupts. Partly by opportunity and partly by popular expectation, some prison guards were transmuted into brutes. Like influenza, cruelty seems to be a disease to which we are all liable to fall prey, in peace as in war. Given the conditions—irrational fear conspiring with a want of authoritative discipline—it will spread like an epidemic. But that is an unhappy chapter in penology.

We are turning today to a brighter chapter in which it is transpiring that prisons are no longer places of uniformly maximum security for the purpose of refined punishment; they are places of graduated security for the purpose of correction. Guards are no longer in sole control over the inmates. They operate as members of a team. And the guards, no less than others in the team, have to subserve the new order, the new goal, acceptance of which led in the first place to introduction of the team approach—namely, the non-punitive correctional gaol.

The recent institution in some Australian States of training courses for prison officers—so far still at a rudimentary pioneering level—has a valuable by-product; it is making life intolerable for the

officer minded to abuse the power that first attracted him to the position. Training also means that the calling of prison service is being seen as too important to be entrusted to persons worthy of no more than the unskilled labourer's wage now paid to the lowest ranks; when prison officers begin to respond to this instruction, it is likely that their wage levels will rise. Insofar as military service is regarded as a profession, so correctional service might in a few years be regarded at least as a vocation, and not merely the last-ditch job it has been.

In addition to guards, there are now in the correctional team many specialists. Most of these others, before gaining official approval and then stipends, first followed the pattern of proving the worth of their contribution by unstinted voluntary work. By far the first in the field were chaplains; at the time of course chaplains were the only welfare workers known to the world. "I was in prison and ye came unto me," said Christ, implying presumably that, if you did not, you should have. That injunction was echoed by Latimer in 1549, when he urged in addition that curates should be "waged for their labour." But it was not until 1773 that prison chaplains were first officially appointed in England. They were "waged" £50 a year for their labour until 1823, when it was raised to £250—quite a handsome salary in those days.

Since then we have appointed physicians and dentists for the physical welfare of inmates. We have appointed educators—both teachers and trade instructors. Teaching an illiterate the three R's, or teaching a trade to a man of average ability, might be just the correctional measure needed in the case of one whose criminality is traceable to a grievance that he has missed normal opportunities to realise his potential. In such cases, the financial outlay is a sound investment for society. Now we have an impressive array of counsellors or therapists; psychiatrists, psychologists, vocational guidance experts, and probation and parole officers. And finally there are the lay workers; official and unofficial visitors from churches, the Returned Servicemen's League, Alcoholics Anonymous, prisoners' aid agencies; and, when they can gain accreditation, some interested individuals as well.

The ideal to which we are apparently moving is the introduction into prisons of all the corrective and ameliorative facilities available outside the walls. We are breaking down the distinction between "care" and after-care, foregoing the pastime of throwing men out to sea so that we may fish them out again in mock charity. The aspiration gaining currency today is that "it is a truism that rehabili-

tation starts at the time of arrest.”<sup>1</sup> The important new element in the correctional team is that they are without exception working towards the positive development of prisoners, not their punishment. There are still some punitive regulations on the books; those for example, that limit the visits and correspondence a prisoner may enjoy—quite unnecessarily from the viewpoint of security and quite obstructively from the viewpoint of rehabilitation, but quite conveniently from the viewpoint of a shortsighted administration. Nevertheless it is fair to say that there is no official today who is charged with the task of administering punishment as such to prisoners. It would seem indeed that the two ambitions—punishment and correction—are quite incompatible with each other.

The changes of emphasis down through history indicate that our reaction to criminal behaviour has been primarily an emotional reaction; and that *after* the reaction has found expression, the philosophers then step in—like defence counsel—with an *ex post facto* justification of it, a justification itself replete with the inarticulate biases of the times. Penology might consequently be said to lie two removes away from the sciences. The answer to the preliminary philosophical question, “What is the purpose of the criminal law?”, will be one of the basis axioms accepted unquestioningly in a science of penology. Yet even amongst eminently reasonable persons it has not yet been possible to reach full agreement upon that matter. And in the world at large we do not even approach the stage of reasoning about it.

Our own work-a-day discussions indicate that the reactions excited by matters correctional have generally been characterised more by their emotional warmth than by their rational persuasion. An unnecessary *fear* in some, and in others an unbecoming *pharisaism*, will frequently conduce to a cruel repressive inhumanity in their dealings with social misfits. In others, a sincere generous compassion, but an *unbridled compassion*, will often ignore the overriding need for community protection. This compassion you meet in persons possessing a genuine sympathetic insight into problem personalities; too frequently it is met in highly trained people—psychiatrists and caseworkers and the clergy. Some will take a middle approach in which they bolster their kindness to the physically diseased and the mentally disturbed (the “ill”) by distinguishing them from the “bad” and making scapegoats of the bad. It is difficult to tell which of these emotional re-

<sup>1</sup> C. L. NEWMAN, SOURCEBOOK ON PROBATION, PAROLE, AND PARDON (1958, Charles C. Thomas, Springfield, Ill.), 288.

actions is the worse—the militant fear or the undisciplined sympathy. Both are socially dysfunctional. Perhaps the worst of all is neither sympathy nor antipathy, but apathy—a conscious deliberate turning away from a vexing problem. A solid wall of unconcern springs up from an incomplete appreciation of the sustained vigilance that has to be maintained as the price of a national, or internal, balance of community peace and individual freedom.

However, the philosophic justification of punishment as a legal sanction is based squarely upon the assumption that criminality is co-extensive with immorality, that a criminal is a sinner—an assumption that has been unsound at least since the separation of church and state. Criminality is no more necessarily the result of the criminal's sin, or of anybody else's sin, than is disease. Even when disease is the product of sinful behaviour, we know enough medicine now not to try curing it by a whipping or simply a vigorous moral upbraiding, although we once used to. That sort of treatment may be a salutary preventive of future disease; but it is no cure for the instant trouble. We call in aid the wholesome loving care and the sterile germ-free atmosphere of the plushly-appointed empire called a hospital. If disease is the result of dirt, then we cure it, not by heaping more dirt on the sufferer, but with an excess of cleanliness. Similarly are we coming to realise that, if criminality is the product of rotten social conditions, then our prisons and after-care ought to be well-appointed correctional institutions, exemplary models of the finest social environment, procuring the best re-educative facilities the community has to offer, even to the unnatural excess of a hospital.

Australian prisons have been adjusting themselves slowly to the new demands being made of them, but perhaps as rapidly as they could in the face of a laggard public and legal opinion. Australian prisons departments are not as well organized or as efficiently administered as are the policing and judicial arms of government. Nor could they have been until they were seized of an agreed philosophy, universal subscription to which was taken as a commonplace. Now, when such a philosophy might lie just around the corner, prisons have an additional obstacle to overcome. They are junior partners in the correctional team, and are not as flexible as they might be. The courts take precedence in implementing an irreconcilable philosophy, and prisons have to work within and up to time limits fixed by the courts pursuant to that other philosophy. Annual reports of prisons departments are today moving away from their former miserable concentration upon the value of prison produce—a clerk's scrupulous assess-

ment down to the last penny, for instance, of the value of each item of the year's vegetable production—towards a deeper concern for the progressive uplift of the human products of the institution. Certainly the economics of correction are not to be decried altogether. It is conceivable that on a prison farm, where expense on security is minimal, acceptance of the goal of making the farm self-supporting would be in itself a useful correctional device. Prison farms can seldom be appropriate for the correction of city dwellers; their present value is to help overcome some effects of excessively long imprisonment. But the setting of a simple group goal for the inmates, and the making its fulfilment a matter of life or daily comfort for them, might in those circumstances have a beneficial effect. But ordinarily prisons, like hospitals, are places of capital investment whose real return must be looked for outside in the *future* productivity of ex-criminals. We cannot ordinarily expect prisons to be self-supporting.

Prisons departments are indeed the poor relations of our health departments. In Australian prisons every item of expense is still scrutinised, pruned, and then incurred only with the grudging of a Shylock. Perhaps it is that hospitals have a clearly-appreciated and obviously desirable goal; and that until governments and electors are clearly "sold" on *why* they conduct penal establishments, prisons expenditure will not be seen as the investment it could be. Whatever the reason, we have been spending on prisons and juvenile institutions a miserly fraction of the sums we lavish on hospitals and their convalescent or after-care facilities. In Victoria the daily average bed cost in public hospitals during the year ending 30th June 1959 was £5/3/3, whilst the daily average expenditure on each prisoner was a mere £1/7/-.

As taxpayers we are unashamed in demanding of prisoners that they should not offend again; but we are still reluctant to inspect the reverse of that coin, the sharp inscription on which points the need adequately to equip prisons for their re-educative task. Martin Dalton, the man who died in prison last March, was actually released on parole in 1930 after he had served 33 years. But he realised immediately that life had changed so much, he had no family, no friends, no money, no job, and no home. So he pleaded—successfully—to be let back into prison. Dalton did not have a visitor since 1898. He did not receive any mail in the last 31 years of his life. It is true he did not commit more any offences. But in the name of humanity, is that our only criterion? Can we happily claim that as a successful imprisonment? If goals are to make the positive contribution we are entitled to expect

of them, they will become expensive finishing schools, exclusive in the nicer sense of the word, fully and lavishly outfitted to assist the failures of our homes and schools, treating them matter-of-factly as backsliders from our temporal legal norms and not sinners against an absolute morality. Prisons might become schools in citizenship of such a stature that people will actually seek and even pay to be admitted to them as voluntary boarders. That is the position in mental hospitals. Why not in prisons too?<sup>2</sup>

Currently one of the greatest obstacles to rehabilitation in prisons is that the oppressive custodial setting itself arouses resentment in a healthy personality. The basic requirement of security just seems to be incompatible with the aim of rehabilitation. And this will continue to be the case until we make imprisonment appreciably beneficial to prisoners. As things are, prisoners know well that they are there for anything but their own good. We have virtually overcome the problem of security in the compulsory hospitalization of sufferers from infectious and mental diseases who are too dangerous to be allowed at large. In recent years such patients have been persuaded for the most part that hospitalization is to their advantage, so they go voluntarily, and the threat of ultimate compulsion pales into insignificance. We may be approaching such a change of emphasis in prisons. When it comes, we shall ipso facto have solved most of our security problems, and so by a mere change of attitude will open doors to treatment now closed to us: this too without any objective improvement in correctional or therapeutic techniques.

One of the greater changes that has crept upon us in the last few decades is the gradual, but in the result startling, increase in the amount of correctional activity entered upon by every level of government. Even under the most conservative leaders we are becoming much more policed than would have been conceivable in the freedom-loving nineteenth century. We are being assailed with planning schemes from every department, most of them carrying their own forcible penal clauses; governments are moving with a new deliberation. The anaesthetic is wearing off! It is more than legislation acknowledging and regularising the practice of telephone-tapping; it is more than the recent amalgamation and streamlining of two of the Commonwealth's police forces. Proliferating in every jurisdiction are dozens of government departments exercising many correctional powers, and seeking

<sup>2</sup> If this is to be, one trusts it will not be solely for the reasons elaborated in Arther Miller's satire, *A Modest proposal for Pacification of the Public Temper*, (1955) 14 MEANJIN, 5-12.

more. We have fair rents inspectors and fruit fly inspectors; taxation inspectors who have powers not readily granted to the ordinary policeman; transport inspectors for taxis and other commercial vehicles; ticket checkers on trains and buses—and on trams in cities that still have them; weights and measures inspectors; immigration and truant officers; postal inspectors and customs and excise inspectors; police forces in all branches of the military; health inspectors; the Australian Security Intelligence Organization; professional institutes and boards controlling those professions which enjoy a statutory monopoly; and so on. There are many administrative tribunals in which it is impossible to distinguish policing from judicial and sentencing functions. We are a much corrected community.

This trend is probably no more to be feared than were the early endeavours of Galileo and Newton to control small aspects of our physical environment. There is no reason to suppose that the attempt at social control will be attended with consequences any less beneficial than the result of man's patient efforts to control his material world. The most fearful thing is the want of principle, the want of co-ordination, in this sprawl of correction. Correctional practices come with such an unprincipled variety that the poor citizen is in danger of not being able to tell where or how or by whom he is going to be got at next; in which case of course the whole point of the movement to correction will be lost altogether. One emphasis still conspicuous by its absence is a proper regard for public relations in this field. For a people may be expected to oppose the extension of correction unless and until they understand that it is for their ultimate good. To this end the Criminology Department in Melbourne is compiling a *Correction Handbook*, as both a contemporary record of the local scene and a working tool for interested persons. The mere listing of correctional agencies is difficult enough; but the problem of rationalizing the sprawl is well nigh impossible, for there is no rationality in it.

The only effective rationalization will come from bold action at an administrative level. It is high time we had in Australia a Commonwealth Department of Correction. A central body—with the commanding perspective to view the country's immediate needs as a whole, with a long-term vision of the desirable emphases in correction, and with the money to attain its ends—could set standards of practice and achievement not hitherto dreamed of, and could compel their implementation by making States' grants in this field conditional upon compliance with the standards. Through an institute for the training, at sub-university grades, of correctional officers in all fields (including

disease and other non-criminal aspects of dangerous or defective citizenship), it could introduce an overall team approach linking police and police-type instrumentalities, courts and quasi-judicial tribunals, and prisons and other correctional institutions. By disseminating the expanding sum of penological learning in such a way, we could be assured of the best services of the seriously limited personnel currently operating. A central authority could initiate movements to interstate uniformity where that is desirable, and provide the facilities for interstate co-operation where that is needed. As a small practical illustration, a co-ordinating body in Canberra could make and administer arrangements to preserve the family ties of the growing numbers of criminals imprisoned interstate in this mobile age. At present a Sydney man imprisoned in Melbourne stays there for his full term. In the absence of a procedure for transferring him to a Sydney prison, his family is likely to be broken up altogether—a direct consequence of the fragmenting of administrative responsibility. Or, to take a more dynamic approach to imprisonment: The total population of Australian corrective institutions is too small for specialised treatments to be economic. Especially is this true with females. Where a specialised treatment could be over quickly (as might the intensive course of a driving correction school), or where local social ties are a secondary consideration, it would pay the States to concentrate all resources on specifically corrective institutions effective enough to justify transporting criminals to them from all parts of the country. With a Commonwealth Department of Correction, Australia could begin to reap some of the advantages the United States have long been harvesting from their Federal Bureaux of Investigation and Prisons.

In this context it is instructive to examine section 120 of the Australian Constitution. That section provides that

“Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences . . .”

It is unfortunate, even if inevitable, that the word “punishment” should have been carved into an instrument of such durability. However, it is apparently not the intention of the section to exclude the Commonwealth from this field, for the section goes on to say that the Commonwealth Parliament may make its own laws to give effect to that provision. The section applies to “offences against the laws of the Commonwealth” only. And of course the Commonwealth could not constitutionally usurp all correctional functions, for the practice of

correction is inseparable from that of government. But with section 120 (and sections 51(vi), 51 (xxxix), and 61), Canberra could give a vital lead.

Many incidental emphases have changed radically in the couple of centuries we have considered; but the basic emphasis will not change. Criminals will remain the declared enemies of society; and a community anxious to retain its integrity as a community will be rigorous in controlling the level of its criminality. Any philosophy that undermines that determination will be shunned as anarchistic. But there seems to be no reason why in Australia today we cannot set ourselves the highest goal, namely, a system that works for the benefit as well of the criminal as of society. Several forces impel us to an enabling sentencing system. In the first place, there is the injunction to christian charity. Secondly, there are the plain arguments of utilitarianism: That we ought to multiply the number of taxpayers; that when we lightly discount the evil our sentencing inflicts upon a prisoner's family, we ourselves break up a home that needs more support than most; and that when we kill or incapacitate a criminal, we cripple the criminal's victim too by depriving him of an effective right to damages. And thirdly, as compelling as any, is the daily evidence of the success of the scientific method in other fields. The simplest lesson of science is that the most profitable results flow when we work *with* the forces of nature, not seeking to destroy them, but re-directing *their* energies to *our* better use. And perhaps the real challenge of science to penologists is that they provide the criminal with a chance to co-operate with authority, which will only be possible when authority finally renounces all ideas of destroying the criminal either in whole or in part.

STANLEY W. JOHNSTON.\*

\* *Senior lecturer in charge, Department of Criminology, University of Melbourne.*