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A LOST IDEAL, A NEW HOPE: THE WAY TOWARD EFFECTIVE CORRECTIONAL TREATMENT

JOHN P. CONRAD*

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Orthodox discourse about penology begins with a recital of the objectives of criminal justice. Readers are told that the goals are multiple—the deterrence of potential offenders, and the intimidation, incapacitation, and rehabilitation of actual offenders. It is an analysis that can be firmly attributed to the utilitarianism of Jeremy Bentham.¹ Its acceptance is general in professional literature and lay comment. In this article, I shall take the heretical position that the criminal justice system cannot be held responsible for the achievement of any of these aims, even though they may often be accomplished in individual cases.

Persistence in this orthodoxy paralyzes thought. Makers of law, policy and decisions must clear their minds of the confusion inherent in the utilitarian view of criminal justice. Rather, the straightforward principle of retributivism clarifies the problems we face in controlling offenders and thereby makes possible the social inventions needed to humanize the system. Contrary to general belief, retributivism determines the realities of criminal justice as it has been administered in this country regardless of the enormous variation in practice that can be found. I hold that corrections has no aim other than the punishment of the

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¹ J. BENTHAM, 1 *THE WORKS OF JEREMY BENTHAM* 396 (J. Bowring ed. 1962). Note that Bentham's language establishes the goals of penology in terms that persist to this day:

With respect to any particular delinquent, we have seen that punishment has three objects: incapacitation, reformation, and intimidation. If the crime he has committed is of a kind calculated to inspire great alarm, as manifesting a very mischievous disposition, it becomes necessary to take from him the power of committing it again. But if the crime, being less dangerous, only justifies a transient punishment, and it is possible for the delinquent to return to society, it is proper that the punishment should possess qualities calculated to reform or to intimidate him.

guilty. The use of the noun, *correction*, distorts the nature of the process it designates. That process is the terminal phase of a long chain that begins with the arrest of the suspect and ends only when he is released from the state's control.² Throughout all these processes standards of fairness and humane treatment are to be observed. Because the offender has been pronounced guilty when he reaches the stage of punishment, he is vulnerable to abusive and unfair treatment. Throughout the history of criminal justice this vulnerability has been its most universal feature. It may be said that the fundamental characteristic of criminal justice reform has been the struggle to eliminate punishments more barbarous and more hideous than the crimes for which they were imposed. Progress toward this end is evident in this country and many others, but its maintenance is precarious. I contend that utilitarian goal-seeking has done little to humanize the system, despite the lofty aims of those who have urged it upon legislators and judges. The time has come for a frank acceptance of retributive justice and the recognition of the elements necessary for its fair and decent administration.

In this disquisition, I consider the consequences of the often proclaimed "demise" of the rehabilitative ideal. As to those other objectives, incapacitation and intimidation, I shall have nothing to say. My silence in these respects is not to be construed as assent to their designation as objectives for which the criminal justice system can be held accountable.

To expect that the simple processes of punishment can prevent crime and reform criminals is to deny the lessons of two centuries' experience. Neither theoretical nor empirical foundations can be discovered to support the preventative aims enumerated by Bentham and his followers. The shaky basis for this multiple teleology is especially evident in our experience with the rehabilitation of the offender, the subject of this article.

The rehabilitative ideal is a noble strain in the Western heritage. It can be traced as far back as Plato, who was uncompromising on its salience in the state's response to criminals.³ The ideal of reformation of the wicked is linked to the idea of salvation, the enduring and civilizing theme of Judaism and Christianity. Writing in a different context, Bar-

² For syntactical convenience, I shall take advantage of the preponderance of men in the population of offenders and limit myself to the masculine pronouns in referring to them in this article.

³ See PLATO, *Protagoras*, in THE COLLECTED DIALOGUES OF PLATO 321 (E. Hamilton & H. Cairns eds. 1961); PLATO, *Gorgias*, *id.* at 261-62. Even in that bleak prescription of an old man in despair about his city, *Laws*, the notion of reform as a goal of criminal justice is clear and forthrightly stated. See PLATO, *Laws*, *id.* at 1463-64.

bara Ward stressed the influence of *hope* in Jewish and Christian cultures:

It is only in the Jewish and Christian faith that a Messianic hope first breaks upon mankind. In Christianity, the hope is expressed in religious terms of deliverance and salvation. But over the centuries the idea became transmuted into this-worldly terms, in fact into the dominant idea of progress, of getting forward, of being able to see hope ahead, and of working for a better future, not hereafter, but here and now.⁴

Hope, "this-worldly" hope, is a distinguishing quality and a moving force in Western culture. As Dante Alighieri told us, hell is where hope must be abandoned.⁵ To deny the possibility of hope is an ultimate cruelty. For offenders, to work for a better future must mean the opportunity for self-improvement, the very basis of hope. In corrections, hope has been expressed as the rehabilitative ideal, the goal toward which the state must lead the convicted criminal.

It is an ideal that has gone into eclipse. Frequent and plausible attacks are made on the concepts of rehabilitation that have prevailed for many years. Ineffectiveness is charged and proved.⁶ Radical and libertarian critics denounce correctional treatment as disguised oppression, calling for offenders to make impossible changes in values and personal conduct so as to conform to middle-class norms.⁷ Critics who assign a primacy to crime control hold that treatment programs too often lead to the release from control of unrepentant but craftily manipulative criminals.⁸

What has happened to the rehabilitative ideal that it has lapsed into such discredit? Writing from the perspective of more than thirty years of engagement in correctional treatment—as a participant, as a clinician, as an administrator and as an observer—I will argue that the rehabilitative ideal has always been a distant goal, unattainable by any system of practice that has yet been devised. Its effects on the routines of criminal justice have been slight. Even juvenile offenders, when guilty

⁴ B. WARD, *THE RICH NATIONS AND THE POOR NATIONS* 22 (1962).

⁵ "Leave all hope, ye that enter." D. ALIGHIERI, *DIVINE COMEDY: THE INFERNO* 26 (J. Carlyle ed. 1849).

⁶ The most widely cited attack from this quarter is that of the late Robert Martinson, in *What Works?—Questions and Answers About Prison Reform*, PUB. INTEREST, 22-54 (1974). This article was a prelude to the publication of D. LIPTON, R. MARTINSON & J. WILKS, *THE EFFECTIVENESS OF CORRECTIONAL TREATMENT* (1975) which catalogued 231 evaluated treatment programs and found that almost none of them were effective.

⁷ To recapitulate the radical critique of criminal justice would require a disproportionate investment of bibliography for a footnote. The general tenor of this critique as found in A. PLATT, *THE CHILD SAVERS* (1969) is typical of themes that are monotonously repeated in a literature more noted for its stridency than for its profundity.

⁸ See E. VAN DEN HAAG, *PUNISHING CRIMINALS* (1975), as a leading exponent of a position that is popular with those espousing the "hard-line" on law enforcement.

of serious crimes, have been subject to punitive justice first, and only secondarily to reformation. The reality of prison cell-blocks and dormitories, and even of probation and parole, have been impervious to the claims of any priority for reformation of offenders.

In defense of this elusive ideal, program administrators and clinicians used to respond—and some still do—that correctional treatment has never been really tried. Resources have been exiguous, personnel have been inadequately trained and supervised. There has been insufficient freedom to experiment and to develop programs that could produce the desired effects on offenders.⁹ All these contentions are true, and they are all beside the point.

My heresy is that rehabilitation is not and never has been a goal of corrections. It is a requirement on which corrections cannot deliver. Once the notion is abandoned, it becomes possible to think of the correctional apparatus in a new and far more hopeful way. To justify correctional programs by promising that they will convert criminals into non-criminals is to assure their failure. Success will never be demonstrated; the promise cannot be kept. To adopt a deontological justification in which humanity, fairness, and efficiency are the daily criteria of satisfactory performance is to obligate the state to discharge well defined duties to at least deserving citizens. My article will conclude with a model sketched for the reconstruction of correctional treatment to meet this tall and heretical order.

A CONDENSED HISTORY OF AN IDEAL

The history of the ideal of rehabilitation has yet to be written. Its origins are obscure, and so are the twists and turns that it has taken in the minds of theorists and practitioners over the two centuries during which it has supposedly been applied to offenders. An understanding of its ascendancy and its decline must await such an account. In another article, I tried to contribute to this understanding by tracing the tensions between those who hate the criminal and those who would offer him hope of reform.¹⁰ As I saw this history, most of the credit for planting the ideal of reformation into the modern system of criminal justice should go to Jeremy Bentham. A son of the Eighteenth Century Enlightenment, he dismissed the idea of vengeance as the legitimate purpose of criminal justice. Bentham thought and wrote in a time when capital punishment could be inflicted for minor offenses against prop-

⁹ This perspective is summed up with typical vigor in R. CLARK, *CRIME IN AMERICA* (1970), particularly at 212-38.

¹⁰ Conrad, *Things Are Not What They Seem; The Ontology of Criminal Justice*, 10 *TOL. L. REV.* 334.

erty in England. On the Continent, horrible tortures—disembowelment, drawing and quartering—often preceded decapitation. In English harbors, convicts starved and froze in fetid hulks of unseaworthy ships. The futile barbarities of criminal justice were appropriate targets for a rationalist. Bentham gave many years of his life and a considerable portion of his fortune to developing a design for humane and rational punishment and to attempts to persuade the government to accept his radical proposals for change. The centerpiece of his proposed system was the "Panopticon," an architectural innovation with which he expected to reform criminals. The Panopticon would firmly control them in a structure in which they would be educated, their morals would be improved, and in which they would be put to productive labor.

In the mountain of manuscripts that Bentham left to posterity, the theme of reformation was insistently advanced and expounded. His were the first systematic references to reform as an objective of criminal justice. For this sheltered member of a privileged class, the intellectual leap was astounding—how astounding it is hard for us to judge two centuries later. Practical legislators, judges, magistrates and sheriffs in England found it too difficult to leap with him, but a surprising number in countries all over Europe and North America acknowledged an obligation to try. His influence was much greater in France and Spain than it was in his own country, and his ideas were known to thoughtful Americans. His Panopticon was not adopted in the United States until more than a century passed and Illinois unwisely built four of them at Stateville. Nevertheless, Bentham's ideas about the reform of criminals through education, discipline, and hard work took hold throughout western culture. The commitment to rehabilitation as a goal to be sought and attained by penal establishments has never been challenged in principle until the present time, even though the reality has fallen sadly short of aspiration.

The historical research of W. David Lewis¹¹ and David Rothman¹² traces the practical ascendancy of oppressive regimes that reshaped the well-intentioned beginnings in the United States. Like so many of their successors up to the present time, the penal innovators of the early nineteenth century lacked a theory that extended beyond a notion. They thought that criminals were influenced by the sordid conditions that prevailed around them. If they could be inspired by religion and disciplined by hard labor, the influences of the past would be overcome, but

¹¹ W. D. LEWIS, *FROM NEWGATE TO DANNEMORA: THE RISE OF THE PENITENTIARY IN NEW YORK, 1796-1848* (1965).

¹² D. ROTHMAN, *THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC* (1971).

only if the regime to which they were subjected was not tainted by the values of fellow prisoners. So that there should be no such subversion of uplift, elaborate measures were taken to prevent communication by systems designed to enforce silence and solitude.

We shall never know how the penitentiary would have evolved if men of conscience and imagination, mixed with a talent for management, had remained in control. Surely the Quakers who designed the Pennsylvania System, and the like-minded idealists who were responsible for the original Auburn Silent System, all of whom acted from humanitarian motives, would have eventually wished to change course. Prison administrators, however, fell into the hands of penal bureaucrats; the routines of management could not retain the interest of professional men and intellectuals. Some of the nineteenth century prison officials were brutes, some of them were corrupt, and some were merely inept, but none of them was capable of the sustained application of reformatory concepts, let alone the innovation of new practices. The "silent system" of New York's Auburn Penitentiary spread throughout the country, not because of any potentiality for the reform of offenders, but rather because it was a wonderfully effective regime for coercive control. Its architectural legacy—the tiers of inside cell-blocks, the vast mess halls in which prisoners were fed at benches, and the enormous empty yards—has constrained innovation in spite of all the unfavorable experience that has accumulated. Those constraints will burden our penology for many years to come.

Americans created the penitentiary, but innovations came from a sprinkling of unusual men in other countries: Montesinos in Spain; Maconochie in Australia; Crofton in Ireland.¹³ It was not until after the Civil War, the grand climacteric of American history when change permeated all sections of society, that the innovations of these foreign penologists were adapted for American prisons. The ideas of Sir Walter Crofton, as put into effect in Ireland, were especially attractive to a small group of enthusiasts—Enoch Wines, Zebulon Brockway, Gaylord Hubbell, and Franklin Sanborn. Their determination resulted in the

¹³ The best account of Maconochie is to be found in J. V. BARRY, *ALEXANDER MACONCHIE OF NORFOLK ISLAND, A STUDY IN PENAL REFORM* (1958). No full account of Montesinos' regime of vocational training reinforced by the award of good time exists in English, but there is a brief account in H. E. BARNES & N. TEETERS, *NEW HORIZONS IN CRIMINOLOGY* (1945). Undoubtedly, Crofton was the most significant influence on the development of the American prison reform movement. There are many contemporary accounts of his system, but perhaps the most important was written by Packard, in the *JOURNAL OF PRISON DISCIPLINE AND PHILANTHROPY* (published by the Pennsylvania Prison Society, (1858)). It inspired a succession of visits to Crofton's reformatory at Mountjoy in Ireland, the source of many of the ideas that eventually led to the Elmira Reformatory.

Elmira Reformatory in New York. The system that Brockway, its first superintendent, envisioned, consisted of five principal elements:

1. Limitation of the population to first offenders between the ages of sixteen and thirty;
2. Assignment of prisoners to graduated levels of freedom according to their behavior;
3. Indeterminate sentences;
4. Prisoners' progress graded according to response to the work and study program, and systematically recorded;
5. Release on parole contingent on the prisoner's status in the marking system, and on assignment of the probability of law-abiding conduct after release.¹⁴

What was innovative about this program was the idea that the offender's improvement was expected to be the result of his personal effort at reformation rather than penitence and submission to discipline. This concept was consistent with the prevailing mood of the times. Optimism about the nature of man was general. Opportunities in a rapidly expanding economy and on a still beckoning frontier supported the view that even the commission of a serious crime need not be regarded as a fall from which a man could not rise. The Elmira Reformatory was the model for a movement that swept the nation with impressive speed. Similar facilities were built in twenty-two states, eleven before the turn of the century.

There was such an abundance of penological zeal in those hopeful days that in 1870, three years after the opening of Elmira, it was possible to convene a National Prison Congress in which the Elmira doctrines of reform were advocated for penal facilities of all kinds. A Declaration of Principles of the National Prison Association was promulgated at that Congress, and the organizers of the new Association became its fervent apostles.¹⁵ To this day, most states maintain penal institutions that are designated as reformatories for the correction of young first offenders, as distinguished from penitentiaries intended for recidivist adults. Most reformatories were built as fortresses that seem to have been designed to chasten the young at first sight. Jeremy Bentham would have approved. He thought that prisons should inspire terror by their exterior appearance, but that their interior design and routines need not correspond to their façades.¹⁶

¹⁴ See Z. BROCKWAY, *FIFTY YEARS OF PRISON SERVICE* 299-327 (1912), for a none too well organized account of the Elmira's methods. See also H. E. BARNES & N. TEETERS, *supra* note 13, at 554-55, for a more orderly account.

¹⁵ See H.E. BARNES & N. TEETERS, *supra* note 13, at 552-53, for the principles themselves. For an account of their adoption and their influence on the prison reform movement, see B. MCKELVEY, *AMERICAN PRISONS: A HISTORY OF GOOD INTENTIONS* 88-114 (1977).

¹⁶ J. BENTHAM, *supra* note 1, at 430-31; “. . . [l]et the apparent condition be as miserable,

What is still significant about the Elmira movement is its survival in form, if not in spirit, to these less hopeful times. Only during the last five years have doubts about the indeterminate sentence and the Elmira release policies culminated in their abandonment in a few states.¹⁷ For more than a century, not only reformatories but prisons for older recidivists have also been generally organized along the principles laid down by Brockway and Wines. These principles may be said to be the embodiment of the rehabilitative ideal in corrections. The original combination of work and school was augmented by vocational training, counseling, and various kinds of group work. Social casework and psychiatry complicated the Elmira classification scheme, which stressed improvement in personal behavior and response to correctional programs; no allowance had been made for psychological or social handicaps.

Eventually, classification became an instrument for the maintenance of effective custodial control, and only secondarily a system for the administration of individualized treatment. With rare exceptions, this is the use of classification to this day. Just as the nineteenth century wardens converted the silent system into a means for intensifying control, the twentieth century prison managers adapted treatment concepts for the same purpose. Brockway and Wines would recognize the system if they were to return for an inspection of their handiwork. It is less certain that they would applaud its application.

Even in their times there was a bureaucratic regression.¹⁸ The routines of control necessarily supplanted pioneering zeal. To maintain a precarious control of an unruly population of young criminals was—and still is—a task to strain the attention and skill of any prison manager. Not many had much zeal left over for innovation. There were not nearly enough of the inspired teachers and friendly guards that Wines

and the real as comfortable, as may be." He went on to recommend three exteriors for prisons, colored gray, dark gray and black, the last designed to "inspire terror and aversion." *Id.*

¹⁷ See *Determinate Sentencing: Reform or Regression*, The Proceedings of the Special Conference on Determinate Sentencing 1-11, 89-109 (1977).

¹⁸ Brockway's own lament over this process is significant:

. . . I was going to have a grand success . . . but it did not work. . . . I found that there was a common place work of education to do with these persons whom I hoped to inspire. . . . That did not suffice. The industrial training of prisoners was taken up, and that is drudgery. Getting down to drudgery, and even lower than that. . . .

B. MCKELVEY, *supra* note 15, at 90 n.4 (quoting NAT'L PRISON ASS'N, PROCEEDINGS 311-12 (1887)). A more recent example of regression from an ideal was the Norfolk Prison Colony, founded by Howard Gill in 1931 in the expectation that classification, combined with systematic incentives, might prove to be the model for rehabilitation. The establishment and subsequent decline of the Norfolk model is recounted in D. ROTHMAN, *CONSCIENCE AND CONVENIENCE*, 379-421 (1980). The entire process was epitomized by the superintendent at Norfolk who succeeded Gill in 1936: ". . . the State Prison Colony cannot be operated (as it was first intended) purely as a 'rehabilitative' institution, but must be administered to a very great extent as a 'custodial' prison." *Id.* at 418.

thought he had seen in Ireland in the service of Sir Walter Crofton. The structure intended to make a reality out of the rehabilitative ideal survived in a vocabulary of euphemisms. We have learned to speak of *correctional facilities* when we mean the reformatories in which the only conceivable reform would occur by intimidation.

Claims for the success of the reformatory were frequent and uniform. Apparently, they were believed by those who made them as well as by those who heard them. The maintenance of "rap-sheets" and their translation into the statistics of recidivism was unknown. Reformatory graduates were generally ineligible for return to reformatory custody. Enthusiasts were satisfied that the anecdotes of parole success were proof positive of the system's value to society and to the young criminals themselves. If pressed, apologists for the reformatory movement would estimate the percentages of their subjects who had left them to become useful citizens. One such superintendent, James A. Leonard, of the Ohio State Reformatory at Mansfield, wrote:

The writer has before him letters from the superintendents of many reformatories setting forth their judgment expressed in mathematical terms, as to the proportion of paroled inmates who refrain from recommission of crime, and conduct themselves as good citizens. The data at hand show that the highest estimate is 85 percent, and that the lowest is 60 percent, and that the average is 75 percent. The writer's experience and observation lead him to believe that after making due allowance for those who may lapse after final discharge, [from parole] and find their proper place in some prison in a distant part of the country, at least three out of four young men discharged from reformatory institutions refrain from crime and become helpful members of society.¹⁹

Leonard wrote in 1910. To recapture the basis for his comfortable assurance that all was well in his reformatory is hardly possible seven decades later. Things must have gone better in the Ohio State Reformatory in the simpler, more homogeneous, less conflict-ridden Ohio of those times than is conceivable now in his still surviving reformatory.

Twenty years after Leonard's cheerful account of his stewardship, the first results of the research of Sheldon and Eleanor Glueck were published. Their study of the Massachusetts State Reformatory at Concord reversed Superintendent Leonard's statistics. Instead of 75 percent success, the failure rate of the 510 men released and tenaciously followed by the Gluecks was about 80 percent.²⁰ To the sponsor of the study, Richard Cabot, the findings came as no surprise:

. . . [A]ny other result would have been astonishing. Why should men thoroughly accustomed and habituated to crime . . . change all these bad

¹⁹ S. GLUECK & E. GLUECK, 500 CRIMINAL CAREERS 5-6 n.8 (1930) (quoting Leonard, *Reformatory Methods and Results*, 1910 PENAL AND REFORMATORY INSTITUTIONS 127).

²⁰ S. GLUECK & E. GLUECK, *supra* note 19, at vii.

habits and acquire good ones merely because they are confined for a little over a year in an institution where they are forced to do work in which they have little or no interest, work chosen almost without reference to their future career or to their present tastes, and pursued, not principally for its educational value, but for its economic results, for which the prisoners care nothing?²¹

Cabot's reading of the Glueck's findings led him to a bleak conclusion that was not wholly shared by his young proteges:

. . . I doubt whether any improvements which could now be suggested . . . would result in reforming the type of habitual offender who is now sent [to the Concord Reformatory] from the courts of Massachusetts. Either he must be prevented (if anyone can do it), . . . or he must be turned loose—as he is now—to continue his life of crime until he gets tired of it.²²

Although this assessment of the futility of the reformatory would find many to agree with it fifty years later, Sheldon and Eleanor Glueck sprang from an optimistic generation. Their recital of Concord's failures did not shake their belief that there was a solution, and that it was to be found in social diagnosis, social casework, psychiatry and "well organized community effort."²³

It is chimerical to suppose that after a youth has been subjected to an artificial regime for a time, he can be belched forth into an indifferent community and be expected, with the prison stigma on him, to find a permanent foothold of respectability.²⁴

The Gluecks' longitudinal studies were among the first American contributions to academic criminology. Their influence was vast. They were more frequently cited in learned journals than any other criminologists. Their ideas spread far beyond the academy. They created a methodology for the evaluation of correctional programs that depended on counting recidivists, and from this approach they hoped to create methods of prediction that would rival those available in the natural sciences. They also urged the introduction of clinical programs throughout the correctional apparatus; the value of the predictive methods they hoped to develop lay in identifying the young offenders who would need the most psychological assistance. It is too much to attribute the spread of correctional psychiatry and social casework to their positivism, but they were the first to advocate the introduction of these services into the prison and the reformatory. Neither in quality nor in quantity have the helping professions matched their hopes, but their belief in clinical treatment came to be incorporated in a new version of the rehabilitative

²¹ *Id.* at ix.

²² *Id.* at xii-xiii.

²³ *Id.* at 317-19.

²⁴ *Id.* at 338.

ideal, depending now on psychological support and insight rather than on education and vocational training.

Correctional oratory has relied heavily on the rehabilitative ideal ever since the first Congress of the National Prison Association in 1870 when, we are told, "hard-headed wardens were carried up for a mountain-top experience," having been "overwhelmed with inspired addresses . . . prayer, song, and much exhortation."²⁵ For almost as long, rehabilitation has been a topic for academic discourse. Exhortation, example, and experimentation have done little to modify the dreary routines of the prison or even of community-based services. The flat assertion that rehabilitation is a prime objective of corrections has occasionally galvanized practitioners into attempts to adapt therapeutic approaches from other settings. Most of them lapse in due course into routines that are drained of content, if not into outright desuetude. There is now a tacit recognition that the gulf between penological reality and the rehabilitative ideal cannot be bridged in the prison as now organized. This acquiescence to the gloomy lessons of experience comes at a time when recognition grows that the criminal justice system can do little to reduce the incidence of crime. In the minds of the cynical and the parsimonious, attempts to improve the system are so much wasted effort. Many correctional workers have come to share the time-serving attitudes that are characteristic of their captives. However unrealistic the zealotry of Brockway, Wines and their contemporaries may have been, it laid the basis for a quasi-professionalism in the administration of prisons and reformatories. The prevailing resignation to impotence can only lead to the legitimization of bureaucracies committed mostly to self-preservation.

ORDEAL BY EVALUATION: THE CALIFORNIA EXPERIENCE

When Richard McGee became director of the California Department of Corrections in 1944, a position that he was to hold for the ensuing seventeen years, his most pressing tasks were to root out corruption, eliminate elementary incompetence, and foster efficiency in administration. He had no obligation to create rehabilitative programs, to engage in correctional research, or even to make policy innovations in the state's correctional administration. He had been appointed by Governor Earl Warren, who charged him with clearing away an ugly and embarrassing mess in the management of a chain of virtually autonomous prisons.

I served under McGee throughout most of his tenure as Director of Corrections. In one way or another, I was involved in most of the innovations for which he was responsible. A restless administrator who was

²⁵ B. McKELVEY, *supra* note 15, at 90.

never content to let well enough alone, McGee encouraged change and fought hard for the resources to make it possible. He has told his story in a recent memoir.²⁶ An article such as this can only present the broad outlines, and only for the purpose of shedding light on what happened to bring about the decline of faith in rehabilitation among policy-makers, practitioners, and the academic public.

The pell-mell growth of California's population during the years after World War II brought with it a comparable increase in the volume of crime and the number of prison commitments. It became imperative to increase the number of prisons to house the swarm of felons sent to the custody of the Department. From three prisons for men when McGee arrived in California, the number increased to fourteen. From about 7,000 prisoners in 1945, the number of convicts rose to a peak of about 25,000 in the early 1960s.²⁷

To bring this avalanche of unwilling humanity under control required a succession of management innovations. First, the incoming prisoners had to be sorted to separate the more hopeful from the nearly hopeless, the old from the young, the mad from the merely bad, and the manifestly dangerous from the apparently harmless. That sorting was the function of the Reception-Guidance Center, one of McGee's first innovations. From the Reception-Guidance Center, prisoners were to be directed to facilities that were more or less specialized as to program and custodial restraint. An accumulating caseload of felons with major psychiatric problems had to be managed in a separate prison; that was the California Medical Facility at Vacaville, in which a determined emphasis on psychiatric treatment, mostly in the form of group therapy, still continues. Attempting to make good on Brockway's promises at Elmira, the Deuel Vocational Institution at Tracy was built for younger offenders. There was even a geriatric prison for the aged and infirm. Since the supply of elderly convicts was too meager to fill the available beds, we had to reduce the minimum age of eligibility to 45. In more remote areas, Conservation Centers were built to serve as staging areas for forestry camps and fire-fighting crews. Still other prisons were built to accommodate the general prison population, classified according to custodial requirements.²⁸

²⁶ R. MCGEE, *PRISONS AND POLITICS* (1981).

²⁷ See generally CALIFORNIA PRISONERS, a statistical series that is unrivaled in the United States and which has been published annually since the late 1940s by the California Department of Corrections.

²⁸ One of the ironies of this tremendous expansion of the prison population was the degree to which we could push the percentage of prisoners who could be safely managed in minimum custody facilities; either in such places as the California Institution for Men at Chino or in the numerous camps that were maintained throughout the state. By 1960, at least 40 percent of the total population were trusted in truly minimum conditions. I have always

To design, build, staff and operate so many new prisons in so short a period of time was an unprecedented administrative achievement. It also imposed an alarming sequence of demands on the public treasury. There never seemed to be an end to the cycle of building. As soon as a new prison was built, it was filled. Statistical projections warned of the urgency of plans for another. To McGee and his staff the best remedy for the bloated prison population was to return as many prisoners as possible to the community as the judgment of the parole board and the requirements of the penal code would allow.

The solution was a series of parole experiments designed to increase public confidence in community corrections. The object was to test the feasibility of reducing the prison population by reducing the time served in prison. Offenders chosen for this reduction were to be assigned to parole officers whose caseloads were reduced from a prevailing standard of ninety to an experimental level of fifteen. The experiment began in 1954 and was designated as the Special Intensive Parole Unit, acronymized to SIPU, the title by which it is still remembered. It says something about the novelty of attempting research of this kind that I was admonished by the Chief Parole Officer never to use that threatening word, "research," when I assumed direction of this project.

There was a determined effort to achieve rigor in the research design. There were two independent variables. Release dates for some parolees were advanced by significant periods of time, usually ninety days, but sometimes as much as six months. Others were kept to their established time of release. That part of the procedure was not random, but advanced and non-advanced parolees were to be randomly distributed to the experimental and control caseloads without reference to this aspect of their status.

The size of the caseload was the other independent variable. At first the experimental caseload was limited to fifteen; later the caseloads were increased to thirty. Various other approaches were attempted to find some means for significantly increasing the impact of parole on the parolee himself. For example, an attempt was made to match parolees with officers according to their presumed need for "control" or for "support." Officers were identified as more effective at one than at the other, which resulted in invidious distinctions that prevented the experiment from reaching a conclusion. Another phase called for classifying parolees according to their "base expectancy," a calculated prediction of success or failure on parole. That phase produced data for the first statistically significant finding that had anything to do with parole su-

pervision. A combination of weekly group counseling and some financial assistance as needed, seemed to make a statistically significant difference in the number of serious offenses committed by parolees in the middle base expectancy range.²⁹ Not an easily interpreted finding, nor one that was followed up for administrative standardization, but at least it was statistically significant.

That was a pale showing for intensive parole supervision, and it would be hard to trace any effect it had on administrative policy or regular parole practice. The really important discovery from the SIPU research had nothing to do with caseload size. The advance of parole dates—originally intended to pay for the experiment by reducing man-years in prison—established that substantial reductions in time served did not increase recidivism in either the experimental or the control caseloads. That prosaic statistic was never addressed in discussions of the refinements of research design that might lead to a principle for increasing parole effectiveness. Parole board members never took much stock in this indication that the length of time served was not related to the rate of recidivism.

From an early point in these studies, we were aware that caseload size was not really a homogeneous variable. Some of the officers assigned to experimental caseloads had graduate degrees in social work or in the social sciences. Some of them had only the advantages of seniority. Two or three had thought about the interactions between parolees and themselves and tried, at least, to make constructive use of the chance a reduced caseload offered to intensify relationships with their parolees. Most of those working in these small caseloads reacted to the day's problems in the same way as they had done when carrying large caseloads. There was no consistency in the supervision methods within either the experimental or the control caseloads. No one saw any way to establish a standard practice of parole that could be a reliable independent variable. There were considerable variations in recidivism from caseload to caseload, but it was beyond our power to design a methodology to help us understand the meaning of these differences and to allow for their systematic study. To this day, I doubt that parole supervision, or any other "therapeutic" relationship can be satisfactorily studied by the "classic" control group research design.

The dependent variable was recidivism. So far as I know, this research was the first to use recidivism in an attempt to test hypotheses about correctional treatment. We defined the term as a return to prison

²⁹ The SIPU reports were never published in journals; they were mimeographed reports for distribution in channels of correspondence. The best summary is to be found in D. LIP-
TON, R. MARTINSON & J. WILKS, *supra* note 6, at 116-64. It is a confusing account of a series
of experiments which were themselves both confused and confusing.

for a violation of the parole agreement or for the conviction of a new offense while under parole supervision. This definition ignored offenses or misconduct by parolees that ended in less drastic dispositions for the obvious reason that only a return to prison resulted in new costs to the state. The independent variables changed several times from phase to phase, but the dependent variable was always recidivism, always defined in the same way.

Not at all disheartened by the unproductive quality of SIPU research, we embarked on a series of similar experiments testing programs of prison counseling. A unit for special counseling was established at the Deuel Vocational Institution under the acronym PICO, for Pilot Intensive Counseling Organization. This program called for intensive casework and group treatment for randomly selected inmates who were wards of the California Youth Authority, which at that time confined its oldest wards at this institution. The youths assigned to PICO were then classified according to their amenability to casework treatment. Later, similar experiments were undertaken at San Quentin, and at the minimum custody California Institution for Men at Chino.

All these experiments shared the familiar dependent variable—recidivism. No serious attempt was made to introduce any other dependent variables. The results were inconclusive in the first analysis of the data, and never published. Later, in a well-known re-analysis of the data, Adams found that “amenable” counseling subjects compiled less “lock-up” time, or more time at liberty on the streets than did the untreated amenable subjects.³⁰ For reasons that are still speculative, the treated non-amenable subjects performed less successfully on this criterion than did the untreated non-amenable subjects. Although Adams suggested that substantial savings might be gained by standardizing the PICO program for amenable prisoners, no replication was ever attempted.

The end of this era of treatment evaluation research came with the publication in 1971 by Kassebaum, Ward, and Wilner of their evaluative study of group counseling.³¹ This assessment was a rigorously designed study of the effectiveness of group counseling as it was administered in a new prison, the California Men’s Colony at San Luis Obispo. The prison was opened in 1961, a year in which the Department of Corrections was profoundly committed to group counseling as the heart of its rehabilitative programs. Led by Norman Fenton, the Deputy Director for Classification and Treatment, the group counseling movement was seen by some as a panacea for criminality, but more sober observers

³⁰ Adams, *The Pico Project*, in *THE SOCIOLOGY OF PUNISHMENT AND CORRECTION* 548-59 (N. Johnston, L. Saritz, & M. Wolfgang eds. 1970).

³¹ G. KASSEBAUM, D. WARD & D. WILNER, *PRISON TREATMENT AND PAROLE SURVIVAL* (1971).

believed that it was an influence that eased institutional conflict and facilitated participation in other rehabilitation programs. In any event, there was a general opinion that group counseling was a beneficial process from which gains in insight would be made which, in turn, would be reflected in improved behavior after release from prison. It was decided that a test of this proposition should be made so that confidence could be increased and more staff and inmates would be inspired to involve themselves.

The California Men's Colony was divided into four identical quadrangles—suggestive of a two-by-two statistical chart—each sealed off from the others. It was administered by a compulsive superintendent who was determined to allow no deviation from the agreed research design. Transfers from one quadrangle to another were forbidden. Most prisoners were assigned to this prison on the estimate that they had at least a full year to serve before they could be paroled. Transfers from the institution were firmly discouraged and rarely occurred.

Two forms of group counseling were defined: one was standard and consistent with the rest of the counseling done in the Department. The counselors were usually correctional officers under the loose supervision of a social worker, and the group sessions took place once a week for about an hour. The second program was "enhanced," *i.e.*, the guards assigned to counseling were given a special training course in group work under the instruction of university clinical specialists. The two differing programs were kept distinct from each other by the quadrangular architecture. A third quadrangle was allocated to a control group that received no group counseling but which was provided with all the other available programs and services of the institution. The fourth quadrangle was occupied by departmental misfits and not considered as part of the study.

As usual, the criterion of success would have been a significantly lower rate of recidivism after release for the experimental groups. But Kassebaum and his colleagues made careful studies of inmate attitudes in the interest of discovering shifts toward less crime-supportive norms. Obviously, if counseling were to have any lasting effect resulting in parole survival, it should have the immediate effect of shifting attitudes of prisoners before they were released.

No statistically significant results were found in either side of the study. Attitudes of prisoners did not change toward more pro-social standards, and recidivism was not more favorably affected for the counseled prisoners than for those who were in the control group.³²

The long range effect of the study was, of course, the dismantling of

³² *Id.* at 207-51.

the program, the unfortunate but predictable result of the disappointment of unrealistic expectations. By hindsight, many illusions can be discerned and the imprudence of so ambitious an evaluation of so tenuous a program can readily be seen and deplored. Perhaps the most thorough re-interpretation of the Kassebaum study has been done by Quay.³³ In this review, Quay showed that in spite of a research design of exemplary rigor, the program itself did not have a theoretical basis for a hypothesis that could be tested by post-release behavior. There was no consistency in the counseling modality. The sessions were weekly. The training of the counselors, even those whose training was "enhanced," was superficial. Many of the counselors had little confidence in the real value of what they were doing; they were involved in the interest of their own career advancement. The supposition that such a program could produce a lasting effect on those who were exposed to it should have strained credulity.

None of us could complain about these shattering results. We believed that our programs should be tested by the criterion of recidivism, even though in the past the results of such tests were invariably inconclusive. We thought that sooner or later, as our programs improved and as research methodologies became more sensitive, positive results would be obtained. Our confidence was foolhardy. We were sure that group counseling ought to reduce recidivism if exposure was protracted and intensive. In the experiment at the California Men's Colony, exposure was much more protracted and intensive than in any of our other institutions. The research team assigned was surely more sophisticated and versatile than any we had been able to muster within the Department's own resources.

I think the evaluation was premature and inappropriate. In a contemporary statement on the subject, I wrote:

. . . the impact of group-counseling on the correctional apparatus cannot be appraised until some models can be set up for test. The task now is not to prove that group-counseling works. Eager advocates of research must be patient with an era of experimentation in group-counseling. Nothing will be settled in any massive study which could conceivably be executed now. Dozens of small issues must be resolved before group counselors can be adequately trained. In the meantime the gains which the correctional apparatus makes from the mere existence of this practice within its gates should sufficiently reward its tolerance.³⁴

Surely it was inappropriate to evaluate a program with which so little experience had been accumulated. Instead, attention should have

³³ Quay, *The Three Faces of Evaluation: What Can Be Expected to Work*, 4 CRIM. JUST. & BEHAVIOR 341 (1977).

³⁴ J. CONRAD, CRIME AND ITS CORRECTION 246-47 (1965).

been given to programs flown under the banner of rehabilitation in which decades of experience had been gained. But evaluation was reserved for the innovations. As far as the California legislature was concerned, these were the programs that were on trial. In the budgetary sense, that was entirely proper; money should not continue to be spent on programs unless the Department knew what it was doing. But in the program sense, no one can be sure about an innovation until enough experience has been gained so that administrators and participants have a general agreement about what they are doing and how it ought to be done. At the least, a well developed theory should be available before the trial by evaluation is attempted, and that is what we did not have.

No studies of educational or vocational training programs were undertaken, nor did we investigate the usefulness of any of our psychiatric treatments. These programs were established line-items in the Department's budget, not subject to review and possible removal. Observation and anecdote indicated that some of these programs might be very good indeed, whereas others were probably valueless. We were too preoccupied with SIPU, PICO and our other counseling experiments to spare time and personnel for the study of education, vocational training and prison industry. The legislature decided what we would have to evaluate, and we did our duty. There was no time to evaluate anything not on the legislature's priorities.

In retrospect, I see this inattention to the study of our sturdier programs as a disastrous mistake. Our strategy committed our research division to the study of thin little programs that should have been regarded as the least likely to succeed. At the time, no one saw it that way. So sure were the clinicians that psychological interventions could redirect offenders that it did not occur to anyone that it would be more reasonable to test those programs in which a prisoner's full time was engaged. Legislative budget analysts, administrators, and program personnel wanted to know whether counseling and parole contacts made a difference when measured by the data of recidivism. No one wanted to know whether the State's much larger investment in prison education and vocational training was wisely spent. It should have been obvious that if any prison staff could positively influence prisoners, they were the teachers and the work supervisors, not the psychiatrists and the counselors. The latter rarely saw any prisoner as often as once a week, and psychiatrists saw themselves as special consultants to the managers, and diagnosticians of prisoners whose behavior might be psychotic and justify hospitalization. If the prisoner could learn new ways to perceive himself and the world around him, the most likely avenue to his consciousness would run through the classroom or the factory floor. It would not be found in a weekly session with a half-trained counselor.

This gap in our knowledge has yet to be filled—in California or anywhere else. In their review of the effectiveness of correctional treatment, Lipton and his associates could find only eight educational programs that had been evaluated, even by their lenient standards. All eight of these studies were *ex post facto*.³⁵ None presented a sufficiently stable conclusion to warrant use for program design.

My own review of the abstracts of correctional literature for the last decade, the period not covered by Lipton and his colleagues, uncovered plenty of items describing prison education and urging that there should be more of it. In a computer survey of correctional education research, only two small studies evaluating prison education were identified for the long period that has elapsed since Lipton, Martinson, and Wilks closed the book on their collection of evaluations.

The recent work of Bell and his associates in the evaluation of prison education delineated the problems encountered in the management of adult education in prison.³⁶ The authors pointedly asserted that the most critical deficiency in prison education was the failure to engage in any local evaluation at all. In the absence of credible data, nothing can be said about what good a school can do for offenders.

As far as I can discover, nobody has attempted to study the conventional prison industry in which pace is slow and productivity is not a serious consideration. That may be just as well; not much is expected of these programs except that they will at least keep prisoners nominally occupied. The new Free Venture program, however, promises to introduce some realism into the management of prison industries.³⁷ The attempt to evaluate its success will be the first serious study of prison industry that has been undertaken with social science methodology. These studies will test the value of industrial programs conducted under optimal conditions, with significant pay, full work days, and standards of productivity comparable to those prevailing in non-prison industrial operations.

The California experience with rehabilitation research—and similar experience in other states—shows that if by rehabilitation we mean psychological treatments, and no more than those treatments, we are barking up an empty tree. This version of the rehabilitative ideal does not make a certain and reliable impact on post-release behavior as reflected in the statistics of recidivism.

Nor can it be said that the psychiatric and counseling programs

³⁵ D. LIPTON, R. MARTINSON & J. WILKS, *supra* note 6, at 192 n.28.

³⁶ R. BELL, E. CONARD, & T. LAFFEY, *CORRECTIONAL EDUCATION PROGRAMS FOR INMATES* (1979).

³⁷ B. AUERBACH, R. LAWSON, J. LUFTIG, B. NEY, J. SCHILLER, G. SEXTON & P. SMITH, *A GUIDE TO EFFECTIVE PRISON INDUSTRIES* (1979).

administered in California—or elsewhere—do any serious harm, as some critics have darkly suggested. There has been no effective brainwashing. Social control has not been enhanced by these feeble attempts at counseling. I have heard parole boards pointing to apparent failure to respond to treatment as a reason to prolong incarceration in some individual cases. I doubt that any parole board consistently uses failure to respond to treatment as a basis for its decisionmaking.

The kind of rehabilitation we studied in California was neither systematically beneficial nor capable of doing harm. The score should be left at that. Correctional evaluation should go on to more promising topics.

THE TAINT OF SCIENTISM

[T]he backwardness of sociology . . . has little to do with a failure to use authenticated methods of scientific research in trying to solve its manifold problems. It is due above all else to the sheer complexity of those problems. I very much doubt whether a methodology based on the intellectual practices of biologists, (supposing that methodology to be sound), would be of any use to sociologists.³⁸

Nowhere in the social sciences are the complexities to which Sir Peter Medawar refers more manifest than in the study of correctional rehabilitation. The apparent ease with which a methodology appropriate for the testing of a new vaccine could be converted to the testing of treatment programs has impelled criminologists and their statistical allies to persist in misunderstanding the fundamental problem. Measurement of the number of recidivists in a universe of persons exposed to a treatment seemed closely analogous to measurement of the number of persons contracting poliomyelitis after immunization procedures. With such a seemingly simple methodology, using data so easily obtained, the correctional researcher was lured into turning out a vast amount of useless research.

The commitment of correctional evaluation to this profitless counting of entries in criminal histories has been so long and its assumptions are still so pervasive, that the position I am taking here will be viewed as another shameless heresy by many of my colleagues. Nevertheless, I contend that we must extricate ourselves from the shallows of scientism into which we have waded, inspired by the triumphs of modern biological science. This is the place to consider the fallacy that lies in the use of recidivism in the evaluation of treatment programs. It has done great mischief to the improvement of penology. It is time that this futility should be exposed.

³⁸ P. MEDAWAR, *INDUCTION AND INTUITION IN SCIENTIFIC THOUGHT* 13 (1969).

To devotees of the positivist tradition in criminology, the evaluation of a correctional program should be a straightforward task. The sequence would begin with the formulation of a hypothesis concerning the effectiveness of a treatment. The treatment would be selected because it would be thought applicable to some sub-population of the total mass of offenders. In the case of the archetypal SIPU, the hypothesis might be stated as follows:

Parolees who are not psychotic, mentally retarded or addicted to opium derivatives will not be affected by the more frequent contacts made possible by reduction in the size of the parole officer's caseload, and this lack of effect will be reflected in a comparison of the recidivism rates with parolees released to caseloads of the conventional average size of ninety.

That would be a null hypothesis, and we all hoped and expected that it would be rejected in the analysis of the data. If the experimental group in a small caseload class produced fewer recidivists than the control group, the experiment would be counted a success. Such successes were rare indeed, but statisticians kept on trying.

Frustrated with non-significant results, social scientists fastened on the definition of recidivism as the source of their difficulties. Here was a term that meant different things to different people. Uniformity had to be achieved, but how? What kind of behavior, or what sorts of events should be counted as recidivistic? How should a new criminal offense less serious than the original commitment offense be regarded? Should a weighting formula be devised? How should we count the violations of the parole agreement—such as absconsion from parole, drunkenness, use of narcotics, possession of firearms, or failure to coöperate with the parole officer? How should we allow for the lapse of time between release and the commission of the parole violation? It was messy, much messier than it seemed in the original two-by-two cells.

The puzzle continues to attract methodologists more interested in procedures than in substance. Research has been commissioned leading to models of recidivism spun out of the ingenuity of operations researchers and systems analysts.³⁹ Data so convenient to collect as new arrests and re-convictions are not often found for the evaluation of any human activity. For many years there were practical problems in obtaining these data. The Federal Bureau of Investigation was singularly uncoöperative in providing "rap-sheets" for the use of statisticians. Even when changes in the administration of that agency dissolved the obstacles to research, the nagging measurement question persisted. How can we be sure that the criminal history is comprehensive? What are we to make of the arrest that appears on the dossier without the record of a follow-

³⁹ See, e.g., M. MALTZ, ON RECIDIVISM: EXPLORING ITS PROPERTIES AS A MEASURE OF CORRECTIONAL EFFECTIVENESS (1980).

ing adjudication? What are we to make of the armed robbery that is bargained down to possession of a firearm? And what of all the offenses committed by released prisoners that do not come to the attention of the police?

In spite of all these questions, the counting of recidivists persists. To Lipton and his associates, recidivism was the usual and preferable criterion of the success or failure of a program.⁴⁰ Martinson, summarizing this famous catalogue of treatment evaluations, argued that the failure of rehabilitative measures to affect rates of recidivism of those exposed to them showed that these measures did not work.⁴¹ Responding to his critics, he suggested that the true test of a rehabilitative program should be its effect on crime rates, not merely the reduction of recidivism.⁴²

Recidivism rates produce the wrong answers to whatever questions it is important to ask about the rehabilitation of criminals. In every treatment program, the essential information is the achievement or the non-achievement of the intended primary benefits of the program itself. If the prisoner is enrolled in school, our question must be, "Did he learn, and how well?" If he was to be trained as a machinist, was he able to pass an examination at the conclusion of the training that demonstrated sufficient proficiency to make him employable? It is pointless to attempt a study of the recidivism of released prisoners who failed these tests, and meaningless to mix the successful learners with those who attended but did not learn.

The evaluation of an experimental parole program such as SIPU presents a different set of questions. At first blush, one might conclude that if any correctional program should be gauged by the criterion of recidivism, probation and parole would be the most obvious candidates. Yet the inescapable diversity of the tasks in these programs makes nonsense of attempts to make judgments about effectiveness by this criterion. Some parolees need understanding help of many kinds, from finding jobs to good advice about the use of leisure time. Others will need close surveillance of their activities to assure that if they drift into crime again they can be prevented from committing too many. Good parole work may be successful counseling or persevering police work. Therefore a parole violation may be the failure of supportive counseling or the success of surveillance. In some cases both inferences may be legitimately drawn. It may be possible to separate all these objectives and the means for attaining them by parole officers with widely disparate

⁴⁰ D. LIPTON, R. MARTINSON & J. WILKS, *supra* note 6, at 12-13.

⁴¹ Martinson, *What Works? Questions and Answers About Prison Reform*, 35 PUB. INTEREST 22-54 (1974).

⁴² Martinson, *California Research at the Crossroads*, 22 CRIME & DELINQUENCY 180 (1976).

aptitudes for their work, but nobody has yet thought of a way of doing it.

The quagmire is bottomless when we come to the evaluation of psychological interventions, still frequently attempted. There is no consensus about the criteria of success in psychotherapy in general practice. As for the specialized treatments attempted by correctional counselors, psychologists, or psychiatrists, there is considerable clinical opinion casting doubt on the feasibility of therapy under the conditions of coercive control in the artificial environment of the prison. So uncertain is our knowledge about the treatment of correctional clients that we still have no model that specifies who needs what treatment, for how long, and what should be expected when treatment comes to an end. Without such knowledge, evaluation by any criterion is meaningless. We do not have any idea as to which exposures to therapy might be counted as successful in achieving primary benefits, and are therefore reduced to counting successes and failures as identical values. Nevertheless, correctional researchers plunge ahead, testing the atheoretical proposition that any contact with any parole officer—or a correctional counselor, a clinical psychologist or perhaps a psychiatrist—may be counted as the equivalent of any other contact with any other clinician of the same discipline, and should produce the same kind of changes which will be reflected in diminished rates of recidivism. This is scientism, the application of scientific appearances to unscientific procedures. It has not told us what works, what does not work, or why.

After so many years of unsuccessful attempts to use the dependent variable of recidivism, it might be supposed that the correctional research community would concede its unsuitability for program evaluation. It is still the favored criterion variable of social scientists who should know better. Consider the recently published report on the rehabilitation of criminal offenders completed by the National Research Council's Committee on Research on Law Enforcement and Criminal Justice.⁴³ Conceding that rehabilitation interventions may have diverse goals, the achievement of which may be valuable outcomes in the short range, the Committee adds:

However, as important as immediate goals may be, and as appealing as they may be in terms of the direction of the link they have with their corresponding treatments, it is the longer-run outcomes in terms of criminal activities that count in establishing policy. Therefore, we do not see any satisfactory alternative to a decrease in criminal activity as a measure of the outcome of rehabilitative efforts.⁴⁴

⁴³ THE REHABILITATION OF CRIMINAL OFFENDERS: PROBLEMS AND PROSPECTS (L. Sechrest, S. O. White & E. Brown eds. 1979).

⁴⁴ *Id.* at 71.

The Committee did not trouble to outline the links that might connect a favorable outcome of treatment and a decrease in criminal activities. That is understandable; they would have received little help from the legion of evaluators who have used this slovenly paradigm.

Let us consider the reasons for rejecting recidivism as the dependent variable for correctional program evaluation. From every point of view, it provides answers that nobody can use. Beginning with the prisoner himself, he is not engaged in any program with the ultimate aim of becoming a non-recidivist. Whatever it may be that inspires him to attend school, to learn a trade, to work in a prison industry or to make an appointment with a counselor, his goal is not and should not be non-recidivism. He may want to fill in idle hours, learn something to his advantage, earn some money, impress the parole board, or relieve his anxiety about his life situation. If he is concerned about the prospects of the program for success, he ought to ask whether people learn from the class he plans to attend, whether there is a chance that the trade he will learn will lead to employment after release, or whether people really feel better about themselves after having been counseled by the psychologist from whom he may receive therapy. The data on recidivism from these programs will be of no real help to him in making his decision.

Similar questions might be asked by those administering treatment. The central concerns for teachers, industrial foremen, and psychotherapists should be the achievement of their immediate goals, the identification of the most favorable prospects for treatment, and the means that will enable more prisoners to receive these immediate benefits. The rise or fall of recidivism rates will tell them nothing relevant to these difficult questions and at the most can only distract some of them from the urgency of improving the quality of their services.

Administrators of any kind of correctional facility have immediate concerns that blot out any thought of recidivism as a criterion of their success at what they are doing. It is not possible to operate a correctional facility without a program of activity, preferably as constructive as can be arranged. What an administrator needs to know about a program is not the rate of recidivism at the end, but such immediately practical questions as its cost, the number of prisoners volunteering to participate, and its effectiveness in achieving immediate aims. He will know—or should—that not every employee engaged in the program will be equally competent in assisting every prisoner engaged in it, or equal to all other employees engaged. Any evaluation that lumps them all together in two categories should be suspect, but is too often accepted at face value.

Researchers have accepted the recidivism paradigm too easily. Thoughtful consideration of the connection between this model of post-

release experience and the realities it is intended to reflect should expose its invalidity. Whatever the program that the prisoner engages in while incarcerated, he will return to a real world in which that preparation is only partly applicable at best. His good grades in school, the General Educational Development diploma, or the certificate of completion of a vocational education course will scarcely equip him for the discouragement of unsuccessful job-seeking, the economic insecurity of subsistence on hand-outs, and the social uncertainties that he must inevitably face. Confronting these unfavorable factors, what can recidivism tell us about the success of the programs in which he participated? No combination of good intentions and success in programs can offset an environment in which unemployment is rising, savings are rapidly exhausted, and survival depends on the acceptance of terms that no active man or woman can readily accept. It is no wonder that the typical evaluation using recidivism as a criterion winds up with no significant difference in favor of the experimental or the control group. Any other finding would call for the explanation of the inexplicable. There are few people for whom two or three years of any kind of treatment will suffice to move them from the bottom of the social barrel, or to endure quietly the prospect of the rest of their lives spent on the bottom. The treatment variable cannot be expected to explain much of the success of parolees, but that does not mean that the effort to offer programs should be abandoned in favor of idle and aimless days.

The use of recidivism as a criterion works against understanding. Nothing is learned from counting arrests on a dossier, or on hundreds of dossiers, that explains change or resistance to change. Those who persevere in this tunnel-sighted approach to evaluation will satisfy themselves with simplistic research designs that will lead to results that cannot be connected to a process. They cannot give us an inkling of the answer to the questions that press so insistently on the administrator and the program personnel: What offenders will benefit from what experience and why? What prevents other offenders from benefiting from whatever treatment was administered to them?

In a theoretical context, a distinguished statistician admonishes us:

. . . when the right thing can only be measured poorly, it tends to cause the wrong thing to be measured, only because it can be measured well. And it is often much worse to have good measurement of the wrong thing—especially when, as is so often the case, the wrong thing will *in fact* be used as an indicator of the right thing. . . . *If what is really needed is harder to measure and harder to explain, we still need to measure and explain it.*⁴⁵

Nothing in social science is easier than the calculation of recidivism

⁴⁵ Tukey, *Methodology and the Statistician's Responsibility for Both Accuracy and Relevance* 74 J. AM. STATISTICAL A. 786-93 (1979).

rates, assuming the cooperation of those who compile the criminal histories. The difficulties of accounting for success after release from custody are almost insurmountable, but the links between interventions and success are exactly what we need to know but can at best measure poorly. Little can be learned from the aggregated failures that are represented in a recidivism rate. The assumption that recidivism is "an indicator of the right thing" obstructs understanding of the processes by which some offenders manage to extricate themselves from criminal careers and become useful citizens.

Although the implementation of a rigorous control group research design in a correctional setting is more difficult than it seems, it can be done. It may be asked what significance should be attached to a stable difference found between an experimental group exposed to a program to be tested, and a comparison group excluded from the program but otherwise composed of similar persons. The question is hypothetical: no such stable difference has ever been demonstrated in correctional evaluation. If it were ever to be achieved, the successful researchers would have to explain the accomplishment in terms of a theory as plausible as the difference would be significant. There are some obvious candidates for theoretical validity. One example might be successful completion of a vocational training program followed by placement in the occupation for which the prisoner had been trained. The formation of a comparison group of prisoners with similar attributes to those in the experimental group who succeeded in the program would be difficult, especially if it is assumed that motivation had to be comparable in the first place and the tenacity to stick to the program could be assumed in the second place. Without these bases for comparison, any difference that might be established would be open to serious challenge.

A less difficult comparison might be made between an experimental group of prisoners exposed to high school education leading to a diploma and a comparable group from which it was withheld. But the administrative and ethical obstacles to withholding an educational program are formidable indeed, and that may explain why it has never been tried. Even less difficult is the comparison of prisoners exposed to group therapy, as was the case at the California Men's Colony, with those from whom it is withheld. But here we have to make the credulous leap to the proposition that weekly exposure to group treatment could make a difference in the distant prospect of life outside prison. The evidence so far is clear that there is neither theoretical nor empirical reason to suppose that it would.

This kind of pseudo-experimentation obstructs scientific effort. Again, I quote Medawar:

The exposure and castigation of error does not propel science forward,

though it may clear a number of obstacles from its path: To prove that pigs cannot fly is not to devise a machine that does so. To explode the myth of the Chimera makes it no easier to transplant a kidney from (say) ape to man.⁴⁶

The analogy is reasonably close. Pigs cannot fly, and we have never been able to show that programs intended for the rehabilitation of prisoners produces an appreciable effect on recidivism. To persist in making this demonstration does not help us to invent programs that will benefit offenders nor will it make the task of invention any easier.

The damage done by social scientism has been grave. In laboriously and repetitively demonstrating that prison programs do not reduce recidivism, it has brought into question the usefulness of any effort to assist prisoners. If nothing tried so far works, why continue to try? The sense of aimlessness to be discerned in contemporary correctional leadership is difficult to document, but the dearth of innovation, the static quality of planning, and the pause in the development of penological doctrine are ominous features on the landscape. The collapse of faith in rehabilitation is to be detected in references to penal policy in the public press. Hard-liners insist on punitive measures more severe than they think now prevail; the legislation under consideration in the state legislatures is always in the direction of an increase in severity, never the reduction of penalties. At the other end of the spectrum of opinion, advocates of prison abolition argue that since rehabilitation is a failure, it follows that offenders should not be incarcerated to receive it.

The research done to test rehabilitation is a considerable mass, chiefly remarkable for its sterility. We are no wiser about crime, criminals, or the changing of criminals than we were when we started. In all the hundreds of evaluation studies, none of the interesting by-products that successful research spins off in the natural sciences has come to notice. The happy accidents that befell Darwin in reviewing his observations during the voyage of the *Beagle*, or to Röntgen in his study of vacuum tubes, or to Fleming in his search for anti-bacterial substances do not happen in correctional evaluation research.

The reason for this boring sterility is to be found in the researcher's failure to combine his statistical studies with systematic observation of the phenomena he is studying. Usually there is not even a direct and regular contact with the people who conduct the program to be tested or with the offenders who participate in them. It might be supposed that if observation were part of the study some contributions to the theory of behavioral or attitudinal change would emerge. That would call for scrutiny of the outcomes of intervention in sufficient detail to account

⁴⁶ P. MEDAWAR, *supra* note 38, at 7-8.

for the expected and unexpected successes and failures. What little we know about the predisposing influences leading to criminal careers, the impact of such careers on personality development, or even about the extinction of criminal careers, has been learned under auspices other than evaluation research.

Listening to correctional personnel one can readily detect the damage that has been done by this simulation of research. The benefits have been negligible. Social science is always vulnerable to charges of triviality and scientism. Those charges are never more justified than in the evaluation of correctional rehabilitation. Here is a book that should now be closed. I hope that this consideration of its pretensions will lead to a more fruitful research strategy, culminating in a truly heuristic evaluation of programs.

THE END OF TELEOLOGY

In his comprehensive review of correctional evaluation, Leslie Wilkins wrote:

It seems that the major objectives of the penal systems (including the treatment aspects), must be to minimize the probability that the offender will recidivate. The early attention given to recidivists lends emphasis to this assumption. No matter what else is done in institutions and no matter how successfully one may run a prison in other ways, if inmates after discharge are found guilty of further offenses and return to custody, then we must regard either the offenders, or their treatment, or both, as failures.⁴⁷

Wilkins thus took his place in the long tradition of criminological positivism. As we have seen, moral philosophers going back to Plato, and particularly including a continuity of thought running through the nineteenth and twentieth centuries, have held that the state should reform the criminals it punishes. By a twist of thought inspired in part by the modern predilection for statistics, this vague aspiration has been raised to a major objective, the achievement of which constitutes success, and the failure of which is failure. If this simple teleology is accepted, it follows that the correctional system must be a failure because criminals are not rehabilitated, or at best, not rehabilitated in sufficient numbers to please the cost-benefit analyst.

Wilkins, who accepts the requirement that objectives must be achieved, was one of the most rigorous and ingenious exponents of predictive methods in criminal justice. Using background characteristics of offenders, he developed methods that discriminated the offender whose post-release success was virtually certain from those whose failure was

⁴⁷ L. WILKINS, *THE EVALUATION OF PENAL MEASURES* 115 (1969).

equally ineluctable—with a continuum of varying odds in between.⁴⁸ Certainly the success of those bound to succeed could not properly be credited to correctional treatment, nor should the failure of those bound to fail be charged against the treatment. Wilkins' position with reference to those in between the certain successes and the certain failures is that the treatments administered should be judged by the extent to which the odds in favor of success are improved.

What seems to be clear from a consideration of predictive methods is that influences far more powerful than the available treatments are the true determinants of success or failure. It has never been possible to factor in the success or failure of an inmate in a treatment program as an element of a prediction formula. The factors that discriminate probabilities of success invariably draw on information items available when the offender is received into custody.

This superficially impressive case against treatment is good enough for the uncritical statistician. The failure of the prison or the prisoners, or both, can be conclusively shown, if Wilkins' position, as quoted above, is accepted. What then? Should we seize such economy as we can by closing down the sketchy treatment programs now available? Should the prisoners who are failures be maintained indefinitely in confinement because of their failure? Or should we acknowledge the inevitable failure of the prison and look for some other way of dealing with offenders?

There is no answer to these questions so long as we conceive of the penal system as obligated to achieve success in changing criminals into law abiding citizens. We must reformulate the problem. Instead of our obsession with the goal of reducing recidivism, we must turn our attention to the far more modest objective of improving the administration of the penal process.

Process is the nature of the criminal justice system. It is a long sequence that begins with the apprehension and arrest of a suspect, his arraignment and prosecution, the verdict of guilty, and the sentencing disposition, selected from a well defined range of penalties. The main reason for any penalty is to be found in the collective sense that the guilty must be punished. That is a belief that has persisted throughout history and is to be found in every culture. It is tenaciously held by the vast majority of citizens in this country, as shown by the insistence on severe sanctions in legislative consideration of changes in the criminal laws and in repeated information surveys.

Imprisonment is the most severe sanction that western culture has

⁴⁸ H. MANNHEIM & L. WILKINS, *PREDICTION METHODS IN RELATION TO BORSTAL TRAINING* (1955).

the stomach to authorize on a general scale. Except for the infrequent executions of murderers, the prison sentence is the limit of severity and will continue to be administered for crimes above some agreed level of seriousness. The abolition of the prison is not even a distant prospect. We send men and women to prison as punishment, not to reform them, not to change them for the better. It is futile to attempt to measure the success of punishment. Punishment is a process without an objective. It is the just consequence of the commission of a crime.

If we must continue to lock up some offenders, the state has difficult responsibilities to discharge. The prisoner must be kept safe, and he must be restored, when the time comes, no worse for the experience. That is a hard task. The nature of the prison is such that it lapses readily into injustice, corruption and brutality. The state must set limits, and it must take actions to assure that the harm done by incarcerating an offender does not become irreversible. In short, the state has duties to perform to and for the offender. It does not have a distant objective such as his effective reform.

Definition of these duties requires us to redefine the position of the prisoner. Until recently, the law defined him as civilly dead, a cadaver enjoying only those rights that it pleased the state to allow him. During the heyday of the rehabilitative ideal, the post-war years, enthusiasts urged that the prison should be transformed from a morgue into a hospital. The presumption was that the crime committed by the offender was a symptom of a curable psychological condition for which he should be treated. In principle, that converted the civil cadaver into a social patient. Neither of these definitions is taken seriously now, and I doubt that they ever had much meaning in law or in social interaction.

I contend that the real position of the prisoner is that of a citizen under restraint and therefore unable to do for himself what a free citizen does to maintain his own welfare, safety, and freedom. Services that the citizen can demand of the state or pay for from his own means must be provided to the citizen-prisoner by the state if he is to receive them at all. It then becomes a question of what services the prisoner is entitled to expect. There can be no question but that he is entitled to those protective services that will assure his survival. But citizens of this country expect more of life than mere survival, and for the prisoner this expectation must be expressed as a realistic hope for a better life in the future. He cannot have a worse life than as a prisoner. He may not choose the opportunities that the state is required to offer, but unless those opportunities exist, most prisoners have no reason to hope for better things in the future.

If the state has a duty to make opportunities for self-improvement available, the question of evaluation is no longer teleological—the

achievement of some ultimate goal, like the rehabilitation of as many prisoners as possible. Evaluation must be deontological in its orientation. Have the services provided met known needs and accomplished their immediate purposes? How well has the state performed its duties?

THE PRISON AS A COMMUNITY OF CITIZENS

In his great essay, *The Psychology of Punitive Justice*, George H. Mead propounded a theory of the relation between the criminal and society that holds with special force today. Likening the response of society to the criminal to outright warfare, Mead argued that:

. . . [our] attitude [is that] of hostility to the lawbreaker as an enemy to the society to which we belong. In this attitude we are defending the social structure against an enemy with all the animus which the threat to our own interests calls out. It is not the detailed operation of the law in defining the invasion of rights and their proper preservation that is the center of our interest but the capture and punishment of the personal enemy, who is also the public enemy. The law is the bulwark of our interests, and the hostile procedure against the enemy arouses a feeling of attachment due to the means put at our disposal for satisfying the hostile impulse. The law has become the weapon for overwhelming the thief of our purse, our good names, or even of our lives.⁴⁹

The situation is far more serious now than Mead could have foreseen in 1918, when this essay was written. Throughout his consideration of society's hostility to the criminal, Mead referred to the social requirement that property be protected. The fear of violent crime entered into his argument almost as an afterthought. Now, over sixty years later, the enemy to whom Mead refers is a violent man who robs us at the point of a gun, or invades our homes, or violates women by force. Racism is accentuated in the minds of majority whites because so much of this violence is attributed to persons of minority races. Hostility toward the criminal is not directed at an otherwise undifferentiated thief who threatens the security of our property, but at a violent young male who is perceived as belonging to a racial minority. This perception is a source of increasing divisiveness as young black and Hispanic men, without stable livelihoods or hopes, choose crime as the vehicle for satisfying their wants and at the same time expressing their anger.

How is the reign of urban violence to be ended? The obvious and imperatively needed economic reforms are beyond the province of the criminologist to propose. Until the realization of social and economic changes whose outlines no one can clearly see now, we must expect that the nation's underclasses will produce a steady and probably increasing volume of street crime, to which the criminal justice system must re-

⁴⁹ Mead, *The Psychology of Punitive Justice*, 23 AM. J. SOC. 577, 585 (1918).

spond as it is required by law to do. A substantial number of offenders will be found guilty, and enough will be sent to prison to keep the cages full.

The rehabilitative programs that await the contemporary convict will not greatly reduce the incidence of the crimes most feared by the law-abiding and the comfortable. These programs must be seen as the state's establishment of a foundation of hope in what must be a hell of violent anarchy. Idle young convicts will not uniformly subside into stuporous inanition when not given something to do. Some will instigate disorders, many of them murderous and destructive. The state's power to repress them will not always prevent great damage to persons and property.

To go from a Hobbesian slum to a Hobbesian prison and back again is the fate of too many offenders. They have never had much to lose. The liberty of which they have been deprived seems of little worth. If hope is denied them in prison, their future submission to the law must depend on intimidation. The advocates of rigor above all else expect that intimidation will subdue them so that on release they will accept any adversity rather than to risk a return to the horrors and miseries of prison life. This kind of intimidation works for some. It explains some, if not most, of the non-recidivism computed by our statisticians. For those who are not intimidated, the lesson has been learned that when hope is gone, there is nothing to fear.

There must be a strategy to find peace if the hostilities between society and the convict are to be reduced. That strategy depends on the creation of a just sense of community in prison. As far back as Captain Maconochie's nineteenth century innovations in Australia, or those of Thomas Mott Osborne in New York, prison reformers have hoped that community solidarity could replace repression. The few experiments of this kind that have been attempted have flourished briefly, only to wither when conflict between the coercive forces of the prison and the aspirations of the community became overt.

The most intensive effort to discover how much of a community could be created in prison and on what terms it could survive was made by Studt.⁵⁰ For a year or so, a wing—"C-Unit"—of the Deuel Vocational Institution of the California Department of Corrections was converted into an experiment in community-building. Too expensive and too difficult for the regular staff of the prison to manage, the C-Unit community reverted to the familiar culture of opposition soon after the termination of the experiment. But the possibilities that it brought into

⁵⁰ E. STUDT, S. MESSINGER & T. WILSON, *C-UNIT: SEARCH FOR COMMUNITY IN PRISON* (1968).

view indicated that it is not fanciful to suppose that there is an alternative to the primitive world of violence that is latent in prison and sometimes erupts with such terrifying results.

Studt attempted to create a situation in which inmates and staff could coexist in citizen-like roles. The stress in C-Unit was not on the weekly counseling group or on individual therapeutic sessions, although the casework staff of the unit was well qualified to carry out these functions and did so as needed. The over-arching objective was a community in which staff and prisoners shared a sense of responsibility for each other. Freedom of choice was increased within the unit, even though this freedom could not pass the threshold and into the institution corridors.

The base on which everything had to be built was communication. Not everything can be told to everybody in any community, but prisons in general limit their use of communication as far as they can. It is as though there were some virtue in restricting communications to the orders issued from the front office and otherwise relying on the grapevine and the snitches to keep both staff and prisoners informed about the reasons for the orders and the intentions of the officials. In C-Unit special attention was paid to making explicit every decision affecting the community that could be made explicit. Once the administration takes this amount of trouble with the communication of its policies, discussion can proceed and the response of prisoners to prospective changes can be gauged. So it was in C-Unit, where disorders and serious disciplinary infractions virtually ceased, in contrast with the frequency of their occurrence in the rest of the institution.

So far as it went, C-Unit was a brave and original departure from the counseling experiments that characterized rehabilitation research throughout the fifties and the sixties. The emphasis on communication, on freedom of choice, and on bridges to the outside community constituted a stride in the right direction, but few similar strides were to follow. The trouble with C-Unit was that there were not many choices that prisoners and staff members could make. Although communications were lively and incessant, they did not affect those aspects of a prisoner's life that should make the most difference to him: his job assignment, his progress in school or in vocational training, or his preparations for release. What was needed was a way to extend the experiment to the whole institution. That way has not yet been found. With only one exception that has come to my attention, efforts to create an institution-wide free-choice community have been conspicuously omitted from the penological agenda.

That exception is the experimental program still under way at the Federal Correctional Institution at Butner, North Carolina (FCI-

Butner). Originally conceived as an institution for the conduct of research in the rehabilitation of disturbed prisoners, the program at FCI-Butner got off to several false starts because of uncertainties about the kinds of programs to be tried. These uncertainties and the spread of a good deal of misinformation generated hostile reactions among federal prisoners and some prison reform groups. Finally it was decided to adopt the program model proposed by Norval Morris in his monograph on *The Future of Imprisonment*.⁵¹

For a full account of the Butner program, the reader must turn to Morris' proposals and the reports that constitute a growing Butner literature.⁵² Here I can only outline the promising program in which a free-choice prison community is attempted, and, apparently, at least partially achieved.

Like most observers of American corrections, Morris thought that the lack of volition open to the prisoner is the critical failing in the program offered. Although it is not unknown for prisoners to benefit from treatment programs in spite of enrollment to please a parole board or because of arbitrary assignment by a classification committee, it seemed clear to Morris that program participation and effect would be favorably increased if prisoners had choices as to what they would do with their time.

The Butner program follows rather faithfully Morris' model for a prison for repetitively violent offenders. It was suggested that the prison limit its intake to prisoners with fixed future release dates so that none could suppose that participation in a program would affect prospects for release. If they so desired, prisoners transferred to Butner could request a return to the facility from which they came after six weeks' exposure to the program. This minimum trial period was later extended to ninety days. At the end of the trial period, prisoners choosing to remain would be given a contract that established release dates, specified furlough privileges, work-release arrangements and amenities that would be afforded. The prisoner may choose his own program so long as he works at his job assignment, attends daily small group sessions, and does not commit serious disciplinary infractions. A wide assortment of voluntary activities is provided, for example: aerobic exercises, transactional analysis, and classes in electronics. Any prisoner is eligible to participate in any activity.

Naturally, there is an elaborate research design. A control group is established, consisting of prisoners in the eligible pool at the sending

⁵¹ N. MORRIS, *THE FUTURE OF IMPRISONMENT* 85-121 (1974).

⁵² Ingram, *Butner: A Reality*, 42 FED. PROBATION 34 (1978); R. Morrison, *The Butner Research Project* (March, 1979) (paper presented to the Southeastern Psychological Association, New Orleans).

institutions from which the experimental population at Butner is selected. So far program participation by the FCI-Butner prisoners is at a much higher level than at the control institutions, and disciplinary infractions are significantly less frequent and less severe. Eventually the program will be tested in the scales of recidivism, an element of research from which nothing of importance will be learned, but which is inevitable, given the expectations that cost-benefit analysts have been encouraged to entertain.

All of the indications so far available suggest that this is an experiment that is succeeding. The warden, Gilbert Ingram, is a participant in the design of the program and not merely an indifferent host, as has been the case in too many correctional experiments. There is a serious delegation of responsibility to the prisoner to take charge of all aspects of his destiny for which the prison circumstances allow him autonomy.

As any reader of this article who has gone this far with me will know, I consider it unlikely that the measurement of the program by the criterion of recidivism will be enlightening. The test of the program should be in terms of program participation, school completions, work productivity, and the orderliness of daily life. If on these scales it is a significant improvement over the comparison institutions, it should be declared a success and plans should be made for its adaptation to other and more difficult settings. The improbable event of a significant elevation of recidivism in comparison with the control groups would need an explanation. So surprising would such an eventuality be that researchers would have to grope for hypotheses for an entirely new investigation; no such hypotheses are immediately apparent. It is far more probable that the differences in recidivism will not be particularly noteworthy, but that they will slightly favor the experimental group.

The life of a citizen in a free community depends on freedom of communication and choice so that he can make decisions in the interest of his social and economic independence. The traditional prison official, sure of the dangers that will arise if restraint is relaxed, finds it hard to allow a prisoner a measure of either kind of independence. The essential humiliation of imprisonment is the transformation of the prisoner into a child-like dependent, unmanned by his dependency. The most obvious choice, for many prisoners the only choice, is non-compliance with the demands of authority. This choice accounts for much of the serious trouble encountered in the management of prisons. Defiance briefly enables the prisoner to deny his dependency and converts him into a warrior doomed to fight against overwhelming odds to a quasi-heroic defeat. The modern prison official must open choices that will allow the prisoner to decide what he will do with the years of incarceration.

This is the light in which Studt's experiment with C-Unit and the

Morris-Ingram initiative at Butner must be understood. There is a prospect for renovation of the prison, and that prospect rests on open communications leading to enlarged choices. New ways can then be found to enable prisoners to take responsibility for their lives. The moribund "rehabilitative ideal" can be shifted to the prisoners as individuals working toward it, rather than as social patients submitting to the imposition of reformatory programs by a staff of professionals who know what's good for the offenders in their care. Out of the re-discovered and reshaped ideal a truce may become possible between the offended society and the offender who has been so clearly defined as a mortal enemy. Unless penology can advance in this direction, the prison must become an even more dangerous arena in which the hostilities defined by Mead will be murderously enacted.

Until the present time our ideas about changing offenders have been naïve. We have expected of counseling far more than the most expert counseling could deliver to willing clients in a free society. We have supposed that the insight gained from such counseling would move criminals from their acceptance of crime as a natural course toward personal satisfaction. This illusion, grounded on wishful thinking, haphazard planning, and unthinking administration, is the rehabilitative ideal as we have known it in corrections for the last thirty or forty years. It is a lost ideal. It is to be dismissed now as an embarrassing absurdity.

The lost ideal can be replaced with a new hope, the kind of hope that every American citizen should entertain for his future. The decision to make an effort in one's own behalf is the beginning of hope. The citizen in prison with realistic hopes for a better future must be able to choose steps that will get him there. In a community where he can work and learn, where he can remedy his shortcomings, and where the decisions to act for himself are his own, there will be hope. Administration and research must turn to the design and spread of such communities throughout the prisons that we must maintain for the foreseeable future. There is no other rational choice for contemporary corrections. To continue with prison business as usual is to assure an endless chain of disasters. The lessons of Attica and Santa Fe do not have to be repeated if the nation can assimilate and understand all the other lessons of experience. The foundation of rehabilitation is hope. It is also the foundation of order.