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PRISONS ARE OUTMODED

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Law, in its legal connotation, is cultured in the medium of society. Society means people. Therefore the ultimate impact of law is upon people—human beings. Occasionally, and increasingly, there has been a tendency to lose sight of this basic concept through preoccupation with the machinery of law. The primary impact, of course, may be upon things. For example, Corporation Law has largely to do with legal entities “without a body to be kicked or a soul to be damned”; but ultimately that force gets through to the well-(or ill-)being of shareholders, employees and business contacts as people.

Other forces of legal sanction affect human values more immediately and directly. Of these, Criminal Law, with its ancillary of penal sanction probably is the most direct. In Canada it is unfortunately among the least adapted to effect its true function.

Let it be assumed that the true function of law in a democratic state is to harmonize and stabilize human relationships upon an agreed basis. As a contribution to this end the State establishes and supports, through public taxation, certain institutions. The paramount purpose of state institutions is the good of the State; to that good the interests of the individual are subordinated. But modern democratic statecraft is being forced to the acceptance of the proposition that welfare of the individual is *pro tanto* welfare of the State; and, conversely, that worsening of the individual worsens the State.

To that extent, therefore, the welfare of the individual is a matter of vital concern to the State (that is, to the aggregate of you and me) upon, at least, a basis of pure self-interest.

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If this is a valid assumption (and as a professional penologist I believe it to be so) we can examine our Canadian system of penology without the bias of sentimentality, on the one hand, or of vindictiveness, on the other.

Clear thinking and intelligent action are particularly necessary in dealing with this phase of social action; because, in it, we compel men and women to forego their liberty and be subjected to whatever regime we choose to impose on them. Unfortunately our dealing with this whole question has been characterized by muddled thinking, obscure objectives and mediaeval technique.

The best modern work on the subject from both the analytical and constructive points of view, as it applies to Canada, is the Report of the Royal Commission on the Penal System of Canada, published in 1938. In painstaking detail, as well as on broader canvas, this publication is recommended to all who seek authentic light on a subject which lies much nearer their own lives than many suspect.

In order to provide a basis for clear thinking I propound here, first of all, certain fundamental principles of penology. They are hammered out of many years' experience with men and women before, during and after their incarceration in those state anachronisms we call Penitentiaries. Later I will attempt to indicate the probable development pattern of progress in penology in the light of the history of our most enlightened state therapeutic institutions. Finally, I will try to set a specific goal for penological practice in the light of history and enlightened social concepts.

Principle No. 1—A state institution exists solely for the benefit of the State.

DeTocqueville, the French sociologist, first expressed this principle when he wrote in 1831 "a political institution does not exist for the individual but for the mass". If the individual benefits, so much the better; if he suffers, his suffering is subservient to the general good of the State. Thus, a prison inmate may receive compulsory, regular treatment for syphilis; not as a favour and benefit to himself but because a syphilitic is a menace to the State. Another inmate may, through regular meals, sleep, exercise and work, find himself physically fitter and mentally clearer than he ever was in his life. On the other hand, an emotionally unstable or claustrophobic prisoner may go slowly insane as a result of his confinement; or he may be strapped to a table and flogged; or he may be hanged by the neck until he is dead. In each case the paramount consideration is the good of the State. Therefore,

whatever happens physically, mentally or morally to a man or woman while in prison is of direct interest to us all, because we are "the State"; it is not primarily for his own good but for ours that the prisoner is in prison. But—and this is a very important "but"—it is now being more and more clearly realized socially and, indeed internationally, that the good of one is the good of all and, conversely, harm done to one harms all.

The key to our prison system, indeed to all of penology, must be this therefore: Every prison inmate will, if he lives, emerge from prison to resume his place in society as your neighbour and mine. What manner of man will so emerge? That most certainly depends to a large extent upon what specific treatment and general influences he receives while in prison. We, the State, will get precisely the kind of neighbour we have helped to create.

It must be said here that the Christian concept of the unique worth and value of the individual has made and will make a definite impact upon our concept of the State and therefore upon our technique of penology. In a nominally Christian state an individual, even when in prison, has certain minimum rights and prerogatives of humanity, which we insist upon regardless of his recalcitrance. Consequently, bestial and degrading measures of punishment are no longer tolerated. Incidentally, this marks one of the fundamental differences between the totalitarian and the democratic ideologies.

As long ago as 1910, Mr. Winston Churchill, then Home Secretary, said in the British House of Commons: "The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused, and even of the convicted, criminal against the State—a constant heart-searching by all charged with the duty of punishment—a desire and an eagerness to rehabilitate in the world of industry those who have payed their due in the hard coinage of punishment: tireless efforts toward the discovery of curative and regenerative processes; unfailing faith that there is a treasure, if you can only find it, in the heart of every man; these are the symbols, which, in the treatment of crime and criminals, mark and measure the stored-up strength of a nation and are sign and proof of the living virtue in it."

Principle No. 2—The true function of penitentiaries is therapeutic.

Let us consider the historical development of the therapeutic element in state institutions. For convenience we will list them

in the usual order of human concern (1) physical, (2) mental and (3) moral. We find in their development an invariable historical sequence of aims. They started with simple *segregation*; then progressed to *segregation plus consideration*; and finally arrived at the complete and true function of *segregation plus consideration plus cure*.

1. *Physical*. The first and most obvious area of concern is the relief of physical pain, disease and dysfunction, as undertaken in our public hospitals. We have come to take for granted the clean, well-appointed and progressive institutions that fulfil these functions. But they were not always so. Not so long ago they were foul lazarets; refuges for sick people who could not pay for care and who were an eyesore and a nuisance to the public. Many, if not most of these places were dirty, dark and verminous, offering little if anything in the way of real consideration for the hapless social refugees who eked out a miserable existence in them. Observe that the primary function was to get the sick person out of the way of the public *i.e.* segregation. Far from undertaking to cure people, such unsanitary warrens were frequently breeding places of disease, staffed by drunken and blowsy doctors and nurses. Gradually, however, enlightened public opinion, backed by such vigorous and courageous action as that of the immortal Florence Nightingale, evolved a new concept, namely, further to benefit the State by maintaining the self-respect of the patient with the ultimate object of restoring to it a healthy citizen instead of merely concealing a sick one. The general physical health of the State has been bettered; therefore the public hospital, having developed through the three classic stages of segregation, segregation plus consideration, segregation plus consideration plus cure, is now fulfilling its basic reason for existence—the improvement of the State.

2. *Mental*. Next observe the development of what we now describe as “Mental Hospitals”. Note how exactly these institutions have followed the development-pattern of our public medico-surgical institutions. They were first called “mad-houses”—mere segregation places of rough treatment and senseless, brutal punishment for the more violent (that is, the more embarrassing to the public) mental cases. At that elementary stage of development, if an inmate were not completely crazy upon admission, he would almost inevitably become so through environment and association—just as the medical patient in the primitive lazaret tended to contract more diseases than he brought in. Later in the course of their development these places came to be called

"asylums", quite appropriately, since they were refuges for the mentally afflicted where some consideration was given to the well-being of the inmate. Finally, (and this is important) they were thought of as "mental hospitals" in which a positive effort should be made to cure, or at least improve, the mental condition of the inmates, or, as they came to be described, the "patients". This concept marked the beginning of scientific mental therapy, the final "cure" stage of their history, leading to the substantial current discharge rate of patients cured or at least socially tolerable.

Mental therapy sometimes involves physical restraint; but this is incidental to the main purpose of the institutions, which is to restore to society as many of their patients as possible. So, instead of being mere repositories for the bodies of the mentally ill in order that they may not unduly interfere with society, the aim is now to invoke the increasing armoury of therapeutic weapons with the primary object of curing the individual, in the knowledge that the paramount interests of the State are advanced by so doing. It is a far cry from the old regime of coarse and dirty living, strait-jackets, beatings and "cold-water treatments" to the modern painstaking diagnosis followed by humane and scientific therapy—the amytol interview, psycho-therapy, shock treatments, medications and all the other resources increasingly available and applied to mental patients. Fifty years ago mental therapeutics lagged a full century behind the somatic. Now the former are overtaking the latter with increasing rapidity owing to the research resources presently available plus the awakened public interest in, and understanding of, mental illness. There does exist a residue of badly conducted mental institutions, which prolong the mysterious and sinister connotation of the term "mental case", but these are the exceptions rather than the rule. The public (*i.e.* the State) will not long tolerate anything less than the most enlightened and modern treatment in public institutions for the care of those of its numbers who are mentally ill.

Here again, mere segregation is not good enough; nor is segregation plus consideration. The positive goal must be the restoration of the citizen to society, cured or improved to the point of social toleration. In other words, not one or two, but all three of the classic features are necessary to complete the picture and justify the taxation necessary to carry out the full intention of the State.

3. *Moral.* Let us now place the matter of our state treatment of moral maladjustment in its historical and sequential setting. Here again, the identical progress-pattern is revealed. This pattern follows exactly the history of medical and mental state institutions; except, of course, that it has now reached only the state of advancement which our mental institutions had achieved three-quarters of a century ago—*i.e.* segregation plus some consideration. This stage involves compulsory disassociation from society (the segregation element); plus provision of food and shelter, perfunctory productive labour and mild recreation (the consideration element). But note well that it also exposes the inmate to all the contamination of vice and crime of his fellow-inmates and environment; and that contamination is frequently beyond the imagination of a normally healthy-minded citizen. This sharply recalls the identical conditions in the early history of somatic and mental institutions.

The final, or "cure" stage of progressive moral therapy has not yet been seriously inaugurated. The State has not yet demanded it. When the State (you and I) demands it the State will get it; but not before. However we are beginning to inquire why between seventy and eighty per cent of our penitentiary population are recidivists *i.e.* men and women who have been in prison from one to one hundred and eighty times previously.

The answer to that inquiry is logical and simple. The essential third element of "cure" is virtually non-existent. Were we to send a citizen to a medical or mental hospital for a purely arbitrary period and merely board and lodge him with no therapeutic treatment, we would scarcely be surprised if his ailment persisted; or if, after discharge without examination or a period of convalescence he had to be periodically re-hospitalized; or if his ailment became chronic.

It is surely crystal-clear that, in order to secure the maximum benefit to the State (*i.e.* ourselves), we must follow the classic sequence to its completion—segregation plus consideration *plus* cure.

Principle No. 3—There is a therapy for crime.

Crime, in sociology, corresponds to a symptom or sign in medicine. It is analogous to a fever. A fever can be alleviated by ice-packs, sulfa drugs and other agencies; but it will never disappear until its pathological cause is discovered, reached and cured. So it is with crime. Its incidence can be modified by police and punishment, but it will not diminish, much less disappear,

in any individual until, like a fever, its cause has been discovered, reached and cured.

Even with the meagre therapeutic agents now available in penitentiaries, events have proved that men, even recidivists, can be cured of that evidence of social maladjustment which we call crime.

This article must by-pass the well-known predisposing factors to crime, and concern itself with the criminal *after* the crime has been committed and he has been apprehended, tried and sentenced; in other words when he is in the position of the patient who is sick and has been admitted to hospital for treatment.

Let us think of some of the approaches to this problem. Legally, of course, crime is an act against the public welfare. Psycho-somatically, crime is a sign of physical, mental or nervous dysfunction. (It has been interesting to note the incidence of crime almost directly attributable to bad teeth, tonsils, sinuses or defective eyesight). Morally, the concept of crime is extended to include any act that violates the highest concept of civic or private virtue, regardless of whether or not such act falls within the four corners of the Criminal Code. Religion, on the other hand, is in the complementary position of not being primarily concerned with crime (the act); but rather with what it describes as "sin"—the deliberate, inner evil motivation of a rational human being, of which the ultimate social expression is the overt criminal act.

It is thus possible to distinguish and at the same time to reconcile the medical and psychological approach, on the one hand, and the religious and moral, on the other. The former deal primarily with pathological causes and are not greatly concerned with the moral implications involved. The latter deal with the spiritual and moral implications involved in the motivating thoughts of wrongdoers who are not necessarily pathological or psycho-neurotic. This distinction is not a divorcement. Rather are the healing arts complementary in dealing with the causes, incidence and cure of crime.

Having said this, however, it would be simply untrue to deny that many professional medical and mental practitioners are in fact deeply concerned with the relationship of their art to public morality; or, on the other hand, that many ministers are true and trained psychologists who regularly invoke at least the resources of psycho-therapy in their professional work.

Another valuable therapeutic factor of a different nature is the infusion into the lives of inmates of visitors (not necessarily

relations) who are normal happy persons, living successfully. They constitute (a) a healthy rapport with the life "outside" and (b) stimulating examples of real flesh-and-blood people who are neither saints nor prudes nor necessarily rich, but who have learned to handle life as it comes and who are deriving great satisfaction from it.

Therefore we see clearly that various and specific therapeutic agencies are available for those who are segregated from society in consequence of their anti-social behaviour. These are at least the somatic, the mental, the moral, the spiritual and the exemplary.

Of the religious element serious account must be taken. Sir Evelyn Ruggles-Bryce, Chairman of the Prison Commission for England and Wales, President of the International Prison Commission and author of the modern classic *The English Prison System* says that "The sanctions of religion are the true basis of all reformatory work".¹ Students of psychology are familiar with the considered and published opinion of Dr. G. C. Jung of Zurich that "out of the many hundreds of patients coming to him from all over the world there was not one of them over thirty years of age whose problem was not, in the last resort, that of finding a religious outlook on life". Still more significantly he adds that "none of them has been really healed who did not regain his religious outlook".

In its penal therapeutic sense religion is, as William James points out emphatically, *not* that of "your ordinary religious believer who follows the conventional observances of his country whether it be Buddhist, Christian or Mohammedan. His religion has been made for him by others, determined to fixed forms by imitation, and retained by habit. It would profit us little to study this second-hand religious life. We must make search, rather, for the original experiences which were and are the pattern setters to all this mass of suggested feeling and imitated conduct."

The factor of therapeutic religion has been dealt with here at some length, firstly to anticipate the skepticism of those who hitherto have failed to grasp the distinction between churchmanship and religion so clearly drawn by James; and, secondly, because the impact of basic religion upon individual penitentiary inmates has been clinically and carefully observed by the writer, who can vouch for its value in terms of results.

The objective of crime therapy is cure. By cure is meant the establishment or re-establishment in the individual of an

¹ THE ENGLISH PRISON SYSTEM, The Macmillan Company, 1921, p. 129.

inherent social morality, based upon character and powered by effective will, to conform to sound social standards as a matter of free personal choice and maximum satisfaction.

The alternative second-best is the establishment or re-establishment in the individual of a course of socially tolerable behaviour, based on the narrower foundation of self-interest or fear; in other words on the practical, realistic acceptance of a working rule that crime does not pay either in dollars and cents, personal comfort, self-esteem or popular regard.

The techniques invoked cover a wide range. They will be reviewed at some length elsewhere; but they do include such diverse elements as surgery, special diets, prayer, psychiatric shock treatments, education, technical training, studies in the arts, competitive games, medication, selected visits—or a healthy application of the strap to the backside. Within the limited compass of this article I can only outline the range and depth of the subject within the confines of the penological institution.

A final word on this score. Among medical, surgical and mental patients there is an inevitable residuum of chronic or incurable cases. There is just such an incidence among moral delinquents. The State will always have to provide institutional or quasi-custodial care for such cases. In penology this provision is known as preventive detention and is analogous to the provision made for mental patients who have proved themselves unable to adjust themselves to society.

THE SOCIAL INSTITUTE

Our one-time foul lazarets have become "General Hospitals". Our dreadful "mad-houses" have become "Mental Hospitals" or "Mental Institutions". Inevitably, our mediaeval "prisons" will become "Social Institutes". A man's act against society is described as anti-social. (Actually the objective act is anti-social; the subjective condition leading to the act is primarily egocentric.) Such a man, upon legal proof of his act by orthodox juridical trial, will not be "imprisoned"; he will be "de-socialized". He will be admitted to a Social Institute, staffed by professional and trained personnel. After diagnosis he will be placed under such therapy as is indicated. He will remain under treatment, not for a blindly set period, but until a professionally qualified board has decided that he is cured or, at least, sufficiently improved to be discharged into free society. Provision will be made for a period of convalescence when he will require certain aids to rehabilitation. If, after discharge, he suffers a relapse or series of

relapses, the board may ultimately categorize him as incurable and commit him to preventive detention.

This abridged forecast may be greeted with skepticism—possibly with ridicule. The attitude of the public toward the convicted man or woman is based primarily on fear and secondarily on a perfectly understandable ignorance. This ignorance is comparable to the ignorance of mental illness a century ago, has an exactly similar basis and expresses itself in an almost exactly similar treatment.

Should the suggested regime be criticized as being too drastic and radical in its changes, the complete reply is that the more radical the change the better, if the value of our present concept is to be gauged by the inexorable finality of the evidence of recidivism. Our system is a failure to the extent that it fails to cure—and that failure is over eighty per cent. True, there are other contributory factors, but this fact does not exonerate our actual institutional regime from its responsibility.

It is just as unscientific to abandon the search for improved moral therapeutic technique upon the feeble, defeatist ground that "human nature will never change" as it would be to abandon medical research upon the ground that "human bodies will never change". There is a constant, daily challenge to persist in Winston Churchill's demand for "tireless efforts toward the discovery of curative and regenerative processes".

Finally, we face the blunt economic fact that it costs us, overall, approximately one thousand dollars per year of our good tax-money to keep one inmate in a penitentiary. That means that possibly every cent of your federal income tax, plus probably that of your next-door neighbour, goes to paying for the fantastic futility of locking up one of our fellow-citizens in a place where the proved odds are four to one that he will emerge a crime-educated wrongdoer; that he will exercise his evil education (which you have paid for, and paid more for, than you have paid for your child's annual education) upon you and your neighbours and, furthermore, that he will return to prison again and again to consume your taxes and mine.

Why not insist that our good money be spent on scientific treatment to improve and make him a good neighbour?

Well—*why not?*