

119857-
119864

Federal Probation

- Guideline Sentencing: Probation Officer Responsibilities and
Interagency Issues *John S. Dierna*
- The Presentence Report, Probation Officer Accountability, and
Recruitment Practices: Some Influences of Guideline Sentencing *Harry Joe Jaffe*
- Prison "Boot Camps" Do Not Measure Up *Dale K. Sechrest*
- The Greatest Correctional Myth: Winning the War on Crime Through
Incarceration *Joseph W. Rogers*
- Probation and Parole Malpractice in a Noninstitutional Setting: A Contemporary
Analysis *John C. Watkins, Jr.*
- The Utilization of Technology in Correctional Institutions *Lawrence F. Travis III*
Edward J. Latessa, Jr.
Robert W. Oldendick
- Prison Overcrowding: The Case of New Jersey *Edward W. Sieh*
- Crime Victims Seeking Fairness, Not Revenge: Toward Restorative
Justice *Mark S. Umbreit*

SEPTEMBER 1989

U.S. Department of Justice
National Institute of Justice

119857-
119864

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 permission of the copyright owner.

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

NCJRS

VOLUME LIII

SEPTEMBER 1989

OCT 6 1989 NUMBER 3

This Issue in Brief^{ACQUISITIONS}

Guideline Sentencing: Probation Officer Responsibilities and Interagency Issues.—The recent decision by the U.S. Supreme Court to uphold the constitutionality of the sentencing guidelines system has provided the impetus for further legitimization of the Federal probation profession; yet problematic issues and difficult guideline decisions confront probation officers as they carry out the guideline presentence investigation. This article by U.S. probation officer John S. Dierna focuses on the important, challenging responsibilities placed upon the Federal probation officer conducting guideline presentence investigations and introduces a three-step process to assist probation officers assigned to these investigations.

The Presentence Report, Probation Officer Accountability, and Recruitment Practices.—Under guideline sentencing, the probation officer has become the "fixer of punishment," according to Federal probation officer Harry J. Jaffe. This new role affects the drafting of the presentence report, heightens the degree of accountability, and argues for a change in the hiring protocol of new officers. As punisher, the probation officer must now function as an evaluator of knowledge rather than as a presenter of simple facts. This untraditional role requires a diversity of analytical skills and competencies, extending beyond the vistas of the social sciences.

Prison "Boot Camps" Do Not Measure Up.—This article by Dale K. Sechrest is about prison "boot camps," or shock incarceration programs, which are proliferating in the United States and have generated great interest from the public and media. Typical programs provide a 90- to 120-day period of military-style recruit training designed to instill discipline and improve the self-respect of the individual participants, thus leading to improved future behavior.

System goals include reducing prison populations, reducing costs, and perhaps reducing recidivism rates for these offenders. Recidivism evidence to date, however, shows little improvement over national norms for these offenders. In fact, they may be doing worse.

The Greatest Correctional Myth: Winning the War on Crime Through Incarceration.—Reiteration of the futility of trying to win the Nation's war on crime through overreliance on incarceration is essential, asserts author Joseph W. Rogers. Taken to extremes, the imprisonment solution has become

CONTENTS

Guideline Sentencing: Probation Officer Responsibilities and Interagency Issues	John S. Dierna	3
The Presentence Report, Probation Officer Accountability, and Recruitment Practices: Some Influences of Guideline Sentencing	Harry Joe Jaffe	12
Prison "Boot Camps" Do Not Measure Up	Dale K. Sechrest	15
The Greatest Correctional Myth: Winning the War on Crime Through Incarceration	Joseph W. Rogers	21
Probation and Parole Malpractice in a Noninstitutional Setting: A Contemporary Analysis ..	John C. Watkins, Jr.	29
The Utilization of Technology in Correctional Institutions	Lawrence F. Travis III Edward J. Latessa, Jr. Robert W. Oldendick	35
Prison Overcrowding: The Case of New Jersey	Edward W. Sieh	41
Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice	Mark S. Umbreit	52
Departments		
News of the Future		58
Looking at the Law		63
Reviews of Professional Periodicals		67
Your Bookshelf on Review		76
It Has Come to Our Attention		84

Prison Overcrowding: The Case of New Jersey

BY EDWARD W. SIEH, PH.D.

Assistant Professor of Criminal Justice, Niagara University

THE PRISON may be compared to a child who is given his or her first pair of shoes, not knowing that the shoes will eventually be filled, outgrown, worn out, and replaced. While the feet are growing the shoes are loosened to accommodate the larger feet. This is only a temporary solution. As the child gets older, new shoes are purchased because the old ones are too small or have worn out. The same thing happens with the prison. We build new prisons when the old institutions wear out or when the institutions become overcrowded. Shoes, like prisons, are devices which are intended to protect us but in doing so confine us to rigid capacity restrictions. Much as a corn is painful on the foot, prison overcrowding is painful on the human body. In both cases, because of the nature of the instrument, growth will cause serious problems.

There are as many prisoners serving time in the United States as there are free citizens living in the city of Boston. There are over 566,000 inmates (Camp and Camp, 1987: 1), and Boston's population is 570,000 (Hoffman, 1988). One report indicates that California will have 100,000 inmates in its prison system by the year 1995 (Travisano, 1987: 7). As of January 1, 1987, there were 14,369 inmates sentenced to prison in New Jersey, and of this number, 1,825 inmates were held in local jails because of prison overcrowding (Camp and Camp, 1987: 1). A more recent report stated, "there are about 17,000 state-sentenced inmates in New Jersey, with about 2,000 of them in county jails awaiting placement. . . . About 125 more inmates come into the state correction system than are released each month" (Narvaez, 1987: B1).

New Jersey's prison population has grown from 6,000 inmates in 1980 to its current level with a modest construction effort. Older facilities have added modular housing units and made additions to existing structures. New prison construction has meant an additional 400 beds. Two more prisons are expected to open soon with an additional 1,016 beds, and another 998 bed spaces are planned for the State. To meet the expected growth in inmate population, New Jersey is building six new facilities (Camp and Camp, 1987: 24). These efforts seem woefully inadequate, for New Jersey will easily have over 18,000 inmates by 1990 (McCarthy, 1985).

Similar to the coalition that rallied to reform the

sentencing laws, various individuals from across the political spectrum, have argued for increased prison construction in New Jersey. They seem to succeed rather easily, for each proposed bond issue passes without much debate. The hard-liners need the additional space a tougher sentencing law necessitates. The wardens and sheriffs argue that current conditions are so inadequate that changes must be made. The liberals and civil libertarians, who deplore the conditions found in most old prisons like Trenton, argue that new institutions are needed (Nagel, 1973: 149). All of these efforts have been supported by the courts which have found several of the jails in New Jersey in violation of inmates' rights.

One means of measuring prison overcrowding involves examining the population versus the rated capacity. According to one report, the New Jersey prison system is 16 percent over capacity (Camp and Camp, 1987: 22). "Determining the capacity of a building to provide human habitation or living quarters will of course involve the consideration of physical features, but implicit in all judgments about the ability of a structure to house human beings are considerations of value, decisions about sufficiency and adequacy involving different kinds of measurement" (Sherman and Hawkins, 1981: 30). Apparently it is not difficult for people to accept three or more inmates in a cell. Prison capacity is a very difficult concept to measure, particularly when the figures are compared over time.

This is especially true because the American concept of capacity has been so flexible. . . . The administrators of corrections systems were under no constraints in determining how many people could occupy each room in their institutions. . . . As long as the corrections department was not seeking additional space, there was little incentive to report statistics which suggested that it might be operating in violation of its own standards. Because of the equivocal nature of the concept of capacity and the absence of a standard definition for it in [any] period, comparison is of little significance. (Sherman and Hawkins, 1981: 28-29)

Closely related to the problem of prison overcrowding is sentencing policy. With the abolition of corporal punishment, and along with the influx of immigrants in the 19th century, a perception developed which argued for the need to build imposing structures which could offer a deterrent to crime. Today we are in another transitional phase. Instead of replacing corporal punishment, the concern is with supplanting

the indeterminate sentence while maintaining a deterrent and incapacitative function through presumptive determinate sentences. This attitude is seen in New Jersey's revised penal code which emphasizes presumptive determinate sentences.

What accounts for the overcrowding in New Jersey? Do any of the major theories offer a partial explanation? Are there other considerations? What does the history of the institution tell us? Is overcrowding a new phenomenon in New Jersey? What role does correctional policy play? And finally, is there not something inherent in the prison institution itself that breeds overcrowding?

In order to address these questions I would like to first discuss the problems associated with prison overcrowding. Next will come a presentation of some common explanations for overcrowding. This is to be succeeded by a discussion of the history of overcrowding in New Jersey's prisons, particularly the prison at Trenton. At this point, it seems appropriate to consider the evolution of correctional policy in the State and the nature of the correctional institution.

Institutional Problems

There are numerous problems that stem from prison overcrowding. High population density affects the physical and mental health as well as the safety of the staff and inmates.

Thornberry and Call (1983) have noted a connection between overcrowding and problems with riots, violence, and assaults. Megargee (1974) found that the number of rule infractions increased as the amount of space decreased. Nacci, Teitlebaum, and Prather (1977) concluded that density was associated with rule violations. Jan's (1980) study uncovered evidence that rule violations increased in both the youth and adult institutions as the level of density increased. McCain, Cox, and Paulus (1980) found that residents in double-bunked cells had higher rates of disciplinary infractions than did residents of single units.

Cobb (1985) identified other problems associated with overcrowding. High temperatures and poor ventilation lead to violence. Problems also result from the high noise levels, diminished standards for hygiene, increased instances of theft, looser controls over the inmates, and a breakdown in inmate solidarity, i.e., the inmates no longer mind their own business and do their own time but respond to irritating behavior exhibited by other inmates. The classification system and work assignments are also hindered. There is an overabundance of workers and too much idleness. "Overcrowding makes it hard for prison officials to keep predators, or inmate hit men, away from those who seek protection" (Cobb, 1985: 81). Inmates also strike out against the staff. During 1986, in New Jersey there were 90 instances of assault directed at

prison staff (Camp and Camp, 1987: 17). Official forms of violence increase as the institution becomes more crowded because the guards do not know how to handle the situation in any other way (Cobb, 1985: 81). Increased inmate populations do not automatically translate into the augmented staff numbers needed to supervise the inmates.

Inmate illnesses become a particularly serious problem. With respect to studies on illness in prison, McCain, Cox, and Paulus (1983) indicated a higher number of illness complaints in crowded institutions. Walker and Gordon (1980) also reported a relationship between crowding and illness. Of particular note is the high incidence of communicable diseases. King and Geis (1970). Stead (1978), and Thornberry and Call (1983) found that crowded jails and prisons contributed to the spread of tuberculosis.

"The State's [New Jersey] incidence of tuberculosis in the general population increased slightly from 891 cases in 1983 to 935 in 1984" (New Jersey Department of Health, 1984: A-6). The incidence of tuberculosis in New Jersey's prisons is higher than the numbers normally expected (Reed, 1985). "The tuberculosis increases are the highest where AIDS is more of a problem" (Associated Press, 1987: 18). Hammett (1986) reports that New York, New Jersey, and Florida accounted for 75 percent of the AIDS cases detected in prison. New Jersey's current policy emphasizes: medical segregation of AIDS patients but no segregation of inmates who test positively for ARC or HTLV-III; careful monitoring and evaluation of inmates suspected of testing positively for the virus; and, finally, extensive staff and inmate education programs (Hammett, 1986: 6). There is no policy calling for the conducting of tests on all inmates to see if any have the AIDS virus, nor is there a policy to distribute condoms. With homosexual activity and tattooing a reality of prison life, it is likely that a number of inmates will contact AIDS in prison. These problems are exacerbated by an absence of policy separating AIDS-infected inmates from AIDS-free inmates in the crowded county jails in New Jersey.

Prison overcrowding leads to a deterioration in physical and mental health. Thornberry and Call (1983) found an association between overcrowding and psychiatric commitments. D'Atri and Ostfeld (1975) found that prison living arrangements were significantly related to blood pressure. Toch (1985: 59-60) has indicated that overcrowding is associated with a number of psychological problems that can lead to violence. Privacy is interfered with. Disruptive behavior increases, and in some cases it can become extremely violent. The younger inmates react violently, and the older inmates develop other health maladies. Those inmates with no outlets for releasing the pressure strike out against another. Overcrowding destabilizes inmate relations; it thrusts incompatible inmates in with one another. Inmates spend longer

times in their own cells which increases their perception of being overcrowded. Inmates also strike at prison staff.

Mortality rates are significant, indicating that increased crowding may in effect make an average prison sentence a death sentence. From 1968 to 1978, the Texas prison system grew from 12,500 inmates to 23,000 inmates. Suicide rates in Texas bore a strong relationship to prison overcrowding. "While the prison population increased by ninety-one percent during the study period, the suicide rate increased by over 1,000 percent" (Thornberry and Call, 1983: 348).

These conditions are but symptoms of the problems associated with overcrowding. It is also important to consider the explanations offered for prison overcrowding.

Theories of Overcrowding

With the aid of computer models, it is possible to develop a statistical projection of the prison population, if all the important variables continue at the strength and direction at which they are anticipated. However, they do not. Thus, any projection eventually becomes useless the further into time it is made. Many factors come into play in developing these models; no attempt will be made here to offer an analysis of these factors, nor of the statistical techniques employed to develop these models. However, there are four different factors that have gained a great deal of attention as explanations of prison overcrowding. They are: shifts in the population at risk, rising crime rates, deteriorating economic conditions, and changes in criminal justice policies.

Shifts in demographic trends have played a big part in the projection of prison population. At the national level, due to a constant rate of imprisonment for those between the ages of 20 to 29, and with a high number of persons in this category, we find that there would be an increase in the population going to prison until the population-at-risk decreases (Austin and Krisberg, 1985: 24).

We are now experiencing a baby boom among all races (Associated Press, 1987: 18) and would therefore expect another increase in the New Jersey prison population by the year 2005. In 1970, the birth rate in New Jersey was 16.7 children per 1,000 population for all races, but by 1976, the rate had fallen to 12.3. In 1980, the rate climbed to 13.1 and then further up to 13.9 in 1985 (New Jersey Department of Health, 1985). "In 1985, there were 105,329 resident births in New Jersey, the highest annual total since 1972" (New Jersey Department of Health, 1985). "After a rapid decline from 1960 to 1976, fertility rates in the U.S. for women 15-44 years of age have been gradually increasing reaching 68.4 births per 1000 in 1980 and dropping to 66.0 in 1984. This trend is partly because

of postponed births as witnessed by postponed marriages" (New Jersey Department of Health, 1984).

Of total births, 80,847 (76.8%) were reported as occurring to white mothers and 22,136 (21.0%) to nonwhite mothers. This was approximately the same proportion as in the previous year. Since 1970 the proportion of total births that were nonwhite has increased slightly, about two or three percent, while a comparable decrease has occurred in the proportion of total births that were white. (New Jersey Department of Health, 1985)

White births increased 3.8 percent from the previous year; nonwhite births increased 4.8 percent (New Jersey Department of Health, 1985). Nationally, the black birth rate of 21.1 per 1,000 population is 50 percent higher than the white rate of 14.8 per 1,000 population (Bureau of Census, 1987: 60).

The racial composition [of New Jersey], age distribution, and other population characteristics did not change [from 1970 to 1980] and are similar to those of the United States. Two major differences, however, have been observed: 1) the rapid growth of the State's minority population which now is twice that of the national rate. . . . (New Jersey Department of Health, 1984)

New Jersey has over 490,000 Hispanic residents (Hoffman, 1988: 540). New Jersey's Hispanic population ranks sixth in size among all states in the country. This ranking is significant because most of the leading states, with the exception of New York, are border states. The national Hispanic population increased by 16 percent between 1980 and 1985 (Hoffman, 1988: 532). "Even without migration for the next 100 years, the [national] Hispanic population would continue growing at twice the national rate" (Hoffman, 1988: 532).

If both census projections and the population-at-risk hypothesis are correct, the number of whites going to prison will decrease during the 1990's but then increase later on. However, the proportion of blacks and Hispanics in prison will remain relatively high and possibly increase as their population growth rates have continued at high levels. Furthermore, if blacks and Hispanics were to receive better health care, particularly prenatal care, their birth rates would remain high. More importantly, the perinatal mortality figure would decrease as well, thus assuring that not only will blacks and Hispanics have more children but these children will more likely grow to adulthood. Any projection in this area is tenuous, however, for we do not know if the mortality rate will increase for one of the populations-at-risk. To make a major investment in costly prison construction on the basis of these projections is very speculative.

Another factor that influences the prison population is a change in the crime rate. The crime rate in New Jersey should remain high for a number of reasons. One important consideration is the State's geography. New Jersey's location has made it the melting pot for many poor immigrants who came to this

country and got no further. The influence of cultural conflict on the genesis of crime is obvious. However, these immigrants account for only so much of the crime. Other factors include New Jersey's role in organized crime, its proximity to New York City, the State's long harbor and coastline, the use of the State as a central east coast thoroughfare, and a high population density with a variety of criminal opportunities.

Until recently, it was believed that the crime rate was dropping or fairly stable. In 1983, both victimization studies and official crime data agreed that crime rates were dropping, especially for juveniles (Department of Justice, 1984). If this trend continued, we would expect fewer people in New Jersey's prisons. However, this has not been the case, for the rate of imprisonment has increased despite the decrease in the crime rate. It should be kept in mind that arrest statistics, despite the fluctuations in the crime rate, have not been going down. "Actually the crime rate could drop quite a bit before arrest would necessarily drop since we arrest only 10 percent of crimes to start with. If arrests stop dropping then this could have an impact on the projections. However, indictments and criminal complaints on crimes went up last year by seven percent" (McCarthy, 1985). Furthermore, it is difficult to believe that the government could spend billions of dollars on criminal justice programs and find that such actions will not increase the number of persons who are sent to prison.

A third theory holds that imprisonment is related to economic conditions. Breener (1976), Rusche and Kirchheimer (1967), and Mannheim (1939), among others, have argued that during times of depressed economic conditions, the prison population will increase. Statisticians have been unable to draw direct relationship between economic factors and incarceration rates. "Recent research holds some promise for demonstrating the joint effects of economic and demographic factors on criminal activity" (Austin and Krisberg, 1985: 26-27). It is a well-known fact that the prison population rose during the 1930's, a time when this country experienced one of its worst depressions. We still do not have data to compare this period of time with a similar economic crisis. We do know, for example, that the prison population increased during the 1930's depression era up until the 1940's at which time it decreased during the war, only to increase again once the war was over. In New Jersey, the number of inmates committed to institutions per year increased from 825 in 1923 to 1,761 in the 1930's and then decreased to 1,574 in 1950 (Cahalan, 1986: 37). A problem occurs in that during the period between 1945 and 1950, the country experienced an economic boom but the prison population continued to increase (Department of Justice, 1982; Bailey, 1961). The crime rate during this time may have

increased as result of a military-to-civilian employment lag or as the result of veterans' problems readjusting to civilian life. The latter difficulty does not relate to economic variables but to psychological factors. This indicates, if anything, that the problem is much more difficult to account for and that a simple correlation between two highly complex concepts, the incarceration rate and rate of unemployment, will lead to little explanation.

During the 1980's, New Jersey experienced an economic boom of sorts; the unemployment rate reached new lows and the economic growth of the State was high (Federal Reserve Bank of Philadelphia, 1987). The unemployment rate in New Jersey decreased from 1983 to 1987 when it reached the low of 3.8 percent which is considerably below the national average of 6.7 percent (Federal Reserve, 1987). One would have expected the prison population to decline. It did not. The economic boom was good for the middle class but not necessarily for the poor. Problems associated with survival, inflation, gentrification, and the perception of not experiencing the benefits of this boom heightened the sense of deprivation, particularly among the poor, which meant that crime became an attractive alternative to or an adjunct to work. The persons going to prison continued to be the poor and those doing poorly—those who are not taking advantage of the economic growth.

Criminal justice policy has played a particularly important role in prison overcrowding throughout the history of New Jersey's prisons. Sentencing reform plays a large part in current policy. Authorities in New Jersey place much of the blame for the current high levels of prison overcrowding on the mandatory and determinate sentencing schemes, particularly as they affect the violent offender. Nearly 65 percent of the offenders in prison are there for crimes of violence, and those offenders who are there for property crimes have crimes of violence in their backgrounds (Division of Policy and Planning, 1985: 2).

In New Jersey, the present prison population is a function of an increase in the number of inmates who are sentenced, an increase in the number going to jail, and an increase in the length of stay. This increase in the length of stay is attributed to an increase in the delay between incarceration and the first parole eligibility, particularly through the use of the minimum sentence. It has been suggested that the period for parole eligibility has doubled in recent years. Today, an inmate is eligible, not after serving one-fifth of the maximum sentence, but after two-fifths of the maximum sentence. The problem is exacerbated because 45 percent of the inmates sentenced to prison are serving a minimum sentence. In fact, many of the cases that involve aggravating factors are sentenced to a minimum term, an action that is going to increase

the population (McCarthy, 1985). Other policy decisions that have affected the inmate population concern the new criminal code, changes in the parole system, requirements for a speedy trial, and mandatory sentences for using a gun and for the sale of narcotics near a school (Narvaez, 1987: B1). All of these factors have put pressure on the correctional system to rush to judgment and keep the convicted in prison longer.

Historical Perspective

Many of the explanations offered for prison overcrowding are valid. However, the problem is even more complex than the experts would have us believe. We are deficient in understanding the problem from the historical point of view. The prison was conceived as a novel idea by those who were not prepared for what they faced. They did not consider a growing free citizen population, rising costs, and the impact of corruption and political scandals. Their general lack of understanding of what they were trying to do was reflected in their site selections, management strategies, and failure to recognize the general problems inherent in using institutions to handle social problems—institutions are costly and they tend to expand.

Seeking the historical antecedents of existing policies is a constructive activity. Looking for someone to blame and vilify is not. It is an historical fact that the Quakers were responsible for the first implementation in the United States of punishment through incarceration. The motives of the Quakers were humane and their experiment attracted worldwide attention. There is little to be gained today in castigating colonial Americans for the evil in the present system, especially since Quakers are in the vanguard of the prison reform movement. (Sommer, 1976: 68-69)

The first prison built in New Jersey, Trenton, housed its first inmate in 1798. It "was a typical two-storied home complete with a columned doorway and set apart only by a low wall enclosing a courtyard" (Rothman, 1971: 90). At the time the prison was constructed it was surrounded by a city with little space for expansion. Immediately it had problems with overcrowding. The same problems occurred with the selection of prison sites for Sing Sing, which was built along a river, and Alcatraz, which was constructed on an island. There was little room for expansion.

From the beginning, the conditions in New Jersey's prisons were not good. McKelvey indicates that the prison in Trenton was required to address problems of overcrowding every 10 years. The original structure called for congregate workshops with single cells for the separate confinement of inmates at night (McKelvey, 1977: 10). By 1833, New Jersey built additional cellblocks at Trenton based on the Philadelphia model but neglected to provide both the needed exercise yard (McKelvey, 1977: 19), and the necessary handicrafts (McKelvey, 1977: 28). In 1850, with the

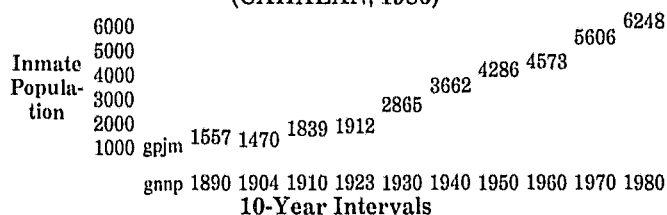
problems of prison overcrowding continuing, the Trenton prison adopted the Auburn model for a new cellblock.

After the Civil War, and for the 10 years that followed, overcrowding continued to plague the Trenton prison. "At no other time during the second half of the century did the prison suffer so persistently from serious overcrowding as during the ten years following 1868. A few of the states, notably New Jersey, Indiana, Illinois and Missouri, never succeeded in freeing their prisons from the evil of two or more men to a cell" (McKelvey, 1977: 98). Despite efforts to expand, to reform, and to deal with the problems, serious overcrowding continued through the 1890's. "New Jersey frequently enlarged the prison at Trenton, yet the population persistently registered 200 ahead of capacity" (McKelvey, 1977: 178).

Problems with overcrowding have continued right on through this century. In 1928, a report indicated that: "No other prison in the country has so large a number of prisoners in such a small acreage. . . . The yard is filled with buildings of different periods constructed in whatever space was available" (Garret and MacCormick, 1929: 612). It was one of the most seriously overcrowded prisons in the country (Garret and MacCormick, 1929: 620).

The statistics available on the rate of incarceration for New Jersey are revealing. One should keep in mind that the accuracy of the data is suspect because of "the absence of a clear definition of terms such as 'convictions,' 'criminals,' and 'prisons,' and the data are not generally accepted as comparable to later reports" (Cahalan, 1986: 1). Nonetheless, these data do give us some picture of what went on in New Jersey.

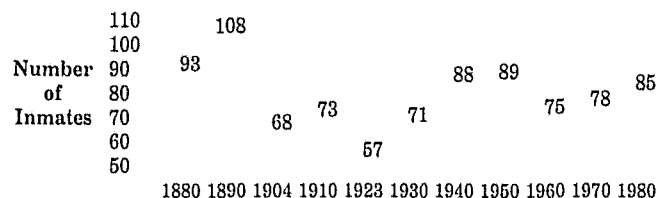
NEW JERSEY PRISON POPULATION 1880 TO 1980
(CAHALAN, 1986)



It is clear from these figures that the inmate population has always increased except during the time when probation began to divert offenders (1890-1910). After a period of initial adjustment the increase resumed. In the period from 1850 to 1880 the rise in the prison population saw a corresponding decrease in the number of people who occupied almshouses (Cahalan, 1986: 207). The purpose of the prison became more diversified. In 1920, we saw a large increase because of new faith in the indeterminate sentence. Imprisonment was going to cure all evils. From 1920 to 1930, we also saw a 50-percent increase in the

number of persons going to prison, a figure matched by what is taking place today. The current New Jersey prison population has increased by nearly 200 percent over what it was in 1980.

PERSONS PRESENT IN NEW JERSEY'S PRISONS,
PER 100,000
FREE CITIZENS POPULATION 1880-1980
(CAHALAN, P. 30).



The data indicate that the number of persons going to prison per 100,000 free citizen population has not been constant over the time period. However, if we exclude both the high figure (108) and the low figure (57), there is not much variation around the mean incarceration rate of 80 persons per 100,000 population. Despite the increase in prison population, we have a relatively constant rate of incarceration. The historical trend reflecting a rise in the prison population could be accounted for by the increase in the State's population or what has earlier been referred to as an increase in the population-at-risk.

We have to take into account that the rate of incarceration may have been higher were it not for the community-based corrections movement of the 1960's and 1970's. However, during the time when the prison population was decreasing and the use of community-based corrections was promoted, the juvenile institutions in this country were very crowded. "Acknowledging that the capacity of the juvenile system was 'under severe strain' the [1967 President's Crime] commission expressed no general concern about the need for additional adult prison capacity" (Sherman and Hawkins, 1981: 10). With the lack of success in dealing with the "state-raised-youth" (Irwin, 1970), we could expect that eventually these juveniles would populate the State adult institutions. Later, the Federal Government did respond to this need by requesting institutional construction monies despite discussions concerning the need for deinstitutionalization in this country.

Both inadequate planning and the lack of policy analysis were important contributors to this historical tendency toward crowded institutions. Choosing short-term prison construction as a means of dealing with a rising criminal population is an expensive policy. The cost of building a facility was and continues to be prohibitive. It can cost on average \$50,000 for each new prison bed (Camp and Camp, 1986: 20). The prison built in 1830 at Cherry Hill, Pennsylvania, cost \$750,000, "a sum that staggered responsible state authorities" (McKelvey, 1977: 19). "At the time they

[prisons] were built some of them were among the most costly buildings the world has seen" (Hawkins, 1976: 42-43). Because of the cost, it was unlikely that the politicians would support a facility that would provide for more than a limited amount of space for population growth. The built-in durability and strength of any prison building leads to further difficulties in modernizing and improving the facility.

Moreover, we must be mindful that prison policy decisions were not paramount in the minds of the early officials. It was only when prison officials complained about the failures of the silent system, particularly official efforts intended to keep inmates from communicating with one another, that anyone recognized that there was a problem with overcrowding. New Jersey politicians were also preoccupied with scandals. The State would have possibly benefited from a permanent board responsible for the supervision of prisons, but scandals and corruption absorbed the attention of the politicians (McKelvey, 1977: 103).

Another related policy problem was official ignorance. Those responsible for the prisons did not know what they were doing. They were dealing with a new entity, a structure that was to hold criminals until they had repented for their sins. Punishment was to be measured in years and not in terms of the number of lashes. There were no models from which to draw upon other than those that came from Europe which were designed to provide assistance to the poor or temporary custody for the accused pending execution of the sentence. The one facility, the Walnut Street Jail, by default, became the model for many other institutions. The jail obtained "nationwide significance not because of any extraordinary conception of development, but because, for lack of another model, it became the pattern upon which numerous other state prisons were built and administered. . . . What was done at Walnut Street conditioned practically absolutely the prison system, so far as there was a system, in the United States for nearly forty years" (Lewis, 1967: 25). The officials in New Jersey followed the model provided by the Walnut Street jail insofar as locating the Trenton prison in the middle of the community but also by utilizing a facility that was very much like the Walnut Street jail in that it resembled an ordinary two-story home that was undistinguishable from its surrounding buildings (Rothman, 1971: 90).

As the penitentiary evolved, prison policy goals remained unclear and unsettled. This muddled picture manifested itself in the discussion over the design of the institution. The debate over the superiority of the Philadelphia model versus the Auburn model was really a matter involving "disagreements concerning the true purpose of the penitentiary but also [over the] uncertainty or ignorance of its design"

(McKelvey, 1977: 19). This lack of certitude in the selection of institutional design is seen in the indecisiveness in the choice of models at Trenton. It is clear that the prison at Trenton was originally built on the Auburn model but some time later the Pennsylvania model was adopted only to be followed once again by the Auburn model. Rothman (1971: 62) points out that a "repulsion from the gallows rather than any faith in the penitentiary spurred the late-eighteenth century construction. Few people had any clear idea what these structures should look like and how they should be administered—or even addressed themselves seriously to these questions." He also states that in substituting incarceration for the gallows, the legislators involved themselves in a totally new question. How much time was a crime worth? No one had asked the question before and there were no easy answers (Rothman, 1981: 376).

Officials could have looked to the house of correction and other institutions for guidance. They could have had some understanding of the demand that was placed on the system. The house of correction was an institution built around the rehabilitative value of work and industry. Using cellular confinement, the residents lived much as the inmates of the later day penitentiary would. The conditions in these institutions were not good. Terrible overcrowding led to serious problems with jail fever or typhus (Johnson, 1973: 15). However, some of the almshouses and poorhouses were, at times, well-administered in New Jersey (Rothman, 1971: 29). More importantly, these institutions were concerned with responding to economic problems which were cyclic in nature reflecting the diminished demands placed on their services during economic upturns. This inconsistency made it hard to predict the level of use the prison would have. The prison was built to handle a continuous but consistent population influx but due to the collapse of the economic system during acute crisis, the institution took in more inmates than it could handle. The prison is an institution intended to deal with chronic but not acute problems. These short-term upheavals, of which there were many, made it difficult to know the dimensions of the population it was serving. Law enforcement practices and demographic factors also played a large part.

Unknowingly, the penitentiary required more community resources than any form of punishment heretofore attempted. Officials did not know the extent to which the institution would make demands on the community's resources. "By its very nature, a lengthy sentence entailed unprecedented expenses; feeding and clothing convicts for a period of years would swell the costs" (Rothman, 1971: 93). One reflection of official ignorance is to consider the management of inmate labor and supplies. "Officials were ill-

prepared to manage their side of the enterprise. They lacked experience in bulk purchasing of raw materials and in marketing procedures; they were uncertain as to whether the state should provide all the necessary goods or lease the entire operation to private contractors" (Rothman, 1971: 93). Experience and skill were soon needed. The warden's job security came to rest on how well he managed the cost of the institution.

Another indication that the authorities did not know what they were doing was the placement and design of the prison. As mentioned earlier, Trenton was badly situated. The initial selection of the site may be attributed to the belief that the prison should be visible to the public so as to emphasize its deterrent qualities, an idea that did not last long. "In colonial society, unlike our own, punishment was much more of an open, public, and collective endeavor" (Walker, 1980: 14).

The officials did not anticipate the space requirements needed for the silent system and for the single-occupant cell. The use of solitary living arrangements found in the Pennsylvania model seem to predispose the institution toward overcrowding. There is little flexibility built into this design. The Auburn model, with the congregate work area, could at least deal with the problem of where to have the prisoners work, but the problems of enforcing the silent system still had to be addressed.

Besides failing to properly understand institutional design and location, officials had no understanding of the demands that were to be placed on the prison. An adequate understanding of the usage of the prison is predicated on a thorough understanding of the efficiency of the criminal justice system. The amount of reported crime versus the actual number of crimes and the number of criminals apprehended versus the actual number of criminals are indications of the efficiency of law enforcement practices—efficiency measured in the sense that we know when a crime had been committed and who did it. A truly efficient system would also know what percentage of what type of offenders are likely to be sent to prison. All of this information was missing when the officials were considering the usage of the prison as a form of punishment, thus officials underestimated the demand for space, built institutions that were too small to begin with, and New Jersey has been unable to catch up ever since. Building really huge institutions with a great deal of space for growth would have only led to other problems that will be discussed later. Working in the dark, limited by political constraints and economic realities, officials could only respond after the need became apparent, a practice that continues today. We have much better indicators of the demands placed on the prison than previously, but we may never know what the true demand for prison space is

because criminals are constantly fighting to diminish the efficiency of the system.

Institutional Punishment

Associated with the failure to provide adequate space at the start is the problem tied to using an institution as a means of responding to crime. Prior to the advent of the penitentiary, expedient methods of punishment were elastic; any mode of punishment could accommodate as many people as there was demand. There was no limit to the number who could be fined, banished from the community, subjected to corporal punishment, executed, or exposed to any other punishment. Moreover, any of these punishments could be applied quickly or slowly depending upon the circumstances. Once officials began using time to be served in an institution as a measure of punishment, capacity limitations became evident. Prisons can only deal with so much capacity at a time if restrictions are placed on who is eligible for release—therefore, imprisonment is an inexpedient form of punishment. The passage of time cannot be hurried without substantially changing the sentence. Imprisonment is costly, time-consuming, and difficult to manage. Moreover, the institution has a way of perpetuating itself over the years.

Prisons have a sense of permanence about them. Once they are constructed they are rarely demobilized. They absorb huge investments of resources. This reflects Blau's (1967: 273-280) concern with institutionalization. Blau has pointed out that legitimate organizations are faced with the problem of their continuance through time. Institutionalization involves formalized procedures that perpetuate organizing principles of social life from generation to generation. Establishing formal procedures requires an investment of resources. Making rules explicit is costly. If an institution is to survive in an organized community, it must become part of the historical record, sets of traditional values must be passed down to each generation, and these values must be enforced by powerful groups which resist change.

A great deal of investment has been made in the prison system. Prisons have been and will continue to be some of our most expensive buildings. A justification for their expense is found in their use. The prison represents key central values with respect to social cohesion and the respecting of life and property. The system continues because it has developed elaborate procedures for punishing people who violate society's laws. This is a costly exercise, but due to the historical reality of using prison as a punishment, and with the support of both the socialized work force in the system and of the dominant power groups in our society, we will continue to use prison. Trenton was built nearly

200 years ago and is still used. And even if the State thought of tearing it down, the cost of razing the structure may be too great (Nagel, 1973: 149). We may hold on to institutions like Trenton for no apparent reason other than the belief that they will be of some use to us in the future. Prisons and not skyscrapers will be the Parthenons of the future.

A final factor that must be reconsidered when examining the historical pattern of growth in the New Jersey prison at Trenton is the tendency for the institutions to reach capacity quickly after construction despite plans that call for a gradual rate of growth. Several times after its initial construction, the prison at Trenton was quickly filled to capacity following expansion. The new Riverfront prison and the facility at Newark are both close to capacity or exceeding it. The prison system itself is 16 percent over capacity (Camp and Camp, 1987:22).

Like the big corporations, the prison industry frantically promotes its own growth. Its executives constantly seek more money, larger staffs, increased power. Anything that impedes the prison's continued expansion, or threatens its well-being, is treated as a serious threat. (Knoop et al., 1976: 56) Meanwhile, as imprisonment has come under increasing attack, more and more public funds have been funneled into the prison's public relations and lobbying efforts. (Greenberg and Stender, 1972: 812)

Sherman and Hawkins (1981) have pointed out a key principle of institutional life, Parkinson's law, which states that where there is time but no work, work will be created to fill the void. Another important but related principle is the "law of utility." The law of utility comes into effect in response to the second law of thermodynamics, which says that events move in the direction of increasing entropy or disorder. The law of utility operates to provide order and structure in the environment. The law of utility is based not on a bureaucratic concept of work but on our tendency to make use of what we have. The law of utility assures a purpose is given to the institution. We try to find a use for the things we have. The greater use we have for an article, the more we try to use it for other things. Examples of this exist in our personal lives and in bureaucracies. How many uses do we have for the common table knife? There is something inherently wasteful about space that is not utilized. An office that initially appears to be too large is quickly filled with sundry items. A family which buys a 10-room home, thinking they have furniture for only 7 rooms, finds a purpose for the other 3 rooms.

The law of utility comes into effect in the prison, too. When space is available, efforts will be made to fill the void with something, usually an inmate. A prison with surplus cell space will use it to house Federal prisoners or another state's prisoners. It is in a sense similar to the concept of a vacuum. When a

vacuum is exposed, air or other matter rush in to fill the void. This "push to capacity" stems from the belief that use must be made of the resources at our disposal. The driving force behind this sentiment is the bureaucracy. The bureaucracy must encourage capacity usage in order to justify its existence. Continued funding, staffing levels, and program activities are promised on the notion that sufficient population counts exist. In fact, some activities cannot take place without sufficient inmate populations.

Today, most buildings are like big machines that move and do different things ranging from automatically turning on the lights to monitoring the temperature. The structure becomes a vibrant living apparatus which needs to be carefully regulated but can only achieve maximum efficiency when working at full capacity. The bureaucracy provides the regulatory mechanism for the structure but also encourages the use of the institution at the start and continues to do so until capacity is reached and sometimes beyond this. At that time the bureaucracy is assured that it will be secure in its work and will continue to grow. Diminishing population levels threaten the life of the organization. Capacity concerns lead to a self-fulfilling prophecy.

If we engage in a process of deinstitutionalization for a particular kind of offender, let us say the petty drug offender, then we will find that another kind of offender will go to prison, possibly the drunk driver or white-collar offender. We will find a need to imprison them where, in the past, there has been little need. Furthermore, when populations go down, the prison's promises go up. There is a tendency to accept and offer assistance to individuals such as the mentally retarded and the mentally ill who would be considered inappropriate inmates at other times. This is supported because it meets the needs of the community and the bureaucracy simultaneously.

Conclusion

Prison overcrowding in New Jersey is a serious problem. The evidence is quite clear that the current concern with prison overcrowding fails to take into account that for much of its history, the prison in Trenton has been overcrowded. If you look at the historical patterns, it seems that every 10 years new facilities and additions had to be built. Much of this overcrowding can be accounted for by a rise in the State's population without any increase in the number of cells. This increase in population has been gradual until the present time, however, with the exception of the 1920's when we saw a 50-percent population increase in only a 10-year period. While that increase could be accounted for by the indeterminate sentence, today's increase is accounted for by the determinate sentence. The current condition is not cyclic in nature

but is in response to a major change in policy. It may turn out to be cyclic in that we will return to indeterminate sentences at some future date.

To consider the current situation as an acute crisis that will pass in time is shortsighted. Several writers believe that we were unprepared from the start for what imprisonment would bring. The institution was underdeveloped from the beginning and has never caught up with the true demand for space. The criminal justice system was slow to develop, and, as a result, many criminal violations went unprosecuted. We have never caught up with the initial shortage, and due to the very nature of the correctional institution, overcrowding will occur regardless of the social conditions. Much of the growth in the prison population is a logical response to increased criminal justice activity at all levels, particularly as a means of dealing with social problems. We need to understand that the continued use of imprisonment is inherently flawed because of its inflexibility and that we are liable to experience overcrowding on a continual basis for a long time.

New Jersey's response to overcrowding has been to build new institutions. The State is also committed to providing intensive community supervision. Although this type of program with help somewhat, the public seems to support building projects because of the illusion they offer of providing incapacitative effects. Moreover, community supervision programs can be used in conjunction with longer sentences, thus giving the appearance that alternatives are provided. However, use of such programs may mean that a "net widening" effect will occur as well.

The monumental solidity of prison architecture—the massive gates, tall gun towers, the thick stone walls and steel doors—has endowed the institution with an aura of undeserved permanence. Prison administrators and their suppliers would like the public to believe that they are indispensable. There is no logical reason why this should be so. The prison is of a more recent origin than other institutions such as the workhouse, the orphanage, and the almshouse which all have been abandoned in most parts of the nation. Imprisonment is a humane invention that has failed. (Sommer, 1976: 16)

None of what has been said means that the State should continue to build indefinitely. When will the number of institutions be sufficient? We do not know. The public should receive greater justification for each bond issue. Building new institutions is just too expensive a policy to support without some idea as to when we can say that we have laid the last brick. We may be mortgaging the solvency of the State. The result of the construction efforts may "be that two or three more generations of Americans would be saddled with an expensive and counterproductive method of controlling crime." (Nagel, 1973: 14)

The prison system may become analogous to the national defense budget—it continues to grow despite

efforts to control it. With each new institution it becomes that much more difficult to redirect existing policy. With the movement toward privatization of prisons, there will be one additional force interested in the development of more institutions. If the number of privately operated institutions continues to grow significantly, their influence over policy will expand accordingly. Institutions tend to justify themselves. They are used long after their *raison d'être* has been discredited. What happens if we devise a system that manages more convicts in the community and the use of the institution becomes secondary? Do we still use these institutions in order to mollify political factions? Can we ever turn back to the time when a few institutions for the really dangerous were all that was needed? I doubt it. We may have made a commitment to madness.

Despite all this discussion about prison construction we must keep our focus on the real problem which is the fear of crime. This must be addressed before we consider solving the problems of prison overcrowding through construction. The current problem is not an aberration; there have been population increases that have matched those seen now. It is a reflection of a policy shift. We shifted policies before and will likely do so again. In our desire to solve our social problems by using the criminal justice system, we will also find greater use of the criminal justice system.

REFERENCES

- Associated Press. "Cases of Tuberculosis Rise; Possible Tie to AIDS Is Cited." *New York Times*, Sec.1, 1987, p. 18.
- Austin, J. and B. Krisberg. "Incarceration in the United States: The Extent and Future of the Problem." *Annals*, 478, 1985, pp. 15-30.
- Bailey, T.A. *The American Pageant*. Boston: D.C. Heath, 1961.
- Brenner, H. *Effects of the National Economy on Crime and Aggression*, Vol. 2 Final Report. National Academy of Sciences, Washington, DC: U.S. Government Printing Office, 1976.
- Cahalan, M.W. *Historical Corrections Statistics in the United States, 1850-1984*. Bureau of Justice Statistics, Washington, DC: U.S. Government Printing Office, 1986.
- Camp, G.M. and C.G. Camp. *The Corrections Yearbook*. South Salem, NY: Criminal Justice Institute, 1987.
- Cobb, A. "Home Truths about Prison Overcrowding." *Annals*, 478, 1985, pp. 73-85.
- D'Atri, D.A. and A.M. Ostfeld. "Crowding: Its Effects on the Elevation of Blood Pressure in Prison Setting." *Preventive Medicine*, 4, 1975, pp. 550-564.
- Department of Justice. "Households Touched by Crime." *Bureau of Justice Statistics Bulletin*, Washington, DC: U.S. Government Printing Office, 1984.
- Department of Justice. "Prisoners 1925-81." *Bureau of Justice Statistics Bulletin*, Washington, DC: U.S. Government Printing Office, 1982.
- Division of Policy and Planning. *Arrest and Conviction Data: Adult Offenders*. Trenton: New Jersey Department of Corrections, 1985.
- Federal Reserve Bank of Philadelphia. *Quarterly Regional Economic Report: First Quarter*. Washington, DC: Government Printing Office, 1987.
- Garret, P. W. and A. H. MacCormack. *Handbook of American Prisons and Reformatories*. New York: National Society of Penal Information, 1929.
- Greenberg, D. and F. Stender. "The Prison as a Lawless Agency." *Buffalo Law Review*, 21, 1972, pp. 799-838.
- Hammett, T. M. "AIDS in Prison and Jails: Issues and Options." *Research in Brief*, National Institute of Justice, Washington, DC: U.S. Government Printing Office, 1986.
- Hawkins, G. *The Prison*. Chicago: University of Chicago Press, 1976.
- Hoffman, M.S. *The World Almanac and Book of Facts 1988*. New York: World Almanac, 1988.
- Irwin, J. *The Felon*. Englewood Cliffs: Prentice Hall, 1970.
- Jan, L. J. "Overcrowding and Inmate Behavior: Some Preliminary Findings." *Criminal Justice and Behavior*, 7, 1980, pp. 293-298.
- Johnston, N. *The Human Cage: A Brief History of Prison Architecture*. New York: Walker, 1973.
- King, L. and G. Geis. "Tuberculosis Transmission in a Large Urban Jail." *Journal of the American Medical Association*, 237, 1977, pp. 790-793.
- Knoop, F. H. et al. *Instead of Prisons: A Handbook for Abolitionists*. Syracuse: Prison Research Education Action Project, 1976.
- Lewis, O.F. *The Development of American Prisons and Prison Customs, 1776-1845*. Montclair: Patterson Smith, 1967.
- Mannheim, H. *The Dilemma of Penal Reform*. London: Allen and Unwin, 1939.
- McCain, G., V. Cox, and P. Paulus. *The Effects of Prison Overcrowding on Inmate Behavior*. National Institute of Justice. Washington, DC: U.S. Government Printing Office, 1980.
- McCarthy, J. "Changing Face of Offender Population," speech delivered to New Jersey chapter, American Correctional Association, Monroe Township, New Jersey, October 22, 1985.
- McKelvey, B. *American Prisons: A History of Good Intentions*. Montclair, NJ: Patterson Smith, 1977.
- Megargee, E.I. "The Association of Population Density, Reduced Space, and Uncomfortable Temperatures with Misconduct in a Prison Community." *American Journal of Community Psychology*, 5, 1977, pp. 289-298.
- Nacci, P.L., H.E. Teirlebaum, and J. Prather. "Population Density and Inmate Misconduct in the Federal Prison System." *Federal Probation*, 41, 1977, pp. 26-31.
- Nagel, W.G. *The New Red Barn: A Critical Look at the Modern American Prison*. Philadelphia: Walker, 1973.
- Narvaez, A.A. "As Prisons Open in Jersey, Officials Support a Bond Issue," *New York Times*, October 28, 1987, pp. B1, B28.
- New Jersey Department of Health. *New Jersey Health Statistics*. Trenton: State Government Printing Office, 1984.
- New Jersey Department of Health. *New Jersey Health Statistics*. Trenton: State Government Printing Office, 1985.
- Reed, R. "AIDS in New Jersey Prisons," speech delivered to New Jersey chapter, American Correctional Association, Monroe Township, New Jersey, October 22, 1985.
- Rothman, D.J. *The Discovery of the Asylum: Social Order and Disorder in the New Republic*. Boston: Little Brown, 1971.
- Rothman, D.J. "Doing Time: Days, Months, and Years in the Criminal Justice System." In H. Gross and A. von Hirsch (eds.), *Sentencing*. New York: Oxford, 1981.

- Rusche, G. and O. Kirchheimer. *Punishment and Social Structure*. New York: Russell and Russell, 1968.
- Sherman, M. and G. Hawkins. *Imprisonment in America*. Chicago: University of Chicago Press, 1981.
- Sommer, R. *The End of Imprisonment*. New York: Oxford, 1976.
- Stead, W.W. "Undetected Tuberculosis in Prison: Source of Infection for Community At Large." *Journal of American Medical Association*, 240, 1978, pp. 2544-2547.
- Thornberry, T.P. and J.E. Call. "Constitutional Challenges to Prison Overcrowding: The Scientific Evidence of Harmful Effect." *The Hastings Law Journal*, 35, 1983, pp. 313-351.
- Toch, H. "Warehouses for People?" *Annals*, 478, 1985, pp. 58-72.
- Travisano, A.P. "Protected California Crowding." *On the Line ACA*, 10, 1987, pp. 1-8.
- Walker, B. and T. Gordon. "Health and High Density Confinement in Jails and Prisons." *Federal Probation*, 44, 1980, pp. 53-58.
- Walker, S. *Popular Justice: A History of American Criminal Justice*. New York: Oxford, 1980.