

SOCIAL ISSUES RESEARCH ASSOCIATES  
*under a grant from*  
CALIFORNIA COUNCIL FOR THE HUMANITIES IN PUBLIC POLICY  
*and*  
THE NATIONAL ENDOWMENT FOR THE HUMANITIES  
*presents proceedings from a conference*  
"HUMANIZING THE CRIMINAL JUSTICE SYSTEM"  
*given*  
*June 25 and June 26, 1976*  
*at*  
*University of San Francisco*  
AUGUST, 1977



Wooden Prison Cage in Early French Chateau  
from Les Bagnes, 1845  
by Maurice Allhay

46103

## CALIFORNIA COUNCIL FOR THE HUMANITIES IN PUBLIC POLICY

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THE CALIFORNIA COUNCIL FOR THE HUMANITIES IN PUBLIC POLICY is a new, independent statewide organization, formed to stimulate dialogue between humanists and members of the public on important areas of social concern. Funded by the National Endowment for the Humanities, the Council provides grants for projects which bring the humanities to bear on public policy issues in California.

The overall aim of the program is to provide a heretofore unexplored point of view on these issues. Most such issues are decided on technical or economic grounds, yet they almost always have profound human implications. Thus the aim of this program is to make it possible for the professional whose field lies in the area of human values—as well as the scientist, the engineer, the economist—to be heard, to enable California citizens to make their decisions from the widest possible base of knowledge and understanding.

*(The opinions expressed in this publication do not necessarily reflect the position or policy of the National Endowment for the Humanities or the California Council for the Humanities in Public Policy, and no official endorsement by either organization should be inferred.)*

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SOCIAL ISSUES RESEARCH ASSOCIATES, a private non-profit corporation, was founded in 1971. With headquarters in Berkeley, California, the firm's members conduct studies on social issues through activities ranging from reviews of literature to empirical assessments of programs and policies through experimental designs and multi-variate analyses. The evaluative perspective of this organization is attentive to pragmatic considerations of efficiency and effectiveness, but is more fundamentally concerned with matters of human rights and the exploration of means for extension of freedom and dignity—with the responsibility of individuals and the accountability of institutions.

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NCJRS

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ACQUISITIONS

**AUGUST, 1977**

## HUMANITIES AND CRIMINAL JUSTICE: MAKING THE CONNECTION

It is an unsettling fact that humanistic scholars are minimally involved in criminal justice policymaking. If it is assumed that the "criminal justice system" ought to be attuned to questions of basic humanity—that policy should not be determined entirely on the basis of efficiency or administrative convenience—then the absence seems remarkable.

Indeed, much of the controversy surrounding such issues as determinate vs. indeterminate sentencing, capital punishment, rehabilitation vs. punishment, drug decriminalization, segregation of ethnic groups in prison, high vs. low custody, the rights of prisoners to organize, the proper role of due process in juvenile justice, or the law enforcement/crime rate enigma, is couched in terms that argue for this or that approach as being more humane. These are largely the arguments of people outside the humanities, however—people trained in law, administration, or the social sciences.

Recent years have seen far-reaching changes in the policy answers to certain of these questions—e.g., the rejection of rehabilitation in favor of just deserts or general deterrence, increased emphasis on due process for juvenile offenders and parole violators, and the on-again, off-again status of capital punishment. Since there remain fundamental questions about the rightness or wrongness of the policy changes which have recently occurred (apart from whether practices are actually in accord with policies) and since rapid and fundamental policy change seems to be an endemic feature of the criminal justice system, the value of public dialogue would seem obvious. The object of this conference is to define, for policymakers and for the interested public, some of the humanistic implications of policies that exist or might exist in the criminal justice system.



## CONFERENCE SPEAKERS

### INTRODUCTION AND ORIENTATION

*William C. McInness, S.J.*  
*President, University of San Francisco*  
*Chairman, California Council for the Humanities in Public Policy*

*James O. Robison, D. Crim.*  
*President, Social Issues Research Associates*

### Session I—HUMANIZING THE SYSTEM, PUNISHMENT vs. TREATMENT

*Sue Mansfield, Ph.D., Professor of History*  
*Claremont Men's College*  
*"Bentham and the Paradox of Penal Reform," 1968*

*Richard Wasserstrom, Ph.D., LL.B.*  
*Professor of Law and Philosophy, UCLA*  
*ED: Today's Moral Problems, 1975*

### Session II—CRIMINAL JUSTICE AND INDIVIDUAL RESPONSIBILITY

*Alfred Louch, Ph.D., Chairman, Dept. of Philosophy*  
*Claremont Graduate School*  
*Explanation and Human Action, 1966*

*Joel Fort, M.D.*  
*Founder, Fort Help, San Francisco*  
*Expert Witness, 1976*

### Session III—SENTENCING REFORM: FORWARD OR BACKWARD?

*Jan Marinissen, Criminal Justice Secretary*  
*American Friends Service Committee, San Francisco*  
*Contributor Struggle for Justice, 1973*

*Arthur Alarcon, LL.B., Judge*  
*Los Angeles Superior Court*  
*Former Member, California Adult Authority*

**Session IV—COMMUNITY WITHIN COMMUNITY: DELANCEY STREET FOUNDATION**

*Charles Hampden-Turner, D.B.A.,  
Author Sane Asylum: Inside the Delancey Street Foundation, 1976*

*David Parslow, Director  
Model Status Offender Program, Tucson*

**Session V—BEYOND TREATMENT AND PUNISHMENT:  
A RELATIONIST VIEWPOINT AND RESPONSE**

*Clyde Tidwell, Ed.D., Counselor & Teacher  
Tucson Accommodation Program  
Co-Founder: Center for Democratic Processes in Education*

*Gene Poschman, Ph.D.  
Professor of Political Science  
Calif. State University, Hayward  
ED: American Political Arena, 1972*

**Session VI—COMMUNITY WITHIN PRISON:  
CULTURE, CONDITIONS, AND RIGHTS TO ORGANIZE**

*Velia Garcia, M.S.W.  
Lecturer: Ethnic Studies, UCB  
"American Justice & La Raza Communities," 1975*

*Willie Holder  
President & Co-Founder, Prisoners' Union, San Francisco  
The Outlaw, Journal of the Prisoners' Union*

**Session VII—CRIME & COMMUNITY: A LEGISLATOR'S TASK**

*Ken Meade, LL.B.,  
California State Assemblyman, 1970-76  
Vice-Chairman (Former) Assembly Committee on Prison Reform  
(represented by: Joe Close)*

**CRIME & COMMUNITY: THE POLITICAL ECONOMY**

*Richard Lichtman, Ph.D., Professor of Philosophy California State University, Sonoma  
The Facade of Freedom: A Marxist Reader in Liberal Ideology, 1974*

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## INTRODUCTION

James O. Robison, D. Crim.  
President  
Social Issues Research Associates

Welcome to another session in one of history's longest running debates. The criminal justice system is, as usual, under attack for being both ineffective and inhumane. The system has stood on a tripod of justifications, known as retribution, rehabilitation, and deterrence, only two of which are oriented toward "crime and control" rooted in utilitarian values. Social engineers try to stretch these two legs faster than social researchers manage to saw them down. With rehabilitation exposed as a mask for coerced meddling, the stool teeters for now on it's last two legs, the word punishment takes a more central place in the dialogue, and deterrence researchers grasp at straws of evidence that crime control is attainable, while others continue to warn that its price may be injustice and tyranny. In California these past several years, argument has centered on what the penalty rates should be, on what grounds they should be established, and on which branch of government--the legislative, judicial, or executive--shall play a large or small role in rate-setting. These are fundamental questions of value affecting all citizens, and I think we can anticipate a lively conference these next two days. For providing us this opportunity, we owe our thanks to the California Council for the Humanities in Public Policy; I would like to express those thanks now to Bruce Sievers, executive director of the Council and to William McInnis, the Council's chairman, who is, also, president of the University which has made these splendid facilities available.

## ORIENTATION

William C. McInness, S.J.  
 President,  
 University of San Francisco  
 Chairman,  
 California Council for the Humanities  
 in Public Policy

I would like to introduce myself, I am Father William McInness. I am here in two capacities. First, to welcome you as the President of the University of San Francisco. The facilities, the resources of the University, are yours today and tomorrow and we hope that you find them congenial and helpful.

I also greet you in a second capacity, even more importantly, as the Chairman of an outfit called the California Council for the Humanities in Public Policy--a statewide committee primarily interested in promoting the quality of public understanding and public dialogues on major issues and especially concerned with the dimensions of the humanities in these discussions. We have offices in San Francisco and Los Angeles and projects all over the state; the Executive Director of our program is here, Bruce Sievers, and he will be with you during the morning. Another member of the staff will be with you during the afternoon. I would like to point out that we are, I think, trying to help you in developing this project in really two ways. The most practical way obviously is that we are providing partial financing, both for this conference and conferences like it. Secondly, we are trying to help you in raising the quality of dialogue concerning these very, very important problems. We do not take any sides on public policy issues. Rather, we try to help the understanding and the participation of adults in these problems, so that they can both appreciate what the problem really is and can bring some perspective to it--that's why we are so very interested in having humanists involved in the discussion of any issues. We are not an advocacy group. We do not promote any particular cause, except, I suppose the cause of civilization and civilized discourse.

You have appearing with you today another member of our Council who serves on our 17 member committee, Dr. Alfred Louch, who is going to take part in the panel this morning.

I guess that that's really my introduction to you--to welcome you here, to point out that being a humanist is a responsibility, I think, that we get in life; and though it may be defined in certain areas that historians and philosophers and other experts are humanists, there is a sense in which we are all humanists, and it's a quality of life that we cannot really delegate to anyone else. We have professionals to assist us in all walks of life, but we are here as human beings to try to find solutions to our problems. If you get the understanding of those people who have on their priority list these problems, and if you bring some kind of mutual participation and perspective to these issues by having people from all walks of life with all points of view, then, you can call the conference a great success.

## SESSION I

### Humanizing the System - Punishment vs. Treatment

Historian Sue Mansfield develops the thesis that Western rituals of voluntary transformation--penance and psychotherapy--have been rendered both impotent and degrading by their importation into a coercive system of indeterminacy and conditionality. Personal submission to such endeavors--whether feigned or genuine--erodes dignity rather than strengthening responsibility, and may be the cruelest of punishments.

Philosopher Richard Wasserstrom enumerates the defining characteristics of treatment and of punishment, and reviews the logical strengths and vulnerabilities of justifications anchored in rehabilitation, general deterrence, and retribution. Acknowledging that dictates appropriate to an ideal or just society may be less suiting under current-day realities, he tempers his own moral position with pragmatism.

Sue Mansfield, Ph.D.  
Professor of History  
Claremont Men's College

As I looked at the topic which I was asked to speak on today, "Humanizing the System, Punishment vs. Treatment," two things occurred to me. First, that "the system" was a shorthand term for the whole procedure of criminal justice--the system of courts, prisons, judges, juries, jailers, written law, and formal judgments--and that in those terms "the system" of criminal justice is a distinctly human institution. From this perspective, it is impossible to speak of humanizing it, because it is so human. By this I mean that it is species-specific. I know of no other animal, no other living species, which has a system of criminal justice. With regards to war, another human institution, one can argue as to whether some ants wage war or not, but ants do not have criminal justice. So, we are talking here about a very species-specific institution.

When, however, one comes to the question of punishment, one comes to a phenomenon which is not species-specific. Punishment--by which I take it one means the infliction of pain, whether physical or psychic, for the purpose of social control of both adults and of children--punishment, in that sense, is a phenomenon that you find among all the complex mammals who are also social animals. Punishment, then, is not a specifically human phenomenon; we share it with our closest relatives, the primates, and with other animals who have a social nature and have genetically evolved to the point where they are not coded for specific action, but are coded to learn, at least in specific realms and, in the case of human beings, most realms of adult behavior. So punishment, per se, is something that all human beings and most complex social mammals engage in. Moreover, the modes of punishment that are used are ones that are relatively common to man and primates.

Those of you who have seen some of Jane Goodall's movies may be aware that you find very similar modes of punishment being used by hunting and gathering or horticultural tribes and by chimpanzees. These modes range all the way from blows and cuffs for small infractions through ostracism to expulsion from the group. And finally, in those cases where you have an animal or a human being who is so aberrant and so hostile that his or her continued existence represents a danger to the social group, you have death, inflicted by certain members acting for the group as a whole. To this range of punishment found among man and other higher animals, man adds a fifth and distinctly human form, one connected closely to our development of language, and that is the imposition of shame or ridicule, the loss of prestige and the downgrading of the individual via shame and ridicule. This is a fifth mode of coercion, a fifth mode of insuring that children are socialized, and that adults conform, to the norms of the community.

For about the first two hundred thousand years of our existence as a species these five modes of punishment were the only ones used for correction of adults. They were the only ones the species seemed to



need in order to survive and flourish. They are modes of punishment, moreover, which are relatively immediate, which are group enforced, and which (with the exception of death) are closely correlated with the socialization patterns which they are re-enforcing. Even when mankind moves into civilization, in the peasant villages at least, these forms of punishment, imposed by the group and informed by unwritten oral tradition, remain the predominant modes by which men and women are constrained or brought to adjust to social norms, and by which aberrant behavior that threatens the community deeply is eliminated.

Indeed, even in an urban complex as large and complicated as the Bay Area or Southern California these remain for most of us the major modes of punishment that we experience and by which we are brought to conform to social norms--not necessarily the norms of the largest community, the United States, say, or even California, but to the norms of the social community with which we have identified. They are the most effective punishments in the sense that the knowledge on which they are based is immediate and easily accessible, while the loss of prestige or the imposition of ostracism is a very real threat to the individual psyche. For most of us, most of the time, it is not the state which is coercing us, it is the social group in which we are embedded.

Now what changes or modifies this situation is that with the advent of the institution that we call the civilized state, punishment as an informal, socially enforced mode of coercion, breaks down. When man develops civilization, he develops the ability to bring together under a single political unit relatively large geographic areas and relatively large numbers of individual men. Thus, from a situation in which one's immediate community is 25 to 50 people and the larger community is about 500--from that kind of situation, which for 200 thousand years had been normal to the species--man creates a situation in which the political community involves thousands and thousands of square miles and a population running into the millions. In addition, man develops urban complexes, in which groups who have inherited rather different social norms live in close proximity. Moreover, it is impossible to prevent individuals from moving from one group to another with some ease because relatively easy intercourse between groups is necessary for the purposes of civilization itself. Finally, of course, with civilization, you begin to develop those extreme disparities of wealth and of prestige, which are not part of the norms of pre-civilized human existence, and which make coercion based on loss of prestige difficult to enforce.

Now the traditional modes of punishment will not work adequately, when the city offers anonymity and when ostracism or expulsion from a specific social group is no longer such a life or death matter. They will not work adequately when ridicule or shame is something that one can avoid by simply moving from one community to another. They will not work adequately when you have large areas which you feel a need to control but which are not specifically within the area of any community. For example, the area between one peasant village and another--the highway system--is one of the earliest areas in which you find the King or State intervening to establish law that the political system will enforce. Highway robbery, which is not subject to the control of

peasant villages, becomes the concern of the monarch or the so-called sovereign state. And in addition, of course, you have the problem of keeping peace between groups who have very different conceptions of appropriate social norms. What seems a crime in one community, or a violation of social norms, does not seem so to another community. And yet the state, the political unit, wants to bring some kind of cohesion, some kind of uniformity into the larger political community.

And so it is that with civilization, you begin to develop for the first time a system, the institution of criminal justice. Instead of traditional and somewhat flexible norms, you get written laws. Instead of instinctive and socially generated punishment, you get prescribed punishments, which are written down. In addition, the formal rituals of judgments by judges and juries are established, and formal systems for inflicting punishment are created. Thus, the whole question of coercion is taken out of the hands of the community as a whole and turned over, at least in specific areas, to specialists--judges and jailers--who presumably make this their total concern and who act, as it were, for the community (though always to some degree distinct from the community). In effect, then, in large areas within a civilization, what has traditionally been handled by social control, is now under political and legal control. Thus, social misbehavior becomes a form of politics and an occasion for legal action.

Even so, in most of the modes of punishment that have been practiced by civilizations, at least prior to the 19th Century, you can see the attempt to take the original modes of control and give them simply a new form. Thus, the cuffs and blows of the tribal situation are replaced by formal whippings or stonings, dunking in the lake, and so forth. The ridicule and shame which had depended initially on verbal action and which was made possible by the common knowledge of what has been done, is replaced by branding, by a slitting of the nose, the elimination of a finger, the formal scar, which acts as a reminder to all, whether they know the individual or not, that this is someone who has violated the norms of the community and therefore is someone to be shamed. And finally, of course, the whole question of ostracism and expulsion is one that is handled on the whole by imprisonment. When you have got a large group--a large, civilized community--expulsion, per se, is difficult; ostracism by the whole community is almost impossible to achieve. When it is possible states attempt, as was done in England in the 17th and 18th Centuries, to retain expulsion in the form of transportation--you just move your criminals overseas. But for most civilizations, this has not been an easily accessible form of punishment, and so, instead, ostracism and expulsion are replaced by imprisonment--the forcible removability of an individual from the society as a whole.

With this formalization of law and of punishment comes, moreover, the first attempts to rationalize and to explain what is happening, and what should happen. Beginning somewhere around 500BC in all of the major civilizations, an attempt is made to think out, in fairly general and abstract terms, what is the proper function of criminal law, what is the proper relation between a crime and a punishment, what the purpose of punishment should be, and how its effectiveness can be judged. Without going into any of these specific theories

about punishment and justice, let me say that there are, before the 18th Century, two and almost only two major political or legal conceptions of punishment. One is the concept of retribution--the concept of an eye for an eye, a tooth for a tooth, and the need for some kind of direct correlation between the pain inflicted by the criminal act and the pain to be imposed on the criminal for that act. This basis for punishment is one that does not particularly concern itself with future actions, but with the past, and is an attempt to wipe out the pain of the past by imposing pain in the future. It is also often understood as an attempt to parallel, on the human plane, what is understood to be divine or natural justice.

The other major understanding of punishment is that of deterrence, the idea that punishment should involve the infliction of enough pain to deter the criminal from repeating the act and to deter others who are observers from imitating his action. Here the concern is with the future, is with teaching, if you will, a lesson as to what kinds of pain can be expected if you persist in actions which the society has defined as aberrant or unacceptable. Both retribution and deterrence assume that an adult at least has enough common sense, and enough rationality--is sane, if you will--to be able to understand the connection between cause and effect, to be able to understand the correlation between his actions and the pain that is inflicted on him as a result of it, and has enough common sense to be able in the future to make a judgment as to whether he wishes to repeat that action and accept the punishment or not. The deterrent theory, in particular, assumes that the so-called criminal has known what he has done, has perhaps forgotten the pain that will come from it, but will in the future remember, and that those who have observed the scene will also understand and remember.

It is not until the 18th Century that the kind of conceptual conflict which we are discussing here, the supposed tension between punishment and treatment, becomes an issue of public concern. It is in 18th Century England, and to a lesser extent in the Lowlands, that you begin to get a very self-conscious re-evaluation of the system of criminal justice, and particularly of punishment, and an attempt to think out ways to make it more effective. You have, in fact, a situation in the 18th Century not too dissimilar to the one which we are experiencing today: a society that is on the whole experiencing growth and prosperity, a society that has come to believe that human thought can make that society even better, that correct social engineering will produce even more and more happiness. In this kind of condition, rising rates of crime represent an anomaly; it is seen as unacceptable, a task to face and hopefully eliminate.

The reform movement of the end of the 18th Century and most of the 19th Century was fed by two motivations and two sources of thought. (They are motivations, moreover, which are still present, though in modified form, today.) On the one hand you had the hard-headed desire to make the system more effective; a concern for society itself, a desire to eliminate crime as much as possible and to protect the interest of the society, with relatively little concern for the interests of the criminal who was violating legal norms. Running right

alongside that hard-headed concern for effectiveness and for protecting the society as a whole, goes what one must call a humane desire to help the criminal, a humane desire to alleviate what seems to be unnecessary or unjustified suffering on the part of the criminal. Thus, one finds both concern with the criminal and concern with society surfacing at the end of the 18th Century, and these two motives then feed into two very different strains of thought.

On the one hand there is that very utilitarian cast of thought which looks to increase the happiness of the society and of the individuals who are members of that society, and which believes that the most effective system of criminal punishment is one which inflicts just enough pain to deter, to eliminate criminal action, and no more pain than is necessary to teach a lesson. Running alongside this utilitarian cast of mind is, I suggest, the Judeo-Christian tradition with its concern for improving the moral character of the individual, for bringing the individual closer to God, for leading the individual to salvation. This concern for the outcast, for the prisoner, is a stream of thought which has deep roots in the Judeo-Christian tradition, and which, in a secularized form, still informs much of our psychological and therapeutic thought in the 20th Century.

Now the result in the 19th Century of these motives and strains of thought coming together, was a reform of the criminal law in most of the Anglo-Saxon countries, which attempted to continue the deterrent quality which had been a traditional part of punishment, and which had now been modified in an attempt to make it more effective, and to introduce into the criminal system for the first time the possibility of rehabilitation, of treatment of the criminal. In effect, what 19th Century reformers did was to take from Christian theology and Christian ritual the concept of penance as a special mode of transformation and rehabilitation, and introduce it into the prison system. They did so in the hope that modes of penance which had been found effective by the church and by individual Christians, would be effective in the criminal system. Consonant with this, prisons were re-named: they were no longer simply prisons or jails, they were penitentiaries and reformatories. These names, which we tend now to use unthinkingly, in the 19th Century in fact stood very specifically for this attempt to introduce penance into the criminal system--an attempt to make it possible for the individual criminal to experience that conversion, that rehabilitation of character, as a result of which presumably he would no longer desire to sin or to infringe the norms of the community. Much of what to us seems inhuman about 19th Century prison systems had, in fact, its roots in that very reform process. The solitude, the darkness, the isolation, the silence, the repetitive drudge work, the uniform, drab clothing--all of these are techniques drawn from both the system of penance and the monastic discipline of the Christian Church. They were applied to the prison system in the belief that they would make possible for the individual criminal the kind of transformation which the experience of Christians, at least as individuals, had suggested was possible within a religious framework.

In the 20th Century, the same impulse, I suggest, has led to the introduction of psychological techniques drawn from both behaviorist and humanistic traditions. Prisons now have encounter groups, therapy

sessions, sophisticated evaluation systems by which so much good behavior wins you so many points which brings you closer to probation and to reintroduction into society, and even the use of drugs for the controlling of energy and mood among prisoners. The whole panoply of therapeutic techniques has been taken out of the "civilian" world and brought into the prison, just as the techniques of penance were brought out of the church and into the prison in the 19th Century. Indeed, in Russia you can see this trend brought to its extreme fruition, when political criminals are adjudged insane and no distinction in treatment is made between them and the non-criminal insane.

Now the difficulty is that you have no evidence that therapy works any better than penance did as a technique for rehabilitation in a prison situation, or, indeed, that either is any more effective than deterrence as a mode of controlling socially aberrant behavior. Moreover, the introduction of the concept of treatment, whether it be penitential or therapeutic, leads to an undermining of the concept of a just retribution and to an undermining of the conception that the deterrent must be just painful enough to deter and no more. Since those who adopt either the penitential or the therapeutic approach assume that it should work, and are sure of the humaneness and goodwill of their own motivation, the result is an abandonment of the idea of a limited period of imprisonment as a just punishment. Instead, rehabilitation leads to the idea of an indeterminate sentence, the idea that you will put the man or woman in prison, subject them to penitence or therapy, and keep them there until the "system"--the treatment--works, and they are rehabilitated.

All the evidence of the 19th Century was that penance didn't work, and it wouldn't work, I suggest, for reasons that should have been evident from the beginning. What happened in the 19th Century was that Protestant reformers (you will notice that almost all this reform occurs in areas that were dominated at that time by Protestant thought) who had little or minimal experience of either monastic discipline or penance as a sacrament, and who had little knowledge of the Church's theology and teachings on these subjects, did not realize that from the theological point of view, penitence had always been a sacrament which worked because it was voluntary. The individual went to confession voluntarily, he understood his guilt internally, and he desired a transformation. The exact nature of the penitence might be prescribed by the priest, but the heavy emphasis of theological teaching was that acceptance of it must be voluntary for it to do any good. Moreover, even under those conditions, the Church always taught that no matter how much human goodwill was involved, no matter how much you might desire to change your character, you might continue to sin unless accessible to God's grace. This was outside of human control, this was the introduction of a special kind of transforming experience which then might produce the ability to eliminate sin from one's life or character.

What happened in the 19th Century was that techniques which were developed to be voluntarily accepted and which assumed some kind of divine intervention, some kind of special mysterious experience, were made coercive. The state did not leave it up to the individuals whether they wished to undertake penance or not, there was no

possibility of it being a voluntary act for the criminal. Instead, reformers assumed that what was developed as voluntary technique would work just the same when imposed as coercion. The result was a penitential system which inflicted an enormous amount of pain upon the individuals involved and yet which did not diminish criminal action. In fact, it resulted in a very bad recidivism rate: over 40 percent of those who entered prison for the first time in England in the 19th Century were doomed, statistically, to come back again. By the end of the 19th Century, as the system was slowly abandoned, it had become clear that what the system did was to produce model prisoners, who adapted very well to the prison system and whose actions there could not be faulted; but who, when returned to society, immediately reverted to a life of crime and who within a year or so were likely to be back within the prison itself.

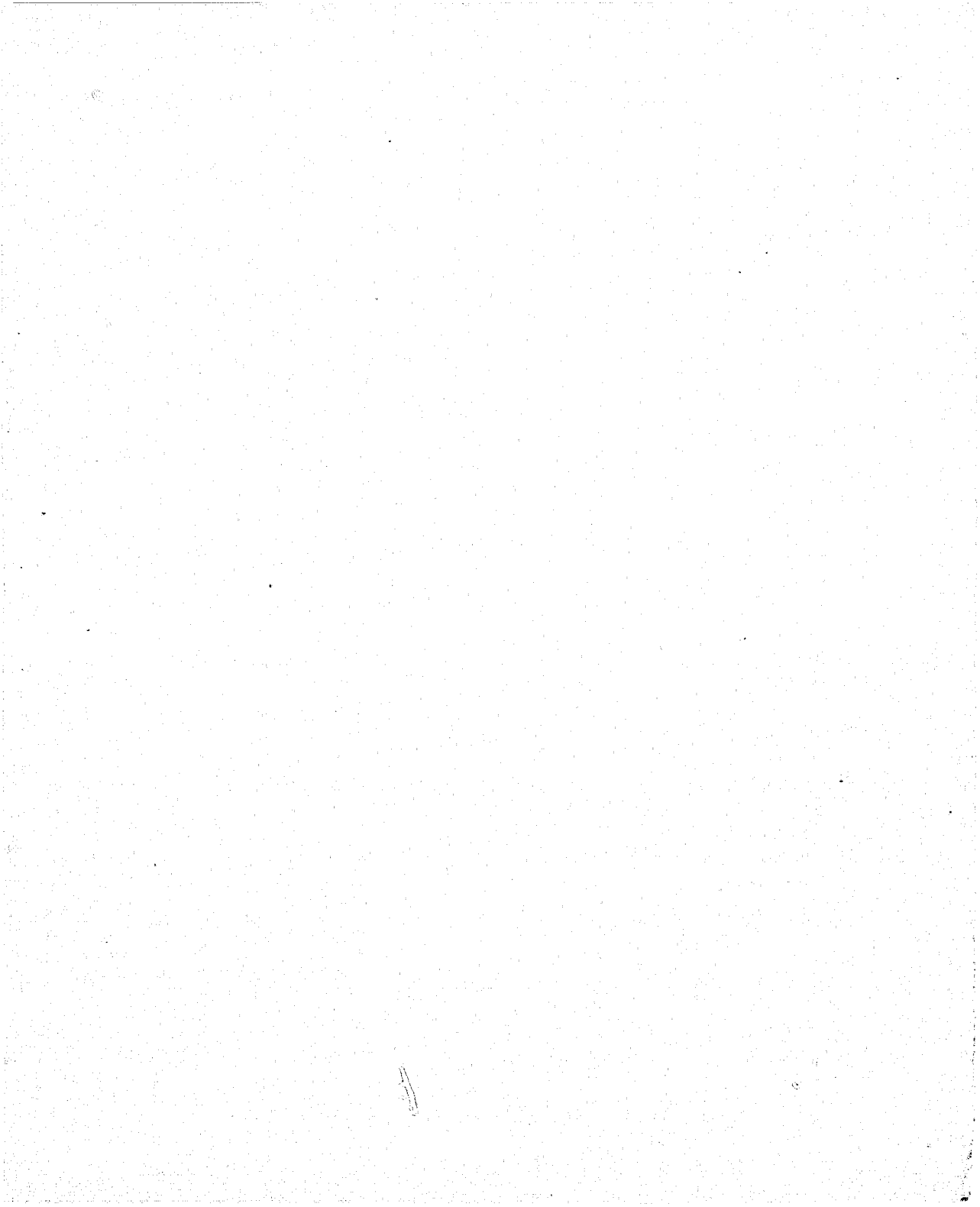
I suggest that the same thing is likely to happen, and indeed does happen, with therapeutic techniques. Particularly the humanistic therapeutic techniques which were developed for people who voluntarily went to a psychologist or an encounter group, who wanted to change, who came there out of desperation or unhappiness, who were willing to put time and effort and even suffering into the experience, and who saw it as a gain for themselves. In the prison system, however, when you take techniques developed for voluntary behavior and impose them upon people, they cease to have the same quality. They take on a coercive, a controlling rather than a releasing quality, and, not unexpectedly, they do not produce the same results. Rather, you get prisoners who have learned to "do" the system--to be the model encounter group participants, while maintaining as little involvement in the operation as possible.

There is, then, I suggest, an inherent contradiction between the techniques of either penitence or therapy with their emphasis on voluntariness, and punishment as the infliction of pain with its element of coercive control. Indeed, I would go a step further and suggest that the issue as we've defined it here is not the real one. What we are really discussing is not punishment vs. treatment--I know of no society which has in fact agreed to give up punishment. Instead, the issue really is punishment and treatment, deterrence and rehabilitation, without any recognition that the two are potentially incompatible. I would go further and suggest that what happens is that the treatment becomes simply another tool of punishment, that the painful, coercive quality of it becomes dominant. This is true even when you have a situation in which, instead of imprisonment, you put somebody on probation if they will undergo certain kinds of therapeutic treatment. The therapy there has become the punishment; it has not become a real alternative to it, because it is coercive and because it is understood to be so. Moreover, both penitence and therapy to be effective do involve some pain and suffering for those involved, and when that pain and suffering is not voluntary, then it is, by whatever name you call it, punishment.

In the end, I would raise another issue for us to think and talk about. To turn treatment into a punishment, into something coercive, is inhumane. I would suggest that penance and therapy are, in effect, rituals of transformation, that they are merely examples of modes

of human behavior which are found in all societies and which are made accessible by the group to individuals who wish to experience transcendence, who wish to experience self-growth. In no society that I know of is such a ritual of transformation considered mandatory. It is not like a ritual of initiation or rituals associated with birth and death which all members of the society are expected to go through. Rather, rituals of transformation are voluntary ones, which individuals may or may not seek as they are so inclined. The difficulty which arises when you turn penance and therapy (which are our only real rituals of transformation in the Western World) into mandatory activities for a part of your population, is that you severely change the quality of those rituals. In effect, you come close to denying, to those you have adjudged criminals, any access to the true ritual, to the real rite of transformation. And that involves a severe limiting of the human capacities of that individual. It is a kind of punishment that is more cruel than that of any other form, except perhaps death itself.

If you would keep the system as close as possible to what is human--human in the sense of the long spell, the long burden of human experience--then it is important to keep the rituals of punishment and of transformation separate, while making therapy and penitence obviously accessible to anyone, including an adjudged criminal. It is also imperative to make punishment itself as immediate, as inescapable, and as equitable as possible. Then, if the system of criminal justice still doesn't work, one probably needs, not to spend more time worrying about criminal justice per se, but to start worrying about the broader society as a whole. One must ultimately face the question of whether the society is not marred by tensions and inequities so great that no socialization process can adequately prepare individuals to conform to its demand. A high crime rate may, in fact, say more about the sanity of the society than it does about the sickness of the individual criminals.





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Increasingly, in recent years, some lawyers and many social scientists and laymen have urged the abolition of punishment. It is not that they want to turn all of the prisoners loose and close the prisons down. Rather they have come to see and define the central issue of punishment as one of necessitating a choice between punishment and something else variously called reform, rehabilitation or treatment. They have viewed the problem as involving a decision as to whether ever to punish at all. Typically, they resolve the issues against the justifiability of punishment.

Although discussion of the subjects is often obscure and puzzling, superficially, at least, the ultimate resolution seems to make good sense. Punishment, it is said, is simply vindictiveness institutionalized. To punish is to react naturally but irrationally toward one who has harmed another. It is to return evil for evil instead of good for evil. It is to focus on the offense, not the offender. If the evil of punishment is so simply exposed, the benefit of treatment is no less obvious. For what could be more humane, more civilized, more sensible and more benevolent than directing society's efforts solely toward the end of achieving the rehabilitation or cure of that social misfit who offends against the law. The reigning maxim is, "Always treat the offender; never punish the crime."

It is plain, I think, that if we are ever to assess adequately this challenge to the very notion of punishment, it is essential that we ask at the outset whether it does make sense to set up the dichotomy between punishment and treatment; and, if there are real alternatives to choose from, it is imperative that we have some reasonably clear idea of in what respects they are different from each other. Thus, our first task must be to delineate some of the more significant characteristics of each.

In order to try to bring these out as sharply as possible, let us conduct a thought-experiment. First, imagine a person who is discovered to have infectious, nonarrested, tuberculosis, and who is, because of this, committed unwillingly to a State hospital for treatment. Second, imagine a person who has embezzled and dissipated all of the funds collected in the annual Easter Seal Campaign, and who was convicted and sentenced to prison for five years for this offense. Are there characteristics which make society's response to the person who has tuberculosis, treatment, and its response to the embezzler, punishment?

We might be tempted to say that there are no real differences between the two situations. We might go on to note, in support of this assertion that in both cases an unpleasantness--in each case a severe deprivation of liberty--is imposed by society upon the

person involved without his consent. It is likely that both the hospital and the prison would have high walls, bars on the windows, and circumscribed rights of locomotion and visitation. It is possible, too, that the inmates of each would be treated with the same degree of courtesy and respect, and that life in both institutions would be highly regimented. But despite these similarities there are important differences that can be detected. The most significant one, I think, is that it is a necessary feature of any punishment that it involves the infliction or imposition of an unpleasantness upon the person punished. It is only accidentally true, however, that the treatment of infectious tuberculosis requires a comparable unpleasantness. Nonetheless, since both the punishment of our embezzler and the treatment of our sufferer of tuberculosis do involve comparable involuntary confinements, it would certainly be helpful were there other features which served to distinguish the one from the other.

Although admittedly quite rough, I propose that the following are among the significant characteristics which serve to delineate each and to set off the one from the other.

As to punishment, I think that we would be punishing someone if:

1. We believed that he had done some action; and
2. We believed that he was responsible at the time he acted; and
3. We believed that his action was blameworthy; and
4. We inflicted some unpleasantness upon him; and
5. We inflicted that unpleasantness upon him in virtue of the fact that he did the action in question, that he was responsible when he acted, and that he was blameworthy for having so acted; and furthermore
6. We determined--within at least some limits--at the time of our decision to punish what the nature and magnitude of the unpleasantness would be; and finally
7. In making the determination we would regard any of the following factors as relevant--although none need be decisive:
  - a. The immorality of the actor and his action,
  - b. The way in which others similarly situated were dealt with,
  - c. The probable effect of the punishment upon the actor's future conduct,
  - d. The probable effect upon others of punishing the actor.

As for treatment, we would be treating someone if:

1. We believed that he was in a certain state or condition, and
2. We acted in a certain way toward or upon him, and
3. We acted in this way in virtue of the fact that acting in this way would alter his condition in a manner beneficial to him, and

4. The decision as to what constituted appropriate treatment was always subject to revision upon a showing of either:
  - a. That an alternative response would be more beneficial to him, or
  - b. That his condition had altered so as no longer to require that, or any other, further response.

If I am right in thinking that these are among the significant characteristics of punishment and treatment as we know them, then several things become noteworthy. First, alleged assessments of responsibility and blameworthiness are simply irrelevant to what is involved in treating someone; whereas they are constitutive of an act of punishment. Secondly, it would not make sense to treat someone for something which had happened to him but with which he was no longer afflicted or by which he was no longer affected. The question of the appropriateness of any particular treatment can be answered by referring to the state or condition of the person only at the time the question is asked. Such is not the case with punishment. And third, there are many things which we do to people, which may in addition involve unpleasantnesses wholly comparable to those of severe punishments or radical treatments, but which are, nevertheless, neither instances of punishment nor treatment. Confining someone who is a carrier, but not a sufferer, of an infectious disease is one example; drafting someone into the army is another.

## II

There are at least two quite different arguments which have been made in support of the claim that punishment is never a justifiable mode of social behavior, and that treatment ought always to be substituted in its stead.

The two arguments are these:

1. Punishment is only justified if the offender was responsible. No offenders are responsible; therefore no offenders are ever justifiably punished.
2. Punishment is only justified if the offender was responsible. However, the consequences of punishing even the responsible are sufficiently undesirable so that better consequences would flow if we always treated and never punished offenders.

A good deal of the confusion present in discussions--particularly nonphilosophical discussion of the evils of punishment, and the virtues of treatment--results from a failure to get clear about these two arguments and to keep the two separate. The first is superficially the more attractive and ultimately the less plausible. There is no standard or correct way to state more fully the argument I have already given, but one version might be this:

Everyone would agree that it is wrong to punish someone for something which he could not help; furthermore, no one can help being sick. Therefore, no one ought ever be punished for being sick. In the words of the Supreme Court of the United States: "Even one day in prison would be cruel and unusual punishment for the 'crime' of having a common cold." It just so happens to be the case that everyone who commits a crime is sick. Hence, it is morally wrong to punish anyone who commits a crime.

Now, the first thing that is apparent about this argument is that the relevance of sickness to the rightness of the punishment of offenders is anything but certain. Indeed, one is very tempted to argue that the entire argument is a non sequitur just because we seldom, if ever, seek to punish people for being sick. Instead we punish them for the actions they perform. On the surface, at least, it would seem that even if someone is sick, and even if he cannot help being sick, this in no way implies that none of his actions could have been other than what it was. Thus, if the argument against ever punishing the guilty criminal is to be at all persuasive, it must be shown that for one reason or another, the sickness which afflicts all criminals, must affect their actions in such a way that they are thereby prevented ever from acting differently. Construed in this fashion the argument is at least coherent and responsive; unfortunately, there is now no reason to be persuaded by it.

It might be persuasive were there any reason to believe that all criminal acts were, for example, instances of compulsive behavior; if, that is, we thought it likely to be true that all criminals were in some obvious and distinguishable sense afflicted by or subjected to irresistible impulses which compelled them to break the law. For there are people who do seem to be subjected to irresistible impulses and who are thereby unable to keep themselves from, among other things, committing crimes. And it is surely monstrous ever to punish them for these actions. Thus, the kleptomaniac or the person who is truly already addicted to narcotics does seem to be suffering from something resembling a sickness and, moreover, to be suffering from something which makes it extraordinarily difficult if not impossible for him to control his actions. He deserves pity not blame; treatment not punishment.

Now, the notion of compulsive behavior is not without difficulties of its own. How strong, for instance, does a compulsion have to be before it cannot be resisted? Would someone be a kleptomaniac only if he went up and stole an object even though a policeman was known by him to be present and observing his every move? Is there anything more that is meant by compulsive behavior than the fact that it is behavior which is inexplicable or unaccountable in terms of the motives and purposes people generally have? More importantly, perhaps, why do we and why should we suppose that the apparently "motiveless" behavior must be the product of compulsions which are less resistible than those to which we all are at times subjected? In particular, as one writer has observed, ". . . it is by no means self-evident that (a wealthy) person's yearnings for valueless (items) are inevitably stronger or more nearly irresistible than the poor man's hunger for a square meal or for a pack of cigarettes."

But while these are all problems, the more basic one is simply that there is no reason at all to believe that all criminal acts are instances of compulsive behavior. Even if we are persuaded that there are people who are victims of irresistible impulses, and even if we do concede that we ought always to treat and never to punish such people, it surely does not follow that everyone who commits a crime is doing a compulsive act. And because this is so, it cannot be claimed that all criminals ought to be exempted from punishment because they have this sickness.

It might be argued, though, that while compulsive behavior accounts for only some criminal acts, there are other sicknesses which account for the remainder. At this juncture, the most ready candidate to absorb the remaining cases is that of insanity. The law, for example, has always been willing to concede that a person ought never be punished if he was so sick or so constituted that he did not know the nature or quality of his act, or if he did know this, that he did not know that what he was doing was wrong. (Surprisingly, perhaps, the law has been less willing to accept the notion that persons, whose actions were instances of compulsive behavior, ought never be punished.) And more recently, attempts have been made, sometimes successfully, to expand this exemption to include any person whose criminal action was substantially the product of a mental defect or disease.

Once again, though, the crucial point for my purposes is not the formulation of the most appropriate test for insanity, but the fact that it is far from evident, even under the most "liberal" test imaginable, that it would be true that everyone who commits a crime would be found to be sick and would be found to have been afflicted with a sickness which in some sense rendered the action in question unavoidable. Given all of our present knowledge, there is simply every reason to suppose that some of the people who do commit crimes are neither subject to irresistible impulses, nor incapable of knowing what they are doing, nor suffering from some other definite mental disease. And if this is so, then it is a mistake to suppose that the treatment of criminals is on this ground always to be preferred to their punishment.

There is, however, one final version of the claim that every criminal action is excusable on grounds of the sickness of the actor. And this version does succeed in bringing all the remaining instances of criminality, not otherwise excusable, within the category of sickness. It does so only by making the defining characteristic or symptom of mental illness the intentional commission of an illegal act. All criminals, so this argument goes, who are not insane or subject to irresistible impulses are sociopaths or psychopaths--people afflicted with that mental illness which manifests itself exclusively through the commission of anti-social acts. This sickness, like any other sickness, must be treated rather than punished.

Once this stage of the discussion is reached, it is terribly important that we be aware of what has happened. In particular, we are no longer confronted with the evidentiary claim that all criminal acts are caused by some sickness. And we are faced instead with the

bare assertion that this must be so--an assertion, moreover, of a somewhat deceptive character. The illness which afflicts these criminals is simply the criminal behavior itself. The disease which is the reason for not punishing the action is identical with the action itself. At this point any attempt to substantiate or disprove the existence of a relationship between sickness and crime is ruled out of order. The presence of mental illnesses of these kinds cannot be reasons for not punishing, or for anything else.

Thus, I would insist that even if it is true that we ought never to punish and that we ought always to treat someone whose criminal action was unavoidable because the product of some mental or physical disease--even if we concede all this--it has yet to be demonstrated--without begging the question--that all persons who commit crimes are afflicted with some disease or sickness of this kind. And, therefore, if it is always wrong to punish people, or if it is always preferable to treat them, then arguments of a different sort must be forthcoming. And they have been.

### III

In general form the second argument is this: (as I have indicated the basic proposal remains the same), the legal system ought to abandon its attempts to assess responsibility and punish offenders and it ought instead to focus solely on the question of how most appropriately the legal system can deal with or rehabilitate the person presently before the court--not, however, because everyone is sick, but because no good comes from punishing even those who are responsible.

On this view, the state of mind, or mens rea, of the actor at the time he committed the act in question is no longer to be determinative--in the way it now is-- of how he shall be dealt with by society. Rather, the proposal is that when someone has been accused of violating the law we ought to have a social mechanism that will ask and answer two distinct questions: Did the accused in fact do the act in question? If he did, given all that we know about this person (including his mental state), what is the appropriate form of social response to him?

With the elimination of questions of responsibility comes the elimination of the need by the legal system to distinguish any longer between wickedness and disease. And with the eradication of this distinction comes the substitution of a preventive for a punitive system of criminal law.

The mental state or condition of the offender will continue to be important but in a different way. "Such conditions . . . become relevant, not to the question of determining the measure of culpability but to the choice of the treatment most likely to be effective in discouraging him from offending again. . . ." What is at issue though is the fact that:

"the formal distinction between prison and hospital will

become blurred, and, one may reasonably expect, eventually obliterated altogether. Both will be simply 'places of safety' in which offenders receive the treatment which experience suggests is most likely to evoke the desired response."

Two quite different kinds of arguments can be offered in support of this general call for the elimination of responsibility and punishment. There are first a couple of practical arguments and second, there is a more fundamental, theoretical argument.

To begin with, by making irrelevant the question of whether the actor was responsible when he acted, we can simplify greatly the operation of the criminal law. More specifically, by "eliminating" the issue of responsibility we thereby necessarily eliminate the requirement that the law continue to attempt to make those terribly difficult judgments of legal responsibility which any definite system of punishment requires to be made. And, as a practical matter, at least, this is no small consideration. For surely there is no area in which the techniques of legal adjudication have functioned less satisfactorily than in that of determining the actor's legal responsibility as of the time he violated the law.

In addition, I think it fair to say that most people do not like to punish others. They may, indeed, have no objection to the punishment of others; but the actual task of inflicting and overseeing the infliction of an organized set of punishments is, I am sure, distasteful to most. It is all too easy, therefore, and all too typical, for society to entrust the administration of punishments to those who, if they do not actually enjoy it, at least do not find it unpleasant. Just as there is no necessary reason for punishments ever to be needlessly severe, so there is no necessary reason for those who are charged with the duty of punishing to be brutal or unkind. Nonetheless, it is simply a fact that it is difficult, if not impossible, to attract sensitive, kindly or compassionate persons to assume this charge. No such analogous problem appears to attend the call for a system analogous to that of treatment.

These are both serious and real practical objections to punishment. There is, as I have said, also a more sweeping theoretical objection. It is this. Even if a person was responsible when he acted and blameworthy for having so acted, we still ought to behave toward him in roughly the same way that we behave toward someone who is sick--we ought, in other words, to do something very much like treating him. Surely this makes more sense than punishing him. The fact that he was responsible is just not very relevant. It is wrong of course to punish people who are sick; but even with those who are well, the more humane and civilized perspective is one that concerns itself solely with the question of how best to effect the most rapid and complete rehabilitation or treatment of the offender. Thus, as I have said, the argument is not that no one is responsible or blameworthy; instead, it is that these descriptions are simply irrelevant to what, on moral grounds, ought to be the only significant considerations, namely, what mode of behavior toward the offender is most apt to maximize the likelihood that he will not in the future commit

those obnoxious or dangerous acts that are proscribed by the law. The only goal is rehabilitation, the only issue how to bring about the rehabilitation of the offender.

The moral good sense of this approach can be perceived, so the argument goes on, most clearly when we contrast this forward looking, analogue to treatment, with any conception of punishment. For if there is one thing which serves to differentiate any form of punishment from that of treatment it is that punishment necessarily permits the possibility and even the desirability that punishment will be imposed upon an offender even though he is fully "cured"--even though there is no significant likelihood that he will behave improperly in the future. And, in every such case in which a person is punished--in every such case in which the infliction of the punishment will help the offender not at all (and may in fact harm him immeasurably)--the act of punishment is, on moral grounds, seriously offensive. Even if it were true that some of the people who commit crimes are responsible and blameworthy, and even if it were the case that we had meaningful techniques at our disposal for distinguishing those who are responsible from those who are not--still, every time we inflict a punishment on someone who will not himself be benefited by it, we commit a seriously immoral act. This claim, or something like it, lies, I think, at the base of the case which can be made against the punishment of the guilty. Any system of social punishment must permit, and probably must require, that some people be made to suffer even though the suffering will help the sufferer not at all. It is this which the analogue to a system of treatment expressly prevents, and it is in virtue of this that such a system is clearly preferable.

#### IV

There are, of course, a variety of objections to this proposal and to the premises upon which it rests; and there are correspondingly, a number of arguments which might be advanced in favor of punishing the guilty. There are four which I wish now to consider.

Treatments, no less than punishments, are capable of giving rise to serious moral problems. If, for instance, a person can be treated effectively only by performing a prefrontal lobotomy or by altering in some other more sophisticated fashion, his basic personality or identity, it might well be that punishment would have the virtue (and it is no small one) of leaving the individual intact. Imprisonment may be a poor way to induce a person to behave differently in the future, but imprisonment may, nonetheless, permit him to remain the same person throughout. In short, treatments as well as punishments may involve serious interferences with the most significant moral claims an individual can assert. Like punishments, treatments of the type contemplated will doubtless be imposed without the actor's consent. The substitution of treatment for punishment could never, therefore, absolve us from involvement in that difficult but unavoidable task of assessing and resolving the competing claims of society and the individual.



Correspondingly, as a practical matter, a system of treatments is also capable of encouraging attitudes which are themselves pernicious. In deeming irrelevant all questions of responsibility and blameworthiness, such a system might well encourage a neglect of just those features which distinguish adult human beings from children. Such a system might thereby all too easily, yet completely, induce a blurring of the differences between the moral claims of responsible adults and those of persons who are not responsible. If a society which punishes offenders always runs the risk of being needlessly cruel and lacking in compassion, a society which treats all offenders always runs the risk of being stiflingly paternalistic and insensitively manipulative.

Neither of these objections is, of course, decisive. A system of treatment need not be attended by these defects. Within such a system certain treatments might be deemed impermissible for the same reasons that some punishments are presently proscribed. Modes of undesirable but untreatable behavior might be tolerated just because the alternatives were less desirable still. At best, the two objections advanced so far are persuasive only as reminders that the substitution of treatment for punishment would be no panacea for the ills of social disorder and offense.

## V

There are, however, two affirmative arguments for punishment, and it is these which I now wish to examine. The first is the more familiar of the two--the argument from deterrence. The second is an elaboration upon a theme I have already introduced--the connection between punishment and the idea of what it is to be a person.

The argument from deterrence goes like this. The aim of criminal legislation is the denunciation of certain types of conduct as conduct that is not to be done. And the general justifying aim of a system of punishment is tied closely to this function of criminal laws. For the justification of punishment is that it helps to assure general conformity to the prohibitions and requirements of the criminal law. The main purpose in making murder a crime is to indicate to all persons in the society that murder ought not to be done. The main purpose in punishing persons who commit murder is, correspondingly, to prevent the commission of murders through the threat of severe punishment.

A system of punishment is, in short, justified just because the announcement of penalties and their infliction upon those who break the laws induces the rest of us to obey the laws. We punish because we thereby deter potential offenders from becoming actual offenders. The case for punishment as a general social practice or institution, rests on the prevention of crime and not upon either the inherent appropriateness of punishing wrongdoing or the "corrective" or rehabilitative powers of fines or imprisonments.

This approach to punishment has several implications some of which are not always as thoroughly acknowledged as they ought to be.

In the first place, a view such as this is less a justification of punishment than a threat of punishment. For it is clear that if we could somehow convince the rest of society that we were in fact punishing offenders we would accomplish all that the deterrent theory would have us achieve through our somewhat more visible punishments. This is so because it is the belief that punishment will follow the commission of an offense that deters potential offenders. The actual punishment of persons is necessary only to keep the threat of punishment credible. Punishment is, therefore, to be conceived of as a necessary evil rather than a positive good, a means to an end, rather than an end in itself. It follows that punishment is something that society ought always seek to minimize if not eradicate.

Ultimately, however, this theory of punishment is more a supplement than an opponent to the analogue to treatment. For the case for punishment of this kind is an essentially non-moral one. It is a way of inducing those who can control their behavior to regulate it in such a way that they conform to the dictates of the law. The disagreement with the treatment analogue is only over the question of whose behavioral modification justifies the imposition of unpleasantnesses upon the criminals. One says it is the modification of the behavior of the non-criminals that matters; the other says it is the modification of the behavior of the criminals that is decisive.

Radically opposed to both is the final position that I wish to consider. It is punishment viewed as retribution. This view has often not received the understanding that it deserves. For it does deserve to be taken seriously, and it often is not.

To be sure, much that passes in the name of retributive theory is unintelligible, and some of it is even vicious. When I talk about retribution I am not, therefore, talking about a kind of mindless call for revenge upon people who hurt other people. Nor am I talking about basically utilitarian arguments that justify punishment as a means to keep the lid on--people, so this argument goes, demand that the guilty be punished, and unless we do it in an orderly way, it will simply get done anyway in a disorderly, socially disruptive manner. I am not talking about arguments like these.

The case for retribution, as I would make it, would focus on the following things. It might begin with the recognition that there are some facts that need explaining and that neither rehabilitative nor deterrent theories can explain; namely, that there are cases in which punishment seems appropriate and in which appeals either to the aim of deterrence or rehabilitation or to claims of non-responsibility are just plain implausible.

The punishment of persons such as Goering or Eichmann--indeed the punishment of war criminals generally--is not very plausibly justified on the ground that this will deter the rest of us from committing comparable acts of barbarism, or that it was necessary to rehabilitate these individuals. More to the point, even if punishment in order to achieve deterrence or rehabilitation made some sense, would we not also want to say that these notions just did not get to the heart of what was involved in punishing people like them?

Now, of course, if you regard these as marginal cases of punishment then you can simply reject them as confusing borderline cases. But if you feel that these are central cases, then rejection of retribution is less easy. What I mean is this. They are central rather than marginal cases just in the sense that they are clear cases of appropriate punishment--if anyone deserved to be punished for his wrongdoing one might say, it was persons like these. And if that is so, then any adequate theory of punishment must provide a convincing justification for punishment in instances like these. Since neither deterrence nor rehabilitation can do so, this at least counts as a mark against them both.

All of this is, in a way, a special illustration of a more general point. The relationship between blame and punishment is both more important and more intimate than deterrent and rehabilitative theories appear to allow. This is significant just because, for example, it is unlikely that blaming can be justified on deterrent or rehabilitative grounds. While it would doubtless be too strong a view to propose that punishment is simply a harsher form of blame, it is not at all implausible to observe that standard case punishment is reserved to those cases in which mere blame is insufficient. Insufficient, however, not in the sense that blaming would not deter while punishment would, but rather insufficient in the sense that blaming would not do justice to the seriousness of the wrong. Thus, if punishment in the standard case is a more extreme version of blame, and if blame cannot be justified on deterrent or rehabilitative grounds, then this too casts doubt upon the justification of punishment by appeal to either of these ideals. They just do not nearly fit all the cases we would like them to fit.

In addition, there is a more affirmative case that can be maintained. There are a number of concepts and principles that do figure largely in the language of crime and punishment and which cannot be explained easily by recourse to the theories already discussed. They depend in part on the conception of what it is to be a person, and in part upon taking seriously a special view of human relationships. Thus on this view punishment can be seen as a social mechanism by which an offender can best achieve expiation for his wrongdoing. As such, it may play an essential and humanizing role in the maintenance of any society. Submission to punishment may be the means by which an offender retains his membership in society despite his transgression. So we speak of punishment as involving the "paying" of one's "debt" to society, and, equally importantly, we speak of an offender's right to renewed acceptance in the society once his punishment has terminated and he has "paid his debt" to society. In addition, the punishment of offenders may make sense in the light of an appeal to the principle which holds that such is necessary to prevent the offender from profiting from his own wrongdoing. In this respect, punishment can be seen as the means by which the unjust enrichment of the offender is most forcefully foreclosed. If, for example, others have restrained themselves from doing what they were inclined to do because the law forbade it, the lawbreaker who satisfies his desires and inclinations has in a sense enriched himself at their expense. Punishment prevents him, so to

speak, from cashing in on his illicit behavior.

I do not know how plausible or convincing any of this sounds to any of you. I am not sure--to tell you the truth--how convinced I am by it. In part this is so because I am not sure that notions like expiation, paying one's debt to society, and the like are not primarily anachronistic. I know that I do not often think that way about my behavior--even when I do something wrong. I also know that these notions do figure largely in the moral universe of others--e.g., Catholic Church. Perhaps this is an area in which meaningful disagreement about the important features of moral life is really permissible. I am not sure.

I am more confident, however, about two other things. First, much of the appeal of this kind of retribution is due to the importance that it places on the concept of a person. It can be understood in this light as a point of view which seeks to limit, for instance, things that can be done to human beings by other human beings--say in the guise of treatment. In other words it can in its most modest form be construed as establishing necessary conditions for the infliction of unpleasantnesses. As such it is easily assimilated into the anti-therapy positions articulated earlier.

Second, suppose it is understood in its stronger sense--as establishing the sufficient conditions for punishment? Suppose it is understood to be a theory which specifies when punishment is permissible if not obligatory. Here, as I say, I am less confident because the moral concepts on which it depends do not seem to me to be central concepts at all. But even if I am wrong about this I am right, I think, in believing that this theory of punishment makes good moral sense only in a world different from the actual world in which we in fact live. It is a theory of punishment for a just society and not, for instance, twentieth-century America. Now of course, this is true to some degree for all of the views I have considered, but it is especially true for this one. Because our prisons--our punishing institutions--are so wretched and so barbaric, so dehumanizing and destructive, I cannot find morally attractive any theory which commends the perpetuation of these institutions. I think that the strongest case for the analogue to a system of treatment is that the practical impulse behind this approach is to make prisons more like hospitals and, as bad as hospitals are, that would be a significant step toward civilization for us all.

## SESSION II

### Criminal Justice and Individual Responsibility

Philosopher Louch grapples with a dilemma: Punishment, in practice, tends to demean or destroy, being a self-defeating means of fixing responsibility; yet, retention of the concept of deserved punishment seems essential to defining personhood, which entails responsibility. Attempts at utilitarian application of criminal law as a means to social control inevitably disrupt the moral focus, regardless of whether sentiments of pity for or enmity toward offenders are employed to erode their status as person.

Expert clinician Joel Fort challenges much which passes for clinical expertise in a wide-ranging discourse on individual responsibility--particularly on that of the helping professions in their relationship to criminal justice. He views the mis-labeling of both persons and institutions as part of a mystification process inherent in psychiatric mythologizing, but rendered more perverse when transferred into the adversary system of criminal justice.

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I hope to have, or to gain, your assent to three propositions. First, it is at least wrong, and probably senseless, to punish someone who is not responsible for his actions. Second, a man once relieved of responsibility stands in a new relationship of dependency toward other members of the community, and thus loses some part of what it is to be fully human. Third, current procedures for punishing are demeaning and dehumanizing, both to the punisher and the punished. Prisoners are treated as objects of contempt, and guards are morally damaged by playing such impersonal or non-personal roles toward other human beings.

To accept these three propositions, however, is to face a dilemma. We must hold a man accountable for what he does, lest he come to occupy the position of a dependent rather than a person, but we cannot punish because the results of doing so are exactly contrary to our impulse to preserve personhood.

Merely as a matter of logic, of course, it does not follow that because punishment entails responsibility, responsibility must also entail punishment. This small contribution from the more formal side of philosophy may suggest that some way other than punishment must be found for holding a man responsible. To this end, the walls of prisons are torn down, vocational and recreational facilities are expanded, and inmates are allowed, periodically, the pleasures of connubial bliss. In California we even relabel penitentiaries, calling them Correctional Facilities, though this may reflect substantive change less than it marks a further stage in the degeneration of bureaucratic--and academic--speech into functionless euphemism. In any event substantive changes appear to have had as little effect on the real problem as linguistic novelties.

Pessimism as to the possibilities of reform encourages a more radical resolution of the dilemma, by rejecting responsibility and punishment altogether. In place of responsibility and the mechanisms for fixing blame, psychiatrists, social workers and many jurists suggest that we think of human beings as conduits in an on-going causal process. The acts that flow from men are determined by prior conditioning, social deprivation, blood chemistry or chromosomal variance. A rational response to crime will thus take the form of medical or psychotherapy, re-education or social reform. It exceeds my assignment to comment on this view which others here have already addressed. But as I have the floor I cannot forbear expressing deep misgivings about such a program. Its appeal results I think, from complementary aims of two groups. On the one hand, psychiatrists and psychologists, who are to be the principal beneficiaries of such a revolution in legal thinking, belong to professions

obsessively anxious about their scientific status. The common citizen, on the other hand, lives these days in mortal terror of rapists, addicts, and armed robbers, and will listen to any song that promises an end to his fears. The psychiatrist sings one such song, just as John Mitchell and Ronald Reagan sing another. The Mitchell-Reagan song appeals to the lust for vengeance as well as the hope of safety; those who find vengeance distasteful can embrace psychotherapy, lobotomy, electric shock or behavior modification, methods every bit as vicariously vindictive, but disguised as rational and scientific solutions to a previously unsolvable problem. The psychologist's claims are, in my opinion, empty boasts, which can be made good by granting him the power to enforce changes in behavior.

To the behavior modifier knowledge of man is nothing more than a compendium of recipes for getting his subjects to do tricks by the means obvious to animal trainers for thousands of years, that is, limiting their options. So, in buying the rehabilitation option, we do not bow to scientific truth so much as we stretch police power, with the alleged scientist serving as the willing instrument of a repressive policy.

This of course is but the merest sketch of a critique of a solution which does not concern me here, since I do not propose to examine an option that removes responsibility, but to explore only the possibilities open to use if we hang onto it. And this is to face, and one hopes surmount, the dilemma. Can responsibility mean anything without punishment? If not, can punishment be anything but a self-defeating means of fixing responsibility? Responsibility appears necessary to personhood; yet punishment tends to destroy the person. Thus, to fix blame in a legally effective way risks losing exactly what we are trying to preserve.

My approach will be to ask again, as it has been asked often enough before, what punishment means. And to begin with I shall register my dissatisfaction with a conventional definition which we have already heard employed in this room, that punishment is inflicting pain for purposes of social control. What this definition leaves out of account is that, to count as punishment, the pain must be deserved. Otherwise we might think of any army punishing the citizens of another regime, a point of view possible I suppose on a Dulles view of foreign policy, but surely a perverse and dangerous conception of the role of any country with respect to the community of nations. Introducing the justification for inflicting pain into the definition of punishment however, does complicate the issue. Here is an example, from Locke's Second Treatise on Civil Government (Chapter II, Section 8) which reads:

8. And thus in the state of nature one man comes by a power over another; but yet no absolute or arbitrary power to use a criminal, when he has got him in his hands, according to the passionate heats or boundless extravagancy of his own will; but only to retribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint; for these two are the only reasons why one

man may lawfully do harm to another, which is that we call punishment. In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men for their mutual security; and so he becomes dangerous to mankind, the tie which is to secure them from injury and violence being slighted and broken by him. Which being a trespass against the whole species and the peace and safety of it provided for by the law of nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or, where it is necessary, destroy things noxious to them, and so may bring such evil on any one who hath transgressed that law, as may make him repent the doing of it and thereby deter him, and by his example others, from doing the like mischief. And in this case, and upon this ground, every man hath a right to punish the offender and be executioner of the law of nature."

Any philosopher knows that Locke is the place to go if you want a view that attempts valiantly to reflect common sense, even at the expense of coherence and consistency. There is nothing antiquated surely, in this passage. But as it is faithful to the sheer variety of things that common men and men of affairs have to say about punishment, so it is remarkable for its fusion of essentially different and disparate elements. Here is one element in it: the law-breaker has placed himself outside the community of men; in consequence the law-abider is not bound by moral constraints in responding to him. Here is another: punishment must hurt, and in proportion to the awfulness of the offense. Finally, the administering of pain is designed to restrain, or prevent further misdeeds.

If our notion of punishment contains all these elements it is not surprising that we make such heavy weather of administering it. I shall try to show why I think the concept, so defined, is incoherent. But I shall do so by constructing an alternative conception of punishment which does not entail (though it does not exclude) pain or restraint, and which does exclude the element essential to Locke's position, that the offender has opted out of the moral or the legal community. This last element is essential to Locke's position because he wants a way of justifying retaliation, even though, in form, retaliation must itself be conduct at variance with moral law. The upright man holds others in respect. The other man's reasons and desires have the same weight as his own. Retaliation and restraint are inconsistent with this civilized and civilizing principle, and must be justified. Locke does it by excluding the criminal from the class of moral persons. The law-breaker is the outlaw, to whom the restraints of moral law do not wholly apply.

My guess is that nobody wants this element in Locke's conception of punishment. Nonetheless it records an honest recognition of the fact that inflicting pain on another has a prima facie immorality



about it. Either it requires justification, as Locke attempts to do, or we need a radically different conception of punishment. I shall try now to present a case for the latter.

The first step is to see that punishment is necessarily linked with responsibility. And by this I do not mean the generally accepted proposition with which I began, that punishment entails responsibility. I mean rather that punishment is by its nature the expression of a finding and assigning of blame for actions deemed morally or legally wrong. The act of punishing is the act of holding responsible. Let me try to explain what I mean by a bit of mythical anthropology. In a society commonly mislabeled primitive it is considered a grievous and awful sin to steal yams. Nonetheless, the economy of the region being what it is, it is not at all uncommon for a yam farmer to note unaccountable inroads on his store. A court procedure exists to try such cases, but it has for us, who have come to gape, a curious form. Once the evidence has been presented and the jury has determined that the accused is guilty as charged, the judge with ceremonial solemnity asks the culprit whether he has anything to say, and then pronounces him blameworthy for his offense. Then everyone goes home. We anthropologists marvel that this society should function, as it appears to do well enough, without institutions of punishment. We have difficulty imagining what the significance can be of a legal procedure that assigns blame and then does nothing about it, either to hurt or restrain the culprit. The answer provided by our informant (as we anthropologists say) is that, as far as he can understand what we're fishing for, telling a man he's guilty under such circumstances is to punish him. And we think there might be something in this when we note that, more often than not, the legal ceremony is followed by a tearful re-union of the yam thief with his friends and relations, an episode that strikes us as an act of contrition by which he is brought back into the fold of the community.

Does this mean, we ask, that the man, today so contrite after what is to us the emasculated form of a legal process, has reformed? Will he, more likely than not, not steal yams again? The questions confuse our informant, since to him these are quite unrelated questions. He tells us that of course the man is sorry. But no man supposes that temptation ends once and for all with one act of contrition. He admits, too, that for some hardened thieves the ceremony is an empty one. We expect to hear that a new procedure comes into play for such cases, but no, the incorrigible yam thief receives exactly the legal response meted out to the occasional thief. What other way is there, our informant asks.

Our learned papers about the tribe report that usual conventions of punishment are absent; nonetheless, informal sanctions prevail. They work, we say, because the people of the tribe share a system of beliefs. Thus, those who violate the rules can be made intensely conscious of their wrongdoing by the simple expedient of calling it to their attention. The mechanism of punishment is a sense of shame, that this apparently toothless and fistless legal procedure can be relied upon to induce. Shame is the surrogate for both harm and restraint. But it must be made clear, too, that shame is not to be confused with embarrassment. The thief has not been caught out in

misconduct, and placed in a public position of ridicule and obloquy. Rather he feels an emotion connected to a punishment self-administered. A man here faces himself, not others; the public ceremony is only a device to bring about this self-awareness.

But if we say all this, we are apt to say as well that though the system works it is hardly a model to import into modern, urban, industrial societies. Essential to the sanctioning force of the legal ceremony is the close proximity of the community as a whole to the courtroom and its transactions. No one is anonymous in this primitive society. Moreover, its members share a moral point of view, which in turn is supported by a common way of life and a rough equivalence of social and economic status. They can hope for roughly the same rewards, fear much the same injury and loss, and expect equal treatment from the chief and elders. Thus the accused sees himself much as does his accuser and his judge. He is truly among his peers. It is not surprising, then, that the public proclamation of his guilt is so readily internalized as genuine shame, and honest contrition. But in a large and heterogeneous population, in which social and economic distinctions go deep, the bond between accuser and accused is broken, and anonymity protects a man from his shame. Society, so to speak, is no longer a non-distorting mirror in which a man can see himself.

Fair enough. But before drawing obvious and perhaps ominous conclusions it is worth re-conceiving punishment as it might be viewed in our tribe. First, the object of holding a man responsible for violation of law or custom is to bring about a consciousness of guilt, and so a state of contrition, forgiveness, and redemption. Punishment is expiation, and has moral instruction as an aim. This is not to say that by these ceremonies of accusation and proclamation of guilt the yam thief learns that stealing yams is wrong. He knows that; what he needs to realize is that he has stolen the yams, that he is guilty, that his act cannot be justified or excused. There is a difference, if a subtle one between knowing that the speed limit is fifty-five miles per hour and seeing oneself as a breaker of the law in exceeding it. Holding a man responsible, punishing him, has the object of bringing this consciousness about. Essentially it is the realization that he is to blame, and stands in need of forgiveness.

Second, tribal justice aims to maintain the status of the yam thief as a bona fide member of the community. The formula of contrition and forgiveness welds the bond between the individual and his fellows. He is not cast out, or denied personhood. He is under pressure only to reflect on his own conduct, and accept his guilt, so as to respond positively to the offer of forgiveness. Thus, the aim of punishment is to bring the law-breaker back into the community, not to exclude him.

Locke sees a different and a negative picture, because, like us all most of the time, he imagines the commission of a crime in a context in which the tribal notions must appear at best irrelevant and at worst suicidal. His picture shows the gentleman set upon by

cutpurses or cutthroats as he steps out to dine with the local squire. The criminal is a desperado, a footpad, (that is, without a horse), without a coat, lacking in refined conversation, coarse, vulgar, uncouth. His social station as much as his act ousts him from society. The gentleman, of course, may also pursue ends leading to another man's death, property loss or defamation. But the gentleman, though disgraced by such acts, is not outlawed because of them. The habit, to which we have grown accustomed, of distinguishing between white-collar crime and the blue-collar criminal is as much a part of the 17th and 18th Centuries as it is of our own, and indeed as it must be of any community in which social distinctions play a politically divisive role. The aristocrat may murder, rape, pillage, rob and lie, but only the unhorsed and the dispossessed are criminalized and outlawed for doing so, only the footpad is fair game, the object of extra-moral retaliation.

True, retaliation has legal limits. But the proportionality of retaliation to the degree of offense preserves the moral position of the punishers, not the legal status of the punished. It rationalizes punishment, thus guaranteeing that gentlemen will always play by the rules. So the civil minded will not be tarred with the brush of criminality. The law-abider limits his response, being civilized, but the object he punishes is not perceived by him as a legal person. As a result the restraint of the lex talionis principle admits of a caveat: keeping the peace warrants an escalation (as we would say today) of the response. Justice takes a back seat, and social control leaches our notion of punishment.

Perhaps social circumstance forces us to do two things with one mechanism, to fix responsibility and to keep the peace. The story of the mythical tribe admits as much; these people can attend to the first task just because the second is not for them a pressing necessity. Locke evidently thought both jobs had to be done in concert, if not in unison, and our institutions follow suit. But I suggest that in this omnibus concept the utilitarian aim will inevitably disrupt the moral focus of criminal law. If law is thought of as a means to social control, a way of getting desired results, the citizen comes to be seen as an object to be manipulated by this mechanism. So my appeal to the myth: you have to put aside utilitarian considerations in order to see what punishment is about and how it might be administered.

Nonetheless, as Locke, and most of my contemporaries would be quick to point out, it is a myth. In our anonymous and fragmented society, with its disasterous inequalities of wealth and status, a mere finding of responsibility has no teeth. In the first place, we require modes of restraint to serve other ends than the fixing of responsibility, and the guilt-internalizing process of expiation. People have to be protected against one another. In the second place, we cannot rely on an Oresteian legal drama to bring about expiation. And so we harm and restrain, using, in order to bridge the gap between the aims of justice and of social control, the specious analogy of debt-paying, as if murder or false witness could be repaid by inflicting a harm or imposing a restraint. The absurdity of such a scale is, once again, the result of attempting to do two things at

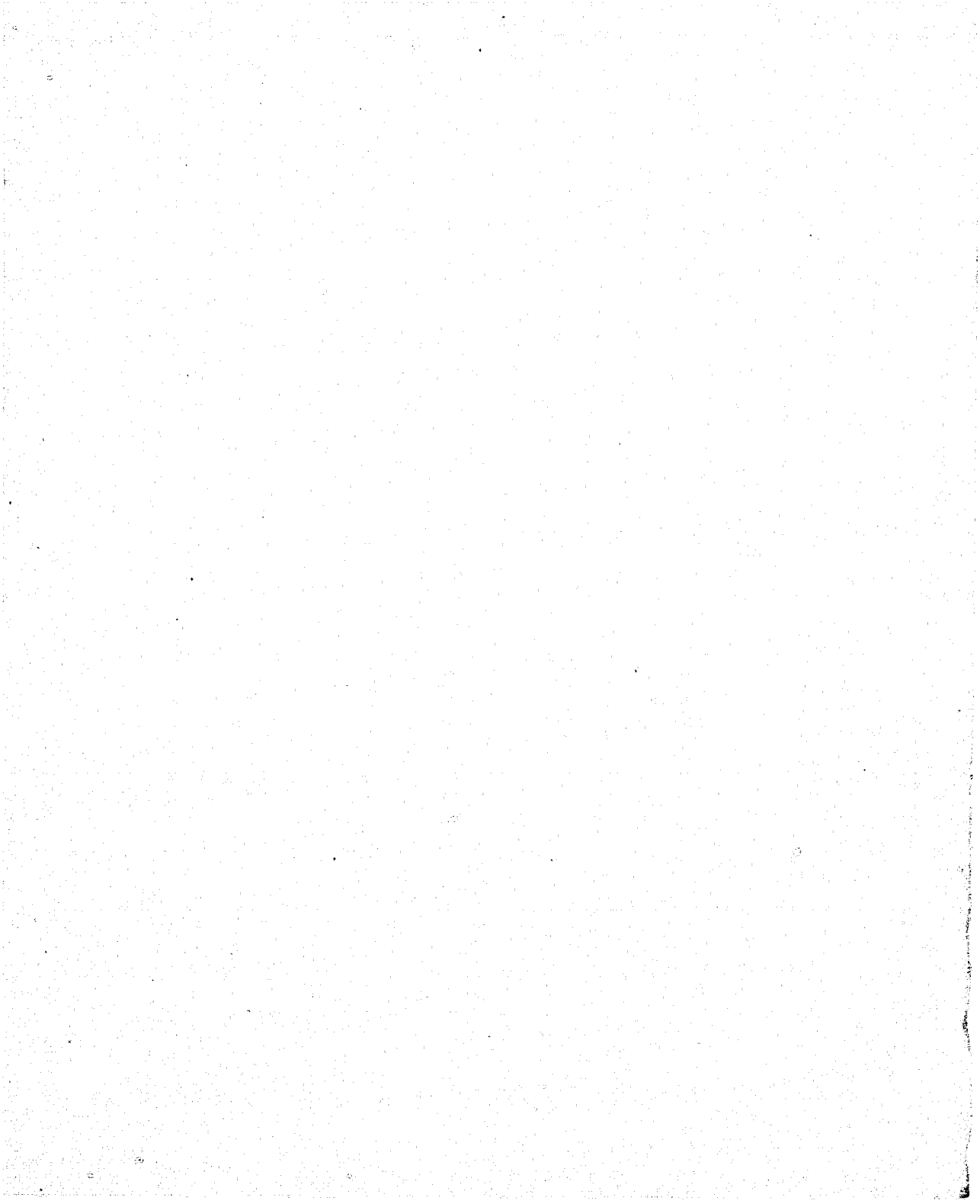
once, in this case to pay respects, at least, to principles of justice while imposing sentences mainly with a view to deterring the worst offenders.

In the ancient notion of lex talionis there is at work a principle of justice: a man shall lose just what he has caused another to lose, and suffer just to the degree that he has caused others to suffer. But that sense of pure retribution becomes mixed with the quite different aim of reparation. An eye for an eye may strike us as a fair application of retribution, but it does nothing to compensate for the loss of an eye. And this, together with the fact that the administration of lex talionis comes uncomfortably close to committing the crimes it punishes, leads to modifications that strike us as more civilized, or more efficient, or a better compromise among the various ends we suppose our system of punishment can or ought to meet. Twenty years instead of an eye, two hundred dollars instead of a tooth: the scale is of course hopelessly artificial unless one thinks that deterrence is our only aim, and acts something less than barbarous the principle constraint upon our means. A clear sense of retribution is lost in such a system. The form of punishment loses its identity with the crime. If we take the point of retribution to be an institutionalized form of expiation, it is most unlikely that incarceration or fine is a device by which a man may become conscious of his guilt. If we think of imprisonment and fines as reparations, we will have to recast our conception of the value of a person in quantitative terms, and view a life or a limb as having a particular market value to be paid for or worked off in prison time. And so we lose the basic notion of a person.

Now we know that our system of punishment is dehumanizing, and that fact alone moves us to seek options. But the difficulty goes deeper. The concept of punishment itself is strained by the multiple services its institutional forms must perform under the conditions of anonymity, instability and inequality that prevail in nation states. The result is that Locke's amalgam of restraint, retribution and the depersonalization of the criminal cannot be squared with the general picture of a moral community within which punishment can be justified. In a simpler world, occasional breaches of custom and law can be acknowledged without recourse to modes of retaliation; responsibility can be the focus of criminal law, expressed in expiating rituals, and social solidarity the overriding concern. Our world lacks the conditions for expiation, and its social structure seems to entail the presence of the alien criminal, who perceives himself (as Locke perceives him) as outside the social framework. The footpad cannot hope for society's rewards, consequently he does not share its rules and courtesies. In rendering the verdict of outlawry upon him, Locke unwittingly points the way to a picture of the relation of the social community to its criminally dissident members which is much closer to Hobbes' starker picture of the state of nature. As crime rates rise to proportions that force the law abiding to pursue the course of prudence, control, rather than responsibility, comes to be the overriding need, and crime is seen politically, as rebellion, the work of an enemy, rather than as the backsliding of citizens who need to understand their guilt and be restored to their community.

It is not unusual to find law enforcers viewing criminals as Hobbes describes the state of war. But more interesting, and perhaps more ominous, that same perception of one's opposite number as the enemy is to be found among those who commit crimes and those who are engaged in their defense. Charles Manson says that the judge in his case cannot be his judge, for that judge's law is not his law, and that judge's community is not his community. And one often hears similar things said in the defense of the delinquent who commits acts of gratuitous brutality on anonymous victims. Remarks like these reinforce the fears of the fearful, and lead to calls for further retaliation, and so to a further collapse of society. And to those who are sensitive to social inequality and anomie, sympathy for the criminal leads to cries for the abandonment of punishment as an unjust response to the social circumstance in which the typical criminal lives. For the fearful, criminals are enemies to be destroyed or neutralized; the question of their responsibility simply does not arise. For the sympathetic, the criminal is the oppressed, but his status is as a result one of cliency, and so again less than responsible and less than fully human. Either way the condition of civil society, based on the integrity and the responsibility of persons, is lost.

Does this mean that to preserve social life, of which civility, personhood and responsibility are essential ingredients, we must accept institutions of punishment that are demeaning and dehumanizing? If so, and at present I do not see obvious alternatives that do not bring in their wake points of view and practices anti-ethical to such ingredients, we are forced to endorse a method as necessary while admitting that it is self-defeating. Perhaps to accept such a conclusion is to accept the gloomy vision that, as J. L. Austin once reckoned, there may be no conceivable amalgam, the good life for man.



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I have 30 minutes to discuss a very complicated issue--and particularly to discuss it with you from a very independent perspective--it's not academic per se even though I have had the pleasure of teaching Criminology and a number of other subjects on various campuses of the University of California and elsewhere--it's not particularly or per se practical, although I have had practical experience working in jails and prisons, in the probation department--and it certainly is not ideological. One of my conclusions long ago was that problems are not going to be solved by capitalism, Marxism, conservatism, but more likely by knowledgeable, committed people who are not wedded to some preconceived bias. From that perspective I want to begin my analysis of crime and responsibility, first with an attempt to put crime in context.

Too often, when we talk about criminality, we are talking as if we are referring to some small group of evil people over there that has nothing to do with the rest of us. And it is important to realize that various studies bring this out, and our own personal experience confirms this: if you ask people in a random survey what acts they have committed that are labelled by this society as misdemeanors or felonies, somewhere between 90 and 99 percent will indicate that they committed things ranging from shoplifting to petty theft at the office to a wide range of criminal behavior, even when you don't include traffic offenses. Most people have been involved in one or more of these, even when you do not include a variety of private sexual behaviors, most of which are considered illegal in the United States. So, when you put all that together, the proper answer to the question, "Who is the criminal as referred to in the criminal justice system?," it is, at the very least, most people, if not everybody. That gets well beyond the traditional polarity of blue collar versus white collar crime, and of criminal versus the decent God-fearing patriotic American.

So, the crime problem is a problem of all society. Then I think it's important for us to look at the three major divisions of crime so that we can assign reasonable priorities to dealing with them. They are, crimes against the person, or we might say, crimes of violence; secondly, crimes against property; thirdly, crimes involving the person, the private behavior of the person, or what are sometimes called victimless crimes. That last category involves a wide range of drug taking practices including smoking and drinking by people under certain ages, certain forms of marijuana use, or marijuana possession, and certainly heroin, cocaine, and other drugs. It involves most sexual behaviors as I already talked about. It involves gambling which has many hypocrisies in it, such as the fact you can place a bet at the race track, but you can't place it a block away; you can play bingo in some churches, but not in others--that is until the passage of the recent initiative; some groups of people can place a bet by a long distance phone to Nevada, but other groups

of people placing a bet in their own neighborhood are involved in criminal actions. For the broad scope of crime, it involves the person, the property, and then the crimes against the person and against property, and then against yourself, if that should be called a crime.

Then we have the concept of deterrence that we need to examine in terms of responsibility. To the extent that deterrence ever occurs, it seems to require two things that aren't present today. They are the swiftness and the certainty of punishment. The American mythology that crime doesn't pay has long ago been proven to be a mythology, and to put it in terms of the real world, crime does pay. Crime pays very well for most criminals, certainly pays very well for most defense attorneys, and it pays well for a variety of other occupational groups in this society. Only a very small number of people who commit crimes end up in prison; this seems to be the primary focus of much of the discussion of this meeting. So, let us have no illusions that even if we solve the prison problem we are solving the crime problem, or even dealing with the issue of responsibility of individuals or of a society.

The crime that does occur goes, mostly, unreported. The vast majority of rapes, shoplifting, and many other offenses are never even reported to get into the criminal statistics. Parenthetically, I hope you are aware of the tremendous weakness of the criminal statistics that are used as a large basis for policy making. For example, the FBI reports there are 10,000,000 serious crimes in a given year, where the census Bureau figures bring out that there were 40,000,000 serious crimes. Now that is an enormous gap in statistics leaving aside the important questions of what is a serious crime and all the other dimensions that I have raised with you. So, most crimes go unreported. Of the ones that are reported only a small percentage result in an arrest. Of those that are arrested, ranging from people who kill others from drunk driving on the highway (which is one of the easiest crimes to get away with), to a whole range of others, most of those crimes that result in an arrest do not result in any jail time. Decreasing proportions of those convicted get probation or go on to prison. And overall, less than five percent of people who commit crimes end up in a jail or prison, again showing that while we should be seriously concerned about prison reform, if we're going to deal with the broader problems of crime and justice we have to deal with many other things as well as prisons.

As I try to analyze this whole area of concern in our discussion today, I think it has been kept from solution by the frequent human habit of putting things in "either-or" categories such as prisons are either for rehabilitation or they shouldn't exist. And, certainly, everyone here knows that rehabilitation rarely, if ever, occurs, although occasionally people rehabilitate themselves despite the system. But the point is that prisons are not just there for rehabilitation--the rehabilitation they often claim. There are at least four major functions of jails or prisons. One is punishment or revenge against the person who commits a certain crime. We usually deal with that by not talking about it, like we deal with many other problems in this society. Second is deter future crimes. To deter the crime of other people and of that particular person we



are sending to prison. But the deterrence concept is mainly based on thought that, through punishment of this particular person for this particular crime you will deter others from doing it. The third one is protection of society. That is perhaps the most forgotten for why prisons exist. Quite clearly that can be no justification for the great many people that are sent to prison. How does society need protection from the person who is engaging in private in oral-genital sexual relationships? How does society need protection against the persons who possess marijuana, or for that matter possess for their own private use heroin or a range of other drugs? As opposed to major traffickers, exploiters, purveyors of things that society considers evil?

But there is a group of people that society does sometimes need protection from and that certainly includes people who have shown themselves to be violent. Notice the distinction I am making here because, hopefully, you are aware that predicting violence in people who are previously non-violent, predicting it on the basis of educational, religious, social class, or other categorizations is extremely imperfect. But certainly there are people who have murdered a number of human beings, who have been violent in a number of ways that probably are a danger to society if they are not kept in prison. In recent years, in recent decades, because it probably goes back 30 years, we have had, in terms of the criminal justice system, the ascendancy of the concept of people being mad versus the traditional concept of them being bad. That's a kind of oversimplified terminology. From the idea that people are sick and need treatment, we can infer that they are mad versus the idea that they are basically sinful and evil and need to be imprisoned. Now, on the surface most people, particularly those who have thought of themselves as "liberals" (whatever that means) have tended to accept the idea that people are sick or mad as progressive and as a highly desirable reform in this society because we all know that psychiatrists are more humane and more socially concerned than correctional officers are. We all know that psychiatrists have made themselves available to all social classes of the society and have attempted to involve themselves in the serious social problems in American. At least we pretend to. Obviously, they don't really do that. But the point is that we have accepted implicitly that to view people as mad is better than to view them as bad. And I seriously question that. Among the underlying assumptions of that is the idea of what is sick, what is abnormal, what is deviant. Or we can talk about that as diagnosis. One of the things that professionals are always taught among the most important things in their training as psychiatrists, or any other medical doctor, psychologists, and social workers, is to diagnose. And it often becomes the single most important thing that when someone comes into you for help you make sure that you can figure out whether they are 323.5--Sociopathic Personality Disturbance, 317.7--Schizophrenia, 325.0--whatever, or some other diagnostic category. That, in turn, is supposed to give you an understanding of who they are as a human being, why they did what they did, and predict or show you how to treat them. All of those are totally fallacious. Diagnoses are extremely subjective and arbitrary even, particularly, when applied by psychiatrists. The few studies that have been done on that show that two psychiatrists have only 60 percent correlation

and when you involve three that can fall into a 45 percent correlation. But another subpoint of that is the destructive effect of labelling human beings as schizophrenic or otherwise psychotic, or as sociopathic people. Just as it is destructive to label people as niggers, kikes, wops, to label them as straight, square, sad, gay, freaks, junkies, heads, queers, or whatever...these destructive labels exist in lay language and they are no less destructive when they exist in so-called professional language. So, diagnosis is a very important part of psychology, psychiatry, and social work.

Then we have the underlying assumption of treatment. It is implicitly accepted that, for example, when psychiatrists go into a court room--and I will discuss their role as experts, or alleged experts later on--but it is particularly accepted that we as a society and the psychiatrist and psychologist as our official representative, know how to cure every human condition, much of which I would characterize as normal behavior, or as a social problem rather than a problem of psychopathology which psychiatry and psychology calls most things. That assumption is false. There are many things, many kinds of behavior, many forms of anger and aggression, and violence, many kinds of criminal behavior that we don't know how to treat, that we don't understand the causes of, and insofar as we think we do understand them, I think excessively attribute them to individual psychopathology rather than to the interaction of a great many social factors with an individual's character. Another assumption is that the treatment exists in the institutions that we will send people to. That assumption is fostered by the American image game or the tendency to use euphemisms. My favorite euphemism, or substitution of a palatable word for an unpalatable one, is the CIA term of killing somebody, which is "maximum demotion with prejudice." There are all kinds of such terms--the Mafia term is not any more preferable, i.e., to "snuff" somebody--that we are all familiar with. The point being, in terms of prisons and/or hospitals, (and of course as good Americans we spend most of our money for buildings or staff salaries, secondly we spend much of it for administrators, fifty percent of most budgets in school, welfare, psychiatric and other programs go to highly overpaid and incompetent administrators), is that when you get down to it the assumption is that calling an expensive facility a correctional facility, a rehabilitation facility, or mind you, calling it a hospital, means invariably that people are treated and cured there. And that's one of the biggest lies in our society. I am sure I don't have to belabor that point to this sophisticated group, but it is part of the context of understanding where we are and what we have to do about it if we are facing reality.

And then we have the idea of the treater; that is, who is to treat people. We know the old Latin saying, "Who is to guard the custodian?" but we should add to that, who is the right person to treat a human being if they do indeed need help, because they have an objectively defined problem rather than a subjectively or arbitrarily defined one. Now where do people take their problems? Again, we have been taught to think that the psychiatrist, or sometimes the psychologist is the person to whom we take our problems. Well, most Americans have not either sought our psychiatric help, or if they have sought it out, had it available unless they could pay a very large

fee for it. Where we take our troubles is very often straight to ourselves. We often, strangely enough, are capable of dealing with our own problems--and often are capable of being independent human beings rather than dependent on someone else. Secondly, we take our problems to our friends, relatives, family members. Thirdly, when you talk about outsiders to whom we take our problems, it is interesting that we often discuss our problems with bartenders, beauticians, barbers, tea-leaf readers, astrologers, and a whole range of other people. Then, when you get into the professions, and this is in decreasing frequency, in my judgment of where we take our problems, within the professions probably more commonly we take them to ministers, and social workers than we do to psychiatrists and psychologists, and even within the medical profession it would not be uncommon to take your problems to a general practitioner, a pediatrician, a gynecologist rather than to a psychiatrist. So, there is a wide range of people, including ourselves, who are potentially available to help us solve our problems, of whom the psychiatrist is only one of many and who certainly sees only a very unrepresentative minority of people.

Now part of what I am alluding to that is very relevant to the idea of treatment or rehabilitation--terms that are really very synonymous although they are used separately--is the idea of the psychiatrist as God in this society. There's been a tremendous amount of aggrandizement by the psychiatric profession. In the limited time that I have, I can summarize that by pointing out that it involves the substitution of one image for another. Traditional American psychiatry involves training in Freudian psychotherapy and the application of it, particularly in two careers. There's a third kind of career I will mention in passing which is an administrative career. But the two careers are as an academician, that is, as a full-time member of a university medical school, and the more common practice which involves the application of Freudian or a related kind of personality theory or therapeutic system, mainly to the problems of white, middle-class, affluent women, usually with a male therapist. Such women, having not-too-serious problems ordinarily, and always, of course, being duly respectful of the status and role of the psychiatrist, regularly pay their bills and follow such unscientific precepts as that the ideal time for getting help is 50 minutes. We all know that problems never require an hour and a half and never can be solved in less than 50 minutes. That's one of many myths that have been built into the system that we tend to accept. In any case, what happened is that this tradition, which still prevails, was renamed community mental health. That simple renaming was immediately then used as a basis for applying traditional psychiatry to the problems of racism, poverty, drug abuse, human sexuality, and crime despite the fact that usually psychiatrists and psychologists never accepted in their practices or in their private offices, or government clinics, alcoholics or other drug abusers, people with serious sexual problems, or a wide range of other common or very important problems in our society. So, that underlies much of what has gone on in terms of the treatment philosophy. It is also assumed, and this relates to the final area I will talk about (and that is how to humanize institutions) but it is also assumed that because you go to medical school or have psychiatric training that you are a born

leader. Meaning that you deserve to have the positions of director, chief, or whatever, that exist in all government clinics, and most private ones, in universities, etc. The fact is that there is no correlation whatsoever between any professional degree and leadership ability. And we have no well defined criteria for any administrator in public agencies. We tend to take the least competent people, the people who are unable, or unwilling to give help to people, or who are manipulative power seekers in bureaucracy. We often tend to put them in these high positions, automatically assuming that they deserve these high salaries and that they are capable of leading. By the way, we don't have a definition of leadership, so the one that I use, indicating my idea of leadership, is to facilitate people's growth, to inspire people to involve themselves in whatever activity they are a part of and that you are supposed to be the administrator of, to be an educator for them to some extent, and to involve yourself with them to some extent--that is blending continued practical work with whatever time you spend as an administrator. All right, that brings me then to another role of the psychiatrist in the justice system.

I have been referring mostly so far to the role in treating problems related to crime either in the prisons or mostly in out-patient clinics. Another important role is as a so-called expert witness. Now the law does not require that an expert witness on criminal responsibility be a psychiatrist. The law defines an expert as someone who knows significantly more about a given area than the average person or the average juror. It is my conclusion after many years of various kinds of work with criminals in and outside of institutions that there are a lot of other people than psychiatrists who can offer considerable expertise, including ex-criminals, writers, probation officers, parole officers, psychologists, and sometimes psychiatrists. Here the point is that we have failed to define and we need to define, relevant standards of training and experience for an expert in the important area of criminal responsibility. And it should not be assumed automatically that training in traditional psychiatry or the kind of experience that I summarized for you that the psychiatrist usually has, is relevant to the criminal justice system. The main two things that psychiatrists in the courtroom are called upon to define in California and about ten other states, are insanity and diminished capacity. Diminished capacity is a kind of second class or second degree insanity so that if you are not found insane, meaning that you did not know that what you were doing was considered wrong by society and were not aware of your actions, it is still possible to be found to have diminished capacity which means, by the definition, that you have a substantial impairment of your functioning due to some kind of mental disease, so that you become unable to do a whole range of things that are ambiguously defined and are overlapping to some extent in the law: premeditate, deliberate, have an intent to kill, harbor malice, etc. And it is amazing sometimes to listen to people in courtrooms who don't even know how these things are defined and don't even know how they tend to overlap, but do not hesitate at all to offer far-reaching opinions about whether or not a given person, three years before the time they see them for a 50 minute examination in the jail cell, was able to do these things at the time they committed a bank robbery, a murder, or whatever. Irresistible impulse

is sometimes used directly or indirectly--that is, it is brought in indirectly in some court decisions in California and elsewhere--being defined as crudely as: Would the person have been likely to commit the crime, even if a policeman was at their elbow, or be so overwhelmed with their impulse that they could not control it? The expert witness being undefined in terms of relevancy, often gets involved to such an extent in the adversary system that he loses all independence, meaning that some people only make themselves available to the defense or the prosecution; his/her responsibility is a one-dimensional search for victory at any price--at least some are willing to engage in anything to win. You might call that the Lombardi philosophy of life, naming it after Vince Lombardi, our most esteemed football coach who said, "Winning is everything, nothing else matters." We might also well wonder whether this expediency orientation built into legal ethics is not one of our most serious social problems in America since the lawyers ethics or lack thereof dominate the political process, since two-thirds to three-quarters of our legislators have come out of that kind of background. The expert witness then often becomes involved in that.

To condense a great deal of information let me say the expert should never agree to be a witness when called upon. That in itself is a bias. Experts, if they are experts and if they are independent, should agree at most to consult with whoever contacts them first, whether a judge (being appointed by one sometimes gives the appearance of independence that does not actually exist), or, more often and commonly, the defense or the prosecution. You have an obligation to consult, to reach an independent conclusion, make that conclusion known; then you may or may not be invited to testify. Anyone who has promised to testify when they are first contacted has obviously already come to a conclusion and obviously done so without any study of the material available at all. Secondly, the traditional psychiatrist, who is the one most commonly brought into the courtroom as the expert, sees all defendants as sick patients in need of treatment, assumes that everything they tell him is the literal truth, makes a false analogy between that situation and seeing a voluntary patient in a private office, and presumes treatment actually exists in these public facilities, I meant to mention that earlier. That's another obvious fallacy. Neither at prisons or at so-called hospitals which are in part prisons as well, does adequate treatment exist even when appropriate treatment is known. So, the presumption of the expert is often that treatment is there and that it would be better to send a person to a hospital prison than to a prison hospital. The expert should see and talk to both sides, should see all objective data, and balance that against any information he/she obtains in interviews. There are many, many other points for me to talk about, but suffice it to say that too often the expert becomes a full participant in the adversary system, loses sight of the idealistic search for truth and becomes involved in this one-dimensional search for victory with all its drawbacks. So here we have another area of responsibility; that's why I am taking time to dwell on that. What is the individual responsibility of the person who commits a crime or, less frequently, is arrested and convicted of a crime? We also have serious ethical questions of the individual responsibility of doctors who are involved in many different steps of the so-called justice system, and

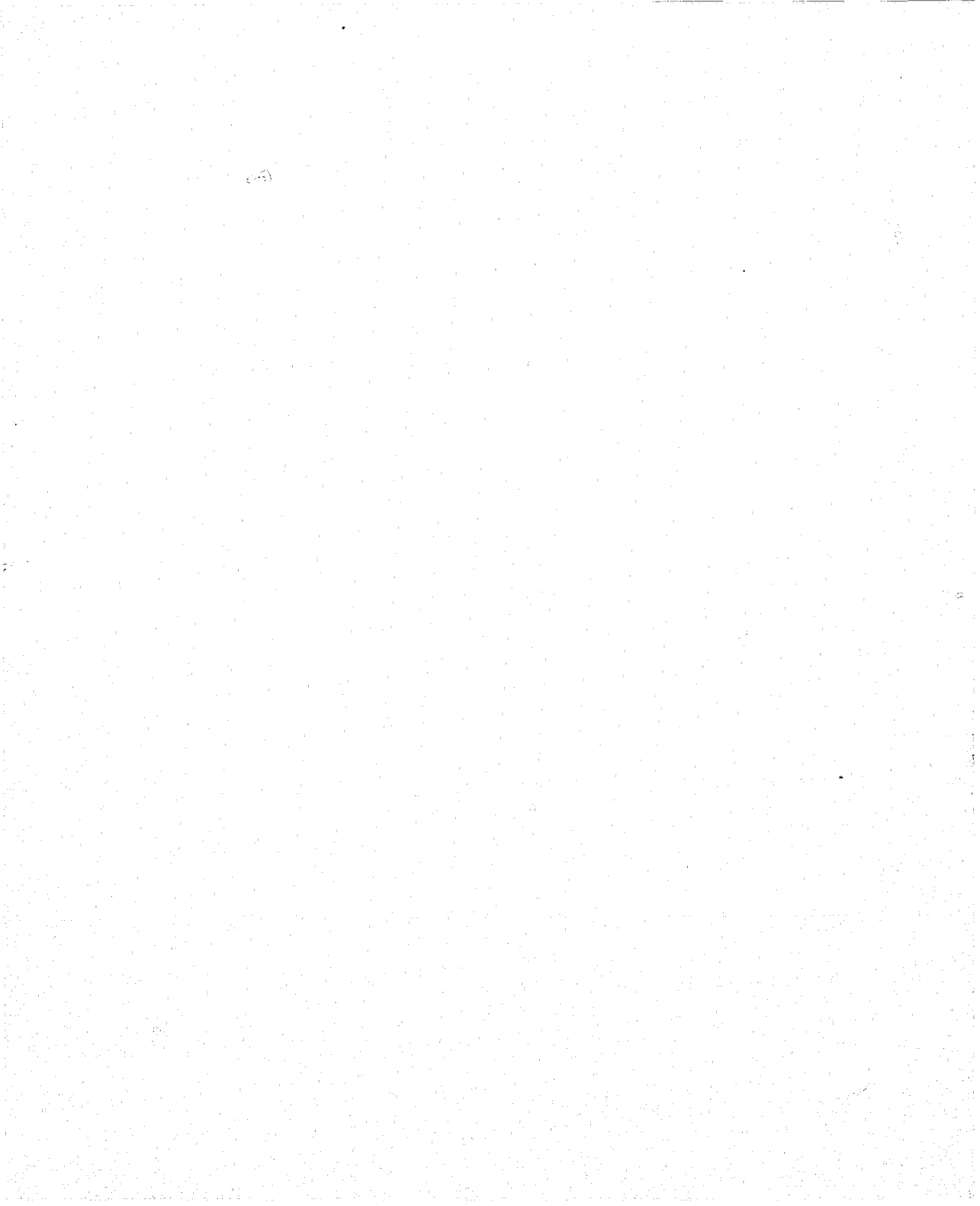
certainly we have most importantly the individual responsibility of lawyers who are prosecutors, defense attorneys, and judges in this complex system which, quite clearly, is not working and is part of the reason that crime pays and pays very well.

In the remaining few minutes, I have two things that I will briefly touch upon to tie together some of these matters. One is: what is treatment? I have already talked about this at some length in terms of who does the treatment, but there's also the important area that many things happen in institutions that are falsely called treatment. If you go swimming, that's called water therapy, if you sweep the floor that's called occupational therapy or work therapy. And, by the way, there are all kinds of things intermeshed with why prisons don't do a better job, one of which is the nefarious influence of trade unions--those great heroes of organized labor that we all know to be liberal humanitarians--who keep prisoners from getting decent salaries and from developing vocational skills that might be competitive with other people. Among many, many other things that we could talk about, what is treatment is the serious question. There are three categories. There's non-treatment which I have just talked about; going swimming really isn't treatment, it might be fun once in a while, might be diversion, but we lose any kind of precision if we call that treatment. Then, there's voluntary treatment that a person seeks out for a variety of motivations, most commonly in the institution they seek it out because it might be helpful in a parole recommendation, not because they seriously want to make changes or because they really believe that this given "shrink" or correctional officer or group is going to help them change, but anyway, its voluntary treatment, where they seek out medications of various kinds again for mixed motives, including to get high, as relief from boredom, to control anxiety. There there's coercive treatment which has gotten the most attention, certainly is an important area, but we shouldn't forget all the problems of the non-treatment, or pretending to give treatment when it doesn't exist, or the inadequacies of voluntary treatment when somebody seeks it out. And coercive treatment doesn't require elaborate discussion in this audience. I think you are familiar with it; it ranges from a variety of tranquilizers and other psychoactive drugs, on to electro shock therapy and psychosurgery, both of which are relatively uncommon and certainly much more irreversible than the other types.

The positive thing I want to say about treatment is that I recommend--and we have tried to build this into our non-profit center here in San Francisco--a smorgasbord approach, and I use that word to describe it because I think it's fallacious to make extreme claims about any one form of treatment. We are constantly beset by promoters in our society who claim this or that program, or they and only they know how to cure something and nobody else knows anything about it. The fact of the matter is no one treatment, whether by a psychiatrist, whether by a self-help approach or something else, is available to, or accessible, or works with more than a minority of people. I mean, then, two important things by smorgasbord. One is that you make available the greatest possible diversity of traditional and innovative techniques of help in your programs, rather than just one or two things that give people essentially no choice whatsoever.

And the second thing I mean by smorgasbord concept is freedom of choice--that they are involved in the decision of which one or several methods of help you utilize in their individualized and, hopefully, humanized program. By implication I am saying that using a combination of methods is often more beneficial than relying on one alone. The final point I want to make is about humanizing institutions. Our most serious, neglected social problem in American, and the one with which I have most concerned myself over the years has usually no attention whatsoever being paid to it because it strikes at the very fabric of society. That most serious problem is bureaucracy. The institutional pollution that we have in the political bureaucratic process, the dehumanization of people by organizational life, with its hierarchical system that forces dependency rather than independence upon people, and makes both the people who work in the organizations and those who come to it for help, makes them increasingly impotent, frustrated, and alienated. To over-simplify a very complex situation, I think what we need to do is to introduce participatory democracy into institutions whether they be government, private, or self-help facilities, they should not be run as authoritarian hierarchical systems. The institution should be decentralized as much as possible, that is, in regard to jails and prisons, we should have smaller more decentralized units where people, including prisoners, guards, doctors, and psychologists, would participate in decision-making collectively.

And finally, in order to humanize institutions, we need to respond to other people seeking our help or our involvement, as individual human beings rather than as categories. Not to see them as a criminal, an ex-offender, a prisoner, as a patient, or as being sick, but as a human being--a person who should be welcomed into our facilities as a guest would be welcomed into our living rooms. Then and only then, through our individual efforts and our attempt to live what we believe in, will we succeed in humanizing the criminal justice system.





### SESSION III

#### Sentencing Reform: Forward or Backward?

Reform advocate Jan Marinissen reviews elements of the legislative, judicial, and administrative history of penal sanctions in California, and concentrates in detail upon recent events in the movement for greater determinacy in sentencing. He notes the association between demands for abolition of indeterminacy and for abolition of coerced treatment, and cautions against the possibility that a punishment ideology could foster abandonment of resources and opportunity for non-coerced treatment. Making a careful separation between issues of equal justice and of excessive penalty rates, Marinissen offers a critical analysis of a statute (Senate Bill 42) under consideration by the California legislature. (This bill was subsequently enacted as the Uniform Determinate Sentencing Act of 1976, and subjected to amendment during the 1977 legislative session by Assembly Bill 476.)

Judge Alarcon expresses a worry that philosophical debate concerning the theoretical justifications for imprisonment may drain attention from other basic human concerns. Accepting crime control as the central goal, he expresses skepticism about the deceptive neatness of retributive "price lists," arguing that penalty levels will be buffeted back and forth as legislators accommodate to varying pressures. Alarcon advocates decriminalization of sumptuary offenses, elevation of resource investment to provide community alternatives for sentencing of non-violent and non-dangerous property offenders, and more attention to honoring the rights and meeting the individualized needs of those offenders who must be maintained in controlled settings out of concern for public safety. (Alarcon's plea for construction of new prison facilities--small, local, humane--has gone unheeded. The legislature considered and rejected appropriations of nearly \$100,000,000 for new prison construction during both the 1976 and 1977 sessions.)

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I was asked to speak about sentencing reform in relation to the great debate about the indeterminate versus the determinate sentence. The debate is taking place across the nation in Maine, Illinois, Minnesota, and California.

The debate has already subsided to some extent since, as I understand it, the decision has already been made in Maine and Minnesota. As I have followed the debate and personally participate in it, I have often asked the question--Is this the topic which should take the center of the debate, or should it be short periods of imprisonment versus long periods of imprisonment?

Just to choose between an indeterminate sentence and a determinate sentence is not sufficient, because persons with a different perspective than mine are also demanding an end to indeterminacy. The length of imprisonment they suggest is barbaric.

Often the demand for an end to indeterminacy goes hand-in-hand with the demand for the abolition of forced rehabilitation and treatment. I think this has been erroneously interpreted as a desire to end all forms of rehabilitation, help, and treatment and substitute for them the "punishing model." These are some of the issues we will be looking at this afternoon. However, before we do that I would like to discuss the context or framework in which the indeterminate or determinate sentencing structure exists.

One of the problems people like us face is that we are working in a rather narrow area and wish to bring about reforms in our particular area of work. Not that most of us are not aware of the serious deficiencies in the delivery system of economic and social justice, and the lack of our government's commitment to social and economic justice. Nevertheless, whenever we read about proposed reforms in the criminal justice process, there seems to be a lack of awareness that whenever reforms are implemented the positive consequences in relation to economic and social justice are almost nil.

The work we are engaged in, as I see it, is primarily negative in that we try to prevent the criminal justice process from doing more harm than it already does. We try to include as much due process and equal protection as possible, knowing that the utilization of the criminal sanction by and large has detrimental effects, not only on the people affected by the criminal sanctions but also on the society as a whole. As long as our society is ridden with bias in the areas of sex, race, class, powers, etc., we know that the criminal justice process will be permeated with that same bias. So long

as equal justice is equated with equality in status, influence and economic power, the construction of a just criminal justice system in an unjust society is a contradiction. Criminal justice is dependent upon social justice and as long as our society is ridden with social and economic injustice we can hardly expect a just criminal justice process.

Most of the literature on criminal justice will acknowledge that the persons most affected by it are those persons by and large who partake in the well being of this nation the least. The use of the criminal sanction, the application of force with the resultant punishment, is at best a necessary evil. It detrimentally affects my deepest religious concepts of the nature and dignity of man, and it violates the noblest vision of a peaceful and non-coercive society. Punishment meted out by the state is not to be regarded as a benefit to the individual, but is instead, a detriment imposed out of necessity.

One of the greatest evils in our society is that the criminal sanction is used for the most part as the first resort instead of being used only very sparingly; and as the last resort when everything else has failed. The sanction was never meant to be used as freely and permissively as applied now. It is primarily used against persons who cry out and act in defiance against dehumanizing situations in their communities.

I may have conveyed the notion that the poor, the minorities, the downtrodden, those who are different, and the young are the only ones who commit crimes. Far from it. Those persons who end up in prison are the ones who were caught, and who, as the result of bias and discretion, receive the brunt of the criminal justice system. For every person in prison there are at least ten times as many who were convicted for similar offenses and sentenced to alternatives other than prison. And, an even larger number of persons who were never apprehended.

The social harm resulting from the crimes committed by the imprisoned is very minimal in relation to the crimes committed by large corporations, by the government and its agencies. Think, for example, of the harmful economic and social consequences of the war in Vietnam, the corruption in the Pentagon, the consumer fraud perpetrated by large corporations, the evil effects of non-compliance to standards by the large pharmaceutical industries, the effects of non-compliance by some corporations with the 160 acreage limitation of water use, red-lining by the real estate industry, banking concerns, etc.

When I compare the social and economic harm which results from these activities with the harm done by the majority of individuals who are imprisoned, I begin to wonder what is the importance of the great debate about the indeterminate versus the determinate sentence? Perhaps the only reasons I am involved in this debate are to minimize the harm done to those imprisoned, and to help negate the deception that in having behind bars on a given day in California 20,000 in state adult prison, 23,000 in local county jails, 5,000 in juvenile

state prisons, and 4,000 in juvenile halls, we are protecting the community, reducing crime, and furthering a democratic society in which people can live in harmony and tranquility.

Will resolving the debate before us speed up the day that we can abolish prisons? Or is this debate like the debate which took place earlier in history except in reverse--should we replace the determinate sentence with the indeterminate--so that we will be able to humanize the prisons, and make model citizens out of prisoners by means of forced rehabilitation and treatment?

History tells us that there were several reasons for the introduction of the indeterminate sentence. There was the vast overcrowding of prisons because judges had no choice but to send certain categories of offenders to prison. These conditions left the government two choices--to build more prisons, which it did; and to devise all kinds of escape valves, which it also did, by means of executive pardons, introduction of good time, and earlier release for those prisoners who "deserved" it. Slowly, implementation of the indeterminate sentence took hold.

With the development of the social sciences, psychology and sociology, in particular, the "deviant" person became the center of attention. Naturally, the person became the focus of the penal sanction as well. As where formerly the offense, the crime, was the concern, now one was able to understand the person better, to understand the reason why the person committed the crime, and to determine the needs of the person in light of the total life context. Prisoners needed help rather than punishment and the government should provide for that help, either on a voluntary or forced basis. And was it not proper for those persons (guards, correctional workers, wardens) who were daily in contact with prisoners to decide if they were making progress? Could not the psychiatrist and the psychologist, with their knowledge and capabilities determine the needs of men, the reasons for their offensive behavior, and ultimately predict future behavior of prisoners? All the reports accumulated over the years regarding the behavior, past, present, and future, were from now on going to be the basis on which a nine-member board decided to release or not to release. Great were the hopes that the new reforms were going to transform an ever expanding captive prison population from offensive characters into law-abiding citizens, exemplary in their behavior.

The widest possible discretion was given to wardens, correctional workers, and members of the board. Hope increased among the prisoners because they thought that the release date was in their hands and that they would be able to work out their own salvation by working hard, allowing themselves to be treated, gaining insights, decreasing their deficiencies, and undergoing medical experiments for the betterment of mankind.

Indeterminate sentences were established with long maximum sentences. The longer the better with the result that 35 offenses carry life sentences in California. The law enforcement-prison-industrial complex started booming--vast expansion took place in the 50's and 60's, thousands of guards were hired, social workers and

others flocked to the prisons and camps scattered all over California. At the same time, the length of parole sentences increased, and the number of parole agents increased by the hundreds.

The expanding work opportunities could readily be filled by former soldiers who were already receiving retirement pensions, and there were many eager soldiers who shifted from the military-industrial complex to the correctional-industrial complex. They were accustomed to discipline, and to receiving orders from above without questioning the rightness or wrongness of them.

In the parole field many professional workers had faith that the combination of being a law enforcer and a person belonging to the helping profession would give them all the tools needed to help the prisoners, including the power to bring the parolee back to prison in case he needed some more rehabilitation and treatment in a confined setting and the maximum sentence was reimposed for that purpose.

The prison population was expanding rapidly but few judges ever bothered to check on the prisons where they were sending the offenders for help. This was not necessary because the prison administrators, the guards, etc. knew the prisoners' needs best.

How little did judges and citizens in general know what the prisons were all about. How little did we know of the all encompassing effects of imprisonment on a person? Of the possibilities of evil when the government and its agencies are left unto themselves? When people with good intentions are endowed with so much power and authority over their fellowmen? We were slow to understand what it meant to lose freedom and liberty.

Even assuming that most of the prison staff and the Adult Authority were people with good intentions, we have been confronted in the last few decades with the effects of too much discretion and political meddling. When prisoners become the scapegoats and politicians use crime, street crime that is, as an issue on which they want to be elected or re-elected, instilling fear in the citizenry of street crime and criminals; and when, in turn, politicians provide more discretion and money to expand the criminal justice system and its weaponry, the democratic values we esteem so highly deteriorate before our eyes. For those who are caught up in the circle of arrest, prosecution, and imprisonment the impact of the criminal justice system is extremely harmful. Instead of encouraging initiative it compels submissiveness; instead of strengthening the belief in authority it generates cynicism and bitterness; instead of promoting different cultures and lifestyles, the penal sanction forces into submission and into conformity thousands and thousands of persons.

What was missing for a long time was the ability and willingness to listen to persons who had been in prison--persons who had received the brunt of the criminal justice process. Could it be that we were unwilling to listen because prisoners by and large were different than we were, coupled with the fact that prisons were isolated, violent institutions? It seems to me that a couple of factors changed all that, and that the change was rather rapid, when it came.

The human rights movement, which included the peace, civil rights, free speech, and civil liberties movements, gained in strength and included thousands and thousands of people inside the jails and prisons. There came about a vast awakening that all was not well at home.

Although prisoners in the past had shown courage in striking for better housing, food, and privileges, increasingly, prisoners organized and joined forces with the movement for change on the outside, which in turn became increasingly concerned about the much needed and long overdue changes in prisons. In participating in this movement, the prisoners risked not only their parole dates but their lives as well. They conveyed the injustice they experienced at the hands of their keepers to the outside world. Long sentences, not knowing the date of release, excessive discretion in the hands of wardens and Adult Authority members were at the root of their complaints. They maintained that vast discretion in the hands of the Adult Authority made a mockery out of justice.

There also slowly developed a coalition on the other side of the spectrum. It consisted of persons who were also dissatisfied with the indeterminate sentence and with the vast discretionary powers of the Adult Authority. They felt that the discretion was used in favor of the prisoners and parolees. Spearheaded by a senator, the correctional officers association and other law enforcement groups soon joined together. Groups of citizens who were persuaded by relatives who had direct encounters with violent parolees joined in. This coalition favored longer and harsher sentences. Governor Reagan joined in as well. The irony is that when Governor Reagan became governor, he inherited a prison population of 29,000 from Governor Brown. Under Governor Reagan the population had decreased from 29,000 to 19,000 by 1972. But, when he joined the coalition he ordered his legal advisor to meet with the members of the Adult Authority and together they formulated Policy Statement #24, which mandated in order of priority: (1) the protection of society; (2) the punishment of the offenders, to make the punishment fit the criminal rather than the crime; (3) the deterrence of the offenders (by the punishment imposed) and of others (by example of the punishment imposed on the offenders); (4) the rehabilitation of those who are amenable to and capable of it. That political statement resulted in a prison population of 25,000 by 1975. Little did that coalition understand the forces which were not only at work outside the prisons, but inside as well.

Prisoners, with the help of the attorneys of public law firms, and others, filed suit after suit--11 during the last couple of decades--to counteract the almost absolute powers of the prison, parole, and Adult Authority administrations. Slowly the courts changed their former "hands off" policy and began to take a closer look at what was happening. The Adult Authority began to take administrative actions to make some changes internally. The public at large became more and more aware of the injustice of the indeterminate sentence and began to pressure legislators to make changes.

A ripple of hope went through all the California prisons when

the Adult Authority in April 1975, came out with its Chairman's Directives 75/20. This was only the beginning. Although administratively the directives seemingly brought an end to much of the Adult Authority's power--at least most of the prisoners were going to receive a release date--the prisoners soon discovered that there were so many exceptions to the general policy that doubt and disappointment set in. Some of the exceptions were: "In some cases, the hearing representative will fix sentences outside the ranges provided for by the guidelines;" "In a certain number of cases the Board will not fix a release date, but instead will calendar the inmate for another Board appearance in one, two, or three years. Typical of such cases would be inmates with significant psychiatric problems, particularly complex cases and multiple termers whose criminal behavior has been so persistent that they need to demonstrate long-term evidence of a change for the better before release can be considered. It is extremely important that every inmate understand that the sentences fixed by the Adult Authority have good time built into them...and assumes that the inmate will remain free of serious or major disciplinary actions and will perform regular institutional work or other assignments...(if not) there is the real possibility that he will lose his date."

No sooner were the directives in the hands of the prisoners than they started to determine when their release date could be. But not knowing if they fell under the "usual" or "exceptional" cases, they lived under great anxiety. Soon hundreds of appeals came to the Adult Authority.

In September of last year, the Supreme Court judged in favor of Rodriguez, stating that the Adult Authority had to set a maximum date within each statutory range proportionate to the culpability of the offense. A fixed term had to be set beyond which there could no longer be any discretion by the Adult Authority. The Chairman's Directives together with the California Supreme Court decision gave parole dates to approximately 10,000 persons.

In the meantime, Senator Nejedly had introduced Senate Bill 42 which, by and large, eliminates the indeterminate sentence and replaces it with determinate sentences. Each criminal act provides the trial judge with three prison sentence choices, e.g., in the case of first degree burglary, the choices would be two, three, or four years. The judge would have to choose the middle range, unless there are circumstances of mitigation or aggravation, at which time he can subtract or add one year respectively. In either case, he must state in writing the reasons why he is deviating from the middle range. Initially, this bill had many supporters and was voted out of the Senate by an overwhelming vote, but it stalled in the Criminal Justice Committee on the Assembly side.

At the end of 1975, everybody was shaken up by another California Supreme Court decision in the case of Stanley and Reed. Both prisoners claimed that the Chairman's Directives 75/20 were unconstitutional in that the Adult Authority had given both prisoners additional time for a court-ordered concurrent sentence. The decision in the case of Stanley and Reed goes far beyond the narrow ruling on the specific

case of extra time of imprisonment for a concurrent sentence. The ruling states that the Directives as a whole are illegal in that the typical and aggravated schedule does not allow for the individual's progress or regression while in prison; and therefore, violates the intent of the indeterminate sentence law. As soon as this decision reached the Capitol, hundreds of copies of this ruling were immediately distributed, undergirding the need for legislative action. Up until that time the Governor's office and the Health and Welfare Secretary had not even considered SB 42 seriously. But now that the Chairman's Directives were declared invalid and the indeterminate sentence upheld, and since the chairman of the Adult Authority was to be considered again for confirmation after a very shaky hearing the year before, everybody began to take SB 42 seriously.

It is clear from history that administrative changes are not the way to proceed in bringing about a permanent schedule for sentencing because, as we have seen, as the political wind changes, so do the directives. Let us now take a closer look at some of the concerns I have but not in order of priority, however. The concerns I will discuss relate to the content of the Bill as amended in the Assembly as of April 22, 1976, and with another set of mock-up amendments of May 26, 1976. It is ironic that the Adult Authority is "grandfathered in" as the future Community Release Board. After all we have gone through with the Board, I had hoped that the earlier version of SB 42 on the composition of the Board,--a composition reflecting the communities at large--would have been maintained. But not so. Neither is it stated that members of the Women's Board of Parole are eligible for inclusion in the new Community Release Board. In spite of the fact that parole will be only for one year for those prisoners who will be sentenced under SB 42, the Community Release Board will have an extremely important function in determining the length of sentence of imprisonment for those prisoners who were sentenced prior to SB 42 if enacted into law. Although hearings are provided for in the Bill, the presence of legal counsel in disputes arising from the records regarding enhancements of term is not. In cases where the Community Release Board majority decides that because the prisoner's past and present behavior warrants more time, the hearing provides for legal counsel.

Although no legal counsel will be present at regular parole and revocation hearings, parole for every prisoner sentenced under SB 42 will be one year and revocation of parole can be only for six months. So the Community Release Board's function here is severely limited. I personally would like to have seen an end to parole altogether.

Every prisoner is able to earn one-third good time for good behavior and participation. For every eight months served in prison, the prisoner can receive four months good time, 75 percent of which can be earned for good behavior and the other 25 percent for participation. A long list of prescribed behavior for which good time can be taken away was included in the last version of the Bill. In my opinion, this list should be seriously curtailed and the vague language cleared up. Participation includes work, educational/vocational training, therapeutic, or other prison activities as specified in the document drawn up by the prisoner and the California Department of



Corrections. Failure to succeed in a program does not constitute loss of good time. After every eight months, good time is banked and cannot be taken away. However, if it is proposed that good time be taken away, the prisoner has the right to a hearing in the presence of witnesses, with the assistance of a CDC investigative employee, rather than legal counsel. Clearly, the investigative employee should be independent of the case before him. It should be more clearly spelled out that in cases in which the prisoner is accused of a crime committed in prison and the court decides not to convict and sentence the prisoner for additional time, good time cannot be taken away for the period that the alleged crime was being prosecuted.

I feel very strongly about the function of the Judicial Council in guiding the judges in matters of SB 42 if enacted. The function should be spelled out more clearly; delineated more. Besides gathering information about specific felonies and their penalties--penalties commensurate with the harm done--it should promote uniformity in sentences, not only in terms of one offense to another offense, but also uniformity between penalties in California, in other states, and under federal criminal code. It should be clear that the Council establishes guidelines for judges and that it reviews all proposed legislation that affects prison penalties; that it conducts hearings in the community and in prisons; and that the council submits to the Legislature impact analyses of proposed legislation.

The greatest difficulty I have with SB 42 is in the area of enhancements. The Bill states that for every previous prison sentence the judge shall add another year of imprisonment unless specifically ordered not to do so by the court. Is the prisoner who has done time for previous crimes to be penalized once more for the same crime?

In the latest mock-up amendments there was a serious change in the prison-free period. It was increased from five years to ten. The former version of five years should be the maximum. The Bill states that in case a prisoner repeats a violent offense--mentioned in a long list of violent crimes--the judge shall sentence the prisoner for the present crime with an additional period of three years in enhancements. Instead of three years, it should be two years. Certain offenses should be eliminated from the list and the violent offenses redefined. The Bill states that a felony attempted or committed while armed with a deadly weapon shall enhance the sentence with another year. Two more years will be added for the possession of a firearm, and an additional three years for intentionally inflicting great bodily harm upon the victim or accomplice.

The basis for all the enhancements need close scrutiny in spite of the fact that the maximum sentence, including enhancements, cannot be longer than 10 years. The consequences of all the enhancements in terms of actual time to be served under SB 42 sentences are not known, although attempts have been made to determine the consequences.

What is frightening to me is that with all the computer equipment available to the State, no one has been willing, or maybe no one is able, to project the future prison population if SB 42 is

enacted into law. With all the statisticians in government service, there is yet no impact analysis, in either the size of the prison population or in terms of potential costs.

It is true that the whole prison population sentenced under SB 42 will be doing one year on parole and that parole revocation cannot be longer than six months. It may be true that prisoners who commit serious offenses will be doing less time, but no one is sure. There is a definite fear on my part that prisoners having committed lesser crimes may do more time in prison.

It has been stated by legislative staff that the time of incarceration under SB 42, as it now stands, is almost equivalent to the present practice under the new administrative directives. As far as I am concerned those prison terms are far too high. According to the latest information (CDC Administrative Statistics, 1975), the median time served was 39 months, well above the national average of somewhere around 20-22 months. It is true that under the Bill the Judicial Council shall consider guidelines for sentencing in accordance with national median time, but once SB 42 is enacted, it will be extremely difficult to decrease the sentencing schedule.

What will be the impact of SB 42 on the very questionable practice of plea bargaining? Where some judges have been unwilling up until now to send some prisoners to state prisons because of the amount of discretion in the hands of the Adult Authority members, will more judges, now that they will be on the "spot," send to prison persons whom they formerly placed on probation, fined, etc.?

Eight new state prisons (one each in Orange, San Diego, Ventura counties; two in Marin county; and three in Los Angeles county), with 600 prisoners each, are planned. Are these planned for the increased prison population if SB 42 as it now stands is enacted?

I mentioned in the beginning that many people feel that rehabilitation and treatment should come to an end, and that punishment should take their place. Forced rehabilitation and forced treatment should come to an end. But I hope that as long as there is an isolated prison population in the tens of thousands, that at least the private sector will muster all the support it can to provide as many opportunities as possible for all kinds of services. Would it be advisable, now that the prisoners will be able to earn good time, that they will be provided with the money which the State will save on incarceration so that the prisoners themselves can determine the help they want, and pay for it?

In the coming months, the fate of SB 42 will be decided. I think we need all the knowledge, wisdom, and technical assistance available to make SB 42 a Bill which is as just and fair as possible--not only for the present and future prison population, but for the victims and the citizenry at large.

Perhaps we can persuade the Legislature to include in the section on initial sentencing a provision that the judge shall consider for

the least restrictive alternative to incarceration, and that the trial judge shall send the person to prison only if he can elaborate in detail and state in the record the reasons why he is sentencing the person to prison by proving beyond a reasonable doubt that the convicted person had available to him/her educational, vocation, and employment opportunities according to the person's ability and skill, had access to medical and other needed social services in the community, and that all these approaches have failed.



Judge Arthur Alarcon  
Los Angeles Superior Court

Because of the hour and the number of speakers who have appeared here before me, some of what I say may have a familiar ring. I will try to skip over those parts and also try to make my presentation briefer than I planned so that we can get to common discussion.

I come here today to express my delight that those of you who teach and study the humanities are focusing your concern on the criminal justice field. I think we need to discuss the philosophy behind our system of criminal justice, as well as discussing present day and immediate problems. Neither discussion should overshadow the other and we must address ourselves this date to both areas.

As a member of the court system, I can bear witness to the desperate need that at least the judges have for the help and direction of the philosopher, the historian, the anthropologist, and the healer. I speak to you today not as an expert on criminal justice, but as a participant, as a judge in the criminal justice system, with enough years in the field to realize that much of what I am asked to do as a judge is not based on logic or in the pursuit of any rational purpose. Judges are expected by the public and the legislature to solve many social problems for which they have no training or research. Let me confess to you that, however well motivated I may be, I cannot cure alcoholism by putting drunks in jail, nor can I heal the heroin addict with the threat of imprisonment. I seriously doubt that I have caused, or any other judge has caused--if I have not sentenced any to jail--one homosexual to change his sexual preference by using the criminal sanctions or the threat of criminal sanctions which are in the law-book. For centuries I and my colleagues have been asked to jail prostitutes. If we were supposed to end prostitution it is obvious, particularly in San Francisco, that we have failed. Our prison sentences have also been ineffective in preventing crimes which result from poverty or an inadequate educational system or which is the inevitable lashback of centuries of hatred and bigotry. If judges cannot solve these problems, it is obvious that we are engaging in self-deception if we do not seek other solutions. I suspect that we are the consenting victim of a political confidence gang. We accept without challenge the proposition that passing laws, prohibiting or restricting the behavior, will end the problem. Do you have an energy crisis? Well, pass a law making the speed limit 55 miles per hour and arrest those who go faster and that will solve the problem. Is drunk driving increasing in your community? Well, make jail sentences mandatory; that will stop drinking. Are the prostitutes embarrassing some of the tourists? Well, jail the women and that will clear the streets.

Humanists can help society and can help solve some of these problems in the criminal justice field by helping to define the goal that we should be following, instead of letting the politicians and the police establish the goals for the system. What should be the ultimate purpose of the criminal justice system? If the goal of the system is vengeance or retributive justice, as described for you this morning, then we should concentrate on devising unpleasant punishments

which satisfy our need for revenge. Obviously, the more suffering we inflict on the prisoner, the more satisfaction we will achieve. Perhaps the most efficient form of vengeance or retribution would be to do to the prisoner what he did to the victim. We certainly shouldn't be squeamish about the fact that we have an Eighth Amendment which prohibits cruel and unusual punishment, because that would interfere with real retribution. A vengeance concept, or retribution concept, also looks very neat on paper. It looks like the final reports of the stockholders, from the board of directors and the president of a corporation, where you include a balance sheet of assets and liabilities. If vengeance is your goal you set up a price list for crime. How much is a forceful rape worth? You simply bargain how many years--you bargain out how many years between the liberal pressure groups and the conservative pressure groups--and then you come up with a legislative statute for that year which tells you the price of a rape.

The greatest advantage to the vengeance or retribution model is its simplicity. It is mechanical and mindless; no thinking is involved. The average high school student who can count can be trained to administer such a program. Of course, a computer would be better. Another advantage is the flexibility of a retribution or vengeance system. It can be adjusted up or down at every legislative session depending upon the current mood of the electorate, and whether the liberal pressure groups or the conservative pressure groups have the most sway in that particular year. If a particularly gruesome crime occurs, the public's concern can be quickly and easily dealt with by making the price of that crime go up. The vengeance system also has a particular advantage for the timid judge. No one can accuse a timid judge of being softheaded if he sentences according to the price list. If you detect a certain concern on my part for whether there is a rational basis for the fixed sentences, then you're correct. If you agree with me that the vengeance or retribution or the fixed sentence system is not an appropriate goal, then we are free. We can free our minds to get down and grapple with the real problem.

What about the prevention of crime as the aim of society? So long as we concentrate, as the speaker before me said, on the indeterminate or the determinate sentence, our politicians can avoid confronting some of these issues. Clearly, as was said this morning, a crime-free society would eliminate the need for all of us in this room who are part of the criminal justice system. If prevention is the goal, then our focus must be on defining the causes of crime and then concentrating our societal resources on eliminating these causes. Relevant job skills and trades should be taught before a student graduates from high school and not become available for the first time at San Quentin. Mental and emotional problems which may lead to drug abuse or violence should be identified in the community and treated and controlled by medical doctors and counselors and not by policemen and turnkeys. If poverty and lack of opportunity produces crime, we should attack poverty and improve our educational system.

Another problem I would ask you to consider is the elimination of certain human behavior from the list of conduct we now label criminal. Every session of the legislature sees more laws passed making more human behavior a subject of the criminal sanction. The energy bill

of 55 miles per hour is an example. How in the world we are able to rationally justify having law enforcement officers stop people going at a safe speed of 55 to save energy and to impose a criminal sanction is beyond me. I have earlier commented on the problems of alcoholism, drug addiction, and consensual sexual behavior. As long as we delude ourselves into believing that the fact I have a degree of doctor of jurisprudence makes me a healer, we will not face up to the need to find new ways outside of the criminal justice system to cope with what society considers as ill.

We must also question the effectiveness of imprisonment in a safe penitentiary for most crimes in which the behavior should legitimately be labeled a crime, but which does not involve violence. Restitution or some kind of alternative service to the community makes much more sense economically for handling the property offender, both for the taxpayer and the victim. To send a forger to prison for passing a \$200 check, which the law now provides for at a cost of thousands of dollars per year, punishes the taxpayer and leaves the victim uncompensated for his loss. However, as far as the legislators are concerned, they have established that as a felony and they have prescribed state prison as an alternative so they are able to wash their hands of dealing with the problems which cause property crimes, without solving the problem.

We must also recognize, I suggest, that we can eliminate many, crimes which now call for a prison sentence and we must also recognize that some people must be committed to permit our society to survive. I refer of course to those who pose an immediate threat of violence. But, having sent them to prison, we should re-examine the goal that we hope to achieve as a result of such incarceration. And most importantly, we should treat each as an individual and assist each according to his needs and expectations. For those whose violence is caused by mental illness, as a matter of humanity and as a matter of survival, we should apply all our present medical knowledge to the treatment and control of that illness. In the field of civil commitment of mentally ill persons, the courts are now saying that there is a constitutional right to treatment. Shouldn't there be such a constitutional right for a mentally ill person who commits violent crimes solely because of that mental illness? Furthermore, should any mentally ill person, whether he commits a violent crime or not, be committed to a prison dungeon like San Quentin, Folsom, Vacaville, or Soledad? Is that an appropriate therapeutic environment for the treatment of mental illness, whether one of its symptoms is acting it out in violent acts or not? If the individual is diagnosed as mentally ill and remains violent, we must ask ourselves, "should he be released to a free society so long as he remains diagnosed as uncured and uncontrollable?" But we should also ask ourselves who should make the decision as to whether that person is diagnosable as still mentally ill and still violently dangerous; if he is, and he cannot be treated within a reasonable time under a corrections system, shouldn't he be transferred to a health system? I would like to point this out, because a question was asked of me during the noon recess, with reference to what is our actual practice in California. Although the laws are on the books, very few property offenders, or at least first offenders, in fact, go to prison.

The problem is that we do not have appropriate alternatives for prison. So long as we concentrate our enthusiasm, or emotion, on the esoteric philosophical discussion of whether we should have a determinate or indeterminate sentence, and ignore the fact that the counties do not have adequate probation services or adequate alternative treatment facilities or community resources, you are going to have judges who, faced with a marginal case, choose prison because of the absence of an alternative in the county which the judge feels will adequately protect society; and that's got to be wrong. A judge is forced into the position of sending someone to prison because the lawmakers have not come up with the money and the program to treat that person where he should be treated.

And now I'd like to close by addressing a couple of points that were raised this morning by a gentleman in the audience, which I think were points that are important and that must not be glossed over in any philosophical discussion about what's the rational basis for punishment, and should we have an indeterminate sentence or a determinate sentence.

The fact is that everybody who is in prison is entitled to be treated with dignity and entitled to due process. We are going to have prisons; I cannot believe that in our lifetime we will not have prisons in some form, whatever we call them. We have a duty now, this year, to work to make them humane. I think most of you would agree if you have been to the prisons at San Quentin, Folsom, Soledad, and Vacaville, that they are disgraceful places and no human should be housed there. Now, let me point out a problem. Governor Reagan proposed their destruction. The Department of Corrections' Director Enomoto has recently prepared a paper which he delivered to Governor Jerry Brown which also has recommended the construction of small prisons near the community. We have two governors in a row recommending the building of smaller prisons near urban areas and we have had no action with reference to those proposals now for many years. The decision as to whether these institutions should be constructed is now purely political. One of the reasons that I am pleased with what I've heard today is that, hopefully, all of us can help mobilize public opinion to get legislators and the governor to pass the necessary laws to create humane prisons and to put them in areas where they should be put rather than in an isolated community. But until we can get 51 percent of the public to share our views of the necessity for humane prisons, governors and legislators will not act.

As long as we have prisons, we have the obligation to preserve the dignity of the human beings that we place there. There is absolutely no justification for dehumanizing programs or conditions which now exist in California prisons. Denying privacy to an individual, whether he is a convict or not, denying him physical contact with those persons with whom he shares a relationship, and providing inadequate medical care, inadequate opportunities for self-improvement, whether it's educational or whether it's in job skills, are totally inexcusable when we have imprisoned those individuals.

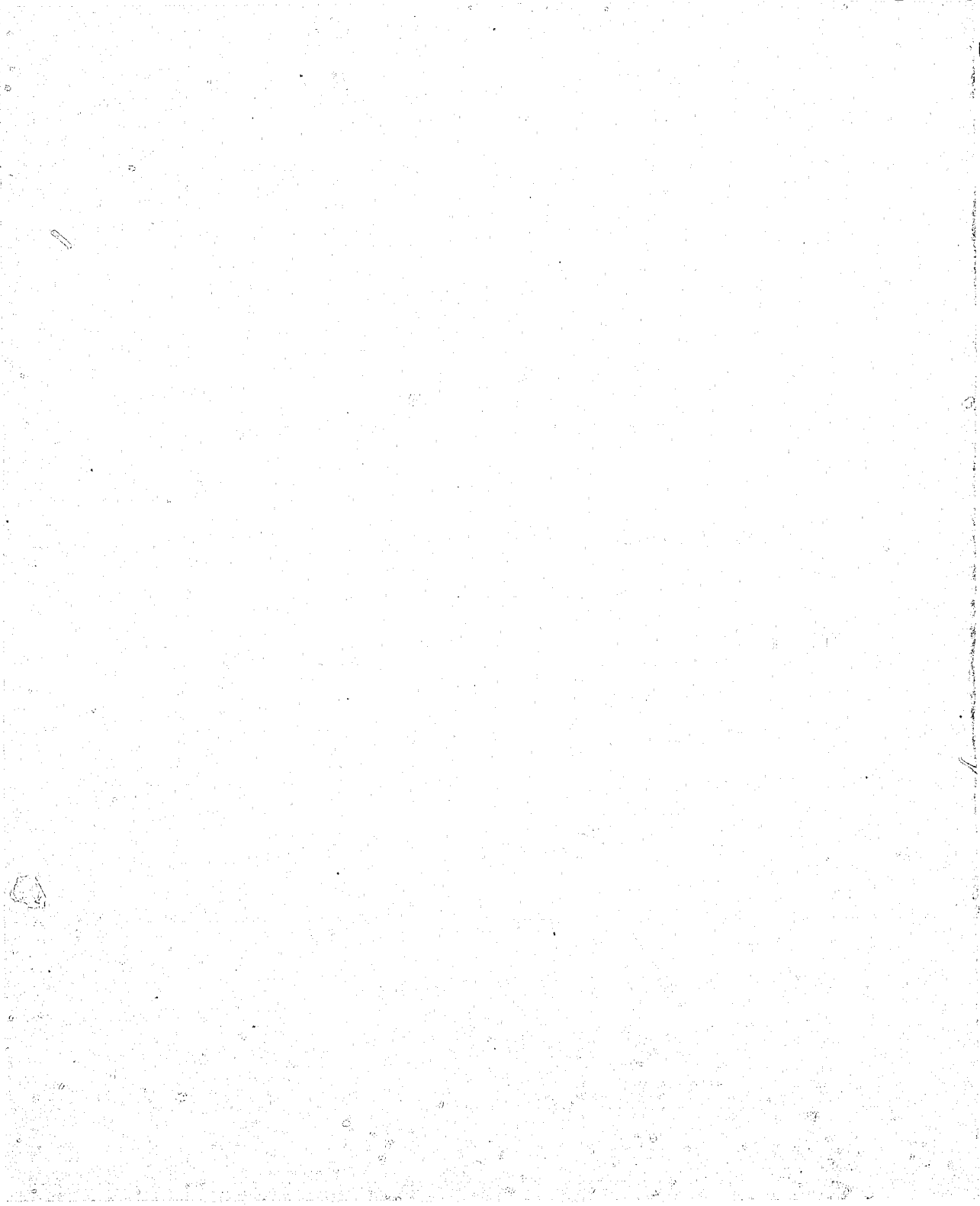
Someone in the audience brought up the protest that some convicts raised recently--denying prisoners access to law books. Now that may



not seem terribly important to you, but it's terribly important to someone in prison who is concerned about his rights, his conviction, or about the condition of his confinement. We should provide prisoners with basic due process rights, and yet don't. Prisoners should have access, at a minimum, to an adequate law library if they wish to represent themselves. Prisoners should also have access to a lawyer while in prison. The group that I am with has recommended that each prison have house counsel at the prison, at all times, where the prisoners would have access to that individual for any legal problems. I see no valid excuse why we don't have that at this time. Those of you who know something about my profession know the field is very crowded and I'm sure they could use the work.

As a final note, let me speak of disciplinary and parole revocation, for time fixing hearings. At the present time, they do not follow fundamental due process as we know it in the court system. The prisoner does not have the right to counsel, the right to a record of the proceedings, and the right to an independent hearing officer. If you're faced with a disciplinary proceeding, the judge, the jury, and the appellate court are all part of the Department of Corrections.

Finally, I worry that these basic human concerns may be overlooked in the more exciting and philosophical debates concerning the theoretical justification for imprisonment, and whether it should be determinate or indeterminate, or short fixed or long fixed.



SESSION IV

Community Within Community: Delancey Street Foundation  
and the Model Status Offender Program

Author Hampden-Turner presents a vivid psychologically-oriented analysis of severe character disorders who haven't obeyed any law or order in the past twenty years, and who eat social workers for breakfast, having their facade bored through by the acetylene torch-like confrontation of peers in a communal setting until they cry for nine hours in rage and self-disgust and mobilize themselves for community reform. Hampden-Turner conceives social problems as resistive to solution because of one-dimensional thinking habits which polarize argument in terms of false dichotomies. As a case example, he points to Jessica Mitford, who "writes totally one-dimensional books where everybody who's conservative, or a prison guard or a judge is some kind of villain and all prisoners are beautiful and pure and intelligent..." (In fact, his quarry dismisses views that prisoners in general are either superior or inferior, and concurs with former prisoner Eugene Debs' view that "upon the average they are like ourselves" and former prisoner Bertrand Russell's view of being "cooped up with a number of average human beings." (pgs 7-8, Kind and Usual Punishment). Perhaps such centrist positions are simply another illustration of one-dimensionality, since they not only fail to embrace opposites (as Hampden-Turner urges), but won't even lean toward one side of the dichotomy.)

Correctional administrator Parslow discusses a project which has demonstrated marked success in curtailing the rates of adjudication, incarceration, and recidivism of juvenile offenders while stimulating a sense of excitement and involvement within the local community. Distrustful of both the validity of hindsight theory and the utility of routinized technique, Parslow claims that "nothing--no thing--works--for very long, anyway," and that effectiveness lies beyond theory and structure in energy and commitment--"in the minds and stomachs of individuals willing to risk themselves to change what is," producing a state of affairs where everything and anything seems to work.

Charles Hampden-Turner, D.B.A.

Author,

Radical Man and Sane Asylum

My position on criminal justice is somewhat abstract--that of a psychologist firstly. I will try and come down to earth at intervals. And, if I don't come down to earth, at exactly the place you want me to, then I hope your questions can direct me there.

I start with the idea that we are a puritan culture. That is the origin of the American culture. A lot of people think that puritan means punitive, self-controlled, hard working, and discrete rather than continuous, obsessive rather than hysterical, etc. In my view, puritan means that you want to take a particular proposition and purify it and extend it one-dimensionally. It doesn't make much difference whether it is in the direction of traditional puritanism, or if it is in the direction of the counter-culture, human potential movement, or various other movements which advance themselves under the guise of liberation. The desire to take an idea and run it into the ground is an essential part of the American character. Americans tend to think lineally. (I'm an Englishman. I don't except myself from these rules. Why don't I say Anglo-Saxon when I remember?) Anglo-Saxon empiricism tends to take certain ideas and extend them unilaterally. This is both the problem of the culture, and the problem of individual people who, for better or for worse, are called character disorders--of which many are found in Delancey Street, mostly ex-addicts and ex-convicts.

The reason why the residents of Delancey Street are especially bad cases at the time they first arrive is that any tendency in society becomes unusually strong and salient among its losers. The contradictions in society become wider and wider, the hiatus becomes more obvious, pathology becomes more manifest as it passes down the social scale. It is, of course, also present at the top, but people in power have ways of disguising the one-dimensionality.

Now the problem of one-dimensionality is that it creeps into our arguments, and we are forever arguing about false dichotomies. The solution to all these dichotomies is to do both at the same time--to believe two opposed ideas. It was F. Scott Fitzgerald who said, "The test of a first-rate intelligence is to hold two opposed ideas in your mind at the same time and still retain the capacity to function." You must, for example, be able to see that things are hopeless and yet be determined to make them otherwise.

Let's take the first major dichotomy--that crime or delinquency is society's fault versus it is the fault of the individual. One, of course, is a conservative position that there are individual sinners--crime as private sin versus crime as socially imposed injustice upon the individual and crime as caused by social dislocation. I don't believe there are many of you here who believe that crime is a private sin. I would imagine that most of us here today are on the left wing on that particular subject. So let me say that, unfortunately, it is not as easy as that. When somebody comes into Delancey Street, if you tell them "Well, it's not your fault, it's your parents fault, or it's

society's fault, or it's the prison system's fault, because the prison system is crazy," that isn't the best way to get them to turn and fight for their own sanity; it isn't the best way to turn them around. Most of the people who come into Delancey are addicts, and addicts tend to be dependent, so there is almost nothing that they like to be told more than that their behavior depends upon society--that if their parents hadn't treated them so badly, if they hadn't been treated so badly by their husband or on the street, or by their friends, or by the parole officer, or by the psychologist, or by the social worker then everything would be wonderful.

Unfortunately it is necessary to convince them that they can help the situation, and that they must take some degree of blame upon themselves. And I'm afraid this is true of all situations. It doesn't much matter really, if the bulldozer has pulled you into a ditch; the bulldozer is obviously much more powerful than you. A sociologist observing the situation would say, "He is in the ditch because the bulldozer pushed him in." There is a therapeutic truth and that is that you are only going to get the hell out of the ditch if you begin to feel that you are at least as clever, or as sharp, or as wily as the bulldozer is--that you can run around it, that you can jump over it, that you can climb under it, that you can do something to it, that you can pour sugar into its gas tank, or that you can do something. So it is necessary for people who want to change to start blaming themselves. It is necessary because you cannot congratulate yourself for the success that you achieve within Delancey Street, if you are not also prepared to blame yourself. So to blame yourself, to take responsibility upon yourself, becomes a self-fulfilling prophecy.

Now Delancey would be an extremely conservative and reactionary regime if it did nothing but preach individualism, and "it's-your-fault," and "you-shouldn't-have-let-it-happen-to-you." At the same time you have to hold the opposed idea in your mind; you have to say, "Well, when I've finished and cleaned up and gone back to my ghetto where I came from, there is my grandmother--she was eating dog food when I left, and she'll be eating dog food when I arrive. My children are in inferior schools. Maybe, rather than live in that environment, I would rather be loaded again." So, if you clean somebody up, if you get them off drugs, help to instill pride in them and you send them back to where they were, they'll be the only sane person on the block and that will drive them insane.

So it isn't enough to be individualistic or to blame yourself. You must at the same time say, "I will use my capacity to steer myself to accuse society and to help to change the system." This is why Delancey does not consist entirely of midnight sessions, where people scream and sob and get rid of the hatred and the guilt in them. It also consists of politics and of fighting to restore some justice in the world.

But people are not ready to fight against injustice the moment they come out of prison, or, at least, most of them are not. You see, I happen to believe that prison is a very evil system, but the final triumph of the system is that it makes its inmates very poor critics. So you come out of prison--a crazy system--and you're pretty crazy

yourself. And so if you say, "Well, he's had slavery, now he needs freedom," that is a false dichotomy because having been enslaved for years, the first thing he'd probably do is drive a harpoon in his arm or some equivalent, to drive himself into insensibility. So you do not cure one extreme--slavery, imprisonment--by its opposite--freedom. In fact, that's how people stay in prison. They come out of prison utterly bored, totally demented by the sheer dragging boredom; they've had no excitement, and the first thing they do is to go back to shoplifting, because that gives them a tremendous thrill and excitement. They don't shoplift like a smart thief would; they take an entire tray of fountain pens on their head, they walk straight to the doorman, they say, "Excuse me--carpenter," and they walk right out of the shop with 50 Parker 51's above their heads. At some level, they want to get caught. Or shall we say that they have teetered from extreme boredom and ultra-security to extreme excitement and freedom, as they might mistakenly call it, or lack of security. And after six or seven months of walking out of shops with trays of goods on their heads, their nerves are so shredded, (they've been tackled by the doorman twice and run away down the street), that at some level they want the excitement to stop, at some level they want to get caught and go back into jail again. And so character disorders, what Delancey calls mickey mouse people have to believe that they are personally responsible and, at the same time, that society has got to change. (I'm not talking about prisoners of conscience. I'm not talking about people who've been locked up for protesting the Viet Nam War. I'm not talking about Black Panthers, who tried to do something for their people and got framed by the police. I'm talking about people who use themselves against themselves, who so far from needing the very opposite of prison when they get out need a synthesis of the two opposites.) And unless you steer between Scylla and Charybdis, between the rock and the whirlpool that the ancient Greeks believed was at the gate of the Aegean Sea, unless you hold these two opposite ideas in your mind at the same time, you will in no way succeed in rehabilitating people.

It is similar to the idea that prisoners need democracy versus the idea that prisoners need authority. You can get yourself hung up on these. The truth of this proposition depends on where you're looking. Do prisoners need more representation in prisons? Yes, of course they do. It is the one feedback loop, probably, that stops guards from behaving in a more arbitrary way than they do at the moment. So, of course, I am in favor of prison democracy, or more prison democracy, which is not to believe that I am in favor of ultra democracy. On the other hand, if you gave new comers to Delancey Street a choice of what they would do, most of them would choose to be insensible rather than sensible, most of them would choose to be drunk rather than sober, most of them would choose to be violent rather than non-violent. This is how they've conducted their lives for a considerable period of time. You have to say to them, "You have suffered from a crazy authority system. Part of the cure for having been in a crazy authority system is to be in a benign authority system, and you know there is such a thing." Most of us tend to think of freedom versus authoritarianism, but authority is very important. If we didn't have authority, we would constantly have to re-invent the wheel. If we couldn't believe somebody who said, "Look, don't do that, it's stupid, it'll get you into trouble," then our social life would have to start from scratch in every generation. If we can't believe our parents, our teachers--"these

experiments have been tried and they have failed, they lead to misery and disaster"---then we cannot build on the superstructure which our ancestors built. Not to believe in authority, not to believe in any authority, to take democracy and run it into the ground, is as puritan as to take authority and run that into the ground. Again, we have to pick our way between these two.

Delancey Street people during their first three or four months are told to obey outside structures; they are told to go through the motions, even if they don't agree with them. They are told that when they have gone through the motions, after that, we will listen to their complaints. You cannot be a good critic of law and order if you haven't a clue of what law and order is about; if you haven't obeyed any law or order in the past 20 years, except possibly stopping at a stop light or something like that, you are not a very good critic of the shortcomings of that law and order. So when people first arrive at Delancey Street they are told to obey. We do not take the liberal view that every human being has an internal moral compass that points to the good. Or that values are inside you and that human expression is, in itself, a beautiful and wonderful thing. It is true for some of us, brought up in upper middle-class families, or brought up in poor families, who've had very fortunate backgrounds and life experiences, who have been well loved, who have intellectual curiosity and creative jobs. Such people can usually steer themselves quite well from an internal moral compass. When upper middle-class liberals wish their own condition on poor people, the results are often disastrous. In order to discover a good system of law and order, you first have to obey it. After you've obeyed it for a few months, then and only then, are you able to internalize it. I remember as a child my grandmother was always trying to get me to say "Thank you" when a visitor gave me something. She was a Victorian lady and in a great state of anxiety which used to make me very angry. A visitor gave me something, and I was about ready to say thank you, and there she would be tearing up her hankerchief and saying, "Now, say thank you." So I used to refuse to say thank you because I could feel this anxiety mounting and I knew I was expected to. So once I thought: I'll do it. I'll go through the motions. Maybe I can say it before she starts making a fuss. So I said, "Thank you very much," and I just caught the visitor's eye and I could see that she was very pleased because she'd taken a lot of trouble finding this. From that moment on, I think I was six or seven, I used to say thank you because it gave people a thrill, especially someone who had tried to be kind to me. From that moment in my life, in that particular way, morality moved from outside--from obeying external instructions, from the conservative view of morality--to the liberal and radical view of morality, that is, to say thank you because it should be, if you're a decent human being, a thrill to help other people.

But when you have severe character disorders, when you have people who have been severely deprived, the internal moral compass has been smashed about a great deal and it doesn't work. And in the first instance you have to get them to obey the external rules and regulations and then you ask them, "Well, now you've done as you were told, do you not see some pleasure in this person's face? Do you see some advantage? Is this not a better way to live?" So, once again, depending on the person's relative maturity, depending on their moral sense, you have

to be both conservative and liberal about moral values at the same time. You have to say, "Yes, potentially morality is internal, potentially it is in the expression of human needs, but it is also in the obedience and following of external yardsticks."

We have the same problem with the discussion which has taken up a lot of time here, which is the determinate sentence versus the indeterminate sentence. This, of course, is a mere derivative of the eternal quarrel between rigidity, or, if you like, if you want to give a good word, constancy, and flexibility. When the indeterminate sentence was first decided upon it was seen as an enormous liberal reform. Instead of being utterly rigid and giving somebody a determinate sentence by a judge who saw that person for only a few moments, perhaps a person who wished to rehabilitate the criminal, who knew him intimately, who had had psychiatric advice should appraise this person day-by-day, moment-by-moment, and when they spotted improvement or growth in this person, they would act with great mental health ability and open the doors and let the bird fly away. This is what reformers thought when they were introducing the idea of the indeterminate sentence. They have since discovered that in a prison atmosphere, there is a lot of pettiness, there is a lot of bitterness, there is a constant war between inmates and staff. Staff find that they can punish. That they can punish an inmate appallingly by telling him one fine day that he has to spend another year or another six months or another two years or another three years. And, if you really want to punish somebody, when they think they have a few more days to run, you just tell them that they really have a few more years to run, and that is the ultimate sanction. As it is difficult to live in prison, under present conditions, without coming to hate prisoners, it is difficult for a prisoner to live there without coming to hate guards. When Zimbardo, the psychologist, did the experiment (using, I think, Stanford students), playing prisoners and guards, he found that middle class kids would hate each other even more, would break down earlier, scream more, and impose more dreadful punishments on each other.

Then, of course, people said, "MY God, look what the indeterminate sentence has done! It has led to arbitrary decisions. It has led to systematic rewards of the Uncle Toms in the prison, of the ass lickens, of the people who do what the warden tells them to do, of the people who say that the prison's not such a bad place. The rebels, the people who helped their black brothers and sisters, the people who stand up for prisoners' rights, they are systematically discriminated against, their sentence is indeed indeterminate--it goes on forever." Now, of course, we want to go back to rigidity. It's tragic that people think the answer is one extreme, when the real problem is not determinacy versus indeterminacy or rigidity versus flexibility--any human being has to move backwards and forwards on these continua. The real answer is not to have a situation where advantage is taken of discretion, and at the same time not to have a situation where advantage is taken of rigidity. All right, you're better, but the judge has said you had to be here five years and you're going to have to stay here." Both rigidity and flexibility can be used to attack people, and you don't get very far by moving the law from one end of the continuum to the other, forward and backward, every twenty or thirty years.



It is also both true that you have to be tough with prisoners and punish them, and that you have to be compassionate with them and rehabilitate them. Again, these two ideas have to be held in your mind at the same time. Only a place like Delancey, only a place with a community where there are skeins that hold together these opposites, only such a place really succeeds in optimizing these opposed values. I assume for the present audience, I do not have to make any case for tenderness or gentleness or compassion or rehabilitation. I think I probably do have to make a case for toughness and punishment.

One reason you have to be tough is because a lot of people coming out of prison have an enormous backlog of self-hatred. If you say, "Well, look, you've had a hard life. The system has done this to you. I am not going to blame you." They simply tune you out; that isn't where they are. Where they are is that they hate and loathe and detest themselves. Only anger, rage, or abuse will get through to this self-hatred, so communication hasn't even started until you somehow make contact with that which is inside them. The other reason punishment is necessary is that, if you realize that what you have done was not, perhaps, necessary, that it could be helped, that now that you see differently, it was not necessary to beat the old woman into unconsciousness, it was not necessary for you to peddle your sister's ass on the corner of Eighth and Geary, it was not necessary for you to pump more heroin into the arms of school children.

There are people at Delancey who have crippled and maimed more people than the biggest white bigot in this town. Now, of course, that doesn't mean it's not his fault; he put them in the ghetto, he kept the ghetto, he maintained it. But that doesn't stop the fact that if you just go up to a poor black person who has crippled kids by selling them heroin and say, "Look, I want to explain to you about economics and racism and things like that," it doesn't get through to him. What he hates himself for, what he despises himself for are all the kids he crippled that he turned on, who are now addicts who've jumped off Golden Gate Bridge or have done themselves in, in one way or another. And although he may pretend that he couldn't care less because he has this "Superfly" or "Blacula" facade that he's been taught by Blaxploitation films and because he was taught in prison that if you show any kind of sensitivity or compassion in prison, you get fucked in the ass (and that's not a metaphor, that's literal). So you come out of prison with this facade that you do not show tenderness, that you do not show fear, that you do not show any virtues usually and falsely described as feminine, that you're a superman; and this facade works--to some extent it keeps you from being attacked. If somebody makes a homosexual advance at you, it's not enough to threaten them, you have to threaten their wife, children, everybody they know--"I'll cut their throats when I get out, if you touch me." Okay, that works, in the prison environment because it's a crazy system.

When these people come out, you can't reach them with tenderness. They have social workers for breakfast. They laugh at them. So the only way you can get through to them in the first place is to bore through the facade with a kind of acetylene torch. Now, who does this? Nixon shouldn't do it. Goldwater shouldn't do it. For that matter, I shouldn't do it. For that matter, I don't do it. I don't think

any upper middle-class people should do it at all. I don't think psychiatrists should do it. I don't think somebody who has had all the advantages in life should call a poor person or a Black person or a Puerto Rican person a punk, even if it gets through to them. The one person who can tell them that is another Puerto Rican person, another Black person. A woman who's drowned her baby in the bathtub can tell another woman who's drowned her baby in the bathtub. She can say, "That was a terrible, an awful thing to do. You will never get over it and you're going to have to live with it." And she will not be "holier than thou," she will not be talking down to her because she did the same thing, and the woman knows that. She will not even be objecting to that person as a woman. She will not be objecting to that person as an addict, because she is an addict herself. She will not be objecting to that person's sex, she is not being sexist, because she is a woman herself. Just like Jews can tell ethnic jokes, and Black people can call each other nigger, when they're by themselves, because it's a joke, and in a family, in a community, you can tell these kinds of ethnic in-jokes. Women can tell the truth to women, because other people are not listening. And this has to go on at the same time as you turn to society and say, "This is a sexist society. This is a racist society." All these are true. It is only in a community that you can say, "I hate your behavior, but I accept you as a person." Now if I came up to you on the street and said, "You're a punk, you've done this lousy thing," and I don't know that person, I don't live with that person, I haven't shared my money with that person, I don't work with that person, I don't weep with that person, I don't worship with that person; then they will think, "Well, he doesn't like me because I'm Black, he doesn't like me because I'm a woman, he doesn't like me because he's a bigot, he doesn't like me because he's middle-class and I'm poor."; and the person would be perfectly justified in thinking that. But if I work all day with a moving company busting my hump to send you to school, sit up with you all night when you howl, then I can say to you, "Look, this is a terrible thing you did and I reject the sin, but I do not reject the sinner. I reject the act, but I do not reject the person." I simultaneously show compassion for the person while showing rage, anger, and disgust for the particular thing he did. This is what takes place within families, if they're good families. It is what can take place within an extended kinship family. It is what takes place within Delancey. It is the only thing that will clean people up. It is the only thing that will rehabilitate them.

And in our society where we play games between liberals and conservatives with the poor as footballs, which we kick in between--"I am tough. I am tender. I blame society. I blame the individual"--these are games.

It is the same thing with Delancey's doctrine of self-help. Now this can very easily be abused. Delancey runs seven businesses. They help themselves. Ninety-five percent of their funds are internally generated. They do not send for a grant to Washington, and then wait, wondering whether a Washington bureaucrat likes them or not, because when you do that, you lose your initiative, you lose your impetus, you lose your soul. Anyway, your grant succeeds or fails for some reason totally different from whether you're any good or not.

It fails on some research finding, or some methodology, or something crazy like that. I worked with poor people's corporations funded by OEO, and they just died waiting to hear the news, first one month, then two months, then three months, then four months, first one person had to sign off, then another person, then another.

All right, they help themselves, but notice how this can be abused. Nixon would love this. "Ah," he'd say, "they help themselves. That means I don't have to help them. That means that Black people can pull themselves up by their own bootstraps. That there's nothing wrong with Chicanos except their idleness." Self-help has to be defined in such a manner that it draws not less help from society, but more help. Notice how these dichotomies work. Self-help is not a reactionary philosophy, if, and only if, it draws more help. It's hard to go through San Francisco without being sold a raffle ticket. Those of you who've gone through are almost bound to have been bounced upon by a very aggressive raffle ticket seller from Delancey. So don't believe that because they help themselves, they don't think you shouldn't help them.

Notice that these opposites can also be synergized. What they say to us is, "Look, we're helping ourselves, so we've already done half the job. Will you do the other half? Will you respond? We've done something--we've started the ball rolling. Will you do the rest?" And this applies to all these other dichotomies that I've been talking about. Toughness within the context of tenderness. Individual takes responsibility, within the context of a social program, changes the lousy society from which these people come. Yes, they believe in equality. They want to make Delancey Street people more equal than they've been. They want to make prisoners more equal with guards. They want to give poor people more money and make poor people more equal. Yet that doesn't mean that there is total equality within the Foundation. It doesn't mean that within Delancey, a person who comes in through the door gets to make all the decisions. That is crazy. Notice that an effective rehabilitation system constantly moves between these opposites--hierarchy and equality, blaming the individual and blaming society, democracy versus authority, needs generated internally versus following external authority, determinacy versus indeterminacy or, if you like, rigidity versus flexibility, punishment and rehabilitation.

Real rehabilitation is punishing. My God, at three o'clock in the morning, the kid who shot up a rival Los Angeles gang and killed a four year old boy--if you don't think that person shouldn't be ashamed, I think he should be ashamed. I don't care where he came from. And he is ashamed. You have to blaze at him and argue at him. They had to get a photograph of the kid, of the four year old boy whom he killed, and prop it up in front of him; had to get someone from the Los Angeles community to abuse this man on behalf of his community. At two o'clock in the morning, his tears begin trickling through his fingers, he has his hands over his face, and he doesn't stop crying for nine hours--that's as much hatred and horror and rage as he has locked up inside himself. And until that horror and rage, and self-disgust is dissipated, he couldn't even go back to his community and start working there. Now he goes back to his community

and tries to help the people, tries to clean it up, tries to make sure that nobody is led to the condition he was led to. But first he had to get rid of the horror and first he had to get rid of the guilt. The punishment was not locking him away, the punishment was not flagellate him, the punishment was nothing extra--punishment should never be split from rehabilitation. Punishment has to be an integral part of growing. When we realize that we have lost opportunities, when we realize that things could have been otherwise, when we realize that we are slaves, but we don't have to be slaves, God knows that's punishment enough. So I'm not advocating punishment. I am saying that growth, when you've hit bottom, is not without pain, and that it is sentimental to pretend that it can be without pain. If somebody has had a lousy life, you cannot sentence them to tender, loving care--it is too late. They've been in hell, they have to spend a little longer in hell in order to get out of hell. That's life.

Evil is not in these polarities. Nor is growth in these polarities. Evil is between them, and growth is between them. I'm sorry if that sounds abstract, but it's by the far the most important thing I have to say, so let's see if I can help you to grasp it--it's rather complicated. What causes an evil dynamic is when the opposites, toughness-tenderness, equality-authority, spring out as if on a centrifuge. If you look at the lives of Delancey Street people, if you look at the typical male resident who is tough and armored and macho and sexist and doesn't show his feelings, what you find out about his past life is that he had a social worker or a girl firend or a mama or a sister who cried a lot and whined, and pleaded a lot, and wept a lot, and forgave him a lot, and martyred herself for him. What happened is that these two opposites--his toughness and her tenderness-grew further and further apart, as if they were on a centrifuge. His exploitation of her love and her love increased, and both of them are playing a game. She is saying, "What else can a mother do? If your boy's in trouble, what can you do but love him?" But the more she loves him, the more he fucks up because he is drawing attention to himself and he has discovered he doesn't have to show love, he doesn't have to show tenderness, he doesn't have to show concern. Why not? Because somebody else is doing it for him. Because somebody else is weeping and crying all over him. The women at Delancey, who mostly are the opposite--many of them have been gang raped, not once or twice, but three times--they are prostitutes, but prostitutes with hearts of gold. "What can you do but love a man?" they say. "Sure, I have taken many times. But you have to try and help people, you have to try and love people." And people say to them, "Look, dear, you are a silly doormat. The more you let men use you, the more they'll use you."

And the street and many parts of the ghetto and the prisons are these centrifuges with values growing farther apart. The tragedy is that when liberals rush in, we are part of that centrifuge. When Jessica Mitford comes in and writes totally one-dimensional books, where everybody who's conservative, or a prison guard, or a prison governor, or a judge, or social scientist experimenter is some variety of villainous individual; and all prisoners are beautiful and pure and intelligent and write letters to her, which costs them a lot because they can barely afford the 12 cents to put on the letter, and

things like that. We become part of the problem when we play that game. You see, she doesn't work in the prison from day-to-day. She's out there somewhere in Tiburon. I've got nothing against the lady personally, except that when we rush in like white knights in armor and just hit one end of the dichotomy and say that what these people need is love and understanding, we then become part of the problem. I do honestly think that Nixon looks out of the White House window at the peace marchers, and the people in sloppy clothes, and the people saying, "All we are saying is give peace a chance," and he becomes worse when he sees us. He says to himself, "I thank thee, Lord, that I am not as other men are--long hair, dirty, sloppy, impractical, professors, hippies, drop-outs, students, women, intellectuals, housewives. I thank thee, Lord, that I am uptight and calculating, because somebody has to calculate, because look at the great mass of innocence out there." So the more innocence we get, the more tough and calculating and deceitful he gets. Sometimes I think the whole society is on this centrifuge, and we are merely playing games together, and that we have stretched poor people out on this crucifix.

Now what does Delancey do about this? Delancey is a laminated organization. This is the best way I have of thinking about it. You know when you want to make wood strong, you lay it in thin slices one on top of the other. You do it with butcher board, I think it's called, and the grain of the wood faces in opposite directions. It's a series of criss-cross laminations and it is stronger if it faces in opposite directions. I think this is what a rehabilitative community is. If you're looking at the social structure of Delancey when you walk in, it is what we usually think of as left wing. It is a communal society, they share all their money, they look after people, they feed you, they bathe you, they cap your teeth, they fix you up, they do everything for you. It's kind of a cradle to the grave paternalism, if you like, at that level. "We are here to look after you. We are here to save you. We are here to heal you." All this is tacit. All this is unspoken. This is what the structure says. And what do the words of Delancey say? The words say exactly the opposite. "Stop whining. Stop feeling sorry for yourself. Stop depending on us. For God's sake, think of somebody else but yourself for awhile. You think you're sorry because you drowned this kid--Cindy over there drowned two. Now what can you say to her?"

Drug addicts already feel too much compassion for themselves, already feel too sorry for themselves. If you say you should be gentle and compassionate, a drug addict interprets that as, "You should be gentle with me. You should be compassionate with me. You should not make demands of me." He doesn't usually think, "You should show this with other people." Delancey has to make sure that people do not ask for things in excess, but they give cooperation to other people.

So finally, only a community can create this nesting, this reconciliation of opposites. Only a community can bring together these false dichotomies with which we've been playing ball games with the poor and the wretched--well funded ball games, since almost

time began. We wish to overcome schismogenesis, which literally means a growing split in the structure of ideas. We have to build synthetic communities where you have to have synthetic types of morals that overcome easily conceptualized left and right positions that make us feel so righteous, that sound good as positions taken on talk shows, but do not work when they are finally applied to the system.

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About ten days ago I was asked to respond to Dr. Hampden-Turner, and it meant quite a bit to me. I read a book of his called Radical Man, when we were going through some organizational changes at the Juvenile Court in Tucson where I was working, four years ago. I read Delancey Street: Sane Asylum, and tested out what I read in Sane Asylum and divided this paper into three parts. I am probably going to be responding more to what Joel Fort said because of the organizational aspects of this paper that I wrote, but I will respond somewhat to what Hampden-Turner said also, I hope.

I believe there is another in a long list of mistakes to be made by taking the rationale offered in Sane Asylum as a methodology. This is what I am afraid of when I see and hear things like Synanon and Delancey St. taken by social scientists and made into methodologies. I think that Sane Asylum does respond to the question--what do we do--but I think it's more in the style and the arrangement of perceptions and in the quality of Hampden-Turner's analysis that tells us where to look, rather than any methods Delancey St. uses. The summary chapter on which I've been told Hampden-Turner's presentation was made, which is called "Synthesis and Celebration," contains a key line. It is Hampden-Turner's statement that the solution was never in the separate ingredients so much as among them. I am reminded of something that Alan Watts said when someone was asking him, "What is essence?" and he said, "It's what's inside." The person said, "Show me the essence of a grape." and cut one open, and Watts said, "You're still looking at the outside of the inside." We have problems with words and you're going to get people reading Delancey Street, I'm afraid, and saying, "Let's try this in Houston."

We have a project in Tucson called Vision Quest, which was started about three years ago, by three kind of semi-outlaws from Las Vegas. They were working with a lot of tough kids and using a system called "constant confrontation and unconditional nurturing," the kind of dichotomies mentioned by Hampden-Turner. The problem was that they had a lot of trouble transferring the method to staff, and when children start operating programs like Delancey Street, it turns into Lord of the Flies--it's a little different at that level.

My experience in the justice system tells me that answers lie without methodology and beyond systems and beyond direct description. The dialectic of social programming goes, and I read this in the Social Work Journal a while ago, that in our society we have crisis, response, expansion, stagnation, degeneration, which creates another crisis. At our court center in Arizona, what we are trying to do is to use a lot of mental judo all the time. One of my co-workers said to me last year that every time he gets comfortable with the methodology, I go off on another tangent and the old answers aren't any good any more. My response to that was not very helpful at the time, but the comment did make me begin to think about what does work. What does work, or what seems to work in the criminal justice system is that when staff itself is involved in some kind of a struggle, when they're

in the early stages of learning some kind of new therapeutic technique, more positive change begins taking place in their clients. The learning situations had arisen and continue to arise out of the felt needs of staff, itself, and are not imposed by the administration of the juvenile court center. When staff anxiety arises out of a feeling of inadequacy, they either request a certain kind of training or find a way to obtain it themselves, and while they're struggling to master that training, their perceived effectiveness goes up. (I don't have any data on this, I've just talked to a lot of the staff about it.) At any rate, the staff members in the justice system who are working with so-called clients seem to experience the same cycle as that described for social programs. They have crisis in themselves, they respond to that, they expand that to work with all of their clients, they begin to stagnate and degenerate, and have to begin looking around again. I've thought of designing some kind of a program that would entail constant training, so that they would be in the high part of their cycle more often, but I decided that would throw a variable into that process which would be destructive in the end. That is, they have to continue to reach out for the complexity, that their own needs systems must continue to be allowed that autonomy and ownership of their own goals, processes, and perceptions.

In the same vein, I doubt that Delancey Street is, in the jargon of social programming, transferrable. The descriptions of Delancey Street are of a kind of a high-risk, hang-loose, high-energy process-oriented atmosphere which comes out of the needs and experience of that creative minority (and there is a lot of leadership at Delancey), described in Hampden-Turner's earlier book, Radical Man. Most of the theory described in Sane Asylum is hindsight theory, as I see it. That is, people begin explaining, finding categories and reasons for what they have done, for what seems to have worked. Program effectiveness seems to lie beyond theory and structure and in the minds and stomachs of individuals willing to risk themselves in order to change what is. More than anything else this is reflected in the non-decisions of the guiding principles of Delancey Street. There's a really good description of a summit conference in Delancey Street, and the lack of decisions that are made there. The people who are running Delancey Street seem constantly to act on their best instincts and take leaps into unknown areas. I propose, then, that the act of discovery is the thing that discovers, and the act of solving provides solutions, and nothing--no thing--works--for very long, anyway.

The court system I work in is a successful corrections agency when measured by almost any objective standard. Programs seem to work well and our organizational structure meets the needs of most staff and clients. But the programs and case work techniques are not very different from any progressive justice system component and the staff is not unique to any large extent. I believe that the changes we've gone through during the past three years are a key. We have a judge who came to the court center three years ago after eight years on an adult bench. Our court center had been a model of organizational restraint--it was well run, there were no controversies, and while kids weren't brutalized, they were locked up at the request of their parents and committed to the state department of corrections at the rate of about 300 a year.



The judge wanted to change the system because of what his experience had been (he's kind of a hard working judge, he works about 14 hours a day); he probably sentenced more adults to prison than any three other judges on the adult bench in Tucson. He asked the long-term staff members what we could do to change what we were doing and and he didn't get any answers, so he turned to the newer staff for ideas. During the past three years, our court has been a center of controversy, change, and mystery within both the correctional and lay community. We went through all kinds of mental health constructs, community treatment models, various counseling methodologies, diversion programs, and so on. During this time, the judge was removed by the State Supreme Court for permissiveness, and then he was reinstated by community demand--reinstated after a month long investigation which showed that our recidivism rate had dropped 35 percent in that first year. The state reform school was closed after he threatened to blow it up. He went after the budget of the State Department of Corrections, with the rationale that since we weren't committing kids, our county shouldn't have to support that department. The State legislature came down on us because we were out of step with the rest of the State. The judge publically threatened to kick down the door of the Board of Supervisors if they refused to give us the support necessary to operate our community-based treatment program. A coalition of citizens groups formed to support what we were trying to do--i.e., trying to create an involvement among staff, kids, and community which did not exist before. We never described any concrete programs during this time. We talked about things like--let's keep the kids here where they belong, etc.--that's as specific as we ever got.

I referred earlier to a group of people known as Vision Quest. These people are kind of semi-outlaws, act kind of like John Wayne, come on conservative, and have adopted a quasi-Indian philosophy adapted from the Plains Indians. What impressed us about this particular group of people was their energy and commitment, and not what they said they were going to do, and not what their philosophy was. This group of people antagonized everyone, they sounded their own horn in every corner of the community, they over-extended themselves, they made errors, etc.--we thought we were going to lose them there for awhile. However, they took some of the heaviest kids from the court center and responded to them with this constant confrontation and unconditional nurturing--they never let any of the kids go. They fought the police, they fought the administration of the court center to keep the kids, no matter what the kids would do. They went through 60 hours at a time of what's known in Delancey Street as decimation.

Internally in the court center, we went through changes almost weekly--staff training and involvement was intense, decisions about hiring were left to staff, promotions, treatment methodologies were in a constant state of flux. Everything seems to work, but no one can figure out exactly why. We went from committing 300 kids a year to the department of corrections to about 12 in the last 3 years, and everyone of those 12 was committed by another judge and not our own juvenile court judge. Our recidivism rates are dropping 35 percent the first year, 24 percent the second year, and 12 percent last year. Our adjudication rates have dropped as dramatically as have our detention rates--we're no longer jailing very many kids. All of this with

no adverse impact on the community at all. While we know these rates of adjudication, detention, recidivism, etc., don't have very much to do with rehabilitative success, they have at least provided us with a justification for what we're doing, for the personal risks we've been taking--most of us have been threatened with firing four or five times.

In hindsight, I think that it's a kind of a sense of excitement and involvement within that community--that the reaching out into the community itself has fostered the kind of success that we've had. We're simply not that different in anything that we do. There's a mythology that's sprung up around our juvenile court center, we're still a minority in the State, and yet we have the reputation of being one of the most powerful political organizations in the State and that's a myth. In fact, there are only probably 25 or 30 people who are actively interested in doing anything. But that mythology is able to stand against the status quo in the rest of the State. We're still out of step with the rest of the State and the rest of the criminal justice community.

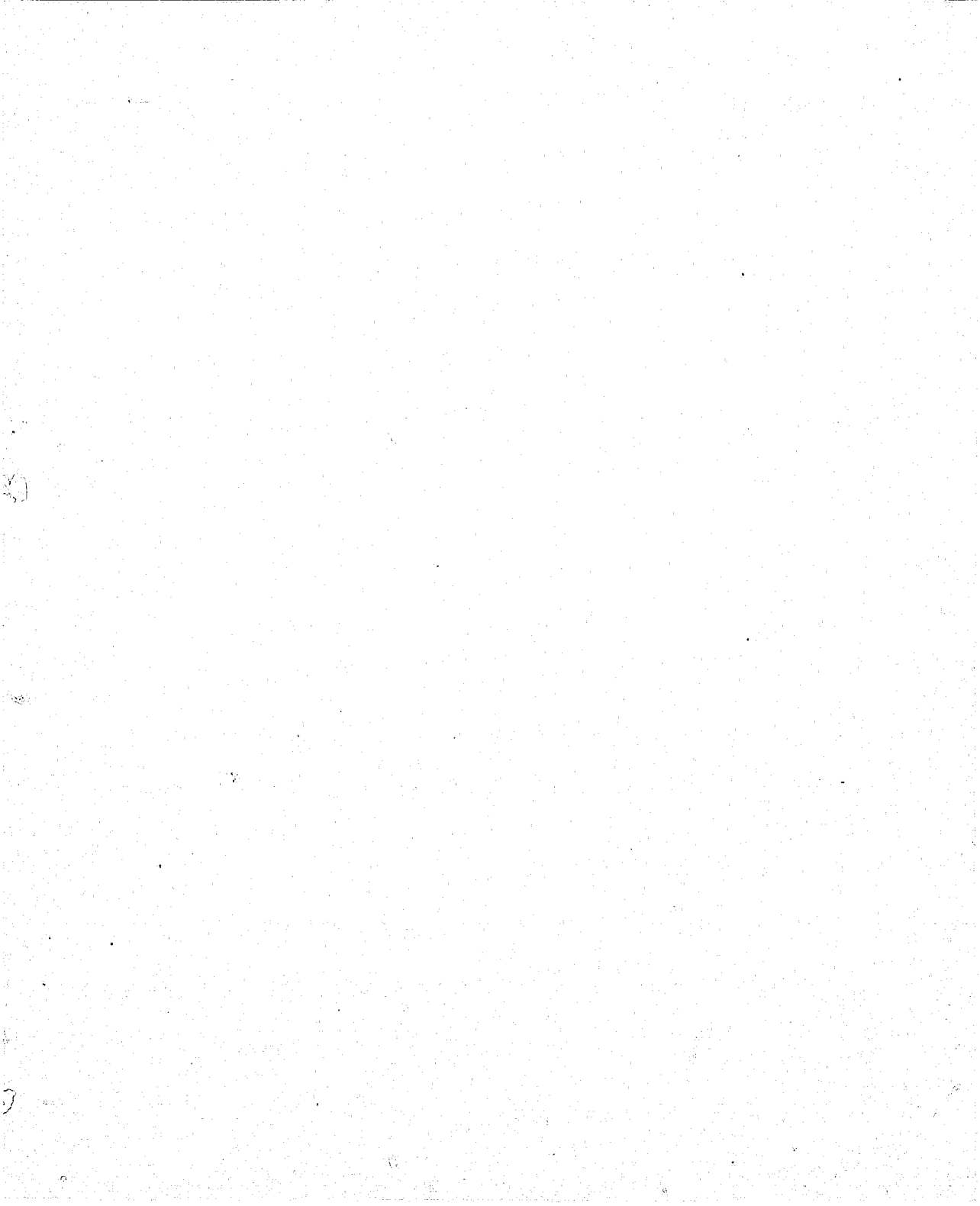
Our latest venture has an abolitionist texture. Earl Fisk of the Prisoner's Union came down about a year and a half ago and said, "Well, what you're doing is kind of nice, but you're still here, and there's still a lot of kids involved. Why don't you see what would happen if you tried to abolish yourselves." So that's what we're trying to do now. We're operating a de-institutionalization project under an LEAA grant. What we're trying to de-institutionalize more than kids, is ourselves. We've turned the court system kind of upside down. All the decisions on the projects that we're funding are made by field staff now, the judge and the director of court services have taken themselves out of the system. The community and family services staff, which is 13 probation officers, has just funded a million and a half dollars worth of programs in the last ninety days and made all the decisions. We've eliminated our programs at the court center, 29 people have lost their jobs, and another 33 are probably scheduled to go this year. In the first quarter of this year, we had a 35 percent drop in referral rates from the police. We used to try and fight off the revolving door thing--police would say to us, "There's no use taking kids there, there's a revolving door--the kids are back on the streets before we are." So we just asked them, "Why do you bring them, then?" and that seems to be working too.

The mythology that's sprung out of what we're doing is so extensive that in the last city council election (city council has nothing to do with the juvenile court, but one percent of the budget has to do with delinquency and youth programs), five of the candidates running had a status offender plank in their campaign. Internally, we've changed the jobs of 13 probation officers from direct service family therapy to community organization and development. We were told that that couldn't be done either, because they were pretty highly trained therapists. The way we did that was to give all the power to that staff and say, "Okay, it's your program, you do it and you figure out how to do it." At the administrative level all we did was to maintain control of enough of the process to satisfy LEAA requirements. All of us there have relinquished positional power. Currently, the

mental health community is mad at us because we didn't fund any mental health programs, the schools are up-tight at us because our workers are intervening directly in the schools and the judge is threatening now to subpoena all the records of the schools so that we can get an evaluation of truancy problems, and stuff like that.

The design within the court center, and again this is in response more to Joel Fort, has become, rather than people being "responsible for" the lower levels of hierarchy, "a responsive to" kind of set up. People were saying to us, "You can't threaten people's jobs." What's happened is that people whose jobs are most directly threatened, in that if they succeed they won't have jobs left at the end of the year, these people are ready to go anyway, because their increased competency is high enough that they're ready to leave, and most of them have already had job offers.

In summary, the kinds of high risk taking that Hampden-Turner talks about going on at Delancey Street, doesn't happen in corrections in general. Just as the people who are on the illegal side of the scale in criminal justice have to clean up their own act, I think that the criminal justice system has to clean up it's own act. I don't know how we can work with people we call criminals and delinquents when we don't have our own act cleaned up.



## SESSION V

### Beyond Treatment and Punishment: A Relationist Viewpoint and Response

Educator Tidwell grapples on a personal experiential plane with philosophical problems which lie on the boundary between epistemology and morals--right and wrong as truth and error and as good and evil--and he finds solutions in the particular which lie outside the boundaries of either relativism or absolutism. His relationist position is derived from Mannheim, who suggested: "In the case of situationally conditioned thought, objectivity comes to mean something quite new and different...what has been correctly but differently perceived by the two perspectives must be understood in the light of the differences in structure of these varied modes of perception. An effort must be made to find a formula for translating the results of one into those of the other and to discover a common denominator for these varying perspectivistic insights. Once such a common denominator has been found, it is possible to separate the necessary differences of the two views from the arbitrarily conceived and mistaken elements, which here too should be considered as errors." The implied prerequisite is a dialogue between equals--a condition missing when institutional structures and professional positions become custodians of truth or virtue.

Political scientist Poschman interprets Tidwell's position and the underlying theme of other conference presentations as anti-bureaucratic communitarianism. He subscribes to a realist posture that the level of intimacy and personal investment demanded cannot be sustained, and addresses himself to the virtues of distance and impersonalism, claiming that the failure of the bureaucratic reform alternative has been that impersonality and distance (i.e., explicit rules, rationality, fairness) were insufficiently established, rather than that they were sought. While he claims that current alternatives to the bureaucratization of existence are little more than pragmatic infantilism, he endorses personal engagement and "having a stake in" as being necessary conditions for any appreciation of realities and mobilization toward change.

Clyde Tidwell, Ed.D.  
Counselor and Teacher  
Tucson Accommodation Program

A conversation last week in a state prison dramatically indicates the timeliness and urgency of the dialogue of this conference.

A student asked a deputy-warden "Are conjugal visits included in the prison."

"The inmates in here have injured someone and society," responded the deputy-warden, "and they must pay their debt to society--they must be punished. For them to have sexual pleasure would offend me personally and would contradict the whole idea of punishment. A criminal should be punished. We deny them sexual visits--it's part of their punishment."

Observation indicates that the deputy-warden's view is probably far more pervasive than the view to be suggested in this paper. It not only is more pervasive but additionally holds the unique distinction of having extensive institutions supporting its existence in prisons, homes, schools, churches, and numerous other organizations.

No attempt will be made to explain how institutions of punishment and treatment were created--nor will an attempt be made to explain how they are sustained--only allusions will be made.

Humans through history have created a sensational number of antinomies and have lived as if each of the inventions were the only alternatives available. Selected persons, an unbelievably high number, enjoy punishment and treatment--even as a primary basis for relationships. In discussions with high school and college students, as well as other people, it has become obvious that it is nearly impossible for them to consider alternatives to punishment, or treatment. The only other discussion generating as much argument and intensity has been the suggestion of a guaranteed income.

The most startling experience has been with the professionals. The home claims rights of discipline, punishment, and control. Likewise the school tightly organizes the young into rigorous lives--rings bells for moments of freedom--intensively scheduled--and then assumes right of discipline, control, punishment, suspension, and expulsion. The church maintains the right to determine morality--define sin--issue edict and dogma--demand rights of exemption--and then when a person expresses dire need frequently puts him in anathema or excommunicates.

Our institutional organizations are formally arranged around one singular commitment, and that is alienation and anomie. Emile Durkheim held anomie to mean a situation which might be described as a sort of social emptiness, or void. Louis Wirth explained that in such conditions suicide, crime, and disorder are phenomena to be

expected because individual existence is no longer rooted in a stable and integrated social milieu, and much of life's activity loses its sense and meaning.

We professionals arrange for so many barriers. People are called patients, clients, counselors, and training institutions caution against personal contact. Sensing the fact that substantial numbers of human experiences are arranged in dependence--we insist that dependence is preserved with all of the social and personal inclemencies attached. Recently watching a person using T.A. I was impressed with the amount of new language required in the relationship prior to personal conversation--perhaps the personal conversation never really happens. In religion a whole mass of theological jargon is required before the convert is appropriately ensconced into the church.

Perhaps it is well to say something concerning different assumptions concerning humans. Reinhold Niebuhr seemed to express worry at the Gifford lectures. "If man takes his uniqueness for granted he is immediately involved in contradictions on the problem of his virtue. If he believes himself to be essentially good and attributes the evils of human history to social and historical causes he involves himself in begging the question; for all of these specific historical causes of evil are revealed, upon close analysis, to be no more than particular consequences and historical configurations of evil tendencies in man himself. They cannot be understood at all if a capacity for, and an inclination toward, evil is not presupposed. If, on the other hand, man comes to pessimistic conclusions about himself, his capacity for such judgments would seem to negate the content of the judgments. How can he be essentially evil if he knows himself to be so? What is the character of the ultimate subject, the quintessential "I", which passes such devastating judgments upon itself as object?" Niebuhr adds two additional broad categories assuming humans to be children of nature and simultaneously claiming humans as spirits capable to stand outside nature, himself, life, his reason, and the world.

Massive systems for human conduct have been invented from such esoteric assumptions. Another assumption--"What is man that thou are mindful of him?" asked the Psalmist, "for thou hast made him a little lower than the angels." That's a cute trick of giving a sort of ultimate importance and then casting humans into an inferior position in the same poetic sentence. It's not unlike the creative effort of an astronomer making highly refined tools to gaze more adequately at the vastness of space, time, laws, and then minimizing his importance by ludicrous comparison.

McMurrin uses religious philosophical categories in an attempt to explain whether people make positive contributions concerning their existence and salvation. He wrestles with such issues as the natural man, the supernatural being, and concludes with an optimistic view of man that affirms the possibility of the achievement of genuine values by human effort.

Another view is shown in the following assumptions: (1) each individual is a unique offspring of a social heritage. The beliefs, morals, ideas, attitudes, stimulations, opportunities, restraints, language, or inferences contained in this heritage are options from which a person chooses to use or act upon. (2) A human cannot not choose. (3) A human cannot not think. (4) A human cannot not judge. (5) No two individuals possess the same genetic factors. (6) No two individuals live in the same social environment. (7) Language is an instrument for action. Words are used to comfort, to create fantasy, to let off steam, to have activity, to promote purposes, to coax, protest, or threaten. Cherry contends that the social value of speech is to permit individuals to work (live) more effectively together and to ease social tensions. (8) Human development is never complete. The quest or pursuit for certainty is a contradiction. Voltaire asserted, "It is truly extravagant to define God, angels, and minds, and to know precisely why God formed the world, when we do not know why we move our arms at will. Doubt is not a very agreeable state, but certainty is a ridiculous one."

Humans create their world. "All objects are thought out," stated Hambenne. "This appears to be the case all the way from elementary perception which creates the ordinary sensory objects on up to a construction of the world. And further, it means that thinking defines its objects in terms of each other and in terms of the world these objects constitute. Nothing is defined in terms of itself. If objects are what they are in and through their relations to each other as this relation is mediated through the world of which every object is a part, then objects must be so thought out if we are to have thinking related to realities...thinking is world building."

This view does not have as its intent any denial of Mannheim's sociology of knowledge in which he seeks to comprehend thought in the concrete setting of an historical-social situation out of which individually differentiated thought only very gradually emerges.

Society may or may not exist--it may be an object for use--for world building--through thinking. Humans use objects to create their world of relationships. People have possession of their thoughts, feelings, attitudes, and behavior. In analysis of human processes one does not explain an alternate view as suffering from illusions or distortions on a psychological or experimental plane but rather attempts to consider the total structure of consciousness and thought.

Instead of locking discussions into dichotomous and competitive dialogue, analysis demands a search, a perpetual and comprehensive inquiry into differing alternatives. Instead of attempting to expose views, or to establish a singular view as infallible or absolute--a pursuit of variations appears more profitable.

Mannheim again suggests "that knowledge, as seen in the light of the total conception of ideology, is by no means an illusory experience, for ideology in its relational concept is not at all identical with illusion. Knowledge arising out of our experience in actual life situations is knowledge nonetheless. The norms arising



out of actual life situations do not exist in a social vacuum, but are effective as real sanctions for conduct. Relationism signifies merely that all of the elements of meaning in a given situation have reference to one another and derive their significance from the reciprocal interrelationship in a given frame of thought."

Individuals may find the world very difficult when confronted with the possibility of multiple alternatives and accordingly embrace some system, goal, or single theory and then attempt to force occurring processes to move through that system. Human development specialists may use special therapy systems, selective language, counseling techniques, cause and effect assumptions, or religious notions and in a comfortable (perhaps insulated) somewhat smug fashion minimize the hazards or miss pleasure passing by.

A person can live in and among multiple variations with uncertainty all about. Each person creates his/her own feeling. When multivariety is all about, it appears that those who resort to authority, exclusiveness, dogma, the divine, or any final position would tend to distort, bend, pervert, and conceal the meaning of the present, and cripple relationships emerging for their future. Persons may pretend that an authority outside themselves--society, family, learning, consensus, office, the vote, or some other--is in control of their world construction but that view is very misleading for upon close examination each person is found to be choosing, thinking, judging, speaking, withdrawing, living, changing, and constructing. We may by some form of illusion attempt to relinquish this fact of being--but let's not be fooled.

My oldest daughter frequently operates from what appears, at first squint, to be weakness. When young she claimed to be afraid of the phone. From that position she engages many in her service. Recently when preparing her camper to go to the "Indy 500" where her husband builds one of the cars, she waited until urgency surrounded her and also surrounded all who listened to her. In the last few hours prior to departure she claimed fatigue, lack of time, inability, and other seeming weaknesses. At least 10 or 12 persons were immediately involved in her tasks. We felt altruistic, strong, skilled, and generous as she left with her three children, towing three motorbikes. Arriving safely she immediately called collect to reassure me and others. Be not dismayed--all of those relational factors were generated by thinking, doing, consenting, judging humans out of each person's unique rationale.

Even though a curious order runs through our perceptions as if an underlayer of objective reality were there for our senses to translate--we must keep in mind that if nothing exists save its being perceived--that the world could possibly dissolve into an anarchy of individual perceptions. "...No man," recites Lincoln Barnett, "can ever know whether his sensation of red, or of middle C, is the same as another man's; it is nonetheless possible to act on the assumption that (nearly) everyone sees color and hears tones more or less alike." (I'm part of the more or less with my eyes and nervous system. I have what one measuring person called a 45 percent color astigmatism.)

At this (one day) time when we began generating selected feelings of certainty from Newtonian mechanics and highly developed empirical social theories--when the physical sciences seemed to be able to explain how things happen--it was found about 45 years ago that this hope began to dim; and right now, with all of the unusual accomplishments, it is a question whether scientific man is in touch with "reality" at all--or can ever hope to be.

"The new generation," explained Charles Reich, "has also learned lessons from technology, by being born with it--It is one thing to know intellectually that there is a Xerox machine that can copy anything, a pill that can make sexual intercourse safe...but it is quite another thing to live with the facts, make use of them, and thus learn to live with them."

One of the peculiar aspects of the American historical social organization is the phenomena of an ideal commitment to democracy with extensive social structures built around authority, class, caste, privilege, deference, and isolation.

Another peculiar aspect observed of many, or at least most, of the so-called human service organizations is that there is a deliberate attempt to avoid the personal lives of people to be served. Families seldom genuinely personally contact the lives of children. We experience enormous numbers of runaway youth. Schools are organized toward relationships of remoteness, with self-serving faculties who make no attempt to find out how young persons really feel. And if they do find a real criticism the faculties mount massive force against the critic, as the young move around the street. Universities quibble about standards--military dogma fosters cheating. It would not appear as ridiculous if a genuine attempt were made to reach the persons screened out of the learning process. The most noble attempt by universities and secondary schools is to indict the product of their own system.

In Arizona for every 1,000 persons who start high school 370 will not graduate. The schools' officials claim purity or suggest that no comprehensive study has been done of dropouts--or respond with a rhetoric of guiltlessness.

If you are an American Indian starting high school in Tucson--600 out of each 1,000 will not graduate--if you are black in Pima County 580 out of every 1,000 will not complete high school--if you are Mexican American 650 out of every 1,000 will not graduate.

In a program close to the street world where I work, over 80 percent of the youth sent to me during the past five years are on probation or in some kind of court custody. The program is 60 percent Black in a school district with less than four percent Black population--and the school district is defending itself against being racist.

Those with whom I work are runaways, dropouts, drug and booze users, poor readers, excessively good readers, Black, white, Chicano, rich, poor, government officers' children, teachers' children, from

good homes, and poor homes, angry, pleasant, and so when I ask them if any attempt is made to contact the personal aspects of their lives they respond:

"Yes - to get evidence against us for punishment or treatment.

- Not really to talk--to find out but only to kick me out or find a weak place to make me submit and adjust.
- we are referred to people who never come to our homes-- or to the street.
- they use counseling to capture us, haul us around town, and give jobs to some strange people.
- they try to play games with my head.

If we treat people with no intent toward personal contact - If we consider them unworthy for consultation - If we avoid finding and identifying their interests--and if the most pretigious of our institutions isolate and exclude them (only 13% of those who start high school will graduate from college--over 40% never start college and have a minimal opportunity for learning) if we make no attempt to include, to share, to go with people--is it any wonder that we find anomie--the turned-off, alienated--the betrayed.

Inasmuch as our institutions are so rigorously organized to exclude--again--is it any wonder that the same excluded are found in maximum security, rehabilitation centers, diversion experiments, and fill the files of expensively funded centers that employ hundreds of people?

Equality in use in human language and processes is not a system but rather an assumption prior to intent which then becomes integrated into behavior. The most striking relationship in behavior, the most rewarding, and the most fulfilling is to maintain behavior and processes that are equal.

Kurt Lewin's research gave us many things to consider regarding democratic relationships created by people. People generally want personal contact--want to participate, and want to be consulted about their lives.

Democratic process postulates the complete worth of every human being. It does not presume the necessity of dichotomous antagonisms and degenerating competitions. It assumes each person to be adequate, curious, interested, equal; and each person cannot not choose. When consulted each person pursues learning, doing so more enthusiastically when his/her interests are focused equally with all others. Each person generally chooses what he wants to know and, in particular, constructs her/his feelings and relationships. General human achievement is more productive when existing in a context of support and warmth. The intent implied in democratic processes is to live this moment fully--regarding the past as selected illusions and the future



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**1 OF 2**

as an imagined world. The intent in personal relations is to enjoy-- not condemn, nor control other persons. The intent is to relate to others in warm personal and hopefully productive ways.

David Brewer calls this rational charisma-a process oriented to the worth of individuals. "...there is no larger frame of reference than each person...no point of being more central than human being. Every individual is extraordinary and is less vital than absolutely no one and nothing."

Gene Poschman, Ph.D.  
Professor of Political Science,  
California State University, Hayward

In response to Clyde Tidwell's paper, let me say that there are certain things I agree with that he has put forth; and there are certain things I deeply disagree with; and there are certain things on which I will make up my mind as I go along. First of all, I think that the context of Beyond Punishment and Treatment and the context of what he said is part of the anti-institutional ideology which all of us share. The notion that we are an over-bureaucratized, over-formalistic, over-depersonalized society is one of the legacies of the New Left, which I carry with me and expect to always carry with me. Unfortunately, being in the position of presenting a rejoinder to Clyde's paper, I find myself in the situation where part of my task, I think, is to tell you about the virtues of depersonalization, of distance, and of non-involvement. That might be a rather tough order.

Let me say that with regard to Clyde's position, I'm glad it exists. I can identify with it in many ways, and I wish there were more to it that gave me a greater sense of security or substance or whatever. Let me try a humorous analogy to describe where I find myself with his paper. I've heard the joke or story in different contexts. It seems to fit in this one.

The story is about a rock climber who goes up the big wall alone as a sign of his own courage and skill and gets to a point very high up and he screws up. He finds himself hanging by his fingernails. What to do? He calls out, "Is anybody there?" No answer. "Is anybody there?" Finally a voice comes back to his absolute surprise, "Yes." The climber says, "Help!" The voice says, "Do you have faith?" The climber says, "Oh, yes, by God, I've got faith. Help me. What shall I do?" The voice says, "Let go." There is a pause, and then the climber says, "Is anybody else there?"

I appreciate Clyde being there, but I'm afraid to let go of the terrible conditions that we now find ourselves in and to perhaps, fall all too freely.

I think one of the underlying themes of this entire conference is the bankruptcy of the present condition of the criminal justice system. Both critics, and those in it, virtually agree without exception, that it's a disastrous system. The best that those who defend it can come up with, if they engage in a bit of wit, is to involve the defense of it which was Winston Churchill's defense of democracy--that democracy is absolutely the worst form of government, except for the alternatives.

In an interesting way the contrast between the ills of the present system and the absence of any profound vision of a different possibility is caught in the images of the two leading contenders for the Democratic nomination for President, Jimmy Carter and Jerry Brown.

Carter, amazingly enough, spends large amounts of his campaign speech time on such topics as governmental reorganization, improved efficiency, etc. This is a kind of language which reminds us of the tarnished grandeur of redevelopment projects and city manager-civil service reform. We somehow feel that this man is an anachronism, almost Woodrow Wilson-like in terms of his progressivism and his bureaucratization ethic, albeit with a little bit of William Jennings Bryan thrown in, in terms of rural values and religious commitment. We know that this is a kind of bankrupt message, although there is a kind of reconciliation of opposites that's almost intriguing--the Godly bureaucrat bringing answers to our problems. On the other hand, the person running against him (still as of last night), knows, like we know, that the administration of bureaucracy is not the place to start in terms of dealing with what can be improved in life. But, again, the context that one finds oneself in is that where Jimmy Carter would say to us in terms of the administration of the justice system--"what we need are better administrators, better trained with more credentials and more expertise"--at which time we would have a sad sense of nostalgia, it is quite clear that the Brown position is post-administrative theory or post-administrative doctrine with absolutely nothing to take its place--that we are in a situation where we're handling a problem piece by piece or one thing at a time which gets us nowhere. We're caught in a paradox that on the other side of the bureaucratization of virtually everything in life, from universities, to prison systems, to sports, and so forth, there is no counter-theory. There is just a vacuum. And the Governor represents that vacuum exquisitely. The result is a further entrenchment of the administrative ethos, the bureaucratization of existence.

One way of going a little bit further with what I'm saying here is that there is probably nothing beyond treatment and punishment, except a kind of custodialness which is neither treatment nor punishment--just simply putting people away in a kind of warehouse. The politics of humanizing the criminal justice system are just simply too disastrous. The present political administration seems to be in a situation where the central experience for many of them is the central experience for ourselves in terms of radicalization--the Caryl Chessman case. What the criminal justice system means is that you can engage in a kind of demonic commitment to disaster by getting involved in it as a politician. Edmund G. Brown, Sr., was a popular well-loved, strongly dynamic governor, who one day got involved in the penal system, and the next day found himself in a totally changed situation. Given also that the calling in of troops to Sproul Hall was again one of those things that changed his image, there's just no doubt that the politics of the criminal justice system are such that no one in a rational political office is going to get deeply involved with that as a cause.

I want to make five or six points and I'll try to enumerate them as I go along. One of the points of opposition between myself and Mr. Tidwell is part of the anti-bureaucratization ethic of which he partakes (and, I think, of which this conference partakes) on the basis that "humanizing" really means the de-bureaucratization of the system. One of the things that I want to stress is the centrality of



theory--the centrality of thinking and ideas and concepts. I don't want to have to invoke here the sacred images of Lenin or Mao in terms of their emphasis on the absolute centrality of theory before action. But what I find is a kind of pragmatic infantilism permeating most of the reactions against the given--I heard it yesterday and it permeates our discussions. If I hear the cliché once more that it "looks good in theory but it won't work in practice", I will give my allegiance to standing that cliché on its head no matter what the costs of absurdity. I really want to say that much of what Clyde has to say looks good in practice, but it really doesn't work in theory.

One of the problems with the literature of the criminal justice system, of criminology, is that it is so practically oriented. That it is so time specific that virtually everything that's done is relevant to a week, or a month, and then sort of passes one by. There's no cumulativeness, there's no serious sustained commitment. Commitment to theory is looked upon as a kind of badge of not being practical, not being macho, not being essentially with it, so to speak. So what I am going to say in many ways may be rather highly theoretical and somewhat abstruse.

What I want to say in terms of tying Clyde's paper and the theory of the criminal justice system together, in terms of most of what I've read and seen and then into the notion of humanizing the system, is that I find that in a paradoxical way the central concepts of the humanities and the central concepts of humanizing the system, obviously have much in common. Where I find everything coming from is a rather ancient and overwhelming debate--most of the intellectual thought of the Nineteenth and Twentieth Centuries can be put into this dichotomy. (I know that Clyde has proscribed the word, but I believe in Blacks and White. I believe in ideology. I believe in passion. I believe in true believers. When somebody tells me that they're coming from no position whatsoever and really have no deep beliefs, I want to reach for my wallet to make sure it's still there. Let me say that not only do I have a commitment to theory, but a commitment to ideology and passion.) The ancient debate here is between the notion of organization on the one side and the notion of community on the other, and essentially this is an historical debate. Liberalism, in a fascinating way, gets caught up in it, because most of the rejection of liberalism that we've had in the Sixties is because liberalism was totally committed to bureaucratization. That's with regard to the university system, the educational system, the marriage counseling system, the Little League system, or anything that you want to put in. Liberalism had one answer and that was bureaucratization--hierarchy, depersonalization, explicit rules, expertise, minimal investment of the worker in his job, and so on and so forth. Bureaucratization may have hit hard into education in terms of work loads and in terms of class hours and class contacts in terms of specializations and hierarchies and such things. It may have hit hard into education, and it certainly hit hard into sports where you now have 14 coaches and a scouting team, and the coach, when asked how the game went tells you that he doesn't know how it went, that he has to see the pictures the next day. This may be the ultimate in terms of bureaucratization of an existence.

In a sense, the meaning of bureaucratization has always been totally prevalent in terms of the criminal justice system. For one thing, bureaucratization "benefits" everybody except those incarcerated. Essentially, the thing which bureaucracy asks is minimal commitment to the job, i.e., you put in your hours and you go home. You do not give your life's blood, your warmth, your intimacy to the people that you're incarcerating, or who are paroled to you or on your probation caseload. What I am saying is that Clyde is coming from a kind of communitarian point of view, and that the weakness of this point of view, in terms of where we're at, is that it asks an overwhelming amount from each individual who involves him or herself in it. The difficulty of sustaining the kind of interactionism which he's talking about--day after day, week after week, year after year, opening up yourself, communicating, and trying to reach into the kind of onion peels of the other individual--is just overwhelming to try and think of how that kind of system can function except in very limited contexts. So I'm stressing the kind of context of this conference, the context of Clyde's paper, the context of my remarks, as being an age old battle between those who cry warmth and intimacy and meaningfulness and those--essentially the realists, and I think realists is a rather dirty term--who cry expertise, efficiency, continuity, and measurability.

The necessity of arguing for the virtues of depersonalization makes me very uncomfortable. I almost want to use the story of Clyde's daughter. How would we have coped with his daughter? Now apparently here's a man of great experience and intelligence who has been conned year after year by this daughter of his--a willing participant; clearly these are consenting adults, in terms of the emotional relationship set up. How would we have handled that? And I can only say--distance. Not only the distance between Tucson and Indianapolis (there was a sense of relief in your voice that she'd gotten there, was going to stay there, and that she wasn't going to pull that interactionism kind of thing), but the virtues of skepticism, the virtues of distance, the virtues of what I call depersonalization. Let me point out what I think is a paradox, (and almost everything is a paradox, I think, if one tries), but the values that Clyde's putting forth, in a way, undermine the ability of what he's putting forth to work within the criminal justice system. In a sense, once you start putting your values on the private existence of emotion and self, once those become your highest values, you are essentially almost down the garden path to driving your work out of being the central meaning of your life. You are almost into the natural repository of those particular virtues--the family, the neighborhood, the one relationship with someone you love--those environments are so much more viable, so much more rewarding in terms of the interrelational vision. Work almost becomes something that you flee from because you cannot sustain those kinds of values. I think that's a kind of paradox in terms of where the values of privatization lead.

In terms of trying to continue the community versus a bureaucratization theme and also personalization, let me say that one of the great victories of the modern penal system is the depersonalization of the criminal system. I was at the University of California in the Sixties. What Savio did in terms of going to the South was to attempt

to depersonalize the system. That most personal of images, the absolutely central symbol of a justice system run on personalism and first-hand knowledge of people was the Southern sheriff. One meaning of going to the South to break that up and bring in rationalism and expertise, was the crusade in the South to make things fair. It was almost like Orlando Wilson going to Chicago. What he brought to Chicago was fear, distrust, and distance, and those were the only weapons he had to use against the highly personalized, intimate nature of the police in Chicago. They had very close relationships with each other--they robbed together, stole together, burglarized together and were a real community. What I am arguing is that we've gone through such a change that the word community now is a sacred term and is almost such as God used to be. Yet community used to be the most hated word in the intellectuals' vocabulary. If you think of the writings of Sinclair Lewis or much of the writings of the 1920's, it was a flight; the most negative term in the vocabulary was Puritan, and the Puritans have ever been the vision of a community in American society, so the idea was of breaking up the community and substituting rational principles of fairness and distance--sort of the central meaning of the modern criminal justice system. Now it's quite clear that it didn't work, that they substituted one kind of hell for another. The notion of the indeterminate sentence is a kind of reflection of this. An attempt to substitute expertise and knowledge and all kinds of factors of a scientific nature in terms of dealing with that most real aspect of an individual's existence--i.e., how much time does he have to spend inside? What resulted was just god-awful--in terms of no certainty in the individual's life, even greater kinds of control; supposedly if he got out of line, he could serve forever. I'm saying that what we have here is another kind of irony. The problem with the bureaucratic system is that it's not essentially scientific and impersonal, that it gets down to being a very personal kind of thing, and so we've gone back to the determinate sentence as a kind of an attempt to solve the problem--where everything is really impersonal almost like your social security number, almost like drawing by lot. The virtue of impersonalism, (I can't quite convince myself, I'm sure I can't convince you), is essentially one of the problems of the personalism supported in Clyde's presentation.

He has other themes in there, the distrust of science, the distrust of social science, which I agree with in a little different way. I don't trust most of the commentaries I've seen of the criminal justice system. Most of those have been by social scientists and I deeply distrust them, because they essentially are coming from a kind of point of view which they really are not aware of. Let me say that most of the social science literature on the criminal justice system, dealing with sentencing or probation or what works or what doesn't work, has been written from a kind of "bureaucratic distance." The social scientist never went in, so to speak, and got involved in terms of the lives of the individuals that he was examining for his data. There is a sense in which you can go in too far on that--one thinks of the anthropologists who taste human flesh, for scientific purposes, of course. But there is a question of when does he cease to be a social scientist and when can he "come back"? Most social scientists have guarded against personal involvement by being very distant, very bureaucratic, and doing their work in a very impersonal way. Most of

their data, therefore, I look upon as essentially difficult, if not impossible, to find much value in because it is so unreal in a very, very significant way.

There's a sense in which whether it is the reform of the university, the reform of political parties, or the reform of Congress--all of which I've devoted a good bit of time to thinking about--or the reform of the criminal justice system, there's a kind of pessimism. As someone said yesterday which I thought was particularly profound, we're back attempting to set up a system which will do the least amount of harm given the fact that there's no doubt that it will continue to do a large amount of harm.

Let me put forward a "plan" for prison reform, which is absolutely absurd enough to show you what I think are the difficulties of actually having any kind of reform taking place. It spins off from the interactionism that Clyde has talked about and role playing and most of the ideas that are present in most of the research. What I've been deeply impressed with in terms of seeing the criminal justice system is when friends of mine, radicals and very committed people, do the trip of getting in the police car and going around with the police as a way of learning about the system. What happens, without exception, is that they get into the police car and they drive along and they see someone on the corner, and the role playing is so total that they know that person no matter what he's doing has committed a crime or is about to commit a crime. There's a total envisioning of things from the policeman's point of view even among the most committed radicals. You can't get into that police car context, without starting a law and order trip within yourself. The two means of reform in the criminal justice system are to get people involved and have a stake in the system in terms of their own involvement. That's why there's been no reform in the system, you can't get people involved and nobody sees that they have a stake in the system. My quest here is to take off on this role playing thing and a little bit on jury duty. My solution is to have a counterpart to a citizen's jury duty where the citizen spends a week every two or three years in jail, either a state prison or a local jail. This is not a serious proposal, of course, but it would be the only way where you're going to cause individuals to have a stake in the system and get involved. You get them into the cell, as a citizen serving his two weeks almost like Mao's sending the Chinese intellectuals off to work on the farms, and you then have a kind of commitment to prison reform that you would never see in any other context. There would be a kind of taking the role of the other that would provide a kind of fear and emotion that would be unprecedented in the American system. Well, no one is going to be able, in a democratic system, to put good people in jail every two years as a citizens' duty. But it sure as hell would take that kind of essential involvement in the lives of the citizens to be able to make what I think are meaningful reforms in the criminal justice system. When you get the law-abiding citizens into jail for a week at Santa Rita, that's interactionism with a vengeance.

## SESSION VI

### Community Within Prison: Culture, Conditions, and Rights to Organize

Prisoners' Union leader Holder explains the necessity for a prisoners' rights organization which links inside membership with outside membership, and he places the movement for prisoners' rights in a historical context for the purpose of illustrating the distinctions from and commonalities with other struggles for human rights and interests. The characterization of the disenfranchised as either beasts or dupes of agitators bent on strewing chaos is a recurrent aspect of the counter-movement. (Since the time of the conference, the negotiations for union access to the prisons were stymied, eventuating in a court case and an unfavorable ruling which is now being appealed.)

Anthropologist Garcia views the criminal justice system as a repressive apparatus designed to maintain economic hegemony by a ruling class. Class and racial discrimination are integral features of the system, with crimes defined and penalties prescribed in such a way as to ensure continued exploitation and domination over a scavenger class, with criminalization employed to legitimate the stifling of resistance or challenge. Since the state is not hesitant to employ legal, extralegal, and illegal techniques in the interest of maintaining the system of privilege, reforms tend to become merely more sophisticated means of repression and control over the poor, the powerless, and the dissident, and the only viable course for true reform becomes one of wresting community control over these operations from the state, and reduction of opportunity for state intervention in the lives of members of the oppressed classes.

Willie Holder  
President, Prisoners' Union  
San Francisco

For over eight months--June, 1975 to January, 1976--the Prisoners' Union met with top administrators of the California Department of Corrections. The meetings proceeded on two tracks. One dealt with general problems of access to prisons--media, visitation, correspondence, etc. The other was an effort to see if we could arrive at a plan for allowing prisoners to participate in organizations. In early January we arrived at a tentative proposal permitting prisoner organizations. Call them unions or whatever, these organizations would have the right to hold meetings inside attended by outside members; elect officials to represent its members at appeals, transfers, or disciplinary hearings; and to meet and confer with administrators to examine prison policies.

On January 19, 1976, the day before our scheduled meeting with prison administrators to present the tentative proposal that had been worked out with top CDC administrators, leaders of the California Correctional Officers Association (CCOA) released the proposal to the press and announced their bitter opposition.

They threatened to strike if it or anything like it were adopted. They demanded that Director Jiro Enomoto and Secretary Mario Obledo of Health and Welfare be fired for even entertaining such an "idiotic" and "insane" idea. The only substantive comments made about the proposal betrayed a total misunderstanding of what it was about. Their hysteria was infectious.

The next day, in a highly unfavorable climate created by their intense reaction and threats, the wardens and superintendents came out strongly against the plan. Concern was also expressed by those above the CDC over the banner headlines of contradictory content that were popping up like mushrooms everywhere. In this pressurized atmosphere, the plan was placed on the back burner, on very low heat.

#### OPPOSITION

What kinds of opposition does the idea of organized prisoners face? One kind is the calculated hysteria of the first press comments of the CCOA leaders. This is essentially a political threat that has nothing to do with the idea. Another kind are specific concerns we have heard from guards, such as a feeling that a grievance procedure might be utilized to harass or fire one individual or that they be included in the planning of any major change. Such concerns are quite legitimate, and can be talked over and worked out.

A more formidable obstacle, however, is an insidious, mistaken notion which we feel strongly is at the root of the prison administrator's unwillingness to accept the proposed plan. This is the belief that prisoners are fundamentally inferior. They are either

dangerous animals or mostly weak people subject to domination by the few dangerous animals. They are, according to this view, incapable of participating in sustained, responsible action and becoming dignified human beings.

#### PRISONER ORGANIZATIONS ARE INEVITABLE

One of the few consistent trends over the past decades has been a slow, very painful, but steady increase in the rights of people formerly excluded from any decision-making arena. Black people, women, Chicanos, industrial workers, farm workers, gay people; all have come very far from where they were forty years ago. The struggle is no less intense now; the outcome in any single situation is problematic, but overall the extension of power to more and more people cannot be stopped.

Two hundred years ago the only people who could vote were white male landowners who were not in prison. The requirements that a person own property, be of a particular race or a favored sex have been dropped; only those classed as felons remain disenfranchised. The process of extending basic recognition to prisoners has begun-- 100 years ago a judge in Virginia could correctly say that prisoners forfeit all rights save the right to breathe.

Things are different now. Whether the Prisoners' Union will be the particular agents who enable a union of prisoners is an open question, dependent on forces larger than our energies or hopes. What is not open is the increased recognition of the humanity of people locked inside, and of what is necessary if they are to remain fully human; this includes the right to organize around the problems common to all.

The Prisoners' Rights movement is still very much in its infancy, having gotten off the ground with a bang in 1970 and reaching a peak of sorts in 1973 and early 1974. From the latter part of 1974, after the massacre at Attica, the atrocities at San Quentin and McAlester, which received international press coverage, the Prisoners' Union has settled down to the nitty gritty work of organizing.

Where do we go from here? Do we recreate another Attica in order to re-interest the dilettante day-tripper who latches on to momentary fads? The Prisoners' Union thinks not. We who have lived in prison are acutely aware of the failure of the prison system. Researchers have amassed volumes attesting to this monumental failure; in fact, there is enough data gathering dust in archives to furnish the entire population of India with toilet paper for a good long spell. If this were done, the needy would at last derive some meaningful use from what is at present a waste.

#### WHY DO INMATE-REPRESENTING ORGANIZATIONS NEED OUTSIDE ORGANIZATIONS?

1. Decisions affecting prisoners' lives are made in many forums most notably legislative, also in the home areas of the peoples' representatives. There needs to be a single, coordinating point

where information can be accumulated about what is happening in all the state prisons (this is very important in California, where there are so many prisons so spread out with so many transfers in-between). There must be people with the mobility to contact families and other segments of the community in order that prisoners may be plugged into the community rather than isolated from it.

2. Prisoners need spokespeople who are not subject to the total domination of the Department of Corrections. If there are no outside representatives, key people in the Union structure could be suddenly transferred or placed in segregation too quickly for the organization to recover. With outside representatives, these people could be defended and replaced. People on the outside could go about their business without worrying about the threats or promises that a prison system is capable of making to those that they are charged to keep.

#### WHY AN INMATE-REPRESENTATIVE ORGANIZATION MUST HAVE MEMBERSHIP INSIDE

Prison reform groups without inside membership have existed since the inception of prisons in this country in the 18th Century. For example, the Quakers have long been associated with major and minor changes in prison policies, including solitary confinement and the indeterminate sentence. These groups have meant well. However, their good intentions, familiarity with relevant literature, empathy, or vicarious injuries cannot substitute for the most reliable indicator of knowledge and insight--that of experience and self-interest.

Only a membership-based organization is flexible enough to respond to day-to-day problems of individuals, small fluctuations in institutional policy, and to examine fundamental conditions of confinement. The compiling of material and impression is vastly simpler. The likelihood of accuracy is far greater. We contend that a major reason for the shortcomings in prison policy to date is that there has been no consideration of the feelings and insights of those directly concerned--prisoners themselves.

#### THE RELATIONSHIP OF THE PRISONERS' UNION TO OTHER UNIONS

The Prisoners' Union envisions itself as something between a labor union and a rights union, i.e., the American Civil Liberties Union. Its aims are toward a more equitable and just prison system rather than towards the bread-and-butter issues that characterize the efforts of labor unions.

The reason for this difference is inherent in the most obvious difference between the members--people in prison will get out of prison as soon as they are allowed, while free citizens have career interests in their jobs. Their station as workers is an honorable one, to be buttressed and extended by collective action. Members of the Prisoners' Union are being punished by the deprivation of their freedom; collective action is here aimed at establishing and maintaining a "floor" of essential principles of justice, beneath which individual members may not fall.



This means, for example, that labor union energies will be expended on creating jobs for its members, or opposing measures which would restrict available work. The Prisoners' Union, in sharp contrast, will never be heard advocating more prisons or longer sentences. Labor unions are very concerned about job security, pension plans, and fringe benefits attached to their jobs; the Prisoners' Union has no interest in maintaining the status of its members as prisoners, and hopes to eliminate any consequence of this status, such as employment disabilities. There is a divergence between the objectives of the two different kinds of organizations, based primarily on the nature of their members.

There are many structural similarities between a fully-functioning Prisoners' Union and most labor unions. The range of activities, however, is much narrower for Prisoners' Unions, again primarily because of their status as prisoners. They would not be able to strike, for example. Prisoners are in no position to exert any economic pressure on "management." "Management" are all state-paid, and lose nothing by locking all prisoners in their cells; indeed, there is more money available to prison staff due to overtime work. Strikes not only fail to exert economic pressure, but they also conjure up frightening images in the eyes of the public of prisoners out of control. Strikes are perceived by the public as a bargaining tool for unions; indeed, their chief bargaining tool. No such tool is presently available to prisoners. They must rely on other methods of education and persuasion.

Parallels with the early period of industrial development in this country are too striking to be ignored. Factories were plagued with strikes, efforts to organize, and continual instances of random violence between workers and workers, workers and foremen, workers and machines, and workers and police. The public widely viewed strikes as a disastrous flood of dangerous chaos; they were so characterized by newspapers. Courts regularly held that workers were entitled to very few legal rights on the job, and fashioned new doctrines to avoid payment of money to workers if they should suffer an industrial accident. Many workers belonged to "gangs," such as the Irish Molly McGuires or Polish and Italian Brotherhood, which were organized along ethnic lines. They offered affiliation and protection to their members, along with some economic protection. Many people died.

Gradually, the efforts to put together unions were successful. They did not bring about all the good results or complete redistribution of power that many early organizers hoped for, but they undeniably improved the lot of the American worker. Labor violence is quite rare today, and a scandal when it happens. There is corruption in certain unions, but there are also hundreds of union locals and central offices which have integrity and are not corrupt. Recent revelations of extensive bribery, price-fixing, and deliberate violations of the law that result in thousands of injuries and deaths annually--such as the recent explosion that killed 15 men in a Kentucky coal mine that had been repeatedly cited for excessive levels of methane gas--remind us of that.

Corruption is no stranger to management in big business. I need only say the word "Watergate" to point out that sleazy dealing exists on a large scale in the area of politics. The convicted class has no corner on corruption.

Unions have a record of basic human rights that stands up very well against any other large societal institutions; they have frequently stood alone. We think the word "union," which some have suggested we abandon, is on balance an honorable one.

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Any serious and informed attempt to humanize the criminal justice system ought to be based on an understanding of the social and political functions of prisons. These functions both, manifest and latent, are linked in U. S. history with factors of race and economics. Pointedly, Angela Davis characterizes these relationships in terms of the contemporary impact of the criminal justice system on the lives of Black people:

"The vicious circle linking poverty, police, courts, prisons, is an integral element of ghetto existence. Unlike the mass of whites, the path which leads to jails and prisons is deeply rooted in the imposed patterns of Black existence."

Davis and other critics of North American society argue that the problems of Third World prisoners, cannot be seriously considered separately from the conditions of social injustice that affect all people of color in the United States. Their insights spotlight the fact that there are important relationships between the function of the criminal justice system and the role of Third World people in the broader political economy. These interrelationships constitute a set of complex and interrelated factors and can only be fully understood in relation to each other and in terms of the historical context of social and economic development in the United States.

The importance of pursuing the broad perspective implied here rests on the fact that there is a fundamental fallacy in reform-oriented societies such as our own, where challenge and questioning of the social system and its observable consequences either does not occur at policy making levels, is treated as impractical or as "radical rhetoric," or is repressed by the established bureaucratic power of the state. Historically, liberal social reforms have been predicated on the unquestioned assumptions deeply conditioned in the American consciousness about the basic righteousness and perfectability of the American social system. Thus, reform has been limited and bound by the system defined parameters of the status-quo. Consequently, the central thrust of most reforms has been to recommend more efficiently systematized procedures, better training and upgrading of personnel, and to otherwise bring greater resources of the same kind, to bear upon social problems. From the first juvenile court, to the creation of the adult authority, and the income tax that came to support them, and the welfare bureaucracy that followed soon after, each reform has effected a greater measure of control over the lives of the poor and the powerless. Each "reform" has come to spell REPRESSION and misery for the masses of poor non-white people who heap at the bottom of a social system based on racial and class privilege. Prison reform at the direction of the state will scarcely affect the impact of criminal justice on the lives of people of color. It will merely sophisticate aspects of repression.

The point of view presented here is based on the assumption that social injustice is endemic in the United States because it is inherent in the American capitalist state and corrupting of its institutions. The perspective is a critical one, framed in the point of view of those at the bottom where the crushing impact of law and criminal justice shapes life experience in devastating ways.

### Racism and Criminal Justice in the American Capitalist State

Generally speaking, racial minorities have been more likely to be defined as criminal over time and to be dealt with more harshly by the legal-judicial system, often without due process, than are other groups in the population. The "seamy side" of United States history reveals that the economic and political growth of the capitalist state has occurred on the basis of a system of inequality and oppression characterized by a dual form of racial and class domination. This has involved the exploitation and "criminalization" of people of color in this country and abroad, and the concentration of wealth and power in the hands of a white ruling class. Functioning as the repressive arm of the capitalist state, systems of law and criminal justice have played a major role in shaping this reality. Early contacts between Anglo American institutions of military and criminal justice and peoples of color indelibly marked these non-white groups as morally inferior, exploitable, and "criminal" classes. In the name of law, order, justice and Christian manifest destiny, countless numbers of so-called "primitive" (i.e., non-white and non-Western), peoples all over the world were in the same way, removed from their natural homelands, deprived of self-determination, and forced to work as wage laborers for capitalist bosses. Native peoples were thus "pacified" and "made safe for capitalism."

While forces of Anglo European military, missionaries, and capital imposed Western systems of domination throughout the Third World, in the U.S. westward "expansion" progressed with the conquest of Mexico and other Native American lands and peoples. The need for systematic repression of the natural and inevitable resistance to oppression that ensued led to calls for "law and order" on the frontier. Frontier institutions of legal, quasi-legal and extra-legal judicial character like the infamous and uniquely American vigilante movement, elite forces like the Texas Rangers, not to mention the Ku Klux Klan, were created to deal with the "natives," slaves, and immigrants. Vigilantism, particularly on the Western frontier, was decidedly racial in character, with its leadership and organization provided by the ruling class of the period and area, and its victims mostly the non-white, immigrant poor, and politically radical. Economic motives typically guided vigilante action and determined its targets. The exploitation of labor, the looting and appropriation of Mexican gold mines and other Mexican and Native American lands preceded by the lynching and torture of the former non-white owners, the hunting of "fugitive" slaves and the appropriation of their labor, later the persecution of free Black citizens, and the systematic brutalization of Asian labor, all helped to form the dual basis of racism and economic motive that characterizes law enforcement and criminal justice today. This legacy of racism and class bias has further underwritten the institution of slavery and slave law.

"Jim Crow," including miscegenation laws, the host of immigrant exclusion legislation, and the long history of labor and civil rights struggles and their legal and extra-legal repression by the state, are but a few examples.

Racism as the basis of a social system of white privilege is rooted in an ideology of white superiority and non-white inferiority that made these developments possible. The association in our culture between criminality and non-whites is part of this heritage. According to Larry Trujillo:

"This ethnocentric conception of the appropriateness and superiority of Anglo institutions and the correlating belief that all conflicting ways of life were necessarily bad or inferior became the predominant mode of thinking of the time.

and....

"Consequently, by the turn of the century, the idea of racial superiority had deeply penetrated nearly every area of social science. The superiority of the Anglo-Saxon. . . was fully documented and had immense philosophical and scientific backing. And because Chicanos were seen as "inherently criminal," the injustice and repression they faced at the hands of the United States system of justice became justified."

It is in this distinctly racial and economic context that prisons can be seen as the most repressive arm of the control apparatus of the developing capitalist state. Thus, prisons have functioned to isolate and diffuse actual and potential sources of resistance to racial and class privilege. The poor, Black, Chicano, and other groups of non-white origin have historically been imprisoned in numbers far exceeding their proportion in the population. Popularized in the culture as "natural criminals," there have been few voices raised in protest.

Beyond the repression represented by imprisonment, convicts were further subjected to the exploitation of their labor by capitalists through arrangements with the state. During the last century it was common practice to lease or loan convicts to work in mines, build roads, pick crops and break labor strikes. Forced work in prison, (slavery), continues to the present day with the full sanction of law, supported by the U.S. constitution. The worst characteristics of contemporary imprisonment--separation from society, extreme control, brutality, economic exploitation, and racism--have historical roots deep in the culture and its early institutional expressions. Any attempt to understand the nature of crime and criminal behavior, or to humanize the criminal justice system should take account of this broader context of political economy and the social history of race relations. Furthermore, the special case of Third World convicts, as Angela Davis suggests, should be examined in terms of historical patterns of domination of people of color in the U.S. and the

relationship between this domestic or internal colonialism and imperialism in Third World countries abroad.

### Defining Crime in the Capitalist State

In the United States capitalist state, crime and criminal behavior are defined by those who have the power to make law and structure institutions of criminal justice. Historically, criminal definitions have really been political definitions of reality, describing who has power over whom. How crime is defined has been, then, a major reflection of the relationship between oppressor and oppressed. Defining the oppressed as criminal and thus a special problem for law enforcement is one aspect of the ideology of oppression. This is one means by which the capitalist state exploits and manipulates racism in an effort to condition public support for its policies. Thus, small property crimes like George Jackson's \$75 robbery are defined as serious violence warranting long imprisonment. On the other hand, the corporate theft of millions through consumer fraud typically results in the imposition of fines and suspended sentences. Government corruption, and other standard operating procedures of the capitalist state, are often defined as "abuse," and "misappropriation," or "malfeasance." These may not be covered by criminal codes but are defined as "civil wrongs," punishable only by administrative action. Losses of life or health due to the negligence and deliberate policies of corporate and government bodies, including irreparable and inestimable environmental damage from industrial chemicals and other contamination, are difficult to prosecute. Imposed fines have little deterrent effect on giant corporations. This does not mean that property and other kinds of "street crime" do not constitute a serious problem. They do, and, moreover, can be expected to worsen with the growing economic crises of the capitalist state. The point is that among many injurious kinds of behavior including property crimes and crimes of violence, only certain behaviors, those most associated with the poor, non-white "criminal" classes, come to be actually defined as "crime" and subsequently punishable by imprisonment. These differences in the nature and application of law, law enforcement, and criminal justice, are consistently related to racial and class characteristics of the alleged offenders. If the core of legal-judicial policy and procedure is embedded in systematic racial and class domination, then its true function cannot be perceived as "balancing the scales of justice." It is a growing point of view that, in reality, the principal functions of law and criminal justice in the United States is to secure economic hegemony for the ruling class and to provide the means for effective repression and control of those who are actually or potentially disruptive of the social system of white ruling class order.

### Political and Economic Functions of Law and Criminal Justice

Western European law and especially law in the U.S.-Anglo American tradition has illustrated a two-fold purpose. The first emanates from highly rational efforts to efficiently regulate economic relations and activity. The economy is in fact regulated by law. The major effect of this has been to facilitate the accumulation, consolidation, and protection of the private property of the ruling class. It was a white privileged class of lawyers, judges, and

politicians that presided over the synthesis of economic and political power that led to the rise of the American capitalist state over the past one hundred years. The focus of this covert legal-judicial activity has centered on the shadowy proceedings of regulatory bodies of government, corporate boards of directors, and the vast complexes of international finance. Most Americans know very little about the legal intricacies of these elite arrangements. It has taken the committed efforts of citizen advocates trained in law and the surfacing of major corporate and government scandals to force even minimal information into the public purview. Clearly, one of our most serious problems of law and order has to do with how to stop government and corporate bodies of the capitalist state from perpetuating already illegal monopolistic and otherwise corrupt racist and dangerous policies and practices. How do you enforce present laws, write and enforce new ones to adequately protect people and prevent the industrial disasters that are increasingly resulting in death, injury, and permanent environmental damage to growing numbers of people and ecologies?

As previously stated, law and justice also function to repress those who "actually or potentially" threaten white ruling class privilege. Legal-judicial institutions thus function as important instruments for the domination and control of Third World people and political "dissidents" of all kinds. Specifically, these include non-white proletariat and lumpen proletariat populations including poor white workers, immigrants, and other cultural "deviants." The male youth of Third World communities have always been perceived as a special menace and thus have been a special target of law enforcement efforts. Policing forces and agents have been described by some writers as the occupying force of a garrison state, saturating non-white communities for "surveillance" and "stop and frisk" operations. The results have been high arrest rates, particularly of juveniles and a common set of often spurious felony charges, i.e., "resisting arrest," "battery on a police officer," and/or narcotics, prostitution and other victimless offenses.

Today, 75 percent of arrests are of young people under twenty-five, while 45 percent are for "moral" offenses without victims. Proportionately, most of these are poor, non-white youths. Legal bias and extra-legal repression are recorded in virtually every officially commissioned study of crime, law enforcement, and criminal justice. Most recently, they became a matter of congressional concern during investigations of the FBI, CIA, and other domestic policing operations. Most dramatically, these investigations have revealed a systematically engineered federal, state, and local law enforcement conspiracy against non-white and other politically dissident groups in the United States. In the case of the Black Panther Party these schemes of repression resulted in the assassination, imprisonment, and forced exile of many young Black individuals and leaders whose "crimes" have involved a commitment to social justice and determined and persuasive political efforts to improve the social condition of Black and other Third World communities and peoples. In this vein, it should be noted that we are approaching the fifth anniversary of the Marin Civic Center "incident" at San Quentin resulting in the death of convict George Jackson and five others.

Police conspiracies have been alleged and may be proven. We are also nearing the fifth anniversary of the prison protest and insurrection at Attica Prison in New York. That "incident" ended when then Governor Nelson Rockefeller ordered a military style attack that resulted in the slaughter of prisoners and hostages. The Attica prison population was at the time over 60 percent non-white, with 40 percent under 30 years of age.

These tragic anniversaries serve to remind us just how cheaply held are the lives of people of color, how vulnerable they are to the power of the state vis-a-vis the criminal justice system, and how ruthless are the lengths to which the state will go to repress any challenge to the system it upholds. We can define another law and order crisis as consisting in the problem of how to prevent the state from abusing its governing powers through blatantly illegal surveillance, abuse, harassment (and even assassination) of citizens, who because they are oppressed, are suspected of actually or potentially seeking fundamental change in the present social system of racial and class privilege.

### Institutional Racism and Institutionalized Injustice

An overview of recent history suggests that the more individuals or groups threaten, or seem to threaten, economic arrangements or conceptions of cultural and racial integrity, the more their behavior is likely to be defined as criminal. Thus, the United Farmworkers movement and the civil rights struggle in the non-violent, reform-oriented, traditions of Cesar Chavez and Martin Luther King, while representing resistance and thus "threatening" to status-quo relations, do not inspire the fear and deadly law enforcement over-reaction occasioned by the more politically militant change-oriented Black Panther Party. That is not to say that the repression that still plagues these movements is not shocking or that participants in these struggles have not died, suffered or spent time in jail. It is, and they have. However, thus far they have not resulted in the national campaign of organized and escalating police terror and murder such as that unleashed by police and other government agencies against the Panthers and other groups such as the American Indian Movement, the New Mexico Alianza and certain student and other white "militant" groups. Such conduct on the part of law enforcement had been considered almost exclusively the result of deranged Southern racists, not national policy.

The denial of legal equality and the use of the legal-judicial system for legal and extra-legal repression of Third World and other poor and deviant groups has had the effect of institutionalizing race, class, and cultural bias in the entire apparatus of the law and criminal justice that continues to characterize the system today. The history of repression by the state marked non-whites as "criminals," shaped public attitudes about criminality, and conditioned public support for government policies. Circularly, the programs and operations of the criminal justice apparatus of the state, reinforced and further conditioned public attitudes. The introduction of "scientific" racism and concepts of inherent intellectual inferiority and proneness to criminality was also an important



development in shaping the image of "the criminal type." This work influenced the thinking of many of the first professionals and academics in the law enforcement and criminal justice agencies that have proliferated during this century. The pervasive and cumulative institutional response conditioned by these historical processes, is today described as institutional racism.

Today it is no secret, even if it is not always acknowledged by reform-oriented groups, that the poor and especially poor people of color, are filling our prisons and jails to capacity. It is a fact that the prison population is a highly select group in terms of racial and class characteristics. Non-white minority groups are in prison seven to 12 times their percentage in the population. This is especially interesting when you consider that nationally only 10 percent of all offenders are jailed or imprisoned, representing five percent of felonies reported. Further, most crimes go unreported altogether, and most criminals never have to account for their crimes. Moreover, on the basis of recidivism rates, some 45 to 80 percent of prisoners have been in prison at least once before.

#### Institutional Racism and the Social Condition of Third World Communities

Up to the present time most Third World communities have existed in an outcast and scavenger status in relation to the broader society. That is, they have historically, and continue today, to be deprived of any regular participation in the national economy. As "scavenger" labor, they take whatever work no one else wants to do, and it is never enough. Otherwise, they scavenge for welfare benefits that are also never enough. And welfare, like employment, is always subject to being withdrawn. Foreign, rather than domestic, labor has become more profitably exploitable. In today's economy, the Third World poor constitute a surplus labor force. Unemployment runs upwards of 50 percent in many non-white, inner-city communities. Young people are discouraged or pushed out of school at alarming rates. Overcrowded housing forces people to live more of their lives in the streets. In the streets, well armed "law enforcement" teams saturate the community and wait.

Armando Morales' study of Chicano/Police Relations documents the practice of police saturation and other regular police abuses, i.e., hasseling, deliberate provocation, "frame-ups," and beatings. Years of criminal stereo-types have become institutionalized as standard law enforcement practice. Jerome Skolnick has described police over-aggressiveness in non-white communities in terms of police conditioning and reaction to "symbolic assailants." This perception is based on racial stereo-types in society as a whole, and is exaggerated in the police experience.

The youth in poor non-white communities face few alternatives. Among the social roles ascribed to their race and class are those of "scavengers," "incompetent," convicted criminal, and sometimes working poor. As described above, scavengers in the work force are unemployed, underemployed, seasonal, and always under paid. Thus, they must also function in the economy as scavenger consumers. It

is they who must inevitably purchase the recycled goods of capitalism after they have been discarded by other classes in society. Typically the non-white poor lives in the most dilapidated house, drive the oldest cars, wear second hand clothing, etc.

The socially ascribed role of "incompetent" is filled by those who become involved in alcoholism, drug addiction, suicide, and who circulate into and out of state mental hospitals. This reaction to oppression signals confusion and growing resignation.

There are of course, some people of color who escape these imposed patternings of life-experience and manage to achieve some level of working poor or even middle-class status. This may occur on the basis of exceptional ability, lucky breaks, some circumstance of family or other group experience, or some temporary and specific social or political condition in the broader society, i.e., college special admissions and recruitment programs for Third World students. Judging from arrest rates, prison statistics, and economic figures, bad breaks occur more often than lucky ones. Talking with people in prisons, it becomes clear that many an individual has been diverted from what might have been an upwardly mobile path, by the searching and tenacious tentacles of law enforcement and criminal justice.

#### Resistance and Criminal Roles

There is at least one set of role "choices" that can be made with some sense of self-determination. There are always individuals who choose to resist subjugation and commit their lives to struggles for social justice. Such resistance may occur on at least two levels. Conscious resistance leads to organizing for change in the status quo. This may take forms ranging from challenges to the democratic process (system-oriented reform), to more militant and direct action geared toward radical social change. Those who engage in this latter form of struggle are likely to come to the attention of state authorities especially if they are effective. Consequently, they are subject to being caught up in the legal-judicial apparatus for formal processing as "criminals." Sometimes, they are simply assassinated summarily by its agents and death squads. This had happened repeatedly over the past decade of civil rights and other Third World and peoples' struggles.

At another level, resistance is less conscious or, rather, involves some level of "false consciousness." Rejection of the "scavenger" role can lead to deliberate or more often, casual involvement in behavior defined as criminal, i.e., street crime. Part of this includes the assumption of a "criminal" role through an "irregular" or "criminal" participation in the economy. It must be emphasized that this is the only means by which certain segments of the population are able to participate at all in the national economy of racist America. Other more regular involvement, i.e., schooling, job, promotion, retirement, and social security, are practically and effectively if not legally, closed to outcast groups at the bottom of the social structure. At one level such irregular participation might mean the commission of property crimes like: shoplifting, purse-snatching, theft, burglary, robbery. At a more complex level

are the organized small and large-scale operations and street "hustlers." We know of course, that just such organized criminal activity goes on with greater impact and magnitude at the highest levels of government and corporate bodies of the capitalist state-- dating back to the days before the infamous "robber barons" plundered California land and established railroad monopolies. Committed by members of the white privileged upper-classes, it has generally occurred with impunity. It is those at the bottom who resist their subjugation and who fit the popular image of the "criminal type" that are likely to be consigned to a lifetime of revolving prison doors.

Among peoples of color in poor communities, all of whom are treated with suspicion by patrolling police forces, it is not only those who consciously resist that are processed as criminals. It is especially easy to be caught up in the criminal justice machinery if you are young, male, non-white, and poor. The difficult thing is to escape this fate. The policies of law enforcement and the courts, as well as social work attitudes and practice, push hard in the direction of confinement and "treatment." Every opportunity is made to begin the official process of "criminalization" as early and efficiently as possible. Many convicts and certainly large numbers of repeaters had their first jailing experience in their mid-, early, or pre-teens, and sometimes earlier. Under these circumstances, by the time an individual reaches his 21 birthday, the state has already laid claim to a number of years of his life. Soon he is labeled an "habitual criminal," and placed on an indeterminate sentence. This then, is the process of "criminalization" that occurs in Third World communities all over the United States every day. It is in this sense that the claim, made by some prison support groups, that all prisoners are political prisoners, takes on its clearest meaning. They are political prisoners because they are outcast victims of an unequal social system in which to survive with dignity, they must violate the property laws of the ruling classes. They are "set up" in a social situation the end result of which inevitably enables the state to assume control over their lives via the criminal justice system. It is in this sense that criminal roles and behaviors are imposed upon patterns of existence in Third World communities.

One often overlooked consequence of institutionalizing race and class and culture bias in law, legal procedures, and systems of justice is that, with the "criminal elements" of society defined, institutions of criminal justice, i.e., the courts and prisons, are essentially relieved of responsibility for effecting "justice" in any ideal sense. And of course, they don't. This is the fundamental nature of the crisis in law, order, and justice that we really face in society and the reason why reforming the present system heightens the crisis. It seems clear that the function of the criminal justice system has always been to provide the muscle (police and other law enforcement agents), and to efficiently manage to process (the courts), that propels the criminals (already defined as non-white poor, and other actual or potential forces of social resistance) into the punishing, highly controlled prison environment. The implications of this reality for concepts of "rehabilitation" and prison reform suggest why so many of the community support groups who work most closely with prisoners support the abolition of forced "treatment"

and "rehabilitation," and in fact, of prisons. They are recognized as among the most racist and socially oppressive institutions in our society. They were intended, in fact designed, to be that way. The concept of treatment in this setting is totally fallacious. The rehabilitation approach is actually a good example of a reform that has meant repression. Rehabilitation only makes sense in terms of changing an unjust social system.

Before turning to briefly examine the ways in which prison conditions represent extensions of the oppression that exists in Third World communities, one point should be made. Criminalization as an initially discriminating process (i.e., most seriously affecting non-white peoples), tends to generalize and thus affect an ever-widening range of behavior and individuals. The experience of white civil rights workers, Kent State University students and Viet Nam war protestors are good examples of this tendency. So too, the so-called "flower children" of the counterculture, as they progressively dis-associated themselves from mainstream morality and other Anglo-American cultural values and traditions, felt commensurately the force of state repression. Further, legal bias against the poorest white workers in this country has not changed substantially since the days immigrants and indentured servants first faced the inside of debtors' prisons. Prisons do not just affect people of color, they are a potential threat to any group or individuals in the population that appears at all threatening to the hegemonic imperatives of the capitalist state. The more powerful and oppressive the state becomes, the more behaviors it seeks to criminalize.

### Third World Communities and the Extreme World of the Prison

In any consideration of the nature of imprisonment, particularly of Third World people in the United States, one is led to the conclusion that the prison world reflects an extreme, even caricaturized, form of the oppressive reality of Third World communities. In characterizing the quality of life in prison, the concept of extremes is important. There are for example the extreme hardships of the physical environment, the extreme threat to physical survival, extreme psychological pressures, extreme assaults on social personality, and the extreme responses of prisoners in their efforts to survive as human beings on terms that permit them to some sense of integrity and self-respect.

The terrible over-crowding and forced lumping of people well know to those forced into the inner-city ghettos and barrios of metropolitan America is grossly exacerbated inside prison where there is literally no escape from the press of humanity. An individual in prison is necessarily intruded upon or intruding upon another's physical and psychological space twenty-four hours every day for years. There is no such thing as being alone in prison. For those who have not experienced it, the absolute lack of privacy is scarcely imaginable. The much-hated two-man cell, a hallmark to barbarism, is infamous because it represents such an extreme assault on human dignity.

The vulnerability of people of color to the arbitrary practice of police violence and other abuses in Third World communities was

discussed earlier. It is a problem of major magnitude and a grievance against American society from which struggle for redress has been generally unsuccessful. In prison the threat to physical survival is so extreme as to impart a bizarre quality to daily life. There is no place in prison where one is safe from the threat of death or serious injury, accidental, or at the hands of guards or other convicts, or due to negligence. In addition to the danger of possible imminent death, prisoners must contend with other extremes of physical abuse that constitute the array of "management" techniques employed by prison administrators. These include beatings, gassings, medical neglect and abuse, denial of edible food and water, exposure to extremes of heat, cold, light, dark, or electroshock. If convicts seem to represent the extremes of "macho" behavior, it is because it is necessary to develop this kind of psychological defense in order to emotionally survive so much physical punishment.

Psychological abuse and pressures of all kinds certainly mark the experience of people of color in society as a whole. High rates of drug addiction, alcoholism, mental illness, and family strife indicate this clearly enough. The crushing impact of class oppression and racism on personality are well known. In prison, psychological abuse reaches the extremes of cruelty in the form of prolonged isolation, sensory deprivation, excessive use of chemotherapy, electro-shock and other aversive "therapies" and psychological techniques of behavior modification, pervasive taunting and ridicule by guards, and intense emotional loneliness.

Extreme assaults on social personality occur in prison in several ways. They occur in terms of the inherent social isolation and social artificiality of the world of the prison. Physical removal from the community and the lack of public access to most prisons compounds the problem. This aspect of imprisonment is especially profound in its impact upon those for whom the criminal role is proscribed, as it is for poor Third World youth who begin their prison experience before adolescence. Many spend their entire adolescence behind bars. The impact of this upon adult personality is certainly devastating. At least, it can be said that part of the experience of institutionalization involves the handicapping of social skills of interpersonal relations in the outside world. Thus, imprisonment for long periods of time is really a denial of opportunity for normal social relationships. In reality, this amounts to a life sentence of "never fitting in." This is the "out of place" feeling many ex-convicts describe. In the same way, the stigma of race, class and other invidious distinctions operate in the society to cast out certain groups and individuals. Accounts of the psychosocial consequences to dominated peoples have been documented all over the world.

Economic deprivation and powerlessness are two conditions widely affecting peoples of color in poor communities. Many prisoners are in prison precisely because they are poor and powerless. In prison these conditions are exaggerated to a humiliating degree. There is total lack of autonomy and consequent degradation of dignity. Property crime is one way albeit an irregular way of dealing with ones poverty and scavenger status in the broader society. Thus, in prison

too, there are a variety of more or less lucrative "hustles" that permit material survival over long periods of imprisonment. It should be stressed that there are only a limited number of ways convicts recruited from the "criminal classes" are able to legally obtain money in prison. They can get it from home--but we must remember that most Third World convicts come from communities afflicted by extremely high unemployment and where facing the welfare roles is the major alternative to crime. Convicts can sell their bodies to the "prison industry". They may volunteer for chemical experiments of more or less dangerous kinds, or they can live a totally ascetic life. This is really an impossibility in prison where the hardships are so extreme that relief is necessary for one's sanity. Cigarettes and chewing gum may be the only diversion in long-term isolation. The state provides only the very barest of necessities. Yet this is a society where one's worth as a human being is measured by one's ability to consume. It is no different in prison. A great deal of prison violence is directly attributable to the same kind of economic competition that inspires those criminals who operate at the highest levels of the capitalist state.

Confronting the extremely harsh and hostile world of the prison, conflicts must organize their own social system on terms that allow them to maintain human integrity and thus survive. If social relations in prison seem harsh, they are conditioned by the environment. If there is cut-throat competition for material goods, power, and prestige, it mirrors the nature of social values in the broader society. If convicts sometimes victimize each other, it reflects the fact that they are themselves the victims of the same racial and class oppression that characterizes the entire American system of social relations.

#### Can We Humanize the Criminal Justice System

Racial and class oppression in American history, culture and experience have laid the foundations and constitute the social legacy of American society. Thus, nothing less than a total restructuring of social institutions and social relations will change the over-all configuration of inequality and social injustice. Institutions of law and justice have been held out as the major means of solving the whole array of social problems that are actually rooted in the structure and organization of the American capitalist state. We have seen however, that systems of law and justice have been a major means by which the present social order has been perpetuated. From the perspective at the bottom of a pyramiding social structure, the legal-judicial apparatus is seen to serve ruling class imperatives, not justice. Clearly, fundamental change must occur but it will be the result of prolonged struggle and cannot be expected to occur overnight. Meanwhile, it is unconscionable to ignore the human suffering wrought by the social order and the struggle against it. Prison is the concentrated essence of the colonial experience for the non-white population in America. In the face of the brutal repression we know occurs inside prisons, every means should be utilized to wrest control of criminal justice institutions from the total control of the state.

Today we can look back on over a decade of severe state repression of many forms of social protest. From police brutalities to political manipulation of the grand jury process to the corruption of adversary proceedings to the torture of political prisoners and the writing of further repressive legislation, law and the system of criminal justice have been the major means of repression. Many white, middle-class, reformist-oriented individuals have been jailed or otherwise brutalized for their efforts. Many more have been shocked by revelations of domestic government conspiracies and shaken by U. S. complicity in the torture chambers of the prisons in Chile, Argentina, Brazil, Guatemala, South Korea, former South Viet Nam, the Philippines, South Africa, and most recently, the atrocities in Thailand. Massive, if distorted media coverage of sensational criminal trials may well have softened the popular concept of "prisoner." Over the past decade, social protest of all kinds has touched many lives. Many more citizens have known someone who has been caught up in the criminal justice apparatus. Many are actively or sympathetically concerned about prison conditions and about racism. Further, it is increasingly clear that the cumulative ravages of imprisonment create escalating problems for prisoners and for society. Problems of crime are not affected by increasing imprisonment. Prisons are enormously expensive. Given the history of their development and function, humanizing prisons through reform is less realistic today than it was in the time of Nineteenth Century prison reformer Dorothea Dix. All of these factors however, also seem to lead to the conclusion that new more progressive approaches may be feasible.

#### Community Control of Corrections

Given the overwhelming task of trying to effect positive change within the existing, corrupted system we must look to the only viable course of action. That is to enlist the collective efforts of neighborhood peoples and prison convicts to build a system of community control of corrections. This is not a new idea. Pilot projects are mushrooming across the country with impressive results. Most of these have been system-inspired reforms that could be more effective in the control of communities. Some have included the building of small community based facilities, greater use of probation, early parole and work/study release, pre-trial diversion programs, experiments with financial restitution, and legislative efforts at decriminalization of crimes without victims. Generally, program efforts have involved first-time felons and not so-called "hard-core" repeaters. Such programs are not likely to have their greatest impact on Third World convicts whose image is more "hard-core" than the middle-class drug offender. It is important that these programs proceed but it is an illusion to expect them to reach the masses of non-whites in prison.

There also exist, to a far more limited degree, community-inspired efforts to provide alternatives to imprisonment for community people. Most of these strive to reach juveniles and drug offenders. Some have developed effective relationships with the courts and work on a system of court referrals. They are, however, plagued by many problems primarily involving the structural realities of criminalization and Third World oppression. Most are underfunded and there

are many complaints of police harassment and interference with program efforts. Police saturation and provocation in the communities where such programs exist means that they must contend with the ever present danger of sometimes arbitrary parole revocations and police "set-ups."

These programs are, as well, struggling with the consequences of the ravages to personality that have been wreaked upon the victims of imprisonment. Many convicts experience real difficulty in relating effectively to the outside world. Similarly, people who have not experienced imprisonment often have a difficult time understanding what that means. Failure to recognize differences between "free" people and those who have been convicted and imprisoned may be an important unrecognized failure of many groups working in the area of prison reform.

### Conclusion

Despite the many difficulties, many community-based programs contain the seeds of a viable system of community-based corrections. Combined with some of the system-inspired efforts previously mentioned, it may be possible to move in the direction of community control. The most important reason why community control must be the goal has to do, in the last analysis, with the whole question of function that has been examined in the body of this paper. That is, if the function of state controlled criminal justice is social oppression, and its principal targets are Third World people, then its reforms, community-based or not, can only sophisticate this process. Dialectically opposed to the power of the capitalist state stand the forces of resistance to oppression represented by the committed efforts of community and workers organizations. Not enough research has been done on the philosophical, structural and methodological bases of these "alternative institutions"--if we can call them that. However, they seem to be defining, through their practice, a dual function. One is oriented toward reducing the incidence of crime in Third World communities, thereby providing relief to community residents and reducing the opportunity for state intervention in the lives of community people. The other emphasis is on the permanent restoration of valuable community members to participation in family and community life by developing alternatives to the kind of social resistance that is represented by crime and the criminal role. This includes skill development in dealing with bureaucratic structures and collective efforts to understand their own and others' lives and the connections between their personal repression and the nature of the capitalist state, the historical role of Third World peoples in the political economy of the United States, and the function of law and criminal justice in this context. With this knowledge, the individual liberation of the convicted class can progress. Thus, while we strive for basic change in the social structure, we must also struggle for community controlled programs of rehabilitation for those who have been socially and psychologically ravaged by imprisonment.



## SESSION VII

### Crime and Community: A Legislator's Task and the Political Economy

State legislator Ken Meade's aide, Joe Close, outlines proposed legislation (Assembly Bill 2095) for a basic overhaul of criminal penalty provisions, and for a re-distribution of power and control over custody and correctional programs. The model is anchored in a voucher model for funding a wide variety of local programs under contract to serve offenders alongside other citizens in need of services, with greater input by offenders and community representatives into particular dispositions, and more stringent standards imposed on the categories of offender subject to prison confinement. (While Meade was victorious in the struggle for educational funding which caused his absence from the conference, his criminal justice bill has withered away, with essentially no elements salvaged from it, and the author of AB2095 chose to leave the State Assembly, "My general feeling after six years in the legislature was that I was on the wrong side, being part of an institution that was insensitive and opposed to what the people want and what they see as being the real needs of the State. The legislature is composed of people enchanted into acquiring power and keeping it, whereas most of the important changes which are needed will require restraints over that power and more checks against its abuse. The electoral base is very small and still diminishing as a proportion of the total population. The potential for change resides in the people, and may yet be brought about by virtue of the initiative process.")

Philosopher Lichtman examines the state of the economy and arrives at pessimistic conclusions concerning the short-term future of liberty and justice. In a period troubled by both inflation and unemployment, lowered promise of material well-being, and increased need for state-provided welfare services occurring in the context of diminished revenue with which to provide them, Lichtman foresees greater attempts at management over lives in order to manage the economy. (Just two weeks prior to Lichtman's remarks, Herman Kahn addressed an international symposium held in Philadelphia, on criminal justice information and statistics systems. Viewing the civil rights movement as having involved defiance of law and encouraging disrespect for the social order and the social system itself, Kahn foresaw "a redressing of the balance between the rights of society and the rights of the accused. Things like the exclusionary rule are going to have to be modified...If you think of the movement of the late Sixties as a reformation movement--the joy and love culture, the 'protest' culture, the 'drop-out' culture--then the strongest movement in America since 1968 has been a counterreformation...it will be terribly effective in fixing a lot of problems in the next four years--including problems in the CJS...There is no question in my mind that the United States will be in some sense more authoritarian in the next five years than it has in the last ten...")

Ken Meade, L.L.B.  
California State Assemblyman, 1970-76  
(Represented by Joe Close, Legislative Aide)

Let me start by saying why you have me rather than Ken Meade; you're going to suffer from that because I'm by no means the public speaker that Ken is. I hope you'll bear with me. I don't know how much you've been reading in the papers, but Ken finds himself in a unique, and, I think, an enjoyable position now. Fifty-four votes are required to get the State budget out of the Assembly. It has already passed the Senate. The budget must be passed by the end of the month, or California won't have any money to pay its bills. By a series of circumstances, Ken is the 54th vote--the last vote needed to pass. The Republicans caucused and decided they would not support the budget. They had three reasons: first, they did not want funding for the Agricultural-Labor Relations Board; second, they did not want funding for a new system of voter registration by postcard, (self-registration versus deputy-registration); and third, they joined the educational issue where Ken is. There is a companion bill going through the Legislature now, SB 1641 by Senator Rodda, which appropriates money to the school system. However, there has been a great deal of discussion about how much money and for what reasons. Ken is taking the position that unless SB 1641 adds money to programs for bi-lingual education, for helping disadvantaged students, and other kinds of social programs that the schools can accomplish if financed, he is not prepared to vote for the budget. They didn't get a vote last night, are now in recess, and will go back on Monday. Ken is in Sacramento. He's trying to tell everyone why they should put in several million more dollars through SB 1641, and they're trying to tell him why he should vote for it as it is. The Oakland Tribune had a very nice comment on the situation: "Ken Meade and Governor Brown went eyeball-to-eyeball, and the Governor blinked first." The money for education won't be there unless Ken wins the fight, so he's staying there today carrying on that fight. Therefore, you're stuck with me, for which both Ken and I apologize.

I wanted to start with a quote that I think tells us something about where we are and where we should be. Daniel Webster said, "Justice, sir, is the greatest interest of man." I think that sets the role for the Legislature and any individual member thereof. The duty of a legislator is to rise above the pressures of special interests, and to understand the needs of the community, so he can deal with, but not be part of, all the pressures that everyone brings to bear. In the criminal justice system there are enormous pressures, both from the community and from the people who have a vested interest in their corner of the criminal justice system. And it's important, if an overview is to be taken, that it be taken in the legislature. Legislators are uniquely able to see the whole fabric, to be responsible for the whole concept, and not just one person's view. The trouble in the past has often been that legislators, as well as people in the community, have reacted defensively to patch up the system of criminal justice. They have not taken the long view, they have run around and put on band-aids. I think (and I hope that you will understand that when I say "I", I mean Ken), we have lost sight of the fact that the overall goal of the criminal justice system is justice.

Justice is what it's all about. Through justice, and only through justice, will we find humanity, which is what this conference is all about.

I suspect that no one would hold that humanity can flower in any sense if there is not justice. This is a concept that is very easy to lose sight of as you move about the system, arguing about the proper length of sentence for a given crime--in these kinds of arguments we tend to lose sight of the overall demand for justice. If I were to ask everyone in this room, "What is justice?", in terms of criminal justice, I suspect we would get a narrow number of definitions, but we would still get a fairly broad spectrum of what definitions there are. This points to the problem. There is no commonly accepted definition of what justice is in this context, and because of that, the system of criminal justice not only fails today, it is doomed to continue to fail until we address this issue and get some understanding of what we are talking about and what we are hoping to achieve. What we do now, it seems, is put band-aids on horrors as they occur or as we see them, but that still is just putting band-aids on the horror. But this band-aid approach does not point up the horror that underlies the criminal justice system because of the absence of justice.

There's another facet of the system which makes this whole concept and discussion much harder to get at. The system, by its nature, has been designed to take place behind locked doors and stone walls out of the sight of the citizens. So when someone goes into the system, there is a feeling in the community-at-large that justice lies there. Some of us often feel that this may not be so. What lies there is this mystique of corrections, the technical answer--"you-can't-argue-it-because-you-don't-know-what-you're-talking-about" kind of thing. This is sometimes substituted for a broader concept of justice. This is demonstrated by community reactions to people coming out of the criminal justice system. They are appalled at the fact these people sometimes return to society worse than they went in, committing future crimes more horrible than those for which they were originally convicted. And people say, "You aren't doing right, and look at all the money we gave you." They think they are buying a system that is going to solve the problem; and when the system doesn't work, the public feels let down and therefore, more threatened and less willing to give money. But it is because we have isolated the public from the system--a system that exists in a context where the public cannot see it, let alone understand it. I think we have to carry the argument beyond the confines of this room. This argument--the overall question of how we deal with the system of criminal justice--will only be resolved when the citizens of this country have come to an understanding of the overall issue and have made a resolution in their minds. It is the responsibility of legislators and everyone concerned with the system, to help educate the public so that they understand the functions of the system, and feel competent enough to make decisions. In addition, we must establish common definitions for terms we use, so we can all agree that they mean the same thing. I don't think that's the situation now.

It is clear that a dramatic realignment of the correctional

methods is called for. It is essential to abate the misuse of institutions. "While much can be done to eliminate the worst effects of the institution--its crippling idleness, anonymous brutality and destructive impact--in so far as the institution has to be relied upon it must be small enough and so located and so operated that it can relate to the problems the offenders pose for themselves and their community." Now, that's not what Ken Meade said. That's what the National Advisory Commission on Standards and Goals said in 1973, on Page One of their report, entitled Corrections. I am sure you are all aware of the National Advisory Commission, which studied and wrote reports in all the areas of criminal justice--six volumes, one of which deals with corrections--and every volume ends similarly, on the legislator's role. They all end with model legislation to be enacted in the states, not federal legislation. So this shows you another aspect of the task of the legislator in relationship to the community. This Commission on Standards and Goals was appointed by John Mitchell, no less, when he was the Attorney General under Nixon. It was charged with reviewing the entire system of criminal justice, both federally and at the state level. Notwithstanding who appointed it, the remarkable thing about the Commission is that it produced strikingly progressive reports in all areas of criminal justice and, I think, a particularly progressive report in the field of corrections. In fact, these reports were so progressive that there was an attempt on the part of the Nixon administration to stifle them.

Because of what Ken considered the thoughtful consideration of a number of very enlightened people in the National Commission on Standards and Goals, he used portions of this report to write a bill, which I will spend a few minutes discussing with you.

It was a bill designed not to do a band-aid job--based solely on sentencing, incarceration, prison staff, or medical facilities--but instead, a bill designed to look at the entire system. Through this bill, Ken hoped to start the kind of dialogue which might get us closer to a definition of the word justice; a definition which we could then agree upon and expand. And when this bill was before the Criminal Justice Committee of the California Assembly, all members of both parties saw this. It was a very, very interesting discussion, lasting for almost an hour and a half, and, I think, that they were startled to see for the first time, a broad package bill brought before them that went to every aspect of corrections.

It would have been easy to take such a startling bill and sort of sweep it under the rug, but they didn't. It is in an interim study now, and they are going to use it as the basis for legislation in the next session. I hope you will all encourage them to take a look at the bill, copies of it are on the back table, it's AB 2095. There is a report in lay language as to what the bill entails and there is a table of cross-reference between the bill and sections on the volume on corrections from the National Commission on Standards and Goals. I hope we can keep the pressure on the Committee on Criminal Justice of the Assembly to keep this bill before them as they go forward. It is, I think, the kind of thing we need for continuing this discussion and to begin talking about some real considerations that could become law. In it's overall view the bill redefines crimes, between violent

and non-violent; restructures sentences; makes incarceration in prison possible only under special, limited circumstances; brings the community into the operation of the penitentiary and related systems; and gives the offenders, themselves, the right to choose from a wide variety of alternatives as to what they are going to do with the time they are under the custody of the Director of Corrections.

In terms of specifying crimes, those of you who are familiar with the Penal Code know that it is an absolute mess, so I don't have to belabor that point. Assembly Bill 2095 defines felonies into five categories, ranging from the most horrendous kind, which has a 10 year maximum sentence to crimes that are non-violent, for which there is an 18 month maximum sentence. Beyond that, it states that if a person is sentenced, there would then have to be a separate hearing to determine what portion of that time would have to be spent in jail or in prison. Prison confinement would be limited to those who are persistent felony offenders, dangerous offenders, or professional criminals--and there are very narrow definitions as to what these terms mean in the act. Then the judge will have to provide a written order stating why he has decided that that person has to go to prison, and that was subject to immediate and speedy carrying to the District Court of Appeals. If there is any argument that the judge misinterpreted this section of the law and was putting someone in prison who did not need to go to prison, there was remedy quickly before the District Court of Appeals. Under this portion of the bill, I think relatively few sentenced offenders would have found their way into prison, or what we refer to later on in the bill euphemistically as "maximum security custody."

It has another provision which would help after somebody was released from prison. It allows the Director of Corrections, after a person has been out of his custody for five years without incident, to seal the records so that the person doesn't have the stigma of being a convicted felon hanging over his head, while he is trying to integrate himself back into society. This provision will apply whether the person had been in prison, or some other program which we'll talk about later.

To make the system work, it completely reorients and redesigns the Department of Corrections. It establishes a state-wide citizens commission that, in fact, runs the Department of Corrections. The commission has the right to supervise the Department, has administrative rights over the Department. The bill establishes how the commission will be selected. There will be public members, as well as members from specialties that will preside on this commission. The actions of this commission will be subject to judicial appeal. If a prisoner, or some other person, feels that the commission has made a wrong decision, then they have the immediate right of appeal to the District Court of Appeals.

In addition, it sets out the legal rights and duties of offenders as a group, and establishes a process whereby offenders can elect their own representatives to negotiate with the state-wide commission. In addition to the state-wide commission, there will be county

committees of citizens in each county that prisoners would be sent to, thus allowing citizen input at all points.

When the person is assigned to the Department of Corrections, after having been convicted, he does not go to jail, provided the judge has not stated otherwise. Instead, he goes to secure housing, not maximum security. This secure housing could be a motel with a fence around it, a YMCA, or some similar facility. While there he negotiates with the technical team and the county citizens committee as to what needs to be done to provide him with the opportunities to reintegrate himself back into society and to lead a crime-free life. The key here was that the convicted person must consent. Thus, we would no longer be saying, "This what we think you should do, now you go out and do it." The convicted person is the key to establishing a program that will operate for him. He continues to have control over the program as it progresses. If he feels the program is not working, he can stop it in mid-stream and renegotiate the whole thing. Equally, if the Department of Corrections thinks the program isn't working, they can stop it in mid-stream. But even then, all they can do is take him back to square one and say let's renegotiate. And the renegotiation would not take place in prison, unless the judge had originally called for incarceration in prison. Thus, the Department of Corrections could not put you in jail, they would have to start all over again in the same circumstances that housed you when they received you.

This program would allow the prisoner to leave secure housing-- in a halfway house, in the community, etc. If jobs are the problem, try to find a job. If job education is the problem, try to secure the kind of job education needed. To solve educational problems, he could contract to get the kind of educational resources he needed in order to get going.

The same can be accomplished for health or mental health problems. If it was a drug abuse problem, he could contract with the drug abuse community that he wanted to work with in order to clean himself up. An interesting side effect of this bill is that the State will be paying for community social programs. This would put a great deal of new money into these various community resources now in existence and which are mostly starving to death financially. It would provide them with the necessary funds to continue functioning. Ideally these programs would not be made up of all, or even a majority of, convicted persons. There would be various groups of people using these resources--one of whom would be under the authority of the Director of Corrections. We think that's an important element. Thus you begin to break the pattern of putting everybody who has been convicted of committing a crime together. At the same time, you help fund some of the community social groups providing needed resources yet lacking money, because they would be contracting with the Department of Corrections and getting paid to do this work.

The bill has one other economic advantage--cutting down on the welfare roles. In most instances now, if someone goes to jail or prison, their family goes on welfare; another cost to society. However, with this program most people would be out working, thus they'd be living with, as well as supporting, their families. So there are

savings in this bill. (Republicans like to hear that. Even some of the Republicans on Criminal Justice smiled when we talked about the savings that could be realized under the bill.)

Another provision of the bill states that if a person is sentenced to prison, he should be sent to a prison with not more than 400 inmates nor further than 75 miles from his home. That would mean stopping all of the warehouses that the Department of Corrections has throughout the State. Initially, we can see that this might mean that some people would have to use county jails, and we all know how bad county jails are. There are provisions in the bill, however, to start cleaning up county jails if they have state prisoners in them. The bill establishes standards that county jails must achieve and maintain in order to have a contract with the State of California. County jails will be inspected periodically, by professionals, and citizen commissions not only in their county, but State-wide, to insure compliance with these standards. So we think another side effect of an approach like this is that it deals with the very serious problem of the conditions that exist in most county jails.

Now, how is this paid for? It's paid for by vouchers. We had a difficult time getting to the money on this thing. It's a very laborious task to find out how much it costs to keep someone in a state penitentiary. You can get a variety of figures. Some include just the obvious things such as the cost of the jail, the cost of the correctional officers, and the little bit for health facilities, as bad as they are. But it is very hard to get to some of the supplementary costs. For example, how much does it cost the Department of Corrections to run their State-wide bus system? You can't even find out how many buses they have--or at least we couldn't. The theory we finally evolved was to take the total cost of operating the Department of Corrections, divide by the number of inmates in prison and on parole, and give this resulting sum in vouchers. It's not likely to be less than \$10,000 a year each, and I wouldn't be surprised if it were as much as \$15,000 to \$18,000 a year if you include all the ancillary costs, provided you can ever obtain them. If you gave someone access to these kinds of resources, and if he was dealing with skilled people, and if he begins to seriously consider "Why am I here, and what do I need to do not to get back here again?", he will then have the necessary means to go out and do it. Obviously, our contention here is that if we are going to spend between \$10,000 and \$18,000 a year to keep someone in custody, we might as well give them a way to get back into society and take care of the deficiencies that got them there in the first place.

Underlying all this, we provided that when such contracts are made, the contracting agencies are forbidden to reveal the individual's identity as a prisoner. Only those people who need to know will know. At that point the person enters the community without stigma attached to him.

The other portion of the bill, which is equally important, specifies offenders rights. The most important right is to allow them to elect their own representatives who can negotiate with the State-wide commission or the county committees to see that the prisoners' rights,

as well as their rights as human beings, are not trampled on. In addition, we added a provision to make available a branch of the public defenders office to see that when prisoners need a lawyer, they get one. This is true whether they are talking with the State-wide commission, to their own correctional counselor, or whether they want to take the matter to court; they have the access to lawyers paid for by the State of California. We realize that these things will only be enforced if there are people out there whose duty it is to enforce them. We hope this group of lawyers who are representing prisoners would take this as their duty, to see that the benevolent portions of this bill are enforced and that every time anyone disregards them, they take them directly to court.

Of all the provisions in the bill, Ken feels that one of the most significant is the citizens advisory commission. To have people come from the community and actually see the day-to-day operations of the criminal justice system, we think, will help to close the gap that leads to citizens not understanding the issue. Obviously, we are all, everyone of us, part of the criminal justice system, whether we ever have committed crimes or not. People walking down the street today are a part of the criminal justice system. They are the ones and we are the ones whom crimes are committed upon, and we are the ones who pay the taxes. We're part of it. We must abandon this kind of isolationism--the us versus them concept. It has to be everyone together. It is our hope that by opening the process to citizens who will play an active role in the criminal justice system, we will start the discussion of the concept of justice I mentioned earlier.

Let me close by reading some words from Kahil Gibran as he put them in The Prophet: "And this also, though the words lie heavy on your hearts. The murdered is not unaccountable for his own murder; the robbed is not blameless in being robbed; the righteous is not innocent of the deeds of the wicked; the white hand is not clean in the wrong doings of the felon; yea, the guilty is oft times the victim of the injured. And still more often, the condemned is the burden bearer for the guiltless and the unblamed. We cannot separate the just from the unjust and the good from the wicked, for they stand together before the face of the sun even as the black thread and the white thread are woven together and when the black thread breaks, the weaver shall look into the whole cloth and he shall examine the loom also. And ye who would understand justice, how shall ye, unless you would look upon all deeds in the fullness of light? Only then shall you know that the erect and the fallen are but one man, standing in twilight between the night of his pigmy self and the day of his God self, and that the cornerstone of the temple is not higher than the lowest stone in its foundation."



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I want to take a phrase from the remarks of the last speaker-- the line from Gibran which talked about looking at the whole cloth in the loom, because the title of my remarks has to do with political economy and crime in the community. It seems to me that a good part of the discussion that followed the speaker's remarks had to do with what felt like a curious kind or set of conflicting perceptions. On the one hand, the remarks seemed quite radical and on the other hand, they seemed extremely limited. It seems to me that that was no accident, but rather is built into the nature of the whole social system that I want to comment upon.

I will go back to the original point, that is, to raise the question of what the criminal justice system is about, and what the definition of justice is. I would like to start by reminding you of one of those remarks that I think Richard Korn referred to as the kind of cliches that we ordinarily hold in common; but this is a cliché that seems to me to be true, and I suppose all clichés are by definition. But this is a truth that we really need to grapple with, despite the fact that we pay lip service to this position and don't ordinarily follow out the implications. It seems to me that the function of the criminal justice system is, in no sense, justice. The function of the criminal justice system is domination, and unless we begin with that point, I don't believe we are going to be able to follow through with anything else that happens in this social arrangement.

Briefly, my perspective is that the system under which we operate is a system of capitalism in which a very small minority of individuals dominate the entire social system by controlling, what Marx referred to, as the means of production, i.e., factories, banks, railroads, mines, and in the present age, research institutions, and so on. The fact that that's the case (which I am going to maintain is the case), indicates to me that this class of people, who I have no hesitation in calling the ruling class, exercises power over the entire society and intends to keep it that way. They have several functions which they must carry out in order to exercise that power.

They have to be able to make the system operate reasonably well to provide for certain material benefits that are supposed to be the advantages of living in a capitalist system. However, they must also provide spiritual benefits, such as freedom, dignity, rights of the individual, equality, and so on. In other words, the system is made up of a set of material and spiritual, or, if you like, political benefits. It seems to me, the system of capitalism is always in a state of profound contradiction. (I know that's an ambiguous term, but I think I can give it an operational definition.) The contradiction I am talking about is between the economic structure, which also implies the social structure, and the set of ideals that are proposed. I refer to the set of ideals as liberalism, and the social structure as capitalism. The simplest way I can state my thesis is that there is a

contradiction between capitalism and liberalism. Liberalism is a system that espouses the values that are laid out in documents such as the Declaration of Independence. It is the type of thing that we all learned in school and particularly in Sunday school. We learned that all people are equal, that human beings are entitled to dignity and respect, etc.

It doesn't require any insight to look around and discover that the social system does not operate on those values. In fact, some people are more equal than others, some people have wealth and others don't, and some people control the lives of other people. If you go back 200 years--since it is the bicentennial--and look at the documents on which this country was supposedly founded, you realize the striking contradiction between the claims of a document like the Declaration of Independence and the actual social reality that prevailed at the very time it was being written. Despite all the talk about all men being created equal (taking the term "men" in its limited sense, not its generic sense, because at the time women didn't vote at all; blacks counted only as a certain fraction of the votes of whites; and, given the property relationships of the times, not even all the white males in the community could vote), whatever the founding fathers meant when they wrote these documents, they did not mean them to be taken literally. It seems to me that it was not an accident, or a limitation, or a peculiarity of the founding fathers--it's part of the very structure of capitalism. The emphasis of my remarks is really on the structure of capitalism, or the structure of the political economy, from which the issues in the criminal justice system follow. These are not defects of specific individuals, and they can't be traced back to the malignancy of a particular person. Rather, it is part of the general structure of capitalism to be based on exploitation, domination, and the control by one group of individuals over the resources upon which the community as a whole, needs to live.

But, since the system is "ideally" based on a set of moral principles, there is a procedure which the State always needs to carry out as best it can, to mask the contradiction between the reality and the set of ideals. In other words, since it is the case that the reality and the ideals are incompatible with each other, one of the functions of the State is not merely to administer the system but to administer to the repercussions of people discovering the extent and depth of social hypocrisy. Fundamentally, to simplify a very long and complex issue, there are two basic ways in which the State can repress the possibility of dissent against it. The two techniques are violence and mystification. The state relies on both those techniques and blends them in complex ways.

I think it's quite clear what the issue of violence is. When the State murdered Mark Hampton, for example, (and I use the word "State" to refer to the governmental apparatus, not to any particular state as such), that was an act of overt violence, exercised in a very clear, common-sensical use of the term "violence;" i.e., people were explicitly murdered. Now ordinarily, a capitalist state is not going to stay in existence very long if it has to rely on overt violence in a very large number of cases. The basic mechanism through which it

stays in power is by winning the allegiance of the individuals it dominates; by winning their agreement to the set of "ideal values" that it espouses. In a system of capitalism it's not possible to obtain the loyalty of a large number of people unless they're able to gain the benefits which the system promises them--which are fundamentally material benefits. So, while the state has been relying on some blend of physical force and violence to intimidate people who are threatening to rebel against it, dissent from it, or are proposing revolutionary alternatives, the State will, as much as possible, abstain from violence whenever it can, and will rely upon means of persuasion. That is, it will try to promise most people some advantages that can be derived by remaining inside and loyal to the system. That's why if we take the other technique--persuasion--taking people out of the ghettos and giving them jobs which promise them some kind of notoriety and significance for example--we find it always goes hand in hand with the use of force. Put very simply, the State uses a carrot and a stick. People are promised benefits in the system, and a very small percent of the people, in that system, do derive benefits. This small percentage is used to guarantee that anyone can rise to the top and derive the same benefits in the system.

This whole theoretical framework would just be a matter of philosophical interest, except for the fact that when blended with some empirical observations about the current state of capitalism, it leads to certain practical expectations. To me it seems to indicate that when the capitalist system is expanding, it will rely less on violence and more on the promise of material well being and economic fulfillment. In other words, in the period that lasted from late 1945 until about 1970, capitalism in our country--particularly in its relationship to the rest of the world--was in an expansive position. The United States clearly was the leader of the world capitalist system. The other capitalist countries, with whom we had competed, had largely been weakened or destroyed economically through the Second World War. Germany, England, Japan, France, and so on, had been our primary rivals, but were in no condition to compete with us after the Second World War. Through devices such as the Marshall Plan and the World Bank, we were able to dominate the whole capitalist community. At the same time there was no real Third World opposition and the Communist world was weak and disorganized. Now a great deal has happened between 1945 and 1970, and we're beginning to experience the repercussions. Other capitalist countries have built up their own power--the European block is one example, the rise of Japan is another. The Communist world has increased its strength and has been able to support a group of countries which regard themselves neither as capitalist nor communist. In addition, footholds have been made in what were traditionally capitalist spheres of influence--in our own hemisphere, primarily in Cuba, and then, temporarily, in Chile. The strangle holds on those spheres of influence are beginning to be lost.

At the present moment, the capitalist economy is experiencing difficulties that it didn't face in 1960 or 1965. There are people struggling to understand how you can have mass unemployment and inflation at the same time. For one who went through economics department and graduate schools, all the traditional wisdom, was that,

by and large, there was an inverse relationship between the state of unemployment and the state of inflation in the system and when one went up the other went down. In fact, it had long been a basic policy principle, that if you wanted to control the rate of inflation you did so by throwing more people into unemployment, and vice versa. What's happening at the present moment is that both of those variables have gone up. The rate of inflation is continually rising and the rate of unemployment is very high. I think, as you all know, you can never trust government figures on unemployment since by anybody's measure they're at least 50 percent under the fact. A couple reasons for this is the government refuses to call people who have given up looking for jobs unemployed. In addition, part-time employment is never considered. There are various other slippery devices for underestimating the rate of unemployment, so that, in California, it's clearly over 10 percent and in the country as a whole, I would think it's at least that, even though the figures can be manipulated at will.

What we have at the present moment is an economic situation in which the tendencies within the capitalist system toward stagnation, which I think are structurally built in, are beginning to reassert themselves. Of course, the ruling class doesn't sit around idly waiting for the system to collapse; it does various things in order to expand and in order to win back the kind of profitability that it sees itself losing in specific instances. It has various devices available and it's a kind of continual warfare--as the system begins to contract the people in charge attempt to expand it. One of the ways in which that expansion takes place is by curtailing the rights of individuals within the home country and attempting to expand as much as possible overseas. One of the reasons for having an increase in issues around repression in the United States is directly related to the downturn in the economy itself. The way in which that develops is around the issues of wages and prices. The attempts of the Nixon administration hold down the level of wage increases--in other words, to curtail union activity and the demands of unions-- I think, is going to continue. In other words, I would not be very surprised if over the next five or ten years there were even more severe attempts to restrict the possibilities of people bargaining around the issues of their wages. And, I also think that what we've witnessed in San Francisco and other cities across the country--that is, the attempt of public workers to increase their own wages--is going to be a perpetual factor for, perhaps, the rest of the century.

All of this is related to the issue of criminal justice because it's related to the basic issue of why people commit crimes in the first place and whether the state has any particular interest in rehabilitating anyone. Let me come back to those two points because I want to remind you, and myself, that that is the focus of this particular discussion. The issue around the role of the state in capitalism is that the expenditures the state makes are continually more and more hardpressed. That's why, for instance, we're seeing the rash of strikes in the public sector--social workers, teachers, medical care, and so on and so forth. The reason is basically that the state derives a very large part of its revenues out of the taxes of the people, who, of course, pay for those taxes by working. However, when there's an economic downturn the amount of tax income that can

be derived from ordinary working people is going to be curtailed. You might think that one solution is to turn to the corporate structure and tax more heavily. In my judgment, the corporate structure controls the state to a very large extent and it is not likely to increase the taxes upon itself. In fact, it does whatever it can to decrease the taxes on itself regardless of what's happening.

The state finds itself in this peculiar situation: it has more and more people in need of state services of one sort or another, but it has fewer and fewer resources to pay for it. It's caught in a kind of squeeze between the growing need for expenditures which are designed to patch up the breakdowns in the system and the limited revenue. People need the social welfare system because they cannot live adequately on the basis of the structure as it exists. The state, which is supposedly a welfare state (although its more so for the rich than for the poor), doesn't have the resources to pay for those welfare services. And the reason it doesn't is because it is not an impartial, neutral state (as liberal theory would like us to believe), but, a state which basically belongs to the people who control the economic system, who are not likely to increase their debt, and who always want to push that debt off onto to other people. But the problem is that other people are less and less able to pay for the services. So, for the ordinary taxpayer the problem leads to taxpayer revolts. Over the last five to seven years, this has become quite evident in this state; it is very difficult to get bond issues passed, even on matters which theoretically you would think the parents of the next generation of children would have some vested interest in passing. For example, when a bond issue to finance a school is proposed, the parents, who have an interest in improving the school, also have an interest in keeping their taxes down, hence the bond issue is rejected.

So we have a series of conflicting forces and, I would say, contradictions built into the economic system. Under those circumstances, people propose alternatives. People become more dissenting and more rebellious. One of the signs of that was in the Sixties. It comes when the state makes promises--that is, when liberalism upholds ideals and holds open expectations--it can't possibly meet.

Take the civil rights movement in the Sixties. There was a movement to introduce more civil rights for Blacks. What that eventually led to was an understanding that civil rights was very restrictive in its meaning because people couldn't participate equally in the economic system; and I don't even mean theoretically or philosophically equal, I just mean equal with whites. I am not talking about getting rid of the class structure. More and more Third World people began to understand the facade of liberalism in American society--the limitations involved in gaining certain civil liberties when you couldn't participate equally in the economic structure. So you found yourself with the right to vote when more and more people have come to feel that there is very little meaning in voting because there is very little that can be accomplished with the vote as long as economic power is so unevenly distributed. Part of the reason for the general apathy and malaise that has existed in the Seventies and continues to grow (almost every pool indicates that fewer and fewer people participate in the whole democratic process, at least in the

electoral process), is the increasing awareness of the irrelevance of mere satire.

There is a very large number of people who regard themselves as independent of both major parties and have no particular interest in participating in either of them. I am willing to bet that in the next election, the number of people not participating at all is going to be higher than it has been in the last 10 years and perhaps may even be higher than the number who voted in the last election. Part of the reason for this is a growing cynicism of what the system is all about. It's curious to see what happened after Watergate. There was a great deal of insight available into how this system operates, and you might have thought that there would have been a movement further to the left. Instead, what we get from the Republican and the Democratic parties is a likelihood of a movement further to the right. That movement is based on the fact, that the ideology--the value system of liberalism--tends to persuade people that nothing can be done. When you get a move like the one after Watergate, which is to show the levels of corruption in high office, people don't respond with the notion that they've got to change the government around; they respond with the notion that they always knew that politicians were corrupt. And I think for most people, it extends beyond that, to the view that they always knew everybody was corrupt and that, in fact, it doesn't matter who holds power because everybody will abuse power when they get it.

The widespread aura of pessimism, apathy, and cynicism that tends to follow in the wake of major political scandals, instead of pushing the system further to the left, tends generally to push it further to the right. My concern is when you find that sort of pessimism and cynicism combined with the current needs of the capitalist state to curtail the rights of individuals, the stage is set for massive repression. For example, look at the legislation that's been proposed in the Congress: Senate Bill 1, which is an incredible incursion into the field of First Amendment rights and civil liberties, and which strangely enough, has managed periodically to get a hearing and a large number of supporters. But it doesn't surprise me, as much as it frightens me, that legislation like that would arise at this particular historical period. I see the tendency of the state at this moment as being one of curtailing people's liberties as much as possible, and having more and more to manage the lives of individuals because of its need to manage the economy, under a system which is going to be more and more a system of curtailment and scarcity. In my view, the reason for Brown's popularity is that his own personality tends to intersect with the needs of the system at this particular moment; and that goes for all the politicians that have been reasonably successful in last year's campaigning. The motto is always a kind of personal curtailment--we have to pull back, we have to cut down, we have to restrain ourselves, we have to move toward a position of austerity.

I don't believe that we as a people are required to move toward a position of austerity given our resources and its potentialities. But, the capitalist system, because of its own irrationality, forces us in this direction. In other words, the curtailment of real economic

advantages are not required because productive forces are unavailable, but because the set of social relationships requires a given class to dominate other classes and to restrict their activity as much as possible.

What I am trying to suggest is that beyond looking at the specific issues around reform, the reason that all these matters are difficult to deal with as they exist today is because we talk in the context of a system, which is not interested in rehabilitating anyone. This is not its primary function. The system is not interested in dispensing justice, it is interested in maintaining class domination. This is accomplished through the facade of pretending to appeal to liberal values; hence, rehabilitation arises. However, it seems quite obvious to me when looking at the system devices for rehabilitation are not available. In fact, looking at the state of the economy, it is even clearer that the whole notion of returning people to society is a curious and ironic notion at best. Where exactly are they supposed to be returned and to what particular functions? With a very high and growing level of unemployment, where are these people supposed to go? The remark made by Joe Close, at the end of his speech, struck me as right to the point. Wouldn't the working people ask why it was that somebody was getting \$10,000 to \$15,000 a year for having committed a crime and being rehabilitated in this fashion, when they themselves were working within that very income at long hours in order to maintain their own livelihood? I think he put his finger on a very critical point, as I don't think there's an answer from within this system. I don't think there's any way of satisfying people within this system. And, I don't think it's an accident that the prison system is set up basically to resemble the worst part of the factory system of the 19th Century. Prisons have usually performed the role of restructuring people's attitudes so that they would be compliant with the system as a whole accepting it as much as possible and not rebelling against it. Despite all the surface pretenses, I don't think its ever been designed to rehabilitate anybody. That's why there's no surprise when the legislation doesn't rehabilitate anybody. Ultimately, what needs to be rehabilitated is the society, not particular individuals who rebel against it.

I am concerned when I make remarks like this--I know the basic question is, "So what?" or "What can you do about this particular point?" I don't think that eliminates the truth of the remarks I'm making. If the conclusion tends to be more pessimistic when you look at the larger structure, I don't feel it is wise to overlook that fact and go on as though you can introduce reform legislation and expect it to pass or to make substantial difference if it passes. Now that doesn't mean that I'd be opposed to the type of legislation proposed by Ken Meade. The function of that kind of activity is to begin to organize the kinds of political movement which will, in fact, make the possibility of a significant transformation in the society possible.

Legislation doesn't always and can't always have the function of actually accomplishing what it sets out or intends to do in its own manifesto. It can, however, begin discussion and debate which leads people to understand the narrowness of the parameters of the real

possibilities that are available in any social system. Consider the question that immediately came up in response to Meade's Bill-- "What are you going to do, pay people to be criminals in this society?" This is a very fundamental question that needs to be asked. For example, people in the corporate structure are paid to be criminals every day of their lives, and it would be very useful if that point were sharply made. There is a classical sociological study by Sutherland, White Collar Crime, which indicates exactly how criminal the system of corporate enterprise is, even in its own terms. If you look at that system in terms of the amount of money and the lives it takes, you find out that the kinds of criminal statistics collected among the working class begin to pale into insignificance. The way this system operates is that the lower you go down the scale, the more that people who commit crime, exercise that crime against other people who are in the same class, because those are the only people that they can basically reach--people who have to TRY to make good in this system, who are faced with overwhelming indignities and frustrations, who are trying to gain only what the liberal system promises them--economic well-being. That's what the system keeps promising everybody in it, and when it's not available, the only way that those people can make any of the promises good is by turning to the people around them, against whom they usually exercise any acts of violence or exploitation. The people in the upper-class, of course, don't ordinarily turn against each other. They turn against other people in the society as a whole. Their crimes, in other words, are perpetrated against all of us, as in the kind of crime that was revealed concerning price fixing in the electrical industry--Westinghouse and General Electric running off with millions and millions of dollars; it throws into miniscule proportions any of the robbery and theft ordinarily committed in a community over any given period of time. Remember what the penalties were for those acts? They were irrelevant. Westinghouse and General Electric were expected to pay fines of something like \$10,000--totally irrelevant given their own budgets. So when the ruling class commits crimes the whole social structure is geared to augment that system, to permit them a certain kind of privilege in doing it, and, of course, never to call them to account. The functions of introducing a certain kind of legislation and getting discussion going is to make those points perfectly clear.

Look at the criminality involved in the entire Watergate proceedings. One of the consequences is that some people will get very wealthy, writing books about their corrupt roles in Watergate. You have to face that kind of repulsive spectacle of people, whose function was to exploit and deceive millions of people, becoming luminaries through their books and through appearances on television and radio in which they describe the corrupt part they played in the system as a whole. Given the kind of commercial enterprise system that we have, that immediately shoots them into a kind of financial notoriety, in which they can, in some cases, make hundreds of thousands of dollars from their own corruption. So exploitation feeds upon itself.

What I am saying is that humanizing the criminal justice system means seriously transforming the social structure in which the criminal justice system functions as a part. I don't see any fundamental way of trying to make reforms in the criminal justice system without



basically overthrowing the system of capitalist domination on which the criminal justice system rests. The reform gestures always point in the right direction, but people began to ask, "Are judges going to administer these reforms?" or "Who are the people that are actually going to be responsible for carrying them out?" I think, what people were asking behind those questions was, "Isn't the dominant class going to make use of this piece of reform legislation the way it's made use of every kind of reform legislation in the past?", meaning isn't it going to use that legislation for its own purposes? If you go back over the history of the regulatory agencies in the United States, you will discover that when they were introduced, some people in the capitalist classes struggled against those agencies, but then they discovered they could use those regulatory agencies to their own purposes. In this history of regulation, the most striking is the anti-trust legislation, the Sherman and the Clayton Acts. Did the Sherman and the Clayton Acts end monopoly in the United States? No. In fact, as it turns out when you look at the history of that legislation, they were a very useful device for the major corporations to increase their monopoly power. Or, take one of the more bizarre examples that's always struck me: if you look at the civil rights legislation after the Civil War, (and if you remember the language in the 14th Amendment and its enabling legislation refer to the rights and privileges of individuals, persons), what the Supreme Court did with that legislation was to strike it down insofar as it protected the Negro and redefined it so it protected the corporation. When the legislation eventually passed, the initial intention of the legislation was totally turned on its head. Instead of protecting the people that the legislation intended to protect--black people in this case--the legislation ended up protecting the larger corporation. When the states tried to regulate corporation activities, they argued that they couldn't have the activity regulated because they were, in fact, persons and, therefore, they were protected under the Fifth and Fourteenth Amendments because they had certain privileges and immunities which the state had to respect.

So, I think, that what I heard coming out of the first part of the discussion, and what all of us know, is that legislation, no matter how well intentioned it is and no matter how much it points in the right direction, tends to be utilized by people in power in order to maintain their power; unless it is part of a larger social movement which is designed to expose that power and to deal with it in a significant political fashion. For me, that political movement takes the form of democratic socialism. But whatever form it takes and where ever people stand on that particular issue, I really have grave doubts whether it's possible to transform any part of this system without dealing directly with the issues of class, power, and domination that lie behind them. The basic tendency in this system at the moment is toward more restriction and more repression; the mood of cynicism that I see in this country is likely to make people particularly "defensive,"--i.e., willing to accept incursions on their freedoms under the notion that somehow or another things could be even worse than they are. I don't have a very optimistic outlook. What it indicates to me is that unless there are counter political movements with very large numbers of people willing to band together and publicly announce their opposition to this tendency, it's likely to move through with little opposition. That's

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the tendency I see at the moment. In other words, I think it's an historical period in which a great deal will have to be done even to stay where we are; otherwise we'll look back in 10 years at this period and discover that our rights, freedoms, and liberties have been further eroded; that by remaining passive, as a large number of people did during the McCarthy period, a great deal was lost. And, things lost in this system are very difficult to make up. Gains get washed away very quickly, but losses have a way of remaining in perpetuity.

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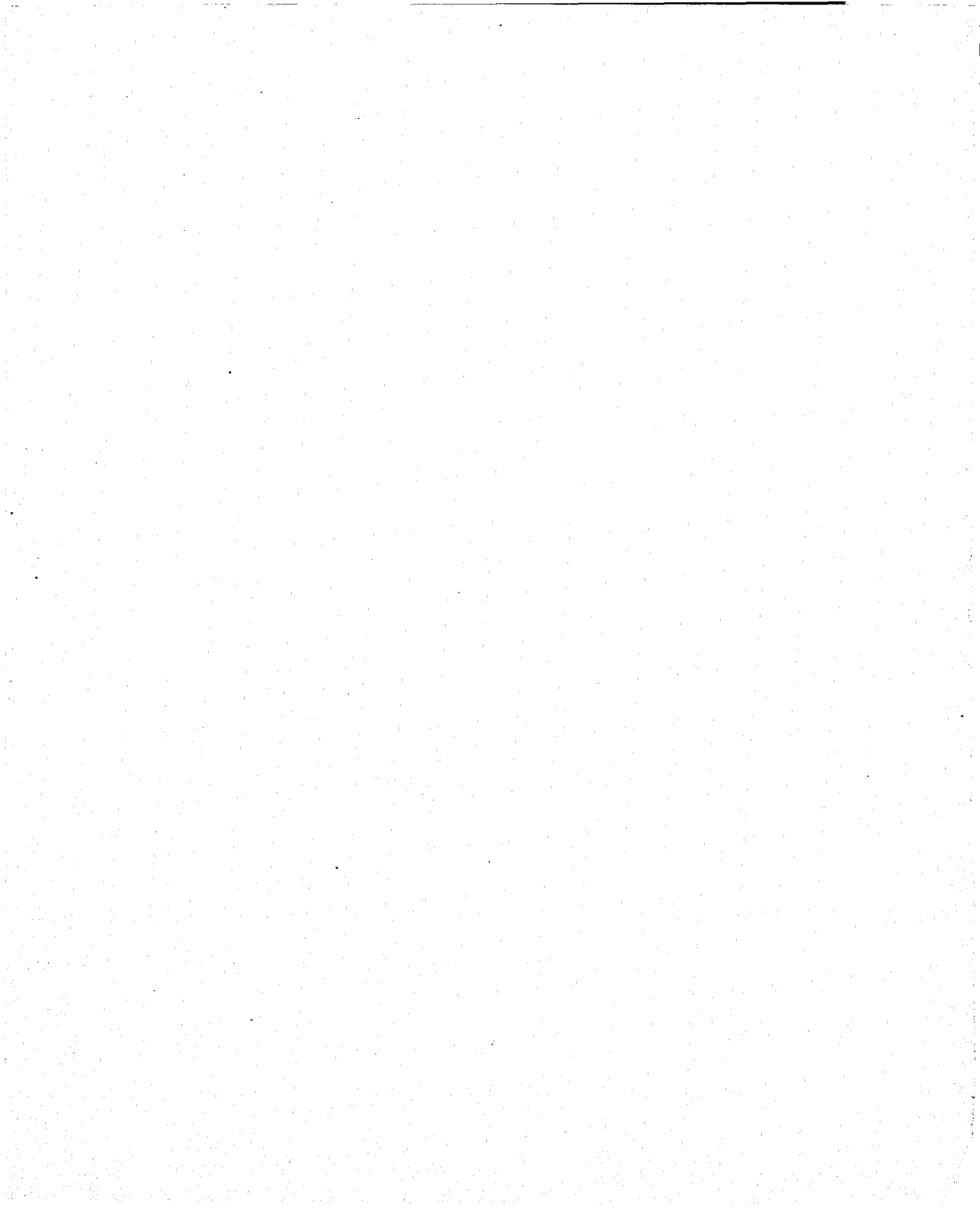
David Petrocchi, Research, California Department of Corrections, designed the conference program and acted as moderator for one of the discussion sessions.

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# SOCIAL ISSUES RESEARCH ASSOCIATES

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### STATEMENT OF CAPABILITIES

SOCIAL ISSUES RESEARCH ASSOCIATES is a private, non-profit organization committed to achieving greater social justice. Members of the firm are involved in policy studies of social agency operations, theoretical analyses of social control perspectives, evaluations of social programs, inquiries of organization decision-making processes, consultation program development, plus the conduct of training sessions on program evaluation and other aspects of the research process.

SIRA designs and executes research studies, from problem formulation through data collection and analysis to interpretation and publication; reviews specialized literature; critiques research designs and proposals; prepares experimental and survey designs; develops detailed data systems for systematic analysis of existing agency records and documents; constructs data collection, coding and data flow instruments; implements data conversion procedures, including quality control mechanisms; provides data analysis and theoretical interpretation; prepares tabular and narrative research reports; offers technical assistance concerning the research aspects of ongoing projects, including consultation and coordination with operations personnel; conducts conferences and training workshops.

SIRA has provided services to various federal, state, and local agencies, national and regional associations, public interest law firms and to individual attorneys, authors, and legislators.

The principal directors of SIRA have intensive experience and formal training in the management of research projects and personnel, close familiarity with the operations of the social control agencies, and a wide range consultative practice.

As individuals and as a corporation, SIRA has more than fifty publications in scientific and professional journals, books, and monographs. Nationally known academicians and practitioners, as well as outstanding graduate students from various fields, have associated themselves with SIRA on specific projects.

Social Issues Research Associates is, then, a small but dedicated core group of professional researchers and a loosely affiliated group of involved social observers who share in a commitment to making science and research responsive to human concerns for a socially just community.

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