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WHAT IS WRONG WITH AMERICAN PRISONS AND JAILS

HARRY MANUEL SHULMAN

The author is First Deputy Commissioner of the Department of Correction in the City of New York. He is on leave from the City College of New York where he is Associate Professor of Sociology. The following article was read by its author before the Conference on Modern Methods in Law Enforcement at New York University, August 3, 1954.—EDITOR.

The faults of American prisons and jails are not to be laid at the door of any single group, neither of prison architects, administrators, correction officers, nor of the agents of criminal justice, but of the entire structure of public crime control, which is content to deal with society's manifold problems of economic, social and human relations largely in terms of punishment. Despite its lip service to theories of social control by education, American penology stands immobilized today with one foot in the road of rehabilitation and the other in the road of punishment, and here, to my mind, lies our major dilemma and problem.

Perhaps, I ought to indicate at this point what I mean by punishment and by rehabilitation. By punishment I mean the emphasis upon secure custody, obedience to authority, and minimal amenities. The object of punishment is to teach a lesson to offenders and prospective offenders; in a word, to deter. In contrast are the principles of rehabilitation, including (1) *diversification*, or institutional specialization of treatment, (2) *classification*, the process of selection of individuals for different institutions, and different treatment purposes within institutions, and for the whole panoply of treatment procedures including academic and vocational education, recreation, social welfare, individual and group diagnosis and treatment, counselling, and after-care. The object of these is to re-orient the prisoner's attitudes, to re-train his technical and social skills, and to direct insight into his social roles and perception of roles. Without insight into what his roles have been, we can do nothing about re-directing his role function, in terms of fitting into the community at large.

American penology, unfortunately, is called upon to produce a program of rehabilitation within a prison social structure dominated by punishment. Prison administrators are expected to stress custody and obedience and to direct programs of rehabilitation through a personnel trained to impose control and prevent escapes. Because of this emphasis upon custody and obedience, we have been slow to deal with prisoners as people and to introduce into prisons the social changes necessary to guide prisoners toward the practice of good human relationships.

In our best prison systems, we have introduced diversification, classification, reception orientation, vocational and academic education, recreation and social work, but these services tend to be limited in quality and either selectively applied or mechanically distributed as a thin layer of rehabilitation on a solid structure of punishment. Because of a lack of rehabilitation programs, continued use of obsolete

institutions, failure to build enough prison structures to house a growing criminally convicted population, and the resistance of both labor and industry to prison industries, our prisons are overcrowded by sullen and apathetic idlers who unlearn past habits of industry, if they ever possessed them, and who develop through a succession of jail and prison commitments, habits of idle profligacy, including those of sex perversion and homosexuality. All these facts have been stated before. True as they are, they do not touch the core of our prison problems. The failure of prisons, and that of punishment, lies not so much in that so many offenders return to jail as that so many offenders and the most dangerous kinds of offenders, remain outside the jails. Jails and prisons receive by and large the failures and misfits in crime, not the professionally trained and commercially successful. The rackets and crime syndicates, their political henchmen, and white collar offenders—these are relatively immune to arrest, prosecution and sentence. As a result, we receive in jails and prisons those persons who do not constitute our major crime problem. Their incarceration does not impress either themselves or the public, in the face of the obvious immunity from punishment of the organized elements in crime.

This brings me to one of the major points I would like to discuss. The failure of our jails and prisons is largely the result of the dismal quality of those who enter it, and may I remark parenthetically that the quality of our inmates is steadily worsening. Setting aside the occasionally erring citizen guilty of an auto offense, a drunken spree, or violation of corporation ordinance, who goes to jail for lack of funds for bail or fine, the vast majority of our urban prisoners are from hopelessly disorganized social backgrounds, broken and disorganized families, slum neighborhoods, school failure, job failure, failure in sex adjustment. The steady development of probation means that nearly every hopeful case, at least in urban communities, is given at least one trial under probation supervision. And so our jails and prisons are thus becoming increasingly the sink holes of recidivism. The hopeful material doesn't ordinarily get into these institutions. As I sit on the Parole Commission of the City of New York and listen to the case histories I am more and more convinced of this fact, that we are dealing at least within our municipal prisons, with the failures of crime.

This matter of failure very much affects what you can do in prisons by way of rehabilitation. I remember, in one of my earlier studies, when I was helping to introduce classification into the Department of Correction in the State of Indiana, I undertook to determine the proportion of men who were qualified for vocational rehabilitation in terms of education, training, physical qualifications, mental abilities, and so on I arrived at a rather dismal figure of 15 percent of the sample as being probably good material for rehabilitation. I think that figure was probably an average—it might run a few percent higher or lower in many institutions, and that means, of course, that when you talk rehabilitation you have to bear in mind the non-rehabilitatable material with which our institutions are overcrowded.

Now, these handicaps, while they underline the incapacity of prisons to educate for social living, tells us very little of the circumstances within prisons which encourage criminal education. These are (1) the social structure of prisons and jails;

(2) the lack of a structure of jurisprudence to protect and direct the ends of justice within prisons and jails; and (3) the failure of conventional authority in prisons and jails to discover practical channels for the exercise of the major constructive powers of men and women—discovery, invention, productivity, new learning, acquisition of goods, of power over others, in a word, that constructive aggressive drive of mankind which leads to achievement. To these three, operating within prisons, I would add a fourth, operating outside of prisons, the emphasis of our society upon breach of sovereignty rather than upon breach of the human relations as the main element in criminal behavior.

SOCIAL STRUCTURE OF PRISONS AND JAILS

Assuming that we had within prisons and jails the kinds of prisoners who were by and large rehabilitable, we would still be unable to go very far in a program of rehabilitation within the existing social structure of our prisons and jails. That social structure is a functional response to the objectives of punishment and secure custody. It consists of two separate social structures, that of officialdom and that of prisoners. That of officialdom is military in its organization; that of prisoners is feudal, being composed of competing groups and bands who recognize no secure leadership and among whom dominance is determined by force rather than by consensus or democratic selection.

Relations between the prisoner community and the official community are distant and strained. The object of the official community is to maintain its control system over the prisoner community and the object of the prisoner community is to negate that control system. Under these circumstances, social relations between the two groups is normally not for the purpose of serving the welfare of all, but to accomplish the objects of each separately. The objects of officialdom are to accomplish the assigned daily routines and to use the inmates for purposes of information. The objects of inmates are to reduce their duties to the bare minimum necessary to escape censure or infraction reports, to "con" the official group into forgetfulness of rules or into tacit overlooking of infractions, and to obtain individual favors and benefits. Between both groups there is an uneasy relationship of domination and submission characterized by non-fraternization on the part of the official group save for the issuance of necessary orders and for the maintenance of controls.

This structure of social relationships does not encourage constructive social learning, productivity, initiative and individual growth. There is no escape for the inmates from the formal bureaucratic structure or from the inmate social structure through socialized aggression such as competition nor through unsocialized aggression, since one is not encouraged and the other is, of course, punished. Escape, therefore, for the prisoner is possible only through psychological withdrawal into introversion, or worse, into psychosis.

These accommodating patterns of official and inmate social structures are reinforced by the lack of a structure of jurisprudence, affecting the prisoner social structure. Persons committed to our prisons and jails lose the protection of the criminal law as regards their persons and property. Technically, prisoners and inmates, while

suffering the loss of many civil rights during the period of incarceration, and for a felony, for an indefinite period following release, unless restored by executive action, are presumed to retain some of the fundamental protections of our civil and criminal law. They are presumed to be secure in their person and property and to have the protection of due process—these protections they do have and often exercise, as statistics on writs of habeas corpus and coram nobis will attest, in relation to the courts. But in relation to the administration of jails and prisons where the courts are not involved, these protections substantially end.

LACK OF A STRUCTURE OF JURISPRUDENCE

The prisoner incarcerated within our jails and prisons finds himself thrown back into an earlier form of society in which force rather than law operates and in which compulsion rather than reason triumphs. Consider the triad of prison relationships as represented by the Warden or Keeper, the prisoner and his fellow prisoner—o ° o—this sort of thing. If in civil life one citizen assaults another or steals his goods or property, an authority will note the complaint, take evidence, and seek an adjudication. In prison this is rarely the case. Crimes are committed within prisons often without the protection of due process for the victim and on a scale of punishments of a different order from that outside. For example, standard practice, when two inmates are found fighting, or when one inmate implicates another in an assault, is to punish them alike regardless of who is the aggressor. Should the offender be so unfortunate as to have been assaulted by an officer, he will not be permitted to produce inmate testimony of the assault or the events leading up to it. The officer, on the other hand, will practically always have the testimony of brother officers available that he was assaulted by the inmate and rescued by them. Only in rare instances involving serious felonious assaults or homicides are the civil authorities notified, and due process of criminal justice instituted.

Since there is no effective protection of inmates from inmates, there has grown the empirical practice among inmates of refusing to testify as witnesses and even of refusing to place complaints as victims. One can almost say that as far as the prisoner is concerned within the prisoner community, he lives in a jungle rather than in a community where law operates. And, the tragic aspect of this is that the administration, the officialdom, stands in no effective way to protect one prisoner against the other. We have certain things we can do. We can transfer a man from one wing to another, from one block to another, from one institution to another, if he is an informer, or if his life has been threatened, but aside from these occasional protections, there is literally very little that we can do. The situation in prisons and jails is thus the paradoxical one, that persons thrown into jail because of their disrespect for the law, find in jail a worse disrespect for law than outside.

Until such time as the social structure of jails and prisons can be reorganized so as to afford to persons the same protection inside of jails as outside, it is idle to speak of imprisonment as producing respect for law. You teach respect for law by producing evidence that law can create justice. This is emphatically not possible

within the prison situation because of the very structure of the prisoner community. Fear of law and hatred of authority may thus be taught, but not respect for law.

NO MOTIVATION TO ACHIEVEMENT

Within this set up, it proves impossible to set forth a normal pattern of motivation to achievement because just as long as prisoners are busy "keeping their noses clean," avoid getting into trouble with other prisoners, or avoid doing any more than is necessary to meet the minimal work requirements of the situation, very few prisoners are deeply concerned with the matter of individual achievement. They are living in a society in which individual achievement has no place.

VIOLATION OF HUMAN RELATIONS, NOT OF SOVEREIGNTY

This brings me to the last point I wish to discuss: the nature of this society's emphasis in its system of criminal jurisprudence. In contemporary criminal justice the emphasis is upon the violation of sovereignty rather than upon breach of human relations. Again using this triad, $\circ \circ \circ$, if we let the top circle represent the State, or authority, the one to the left represent the offender, and the one to the right, the victim, we have the normal constituents of any juridical process. The complainant lodges a complaint with the State against the defendant. The State causes an investigation, adjudicates the issue, and assigns guilt or innocence, and in the case of guilt, assigns punishment.

Now, in primitive societies, illiterates with presumably no real grasp of functional understanding, seem to have done things much better because in stressing compensation, they stressed the relationship between the offender and the victim and they saw to it that the offender, in some practical way, recompensed either the victim or the victim's family. But, when the State came into being, and with it the gradual development of criminal law, this important relationship between offender and victim began to be replaced by the relationship between the State and the offender, and so the practice of fines, and of imprisonment, and of the reduction in compensation by the withholding of more and more of compensation as fine, led to a situation in which the relationship between offender and victim was practically extinguished and the victim became like the taxpayer, a forgotten man. He became now merely the complaining witness. He became the man who is merely the means of initiating the legal process, and, from here on in, he drops out of the picture pretty much and it's the relationship between the State and offender that is emphasized.

Now, this is unfortunate because it has led to an increasing psychological gap between the offender and the victim. In all of our case analyses, in all of our interviews with offenders, we have a great deal to say about the law and the payment to the law for the transgression, we have a great deal to say about their mental attitudes toward themselves but we have very little, if anything, to say about the relationship between the offender and the victim. We make no provision, except casually in probation, for restitution as a part of this relationship. I would venture to say that every year in the United States probably upwards of a million citizens suffer grievously as a result of crimes in relation to which no penal provision is made for any kind of restitution or reimbursement by offenders, whether psychological or

pecuniary, and offenders are set at no tasks that bear any relationship to overcoming or making good in some way the injury done to the victim. The offender is set at no productive activities, no money earning function which is aimed at mitigating the damage he has done such as through meeting the costs of any form of premium for insurance against losses or damages to the victim. And so, he does time, he pays the State with time, rather than, in any way, paying the victim for injury by services. And we dare to speak of a system of penal rehabilitation when we fail miserably to accomplish the first object of rehabilitation, that of rehabilitating the offender in the eyes of the community and of the individual or group against whom he has transgressed. Until a penal policy is established that re-asserts the responsibility of the offender toward his victim or victims, we shall have no basis for rehabilitation in a deeply social sense, and no means for converting prisons into rehabilitative institutions.