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AMERICAN LAW INSTITUTE

IV. After sentence—What?

JAMES V. BENNETT

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One in my position is constantly assailed with anxieties, quandaries and paradoxes and tonight is no exception. Judge Goodrich asked me to draw aside the curtain that shrouds our prisons and discuss—"After Sentence—What?" Thinking this over I wondered whether he wanted me to talk about the cold, hard and all too dismal facts concerning America's correctional system—state and Federal—or what I thought ought to be the situation. It would be much more pleasant to set forth how much better our great-grandchildren are going to do in curbing crime and correcting mal-adjustments than we are now doing, but it might subject me to the same fate that befell sponsors of new laws in ancient Greece.

Demosthenes records that the Council of 1000 of Locris required anyone who proposed a new law, a new tax or who advocated a considerable change in existing methods to stand and explain his law or his project with a rope around his neck. If the Council could not accept his reasoning he was unceremoniously strangled then and there. Demosthenes adds that under this system there was but one law changed in nearly 200 years. I want to escape that fate, so I ask your permission to be both realistic and somewhat visionary if that is possible.

PUNISHMENT OR CORRECTION

It seems to me altogether proper that judges and lawyers know how the kind of medicine they prescribe is administered. They measure out the dosage and leave to others the compounding of the prescription and the aftercare of the patient. In some cases the medicine is expected to cure or help or strengthen not the person who is before the court but others vaguely referred to as society. This is the doctrine of deterrence, of preventing crime by punishment alone. For some types of crime and personalities it hasn't worked very well. But it has had a most benign effect on those who do not like to pay taxes or engage in some kind of so-called white collar crime. Most judges, however, send men and a few women to prison to be corrected, to be redirected, to be rehabilitated—call it what you will. And they send them there *as* punishment and not primarily *for* punishment. And they rightfully expect something more. Now how is this being achieved?

THE PRISONER'S ORDEAL

Let us follow a prisoner figuratively to one of the better state or Federal institutions. When that iron gate ominously clangs behind the prisoner he is in a state of shock if he is a normal human being. He is depressed, worried about his family, despairing, fearful and suspicious of all about him. But probably also if he stood trial he is bitter. As one prisoner once wrote me:

"Men approach the ordeal of the criminal court, stirred and bewildered by a deep and undefinable fear and go through it in a chaos of torment. It is in this hour of his greatest fear, his greatest need for honest guidance and counsel that the law submits him to a legal dueling and to a vilification of himself which might well appall the stoutest mind. And so he leaves the courtroom with his heart pouring forth so much hate and venom that it is well-nigh impossible to bring about those inner mental changes so essential to true rehabilitation."

TREATMENT MUST BE PLANNED

Regardless of whether that statement is justified, we do recognize that a period of orientation, self-analysis and quarantine is needed to recover from the traumatisms most prisoners have. And not a little of his cynicism and animosities stem from the inexcusably deplorable conditions of the jails and lock-ups where he was held when on trial. So for the first month in prison he spends his time apart from other prisoners and learns about the institution not from jail chatter he heard but through talks by various officers of the institution, and through interviews and examinations by the doctors, the case-workers, the psychologists, the chaplains and the vocational guidance people. What comes out of this orientation period is a classification study giving all data that has been learned about the prisoner—his own and the court version of the offense, his school, family and employment history, his mental rating, his psychiatric evaluation, his physical condition, an estimate of his institutional adjustment and similar data. With this information as a basis, his case is then discussed by a committee of the principal officers of the institution and his future program outlined. It is decided where he is to work, where he will be housed—in a close custody institution or area, on the farm or elsewhere. Also an educational or vocational training course is outlined and the prisoner encouraged to take advantage of it. The doctor will schedule any needed corrective surgery. The chaplain will try to interest the prisoner in church. And in case the prisoner, especially if he is young, seems to need someone to help and advise him with regard to a personal problem—a depressed state-overaggressiveness, sex anxieties or fears for his own safety—he may be allowed to select an officer or employee of the institution as a personal advisor to whom he is free to turn for help whenever required.

To be sure, some of these things I have been saying are still visionary in many institutions. And also it goes without saying that whatever the program it must be within the capacities of the institutional facilities and not interfere with the primary responsibility of seeing that the sentence of the court is faithfully executed.

ROADBLOCKS IN THE WAY OF ACCOMPLISHMENT

And there is the rub! There are few prisons or correctional institutions in America that are not overcrowded, understaffed, obsolete in physical structure and equipment,

devoid of real work opportunities and starved for operating funds. Moreover their population now consists largely of serious, habitual and psychopathic offenders. The more hopeful cases have been skimmed off by the ever-widening use of probation, leaving the professional criminal, the handicapped and the warped personalities for the prison to deal with. That is a good thing, I believe, because good probation can salvage a far greater percentage of offenders than can even the best penal system.

It is important to keep this fact in mind when appraising the prison and trying to understand why it does not have a greater percentage of successes. Everyone seems to gasp when they are told that upwards of sixty per cent of the men who leave prison will return again within five years. But think of the raw material!

The wonder is that prisons succeed in so large a number of cases as they do. Some men, I am convinced, go back to prison time and again because they want to and it is not because it's a country club. Rather it is because they cannot or will not meet the tests of our competitive society, are discouraged and seek a haven in the only place they are accepted. Then too the prison must deal with a wide range of psychopaths, the mentally retarded, sex deviates, senile and many who are crazy in fact although not within the narrow orbit of the McNaughton rule. At least twenty per cent of Federal prisoners fall within these discouraging categories. To talk of rehabilitating many of them is pretty naive. Yet we try. But most of our effort naturally is concentrated on more hopeful cases. And how much money do we have to teach, to train, to rehabilitate? Aside from the cost of guard personnel even the best of prisons spend not more than \$2.00 per man per day to feed, clothe, educate and take care of all those other things necessary to make men into self-reliant, self-respecting, law-abiding citizens. Not much is it when you stop to think what the dollar will buy these days.

NEED FOR WORK AND TRAINING

A few experiments going on in our prisons are pointing the way to making them more effective instrumentalities of reformation as funds become available. Teaching a young man a trade or an older offender how to work isn't the answer in all cases. But note, for instance, that of the 330 young men who completed a course in airplane engine mechanics at our institution at Chillicothe, Ohio and received their certificates from the Civil Aeronautics Authority only 32 have been returned to an institution. And a surprisingly large number of prisoners are eager to learn. For instance, nearly 9,000 or 50 percent of Federal prisoners enrolled last year in one of our 372 training courses—ranging from the 3 R's to Diesel engineering. Also it stands to reason that teaching those who haven't the capacity or will to learn how to work as operating a metal stamping and punching machine, or to perform some repetitive operation and paying him wages according to his skill and efficiency will help him learn how to hold his place in a production line and get started in a legitimate job when he leaves the prison. We are able to do these for most Federal prisoners. Unfortunately, however, there is no aspect in which most state prisons have failed to measure up to their responsibilities as in finding stimulating work for their men. Most American prisons are merely vast idle houses filled with men aimlessly milling about crowded yards or locked in cells or dormitories with nothing to do.

OPEN INSTITUTIONS PAY DIVIDENDS

Another experiment that seems to be paying real dividends is the growing use of open institutions where the sentenced offender is not under constant and continuous guard. The emphasis in these institutions is on building character and trustworthiness, self-respect and self-reliance. California has such an institution at Chino, the Federal Government has one near Dallas, Texas, and New York has one at Wallkill. These institutions depend on brains not bars for security. And they are entirely adequate and safe for an amazingly large number of prisoners. We are not so naive, of course, as to believe that some of the well-conditioned bank robbers, sex offenders and confidence men can be held in such an institution, but there are many check-forgers, auto thieves, embezzlers and other accidental or situational offenders who gain great benefits in such an environment. Since Seagoville, as we call our open institution in Texas, has been in operation more than 4,100 men have passed through the institution and only 32 men have escaped, all of whom have been recaptured. Such institutions and camps are cheaper to operate, they improve greatly opportunities for testing the progress being made by the prisoner and strengthen his faith in himself.

YOUTH CORRECTION OUR MOST POWERFUL TOOL

One other new kind of penology is proving its merit. I refer to the youth correction idea which was cradled and sponsored by this Law Institute. As you know, your model act was adopted in somewhat modified form by California, Minnesota, Texas, Wisconsin, Massachusetts and is just now coming in operation in Federal courts, following the implementation of the Act by Attorney General Brownell. We now have some 75 young men in our institution at Ashland, Kentucky, which has been set aside as a youth center for district courts east of the Mississippi, with the exception of the District of Columbia. We are accepting men from the Federal courts for observation, diagnosis and for report of the findings of our case workers, psychiatrists and others to the sentencing judge. The California youth corrections act was put into operation nearly ten years ago under the leadership of our present Chief Justice. Now there are nearly 9,000 young offenders under the jurisdiction of the California Youth Authority. Almost everyone agrees it is proving a tremendous advance over the largely punitive approach formerly characteristic of traditional legal methods. The American Law Institute can indeed be proud of its far-sighted and pioneering activities in this field. I have every confidence that as time goes by equally fine results will be apparent in the Federal system. Our Chairman who over these many years has fostered and encouraged the movement, can more fittingly than I pay tribute to those able and understanding lawyers and judges who forwarded this legislation under the leadership of Judge Parker and Judge Phillips.

For my part I can, I think quite properly, advise you that Attorney General Brownell since taking office, has vigorously spurred forward the implementation of the Federal Youth Act. I think further you can rest assured the executive branch will not consider it has fulfilled its responsibilities until after sentence there really will be a "what". To this end we ask for understanding, cooperation and support.