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REHABILITATING PAROLE

AN ALTERNATE MODEL

May 15, 1974

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PREFACE

There is in our society today a widespread and increasing belief in the failure of the rehabilitative model in corrections, and a growing realization that coercive intervention in the name of treatment is incompatible with the high value placed on individual liberty in our culture. Finally, there is more open acknowledgement and appreciation that, in the operations of our criminal justice system, the relationship between crime and poverty is far less perfect than the relationship between punishment and poverty. These trends, both in the public's sense of what has been happening, and in the volume of empirical documentation of its validity, may be summed up in a single word--oppression. This phenomenon is paralleled by a loss of confidence in the government's ability, as well as the sincerity of its interest in serving the people.

An occasion of disillusionment can provide, however, a special opportunity to recover from alienation, and to re-establish unity of purpose. Symbolic gestures are, at such times, a particularly important means by which to express community of interest, and the parole service provides a particularly appropriate opportunity to meet that purpose.

We propose then, as our alternate parole model, the sacrifice of the social institution called parole, on

the grounds that it has not only failed to serve the people, but has acted as a fundamental impediment to more basic reform.

Despite the lip service paid to the importance of Corrections, and matching the treatment to the offender rather than the penalty to the crime, the idea that a man or woman has "paid his debt" when he leaves the prison gate is still rather firmly entrenched in our culture, and the legally designated gravity of the commitment offense continues to account in practice, more than any other factor, for the period of time an individual remains in prison. It will be argued, of course, that the rehabilitative approach was never given a real chance to prove itself, but popular sentiment seems to be that individualized justice is incompatible with the principles of equality under the law upon which our country was founded, that even if it "worked," it would not be "right," and that there should be, as there has continued to remain, some proportionality between offense and penalty.

A SCIENCE OF MAN?

We have attempted to develop an alternate parole model consistent with principles of fairness and existing evidence on utility. We have chosen to limit the model as applicable to adult offenders committed under criminal statutes--persons legally deemed accountable for their behavior, and to anchor the model in a corresponding myth--the myth of individual freedom. We propose, then, a model which gives primary emphasis to retributive concerns, rather than to rehabilitative or deterrent interests, and we will attempt to build a case that unconditional release from incarceration is most consistent with this posture.

To espouse outright discharge as the most appropriate form of release from prison markedly reduces the complexity of one set of problems--those concerned with devising structures to handle the post-release situation for former prisoners (i.e., supervision and revocation), while requiring increased attention to another set of problems--the repercussions adoption of our suggested model might have upon the period of incarceration.

The reader may ask whether promotion of a myth is a satisfactory way to cope with the serious practical problem of crime in our society, and may challenge us either to face reality, or to justify this myth as preferable to others. We will strive to do both.

Criminal justice, in apparent defiance of social science teachings, still relies heavily upon the premise of man as master of his own fate, and is less drawn by instrumental concerns (e.g., individualized treatment) and more by expressive ones (e.g., equitable handling); it is more oriented to the similarities among men than the differences among men when assigning blame-worthiness. In imposing sanctions, the law is thus more oriented to aggravating and mitigating circumstances affecting the conduct of an essentially free individual than to the depiction of forces driving an essentially determined individual--its standard is: How would a reasonably prudent person have acted (i.e., How ought a man be expected to act?). The question is thus, simultaneously, addressed to fact and to value.

Much abuse has recently been hurled (and properly so) at the so-called "medical model" of criminal conduct, and related positivist variants, and more favor has been drawn to social and political forms of explanation. While these latter shift the locus of determination, they also subordinate free will. Thus:

> The development of lebeling theory...promises to infect the new conflict approaches with a sense of psychology, too; in stressing the extent to which men's behavior can be the product of the social reactions of others as much as it is the reaction of self to internal or material exigencies (psychological or financial needs)...Of course, the new conflict theorists do not retreat to the pathologies of early positivism; but the stress remains on the way men's criminal behavior and behavior in general are <u>determined</u>...

> Whether they are discussing the genesis of behavior or the derivation of labels, the new conflict theorists see a relatively simple relationship between power and interest, and the consciousness of men (as being formed in conjunctures of such interests)...In particular, it leads to an approach to crime in which action is merely and simply a product of powerful interests or unequal society--as opposed to being the product of purposive individual or collective action taken to resolve such inequalities of power and interest...the conflict approach is in danger of withdrawing integrity and purpose--or ideosyncracy--from men; and thus, is close to erecting a view of crime as non-purposive (or pathological) reaction to external circumstances. (Taylor and Young, 1973)

Violations of law, then, may be treated primarily as something to be explained, or primarily as something to be evaluated. Our approach emphasizes the latter--as the opportunity of free persons to express virtue or evil, which includes the possibility of virtuous crimes and evil laws, of crimes of conscience, and of political prisoners. Thus, we are as attentive to morality as to law, and more to both than to problems of human engineering.

THE LAW AND THE JUST

The individual juror is told by the state that he or she must follow the instructions of the court which, simply put, means that a general verdict must be reached by applying the facts found, in accordance with legal instructions given by the judge. If the jury's "philosophy of law" differs from the judge's, thereby causing the jury to view the particular law in question as being "unjust," this is of no consequence. There are neither "interpretations" of the law itself not questions as to its "justice" which are of concern to the jury. Rather, it is obliged merely to "find the facts" and render the appropriate verdict: "guilty" if the law has been violated, "innocent" if it has not...However, the jury is also extended the privilege--or perhaps one should say, has the power (vs. having the "right") --to depart from the formal law by following the judge's instructions only when it is inclined to do so...The judge says, "Follow my instructions." But the juror is also the "final judge" vis-a-vis this obligation, since a verdict of acquittal may not be overturned, nor is the juror subject to judicial reprisals if the verdict is demonstrated to be contrary to law. (Groudine, 1973)

AN ANCHOR

No society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects. Yet a society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair...once the principles of justice are thought of as arising from an original agreement in a situation of equality, it is an open question whether the principle of utility would be acknowledged. Offhand it hardly seems likely that persons who view themselves as equals, entitled to press their claims upon one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others...The two main concepts of ethics are those of the right and the good; the concept of a morally worthy person is, I believe, derived from them...utilitarianism is a teleological theory whereas justice as fairness is not. By definition, then, the latter is a deontological theory, one that either does not specify the good independently from the right, or does not interpret the right as maximizing the good...in justice as fairness the concept of right is prior to that of the good... (Rawls, 1972)

AN ILLUSTRATION

Parole, however fairly the term set and the conditions drawn, involves a conflict of obligations between the right and the good. This is evident in its military origins, where the released captive must decide whether his word of honor shall hold precedence over the cause in behalf of which he fought. But that cause probably included an insistence that he adhere to a code of honor. Who writes the code? By definition, the released captive loses his honor as well as risking his life if he returns to battle, but he may decide that the loss of honor is secondary to the losses his side (or perhaps eventually, both sides, as "oppression" may supplant "liberation") may experience, if he remains out of combat--a fact that his captor recognized, and a risk he nevertheless accepted. That is the dilemma of agreements made between enemies--it complicates the nature of the moral issues involved in trust and betrayal, affecting the likelihood (but in ways which can only be very poorly approximated) of survival of both enemies and allies, and raises the question of whether these are to be assigned differential weights or treated as equal. That dilemma is experienced, of course, by the offeror, as well as the acceptor of parole--he is likely to be looked upon by his comrades as a fool, and as a dangerous one at that, and thus jeopardize his position of leadership and whatever civilizing

influence he might exert. The prudent man would condition his decision on the enemy's policy and practices toward prisoners and perhaps call for a prisoner exchange, rather than attempting to provide a model or set a risky example of decent conduct in the hope that it will have a civilizing affect upon the enemy's handling of prisoners. Claims to greater decency, compared to the enemy, in the handling of refugees and prisoners of war is a major and recurrent theme, having great importance in demonstrating the rightness of one's cause and the relative barbarism of the other side, and it thereby consolidates support and allegiance. At either level--the individual or the collective--the captor's policy serves to define "human"--behavior toward an overpowered enemy is the direct index of self-regard; when self-interest over-rides self-regard, beyond a certain boundary, the Beast is unleashed.

To what extent is any of this thinking transferable to the sphere of criminal justice? First, of course, our nation has been absorbed for some years now in a "War on Crime," in which victory over the enemy was seen as requiring more effective weapons, and the re-drawing of certain boundaries. The interest in crime control was given precedence over some niceties of our traditional understanding of due process and safeguards on individual liberties in the attempt to regain "balance." In the war between the

cops and robbers or good guys and bad guys, civil libertarians became identified with the enemy camp.

Packer (1968) has abstracted the competing systems of values that animate the crime control and the due process models, presenting them as an aid to analysis rather than a program of action, and noting that a person who chose all values of one set and excluded all of the other "would be rightly viewed as a fanatic," but he finds, in the polarity of models, a good deal of common ground and shared assumptions: "Its existence should not be overlooked, because it is, by definition, what permits partial resolution of the tension between the two models to take place."

CRIME CONTROL VALUES

The value system that underlies the Crime Control Model is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process...The model, in order to operate successfully, must produce a high rate of apprehension and conviction, and must do so in a context where the magnitudes being dealt with are very large and the resources for dealing with them are very limited. There must then be a premium on speed and finality. Speed, in turn, depends on informality and on uniformity; finality depends on minimizing the occasions for challenge... The image that comes to mind is an assembly-line... The key to the operation of the model regarding those who are not screened out is what I shall call a presumption of guilt...The supposition is that the screening processes operated by police and prosecutors are reliable indicators of probable guilt ...If there is confidence in the reliability of informal administrative fact-finding activities that take place in the early stages of the criminal process, the remaining stages of the process can be fairly perfunctory...The presumption of innocence is not...[the opposite of the presumption of guilt]...The presumption of innocence is a direction to officials about how to proceed, not a prediction of outcome...It tells them, in effect, to close their eyes to what will frequently seem to be factual probabilities...the presumption of guilt is descriptive and factual; the presumption of innocence is normative and legal...The focal device [of the Crime Control Model], as we shall see, is the plea of guilty. (Packer, 1968)

DUE PROCESS VALUES

If the Crime Control Model resembles an assembly line, the Due Process Model looks very much like an obstacle course...Its ideology is not the converse of that underlying the Crime Control Model. It does not rest on the idea that it is not socially desirable to repress crime...The Due Process Model encounters its rival on the Crime Control Model's own ground in respect to the reliability of the fact-finding processes ...stresses the possibility of error...

The Crime Control Model is more optimistic about the improbability of error in a significant number of cases; but it is also, though only in part therefore, more tolerant about the amount of error that it will put up with...proponents of the Due Process Model would accept with considerable equanimity a substantial diminution in the efficiency with which the criminal process operates in the interest of preventing official oppression of the individual...The most modest-seeming but potentially far-reaching mechanics by which the Due Process Model implements these anti-authoritarian values is the doctrine of legal guilt...By opening up a procedural situation that permits the successful assertion of defenses having nothing to do with factual guilt, it vindicates the proposition that the factually guilty may nonetheless be legally innocent and should therefore be given a chance to qualify for that kind of treatment...In theory, the Crime Control Model can tolerate rules that forbid illegal arrests, unreasonable searches, coercive interrogations, and the like. What it cannot tolerate is the vindication of those rules in the criminal process itself through the exclusion of evidence illegally obtained or through the reversal of conviction in cases where the criminal process has breached the rules laid down for its observance... Another strand in the complex of attitudes underlying the Due Process Model is the idea--itself a shorthand statement for a complex of attitudes--of equality... there can be no equal justice where the kind of trial a man gets depends on the amount of money he has... Many of the rules that the model requires are couched in terms of the availability of counsel to do various things at various stages of the process--this is the conventionally recognized aspect; beyond it, there is a pervasive assumption that counsel is necessary in order to invoke sanctions for breach of any of the rules...and if equality of operation is a governing norm, the availability of counsel to some is seen as requiring it for all. Of all the controverted aspects of the criminal process, the right to counsel, including the role of government in its provision, is the most dependant on what one's model of the process looks like, and the least susceptible of resolution unless one has confronted the antinomies of the two models. (Packer, 1968)

WHERE ARE WE GOING?

At any particular point in history, one can find evidence of simultaneous trends in both directions toward the poles of the Crime Control Model and the Due Process Model, but despite the "mix," one trend is likely to prevail over the other during a given period.

For example, the report of the National Conference on Criminal Justice (January 23-26, 1973) states, in its frontispiece: "The ultimate goal of the commission's work is as simple to state as it is difficult to accomplish: to reduce crime..."; and, in its summary on the role of the courts:

> ...a central issue running through the entire Courts Task Force Report is the question of the extent to which courts, and in particular the judge, have a specific crime control function...the commission devoted lengthly discussion to this issue before deciding that the judiciary does have a crime control function...the Task Force and the commission decided that the major priority in the courts area toward reducing criminal activity must be given to developing speed and efficiency in achieving the final determination of guilt or innocence for a particular defendant.

The Operational Task Force for courts included among its membership a single public defender, two district attorneys, and two attorneys general (one a deputy), plus judges, professors, and others. In the final 358 page National Advisory Commission on Criminal Justice Standards

and Goals reports on Courts (1973), only the public defender and one judge registered dissenting views. On the subject of Review, for example, the defender states:

> ...I consider the proposed standards to be potentially unfair to the criminally accused--largely the poor and members of minority groups. The plain intent of the standards is to make it more difficult for a person to challenge the validity of a conviction...

and, on Six-Member Juries:

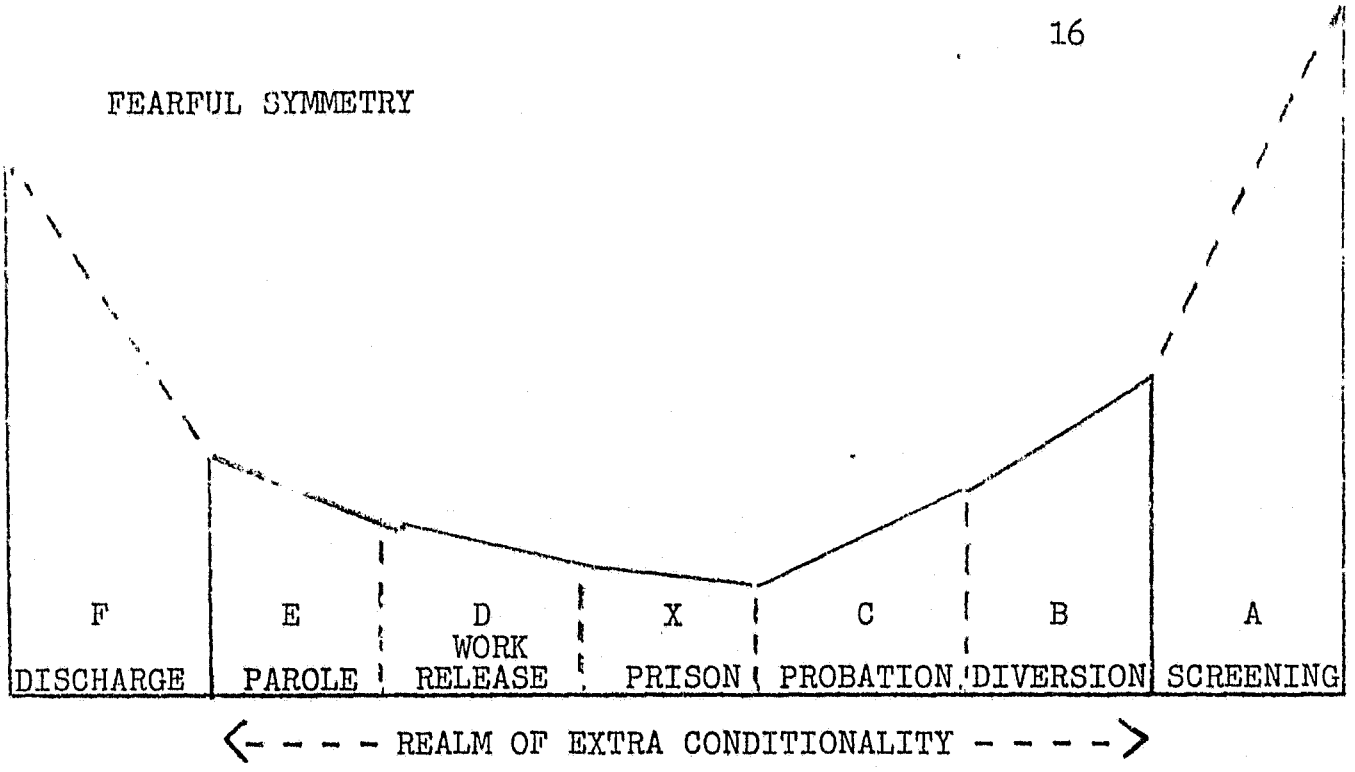
> ...I am concerned that the reduction in the number of jurors may work to the disadvantage of persons accused of crime...the reduced size of the jury would make a hung jury less likely...[and the hung jury is]...an integral part of the concept of reasonable doubt, which, in turn, is the very cornerstone of the criminal process.

The Courts report questions the necessity of the exclusionary rule, and recommends a study to consider modification or alternatives.

The push toward a Crime Control Model is more forcefully expressed in the report of the California Governor's Select Committee on Law Enforcement Problems (1973), aptly titled, "Controlling Crime in California: Protecting the Law-Abiding," which advocates secret witness programs, mandatory prison sentences in a number of crime categories, and abolition of the exclusionary rule.

In the zeal to inculcate respect for the law, the enforcers must either move boundaries, or be accused of over-stepping them. Rehabilitative enthusiasm and Law Enforcement enthusiasm, though seemingly quite separable, share a common interest in controlling crime by controlling criminals, and a common impatience toward due process technicalities which interfere with their respective "missions."

FEARFUL SYMMETRY



The criminal justice system is characterized by a certain symmetry. In the diagram above, the amount of restriction on liberty is symbolically represented by the height of the "ceiling." The basic "moral" of the system is that current actions of an individual will be judged in context of past actions by that individual, with decisions about constriction of liberty contingent on and justified with reference to both. The system remembers, and even the screenee and the dischargee are likely to find themselves more vulnerable than other citizens on subsequent encounters with the legal apparatus, though they have "officially" left its control. Since nearly all diversion is conditional rather than "true," the major distinction between the divertee and the probationer lies in the fact that the former

is brought under official control prior to conviction, and the latter subsequent to conviction. Being in stations B, C, D, or E is to be in a region of vulnerability, with respect to placement in station X, in that the machinery of justice can be cranked up again under less provacation than was originally necessary to set it in motion--there are special conditions to be observed if the relative freedom is not to be jeoparidzed.

DON'T GET LOST

The essential condition in each of the statuses just described is not that one obey the usual laws, but that one not get lost--else how could it be determined whether any other condition were being observed? For parole, at least, this is ironic, since, in the origins of this type of control, the basic condition was that one get lost, and the failure to abide by that condition became the basis for further sanctions. Thus:

> In the beginning, no specific conditions were imposed upon those receiving such pardons. However, many of those pardoned evaded transportation or returned to England prior to expiration of their terms, and it became necessary to impose certain restrictions upon the individuals to whom these pardons were granted. About 1655, the form of pardon was amended to include specific conditions and to provide for the nullification of the pardon if the recipient failed to abide by the conditions. (Parker, 1972)

Banishment as a condition of probation or parole has since fallen into disfavor, but not, as Cohen notes, on the basis of constitutional issues so much as for "public policy" reasons. Thus:

> The Michigan Supreme Court led the way in this area...It took the highly practical view that if Michigan were to permit the "dumping" of its offenders on other states, the favor would most assuredly be returned. (Cohen, 1969)

DEBT AND TRIBUTE

One might assert that the right to get lost is the fundamental freedom--the most treasured of all individual rights, and that we should take particular pains to see that it is not unduly infringed. (Among the "stations" we charted, only screening and discharge honor that right.) The catch, of course, is that we are unwilling to extend that right to debtors--it is necessary to "settle up" and meet incurred obligations before one can take leave. Criminal justice is, in essence, a social contract model focussed on debt repayment, and liberty has replaced bodily parts as the basic currency of exchange. Thus, regardless of which station one finds himself in within the "don't get lost" boundaries of the criminal justice system, he finds himself paying some of the debt with a balance held in abeyance, rather than waived. He has himself, ordinarily, been induced to waive exercise of some of the procedural safeguards which might have been invoked in defense of his liberty, and the further he finds himself into the system, the fewer the accessible safeguards. The idea of conditional liberty, however, extends beyond the waiver of rights and the forfeiture of liberty to the incurring of an obligation, and one is made a party to his own oppression. He is not merely informed that his liberty is partial--he is usually required to endorse, whether explicitly or implicitly,

that deprivation through some form of active participation. In all such bargains, the poor are likely to pay more, as is particularly evident in the composition of our prison and parole population.

Parole agreements, and parole supervision appear to be a means of coping simultaneously with crime and injustice, but those appearences are quite misleading. The endorsement of any parole model amounts, in essence, to an endorsement of subjugation with the contribution to injustice exceeding the contribution to crime control.

> A contract is a freely bargained-for mutually acceptable, agreement supported by a valuable consideration and arrived at by parties who possess some equivalency in bargaining power. Even if we assume that the offender has the power to refuse the grant, we must recognize that he will accept virtually anything to gain his freedom. The probation or parole "agreement" handed to the offender, then, bears little resemblance to a contract; realistically, it is a notice of conditions arrived at ex parte by the court or parole board and no more. (Cohen, 1969)

The sense of injustice thus stimulated may become, in itself, the rationalization for further crime.

Parole is, in essence, not just partial liberty, but conditional liberty. In contrast to the military origins, where great weight was placed on the honor of the released prisoner, it has become, by virtue of surveillance checks, a machinery of distrust--the offender's honor is secondary, and his status is demeaned.

I
INEQUALITY AND CREDBILITY

Is parole a vital part of our society? Perhaps. Does parole have any noteworthy impact on the level of crime in our society? Probably not. If we were to abandon the use of parole, would this necessitate changes in other social institutions? Almost certainly.

We are all, in a sense, on conditional liberty, being subject to judicial processes which, under certain circumstances, can deprive us of liberty. Despite equal protection of the law, however, we are not, of course, equally vulnerable, since some of us are not in social positions that would enable us to commit certain crimes, or to be likely to be apprehended if we committed certain crimes, or to be conveniently accorded the full panoply of safeguards against expeditious determination of guilt, or to have the heaviest sanctions imposed if we were convicted of certain crimes. Further, this winnowing process depends not only on characteristics of the offender, only some of which have bearing on his crime, but also to a great extent on such variables as which prosecutor or judge he happens to encounter, and these affect the official definition of the crime as well as the likelihood and magnitude of penalty imposition.

In consequence, both luck and vulnerability play a significant part, in addition to deservingness or need,

in the matter of whether a person is sent to prison, and thereby becomes a potential parolee. The facts that criminal justice processes are highly individualized and highly imperfect does not go unnoticed by sentenced prisoners who, even if they feel they got a "bargain," are also aware that many equally deserving offenders received an even better break, and that they were themselves "cheated."

The moral issue is transformed into a strategic problem, and one finds himself trapped in the "Time Game," where the object is cleverness, since the other side holds all the high cards. Getting to parole is part of it, and being on parole affirms it.

WHO DO YOU TRUST?

The ordinary citizen's respect for law is conditioned upon his trust in government to enact proper laws and to enforce them properly--i.e., upon the government's respect for law. The adequacy of the fact-finding process in determinations of guilt is an essential element of that trust (i.e., Has the letter of the law been observed?), but is not the entirety (i.e., Is the letter in keeping with the spirit of Law?). Officially recognized offenders are, of course, also citizens.

> Some twenty students sit in a classroom, their heads bent over examination papers. Suddenly the door pops open, and a young woman, about five feet tall and dressed in levis, a plaid hunting shirt, and green tyrolean hat, bursts into the room. She quickly levels a carrot at a student seated in the first row and shouts "Federal Herring! You stole my marks!" Outside in the corridor, a popping sound is heard. A student in the front row clutches his breast, screams and falls to the floor...One young man, who hopes to become a criminologist, writes: "The killer was a big Germanic type...Looked something like a Hollywood stormtrooper...Called the deceased an FBI man... Said he was tired of being a Communist...The murder weapon was a 7.5 Mauser...The victim was a typical looking student in twenties...white...seasonable dress..." Another student, a young woman who hopes to become a clinical psychologist, says: "...The murderer was of average height...wearing a European-type railroad conductor's uniform...Used a switchblade knife on the victim...Murderer said...'You are a Marxist and are working to destroy our republic'... Stabbed the victim three times...Victim was a white male..." It was not mentioned by anyone that the "victim" of this assault was a black male, wearing a ROTC uniform! (Erlich, 1974)

Given the obvious dangers of potential conviction of the innocent--"...the influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor--perhaps it is responsible for more such errors than all factors combined..." (Hall, 1974)--we can appreciate the convenience afforded by pleas of guilty as well as the necessity of counsel in advising defendants on waiver of fundamental rights. But plea negotiation remains a procedure extremely vulnerable to improper inducement and dubious settlements, and is described, in the summary report on the Courts (National Conference on Criminal Justice, 1973), as "a pernicious process ready for extinction."

It is extremely important to keep in mind, as we consider an alternate parole model for early implementation, that the population of persons currently on parole and in prison is less likely to have reaped the advantage of reforms in court procedure recently instituted, and that special conditions may be due them because of absence of earlier safeguards; while the issue of "guilty; and, of what?" is in the foreground, that of penalty determination and redetermination proceeds quietly in the background, and remains hardly accessible to challenge.

MACHINERY AND JUSTICE

The particular bearing of these matters upon the development of an alternate parole model is the basic theme of coercion of consent which permeates criminal justice operations from beginning to end, including conditional periods of confinement, and conditional release. We find the greatest danger of prevailing parole models, therefore, to be the enlistment of the individual in his own oppression--his "volunteer" status, in the ironic sense, rather than his "draftee" status. The inherent contradiction is more poignantly phrased in the terms "supervised liberation," found in some Canadian writings on parole, although it is nearly as well captured in the standard phrasing--"conditional liberty." The practice is anchored in the notion of equivalent concepts of serfdom and peonage--a status of lessened dignity.

Traditionally, we had been indoctrinated in the notion of a man having "paid his debt" when he left the prison gate. Our culture is not soon likely to abandon the image of debt repayment or forgiveness, and we believe it fairer to conceive it as coinciding with the close of imprisonment, as opposed to the image of a parolee as a man who only partially paid his debt and is thereby properly still hounded by his "creditors."

Regardless of what steps are taken to improve this social institution, and regardless of whether practices attached to it are justified on the basis of the "best interest" of the offender, or society, or both, parole will essentially remain an instrument of oppression, and so we advise its abandonment. The intent in adaptation of the alternate model would be sudden, rather than gradual abandonment of parole, and no necessity for a transitional state is foreseen.

SURRENDER OF ONE MACHINE

Claims of partial victory in the War on Crime have emanated recently from government sources. While many would ridicule an attempt to draw parallels between the War on Crime and the War Between the States, we feel that several statements by Lincoln during 1863 might serve as appropriate models in drafting a new proclamation:

> ...I do order and declare that all persons held as slaves...are, and henceforward shall be, free... and I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defense... (Emancipation Proclamation, Elliot, 1910)
>
> ...proclaim, declare, and make known to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is hereby granted to them and each of them... (Proclamation of Amnesty, Elliot, 1910)

But is this a responsible position, or mere rhetoric? Abolition of parole is certainly less ambitious than proposals to abolish incarceration, although it may be an appropriate precursor to more serious consideration of such proposals, since it presents an opportunity to test at a scaled down level the real, as opposed to the imagined threat that is consequent to solutions involving forfeit of control. On the day of full abolition, there would be no more offenders in the community than before, and the

act would not, in and of itself, either accelerate or decelerate the rate of release from prison of other offenders.

The abrupt abolition of parole involves a modest risk; existing evidence does not support the alarms that are likely to be raised by those who are concerned with either the potential loss of deterrence, or the potential loss of rehabilitation--parole provides no better preparation for discharge than prison provides for parole. In both these social institutions, we have made the seizure of liberty, in and of itself, a punishable offense--the prison escaper risks loss of life, and the parole absconder risks return to confinement. We might better honor liberty by granting it unconditionally.

FREEDOM TO STARVE?

Our argument that the grant of full independence is the appropriate first step for reintegration into society will, of course, be met with arguments about the need for transitional steps to equip the former prisoner to cope with liberty--we will be charged with callousness and unbridled impatience. Our reply is simply this: The provision of services and resources does not presuppose conditional liberty, conditipnal liberty detracts from more than it contributes toward the effective utilization of resources, and the contribution it makes toward social control is largely illusory, and often quite unfair. This is not to deny that the prison dischargee is in an unfortunate status, but that parole hindrance exceeds parole helpfulness.

> After liberation, as we have already pointed out, the Negro was confronted with what may be called a liberation panic. This meant a transition into a new style of adaptation. First, it augmented his sense of responsibility for himself without much ability to do anything about it. He was given a nominal freedom, but without the opportunities for full participation. Such protective features as were attached to the slave status were removed. He now had to compete under very unfavorable conditions with low-priced foreign white labor. (Kardiner, 1962)

We think it unlikely that, under the condition proposed, there would be many applicants for parole, and far simpler to dispense with it entirely.

One alternative approach, which we reject, is to maintain the parole service as a service rather than as an instrument of control, with agency staff stripped of their overseer role and obliged merely to act as offender advocates, community service brokers, coordinators of volunteers, or resource managers for prisoners unconditionally released. We find this alternative inadvisable on several grounds: first, there would be unlikely to be many customers; second, the official association with criminal justice is an awkward base for service-brokering; and third, the same association would incline law enforcement agencies toward attempted reliance on parole staff for surveillance purposes, re-establishing the vulnerability and denigration of released prisoners.

REPARATIONS

We acknowledge that released prisoners are likely to have serious wants arising out of the interruption of confinement upon their careers. We find it advisable to separate problems attributable to the transition from confinement from problems attributable to marginal status in society prior to confinement. While the offender may have slept under bridges prior to incarceration, the likelihood of that particular form of "freedom" being indulged is often increased by his removal from the community, and the lack of resources available to him upon return; special compensation appears justified.

Direct proportionality between period of incarceration and amount received would serve as a reminder that penalty magnitude is related to what an offender deserves rather than what he needs, and would weaken the forces which translate activities serving institutional convenience into offender "needs." It may be argued that this will weaken deterrent effects. Is our society, in fact, that fragile? It may also be argued that, whatever the amount, the idea demeans the dignity of the recipient. Perhaps, but that depends on whether it is seen as a gift, or as an acknowledgment.

Thus, quite apart from assets retained while incarcerated, or earned while there, or available through other means (e.g., unemployment compensation) subsequent to release, we suggest that some form of direct and partial reparation, proportional to the period of lost liberty, be offered by the state in a lump sum at the time of unconditional release, and without regard to availability of other resources, or imposition of constraints upon expenditure. As a benchmark, we recommend an amount no lower than a nonforfeitable $100 per month of accumulated confinement, offered in recognition that removal from the community creates a special hardship, and to signify that the state does not trivialize the lost time in any person's life.

Parolees leave prison as they entered, still poor with little work experience and few employable skills. (Lenihan, 1974) A recent survey of financial assistance to prisoners being released revealed that modal category of "gate money" was 20 to 29 dollars augmented by clothing and transportation costs borne by the state and less than $100 in savings accumulated by the prisoner. Echoing the results of other surveys (Pownall, 1967), a San Francisco survey found that "...the wage levels of newly released prisoners falls far below that of state and national averages for the same jobs...", and that "...the level of employment ultimately accepted...falls beneath their own sense of dignity and self-worth." (Transitions to Freedom)

AFTERCARE: PROFESSIONALS AND AMATEURS

In addition, the parolee (or ex-prisoner) has usually been out of touch with the outside world for several years. In California, approximately one-half do not return to the community from which they were committed; only one-fourth or so are married, and they do not have sufficient funds to survive in a social system which "supplies" physical survival requirements by an impersonal process of monetary exchange. While on parole, about one-half face periods of unemployment, and the longer the person is on parole the greater is the probability that he or she will face unemployment. (Erickson, et al, 1973)

Projects in Washington (Dightman and Johns, 1974), Minnesota (Ericson and Moberg, 1967), California (Reinarman, 1973), New York (Witt, 1968) and other states and jurisdictions have attempted to provide occupational and direct financial assistance to parolees to meet their physical survival needs. The direct financial assistance has been substantially higher than that normally provided to ex-prisoners, but it has still been meager--typically less than $80 per week for no more than six months is provided under conditions which clearly indicate that the money is a gift and that the person is unable to manage even such piddling amounts on his or her own.

These projects have also stressed the need to upgrade the occupational skills and opportunities of ex-prisoners. The following quotation from one of these projects captures well what they have tried to do and achieve:

> The chief innovations of the project, from the perspective of traditional correctional practices, were its comprehensive inter-disciplinary-team nature, the emphasis on vocational adjustment as a primary means to total life adjustment, the sophistication of the vocational evaluation process, the commitment to seeking education and training for high-risk clients, the provision of immediate comprehensive post-release services to all experimental parolees rather than only to selected clients, the availability of direct financial assistance during the immediate post-release period, and the use of an experimental design to compare outcomes of treated parolees with those of offenders receiving only normal parole supervision. (Ericson and Moberg, 1967)

These projects are providing direct financial assistance badly needed by those they are designed to help and the best in professional vocational assistance is being provided. Doubtless, many of the parolees and ex-prisoners have benefitted materially from them. And, considering the methodological and political problems of doing evaluations, these projects have been capably evaluated. As with the evaluations of the more traditional forms of correctional treatment, these programs have not produced a statistically significant reduction in recidivism. One of the reasons for the recurrent failure to meet the goal of reducing recidivism is that none of these programs change the status of the parolee. These "new" approaches to theory and practice have not overcome the older, all pervasive social-psychological theories and practices of correction.

CAN PAROLE AGENTS BE REHABILITATED?

Professional people-changers working with the criminally deviant within the parole system (Knight, 1972; Irwin, 1970; Studt, 1973) or outside of the formal parole system (Gottesfeld, 1965; Lytle, 1964) view the criminally deviant as pathological and the product of pathology. They are morally inferior persons (Duster, 1970) who must be changed to fit into a social system (itself, possibly corrupt) by the primary means at their disposal--talk. Talk about intra-psychic and interpersonal inadequacies of the criminals; talk which is both rejected by the "clients" and demeaning of their sense of self. This is critical, for:

> From the criminal ex-convict perspective it [parole] must...be dignified. This is not generally understood by correctional people whose ideas on success are dominated by narrow and unrealistic conceptions of nonrecidivism and reformation. Importantly, because of their failure to recognize the felon's viewpoint, his aspirations, his conceptions of respect and dignity, or his foibles, they leave him to travel the difficult route away from the prison without guidance or assistance; in fact, with considerable hindrance, and with few avenues out of a criminal life acceptable both to him and his former keepers. (Irwin, 1970)

This failure to provide what the parolee needs and the denigration of the parolee is not the result of ignorance or inadequate means; rather, it is merely the reflection in correctional theory and practice of the demands of the state.

As one parolee has written, the "...parolee is virtually a ward of the state. As such, he has no rights or privileges which are not granted to him by the state." (Griswold, et al, 1970) And as one probation officer and former correctional official has said, "...if society is properly our client, then we...must do those things that will protect society." (Lytle, 1964) A survey of parole systems in the United States revealed that these jurisdictions hold that such enforcement and authoritative measures as are necessary to protect society must be used; they include the use of firearms, restraining devices, surveillance, searches of the person and his or her property and the classification of parole officers as peace officers. (Ackerman, 1969) And it is these technologies which are the most advanced and practiced in the most professional parole systems. (Studt, 1973) A study in California revealed what is true of parole in general:

> [T]he parolees reported that the agents were relatively ineffective in dealing with the practical problems of reintegration, while the agents' ubiquitous presence in their social relationships tended to spread stigma and to reduce the possibility that the parolees would be treated as "normal" by others. [M]any agents tended to agree with the parolees that they lacked the tools, the technology, and the influence within normal social systems that would be necessary to make an effective contribution to the reintegration of parolees. (Studt, 1973)

In the creation of criminals and the processing of them, the state achieves ends of a broader scope than the mere apprehension and surveillance of the guilty. Indeed, the virtually complete lack of any practical consequences for the victim(s) achieved by the hension and the unrecovered costs of processing the criminal which are borne by the state must mean that some other ends are achieved. One of these is the conversion of the th f (and other criminals) into the symbolic representation of criminality. The identified criminal becomes the cause of crime; after all, he, not us, did it.

Once granted the authority to correct the ex-prisoner by the creation of the parole system, the state must build a bureaucracy to exercise this power. As noted by the [State] Citizen's Study Committee on Offender Rehabilitation of Wisconsin (1972):

> The Division [of Corrections] like any bureaucracy, must, in order to continue growth and expansion, respond to the needs of its own staff and the demands of the public before it meets the needs of its client population (i.e., offenders). This is true because offenders have no power to effect the actions of the Division. On the other hand, the Division must and does respond to the needs of its staff by providing job security and advancement possibilities.

This problem will not be resolved by merely redefining the parole agent into an assistance agent, but leaving him in a dependant role to the control agency. Aftercare responsibility must be more definitely separated from that realm, or the bureaucratic entrenchment and old ideology will continue to prevail.

VOLUNTEERS OUT OF CORRECTIONS

In contrast, the ordinary citizen, like the untrained correctional worker (Lytle, 1964), has not been trained to see pathology everywhere and always. The volunteer has no stake in the growth of any bureaucracy. The volunteer need not engage in surveillance in order to protect a system from being charged with failure in its duty to enforce the rules. The volunteer achieves his or her livelihood and sense of belonging from his or her own occupation. As has been said with respect to volunteers in probation work:

> The volunteer may be a business man, teacher, lawyer, doctor, carpenter, minister, auto mechanic, professional football player, government employee, engineer, housewife or come from any other walk of life. He may be of any age, of either sex, of any religious, ethnic or economic group. Indeed, the very diversity of backgrounds is one of the strengths of the system [of volunteer probation workers]. (Burnett, 1969)

As opposed to the state-employed, professional correctional worker (probation officer), numerous studies have shown that the volunteer is 1. not burdened by the role of the enforcer, 2. not alienated from the criminal by professional status, 3. not burdened with the expectation of pathology, 4. not inundated by failure as a caseload carrier is--success is expected just as it is in the rest of the volunteer's life, 5. more likely to be thought of as a

friend rather than a cop, 6. more likely to have the connections for a job when it is needed, 7. more likely to have time to offer moral support and guidance when it is needed, 8. more likely to be able to respond to a crisis when the response is needed, 9. interested in the person as such, and, 10. welcomed by the courts and probation departments. (Jorgensen, 1970; Burnett, 1969; Beier and Zautra, n.d.)

And they seem to be in abundant supply, willing to work hard, anxious to continue helping poeple, and no more distrubed or deviant than any other group of people. (Jorgensen, 1970; Burnett, 1969) Nor are they unwelcome in the more traditional areas of prison and parole work. (Joint Commission on Correctional Manpower and Training, 1970)

Probationers who have been given help by volunteers rather than supervision by probation officers report more help and liking for them:

> The volunteers apparently offered a more personal relationship and a large number of probationers perceived this relationship as helpful in improving their work habits, family life, social life and reorganization of their home living. (Beier and Zautra, n.d.)

As opposed to the usual case with correctional workers, the probationers given volunteer services reported increased helpfulness as the number of contacts with the volunteers increased. Those who stated that their volun-

teer had been more helpful also committed less serious offenses; they were meeting with their volunteers more often, and they made more positive changes in their living arrangements. Finally, they saw future contacts with the volunteers as promising even more help, while future contacts with the probation officer were not seen as promising. (Beier and Zautra, n.d.)

It is also the case that volunteer-worker probation projects have shown lower recidivism rates than are achieved in traditional programs. (Burnett, 1969) But their primary value is that they seem to have helped people who want help and they do not constitute yet another bureaucracy. Because they are not governmental employees and they need no state authority to provide the help needed, they need no special relationship to the criminal other than that of a helping friend. Their strength comes from their social connections in the rest of their life. If we see volunteers as a loosely organized helping force for parolees who are committed to providing this help independently of the state, then we may have the kind of social organization needed to relate effectively with the government. The conditions for a viable coalition have been specified as follows:

> a. The recognition by the parties involved of their respective self interests; b. the mutual belief that each party stands to benefit in terms of that self-interest from joining with the others; c. the acceptance of the fact that each party has its own independent base of power and does not depend for ultimate decision making on a force outside itself; and, d. the realization that the coalition deals with specific and identifiable--as opposed to general and vague--goals. (Carmichael and Hamilton, 1967)

And this coalition does not require that the ex-prisoner be put on parole. The volunteers do not need this provision for supplying their help and the State has its usual system of law enforcement agencies to detect, convict and confine the ex-prisoner who commits a new crime. The parole system becomes an expensive redundancy. Indeed, it is that now, though there seems to be some need to find a defensible alternative. Why, then, not recommend a structure where the former parole agents remain employed by the correctional agency, deprived of their control authority and their surveillance responsibility, and serving as recruiters and coordinators of citizen volunteers? Because, again, there needs to be a definite separation of the providers of aftercare from both real and symbolic attachments to the control authority of the state, and from a primary investment in control.

SYSTEMIC DISORDERS

Parole has become a rather well-integrated component of the correctional system, and it serves a hierarchy of functions--some much more effectively than others. In order of degree of both accomplishment and potential, these seem to be: 1. Regulation of the size and orderliness of the prison population; 2. Reduction of sentencing disparity and amelioration of harsh penalties; and, 3. A confinement alternative which retains some rehabilitative and special deterrent means for control.

The task for the present investigation was focussed toward the post-release situation of former prisoners, or the assistance and control functions as those operate in the community setting. Thus, we were more attentive to the parole service and to parole revocation and expiration than to the matter of initial release from prison. On the basis of our review, we concede that it is often more convenient and advantageous to keep an offender on a leash rather than keep him in a cage, but we have found no evidence to support the position that the leash is a necessary evil, and we conclude that the basic vehicle of conditional release, regardless of the accessories with which it is equipped, effectively serves neither the offender nor society.

In our efforts to devise alternate parole models

consistent with prevailing evidence and principles of fairness, a wide variety of reform elements were considered, and selected for combination into tentative models. While a number of these appeared to represent genuine improvement over the versions now in popular use, they were all deemed, nevertheless, unsatisfactory, on the basis of containing disadvantages which outweighed their advantages.

As an alternate parole model, then, we recommend unconditional release from prison, or the simplest alternative to parole. In offering this recommendation we are fully cognizant of the difficulty in obtaining acceptance for the model offered, but all other models and variants contemplated were found to involve essential and inescapable dishonesties.

The solution we propose, if it is to be accepted, requires the solution of a number of other difficult and tedious problems that extend beyond the appropriate boundaries of our immediate assignment. We are, however, encouraged that major steps toward solution of the corrolary problems are being undertaken by others, and that our proposed model may not be as unrealistic as it first appeared. Further, we believe that the proposed abandonment of parole not only creates some system problems, but also transforms a number of present problems in a way that will facilitate their solution.

For example, the rituals associated with parole revocation are becoming increasingly stringent, formalized,

and costly, in recognition of the grievous loss inflicted by reconfinement, and the necessity for procedural safeguards when liberty is threatened. If this is a genuine trend, the reconfinement disposition will progressively be restricted toward more serious infractions and more substantial proof. At some point, and we see no reason for delaying that point, it becomes reasonable to inquire why parolees should be processed differently than other citizens, whether the quasi-judicial machinery is a necessary redundancy, and why all such matters should not revert to the courts. NACCJSG recommends (Corrections) that each state should take immediate action to reduce parole rules to an absolute minimum; the absolute minimum is, of course, total elimination. NACCJSG also claims that: "To the extent that a parole agency can reduce emphasis on surveillance and control and stress its concern for assisting the parolee, it probably will be more successful in crime reduction."

We find such a statement rather puzzling in its implications--it expresses confidence in the utility of the carrot, but in the context of continued availability of the stick. The ambivalence toward abandonment of jurisdiction, even where there is doubtful interest in assistance, is also evident in: "Stringent review procedures should be adopted, so that parolees not requiring supervision are released from supervision immediately and those requiring minimal attention are placed in minimum supervision caseloads." (NACCJSG)

The tension between an interest in restoring full liberty and an interest in keeping the parolee in a vulnerable [i.e., revocable] status results in statements that appear to curb the exercise of discretion, but in fact increase it--the individualization of treatment corresponds to the inequitable application of penalty. Laudable intent leads to dubious applications.

CLASSIFICATION AND MYSTIFICATION

Parallel strains, which tend to confuse the need of the person to be controlled with the comfort of the person responsible for control, permeate the contents of Standards 12.6 "Community Service for Parolees" and 23.7 "Meausres of Control," in the NACCJSG volumne on Corrections. For example:

> Special caseloads should be established for offenders with specific types of problems, such as drug abuse. (pg. 430)
>
> Special caseloads for intensive supervision should be established and staffed by personnel of suitable skill and temperament. Careful review procedures should be established to determine which offenders should be assigned or removed from such caseloads. (pg. 433)
>
> After considering suggestions from correctional staff and preferences of the individual, parole boards should establish in each case the specific parole conditions appropriate for the individual offender. (pg. 433)
>
> Parole staff should be able to request the board to amend rules to fit the needs of each case and should be empowered to require the parolee to obey any such rule when put in writing, pending the final action of the parole board. (pg. 433)

Such statements are typical of professional writings, in general, First, there is a lip service tribute toward considering the wishes of the client, second, there is an invocation of fairness in applying criteria for decisions and presumption of a scientific basis for the criteria,

and third, a reliance upon training and expertise to define and determine best interest in the individual case. In view of the voluminous empirical evidence now available on parole and corrections, we would hope that there would have been an end to such rhetoric which we find arrogant, paternalistic, unsubstantiable, and primarily serving as an excuse for the continued arbitrary subjugation of released prisoners.

One alternative to our own approach, and one which seems to promise more than just minor tinkering with the prevailing model now in operation, is that which recognizes a similarity between parole and probation status, and transfers the former prisoner to a probation-like status so that review of violations comes under the purview of the court, eliminating the need for duplicative processing machinery. (McGee, 1973) This model makes, however, the conventional professional assumptions about offender needs and service delivery techniques. We have rejected it.

VALVES AND TENTACLES

Probation and parole were both developed as much for the sake of keeping or getting people out of prison as for being "correctional" devices. This is recognized by NACCJSG:

> Probation developed as an arm of the sentencing court and subject to its control. Persons were not "sentenced to" probation; the sentence to confinement was suspended. The courts viewed probation as a device to keep certain deserving offenders out of the correctional system, rather than as a more appropriate and effective correctional technique. (pg. 538) [Our underlining.]

Similarly:

> In many states, parole agencies developed independently. To moderate long prison sentences, parole boards were established and given authority to release some offenders from confinement if they agreed to supervision in the community. Parole also was viewed as getting the offender out of the correctional system rather than altering the nature of his correctional program. (pg. 536) [Our underlining.]

These origins are important to an understanding of the functions served, and to recognition of the basic needs which any proposed alternative must be prepared to satisfy. Both probation and parole are, in essence, relief valves designed to handle a condition of overload--one, ordinarily in the hands of the judicial branch, pro-

vided a convenient bargaining device for expediting the problem of calendar overflow (plea bargaining is generally sentence bargaining, and removal of the threat of prison can speed and facilitate agreement). The other, in the hands of the executive branch, served to by-pass the threat of prison overflow when commitment rates increased and legislative or judicial requirements hindered simple "dumping" of surplus prisoners.

But both, also, by making the system more "efficient," and enabling its control boundaries to spread, contributed to the over-reach of the criminal justice sanction, so that business remained at floodtide, and the quality of justice hardly improved. Now those boundaries are extending still further as the system is augmented by conditional diversion programs, which are likely to have the same consequence, with more and more deviance recognized and calling for control. As Klapmuts (1974) recently summed it up:

> In actuality, the diversionary system now being created may simply shift responsibility for the problems of criminal justice rather than contribute to their solution. The availability of alternative intervention strategies may inhibit decriminalization by legislative change; the number of persons under some sort of coercive control is not likely to be reduced and may be increased; the stigmatization inherent in record-keeping by intervention agencies may become as onerous as that associated with arrest or conviction records; and the discriminatory application of diversion alternatives, for which there is considerable potential, may simply perpetuate the inequalities now so obvious in criminal justice...Current concepts of diversion appear to be heavily entrenched in the dominant treatment ideology, which focusses attention on the offender and his needs rather than the inadequacies of the official system of intervention and control.

PARASITES AND PESTICIDES

There is heavy irony in the fact that, in our search for ideas with potential applicability to the problem of constructing alternate parole models, we were drawn to explore the new frontiers of diversion, only to find that they bring us full circle. Is there no exit? The likely future problems in diversion are those in the history of parole. But in the more distant parts of that history lies a solution--in the precursor to parole.

A PARDONABLE OFFENSE

Goldfarb and Singer, in After Conviction (Chapter VI, "Clemency - Rehabilitating the Record"), provide a rich supply of information about how it was once done, and therefore might again be done. We have relied on their review for most of that which follows.

> Clemency is a determination late in the criminal justice process by an executive authority to mitigate some consequences of a sentence...The chief and by far the most commonly used form is the pardon...an amnesty overlooks the crimes of a group of offenders.

Even there, however, we find many of the same ambiguities that beset the whole system. For instance, there is the usual problem about whether consent in involved. As Goldfarb and Singer recount it, Chief Justice John Marshall (1836) had considered pardon an offer of grace which, like a contract, had to be accepted by the offender in order to be complete, but when, in 1926, a prisoner refused the President's offer to commute his death sentence to life imprisonment, the Supreme Court denied the refusal. In Oliver Wendall Holmes, Jr.'s words:

> Just as the original punishment would be imposed without regard to the prisoner's consent and in the teeth of his will, whether he liked it or not, the public welfare, not his consent, determines what shall be done.

And there is, of course, the question of the significance attached to the criminal act. Again, from Goldfarb and Singer:

> More than recognizing errors or adapting to changing times and values is involved in the extraordinary clemency process. A moral element exists as well; and it goes to the heart of the philosophical goals of any criminal justice system. It is most apparent in cases of civil disobedience. Throughout our history there have been notable examples where good men of decent intent violated laws for reasons of conscience.

The idea of pardons in volume for "common" criminals may be thought to sully the noble nature of the ritual, but that is a sentiment apparently more common to men than to women. For example:

> ...[T]he governor of Texas from 1925-26, Mrs. Miriam E. Ferguson, granted approximately 3,500 pardons in a two-year period. Her predecessor had granted only seventeen pardons in four years.

Throw the rascals out? There are some legal hindrances to the pardon process, but in a great number of states, the only un-pardonable offense is impeachment, and the actions of the clemency authority are held to be purely discretionary and hence not subject to judicial review. "The pardoning authorities are bound neither by legal precedents nor by rules of evidence and can base their decisions on whatever considerations seem persuasive."

Legislatures have, however, imposed various procedural requirements, and it may first be necessary to exhaust avenues of appeal, although most states still have no procedure for appealing the review of criminal sentence. Interestingly:

> Laws authorizing courts to suspend sentences or place defendants on probation occasionlly were attacked as being an invalid delegation of the pardoning power to the judiciary...
>
> Similarly, the enactment of parole laws temporarily was shackled at the turn of the century by decisions which held that paroles were similar in nature to conditional pardons and therefore were improper attempts to grant legislative pardons.

Pardons need not, of course, be conditional, but:

> Conditional pardons, which may be revoked if the conditions are violated, were the forerunners of parole...
>
> ...with pardons the conditions might be tailored to individual cases without regard to any applicable statutory conditions required to be placed on parolees... Submission to supervision by parole officers is not commonly annexed to a conditional pardon. Thus a prisoner required by statute to serve a minimum portion of his sentence before he is eligible for parole may not only be released by a conditional pardon before the minimum term expires but may be released without the supervision that characterizes parole...The use of pardons to circumvent overly rigid restrictions on the granting of parole illustrates one modern way of using clemency to escape the rigidity of other features of the criminal law.

To repeat, pardons need not be conditional.

As with so many matters,

> The legal effects of a pardon are confused. Although one ground for seeking a pardon has been deemed to be the establishment of innocence, many courts have held that a pardon implies not innocence but guilt... although most rights lost on conviction are automatically restored by a full pardon, others, such as the right to own a gun, or to return to a public office forfeited by the conviction, are not.

While such procedures appear perfectly adequate to solve the technical problems involved in an immediate and total abolition of parole and, beyond that, provide a potential safeguard against a backlash effect of lengthened confinement for remaining prisoners after the parole system is dissolved, to serve as temporary insurance until a more satisfactory and less arbitrary structure could be set in place to determine lengths of prison terms, with the principles of unconditional release and full restoration of rights incorporated as statutory elements. It is perfectly obvious that any such step should be preceded by consultation with the prisoners and parolees, and representatives across all three branches of government. The problems lie less in the matter of formal authority for the initial purging of parole than in the matter of political climate. Legislative action to repeal the parole statute, to articulate a new prison term fixing structure, and to institute the reparations system would accompany the general pardon for existing parolees. Particular attention would have to be given to

the problem of alternate careers for parole agents. While pardon is in general practice primarily an executive power, a Kansas Court wrote (Jamison v. Flanner) that pardon is "...a power of government inherent in the poeple, who may by constitutional provision place its exercise in any official, board or department of government they choose."

Amnesty is said, according to Goldfarb and Singer, to differ from pardon in three respects: "It entirely overlooks the offense, it pertains to groups, and it may refer to unnamed individuals, while a pardon usually does not excuse the particular offense and pertains to specific individuals."

Like parole, amnesty has some origins in military application, and as a practical and symbolic means for re-establishing solidarity. Thrasybulus (ca 400 B.C.) recruited an army of exiles to re-take Athens from a junta which seized it after the Peloponesian War, and,

> ...the returning regime decided not to punish the Athenian officeholders or citizens who had co-operated with the junta and not to adjudge the severe punishments usually reserved for traitors and collaborators. Instead he invited them to participate in rebuilding a democratic Athens.

REUNIFICATION

There are today, of course, in addition to a large number of Americans subject to penalty because of their refusal to participate as soldiers in the Vietnam War, also a large number of Viet Nam veterans who have entered our prisons on conventional criminal charges subsequent to their discharge. Our alternate parole model would affect members of this latter group.

Although the amnesty proclamation would immediatley affect only those already on parole, "rehabilitating" the record and the person simultaneously, the principle of unconditional release and full restoration of rights upon release from prison would affect all subsequent cases, as well. Logically, the other widespread immediate effect would be full restoration of rights for the many persons who had earlier terminated from parole, but whose civil status was still comprimised. Full attention could then be turned to the more fundamental problem of developing a more equitable structure and procedure for determining length of prison stay.

"FIXING" PEOPLE

Does the proposed model violate the very principles upon which we attempted to justify it? Was not the basic problem as we conceived it one of discretionary abuse, and does the solution we have advocated amount to anything other than a massive infusion of discretion, and is not our antidote the same poison? Not if we have correctly diagnosed the major source of such abuse--excess of zeal regarding the possibility and desirability of directing and limiting individual futures, leading to excessive reliance on experts and professionals, which discourages and vitiates citizen-offender reconciliation. Preoccupation with the individual's future criminality, with forecasts made by reference to his past social standing, has impeded genuine social change through resort to insistance on individual changes that have little bearing on the problem of crime in our society. Benevolent intervention catalyzed further oppression. It was a cruel hoax, and the parolee, as the most rescued and as the most criminalized, has borne a heavy share. Yet, there is continued insistence on developing and improving offender classifications that are basically future-oriented, whether these be prognostic categ ies or treatment-need categories. A single example will suffice, and can be found in the Appendix. While it is cast in terms of incapacitive dispositions, the details are directly trans-

posable to decisions about the duration of parole, and conditions to be imposed during parole.

The general problem is not so much the "state of the art" in such endeavors, as the robotized philosophy of prediction-and-control that undergirds it. While progress in such endeavors has been remarkably slow, it is, of course, always possible that a major breakthrough may occur. To us, that breakthrough may not be distinguishable from totalitarianism, and the failure of such approaches thus far then becomes a cause for celebration, rather than frustration.

FIXING TERMS

While we need not mourn the demolition of parole, that demolition will hardly resolve the problem of criminal sentencing. The action might, however, facilitate recourse to a much broader-based adversary forum to examine that problem in the context of other public policy issues. By broadening the responsibility base, power may redistribute itself. The sentence-fixer's lot is not an enviable one:

> In the absence of narrative standards which are generally accepted or enforced by legal rule or precedent or appelate review, to reach a viable compromise of conflicting interests becomes the chief function of sentence-fixing. For the sentence-fixer, the charteristics of the criminal must compete with the necessities of placating right-wing political pressure, displaying the necessary level of cooperation with law enforcement and prosecution, heeding the management interests of correctional bureaucracy, keeping a finger on the pulse of seething unrest in inmate populations, trying to maintain some degree of consistency with colleagues of widely divergent views, parrying the moves of those who would usurp his jurisdiction or manipulate him for their own ends, or compromising what he thinks are right solutions because of the constraints dictated by budget priorities or administrative policies over which he has no control. (Foote, in Roscoe Pound-American Trial Lawyers Foundation, 1972)

Regardless of one's persuasion--whether crime controller, rehabilitationist, or due processor--only the naive could hope to "de-politicize" such a matter; while ritual may be the only way to cope with dilemma, the rites have grown altogether too mysterious--the problem of placating competing interests lies disguised behind the prediction-control rhetoric of rehabilitation, and parole has provided the cloak.

ARROGANCE

VICTIM: You broke my nose.
OFFENDER: Yes
V: Why?
O: No good reason. I just felt like it.
V: Did you mean to break it?
O: Sure.
V: I'm calling the police.
O: I think you ought to do that.
JUDGE: You admit you deliberately, and without provacation, broke A's nose?
O: Yes.
J: You know that your act was wrong?
O: Of course.
J: Would you do it again, if you had it to do over?
O: Yes.
J: For no reason at all?
O: Well, to demonstrate my freedom of choice.
J: Is that an excuse?
O: Not at all.
J: Couldn't you think of a better way to test your free will?
O: Not at that monent.
J: How can we be sure you won't do it again?
O: I could give you my word.
J: Will you?
O: I haven't decided, yet.
J: Do you think you should be punished?
O: Certainly.
J: Do you think that will increase or decrease the chances you will do it again?
O: Not in the least.
J: Would you accept treatment that might lessen your propensity for violence?
O: No thank you.
J: Don't you believe it would work?
O: I have no reason to doubt that it would.
J: Are you concerned that it would be unpleasant?
O: No.
J: Then why aren't you willing?
O: I'm simply not interested.
J: Do you feel remorse for what you've done?
O: Yes.
J: It doesn't show.
O: Must it? We all know the act was morally wrong.
J: How do you think your victim feels?
O: Perhaps we should ask him.
V: I'm perplexed and offended.
J: What do you think ought to be done?
V: That's your job.
J: Yes, but I'm asking you.

V: On the one hand, I'd like to see him dead, and on the other it seems you might as well let him go. I'm just not in a position to make a recommendation for sentence.
J: You don't see that as any of your responsibility?
V: It's not one I care to accept.
J: Well, it's obvious that this sort of behavior can't be condoned.
O: I agree.
J: You said earlier that you could offer your word that you wouldn't act this way again, but do you think that would be much assurance?
O: Yes, I do.
J: And have you now made up your mind what the answer is as to whether you will do it again?
O: Yes.
J: And will you tell us what that answer is?
O: No.
J: And do you have an opinion about appropriate penalty?
O: I prefer not to concern myself with that issue.
J: You are being most uncooperative. Do you have anything further to say before I pass sentence?
O: No, thank you.

BIBLIOGRAPHY

Ackerman, John R.
1969 The role of enforcement in American parole service. American Journal of Corrections, March-April, 31.

Adams, Stuart
1970 A comparative study of recidivism rates in six correctional systems.
Research Report No. 21.
Washington, DC: District of Columbia, Department of Corrections, January.

Adams, Stuart
1967 A cost-effectiveness comparison of correctional treatments.
Paper presented at the annual meetings of the Society for the Study of Social Problems, San Francisco, August.

Adams, Stuart
1973 Evaluative research in corrections: Status and prospectus.
Paper presented at the American Society of Criminology meetings, New York, October.

Adams, Stuart
1967 Some findings from correctional caseload research. Federal Probation, December.

Advisory Commission on Intergovernmental Relations
1971 Correctional reform. (M-64, August)
Court reform. (M-63, July)
Police reform. (M-65, August)
Prosecusion reform. (M-66, September)
Washington, DC.

Alexander, Susan
1972 The captive patient: The treatment of health problems in American prisons.
Clearinghouse Review, May.

American Bar Association, Commission on Correctional Facilities and Services, Resource Center on Correctional Law and Legal Services
1973 Survey of parole revocation procedures: State parole board compliance with Morrissey v. Brewer.
Washington, DC, January.

American Bar Association
The national volunteer parole aide program: Guidelines for state projects.
Washington, DC, n.d.

American Bar Association and Council of State Governments
1972 Compendium of model correctional legislation and standards.
Washington, DC.

American Correctional Association
1972 Juvenile diversion: A perspective.
College Park, Maryland, July 1.

The American Criminal Law Review
1973 Note: Judicial application of procedural due process in parole release and revocation.
Summer, 11.

American Friends Service Committee
1971 Struggle for justice: A report on crime and punishment in America.
New York: Hill and Wang.

Austin, Severa
1974 Correctional planning: Much ado about nothing.
Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Barton, Marlin and W. O. Jenkins
1973 The maladaptive behavior record (MBR): A scale for the analysis and prediction of community adjustment and recidivism of offenders.
Elmore, Alabama: Rehabilitation Research Foundation, Experimental Manpower Laboratory for Corrections, January.

Bass, Stanley A.
1971 Correcting the correctional system: A responsibility of the legal profession.
Clearinghouse Review, July, V.

Beier, Ernst G. and Alexander J. Zautra
The evaluation of the effectiveness of volunteers and probation officers in misdemeanour services.
University of Utah, n.d., process.

Beless, Donald W. and Ellen Ryan Rest
Probation officer case aide project: Final Report, Phase I.
University of Chicago Law School, Center for Studies in Criminal Justice, n.d.

Berecochea, John E., Dorothy R. Jaman, and Welton A. Jones
1973 Time served in prison and parole outcome: An experimental study.
Research Report No. 49.
Sacramento: California Department of Corrections, Research Division.

Beverly, Robert
1964 Base expectancies and the initial home visit research schedule.
Research Report No. 37.
Sacramento: California Department of the Youth Authority, Division of Research, January.

Blackburn, Sara, Editor
1971 White justice: Black experience today in America's courtrooms.
Harper Colophon Books.
New York: Harper & Row, Publishers.

Blumstein, Alfred and Jacqueline Cohen
A theory of the stability of punishment.
Unpublished paper, n.d.

Braceland, Francis J.
1969 Historical perspectives of the ethical practice of psychiatry.
The American Journal of Psychiatry, August, 126.

Brandt, Richard B., Editor
1962 Social justice
A Spectrum Book.
Englewood Cliffs, N.J.: Prentice-Hall, Inc.

Brown, Barry S., Ellen M. Markman, and Robert L. Dupont
1970 Released offenders' perceptions of community and institution.
Corrective Psychiatry and Journal of Social Therapy, 16.

Bull, James L.
1972 Coming alive: The dynamics of personal recovery.
Ph.D. Dissertation, University of California, Santa Barbara, 1972.

Burnett, William
1969 The volunteer probation counselor.
Judicature, February, 57.

California Council on Criminal Justice
1973 Evaluation of crime control programs in California: A review.
Sacramento, April.

California Department of Corrections
1972 Inmate release allowances.
Administrative Bulletin No. 73/33
Sacramento, August 6.
1972 Inmate release allowances.
Administrative Bulletin No. 73/33 (First Revision)
Sacramento, October 30.

California Department of Justice, Division of Law Enforcement, Bureau of Criminal Statistics
1973 Subsidy: A perspective, a cohort analysis of superior court non-subsidy and subsidy cases. Research Report No. 6. Sacramento, January.

California Governor's Office
1973 Controlling crime in California: Protecting the law-abiding. Report of the Governor's Select Committee on Law Enforcement Problems, Submitted to the California Legislature by Governor Ronald Reagan. Sacramento, August.

Canadian Department of the Solicitor General
1972 Report of the task force on release of inmates. Montreal, November 30.

Carmichael, Stokely and Charles V. Hamilton
1967 Black power: The politics of liberation in America. New York: Vintage Books.

Caro, Francis G.
1969 Approaches to evaluative research: A review. Human Organization, Summer, 28.

Carr-Hill, Roy
1970 Victims of our typologies. The violent offender--reality or illusion? Occasional Paper No. 1. Oxford University Penal Research Unit. Abingdon, Berkshire, England: Abbey Press.

Center for Criminal Justice
1973 Overview of Changes in the Massachusetts Department of Youth Services: A preliminary and tentative analysis. Cambridge, Mass.: Harvard Law School, September.

Center for Program Effectiveness Studies
1972 Evaluating volunteer programs in corrections Charlottesville: University of Virginia.

Chaiklin, Harris
1973 The community reintegration project, final report. Maryland: Department of Public Safety and Correctional Services, Division of Corrections, process.
1972 Integrating correctional and family systems. American Journal of Orthopsychiatry, October, 42.

Chernoff, Paul A.
1974 Conflicts of interest. Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Clements, Raymond D. (Edited by Hans W. Mattick)
1972 Para-professionals in probation and parole: A manual for their selection, training, induction and supervision in day-to-day tasks.
Chicago: U.S. Probation Office, Northern District of Illinois and the Center for Studies in Criminal Justice, The Law School, University of Chicago.

Coates, Robert B., Alden D. Miller, and Lloyd E. Ohlin
The labeling perspective and innovation in juvenile correctional systems: An analysis based largely on the Massachusetts experience.
Center for Criminal Justice, Law School of Harvard University, n.d.

Cohen, Fred
1969 The legal challenge to corrections: Implications for manpower and training.
Washington, DC: Joint Commission on Correctional Manpower and Training, March.
Parole: A new approach for lawyers.
Unpublished paper for the Resource Center on Correctional Law and Correctional Services, n.d.

Committee for Economic Development
1972 Reducing crime and assuring justice.
A statement on national policy by the Research and Policy Committee.
New York, June.

Congressional Quarterly Service
1967 Crime and justice in America.
Washington, DC, August.

Correctional Service Federation - U.S.A.
1974 Directory of correctional service agencies.
Newsletter, Winter.

Cressey, Donald R. and Robert A. McDermott
1973 Diversion from the juvenile justice system.
National Assessment of Juvenile Corrections.
Ann Arbor: University of Michigan, June.

Davis, Kenneth Culp
1971 Discretionary justice: A preliminary inquiry.
Urbana: University of Illinois Press.

Dean, Charles W. and Thomas J. Duggan
1968 Problems in parole prediction: A historical analysis.
Social Problems, Spring, 15.

Dightman, Cameron R. and Donald R. Johns
1974 The adult corrections release support program in Washington.
State Government, Winter, 47.

Doleschal, Eugene
1970 Hidden crime.
Crime and Delinquency Literature, October.

Doleschal, Eugene and Nora Klapmuts
1974 New Criminology.
[Abstracted from Crime and Delinquency Literature, December, 1973.]
Behavior Today, January 21.

Douglas, William O.
1961 The right of the people.
New York: Pyramid Books.

DuBois, W.E. Burghardt
1961 The souls of black folk.
Greenwich, Conn.: Fawcett Publications, Inc.

Dunbar, Walter
1974 Special presentation
Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Duster, Troy
1970 The legislation of morality: Law, drugs and moral judgment.
New York: The Free Press.

Elliot, Charles W., Editor
1910 American historical documents, 1000 - 1904
The Harvard Classics.
New York: P.F. Collier & Sons, Corporation.

Empey, LaMar T.
1967 Alternatives to incarceration.
Studies in Delinquency.
Washington, DC: U.S. Dept. of Health, Education, and Welfare.

Ennis, Bruce and Loren Siegel
1973 The rights of mental patients: The basic ACLU guide to a mental patient's rights.
An American Civil Liberties Union Handbook.
New York: Discus Books, Avon.

Erickson, Rosemary J., Wyaman J. Crow, Louis Zarcher, and Archie V. Connett
1973 Paroled but not free: Ex-offenders look at what they need to make it outside.
New York: Behavioral Publications.

Ericson, Richard C. and David O. Moberg
1967 The rehabilitation of parolees.
Minnesota: Minneapolis Rehabilitation Center, process.

Erikson, Kai T.
1966 Wayward puritans.
New York: John Wiley and Sons, Inc.

Fitch, Anthony
1972 An introduction to prison reform legistation.
Clearinghouse Review, March.

Friedman, Richard W.
1974 Dilemmas of correctional law and rehabilitation.
Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Gaddis, Thomas E.
1973 Trip to the people-keepers.
Northwest Magazine, September 30.

Girgenti, Richard
1973 Judicial application of due process in parole release and revocation.
American Criminal Law Review, Summer, 11.

Glaser, Daniel
1967 The assessment of correctional effectiveness.
Paper prepared for the First National Symposium on Law Enforcement, Science and Technology, Illinois Institute of Technology, Chicago, Mar. 7-9.
1973 The state of the art of criminal justice evaluation.
Keynote speech at the Second Annual Meeting of the Association for Criminal Justice Research, Los Angeles, California, November 9.

Glaser, Daniel, Donald Kenefick and Vincent O'Leary
1966 The violent offender.
Parole Decision-Making.
Washington, DC: U.S. Dept. of Health, Education, and Welfare, Office of Juvenile Delinquency and Youth Development.

Glaser, Daniel and Vincent O'Leary
1966 The alcoholic offender.
Parole Decision-Making.
Washington, DC: U.S. Dept. of Health, Education and Welfare, Office of Juvenile Delinquency and Youth Development.
1966 Personal characteristics and parole outcome.
Washington, DC: U.S. Dept. of Health, Education, and Welfare, Office of Juvenile Delinquency and Youth Development.

Goldberg, Nancy E.
Pre-trial diversion: Bilk or bargain?
n.p., n.d.

Goldfarb, Ronald L. and Linda R. Singer
1973 After conviction.
New York: Simon and Schuster.

Goodell, Charles E. and Andrew von Hirsch
1972 Testimony before Subcommittee #3 of the House Judiciary Committee on H.R. 13118: The Parole Improvement and Procedures Act of 1972.
Washington, DC, April 26.

Gottesfeld, Harry
1965 Professionals and delinquents evaluate professional methods with delinquents.
Social Problems, Summer, 13.

Gottfredson, Don M.
1967 Assessment and prediction methods in crime and delinquency.
[Reproduced from Task Force Report: Juvenile Delinquency and Youth Crime, The President's Commission on Law Enforcement and Administration of Justice.

Gottfredson, Don M. and Kelley B. Ballard, Jr.
1966 Offender classification and parole prediction.
Vacaville, California: Institute for the Study of Crime and Delinquency, December.
1965 The validity of two parole prediction scales: An eight year follow-up study.
Davis, California: Institute for the Study of Crime and Delinquency.

Greenberg, David F.
1972 General deterrence: Research data and general considerations.
Staff memorandum #3, unpublished.
Washington, DC: Committee for the Study of Incarceration, February 2.
1973 Incidence of serious recidivism in offender population and contribution of offender population to serious offenses.
Unpublished paper.
Washington, DC: Committee for the Study of Incarceration.
1972 Special deterrence and treatment of offenders.
Unpublished paper.
Washington, DC: Committee for the Study of Incarceration, September 29.
1972 The special effects of penal measures: A descriptive summary of existing studies.
Staff memorandum #2, unpublished.
Washington, DC: Committee for the Study of Incarceration, March 29.

Griswold, H. Jack, Mike Misenheimer, Art Powers, and Ed Tromanhausen
1970 An eye for an eye.
New York: Holt, Rinehart and Winston.

Grygier, Tadeusz
Correlates of trust in correctional workshops.
University of Ottawa, Centre of Criminology, n.d., process.

Grygier, Tadeusz, Frank Blum, and O.R. Porebski
1971 Decisions and outcome: Studies in parole prediction.
Canadian Journal of Criminology and Corrections, April, 13.

Haney, Bill and Martin Gold
1973 The juvenile delinquent nobody knows.
Psychology Today, September.

Hardy, Kenneth
1971 The ex-offender as parole officer: Final Report.
Washington, DC: District of Columbia, Department of Corrections, August.

Harlow, Eleanor
1971 Community based correctional programs: Models and practices.
Crime and Delinquency Topics.
Rockville, Maryland: National Institute of Mental Health, Center for Studies of Crime and Delinquency.
1972 Diversion from the criminal justice system.
Crime and Delinquency Topics.
Rockville, Maryland: National Institute of Mental Health, Center for Studies of Crime and Delinquency.

Hartung, Frank E.
1966 Crime, law, and society.
Detroit: Wayne State University Press.

Holt, Norman
1974 Rational risk taking: Some alternatives to traditional correctional programs.
Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Hudson, C.H.
1973 Experimental study of the differential effects of parole supervision for a group of adolescent boys and girls: Summary Report.
Washington, DC: U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice.

Hunter, Kevin, Robert Packrass, and Luanne Hostermann
1973 Probationed offenders and rehabilitation training: An evaluation of community based corrections. Minnosota: Urban Studies Institute, Mankato State College.

Ingraham, Barton L. and Gerald W. Smith
1972 The use of electronics in the observation and control of human behavior and its possible use in rehabilitation and parole. Issues in Criminology, Fall, 7.

Institute for Research on Poverty
1973 The New Jersey graduated work incentive experiment: Summary Report. Madison: University of Wisconsin, and Princeton: Mathematica, Inc., December.

Institute of Criminal Justice and Criminology
1973 Reintegration of the offender into the community. University of Maryland, June.

Irwin, John
1970 The felon. New Jersey: Prentice-Hall.

Jenkins, W.O.
1972 The prediction of recidivism: The environmental deprivation scale (EDS), a method of assessing degree of environmental deprivation and behavioral deviancy. Wlmore, Alabama: Rehabilitation Research Foundation, Draper Correctional Center, May 1.

Jenkins, W.O., M.C. Barton, E.K. deValera, M.D. DeVine, A.D. Witherspoon, and J.B. Muller
1971 The measurement and prediction of criminal behavior and recidivism: The environmental deprivation scale (EDS) and the maladaptive behavior record (MBR). Elmore, Alabama: Experimental Manpower Laboratory for Corrections, Rehabilitation Research Foundation, Draper Correctional Center, December.

Jenkins, W.O. and W. Lee Sanford
1972 A manual for the use of the environmental deprivation scale (EDS) in corrections: The prediction of criminal behavior. Elmore, Alabama: Experimental Manpower Laboratory for Corrections, Rehabilitation Research Foundation, Draper Correctional Center, October.

Johnson, Bertram M.
1962 An analysis of predictions of parole performance and of judgements of supervision in the parole research project.
Research Report No. 32.
Sacramento: California Department of the Youth Authority, December.

Johnston, Norman G., Newton L.P. Jackson, Jr., and Samuel Schultz II
1971 Psychodiagnosis in predicting determinations of competence to stand trial.
Paper presented at the Midwestern Psychological Association Convention, Detroit, May.

Joint Commission on Correctional Manpower and Training
1970 Perspectives on correctional manpower and training.
Washington, DC.

Jones, Harry W., Editor
1965 The courts, the public, and the law explosion.
A Spectrum Book.
Englewood Cliffs, N.J.: Prentice-Hall, Inc.

Jorgensen, James D.
1970 John Augustus revisited: The volunteer counselor in a misdemeanant court.
Corrective Psychiatry and Journal of Social Therapy, 16.

Kardiner, Abram and Lionel Ovesey
1962 The mark of oppression: Explorations in the personality of the American Negro.
Cleveland: Meridaian Books, The World Publishing Company.

Kastenmeir, Robert W. and Howard C. Eglit
1973 Parole release decision-making: Rehabilitation, expertise, and the demise of mythology.
The American University Law Review, Spring, 22.

Kaufman, Michael and Harvey Bluestone
1974 Patient--therapist: Are we free to choose therapy?
Paper presented at the American Orthopsychiatric Association Annual Meeting, San Francisco, April 10.

Klapmuts, Nora
1974 Diversion from the justice system?
Crime and Delinquency Literature, March.

Klapp, Orrin E.
1962 Heroes, villains, and fools: The changing American character.
A Spectrum Book.
Englewood Cliffs, N.J.: Prentice-Hall, Inc.

Knight, Doug
1972 Delinquency causes and remedies: The working assumptions of California Youth Authority staff. Research Report No. 61. Sacramento: California Department of the Youth Authority.

Knight, Etheridge
1970 Black voices from prison. A Merit Book. New York: Pathfinder Press, Inc.

Knowles, Louis L. and Kenneth Prewitt, Editors
1969 Institutional racism in America. A Spectrum Book. Englewood Cliffs, N.J.: Prentice-Hall, Inc.

Krisberg, Barry and Paul Takagi
1973 Ethical issues in evaluating criminal justice demonstration projects. Prepared for the Annual Meetings of the American Criminology Society, New York, November.

Kutak, Robert
1971 From the outside looking in: Grim fairy tales for prison administrators. [Reprinted from Outside Looking In, U.S. Dept. of Justice, LEAA, Washington, DC.] Washington, DC: American Bar Association, Commission on Correctional Facilities and Services, August.

Lamson, Robin and Carol Crowther
1968 Crime and penalties in California. Sacramento: California State Assembly, Office of Research.

LaPiere, Richard
1959 The Freudian ethic. New York: Duell, Sloan and Pearce.

Lefcourt, Robert, Editor
1971 Law against the people: Essays to demystify law, order, and the courts. Vintage Books. New York: Random House.

Lemert, Edwin M.
1972 Instead of court: Diversion in juvenile justice. Crime and Delinquency Issues. Rockville, Maryland: National Institute of Mental Health, Center for Studies of Crime and Delinquency.

Lenihan, Kenneth J.
1974 The financial resources of released prisoners. Washington, DC: Bureau of Social Science Research, Inc., process.

Lerman, Paul
1968 Evaluating the outcomes of institutions for delinquents.
Social Work, July, 13.

Levin, Martin A.
1971 Policy evaluation and recidivism.
Law and Society Review, August, 6.

Logan, Charles H.
1972 Evaluation research in crime and delinquency: A reappraisal.
The Journal of Criminal Law, Criminology and Police Science, 63.

Lohman, Joseph D., Albert Wahl, Robert M. Carter and Arthur E. Elliott
1970 The impact of supervision: Officer and offender assessment.
The San Francisco Project: A Study of Federal Probation and Parole, Research Report No. 13. Berkeley: University of California, School of Criminology.

Looney, Maryanne and Suzanne Metcalf
1974 The "fatigue factor": Sufficient motivation for treatment?
Paper presented at the American Orthopsychiatric Association Annual Meeting, San Francisco, April 10.

Lytle, Milford B.
1964 The unpromising client.
Crime and Delinquency, April, 10.

Macaulay, J. and L. Berkowitz
1970 Altruism and helping behavior: Social Psychological studies of some antecedents and consequences.
New York: Academic Press.

McGee, Richard A.
1973 California's indeterminate sentence: An alternative.
Draft of a paper for the American Justice Institute, December 12.

Mandel, Nathan G., Beverly S. Collins, Mark R. Moran, Alfred J. Barron, Frederick J. Gelbmann, Charles B. Gadbois, and Philip Kaminstein
1965 Recidivism studied and defined.
The Journal of Criminal Law, Criminology and Police Science, March, 56.

Marcuse, Herbert
1969 An essay on liberation.
Boston: Beacon Press.

Martin, John M.
1970 Toward a political definition of juvenile delinquency.
Social and Rehabilitation Services Report No. 146.
Washington, DC: U.S. Dept. of Health, Education, and Welfare.

Martinson, Robert
Community Treatment and the policy effect.
Unpublished paper, n.d.
A static-descriptive model of field supervision.
Unpublished paper, n.d.
1974 What works?--Questions and answers about prison reform.
The Public Interest, Spring, 35.

Maslow, A.H.
1954 Motivation and personality.
New York: Harper.

Matza, David
1969 Becoming deviant.
New Jersey:Prentice-Hall.

Memmi, Albert
1968 Dominated man.
Boston: Beacon Press.

Miller, S.M. and Pamela A. Roby
1970 The future of inequality.
New York: Basic Books, Inc.

Minnesota Department of Corrections
1972 Positive peer culture program: Follow-up study.
Minnesota, June, unpublished.

Mitford, Jessica
1973 Kind and usual punishment: The prison business.
New York: Alfred A. Knopf.

Molof, Martin J.
1965 Prediction of future assaultive behavior among youthful offenders.
Research Report No. 41.
Sacramento: California Department of the Youth Authority, May.

Monson, Murry and James E. Cowden
1968 How effective is aftercare?
Crime and Delinquency, October, 14.

Morris, Albert
1971 A correctional administrators'guide to the evaluation of correctional programs. Correctional Research, November, 21.
1972 Correctional reform: Illusion and reality. Correctional Research, November, 22.
1973 Extending public understanding of crime and its treatment. Correctional Research, November, 23.
1970 Involvement of offenders in prevention and correction of criminal behavior. Correctional Research, October, 20.
1968 What do administrative and professional staffs think about their correctional systems? Correctional Research, May, 17.
1968 What is the role of the judge in the correctional process? Correctional Research, November, 18.
1957 What's new in sentencing? Correctional Research, October, 7.

Morris, Norval and Gordon Hawkins
1970 The honest politician's guide to crime control. Chicago: The University of Chicago Press.

National Advisory Commission on Criminal Justice Standards and Goals
1973 Community crime prevention.
Corrections.
Courts.
Criminal justice system.
A national strategy to reduce crime.
Washington, DC, January 23.

National Center for Voluntary Action
1972 Clearinghouse Portfolio No. 17: Volunteers in probation and probation-related services. June.
Clearinghouse Portfolio No. 18: Volunteers assisting the offender in prison and in the community. July.
Helping the volunteer get started: The role of the volunteer center. September.
1973 College-university resources in education and training for voluntary action. August.
Recruiting low-income volunteers: Experiences of five voluntary action centers. December.
Washington, DC.

National Council on Crime and Delinquency
Instead of prison: A report on the community treatment project for repeat offenders, Oakland County, Michigan.
Hackensack, New Jersey, n.d.

National Criminal Justice Reference Service
1973 Bibliography on ex-offenders. July.
Employment problems of former offenders. n.d.
Abstracts on probation and parole management. n.d.
Abstracts on probation and parole services. n.d.
Abstracts on ex-offender employment. n.d,
Abstracts on probation and parole supervision. n.d.
Abstracts on volunteerism in corrections. n.d.
Washington, DC: U.S. Dept. of Justice, LEAA.

National District Attorneys Association
A prosecutor's manual on screening and diversionary programs.
Chicago, n.d.

National Institute of Law Enforcement and Criminal Justice
1973 The classification of criminal behavior.
Selected papers from a seminar series.
Washington, DC: U.S. Dept. of Justice, LEAA, June.
1973 New approaches to diversion and treatment of juvenile offenders.
Criminal Justice Monograph.
Papers on related topics presented at the Fourth National Symposium on Law Enforcement Science and Technology, conducted by the Institute of Criminal Justice and Criminology, University of Maryland, May 1-3, 1972.
Washington, DC: U.S. Dept. of Justice, LEAA, June.

New York Division of Probation
1974 Mutual objectives probation program.
Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Nicholson, Richard
Use of prediction in caseload management.
Federal Probation.

Nixon, Connor
1973 Forum for corrections.
Umpublished paper.

Ohlin, Lloyd E., Editor
1973 Prisoners in America.
The American Assembly. A Spectrum Book.
Englewood Cliffs, N.J.: Prentice-Hall, Inc.

Packer, Herbert L.
1968 The limits of the criminal sanction.
Stanford, California: Stanford University Press.

Palmer, Ted
1973 The community treatment project in perspective: 1961 - 1973.
Youth Authority Quarterly, Winter, 26.

Parker, William
1972 Parole: Origins, development, current practices and statutes.
College Park, Maryland: American Correctional Association, May.

Phillips, Charles
1974 The Department of Labor Manpower Programs in corrections.
Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Powers, Edwin
1970 Parole boards, appointments, compensation, qualifications: A review of the laws in the fifty states.
Boston: Massachusetts Correctional Association, July.
1969 Parole eligibility of prisoners serving a life sentence.
Boston: Massachusetts Correctional Association, July.

Powers, Sanger B.
1974 Wisconsin's mutual agreement program.
Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Pownall, George
1967 Employment problems of released prisoners.
Washington, DC: U.S. Department of Labor.

Quinney, Richard
1970 The social reality of crime.
Boston: Little, Brown and Company.

Rawls, John
1972 A theory of justice.
A Harvard Paperback.
Cambridge, Mass.: The Belkap Press of Harvard University Press.

Reachout Today, Inc.
1973 Community corrections and you.
Presentation for Metropolitan Committee on Youth Advocacy Workshop, Minneapolis, Minnosota, Dec. 6.
Minneapolis, Minnosata.

Reinerman, Craig
1973 Direct financial assistance to parolees.
San Francisco: Scientific Analysis Corporation, July, unpublished.

Risley, Henry B.
1974 Michigan's contract service program: The first year's experience. Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Robison, James
1972 Incarceration and incapacitation Unpublished paper. Washington, DC: Committee for the Study of Incarceration.
1972 State prisons, the state of prison, and the prison state. Unpublished paper. Washington, DC: Committee for the Study of Incarceration.

Robison, James and Gerald Smith
1971 The effectiveness of correctional programs. Crime and Delinquency, January.

Robison, James and Paul Takagi
1968 The parole violator as an organization reject. Berkeley: University of California, School of Criminology.

Robison, James, Leslie T. Wilkins, Robert M. Carter, and Albert Wahl
1969 The San Francisco Project: Final Report. Berkeley: University of California, School of Criminology.

Robison, Margo
1974 Checking out: Case decisions and operating policy in early discharge from parole. To be published in Parole: Selected Issues, Edited by William E. Amos and Charles L. Newman. New York: Aberdeen Press.

Roscoe Pound-American Trial Lawyers Foundation
1972 A program for prison reform. Annual Chief Justice Earl Warren Conference, Cambridge, Mass., June 9-10.

Rosenthal, Robert
1966 Experimenter effects in behavioral research. New York: Appleton-Century-Crofts.
1973 The Pygmalion effect lives. Psychology Today, September.

Rubenfeld, Seymour
1967 Typoligical approaches and delinquency control: A status report. Rockville, Maryland: National Institute of Mental Health, Center for Studies of Crime and Delinquency.

Rubovits, Pamela C. and Martin L. Maehr
1973 Pygmalion black and white.
Journal of Personality and Social Psychology, 25.

Sadoff, Robert L,, Herman V. Roether and Joseph J. Peters
1971 Clinical measures of enforced group psychotherapy.
American Journal of Psychiatry, August, 128.

Salem, Richard G. and William J. Bowers
1970 Severity of formal sanctions as a deterrent to deviant behavior.
Law and Society Review, August, 5.

San Diego Youth Service Bureaus
1971 Diversion project for juveniles, including use of existing community resources.
Unpublished proposal to California Council on Criminal Justice, Sacramento.

Sanford, Michael D.
1965 A preliminary overview of adult paroles in California.
Unpublished paper.
Berkeley: Center for the Study of Law and Society, September.

Schur, Edwin M.
1968 Law and society: A sociological view.
Studies in Sociology.
New York: Random House.

Schwitzgebel, Ralph H. and Daniel J. Baer
1967 Intensive supervision by parole officers as a factor in recidivism production of non-delinquents.
The Journal of Psychology, September, 67.

Scott, Ronald
1974 Correctional treatment: A "double-bind" problem.
Paper presented at the Second National Workshop on Corrections and Parole Administration, San Antonio, Texas, March.

Shihadeh, Emile S.
1973 The perception of parolees and parole officers.
The Journal of Psychology, September, 84.

Shin, H. Joo
1973 Criminal justice in 1980: Summary description of the data from the first round of Delphi Study.
Albany, New York: School of Criminal Justice, March.

Shore, Milton F. and Stuart E. Golann, Editors
1973 Current ethical issues in mental health.
Based on a workshop at the 47th Annual Meeting of the American Orthopsychiatric Association, San Frnacisco, March, 1970.
Rockville, Maryland: National Institute of Mental Health, National Clearinghouse for Mental Health Information.

Simon, Frances H.
1972 Statistical methods of making prediction instruments. Journal of Research in Crime and Delinquency, January, 2.

Singer, Richard
1972 Morrissey v. Brewer: Implications for the future of correctional law. Clearinghouse Review, October.

Smith, Robert L.
1972 A quiet revolution: Probation subsidy. Washington, DC: U.S. Department of Health, Education, and Welfare, Social and Rehabilitation Service, Youth Development and Delinquency Prevention Administration.

Steadman, Henry J.
1973 The prediction of dangerousness. Prepared for presentation at the Continuing Education Meeting of the Department of Psychological and Social Medicine of Pacific Medical Center, San Francisco, December 8.
1972 The psychiatrist as a conservative agent of social control. Social Problems, Fall, 20.
Some evidence on the inadequacy of the concept of dangerousness in law and psychiatry. Albany, New York: New York State Department of Mental Hygiene, Mental Health Research Unit, n.d.

Street, Harry
1963 Freedom, the individual and the law. Harmondsworth, Middlesex, England: Penguin Books Ltd.

Stubbs, Earl
Salvation Army volunteer probation counselor program in Milwaukee, Wisconsin. Salvation Army News Bulletin, n.d.

Studt, Elliot
1973 Surveillance and service in parole: A report of the parole action study. Washington, DC: U.S. Governemnt Printing Office.

Szasz, Thomas S.
1970 The manufacture of madness. New York: Harper and Row.

Taggart, Robert
1972 The prison of unemployment Baltimore: The Johns Hopkins University Press.

Takagi, Paul
1967 Evaluation systems and adaptations in a formal organization.
Unpublished Ph.D. dissertation, Stanford University, Department of Sociology, Palo Alto, California.

Thurow, Lester C.
1967 Poverty and discrimination.
Studies in Social Economics.
Washington, DC: The Brookings Institution.

Tittle, Charles
1969 Crime rates and legal sanctions.
Social Problems, Spring.

Transitions to Freedom
Transitions to freedom: A model for urban projects designed to improve the employment situation for men and women returning from prison and jails.
San Francisco, n.d.

Tyce, Francis A.
1971 Community rehabilitation for legal offenders: PORT of Olmsted County, Minnesota.
Hospital and Community Psychiatry, March.

United States Chamber of Commerce
1973 Modernizing criminal justice through citizen power.
Washington, DC.

von Hirsch, Andrew
1972 Prediction of criminal conduct and preventive confinement of convicted persons.
Buffalo Law Review, 21.

von Hirsch, Andrew and Patricia Ebener
1972 Release from incarceration (I): Adult parole.
Unpublished staff memorandum #1.
Washington, DC: Committee for the Study of Incarceration, May 17.

von Hirsch, Andrew and S. Steward
1973 Convicted adult offenders.
Unpublished papers.
Washington, DC: Committee for the Study of Incarceration, December.

von Hirsch, Andrew
1971 Deterrence.
Unpublished staff memorandum #3.
Washington, DC: Committee for the Study of Incarceration, November 19.

Waldo, Gordon P. and Simon Dinitz
1967 Personality attributes of the criminal: An analysis of research studies, 1950-65. Journal of Research in Crime and Delinquency, July, 4.

Walker, Nigel, William Hammond, and David Steer
1970 Careers of violence. The violent offender--reality or illusion? Occasional Paper No. 1, Oxford University Penal Research Unit, Oxford. [Reprinted from Criminal Law Review, August, 1967.] Abingdon, Berkshire, England: Abbey Press.

Walsh, Vivian Charles
1961 Scarcity and evil. A Spectrum Book. Englewood Cliffs, N.J.: Prentice-Hall, Inc.

Walster, Elaine, Ellen Berscheid, and G. William Walster
1970 The exploited: Justice or justification? in Altruism and helping behavior: Social Psychological studies of some antecedents and consequences. Edited by J. Macaulay and L. Berkowitz. New York: Academic Press.

Walton, G, L.D. Grauberger, R. Rogers, and T. Wilson
Denver Youth Services System. Unpublished paper. n.d.

Way, H. Frank, Jr.
1967 Liberty in the balance. Foundations of American Government and Political Science. Second Edition. New York: McGraw-Hill Book Company.

Wayson, Billy L.
1974 Correctional myths and economic realities. Washington, DC: American Bar Association, process.

Weiss, Carol H.
1973 Where politics and evaluation research meet. Evaluation, 1.

West, D.J., Editor
1972 The future of parole. London: Gerald Duckworth & Co.

Western American Assembly
1973 Final Report of the Conference on Prisoners in America, Berkeley, September 27.

Wettergren, David, Margaret Thompson, and O. Russell Olson
1972 PORT handbook: A manual for effective community action with the criminal offender. Rochester, Minnesota.

Wilkins, Leslie T.
1973 Crime and criminal justice at the turn of the century. Paper presented at the 77th Annual Meeting of the American Academy of Political and Social Science, Philadelphia, April 13.
1969 Evaluation of penal measures. New York: Random House.
1968 Improving criminal statistics. Paper presented to the American Statistical Association Conference, Pittsburgh, August 22.
1973 The problem of overlap in experience table construction. Parole Decision-Making, Supplemental Report 3. Davis, California: National Council on Crime and Delinquency.
1968 Values v. variates--An essay on the relevance of measurement to marals and value judgments. in Crime and culture: Essays in honor of Thorsten Sellin, Edited by Marvin E. Wolfgang. New York: John Wiley & Sons, Inc.

Williams, Wlater and John W. Evans
1972 The politics of evaluation: The case of Head Start. in Evaluating social programs: Theory, practice, and politics, Edited by Peter H. Rossi and Walter Williams. New York: Seminar Press.

Wisconsin Council on Criminal Justice
1972 Final report to the Governor of the Citizens' Study Committee on Rehabilitation. Madison, July.

Witherspoon, A.D., E.K. deValera, and W.O. Jenkins
1973 The law encounter severity scale (LESS): A criterion for criminal behavior and recidivism. Montgomery, Alabama: Rehabilitation Research Foundation, Experimental Manpower Laboratory for Corrections, August.

Witt, Leonard R.
1968 Project DEVELOP: Final Report. New York: New York State Division of Parole, process.

Wolff, Robert Paul, Barrington Moore, Jr., and Herbert Marcuse
1970 A critique of pure tolerance.
Boston: Beacon Press.

Wormeli, Paul K. and Steve E. Kolodney
1972 The crime-specific model: A new criminal justice perspective.
Journal of Research in Crime and Delinquency, January, 9.

Wyllie, Irvin
1966 The self-made man in America: The myth of rags to riches.
New York: The Free Press.

Youth Studies Center, University of Southern California
1963 Types of probation officers and types of youth on probation: Their views and interaction.
Los Angeles.

Zimring, Franklin E.
1971 Perspectives on deterrence.
Crime and Delinquency Issues.
Washington, DC: National Institute of Mental Health, Center for Studies of Crime and Delinquency, January.

Erlich, J.W.
1974 Jake Erlich on Eyewitnesses.
[from The Lost Art of Cross-Examination by J.W. Erlich.]
Social Action and the Law Newsletter, February, 1.

Groudine, Candance
1973 Beyond the law: Jury acquittals by reasons of morality.
Report No. CR-4.
Brooklyn, New York: Brooklyn College, The Center for Responsive Psychology, May.

National Conference on Criminal Justice
1973 Working papers.
Washington, DC: U.S. Department of Justice, Law Enforcement Assistance Administration, January 23 - 26.

Taylor, Ian and Jock Young
1973 The New Criminology.
London: Routledge, Kegan, Paul.

Wall, Patrick M. and Charles C. Thomas
1974 Review of Eyewitness identification in Criminal Cases, by Glenn Silverberg.
Social Action and the Law Newsletter, February, 1.

Waller, Irvin
1973 Men released from prison.
Toronto: University of Toronto Press.

APPENDIX

SCIENTIFIC REPRESSION

Improvement in Recidivism Prediction By Use Of Offender Background Characteristics

A program of direct crime prevention through the confinement and incapacitation of convicted offenders should be anchored in estimates of recidivistic crime, with decisions for release or extended confinement dependant on recidivism likelihood. Classification of offenders on the basis of commitment offense is a relatively crude way of developing groups with greater or lesser likelihood of recidivism. Surely, if more information about offenders past histories were taken into account, improved forms of classification and increased accuracy of prediction could be attained, permitting greater rationality in decisions of confinement or release.

The Claim

"In 1958, initially under guidance of Leslie Wilkins from England, the Research Division of the California Department of Corrections entered the field of parole outcome prediction from base expectancies. The base expectancy scale assigns a score to each inmate according to possession or absence of certain historical characteristics. It predicts from past observation the percentage of inmates for each

BE score who will have favorable outcomes; the higher the score, the greater the possibility of favorable parole outcome...BE 61A was created to predict favorable parole outcome within two years after release. In general, favorable outcome was defined as no return to any prison from parole, no jail sentence of 90 or more days, or not PAL [parolee-at-large] over six months. The scale scores range from 0 - 76, with the specified points accumulated for whichever of the following characteristics are applicable:

12	Arrest-free period of five or more consecutive years
9	No history of any opiate use
8	Not more than two jail commitments
7	Not committed for burglary, forgery, or checks
6	No family criminal record
6	No alcohol involvement
5	Not first arrested for auto theft
5	Six or more consecutive months for one employer
5	No aliases
5	First imprisonment under this serial number
4	Favorable living arrangement
4	Not more than two prior arrests

"...BE 61A continues to be a valid measurement and predictive device for male felon parolees...the percent favorable outcome for each year's releases is higher at any level than the percents observed for the same year's lower levels. Although the BE was created to predict favorable outcome within two years, it has some validity for predicting returns to prison in that the percent of returns generally increases as the BE score level decreases.

"Even though the BE 61A scale accounts for less than 20% of the variation in parole outcomes, its predictions

for favorable outcome are better than change. Therefore, it can be helpful to administrators and in program evaluations." [from: "Parole Outcome of Felon Releases to California Parole 1962-1969 By Parole Office of Release", Research Measurement Unit, California Department of Corrections, Research Division, April, 1971. (Underlining by this writer.)]

The Evidence

The document cited above provides data on percent favorable outcome and percent returned to prison with new felony commitment for each of seven BE score ranges or "risk levels". The findings reported above are for 5910 men released to parole in 1967. Suppose that a parole board were to employ the device in determining which inmates to release after a certain period and which to confine for an additional year. The board might decide to attempt retaining inmates who would otherwise violate within two years and return to prison with a new felony commitment, or it might set a lower threshold, attempting to safeguard against those who would merely have an "unfavorable outcome". The issue becomes: What are the consequences of holding the worst BE group an extra year? The worst two BE groups? The worst three? etc.

As applied to the 1967 data, and using the criterion of return to prison with new felony commitment as the outcome to be prevented, we find:

HOLD BE LEVELS	PERCENT OF BAD GUYS HELD	PERCENT OF GOOD GUYS HELD	% GOOD GUYS AMONG HELD	PERCENT ERROR: (BAD RELEASED + GOOD HELD)
F	3.3	3.0	87	14
EF	19.7	17.8	87	25
DEF	37.2	33.6	87	37
XDEF	79.8	72.1	87	66

If we term those who would return "bad guys" and those who would not "good guys", and count it as an error to release a bad guy or to hold a good guy, the parole board minimizes error by deciding to retain for an extra year only the members of the "worst" BE level--level F. By so doing, only 14% of its individual case decisions are in error. If the aim were simply to minimize error, however, the board could do better by deciding to release all the inmates, and would be wrong only 12% of the time. By deciding to hold the members of BE level F, the board would manage to keep 3.3% of the bad guys off the street. To do so, however, it would be necessary to also hold 3.0% of the good guys and, since good guys heavily outnumber bad guys, the vast majority of those retained in confinement (87%) would be good guys. If the parole board were to raise the decision threshold for the purpose of holding a higher proportion of the bad guys, it could retain 20% of them at the cost of holding 18% of the good guys (BE levels E and F), could hold 37% of the bad by holding 34% of the good (levels D, E, and F), and 80% of the bad with 72% of the good

(levels XDEF). At each of these steps upward in the screening decision, the false positive rate, or percent good guys among those held, remains 87%, but the total error rate progressively increases--to 25% if the two lowest BE levels are held, to 37% if the three lowest are held and, finally, to 66% if the four lowest are held.

In short, then, the "helpfulness" of the base expectancy to administrators in the above situation is this: If they were to reach blindly into a hat and withdraw samples of offenders to hold an extra year in confinement, 88% of the cases they chose to retain would be good guys or false positives. With the assistance of the base expectancy to inform their decisions, 87% of cases held would be good guys. Though the BE is "worth" one percent, neither "informed" nor "uninformed" conditions appear to have utility for the incapacitative decision.

If the incapacitative decision were to be based on the less serious criterion of recidivism for which the BE was originally designed--"unfavorable outcome"--prediction can be somewhat improved but the point of such prediction becomes more nebulous since the level of difficulty to be prevented is less likely to warrant the incapacitative response. If these concerns about over-response were ignored, then:

The parole board could hold: BE LEVEL	F	EF	DEF	XDEF	C XDEF	BC XDEF
Amounting to __% of the offenders:	3	18	34	73	86	98
And would retain __% of the "bad guys":	4.6	24.3	43.2	82.0	94.4	99.9
At the cost of keeping __% of the "good guys":	1.4	11.6	24.8	63.9	78.5	96.1
So that __% of those held were "good guys":	23	32	36	44	46	49
And __% of all decisions were in error:	49	44	41	41	42	48

Uninformed decisions on the unfavorable outcome criterion would yield an error rate of 50%. This error rate is approached under either of the more extreme BE-informed solutions to the incapacitative decision: We could decide to hold only level F and ensure minimal holding of good guys (1.4%), but would succeed in incapacitating only 4.6% of the bad guys; if we sought, instead, to nearly guarantee retention of the bad guys (99.9%), we would find it necessary to keep 96.1% of the good guys confined. Total error can be reduced to 41% by, for example, deciding to retain levels DEF, which would achieve the incapacitation of two fifths of the bad guys at the expense of lost freedom for one fourth of the good guys and the result that over one third of those retained would be unjustly held. The injustice is not confined to the false positives, however; the issue remains whether incapacitation is an appropriate preventive measure to the levels of "badness" represented in our criterion, which includes misdemeanors and periods of absconding.

CONTINUED

1 OF 2

It has often been argued that clinical and actuarial predictions may be profitably combined for making decisions about the disposition of offenders. It is difficult to see how this could, in fact, be realized unless the decision maker is preoccupied with concerns about minor degrees of return to crime--the criterion addressed by most actuarial devices. In these circumstances, low scores supply a scientific prejudice to be weighed alongside intuitional prejudice. There are not now in existence actuarial devices that are offense-specific or addressed to prediction of high gravity recidivism. They do not exist because no one has discovered the means for their successful construction. Unless that happens, and, because of the nature of the problem it seems quite unlikely that it will happen, actuarial instruments can assist us only if we are prepared to accept either a high rate of false positive predictions or a low threshold of danger to be prevented. The costs to personal liberty are excessive in either case.

PROOF TABLES

[Derived from data available in "Parole Outcome of Felon Releases to California Parole 1962-69"]

GROUP	RISK LEVEL SCORES	PROPORTION RTP - WNC	PROPORTION OF TOTAL RELEASED RTP - WNC "bad guys"	RTP - WNC "good guys"
A	69-76	00	0200	0000	0200
B	53-68	07	1200	0084	1116
C	46-52	12	1300	0156	1144
X	33-45	13	3900	0507	3393
D	27-32	13	1600	0208	1392
E	17-26	13	1500	0195	1305
F	00-16	13	0300	0039	0261
≤		12	10000	1189	8811

	BLAMED	ERROR	TRUE POSITIVE ("gotten")	FALSE NEGATIVE ("missed")	FALSE POSITIVE ("dammed")	TRUE NEGATIVE ("rescued")
F	0300	1411	0039	1150	0261	8550
E	1800	2521	0234	0955	1566	7245
D	3400	3705	0442	0747	2958	5853
X	7300	6591	0949	0240	6351	2461

	PERCENT OF BAD GUYS HELD TP/BG	PERCENT GOOD GUYS HELD FP/GG	PERCENT GOOD GUYS AMONG THOSE HELD FP/FP+TP
F	3.3	3.0	87
E	19.7	17.8	87
D	37.2	33.6	87
X	79.8	72.1	87

PROOF TABLES

[Derived from data available in "Parole Outcome of Felon Releases to California Parole 1962-69"]

GROUP	RISK LEVEL SCORES	PROPORTION UNFAVORABLE	PROPORTION OF TOTAL RELEASED UNFAVORABLE	FAVORABLE
A	69-76	03	0200	0006	0194
B	53-68	27	1200	0324	0876
C	46-52	44	1300	0572	0728
X	33-45	50	3900	1950	1950
D	27-32	59	1600	0944	0656
E	17-26	66	1500	0990	0510
F	00-16	77	0300	0231	0069
Σ		50	10000	5017	4983

	BLAMED	ERROR	TRUE POSITIVE ("gotten")	FALSE NEGATIVE ("missed")	FALSE POSITIVE ("dammed")	TRUE NEGATIVE ("rescued")
F	0300	4855	0231	4786	0069	4914
E	1800	4375	1221	3796	0579	4404
D	3400	4087	2165	2852	1235	3748
X	7300	4087	4115	0902	3185	1798
C	8600	4243	4687	0330	3913	1070
B	9800	4795	5011	0006	4789	0194

	PERCENT OF BAD GUYS HELD	PERCENT OF GOOD GUYS HELD	PERCENT GOOD GUYS AMONG THOSE HELD
F	4.6	1.4	23
E	24.3	11.6	32
D	43.2	24.8	36
X	82.0	63.9	44
C	93.4	78.5	46
B	99.9	96.1	49

END