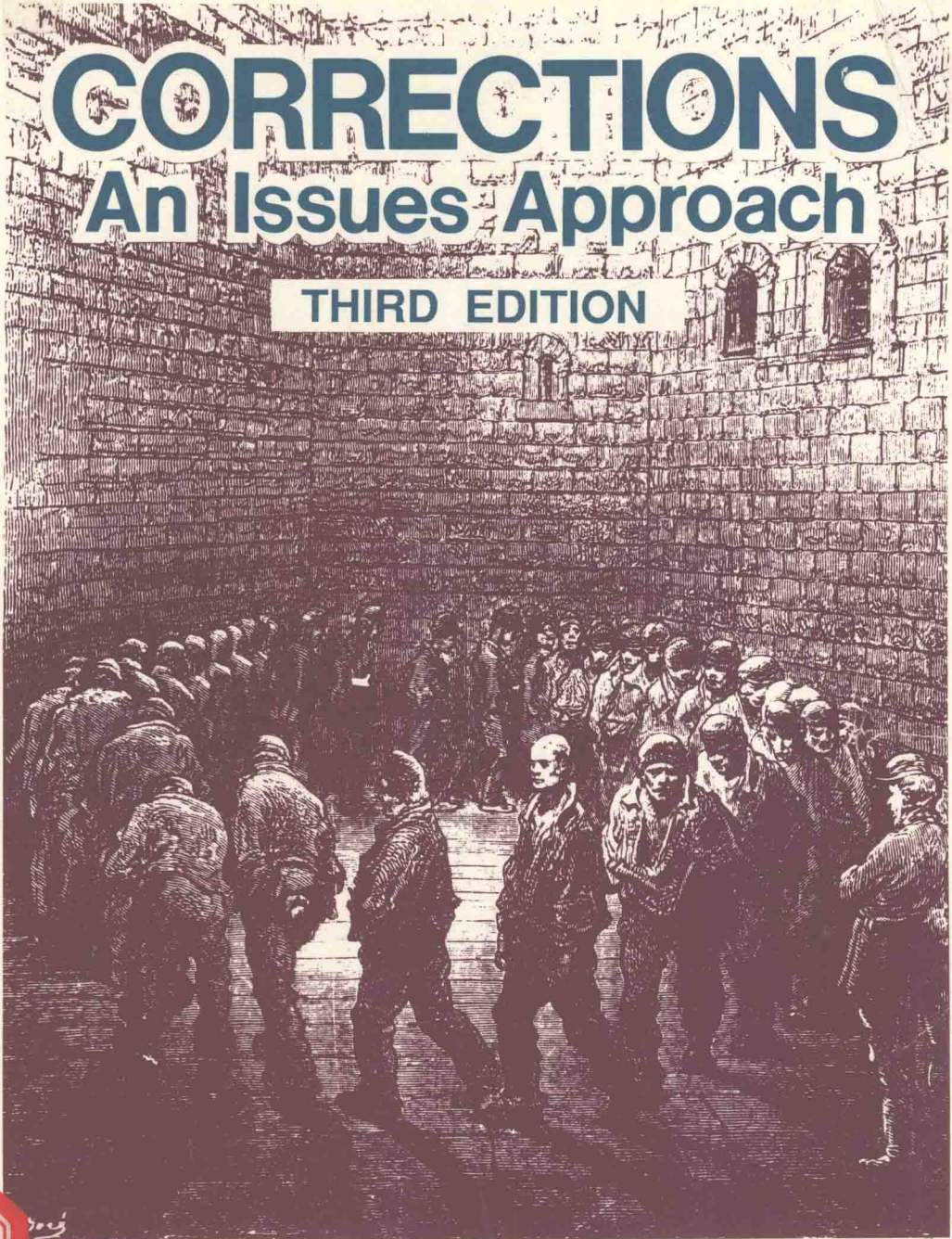


CORRECTIONS

An Issues Approach

THIRD EDITION



Lawrence F. Travis III
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An Issues Approach

THIRD EDITION

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Corrections: An Issues Approach

Third Edition

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There is 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.

—*Ludwig Wittgenstein*

Ours is a system with orderly procedures for arriving at a chaotic jumble of non-standard and often irrational decisions.

—*Richard McGee*

PREFACE TO THE THIRD EDITION

The third edition of *Corrections: An Issues Approach* includes an extension and refinement of the earlier editions. We continue the “debate” format, striving to present opposing or alternative views on basic questions about the American correctional process. These basic questions address the purposes and utility of prisons, community supervision, and the treatment of offenders.

Our hope remains that readers of this book will examine the assumptions on which current correctional practices are based. As in the earlier editions, we continue to believe that a discussion of which prison programs are most beneficial should follow an examination of the purpose and appropriateness of prison as a correctional option and treatment as a correctional function.

The changes we have made in this edition include a necessary updating of references and statistics. We extended the discussion of the American Correctional Process, placing it more firmly into a developmental context by referring to correctional eras. We hope this presentation will sensitize readers to the changing fads and fashions of American corrections. Beyond this, we have expanded the discussions in each of the three major sections: Correctional Institutions, Community Supervision, and Treatment for the Offender. In doing so, we have kept to the basic format of the second edition in presenting a “compromise” or alternative position to accompany the debates for each section. Finally, Part V: Emerging Issues and Change, has been revised to reflect more current concerns.

Whenever editors prepare a book of readings they incur debts of gratitude to a variety of people and institutions. First, we thank all of the authors and publishers who have graciously allowed us to use their works in this book. In addition, Bill Simon, Mickey Braswell and Kelly Humble of Anderson Publishing deserve special mention for their support and assistance in the preparation of this edition.

We owe a great debt to several scholars whose guidance and knowledge have contributed greatly to this and the previous editions. Vincent O’Leary, Fred Cohen, Hans Toch, Leslie Wilkins and Marguerite Warren left lasting impressions on each of us, which we are still trying to overcome. The late Donald J. Newman is among those to whom we owe a lasting debt.

A large number of students and colleagues have also contributed to this book through sharing their observations and comments with us. While there are too many to list here, we wish to express our gratitude to Gregg Barak, Gerry

Vito, George Wilson, Nancy Schafer, Harry Allen, and Richard Lawrence. As with the earlier editions, we think it only fair to note that any errors or omissions in this book are a direct result of the influence of these people. Any credit to be bestowed, however, comes from our ability to transcend these influences.

Finally, we owe thanks to those people whose efforts allowed us to complete the tedious and inglorious chores required to see this edition to completion. We mean, of course, the anonymous programmers who created our various word-processing packages. For her unselfish and generally uncomplaining attitude, as much as her competent handling of correspondence and manuscript management, we thank Pat Travis.

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June, 1991

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Part One

Introduction to American Corrections

1850

Rev. James B. Finney, Memorials of Prison Life. (New York: L. Swormstedt & J. H. Power, 1850), pp. 16-17.

There is a single question, also, now extensively agitated throughout the civilized world, respecting the exact objectives to be reached after in depriving criminals of their liberty, which can be studied and answered best within the precincts of a prison. Upon this question there are now three theories in vogue. One theory is, that all imprisonment is for the sake of punishment; and the practical conclusion from it is, that the severer and more certain the punishment, the more sure it is to deter from crime. The second theory, on the contrary begins by asserting, that all punish-

ment, properly understood, is for the improvement of the culprit, and, consequently, all its rigors should be softened down by the spirit of unmixed love. The third and last theory takes a middle position between the other two, maintaining, that, as there are two parties in the case, so there are two sides to be looked at; that society is to be defended against the probable repetition of unpunished crimes; and that this is to be done in a way most likely, at the same time, to benefit the criminal but unfortunate victim of the law.

National Advisory Commission on Criminal Justice Standards and Goals, Correction (Washington, D.C.: Government Printing Office, 1973), p. 3.

Corrections clearly has many purposes. It is important to recognize that correctional purposes can differ for various types of offenders. In sentencing the convicted murderer we usually are serving punitive and deterrent rather than rehabilitative purposes. Precisely the contrary is true with respect to the deprived, ill-educated, vocationally incompetent youth who is adjudged delinquent; with him, rehabilitative and reintegrative purposes predominate.

There is no doubt that corrections can contribute more than it does to the reduction and control of crime, and this is clearly one of its purposes.

What is done in corrections may reduce recidivism. To the extent that recidivist crime is a substantial proportion of all crime, corrections should be able to reduce crime. A swift and effective criminal justice system, respectful of due process and containing a firm and humane corrections component, may provide useful deterrents to crime. Through these mechanisms corrections can contribute to the overall objective of crime reduction. This is an entirely worthy objective if it can be achieved without sacrificing other important human values to which this society is dedicated.

THE SETTING

This book is about issues in contemporary American Corrections. To understand these issues and begin to develop reasoned responses to them it is first necessary to recognize the context in which correctional agencies and agents operate. This section of the book is devoted to a description of the context of American Corrections.

Corrections is a complex enterprise comprised of prisons, jails, probation, parole, and other community programs designed for the care and control of persons convicted of crimes. The large number and variety of institutions, organizations and programs that make up American corrections do not exist in a vacuum. Rather, they have developed over time and within particular social, economic, historical and organizational settings.

Our first task is to define and describe the setting, development and structure of corrections. In doing so we will see the complexity of the enterprise of corrections and gain an appreciation for the many sources of the conflicts and other issues which currently plague correctional practice.

CORRECTIONS AND THE CRIMINAL JUSTICE SYSTEM

Corrections is the “home stretch” of the criminal justice system. By the time most offenders come under correctional supervision they have already run through most of the field: starting out as free citizens, they have moved through the roles of suspect, arrestee, defendant and convict before arriving at their current status (that of probationer, parolee or inmate).

It is important to keep this in mind, for while corrections can be extracted from the broader criminal justice process for study, that extraction is artificial. It is done for ease of analysis, and does not represent actual conditions.

The criminal justice system can be considered to be a formal social institution developed for the control of that deviance defined as criminal (Travis, 1990). It is composed of three major parts: policing, courts and corrections. The goals of the criminal justice system are: the control and prevention of crime. Like policing and criminal courts, then, corrections can only be understood as a component of the larger criminal justice system.

Actually, the question of whether or not the criminal justice process can properly be called a “system” has been hotly debated in the literature of the field (Robin, 1987:43-47). Some observers contend that differences in personnel,

jurisdiction and goals make the criminal justice process a "non-system." No matter what conclusion one reaches on this question, the fact remains that in operation, the agencies and offices of the criminal justice process share certain characteristics of a system.

Perhaps the most important among these systemic characteristics is that these various agencies are interdependent. That is, each component of the justice system is tied to every other component. Changes in any aspect of the process; police, courts or corrections, will cause the others to adapt.

An example of this interdependence is the way correctional agencies rely on the criminal courts for input in terms of subject population. If convicted offenders were not sentenced to incarceration or probation, there would be very little left for the correctional bureaucracy to do.

While this example is purposely extreme, it does make the point that the correctional process is intricately bound to the rest of the criminal justice system. Interdependence, by definition, involves a "give and take" relationship among the three parts of the justice process. On the "give" side, a particularly important characteristic of the justice system is that it has a directional process. Cases "flow" from the police through the courts to corrections. This means that the subject population of correctional agencies (the input to the correctional process) is defined and controlled by agencies not identified as being in the correctional segment of the justice system. In simple language, corrections has to take whatever or whomever it is given. This fact is even more important to an understanding of American corrections once the nature of the criminal justice system is explored.

On the "take" side, there is some feedback flowing in the other direction which may have some impact on earlier sections of the system. Constant cries of overcrowding from correctional authorities may convince some courts to sentence more offenders to community supervision. A policy of early parole for certain offenders, for example, those convicted of possession of small quantities of marijuana, combined with court action to dismiss or lightly sentence such offenders, can convince police to stop "wasting" time by arresting such law violators.

Yet, while the criminal justice process is characterized by many of the attributes of a system, it does not neatly fit any common systemic model. Sheldon Glueck (1928:480) once remarked that the American criminal justice system is "the clumsy admixture of the oil of discretion and the water of rule." Because the justice system is an "open system" (Trist, 1969:269) it interacts with its environment and not only has an impact on that environment, but also is affected by it. That environment is the larger system of American society. This interaction is visible in how the justice process has reacted to changing public perceptions of the seriousness of drunk driving (National Institute of Justice, 1985) and the "war on drugs."

One of the primary ways in which agents and agencies of the criminal justice system are able to react to environmental pressures is through their exercise of discretionary authority. By design, necessity or historical development,

criminal justice agencies have obtained tremendous authority to control their day-to-day operations. This authority, the power to choose among alternative actions or inaction, is known as discretion (Davis, 1969). The importance of discretion to an understanding of the criminal justice system cannot be overstated.

Discretion

The combination of rather broad discretionary power, residing in the criminal justice agencies, with the directional flow of cases has important ramifications for American corrections. The police have the power to "overlook" criminal offenses. They can fail to investigate reported crime, decide not to arrest known suspects, or fail to work for convictions. By simply organizing their forces in one manner or another, they can strongly affect the types of arrests made. For example, creating an organized crime squad, or career criminal unit, would result in quite a different arrest picture than if no such units were established.

This same discretionary power exists throughout the justice system. Prosecutors can refuse to charge suspects with any crime at all, or can change the crime for which they were arrested to one which is more or less serious. Grand juries can refuse to indict. Trial juries can refuse to convict, regardless of the magnitude of the evidence against a defendant. Sentencing judges have the discretion to, with few exceptions, suspend sentence altogether, or to impose fines, probation or incarceration. Correctional agencies also have discretionary authority, as we shall see later in the book.

Discretion can serve two different functions. First, and most commonly, it is exercised in a manner that will help to continually reduce the number of cases being processed. Thus, the number of persons sentenced is far lower than the number arrested. The justice system acts as a funnel (President's Commission, 1967; Travis, 1990:140), with the result that correctional populations have been negatively selected and are theoretically comprised of the most serious, most intractable and most dangerous offenders.

Second, the power to divert persons from the justice system necessarily involves the power to retain others. This means that some decisionmaker with discretionary power has chosen not to divert some people. Thus, many persons sentenced to correctional supervision neither "need" such supervision, nor, when compared to others diverted from the process, deserve it. Such persons place an unnecessary and unwarranted burden on the finite resources of correctional agencies.

With all of these decisions being made daily, the criminal justice system has been defined as a "complex decision network" (Newman & Anderson, 1989). Actually, it is a sequential series of decisions made by state agents (police officers, prosecutors, judges and correctional officials), in which each decision is heavily influenced by preceding ones. Trial judges or juries can only convict those persons who have been formally charged by prosecutors, who generally

charge only those persons identified as law-breakers by the police, and so on. Probation officers only have custody over those sentenced to terms of probation. In such a system, the decision immediately preceding that to be made by any official thus carries the most weight and has the greatest influence on that official's exercise of authority. For this reason alone, judicial sentencing is of vital importance to correctional agencies.

Sentencing

In many ways, sentencing is the center of the criminal justice system. Television and literary dramas notwithstanding, it is in sentencing decisions that the state exercises the most power over the individual. It is at this point that a decision is made which determines the conditions under which the convicted offender will live for a period of time that may range up to the entire remainder of his or her life. Indeed, in roughly 60 percent of the states, the judge or jury is empowered to decide whether or not the offender will continue to live if they are convicted of certain specified offenses. By early 1990, there were 2,400 persons on death row in the United States (Kaplan & Wright, 1990:73).

Up to the point of sentencing, the entire decision network operates to identify those persons who will be subjected to criminal sanctions. After sentencing, the network operates to execute the penalty imposed. Correctional agencies play a very important role in the sentencing process and beyond. Indeed, a major function of all correctional agencies is the execution of judicially imposed sanctions.

A second role corrections plays in sentencing involves the preparation of presentence investigations by probation agencies. These source documents, which often form the basis on which judges make punishment decisions, often include specific sentence recommendations (Evjen, 1964). After determining an appropriate sentence, the judge often shares decision-making with another correctional agency, the parole authority. Through its ability to grant release (under specified conditions) from incarceration, the parole authority actually determines the length of prison terms.

Thus, probation agents provide judges with information and, sometimes, recommendations about sentences. Parole authorities share punishment power with judges in cases where the offender is sent to prison. Finally, probation, parole, jail and prison authorities carry out the sentences imposed by the judge. In all cases correctional officials are responsible for carrying out sentences, and in many cases they share in the sentencing decision itself.

After the judge makes a sentencing determination within the constraints of applicable statutes, the decision can work to limit the activities of correctional agencies in two important ways. First, the sentence may establish and define the goals of correctional intervention. Second, the sentence imposes certain operational constraints by establishing the length of term and the conditions of

correctional supervision. For example, the judge may impose a five-year probation term which requires that the offender receive treatment for a substance abuse problem. Such a sentence tells correctional authorities that they have five years in which to supervise this person, and further, that they must provide substance abuse treatment during this time.

In most cases judges have broad discretionary power in setting criminal sentences. Recently concern has been raised over the fairness and effectiveness of sentencing decisions. This concern has led to changes in the sentencing practices and statutes of several states, most of which have attempted to reduce the discretionary power of judges and parole authorities.

There is a justification for allowing judges to retain broad discretionary power. In general, the utility of discretionary sentencing authority is tied to beliefs about the appropriate purposes of punishment. Four such purposes or goals of criminal penalties have been identified and described: deterrence, incapacitation, treatment and retribution (O'Leary, et al., 1975; Travis, 1990:274-82).

Deterrence involves the use of the criminal sanction to warn would-be offenders that crime will be punished in hopes of convincing them to remain law abiding. As a warning, punishment can take one of two forms. General deterrence applies when a particular offender is punished in order to "teach a lesson" to others that crime does not pay. In general deterrence, the specific offender is used as an example to the general population. Special or specific deterrence is at work when the punishment is applied to teach the individual offender a lesson.

In either case, the purpose of the penalty is to convince people that criminal behavior will be punished, and that it is in their best interests to obey the law. The penalty is an example of what awaits lawbreakers and causes them to consider the costs of crime and weigh them against the benefits of crime (Paternoster, 1987). Deterrence assumes a rational offender who will avoid punishment. It relies on certainty, severity and celerity to establish a high cost of crime. That is, the offender must fear the penalty, and the penalty must be seen as sure to swiftly follow the crime in order for deterrence to work. Evidently, these conditions are not always met. Paternoster (1987) reviewed the literature on deterrence and concludes that while the theory of deterrence is elegant and intuitively correct, the empirical evidence for its effectiveness is unclear.

Incapacitation is the goal of punishments imposed to prevent offenders from having the opportunity to commit new crimes. Unlike deterrence which seeks an educative effect, incapacitative penalties attempt to prevent crime by limiting the chances offenders will have to commit new offenses. A person locked in prison will not have the chance to burglarize your home, and is thus incapacitated.

The major limitations on incapacitation are the difficulties in predicting which offenders are dangerous, and the costs of imprisoning or otherwise controlling offenders. A perfect incapacitative system would imprison all offenders who would commit new crimes, but only those who will commit new crimes. No