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## Future of Corrections

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# Contents

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

# Future Penal Philosophy and Practice

Leslie T. Wilkins\*

The guest editor of this edition of *The Prison Journal* has asked contributors to discuss the probable and desirable directions for penal policy until the year 2012. Where we might be able to get in the next decades is dependent on where we now are. One purpose of employing projection techniques is to rob any probable future of some of its surprises, and thus to facilitate diversion from policies which may lead to undesired outcomes. But if we do not know precisely where we now stand, our progress into the future will be a drunkard's walk! I will, therefore, make some small modifications to my brief so that I can present an argument consistent with this view.

## *Rational Decisions, Current and Future Policy*

Some might claim that criminal justice policy is not entirely rational, but perhaps few would go on to assert that it should be no more than an emotional response. Indeed the criminal law is intended to reduce the probability of base emotional reaction as expressed, for example, in "lynch law." I shall avoid, in this analysis, the view that the expressed reasons for crime policies are not intended to stand up to logical analysis, but merely to satisfy "the public" and serve party political ends. Rather, I will begin by assuming that justifications of penal policy are intended to be honest, and since rationality is claimed, I shall, initially, take it as a basic assumption.

It is, indeed, usually expected that actions can be supported by reasons. If, then, practices in the future are different from those of today, we might expect them to be based on a different rationale. Indeed, it might seem reasonable to approach the projection of future states by first asking what ideas are likely to be dominant in the future. If we can make some good guesses as to the popular beliefs of 2012, we might be able to sort out the correlates of those beliefs.

Postulating a rational basis for future policies implies that we would expect to see a relationship between ideas and procedures, between philosophies and decisions. between actions and reasons for those actions. Similarly, if present procedures are rationally based, we should, likewise, currently be able to identify similar relationships. If we could establish a pattern of logical relationships between contemporary ideas and contemporary practices, this would be a great help for two reasons. Firstly, we could seek for some empirical data on the nature of these relationships; and, secondly, because ideas precede action, the time scale for projection is reduced. This is more obvious in the field of technology where the reality of the future is found in the ideas of today — on the drawing board. If we think that procedures in the future will differ from those of today, and we postulate relationships between ideas and actions, then, where we find currently different kinds of procedures in operation, we should expect to identify different kinds of supporting reasons. In other words, reasons today and in the future should make sense, and the underlying sense be based on a similar logic. (See Jantsch, 1967.)

This approach relies upon the assumption that ideas do in fact precede logically related decisions. While this is clear enough in science and technology, it is questionable whether it is so in certain other fields, including that of criminal justice. Social concepts

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change slowly, and the direction of change seems sometimes to go into reverse! Many still think that much of the writing of Plato and other ancient philosophers continues to be relevant today, and that study of their teachings is highly relevant to training for high office in government. If the basic thinking in our field remains unchanged in 2012, then it is likely that the decision patterns will also remain unchanged. But the situation within criminal justice may change because external conditions may enforce change antagonistic to the prevailing logic.<sup>1</sup> If such conditions apply, then we should postulate future problems deriving from that conflict. Here again, we might find some useful data in current conflicts.

### *A Search for Empirical Data*

If we put aside questions of the death penalty, we may consider the use of incarceration to be the most severe sanction which the criminal justice system employs. Both within and between jurisdictions, there is wide variation in the frequency and duration of prison dispositions. If we refer to data only from Western democracies, incarceration rates differing by as much as ten-fold may be found at this time. (See Newman, 1980; and Pepinsky, 1980.) We might think that such widely different practices would be informed by different rationales. Furthermore, with such extreme variations, we might expect some of the current practices to resemble those which will dominate in the future.<sup>2</sup>

What, then, are the robust ideas presently informing the variety of procedures of criminal justice? If for the future we are to invest in our present successes, how are these successes defined and where are they to be found? These questions need only trivial reflection before it becomes obvious that the elegance of the model of ideas leading to related decisions has already fallen apart.

Since I have argued elsewhere that at this time it is not possible to find strictly logical relationships between given reasons and decision patterns, my initial assumptions will, rightly, be challenged. If I cannot accept any ready-made logic, then I must modify my approach. I must first try to find a consistent pattern in the decisions, then suggest a logic (or a pattern of correlations), and finally see whether this will help with the projection. The remainder of this article attempts this approach.

Let me now reverse my first assumption and state that there is no association between supporting philosophical positions and practice. Indeed, even the noted ten-fold difference in incarceration rate lacks any accepted explanation. Nonetheless, by some means, widely different and inconsistent philosophical perspectives somehow manage to co-exist! Perhaps a word in support of that claim is required.

The most popular justification of treatment, punishment, or attempted reform of offenders has for several decades been based upon beliefs as to increase in public safety. Research, however, has recently shown that little or nothing can be achieved in the reduction of crime by any currently acceptable actions taken against identified offenders. Notwithstanding, this does not mean that nothing can be done to reduce crime, nor that nothing should be done with offenders. It means only that the problem of crime cannot be simplified to the problem of the offender.<sup>3</sup>

### *Present Practices*

I will not discuss here the currently argued philosophical positions or theories offering support for the procedures of the courts in disposing of offenders found guilty. (See National Science Foundations, 1983; and von Hirsch, 1976.) It is more instructive

to take time to look a little more carefully at the present variety of practice. It is difficult to believe that there are no procedures currently in effect which may be seen as in advance of their time. If we could identify any, we could "bootstrap" ourselves into some thoughts as to the desirable future.

There is no doubt that there are extreme variations in the rates of use of prison (incarceration rates) in Western democracies. But as I noted, we cannot capture any utility from the analysis unless we can say how this variation comes about. Obviously, the first claim to be examined is that the variations are not true variations because the differences in punishment are appropriately matched to differences in the seriousness or incidence of crime. Not only does this claim fail to stand up in terms of cross-national comparisons, but it does not stand up in comparisons over time within jurisdictions. Very large increases in the uses of imprisonment are not matched by similar increases in recorded crime, nor apparently by its seriousness. Nor does it seem that these differences are due to differing theories of criminality or general penal philosophy.

"Crime" is a code word expressing the intention to set in motion that machinery of government known as the criminal justice system in relation to a prohibited act. Leaving aside the "actor," the "act" (called "crime") poses two problems:

- (1) the problem of the demand for punishment and how this becomes attached to certain acts (the "criminalizing" process) (Wilkins, 1986).
- (2) the problem of how to reduce "crime."

For investigating (1), we cannot, obviously, gain anything from the study of offenders. While for (2), in the past, reliance has been placed mainly on studies of offenders with a view to finding out "why they do it!" We now know that this approach provides little or no profit. Let us leave aside for the moment the problem of crime (and criminalizing) and focus consideration on what is done with persons found guilty of acts which have been "criminalized" by whatever process is involved.

### *Demand for Punishment*

It has been my claim that variations in the use of severe penalties in different countries is explained by sociocultural factors. Emphasis on variations in what is often seen as a "moral issue" (i.e., "crime") has led to some opposition to this approach. Often my perspective is confused with that of those who oppose punishment in principle, and I have been accused of seeking to exculpate offenders by denigrating moral values. Moral values are, it seems, often considered to be absolute, and thus to postulate variation, as indeed I do, is itself undesirable if not also immoral.

Immediately post-war (1939-45), (before I became interested in variations in criminal sanctions), I was interested in variations in the price of commodities then subject to rationing. Butter, for example, was scarce, and, before de-rationing, the government was interested in what might happen to the price when controls were lifted. Research was commissioned to forecast the probable position. For purposes of estimating the probable future price of butter in an open market, data on variations in price were required (Heller, 1986).

It would be out of place here to go into any detail of the design of this kind of research. Suffice it to say that I would now claim that the inquiring mind can identify many interesting similarities in variations in the demand for both butter and the demand for punishment of offenders! At the trivial level, both cost money, and money indicates preferences in public choice. Furthermore, while the price (of butter) may vary widely, nowhere would we expect it to be totally worthless. Similarly with punish-

ment: a "zero" value is neither part of the set of observed nor postulated "variation." Concern for variations does not argue for an established (or establishable!) zero point. Variations in the rates of punishment indicate, in precisely the same ways as for other traded preferences (even butter!), that there is no objective (say "real" or "true") price which can be arrived at by philosophical analysis. We may note that, like other commodities, surplus interacts with price. This applies in the demand for punishment. When prisons are too overcrowded, policymakers tend to find ways of reducing sentence lengths. On the other hand, increases in the supply of crime tend to increase the "price" the offender is expected to pay. We have, therefore, one principle which accords with and one which runs contrary to those which determine economic systems. This looks rather like a "self-destruct" loop and provides a serious challenge, but does not invalidate the analogy.<sup>4</sup>

The question, "what punishment is this crime worth?" is very similar to the question, "what is this pound of butter worth?" We know what a pound of butter is worth only when we know what people will pay for it. We know what a crime is worth only in terms of what offenders are expected "to pay for it." There is a currency of punishment because people are willing to support the price. That is to say, the prices of butters and crimes vary according to market demand for these items. Therefore, in order to understand the best ways of controlling the cost of prisons and the criminal justice system, we need to study appropriate "market conditions" not only for the production of crime but particularly regarding the demand for punishment rather than the philosophy of its justification.

In the case of butter, though we may not assume a "perfect market," there is good information flow and considerable agreement as to the "correct" price. What a crime is worth is settled with much less information exchange, and it is not surprising that we observe a far greater variance in "price" structure. No analogy will hold if pressed too hard, but it is the point at which an analogy breaks down which often provides insight. Analogies provide no answers, but they suggest useful questions (Wilkins, 1984).

The proposition that the amount of punishment dispensed by a criminal justice system is a response to the amount of serious crime needs to be turned on its head. Rather than an increasing amount of crime driving up the demand for punishment, it is more reasonable to postulate that a general phenomena which may be designated the demand for punishment develops and varies within a social system and is not restricted to acts defined as "crimes."

Graeme Newman (1983) prefers the idea of vengeance to that of punishment. But, as I see it, vengeance is an individual demand which can be attributed only to the persons who are in some way involved. It does not explain social policy, unless we are prepared to take a reductionist perspective—which I am not! Newman's analysis refers to a "micro" model—a theory born out of the psychological discipline. My model is a "macro" model and is concerned with social policy, perhaps born out of a statistical discipline.

#### *Macro vs. Micro Models*

It may be necessary for me to stress that I am concerned with questions of public policy—not with explanation in terms of individual psychology, religion, or other analysis at the "micro" level. Let me indicate what I mean by "micro" vs. "macro" models. Newman's idea of "vengeance" may be correct at the individual level, but explanations at the individual level do not suffice as efficient guides to social policy. The distinction is quite well made in economics. Most people would find it easy to accept

that the kind of models (ideas) which might assist in the successful operation of a village grocery store would not serve the Bureau of the Budget as a model of the national economy. (Unfortunately, some politicians seem to assume that such differences are inconsequential!)

So much appreciated in the village store is the attention to detail and care for the traits of significant customers. But these are not of concern at the level of the national economy. For that, a much higher level of abstraction is required. Furthermore, anecdotal details at the (micro) village level provide no useful exemplars at the (macro) national level. No dramatic incident is an efficient guide to policy. ("Hard cases make bad law.")

Fundamentalist religions are, I suppose, the best exemplars of the misapplication of micro concepts to macro issues. The way to save the world, they believe, is to save individual souls. Criminology followed this idea with the (now discredited) "medical model": the way to reduce crime was by reducing the likelihood of the individual to recidivate. We must carefully distinguish which kind of model we are using. There are quite appropriate applications of micro models; indeed, it is both possible and reasonable to consider sales, debts, interest, cost-price ratios, crime, punishment, and many other things at the micro level. It is also equally reasonable to consider interest rates, sales (exports), and, indeed, punishment rates, at the national (macro) level.

#### *Persons vs. Information About Persons*

Confusion between macro and micro models can have positive dangers as well as being sloppy scientific thought. I am always bothered when I hear (as I often do) agents in criminal justice talk of "making decisions about persons." Persons are affected by their decisions, but the decisions are made "about information," or "evidence." It must be stressed that it is information/evidence which directs procedures — procedures of selection into the criminal justice machinery and operations within its network. Information in the form of the label "crime" thus dictates, with precision, a sociopolitical mechanism, but lacks precision as a descriptor of the "criminal act" or actor.

Similarly, it is not "the economy" which determines government policy, but the model of that economy which is accepted by those having financial control. It is not "the individual" who determines the decision, but the informational model of the individual accepted by the decisionmaker. Unless this is always kept in mind, false inferences are certain and can have serious consequences.

Information about individuals is not unique to any individual. It cannot be, as is obvious from simple semantics. Thus, the assertion that every person is unique lacks utility. The basic concept of information requires an awareness of the macro approach.

#### *The Political Basis of Justification for Punishments*

Punishment administered through official organs of government in any social system requires that authority (to punish) is vested in those who have responsibility for the maintenance of order. Punishment, in a word, is not merely a matter between individuals mediated by society; punishment of the blameworthy may be, in and of itself, a social necessity. That is to say, the administration of punishment may be a politically useful form of social control functioning independently of the reasons expressed as justification for its deployment, namely the activities of individuals in relation to the criminal code.

One important piece of evidence for this proposition is, of course, the failure of any data to show that variations in the amounts of recorded crime correlate significantly with variations in incarceration rates.

### *A National Punishment Budget?*

The value of the concept of a macro model in criminal policy will be evident from the fact that it requires the explicit statement of objectives of government. Perhaps if the current interest in "privatizing" prisons gains ground, it will have at least one good effect—it will make it clear that provision of means of punishment has specific costs. It follows, therefore, that there is a punishment budget, as there is a military budget or an educational budget. No nation will allocate financial incentives beyond that which it is believed it can afford, and what can be "afforded" will depend upon the favoured economic theory. For example, the allocations income distribution policy which will accord with (macro) economic models will impact upon citizens in various ways, notably by changes in taxation policy.

In a less controlled way, no nation will carry out more punishment than it believes it can afford. The difference is that while there is a known, explicit model which indicates how rewards are distributed, there is not, as yet, any macro model which underlies the implicit national punishment budget. Indeed, in England, the very idea of punishment being subject to allocation is rejected. Offenders must get "what they deserve" (i.e., whatever the judges dispose), and considerations of resources are not for those who dispense justice. It is for other branches of government to find the ways whereby the court's will is put into effect.

I would like, in the future, to see the policy of punishment allocation as tightly controlled as reward allocation, and made equally explicit and related to a system of accountability for its use. It is my view that judges cannot find a "right" penalty which is independent of sociocultural values. Therefore, there is required some form of accountability for the exercise of discretion. I doubt that any micro model will work, but we could begin with some crude macro allocation systems which regarded punishment as a "scarce resource," and required the judiciary to be accountable for individualizing dispositions within the constraints of an overall budget. Neither the health and education services, nor the military, nor, indeed, any other department of government can arrogate to itself the determination of its total budget, and there would seem to be no reason why the judiciary should be exempted. To so claim is tantamount to claiming a power for the judiciary above all secular political power. Some judges and at least one chief of police have claimed to follow divine instructions, directly received, and judges have claimed that they have, in the whole of their careers on the bench, made no mistakes.<sup>5</sup> If we cannot accept such claims to mediate for the divine, then there must be an accountability to an appropriate secular authority. The medium of money would seem to be a viable alternative. This is clearly a value choice. But the range of choice is constrained. Reason requires that constraints be identified and acknowledged.

Such development seems unlikely in the near future. Indeed, we can expect no progress until the concept of allocation of scarce resources of punishment has found acceptability, and there is a research data base. When criminologists do as much research as economists and when practitioners in the field take as much notice of research findings as do financial practitioners of economic models, we will begin to see progress toward a more rational system.

In order to make progress with the analysis and to try to make sense of any future penal policy, I will continue to work in terms of some macro model for the allocation of punishment resources.



If nations, that is to say, political powers, have economic policies which result in observed patterns in the allocations of rewards, is it not possible that there are related patterns in the allocation of punishments? Is it not possible that these two allocation processes are correlated? If so, then we will have established that political policies are reflected in both a country's economics and its jurisprudence.

There are some data which support this theory (see Pease and Wilkins, 1987), showing that inequality of distribution of income is associated with incarceration rates and the severity of punishments awarded. Specifically, as the proportion of income obtained by the top 1-5 percent of the population increases, so punitiveness increases. The degree of association in this case is about the same as is the association between variations in the rate of earnings and the rate of inflation.

Punishment and reward are all pervasive in both private and governmental sectors. The study of reward at the macro level has been the preserve of economics with its theories of interest, money supply, and taxation. Government economic policy is arranged through a variety of mechanisms —by direct intervention or by changing its own economic activities (e.g., taxation and borrowing, nationalization and denationalization). Government policy in the administration of punishment is more directly achieved by the writing in of penalties for proscribed acts, though usually this leaves considerable discretion to the judiciary who interpret the law.

#### *Discovery of the Future in the Present*

Political climates and political theories relate closely to governmental economic activity, and some would say that fiscal policy was central to any political philosophy.

Doubtless political theories and climates have an impact upon the definitions of crimes. It now seems that they are equally as surely, but less explicitly, related to both the level and distribution of punishments.

The idea that the disposition of offenders is related to political philosophy is not new. Becker (1968), in a much respected work, has specifically discussed the demand for crime as an economic function. The construct of a function which I have termed demand-for-punishment is not new. What I believe is new in my analysis is the demonstration that the demand for punishment may be treated in a similar manner to other demand functions. Earlier, I suggested that it is this kind of demand which drives the definition of crime: I would go further and say that its impact is also to be found in the changing practices of the judiciary in the disposition of offenders. The ways in which politico-economic theory constrains what is seen as practical political action is reasonably well understood. By contrast, there has been little effort to sort out the similar phenomenon in regard to the allocation of punishment. Indeed, rejected out of hand is the very basic idea that punishment is a resource to which allocation procedures might be applied —by an authority— certainly not by the "justice system."

In democracies, the processes of judicial decisionmaking are complex, and the individual personal prejudices of those elected, while important, will be subject to modification. But again, the same may be said of interventions in economic matters, such as monetary control, interest policy, and price regulation. The manner in which factors interact (though obviously not the same factors) in such economic mechanisms as in the establishment of wage restraint or money supply is likely to be precisely similar to that which might apply to punishment control.

Though requiring expensive, sophisticated research techniques (certainly not by simple direct questioning!), it would be possible to ascertain what factors might

result in the public being willing to substitute their demand for, say, butter, with a demand for polyunsaturated spreads. It would probably be more difficult, but still possible, to ascertain what factors might result in the public switching their demand for prison to a demand for more community service orders or fines. Public preferences in economic behaviour are coded directly into money flow. But preferences in the demand for punishment (i.e., acceptable "trade-offs" such as what level of fine is worth how many days in prison) also involve money, though less directly, and can and should be explored.

But on a more general point. I would claim that there are similarities between the political philosophies of reward and the political philosophy of punishment, and similarities in the impact upon the respective systems. In short it seems reasonable to accept that sociopolitical theories dominate all machinery of government, including the criminal justice system.

The preceding argument claims that political dominance of the operations of the criminal justice system is the *de facto* situation. Though this may or may not be desirable, it follows that we must come to terms with it and match our kinds of analysis accordingly. If we wish to change the penalty structure because we see it as too costly, too severe, too lenient, or even as inefficient, it is to the sociopolitical structure of our society that we should direct our attention.

We have, then, a similar problem of analysis whether we are concerned with the likely future or the desirable future.

#### *Two Different Markets: Crime and Punishment. Who Buys?*

Where does this leave us? I suggest that as much is to be gained from the study of the market for punishment as from a study of the market for crime. Who **buys into** crime has been given tremendous investment over decades and has been the subject of all kinds of analysis, research literature, and philosophical speculation. Who **buys into how much** punishment is an equally important question in the control of a modern society.

More important than simple direct observation of the demand for punishment is the study of the ways in which it goes together with other attitudes in "packages." This latter finding is disturbing because I find a close mapping between my observations of political policy correlates and an individual psychology model. Some decades ago, Eysenck, (1949) showed experimentally that an individual's basic political attitudes could be classified into "packages" or "dimensions." That is to say, basic political attitudes tended to be quite strongly interrelated. In particular, within individuals, a punitive attitude toward offender was related to many other basic attitudes, including those of religion and economics.<sup>6</sup>

Political platforms also are found to comprise packages, and these packages are almost identical with individual packaging of attitudes and moral values.

#### *Political Futures Determine Punishment Futures*

Earlier in this paper, I suggested that a micro (individual psychology) model was inappropriate for describing a macro political process. Inappropriate it may be, but it seems to fit. This seems theoretically unsatisfactory, but is it undesirable? It is clear that under certain kinds of political systems, a reductionist model is in fact appropriate. The simplest case in which we would expect to find a convergence between micro

and macro models would be where a system of government permitted only one person to exercise individual prejudices.<sup>7</sup> I can say only that similar convergence is observed in my data. Does this mean that there is little difference between a strongly led democracy and a dictatorship?

Surely there must be other reasons. Perhaps these observations reflect a concentration of judicial power within our systems of government. While judicial practices fit well enough within implicit government policy, they are permitted to continue on their own ways. But, as has been evidenced in South Africa, though judges sometimes fail to endorse official policy, they are not permitted to get too far out of step. Thus, judicial philosophy is no more than a minor perturbation of the political dominance of the concepts of crime and punishment policy.

Projection of the likely form of the criminal justice system in 2012 is, it seems, dependent upon the political system we might project for that time. I may illustrate this by a forceful, specific, and hypothetical question —in 2012 will South African courts be enforcing equal rights legislation or U.S. courts supporting the re-introduction of segregation? Probably neither; but clearly politics rather than jurisprudence will decide.

#### *Political Futures: An Uninformed Guess*

If I could be given a scenario of the political climate in 2012, I would be willing to fill in a fairly detailed scenario for crime and punishment, provide some suggestions as to the size and style of police forces, and indicate the kinds of prisons I would expect to see. If without being given a projection of the political climate, I were, nonetheless, to provide statements which I pretended were suggestions as to the probable state of the institutions of criminal justice in the future, I should, implicitly, be risking a projection as to the political scenario of that time. Whatever I may know about the field of criminal justice, I am totally unqualified to project political futures. Whatever the future shape of the political power, it is that power which will generate definitions of punishability (criminalizing), provide the constraints and rewards for the agents of social control, and both influence and be influenced by the "market conditions" for the "products" of the criminal justice system.

But the Editor presses! Perhaps I am not much more ignorant than others. Risk a guess!

What is seen as probable is, for the optimist, likely to be that which is also desirable. (Formal projection methods take this into account in quantified terms.) The Western world has had its "swing to the right." Can it go further right? Perhaps, but with my prejudices that would be undesirable, so let us say that it is improbable.

If this is so, we will see a reduction of both extremes of reward and punishment. That is to say, the top 1 percent of income will diminish in absolute terms, and, associated with this, the heaviest 1 percent of punishments (long prison terms or substitute severe penalties) will decline. Reduction of long-term prisoners would have a major impact upon prison populations. But these and similar major changes can take place only in a very different political climate from that of today.

It is my view that while things can only get better eventually, there is much worse to come in the short and mid-range future. Before there is any major change in political philosophies, there is likely to be considerable development of techniques of "electronic" monitoring and control of offenders (and perhaps also "suspects") in the community. This electronic "marking" will serve several purposes, among them, it will make pos-

sible a change in the use of prisons. Longer periods of detention will become possible for those offenders who are classified as "dangerous." It is doubtful whether fewer will suffer incarceration, rather a greater number of persons will become subject to some forms of constraint or surveillance, including new "nonintrusive" forms of "marking" and tracing.

Most may regard this scenario as undesirable. While highly probable, this "future" is not inevitable. It is possible to identify trends and to foster those which might lead to alternative futures. An essential condition is, in my view, that we begin to explain and regulate the *demand-for-punishment* function and gain some understanding of the "packaging" of basic political attitudes. (See Pease and Wilkins, 1987.) Attitudes toward criminalizing acts and punishing offenders will need to be separated from political interests, whether of the left or the right. To effect this, it is the public who must make clear to candidates for office that "crime" is an unattractive topic for the hustings.

It might help if attitudes toward "crime" could be dissociated from certain other attitudes with which they are now strongly correlated. For this, a change of "product image" is required. (Appropriate techniques are well established in market research.) Mainly in Canada and in some localities in the United States, there are some weak traces of trends that suggest that such a change of "image" is (probably unintentionally) beginning to take place. At present, we may identify only isolated *ad hoc* modifications of some procedures within the system. Among these significant "straws in the wind" are victim support services, compensation, restitution, and witness cooperation schemes. These are examples of a class of modifications of procedures which serve to temper the accusatorial (contest/conflict) model enshrined in *Rex v. Whoever* (and national variations thereon) by providing a significant, participating role for all concerned in the event (crime), which started up the machinery in the first place.

It seems unlikely that many who are engaged in such procedural changes recognize or would accept that an underlying idea was changing the basic concepts of criminal justice process and perhaps also of criminal law. But it may be noted that these changes are consistent with changes in other sectors. For example, the medical profession has moved toward more involvement of patients; child education is providing roles for parents; students have more power in institutions of higher education, and, quite generally, we may note the impact of "consumerism." It is not surprising that some effects spill over into the ideas underlying criminal justice. Thus, implicitly, these *ad hoc*, largely uncoordinated changes represent a challenge to the entrenched concepts of the criminal justice system.

If these kinds of changes proliferate, they may come to be seen as undermining the very foundations of "justice" in the majesty of law and the dignity of fair contest mediated by a protective state power. No entrenched, traditional system readily accepts fundamental reorientation. There is, therefore, a grave danger that should these trends continue and come to be recognized as leading toward a fundamental change, they will lose support. But if change does not take place and develop rapidly in these directions, then all thinking citizens should be fearful, not that they may suffer by being a victim of a crime, but by becoming a victim of a "system" which has no focus of accountability and no concept of service, but only of "doing what is right."

My optimism, then, is conditional. It requires that a political climate can prevail where crimes (and particularly criminals) are not exploited for votes. Removal from the political arena will require that the whole concept be remodeled. It is essential that the state be replaced as the complainant/prosecuting-agent/victim, and the "real" victim become a significant participant in all proceedings. But not only the victim.

Existing "fictions" must be replaced by information directly provided by all those who were involved.

The function of the criminal justice system would not be to protect the state itself nor its organizations nor any set of cherished principles. Its functions, effected through the application of modern management techniques, would be to provide for all persons within its jurisdiction the maximum freedom to exercise their individual *preferences* consistent with the protection of others. The criminal justice system must strip off its ritual and mysticism and graduate to become a social management organization in the form of a criminal justice *service*. The public, now mostly no more than petitioners, would gain dignity and become "customers" of these services, as for health and education services. As we move away from an authority base in other sectors of official policy, so, similarly, we may look for change in criminal justice services as we begin to extend the roles of the participants in the procedures.

It is, then, my strongly held view that if we would hope for a more desirable future, we need to reduce our dependence upon drama and ritual and to turn our attention more firmly (and less emotionally) toward the wider and more significant problems of the quality of life. Social management would have to become concerned with **harms** of all kinds, devoting much more effort to those harms which do not attract the moral revulsion/fascination of the label "crime."

#### *Footnotes*

<sup>1</sup>If in the present system there is an unstable (or illogical) relationship between the supporting arguments and action, then no statements can be made as to the shape of probable future states. Emotional states are not amenable to projective analysis.

<sup>2</sup>The greater the degree of variety at the present time, the larger the number of exemplars of the processes we may consider as guides to our speculation about the future.

<sup>3</sup>It is now generally accepted that variations in dispositions do not correlate with outcome. A summary of much research up to 1967 (which has not been invalidated since) is to be found in the report of the European Committee on Crime Problems, Council of Europe, *The Effectiveness of Punishment and Other Measures of Treatment*, Strasbourg.

<sup>4</sup>If we assume that "life" is less than "death," then this no longer seems to be a problem of conflicting preference structures.

<sup>5</sup>According to newspaper reports, at least one British judge has both claimed for himself, and been attributed, infallibility. See, for example, *Guardian*, 27 December 1986, and *Sunday Times*, May 1981.

<sup>6</sup>For example, those in favour of the death penalty also favoured the "right to life" (i.e., were against abortion).

<sup>7</sup>In a total dictatorship, for example, a study of the individual psychology of the dictator would be far more informative than the development of models based upon complex systems of decision-making.

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