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*NATIONAL INSTITUTE FOR CRIME PREVENTION
AND REHABILITATION OF OFFENDERS*

**CRIME
AND PUNISHMENT
IN SOUTH AFRICA**

by J. J. LABUSCHAGNE

*NATIONALE INSTITUUT INSAKE MISDAAD-
VOORKOMING EN REHABILITASIE VAN OORTREDERS*

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CRIME AND ITS TREATMENT IN SOUTH AFRICA

Criminals and women have much the same in common as subjects of study. Both are difficult to understand; both are approached more often with emotion than logic; both are adept at hiding their true natures from the observer when it suits their interest to do so. Yet few subjects attract so many self-styled "experts" or such intense curiosity and interest.

From time immemorial reactions to crime and the criminal have been coloured by extremes of emotion. Criminals have been described as monsters or pictured as hunted animals or as helpless victims of circumstances. These wide swings of emotion are reflected in crime fiction. One story describes the resourcefulness of the clever criminal in outwitting the police. Another tale presents the heroic figure of the fearless policeman risking his life and using his wits to overcome the vicious criminal. Often the story ends with the clang of prison gates. News stories about crime usually end at this point because this is where public interest stops - people often fail to realize that prison doors swing both ways.

The drama of crime stimulates curiosity in several forms. There the idle curiosity which seeks entertainment and the thrills and in which the desire to learn or to help is of minor importance. Visits to courts where spectacular cases are heard, resemble trips to the zoo to see strange and frightening creatures. Another form of curiosity, the prying type, is meddling and too often motivated by impertinent inquisitiveness. These people attempt to gain information through a pretended interest in the welfare of the offender or of society. The interviewer, and here I unfortunately have to include the press sometimes, presses beyond his duties in order to obtain information to be used as a weapon against the criminal or the victim.

Fortunately there are also people with a healthy curiosity in crime and punishment. This curiosity is not sporadic and unorganised and does not result in unreliable speculation. Because of our balanced outlook on crime and punishment, we at MICRO like to include ourselves in this last group. I am also sure that everybody present this evening has a healthy curiosity in the subject.

Crime is not a simple phenomenon that can be examined, described and analysed in one piece. It occurs in every part of the country and in every stratum of society. Its perpetrators and its victims are people of all races, ages, incomes and backgrounds. Its trends are difficult to ascertain.

Its causes are legion. Its cures are speculative and controversial. An examination of any single kind of crime, let alone of crime in South Africa, raises a myriad of issues of the utmost complexity.

In the study of human behaviour, we encounter the obvious fact that those behaviours to be identified as criminal do not become so until the law-maker defines them as such. The proscriptions and prescriptions of the criminal law are not permanently fixed, but throughout history have been subject to marked shifts in emphasis and to pronounced changes - as the years accumulate and new arrangements for social living emerge, criminal laws take on new forms and patterns. Whatever the defects of criminal laws may be, they are the means by which those that have the power to enforce their beliefs enact and enforce those control rules in society which they view as crucial for proper order. Although the nature of criminal laws varies throughout history, one accepts the necessity of criminal laws if one desires a society that is ordered, and one also accepts that legal norms reflect either the underlying social values or the ever-changing conflicts of interest characterising any given society. In such a society there is a respect for the law.

In South African society most legal norms reflect the shared norms of the vast majority of people. This includes for example the prohibition of crimes such as robbery, murder, burglary and many others. In these cases the legal norms are not substantially different from the expressed interests of the different subgroups within South Africa.

Let us have a look at some of these crimes.

Crimes of violence

Obviously the most serious crimes are those that consist of or employ physical aggression: murder, robbery and assault. The injuries such crimes inflict are grievous and often irreparable. There is no way to undo the damage done to a child whose father is murdered or to a person who has been seriously assaulted. And though medicine may heal the wounds of a victim of a robbery, and the police may recover his stolen property, they cannot restore to him the feeling of personal security that has been violently wrested from him. The most damaging of the effects of a violent crime is fear, and that fear must not be belittled. Suddenly becoming the object of a stranger's violent hostility is as frightening as any class of experience. A person who hears rapid footsteps behind him as he walks down a dark and deserted street, cannot be expected to calculate that the chance of those footsteps having a sinister meaning is one out of a hundred. Any chance at all is frightening.

Of the 444 264 convictions reported in the South African criminal statistics in 1967/1968, no less than 94 480 were for murder, robbery and assault; 1 352 people were convicted for murder; 5 645 for robbery of which 458 were for robbery under aggravating circumstances; 87 482 were convicted of assault, of which 36 936 were for assault with intent to do grievous bodily harm. That means that the more serious crimes of violence accounted for about 22% of our statistics for offences, whereas all crimes against the person accounted for about 30% of all convictions if drunkenness and gambling is not taken into consideration. When we make a further breakdown of the figures we find that of the grand total of convictions 46 158 were committed by Whites and 398 106 by non-Whites - that gives us a ratio of 1 to 8. That ratio corresponds roughly with the ratio of Whites to non-Whites in the whole population. Should we, however, analyse the ratios of the more serious crimes of violence, we find that for assault the ratio of White compared with non-White convictions is 1 to 15 (3 319 : 47 236), assault with intent to do grievous bodily harm 1 to 75 (477 : 36 459), robbery 1 to 56 (90 : 5 097), robbery under aggravating circumstances 1 to 17 (25 : 433) and murder 1 to 58 (23 : 1 329)

Like all human behaviour, violent crimes must be viewed in terms of the cultural context from which they spring. This must be done in order to arrive at a meaningful adequate understanding of regularities, uniformities or patterns of interaction. In South Africa there is a conflict of value systems. That is, there is a conflict between the prevailing culture value and some sub-cultural entity. But the commission of violent crimes by people from the sub-culture at variance with the prevailing culture cannot be adequately explained in terms of frustration due to failure to attain normative goals or in terms of inability to succeed with limited available means. The highest rates of violent crime occur among relatively homogeneous subcultural groups in any community. The value system of these groups may be described in the words of Wolfgang and Ferracuti as a subculture of violence.

One of the problems we have with members of such a subculture of violence is that the use of violence is not necessarily viewed as illicit conduct and the users therefore do not have to deal with feelings of guilt about their aggression. Violence becomes a part of the life style and it occurs mostly within the subculture, for violence is used mostly between persons or groups who themselves rely upon the same values and norms.

Property crimes

The ± 88 000 convictions for property crimes account for about 20% of the total convictions reported in the statistics for 1967/1968 (and if convic-

tions for drunkenness and gambling are not taken into consideration it accounts for about 26%). A further breakdown of the statistics reveals a similar trend as crimes of violence. The ratio between Whites and non-Whites for burglary was 1 : 23 (695 : 15 627) and for theft 1 : 14 where the ratio in the population was 1 to about 8. An interesting comparison that we find in this group is the one for fraud. There the ratio between White and non-White crime was 1 : 2 (778 : 1 564). The reason for this is that fraud is a white-collar crime that is characteristic of the higher income group. It is also committed to a greater extent by Whites because they have more opportunities to commit fraud and are in a better position to do so - relatively less non-Whites carry cheque books, have banking accounts and participate in business transactions than Whites.

One way in which property crimes and for that matter all crimes, affect the lives of South Africans is that it costs money. Of course, economic costs alone cannot determine attitudes about crime or policies toward crime. But economic factors relating to crime are, however, important in the formation of attitudes and policies. Crime today imposes a very heavy economic burden upon our community as a whole and also on individual members. Risks cannot be judged with maximum effectiveness until the full extent of economic loss has been ascertained. But it is difficult to ascertain the economic loss involved in theft, burglary, robbery, fraud, motorcar theft, forgery etc. Then one must also add the costs of preventing crime, burglar alarms, safes, locks, etc. The number of policemen or the amount of insurance any individual or business carries are controlled to some degree by economics - the balance of the value to be gained against the burden of additional expenditure. If the protection of property is the objective, the economic loss from crime must be weighed directly against the cost of better prevention and control. This information on these aspects is, however, fragmentary.

But we can be sure that crime costs South Africa millions, if not hundreds of millions, of rand per year. To keep our police, courts and prisons going, costs R500 000 per day. While the criminal causes society to pay for the policeman, the judge and the prison, the property he steals, the bodily harm he inflicts and numerous other expenses, he adds very little to the national income by his own productive labour.

Sexual crimes

I will deal very briefly with this aspect. We find here the same trend as with violent and economic crimes. In 1967/1968, 73 Whites were

convicted of rape in comparison with 2 311 non-Whites. That gives us a ratio of 1 : 33. As rape usually goes hand-in-hand with some form of violence, I think that the factors I mentioned there, are also applicable in this case.

With regard to the ordinary crimes I have just discussed, everybody agrees with the use of punishment. Nobody denies that we have a right to protect ourselves against physical attack and likewise to defend our property against damage. Offences against public decency are in the same category. People have a right to demand that certain behaviour which disgusts or nauseates them should not take place in public. The justification of the existence of all these types of crimes and their punishment is based on the right of the individual to protect himself against certain types of harm. His private right is supplemented and to some extent supplanted by state prevention of these activities.

A common characteristic of these so-called "ordinary crimes" is that each one has a direct victim clearly distinguishable from the perpetrator. Some of these crimes, like robbery, involve physical assault and here the justification is that man has the right to defend himself and his property against attack. Other crimes, while free from violence, involve a measure of corruption, where the victim is young and inexperienced. The justification for punishing this type of corruption is that even if it were admitted that everybody should be free to choose his own way of life, nevertheless the young and inexperienced should be protected against their own immaturity until they are old enough to appreciate what is involved in this choice.

Apart from these so-called ordinary crimes which have direct victims, another category of offences is distinguishable, namely what has become to be known in criminology as "crimes without victims".

They are those offences whose commission involves neither violence nor corruption nor public indecency. Examples of such behaviour are prostitution, homosexuality between consenting adults in private and the possession and reading of pornographic literature. They are all manifestations of permissiveness.

Such offences differ in one very important respect from ordinary crimes, in that it is only those who commit them who are obviously and directly affected. No direct attack is made on anybody else by such behaviour. In order, therefore, to defend the imposition of punishment on those who behave in this permissive way, two aspects must be proved namely (i) that it is somehow good in itself to prevent people from so behaving or

(ii) that such permissive conduct does in reality affect other people who have a right to be protected against the harm caused by it.

With regard to the first requirement it must be admitted that the authorities do not agree whether it is somehow good in itself to prevent people from behaving permissively. Enforced conformity to a moral code merely for the sake of such conformity is not generally accepted any more. To force a person by fear or threat of punishment to act according to certain moral standards, is not to make him act morally. In any case it does not seem to be a function of the criminal law and the law enforcement agencies to judge the private morals of people. It is rather the function of the law and its agencies to preserve public order and decency, to protect the citizen against what is offensive or injurious and to provide safeguards against corruption and exploitation. Private immorality and permissiveness should not be the concern of the law. An existing example of this is adultery.

With regard to the second requirement, authorities also differ on the effect of permissive behaviour on other people. Some people say that permissive behaviour, though not directly injurious to the citizen, is indirectly so. It has been argued that those who indulge in, for example, homosexual practices with consenting adult partners, may later extend their activities to corruption of the young. The Wolfenden Committee in England, however, found that factual evidence did not support that proposition.

Another attempt to justify the use of the criminal law against permissiveness is the argument that the law should promote the common good of society by providing an environment in which people can live moral lives. It is said that the toleration of permissive behaviour makes it difficult to produce such an environment and to tolerate permissiveness might well mislead some people to think that permissive behaviour is not so bad, and result in a decline in the standards of society. This may be true, but it should also be kept in mind that while punishment for corrupting youth is justified by the need to protect them until they reach maturity, the notion that the adult community should be protected by force against those who might corrupt them, is less easy to support. The claim that the courts should act as guardians of the morals, rings strange to modern ears. Children need guardians, but the ordinary adult members of South African society hardly consider themselves in need of tutelage. The objection to which this approach is open is that in a community where attitudes to such

matters diverge, one must weigh the good to be attained by using the law to combat permissiveness against the misery involved in using the weapons of the criminal law to combat those who may not share such views. In a pluralistic society, norms differ according to social class, occupational, racial and other subcultural groups. In such a society the treatment of permissive behaviour as crime invites the imposition of the morality of a politically powerful group on all other groups.

When the criminal law runs counter to the traditions of certain groups, administration of justice becomes entangled in the difficulties of coercing many respectable citizens to conform to rules they regard as unnatural and unreasonable. The gathering of evidence is further complicated because ordinary law enforcement techniques are of limited effectiveness in combating prostitution, homosexuality, gambling, etc. It should also be borne in mind that the intrusion of the criminal law and the law enforcement agencies into the private life of the citizen is undesirable. Due to these difficulties, law enforcement tends to become haphazard and to result in inequality. The police and the courts would anyhow be better occupied in dealing with conduct which is unanimously agreed to need prevention, for example murder, rape, robbery, etc. The reliance on law enforcement to deal with permissive behaviour results in a repetitive cycle of arrest, short term imprisonment and release which burdens police, courts and prisons with a continuous flow of people with personality problems. An important consequence of this is that people lose respect for the law. The law has no deterrent effect any more because people feel that just about everything is threatened with punishment. They know that all the laws cannot be enforced properly and it may be worthwhile for them to take a chance - you will never be caught.

I want to state that what I have said should not be interpreted as meaning that I approve of permissive behaviour, or that I do not believe in punishment. I think that punishment, even severe punishment, is necessary but not in those cases of permissiveness which I have termed "crimes without victims". A more positive treatment-approach in which people are educated not to remain part of a problem but to become part of the answer, seems a more plausible solution than employing law enforcement against permissiveness.

I have now said something about crime and the criminal law. Allow me a few remarks on punishment. I will limit myself to imprisonment as it is the most prevalent punishment today.

There are several ways of attempting to tackle the crime problem, and most of them cost public money. It is therefore important to try and determine the method which seems most likely to succeed and avoid wasting already strained resources. Some approaches have more than the single aim of preventing crime, e.g. slum clearance, provision of social and recreational facilities, mental health, etc. Others need justification, or at least some reasonable assurance of gain to the community. Examples of these are increasing the size and efficiency of the police force to raise detection rates, increasing our knowledge of the causation of criminal behaviour, and improving or adding to our present methods of dealing with criminals. Within the last category, a great deal of faith is now placed in attempts to rehabilitate criminals, if only we knew how. The question may be asked whether imprisonment is always the most effective method to rehabilitate the criminal.

The chances of a man's success after discharge from prison depend on three major variables: his pre-prison experience and attitudes, the changes in him that are effected during incarceration and the influence of the post-prison environment. The offender who is retained in prison for an average length of time, is there long enough to sustain a heavy impact from prison life, but its influence relates selectively both to what he brings to the experience and to what he can draw from it as he returns to freedom. It is true that, so far as success in later adjustment is concerned, pre-release preparation and parole guidance to facilitate the transition of the prisoner into the community are important. The evidence, however, indicates that the total institutional experience may be valuable to a considerable proportion of offenders. Donald Clemmer concluded from direct observation that prisoners in a maximum security institution were dissuaded from the further pursuit of crime by various aspects of their experience in the institution. Some were deterred by the fear of repeating what they had found to be a most unpleasant experience. Others had experienced an intensification of loyalties and responsibility to their attachments in the home community. A few had found or regained religion. Some had developed a useful and rewarding occupational skill that they could employ on the outside.

It thus appears that the prison system in its essential character, will remain, and for good reasons. Foremost amongst these is the fact that there is no satisfactory alternative in many cases in which public protection is an important consideration. Imprisonment is the only sanction that has been devised that at the same time removes the offender from the circumstances

in which his criminality occurred, that protects the community and that provides opportunity for corrective treatment and training in a controlled environment. Moreover, since personal freedom is precious to the human being, imprisonment has a deterrent value while it does not involve the suffering that inheres in other measures that have been used in the past. No less important is the versatility of imprisonment as a correctional device - it is adaptable to a diversity of ends and to a wide variety of offenders.

Despite the advantages of imprisonment as a means of correction, prisons do display in some measure the cruelty and futility that is sometimes attributed to them. Any method of treatment that might be applied to large groups of people can be little more than an expedient compromise to serve conflicting ends. Imprisonment also involves a number of disadvantages that are serious obstacles to rehabilitation. That this is a problem that concerns every South African is evidenced by the fact that most prisoners are released within a comparatively short time. The massing of anti-social individuals together, while it may protect the community and avoid contamination of the innocent, provides less than an optimum climate for the development of socialized attitudes and habits. It is quite apparent that life in an institution, a one-sexed institution at that, must be to a considerable degree abnormal and for that reason must be an imperfect preparation for responsible living in the free community. The limitations of the prison for the accomplishment of rehabilitation are increased by the necessary reliance in part upon the threat of force and upon custodial restriction to retain men against their will. What Gresham Sykes has called the "pains of imprisonment", the material and emotional deprivations, together with the minimal opportunities for creative expression and the small rewards that can be meted out, can result in attitudes and relationships that are unhealthy and antisocial. At present, the most important obstacles to making imprisonment really effective are the following.

- (i) There are strong influences within a prison that tend to unite the attitudes, beliefs and habits of the prisoners into a prison culture and to create a code by which they live. By this code they rate their fellows, giving recognition to those who have achieved financial success in the commission of crimes. They also value highly physical strength and violence, predatory attitudes and exploitative sex relations. The close physical

proximity in which prisoners must live destroys virtually all privacy, while their isolation limits the range of experience, magnifies every word and act, and thus intensifies the regulating influence of talk and gossip within the walls. Furthermore, a monotonous equalitarianism increases the psychological impact of prison life. Prisoners occupy similar cells, wear the same kind of clothes, eat the same food, do the same thing at the same time according to the same rules, and without having to compete for worldly goods or struggle for economic security. To the extent that these influences affect the prisoner, he identifies himself with the inmate body and projects his feelings of hostility and hatred against the wardens, whom he sees as representatives of the free community.

- (ii) Many prisons are too large or overcrowded. Some suffer from both these defects. There is a growing conviction among criminologists that no prison ought to have more than 1 000 inmates, and many feel that a population of 500 or 600 would be closer to the ideal. Small prisons make it possible for the wardens to know the prisoners better and to deal with each individual's problems more effectively.
- (iii) In general, prisons were, and some still are unnecessarily uncomfortable and unsuitable. Although modern sanitary, ventilating and lighting facilities have improved the interior cell blocks, they have not changed the essential surroundings of their inmates. It is also felt that too much regimentation militates against successful adjustment after release and that a prisoner is better prepared to assume his responsibilities in the community if he has the self-respect that comes from having been treated like a grown man instead of a caged animal.
- (iv) It also happens that the personnel in many prisons is inadequate. Although the number of professionally trained persons is increasing, there are still comparatively few psychiatrists, psychologists, sociologists and social workers in the employ of these institutions.
- (v) The segregation of inmates is not widely enforced. Most correctional officials believe that the hardened criminals,

the mentally ill and the homosexuals should be segregated from the general prison population. However, in practice this is not always done and the presence of these groups tends to undermine any program of rehabilitation.

- (vi) Institutional discipline tends to become rigid. Rules accumulate to promote operational efficiency, to regulate relationships within the institution, to facilitate supervision and to prevent escapes. Unless officials are on the alert to check the tendency toward rigidity, an institutional machine is created which becomes an end in itself. When this happens, some inmates mechanically obey and drift along in an apathetic existence. Others rebel, are punished and become hard and bitter. Many thus acquire qualities that interfere with successful adjustment in the free community after release.

In the light of what I have said, one can hardly be surprised at the grave concern of NICRO about the extent of imprisonment and especially short term imprisonment as punishment in South Africa. Of the more than 91 000 people locked up in our prisons every day, 84% serve sentences of less than four months imprisonment. The negative aspects of imprisonment that I have just mentioned apply particularly to this group of prisoners.

To solve this problem, alternatives to imprisonment must be sought. Many alternatives have been suggested, some of which already exist but are not used by judicial officers. I need mention only one, e.g. putting the convicted criminal on probation in terms of section 352 of the Criminal Procedure Act and making it a condition of his probation that he pays compensation to his victim (section 357).

What is, however, still a fact is that imprisonment is extensively used and the released prisoner is a concern of the society to which he returns.

Since most prisoners will be set free again, the community cannot afford to look upon the prison as an "out-of-sight, out-of-mind" junkyard for human failures. The reality and pressures of our times are forcing society to become concerned not only with the prevention of crime, but also with the task of transforming the offender into a responsible citizen.

The rehabilitation of the criminal is a joint effort involving the offender, the professional worker and the community. Unless the community accepts its responsibility and indeed plays a strategic role, successful rehabilitation of the offender will be jeopardized. Every community will not only have the crime that it deserves, as La Cassagne said a century ago, but will more than deserve the excessive crime that it has.

Rehabilitation begins in prison where the prisoner is helped, by a variety of scientific techniques, to change his attitude to society. Undoubtedly one of the most important elements in the rehabilitation of the offender is the matter of trust. Social workers who work with offenders must have a firm conviction that basically all human beings have a deep-seated drive toward health and normality.

They should provide every opportunity for a trusting relationship, for without it rehabilitation cannot succeed. The offender must change from an anti-social to a socially acceptable identity with all that such an identity implies - work, family living, social participation, etc. To help the offender establish a new identity is probably the major mission of rehabilitation. The institutional treatment programme of the prisoner includes vocational training, labour, education, social, religious and medical care, recreation, etc. This rehabilitation programme must, however, continue for a long period after discharge, otherwise the activities become fragmented and meaningless.

The community should be a therapeutic partner

The responsibility for the continuation of the rehabilitation programme is not only that of the professional social worker. The community should play a strategic role as a therapeutic partner in this programme. An unknown Indian sage once made the following meaningful prayer: "Great Spirit, teach me not to condemn the ways of my brother until I have walked at least a moon in his moccasins". In like manner members of the community need to become involved with prisoners and the problems that produce criminality. In order to curb the incidence of criminality, the community needs to know the offender as much as the offender needs to know the community; and the ordinary citizen must know the offender as a person - not as a problem, but as a person with a problem.

When a prisoner is discharged from prison, his values have changed as a result of various influences. He emerges from prison as a changed

personality and enters a world which has also changed and is very strange to him. The transition from prison routine to free life is a sudden one and the external discipline which was enforced upon him, must now be internalized. He must adjust himself to this strange world and taking into consideration that he committed crime (and landed up in prison) partly because he could not adjust to his environment, it is evident that his new adjustment will be all the more difficult. For the prisoner release often means the return to a complicated social situation. Only through development of a satisfactory relationship between prisoner and community, which produces a mutual experience for both, can the community be expected to change its wrong attitude toward prisoners. On the other hand, the prisoners cannot be expected to develop a receptive feeling toward society unless members of that society accept him as a human being. The strategic role of the community lies in helping the released prisoner to adjust in a normal way to his new environment.

How the community can help

Employment is one of the prime requisites to rehabilitation. Idleness demonstrably contributes to the causation of crime and logically it should confirm criminal habits if continued after incarceration. When the offender is ready to leave the institution, the employer in industry must be prepared to accept his role as therapeutic partner. All the hard work in the institution would be wasted if there are not both ample job opportunities and understanding employers. The Chambers of Commerce and other organizations with industrial affiliations can be a fertile medium for developing employer involvement in the rehabilitation of the offender.

Just as the employer should be involved as a therapeutic partner, other community agents can play a similar constructive role. The horizons of the released prisoner would be greatly expanded if institutions and agencies such as civic clubs, churches, educational, recreational and governmental agencies were to band together to provide the supportive framework for the offender to take his rightful place in society. Churches can perform a more vital function than they now assume. For example, clergymen can reintroduce the offender into the mainstream of living through church-related programmes. Unfortunately some clergymen adopt a moralistic and even condemnatory outlook which has the effect of driving the offender away from the church.

In similar vein schools and universities should open their doors to juvenile delinquents and offenders with academic potential, especially as many of these individuals suffer from erratic school performance. Scholarships and other financial assistance should be more readily available. Counseling

through university services should be offered when necessary prior to entrance and during matriculation. If schools and universities can be magnanimous in this way, undoubtedly much productive talent would be salvaged.

A community effort should also include wide participation from individual citizens. Many a successful rehabilitation in prison has been undone because of a vindictive attitude in the community. If the released prisoner is to be really a part of the community, he must be able to rent a house to live in, he must know where and how to get medical care, he must resume the roles which he played before he went to prison by again becoming a worker, a husband and a father, a church-goer, a person participating in recreation and he must also have reliable, trustworthy friends. In this respect the community members can play an important part in the re-integration of the released prisoner. I am talking now about the released prisoner capable of responding to the best the community can give him. There are, of course, many people released from prisons who persist in defying every community effort. A community is obligated to protect itself from the dangers of such individuals, but it is indeed a waste of human energy and community strength to allow former inmates who desire to live law-abiding lives to return to prison again and again by default.

END

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