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Further information may be obtained from:

Training Division,
Australian Institute of Criminology,
P.O. Box 28, Woden, A.C.T. Australia. 2606

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INTRODUCTION

The twenty-eight participants in this Seminar represented prison administrators, prisoners' action groups, prison officers and academics. Heads of prisons in all Australian States except Queensland attended. The prison officers were nominated by prison officers' associations in each State. Seven of the participants were ex-prisoners who made a significant contribution to the meeting.

Representatives of the Law Foundation of New South Wales, the Council for Civil Liberties, the South Australian Prisoners' Aid Association and Women Behind Bars also attended.

It is not known whether such a meeting has been held before in Australia. There is an obvious need for more meetings of this kind.

During the seminar there were many confrontations between groups of differing orientations. The Australian Institute of Criminology was anxious to provide a forum for the mixing of ideas, viewpoints, feelings, hostilities and anxieties, held by those responsible for the management of prisons, the prisoners themselves, and those who, from the sidelines, are sympathetic to both sides. The Institute hoped to provide an opportunity for discussion and understanding of opposing viewpoints.

It was necessary to demonstrate that prejudice is as real among differently socialised sub-groups in our own culture as it is between different races and creeds.

In the final session, after three and a half days of discussion, the conference declared itself, by a significant majority (19 out of 25, 3 against), committed to the view that although the goal of abolition of prisons was not realistically attainable in the immediate future, prisons are ultimately unnecessary and that all concerned with corrections should work towards their eventual elimination.

A final development was the appointment by the conference of a working party of four to be chaired by an officer of the Australian Institute of Criminology, to draft Standard Minimum Rules for the treatment of prisoners in Australian prisons. The committee was composed as follows:

Chair — Mr C.R. Bevan
Australian Institute of Criminology

Mr Colin Campbell
Director
Department of Corrections
Western Australia

Mr George Zdenkowski
Council for Civil Liberties
New South Wales

Mr Ivan Knight
Prison Officers' Association
Western Australia

Mr Percy Boyes
Psychologist
Department of Corrections
Western Australia

The terms of reference for the committee are contained in the final resolution of the conference and detailed in the body of these proceedings.

PENAL PHILOSOPHIES AND PRACTICE IN THE 1970s IN CANADA

John Braithwaite

In presenting some observations on penal programs and philosophies of the 1970s primarily related to the Canadian scene, two warnings or admonitions are necessary. One is that the Canadian approach to the divergent trends apparent in corrections and criminal justice today is, typically, one of accommodation or compromise. So that you may better understand it on international terms: one of Canadian Club - a blend of diverse ingredients that results in a potent mixture - not without impact. The other admonition is that the views offered are solely for your consideration, they are offered to you rather than pushed at you, as concepts suffer from both importation and imposition.

The term 'penal progress', creates quandary as progress is not a hallmark of our common activities. Also, it is difficult to discern whether 'penal' confines one to a discussion of the institutional scene or to the Webster's dictionary definition of 'penal', which implies 'inflicting or incurring punishment for crime; punitive'. Rather than becoming too engrossed in internal, intellectual conflict, perhaps it is best to take from both approaches.

Rather than attempt to provide a catalogue of penal philosophies and programs of the '70s, I would prefer to present you with some of the over-riding considerations which pervade our field at the present time, and reflect on primarily Canadian and American reactions to these catalystic concerns - leaving it to you to sort and sift their application to Australia. In doing so, I will refer frequently to the prison situation that I know best but I ask you to draw the necessary analogies, parallels and links to community-based corrections, juvenile offenders and detention facilities.

We live today in anxious times. Every free society is cursed and concerned with inflation, unemployment, strikes, pollution and crime. But crime falls in a special category - crime creates personal fears which can lead to excess reaction, oppression and injustice. Societies that want freedom, justice and security, face few greater challenges than that of how to cope with crime.

In Canada, a recent government-sponsored survey indicated that crime was a concern second only to inflation. Dealing with crime is at least a dual problem for a just society. Both crime that we do not deal with and crime that is dealt with wrongly, is unjust. Criminal law, the state versus the individual, is always on the cutting edge of the abuse of power. Between these two extremes justice must maintain a rational balance. To cope with crime rationally, we must not hit out blindly and must not mistake activity for action. We must not be lead by fears, frustration or false expectations.1

Fear of crime is natural - but, of all the things that frighten us,crime has a unique place - it wears a human face. Other things happen but crime is done in a seemingly deliberate way - highjacking,bombing, kidnapping, do not always just occur, they are planned as terrorism grows. There is a growing sense, in most countries, of crisis about crime. Small wonder citizens are fearful.

But crime also brings frustration and fads. Expectations are perhaps to blame; we expect the law to protect us and reduce the volume of crime. Yet as we know, the vast majority of crimes are never cleared. For every crime prosecuted, there may be 10 reported and 40 unreported. Reducing this gap in crime control would need more police, greater citizen cooperation and a very different ciminal law. However, the kind of criminal law we have can never guarantee protection and, generally, it moves in only after the event. Our criminal law looks to the past - protection comes from looking to the future.

At the same time that most Western countries are facing these phenomena, we feel that our knowledge has increased. Literature on the subject is more prolific and profound, our discussions grow more sophisticated, and our staff grow better qualified. But does this have an effect on crime? If it does, it is not manifest in a dramatic decrease.

As my friend and colleague, Norval Morris, Dean of the Chicago Law School, has said, 'All of this activity is no cause for joy and the analysis can be summed up in the great Chinese proverb "much noise on stairs, nobody comes"'.

Part of the difficulty lies in our expectation of the criminal justice system. It would appear that the criminal justice system has a limited capacity for reducing or even controlling crime. It could, and should, catch and convict more criminals, particularly those guilty of crimes of violence. It should impose deterrent and community protective punishments. It should help those criminals who wish to conform to a reasonably law-abiding life. It could help reduce crime but it cannot manage with deep-seated, more basic problems that exist within a society, such as social inequity, racial discrimination, lack of educational and employment opportunities and any under-class locked in by poverty but faced by conspicuous luxury and encouraged to achieve the material trappings of success.

Better policing, convicting and sentencing of criminals would no doubt help but such action would not diminish much the effects of criminogenic pressures of broken families, blighted neighbourhoods, poor schools and few jobs.

Cops, courts and confinement are not the sole answers to the crime problem. The solution lies in much more basic endeavours.

There is a need for a new social planning era which shifts the focus of effort from recidivism to the overall crime rate, combined with related costs. The public probably cares less whether a program demonstrates that an experimental group shows a lower recidivism rate than a control group. It would prefer to know whether the program reduces the overall crime rate. Thus the aim of future research activities will be to create the knowledge needed to reduce crime. Such research will combine the analytical skills of the economist, the jurisprudence of the lawyer, the sociology of the life span and the analysis of systems. Traditional evaluation will play a modest but declining role. 2

It might be helpful, for a moment, to consider the role of the criminal justice system. The criminal justice system is a complex system that embraces the criminal law - law enforcement, the judiciary, corrections and community involvement all forming an interrelated sequence.

The purpose of the criminal justice system should be to protect society, of which the offender remains a part. It might also be wise, at this point, to observe that the criminal justice system does not exist in a vacuum. The criminal justice system in general, and corrections in particular, reflects the values of the society in which we live. Winston Churchill once said that the mood and temper of a society could be assessed by the way in which it treated the offender. And before him, Dostoyevsky, in his *House of the Dead,* noted, 'The degree of civilisation in a society can be judged by entering its prisons'.

In our current disillusionment with the total criminal justice system, corrections is probably the most maligned member - it is the skunk at the criminal justice garden party. It is the least rewarding, promising or productive facet. This view is shared by practitioners, probationers, parolees and prisoners alike. But, nevertheless, it must not be forgotten that corrections is the official and essential reaction or sanction of the community to the convicted offender. This is vital if realism is to replace rhetoric in our deliberations and development.

Every society entertains certain expectations of its respective criminal justice system. In general, these expectations encompass the concepts of humanity, freedom and justice. But each thrust works in opposite directions, both for and against the individual citizen. For example, the criminal law aims towards humanity. The sort of things which are prohibited, especially acts of violence, are acts violating common standards of humanity. Crimes are not just forbidden - they are wrong. But these same standards and requirements apply to the authorities themselves. 3

The criminal law sets limits as to what we can do to one another and it also limits what the authorities can do to suspects and criminals. They cannot, for instance, torture, maim or blind offenders. But more relevant perhaps, they cannot use surgical or psychological techniques to stop people being criminals. Thus, the criminal law treats the individual as a person rather than a thing - a human being to be persuaded, not a robot to be reprogrammed.

As to the aspect of freedom, the accused is presumed to be innocent. Unless the authorities think they have sufficient evidence against a person, he will stay free of prosecution. Also, there is a presumption that an act is not a crime. No one needs to prove his right to do an act. In general, unless the law prohibits it, he is free to do it. And finally, our criminal justice system aims at justice itself. This means roughly, three different notions:

1. Guilt, innocence and sentence should be fairly determined according to evidence.

2. Punishment should be appropriate to the offence and the offender.

3. Like cases should be treated alike and different cases differently.

This doctrine indicates that a crime is a crime, no matter who commits it. It is a crime for an individual to lay hands on a police officer but it is equally a crime for a police officer to lay hands on a citizen unless the law specifically allows it. It is a crime to kill another; it is equally a crime for the authorities to kill a killer unless the law specifically allows this penalty. All of us should be equal under the law, unless the law specifies otherwise.

But even the most casual observer would notice that there is a gap between our aspirations and achievements. In regard to humanity, there is the operation of the criminal justice system itself. It is frequently inhuman - we tend to use prison sentences as a form of conspicuous waste. Sentences tend to be too long - half the inmates should never be incarcerated and there are so many incarcerated that those few needing real care cannot get it. We are in a growth business but we may also have developed the criminal justice equivalent of the perpetual machine sucking people into incarceration at one end, spewing them out at the other and, subsequently, sucking them back in again.

As to freedom, it is suggested that no act is a crime unless the law specifically says so. However, few citizens can possibly know all the sections and offences embraced by the Criminal Code. But ignorance of the law is no excuse and so the citizen is never sure he is not breaking the law.

On the presumption of innocence question, the prosecution should prove guilt, but in reality, the defendant often fights under a handicap. His appearance, his clothes, his manner of speaking and his presence in the dock can all cry out and betray him.

And finally, the principle of justice. Crimes are crimes and punished equally, no matter who commits them, it is claimed. In practice, the penalty frequently depends not on the nature of the crime but on the person who commits it. Prison populations generally contain an undue percentage of poor, disadvantaged and minority member offenders. There is no doubt that the richer you are, the more attractive the criminal justice system appears. More poor people than rich people are prosecuted even on a proportional reckoning. We still tend to have one law for the rich and another for the poor and so our prisons are populated with what are generally defined as 'losers'.

Theoretically, we demonstrate our disapproval of certain types of conduct; in practice, we process an interminable series of recurring cases along the dreary assembly line of dime storejustice. Judges, crown attorneys, police, defence layers and all concerned grow daily more dissillusioned and discouraged. Small wonder many citizens conceive of the criminal law with a deepening degree of despondency and disillusionment.

However, after conviction, there is still a continuance of despondency and disillusionment. As we turn to corrections, we look towards the objectives of punishment, deterrence and rehabilitation.

It is probably not productive to dwell unduly long on this matter. The current debate tends to develop more heat than light on the total subject. Much has been written and our current disillusionment is moving us somewhat away from time-honoured but increasingly less cherished concepts. The principle of punishment is fairly well accepted. Certainly it is accepted by the recipients. The vast majority of correctional clients if asked why they had incurred society's sanction, would promptly tell you they had played the game and now they must pay.

They would be less likely to suggest that they were performing a great service to society at large by serving as an exemplary object to promote better behaviour on the part of other citizens. If such were the case, one wonders if the recidivist should not be considered for some form of civic service medal - like those given to devoted blood donors.

The most contentious of the three concepts of corrections at the present time is the concept of rehabilitation. Perhaps, to a certain extent, the question is falsely posed. Much of the research, including that of Robert Martinson,[4] as well as earlier studies, has been, almost grossly, misapplied. The research indicates that helping programs for convicted criminals are not shown either overall or with selected categories of offenders to overcome social alienation and disadvantages of conviction and imprisonment, or of conviction and control. At the same time, all of us know many prisoners who have been helped to a more law-abiding life. The programs that allegedly give rehabilitation meaning, must cease to be the claimed purpose of a correctional sanction. This does not mean that such programs as we now have should be abandoned. They need to be expanded and developed and made more sophisticated. No one who visits an institution can help but recognise that it contains individuals who, disproportionately to other groups, are frequently illiterate, unemployed, untrained, uneducated, disturbed and socially alienated. It is both humane and in the community's best interest to help them. But these programs are not the primary purpose of corrections.

I do not subscribe to the notion that most offenders sentenced to prison, feel that they are being given a great and shining opportunity to improve their lifestyle or status. The prison cell has not yet become the portals to Heaven.

If there is any doubt on this matter, listen to the words of one American recidivist, immortalised in a popular song entitled 'Huntsville', a popular Texas castle of confinement. The words go:

> 'Hello Warden, come down and kiss me;
> Hey there, Jimmie, you've got a new friend,
> Howdy there, screw, did you miss me;
> I'm back home in Huntsville again.'

That contains a touching trace of both home and homosexuality - but there is also a tragic sense of acceptance and apathy. There is no suggestion of hope or rehabilitation, let alone redemption.

We, in corrections, are saddled with an ideological legacy that equates criminal offences with moral or psychological illness. This legacy leads to the presumptuous conclusion that sick persons must be given treatment and treatment is best given in an institution.

It is time to question this ideological inheritance. In American terms: New York has 31 times as many armed robberies as London; Philadelphia 44 times as many murders as Vienna; Chicago more burglaries than all of Japan and, indeed, all of America. But this has not been our approach. We concentrate on the symbol of the sickness - the offender. This is a poor version of the medical model. What is needed is a better version of the public health model, and an attempt to treat the causes rather than focus on the symptoms with quick but all too false solutions and panaceas.

There is another aspect to the rehabilitation question. It is not that human behaviour is unchangeable, that is the reason we should reject rehabilitation. If we wish, we can coercively cure. Capital punishment, exile, extended imprisonment are effective cures of violence. Again, as Norval Morris had indicated, if we were to keep all criminals convicted of violence in prison until after their fortieth birthday, few would return to violence. However, what we would do to our concepts of relationships between individual freedom and state authority, about human rights and decencies and the corruptive effects of power, would be open to serious question and could possibly do more damage to our society than our current ineffectual and inept attempts at dealing with the offender. We should reject with equal fervour the extremes of both the scaffold and the scalpel.

You might have passing interest in the comment of Charles Dickens,when in 1842 he visited one of Canada's first penitentiaries which is still in existence although it has grown considerably.

> I believe it in its effects to be cruel and wrong. In its intention, I am convinced it is kind, humane and meant for reformation. But I am persuaded that those who devised this system do not know what it is they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment inflicts upon the sufferer. I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body.

After having painted such a pageant of pessimism, the question is: What should be done? Obviously, something different, but what?

Two general admonitions should be kept in mind. The first, in the words of Jeremy Bentham, 'This much is certain - the system that is never to be censored will never be improved. That if nothing is ever to be

found fault with, nothing will ever be mended.' But also the words of the itinerant peddler, Sam Slick, 'Changing one thing to another, ain't necessarily progress.'

The decay in the life cycle of an institution sets in when it exceeds its positive function as a preserver and developer of values and enters upon the negative function of the prohibition against novelty and, hence, against further gains in values. A church which begins by spreading the gospel of love and ends by taking up the sword to defend its gospel is a case in point. Any institution that can only do what it has been doing is not doing enough. Novelty is life and we expect progress - progress not necessarily in the direction of size but in the direction of development of new ideas and new values. When it can no longer fulfil this requirement, it fails and this means the beginning of a decline.5 An institution declines, decays and dies when it no longer progresses.

In suggesting some possible alternatives or new directions, I will, through lack of cosmopolitan experience, draw heavily on Canadian and American concepts. I do not apologise for this, because I think it is high time that we from another hemisphere pay tribute to Australia's contribution to correctional progress - the concept of punishment by transportation or exile - a concept that is still fondly remembered by many.

As recently as last week, a United States Senate hopeful from beautiful Ohio, recalling that England sent one and a quarter million offenders to Australia prior to 1890, proposed the establishment of rehabilitation centres on remote Pacific Islands instead of a $4 billion federal prison construction program. Richard Kay suggested that centres be set up on either the Micronesian, Polynesian or Aleutian Islands. Thus, prisoners with a proven propensity for violence could be shipped to the islands so society could be better protected. 'Let the oceans be the bars', was his profound progressive proclamation.

Many of the subsequent comments as to the future or guidelines for improvement, stem from two major Canadian endeavours of recent years. One is the Law Reform Commission, a body set up to review the total criminal justice process in Canada in consultation with all interested sectors of the community and to make appropriate recommendations. The other is the Federal Corrections Task Force, which is concerned with the establishment of a new Federal Corrections Agency responsible for certain categories of adult prisoners and parolees.

Perhaps a brief orientation to the Canadian criminal justice scene might be in order. First, to the matter of jurisdiction - it is typically schizophrenic at worst and compromising at best. The 10 provinces are responsible for the administration of justice, all juvenile correctional programs and adult correctional programs, including probation and imprisonment for those serving sentences of less than two years. The role of the Federal Government is restricted to the establishment of a common Criminal Code and the incarceration and parole of all offenders serving two years or more. The total operating expenditure of all these services is in excess of $1 billion per year.

The provincial systems have approximately 11,000 adult offenders, while the federal system has around 9,000 adult offenders. The incarceration rate for Canada is about 90 out of every 100,000 for the United Kingdom and the Netherlands which imprisons only 22 per 100,000. Out of 100 Canadians convicted of indictable offences, 55 will serve their sentences in the community on probation, through the payment of fines or some other sanction; 37 will serve sentences of less than two years in provincial institutions; and, the remaining eight will be found in federal penitentiaries.

What then were the recommendations of these two organisations as they commented on the results of the survey of the criminal justice system in general and the use of federal institutions and parole in particular?

The Law Reform Commission called for the removal of all regulatory offences from the criminal regime, the diversion of less serious real crimes outside the traditional system, leaving only a hard core of violations of the basic values of society requiring traditional trials and serious punishment. But they called for restraint in the use of incarceration for several reasons; the cost to the taxpayer, and also the danger that exists with all punishment, that is, that all familiarity breeds contempt. The harsher the punishment, the more reluctant society should be to use it. This particularly applies to punishments of last resort. The major punishment of last resort is prison. This is the ultimate weapon of the criminal law, the symbol of power of society. If one ever doubts that, consider the easy acceptance of the recidivist back into an institution compared to the return of an escapee who has obviously beaten or defied the system. The use of prison should be restricted to three kinds of cases: offenders too dangerous to leave at large; offenders for which, as things are now, no other adequate denunciation presently exists; and offenders wilfully refusing to submit to other sanctions such as probation, fines, community service orders, restitution and the like.

Restricting our use of imprisonment will allow us more scope for other types of penalties. However, the prison must remain as the cornerstone, or ultimate sanction, which gives credence to community alternatives. One penalty that should be used more extensively is the restitution order. This brings home to the offender the wrong he has done; it meets the real needs of the victim; and it satisfies society's sense of justice in the desire to see that the offender is not profiting at the expense of his victim. Restitution has a vital and essential place in the criminal justice system.

Equally vital is a second kind of reparation. Although one victim of crime is the individual who has been wronged or cheated, another is society whose values have been threatened or infringed upon. Society also has a claim to reparation - a claim not satisfied by imprisonment - a claim that is better met by more creative penalties like community service orders, compelling the offender to make a positive contribution to the worth of his community to compensate for the wrong he has done that community. Positive penalties, like restitution and community service orders, should be increasingly substituted for the unnecessary and uncreative warehousing of incarceration.

1. Separation

In considering imprisonment for the purpose of separating the offender from the rest of society, two necessary conditions must be met: first the offender has been convicted of a serious offence that endangered the life or personal security of others; and second, the probability of the offender committing another crime endangering the life or personal security of others in the immediate future shows that imprisonment is the only sanction that can adequately promote the general feeling of personal security.

In determining the probability and degree of risk among the other factors, the judge should consider:

(a) The number and recency of previous offences that represented a threat to the life or personal security of others.

(b) The offender's personality.

(c) The police report on the offender's prior involvement with the criminal law.

(d) A pre-sentence report.

(e) All material submissions including expert opinion and research from the behavioural sciences. 6

In determining the probability and degree of risk, the court should place considerable weight on the most reliable predictive factor now available - past conduct. But even so, predictions of future risk are likely to be inaccurate. For example, as a result of research it would appear that, for every 20 persons predicted to be dangerous, only one, in fact, will commit some violent act. The problem is in knowing which one of the 20 poses the real risk. This should lead to caution in making a finding of risk, and has implications for conditions of sentence and release.

The court should rarely make a finding that a person is a probable risk to the life or personal security of others unless he has committed a previous violent offence against persons within the preceding three years as a free citizen in the community. This is not a formula, however, to be rigidly applied. For example, it may be that for a large part of the previous three years, the offender was under strict supervision or control. Many factors must be considered, weighed and balanced. In the end, however, the policy of the law should take note of the tendency to over-predict risk. As a consequence, there is need for decision-makers to follow clear criteria before making findings of risk.

2. Denunication

Although the court may decide not to impose imprisonment in a given case for the purposes of separation or isolation, it may still wish to imprison for purposes of denunciation. Before imposing imprisonment for this purpose, however, the court must be convinced that no other available sanction is sufficiently strong to denounce the offender's criminal conduct. In coming to this conclusion, the court should consider: first the nature, gravity and circumstances of the offence; and second, the social reprobation in which the offence is held.

3. Non-Compliance

The third purpose for which imprisonment may be used relates to cases of last resort where the offender's wilful refusal to pay a fine, make restitution or comply with other non-custodial sanctions demonstrates to the satisfaction of the court that a short term of imprisonment is the last resort. In short, incarceration is used as a shock to obtain the offender's attention.

Prison sentences, imposed primarily to separate from society those offenders whose conduct represents a serious risk to the life and personal security of others, should carry a higher maximum than those aimed at denunciation, and prison terms imposed for wilful default of other sanctions.

Separation or isolation of the offender convicted of crimes of serious violence to persons may justify quite a high maximum. These should vary with the offence and its circumstances, but the Commission is of the view that a sentence of up to 20 years should provide adequate security. At the end of that time, there can be recourse to mental health legislation if the offender is mentally ill and a danger to others. Such a procedure should be subject to the same conditions and safeguards as those of civil commitment. Experience shows that most offenders who are believed to be a danger to others appear to be less of a risk with increasing age. Moreover, the difficulty of predicting with accuracy who may or may not pose a risk, is so great that the law should proceed with caution. Considering that nearly all prisoners today are detained for less than 15 years, (and the average federal inmate for just under 3 years) that prolonged imprisonment makes the eventual successful return of the offender to society more and more difficult, and that very long periods of parole supervision appear to be unnecessary and burdensome, an upper limit of 20 years in the interest of promoting the general security would seem to be more than adequate.

In some cases, denunciation will be the primary purpose of the sentence of imprisonment, as in cases of flagrant breach of trust, or of serious violent offences against the person where the offender's conduct does not represent a continuing risk to the life and personal security of others. In these cases, a maximum term of three years may be adequate. This would apply equally to the denunciatory part of a longer sentence given for the purpose of separation.

When imprisonment is used to deal with offenders who are wilfully in default of obligations imposed under other sentences such as fines, the imprisonment should not, in general, exceed six months.

In terms of release procedures, the Law Reform Commission envisaged a sentence supervisory board. Such a board would be concerned with the quality of the sentence as well as the length of incarceration. It envisaged that in sentences of separation; one-third of the sentence would be spent in incarceration; the last third of the sentence would be served, if necessary, under mandatory supervision, in the community; with the remaining third being negotiable depending upon the inmate's demonstrated responsibility rather than his 'rehabilitation'. A plan would be developed mutually between the institutional authorities and the individual offender. This plan would not require him to participate in sports, cultural activities or so-called rehabilitative programs, but it would require him to participate in work or educational activities. Once the plan was developed, it would be subject to approval by the sentence supervisory board and any deviation from the plan would have to be explained to the board. This would include the transfer of an individual to a more restricted institutional regime from a more liberal one. If the conditions of the plan were met, then the individual would be released sometime during the middle third of the sentence. If they were not met, then he might be released during the final third of the sentence.

The transition from total custody to stages of decreased restriction of freedom would begin with supervised temporary absences at the appropriate time. It was felt that, with rare exceptions, prisoners should be given absences to allow them to maintain, renew and build family and community relationships. In addition, such leaves would test the offender's ability to act with responsibility in the community. Temporary absence would be denied only in special cases where the correctional administration, to the satisfaction of the sentence supervisory board, advises that such an absence would present a threat to the life and security of others.

Inherent within this proposal is the concept that no correctional program can exist without building into it the concept of reasonable risk. Any suggestion that a correctional system does not include risk to the public is sheer naivety. It suggests that, inevitably, we must turn to science fiction for a sophisticated solution at best, or at worst, to contemplate the maintenance and increased use of capital punishment. Without an element of risk we will not be able to divert offenders from the criminal justice system and we will unduly increase the size and inhumanity of our institutes of incarceration.

With this background, the Task Force on the Federal Corrections Agency commenced their deliberations relative to incarceration and parole. They noted that one of the most previously popular beliefs in corrections was that the best way to protect society was to rehabilitate the offender. The implication in this statement is that the agency itself is somehow responsible for the 'success' or 'failure' of the offender. Correctional personnel diagnosed the offender and his behaviour and subsequently purported to treat him. This approach has proven to be unrealistic. Too much stress on rehabilitation tends to mislead the public and the offender as to the intent, capacity and capability of corrections. To persist in this approach is to misrepresent to people within and outside corrections the legitimate claims of the correctional process, to continue to draw the accusations of failure arising from unrealistic expectations, and to hinder the development of effective relationships between corrections and the public.

This demonstrates a marked shift in emphasis toward a role which is more realistic, honest and fair. From them, federal corrections can identify some key principles that determine how it can apply the prescriptions of criminal law, the expectations of the judiciary and its own objectives to the day-to-day management and administration of the court's sentence.

BASIC PRINCIPLES FOR THE ROLE OF FEDERAL CORRECTIONS

1. The offender is perceived as an individual to be held ultimately responsible for his criminal behaviour.

2. The sentence imposed by the court itself constitutes the punishment.

3. The community, the offender and the agency all share the responsibility for participation in the correctional process.

4. The adequate protection of individuals in society including the offender himself.

5. The provision of an environment, appropriate to security requirements and conducive to active participation in program opportunities.

6. The provision of adequate procedural safeguards designed to protect the rights of the offender.

7. The provision of correctional program opportunities which, through voluntary participation, enable the offender to develop the capacity to make choices that are more socially acceptable.

1. *The offender is perceived as an individual to be held ultimately responsible for his criminal behaviour.*

The concept of legal responsibility as applied at the point of determination of guilt, is a narrow legal definition. However, at the time of sentencing the judge has discretion to take into account extenuating circumstances that should mitigate the severity of sentence while still holding the offender accountable for his actions. As the courts have discretion to mitigate the severity of sentence because of extenuating circumstances, federal corrections, whose concern is the future behaviour of the offender, must be able to provide program opportunities aimed at allowing the offender to exercise his capacity to demonstrate an increased measure of responsibility. Indeed, there is a growing plea for accountability:

> ... the old fashioned idea of individual responsibility for behaviour. A great deal of social organisation and most social mores rested on this foundation. If we do not get back to this concept the structure of the criminal justice system and eventually of society will fall. We need to brighten up our controls on behaviour of building correctional approaches based on the reality of the existence of a penalty for violation of law. This is particularly true when such punishment is rightly viewed in the sense of the logical consequences of an action and the necessity to learn responsibility by being forced to face up to the results of one's own behaviour. 7

2. *The sentence imposed by the court itself constitutes the punishment.*

There is no provision anywhere for corrections to impose vindictive punishment in excess of that handed down by the courts. The controls place upon the offender by the sentence constitute the means of punishment. Punishment consists solely of restrictions placed upon the freedom of the individual offender through confinement in an institution or through adherence to controls placed upon the offender's activities within the institution and/or the community. Within the institution there is, of course, provision for regulatory controls enforced with appropriate sanctions to ensure the peace and good order of institutional life.

3. *The community, the offender and the agency all share the responsibility for participation in the correctional process.*

'Most criminal conduct is spawned in the community, contributed to by the social economic and political circumstances of the community. Thus criminal behaviour is a function both of the offender and of the community, and the solutions must be sought in both'. 8 While recognising that the offender himself must bear the ultimate responsibility for his criminal actions, there are factors in the community which contribute

to his involvement in criminal activity. The responsibility for failing to provide the offender with the necessary opportunities to become a productive and responsible member of society rests with the community as a whole.

This participation of the community, the offender and federal corrections is envisaged as a tripartite relationship, with each participant contributing in a way which will encourage initiative and enhancement of the total program. But for corrections to fully use this concept, it must rid itself of certain reservations.

Entrenched traditions - which have hindered the introduction of innovations - vested interests, which have even negated many changes already implemented, and the confusion of philosophy and goals of what corrections is supposed to be doing, are some of the vestiges that we shall have to cast off in order to optimise the partnerships with both community and offender.

4. *Federal corrections is responsible for ensuring the adequate protection of individuals in society including the offender himself.*

An offender who is forced to serve his entire sentence incarcerated in an institution, with no opportunity to demonstrate responsibility or participate in programs, will become frustrated and embittered to the point where he poses an even greater threat to society. A system of gradual release, no matter how carefully administered, involves an element of risk. The provision of program opportunities which enable the offender to demonstrate his capacity to make responsible choices can provide necessary information upon which better decisions can be made so as to lessen the risk. The provision of sound correctional program opportunities is a vital element of paramount priority for the protection of the community. In the final analysis, it is the community which must define the degree of risk which is considered tolerable.

5. *Federal corrections is responsible for ensuring the provision of an environment, appropriate to security requirements and conducive to active participation in program opportunities.*

The social milieu of the institution should, within the constraints of perimeter security, provide an atmosphere conducive to the offender's active participation in program opportunities. The primary purpose of the institutional program is to provide an environment for encouraging program involvement. Within security limitations, it should provide flexibility for staff-inmate interaction and accessibility to program opportunities available.

6. *Federal corrections is responsible for ensuring the provision of adequate procedural safeguards designed to protect the rights of the offender.*

It is important to distinguish between the rights of an inmate and his privileges. Rights may be enforced by action in the courts, while privileges may be granted or withheld at the discretion of the administration.

An inmate should retain all the rights of an ordinary citizen, except those that are expressly taken away from him by statute, or that he loses as a necessary consequence of incarceration.

7. *Federal corrections is responsible for ensuring the provision of correctional program opportunities which through voluntary participation enable the offender to develop the capacity to make choices that are more socially acceptable.*

Correctional program opportunities encompass all constructive activities in which the offender may engage during the entire sentence imposed by the courts. Although the decision to participate and the depth of such participation will be voluntary on the part of the offender, federal corrections will ensure that every offender is involved in constructive work which contributes to the well-being of the institution as well as meeting the needs of the offender.

Another dilemma of past approaches rests in the suggestion that expertise, and expertise only, can resolve the problem of crime. The treatment model allows the public to content itself with the thought that government and specially trained experts will handle the problem in much the same way that public health officials can control an epidemic. This has tended to relieve the community of facing its responsibility as a very important component in the correctional process.

* * * *

It is on the basis of these principles that we are now revising structure and programs for federal offenders but this is not enough. There is a need for accountability - an accountability that involves being evaluated as part of the criminal justice system which, in turn, is part of our total society. No man is an island unto himself and no facet of corrections can be divorced from the total society in which it exists. However, if there is to be an accounting, let it be based on reality.

The correctional sky is continuously filled with the flutter of wings. We are constantly being carped at by succeeding flocks of hawks and flights of doves. If we are to be held accountable let it be on the basis of reality rather than rhetoric or false but grandiose expectations - we have, at times, as a result of the swing of the public or political pendulum, been too lax, too rigid, too lenient, too punitive, too caught up with institutions or about to give them up entirely. At one time or another, we have been moved by every possible product of intuition, imagination and idiocy.

We must cease making ludicrous claims that we can not meet and that lead us to despondency and society to despair and disillusion. If you doubt our current level of morale consider these titles from a professional journal:

- Is the treatment of criminal offenders really necessary?
- Corrections tarnished halo.
- Corrections - rhetoric, reality and potential.
- Settling for hamazation - evidence of despair or facing reality?

We should strive for more achievements more limited goals and more modesty. Norval Morris recalled the words of Aldous Huxley who suggested that there were only two satisfactory professions - medicine and astronomy. The doctor can persuade himself he is doing good - the astronmer is sure he is doing no harm. Perhaps corrections should emulate the astronomers.

We must develop a more balanced and rational approach. The challenge is whether we can prove capable of developing coherent and cohesive statements of goal and standards of practice. There is no doubt that the public has a significant role to play in the field of corrections. There is no doubt that we have an obligation to citizens who are incarcerated, or otherwise controlled by the system, to assure them of standards of performance. The American experience has been that, in the absence of such standards, there are judicial intrusions not based on knowledge but based on false and immense expectations. It is important that the day of evangelism and exhortation give way to education and evaluation. But, if this is to be achieved, then standards of practice for probation, for prisons and for parole must be developed and accepted. This is needed to protect the public and to protect the staff; but also to protect the probationer, the prisoner or the parolee.

There is great activity in America towards this objective and similar activity is being reflected on the Canadian scene. This will enable all in society to experience greater achievement in a movement towards excellence.

In closing, I must suggest that there may be very little herein that has application to the Australian scene. For this, I apologise - but I think it is better that I share with you some of our experiences than exhort you to accept panaceas from a Commonwealth sibling that is subtly but significantly different.

There is, however, one thing which we have in common - our mutual responsibility, captured in the words of Sir Hubert Morrison when he was Home Secretary for the United Kingdom.

> Those who commit offences against society represent a small proportion of the total community. But those who condone current methods of dealing with offenders when better methods are known, *that is the responsibility of the total community.*

FOOTNOTES

1. Canada. Law Reform Commission, *Our Criminal Law* (Ottawa, Ontario, Information Canada, 1975), p.18

2. Robert Martinson's article in *Crime and Delinquency* (Hackensack, NJ., 1976). January 1976.

3. *ibid,* p.5.

4. op cit, Martinson.

5. James Feibleman.

6. Canada. Law Reform Commission, *Imprisonment and Release* (Ottawa, Ontario, Information Canada, 1975)., p.18.

7. Claude T. Mangrum, 'Corrections' Tarnished Halo,' in *Federal Probation* (Washington Dl, March 1976), vol.40, no.1, p.13.

8. *ibid,* p.11.

THE LESSONS TO BE LEARNED FROM THE SCANDINAVIAN EXPERIENCE IN PENAL REFORM

Clas Amilon

INTRODUCTION

The title of this paper is 'The Lessons to be Learned from the Scandinavian Experience in Penal Reform', but perhaps it would be more appropriate to substitute the word 'Swedish' for 'Scandinavian'. The fact that the paper deals mainly with the situation in Sweden is easily accounted for by the author's nationality and professional background.

Since they share a similar social, cultural and political past, the Scandinavian countries have endeavoured for a long time to coordinate their national legislation, both civil and criminal, and developments in the field of criminal justice have followed the same general pattern. Therefore, it probably will not do the other Scandinavian countries an injustice if Sweden serves in this report as a model of the 'Scandinavian way' in the treatment of offenders.

The paper will discuss the Swedish correctional system, not in the manner of a public relations document from an official government source, but as a report from one who has worked and will work within the system, but who may have acquired a certain amount of objectivity during some years' service with an international organisation dealing with crime prevention and criminal justice. The positive and negative remarks made in the paper reflect my personal views and do not necessarily pretend to indicate the true 'lessons to be learned' from Scandinavia. Instead, they are intended to serve as a basis for the discussions and conclusions of the seminar. And besides, the most important lesson from Sweden and the other Scandinavian countries may lie in the fact that correctional policy is constantly undergoing a process of review and modification, rather than in the results achieved.

GENERAL BACKGROUND

The Social Welfare Ideology

The correctional policy of a country should be viewed as a reflection of the society as a whole. Such a policy develops as a part of, and not apart from, the general values and philosophies prevailing in the society itself. The fact that Sweden has had a history of peace since the beginning of the 19th century and that it has been spared domestic turmoils, serious social tensions and racial problems has made possible the promotion of a social welfare policy, from which the penal and legal philosophy has emerged.

The social welfare ideology involves something more than just the creation of favourable economic conditions: it emphasises the similarities among citizens rather than the differences, and encourages a sense of collective responsibility, which works to protect the rights

of the weaker members of the society, including those of offenders. A society without slums cannot let its prisoners live under slum conditions; a society which has accepted collective responsibility for the physical and economic welfare of its citizens cannot abuse the rights of even those who transgress its rules; and a society, which - at least to a certain extent - regards the offender as a product of his society must make very endeavour to reintegrate him to that society. Thus, the assumption is that the objective of penal policy should be rehabilitation or adaptation to social demands. On this assumption and on a modified form of the rehabilitation theory, the Swedish criminal policy was developed in the 1950s and codified in the Penal Law of 1965.

The Development of Corrections

When the modern Swedish welfare society was planned during the last years of the Second World War and during the post-war period, attention was also given to corrections. The course was already set in the mid-1930s by a great correctional reformer, Karl Schlyter - professor in penology, legislator and Minister of Justice - with the motto: 'Empty the prisons'. The optimism was great - criminality and the welfare society had not much in common - and the prison system was planned to accommodate not more than 2,000 persons.

The optimism, however, proved to be ill-founded. The crime rate increased yearly, and it became evident that the considerable expansion of health, education and other social improvement programs, desirable in its own right, had not the immediate crime-preventive effect anticipated. Instead, 'welfare criminality' was a fact, and the need for more institutional places was urgent. As planned, the new isntitutions could not replace the old Pennsylvania-style prisons from the 19th century, in spite of the fact that more institutions were constructed in Sweden during the period 1955-1965 than since the middle of the last century and to an extent probably never to be equalled again. Temporary solutions had to be found, and deserted school buildings, empty military barracks and factories no longer in use were converted to prisons, not without success. The purposely-built facilities reflected the rehabilitation optimism of those days. A good example of this is Roxtuna, designed as a 'medical-psychiatric treatment centre' for young adults and lavishly equipped in terms of treatment expertise, personnel and general standards.

Owing to financial limitations, Roxtuna could not set the standards for all future institutions, so a series of 'prison factories' were built under the slogan 'first we build the factory, then we add the institution', a slogan which mirrored the significance attached to a well-developed work program.

The crime rate continued to increase and caused an intensive debate concerning the rights or wrongs of the criminal policy then in effect, which was characterised by an endeavour to avoid the use of prison as the main correctional instrument and to favour other measures such as day-fines, suspended sentences and probation. The government and the authorities were heavily criticised in Parliament and in the mass media for being indulgent and out of touch with reality. A number of striking escapes added more fuel to the discussion, but the course

remained essentially the same: to increase the community-based treatment programs.

The increase in the prison population continued in spite of the more and more widespread use of non-institutional treatment methods. Early in the 1960s the situation was almost desperate and the possibility of 'renting' available institutional places in Denmark was seriously considered! In a prognosis from 1962 the Correctional Administration forecast the need for an institutional capacity of about 10,000 places 10 years later.

Once again, however, the prognosticators were wrong. In 1966 the prison population ceased to increase and began to decrease steadily, with the result that the daily number of prisoners, including those awaiting trial, for the time being is just about 3,200.

The main reason behind the change was the new Penal Code, which entered into force in 1965 and opened extensive possibilities for the courts to choose community-based measures instead of imprisonment at the same time as additional resources were allocated to the probation and parole system. Another contributing factor was, beyond doubt, a growing dissatisfaction with the lack of effectiveness of prison as a rehabilitation method, followed by the organising of pressure groups and a new intensive debate. This time the authorities were blamed for conservatism and - once again - for being out of touch with reality. The hawks from the 1950s debate became the doves of the 1960s. The Kumla institution, Sweden's largest institution, with around 400 places and of maximum security character, which to a large extent was a result of the earlier debate, was looked upon as a huge symbol of unsuccessful criminal policy

The development in the other Scandinavian countries during the 20 to 25 years following the Second World War has not exactly followed the Swedish pattern. The heavy increase in the crime rate in Sweden during the 1950s was not as considerable, the problem with overcrowded institutions has not been the same and the rest of the Nordic countries seemed to watch the Swedish experiences in order to learn and to do better. The trend, however, was the same: to replace the institutions as far as possible with community-based programs.

FACTS AND FIGURES

The Crime Trend

In 1960 more than 270,000 crimes against the Penal Code were reported to the Swedish police. The corresponding figure for 1974 was close to 546,000, which, in turn, means an increase of 4 per cent compared with 1973. 1 Preliminary reports seem to indicate a similar increase for 1975. Of the reported crimes in 1974 around 390,000 were thefts of different kinds, 40,000 frauds, 35,000 crimes of violence, 25,000 traffic offences and 20,000 crimes involving narcotics (drug trafficking and drug possession).

The Scandinavian countries, with their geographically protected situation, have long been spared immediate contact with transnational criminality. During the last decade, however, Sweden and Denmark seem to have become a more and more attractive field, particularly for drug trafficking and armed bank robberies. Even crimes with an obvious political motive, like many cases of hijacking, murder of diplomats and mutual violence amongst competing minority groups, have become a reality.

As far as organised criminality with an economically profitable background like drug trafficking is concerned, it has been said that the Scandinavian countries - especially Sweden - have been regarded as particularly attractive because of short sentences, liberal furlough systems and possibilities for an offender to be placed in open institutions from which escapes can be made easily; all factors considered in the risk and profit calculations made by all businessmen - even in the crime branch.

In this connection, it ought to be mentioned that the maximum penalty for drug dealing, which in the early 1960s, when this type of offence was an extremely unusual phenomenon, was two years imprisonment, has been increased to the present maximum of 10 years; at the same time more restricted furlough regulations have been introduced for the 'big shots' in the narcotic branch. It is interesting to notice that the number of offences against the Narcotic Law decreased by not less than 17 per cent in 1974, compared with the previous year.2 It is, however, too early to say if this decrease is only a temporary phenomenon or if it indicates a trend. It is also difficult to explain the underlying reasons. Have the harsher measures influenced cost-benefit thinking or have the dealers developed more sophisticated methods? Or is the market simply over-supplied? The future will give the answer.

Offender Statistics

If the crime rate is constantly growing, the picture is the opposite as far as the prison population is concerned. In 1965 the daily average population (including those awaiting trial or sentence) was 5,200 and in 1975, 4,140. For the time being Swedish correctional institutions of all categories house, as said before, not more than roughly 3,200 inmates.

An international comparison of the prison population per 100,000 inhabitants as of 1 January 1974 showed the following situation in certain industrialised countries: 3

Netherlands	21	*	Australia	70	
Norway	39		United Kingdom	75	
Sweden	43		West Germany	81	
Japan	43		New Zealand	85	*
Italy	51	*	Canada	95	
France	53		Finland	101	
Denmark	54		Austria	104	
Belgium	58		U.S.A.	189	*

Despite many social and legislative changes in Scandinavia the size of the prison population has remained remarkably stable for a long period of time, and it is only during the last few years that a decrease, particularly notable and rapid, in Sweden has occurred.

In 1974 around 10,200 persons sentenced to different forms of deprivation of liberty, most of them for very short periods, were admitted to correctional institutions in Sweden. Thus, about 70 per cent were sentenced to less than three months, about 20 per cent had sentences between three and 12 months, and about 10 per cent had to serve terms of one year or more. Every year around 4,000 persons in Sweden, that is 40 per cent of the yearly turn-over, serve time for drunken driving, while in Norway more people are sentenced to prison for this single offence than for all 'traditional' crimes combined.

As said in the foregoing, Swedish criminal policy has long been characterised by the endeavour to substitute community-based sanctions for institutional methods. Thus, the proportion of the institutional clientele to the non-institutional was already about one to three in the 1950s, a proportion which gradually changed to one to five in 1974, when the number of parolees and probationers exceeded 23,000 of which the large majority were sentenced to probation. Since, however, the probation period two years ago was reduced from three years to two the non-institutional clientele has dropped to 17,000.

Resources of Corrections

At the end of 1975 the Swedish correctional system had 4,900 places, 2,960 of which were in closed institutions and 1,940 in open ones. The number of prisons was as large as 72, which means that most of them accommodated not more than 40 to 60 inmates. In addition there were 21 gaols,[4] all of them closed with a total capacity of 1,100 places. Because of the decreasing prison population there is now a considerable over capacity and several facilities or wings are expected to be closed in the near future.

Available for the 6,000 places (including the gaols) and for the current amount of 3,200 inmates is a staff numbering 4,200 persons, including 2,750 officers and 600 works-foremen. 5

If the ratio of institutional staff to prisoners seems to be very high, the situation is the opposite as far as the probation/parole system is concerned; this has at its disposal not more than 500 social workers or other experts for the supervision and treatment of the 17,000 offenders in community-based programs. These figures, however, are grossly misleading as a measure of the system's capacity, since the policy is to rely heavily on volunteers as supervisors. This group of volunteers, working for a nominal fee of 50Skr (US.$12) per month and case, consists of about 12,000 people.

CORRECTIONS AND SOCIETY

The most characteristic and important feature of the Swedish correctional system is not the high material standard of its institutions, which is only a mirror of the general standard of living; nor is it the liberal furlough system, which probably is the most developed in the world; nor is it the extensive use of non-institutional sanctions. Instead, the most interesting aspects are the close interplay between corrections and other social services and the high level of public tolerance towards law-breakers.

Corrections and other Social Services

In the 1890s an English prison administrator, Arthur Griffith, wrote a book called *The Secrets of the Prison House*. This was a perfectly adequate title at that time and is still so today to a very large extent. The prison gates were closed not only for those who were inside, but even for society outside. The prison was a world in itself, symbolising deterrence and punishment. This attitude is still prevalent in many countries, and it is typical for correctional systems to operate in a manner thoroughly insulated from other human services.

In the Scandinavian countries there has long been a growing recognition that a large number of persons who are caught up in the criminal justice system, together with their families, present probelms which require the assistance of other social welfare institutions, and, as a matter of fact, of the total society and the public. This awareness of the important interrelationship between the system of the correctional service and the larger system of social welfare, health service and educational programs, has recently been reflected in a new Act in Sweden and in a report by a drafting committee in Finland.

The new Swedish prison law, which entered into force on 1 July 1974, emphasises that the total resources of society should be open to prisoners to the same extent that and on the same conditions as they are to ordinary free citizens. Consequently, there is an intentional avoidance of building up within the correctional system special resources and bodies for programs such as vocational training, education and health and mental services, because such services can and will be provided in a much larger scale and in a more effective manner through the ordinary agencies open to everybody.

In order to facilitate the interplay between corrections and other social bodies and to render easier the transfer from institutions to society, the inmate shall, unless security aspects require otherwise, serve his sentence in a so-called local institution that enables him to remain in the vicinity of his home community, close to the environment that awaits him when he leaves prison. The acitivity at local institutions is very outward-oriented, and the prisoners are frequently granted furloughs or other temporary absences from the institution to participate in the same training, teaching, medical care, labour market, club activities, cultural activities, etc., as other citizens. In other

words, the walls of the society should not be higher than those of the prison and through well-developed coordination between institutional and non-institutional treatment and between the correctional authorities and society, the inmate's return to society should be a natural occurrence rather than a social shock.

The philosophy that the correctional system is not something removed from society but an integral part of it, has considerably influenced the work of the parole and probation services in Denmark, Norway and Sweden. These services have rather limited financial resources and restricted treatment facilities at their own disposal, and the main task of the probation officer, apart from the supervisory function,can be described as to act as an advocate of the client so as to ensure the offender the same accessibility to services as other citizens in need of help. In Finland, on the other hand, a more radical way has recently been suggested, separating completely the community-based programs from the correctional system. The help and support to probationers and parolees will, according to this proposal, be entirely the responsibility of the general social welfare system while the control - nobody denies that the elimination of incarceration does not eliminate control - will be taken care of by the police (very appropriately called 'penal supervision').

The relationship between corrections and society includes also a close cooperation with the trade unions and the National Association of Employers and it can, in principle, be said that an ex-convict is not barred from any profession just because he has served - or perhaps is still serving - a sentence. One example of this policy might be worth mentioning. A couple of years ago a prisoner serving a life term applied for a vacant position as a teller in the same institution where he was serving his sentence! Since he was by far the best qualified candidate he was appointed to act as a day-time official, but served as a night-time prisoner. 6

Corrections and the Public

The correctional policy of a country is in the end not decided by the politicians, nor by the correctional administrators or others with a professional interest in social welfare work, nor by pressure-groups such as ex-convicts' organisations - the activities of which often tend to have the opposite effect - nor by other associations working for a more progressive correctional system. Instead it is 'the man in the street' who has that power, and against his will very little can be done.

How is, then, the climate in this respect in Scandinavia? Even if, true enough, public opinion is more conservative than an observer might believe when following the present public debate in the mass media, the general attitude towards law-breakers is probably much more understanding in Sweden and the other Scandinavian countries than in any other part of the world. A good indicator of the high level of tolerance is the reaction, or rather lack of reaction, to the very large number of escapes from Swedish correctional facilities, a number which amounts

yearly to about 2,200-2,500, including those who do not return after leave of absence. This means that on the average more than 200 persons are illegally away from prisons every given day! This is probably the world championship - if desirable or not, that can of course be discussed! In some countries it is usual to dismiss the person in charge of the correctional system when a prisoner has succeeded in escaping. If Sweden had followed that policy probably all non-criminal adults would have had a fair chance to become prison commissioner (there have only been three in the last 40 years)!

The fact that in the Scandinavian countries public support for the humane treatment of offenders has replaced the aggressive tendencies towards criminals and that the care and treatment of law-breakers, which once was primarily a philanthropic interest, is the concern of the great majority of the public can be probably explained by various reasons. The Scandinavian countries are small and have a homogeneous population. They have hitherto, been spared the most heinous forms of organised criminality. Probably also the social welfare philosophy, fostering a sense of collective responsibility, is a factor that merits consideration. Within the criminal justice system the traditional public participation, particularly in two forms, has most likely influenced public opinion.

In court procedure there has long been an involvement of the public in a form which is reminiscent of the jury system in the Anglo-Saxon countries but which differs on at least one very important point. The Scandinavian jury members, appointed for a certain period, take part not only in deciding the question of guilt or innocence, but even in determining the sentence. This means that the jury members, or rather lay-judges, as representatives of the public,are well acquainted with the different sanctions and have a direct responsibility for choosing the one which seems to be the most appropriate in each particular case. It is one thing to say 'let them have it' and another to do so.

Another important feature of Scandinavian criminal justice systems is the great number of volunteers working as supervisors for probationers and parolees. This group of volunteers represents a cross-section of society and has had an influence on the public attitude towards offenders which probably cannot be overestimated. The lay supervisors are sometimes criticised by professional probation officers for lack of expert knowledge, for not being available around the clock, for not being able to cope with the more difficult and troublesome cases. This is , indeed, right and experts will always be needed. The experts, however, do not represent the most important factor, so do the volunteers, in the long run, as representatives of the public.

It is certainly true that too much confidence on the part of the public can sometimes be as dangerous as a balance on the razor's edge. The wind may veer round.

TREATMENT OR PUNISHMENT

Prisons have few friends; dissatisfaction with them is widespread. They have too frequently been the scene of brutality, violence and human conflicts; they are very expensive in terms of money, buildings, equipment and trained manpower. Insofar as the prison is intended to cure criminals of crime, its record measured in terms of recidivism has not been too encouraging. It has been said that the institution serves not only to dehumanise the offender but also to reinforce negative values rather than to modify them in a positive direction. On the other hand, it is quite clear that no society is prepared to rid itself completely of the use of prison since no suitable alternative has so far been devised for dangerous and difficult offenders and for persistent recidivists.

At an international conference at Helsinki two years ago, a Scandinavian penologist said that 'the 20th century has seen the rise and fall of the therapeutic prison philosophy'. This statement reflected the opinion of a number of criminologists who take the view that efforts to manage prisons for the purpose of changing people should be abandoned, that the treatment model has been used too often as a pretext for imprisonment and that punishment never should be camouflaged by being called treatment, rehabilitation or therapy. In short, the strategy of this group is to restore the role of the prison as a place of punishment, although only for hardened criminals.

The reborn punishment philosophy, hailed in many Western European countries and particularly in the United States of America, where it is now euphemistically called 'the judiciary model', forms the base for a peculiar marriage between ultra-reactionists and disappointed liberals. Still more peculiar is the fact that this marriage took place in Scandinavia, where the medical model always has been used in a very modified form, where the indeterminate sentences never have played anything but an unimportant role and where the discretion of the parole boards has been carefully restricted. Instead, the treatment ideology has been practiced with the motto 'you come to prison as a punishment but not to be punished' and the rehabilitation goal has been used in order to develop a more 'open' system and to bring about more humane methods in dealing with offenders - even if not more effective ones.

Attacks on the treament ideology have already produced important changes of emphasis in correctional practices in all the Scandinavian countries. In Denmark the indeterminate sanction of youth imprisonment has been abolished. [7] The courts now pass sentences on young offenders which, if they do involve imprisonment at all, are of determinate length.

In Sweden a committee has been set up to recommend alternatives to youth imprisonment, and Norway is likely to take the same step in the future. [8]

Hitherto in Denmark serious recidivists have been regarded as socially dangerous and have been dealt with by an indeterminate internment sanction. As a result of new proposals, the grounds for using internment are sharply limited and only those offences which clearly represent a serious danger to the community will result in internment.

In Finland a governmental committee recommended in 1973 that as far as suspended sentence was concerned, a distinction be made between control measures, such as reporting, which could be coercive, and treatment and social help measures, which had to be offered for voluntary acceptance. As mentioned above, the committee also proposed a new sanction called 'penal supervision', which essentially means that the offender must report to the police two or three times a week.

The new Swedish prison law was based on a report by a parliamentary committee. One of the basic conclusions of this committee was that there was so little certainty about the need for and effects of treatment and that it was not possible to attempt to base correctional practice on the notion of providing treatment.

On the other hand, the Swedish committee urged the improvement of the quality of practical help given to offenders in terms of social welfare service, education, health programs, work and adequate housing, well recognising a recent experiment with serious offenders in a Danish prison which offered intensive social work assistance to an experimental group but not to a control group, the result of which was a significant reduction in recidivism in the former group. But is this not treatment - even if not in the medical sense? Of course it is, since the best possible treatment cannot mean anything other than helping the criminal back to society! Is the difference between the rehabilitation model as practiced in Scandinavia and the punishment philosophy nothing much more than an academic question? Unfortunately, it is.

It seems that the advocates of the punishment approach, although stressing the importance of the humane treatment of prisoners, have overlooked certain long-term risks. What kind of people will the correctional service attract? How will the relations be between prisoners and staff, when the former are supposed to be punished and the work of the latter reduced almost entirely to supervision? Can the humanising process continue? And, finally, will the public still feel inclined to accept an 'open' correctional policy, the large number of escapes and the extensive experimentation, hitherto defended in the name of an honest attempt to rehabilitate? These are questions to ask and to worry about.

PRESSURE GROUPS, PRISON DEMOCRACY AND PRISON DISTURBANCES

Krum, Krim and Krom

The first Scandinavian pressure group, composed of a number of psychologists, social workers and other persons, including some ex-convicts, interested in penal reform was organised in Sweden in the fall of 1966,

under the name of *Riksforbundet for Kriminalvordens Humanisering* ('The Association for a Humane Criminal Policy'), abbreviated KRUM. At the beginning, the work of KRUM was characterised by an emphasis on concrete social aid to inmates and on the importance of adequate 'treatment' facilities in the institutions. Soon, however, the organisation turned to more exciting and far-reaching goals, namely 'to analyse and fight the class society' and 'to abolish imprisonment and other types of forced incarceration within the correctional system, child and youth welfare, mental health care, alcohol care, handicap care, etc.', thus becoming a strongly critical, politically-oriented pressure group.[9] The attitude of the organisation was that any cooperation with the authorities in order to improve the conditions in the institutions would tend only to preserve the established system and should, therefore, be abolished.

Parallel associations were soon established in the other countries. The development of the Norwegian KROM followed the same pattern as its Swedish counterpart, while KRIM in Denmark evolved a somewhat more moderate policy. The corresponding organisation in Finland finally became different in character, working with study groups in the prison cultural programs for the inmates and other humanitarian activities. There is another interesting difference, too, namely, that the Finnish KRIM is the only one that can justly claim to have succeeded in reaching a larger group of prisoners.

Although these pressure groups have done very little in terms of concrete assistance to convicts and ex-convicts and have lost most of the support they might have had once from those they pretended to help, they certainly deserve the credit for having started a debate which, in turn, has stimulated interest in penal reform. And they do represent something that is indispensable in a free society: the right to criticise. [10]

Prison Strikes and Negotiations

As a result of an intensive and often inflammatory debate over so-called 'prison democracy' the inmates in several institutions, encouraged by KRUM, began at the end of the 1960s to form 'inmate councils' with a view to discussing with the prison administrations questions of common interest to the prisoners. According to Swedish law, there is nothing to prevent the inmates of correctional facilities from establishing their own organisations, since the general freedom of association applies also to them. Likewise, there is nothing to prevent them from electing bodies within the institutions to further their demands, although regulations concerned with order and security within the prison could in a particular case limit the activities of the inmate councils.

In some cases these councils proved to be a useful means of communication between the warden, the staff and the inmates, but too often the militant groups took over openly or ran the play in the background. 'Power to the clients' became the slogan, and what could not be achieved in a democratic way could perhaps be attained by other weapons. In other words, most of the inmate councils chose to follow the pattern of KRUM: conflict instead of cooperation.

During the following period, a series of work strikes occurred in several institutions, most of them apparently without any reasonable cause and some of them accompanied by demands far beyond the power of the local prison authorities to consider seriously. Since the parole boards regarded participation in work strikes - work in institutions is obligatory for the prisoners - as an indisciplinary behaviour and consequently postponed parole, usually for a month, the inmate councils and KRUM turned instead to another weapon,the hunger strike.

In the fall of 1970, a hunger strike was staged at one closed institution, the reason being certain differences of opinion between the administration and the inmate council concerning visiting conditions, utilisation of exercise facilities, etc. The conflict, planned in advance and coordinated from outside, was extensively reported by the mass media and quickly spread over the country. Within a few days about 2,000 inmates took part, many of them not knowing what it was all about. In this situation, the Central Correctional Administration yielded and took the amazing step of arranging negotiations (called 'talks' by the authorities) with an elected delegation of eight prisoners from different institutions, advised by two representatives of KRUM. In the talks the different staff trade unions also were represented. Following a further hunger strike by about 1,000 inmates, an agreement was reached early in 1971 covering better working conditions for the inmate councils more generous furlough regulations, limitations on the censorship of letters, etc.

A new'summit meeting' took place in late 1971, but this time the 'negotiations' broke down after only a few hours of discussion because of the completely unrealistic demands presented by the inmates and their advisors. Besides, by now everybody had become suspicious of these kinds of exercises; the inmates because they asserted they had been cheated out of the results of previous meetings and the authorities because of growing opposition among the staff. No further attempts have been made in this direction, the whole idea was buried in silence and the mourners were few.

Is prison democracy - or call it co-influence of the inmate on his own situation - unrealistic? Not at all. But several lessons can be learned from the Swedish experiments. It has been said, rightly, that the inmates went over the heads of the personnel directly to the administration, thus weakening the position of the prison officers and diminishing their authority. The inmate councils, on the whole, have widened the gap between the two traditional groups, the prisoners and the staff, and have created a situation of conflict instead of an atmosphere of understanding. Furthermore, the inmate councils have tended to focus too much on the inmates and too little on the inmate. It also can be said that the members of the councils too often have not been representative of the large majority of the prisoners but only of a fraction of the most militant groups.

'Prison democracy' must begin with the staff and must involve the personnel of all categories in every phase. It cannot be created by the mere establishment of 'inmate councils' or similar bodies, but

must be founded on mutual confidence and close contacts between the prisoners and the staff, in particular the prison officers, based upon the small-group principle. Moreover, it is indispensable that the personnel of lower levels be given increased responsibility, more authority and, of course, better training.

New Forms of Disturbance

On the whole, the work and hunger strikes have ceased, and during the last few years there have been only a few, locally limited incidences of this kind, at the same time as the interest in and the influence of the inmate councils seem to have considerably decreased. But, instead, a new and much more alarming phenomenon has occurred: increased violence, including the taking of hostages in connection with attempted escapes, the use of weapons and high explosives and organised attempts from the outside to release certain prisoners.

The reasons behind this development are obvious. The closed institutions, especially those of a maximum-security character, have more and more come to house a larger proportion of a residual group of offenders, marked by the seriousness of their crimes or their recognised danger to society, to the safety of the institutions, to other inmates and to staff members. Many of these hard-core offenders are extreme escape risks, potentially disruptive and unpredictable. At the same time, the installation of new and more effective custodial measures of a highly sophisticated nature has made an institution like Kumla[11] extremely secure, leaving the escape-prone only one way out: by violence.

The increased security measures are inevitable, but so far not enough attention has been paid to other dimensions of the institutional program which are needed for hard core offenders and which include the question of a proper balance between discipline and control on the one hand and human rights and rehabilitative measures on the other.

EXPERIMENTS AND DEVELOPMENT

One of the most serious consequences arising from deprivation of liberty is the fact that contacts between the inmate and his family, as well as other social ties, are jeopardised. This is the more serious since it is around the family that rehabilitation work should be built. Recognising this, the Scandinavian countries have developed different means to combat the process of alienation and to put into practice the philosophy of intergrating corrections with society as a whole. Some of these means and other experiments will be described briefly in this section.

Furloughs[12]

Forty years ago the furlough system was experimentally introduced in Sweden, although on a very limited scale and under special circumstances. Since the first experiences proved to be favourable, the possibilities of granting day leaves were gradually expanded and soon became a normal part of the treatment program. furloughs are now considered indispensable for practically every convict, except those serving very short terms and some few dangerous and escape-prone criminals; more than anything else, they have contributed to make the artificial prison life less artificial, lessened the sexual tensions and reduced the problem of homosexuality practically to nil.

The following figures from Sweden illustrate the importance attached to the furlough system and its extended use.

Year	Number of furloughs	Failure to return	
		Actual number	In percentage of col. (2)
1964	7,715	619	8
1967	10,673	950	9
1971	17,996	1,680	9
1973	21,784	1,305	6
1974	26,377	1,586	6

It ought to be said that most of the escapees are arrested or give themselves up without having committed new offences. More serious crimes are relatively few, but they occur from time to time. A recent and remarkable example is the world-famous bank robbery at Norrmalmstorg in Stockholm in 1973, when a prisoner, instead of returning as prescribed to the institution after 48 hours leave, robbed the bank, held four persons as hostages for five days and wounded two police officers[13]. But the public is hardy, and no discussions arose concern ing the rights or wrongs of the furlough system, but instead, shortly afterwards, the Parliament passed a Bill further extending the possibilities for granting leave of absence.

The fulough idea has been much less developed in the other Scandinavin countries. However, the number of leaves in Denmark is constantly growing according to a model, which is similar to the Swedish one and in certain cases even more liberal.[14] Also Finland has made great progress in spite of some setbacks in the initial stage when two prisoners on home leave committed serious crimes of violence.

'Prison Vacations'

The traditional forms of visiting which with few exceptions, mean opportunities for conjugal visits, will not be dealt with here. It is enough to mention that some institutions have hotel accommodations available for the use of the inmates and their families during weekends, for example. A short account of some more radical methods of contacts may be of interest, however.

In 1967 a rather interesting experiment took place in a small open institution in the northern part of Sweden. It was an experiment with 'prison vacation', giving possibilities for all not escape-prone long-termers serving at least two years to spend three weeks together with their families without any obligation except for refraining from escape and keeping some few fundamental rules of order. The experiment was a great success and has now gone beyond the experimental stage to become a normal part of the treatment of long-termers.[15] Among the several hundred inmates who have spent time at the 'vacation camp' only a handful has taken this opportunity to escape - one of them was, by the way, later involved in the Norrmalmstorg robbery.

The experiences with the prison vacation have given an impetus to still more radical steps and resulted in a complete 'prison village'. This village, called Gruvberget, was once an ordinary countryside village but since the end of the 1960s it had been more or less deserted. It was then taken over by the Correctional Administration, including a school, a shop, a church (with the vicar!)and some remaining elderly inhabitants.

The village, which functions all year round, is open to inmates and their families and is used as a sort of boarding-school with programs, for example, in social, matrimonial and educational questions or in any other subject that a group decides to study. This village is also open for parolees and probationers who need a short-term change of environment due to lack of work or lodging, risk of relapse into drug or alcoholic misuse of other forms of a social or ciminal behaviour. Some parolees may come with their supervisors for a weekend of skiing or fishing. Not least for these latter categories an institutuion or a refuge like Gruvberget has and will have a mission to fill also in a future, perhaps completely different correctional system.

Labour Market Wages

Since 1972 an experiment has been under way at Tillberga, which is an open institution with a capacity of 120 places. The inmates are making prefabricated houses at a market tempo and receiving wages in accordance with the open labour market (after adjustment for income tax deductions since the inmates do not pay taxes for technical reasons). Each prisoner is required to account openly for his financial circumstances with a staff assistant. Together they make up a budget, to which the prisoner is expected to stick. He is permitted to use 25 per cent of his earning, on the average amounting to about 2,400 Swedish crowns (= U.S. $550) a month[16], as he wishes, but the other 75 per cent must be budgeted to cover expenses such as fines, debts and family maintenance costs, as well as institutional meals and expenses related to furloughs.

What is hoped will be the main result of the Tillberga experiment is a reasonably good financial and social situation for the prisoner when he is released, which, in turn, can have a favourable influence on his readjustment to society and, one hopes, reduce the risk of relapse into crime. The first results of a follow-up study, however, do not indicate any significant decrease in the rate of recidivism, although the average period between release and resumed criminality seems to be longer for the Tillberga group than in a control group.

On the other hand, the experiment has been successful in terms of the interest shown both by staff and prisoners, the better financial situation of the inmate at the time of release and higher productivity. These circumstances have led recently to the decision to introduce labour-market wages also at a second institution, this time a semi-open one. But it seems very doubtful if the experiment can be extended to many more institutions, since the high work tempo precludes other activities, such as education, vocational training and psychotherapeutic treatment, badly needed by a growing proportion of the prison population.

The Sundsvall Project

Four years ago an experiment involving intensified treatment of probationers and parolees was started in the Sundsvall probation district in the northern part of Sweden. The assumption was that staff reinforcement and better treatment facilities of various kinds would have positive effects on the clients and contribute to better treatment results measured in terms of recidivism. The personnel resources of the district were trebled, bringing down the caseload to about 30; a hotel was built, providing temporary accommodation for 20 clients; likewise, a half-way house [17], for 20 persons was constructed in order to facilitate close coordination between institutional and non-institutional treatment. Also a clinic specialising in social medicine was planned. Furthermore, the experiment involved intensified cooperation between corrections and other social welfare agencies as well as methods to ensure that the 'right' client was given the 'right' supervisor.

The results of a preliminary evaluation of the Sundsvall project, published last summer, seem to confirm the experience derived from similar experiments in the United States of America and the United Kingdom, namely that reinforced treatment resources have only very limited effects on the rate of recidivism. However, it is still far too early to give a final judgement, and it may well turn out that in the long run the strategy adopted in Sundsvall will justify the increased costs and efforts. At least this seems to have been the position taken by Parliament and the Government, which already have decided on a general strengthening of the non-institutional sector of corrections throughout the whole country in a way very similar to what has been tried in Sundsvall.

CAN CORRECTIONS CORRECT?

The effectiveness of the correctional system is generally measured in terms of the numbers of failures represented by those who, for whatever reason, relapse into criminality. Whether this is the right and only yardstick is a special question which will not be discussed here, but yet applied it does not indicate that the Scandinavian approach has proved to be more effective than other ways and methods tried in other parts of the world. In fact, the recidivism statistics are far from encouraging. According to the most recent Swedish reports, the rate of recidivism varies from 13 per cent to 81 per cent among those sentenced to deprivation of liberty, depending on length of imprisonment, age group and previous criminal record. The best figures relate to first offenders sentenced to one to four months and the highest rate of recidivism was registered among young adults sentenced to youth imprisonment. The corresponding figures for those sentenced to probation is, of course, on the whole much more satisfactory, not exceeding 47 per cent for any group.[18]

Needless to say, these figures do not prove the relative effectiveness of the various types of sanctions because of the fact that different measures are applied to different groups, taking into consideration, among other things, previous criminal record, social adaptation and prognosis - a fact too often overlooked in the vulgar debate. The courts place the 'best risks' on probation and, consequently, a simple comparison of the difference in recidivism rates between imprisonment and probation will not answer the question about effectiveness of the different sanctions.

Some research studies have tried to eliminate the existing differences between the prison group and the probationers, but always with questionable methods or results. One such attempt was made 10 years ago by a Swedish researcher, Bengt Borjesson. His study, *The Effectiveness of Penal Sanctions,* gave clear evidence of the better results of probation compared with imprisonment and added more fuel to the 'empty-the-prisons' policy, until, a few years later, other researchers proved that if other, and perhaps more reliable, methods of measurement had been used, the result would have been more or less the opposite or, at best, that non-institutional treatment did not yield poorer results than a prison sentence.

Nevertheless, there are good reasons for continuing the trend towards an increasing reliance on community-based programs and to extend the non-institutional treatment chain by introducing new forms of sanctions and measures. Probation and similar methods are less costly than imprisonment, even if not to the extent often claimed,[19] and, more important, they do represent a more humane way in the treatment of offenders, avoiding the harmful effects of imprisonment, which unquestionably exist. But it seems doubtful if there is much room for any considerable transfer of resources from the prison sector to the non-institutional sector, favoured by many, if not the prison will be a place solely for confinement. This would, indeed, not be consistent with a humane approach, since imprisonment will continue to play an important function for the foreseeable future as one instrument of many in the treatment of offenders.

Although there seem to be few reasons for boasting of the effectiveness, measured in terms of recidivism, of the criminal justice system in Scandinavia, there is, perhaps after all a lesson to be learned from this, apparently, negative result; that is that the guiding principle has not only been how much the correctional policy was worth with regard to effectiveness and costs, but whether that policy was worthy of the society.

FOOTNOTES

1. The development in Denmark has been practically identical. Thus, in 1960, 126,000 offences were reported and, in 1973, 311,000. Also Norway reported a 100 per cent increase in crimes during the same period.

2. The last law amendment and the new furlough regulations entered into force 1 July 1972.

3. Figures marked by asterisks are as of 1 December 1972. All figures in the table are provided by United Nations national correspondents.

4. The gaols accommodate exclusively persons awaiting trial or sentence. The Stockholm gaol has more than 300 places, but the majority have a capacity of not more than 20-30.

5. The great number of officers must be judged against the background of 40 hour working week, four weeks vacation yearly and restrictive regulations concerning overtime, nightwork and weekend work.

6. Now released, he still keeps his job.

7. For a short description of the various sanctions, see Note 1.

8. It is most likely that the young offenders spend less time in institutions while serving the indeterminate sanction of youth imprisonment than would have been the case if they had drawn a determinate sentence fitting the crime instead of the criminal.

9. Some of the more militant prisoners, who did not consider that they had time to wait for the new, classless society, founded a separate organisation, called the 'United Prisoners Central Organisation'. This illustrious organisation applied for membership in the Swedish Central Labour Organisation composed of the various trade unions. The application was politely but firmly turned down.

10. For a detailed description and analysis of the Scandinavian pressure groups and their activities, see *Scandinavian Studies in Criminology* (Oslo, 1970), volume 4.

11. After an incredible escape in 1972 when 15 of the most notorious prisoners escaped from the special security wing, the Kumla institution was equipped with a new system of radar and television devices and is, from a technological point of view, probably second to none in the world in terms of security. The staff, however, has not and will not - have any access to firearms.

12. Concerning the legal prerequisites for furlough in Sweden, see Note 2. In addition, the Correctional Administration has issued detailed regulations.

13. He was sentenced to internment for at least 10 years. The author of this paper was responsible for the robbery insofar as he, hesitantly, gave the person in question his leave!

14. In Denmark about 7,500 home leaves were granted in 1973.

15. A similar program exists in Yugoslavia.

16. Normally average prison wage is approximately 350-400 Skr. (= U.S.$80-90 or, per hour, 0.50-0.55) even though monthly wages of 600-700 Skr. (=U.S. $150-165) are not unusual.

17. The following terminology is used: a *hotel* is intended for probationers and parolees until permanent living accommodations have been found, while a *half-way house* accommodates prisoners, who work outside during the last part of their prison term.

18. For details, see Note 3.

19. In Sweden, the daily average costs for a prisoner are expected to amount to 320 Skr. (= U. S. $75) during the fiscal year 1975/76. Too often these costs are compared with the expenses in the budget of the correctional system for non-institutional care, which amount to only 15 Skr. (= U.S. $3.50). This comparison is, however, nonsense, since the 15 Skr. reflect only the top of the iceberg, the larger part of which consists of expenses covered from the budget of other authorities or agencies, such as the social welfare system, the health system, the educational and vocational bodies,etc. No reliable information exists on the true expenses for probationers.

NOTE 1

SURVEY OF THE SWEDISH SYSTEM OF PENAL SANCTIONS

This survey is intended to give a short description of the most important sanctions given in the Swedish Penal Code, which came into effect on 1 January 1965. Since the Nordic countries for a long period have endeavoured to coordinate their national legislation, this summary may also, to a certain extent, give a fairly accurate picture of the penal systems in the other Scandinavian countries, although differences do exist.

1. Fines, the most common type of fines are the so-called day fines, which are imposed in numbers varying with the gravity of the offence from one to a maximum of 120 (or a maximum of 180 in case of punishment for more than one offence). The monetary value of the day fine varies according to the economic circumstances of the convicted person from two to 500 Swedish crowns (about US $0.50 to US $110).

2. Conditional sentence, is intended to be imposed on the casual offender whose prognosis is good enough for any other measures - apart from the warning implied by the sentence - to be unnecessary for his correction. The sanction is formulated as a penal sanction in the technical sense, but its implication is that no real sanction will be imposed provided the convicted person does not commit any other offence during a trial period of two years. The convicted person is not subject to supervision or any kind of prescriptions. In some cases, mainly because of general preventive aspects, a conditional sentence may be combined with day fines.

3. Probation, which can be ordered for offences punishable by imprisonment, resembles a conditional sentence in not entailing loss of liberty, but differs from it in involving a substantial degree of intervention. Probation is intended to be a form of treatment,and equivalent as such to institutional treatment. Probation involves a trial period of three years with supervision from the beginning of the trial period. Supervision is normally discontinued after the first two years of the trial period, or earlier if it is no longer considered necessary. This sanction may be combined with instructions regarding the convicted person's way of life during the trial period.

If the offender has attained the age of 18, the court may order that probation shall include institutional treatment (the model has been the British Detention Centre). According to the Probation Board's decision, such institutional treatment shall last at least one and not more than two months. It normally takes place at the beginning of the probation period with the intention to interrupt the criminal activity of the offender and to remove him, at least temporarily, from a bad milieu and enable him to be observed and studied in various respects as a preparation for the following non-institutional treatment period.

If the probationer neglects his obligations during the trial period, the Probation Board may order the probationer to follow certain prescriptions regarding place of abode or employment, give him a warning or request the prosecutor to institute a court action to substitute a prison sentence for the sentence of probation.

4. Imprisonment, is imposed for a fixed term, at least one month and at most 10 years (this limit may be exceeded with two years in the case of consecutive punishments for more than one offence), or for life.

A person serving imprisonment may be released on parole after serving two thirds of the term or, in some cases, half the term. Parole cannot be granted, however, unless the prisoner has served at least four months of the sentence. When deciding the question of release on parole, special attention shall be given to the effect of continued deprivation of liberty on the prisoner, and to his chances of being able to adjust to society in the light of his situation after release, in particular with regard to employment and housing. Circumstances of relevance to the possibility of parole after serving half of the sentence are the prisoners age, the length of the sentence (as long-term is in practice regarded, in case of a young offender, a sentence of 1½ years and, for an adult offender a 2½ years sentence) and the fact that the prisoner has not previously undergone institutional treatment; as well as other factors mentioned above.

Persons sentenced to life imprisonment cannot be paroled until the government, by grant of pardon, has altered their punishment to imprisonment for a fixed term. This term is generally set between 12 and 14 years, which means that a life termer can be and usually is released on parole after about 7 or 8 years, that is after having served little more than half of the thus decided fixed period.

Decisions regarding release on parole are made by the Local Probation Board or in certain cases by a central board, called the National Parole Board. A grant of parole is associated with a specific trial period varying from one to five years.

During the trial period, the parolee is practically always subject to supervision. If the parolee neglects his obligation, the Probation Board may direct him to follow certain prescriptions regarding place of aboding or employment, give him a warning, or declare his conditionally granted liberty forfeit. The conditionally granted liberty may also be declared forfeit by a court if the parolee is convicted of new offences.

5. Youth prison, roughly corresponding to the British Borstals, is primarily intended for criminals in the age-group 18 to 20 years when reformatory treatment and vocational training is considered to be needed. Youth prison involves treatment both in and outside institutions. Institutional treatment can continue for up to three years, and the effectuation of the entire sentence for a maximum of five years. The treatment shall begin in the institution and continue there for at least one year unless there are special circumstances motivating a shorter period. The convicted person is subject to supervision as a part of

the non-institutional treatment for the whole duration of the community treatment period.

6. *Internment*, is a sanction involving deprivation of liberty for a indeterminate period and is designed for recidivists who cannot be deterred from continued serious criminality by less radical measures.

The court determines a minimum institutional period varying from at least one to not more than 12 years. On the expiration of this minimum period, the treatment combined with supervision continues in the community for a period not exceeding five years.

The decision to transfer the internee from institutional to non-institutional treatment is made by a central board, called the Internment Board. It is to be observed that institutional treatment may not without the consent of the court continue more than three years (five years if the minimum period for the institutional treatment is three years or more) beyond the minimum period fixed in the court sentence.

7. *Commitment for special treatment*, means that the court under special circumstances can sentence a person to treatment outside the correctional system, for example, by the child welfare authorities, to treatment under the Temperance Act or psychiatric care.

NOTE 2

CORRECTIONAL TREATMENT IN INSTITUTIONS

A new Act on correctional treatment in institutions came into effect in Sweden on 1 July 1974. In order to assist persons not familiar with the Swedish system to understand certain expressions used in the working paper and some features which particularly characterise the Swedish system, some articles in the new Act are quoted below.

Article 6

The following general guidelines shall apply with regard to the assignment of inmates between local and national institutions:

Persons serving sentences of 12 months or less, or undergoing treatment under Chapter 28, Article 3 of the Penal Code[1] should be placed by preference in local institutions.

Persons serving sentences of over 12 months or sentenced to youth prison or internment should be placed by preference in national institutions. Inmates may be transferred to local institutions when this is necessary in order to prepare purposefully for their release or transfer to extra-institutional care.

Article 7

In assigning inmates between open and closed institutions, the following rules are to be observed:

The inmate should be assigned to an open institution, unless some other placement is called for taking into account the risk that he will abscond or otherwise on security grounds, or having consideration to the need to provide him with facilities for such studies, vocational training or special treatment as cannot suitably be provided in an open institution.

Persons sentenced to a minimum period of two years' imprisonment, or to a minimum two years' internment, are to be assigned to closed institutions if there is reason to fear they will be particularly prone to abscond and resume criminal activities of a particularly serious nature or extent because they have no firm roots in this country, or for any other reason The above does not however apply if some other placement is called for in order to prepare purposefully for the imminent release or transfer of the inmate to extra-institutional care or if very special grounds otherwise exist for placing him in an open institution.

(1) Institutional treatment in connection with probation; see Note 1, point 3.

Article 11

In order to facilitate his rehabilitation in society, an inmate of a local institution may receive permission to do work, study, participate in vocational training or other specially-arranged activities outside the institution during working hours. Special efforts are to be made at institutions of this nature to promote such activities.

Permission under paragraph 1 may be granted also to inmates of national institutions where special grounds exist.

Article 20

An inmate may be kept separate from other inmates if it is necessary having regard to the security of the realm, the existence of a danger to the safety of life or limb of the inmate himself or of others, or of serious damage to the property of the institution, or if it is necessary in order to prevent the inmate exerting a detrimental influence over other inmates.

An inmate coming under Article 7, paragraph 3, who has been placed in a closed institution for reasons given in that paragraph, may be kept separate from other inmates if there is reason to fear that he is planning to escape or others are planning to attempt to set him free, and separation is necessary in order to prevent such a plan being put into execution.

Decisions under paragraphs 1 and 2 shall be reviewed as often as there are grounds, or at least once a month.

Article 23

An inmate may be kept separate from other inmates if this is necessary in order to control violent behaviour on his part. Such action may not be of longer duration than is dictated by the requirements of security. If other means prove inadequate to control violent behaviour on the part of an inmate, he may be put under restraint, if this is unavoidably necessary for security reasons.

The opinion of a doctor is to be obtained as soon as possible concerning action under paragraphs 1 and 2. A record is to be kept of what occurs.

Article 32

An inmate may be granted permission to leave an institution for a specified brief period in order to facilitate his rehabilitation in society (short furlough) if there is no considerable risk of abuse. Short furloughs may also be granted where there are other, special grounds. An inmate coming under Article 7, paragraph 3, who has been

placed in a closed institution for reasons given in that paragraph, may be granted short furlough only where there are very special grounds. Whatever conditions are considered necessary may be made in connection with short furloughs with regard to place of sojourn, liability to report and the like. If close supervision is necessary, a ruling may be made that the inmate is to be kept under suveillance throughout the furlough.

Article 33

In preparing for the release or transfer to extra-institutional care of an inmate serving a prison sentence, a term of youth prison or a term of internment, the inmate may be given leave for a specified longer period (release furlough).

Any person sentenced to a term of imprisonment of such duration that there is no question of conditional release, may be granted release furlough only where there are very special grounds. Other persons serving prison sentences and persons undergoing internment may not be granted release furlough before the earliest date on which conditional release or transfer to extra-institutional care is possible. Whatever conditions appear desirable may be made in the case of release furlough with regard to place of sojourn, liability to report, etc.

Article 34

If it is possible to focus special measures on an inmate by granting him a period of sojourn outside an institution which it can be presumed will facilitate his rehabilitation in society, permission may be granted for him to spend the appropriate period of time outside the institution for this purpose, where there are special grounds. Whatever conditions appear necessary shall be made concerning such a sojourn.

Article 46

If an inmate offends against standing orders or against instructions issued to him, disciplinary punishment may be meted out to him in accordance with the provisions of Article 47, provided there is no reason to suppose that he will submit to instructions or admonition or if his action is of such a nature that punishment is called for out of consideration for the order and security of the institution.

Article 47

Disciplinary action may take the form of:

(a) A warning to the inmate.
(b) Solitary confinement for a period not exceeding seven days; or
(c) Where special grounds necessitate such action, taking into account the nature of the offence or on account of repeated intransigence, the issue of an order decreeing that a certain specified period, not exceeding 10 days, shall not count towards the period of sentence.

Action under (b) and (c) may be taken in combination.

In applying (b), the period during which the inmate is kept in solitary confinement in connection with an investigation preceding such a decision under Article 50 shall be deducted from the period during which he is sentenced to be kept in solitary confinement.

Article 48

In considering a question of disciplinary punishment, the question of whether the offence will have, or can be assumed to have, other repercussions for the inmate, is to be taken into account, in particular circumstances such as those covered by Articles 11, 32 and 33 of this Act.

Article 49

If several separate offences are involved, disciplinary punishment for all offences is to be determined jointly.

Any person who has been kept in solitary confinement for seven days may not be returned to solitary confinement as the result of a decision in another disciplinary matter before a minimum period of seven days has elapsed.

The period under Article 47, paragraph 1, which is not to be counted towards the period of sentence, may not as the result of repeated rulings exceed a total of 45 days, or, in the case of persons serving sentences of four months or less, or undergoing treatment under Chapter 28, Article 3 of the Penal Code, 15 days.

Article 50

An inmate may be kept temporarily in solitary confinement for the purpose of investigating a disciplinary matter and pending a decision. Such confinement may not however be prolonged more than is unavoidably necessary, and in no case for more than seven days.

NOTE 3

STATISTICS ON RECIDIVISM

TABLE 1

Recidivism during a period of three years for persons sentenced in 1968.

Sentenced to	First-time offenders		With previous convictions		All sentenced	
	N	% Recidivists	N	% Recidivists	N	% Recidivists
Conditional sentence	2,703	9	579	13	3,282	10
Probation	2,883	32	3,949	49	6,832	42
Imprisonment 1-4 months	2,499	13	3,463	46	5,962	32
Imprisonment 5 months or more	210	24	2,316	69	2,526	65
Youth imprisonment	12	50	295	83	307	82
Internment	-	-	614	79	614	79

STATISTICS ON RECIDIVISM

TABLE 2

Recidivism during a period of three years for persons sentenced to probation in 1968, according to age groups.

Age	First-time offenders		With previous convictions	
	N	% Recidivists	N	% Recidivists
15-17	286	44	146	59
18-20	1,145	37	1,031	60
21-24	661	31	907	52
25-29	278	30	537	47
30-39	274	24	679	44
40-	239	12	649	31
Total	2,883	32	3,949	49

PENAL PHILOSOPHIES AND PRACTICES IN THE 1970s IN NEW ZEALAND

W.D. Garrett

The work of those people involved in penal or correction work,including the formulation and implementation of policy is in no way simple or straightforward. However, in New Zealand some twenty years ago several 'guiding principles'were established to implement practices consistent with the stated positive philosophy. These were again stated in 1968 in a New Zealand Justice Department publication, *Penal Policy in New Zealand* as follows:-

1. Every effort must be made to divert young people from crime.

2. Offenders should be removed from the community only as a last resort.

3. When some form of imprisonment or detention is necessary, every possible good influence must be brought to bear on the prisoner.

4. Those who persist in serious crime must be held in custody for long periods in order to protect society.

5. Every effort must be made to see that inmates released from detention are adequately resettled in the community.

These principles still hold good, and are consistent with current philosophy but it must be admitted that some of them are still not adequately matched by current practices.

As we see it, the fundamental purpose of the criminal justice system in general, and penal policy in particular, is to protect society from certain kinds of harm by preventing this harm as far as possible, by limiting it, and trying to prevent its repetition. The question is how this can be most efficiently and effectively achieved within a democratic and relatively secure society? The answer is to be sought from reason, and not from gusts of emotion and not always well informed public reaction. Likewise, it should be based on evidence rather than assumption. While evidence in this field is still meagre, we must actively seek greater knowledge, as within our resources we are doing.

What is important to society is that a reformed offender does not offend again, and society and the individual citizen are thereby protected. Reformation is therefore a practical and pragmatic goal, made more urgent by the fact that the vast majority of offences committed are not 'first

offences', that is, they have been committed by persons who have previously been caught and punished. In July 1972 for example, 61 per cent of our male prison inmates had previously been in prison at least once, and 40 percent had been in borstal. These figures (which are overlapping) are alarming, but they indicate where one very serious problem lies.

The underlying object of all penal policy is to prevent crime. It is not being soft but only sensible to follow the path that is most likely to achieve that result with the least expense to the community.

Professor Rupert Cross, Vinerian Professor of Law at Oxford, in two Hamlyn Lectures on Punishment, Prison and the Public, had this to say about institutional treatment of offenders, which is relevant to New Zealand penal philosophy.

> 'In some cases reform may be brought about by a change of heart, which may be either sudden or the outcome of reflection: in other cases the erstwhile offender simply drifts out of crime through the acquisition of other interests or more maturation. The change of heart, acquisition of other interest, or maturation, can, and no doubt sometimes does, occur in prison: but they are much more likely to occur outside owing, for example, to the influence of a friend, the guidance of probation officer, membership of a sympathetic group, matrimony, or change of employment. The chances of deterioration in prison are at least as great as those of reform: surely the most realistic approach is to regard the rehabilitative changes mentioned in this lecture as aimed primarily at the prevention of deterioration... The prevention of deterioration is just as important as the promotion of reform and the methods of achieving the two objects are similar...'

Mr E.A.Missen, former head of the New Zealand Department of Justice who retired in 1974, had this to say:

> 'I am convinced that the future for criminal justice in New Zealand lies more and more, first in limiting the offender's liberty rather than confining him completely, and second in exacting restitution either in the form of property, money, or services to the victim or to the community. I make no claim to originality for either leg of this proposition. What I urge is that we should seek more actively and more wholeheartedly to apply it. I envisage a situation where the offender who is incarcerated 24 hours a day throughout his sentence is very much the exception and where what we now regard as ordinary imprisonment is reserved for the truly dangerous, the professional criminal, and perhaps the apparently hopeless recidivist. There is need to place the notion of restitution in a practical form and not simply as an abstract concept much nearer the forefront of our thinking. The notion of criminal bankruptcy as is being

> tried in Britain, the deprivation of valued privileges such as the right to drive or to possess a car, are examples of possibilities we need to consider, not merely for the exceptional but for the more ordinary case.'

At the end of the 1960s institutional sentences available to the courts included the usual finite sentences, preventive detention (indeterminate for persistent sexual offenders), life imprisonment (for murder),and borstal training (an indeterminate but two years maximum sentence for young offenders). The use of sentences of less than six months was restricted by statute to cases, where, in the opinion of the court there was no appropriate alternative to sending the offender to prison.

Treatments within the community, apart from fines, were as now, centred in the Probation Service. All penal measures short of imprisonment are in fact administered by the Probation Service. In addition to probation itself these include periodic detention, probation with community work, and hostels of various kinds, including pre-release hostels, run either by the Probation Service itself, by church organisations, or the Prisoners' Aid and Rehabilitation Society in liaison with the Probation Service. As the emphasis on rehabilitation has become more pronounced, the role of the Probation Service has become more important.

PROBATION AND OTHER MEASURES WITHIN THE COMMUNITY

The growing use of probation is well illustrated by the following table of sentences imposed:

	1969	1971	1973
Probation	3,794	4,274	5,311
Periodic Detention	286	952	2,150
Detention Centre	397	558	561
Borstal	609	889	719
Imprisonment - Under three months	1,360	2,116	1,736
Five years and over	11	23	23
Life	2	5	10
Preventive Detention	2	4	1

Probation

It has been established policy for at least 15 years within the Justice Department that the Probation Division will be responsible for all forms of penal treatment which take place in the open community. This has required probation officers to move outside their traditional role of

caseworkers to become involved also with a wide range of hostels, as well as the sentence of periodic detention. As a result over 80 per cent of all offenders coming under the supervision of the department are dealt with by officers of the Probation Division and there are now over 9,500 reporting on probation and parole and over 1,600 reporting for periodic detention throughout the country.

Another primary function of probation officers is, when requested to do so by the court, to report on the character and personal history of persons convicted of offences punishable by imprisonment. The courts recognise the assistance that such reports can give when it comes to determining sentence and seek them increasingly often. During 1975 over 17,000 pre-sentence reports on convicted offenders were prepared and this contrasts with the 10,500 prepared five years before.

Persons released on probation are all convicted of offences punishable by imprisonment and the conditions of release impose minimal restrictions covering such matters as the necessity for reporting to the probation officer and giving some measure of control over residence, employment and undesirable associations. The court may also impose special conditions relating to the use of motor vehicles, liquor and so on which may have been factors in the particular offences.

In New Zealand persons sentenced to a year or more in prison are on their release from imprisonment subject to a year of statutory parole. This is directed towards their resettlement in the community and is seen as part of the total sentence and probably has the effect of reducing the length of time spent in an institution.

Distinctive features of probation are that it is a sentence of conditional liberty for offenders who might otherwise be sentenced to imprisonment and the supervision is undertaken by probation officers who are nearly all full-time public servants with statutory powers to prosecute for non-compliance with the conditions of release.

Probation Treatment Centres

In June 1968 a treatment centre was established in Auckland for offenders on probation and parole who are considered to be in need of specialist treatment beyond the scope and skill of probation officers. Other centres have subsequently been opened at Christchurch, Wellington and Hamilton where concentration of population warrants this. These centres are staffed by a psychiatrist, a physician and psychologist under the chairmanship of the District Probation Officer.

The Auckland Treatment Centre met 10 times in 1974 to consider 65 referrals. Of these, 34 were dealt with by the psychiatrist, 25 by the psychologist and six were considered to be medical problems.

Probation Hostels

In order to combine adequate accommodation with supervision, the Justice Department has sought the cooperation of church, social services and other voluntary organisations. In most cases the department provides the premises and hands it over to the church agency which administers the hostel and provides staff but in the case of the female probation hostel it is staffed by departmental officers. In other cases where a social service agency has demonstrated that it provides supervised accommodation which meets the needs of probationers and parolees the department provides a grant to cover operating losses on the hostel in the proportion of probationers, etc., to total residents. We have this arrangement with six voluntary organisations at present but expect this form of subsidy scheme to expand.

In these hostels youths on the fringe of serious offending are placed in an atmosphere where they can be counselled more effectively and where they can gain insight and maturity and where many of their activities can be supervised.

Pre-Release Hostels

These hostels provide a bridge for some inmates from penal institutions to the community. Hostel residents while continuing to serve their sentences are helped to find suitable jobs and good accommodation and in general to adjust gradually to normal life before they are finally released. the usual length of stay is from two to four months.

Hostels for borstal youths are at Auckland, Hamilton and Wellington and for adult male prisoners at Auckland (2), Christchurch and Wellington.

Post-Release Hostels

The department has encouraged voluntary organisations to cooperate with the Probation Service in providing hostels for prisoners on their release. The usual pattern, however, is for these to be administered and staffed by the New Zealand Prisoners' Aid and Rehabilitation Society in premises provided by the department. The five hostels so far established provide continuing support for ex-inmates who without this, would be more likely to offend again.

Periodic Detention

In 1962 the periodic detention scheme was introduced and its early promise as one of the most significant developments of recent years has been realised. The value of the periodic detention scheme is that the offenders, often irresponsible and with some previous criminal history, are kept within the community, and in the case of young people, taught to use their leisure time in socially acceptable ways.

Young offenders, 15 to 20 years of age, sentenced in areas where the work centre is residential, spend Wednesday evenings at the centres, and from Friday evening until late Sunday morning they live at the centre under supervision. During the rest of the week they live at home.

At the centre, the youths work for eight hours on Saturday at some community centred work and in the evenings of Wednesday, Friday and Saturday they take part in a counselling and educational program.

Loss of weekend freedom is a severe punishment to youths. It is intended that such a punishment, combined with the training programs at the centres, will deter them from further offending without subjecting them to the dubious environment of a borstal or prison. The cost too is very much less than full institution treatment. The maximum period of periodic detention is 12 months, and can be followed by or run contemporaneously with a year's probation. Periodic detention is used for such offences as disorderly behaviour, dangerous driving, driving while disqualified, assault, wilful damage, narcotics use and possession, theft, car conversion, burglary and unlawful sexual intercourse.

A development of the periodic detention scheme is its extension to adults, where it has replaced, quite often, a short prison sentence. In the case of adults, who predictably have family and home commitments to meet at weekends, more harm than good might be done by attending work centres for the times required of youths. Adults therefore are only required to attend periodic detention centres for nine hours each Saturday .

Originally only set up in larger cities,periodic detention centres, more especially non-residential ones, have now been established in many smaller communities.

In smaller places again, the principles of the periodic detention scheme are applied through 'community work', ordered by a court. The local probation officer organises projects, and arranges for these to be carried out in the offenders' leisure time, usually a Saturday. Some 'community work' is carried out without formal supervision, but wherever practicable groups are supervised by the probation officer or a part-time helper. As with periodic detention, these schemes have local advisory committees to decide what is appropriate community work.

This sentence is found to be a satisfactory alternative to short sentences of imprisonment and at any one time there are about 100 undertaking community work.

Women

We have opened a periodic detention centre for women at Auckland and there women report for work on Saturdays or on other occasions during the week to take part in training in skills such as sewing, laundry, infant care, personal grooming, etc. They may also bring their children to the centre where a creche operates.

Assessment of Periodic Detention

In 1969 there were 10 periodic detention centres throughout the country and in 1974 there were 32. At the end of 1969, 194 were reporting on periodic detention and at the end of 1975 there were 1,375.

A study of youths sentenced to residential periodic detention in 1967 showed that about two-thirds had not offended seriously after a period of two years. The remaining 35 per cent received custodial sentences (including breach of periodic detention order) within the two year follow-up period. However, a more recent survey of those youths sentenced to both residential and non-residential periodic detention in 1972 showed that 45 per cent received a custodial sentence within the same follow-up period. A survey of adults (in 1972) showed that 34 per cent received a custodial sentence within the follow-up period (again two years). However, when custodial sentences for a breach of the periodic detention work order are omitted this percentage (that is custodial sentences) drops to 26 per cent. This suggests that periodic detention is more effective for adults, but this is confused by the general observation that offending rapidly declines for those over about 25 years.

CURRENT PROBLEMS OF PENAL INSTITUTIONS

Perhaps the greatest problem is that of public acceptance of what many regard as 'soft' policies in dealing with criminals. We are now experiencing a type of counter reaction which can be met only by constantly restating that almost every prisoner is eventually released and it is in the interest of the community that he should be the better and not the worse for the experience of imprisonment.

The second major problem is in defining the role of the prison officer which traditionally has been seen as punitive. Indeed the often conflicting interests of security and rehabilitation are a formidable obstacle to the officer's own understanding of his role. We do not pretend to have found the solution but think that the road towards progress lies in the direction of more exact classification of inmates and better staff training. If the right type of officer is to be attracted it is necessary to create the image of a worthwhile vocation. The prison officer deals with people whom ordinary social pressures have failed to control. He must be equipped to do so and supported in the task. That is why we are now expanding existing staff training facilities to provide the follow-up support hitherto denied to long-serving staff who have been abandoned to the jungle of 'experience'.

A significant result of providing the courts with alternatives to imprisonment such as probation, periodic detention and detention centre has been that those received into borstals and prisons tend to be more and more the hard core of offenders who have not been diverted by other measures. This has greatly increased control and supervision problems within institutions and has decreased the former 'success' rate of custodial sanctions all of which has had an impact upon staff.

New Zealand's scattered population and the long distances between main cities pose special problems especially in the areas of allocation to institutions and visits by relatives. Stated policy is to have small institutions close to the areas from which the inmates originate but we are far from achieving this. A major difficulty is that of overcoming public resistance to the establishment of new penal institutions adjacent to existing communities and the tendency in the past has been simply to enlarge established facilities. It is also cheaper to do this instead of building a new institution but in the long run society faces a heavy cost in terms of criminal sophistication and subsequent reoffending.

GENERAL PENAL MEASURES

Detention Centres

In June 1961 the first detention centre was opened in the North Island for youths between 16 and 21 years of age. The sentence, which can only be imposed on a particular person once, is for a maximum of three months detention, followed by probation of 12 months. Up to one months remission may be granted. The emphasis is on hard work and strict discipline. An evening program of lectures, discussions and counselling is designed to stimulate cultural interests and good citizenship. Another centre for South Island youths was established in 1972. Over the last few years an average of 560 youths have served this sentence every year. We cannot claim that it has any greater success rate than traditional imprisonment because of the selection that operates at court level. It has the merits, however, of being short and constructive.

Borstal Training

This is an indeterminate sentence of up to two years with release determined by a parole board appointed for each borstal. The board chairman is a magistrate or retired magistrate. The other members are the superintendent of the institution, a head office official and two local citizens. Boards meet at intervals of not more than two months and each trainee's case is reviewed at least twice yearly. The trainees are interviewed in person by the board and also see the report submitted upon them by the institution. There are four borstals for males (Waikeria, Kaitoke, Waipiata and Invercargill) and one borstal for females (Arohata).

Classification

Young persons sentenced to borstal training and detention centre are sent direct from the courts to the appropriate institutions. Within the borstal system there is scope for further classification according to security requirements. About 25 per cent of the 700 borstal trainees are placed in minimum security conditions. The detention centres are minimum security and together take up to 120 young men.

Adult males sentenced to imprisonment are classified upon reception according to security needs, previous criminal history, and the availability of specialist treatment where this is considered to be essential.

Existing institutions provide for three broad security categories: maximum, medium and minimum and present distribution of the male prison population is as follows:

Maximum security	10 per cent approx.
Medium security	50 per cent approx.
Minimum security	40 per cent approx.

Special attention is given to males who are in prison for the first time. Most are placed in minimum security prisons, one of which is reserved specifically for first offenders serving six months or more who are considered likely to reoffend and who therefore require more individual attention.

Comparatively few adult females are sentenced to imprisonment and all, except those serving very short sentences are sent to a single institution which has an average population of 30 women in varying degrees of security. Experience indicates that it is rare for women to require maximum security of other than brief duration (measured in weeks rather than months) upon first reception.

Small Institutions

There is ample evidence to show that small institutions are more easily controlled and provide a better climate for rehabilitative measures. Our policy is to build small institutions but, unfortunately, the existing classification system is still handicapped by the existence of large central medium security receiving prisons in Auckland and Christchurch which must deal with conglomerate populations of all categories, including minimum security risks who must be retained for medical, family or other reasons. The pressure upon these institutions means too that more men are retained in maximum security than might otherwise be necessary. We estimate that perhaps five per cent of our prison population really need maximum security. The rest are behaviour problems who could be dealt with in adequately staffed, less overcrowded, medium security institutions.

Public Relations

We have for years encouraged our staff to talk to interested groups about their work and to be helpful to responsible journalists. Many institutions, and particularly the youth institutions, assist with community projects. Clubs have been formed at two borstals to undertake community work and encourage civic responsibility and social awareness in the trainees. My own institution has recently assisted a local voluntary society in restoring a historic site. Apart from the hoped for good effect upon detainees , we see such activity as helpful in acquainting the public with our work and removing some of the mystery that surrounds penal institutions.

Release to Work

So that you will understand the statistical context in which I speak, let me give you some figures about inmates currently in prison. Of a total of 2,875, 116 are women in prisons or borstals. Of the men, 718 are young men in borstals, 115 are young men in detention centres, 768 are men in minimum security, 974 are men in medium security central institutions and 185 are men in maximum security. The last two years have seen a sharp upward trend in the penal population which in May 1974 totalled 2,428.

The annual cost of maintaining offenders whether in full, partial or no custody, according to the latest figures available is as follows:

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Probationer	235
Inmate of Periodic Detention Centre	467
Inmate of Pre-Release Hostel	3,276
Borstal Trainee	4,116
Prison Inmate	4,655

This, however, is substantially short of the full story. The offender in full custody is withdrawn from the productive work force, and while some allowance can be made for a possible contribution to prison industries, this is small in comparison to his productivity in the outside work force. The loss of this outside productivity, plus assistance to dependants by way of social welfare benefits brings up the cost of sending a man to prison to at least $10,000 per year. It can be seen then that imprisonment is, at the most, a very expensive reponse to crime.

Provisions for inmates to be released daily to work in the community were already being implemented in the 1960s, the measure having been place on the statute books in 1961. The advantages are many. The inmate is assisted to adjust to normal living while allowing some official oversight and control of his movements and behaviour. The burden on the taxpayer is eased too, not only by hopefully successfully resettling the inmate when he is released, but also by the inmate paying taxes, paying board, wearing his own clothes, and where dependants are being paid a social welfare benefit, the inmate making a contribution from his wages towards the dependants' keep. The initial pleasing response from employers, trade unions, and fellow workers of inmates, has continued throughout.

During 1965, 124 inmates were recommended for the privilege. In 1970, 311 were successfully placed at work outside prisons. In addition 121 borstal inmates were released to work during the year,although some for necessarily short periods. In 1975, 527 inmates were approved for work parole, and 455 started work. Two hundred and twenty one borstal inmates worked for local employers.

Prison inmates are generally considered for work parole during the last six months of their sentences, although there is provision for those in prison for the first time to be considered during the last twelve months of their sentences. Inmates serving a sentence of less than twelve months are usually not considered, unless they are maintenance offenders or in prison for the first time.

Suitable daily employment is not easy to obtain for all those in country institutions. Most country institutions are minimum security establishments and as such held a high proportion of inmates who are not only suitable for daily work outside the institution, but for whom it is a logical treatment step between the minimum security environment and final release. In the case of the institution under my care, Tongariro Prison Farm, where we usually have some 240 adult inmates, the locality places severe restrictions on job opportunities. Because there is little private development work locally, it is only practicable to place at the most three men in the building or servicing industries. Forest development resources locally cooperate by taking up to six inmates for silviculture during the year, and some extras during the winter planting season for a period. Long waiting lists built up some three to four years ago, but these have now been reduced by the provision of more adult pre-release hostels. It is not policy to place inmates who have histories of violent offending in open pre-release hostels in residential areas. For this reason, a pre-release unit catering for 12 inmates was recently set up at Mt Eden prison in Auckland. Separate borstal pre-release hostels cater for borstal inmates granted release to work parole.

Home Leave

While provision had existed for many years for inmates to be released on parole for compassionate reasons such as the serious illness or the death of a near relative or very close friend, it was during 1965 that inmates who were in prison for the first time were first allowed to visit their homes on parole for three days leave, every four months, and for three days during the 1965-66 Christmas - New Year period. At that time leave was usually restricted to married men, although other inmates, including those with stable de facto relationships were also considered in some circumstances. The inmate had to have a stable home to go to, and the inmate's wife or family had to be agreeable to the visit. Some married borstal inmates were also included in the 1965-66 Christmas New Year leave approvals.

During 1970, 114 inmates were allowed the home leave privileges, some on several occasions, although it was then still restricted to those in prison for the first time.

From February 1974, the home leave scheme was extended to apply to all those serving imprisonment in minimum security institutions provided they had a suitable family or sponsor to go to and seemed unlikely to be a risk while in the community on leave.

During the six years from 1966 to 1972, 617 inmates were allowed home leave. One hundred and four other inmates were granted temporary parole for commpassionate reasons, or such pre-release purposes as arranging employment when released, accommodation, etc. During 1975,757 inmates were given home leave on 1,372 occasions. Another 378 inmates were granted temporary parole for compassionate, educational or pre-release purposes.

Most recent provisions for home leave include those eligible being able to have leave after two months of sentence, and thereafter at two monthly intervals. Inmates in medium security may have home leave once in the last three months of sentence provided they have completed at least two months of their sentence. Home leave has turned out, as expected, to have a strong controlling effect on the institutional conduct of inmates.

A survey of last year's home leaves showed that about 5 percent breached trust either by failing to return on time, committing other offences, or failing to observe other conditions. There have been some spectacular episodes and as a result we have been obliged to apply more stringent selection especially to those convicted of violent offences.

Visiting

As in other countries, the majority of offenders live in the cities, and when sentenced may be visited easily by relatives and friends. Our regulations provide for weekly visits for all inmates. However, by the very necessity of the outdoor nature of work associated with minimum security prison conditions, these institutions are remote from the homes of most offenders. While home leave in some way goes to compensate for fewer visits, visits in minimum security institutions are much more extensive in time, and conducted in relaxed conditions. All day visits are permitted at our country institutions both on Saturdays and Sundays, and in fine weather visits may take place in open spaces on picnic-like seats on grassed areas surrounding the institution. When visitors bring lunch, the inmate may have lunch with the visitors, sharing the food brought in. Tea making, baby bottle warming and children's creche facilities are also provided in some institutions.

Accommodation in country areas can also be difficult and so costly as to be out of the question for some relatives of inmates. At several institutions the department has now made available houses in which inmates' visitors may be accommodated while visiting. These houses are usually managed by the Prisoners'Aid and Rehabilitation Society, sometimes with the aid of interested local organisations, such as Red Cross, and Maori Women's Welfare League.

Remission of Sentences

Subject to good conduct, an inmate serving a finite sentence of imprisonment may receive remission of up to one-quarter of his sentence. Special additional remission not exceeding one-twelfth of his sentence can be granted as a reward for exemplary conduct or for some special assistance to the administration. Inmates transferred to the more isolated minimum security institutions are granted the additional remission

provided that at no time they offend against prison regulations during their sentence, and there has been a marked decrease in such offences by those affected. In 1975, 1,031 inmates were granted extra remission out of approximately 2,100 eligible. Those serving life imprisonment, preventive detention and borstal training do not qualify for this remission. Their cases are considered by the parole board.

Until the passing of amendments to law in 1975, the earliest period at which the Prisons Parole Board could first consider the release of a person convicted of murder was 10 years after the date of his sentence. This has now been reduced to seven years. The parole board's jurisdiction over finite sentences has also been extended. Previously it could review any sentence of more than six years on completion of three and a half years; now it may consider any sentence of five years or more at its half term, and the Minister of Justice may also designate certain categories of offenders for review at any time. Deportation cases have been so designated because it was felt that in some cases deportation may well represent a substantial additional penalty.

Staff Training

A prison officercadet scheme began in February 1967 with 15 cadets. The two year course covers academic work, practical and theoretical penal work, physical and social development and training in special skills such as first aid, driving, bushcraft, judo and lifesaving. There have been seven completed courses from which 67 young men have graduated. Of the 112 who have enrolled, 26 have resigned and one was accidentally killed. Former cadets have now reached intermediate rank and others qualified for promotion to intermediate grades.

Full time staff training officers are employed at various prisons to enable continuous in-service staff training to be given in addition to preparing officers for departmental examinations.

A three week residential course is available for new officers and a complete range of study courses for intermediate and senior promotion examinations is available. The purpose is to build up a professionally trained staff knowledgeable in theory as well as practice. The University of Auckland courses for the Diploma and Certificate in Criminology are proving of great value and several officers spend a year or more at the university on full time study to gain these professional qualifications.

The Protest Movement

In the late 1960s and early 1970s we experienced considerable discontent from groups of prisoners as the result of the opening of the new maximum security prison in Auckland, and from this discontent emerged groups in the community which complained vigorously and agitated for changes, notwithstanding that we already had in operation such measures as release to work parole, temporary parole for compassionate and educational reasons, extensive evening recreational activities, hobbies facilities, etc.

The pressures from inmates for concessions and from small but organised groups in the community protesting about prison conditions were reinforced by a change of government in November 1972, when the New Zealand Labour Party became the governing party, and a Minister of Justice appointed,who had been critical of the penal system before coming into office. The climate was therefore clearly conducive to change, and relaxation in the treatment of inmates. Liberal innovations of the last few years have abated the vigour of the pressure groups to the stage where at present their activities have reduced to a much less significant level. The danger is that the progressive measures will generate repressive reaction.

Some far-reaching changes are at present taking place both in the types of sentence available and in institution regimes.

The Criminal Justice Amendment Act 1975 will:

(a) phase out the sentences of borstal training and detention in a detention centre and

(b) introduce sentences of corrective training for three months and six months.

The sentence of three months corrective training is to be essentially the detention centre sentence renamed. The sentence of six months corrective training (with one-third remission for good behaviour) is broadly similar in character but the period served being twice as long, the regime will be somewhat different.

For young offenders under 20 who are sentenced to custody, the alternative to corrective training will be a finite sentence of imprisonment, to be served in a youth prison.

The disappearance of the borstal sentence will mean the end of the indeterminate sentence in New Zealand (except for the special case of preventive detention for sexual crimes, and life imprisonment for murder). This form of sentence has had a long history in New Zealand, being first introduced in 1906. In 1954 new forms of indeterminate sentence were introduced in an attempt to avoid the main weaknesses of those previously available. They did not prove satisfactory, partly because of the uncertainty frustration and indeed resentment they caused to inmates who received them and partly because they tended to become fixed in certain patterns and lose their genuine 'indeterminate' character. They were also regarded as open to objection in principle, by offenders as well as by many others, because they permitted detention in some cases for longer than the maximum finite imprisonment prescribed for the particular offence.

Institution Regimes

It would be true to say that our work parole and home leave provisions were more the result of considered actions by the administration to implement stated policy than the result of pressure from inmate groups or outside action groups.

However, in matters relating to management of the institutions pressure has come from inmates and from action groups outside, and we have been obliged to review traditional practices. In my opinion we have lost nothing, and the main result has been an improvement in relationships between inmates and staff.

The aim is to remove petty restrictions that are inessential to good order and security or are a source of friction between staffand inmates. Loss of liberty for a period determined by the courts ought not to be followed by other afflictions determined by government officials. The preservation of human dignity should be ensured by moving away from a system where 'everything is prohibited unless specifically permitted' to a situation where 'everything is permitted unless prohibited on lawful and reasonable grounds'.

For some years now in most institutions, inmates have been coopted, even in some situations elected, to assist in organising recreational activities. With tacit, and in some places formal approval, these 'committees' have been able to make representations to the local administration for provision of amenities, changes in routines, etc. While usually being reasonable, these representations have been not inconsiderable in bringing about some of the relaxations in prison management. I will first deal with two of the most important in the eyes of the inmates.

A long standing area of frustration for inmates was mail censoring. It is not always convenient for mail censoring to be carried out completely out of sight of inmates, and the sight of officers reading mail irritated more than the pure knowledge that censoring was carried out. So too did indiscrete talk by staff.

Strict censoring is no longer carried out. Inmates' letters are opened and checked for money or prohibited articles, but not read, except for maximum security inmates, and where there is reason to believe a regulation might be contravened. There is too, the provision for inmates to correspond confidentially with the Ombudsman. We do not see mail censorship as necessary to prevent escape plans and such censorship was inconsistent with our visiting practices.

Longstanding prohibitions on certain classes of reading material existed until recently. These forbade magazines and books 'which unduly emphasized sex, crime or violence', books on psychology, legal matters and the like.

The general rule today is to allow any reading material which is distributed on a nationwide basis and can be purchased by the public subject of course to any restrictions imposed by our Indecent Publications Tribunal. Thus we no longer have the problem of inconsistency of opinions among staff.

Hairstyles and beards and moustaches were for many years a vexed question and an area of conflict between inmates and the administration. I was never more relieved than when we finally discarded our short back and sides rule for haircuts. Although not strictly in accordance with regulations, tradition had grown up which required all inmates to be

clean shaven as soon as received. This was no real problem until latter times when more and more men, especially among the type with which we deal, have been wearing beards. Clear rules have recently been formulated so that the shaving off of beards and moustaches, and cutting short of hair is not required on reception, except for reasons of health. Beards and moustaches worn on reception may be retained, and others may, with permission grow these during the last month of sentence. The general rule as to hairstyles is that they may be in accordance with current fashions and styles that prevail in the outside community.

In my experience these rules have not led to any abuses, or exhibitionism in the growing of 'way out' hairstyles or beards.

We have become more permissive too in the issue of personal property, such as watches, rings, etc. Traditionally watches were only issued where necessary for the inmate's work, and even wedding rings were removed on reception, if necessary by cutting. Generally now, wedding rings are permitted to be retained, as are watches, personal photographs, cigarette lighters, electric shavers, small musical instruments such as guitars, etc. I have not had to deal with any problems in this area.

Television has been introduced to most institutions over the last three years, and has had mixed popularity. This is contrary to my expectation that television would have a serious effect on the interest taken in other preferable evening activities.

While in serious emergencies inmates had, for many years, been allowed to use the telephone, more liberal use is now allowed, so that inmates in minimum security prisons may make collect calls to relatives and friends. This has proved to be an excellent way of relieving tensions and is practically self-regulatory by virtue of the calls being made collect.

I must also mention the fact that sentenced inmates were allowed to vote in the 1975 General Election in New Zealand. Inmates were required to enrol in the electorate in which they were last resident so that the majority of their votes were special votes, and the votes taken at a penal institution had no significant effect on the electorate in which the institution was sited. The question of voting by inmates has become something of a political issue, with the change of government and whether the practice will be retained has not been settled.

In case you think that we have a system where all is sweetness and light I shall traverse some darker moments. Traditionally most actions taken by prisoners'action groups in New Zealand have been by way of passive protests about a number of grievances.

During the years 1953-74, however, ten major disturbances occurred. Details of these are shown in Table 1 of this paper. There is no doubt that some of this turbulance was agitated and encouraged by self-styled 'action groups' in the community.

One of the major outcomes, however, was the use of independent investigators into the causes of these disturbances and the validity of the inmates' claims. In particular, our maximum security prison, Paremoremo, was the subject of two such inquiries conducted jointly by the Ombudsman, Sir Guy Powles, and a retired Magistrate, Mr Sinclair.

At the end of November 1972, the government changed and the new Minister of Justice was a well known Auckland solicitor who had himself been critical of Paremoremo. By that time the first inquiry had taken place.

The new Minister decided that it would be wise to re-engage the Ombudsman and Mr Sinclair to do a second and fuller investigation and report on the situation at Paremoremo. I stress again here the independent nature of this inquiry and draw to your attention the trend away from departmental officers making such inquiries, and the bringing in of independent professionals for this purpose. We have, however, set our face against bringing in 'mediators' for the purpose of restoring order although we have several times been urged to do so. Nor do we recognise any prisoners union.

As a result of the second inquiry which produced a report dated 15 March 1973, various actions were taken to strengthen staffing levels, improve staff training and 'communication' within the prison, and generally give effect to the recommendations made.

The report was of course a useful document in convincing the State Services Commission, New Zealand's Public Service staff regulatory body, of the necessity for extra staff, something which departmental officers may have found much more difficult without the advantage of the report.

Because of the existence of action groups both inside and outside prisons, and the ciriticism levelled by the public generally at penal policy, it is not possible for my department to satisfy all interests. We are either 'too restrictive' or 'too permissive'. But if our actions have as their basis the support of the considered opinions expressed by qualified and independent professionals, the sting is removed from much of the criticism, and our policies and actions more easily justified to the satisfaction of as many interests as practicable.

It has been observed that a feature of the penal scene in New Zealand during the last 25 years has been a willingness to change and adapt; to introduce new ideas and to discard provisions and policies that have not succeeded. The attitude has been well described by a well known New Zealand penologist (Dr Robson) as one of 'responsible experimentation'.

TABLE 1

DETAILS OF INSTITUTION DISTURBANCES

Paparua 1953

Inmates remained in the dining room at breakfast time and refused to move to work. Grievances were heard by a senior administrator from Head Office.

Some remarks made by the Superintendent the previous night at a concert attended by outsiders sparked off the protest, but wider issues were involved and several other grievances were aired.

Invercargill 1959

Mass disobedience of 60 inmates who apparently resented discipline after a home brew had been found in their quarters. They set to smashing furniture and windows. After a couple of hours the disturbance ran its course and the institution was quiet again. Overcrowding seemed to be a significant contributing factor in this incident and further minor ones following soon after.

Mt Eden 1960

Mass disobedience followed allegations being made that some inmates had been beaten up by staff. The protest took the form of a large group of inmates staying out in the exercise yards. It was by negotiations directly between the Superintendent and the inmates involved that the protest was resolved.

New Plymouth 1963

A group of inmates in one of the yards refused to go to work or to their cells until faced with a show of force. The previous night there had been a fight in the dining area at meal time, following home brew having been consumed by a small group of inmates. Following the fight, some inmates had to be forcibly removed to their cells. The 23 inmates involved in refusing to go to work the next morning alleged too much force had been used. Prison and police officers later that morning took the ringleaders forcibly from the yard to the cells. The rest then left peaceably.

Dunedin Women's Prison 1964

Only a small proportion of inmates were involved, mainly the younger women, who were apparently in conflict with the older women in the prison. Poor physical conditions within the prison were also a contributing factor. There was some unrest during the evening, and the troublesome ones were left locked up the next morning. They proceeded to smash windows and cell furniture and hurl abuse and the wreakage out the windows. Being close to a city street, passers by came in for their share of abuse. Disciplinary action under the Penal Institutions Act followed, and the need for a new women's prison was acknowledged. The new prison is now a reality.

Mt Eden and Paparua 1965

An escape attempt by two armed remand prisoners in the early hours of Tuesday, 20 July 1965, developed into a full scale riot. One of the repercussions was a riot at Paparua on the evening of Sunday, 25 July, among 70 inmates attending a church service. These riots were not a direct result of organised efforts to change conditions and were brought under control eventually by firm and determined action by staff. These riots seemed to be more symptomatic of the dissent which was making itself apparent in free society at that time.

Mt Eden Security Unit 1967

This involved a hunger strike by inmates in this block which was then catering for our greatest security risks. A stipendiary magistrate was appointed to conduct an inquiry as a visiting justice in terms of the provisions of the Penal Institutions Act. The inmates in the block raised various matters such as food, beds, ventilation, visiting facilities, reading material, hobbies, shaving, showers, clothing, etc.

The magistrate concluded that the real cause of the troubles was the inmates' lack of knowledge of:

(a) The reasons why they were placed in the block;
(b) The machinery by which they were placed in the block; and
(c) How long they were to be detained there.

These conclusions were reached as a result of his interviews with the inmates, disclosing a sense of deep frustration in that they could not see any hope or future while they were incarcerated in the block.

As a result of the findings of the inquiry a committee was set up, including a magistrate, to consider the cases of inmates being placed in the block or being removed from it.

Tongario Prison Farm 1972

About forty inmates, just under half the total muster at Rangipo Prison refused to be locked up at lockup time. Twelve demands were made, mostly for minor alterations in conditions. At the time these were all refused and the inmates locked up forcibly after allowing some four hours for common sense to prevail. It is interesting to note that some of the requests for changes were already being considered, and since then many of the changes have been introduced on a progressive basis. One of the major causes of this incident was the existence of different practices in relation to the treatment of inmates in Rangipo and the other two camps in the locality.

Paparua 1974

One hundred and eighty five inmates refused to parade for work or return to their cells as a passive protest about several grievances. The demonstration began after breakfast and continued until late afternoon when the strikers went to their cells without force having to be used. Complaints were made about staff baiting inmates, lack of adequate suitable work, remedial educational facilities, food, and restrictive rules about beards and moustaches.

Alleged inadequate medical care was the principal area of complaint, although this was not substantiated. Those who took part were dealt with under the disciplinary provisions of the Penal Institutions Act, by a magistrate acting as a visiting justice. Some staff expressed the opinion that an outside action group known as Project Paparua was instrumental in encouraging the strikers to act as they did, but this has not been substantiated officially.

Paremoremo Prison

I have purposely omitted from the above chronological order incidents which have occurred at the Auckland Medium Security Prison, known more usually as Paremoremo, as these are related more specifically to action groups, and the administration's method of dealing with the problems is quite specific and typical. Not long after this institution was occupied in March 1969 criticisms were levelled at the concept of the institution from various sources, reinforcing the dissident element within the institution. The 1970 Annual Report of the Department of Justice had this to say: '... The concept of the Auckland Prison was so completely new to the New Zealand scene that it brought its problem of adjustment. Its spaciousness, its amenities, and its longer hours of unlock were appreciated by most of the inmates but towards the end of 1969 a handful of trouble makers created strife culminating in a strike ...'. In fact the short history of Paremoremo has been punctuated by incidents of greater or less degree, but this is only to be expected where the very worst of our population are brought together under one roof. Fortunately the frequency of these incidents has waned, and comparatively long periods of calm have been apparent.

Out of the alleged inadequacies of the prison and the treament of the inmates emerged several outside action groups, the best known one being Project Paremoremo, led by a very vocal lady who befriended several of the inmates.

Some of the action groups had a racial tone, and included the Ponsonby Maori Group, and Polynesian Panther Group in Auckland.

During 1971, Sir Guy Powles as Ombudsman had received over a period of several months a number of complaints from prisoners and from interested persons outside the prison. One of the main areas of tension surrounded an inmate who had been found guilty in open court of assault on an officer, the main body of inmates strongly maintaining the inmate's innocence. As a result of these complaints and obvious tension in the prison the then Minister of Justice, Sir Roy Jack, appointed Mr L.G.H. Sinclair, a retired magistrate as a visiting justice to report to the Minister in accordance with written terms of reference under various headings. The complaints made to the Ombudsman by inmates and outsiders fell in many respects under headings upon which the Minister had asked Mr Sinclair to report. While each had his own independent investigation to make, at the Minister's suggestion a joint report was submitted.

The Minister's action in asking for these investigations and the report were intended to ensure that not only was a full inquiry made, but it was seen to be completely independent of departmental bias, having in mind that this would more fully satisfy both the inmates and outside complainants, and of course would best serve the public interest.

As a result of this report dated 21 January 1972 some adjustments were made to liberalise the regime. These changes were welcomed by the inmates, but from June 1972 discipline again began to deteriorate. From September 1972 inmates began to make new demands and in November deliberate sabotage to machines was apparent.

As a result of suspicions of a planned escape a full scale search of the prison was made during November 1972.

In a letter dated 19 November 1972 the President of Project Paremoremo wrote to the then Minister, Sir Roy Jack, making complaints as a result of information she had received from inmates during visiting time at Paremoremo. She also had made certain statements which were published in Sunday newspapers at the same time. This resulted in the second Powles - Sinclair inquiry.

REPORT ON THE SEMINAR

C.R. Bevan

On the first day of the seminar, two visiting experts, Mr John Braithwaite, Deputy Commissioner of the Canadian Penetentiary Service, and Mr Clas Amilon, Head of Department, National Swedish Correctional Administration, and a visiting scholar addressed the participants. The visiting scholar was Mr William Garrett, Superintendent, Tongariro Prison Farm, New Zealand. Discussion periods, confined to questions seeking explanation and amplification of information, followed each paper.

It appeared that Canada experiences inconsistencies in the application of the criminal justice system similar to those between different States in Australia and also between indigenous offenders and whites. Notions of the reformative and rehabilitative value of prisons and imprisonment are being abandoned and terms of imprisonment are regarded primarily as for punishment.

Mr Garrett was asked about the nature of the work done by week-end detainees in New Zealand. Criticism was directed towards behaviour modification methods used on borstal inmates in the institution where experimental work was being conducted. One participant claimed that behaviour modification processes using token rewards and deprivation could subject people to intense psychological pressures in the name of treatment which would be regarded as totally intolerable in the name of punishment.

Mr Garrett did not think that open visiting facilities and relative lack of censorship of prisoners' mail in New Zealand detracted from the security of the prisons except for the occasional smuggling of small amounts of cannabis. He attributed the riots at Paremoremo in 1972 to deficiencies in communication between staff and inmates and deficiencies in staff training, and believed that New Zealand would again build a Paremoremo if necessary. A situation similar to the Australian situation exists in New Zealand in relation to the disproportionate representation of Maoris in prison populations. Ten per cent of New Zealanders are Maoris but they constitute 40 per cent of prisoners.

Mr Amilon said there was a large number of escapes from prison in Sweden, and that there was fairly general public tolerance of this state of affairs. A participant suggested that possibly the escapees were from minimum security institutions, and that the tolerance of the public derived from their recognition that probably the prisoners should not be locked up at all, but should have some form of community treatment.

Mr Amilon accepted that this could be the case in many events, but instanced the limits of public tolerance, which nevertheless appear much more accommodating than is the case in Australia.

Describing prison uprisings in Sweden, Mr Amilon said that when two thousand prisoners throughout the country were on a hunger strike, some of the prisoners did not appear to know why they were striking. This was challenged by an ex-prisoner in the audience who claimed that prisoners are unlikely to strike, risking severe penalties, for a cause which is unknown to them. He also questioned another statement which seemed to him to contain distinct contradictions. Mr Amilon had

indicated that correctional authorities were attempting to design penal methods that would permit more outward-oriented institutional treatment. However, the increased security measures at one institution left only one avenue of escape, that is through violence.

Discussion centred on the question of compulsory work in Swedish prisons but opinions remained firmly divided.

Mr Amilon's assertion that unrest in Swedish prisons was generated and organised by outside groups was strongly questioned by Prisoners' Action Group members. They argued that, although this was claimed by Australian prison administrators, there was no justification for this claim.

It was argued that if prisons are to concentrate on the punishment function only, prison authorities should provide constructive programs of mental, physical and social activities for the inmates. In this regard, reference was made to Professor Rupert Cross' book *Punishment, Prison and the Public.* (1) It was pointed out that Cross sees prison programs as aimed at the prevention of deterioration of personality rather than rehabilitation.

Answering another question, Mr Amilon said that the decrease in the use of imprisonment in Sweden was a result of encouraging and extending community-based treatment rather than decriminalisation of offences.

He said that in Sweden pre-sentence reports are widely used by courts, are compulsory in certain instances, but are frequently prepared by volunteer laymen under the supervision of professional probation officers.

In discussion groups, participants expressed doubts about the realism of society's expectations of prison systems. They thought it unlikely that any of the commonly accepted goals of imprisonment, other than the temporary removal of the offender from the community or the demonstration of unaccepted levels of behaviour, could be attained.

The concept of deterrence was dismissed as being useless unless the sentence was so severe in relation to the offence as to be absurd.

If society chooses punishment and retribution as the main functions of a prison system, then the process should be open, honest and quick, to avoid any possible gradual disintegration of prisoners' physical and mental faculties. It was thought to be unlikely that society expected rehabilitation to occur as part of a prison sentence.

One group examined possible constructive effects of imprisonment. Although it was agreed that some inmates, for example, derelicts, alcoholics and addicts, could benefit in physical health, it was also readily agreed that this was hardly an appropriate use for prisons. Neither was it considered that the opportunity provided for gaining work skills or education justified the use of prisons for these purposes. There was a call for individualisation of treatment to cater for the diversity of

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(1) Rupert Cross, *Punishment, Prison and the Public* (London, Stevens, 1971).

prisoners' needs and including permission to opt out from all planned programs.

Rehabilitation is a vague, over-worked and almost meaningless word. Rehabilitation is rarely associated with a prison term, and where it does occur, it is likely to have appeared in spite of the imprisonment rather than because of it.

Some groups were unable to reach a consensus on such matters as the need for prisons at all in their present form, their deterrent effect, what social values and attitudes need changing, and what should take their place. It was agreed that sentencing policies are changing, judges are imposing smaller sentences for such offences as rape and escaping from prison, but are still not sufficiently aware of the results of their decisions.

Participants further disagreed on the use of mandatory pre-sentence reports. In Canada pre-sentence reports are compulsory in all juvenile cases and in adult cases where imprisonment is likely. The reports are supplied to the crown and the defence, and are open to argument and challenge.

One group supported an Australian application of standards developed by the American Correctional Association. These standards are intended to control penal institutions, to determine effective levels of administration, to foster community interest in prisons, and to consequently encourage alternative judicial courses so that only those too dangerous to be at large are incarcerated.

Another group attempted to answer the question 'can corrections correct?' Their answers tended to be pessimistic. This was because offenders who are imprisoned are already conditioned to a certain way of life which is further reinforced by prison culture, which tends to progressively insulate them from an awareness of the possibilities of a different life style.

To combat this problem outside organisations should work within the community making it aware that it shares the prisoner's problems. The community must stir itself to move inside the prisons and contact the inmates. It is essential that prison custodial staff be a part of this movement. The workshop, in this regard, drew heavily on the Western Australian experience which was explained in depth by the Director of the Western Australian Department of Corrections.

This same group also examined the criteria for classifying offenders into maximum, medium or minimum security institutions. This particular group seemed concerned with imprisoned people, both during their term and upon release, rather than with the morality of imprisonment.

Mr David Biles, the Institute's Assistant Director (Research), addressed the seminar on 'Recent Trends in Imprisonment Rates' and presented a number of statistical tables to illustrate his points.

Mr Biles presented a table which summarised the major facts relating to

the seven correctional administrations in Australia. For each administration his table (Table 1) indicates the number of penal institutions, the daily average number of prisoners for the year 1973-74, the percentage of prisoners in the largest institution and the percentage held in conditions of minimum security. The table also shows the escape rate as a proportion of the escapees related to the daily average number of prisoners and also the year of commencement of the parole system.

TABLE 1 Summary of Australian State Prison Systems 1973-74

	N.S.W.	Vic.	Qld.	S.A.	W.A.	Tas.	N.T.
No. of Institutions	24	13	10	8	13	4	3
Daily Average	3274*	1870	1497	762	1125	344	205
% in Largest Institution	38	50	43	40	37	78	44
% in Minimum Security	14	19	7	8	30	22	14
% of Escapees	3.4	2.8	2.7	2.1	9.5	3.2	?
Year of Commencement of Parole System	1967	1956	1959	1970	1964	1975	-

* Including A.C.T.

This table shows that Australia has 75 separate prisons, housing approximately 9,000 prisoners at any one time. Mr Biles pointed out that there were significant differences between jurisdictions in the proportions of prisoners held in minimum security conditions and also in escape rates. Western Australia had the hignest number of prisoners in minimum security institutions and the highest number of escapees and this suggested a high imprisonment rate. He also pointed out that over the past 20 years parole systems had been established in all jurisdictions but these seemed to bear no relationship to the numbers of prisoners.

Mr Biles said that the major issue in prison reform was the 'imprisonment rate' which he defined as the daily average number of persons in prison (including unconvicted persons awaiting trial) per 100,000 of the general population. Mr Biles then presented a table which showed the imprisonment rates for each of the six Australian States and the two Territories for the year 1973-74. This table (Table 2) indicates that the Northern Territory has by far the highest rate and the Australian Capital Territory the lowest, but Mr Biles pointed out that the extreme figures found in these two jurisdictions should only be compared with those of the States with the utmost caution due to the special factors operating in the Territories.

TABLE 2 Australian Imprisonment Rates 1973-74

State	Daily Average Persons in Prison	General Population* (in thousands)	Imprisonment Rates
New South Wales	3231	4738	68.2
Victoria	1870	3616	51.7
Queensland	1497	1947	76.9
South Australia	762	1211	62.9
Western Australia	1125	1084	103.8
Tasmania	344	399	86.2
Northern Territory	205	98	209.2
Australian Capital Territory	43	175	24.6
Total	9077	13268	68.4

* as at 31.12.73

With regard to the six States, Mr Biles drew attention to the fact that Western Australia had the highest imprisonment rate, this being more than twice as high as that of Victoria. The other four States had figures in between these extremes and Mr Biles pointed out that differences of the magnitude shown in Table 2 had been established for many years.

Prison administrators attending the seminar were invited to comment on trends in imprisonment rates since 1973-74 and for most jurisdictions further decline in numbers was indicated.

Participants expressed considerable interest in possible explanations for the striking differences in imprisonment rates and Mr Biles emphasised that these differences could not be explained by reference to crime rates. This lack of correlation, he argued, had been found from many overseas studies and he cited the work of Professor Leslie Wilkins as an example. He pointed out, however, that one minor exception seemed to apply to Australia and this occurred in the situation in the Northern Territory, which seemed to have both a high imprisonment rate and an abnormally high level of car stealing. A number of other hypotheses such as the numbers of police and the availability of alternatives to imprisonment were suggested, but Mr Biles argued that the available evidence indicated that they had little or no explanatory value.

He suggested that there were three types of valid explanations for the variations in imprisonment rates. These were:

1. the negative correlation between the numbers of persons in prison and the numbers in mental hospitals;

2. the numbers and legal status of Aborigines in the relevant general populations; and

3. the social climate or level of public tolerance of deviance which was reflected in the sentencing of criminal offenders.

Mr Biles emphasised that these were only partial explanations and he stressed the fact that where these differences existed, other much debated issues, such as prisoners' conditions, diet, education and training opportunities were relatively insignificant. If large numbers of people were held in prisons in some jurisdictions who would not be in prison in neighbouring jurisdictions, it seemed pointless, he argued, to debate whether or not they should be allowed to have hot showers. In many cases these prisoners should not be in jail at all.

To illustrate trends over the past 15 years in Australian imprisonment rates, Mr Biles presented a third statistical table (Table 3). This table shows that in nearly all jurisdictions there has been a clear tendency towards decrease in the rates in recent years, the only significant exception being that of Queensland.

TABLE 3 Australian Imprisonment Rates 1959-60/1973-74

Year	N.S.W.*	Vic.	Qld.	S.A.	W.A.	Tas.
1959-60	82.1	60.7	62.9	72.3	88.7	65.8
1960-61	79.3	64.9	59.6	73.0	89.7	61.2
1961-62	81.6	67.5	60.4	78.8	95.8	68.7
1962-63	78.9	66.0	59.9	77.9	106.7	68.4
1963-64	80.7	68.0	56.9	80.1	109.2	65.4
1964-65	74.6	64.3	55.9	77.2	107.2	64.3
1965-66	78.3	61.0	61.5	81.9	103.0	64.6
1966-67	80.5	65.0	64.6	81.0	117.8	78.1
1967-68	81.8	67.6	62.4	88.2	133.0	85.0
1968-69	81.1	69.0	61.2	88.8	145.3	86.3
1969-70	82.1	66.8	63.1	84.5	134.7	91.8
1970-71	83.0	68.6	68.3	78.2	143.9	97.5
1971-72	86.9	67.0	71.0	77.8	144.8	94.9
1972-73	85.5	58.8	79.9	72.7	121.5	93.8
1973-74	66.6	51.7	76.9	62.9	103.8	86.2

* including A.C.T.

Mr Biles invited answers to the question 'what is a desirable imprisonment rate?' Some participants suggested that the answer was zero but others argued that it should be as low as was tolerable to the community.

Following presentation of this address, arrangements were made with the prison administrators present to provide the Institute staff with

up-to-date information on prison numbers so that analyses such as those presented above can be available at any time.

A Prisoners' Action Group representative, Mr Tony Green, spoke about the publication *Alternative Criminology Journal* and the function, aims and objectives of the Prisoners' Action Group. The group was formed about 3 years ago to press for the total abolition of imprisonment as a sanction against criminal activity. Another primary concern of the group is the welfare of inmates within prisons. Mr Green stressed that the group did not exist to create riot situations, since the results of such were often punitive to the participants. If prisoners themselves, however, decided to riot, then he was bound, because of his personal experience and as a matter of honesty, to support their action.

Beyond merely organising demonstrations, his group have been conducting a publicity campaign as an alternative source of information to the press. Two films and a videotape have also been made with money from the public and an Arts Council grant. The group has also set up a half-way house in a Sydney suburb, which helps many discharged prisoners. Denying that their activities could be labelled as terrorist, Mr Green spoke of his group's direct-action activities such as passing around pamphlets and using loud speakers outside prisons.

Mr Green expressed concern that inmates are not given an opportunity to participate in penal policy or prison administration decisions. He drew attention to the *Alternative Criminology Journal*, and outlined material that was in production for distribution to all Australian prisons. Not all of the pamphlets are allowed into institutions and he appealed to penal administrators to consider this matter. During subsequent discussion supporters of prisoners action groups requested assurances from the penal administrators present that bans against the entry of their publicity pamphlets into prisons would be lifted. There was no opposition to the notion that prison administrators should have the right to check such material before allowing it into prisons. Mr Braithwaite, however, said that as much concern should be felt about radio and television broadcasts as for printed material. It was generally felt that any publication that was lawful in the jurisdiction should be admitted to a prison.

Two criticisms were levelled at prisoners action groups. One was that some of their actions could only damage their public image rather than help ex-prisoners to be more easily accepted in the community upon release. The other concerned the involvement of a prisoners action group following allegations of malpractices towards inmates' visitors.

Mr Braithwaite, Mr Amilon and Mr Garrett described letter censorship and the supervision of printed material entering institutions in their countries. They created the impression that rules on those matters were rather more liberal than in Australia. It was obvious during subsequent discussion that only prisoners action group delegates supported the proposition of internal prison newspapers or of the creation of prisoners' unions.

The one woman present, Wendy Bacon, representing the organisation Women Behind Bars, described her organisation. A full statement of her address is contained in Appendix 6 to this report. Miss Bacon presented 12 suggestions for changes in Australian women's prisons which are also

included in Appendix 6. Miss Bacon criticised the seminar for the lack of women participants and stressed her belief that there should be no prisons at all, either for men or women. However, as they did exist, her group would try to improve them. The question of segregation of the sexes in prisons was discussed in some detail. The visiting experts commented on the situation in their countries. Mr Braithwaite reported that Canada was experimenting with non-segregation of prisoners. The point was raised that many women prisoners themselves would prefer incarceration in single-sex institutions.

The use of male staff in female institutions and vice versa was also discussed and it appeared that New Zealand, Canada and Sweden have advanced more in this direction than has Australia.

Each of the four main groups represented at the seminar were given the opportunity to prepare and issue a statement of their views. One session was devoted to the reading of these prepared statements by institute staff to the whole group. The statement which generated most attention was that of the prison officer group. That group had directed attention to a particular issue of the *Alternative Criminology Journal*, No.1 Vol 3 containing an article lampooning prison officers, which was considered by the officers to be highly insulting. Some prison administrators and officers said that this was an example of a journal that they would ban if it contained such an article. This attitude was criticised by prisoners' action groups, who argued that the administrators were exercising power of discretion and making value judgements about what the prisoners should or should not read rather than exercising their right to prohibit the entry of publications that could be regarded as illegal.

It was conceded that an example of a publication that might be excluded would be one urging violence and escape and containing specific instructions in methods of weapon improvisation.

The discussion demonstrated the lack of mutual understanding between the aware and militant prisoners and prison officers. The polarity of views, both within the small group discussions and the larger plenary discussions, was obvious. This polarity was reflected in the statement by the Prison Administrators group in Appendix 2. Generally prison administrators and prison officers take the existence of prisons for granted however much they see the need for constant efforts to improve them and to find alternatives for them.

There were various views expressed by participants on the need for prisons. Some questioned on every possible occasion the need for prisons in any form; others felt that the present prison system was basically sound but needed improvement; while another group felt that it was wrong in principle because it enforced a social system that was wrong. This group felt that today's criminal justice system mirrors a society where one class oppresses another, where definitions of law aim at the economic and sociological suppression of the working class.

The prison administrators complained in their statement that certain participants did not come prepared to discuss penal philosophies and practices, but rather to discuss the nature and fabric of society. They

did not see this type of discussion, although it might have merit, as part of the seminar. Other participants felt strongly that it was impossible to discuss penal philosophies and practice without reference to the socio-political climate into which our current correctional systems were born and by which they have been nourished. They persisted in attacking the symbiotic relationship between socio-political considerations and the criminal justice system. It was largely the strength of conviction on both sides which prompted the organisers of the seminar to invite all groups to present their views in a statement to be printed as part of this report.

In an attempt to resolve a threatened stalemate, one participant formulated four discussion points on which the group might meet on common ground. Participants decided that the following four points should be discussed in detail, stressing that this did not necessarily mean they agreed with them, but merely that they agreed to discuss them:

1. Dormitory accommodation should not exist in Australian prisons except in the case of some tribal Aboriginals.

2. Disciplinary proceedings inside prisons should give legal representation to prisoners.

3. New Zealand and Scandinavian methods of handling incoming and outgoing mail should be adopted.

4. No special segregation blocks or prisons should exist in Australian prison systems.

Two further points suggested for discussion by the workshop groups were:

(a) Is rehabilitation relevant?

(b) The transition from prison to community.

There was no real opposition to the proposal that the question of relevance of rehabilitation be summarily dismissed. It was generally felt that rehabilitation had not been justified as a function of imprisonment. From the discussion of the transition from prison to community it was obvious that the same polarity of views appeared in whatever was discussed by the seminar. Some participants saw the transition from prison to community as an aftercare concept, while others saw it as the transition from the almost total use of prison as a sanction to the total use of community sanctions and the complete abolition of imprisonment.

When discussing victimless crime, some participants said that offenders should have the right to destroy their own lives if they chose, while others said that this could be disruptive.

Given that the abolition of imprisonment is at present an unrealistic goal, the participants were forced to discuss the role of imprisonment. Some participants felt strongly that the State has no legal or moral right to impose any coercion beyond deprivation of liberty. If a person chooses to offend, he implicitly accepts society's sanctions, but society has no right to modify his behaviour, personality or life-style. It was pointed out that the Law Enforcement Assistance Agency in the United

States is apparently now hesitating to fund behaviour modification programs. However it was felt that the community does have the right to attempt to convince the offender of the benefit of changing his behaviour, and to make treatment facilities of all kinds freely available to him. It was the general feeling, nonetheless, that the prison must at present be retained as an ultimate sanction.

During discussions the philosophy of the prisoners' action group was forcefully expressed. The group described their ideal of a society free of the tensions and pressures which lead people to commit crime. They acknowledged that this was Utopian and said that in the meantime their primary concern was to improve conditions in prisons.

It was felt that in today's society there would remain a demand for the removal of some offenders, especially violent offenders. When violence arose, however, there should be considerable community concern. Society should in each case consider what went wrong, why it went wrong and what should be done about it. If answers lie in psychiatry or psychology then mental hospitals should be used more constructively. The prisoners' action groups said that victimless crimes and property offences should not receive the severe sanctions they are currently given. Such sanctions should be reserved for dangerous offenders. The prisoners' action groups were concerned with the high cost of imprisonment and offered suggestions for alternative use of the vast amounts of money now chanelled into prisons. Some of their suggestions were for the funding of motor mechanics courses for car thieves, pensioning off of middle-aged, fully institutionalised offenders, and introducing a system whereby offenders might be confronted with the victims of their crimes.

The problems of prison administrators were also discussed. They should be responsive to community needs and moral considerations, answer community pressure for strong sanctions, and of course to be responsible to their government. Prison reforms can be undertaken only with political approval, and governments must keep in line with the community. Prison administrators agreed that they had responsibility for iniating and supporting government moves for reform. Participants discussed those alternatives to imprisonment and to those reforms of the present system which should be acceptable to governments and supported by prison administrators. Some of these measures were:

1. The appointment of correctional officers for 'open-ended' social work, making themselves available at hotels, milk bars, coffee shops, etc. to mix with offenders and potential offenders in an attempt to gain their confidence and, hopefully, to influence them in the direction of voluntary modification of behaviour.

2. Deferred sentences with the offenders undertaking to accept 'half-way-house' type hostel accommodation.

3. The organisation of bands of voluntary 'friends' to visit half-way houses, hostels, etc.

4. The provision of the opportunity for suitable prison officers to move through prison work to social work

outside the prison walls, as indicated for example in (1) above.

5. The much greater use of release to work provisions.

6. The greater use of parole.

7. More construction and purchase of half-way houses and attendance centres and the like in place of the greater direction of funds to prison construction.

8. The use of supervised bail.

9. Attention to diversionary schemes, including training of police to use discretion more widely as to whether or not a charge is laid and in the training of judges and magistrates to make greater use of deferred sentences.

10. The reinforcement of, and assistance to, groups of problem families.

11. The wider use of community work orders.

12. The increased use of volunteers, primarily ex-prisoners, as volunteer probation and parole officers, or the appointment of such people to statutory posts in those fields.

13. The encouragement of prison officers to engage in rehabilitative programs outside their normal working hours on a paid basis, so that an officer with the inclination and the natural skills might provide access to what is believed to be a great untapped source of ex-prisoner assistance. The seminar was informed that this plan is already in force in some prisons in Australia.

14. Some ex-prisoners felt strongly about the need to recognise the existence of such a phenomenon as inmate mentality and imprisonisation. Greater attention, therefore, was recommended for a man to be able to complete his sentence in a minimum security institution or preferably on work release so that it might never occur that a person is released after a long term of imprisonment from a maximum security prison. It was considered essential that a general re-establishment of contact with the community should begin earlier in the prison sentence to relieve some of the shock of release. Work release schemes, therefore, were highly appropriate for recidivists. Any discussion centering on greater prisoner participation in the running of prisons seemed to lead inevitably to discussions of security. It was claimed by some of the ex-prisoners that emphasis on security is excessive

> in most prisons. Similarly, ex-prisoners doubted the necessity to segregate prisoners and to classify prisoners according to security risks. Ex-prisoners referred to the existence of the prison culture as evidenced by the resentment felt by long-term or older prisoners against new younger prisoners who may disrupt their community and their form of adjustment to the prison culture. Some resentment was expressed against the preferential treatment accorded 'silver-tails' or prisoners from above-average socio-economic levels, compared to the treatment of ordinary prisoners. The use of the ombudsman for prisoners' complaints was regarded as very desirable. It was evident that inconsistencies in the administration of jails cause frustration among prisoners and it was felt by ex-prisoners that the nature of the roles of 'crim' and 'screw' creates a situation of general conflict which is an inevitable result of imprisonment.

At the end of the seminar there was a proposal to form a working party to draft a code of minimum standards for Australian prisons. The composition of the working party, and its terms of reference, were discussed. On the last day a motion that had been much discussed was offered for consideration in the following amended form:

> That the text of the following statement be incorporated in the final report
>
> The conference asserts that prisons are ultimately unnecessary.
>
> The viewpoint has been adopted that such a goal is not realistically attainable in the immediate future.
>
> However, whether the conference is truly committed to the statements made will be determined by the desire of the conference to include in the preamble of its final report, at the very least, a symbolic affirmation of this objective.
>
> As a concrete expression of the desirability of that goal the conference should assert:
>
> (a) That no new penal institutions having the effect of increasing the prison population be built.
>
> (b) That prison as a penal sanction should disappear.
>
> (c) Prisons involving substantial sensory deprivation be deplored and that no future prisons of that kind be built in Australia.
>
> (d) That the Australian Institute of Criminology

deploy funds towards research into the question of less restrictive alternatives to imprisonment.

This motion was passed unaminously. A second motion regarding the terms of reference for the working committee was discussed and eventually passed in the following amended form:

(a) That a working party be established that will consist of four people drawn from the four main interest groups and a chairperson from the Australian Institute of Criminology.

(b) Decisions will be reached on any particular issue by a simple majority and in the event of a deadlock, the chairperson has the casting vote.

(c) Due regard should be given to any submission received from any interested group or individual.

(d) The final document of the committee should be issued under the auspices of the Australian Institute of Criminology and any participant or non-participant organisation may ratify it if they desire.

(e) That the committee take note of the decision taken by this meeting today as to the desirability of prisons.

(f) Participation in the drawing up of these minimum standards does not in any way constitute endorsement by any group or individual.

(g) The minimum standards that are derived are only just that.

Finally nominations were received and confirmed by subsequent motion for membership of the working party as detailed in the introduction to this report. The Director of the Australian Institute of Criminology subsequently appointed the Assistant Director (Training), Mr C.R. Bevan, to chair the working party in conformity with clause (a) of the motion setting up the committee.

The draft report prepared for consideration by participants was then examined and amended as desired by individual participants and the report as amended was finally accepted by the conference.

Appendix I

SUBMISSION BY P.J. BOYES, R.A. TOMASIC, A. WICKS AND G.D. WOODS

SOME GENERAL PRINCIPLES

While it is not accepted that prisons can be abolished in the foreseeable future, it is felt that the use of imprisonment as a sentencing option is still quite excessive, despite falling prison populations in Australia during the last ten years.

It is envisaged that Australian prison populations could be substantially reduced from present numbers with safety to the public and justice for offenders. Offenders should not be sentenced to imprisonment in the belief that their rehabilitation will be effected or with the expectation that treatment for deviance is uniquely available in a custodial environment.

PROPOSAL FOR A WORKING PARTY

Accepting that we have prisons, conditions for prisoners and for prison officers should be compatible with minimum standards of justice. This meeting, with its strong representation of senior prison administrators, prison officers, ex-offenders and academics, represents an appropriate opportunity to initiate the drafting of minimum standards for Australian prisons.

The following recommendations are not put before this meeting for the primary purpose of ratification and approval, but as examples of minimum standards which may be appropriate to contemporary Australian conditions.

We ask that the Australian Institute of Criminology sponsor a working party to draft comprehensive and detailed minimum standards for Australian prisons. This working party should be supported in its deliberations by the Institute and asked to report within a year to a reassembly of this meeting or a similar meeting, with a view to ratifying a final set of standards. The minimum standards established would carry considerable weight and possibly be approved and enacted as policy in the various jurisdictions. Members of this meeting will be aware that the United Nations Standard Minimum Rules were adopted in the U.N. in 1955 and are now outdated and inapplicable.

COMMUNICATION

1. PUBLICATIONS

(a) No restriction should be placed on the receipt by prisoners of papers, journals, books or other published documents which are sent directly from a reputable publisher or distributor and which are lawfully in circulation in the particular jurisdiction.

2. MAIL

(a) No restriction should be placed on the number of personal letters which may be received by an inmate. The prison authorities may examine the contents of any incoming letters and may confiscate illegal materials but must not withhold the communication itself.

(b) No restriction should be placed on the numbers of letters sent out of prison by a prisoner. These should be at the expense of the prison authorities. Outgoing letters may, with the exceptions mentioned below, be read by prison authorities, and shall not be withheld except where the sending of a letter would amount to a breach of the law, for example, sending threatening letters through the post.

No outgoing letter shall be opened or read by prison authorities if it is addressed to any of the following persons:

(i) Any member of parliament.

(ii) Any solicitor or barrister practising in the particular jurisdiction

(iii) The Ombudsman or his equivalent in any jurisdiction.

(iv) The permanent head (director, commissioner, etc.) of the correctional department or organisation in the particular jurisdiction.

(c) All outgoing mail must be promptly and properly despatched and incoming mail must be distributed on the day of receipt or on the first working day thereafter.

(d) Writing materials should be freely available to all prisoners at all times, at the expense of the prison authorities.

(e) In institutions deemed 'open' or 'minimum security' the examination of inward or outward mail is considered unnecessary.

3. TELEPHONE CALLS

(a) In institutions deemed 'open' or 'minimum security' it shall be permitted at some reasonable time each day for prisoners to make

use of the telephone. Local calls should be made at the expense of the prison authorities and trunk calls on a reverse charge basis. Obviously it will be necessary to make rules about the length of calls, but this could be worked out in particular institutions.

(b) In other institutions supervised telephone calls may be made by prisoners on arrangement with prison authorities. Local calls would be at the expense of prison authorities, trunk calls would usually be on a 'collect' basis. It is envisaged that the offices of personnel such as welfare officers might be used for this purpose.

4. PERSONAL VISITS

(a) As a general principle, visits to prisoners should be encouraged in order to assist in the maintenance of ties with family and friends.

(b) Visits should be permitted as frequently as possible, taking into account the circumstances of the particular institution, and should not in any case be less frequently allowed than once per week.

(c) Where possible, visiting arrangements should be such that there is no physical barrier between the prisoner and the visitor(s). Where for security reasons it is considered necessary to ensure physical separation, the barrier erected should not require the prisoner to communicate with the visitor(s) by means of an electronic speaking device. Verbal contact should be able to be effected directly without the use of mechanical or electronic aids. Use of a grille could ensure adequate security.

(d) Where possible, visits should be permitted outside normal working hours (that is, evenings and weekends).

5. OTHER VISITS

(a) Legal visits should be allowed at any reasonable time.

(b) Visits by

(i) any members of a prisoners' aid group or other group (such as a Council for Civil Liberties) concerned with the advancement of prisoners' rights;

(ii) any other group recognised by prison authorities as having legitimate access to the prison (such as Jaycees) should be allowed at any reasonable time.

(c) Visits mentioned in this section should not be counted as personal visits.

6. FREE ACCESS

Any State Member of Parliament or Federal Member of Parliament or Judge of a Supreme or District Court for the particular

jurisdiction shall be entitled as of right to free entry and access to all parts of any prison facility in the jurisdiction at any time without prior notification.

ACCOMMODATION

1. Prison accommodation of the dormitory type, allowing physical contact between prisoners during sleeping hours, is, in general, undesirable. Single cell or room accommodation should be the general rule, except where other arrangements are available, requested by the prisoners involved, and are appropriate.

2. Prisoners should not be required to spend more than twelve hours compulsorily in their cells during each twenty-four hour period.

3. Any prisoner shall be entitled to have in his cell any item of mail, any journal, book or other publication which has been lawfully received by him, and writing materials.

4. Any prisoner shall be entitled to decorate his cell with pictures or other items as he sees fit, at his own expense.

5. Any other items or materials should be able to be kept in his cell by a prisoner unless they are, in all the circumstances, dangerous to health or security.

PRISON DISCIPLINE HEARINGS

1. Where a prisoner is charged with a minor offence against prison discipline, it may be punished only by loss of privileges, but not by increasing the actual time to be served. Such offences may be tried summarily by the superintendent in a fair manner, or referred to the visiting justice.

2. Where a prisoner is charged with an offence against prison discipline, or any other offence committed within the prison, which may be punished by increasing the actual time to be served, or by an additional sentence of imprisonment, the defendant shall be free to elect for trial within the prison by a visiting justice or for trial outside the prison by a magistrate.

3. In any case mentioned in (2) above, whether the matter is tried within or outside the prison, the defendant shall be entitled to be legally represented. This may be either at his own expense or through legal aid requested and granted in appropriate cases.

4. In any case mentioned in (2) above, the prosecution of the charge by the prison authorities should be carried forward by a lawyer

or by a prison officer appropriately trained in prosecution procedures. Prison authorities should immediately begin a program of training for prison officers in prosecution and court procedures.

5. Every prisoner shall have the right of ready and free access to up-to-date copies of statutes, rules, regulations, by-laws and standing orders relevant to the discipline of the prison and to the length and meaning of his sentence.

6. In any case mentioned in (2) above, the prisoner shall be entitled to receive details in writing of the charge made against him at the time he is charged.

7. Where a prisoner has been charged with an offence alleged to have been committed within the prison, and has been found not guilty, any written notation of the charge or any evidence or allegations connected therewith, shall be expunged from the personal file or record of the prisoner.

TREATMENT

1. Leaving aside the question of the administration of drugs, no prisoner shall be compelled to participate in or undergo any program of a psychological or therapeutic nature organised within a prison.

   Participation in such programs by prisoners must be voluntary, and withdrawal of consent may be effected at any time.

   No administrative penalty shall be imposed upon a prisoner for refusal to participate in or withdrawal from any program of a psychological or therapeutic nature.

2. Every prisoner shall have the right of free and confidential access to treatment staff of the prison (that is, medical officers, psychiatrists and psychologists, social workers and welfare officers) at any time.

RIGHT TO ASSOCIATION

Prisoners should be permitted to associate for the purpose of discussing prison conditions, management and discipline, so that representatives of the prisoners can present and negotiate any requests for change.

Such negotiation should be with the level of management in the prison system that has the power to make decisions about the requests.

Appendix 2

SUBMISSION BY PRISON ADMINISTRATORS

The prison administrators attending the seminar have all been involved in the correction field for a considerable period of time. As a group they have travelled widely studying other systems as well as having been involved in numerous seminars and conferences of this type in which they are now involved. They have done this with the intention of not only attempting to stay abreast of current development, but more importantly to gain further knowledge which would be of assistance to them in their endeavours to improve their own systems. It was with that frame of reference that they approached this seminar which had as its theme, 'Penal Philosophies and Practices of the 1970s'.

We must state that as a group we are disappointed! Disappointed not with the theme of the seminar but with the fact that the theme of the seminar has not been the focus or topic of the discussions to date. It is obvious that a number of the participants were not prepared to, or cannot agree to, rationally enter into discussions of the issues related to the theme of the seminar.

The prison administrators do not deny that some participants undoubtedly have divergent points of view, and that these need to be recognised. Further, if these divergent views were not present, the seminar would probably not have been arranged. They are, however, concerned at the reluctance and/or refusal of some of the participants to enter into meaningful discussions related to the stated theme of the seminar. Certain participants, obviously did not come prepared to discuss penal philosophies and practices, but rather to discuss the very nature and fabric of the society that we live in and which not only accommodates them and us, but further has created the very institution by which we are employed. While this type of discussion may well have considerable merit, we do not see it as part of this seminar.

The prison administrators here are a representative group of public servants, and as prison administrators are employed to implement the policies of the democratically elected governments by which they are employed. Each administrator came to the seminar prepared to discuss and analyse the prison system as it exists with the hope that through these activities new information as well as additional insights might be gained. To date with the exception of the formal sessions at which papers were presented little of value has been discussed or presented by any of the participants present. It is obvious that there are participants attending who would be prepared to engage in meaningful discussion, but have been reluctant to do so as their contribution would only become the focus of further confrontation.

The administrators present came to discuss penal philosophies and practices while on the other hand certain participants came to discuss

political philosophies and political action. We do not deny the need for both issues to be discussed and examined, but are not of the opinion that the present seminar was convened for that purpose.

We regret that the group has to date not been able to discuss the theme of the seminar to which they were invited and for which some had made preparations. We feel that if any meaningful discussions are to be entered into and if any useful materials are to emanate from this seminar a definite frame of reference will have to be provided so that the remaining discussions can reflect that frame of reference from this point on.

Appendix 3

SUBMISSION BY R.J. KIDNEY AND R.S. OZYJIWSKY OF THE PRISONERS' AID ASSOCIATION OF SOUTH AUSTRALIA

Prisoners' Aid organisations in Australia believe that rehabilitation can only be achieved in a positive attitude of goodwill with mutual understanding, respect and trust by those involved - namely the community, the voluntary agency, ex-offenders, prison officials and the prisoner.

We see voluntary agencies involving the ex-offender in prison visitation and after as being an important part of rehabilitation in the late 70s.

We see the need for administrators of prisons to admit more people belonging to ordinary community organisations to hold group discussions and to arrange interest groups in cooperation with prison officers and prisoners. This will not only benefit prisoners but will enable the community to have a greater appreciation of the problems facing ex-offenders on discharge.

We believe voluntary agencies by the use of rightly motivated ex-offenders can be used extensively in public speaking to educate the community and to break down the existing public image of the offender which has often been presented by the media.

We see the continued role of prisoners' aid organisations as giving support to prisoners' families and see post release houses of various kinds, for some offenders, as an integral part of the rehabilitation system.

We ask prison administrators here to examine the value of prisoners' aid organisations and in areas where they do not exist urge communities and their governments to give financial support to their establishment.

In attending seminars such as this, as well as meetings convened by the United Nations or the Australian Crime Prevention Council, we are alerted to the deep concern from all disciplines concerning the ever growing crime rate and recidivism in particular.

Laws have been amended, new legislation brought in, correctional centres have changed procedures in handling adult and juvenile deviants. The community in some cases is calling for tougher penalties as the answer to the problem in which we are all involved and about which we are all concerned.

Prisoners' Aid International some years ago stated in its philosophies a new element, which, while not overlooking the importance of so many of the methods previously tried, I believe today, when an answer is being sought, is worthy of our consideration:

> That since the object of prisoners' aid and after-care agencies is the reformation of the offender, we affirm that none should enter in or remain in this work, who is not committed to the principle that every offender offers hope of reclamation.
>
> That since all prisoners have spiritual aspiration towards a better life (consciously or otherwise) it is through these aspirations that they are most likely to enter a road to restoration. Prisoners' aid organisations should without favour, but with due regard to a prisoner's religious beliefs, cooperate with all who are able to contribute to this end.

The question you ask is 'does this work?' I can only answer for myself, after using this philosophy for 20 years in social welfare work and in seven and a half years in prisoners' aid work, that it does. We have many case histories of completely changed criminals as evidence. Above all, we can produce the people to speak for themselves.

Last year in Washington I witnessed the same power at work in Lorton Prison, where hundreds of hardened negro prisoners have changed from men of hatred and bitterness to men of gentleness, and men who now live to help and consider others.

This movement has had its effect on prison staff and administrators alike. Recently the Federal Bureau of Prisons has made it possible for prisoners from other parts of the USA in twos and threes to be transferred to Lorton in the hope of them finding this answer, and, in turn, returning to their own prison.

This method does not cost millions - it is old, but has proved it still works if given the opportunity.

Appendix 4

SUBMISSION BY PRISON OFFICERS

Owing to the previous discussion relating to the *Alternative Criminology Journal* and the various comments made against prison officers, the group started discussion on this point. None of those present had viewed the magazine before this, and could devote only a short time therefore to it.

Our immediate reaction was that the majority of officers, and certainly those present, would regard the particular publication as offensive and possibly slanderous, (we refer here to page 31, Vol.1, No.3) not only to ourselves, but to people of migrant background.

If it is the aim of the Prison Action Group to break down barriers, and to solicit support for their aims, this is a peculiar method of doing it. This particular section would provoke hostile feeling rather than allay it. Were I a migrant, of whatever race or creed, I would object strongly to being so described.

As prison officers we object to the circulation of anything designed to cause conflict between prisoners and officers as this fairly obviously is. There is already enough friction, hate and hostility between the participants of any prison regime without throwing petrol on a smouldering fire.

I also object personally because of my own qualifications. I did not 'drop out' I was expelled from an orphanage. As to the 'Latent Freudian' sadistic complex I'm not sure what one is; though I suspect all here present have one.

THEN - ON TO THE DUTIES

1. I have never 'bashed' any prisoner, though I have been bashed by a prisoner, and have witnessed many unprovoked assaults on officers, and many vicious assaults by prisoners upon other prisoners.

2. Guilty. I have covered up for other officers! On at least two occasions I have failed to report officers who were three minutes late on duty.

3. Decidedly guilty. I imagine going on duty nude in this weather. Anyway they won't allow streakers through the gate.

4. I'm damned if I can find any of these bribes I'm supposed to collect.

5. I'm afraid I have no interest in homosexual activities, but I would have thought that since one of the demands listed on

The Prison Action Group Blue Sheet is 'conjugal rights' that they would have been attempting to cater for all inmates rather than only a select group, and would have been quite happy if running a homosexual lonely hearts club was part of an officer's duty. Perhaps they discriminate against C.A.M.P. in other respects too.

As to the last points in the advertisement - as a union official I would undoubtedly be lynched if I agreed with the first phrase - and then - 'plus lurks' - I can only conclude that they must be on the same shelf as the bribes - finally, though I have sometimes felt the need of psychiatric attention, I have been unable to obtain it free. Of course, becoming an inmate would solve that, but I don't think I need it that badly.

Another point in the magazine - page 29.

As I recall it these points had been discussed at meetings by officers, and were finally the subject of a proposal from the senior staff at Fremantle to the Director; I attended those meetings and I certainly do not recall one of your members being involved in any way.

We unfortunately did not have sufficient time to study the publication at length, though what little of it we read confirms our belief that prison officers are all too often the scapegoat of the system. Whatever inmates conceive as bad, unjust, or in any way undesirable, in the prison system, they lay the blame for it on the officer. By and large, the general public do likewise. Some prison administrators, and others, who attempt to introduce new methods of control, or programs of one kind or another into prisons, tend to lay the blame for their failure on the officers. If the program is a success some other agency will lay claim to it.

In Western Australia we were recently told that prison officers should adjust their thinking on racial discrimination in spite of the fact that the recent (1972 I think) Royal Commission stated there was much less racial discrimination in Fremantle Prison than in the community in general.

Another comment on the Prison Action Group Blue Sheet - The Present System - para 2.

It appears almost inevitable that in any situation of conflict, no matter what happens, or how it happens, the prison officer will have the blame sheeted home to him by those who apparently follow the line that - we are innocent until proven guilty - you (the officer) are guilty - before, during and after any sort of verdict no matter by who rendered - of crimes committed.

This was also borne out by the statement that a prison officer 'propositioned' a female visitor to a prison and that the Prison Action Group in retaliation, took photos of car numbers, etc, in order to establish residential whereabouts of officers. With what purpose in mind? What were they going to do?

Had the 'proposition' been made by a taxi driver, or bus driver, would the Prison Action Group have taken the same action? If so - again - with what purpose in mind? If not - why not? Is it just that their emotions overcome their logic and the blame for all their ills is directed against the prison officer? It would certainly seem so, for many women and children have been 'propositioned' and wound up as rape or rape/murder statistics, and the offender incarcerated. What action has the Prison Action Group taken then? Have they taken photos of ex-inmate's vehicles?

We felt at that point that we should devote no more time to that topic as we had all experienced these emotional outbursts before, and heard all the accusations before, and that we did not consider we had travelled hundreds in some cases thousands of miles to be vilified once more. We had hoped for a spirit of cooperation aimed at solving problems; we had also hoped that perhaps this seminar would define and outline the function of the prison system; precisely what the system is supposed to achieve, and how it is going to do so, and the officer's role therein.

The vague definition of rehabilitation, penal reform, etc, means little. Any place, no matter how well it is run, on what lines, on what scope, where people are detained, however loosely, or by whatever sanction, against their will, is still a prison.

It is a fact that very few offenders against the laws of society - concentrate on just one category - premeditated wilful murder for gain, will peacefully surrender themselves, or make themselves available for treatment, of whatever description, even the most benign. They must be held against their will.

Considering then that people are being detained against their will, in an institution which may be called a prison or a crackerbox if you will, we discussed the points made earlier.

1. DORMITORIES

Generally we agree that this type of accommodation should be dispensed with. The exceptions - where the inmates themselves do not desire it.

2. LEGAL REPRESENTATION

All parties should have legal representation in any legal action.

3. MAIL

There should be no limitation on amount of mail received or sent.

Magazines - lawfully printed outside/or inside should come direct from publishers if possible or access otherwise granted - library facility, etc. The exception - where the aim of the author or publisher is to incite or inflame violence.

4. SPECIAL BLOCKS

There must be special blocks in many prisons. The best reason for this

is outlined in the *Alternative Criminology Journal* - page 34 - para 2 Dixon v W A. Some prisoners must be segregated from all others.

Many must also be segregated for their own protection from other inmates.

Appendix 5

SUBMISSION BY PRISONERS' ACTION GROUP

PREAMBLE

In analysing penal philosophies and practices in Australia in the 1970s it is essential to recognise that the penal system in Australia is an integral part of a system preserving and reinforcing the structure of the Australian capitalist social and economic order.

Much of this conference has been conducted on a basic misconception of the reality of the order we live under. It has been based on a liberal pluralist image of society: that we are different interest groups, who compete equally with others under the watchful eye of the umpire, the end result being some balancing of interests and consensus. This view is, in short, a sham.

The reality in the conference situation is the reality of the wider society. Power lies with the agencies of the State, the agencies of the established social order, whether they be the on-the-spot agents, the screws, or those who parasite off this dirty work, the managerial and ideological legitimators, the administrators and sundry experts/criminologists, social work apologists and God-squaders.

These power relationships are manifested in a variety of blatant and subtle ways. One example was in the discussion yesterday when the taking of car numbers was viewed with such alarm and consternation. That such an action can cause alarm in a situation in which people are prepared to joke about the genocide of an entire culture in Tasmania, a situation in which it is clearly revealed that certain particular penal administrators are nothing other than managerial yes men who are not even aware of the legislative structure within which they purport to be operating, raises interesting questions.

It is time, perhaps, that the visiting 'experts' started hearing something of the prison system in Australia, of the bashing and the brutality that continues daily while we are here talking. They may be interested to learn, for example, that the original Victorian P.A.G. nomination could not attend this conference. His parole officer advised him that he would not recommend that the Parole Board allow him to leave Victoria for the purpose of coming to the conference. The reason for this recommendation - that it would be in his best interests not to attend. Perhaps a very accurate assessment: perhaps an official attempt to censor his very attendance.

The visiting 'experts' may be interested to know of the present bashing and intimidation of prisoners in New South Wales. The crime of these people? To attempt to organise and awake fellow prisoners to the fact that there is in the State of New South Wales a Royal Commission into Prisons, a subject on which some prisoners may, presumably, feel qualified

to offer an opinion. In our fuller statement to be issued later, at this conference, we may well document this intimidation and unlawful violence, and challenge the New South Wales prison administration to admit that the suspension of privileges, the destruction of notes and diaries, the theft of writing materials and typewriters, referral to psychiatrists, the transfer to successively more brutal prisons and the actual physical brutality - all this being practised in recent weeks in New South Wales - not only is despicable and utterly indefensible, but reveals that frightening totalitarianism that would seek to prevent a prisoner from speaking his mind, from communicating to lawyers and eventually to the public, his experience of the so-called correctional system.

Make no mistake about it, the history of the present Australian Gulag Archipelago is being documented, the truth cannot be bashed out, concealed, ignored, forever.

Returning to the inability of bourgeois liberal pluralist philosophy to do anything other than mystify our capitalist social order - let us ask yet again - how can we adjudge the working class thief a criminal and yet support the wholesale plunder of both Australian resources and the sweat and toil of Australian workers by American multi-nationals, and the similar plunder of Fijian and Bouganvillean workers by Australian capitalists?

How can we adjudge the violent individual a criminal given the existence of massive State violence, in its multitude of hideous forms: industrial accident and disease, pollution, deformed thalidomide children, poverty, unemployment, denial of access to essential services, sexism, patriarchy, racism, imperialism and so on?

That the law is a political weapon wielded on behalf of the ruling class by a variety of ideological agents is undesirable. We include within that category of ideological agents the Director of this Institute, William Clifford, who has much to answer for in relation to the propagation of crime control criminology in third world countries, particularly in Africa and Papua New Guinea, a claim we will develop further in our fuller paper.

Any analysis of the class composition of prisoners will demonstrate the essentially political nature of criminal definitions and of enforcement of those definitions. Prisons represent one of the most brutal outposts of our social and economic order. Who can view Katingal as anything other than a behaviourist nightmare, an epitaph to the poverty of penal philosophy in the seventies?

Who can seriously view the creation of a prison mentality in inmates, or the existing process of conditioning prisoners to adapt to prison captive life, as anything other than inevitable?

Who can view that fundamental contradiction between training for freedom in conditions of captivity, as anything other than irresolvable?

Abolition as a general goal becomes the only possible response to these contradictions, abolition as a continued and fundamental demand, abolition as a spiralling attack not only on penal institutions but also on the

very law itself, for law is, after all, 'the antonym rather than the synonym of order'. (Quinney: 1974 p.190).

When has it ever been other than that captive people have asserted their very humanity through struggle? When has it ever been other than that the caged have resented their cages and cagers? When has it ever been other than that all people, deep down in their hearts, have known that justice lies in the oppressed and not in the oppressor? Human beings have always attempted to escape from oppressive institutions and we support this assertion of humanity.

WHY REBELLION?

Prisoners in Australia have, in the last six years, adopted the stance that it is valid, when all other attempts to gain redress for their grievances have failed, to destroy the system, philosophies and hardware which oppress them.

In this period we have seen Bathurst Jail destroyed, rebellions and major disturbances in Maitland, Parramatta, Goulburn, Boggo Road, Pentridge and Yatala Jails, and many other less forceful demonstrations and strikes, showing prisoners' frustrations, at almost every other maximum and minimum security prison in the nation.

It is suggested that this phenomenon of prisoners' aggressive confrontation with the prison system is no mere coincidence. It is answer to which prisoners have recourse in relation to the barbaric systems which are euphemistically designated correctional institutions.

When one looks at the demands that prisoners all over the world are making, it seems incomprehensible that the justice of their demands have not convinced prison administrators to implement them immediately.

Yet at this conference and generally there is a basic reluctance by prison authorities to relinquish the power they hold over the fundamental rights of prisoners as human beings.

The rebellions in prisons in this country are due, not to one specific issue or goal, but to an accumulation of what in isolation would in many instances amount to only minor grievances, but which, when combined, add up to an oppressive system without rhyme or reason that is intelligible to the prisoners.

This is coupled with an almost complete refusal by authorities to give due consideration and in many instances, even listen to, their demands. Prisoners, justly, feel that they are knocking their heads against a brick wall.

Accordingly, and because access to outside, sympathetic allies is denied them, they have concluded that the only course open to them is to attract publicity to their plight. Because of the above, the only methods which have a chance of success open to them are the sit down strike, hunger strike, demonstration and rebellion. It must be stated the system is not of the prisoner's making. He cannot control the fact

that he has no access to the outside world. Similarly we cannot blame the prisoner for being backed into a corner and of having no alternative but fighting his way out. And in this struggle we support the prisoner.

Let us make clear that we in no way encourage rebellion. We know only too well that the response of the system to it is vicious, uncontrolled, savagery against all prisoners within the prison.

There is a trend towards escalation in the violence of these disturbances and rebellions. Current prison administrators who honestly assess the situation cannot abdicate responsibility if this position is sustained. Bathurst Jail is a classic example. In 1970 130 prisoners staged a passive sit down strike to protest against the conditions. The administration pretended to negotiate with the prisoners and as a result they returned to their cells. Over the next two days all of the undertakings of the administration were broken and some prisoners were sent to Grafton Jail. On the next day the prisoners staged a full scale rebellion which was notable for the fact that during the rebellion absolutely no physical violence occurred. Again negotiations were entered into, again promises were made, including the promise that there would be no reprisals. As a result prisoners returned to their cells. They were subjected to, over the next three weeks, the organised and systematic brutality of the prison staff.

Prisoners, knowing that they had nothing to lose, and knowing that they could expect violence in return for their actions, completely destroyed the prison. In the next rebellion prison administrators in New South Wales ran true to form and showed that they are slow learners because again their answer was cruel, systematic brutality over a prolonged period after the rebellion had concluded.

Unless there are fundamental and far-reaching reforms instituted rapidly the only foreseeable outcome of this spiral of violence is yet further bloodshed.

MINORITIES

Minorities in prisons deserve special comment. The large proportion of Aborigines in our prisons is the result of a deeply entrenched racist system. Conditions of Aborigines in the society will not fundamentally be changed until that system is destroyed. To quote Paul Coe, President of the Aboriginal Legal Service 'The stealing of white man's property is rebellion against white man's values. As far as I'm concerned, as far as blacks in Sydney are concerned, every black prisoner in Australia is a political prisoner. He should not be there because you came, you stole his land in the first place, you destroyed our culture, you destroyed so many black people.' While the present system exists, black inmates must be given free access to the resources and organisations of the black community, so that they can formulate policies and changes relevant to their special needs. A similar principle must be applied to migrants.

Women represent only a small proportion of our prison population. They are more often institutionalised in mental hospitals. Patterns of deviance and crime flow from the oppression of women in this society.

For example, child battering occurs because women are isolated and confused, conditioned to adopt a role which is still seen as the most legitimate one for all women. The solution to child battering lies in free 24 hour a day child care, cooperative forms of housing and a change in ways in which women are conditioned and viewed in this society. Similarly, the rare woman who murders her husband may have been beaten and abused for years by that man whose proclivity for domestic violence has been characteristically ignored by law enforcement agencies. Surely the answer lies in changing the nature of male-female relationships rather than in further punishing the woman herself. Women lacking the economic resources to provide for themselves and their children or conditioned by advertising and consumerism to acquire the latest fashions if they are to feel acceptable in the eyes of men may end up in prison for shoplifting.

Within women's prisons limited facilities are available and the emphasis of those which are available reflect a restricted view of the potentiality of women. Sewing, cleaning and cooking still make up the bulk of jobs available. While both men and women should be able to engage in this work, clear alternative productive work should be available. Special reforms must be introduced to ensure that women have the same rights as men. Methods of control which take advantage of the conditioned passivity and submissiveness of women must not be used. For example, because of their conditioning, women may be more easily manipulated by the use of drugs and behaviour modification methods. Loss of clothes, make-up etc, while unnecessary in the normal situation, can result in a devastating loss of individuality in women - again because of a conditioning which leads women to associate their very selves with their physical appearance.

REFORM

It is undeniable that the 'utopian' position that the prison population should be zero, because prisons are irrelevant, would command a universal consensus amongst delegates to this conference, be they prison administrators, academics, ex-prisoners, prison warders or 'reformers'. Divergence would inevitably arise in relation to whether this is a realistic goal or to the methodology by which it ought to be achieved. Nonetheless it should be made absolutely clear that the ultimate goal should be the eventual abolition of prisons and, of course, any pseudo-prisons or cognate forms.

If it be said that, in the short term, it is simply impossible for pragmatic reasons, to achieve that objective, it becomes crucial (pending that result and not in substitution therefore) to implement immediately a number of reforms in the existing penal systems. This will, at least, ameliorate the barbarous destructive effects of prison on the human relationships of large numbers of people both inside and outside the walls. It is important to note that many of the recommendations which follow are straight forward, even mundane, and capable of rapid implementation, often without legislative change. If this conference really wishes to contribute to penal reform it will, at the very least, endorse the following proposals:

RECOMMENDATIONS

1. Prison uniforms should be abolished or made optional. (Shorts, singlets and thongs to be worn in summer). The use of prison numbers should be abolished.

2. The only possessions liable to forfeiture on admission should be money, weapons or things capable of being used as weapons.

3. All prisoners should retain the right to vote in all elections and facilities should be made available for them to exercise that right.

4. Present restrictions on personal possessions and goods and services should be considerably relaxed with a view to being eventually abolished, especially for long-term prisoners.

5. Prisoners should be allowed an unlimited number of visits, such visits to take place in proper facilities befitting human beings. There should be no physical obstruction between the parties and any conversation would be conducted out of earshot, if not actually out of sight, of warders.

6. Most prisoners should be entitled to conjugal visits with either spouse, de facto spouse or friend. These visits should preferably take the form of week-end leave. For those prisoners considered unsuitable for week-end leave, facilities should be provided adjacent to the prison for conjugal visits.

7. Female staff should be used in male prisons and vice versa. The single-sex nature of prisons should be broken down.

8. All restrictions on the writing and receipt of written communications should be lifted. The practice of withholding mail should be prohibited.

9. Any publication obtainable legally in the community should similarly be obtainable by prisoners.

10. All prisoners should be guaranteed the right to proper, meaningful work.

11. Prisoners should be paid the ruling rate wages for such work which apply outside prison and be entitled to membership of unions.

12. The money earned should be put towards the support of a prisoner's family or dependants where relevant. If there is no family/dependant the money should be placed in a bank account to be managed by the prisoner.

13. Much of the present prison routine should be changed to allow for greater freedom of movement and greater opportunity for association and interpersonal contact between prisoners.

14. A maximum time limit should be imposed beyond which it is not permissible to detain prisoners in their cells.

15. There should be no special segregation punishment blocks such as 'H' Division (Pentridge), Grafton, Katingal, OBS.

16. All victimless crimes (vagrancy, drunkenness, prostitution, homosexual offences, abortion, consorting, marijuana usage) should be abolished.

17. Summary offences such as offensive behaviour and indecent language and all minor non-violent theft offences should be non-imprisonable.

18. All sentences less than 12 months in respect of first offenders should be suspended.

19. The criminal record of prisoners convicted of minor offences should be expunged after a relatively short period.

20. Prisoners should be allowed to form unions, meet regularly and circulate a newsletter to enable full and free discussion of any matter of concern to them.

21. Within the limited hours during which TV/radio is allowed there should be no restriction on selection of channels.

22. Disciplinary proceedings against prisoners should be reviewable on appeal to the District/County Court and should be originally heard in open court by magistrates. Prisoners should be entitled to representation and legal aid as of right.

23. There should be no dormitory accommodation for full-time prisoners unless specifically requested.

24. Prisoners should be entitled as of right to appear in any court during the hearing of any matter concerning them.

25. Prisoners should be entitled to appear at and/or be represented legally at any adjudication by a parole authority.

26. Prisoners in relation to whom parole has been revoked, refused or deferred should be granted the right of appeal to a superior court.

27. A parole officer should be available at prisons at all times during the day to answer prisoners' queries concerning parole.

28. The granting of parole should not prejudice statutory (or other) remission entitlements.

29. There should be no loss of remission as an additional punishment consequent upon a finding of guilt in disciplinary proceedings.

30. Prisons should be open to inspection by members of parliament, magistrates, judges and penal reform groups.

31. A prisoner should be entitled to one telephone call per day (at his/her own expense in the case of trunk calls).

32. Buzzers should be installed in cells, in case of serious illness.

33. The prison library stocks should be improved and no political/ sexual censorship should be imposed.

34. Allegations of beatings of prisoners by warders should be thoroughly and independently investigated.

35. Prisoners should be entitled to make representations in relation to and appeal to a magistrate against a transfer decision.

36. Lawyers and prisoners should be entitled to meet privately out of sight and hearing of warders free from electronic surveillance, and without the interposition of any glass or wire grilles.

37. Greater emphasis should be given to furloughs and work release after serving the minimum portion of a sentence.

It is important to recall that none of the above suggestions is radical or revolutionary. If all were adopted tomorrow, a small step in the right direction would have been taken. A panacea for the fundamental problems they are certainly not. However, if they are not implemented it is clear that prison authorities will be faced with violence as the ultimate, agonised and frustrated response to a blanket refusal to consider reasonable and straight-forward demands which do not even broach the question of the legitimacy of the institutions they seek to perpetuate as organs of social control.

FOOTNOTE

The deprivation of the liberty of an individual is, of course, the greatest possible deprivation of civil liberties. In addition there is an undeniable abuse of fundamental human rights within the prisons. As always the onus is heavily upon those who seek to impose those constraints to justify such imposition.

The New South Wales Council for Civil Liberties condemns the existing penal administration in New South Wales. In particular, it deplores the failure of that administration and the successive Ministers responsible for it, to investigate the causes and consequences of the rebellion at Bathurst Jail in February, 1974. Even now there is continuing frustration of penal reform groups in relation to the Royal Commission into Prisons in New South Wales.

The Council is of the view that the abolition of prisons, though obviously a desirable goal, is not presently capable of achievement. However, the Council wishes to endorse strongly the 37 proposals for reform of the existing prison systems in Australia listed above.

Appendix 6

SUBMISSION BY WOMEN BEHIND BARS REPRESENTATIVE WENDY BACON

'Women Behind Bars' is an organisation which is open to women who have been in prison and women who are closely associated with women in prison. It began in 1975. Almost all of us have spent some time in Mulawa women's prison. So far we have taken up some specific complaints of women prisoners - one from a woman who had been kneed in the stomach while pregnant in Mulawa, another from a woman who has been refused permission to visit a close friend in jail. The group does not share one general view of prisons or a single attitude towards crime, so in making these comments I do so on my own behalf.

As the only woman at this conference called to consider the philosophy of penal practices, I gave some thought to why that was the case. An obvious answer, is that there are very few women prisoners (several hundred in Australia) compared with the thousands of men incarcerated. However, there is more to it than that. There are many women involved in the day to day running of the prison industry - a few governesses, prison officers, probation officers, psychologists, nurses, cleaners, clerks and typists. Most of these are in the lower echelons of the departments, and since we have a heavy preponderance of top level administrators here, they are not represented. Administrators tend to present an official line. There is no reason why typists and clerks might not also have a view to offer. It is one of the characteristics of authoritarian institutions that power and therefore policy making is concentrated at the top. I note also that at this conference, while women are involved in typing, tea making and general administrative details, it is men who chair meetings and speak on behalf of the Institute.

The result of the fact that we have only one woman is that the analysis we produce is a very male dominated one. When examples have been given, they have almost always involved men - not surprising, but policies which recognise the different needs of women should be formulated. But I do not just mean it is male dominated in a superficial sense. By focussing in our discussions solely on the inmate, in most cases a man, whole classes of people who are deeply affected by current penal practices are omitted from the analysis - the women and children who have relationships with the inmates - the wives, mothers and girlfriends. Women are heavily conditioned to feel responsible for the needs of men in their lives. If a mother has a son in jail, she may suffer a deep sense of guilt, a feeling that she has failed her son. She shares too the judgement that prejudice leads some to make of those in jail. Women also carry the economic burden when men who previously supported them are imprisoned. For myself, I oppose punishment and jails. However I would point out to those who talk in terms of punishment, that they

should remember that they are punishing also many others than the inmates themselves.

At a deeper level, any philosophy of penal practices must look at the extent to which our authoritarian criminological philosophy is an aspect of a patriarchial culture and male dominated society. Certainly the brutalisation and dehumanising effects of jail are an extension of the conditioning which men undergo which cuts them off from their emotions, makes it difficult for them to express their feelings, and makes them aggressive and often violent towards others. Such an analysis is most likely to be done by women. One of the processes the feminist movement is concerned with is reintroducing female cultural values of tenderness and cooperation back into public life.

I would like to make some comments now about women's jails. While I would agree with the preamble of the Prisoners Action Group's statement - that is, our prison system must be seen in the context of a capitalist and authoritarian society, and that is why the vast majority of prisoners, and this goes for women prisoners also, are working class. Moreover, when one comes to look at female crime and penal practices that are in use, one must also consider this in the context of a patriarchial society. Perhaps this is best illustrated to you by talking about the various ways in which the oppression of women is reflected in the female prison system.

1. THE 'CRIMES' THEMSELVES

Child battering and child murder are the product of a society in which women are often confined and isolated with children for long periods. We are still conditioned to believe that child bearing, at least for a period of her life, is the most legitimate role a woman can perform. The answer to 'child battering' is not punishment in the form of trials, probation and sometimes jail. It is free 24-hour child care, cooperative forms of child raising, the development of a wider view of the potentiality of women. Similarly with the occasional woman who murders her husband. She may have suffered mental and physical cruelty for years, frequently unable to activate any law enforcement agency to protect her interests. If she should finally kill that man, a trial, a remand period or a jail sentence further continues her punishment.

There are other examples too. Marriage in our society has been called a legalised form of prostitution - women exchanging their bodies and services in return for protection. When a woman chooses to make such a contract on a temporary basis and where she retains at least a measure of control over the situation, it is judged in this society to be a crime - a crime by the woman, not her client.

Women lacking the economic means to provide for their families or conditioned by the media and consumerism to require the latest in fashion, etc, so that they do not lose the approval of men, may end up in jail for shoplifting or stealing.

I have known women, too, to take the rap for boyfriends or husbands who would get more severe punishments, or to be involved in illegal activities (for example, women pushing heroin) because they are being stood over by men.

2. VIOLENCE IN PRISON

Until the last year, Mulawa Women's Prison was successfully promoted by the New South Wales Department of Corrective Services as a model jail - this despite the severe boredom there, the restrictions and limitations on facilities available and so on. I think one reason this was possible is that the jail had a 'soft' reputation - no history of bashings, floggings, etc. unlike most male jails in New South Wales. Judged in these terms, Mulawa is a less violent prison, but I think this is a very male oriented way to view violence. Women, taught to see themselves as weak, guilty, sick, are much more likely to turn violence back on themselves. I have not gone through all the suicide figures, but I think you would find there is a higher rate of suicide and self-inflicted injuries in women's prisons. Women are more likely to respond to authority by becoming depressed, introverted. This is partly why women are more often institutionalised in mental hospitals than jails.

Under crimes, I did not mention drug use in women. I am not talking here about use of marijuana, or acid, but the heavy use of drugs that can only end up in self-obliteration. Quite a large proportion of female offenders are drug users. There were insufficient facilities for drug users in Mulawa (before Christmas, a woman died going through withdrawal), and everything about the place encourages dependency, guilt, self-hatred. (Recently I have heard, however, a drug counsellor from the Health Commission has been allowed in.)

3. METHODS OF CONTROL USED TO TAKE ADVANTAGE OF CONDITIONED PASSIVITY AND FEMININITY

a. LOSS OF CLOTHES

Loss of clothes in any person can cause a loss of individuality. For women it may be especially bad. If a woman has been taught to believe her worth, in fact her very person, is tied up in her appearance, she is shattered, depersonalised, when on arriving in jail she is stripped of all her personal belongings. Sometimes later a few may be returned as privilege. But this does not lessen the effect of the initial shock. A woman reduced in this way is going to be easier to mould, manipulate.

b. CHILD-LIKE BEHAVIOUR IS ENCOURAGED

The approach which is admittedly often benevolent, offers and withdraws approval. Authority is often exerted at the whim of officer or governess. Some women begin to behave like children or perhaps call themselves sick, in need of help, etc.

c. Other methods are used which encourage a lack of independence, for example, the use of tranquilisers when women become upset or aggressive and behaviour modification (reward/sanction) experiments.

4. FACILITIES AND RESOURCES

Facilities and resources are more restricted than in men's jails,

reflecting a limited view of the potentiality of women. Books tend to be romantic novels; few books offer social or political comment. Work reflects traditional emphasis on domestic tasks. Courses stress success through femininity - make-up, hostesses. I believe these should be available to those who want them but a wider range should be available.

In general, it could be summed up that women entering jail often have a low self-esteem - feel already failures as women where success is judged by your success as wife and mother. The prison system encourages negative conditioned qualities of female behaviour (dependence, passivity) and produces further anxiety about success or failure in the role itself. This leads me to add the final comment, that, while I endorse the comments on rebellion in the Prisoners' Action Group statement, I would add too, that the rise of more assertive crimes by women and some signs of resistance in Mulawa, may themselves be healthy signs.

SUGGESTIONS FOR CHANGES IN MULAWA WOMEN'S PRISON AND OTHER AUSTRALIAN WOMEN'S PRISONS

1. The types of work available to women prisoners should be extended beyond tasks traditionally allocated to women, e.g., laundry, sewing, cooking, cleaning and punch card operating, to skills associated with construction, driving, mechanics, etc.

2. All courses and training available to male prisoners should be made available to women prisoners.

3. Work should be productive, (not repetitive, unnecessary tasks like cleaning floors cleaned the day before). Women prisoners should be paid award rates and should be allowed to join unions.

4. Where both sex segregated and non sex segregated institutions exist, women should be allowed to choose which they prefer.

5. There should be free sexual expression in prison. Women should be given conjugal rights and rights to continue longstanding relationships.

6. Women should be allowed access to medical care provided by women's health centres, or Aboriginal medical centres. Abortion should be freely available to women to the extent allowed by law. Health and drug education activities should be provided. Compulsory internal examinations should be abolished.

7. Self-help organisations for women - rape crisis centres, women's refuges, etc. should be allowed access to prisons.

8. Methods of control which take advantage of the submissive conditioning of women - the use of tranquilisers, behaviour modification methods, etc. should be abolished. Where psychiatry is used professionals recommended by feminist psychology groups should be made available to women.

9. Punishment blocks should be abolished.

10. Discretionary powers of governesses should be removed, and conditions within prisons made consistent throughout the system.

11. Prisoners should be allowed to dress as their personality demands.

12. Nutrition should be improved, especially for pregnant women. Pregnant women should be permitted to attend antenatal clinics outside jails.

It is assumed that all reforms including the abolition of all mail censorship and restriction on mail and visiting will apply in women's prisons.

Appendix 7

LIST OF PARTICIPANTS

PROJECT DIRECTOR

C.R. Bevan	Assistant Director (Training) Australian Institute of Criminology Australian Capital Territory

VISITING EXPERTS

C. Amilon	Head of Department, National Swedish Correctional Administration (attached to United Nations Organisation), United States of America
J. Braithwaite	Deputy Commissioner (Inmate Programs), Department of the Solicitor General, Canada

VISITING SCHOLAR

W.D. Garrett	Superintendent, Tongariro Prison Farm, New Zealand

PARTICIPANTS

W. Bacon	Women Behind Bars, New South Wales
P. Boyes	Psychologist, Department of Corrections, Western Australia
D. Brown	Prisoners' Action Group, New South Wales
C. Campbell	Director, Department of Corrections, Western Australia
F. Cassidy	Assistant Director (Corrective Services), Australian Capital Territory
L.W. Deichsel	Superintendent, Her Majesty's Prison, Woodford, Queensland
R. Donnelly	Deputy Director of Correctional Services, Northern Territory
R. Fletcher	Prison Officers' Association, Tasmania
E. Franke	Deputy-Comptroller-General (Recruitment, Training and Personnel), Prisons Department, Queensland

L.B. Gard	Director, Department of Correctional Services, South Australia
R. Gerritson	Prisoners' Action Group, Western Australia
A. Green	Prisoners' Action Group, New South Wales
B. York	Prisoners' Action Committee, Victoria
D. Hornibrook	Controller of Prisons, Tasmania
R. Kidney	Prisoners' Aid Association, South Australia
I. Knight	Prison Officers' Association, Western Australia
P. Lynn	Director, Prisons Branch, Social Welfare Department, Victoria
W. Malone	Assistant Commissioner, Department of Corrective Services, New South Wales
S. Ozjiwisky	Prisoners' Aid Association, South Australia
J. Purcell	Executive Director Australian Crime Prevention Council
F. Rinaldi	Faculty of Law, Australian National University
R. Tomasic	Law Foundation, New South Wales
J. Van Groningen	Superintendent, Her Majesty's Prison, Pentridge, Victoria
B.M. Wicks	Solicitor, Tasmania
M. Williams	Poet, New South Wales
B.M. Wood	Prison Officer's Association, Queensland
G. Woods	Institute of Criminology, University of Sydney New South Wales
G. Zdenkowski	Council for Civil Liberties, New South Wales