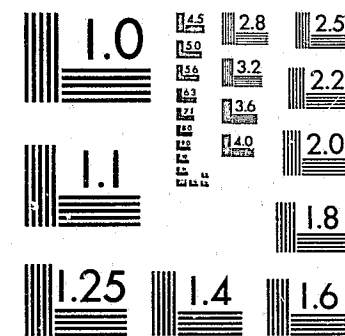


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WORKSHOP
PAPERS

HISTORICAL APPROACHES
TO
STUDYING CRIME

OCTOBER 11-12, 1979

UNEDITED DRAFT

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91587

United States Department of Justice
Law Enforcement Assistance Administration
Henry S. Dogin, Administrator
National Institute of Law Enforcement
and Criminal Justice
Harry Bratt, Acting Director
Paul Cascarano, Assistant Director

*WORKSHOP PAPERS

Prepared for

Special National Workshop

HISTORICAL APPROACHES TO STUDYING CRIME

Chantilly, Virginia

October 11-12, 1979

For

THE NATIONAL CRIMINAL JUSTICE RESEARCH UTILIZATION PROGRAM

These papers are being presented at a Special National Workshop held pursuant to Contract No. J-LEAA-004-79 awarded to University Research Corporation by the U.S. Department of Justice, Law Enforcement Assistance Administration, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. The points of view or opinions expressed do not necessarily represent official policy or positions of the U.S. Department of Justice.

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Section I

The Politics of Criminal
Justice Reform in
Nineteenth-Century France*

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Thomas J. Duesterberg
August 25, 1979

* I have received invaluable assistance on this paper from Elizabeth Muenger. This paper has been prepared for delivery to the symposium on History and Crime sponsored by the NILECJ.

The casual observer of modern politics knows that the "crime problem" is an issue charged with political importance. A standard salvo in any political campaign is that one's opponent either exhibits indulgence toward the criminal or that repressive measures are weighted unjustly against him. Similar charges have been a regular source of political currency since the late eighteenth century.¹ What is perhaps less evident is that the repressive practices of a given regime inevitably reflect its most deeply-rooted political beliefs and reveal much about the nature of its political arrangements. In this paper I would like to explore the history of criminal justice reform in modern France, showing the ways in which political considerations have tempered and shaped them.

The French case offers a unique perspective on this question for two reasons. First, the history of criminal justice reform in France recapitulates the Western experience in modern times. Each successive stage in the development of the contemporary system of criminal justice in the advanced Western world is clearly demarcated and articulated in French history. From the campaign against the "barbarism" and "inhumanity" of the Old Regime practices, through the world-wide movement of prison reform in the early nineteenth century, to contemporary practices of "social defense" and scientific management of deviance, the French have been in the forefront of criminology and penal practice. Second, the French political life in the period from 1760 to 1900 (by

which time the contemporary system of criminal justice was largely in place) was more mercurial than that of other nations. More pertinently, the principal changes in criminal law and penal practices in France occurred invariably as the result of profound political transformations, that is, soon after revolutions or coup d'états. The coincidence in the histories of political regimes and criminal justice reform allows us to gauge the deep political grounding of each type of repressive practice developed in modern times.

My purpose in delineating the relationship between political change and reform in the system of criminal justice is of course to show the political limitations in inhibiting or promoting certain types of criminal justice policy. But I would also like to suggest that familiarity with some features of the French experience is useful to those reflecting on the strengths and weaknesses of the American justice system. An understanding of the process by which the contemporary French justice apparatus took form will illuminate some problems facing American justice officials. For the French have, since the end of the nineteenth century, resolved some of the political difficulties inherent to the implementation of a policy designed to prevent crime by regulating some features of social life, by implementing social scientific correctional strategies to treat deviants and potential deviants, and by taking precautionary measures against habitual offenders. These programs, which contemporary criminology recommends, have not been fully implemented in the United States due to the deeply-rooted respect for individual liberty lying at the heart of the American political consensus. Consequently, an examination of the way in

which the French have approached this problem may prove useful.

II

Before beginning a discussion of the political meaning of criminal justice reform, it is necessary to give a brief overview of the major stages marking the development of the contemporary program of criminal justice in France, and to describe in a cursory manner how each stage is linked to a particular phase in the evolution of modern French democracy. I might add that I regard this process as teleological only in the sense that each of its stages have contributed to the constitution of the actual system of justice in France. I will also make a few remarks describing the manner in which reform has been accomplished. This will provide a preliminary indication of the symbiotic relation between political change and justice reform.

Four essential components comprise the contemporary French criminal justice system:² retribution, the punishment of offenders; deterrence, the attempt to discourage potential offenders through the threat of retribution; correctional or rehabilitative treatment, the use of methods devised by scientific experts to modify anti-social or criminal tendencies in the offender; and prevention, the implementation of programs intended to combat those psychological and social conditions thought to be conducive to criminal behavior. As is well known to students of the history of criminal law, modern theories and institutions of criminal justice first appeared in the latter half of the eighteenth century in the context of the campaign to reform the inhumane and ineffective repressive

practices of the absolute monarchy. During the great age of reformist thought and revolution in Europe, legislators and social critics devised a new method of controlling crime which relied primarily on the powers of retribution and deterrence.³ The greatest single monument to the reformist spirit of the eighteenth century is the Napoleonic Code (1808-1810).

Supporters of the Code (a preliminary version of which was introduced in 1791) hoped both to control crime and to limit the absolute authority of the executive power. The repressive system employed by the Old Regime had become a symbol of its arbitrary authority and its ineffectual rule (for crime was rampant.) The basic assumption underlying the Code was that crime could be deterred most effectively by assigning a specific quantity of punishment to each socially harmful act (which is the utilitarian definition of crime.) Proponents of the rule of law also reasoned that liberty could be protected best by a criminal code with a fixed universe of crimes and punishments and rules of procedure establishing the rights of individuals against arbitrary arrest and punishment. The purpose of the Napoleonic Code, then, was to deter crime through a reasoned scale of proportionate penalties while at the same time protecting the freedom of the innocent.

Soon after the fall of the Napoleonic Empire (1815), however, politicians and social thinkers began to question the efficacy of the Napoleonic system, which had been maintained largely intact by the restored Bourbon monarchy (1815-1830).⁴ Impetus for the assault on the deterrent system bequeathed to modern France by the Emperor came primarily from a group of liberals who were eventually to take power after the Revolution of 1830. Despite the liberal

intentions of the philosophers who first elaborated the utilitarian theory of deterrence, the pristine rule of law envisioned by eighteenth-century reformers was never definitively established in France before 1830. Napoleon and the last two Bourbon kings abused the intent of the Codes by replacing the legally-constituted tribunals with military jurisdictions and employing blatantly arbitrary methods of political repression. Napoleon also modified the original liberal codes to employ a harsher scale of penalties than the principles of proportionality and humanity authorized. Furthermore, by the late 1820's it had become apparent that criminal activity was increasing, leading liberal critics to conclude that a system of harsh repression and deterrence was intrinsically ineffective.⁵

When the liberal critics of the 1820's assumed power in 1830, one of the first and most publicized of its reforms altered the nature of the criminal justice system.⁶ The liberal social thinkers, some of whom now were legislators and administrators, who engineered the reforms reasoned that crime could be reduced and personal liberty better protected by eliminating the authoritarian impediments to the rule of law and by perfecting methods of punishment. The 1830's and 1840's mark the heroic age of prison reform in the Western world, and the liberals of the July Monarchy made a significant contribution to the movement.⁷ One change implemented in the 1830's had the effect of individualizing punishment by giving judges and juries the right to determine sentences within fairly broad limits. More important to contemporaries, however, was the transformation of prisons into "penitentiaries" capable of effecting the moral rehabilitation of inmates. Consequently, the French began to rely

on an individualized, corrective prison regime as a necessary supplement to the deterrent effect of the criminal code.

In 1848 the Constitutional Monarchy fell to a revolutionary upsurge, and in 1851 Louis-Napoleon imposed an authoritarian regime on the French. The new Emperor, like his uncle and most dictators, attempted to win prestige and maintain order by shoring up the forces of repression and by imposing harsh criminal penalties on political and common-law offenders.⁸ He terminated the program of prison improvement, choosing instead to alter criminal law and procedure to permit stiffer sentences. Napoleon thus reversed the trend of the previous twenty years by increasing penalties and reducing emphasis on rehabilitative treatment. His policy of achieving order through the use of blunt force was especially clear in his harsh treatment of political dissidents and of petty recidivists. The justification offered by the Emperor's supporters for the new repressive regime, whose single lasting accomplishment was improving the training and tripling the size of the police forces, gives an unusually clear insight into the political nature of criminal justice reform. The leading penal theorist of the Second Empire (1851-1870) made the following claim in his analysis of the justice reforms of the July Monarchy:

One can also be certain that the 1832 revision of the penal code, however one interprets it (either as an abdication of the rights and duties of authority, or as a concession to disorder and the violation of laws, or as the complete enervation of the penal system) was the most direct, if least noticed, causes of the moral anarchy which brought the Revolution of 1848! ⁹

Apart from its decision to gut the liberal reforms of the July Monarchy, the Second Empire made no lasting contribution to modern ideas or policies in the field of criminal justice. What

Napoleon did accomplish was to break the stranglehold of classical liberal thinking in all fields, including that of criminal justice. After 1848 theorists and practitioners began to contemplate repressive, correctional and preventive policies which challenged, at least implicitly, the principle of inviolability of individual liberty which informed the thinking of the philosophes and the practice of the July Monarchy. By challenging the classical liberal and penal philosophy of his predecessors, Napoleon opened the path to further innovations by the first stable democratic regime to rule France, the Third Republic (1871-1940).

During the first three decades of the Third Republic the French criminal justice system took its contemporary form. As with the other changes of regime in nineteenth-century France, the Third Republic was born on the heels of violent events. It was only after their forces had decisively turned back efforts by conservatives to reinstate dictatorial rule (that is, after 1879) that the republicans were able to initiate the series of social reforms which included profound changes in methods of repression and crime control.¹⁰ The republicans perceived that social reform was imperative if they were to maintain political power in the face of conservative and authoritarian opposition. One means of solidifying political support was to find new, more effective means to restore the social and moral order so gravely compromised by the revolution and social crisis of the 1870's.¹¹ A new approach to the crime problem, whose unacceptable growth a government study in 1880 confirmed, proved to be an important component of the reform program.¹²

The justice officials of the Third Republic developed a multi-

faceted program to counter what they now labeled an "epidemic" of crime.¹³ One of the first major policy changes of the Third Republic was to reinstate and perfect the program of prison improvements (1875). The major thrust of prison reform was to provide more adequate correctional treatment and post-liberation care for the petty offenders who spent less than two years behind bars.¹⁴ The minister of justice also overturned those Napoleonic statutes which had undermined some rights and procedures designed to guarantee due process and proportionality of punishment.¹⁵ Next, a series of laws intended to permit the forces of repression to protect society against such "dangerous" individuals as alcoholics, violent revolutionaries, the criminally insane and habitual offenders were passed into law between 1873 and 1894. A law of 1885, for instance, allowed judges to sentence habitual offenders to penal colonies for life. These laws mark a significant evolution in legal thinking, as their intent was to punish a dangerous state rather than a specific act.

Another important body of legislation passed between 1885 and 1891 introduced parole and probation into sentencing procedures, and made the "legal pardon"¹⁶ much simpler and easier to obtain. The effect of these laws and sentencing practices was to reduce the prison population by one-half between 1870 and 1910.¹⁷ By this time criminologists had come to believe that the most effective means to correct criminal behavior was to effect the social reintegration of the offender, hence to treat him outside the enclosed walls of the prison. In close contact with an international movement to improve the judicial regime for juveniles, reformers also gradually developed and implemented a separate regime of tribunals

and correctional facilities for youthful offenders (completed in 1912).¹⁸ In this instance too the effect of the new procedures was to keep juveniles out of prisons and to effectuate their reform in the context of the community rather than the asylum.¹⁹

What was truly innovative in the penal reforms of the Third Republic, and what links them to contemporary policy, is that they were conceived as part of a much broader program of social reform. The political leaders and social thinkers of this period spearheaded a series of reforms which inaugurated the age of the welfare state in France.²⁰ The most important innovations included the creation of the modern system of secular education, economic stimulation and labor regulation programs, expanded public welfare services, regulation of dangerous substances, public health programs, and the first of the modern series of social security programs (all introduced between 1874 and 1900). Republican politicians intended these measures to supply the degree of social justice required to consolidate support for the new democratic state, while at the same time breaking the stranglehold of the Catholic Church and the conservative elites on education, the economy, and public welfare services.²¹

Criminologists viewed these programs as a means to combat crime and social disorder in general.²² They reasoned that it was the "breakdown" of social organization, rather than simply the moral defects of the offender, which explained the "crisis of civilization" whose clearest indicator was the growth of crime. Both legislators and social theorists wanted to restore social order by regulating social institutions and providing those services deemed necessary to the maintenance of strong and healthy social ties.

The evolution of the contemporary juvenile justice system in the Third Republic provides the most striking example of the links drawn between social reform and changes in criminal law.²³ Laws passed in 1889 and 1898 radically altered the regime of juvenile justice and at the same time effected a profound change in the most sacred of modern social institutions, the family. These two laws declared that in any case of a crime committed "by or against" a child, the court could rule the family had failed in its duty to educate its offspring. In such cases, the laws gave the presiding judge power to revoke the legal authority of the parents over their child. The laws then charged the bench with seeing to the proper education and/or correctional treatment of the child, be he victim or offender. Even a child victimized by his parents could be sent to reform school if the judge found his behavior anti-social in any way.

The laws on child abuse and juvenile delinquency illuminate several trends in the social and criminological thought of the Third Republic. They demonstrate, first, the degree to which legislators linked social and penal reform. Second, they show how legislators invoked the threat of crime as a justification for broad social reform. Finally, they give proof of the shift in criminal thought which has caused modern social thinkers to combat delinquency through the regulation of social relations rather than through retribution or correctional education alone. The use of parole, probation, and legal pardons, and the decline of imprisonments likewise illustrate the same policy. For these new programs to succeed, it was necessary to exert some degree of control over the social networks burdened with the task of achieving the social re-inte-

gration of deviants and potential deviants.

III

Thus far I have shown that the modern history of the French criminal justice system can be divided into three principal phases, that these phases describe a progressive evolution in which the contemporary strategy of repression has unfolded, and that each successive period of innovation can be linked to a specific political regime. My brief descriptive history is the first indication of the political grounding of criminal justice reform. An examination of individuals (and political movements) taking the lead in the various efforts at reform provides evidence of a different sort to corroborate my thesis. In the interests of brevity, I will restrict my observations to the first two waves of reforms and reformers.

Preceding each wave of progressive criminal justice reform in modern times (I use the term progressive to describe those reforms which have proved lasting and which are still incorporated in contemporary strategies) was a sophisticated campaign of research and publicity by social reformers who were, at least partially, politically motivated. The classic example of such a campaign is of course the theoretical and political agitation conducted by the philosophes for the purpose of terminating the "barbarism" of monarchical justice.²⁴

What is most relevant to my argument is the source of criticism and its content. The source of innovation in the late-eighteenth century (and throughout the nineteenth) was the political opposition to the existing regime. Many of the philosophes, who

were later to become revolutionaries, seized upon the crime problem as a point of attack against the Old Regime. Mirabeau and Mably, for example, insisted that any legal system, such as that of Bourbon France, which was both unjust and inefficient, was by definition corrupt and inhumane. Marat, Brissot, Linguet, the Encyclopaedists, Voltaire, LeTrosne, and Robespierre all wrote treatises condemning the criminal laws and tribunals of the Bourbon monarchy.

The works of eighteenth-century reformers and revolutionaries were also an important source of the utilitarian theory holding that crime could best be controlled by imposing a strictly-delimited rule of law and by regulating punishment according to the principles of proportionality and humanity. Adherence to these principles would, in effect, place limits on the absolute authority of the monarchy, whose political ascendancy the philosophes contended. Hence the social and political critique of the philosophes combined theoretical and political arguments against the Old Regime and the system of justice it employed.

The bond joining penal reform to political opposition is even more evident in the era of the July Monarchy.²⁵ In the 1820's and 1830's, the theoretical and political impetus for progressive reform originated in the liberal opposition to the restored Bourbon monarchy. Social thinkers collaborated with liberal political actors in reform groups such as the Royal Prison Society, the Society for Christian Morality, and (in the 1830's) the Academy of Moral and Political Sciences. Social critics of this era were even more sophisticated than the philosophes in that they used modern scientific studies to demonstrate the inability of the

criminal justice system to maintain social order and protect the lives and liberty of the citizenry. Studies undertaken by liberal reformers drew attention to both the magnitude of the crime problem, by producing the first reliable times-series data on crime, and the inadequacy of current methods of punishment to correct aberrant social behavior, through a multitude of reports on prison conditions and recidivism. In an age dominated by the "positive" scientific spirit, the studies of liberal reformers tended to show that the system of harsh repression and inhumane methods of incarceration only served to create new sources of crime and erode personal liberties. As in the eighteenth century, the new theories of criminal behavior (in this case the new "penitentiary science") served to condemn a political regime and a particular strategy of repression.

What is particularly revealing in this period is that most of the important criminological studies were either conducted or supported by liberals holding important positions in the July Monarchy.²⁷ Francois Guizot was a minister under Louis Philippe. Charles Lucas, Louis Moreau-Christophe, L. R. Villermé, and G. Ferrus all became prison inspectors during the July Monarchy. A. M. Béranger, the duc de Broglie and P. Rossi occupied influential positions in the Institut de France and as advisers to Louis Philippe. Tocqueville was of course an academician and legislator, but was sent abroad on one of the five missions to study the most advanced prison systems. Louis Philippe himself was a patron of the liberal reform agencies, the Royal Prison Society and the Society of Christian Morality. After the Revolution of 1830, liberals used government machinery to stimulate research supporting efforts at

reform. The regime sent missions abroad, supported studies by academicians, and directed the department of justice to collect statistics and conduct research on criminal behavior and methods of punishment. The July Monarchy was the patron of the type of scientific research which is at the origins of scientific criminology, and which has provided scientific legitimacy for reforms introduced for political reasons. In the next section I will show the positive political reasons stimulating liberals to such a vast reform effort.

IV

To understand the politics of criminal justice reform fully, a final aspect of the question must be explored, for the reforms I have associated with specific regimes and specific political actors were also integrated with positive political goals and philosophies. Reformers have always been more than critics of their political opponents. They have always attempted to implement new programs as a means of consolidating political support and guaranteeing social order. Furthermore, French politicians have exhibited an acute understanding of the philosophical (or ideological) aspects of the issues they confront, and this is apparent in their approach to criminal justice reform. In this section, then, I will show how two regimes, the July Monarchy and the Third Republic, have integrated their strategy of justice reforms with their most fundamental political beliefs and structures.

The Revolution of 1830 brought to power a wealthy and highly sophisticated elite which had been schooled in the precepts of classical liberal political and economic thought.²⁹ The Consti-

tution of the July Monarchy limited the franchise to the wealthiest two percent of the population, and power was shared between a "citizen king" and a two-tiered legislature. The political philosophy of the regime was intended as an antidote to the high-handed and reactionary tactics of the last Bourbon kings. The ruling political class was determined to limit the authority of the executive power and the central government, to protect the political liberties of the citizens (at least of the full citizens), and to create a political climate fostering economic prosperity and social stability.

A key maxim of the ruling elite held that to govern less was to govern better. Consequently, the government adhered to a laissez-faire policy in economic and social affairs. Education and public welfare were left largely in the care of private individuals or groups. Professional philanthropists preached the doctrine of self-help and personal responsibility. The government took few initiatives to stimulate the economy, provide measures of social security, to build public housing or to promote social and economic equality. Finally, the July Monarchy strove to maintain public order and to protect liberty by adhering to the doctrine of a rule of law. New laws assured fairness in criminal and civil procedure, reduced the scale of punishments, abolished most "religious offenses," eliminated most remaining physical and public punishments, and worked to protect against political repression. The government also recognized the rights of prisoners to adequate care while incarcerated, and sponsored programs to aid in their rehabilitation.

I noted earlier that the two most important penal reforms of this regime had the effect of individualizing punishment and of

introducing a modern penitentiary program. The scrupulous application of the rule of law went far toward protecting the liberal political ideal of the July Monarchy, but the ruling elite reasoned that these additional improvements were necessary if their political credo was to be realized.³⁰ The law of 1832, which individualized punishment by charging the presiding judge with the task of determining punishment according to the degree of responsibility and the motivation of the offender, was motivated by the belief that the individual alone was responsible for his act and that the purpose of punishment was, consequently, to correct his aberrant character.³¹ These principles also informed the great prison reform of the 1830's and 1840's, which attracted the strong support of great liberal thinkers of the quality of Tocqueville, Guizot, and Charles Lucas.

In a liberal state intent upon restricting the authority of the central government and the executive, the scope of action of the criminal justice system must necessarily be restrained. The criminal justice reforms of the July Monarchy had just this effect. The new laws forbade, in most cases, the punishment of religious and political dissidents, assured that only those found guilty of offenses against the written statutes would be punished, and limited the extent of punishment. Furthermore, reliance on individual punishment and rehabilitation in the prison placed the burden for protecting social order squarely on the prison. As a consequence, the government found it unnecessary to embark on a program of broad educational, social, or economic reform as a means of assuring social stability. The liberals of this period concluded that the existence of the modern prison (and other asylums

to treat the insane and the physically ill) obviated the necessity of any other social reform destined to preserve public order and stability.³² The modern penitentiary became the focus of the criminal justice system in the classical liberal era precisely because it offered a solution to the problem of social order which did not entail massive social and economic reform, nor the brand of harsh repression characteristic of authoritarian regimes. Thus it helped accommodate the liberal political ideal of governing better by governing less by finding a better form of punishment.

After 1848, the central government in France began to assume an ever-larger role in the regulation of economy and society. The trend took form during the populist, plebiscitary regime of Louis-Napoleon, and gained speed during the Third Republic. France's first stable democratic regime was dominated by the parliament, in reaction to the authoritarian tendencies in French political culture.³³ The most pressing political question facing the nascent regime was to attract the type of broad popular support needed to preserve democratic rule in a country long dominated by conservative elites and the military. To achieve this goal republican legislators introduced the social reform program discussed earlier. Supporters of the program intended it not only as a means of consolidating popular support for the republic, but also as a means of preserving the social order so gravely compromised by the revolution of 1871, endemic political unrest in the 1870's and the frightening growth of criminal activity.

I explained earlier how the social and economic programs inaugurated by the Third Republic were coordinated with reforms of the criminal justice system. By arrogating the right to edu-

cate the youth of France, regulate business and labor, manipulate social institutions, and make compensation for the underprivileged social and economic classes, the French state explicitly assumed at least limited authority to control society when national interest so demanded.³⁴ (In effect, the concept of a "national interest" or a "social good" first became meaningful with the establishment of a true democracy.) Criminal theory propounded in this era had advocated strengthening and improving social ties as a means of combatting deviance. Many of the reforms mentioned earlier necessitated the adjustment of social and economic institutions. Laws tending to sanction the states of drunkenness or of "dangerousness" (habitual offenders act) involved a breach in the previously sacrosanct principle of individual liberty preached earlier in the century. If, as contemporary criminologists argued, crime resulted from improper socialization or from economic deprivation, then only a strategy involving the regulation of society and economy could hope to contain the spread of deviance. In fact, the programs to combat juvenile delinquency, to reeducate convicts and first offenders, and to reintegrate ex-convicts into society could only be successful if the government exercised some control over the social milieu into which these categories of offenders were often released.

The doctrines of classical liberalism were fundamentally incompatible with the developments in social, economic, and repressive policy in the Third Republic. Political thinkers, aided by the sociological theories of Durkheim and other criminologists, soon filled the ideological void created by this dissonance. The politician Léon Bourgeois, the social thinker Charles Gide, and

Durkheim all contributed to the elaboration of the doctrine of solidarism, which became something of an "official philosophy" of the Third Republic.³⁵ The new social and political philosophy argued that the rights of the community supercede those of the individual in many circumstances. The sociological works of Durkheim gave a scientific grounding to the theory of communal solidarity by showing the irreducible necessity of communal life to individual fulfillment and to social order.

The doctrine of solidarism legitimated the social reform practice of the Third Republic and also provided a rationale for the new focus of the criminal justice system. I noted earlier that criminologists frequently faulted social organization in seeking to explain crime, and in turn sought to combat deviance by reinforcing what they considered to be healthy social ties. Analysis of the crime problem, furthermore, provided a stimulus to the elaboration of solidarism by demonstrating the extent of communal responsibility in the genesis of deviance. The theory of punishment developed at this time also shows the extent to which solidarist theories penetrated criminology. Theorists such as Tarde and Durkheim no longer considered the purpose of punishment to be simple retribution or rehabilitation, but rather the reinforcement of the sense of communal responsibility and justice among the non-criminal population.³⁶ As in the period of classical liberalism, then, the theory and structure of the criminal justice system both reflected the prevailing political consensus and provided one sort of legitimation for that consensus.

What can the contemporary observer learn from this brief survey of the political meaning of criminal justice reform? It is clear that significant reform occurs in the wake of profound political transformation. Equally obvious, at least in the case reviewed here, is that criminal justice reform has always been, in modern times, a highly politicized issue. This is true not only in the sense that the crime problem evokes partisan passions, but also in the sense that particular reform schemes, whether progressive or reactionary, are normally associated with specific political and/or ideological movements. One can also note that the scientific expertise associated with progressive reforms of the criminal justice system has usually come directly from a political party or has enjoyed the support of some such group. Reform results from the coordinated efforts of politicians, social thinkers, and justice officials.

As a final point of interest, I think that the particular circumstances associated with the modern history of criminal justice reform has some relevance to contemporary America. While not wanting to press the argument too far, I would hazard the observation that the United States has not yet squarely faced the political problems associated with the implementation of reforms designed to control crime by regulating social and economic institutions. Perhaps the reason for this is that the political price, in terms of the inroads that would be made on the sacred doctrine of individual liberties, is too high for the American system to pay. The revival of the theory and practice of retribution and

deterrence seems to be associated with the current distrust of government intervention. As I noted earlier, a retributive (or even correctional) strategy does not entail manipulation of the lives of third parties or innocent citizens. While there is much demand for changes along the general lines of the preventive practices undertaken by the French and others, a full commitment to such a policy will probably remain a vague dream until we resolve the accompanying political questions.

Notes

1. See, for example E. P. Thompson, Whigs and Hunters: the Origin of the Black Act (New York: Pantheon Books, 1975); G. F. LeTrosne, Mémoire sur les Vagabonds et les Mendiants (Soissons: Simon, 1764); and Voltaire, "Prix de la justice de de l'humanité," in Oeuvres Complètes (Paris: Garnier, 1880), XXX, 533-586.
2. Among the best works on criminal justice in contemporary France are J. Léauté and R. Vouin, Droit Pénal et Criminologie (Paris: Presses Universitaires de France, 1964); and P. Bouzat and J. Pinatel, Traité de Droit Pénal et de Criminologie, second ed. (Paris: Dalloz, 1970), 3 vols.
3. Recent works on this subject are Pierre Deyon, Le Temps des Prisons (Paris: Editions Universitaires, 1975); and Michel Foucault, Surveiller et Punir: Naissance de la Prison (Paris: Gallimard, 1975).
4. For criticism of the system created by Napoleon, see the pages of the Journal de la Société de la Morale Chrétienne (1822-1830); A. M. Béranger, De la Justice Criminelle en France (Paris: l'Huillier, 1818); and Charles Lucas, Du Système Pénal et du Système Répressif en Général: De la Peine de Mort en Particulier (Paris: Charles-Béchet, 1827).
5. Contributing to the perception of a rise in crime in France was the publication of a serial record of criminal statistics beginning in 1825. The Compte Général de l'Administration de la Justice Criminelle confirmed some of the fears of the critics of the Napoleonic system, especially concern with the rate of recidivism, thus adding fuel to the debate on reform.
6. See Jean Bancal, "L'oeuvre pénitentiaire de la Restauration et de la Monarchie de Juillet," Revue de Science Criminelle et de Droit Pénal Comparé, VI (1941), 219-243; and Michelle Perrot, "Délinquance et système pénitentiaire en France au XIXème siècle," Annales; Economies, Sociétés, Civilisations, No. 1 (1975), 67-91.
7. Foucault, Surveiller et Punir, has chronicled this movement. Among the most influential contemporary works were, G. de Beaumont and A. de Tocqueville, On the Penitentiary System in the United States and its Application in France (Carbondale: Southern Illinois University Press, 1964); Charles Lucas, De la Réforme des Prisons, ou Théorie de l'Emprisonnement (Paris: Legrand & Bergounioux, 1836-38), 3 vols.; and L. M. Moreau-Christophe, De la Réforme des Prisons en France (Paris: Huzand, 1838), 2 vols.
8. See Arnould Bonneville de Marsangy, De l'Amélioration de la Loi Criminelle (Paris: Cotillon, 1855-64), 2 vols.; Perrot, "Délinquance et système pénitentiaire;" and H. C. Payne, The Police State of Louis-Napoleon Bonaparte (Seattle: University of Washington Press, 1966).
9. Bonneville de Marsangy, De l'Amélioration, I, 22-23.

10. J. P. Azéma and M. Winock, La Troisième République (Paris: Calmann-Lévy, 1976), pp. 85-123.
11. J. T. Joughlin, The Paris Commune in French Politics; 1871-1880 (Baltimore: Johns Hopkins University Press, 1955).
12. France; Ministère de la Justice, Compte Général de l'Administration de la Justice Criminelle (Paris: Imprimerie Nationale, 1882), "Resume rétrospectif."
13. It was during this period that the science of criminology was perfected. Among the many activities of the criminological experts was the production of time-series studies confirming the overall growth of crime in the nineteenth century. Criminologists also gave widespread (and often alarmist) publicity to the crime problem.
14. Comte Othenin d'Haussonville, Les Établissements Pénitentiaires en France et aux Colonies (Paris: Lévy, 1875).
15. There is no single secondary source which gives a good overview of the reforms of this period. The best means to follow the course of change is in the annual volumes of the legal journal, Dalloz: Jurisprudence Générale, 1873-1900.
16. In French jurisprudence, a "réhabilitation légale" meant only that the consequences of a conviction, which normally included loss of certain civil rights and the existence of a criminal record (a "dossier judiciaire"), were eliminated. The pardoned offender normally served his sentence before the pardon was considered.
17. See France; Institut National de la Statistique et des Études Economiques, Statistique Générale de la France, CVIII (Paris: Imprimerie Nationale, 1951), p. 97. The total incarcerated population dropped from 53,461 in 1852 to 25,679 in 1910.
18. See J. Donzelot, La Police des Familles (Paris: Minuit, 1977), and H. Gaillac, Les Maisons de Correction, 1830-1945 (Paris: Cujas, 1971).
19. It is instructive to observe that psychiatric thinking at this time also tended to emphasize treatment in a communal setting rather than in the isolation of the asylum. The historian of asylums in France has labeled this period that of the "revolt against the asylum." See Robert Castel, L'Ordre Psychiatrique, (Paris: Minuit, 1976), chapter 7.
20. See H. Hatzfeld, Du Paupérisme à la Sécurité Sociale: 1850-1940 (Paris: Colin, 1971).
21. Prior to the 1830s, welfare and education were dominated by the Church and wealthy philanthropists. Religious and philanthropic organizations also played a large role in the penal system, especially in the areas of juvenile reform schools, female prisoners and convict-aid societies. The Third Republic extended the regulatory power of the state over these organizations.

22. Emile Durkheim, De la Division du Travail Social, eighth ed. (Paris: Presses Universitaires de France, 1967), and E. Durkheim, Suicide (New York: Free Press, 1951).
23. See Donzelot, Police des Familles; and Gaillac, Maisons de Correction.
24. Foucault, Surveiller et Punir.
25. See especially L. R. Villermé, Des Prisons telles qu'elles sont et telles qu'elles devraient être (Paris: Mèquignon, 1820); Lucas, Du Système Répressif; and François Guizot, De la Peine de Mort en Matière Politique, in his Mélanges Historiques et Politiques (Paris: Lévy, 1869), pp. 239-434.
26. See the works of Tocqueville, Berenger, Lucas, Moreau-Christophe, Guizot and Villermé.
27. See T. J. Duesterberg, "The origins of Criminology in France," in John Conley, ed. Theory and Research in Criminal Justice: Current Perspectives (Cincinnati: Anderson, 1979).
28. Gabriel Tarde, Penal Philosophy (New York: Little, Brown & Co., 1912); and Emile Durkheim, Moral Education (New York: Free Press, 1961).
29. A. Jardin and A. J. Tudesq, La France des Notables, 1815-1848 (Paris: Seuil, 1973); and René Rémond, The Right Wing in France: from 1815 to De Gaulle (Philadelphia: University of Pennsylvania Press, 1969).
30. See the works of Guizot, Berenger and Lucas; and P. Rossi, Traité de Droit Penal (Paris: Sautet, 1829), 3 vols.
31. France; Chambre des Députés, Procès-Verbaux, Session 1831, "Exposé des motifs du projet de loi tendant à introduire des réformes dans les lois pénales," (Paris: Imprimerie Royale, 1831), I, 414-428.
32. Charles Coquerel, "Note sur la question de la réforme des prisons," Journal de la Société de la Morale Chrétienne, III, No. 17 (1824), 214.
33. Azéma and Winock, La Troisième République, 159-200; and J. M. Mayeur, Les Débuts de la Troisième République, 1871-1898 (Paris: Seuil, 1973), passim.
34. Hatzfeld, Du Paupérisme à la Sécurité Sociale, passim.
35. L. Bourgeois, Solidarité (Paris: Colin, 1896); Ch. Gide, "L'idée de Solidarité," Revue Internationale de Sociologie, I (1893), 385-400; and J. E. S. Hayward, "The official social philosophy of the Third Republic: L. Bourgeois and Solidarism," International Review of Social History, IV, No. 2 (1959), 261-284.
36. Tarde, Penal Philosophy; and Durkheim, Moral Education.

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