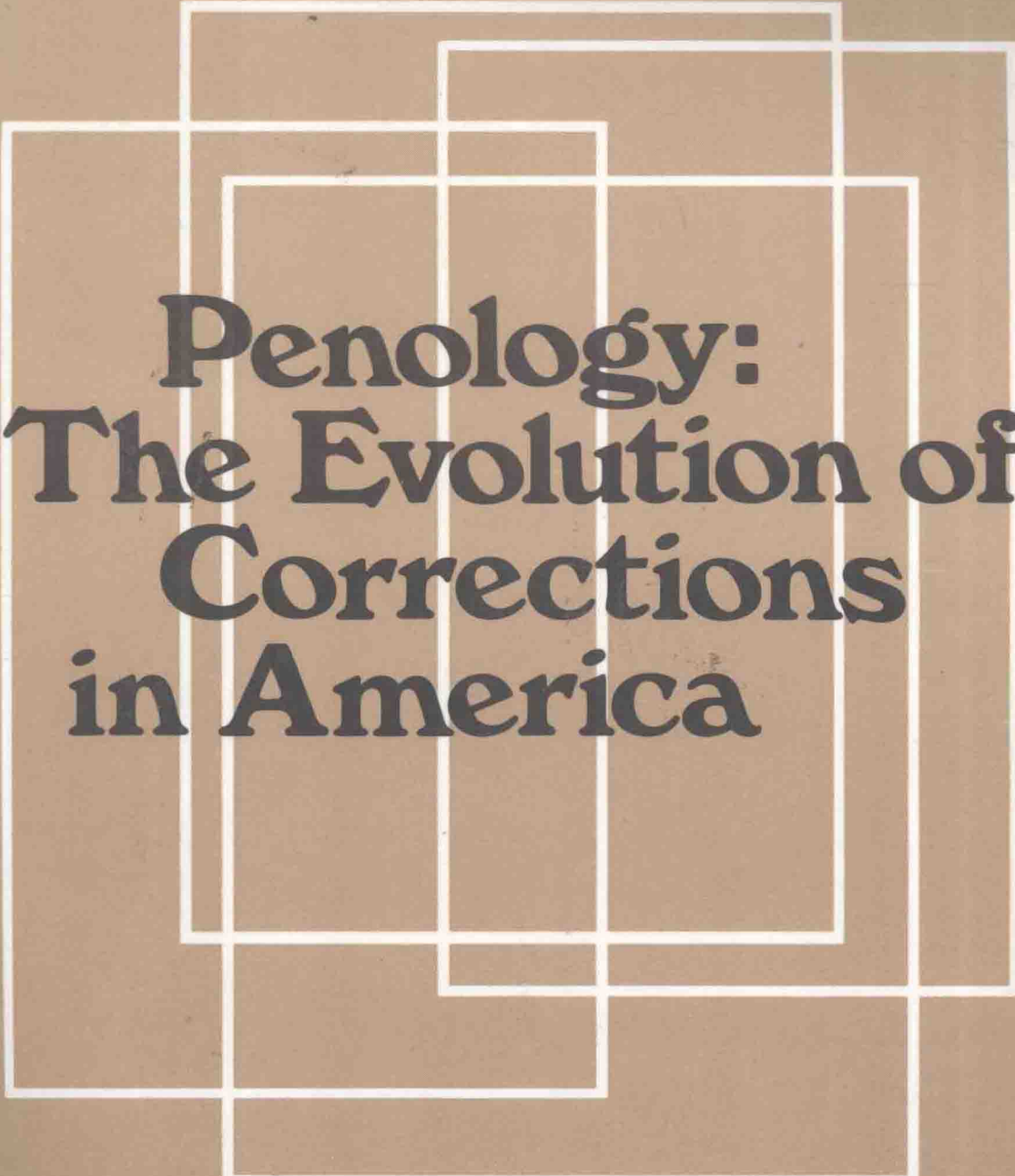


SECOND EDITION



**Penology:
The Evolution of
Corrections
in America**

George G. Killinger

Paul F. Cromwell

Jerry M. Wood

CRIMINAL JUSTICE SERIES

Penology

The Evolution of Corrections in America

SECOND EDITION

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Preface

Shortly after this country's birth, Americans again made history with an innovation called the penitentiary. Among other foreign notables, Charles Dickens visited and wrote of the penitentiary: "America has shown great wisdom, great benevolence and exalted policy".

Almost two hundred years later, in 1976 David Bazelon, Chief Judge of the United States Court of Appeals for the District of Columbia, spoke to the 106th Congress of Corrections in Denver and struck another, less enthusiastic note:

fifteen years ago, I visited various state and federal prisons. At the end of each day, a group of prison officials and I gathered to discuss the problems of corrections. We invariably talked about recidivism and how discouraging the problem seemed. They vented their frustrations—overcrowding, understaffing, lack of funds for rehabilitative services, and, in general, the inanities of the criminal justice system

In that same conference the President of the American Correctional Association began his Presidential Address with these words, "The United States of America began its bicentennial year with more of its citizens in prison than in any other time in history".

The frustration concerning crime was graphically illustrated last year when Governor Brown of California, when asked what could be done about the problem, is reputed to have replied, "stay low, move fast and don't carry a lot of money".

Thus the performance of our system of criminal justice in general and prisons in particular seem to belie the promise visioned by Dickens, for neither wisdom nor benevolence have halted the rate of crime in America.

Great debate stirs correctional circles as to the purpose of imprisonment. Rehabilitation having apparently failed, is being abandoned by many in the pursuit of a "justice model" which espouses the "protection of society" as the purpose of the prison system.

An eminent scholar and prison expert, Norval Morris, has told us "We should avoid hypocrisy: We send men to prison as punishment for what they have done; sometimes also to deter those who are like minded, and sometimes because we do not know what else to do with them".

In the Preface to the first edition of this text we stated that the volume enabled the student to "reconstruct the history of American corrections; to capture the spirit, the programs and the pioneers of the two hundred years of correctional development in America, to move him into the 'enlightened' era of contemporary corrections".

In less than five years since those optimistic words were written the American correctional scene has undergone a basic change of course—has moved to a harder philosophy and "rehabilitation", the commonly accepted priority of corrections, has come into disrepute. Thus the pendulum has swung, again, this time to the right and to a philosophy of imprisonment as punishment—as deterrent—as retribution—with rehabilitation as a desirable, but not necessary, adjunct.

Perhaps we have moved into a rational period whereby we recognize that people cannot be remade in the coercive environment of a penal institution. Perhaps we have taken a step backward. It is, however, as Norval Morris has stated, time to reach clarity on why we punish and on the purposes served by criminal sanctions and to adopt policies reflecting the recognition.

This text presents the history and the present state of corrections in America. The turmoil over philosophy and practice is viewed from the both camps and it is hoped that the reader may discriminate between the fervor of the advocate and the objectivity of the scientific observer—both of whom are represented in these pages.

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Fort Worth, Texas
February 1979

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*

Introduction

THE PRISON

Gordon Hawkins *

Three salient questions recur throughout the body of critical argument on the subject of the prison. They relate first to the functions of the prison, second to the need for its continued existence, and third to its reform. They could be expressed in the form: What is prison for? Are prisons necessary? What should be done about prisons?

WHAT IS PRISON FOR?

The prison, or penitentiary, is commonly described as having multiple and sometimes conflicting purposes. "Whatever prison is for it is not for one clear and single purpose," said Lionel Fox (1952, p. 15). He went on to distinguish three main purposes, which he defined at one point as custody, coercion, and correction and at another as prevention, deterrence, and reform. Others have used a variety of terms to denote what they have seen as the principal tasks or goals of the prison system. Among them, in addition to those mentioned, we en-

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counter with varying frequency: containment, control, incapacitation, punishment, retribution, restraint, rehabilitation, reintegration, therapy, and training.

Attempts have been made to bring some order into this confusion by drawing a distinction between primary and secondary purposes. But there has been no consensus about the way in which this distinction should be applied. Thus in a recent discussion J. E. Thomas has declared firmly that "there can only be *one primary task*. . . . [T]he prison system has control as its primary organizational task" (1972, pp. 4-5). Lionel Fox on the other hand wrote of "the possibility of a system of treatment in which reform would hold a *primary and concurrent* place with deterrence" (1952, p. 71). (My italics in both cases.) Others have spoken of "bifurcated goals" and "congruent goals." In one notable attempt, by O'Leary and Duffee, to devise a classification system, four separate models of correctional policies are developed according to the relative emphasis that is placed on different correctional concerns or assumptions (1971).

It is not intended here to enter into argument about the taxonomy of correctional goals. The notion of an ideal, context-free classification scheme or hierarchy of aims is a delusion. The degree to which such schemes are satisfactory depends on the purpose for which they are intended. Indeed it is in part because those who have devised them have had different perspectives, that they have produced such diverse formulations and typologies.

The basic reason for the inconclusiveness of discussion on this topic, however, is that it involves a confusion arising out of the ambiguous nature of the question. To give some examples, the question, What is prison for? can and has been answered in terms of the intentions of its originators or later administrators; its actual or supposed purpose, role, or function in society; its distinctive or "essential" nature as opposed to the accidental or contingent functions it may fulfill; its historical identity; the form in which it ought to exist and be preserved; and the moral justification for its use.

Commonly a number of these questions are confused, and answers are given in mixed historical, sociological, and jurisprudential terms. Clearly it is necessary to draw distinctions between the questions. But for the purpose of this discussion it is necessary to draw only one distinction, that between justification and function. It may be that this does not fully meet the classical requirements of exhaustiveness and exclusiveness, and I shall not attempt to demonstrate that all the questions noted above regarding the prison can be grouped under these two headings. But it is all that is required in the context of this discussion and it has the virtue of simplicity.

The question about the justification of imprisonment is: Why is it morally good or permissible for men to imprison other men? Insofar as the prison system is part of the penal system, and a method of

punishment, the debate on this question is largely a reflection of the more general debate on the ethics of punishment and is usually couched in the same terms. Not only do we find ourselves rehearsing all over again the familiar championship battles between such popular contestants as Desert, Deterrence, and Reform but we are frequently expected to accept the notion that there can be only one winner; or that at the most there may be a draw, as in the case of Lionel Fox's idea of reform holding "a primary and concurrent place with deterrence." Occasionally a new challenger like Denunciation or Reprobation enters the ring, although such new challengers are usually former contestants under new colors.

It is not intended in this work to enter into a lengthy discussion of the jurisprudence of imprisonment. It will be sufficient here to refer the reader to H. L. A. Hart's *Punishment and Responsibility* (1968), where he writes of the complexity of punishment and of the multiplicity of aims and justifications which in the case of punishment, as in that of many other social institutions, may be pursued. Yet if we acknowledge, as we must, this multiplicity of justifications in relation to the institution of punishment, we must also recognize that precisely the same may apply to some of the particular methods of punishment such as imprisonment. So that, rather than seeking for some simple formula to define the justification of imprisonment in general, we should recognize that confinement in penal institutions may be justified in different ways in relation to different categories of prisoner and different purposes of imprisonment.

Very similar considerations apply in relation to the question of the functions of imprisonment. In this case other challengers such as Custody, Control, Security Treatment, and Training enter the ring. But here too we encounter the same pursuit of primacy. Here too occasionally a new contestant appears. Thus we find Rupert Cross in *Punishment, Prison and the Public* dismissing reform swiftly as "incidental to, not the object of, imprisonment" and asserting that the main aim should be "the prevention of prisoners' deterioration" (1971, pp. 85-86).

Yes it is surely a mistake to talk about the "primary task of the system" or "the object of imprisonment" in this way. Consider for example Thomas's candidate for primacy, which he variously calls control, custody, or containment. It is true that to sentence a person to imprisonment means to order him to be deprived of his liberty by confinement in a prison. As Thomas puts it, "Society has defined the need for removal of the criminal and the prison system, as an organization, has come into being to achieve this task" (1972, p. 5). There can be no question that viewed in historical perspective imprisonment fulfills the function of removal from society formerly achieved by a variety of different methods such as banishment, outlawry, transportation, and the death penalty. There can be no ques-

tion either that one of the principal measures of the success or failure of the prison system in the eyes of the public is the degree to which it achieves simple containment.

Implicit in the custodial process, of course, is prevention. As Fox puts it, "It does not . . . require any modification of the custodial function" to achieve this objective (1952, p. 17). While the offender is in custody he cannot offend again; prevention is achieved for so long as the sentence lasts. A sentence of imprisonment for life, carried out literally, so that the prisoner is detained for the rest of his natural life, constitutes an absolute preventive. It should be noted in passing that this is a somewhat ethnocentric conception of prevention in that it ignores all offenses by inmates against other inmates or prison guards. The principle of prevention is also sometimes made explicit in sentences of "preventive detention," in "indeterminate sentences," and in "measures of security" found in some European penal systems; all of which are applied to persistent offenders who are judged to be committed to a life of crime.

However, except in the case of some persistent offenders and some who are judged to be especially dangerous, few sentences are based *exclusively* on this conception. In the great majority of cases the assumption is that the offender will be returned to the community. And, since the beginning of the penitentiary system at any rate, it has been generally accepted as one of the basic premises of corrections that the offender's treatment in prison should be such that, having undergone the experience of imprisonment, on his return to the community he will refrain from further offenses, although opinions have differed, and still do differ, as to how that may be achieved.

As a matter of fact, those who dismiss the notion of the reformation or rehabilitation of the prisoner as either irrelevant, impractical, or objectionable, and promote custody or control as the primary task or principal purpose of the prison make another mistake also. For it is no answer to the question, What is the function or task of the prison? to say that it is custody or containment or confinement. It is, in fact, an evasion of the question to respond in that way. It is no more than a tautology to say that a prison is a place of confinement or captivity. To imprison a person is to confine him. But this may be done to people for a great variety of reasons. Thus we confine enemy aliens in time of war, we confine travelers under quarantine regulations, we confine insane persons in mental hospitals.

In each case it is reasonable to ask and legitimate to expect an answer to questions about the purposes of their confinement or the functions of their places of confinement. In each case answers are forthcoming: We confine enemy aliens in wartime for reasons of national security; we quarantine some travelers because they are suspected of carrying contagious diseases; we confine some insane persons because they may be a danger to themselves and others. In

no case would it be enough to say: The purpose of their confinement is custody or control or containment. And what applies to the internment camp and the quarantine station and the mental hospital applies equally to the penitentiary or prison.

The basic fallacy, however, lies in the search for some simple formula or single purpose as the overall primary task of the prison system. Thus there may be prisoners in respect to whom the primary task of the system could only be defined in terms of control or containment, although both humanity and prudence would dictate that we should also pay attention to the prevention of prisoners' deterioration. At the other extreme there is unquestionably a substantial number of offenders whose imprisonment serves no purpose that could not be better achieved outside prison. In between there will be many different categories of prisoner for whom a variety of different objectives—educational, vocational, disciplinary, remedial, or therapeutic—might feasibly be suggested as primary.

When we ask about the functions of imprisonment we are asking in effect why we imprison. One way of answering this question is to refer to Wittgenstein's reply to the question, Why do we punish criminals? "There is," he said, "the institution of punishing criminals. Different people support this for different reasons, and for different reasons in different cases and at different times. Some people support it out of a desire for revenge, some perhaps out of a desire for justice, some out of a wish to prevent a repetition of the crime, and so on. And so punishments are carried out" (1966, p. 50).

Or, as H. L. A. Hart puts it, "Men punish and always have punished for a vast number of different reasons. They have punished to secure obedience to different laws, to gratify feelings of revenge, to satisfy a public demand for severe reprisals for outrageous crimes, because they believed a deity demands punishment, to match with suffering the moral evil inherent in the perpetration of a crime, or simply out of respect for tradition" (1968, p. 73).

Why then in regard both to the institution of punishment in general and the institution of the prison in particular should one particular function be nominated as the "prime" or "essential" function? Is it because, as Hart suggests, "in our inherited ways of talking or thinking about punishment there is some persistent drive towards an oversimplification of multiple issues which require separate consideration" (*ibid.*, p. 3)? Or is it because in all areas of discourse we prefer simple rather than complicated explanations?

One other point should be mentioned which applies to discussions both of the moral justification for imprisonment and the functions of imprisonment. Very frequently when people nominate a particular justification or aim as primary or essential it seems that what they are doing in effect is recommending that justification or aim as meriting special approval. In other words, their statements