

Probation

Probation Officer Burnout: An Organizational Disease/An Organizational Cure..... *Paul W. Brown*

The Privatization of Treatment: Prison Reform in the 1980's..... *Francis T. Cullen*

A Theoretical Examination of Home Incarceration *Richard A. Ball
J. Robert Lilly*

Probation Supervision: Mission Impossible..... *John Rosecrance*

The Dimensions of Crime *Manuel López-Rey*

Security and Custody: Monitoring the Federal Bureau of Prisons' Classification System *Michael Janus
Jerome Mabli
J. D. Williams*

Breaking the Cycle of Hard Living and Crime: Women's Accommodations to Husbands' Parole Performance *Laura T. Fishman*

Community Service Sentencing in New Zealand: A Survey of Users *NCJRS
Julie Leibrich
Burt Galaway
Yvonne Underhill*

Probation Centers as a Management Promotion Tool *JUN 20 1986
William V. Pelfrey*

Probation Guidelines: To Be or Not To Be *ACQUISITIONS
Chris W. Eskridge*

101777-
101783

MARCH 1986

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

L. RALPH MECHAM
Director

JAMES E. MACKLIN, JR.
Deputy Director

DONALD L. CHAMLEE
Chief of Probation

EDITORIAL STAFF

LORENE LAKE
*Probation Programs Specialist
Editor*

KAREN S. HENKEL
Associate Editor

ETTA J. JOHNSON
Editorial Secretary

ADVISORY COMMITTEE

WILLIAM E. AMOS, ED.D., *Professor and Coordinator,
Criminal Justice Programs, North Texas State Univer-
sity, Denton*

J. E. BAKER, *Federal and State Corrections Ad-
ministrator (Retired)*

RICHARD A. CHAPPELL, *Former Chairman, U.S. Board
of Parole, and Foi
System*

ALVIN W. COHN, D. CR
Justice Services, Inc

JOHN P. CONRAD, *Dayi*

DANIEL GLASER, PH.D.,
sity of Southern Ca

SUSAN KRUP GRUNIN, *Re
Administrative Offi.*

M. KAY HARRIS, *Assista
Temple University*

PETER B. HOFFMAN, F
Parole Commission

BEN S. MEEKER, *Chief 1
District Court for t*

LLOYD E. OHLIN, PH.D, *Professor of Criminology, Har-
vard University Law School*

MILTON G. RECTOR, *President Emeritus, National Coun-
cil on Crime and Delinquency, Hackensack, New
Jersey*

GEORGE J. REED, *Commissioner (Retired), U.S. Parole*

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Federal Probation

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permis-
sion of the copyright owner.

*f Law, The American
C.*

*meritus Professor of
nnsylvania*

*essor of Psychiatry, The
sity of North Carolina,*

*robation (Retired), Ad-
l.S. Courts*

*ssioner of Corrections
y, New York, and former
f Correction*

Federal Probation is published by the Administrative Office of the United States Courts and is edited by the Probation Division of the Administrative Office.

All phases of preventive and correctional activities in delinquency and crime come within the fields of interest of FEDERAL PROBATION. The Quarterly wishes to share with its readers all constructively worthwhile points of view and welcomes the contributions of those engaged in the study of juvenile and adult offenders. Federal, state, and local organizations, institutions, and agencies—both public and private—are invited to submit any significant experience and findings related to the prevention and control of delinquency and crime.

Manuscripts, editorial matters, books, and communications should be addressed to FEDERAL PROBATION, Administrative Office of the United States Courts, Washington, D.C. 20544.

Subscriptions may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at an annual rate of \$11.00 (domestic) and \$13.75 (foreign). Single copies are available at \$3.50 (domestic) and \$4.40 (foreign).

Permission to quote is granted on condition that appropriate credit is given to the author and the Quarterly. Information regarding the reprinting of articles may be obtained by writing to the Editors.

FEDERAL PROBATION QUARTERLY
Administrative Office of the United States Courts, Washington, D.C. 20544

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME L

MARCH 1986

NUMBER 1

This Issue in Brief

Probation Officer Burnout: An Organizational Disease/An Organizational Cure.—In recent years, considerable attention has been given to burnout of public service personnel; however, little has been published on burnout of probation officers. Author Paul W. Brown looks at organizationally caused burnout and some approaches to moderate it. According to the author, most correctional agencies are based on a military-like structure, and probation departments seem to be no exception. This traditional structure may be responsible for burnout, and there is little a probation officer can do about it. Changes will have to be made by managers who are willing to accept and implement more democratic management styles.

The Privatization of Treatment: Prison Reform in the 1980's.—According to author Francis T. Cullen, a contributing factor to the swing in criminal justice policy to the right has been the failure of progressives to provide plausible policy alternatives. He argues that a viable avenue of prison reform is the privatization of correctional treatment programs—a reform that is politically feasible because it capitalizes upon both the continuing legitimacy of the rehabilitative ideal and the emerging popularity of private sector involvement in corrections. While a number of concerns about profit-making in prisons must be addressed, the author contends, the major advantage of privatizing treatment is that it severs the potentially corrupting link between custody and treatment and thus helps to structure interests within the prison in favor of effective correctional rehabilitation.

A Theoretical Examination of Home Incarceration.—Developing a theoretical rationale for the use of home incarceration as an alternative sentence, authors Richard A. Ball and J. Robert Lilly argue, based on a previously developed theoretical position as to the goals of sentencing generally, that “punishment” is ultimately directed at the restricted reprobation of an act in such a way as to provide for the reparation of that particular conception of social reality agreed upon in a given society. According to the authors, home incarceration has advan-

tages in that it is of easy communicability in terms of present conceptions of social reality, of limited complexity and fairly obvious potential impact, and of reasonable cost. Since it is also characterized by reversibility, divisibility, compatibility, and perceived relevance to organizational goals, it is considered to possess the theoretical advantages necessary to adoption.

Probation Supervision: Mission Impossible.—According to author John Rosecrance, there is a consensus that probation has failed to reduce recidivism and has lost credibility with the public and other criminal justice

CONTENTS

Probation Officer Burnout: An Organizational Disease/An Organizational Cure Paul W. Brown	4
The Privatization of Treatment: Prison Reform in the 1980's Francis T. Cullen	8
A Theoretical Examination of Home Incarceration Richard A. Ball J. Robert Lilly	17
Probation Supervision: Mission Impossible John Rosecrance	25
The Dimensions of Crime Manuel López-Rey	32
Security and Custody: Monitoring the Federal Bureau of Prisons' Classification System Michael Janus Jerome Mabli J. D. Williams	35
Repeating the Cycle of Hard Living and Crime: Wives' Accommodations to Husbands' Parole Performance Laura T. Fishman	44
Community Service Sentencing in New Zealand: A Survey of Users Julie Leibrich Burt Galaway Yvonne Underhill	55
Assessment Centers as a Management Promotion Tool William V. Pelfrey	65
Sentencing Guidelines: To Be or Not To Be Chris W. Skridge	70
Departments:	
News of the Future	77
Looking at the Law	82
Reviews of Professional Periodicals	87
Your Bookshelf on Review	87
It Has Come to Our Attention	91

agencies. Probation supervision has proven ineffective, he contends, because of bureaucratic dynamics and the conflicting nature of officer-client relationships. Although there are calls for drastically overhauling probation services and revitalizing its mission, the prevailing alternatives—(1) service orientation, (2) differential supervision, and (3) intensive supervision—are incremental and fail to address fundamental problems. The author advocates eliminating probation supervision and allowing other agencies to assume these responsibilities. Probation would be left with a feasible and unambiguous mission—providing objective investigation services to the court.

The Dimensions of Crime.—Author Manuel Lopez-Rey discusses a subject addressed at the seventh United Nations Congress on the Prevention of Crime, Milan, 1985: What are the dimensions of crime? Contending that criminal justice policy is formulated without knowledge of the true scope of crime worldwide, the author holds that what is thought of as constituting crime is only common, conventional crime, and what is not taken into account is unconventional crime—such as terrorism, torture, and summary execution—prevalent in dictatorial regimes where crime often goes unreported. The author addresses how malfunctions in the criminal justice system affect the dimensions of crime, stressing the need to define what is crime by law and to broaden conceptions of crime to include less conventional crime. Influencing factors such as economic crime and criminal negligence are also discussed.

Security and Custody: Monitoring the Federal Bureau of Prisons' Classification System.—Authors Michael Janus, Jerome Mabli, and J. D. Williams report on the Federal Bureau of Prisons' system—implemented in 1979—for assigning inmates to institutions (Security Designation) and to various levels of supervision (Custody Classification) within institutions based on background and behavioral variables. This security and custody system replaced an informal one which relied heavily on individual discretion. The new method quantified the factors involved in decisionmaking and shifted the focus of classification procedures from the diagnostic-medical model to the humane control model. Since 1981, the Bureau of Prisons has monitored the system by recording monthly security and custody breakdowns as well as inmate misconduct and escape information for each of its approximately 50 institutions. This study will report analysis of these data both cross-sectionally and longitudinally at the institution level.

Repeating the Cycle of Hard Living and Crime: Wives' Accommodations to Husbands' Parole Performance.—Author Laura T. Fishman examines the social ac-

commodations made by prisoners' wives to their husbands' post-prison performance. To construct an ethnographic account of the social worlds of 30 women married to men incarcerated in two prisons, the author employed a combination of methods—indepth interviews with wives, examination of prison records, summaries of women's "rap sessions," and a variety of other sources of data. She found that of the 30 women, 15 welcomed their husbands home from prison, and the wives used a variety of accommodative strategies to support their husbands' settling down and to deter them from resuming hard living patterns and criminal activities. The author concluded that none of these strategies were as effective as wives anticipated; wives do not appear to have much influence on whether or not their paroled husbands resume criminal activities, get rearrested, and return to jail.

Community Service Sentencing in New Zealand: A Survey of Users.—Beginning in 1981, New Zealand law authorized sentencing offenders to perform from 8 to 200 hours of unpaid service to a charitable or governmental organization. Authors Julie Leibrich, Burt Galaway, and Yvonne Underhill conducted structured interviews with samples of probation officers, community service sponsors, offenders sentenced to community service, and judges to determine the extent of agreement on the purpose of the sentence, ways in which the sentence was being implemented, benefits thought to flow from the sentence, and the extent of satisfaction with the sentence. According to the authors, the New Zealand experience suggests that community service is a feasible and practical sentencing option. They caution, however, that consistency of administration requires reaching agreement as to the purpose of the sentence and its relationship with other sentences. A number of implementation decisions also need to be resolved, including the role of the offender in selecting a community service sponsor, the role of the judge and probation officer in determining a specific placement, development of working relationships between probation officer and community service sponsor, and the need for a backup sanction.

Assessment Centers as a Management Promotion Tool.—An assessment center or the multiple assessment approach is the careful analysis and programmed assessment of management ability using a variety of job-related criteria. This approach has been used for decades in companies such as IBM, General Electric, American Telephone and Telegraph, and numerous government agencies. The variables or dimensions used to test an applicant's attributes vary from organization to organization, as do the techniques used to test these dimensions. Author William V. Pelfrey reviews the typical techniques

A Theoretical Examination of Home Incarceration

BY RICHARD A. BALL AND J. ROBERT LILLY*

THE DEVELOPMENT of alternatives to traditional sentencing policy has become a major movement in criminal justice. As we have indicated elsewhere (Ball and Lilly, 1983a, 1983b, 1984, forthcoming), one of the most recent of these developments involves the use of home incarceration through some form of restriction of the offender to his or her residence during specified periods of time. Although some manner of home detention has been employed informally, more and more jurisdictions are formalizing the practice, partly in an effort to save money, partly to avoid the more adverse repercussions of jailing, and partly to insure consideration of due process in a heretofore shady legal area. We have been studying the phenomenon for approximately 3 years, during which time official home incarceration policies have come into practice in California, Florida, Illinois, New Mexico, New York, Oklahoma, and Utah. Although the practice is variously termed "house arrest," "home detention," "home confinement," or "domicile restriction," it has in common the fact that the offender is restricted to the home as a means of detention or punishment.

To this point we have outlined home incarceration in terms of the international scene (Ball and Lilly, 1983a, 1984) and have examined its applicability to certain specific offenses such as drunken driving (Ball and Lilly, 1983b, 1984). But now developments are proceeding so dramatically that it is necessary to pause and to consider what is happening in greater depth. An "alternative," of course, can be a new means to an old objective or an alternative goal in itself. Too often latent assumptions go unstated and therefore unexamined. Any argument for or against the development of an "alternative" should make explicit its theoretical grounds (Heijder, 1980). Given that we have already outlined the practical advantages and disadvantages of home incarceration, our intention here is to take the emerging debate a bit further, not necessarily as advocates but as students of the issue who wish to see all sides considered as fully as possible. To that end we will outline our own theoretical position and then examine home incarceration in those terms. That is not to say that we consider other positions invalid but only to make a beginning.

*Dr. Ball is a professor at West Virginia University. Dr. Lilly is a professor at Northern Kentucky University.

Theoretical Considerations

Criminological theory has long been divided into two distinct realms, the so-called "classical" and "positive" schools. The former is characterized by a stress upon rationality, as exemplified by notions of the importance of clarity, parsimony, balance, and restraint. Despite its many virtues, it can be most "unrealistic" in its tendency to place principles before people. The latter is characterized by a stress upon theoretical determinism and an emphasis upon "facts" rather than "metaphysics" (basic assumptions or issues of logic). Unfortunately, it is sometimes inclined to advocate whatever criminal justice policy that "works," with little regard for the more subtle questions of justice. As one of the authors has suggested in an earlier work critiquing these approaches, what is badly needed is a "dialectical" criminology which can overcome these problems (Ball, 1978). Such a position would consider the way in which perceptions of appropriate punishment change over time in such a way that those deemed reasonable under one set of social conditions dominated by one manner of social consciousness may be considered very unjust only a few years later. A dialectical theory of sentencing, for example, would pay considerable attention to perspectives gained from studies in the sociology of knowledge.

Taking this argument one step further in more recent work (Ball, 1979), it has been suggested that the three traditional goals of offender punishment, retribution, utility, and reformation, be reconsidered in terms of a paradigm devoted to a concept of "restricted reprobation" of the criminal act in the service of the "reparation of social reality" as that particular reality exists at a given period. Retribution, whether aimed at retaliation or expiation, must be incorporated as one aspect of this approach, but it must not be allowed to dominate. Retribution involves the notion of not only a right but a duty to punish offenders. On the other hand, the concept of justice as developed in the doctrine of retribution insists that only the guilty be punished and that the punishment be fitting to the offense. That is, the denunciation or reprobation of the offender is considered a moral necessity but is also subjected to certain inherent restrictions in accordance with the reigning concept of justice.

The doctrine of utility, whether aimed primarily at incapacitation or deterrence, represented an attempt to

apply a purely rational theory of punishment, and it had a major impact upon sentencing policies, including "alternative" sentences. Unfortunately, the utilitarian goal was essentially negative in its approach and avoided issues of morality while stressing expedience. Nevertheless, it did represent an advance in the sense that sentencing policy was examined in terms of reason and logic while excessive moralism was somewhat curbed. It aimed essentially at the protection of the community rather than either retribution or reformation of the offender. Reprobation was a means.

The doctrine of reformation also had its two different emphases, one being the mitigation of the more harsh and brutal punishments and the other the idea of positive "rehabilitation" of the offender as a basic goal. This too has had its effect upon sentencing policies. Unfortunately, one result has been to tear the offender out of the community and turn him or her over to technical "experts" whose ostensible role is to "help" the offender. This not only separates the offender from the community, often leading to more lengthy sentences so that the "help" may be extended, but it has often outraged public sentiment, which demands that the offender "pay" for the offense instead of being "coddled" by the state. The community demands symbolic denunciation of the offense and has grave doubts about the possibility of reformation.

In formulating sentencing policy, society is faced with two fundamental problems. The first problem is how to sustain the collective definitions of social reality which allow common interpretations and shared expectations. The second problem is how to provide sufficient flexibility so that social reality can be continually constructed and reconstructed as conditions change. This two-sided process involves the *reparation of social reality*. Thus, the basic functions of sentencing are *symbolic* functions. "Punishment is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, either on the part of the punishing authority himself or of those 'in whose name' the punishment is inflicted" (Feinberg, 1965: 399). On the one hand, there must be symbolic reprobation. On the other, this reprobation must be restricted by conceptions of justice as developed in the more advanced doctrines of retribution.

The notion of sentencing policy as directed toward the restricted reprobation of offenders in the interest of the reparation of social reality also incorporates the doctrine of utility, but it recognizes that society is not held together by bonds of logic which can be managed according to pure reason but by symbolic ties. Thus, the most "utilitarian" sentence may be one which does not seem very logical but which does carry enormous symbolic force. At the same time, the reparation of social reality must

attend to the issue of reformation. The key is to repair the breach between offender and society. If this is to be accomplished, the reprobation must occur in such a way as to encourage desired changes in the behavior of the offender and perhaps also in the approach of the community to such offenses.

Building upon the first two theoretical statements, we have stressed in our most recent attempt to advance the theoretical understanding of sentencing policies the special importance of shifting collective definitions of the key concept of *responsibility* (Lilly and Ball, 1982). Contemporary principles of justice require that there be some acceptable mode of singling out those who are to be punished from those who should not be punished, but at one time just to be *near* a crime was considered to be morally contaminating, and somehow implying certain responsibility while at another time merely to show that a particular person bore a *resemblance* to the actual offender (by way of characteristics such as tribal affiliation, race, religious affiliation, etc.) was enough to brand that person guilty (Fauconnet, 1975). The question of what specific individual was sanctioned remained relatively unimportant as long as the process was experienced as providing a satisfactory sense of reparation, as "settling" things. It was not until St. Augustine's (354-450 A.D.) development of the concept of *mens rea* based on Seneca's (5 B.C.-65 A.D.) earlier discussions of "evil mind" that the subjective element of *intent* became significant (Hall, 1960). Prior to this time *actus reus* was sufficient; it was enough to show that an act had violated conceptions of law. The question of who was to be offered, as it were, in a public expiatory sacrifice so as to heal the breach made in the dominant social reality was quite secondary. Sometimes almost anyone would do, and offenders often selected paid substitutes to undergo their scheduled punishment in a "stand-in" role (Fauconnet, 1975).

This would all be nothing more than ancient history were it not that the utilitarian doctrine still permits this sort of thing under the goal of deterrence. On strictly utilitarian grounds it may be deemed more important that *someone* be punished quickly as an "example" if there is the possibility of undertaking a long and likely fruitless search for that particular individual who actually committed the offense. The latter course is often seen as undermining that public respect for the law which is necessary for deterrence. That is one reason why our theoretical perspective insists upon close attention to the definition of responsibility as a means of restricting the scope of those available for public reprobation.

Home Incarceration as an Alternative

Considered in terms of the brief theoretical perspec-

tive outlined above, home incarceration seems to offer certain advantages over some other sentencing alternatives. One of the principal problems of such practices as suspended judgment, unconditional release, suspended sentence, or even standard probation is that they often fail to satisfy the public sense of justice. The tradition of retribution is very powerful, and the court which violates the prevalent sense of justice by going too lightly on the offender is likely to provoke public backlash. Indeed, the continued force of this sense of the symbolic necessity of some degree of retribution so as to restore the public "confidence" in the legal system and thereby to insure the adequate reparation of social reality can be clearly seen in the recent crusade against drunken driving. This has resulted in a proliferation of "slammer laws" designed to force offenders convicted of DUI (Driving Under the Influence) or DWI (Driving While Intoxicated) into jails. We have examined this problem elsewhere, suggesting that home incarceration may provide a more restricted form of social reprobation which will still guarantee the public protection against those who continue to endanger it (Ball and Lilly, 1984). Such an alternative may offer a possibility of providing the public with the necessary "symbolic value of an official finding of offender accountability" (Aaronsen et al., 1972) without exacerbating the problem by jailing the offender (Galvin et al., 1977).

In the case of drunken driving, it is obvious that the sentencing practices have not been either effective enough or dramatic enough to reaffirm the norms and redraw the boundary between the offender and the "law-abiding" public. Social definitions had been blurred and moral indignation finally exploded in a burst of excessive retribution which interferes with utilitarian goals and contributes nothing to the rehabilitation of the offender. Home incarceration may provide a sense of appropriate retribution while at the same time serving the utilitarian goal of protecting the public. And it can easily be combined with "treatment" programs if necessary.

As indicated above, sentencing alternatives may be expected to follow shifts in social consciousness and changing perceptions of social reality. This may be seen in the case of home incarceration. In 1970, France introduced the new concept of *controle judiciaire* as a form of pretrial detention involving a provision which employed home confinement as an alternative (Gerety, 1980). In 1975, Italy initiated *affidamento in provo ai servizio sociale* (trial custody), which we have described elsewhere as a form of parole to the home after a period of some 3 months incarceration in a penal institution (Ball and Lilly, 1983a). The brief institutional incarceration fits our theoretical paradigm in that it is perceived of as a shock treatment which can have great impact as a symbolic

statement but in a restricted way which might avoid the negative effects of long-term incarceration in the typical prison. The shift is underway internationally. Prior to the advent of home incarceration (there termed "domicile restriction") in New York, the New York Division of Youth had established a Community Aide Program with volunteers among whose responsibilities it was to check periodically to insure that the youths under their supervision were remaining at home (*Removing Children From Jails*, 1980). At about the same time, an alternative called "home detention" came into use in Washington, D.C., again as a means of supervising juvenile offenders (*Removing Children From Jails*, 1980). This is not surprising in view of the fact that the home has long been considered the key to dealing with youth. Even institutions for youth are still often called "youth homes." The next step in the shifting definitions would extend the concept to adults.

Theoretical Rationale for Home Incarceration

Home incarceration may not have been acceptable some years ago when the nature of "social reality" was somewhat different. The movement toward alternative sentences, however, had contributed to a partial reconstruction of collective perceptions, as evidenced by the fact that the National Advisory Commission on Criminal Justice Standards and Goals for Corrections (1973) has taken the position advocating the least drastic alternative consistent with public safety. The Commission has also recognized the importance of a dialectical relationship between sentencing alternatives and changing conditions and public perceptions, albeit implicitly rather than by way of an explicit theoretical approach, in its analysis of characteristics making for the likelihood of actual adoption of a given sentencing alternative. These include communicability, complexity level, potential impact, reasonable cost, reversibility, divisibility, compatibility, and perceived relevance to organizational goals (National Advisory Commission on Criminal Justice Standards and Goals for Corrections, 1973). Although we have considered these criteria at some length elsewhere (Ball and Lilly, 1984), they are worth examining here in terms of the way in which they illustrate an example of the application of the theoretical considerations outlined above.

According to our theoretical perspective, a new alternative sentencing policy stands little likelihood of adoption unless it is reasonably *communicable* or understandable in terms of the conceptions of social reality dominant in any particular era. If it does not "make sense," it may appear outlandish or even incomprehensible. At one time in the United States, home incarceration might have been rejected on such grounds. When life was lived

on farms of more than 100 acres and one went into the nearest town perhaps only once a month for supplies, what sense would it have made to "punish" an offender by restricting the individual to that farm? Assuming that another member of the family could go for the supplies, the impact would be rather mild unless home incarceration were to be extended to a year or more. And how would compliance have been monitored? The burden of traveling from the county seat from time to time to "check up" on the offender so as to insure that the sentence was being carried out would have been unacceptable. But today social realities are quite different, and it is possible to monitor compliance by telephone, electronic devices, or random visits which might take only a few minutes time away from other work. Under these conditions, home incarceration would seem to be a very understandable and easily communicated alternative sentence.

In terms of our theoretical perspective, we must ask a key question. Does home incarceration "make sense" in view of current conceptions of responsibility? As we have indicated, the concept of responsibility is central to the way in which changing perceptions of social reality affect legal systems. Considered in this light, it would seem that home incarceration might represent an especially suitable means of satisfying the need for "reparation" in many contemporary cases. At first glance, for example, a violation such as drunken driving seems to be a victimless activity. And for many years this was accepted as the reality of the situation. But recent years have seen an extension of notions of responsibility, especially with reference to issues of public order (Lilly and Ball, 1982). Hart (1968) has commented on this trend in terms of the concept of *role responsibility*. According to this conception, one assumes certain duties whenever one assumes a particular role. Assumption of the role of driver brings with it the obligation to perform the function safely, that is to say, responsibly. The most desirable symbolic sanction for failure to perform the role responsibly might be one or more steps leading toward possible loss of that role, perhaps along the lines of the "points systems" in use in many states which assign points in accordance with the seriousness of various traffic infractions with loss of drivers' licenses coming once a given number of points has been accumulated. But a number of studies have shown that this sanction is less than effective in that most offenders continue to drive even after license revocation. Some alternative has now become necessary.

It is interesting to note in this connection that youth who are punished by being confined to the home by their parents during normal socializing periods have for decades referred to being "grounded." This term originated among aircraft pilots who were punished for

flying infractions by being forbidden to fly for a time. Home incarceration might be perceived as a form of "grounding" of offenders. It would appear to merit serious consideration in terms of our theoretical perspective in that it combines moral retribution of a restricted sort with practical deterrence and reformation pressure.

The example just given also illustrates the second problem facing any possible sentencing alternative, the issue of *complexity level*. Home incarceration would have been an impossibly complex sentence to administer under the social realities of only a few decades ago. Not only would monitoring have been a serious drawback, but there would have been great pressure upon the offender to violate the conditions of the sentence in order to pay bills, handle other personal matters, and seek some entertainment. Today it is simple enough to pay the bills by check through the mail, to handle most personal matters by telephone, and to be entertained within the confines of the home by way of radio, records, television, and a variety of other facilities. Home incarceration now encounters a much less complex set of problems than would have once been the case, and it is certainly a very different form of "punishment" than it would have been in former times.

The reasonableness of any alternative is also connected with its *potential impact*. Again, potential impact must be judged in terms of the prevalent definitions of social reality, especially the goals which are being sought at the particular time, whether these be primarily retributive, utilitarian, or reformative. In our earlier proposal that home incarceration be examined as a possible sentencing alternative for drunken drivers (Ball and Lilly, 1984), we called attention to the fact that under present conditions mere retribution is hardly a reasonable response and may be the most counterproductive policy possible. At the same time, the public has lost much of its former faith in the rehabilitative ideal and now refuses to accept a sentence to participate in an alcoholism education program as "appropriate." What has happened is that social reality has been redefined. In a pattern similar to that which led to the passage of the so-called "sexual psychopath" laws (Sutherland, 1950) a new myth of the "killer drunk" was constructed, dramatized, and accepted by the general public. Once this had occurred, much greater "reparation" was demanded than the traditional traffic fine. Close examination, however, reveals that what the public really seems to want is a simple utilitarian goal—protection from those who drive while intoxicated and so constitute a public danger no longer to be tolerated. Home incarceration, if properly administered, may be the best means of insuring that goal.

Judged in terms of our theory of punitive sanctions as representing restricted reprobation in the interest of the reparation of social reality, the potential impact of

home incarceration as a sentencing alternative goes far beyond its capacity for the dialectical combination of the best features of the retribution, utility, and reformation doctrines in a new way. The successful reparation of social reality depends to a considerable extent upon the effectiveness of a particular sentence in affirming the *norm of reciprocity* by which social systems are tied together (Gouldner, 1960). "It is only reasonable that those who voluntarily comply with the rules be given assurance that they will not be assuming burdens which others are unprepared to assume" (Morris, 1968: 477). The significance of the norm of reciprocity lies in the way in which it undergirds collective definitions of social reality and implies the necessity of sanctions when the fundamental norm is breached. This is a major reason why the public has begun to demand harsher sanctions against offenses such as drunken driving. The driver who insists upon handling a motor vehicle while severely intoxicated is now perceived as someone who benefits from—but refuses to reciprocate—the restraint of other drivers who refuse to endanger him or her by such behavior. Thus, the moral indignation is great and demands stricter sanctioning. The obvious symbolic sanction is simply to deny access to motor vehicles for a specified time. But revocation of the driver's license, even if it could be enforced, deprives the offender of the opportunity to fulfill other duties toward the norm of reciprocity by interfering with the ability to get to work or school or to perform other duties of a "good citizen." Home incarceration, if *restricted* in a reasonable way to certain times of the day, could solve this problem in a way which fits the requirements of the theory.

The concept of restraint is particular to the sentencing theory we have outlined. The relatively free individual is a mainstay in contemporary definitions of desirable social reality, and punitive sanctions must make no greater restrictions upon individual liberty than are necessary. Hawkins (1944) has made this clear while at the same time pointing to the other side of the coin as manifested in Aquinas' argument that equity requires that a human being be deprived of the good against which he or she acts because the act implies some degree of rejection of that good. In this sense, sanctions consist essentially of the loss of some portion of individual self-determination. One of the most interesting things about home incarceration is that it offers the possibility of restricting self-determination in such a way as to avoid the harsher aspects of retribution or the dangers inherent in attempts to "reform" the individual by intrusive therapeutic techniques applied by the political state. To meet the requirements of the sentence, all the offender need do is to remain within the confines of the home. More extreme breaches of individuality which are

associated with alternatives such as jailing are not necessary.

Perhaps the principal reason for the recent tendency toward stiffer penalties for many offenses is the sense that justice is not being done (van den Haag, 1975; von Hirsch, 1976). The perception is that many of the lighter sentences such as fines, suspended sentences, or relatively unsupervised probation have not had a significant impact upon the offender, have "failed to teach him a lesson he won't forget." For some, lighter sentences suggest that social reality is being redefined in such a way as to virtually excuse some offenses by considering them "normal." This is true, for example, of many traffic offenses, where the "scofflaw" has become legendary. At the same time, neither fines nor revocation of drivers' licenses can be regarded as satisfactory sanctions. A traffic fine of several hundred dollars, which might be necessary to produce the desired impact upon a somewhat affluent individual, could be economically devastating to a person of low income. And revocation of drivers' licenses is such a severe sanction in a society so dependent upon the automobile that noncompliance has become the rule (Bacon, 1968). Home incarceration, on the other hand, can be administered in such a way that the offender will be impressed with the public's definition of the offense as serious without being subjected to the harsh sanctions which are sometimes held to be necessary "to get their attention."

Recent decades have seen a shift in perceptions of social reality and in the relative salience of its different dimensions, so that the criterion of *reasonable cost* now looms larger than ever before in any consideration of sentencing alternatives. The shift in Federal-state relations, combined with the tendency to incarcerate more and more of the population, has put a severe strain upon local budgets, particularly in the case of criminal justice agencies. The cost-benefit analysis has become a way of life. The escalation of costs has led to a different definition of realities even on the part of many political conservatives, who are now questioning the construction of jails and prisons on grounds of the tremendous expense. Thus, a major share of those who might have once opposed the concept of home incarceration as "coddling" of the offender may well see things differently given their new perceptions of social reality.

Home incarceration also offers the virtue of *reversibility*. Should unforeseen problems arise in any particular case, revocation proceedings could be initiated very easily. If home incarceration were to be administered, for example, through use of a probation contract, current conceptions of justice could be adhered to in such a way as to satisfy everyone that the "reparation" was being handled fairly. The court would agree to this sentencing alternative with the written understanding that the of-

fender agreed to abide by certain conditions spelled out in the contract. Such niceties would have had little appeal in former times, but the nature of social reality is now such that it is increasingly important that sentencing alternatives allow for more complete consideration of the rights of offenders, including the right to fair revocation procedures. At the same time, the rights of society are insured. In effect, the court agrees to restrict the degree of reprobation one step further in an effort to reconcile the offender and the community while the offender recognizes the justice of the sentence and agrees to conform (Galvin et al., 1977).

Current conceptions of social reality are less prone to an "all or nothing" point of view and more willing to incorporate various shades of gray. Thus, the *divisibility* of a particular sentencing alternative has become more and more important. Again, home incarceration fits this new reality. The term of confinement can be as little (in theory) as an hour or as much as perhaps a year. And the sentence is further divisible in that it could be specified for certain hours of the day only so as to allow for continued employment, schooling, treatment, or other activities which would help to maintain ties between offender and community. Should the offender become ill or should some emergency arise, a quick telephone call could be made to obtain special exceptions to the nature of the confinement.

In the earlier theoretical examinations of the goals of punitive sanctioning (Ball, 1978, 1979), the increasing use of restitution as a sentencing alternative was mentioned as an example of the implicit use of restricted reprobation aimed at the reparation of a perceived breach in the social reality enforced by law. Rather than to jail the offender, which is increasingly perceived as less than a "reparation" or resolution of the offense, or to levy a fine, which is increasingly perceived as a reparation paid to the state at the expense of the direct victim, the offender is required to make restitution to the victim. In this way, things are "made right" in a way that is more satisfying to the contemporary mentality. Home incarceration has the added advantage of *compatibility* with this and many other newer (or, more accurately, resurrected) alternative sentencing practices. While as a symbolically negative statement the offender would be confined to the home by the offended community, restitution would balance the reparation through a positive gesture on the part of the offender. Or in the case of a drunken driver, for example, home incarceration might be conceived of as the symbolic reprobation or negative gesture; participation in an alcohol education or treatment program might represent the positive statement of the offender's willingness to "reform" and attempt effective reconciliation with the norm of reciprocity (Harris, 1979; Ball and Lilly, 1984).

Finally, there is the issue of *perceived relevance to organizational goals*. In times when retribution was the major goal of sentencing, home incarceration would likely have been perceived as too lenient in many cases. But probation, for example, was developed precisely because of a growing sense that mere retribution was often counterproductive. Probation agencies are almost unanimous in their view that the more punitive sentences tend to separate offender from community, but they are also in widespread agreement that one of their major goals must be to reassure the public that offenders are being punished and that probation is not merely an institutionalized way of allowing them to go "Scot free" (Thomson and Fogel, 1981). Faced with these social realities, the agencies might find home incarceration an alternative which would provide the public with clear evidence of decisive reprobation beyond a "slap on the wrist" and assuage their moral indignation: at the breach of collective definitions of propriety while providing the agencies with a means to supervise caseloads in a manner more restrained than the use of the local jail or detention center. Home incarceration would seem to be even more acceptable under an explicit theoretical formulation which specified the aim of such sanctions as neither retribution, utility, nor reformation, *per se*, but as a dialectical combination of all three guided by the concept of the most restricted reprobation possible which will still provide the sense of justice in terms of a suitable reparation of the social reality which has been violated.

Theoretical Limitations of Home Incarceration

All this is not to say that there are no problems with the notion of home incarceration as a sentencing alternative. Indeed, it is possible that our reading of the contemporary social reality is flawed in some important way. One problem might arise in connection with the Anglo-American tradition that "A man's home is his castle." Home incarceration might represent a significant breach of this traditional definition in that it would have the effect of converting the home into a prison. But would it be so perceived? At this point, we confess some uncertainty.

To what extent would home incarceration allow the state access to the "sanctity" of the home? When we began our explorations of home incarceration, our initial idea involved the potential use of community volunteers who would make periodic telephone calls to monitor compliance and who might also make "spot checks" through unannounced visits to the home. In terms of our theoretical perspective, it was felt that this would serve an important symbolic function by returning some of the supervision function to the community and building a closer relationship between the community and its criminal and juvenile justice systems. But there is many

a slip between theoretical cup and application lip. Since that time, judges in both New Mexico and Florida have experimented with devices which can be attached to the offender's wrist or ankle. Once this transmitter is activated and a receiver is attached to the domestic telephone, the offender cannot move more than approximately 150 yards from the telephone without triggering a telephone signal to the central console located in the probation agency or some other monitoring center. We have already pointed to the real "Orwellian overtones" (Ball and Lilly, 1984).

On the other hand, some would argue that the nature of contemporary social reality is such that the state already has the power to penetrate the home in ways far beyond any envisioned by the "castle" tradition. And it is surely true that the home has lost much of its "sanctity" in recent years as the public has become aware of the extent of child abuse, spouse abuse, incest, and other now intolerable violations of presently accepted social standards. Just what is really involved in the symbolism of the home? Perhaps this is the central theoretical problem to be explored in any full-fledged examination of home incarceration as a sentencing alternative.

In the earliest of the theoretical explorations of sanctioning policy described above, one of the authors has stressed the theoretical significance of the emergence of individuality, especially in recent times (Ball, 1978). Cassirer (1955: 171-173) describes the transformation as bringing a new consciousness of "inner freedom," a shift which on the one hand brought more nonconformity and on the other a new ethical sensitivity and concern for the rights of the individual. One of the principal factors giving rise to increased individuality was the development of domestic privacy (Aries, 1962; Shorter, 1977). As late as the Middle Ages, the home was generally open to a variety of friends and neighbors who roamed through it almost at will. It was only with the coming of the concept of privacy that the home became divided into various zones including the "surround" or area between property line and the home itself, "region" or area comprised of living rooms and parlors, and "nucleus" or area made up of bedrooms and bathrooms once the latter came on the scene (Ashcraft and Scheflen, 1976). Where strangers such as the garbage collector would be allowed into the surround, only those with more intimate business would be expected to seek entrance into the area defined as region, and only the closest of acquaintances would be permitted into bedrooms and bathrooms.

So it was that domestic privacy and individuality developed concomitantly. Within the past century, the telephone has allowed outsiders to "invade" the home at will while radio and television have enabled residents to hear and see the outside world from inside the confines of their domestic privacy. Still, there remains a close

connection between the social reality of the free individual and the social reality of domestic privacy. What are the implications when and if the state converts the home into a jail?

As indicated above, our conception of the goal of sentencing policy as essentially involving a dialectical combination of the best features of the older doctrines of retribution, utility, and reformation in an effort at restricted reprobation in the interest of satisfactory reparation of social reality lays heavy stress upon *restraint*. Only the guilty must be punished, and the punishment must be fitting. Proponents of alternatives to institutional incarceration have been subjected to justifiable criticism for ignoring significant disadvantages of apparently more restrained approaches, especially the so-called "add-on" effect (Greenberg, 1975). When "diversion" programs were created, for example, what often happened was that minor infractions which would have once been ignored or handled with a warning were now referred to the diversion program. Rather than keeping people out of jail, the programs sometimes tended to extend the control of the state even further. Thus, it is important to emphasize that our theoretical perspective leads to advocacy of the *least* restriction on individual liberty consistent with the goal.

Conclusion

Alternative sentencing policies are usually adopted as matters of expedience. Only rarely is there an attempt to consider a new proposal in the light of extended theoretical analysis informed by the humanities and social sciences. Here we have undertaken to make a beginning at such a consideration with respect to the development of home incarceration. If the goal of sentencing can be said to represent a reasonable combination of traditional doctrines of retribution, utility, and reformation aimed at restricted reprobation in the overall interest of the satisfactory symbolic reparation of collective definitions of social reality, home incarceration seems well worth further exploration. It represents an alternative which is communicable in terms of contemporary realities, which is not overly complex, and which would appear to provide the potential impact desired in many cases. It is characterized by reasonable cost, and it is both reversible should it fail and divisible into a variety of time frames which might be tailored to the particular offender subjected to such a sentence. Finally, this alternative seems to be quite compatible with others, including restitution, education, treatment, or community service, with which it could be combined, and it has clear relevance to the organizational goals of agencies such as probation departments.

Yet there remain reasons for continued debate. From a theoretical perspective, the first is the issue of the place

of the home in current conceptions of social reality, especially given the historically close relationship between domestic privacy and the social psychology of the free individual. From a practical point of view, there is the danger of the "add-on" effect. A full and free debate may allow us to institute home incarceration with closer attention to its possible dangers. At a minimum, it ought to make it clearer to us all just what we are doing.

REFERENCES

- Aaronson, D.E., Hoff, B.H., Jaszi, P., Kittrie, N.M., and Sarri, D. (1977) *The new justice: alternatives to conventional criminal adjudication*. Washington, D.C.: U.S. Government Printing Office.
- Aries, P. (1962) *Centuries of childhood: a social history of family life*. Translated by R. Baldack. New York: Vintage.
- Ashcraft, N. and Schefflen, A.E. (1976) *People space: the making and breaking of human boundaries*. Garden City, New York: Anchor.
- Bacon, S. (1968) Traffic accidents involving alcohol in the U.S.: second stage aspects of a social problem. *Quarterly journal of studies on alcohol supplement* 4: 11-33.
- Ball, R.A. (1978) Toward a dialectical criminology. In *Crime, law, and sanctions: theoretical perspectives*, ed. M.D. Krohn and R.L. Akers. Beverly Hills, California: Sage.
- _____ (1979) A theory of punishment: restricted reprobation and the reparation of social reality. In *Structure, law, and power: essays in the sociology of law*, ed. P.J. Brantingham and J.M. Kress. Beverly Hills, California: Sage.
- Ball, R.A. and Lilly, J.R. (1983a) The use of home incarceration as an alternative. Paper presented at the VI International Conference on Criminology, Vienna.
- _____ (1983b) Home incarceration for drunken drivers. Paper presented at Annual Meetings of the American Society of Criminology, Denver.
- _____ (1984) The potential use of home incarceration with drunken drivers. In *Critical issues in criminal justice*, ed. J.E. Scott and T. Hirschi. Beverly Hills, California: Sage.
- _____ (forthcoming) Home incarceration: an alternative to total incarceration. *The justice system journal*.
- Cassirer, E. (1955) *The philosophy of symbolic forms: vol. 2, mythical thought*. New Haven, Connecticut: Yale University Press.
- Fauconnet, P. (1975) *Responsibility*. Translated by W. Jeffrey, Jr., Paris: Felix Alcan.
- Feinberg, J. (1968) Collective responsibility. *Journal of philosophy* 65: 674-688.
- Galvin, J.C., Busher, W., Greene, W., Kemp, G., Harlow, N., and Hoffman, K. (1977) *Instead of jail: pre- and post-trial alternatives to jail incarceration: vol. 4: Sentencing the misdemeanor*. Washington, D.C.: U.S. Government Printing Office.
- Gerety, P. (1980) A French program to reduce pretrial detention. *Crime and delinquency* 26: 22-34.
- Gouldner, A. (1960) The norm of reciprocity: a preliminary statement. *American sociological review* 25: 161-172.
- Greenberg, D.F. (1975) Problems in community corrections. *Issues in criminology* (Spring): 22-32.
- Hall, J. (1960) *General principles of criminal law*. Indianapolis: Bobbs-Merrill.
- Harris, M.K. (1979) *Community service by offenders*. Washington, D.C.: National Institute of Corrections.
- Hart, H.L.A. (1968) Postscript: responsibility and retribution. In *Punishment and responsibility*, ed. H.L.A. Hart. New York: Oxford University Press.
- Hawkins, D.J.B. (1944) *Punishment and moral responsibility*. *Modern law review* 7: 205-208.
- Heijder, A. (1980) Can we cope with alternatives? *Crime and delinquency* 26: 1-9.
- Lilly, J.R. and Ball, R.A. (1982) A critical analysis of the changing concept of criminal responsibility. *Criminology* 20: 169-184.
- Morris, H. (1968) Persons and punishment. *The monist* 52: 476-479.
- National Advisory Commission on Criminal Justice Standards and Goals for Corrections (1973) *Report of the national advisory commission for criminal justice standards and goals for corrections*. Washington, D.C.: U.S. Government Printing Office.
- Removing children from jails* (1980) Washington, D.C.: U.S. Government Printing Office.
- Shorter, E. (1977) *The making of the modern family*. New York: Basic Books.
- Sutherland E. (1950) The sexual psychopath laws. *Journal of criminal law and criminology* 40: 543-554.
- Thomson, D and Fogel, D. (1981) *Probation work in small agencies: a national study of training provisions and needs*. Chicago: Center for Research in Law and Justice.
- van den Haag, E. (1975) *Punishing criminals*. New York: Basic Books.
- von Hirsch, A. (1975) *Doing justice: the choice of punishments*. New York: Hill and Wang.