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Federal Probation

Probation and Biology Offenders

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Public Be Blamed?

*Francis T. Cullen
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This Issue in Brief

Probation and Felony Offenders.—Author Joan Petersilia summarizes the major findings of a recent Rand study designed to discover whether felony probation presents unacceptable risks for public safety and, if so, what the system could do to overcome those risks. To this end, the study sought to establish how effective probation has been for a sample of felony probationers, to identify the criteria courts use to decide whether a convicted felon gets a prison or probation sentence, to discover whether the prediction of recidivism could be improved, and to see if the system could develop a felony sentencing alternative that poses less risk for public safety. The results show that two-thirds of those sentenced to probation in Los Angeles and Alameda, California, were arrested during a 40-month followup period. Given these findings, the author concludes that the criminal justice system needs an alternative form of punishment intermediate between prison and probation. The article recommends that programs incorporate intensive surveillance with substantial community service and restitution.

Prosecutors Don't Always Aim To Pleas.—Barbara Boland and Brian Forst examine a new data base on prosecution practices across the county, focusing on the prevalence of guilty pleas relative to trials. They find substantial variation in the number of pleas per trial from jurisdiction to jurisdiction; they also find evidence that this variation is driven substantially by differences in prosecution styles.

Explaining The Get Tough Movement: Can The Public Be Blamed?—This article assesses the common assertion that the current movement to get tough with offenders is a reflection of the public will. Through an analysis of data collected in Texas, authors Francis T. Cullen, Gregory A. Clark, and

John F. Wozniak discovered that citizens do indeed harbor punitive attitudes. However, the data also revealed that few citizens are intensely fearful of crime (a supposed cause of punitive attitudes) and that support for rehabilitation as a goal of corrections remains strong. Taken together, these findings suggest that the get tough movement can only partially be attributed to public desires. Instead, a full explanation must attend to the changing social context that not only shaped public views but also en-

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couraged politicians to champion a "law and order" policy agenda across the nation.

Assessing Treatment of the Offender: From Probation to Capital Punishment.—Debate surrounds the issue of effectiveness and/or appropriateness of the various options available in sentencing criminals. While there are many reasons for differences of opinions, the basic—and often most overlooked, according to author Philip E. Lampe—is the lack of official goals. The way a criminal is treated (means) should be guided by what the system hopes to accomplish (ends). It is impossible to assess the effectiveness of any form of treatment without considering it in relation to a specific goal. The author contends, therefore, that until the criminal justice system establishes official goals, no final assessment regarding treatment can be made.

Community Service: All Things to All People.—One of the more popular criminal justice system reforms today has been the introduction of community service. To advocates of competing penal philosophies, community service has been heralded as an innovative measure which incorporates elements of punishment, reparation, rehabilitation, and reintegration in equal force. Whether the objectives in these varying penal philosophies can adequately be achieved within the framework of community service is the focus of this article by David C. Perrier and F. Steven Pink. Apart from the debate concerning the range of objectives community service was originally designed to achieve, the authors hold that there is little doubt about its appeal to protagonists of competing philosophical perspectives.

The Effect of Casino Gambling on Crime.—The legalization of casino gambling is currently being considered by a number of states and cities as a way to improve the local economy without raising taxes. A significant encumbrance to its widespread adoption, however, has been the fear that the introduction of casinos will result in increased crime. Until now, no investigation has been rigorous enough to generate conclusive evidence to support this claim. Author Jay S. Albanese examines the relationship between casino gambling and crime in Atlantic City, and accounts for the inconclusive findings of earlier work by controlling for the effects of increases in the population at risk, police manpower, and statewide crime trends. The author hopes that through such objective investigations, both legislators and the public can more confidently assess the benefits and liabilities of casino gambling.

The Alcoholic Bank Robber.—Authors Louis

Lieberman and James F. Haran studied 500 bank robbers convicted between 1964 and 1976. Data collected from presentence investigations, probation department files, and the Federal Bureau of Prisons and other sources indicated that of those studied, 12½ percent were alcoholic, an additional 48 percent were moderate drinkers, and those remaining were abstainers at the time of their arrest. According to the authors, alcoholic bank robbers tended to be older, white, poorly educated, separated or divorced, and on welfare. They were less likely than moderate and nondrinkers to use marijuana or opiates. They were more likely to have had multiple prior convictions for both violent and property crimes than were moderate or nondrinkers. Other variables presented: religion, church attendance, mental health status, and cocaine and other illicit substance use.

The Cornerstone Program.—Author Gary Field describes Oregon's pre-release treatment program for chemically dependent, recidivist offenders and presents the results of client outcome studies. The treatment program, Cornerstone, is a 32-bed residential program lasting 6 to 12 months followed by 6 months of outpatient treatment. The client population is chronically disabled by both alcohol or drug history and by criminal history. The five major categories of treatment intervention used at the Cornerstone Program are a therapeutic community, treatment contracts, intensive counseling, life skill training, and community followup treatment. The author evaluates Program results in the areas of client self-esteem, symptomatology, knowledge learned, and subsequent criminal activity and prison recidivism. As a function of the treatment program, Cornerstone clients showed enhanced self-esteem, reduced psychiatric symptomatology, increased knowledge in critical treatment areas such as alcohol and drug abuse, reduced criminal activity, and reduced prison recidivism.

Probation and Parole in Canada: Protecting the Canadian Public?—Even if North Americans share basically many sociocultural values, Americans and Canadians are different in matters related to criminal justice, especially with regard to sentencing, probation, and parole. According to author Andre Normandeau, interviews with Canadian probation and parole officers, as well as correctional administrators, show that Canadians are not turning "to the right." There is no significant emphasis on control and punishment. In fact, Canadians still believe in rehabilitation and their mood and temper still meets Winston Churchill's test of civilization.

Assessing Treatment of the Offender: From Probation to Capital Punishment

BY PHILIP E. LAMPE

Professor of Sociology, Incarnate Word College, San Antonio, Texas

VIRTUALLY EVERY form of treatment¹ from probation to capital punishment has its detractors as well as its defenders. Debate between the two opposing positions is often more visceral than cerebral, producing more heat than light. One reason for this is that the issues are, or may quickly become, moral issues and, in a religiously heterogeneous society such as exists in the United States, it is difficult to reach a moral consensus. However, even when the issues do not become religious, they may still be based on a personally accepted but unproven faith, such as the innate goodness or evil of man, the ability or inability of modern science to solve all problems, etc. As such, the positions espoused are not always completely rational and/or empirically verifiable, and emotion rather than reason tends to permeate the arguments and counterarguments which are presented.

Another reason for the often heated debates has to do with the inconsistent and sometimes conflicting nature of the research findings which report on the effectiveness of the various forms of treatment. As a result, even when an attempt is made to transcend the personally held belief as a basis for discussing the relative merits of a particular form of treatment, both sides are able to cite statistics and/or some form of evidence favorable to their own personal preference. It should be noted that presently there exists no consistent findings which convincingly prove the superiority of any one form of treatment. Indeed, the most consistent and convincing finding is that no significant difference seems to exist between the results obtained by the various forms of treatment. Based on an analysis of the results of over 200 studies, criminologists Gould and Namenwirth stated that "the sad conclusion is that no treatment program in corrections, when evaluated by acceptable scientific procedures, has proved to make more than the slightest impact on recidivism rates. Most have either had no impact at all or have been harmful" (Gould and Namenwirth, 1971: 240).

Not everyone, of course, would agree that all currently employed treatments are uniformly ineffective. Some disagreements are based on methodological or evaluative procedures. However, what may be the primary reason for many of these disagreements (whether recognized or not) is the general lack of reference to functions. Evaluations of effectiveness cannot be validly made without a consideration of the desired or manifest function of that which is being evaluated. Thus, in order to properly evaluate the various forms of treatment, the desired functions must be specified. As functions or goals change, so too may the evaluations.

Common Goals

There are six commonly recognized functions or goals of the treatment of offenders: restraint, deterrence, rehabilitation, symbolic revival of unity, retribution, and restitution (Nettler, 1978).

Restraint, also referred to as incapacitation, is concerned with impeding the offender from the commission of further offenses. The focus is on making continued criminal activity impossible. There is no implication of punishment or treatment.

Deterrence as a goal is concerned with influencing people to refrain from prohibited behavior. A distinction is often made between individual or special deterrence and general deterrence (Reid, 1981; Andenaes, 1974). The former refers to controlling the future behavior of an offender by means of the threat of apprehension and/or punishment. The latter refers to controlling the behavior of others by means of the example made of the offender who was caught. It is assumed that others will get the message and act accordingly. One advocate of this position, the 17th century philosopher Hobbes, was of the opinion that punishment could only be justified on utilitarian grounds for the protection of society (Hobbes, 1881).

Rehabilitation is aimed at change. It not only seeks to change the offender's behavior but, ultimately, also to affect a change of heart which will lead to prosocial rather than antisocial behavior. This goal has also been called reform. Inspired by the goal of rehabilitation, prisons have variously been referred to as penitentiaries, refor-

¹ In this discussion, the term treatment is used not in a medical or psychiatric sense, but to describe the manner or technique used in dealing with a convicted offender.

matories, correction centers, and rehabilitation facilities.

Symbolic revival of unity, which is probably the least recognized and acknowledged goal, is concerned with repairing the damage done to society's unity by the violation of its laws. Action taken against an offender is seen as a way for members of society to collectively reinforce and reaffirm commitment to their common beliefs and identity, resulting in greater cohesion. This is consistent with the ideas of Durkheim (1893), who was of the opinion that the primary function of punishment was the reaffirmation of society's values and a reinforcement of the "collective conscience."

Retribution, one of the oldest and most universal goals, is primarily concerned with justice. It is based on the legal and moral philosophy which holds that justice requires a balance between the perpetrated wrong and the penalty the wrongdoer is made to suffer. The German philosopher Kant was an ardent supporter of retribution, believing that it was so important to the natural order of things that it need have no practical purpose or consequence whatsoever (Kant, 1970). Some social scientists, as well as non-scientists, have mistakenly referred to this goal as revenge (Carter *et al.*, 1975). However, as has been pointed out by others, retribution is not revenge. The criminologist Nettler has explained, "Revenge is the emotional impulse to wreak havoc on a person who had injured us. Revenge knows no balance. . . the balancing principle of retribution distinguishes it from revenge. Retribution sets limits to punishment. It seeks a punishment proportional to the wrong done." (1978: 51).

Restitution as a goal seeks the restoration of things to their precrime state. To the extent possible, the offender must make restitution or payment to his or her victim(s). This requirement is based on what is referred to as "commutative justice," so-called because it concerns contracts or exchanges (commutations). Such contracts can be either voluntary or involuntary. A voluntary contract is made when two parties reach an agreement. An involuntary contract occurs when one person injures or takes what belongs to another. This act binds that person to restitution in the same way that a voluntary contract, mutually agreed upon, binds one to pay for what is received (Cronin, 1920).

Assumptions of the Goals

Each of the above goals has its own basic underlying assumptions. For example, restraint assumes that it is possible to deal with the offender in such a way so as to make it impossible for him or her to continue violating the law. It also assumes that such action benefits society. Such assumptions ignore the fact that crime is not deterred by incarceration (one of the most common forms of treatment), but is merely transferred. There appears to be more crime per capita inside of jail and prison walls than outside. Furthermore, as Durkheim (1938) pointed out long ago, some illegal behavior may at times actually benefit society. Social change often originates from illegal behavior. Advances in civil rights were undoubtedly stimulated by acts of civil disobedience and violence or the threat of violence on the part of those seeking change.

Individual deterrence assumes that an offender finds the treatment assessed when caught undesirable, and that fear of such treatment will cause the past offender to avoid future offenses. Overlooked is the fact that fear of the unknown is generally greater than fear of the known and previously experienced. Once individuals have experienced and survived a situation, much of the apprehension and fear associated with it declines. General deterrence assumes that people know what is being done to offenders, that they find such treatment undesirable, and that most people let what happens to others, e.g., the offender, affect their own behavior. In reality, many people are unaware of what happens to the offender, and for some individuals, i.e., street people, the lonely, and the unemployed and hungry, institutional life does not always seem so undesirable. This point was poignantly illustrated by O. Henry in his story "The Cop and the Anthem." In addition, it does not appear that most people are affected for long by what happens to others, especially if those others are strangers.

Rehabilitation has a series of assumptions: first, that people can change; second, that the legal system knows how to bring about such a change; third, that the system is capable of recognizing when such a change has occurred; and fourth, that society will recognize and/or accept a rehabilitated past-offender. Each of these assumptions is questionable. Some offenders, such as psychopaths, have been impervious to attempts at changing them.² Based on the results of efforts expended through a variety of programs to bring about large-scale change among juvenile delinquents and adult criminals, it is evident by the recidivism rates that

² Psychopaths, or sociopaths as they are also referred to, have sometimes been distinguished into two types: hostile and simple. It has been suggested that the former type may be more readily retrained than the latter (see Henry Allen, Lewis Linder, Harold Goldman and Simon Dinitz, "Hostile and Simple Sociopaths: An Empirical Typology," *Criminology*, 9 (May 1971), pp. 27-47.

the system still does not have a program capable of reforming all those it services. After an extensive review of programs, Martinson (1974: 25) concluded that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism." Equally evident is the fact that it is not possible at this time to accurately assess the occurrence of desired changes in deviant individuals. Trained psychiatrists, psychologists, and other professional members of assessment boards, such as those utilized in mental institutions to decide release and in prisons to decide parole, continue to display frequent and serious errors in judgments. Finally, it has been widely recognized that once a person is labeled as criminal, it is extremely difficult to overcome and/or eliminate the label and its negative consequences (Wright and Fox, 1978).

Symbolic revival of unity has several assumptions, perhaps the most basic of which is that crime in some way disrupts or causes divisions in society. Also assumed is that actions taken by society can repair the disruption or division. It is difficult to see how certain crimes, especially those that go undetected and/or unreported to the public, cause division among members of society. And while action taken against an offender, who is perceived by all as a common enemy, can unite members of society, in today's heterogeneous society the action taken is itself often the cause for division. Groups protesting the treatment assessed an offender are a frequent and recurrent phenomenon (i.e., public reaction was divided on the official treatment of such highly publicized figures as Nixon, Gilmore, and Hinckley. At the state and local levels some court decisions, together with the treatment assessed, have been the cause for rioting, especially among minority groups who have been affected by the decisions).

Retribution is based on the assumption that there is some transcendental plan or model of justice which requires a balance or payment in kind (e.g., good for good, evil for evil). It also assumes that there is a hierarchy of evil (and good) and that this hierarchy is, or can be, known and agreed upon. The first set of assumptions is based on faith and, as such, is beyond empirical verification. The existence of an objective, unchanging hierarchy is also a debatable issue, although it appears that most people may agree there is (this underlies the recognition of some criminal behavior as *mala in se*). However, it is evident that there is no agreement on what the specific hierarchy is as reflected in the relative ranking of crimes. There are differences in evaluations

based on such variables as sex (Lampe, 1982), class (Sinden, 1980), ethnicity (Lampe, 1984), age and education (Rossi, *et al.*, 1974).

The final goal, restitution, also has its underlying assumptions. Perhaps the most basic one is that restitution can be made for crimes. Another is that the perpetrator should make restitution for his or her crime. In fact, while restitution can in most cases readily be made for property crimes (excluding those items which have primarily a sentimental value), it is doubtful that it can be made for most violent crimes. In the latter cases, hospital bills and lost income due to the crime can be repaid, but the fear, pain, and suffering caused the victim and his or her family cannot. Physical or emotional scars often result which remain and affect them the rest of their lives. More importantly, how do you repay a victim of murder or rape? Obviously there is no way to replace that which was taken in either case. A victim of murder is no longer able to receive any recompense, and a monetary recompense to a victim of rape would make rape dangerously close to the crime of prostitution wherein the victim becomes a co-perpetrator. Finally, although it seems logical that if there is an attempt at restitution it should come from the perpetrator, in some cases this can present a real problem. Imposing a financial obligation on an uneducated and unemployed criminal may only assure a return to criminal activity to obtain the necessary money.

Assessing the Forms of Treatment

In order to fairly and impartially evaluate the effectiveness of the various forms of treatment utilized by the legal system, it is necessary to consider each form in relation to each of the six goals. This means, among other things, that there is no single test of effectiveness, although some believe recidivism is an all-purpose appropriate measure (Reid, 1981). In fact, recidivism is relevant to less than half of the goals. It is an appropriate measure if the expressed goal of the treatment is rehabilitation, individual deterrence, or restraint, but it is not appropriate if the goal is retribution, general deterrence, symbolic revival of unity, or restitution.

The same confusion regarding an appropriate measurement which results when the desired goal is not specified has been common to the debate over capital punishment. For example, the argument that a mistake may be made and an innocent person may be executed is compelling if the goal of the system is retribution; it is irrelevant if the goal is general deterrence. While such an irreparable mistake would be completely opposed to the desire

for justice, it would not necessarily be detrimental to the desire to deter others from engaging in the proscribed behavior. The deterrent effect of executing a convicted murderer will be the same whether the convicted person was really guilty or not, as long as the public perception was one of guilt. (This latter point may, of course, be a cause for concern if the official goal is nothing more than general deterrence). On the other hand, the argument that the death penalty does not significantly reduce the murder rate, while relevant to the goal of general deterrence, is completely irrelevant to the goals of restraint, symbolic revival of unity, or retribution. All other arguments are similarly relevant to some goals but not to others.

An assessment of the effectiveness of treatments has been made in tabular form. The treatments which were assessed are those more commonly given the convicted criminals. Assessments are based on the degree to which each form of treatment is capable of achieving the specified goals. The following five assessments were utilized: 1) none-completely ineffective, 2) minimum-low degree of effectiveness, 3) moderate-average degree of effectiveness, 4) maximum-high degree of effectiveness, 5) total-completely effective. As can be seen, the effectiveness of every treatment varies with the desired goal.

Probation

This treatment is minimally effective if the goal is restraint. Probation entails no incapacitation and only very superficial and periodic supervision of behavior. The effect is also minimal if the goal is either individual or general deterrence. In either case the threat is not sufficient to have more than a minimal effect on would-be criminals. When the goal is rehabilitation, the effectiveness can vary from minimal to moderate, depending on the provisions stipulated and enforced under the conditions of probation. Professional therapy or supervised experiences and/or treatment may be required which could help bring about a change. For achieving the goal of symbolic revival of unity, the effectiveness of probation is minimal. It does not appear to be the type of legal response which rallies the community together. If the goal is retribution, the sentence of probation, depending on the nature of the offense, is either completely ineffective or only slightly effective. The greatest possibility for effectiveness is in the case of restitution. Probation allows the perpetrator to remain free and, if employed, to continue earning an income. This, together with the condition of probation that some form of service be performed and/or regular specified payments be made to the victim, offers the likelihood that restitution will occur, to the extent possible.

TABLE 1. PROBABLE EFFECTIVENESS OF TREATMENT RELATIVE TO GOALS

TREATMENT	GOALS					
	Restraint	Deterrence	Rehabilitation	Symbolic Revival	Retribution	Restitution*
Probation	minimum	minimum	minimum-moderate	minimum	none-minimum	maximum possibility
Fines	none	none-minimum	none	none	none-minimum	none-total possibility
Community based Alternatives	minimum-moderate	minimum	minimum-maximum	minimum-moderate	minimum	moderate maximum possibility
Prison	minimum-maximum	minimum-moderate	none-moderate	minimum-maximum	minimum-maximum	none-minimum possibility
Capital Punishment	total	total or minimum-moderate	none	minimum-maximum	minimum-total	none

*In the case of restitution, the assessment is made on the basis of how well the treatment provides the opportunity and/or possibility for repayment, whether or not it actually occurs.

Fines

When the desired goal is restraint, the use of a fine is completely ineffective. Such treatment offers absolutely no supervision or control over behavior. If the goal is individual or general deterrence, the effectiveness of a fine is either none or minimal. Two relevant factors are: size of the fine and amount of resources available to the perpetrator. If the fine is small in relation to the possible gain or risk of apprehension, it is completely ineffective. The same is true if the perpetrator commands sufficient resources so that payment of a fine does not impose a significant hardship. Fines are unlikely to have more than minimal effect in meeting the goals of rehabilitation or symbolic revival of unity. When the goal is retribution, the effectiveness can be either none or minimal. In most cases of criminal behavior, a fine is not a sufficient response to balance the scales of justice, especially if no hardship is incurred as a result of payment. In addition, there is no justice when, as frequently occurs, the fine is less than the amount of illegal gain. A fine may range from completely ineffective to completely effective if the goal is restitution. It is completely ineffective if the fine goes to the government, courts, or anyone other than the victim(s) of the crime. A fine may be partially effective if all, or a portion of it, goes to the victim(s) but is less than complete compensation. The use of fines can be completely effective in property crimes when the fine is placed at the level of the loss and is assigned to the victim(s).

Community-Based Alternatives

The use of alternatives such as halfway houses, weekend incarcerations, etc., can be minimally to moderately effective if the goal is restraint. Degree of effectiveness depends on the degree of incapacitation and/or supervision utilized to control behavior. If the goal is deterrence, the effectiveness of the use of community-based alternatives is generally minimal because the perceived threat (e.g., remain in your own community in at least a semi-free manner) is not great. Alternatives may be minimally to highly effective when the goal is rehabilitation. How effective they are depends on the individual and the availability of appropriate experiences, counseling, programs (including educational), and/or psychiatric treatment. For the goal of symbolic revival of unity, the use of community-based alternatives can be minimally to moderately effective. Exactly how effective they are depends on the degree to which the community deems the treatment appropriate to the offense. When the goal is retribution, the effec-

tiveness of community alternatives is generally only minimal. This is because the primary concern and the *raison d'être* of the alternative is change rather than justice or punishment for one's actions. Alternatives have the possibility of being moderately to highly effective in meeting the goal of restitution, due to the fact that the perpetrator is still in the community under supervision and is often able to earn money. The possibility for payment to the victim is greatest if the perpetrator is gainfully employed and is required to make restitution.

Prison

In any discussion or evaluation of prisons as a form of treatment, it must be remembered that we are not talking about a monolithic institution. There are different types, or levels, of prisons ranging from minimum security to maximum security. Differences in security are related to differences in conditions and treatment inside prisons. There are also differences in sentencing: determinant or fixed, indeterminate or open-ended, and indefinite or within limits. However, all prisons are, using the concept of Goffman (1961), "total institutions" and as such have certain characteristics in common. Therefore, regardless of the type of prison or sentence imposed, there are sufficient similarities among prison experiences in the United States that a general evaluation can be made regarding each of the goals.

Imprisonment is minimally to highly effective in achieving the goal of restraint, depending on where we want to control crime. It is virtually impossible to completely deter criminal behavior, especially in a community of rebellious criminals. Degree of success will depend in part on the cooperation of individual prisoners and in part on the supervision and control exercised by the prison. Of course, it may be that the major concern of incapacitation is to make it impossible for convicted criminals to continue to prey on society. In this case imprisonment can be highly effective. The criminologist Wilson, representative of a growing number of people concerned with the generally rising crime rates, believes incarceration of both serious and repeat offenders is imperative. In his book *Thinking About Crime*, he cites an estimate that the rate of serious crime could be reduced by two-thirds if every person convicted of a serious offense were imprisoned for even 3 years (Wilson, 1975: 225). When the goal is deterrence, the effectiveness of prison is again minimal to moderate. The relatively high recidivism rate (approximately one-third return to prison within 3 years) indicates the rather low degree of effectiveness for individual deterrence (*Time*, 1982: 38),

and the very high crime rate over the years indicates that the threat of prison is not very effective for general deterrence either. This latter phenomenon may be due in large part to the fact that very few of those who commit crime ever serve time in prison (Sutherland and Cressey, 1978). If the desired goal is rehabilitation, the use of prison as a form of treatment ranges from completely ineffective to moderately effective. The prison experience itself probably has but little, if any, rehabilitative effect. In those cases where a former prisoner's behavior does change, it is difficult to distinguish between the individual deterrent effect and a possible rehabilitative effect of prison. Rehabilitation is more likely when there are some programs available to the inmates which are designed to promote change in attitude and/or behavior. It should also be noted that the use of an indeterminate sentence is much more appropriate to rehabilitation than is a determinate sentence, since change, if it takes place at all, does not follow a fixed schedule. Nevertheless, the custodial function of prisons, which is primary, tends to conflict with the rehabilitative function. Prisons can be minimally to highly successful in achieving the goals of symbolic revival of unity and retribution. Regarding the latter goal, degree of effectiveness depends to a large extent on the nature of the crime and the length of sentence and type of prison utilized. In either case, the subsequent use of parole may alter the effectiveness achieved. When the desired goal is restitution, prison as a form of treatment is completely ineffective or only minimally effective. This is because the imprisoned perpetrator suffers loss of income and the strong threat for nonpayment.

Capital Punishment

This form of treatment evokes the strongest emotions and the most bitter disagreements. It is society's final and ultimate response to crime. Viewed calmly and objectively in relation to desired goals, it can be seen that capital punishment is actually relatively easy to evaluate in most cases. It is the only form of treatment which is completely effective if the goal is restraint. Capital punishment is also completely effective in meeting the goal of individual deterrence (although it may be argued that in this case it is the same as restraint). When the desired goal is general deterrence, its effectiveness is minimal to moderate. One reason for this is that a high percentage of murders, virtually the only crime for which the death penalty is now imposed in the United States, are committed by individuals under the influence of drugs, including alcohol, and/or in a

highly emotional state. In either case, reason is diminished and with it the effectiveness of the threat. If the goal is rehabilitation, capital punishment is obviously completely ineffective. Its effectiveness in achieving the goal of symbolic revival of community ranges from minimal to maximum, depending on the degree of consensus in the community regarding the appropriateness of the death penalty. According to a recent Gallup poll, 72 percent of Americans are in favor of capital punishment (up from 42 percent in 1966) (*Time*, 1983: 28). In the case of retribution, this form of treatment is from minimally to completely effective, depending on one's beliefs and values. There are those who believe that only the life of the murderer can adequately pay for the life of the victim. Others believe that a life should never be purposely taken, not even as payment for a victim's life. This issue is moral and/or philosophical and can never be resolved empirically. Finally, capital punishment is completely ineffective if the goal is restitution.

Summary and Conclusion

The legal system has a variety of options at its disposal in treating the offender. However, not all forms of treatment are equally appropriate and effective in meeting the goals. Logically, the goal(s) of the legal system should be established first, and then the treatment which is best able to achieve the desired goal(s) should be selected. The system is commonly referred to as the criminal justice system. Thus, at least implicitly, justice would appear to be the goal. In fact, however, justice is not a major concern (Lampe, 1980). Unfortunately, it appears that the legal system has never really established goals, even though justice (retribution), rehabilitation, and deterrence are most frequently mentioned. It should be noted that there is no single form of treatment which is effective in meeting all three of these goals, but at least one form, e.g., fines, is ineffective for all three.

Due to the absence of officially established goal(s), each judge must select the goal he or she favors and the form of treatment deemed most appropriate to achieve it. At times it appears that a favored treatment is selected without concern for a goal. In this case, instead of the treatment being a means to achieve a desired end (i.e., goal), the treatment itself becomes the end. When this occurs, there is no possibility to evaluate the effectiveness of the treatment, since evaluations can only be made in relation to function or goal. The lack of a specified goal also inhibits the development of new and better forms of

treatment because improvement implies greater competence or facility in achieving a desired goal.

In conclusion, greater concern is needed in establishing an official goal or hierarchy of goals for the legal system in the United States. Only then will any meaningful study and dialogue be possible regarding the relative merits of the various forms of treatment.

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