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Contents

	Page
Preface	i
John P. Conrad	
Editorial	1
William G. Babcock	
[The Future of the Local Jail	3
Merlyn Bell	110525
[Is Ignorance Invincible?	11
George Beto	110526
[The Future of the Long-Term Offender	16
Alonzo M. Cobb, Jr.	110527
[Social Policy and the Future of Criminal Justice	19
Elliott Currie	110528
[Moving into the New Millenium: Toward a Feminist Vision of Justice	27
M. Kay Harris	110529
[Some Views on the Future of Criminal Justice	39
Joe Hudson	110530
[Banishing Goodness and Badness: Toward a New Penology	49
Naneen Karraker	110531
[Corrections in the Nuclear Age	54
Oliver J. Keller	110532
[Hard Labor Can Save Prison Time	67
Kenneth F. Schoen	110533
[The Future of Corrections: A View from a State Correctional Administrator	71
Richard P. Seiter	110534
[Future Penal Philosophy and Practice	76
Leslie T. Wilkins	110535
The Future of Corrections	88
Marvin E. Wolfgang	
[A Hard But Practical Line	90
Ernest van den Haag	110536
Index	95

Is Ignorance Invincible?

George Beto*

To be able to participate in the celebration of the bicentennial of the Pennsylvania Prison Society is a distinct honor. Recalling, however, the original name of the organization —The Philadelphia Society for Alleviating the Miseries of Public Prisons—causes some depression. After 200 years of intelligent effort on the part of the Pennsylvania Prison Society and kindred organizations, the “miseries of public prisons” and the inequities inherent in the criminal justice system continue. The changes in the criminal justice system which have occurred during the past 200 years have been accidental rather than essential in nature (to use the term learned in a course in logic 50 years ago).

Through its long and distinguished history, the American Academy of Political and Social Science has published on a bimonthly basis its *Annals*, each issue devoted to topics deserving public interest, be they the international monetary system, foreign relations, demographics, public welfare, or education. The services of experts are secured in the writing of the articles. During that long history of the publication, 32 issues have been devoted to the criminal justice system and to related issues.

A review of the articles in these issues reveals not much that is new. The problems involved in the prevention of society's deviancies and the treatment of the deviants remain essentially the same. Someone has observed that the chronicle of American criminal sanctions “represents two hundred years of undocumented fads.” A comprehensive survey of the history of the American criminal justice system and a reading of the articles in the *Annals* indicate that there is more truth than flippant cynicism in that remark.

Nevertheless, change in American prisons has occurred during the past century. The years following 1870 —the year of the founding of the American Prison Association (currently the American Correctional Association)— have witnessed, among others, the following changes:

- The growth of the reformatory movement in the United States.
- Probation as substitute for incarceration, first established in Massachusetts.
- The Juvenile Court was established.
- Supervised parole was instituted.
- Corporal punishment and degrading punishments were gradually eliminated.
- New York led in the provision for prison educational programs as remedial discipline, a concept generally accepted today.
- A system of classification of inmates was accepted and utilized as a method of treatment.
- Special institutions for the mentally ill, the retarded, and the addicted, were established.

*George Beto is a professor of criminal justice at the Sam Houston State University in Texas. He served as director of the Texas Department of Corrections from 1962 to 1972 and as president of the American Correctional Association in 1970.

- A Federal Bureau of Prisons was established.
- Legislatures in most states adopted a State-Use Law which gave rise to prison industry.
- Work release and prerelease programs were instituted.
- A Manual of Correctional Standards was adopted and revised. This Manual furnishes criteria to the courts as well as to correctional practitioners for the evaluation of correctional processes.
- Accreditation of institutions and programs was introduced.

In inviting me to contribute to this jubilee issue of the *Journal*, John Conrad asked: "What do you think criminal justice should look like in the year 2012?" I am not sufficiently sanguine in attitude to believe that criminal justice will even approximate what I believe it "should look like in the year 2012."

A 19th century pope used in an encyclical the expression "invincible ignorance" in discussing spiritual matters. Given that same invincible ignorance on the part of the public and most legislators in criminal justice matters, we will continue to incarcerate the poor, the stupid, and the inept in our penal institutions. Currently the population of state prisoners can be profiled as 96 percent school dropouts, 60 percent from broken homes, 20 percent mentally retarded, 18 percent illiterate, and 40 percent with no record of sustained employment. Accordingly, our prisons will continue to house society's rejects.

Most of these human warehouses will continue to be —overtly or covertly— convict-run. The late and much maligned Joe Ragen was wont to observe in speaking of prisons: "Either you run it, or they run it." As a result of administrative neglect or incompetence, a misguided humanitarianism or fear, prisons will continue to be places where the strong prey on the weak, with an atmosphere involving rampant homosexuality (if there were ever a *testimonium paupertatis* in prison administration, it is the issuing of condoms to prisoners) and characterized by abject and stultifying idleness.

In 2012, society will continue to be ambivalent regarding the purpose of correctional agencies and institutions. It will not have answered the question why they are maintained. For revenge? For rehabilitation? For restraint? For reintegration with society? Teeters' observation in 1967 will be as applicable in 2012 as it was some 50 years earlier: "The dilemma of modern corrections is that society is confused. Many want rehabilitation but they want it by clinging to the concept of punishment. These persons will clamor for retribution and represent a strident voice from the outmoded past. . ." (Proceedings, 1970:7).

Manifestly, we shall have prisons as an integral and substantial component of our criminal justice system. In spite of the increased use of alternatives to incarceration —probation, parole, halfway houses, restitution centers, et cetera— prisons will survive. In fact, to a degree, these alternatives will not result in a reduction in prison population but rather in a "widening of the net." Individuals who in many instances would avoid the toils of punishment will find themselves therein simply because the alternatives are available.

Moreover, in spite of the abolition of prisons movement —and some of the arguments of the exponents of that view are compelling— the public will demand the continued use of imprisonment as one of its sanctions.

Assuming their continued existence in 2012, I would like to see prisons which are—to steal an expression of John Conrad—lawful, safe, industrious, and hopeful. Moreover, it is my considered opinion that those conditions can be achieved without significant statute change and without the increase of funds currently expended on prisons.

Prison employees will conduct themselves in a lawful manner. While statute law has long mandated conduct for prison employees, court decisions as a result of suits have reinforced the statutes and regulations, making lawful behavior relatively routine. The behavior may not be enlightened, but it will be lawful.

The same strictures on unacceptable behavior for employees should apply to prisoners. Behavior involving prisoner with prisoner—theft, assault, homosexuality—should not be tolerated. Equally intolerable should be verbal and physical assaults on employees. The throwing of feces and urine and physical attacks on institutional employees as well as obscene verbal abuse should be unthinkable practices. Enlightened management can establish a climate in which a civility is developed which results in a lawful prison.

Prisons should be safe. While it is manifest that society has a right to imprison a citizen for violation of its sanctions, it is equally true that society has an overriding obligation to protect its citizens in confinement. No citizen—be his crime innocuous or heinous—should be forced to live a life of fear while incarcerated.

In 1982, James Jacobs wrote an article in the *Criminal Law Bulletin* in which he questioned the legal and sociological basis for uncritically applying the principles of *Brown v. Board of Education* to prison racial integration. Whether or not you agree with his thesis is irrelevant. His description of the unwarranted violence characteristic of the prison environment is true. "It should hardly cause surprise to learn that relations among racial groups (or any group or individuals in prison: Beto) are extremely tense, predatory, and a source of continual conflict. Prison populations contain disproportionate numbers of the least mature, least stable, and most violent individuals in American society."

Again, "... the only hope in prison is for survival. . . . although conflict and violence do occur in schools, school children do not very frequently kill one another and their teachers, perpetrate brutal assaults and homosexual rapes, or destroy school buildings during riots. It is precisely these kinds of threats that set the atmosphere in our prisons. . . . In no other institution are the relations so fraught with violence. . ." (*Criminal Law Bulletin*, March-April, 1982, passim).

Jacob's description of prison life is not hyperbolic. The social environment in prisons is probably of a higher order than that found in county jails. Someone—apparently not fearing contradiction—has referred to America's county jails as the "horror of our age."

I can hope that the year 2012 will witness an era in which jails and prisons will be safe for the kept and the keeper. Competent administrators can achieve this end.

A baneful idleness characterizes most prisons. There is no good reason why prisons cannot be places of industry. When one considers that over 40 percent of those incarcerated in America's prisons had no sustained record of employment prior to their incarceration, the reason for full employment becomes all the more compelling. Imprisonment should habituate them to a work experience characterized by quality and production control, realistic staffing, state of the art equipment, and a work schedule approximating that of the "free world."

It is difficult to understand why the high quality of industry in the Federal Bureau of Prisons cannot be replicated and even improved upon at the state level. Many states have a state-use law, usually unimplemented and unenforced. The correctional leadership in jurisdictions lacking such legislation should seek the passage of such an enabling statute. In spite of inevitable self-serving opposition to this legislation, its passage can be secured with relative ease. Where the potential of a state use law is exploited (and the potential for exploitation is not severely limited), prison idleness can be radically reduced. A prison administrator need only consult a state purchasing agency to determine its buying patterns, and build an industrial program to satisfy those purchasing demands.

To describe prisons as hopeful may appear to be a contradiction in terms. Nevertheless, prisons can be more places of hope than places of despair and frustration than they currently are.

Formal education can contribute to the building of hope. If 20 percent of those admitted to prisons are illiterate, if 96 percent of the prisoners are school dropouts, it appears that the state has "a compelling interest" to provide a first-class educational program for the functional illiterates and the dropouts. If Jefferson was correct (and we believe that he was) when he asserted that a democracy can survive only if the electorate is informed, then that state interest in education becomes even more compelling in the case of prison inmates. For it can be empirically shown that a good educational program in a controlled prison environment can accomplish more in a shorter time than can the schools "on the streets."

The year 2012 should witness in America's prisons superior educational programs ranging from illiteracy classes through the baccalaureate degree, programs increasing the skills, enlarging the vision, and enhancing the hope of prisoners. By the advent of 2012, the futility of certain types of hope-destroying sentencing practices should be apparent. Sentences mandating life without parole or 20 years of "flat time" prior to parole eligibility are hope-destroying. To tell a young man in his mid-twenties, full of the juices of life, that regardless of his behavior, he must spend the next 20 or more years of his life in prison, not only removes hope but also creates a serious management problem. Obviously, some prisoners should never be released; to advise them, however, at the beginning of their sentence that as a result of a law passed in the hysteria of the moment, they will probably never be released is to destroy hope.

If we are to see any real reform in the criminal justice system in the future, citizens and their legislative representatives must view the criminal justice system comprehensively, beginning with police, continuing through detention, prosecution, adjudication, probation, imprisonment, and parole. A serious effort to perform this task was undertaken in the Johnson administration. *The Challenge of Crime in a Free Society* considered every aspect of the criminal justice problem. The Nixon administration with its publication of *National Goals and Standards* represented an equally serious attempt to solve the problems highlighted in President Johnson's Crime Commission Report. Little was accomplished largely because of the "invincible ignorance" previously referred to and the fragmentation of the system.

In 2012, our prisons will still be crowded. In spite of the increased use of alternatives to imprisonment (probation, parole, restitution, halfway houses), we will have only "widened the net." More people will be in the toils of the criminal justice system, but not fewer in prisons.

Finally, positive change occurring will have occurred as a result of the work of *one* prison administrator, *one* director of alternative programs, *one* prosecutor, *one* judge

—individuals with vision, dedication, faithfulness, and knowledge who brought about positive change in their jurisdictions of responsibility and were emulated by some few others.

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