

Spring 1974

## Prisoners in America

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### Recommended Citation

Vernon E. Hubka, *Prisoners in America*, 2 Fla. St. U. L. Rev. 403 (1974) .  
<https://ir.law.fsu.edu/lr/vol2/iss2/9>

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## BOOK REVIEW

PRISONERS IN AMERICA. Edited by Lloyd E. Ohlin.<sup>1</sup> Englewood Cliffs, New Jersey: Prentice-Hall. 1973. Pp. iv, 206. \$6.95.

*Reviewed by Vernon E. Hubka<sup>2</sup>*

*Prisoners in America* is comprised of the working papers for the American Assembly's 1972 annual meeting, convened to consider current problems and issues in penology. The papers were solicited from leading sociologists and lawyers who are experts in the field of corrections. The participants in the 1972 American Assembly meeting agreed that "[w]e can no longer delay confronting the chaos of the American correctional system," and concluded that "most American correctional institutions are and can be no more than 'mere warehouses that degrade and brutalize their human baggage' " (p. iv). Accepting these premises, the Assembly sought more effective ways to "rehabilitate" criminals or those in our correctional system.

The background papers prepared for the 1972 Assembly meeting explore the alternatives to our present correctional system. The papers are readily comprehensible, since they are directed at the lay public. Two obvious limitations, however, seem apparent. First, the articles are written for nonexperts in the field of corrections (whether there are any "nonexperts" in the field is another issue). The term "nonexperts" simply means those people whose lack of familiarity with penology requires that age-old issues of corrections be rehashed. The second and most serious defect of this book, and of our entire criminal justice system, is the assumption that somehow the correctional system itself can be revamped or reorganized to do the job of rehabilitation; this reflects the fundamental misconception that somehow the correctional system exists in a vacuum. Thus the book contains no extended discussion of the underlying social, political and economic reasons why people become caught up in the criminal justice system. The implications of the facts that approximately 90 percent of Federal Bureau of Investigation Index crimes are property crimes, and that approximately 90 percent of persons serving time in prison are members of lower socioeconomic classes and possess few, if any, marketable skills, are not extensively examined.

*Prisoners in America* is particularly important to lawyers—all lawyers, not just those who practice criminal law. The book, and a significant portion of the literature produced on the subject of cor-

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rections, seem to conclude that our system of corrections is a failure, and that the criminal-justice court system, criminal procedure and "due process of law" may be considered in isolation from the fundamental causes of criminal behavior. The fact remains, however, that the overwhelming majority of criminal defendants are guilty of the crime with which they have been charged, although they may not be convicted. Therefore, if the underlying causes of crime are not eliminated, generation after generation of the same group will continue to be sucked into the criminal justice system. If the social, political and economic conditions which engender crime are not changed, and if the correctional system really is a failure, then the lawyer's office and the criminal courts are simply by-stations in the continuous cycle of a "criminal career." Only one paper, that by David Ward, addresses this issue, and it does so only indirectly.

*Prisoners in America* consists of six articles, with an introduction by editor Lloyd Ohlin. Ohlin discusses some of the critical issues that the articles develop more fully, issues that arise because our society has chosen to use the criminal sanction for social control and has rejected alternative, and perhaps more effective, methods of control that would not involve the criminal justice system. Ohlin suggests that the basic problem for penologists and for the American public to solve is "whether the responsibility of administering a system of punishment can ever be made compatible with a system of individual treatment and rehabilitation" (p. 3). Because that critical question has never been answered (regardless of the rhetoric of correctional rehabilitation), problems of organization continue to arise from the attempt to punish and treat simultaneously. In fact, various authorities have urged movement to one or the other extreme—treatment or punishment. Since the evidence seems to show that a system of treatment has not been and cannot be established in the United States, we should abandon the rhetoric of rehabilitation and return to the system advocated by the Classical school of criminology and penology in the 1750's—a definite punishment for a definite crime. The punishment would fit the crime; the present ideology of letting the punishment fit the individual would be replaced.

The key trends and policy issues that Ohlin identifies and that the authors of the articles discuss in some fashion are: decriminalization, diversion, deinstitutionalization, enrichment of alternatives, the rights of committed offenders and policy evaluation.

In the first article, "Juvenile Justice Reform," LaMar T. Empey stresses three concepts fundamental to reform of juvenile justice—diversion, due process and deinstitutionalization. The juvenile court and

juvenile delinquency statutes permit an overreach of law. The juvenile court becomes the last stop for those whom every other social control agency in society has failed. If family, school, church or environment do not control the "problem" child, he or she is simply referred to the juvenile court.

According to Empey, "The basic problem is that legal definition and practices tend to be arbitrary, artificial, and insensitive to many subtle and difficult issues" (p. 18). This arbitrariness is the reason that the very basic right of "due process" for juveniles became an issue. In the 1967 case of *In re Gault*,<sup>3</sup> the Supreme Court of the United States recognized that the "rehabilitative ideal" of the juvenile court had caused, or at least allowed, grievous violations of the protection that due process of law should have provided to juveniles. The Supreme Court tacitly suggested that incarceration under any name is still a denial of freedom and rights and, therefore, that due process must be afforded under such circumstances. In the later case of *In re Winship*,<sup>4</sup> the Court went further and held that, in addition to being assured the fundamental but limited rights of due process recognized by *Gault*, the juvenile must be found guilty under the same standard applied to all criminal defendants—"beyond a reasonable doubt"—rather than under the standard of a "preponderance of the evidence." This, in the reviewer's opinion, is essentially an admission that a juvenile hearing is a criminal rather than a civil proceeding. Empey raises the question: What effect do the requirements of due process imposed by the two decisions have on the original concept of the juvenile court as a noncriminal rehabilitative entity?

Empey argues that the mandate of the juvenile court, and its jurisdiction, should be extremely limited. Only minimal moral and legal norms should be imposed and enforced through the juvenile court system. Problems such as incorrigibility, truancy and immoral conduct must be diverted to other agencies capable of solving these problems in a way that will not stigmatize or criminalize the child. But Empey does not suggest which agencies can best do this job, nor does he consider whether any agency really has the resources and personnel to accomplish the task.

Empey stresses that those juveniles who must be brought into the juvenile court system should be accorded all constitutional rights, since the rehabilitation or effective learning of the juvenile will be based upon "(a) the extent to which he is treated justly and fairly during the court experience and (b) the extent to which correctional

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3. 387 U.S. 1 (1967).

4. 397 U.S. 358 (1970).

programs are able to assist him in adopting a legitimate identity and in achieving an acceptable nondelinquent role" (p. 33). Empey argues that the achievement of an acceptable nondelinquent role can be best accomplished by programs of deinstitutionalization, and then gives a favorable, even sugar-coated, report of several residential programs. These noninstitutionalization programs do seem at least as successful as (if not more successful than) any institutionalization program, and are considerably less expensive.

Donald Cressey's article "Adult Felons in Prison" reviews the continuing problems of correctional institutions for adults. At the same time that they fulfill their custodial function, prisons are expected to rehabilitate inmates and to sustain themselves, as much as possible, without the taxpayer's help. The three tasks of the prison administration, referred to by Cressey as "keeping," "serving" and "using" inmates, must be accomplished. The structure of prison administrative organization does, in fact, provide the three personnel hierarchies needed for each task, but does not permit integration of these divergent and often conflicting goals. Thus the structure of prison administration itself leads to conflict in the realization of these tasks and, in particular, to conflict among the personnel assigned to each task.

In addition to the organizational structure within prison administration, social organization of any prison exists on both the staff level and the inmate level. Any attempt to understand or reform prisons cannot ignore the latter. Inmate organization is necessary for the stability of the prison, because it is only with the *consent* of the prisoners that the institution is able to function. Riots can occur in virtually any prison on any day if the inmate organization does not exert a restraining influence. Cressey defines three different inmate subcultures and discusses their effect on the organization of the prison, both on a day-to-day basis and during a prison riot. Additionally, Cressey analyzes how the growing political consciousness or politicization of prisoners has created new implications for inmate organization. The politicization of prisoners, especially black prisoners, may, in fact, lead to needed prison reform, reform that was prevented by the traditional inmate organization.

In conclusion, Cressey argues, and the reviewer emphatically agrees, that penal theory and practice must face the reality of our present prison system and its emphasis on punishment:

By definition, punishment imposed by the state is punishment imposed on the less powerful by the more powerful. For about 200 years the powerful have been inflicting pain on quite powerless lower-class criminals by intentionally depriving them of even the

restricted liberty they possess as half-educated, half-employed, half-housed, half-clothed, and half-fed citizens in the land of the free. And all this punishing of the less powerful by the more powerful has been made easier by the idea that imprisonment is good for them, that it reforms them, rehabilitates them, resocializes them, educates them, trains them for work, and generally makes them "decent men" and "upright citizens" who consequently can "take their rightful place in society."

*When we say these things, we lie.* Prison programs rarely rehabilitate anyone, and we know it. I think we keep reciting our faith in the rehabilitative ideal because believing in this ideal eases our consciences as we inflict pain and powerlessness on men already enduring much pain and holding little power. [Pp. 149-50 (emphasis added).]

Perhaps the most instructive article included in *Prisoners in America* is David A. Ward's "Evaluative Research for Corrections." The author reviews "some of the consequences of introducing the so-called 'treatment philosophy' into the largest prison system in America, the California Department of Corrections" (p. 185).

In the 1950's the California correctional system moved to the treatment philosophy of corrections, in which prisoners became "patients." The basic assumption of the treatment model was that criminal behavior reflects a personal defect that professionals could correct. Insufficient funds to pay professionals led to the use of nonprofessional staff members in the program of group counseling. The "indeterminate sentence" and "individualized treatment" were introduced as part of the rhetoric of the new correctional philosophy. The group counseling program was initiated enthusiastically; Ward and two of his cohorts were commissioned by the California Department of Corrections to evaluate the program. Guidelines for the official goals of the program were established, and the researchers were to evaluate the progress with respect to those goals. A six-year study of the treatment group and the control group (those who did not receive group counseling) produced negative findings on all predicted outcome criteria (p. 191). Subsequent research on specialized intensive probation services within the California parole division revealed that "neither caseload size nor type of supervision was significantly related to parole survival" (p. 191). Further research in the mid-1960's regarding half-way houses for and civil commitment of narcotic addicts provided no evidence that "treatment" reduced recidivism.

As the evidence that "treatment" did not reduce recidivism continued to mount, the California officials turned to what has been described as the "vocabulary of adjustment." They began to observe

that the treatment program, although not necessarily effective to prevent recidivism or to assure peace within the prison, did help improve inmate or parolee behavior. Administrators attempted to redefine the goals and perhaps administratively to guarantee the attainment of those redefined goals in the face of such negative findings.

The California Legislature's Office of Research conducted its own independent evaluation, and, in its report, *The California Prison, Parole, and Probation System*, concluded that there was no evidence to show that any one correctional program had more rehabilitative effect than any other. The report urged that no more funds for the construction of state prison facilities be provided. Legislators also learned that the indeterminate sentence had led to longer rather than shorter sentences. During the period from 1960 to 1968, under the indeterminate sentence and the rehabilitation model, the average sentence served had increased from 24 months to 36 months, although the behavioral characteristics of the inmates during the periods remained essentially the same.

In spite of the demonstrated failure of the treatment or rehabilitative program, Ward claims that the California Department of Corrections continues to use the treatment rhetoric as the "latest and most sophisticated justification for controlling the behavior of 'militants,' 'radicals,' and 'agitators' who threaten the interests of organizational and community power structures" (p. 197). Another serious consequence of the treatment philosophy is:

It has permitted Americans to pretend that the administration of criminal justice is just and that people who end up in prison deserve to be there because they are really different from the rest of us. Most importantly, it has diverted attention from the social, economic, and political features of American society that promote law violations of one sort or another by almost all citizens and places the responsibility for "crime" upon certain individuals. [Pp. 198-99.]

Thus in the late 1960's California moved to the probation subsidy program, through which a community was paid approximately \$4,000 for each offender that the community kept and did not commit to the state correctional system. The emphasis had shifted to community correction, but only after the claim of prison "treatment" had been hopelessly crushed. The subsidy program resulted in a tremendous financial gain to the state with over \$100,000,000 saved in 1966-1972, according to one study. The program appealed to politicians, citizens, Department of Corrections officials, offenders and prison reformers.

Once again the rush has begun to find a new correctional treatment program, but, as Ward specifically states, "if the criterion for success is community *treatment* the evidence is yet to come in" (p. 201). Program evaluation is not essential to community corrections because "rehabilitation" becomes self-evident to everyone, including the inmate. The vested interests of the profession of social work and the creation of more and better jobs for white middle class social workers by LEAA<sup>5</sup> funds have increased the demand for community corrections. Nevertheless, as Ward recognizes, we do not have the evidence to show that "community treatment" is treatment, and perhaps we should not be surprised to learn in the future that exactly the opposite is true.

I would certainly recommend *Prisoners in America* to lawyers and laymen unfamiliar with the field of corrections. The book provides a general overview of the significant problems and dilemmas of our correctional system; the observations of David Ward and Donald Cressey are particularly excellent. The articles in the book define the fundamental issues of corrections, but they provide no real answers. The book's major flaw, however, is that while it raises the general issues and problems faced by American corrections, it fails to link these issues to the social, political and economic structure of our society. Thus, this review concludes with a reiteration of the principle stated earlier: "corrections" of any kind cannot exist in a vacuum; we, as citizens, cannot expect any correctional program to eliminate the underlying social, political and economic defects in this society, defects that directly or indirectly create that class of human beings known as criminals.

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5. Law Enforcement Assistance Administration of the United States Department of Justice.