

# Punishment or treatment? No clear answer

(EDITOR'S NOTE: This is the last of 15 articles in a Course by News-Service exploring crime and justice in America. The series was developed by the University of California, San Diego. The articles are the textbook for an Oakland University course taught by Prof. Jesse Pitts.)

By SHELDON L. MESSINGER

America has a vast and complicated sanctioning enterprise, ranging from bastille-like prisons through one-cell lockups, to non-residential "treatment facilities" and "treatment programs" sometimes reaching out to whole families.

And current trends seem likely to make it larger by bringing a greater proportion of America's citizens under the supervision of criminal justice officials.

Fully accurate figures are not available. Piecing together various surveys and informed guesses, we can estimate that on any given recent day some 60,000 juveniles were being held in jails, detention centers, shelters, training schools, reception and diagnostic centers, county and local ranches, camps, farms, halfway houses, and group homes.

An additional 500,000 were under probation supervision outside these facilities; and 100,000 were on parole from them.

COMPARABLE FIGURES for adults suggest 285,000 in state and federal prisons; 150,000 in county and local jails; 670,000 on probation; and 150,000 on parole.

These figures—almost surely undercounts for 1977 in most instances—add up to 1,915,000 locked up or under some form of official supervision every day; about one out of 110 Americans.

And the figures do not include the apparently increasing number of family members encouraged or required to accept "treatment" when one of them is in trouble with the law.

It should be kept in mind, too, that these numbers represent only those locked up or under supervision on any given day. The number in these circumstances at some time during any year is much, much larger.

Thus, more than a half-million juveniles were admitted to and released from custodial institutions in any recent year; while more than a million adults had this experience. Perhaps as many as one American in every 50 or 60 is locked up yearly, while many more are supervised or "treated."

Although the sanctioning enterprise is large and complex, nobody is pleased with how it operates. Discontent with inherited punishment practices has led to two seemingly contradictory trends which together should heavily influence the future of

American punishment.

FIRST, SINCE the early 1960s, there has been a major effort to "divert" law violators from the system in the hope that "alternatives" to conventional forms of punishment would be more effective at reducing crime rates and recidivism, more humane, and less costly.

"Diversion" encompasses a variety of procedures old and new, still poorly conceptualized or understood.

But broadly speaking "diversion" involves, on the one hand, halting justice system action against someone believed to have violated a law in favor of dealing with the person in

some other way—referring a juvenile to school authorities, for example, or an adult to a job-training program.

On the other hand, it involves imposing a non-custodial penalty—like intensive probation supervision—on a convicted offender who might legally have been committed to jail or prison.

"Diverting" suspected and convicted offenders to "community-based treatment programs" is widely understood as a move "away" from punishment, particularly imprisonment.

SECOND, MORE recently there has been strong support for the view that the proper business of the juvenile and

criminal justice systems is punishment, not treatment. According to this view, law violators should be given their "just deserts" in proportion to their offenses and past records.

A loss of faith in the efficacy of

"treatment" is a negative source of this view. But it is coupled with the positive hope that more severe punishment—longer prison sentences or imprisoning more offenders—might help stem rising crime rates.

Many also support this view for moral reasons, seeking a more principled basis for apportioning sanctions that "treatment" has turned out to be.

This support of the "just deserts" position is interpreted as a move "toward" punishment, with imprisonment to play an increased role.

THESE SEEMINGLY contradictory trends of diversion and the "just deserts" approach may, however, be complementary—in effect, if not intention.

Their joint outcome is likely to be punishment, including imprisonment, for a greater proportion of suspected and convicted law violators in the future.

Consider this: Although the effort to "divert" law violators from custodial institutions has been in force for some time, their populations are not being reduced; instead, they are increasing. A recent survey found a 12 per cent increase during 1976, and there was a similar gain during 1975.

Indeed, there has been an increase in prison populations each year since 1969, except for 1973. And fragmentary data suggest that 1977 will also show increases. Jail populations also appear to be rising. This is true for juveniles as well as adults.

CONFINEMENT, however, is by no means the only available sanction.

Since the turn of the 20th century an increasing proportion of juvenile and adult law violators have been placed under some form of supervision in the community via probation or parole.

The burgeoning development of "community-based treatment programs" is an extension of this long-term trend, and presently some two-thirds of adjudicated offenders are under such supervision.

Such "programs" are considered as an "alternative" to imprisonment, but they are also "alternatives" to doing nothing at all or almost nothing—like reprimanding a suspected offender or discharging a convicted one. There is growing suspicion, based on scanty evidence, that this latter "alter-

native" is the prevalent one.

Thus, while custodial institutions continue to hold the same or an increasing proportion of the population, a rapidly escalating proportion of minor offenders or suspects is being placed under supervision, often with intermittent periods of custody to reinforce "treatment" plans.

But one rub is that, so far as can be told, "treatment" in the community is no more effective at curbing renewed delinquency and crime than any other "program."

THE MOVE toward "just deserts" seems likely to encourage the imprisonment of a greater proportion of offenders, to the dismay of some of its proponents but to the satisfaction of others, who support it for just this reason.

Judges, reluctant in the past to imprison law violators for the indeterminate periods that might be necessary for "treatment," are likely to be more willing to imprison offenders for "determinate" periods that are fixed according to the offense.

At the same time, reducing judicial and parole board discretion to determine the length of prison terms should result in more desirable uniformity.

Given the cost of imprisonment, the rise in inmate populations may also mean somewhat shorter terms for most prisoners. The more draconian prison terms—and the death penalty—will continue to be selectively applied, but the basis of selection is likely to focus more on acts, less on character and prospects.

IN ANY EVENT, the future of punishment will certainly remain a "problem" for which there is no "solution" in the ordinary sense of that term.

At best there are more and less satisfactory ways of reducing the tensions produced by our various and often conflicting punishment objectives: To reduce crime by deterring potential offenders or repeaters; to express disapproval of law violating activities; to be just and fair; and to keep costs at a tolerable level.

Different groups in society define and value these objectives differently; and these definitions and values shift over time. We can therefore be confident of only one outcome—that tomorrow's practices will prove troublesome as yesterday's or today's.

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## Crime is form of war

By JESSE PITTS  
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Once and for all: Poverty does not cause crime. In the immediate, a combination of the incapacity to earn an honest living (making leaves, cleaning gutters, washing windows—I know; these are defined now as "slave jobs"); an incapacity to balance one's budget; envy of the others and the search for excitement—all are primary causes for most property crimes.

For many, a need for drugs stabilizes a deviant commitment and gives an immediate high as a reward for stealing. Superego rewards do not give as good a high as heroin. And I am aware of what lower class life, disintegrated families and disintegrated schools contribute to one's incapacity to earn an honest living.

A LACK OF loyalty to adult society and a lack of consensus about basic values are also causes of crime.

Crime, then, becomes a low-grade form of war between age groups—the young against the old, the underclass against the working class, one race against another, one ethnic group against another.

The settlers of the old West practiced white collar crime against the Indians because they did not feel any solidarity toward them. Indians were essentially the enemy. Cheating them could be defined as a duty.

WHEN LOYALTIES to the overall society decrease, people think more of their narrow selves.

In the face of temptation, refusing to steal is an act of self-denial in favor of a society which sustains and protects us. When you respect less your society, the impulse to "get yours" is harder to resist.

A "narcissistic society," to use Christopher Lasch's expression, will be a more crime-prone society.

The upswing in crime during the 1960s and early 1970s had many reasons, one of which was the increasing percentage of youth in the total society. Increasing poverty was not a strategic factor.

A weakening of the family, a decline in the strength of urban neighborhoods, a decline in the American consensus were crucial factors.

The decline in the judicial system's capacity to punish was partly the result of this declining consensus and partly the result of technical factors, some of which are being repaired now. During the 1960s and early 1970s, crime paid, more than ever.

IF CRIME starts to decline now, it will be also

for a multitude of reasons, but one of them will be the reaction of Americans to the debunking of the 1960s. It may be the return to "normalcy," symbolized by President Jimmy Carter's election. A society that respects itself can punish in the name of its sacred values. The very act of punishing strengthens the consensus and makes all citizens less likely to succumb to temptation. For some it blocks temptation, for others it makes succumbing risky because it is now clear that society "means it."

HUMAN SOCIETY requires rewards and punishments. Otherwise, order could not exist, and human beings require order as much as they require air and water.

Yet, let us face it: There is a great deal of arrogance in our assuming the right to judge and punish other men. After all, there are two key phrases that we should repeat to ourselves every day: "There, but for the grace of God, go I" and "I only know the conscience of an honest man, and I can tell you it is abominable" (DeMaistre).

Nevertheless, we must punish. There is even greater arrogance in refusing to punish. Only God is above punishment.

It is true that in His eyes there is greater virtue in a robber who says to his pal, "Stop it, let her go," than in the physician who writes a \$200 check to charity.

Nevertheless, we must punish this robber, and personally I would not shy of the death penalty for a Manson, a Speck, a Hillside strangler, an Eichmann, although I would settle for life imprisonment if it could be made to last more than 10 years.

I know that it is our society that has "created" these men. I know that I have a part in their guilt. I know that a healthy society requires some crime.

But I also know that a healthy society must punish the very crime that makes it a healthy society.

SADLY ENOUGH, many of those who wish to be indulgent and forgiving and turn the other cheek are not turning their own cheek, but the cheek of the working class. They pick up the moral righteousness while others pick up the blows.

From my safe suburbia, I assume the guilt of punishing the guilty. I assume the burden of the errors inherent to human justice.

After all, we must help the innocent to remain innocent. The ceremony of human justice, the pain inflicted upon those found guilty, is above all destined to help all of us remain innocent as we walk along the cliff edges of life.

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