Prison Service Journal

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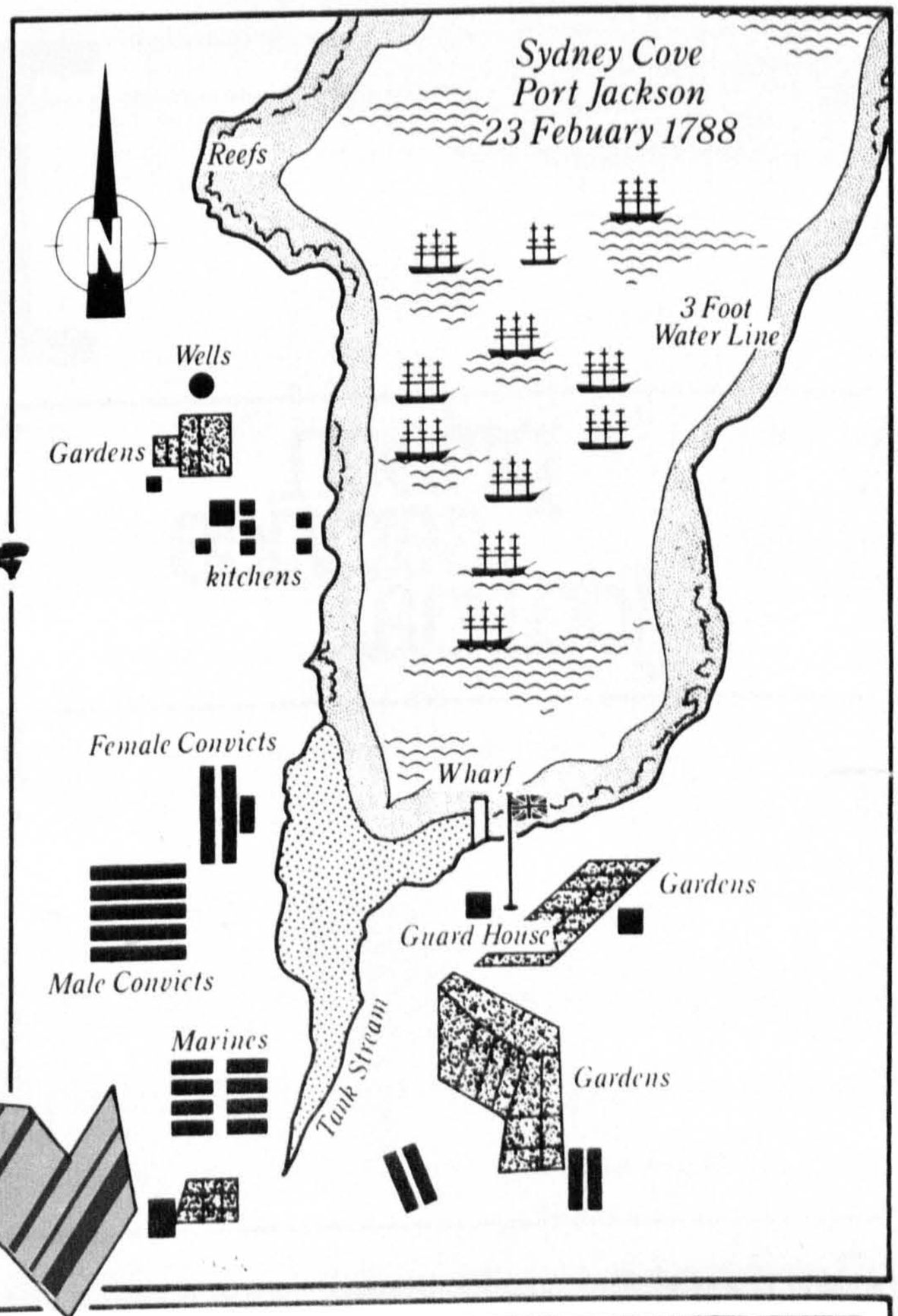

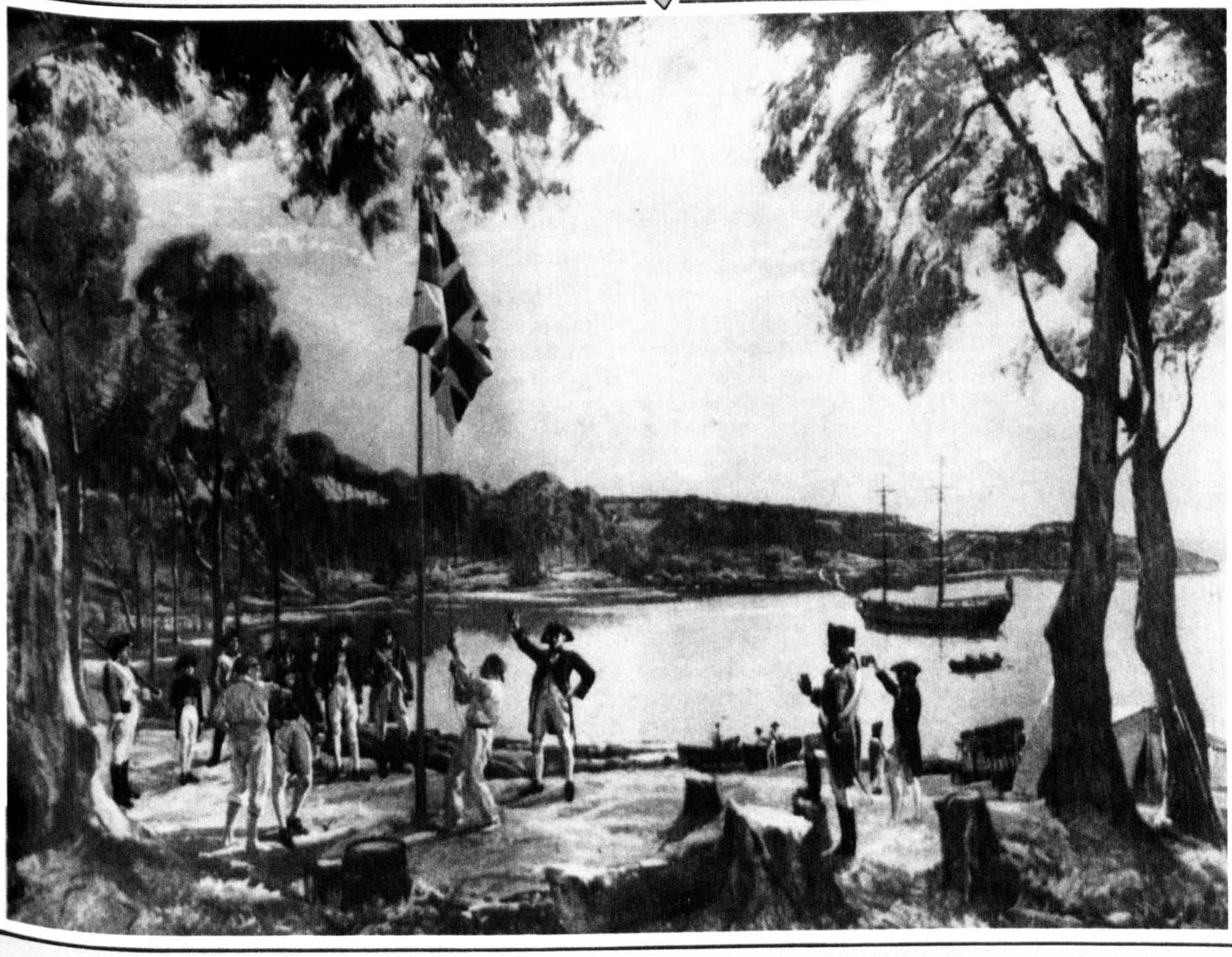

"The Founding of Australia" by Algernon Talmage

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PSJ

prison service journal

No. 73 New Series January 1989

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Contents

The editorial board wishes to make it clear that the views expressed by contributors are their own and need not reflect the official views or policies of the Prison Department.

Printed at HMP Leyhill.

Comment

This Edition of the PSJ turns its attention overseas. Prompted by the presence of one of our Editorial Board at the Bicentennial Congress held early in 1988 in Australia, we look back at the history of transportation to Australia.

Imprisonment as we know it today is a relatively recent concept. Until the middle of the last century, after execution, banishment and exile to foreign parts was the most favoured penal disposal. It was only when the colonies started to object to being used as penal dustbins that we began to use the Benthamite buildings which still form such a large part of the Prison estate today. It could be argued that transportation was a far more constructive and creative penal measure than mid nineteenth century or present day imprisonment. At least it offered the possibility of building an entirely new and law abiding life on the frontiers of the Empire. Furthermore it offered the possibility of doing so in an environment, which unlike present day imprisonment, was relatively normal, albeit cut off from relatives and friends in the mother country. The brutalities and degradation involved in the process of transportation were more a reflection of the prevailing spirit of the age than an intrinsic part of its penal efficacy. Had there been more Maconochies available it might have been hailed as the most constructive measure in penal history. Indeed, it is fascinating to note in Mike Selby's article, how far ahead of his times Maconochie was, and how his "token economy" has influenced the most positive penal experiments that have occurred in many parts of the world since his time on Norfolk Island.

As well as a report on the Bicentennial Congress itself we also include papers delivered at the Congress. Sir Brian Cubbon, perhaps anxious to avoid the image of the cautious senior civil servant created by Sir Robert Armstrong in his well publicised appearance in an Australian Court, speaks interestingly and in an apparently unfettered manner, about the constraints and realities of penal policy-making.

The training of overseas prison officials is now conducted by the Crown Agents, and the article on their activities brings us up to date with a process which began with secondments abroad for serving English Prison Governors, and continued with special overseas courses at the Prison Service College in Wakefield. It is now rare for English Prison Governors to be given secondments abroad to train indigenous Prison staff, and the Prison Service College no longer runs overseas courses. The mantle of overseas training has now fallen on the Crown Agents who draw heavily on the resources of retired members of the English Prison Service.

Finally, much closer to our own shores, we include articles on the European Prison Rules and the East German Prison System, within the general ambit of this overseas edition.

The article on privatisation in the nineteenth century is included not only because it describes processes which took place after the outlets for transportation ceased, but also for similarities we can discern with processes which are now being talked about as a means of improving the the current penal situation. ■

THE AUSTRALIAN BICENTENNIAL INTERNATIONAL CONGRESS ON CORRECTIVE SERVICES

MARTIN MOGG
Governor
HMYCC Northallerton

Introduction

In January 1988 the New South Wales Department of Corrective Services hosted the Australian Bicentennial International Congress on Corrective Services. In the same week exactly 200 years previously the first fleet had arrived at Sydney Cove, now over 700 delegates from forty nations had gathered to participate in the Congress. The theme "Corrections: The 20th Century Reviewed; The 21st Century Previewed" provided the opportunity to confront the variety of challenges facing the professions represented. The Official Opening of the Congress took place at Sydney Town Hall on Sunday 24 January 1988, The Governor-General, The Right Hon. Sir Ninian Stephen, A.K., G.C.M.G., G.C.V.O., K.B.E. opened the Congress, and this ceremony was followed by an Historic Address from Sir Brian Cubbon, G.C.B. then Permanent Under Secretary of State at the United Kingdom Home Office. Sir Brian's Address was well received by all delegates and gave some insight into the policy decision making process both in 18th and 20th Century Britain. Sir Brian's Address is printed in full in this issue of the Prison Service Journal.

The Patron of the Congress, The Hon. John Akister M.P., N.S.W. Minister for Corrective Services, formally welcomed delegates, and a summary of Mr. Akister's speech is reported below. Mr. Akister emigrated from England over 20 years ago, and is proud of the fact that as a boy brought up in a children's home in the Lake District, he could achieve the position of Minister of State in his adopted country Australia.

The remainder of the Opening Ceremonies was taken up with a musical tableau, presented by the N.S.W. Department of Corrective Services Band and guest performers. These included folk songs, poems and musical items as well as re-enactments of many of the more unpleasant aspects of the early days of settlement.

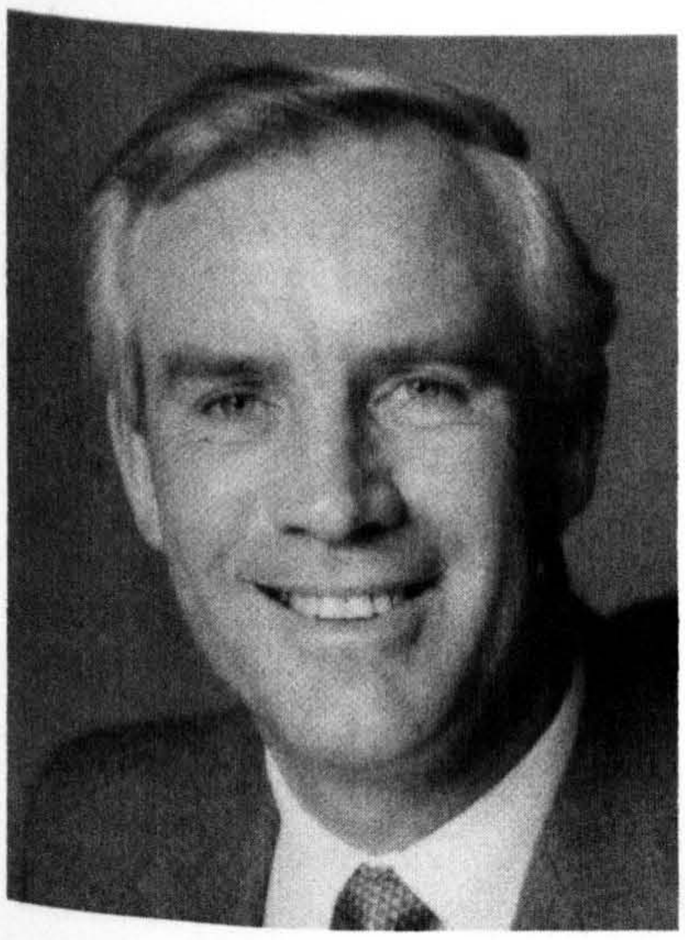
Over the next four days the Congress focussed attention on a number of particular aspects of Corrections and on each the focus was set by a keynote speaker—'International Trends in the Treatment of Offenders' from Professor Norval Morris; 'Some Major Lessons Learned from the History of Corrections' from Dr. John Ellard; 'Practical Issues for Corrections in the 1990s' from Mr. Norman A. Carlson; and 'Ensuring Professional Standards in Corrections' from Mr. Justice Helge Rostad. (Reports on these speeches appear below).

Following the Keynote Speech delegates had the opportunity of attending any of five Concurrant Symposia on Aspects of the Day's Theme. In the Treatment field these were Prison Based Programmes; Community Based Programmes; Correctional Programmes for Juveniles and Young People; Prison Education and Work Programmes and Procedures for Complaints and Grievances. On other days additional topics considered were Correctional Programmes for Indigenous Peoples, Sentencing and Corrections; Female Prisoners; Managing Intellectually Disabled Offenders, Management of Child Sexual Assault Offenders, High Security and Special Risk Prisoners; Parole; The Professional Development of Custodial Officers; and Institutional Architecture.

Special Interest Discussion Groups considered a wide range of subjects ranging from AIDS and Corrections to Forensic Psychology. In all almost 150 presentations were available for delegates to choose from, varying from formal presentation of papers, to films, videos and slide presentations.

The England and Wales Prison Service were represented by Mr. Christopher Train, Director General, who gave a paper on Corrections Policy and Management Issues for the 1990s, Dr. J.J. Kilgour, Director of Prison Medical Services who contributed on AIDS and Corrections, and Mr. M. A. Mogg, the Governor of HMYCC Northallerton who presented a paper on Correctional Programmes for Juveniles and Young People.

Two papers presented to the Congress are included in this issue of the Prison Service Journal. Further papers will be published in due course.



JOHN AKISTER
Minister for Corrective Services,
New South Wales

MINISTER'S WELCOME

The NSW Minister for Corrective Services stressed the need to acknowledge a debt to the aboriginal people and the many injustices perpetrated against them. In his speech at the Opening Ceremony of the Bicentennial Congress at the Sydney Town Hall. Mr. Akister said that while not advocating that 200 years of prisons in Australia was any cause for celebration, the Bicentenary none the less presented a timely opportunity for a critical look at corrections.

Mr Akister also acknowledged the many distinguished and expert speakers who would address the Congress over the following four days.

The Minister then addressed the audience as to the current correctional concerns and issues.

In doing so he made extensive reference to the address given by the Dutch Minister for Justice on a similar occasion in 1986—the Centenary of One Hundred Years of Deprivation of Liberty in The Netherlands.

The Minister agreed with the Dutch Minister by pointing out that the question is not whether we are in favour of prisons, but whether we can do without them.

"Even though imprisonment continues to be the backbone of our criminal system, there is nothing to be gained by imposing custodial sentences more often for longer than necessary," he said.

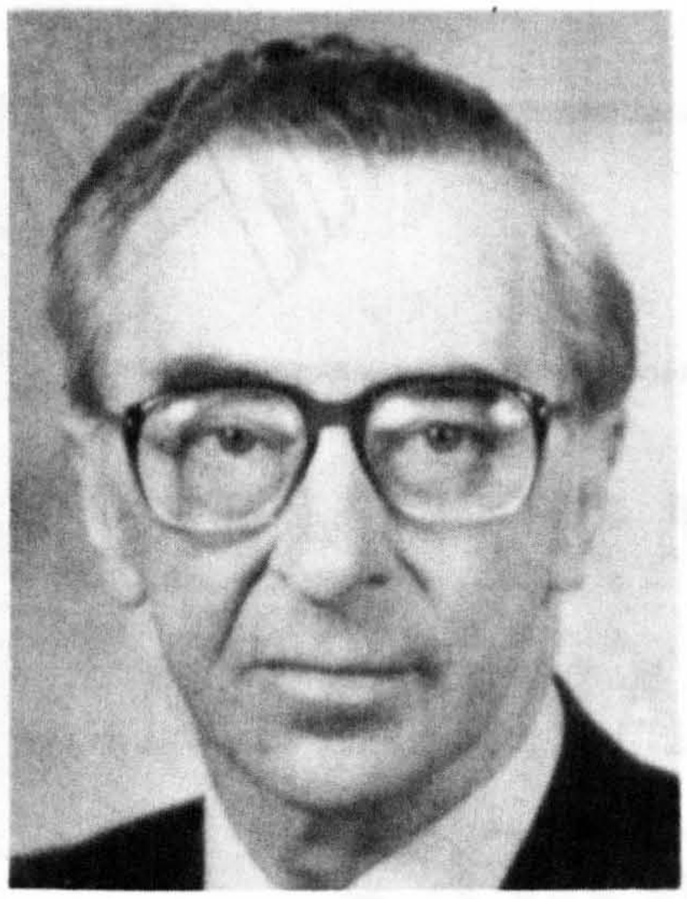
The Minister said that rising public concern with social and moral problems, with public order and security, combined with increased emphasis on human values and the rights of the individual, had led to increased attention being focused on the criminal justice system.

"This in itself presents new challenges of increased scrutiny and accountability for our actions."

However, the Minister also stressed the dangers inherent in seeking correctional panaceas and 'quick fix solutions'.

"The temptation to reach for short term and piecemeal solutions must be resisted. I am convinced that it is through forums such as this Congress that we will achieve direction," he said.

Before closing, Mr Akister acknowledged the efforts of the National Organising Committee and thanked the Chairman, John Griffin and the Congress Secretariat for making the Congress a reality. ■



PROFESSOR NORVAL MORRIS

INTERNATIONAL TRENDS IN TREATMENT OF OFFENDERS

Speaking in the first Keynote Address to the Congress, Professor Norval Morris said that the community expected correctional workers to be part of the process of reducing the crime rate even though that contribution may necessarily make only a marginal difference.

The distinguished Professor said that the community's lower tolerance to crime was a desirable development and that criticism of the public's more punitive attitudes had disguised this positive development. However, Professor Morris also said that we must remain conscious of the need to develop proper measures to deal justly and appropriately with convicted offenders.

Professor Morris stressed the need for dramatic changes in probation practices which have become "a way whereby a Judge can appear to be doing something when nothing is really done". He stated that where offenders in the community represent a higher risk to the community, they should be subjected to more intensive supervising regimes.

Programmes such as home detention and curfew control can enhance the capacity to inhibit crime. He described electronic monitoring devices as "a current and useful reality" which provided great promise for the future. Professor Morris said that it was not the lack of knowledge that impeded the creation of "differential" supervising regimes, but community and political support.

He predicted that intensive probationwill place new demands on probation officers. Officers will need the monitoring skills of a policeman in the future and will need to go through the difficulties and tensions of refining their roles. "Probation officers need to adapt the regime of supervision to client risk", he said.

The Professor was also critical of the random and unjust disparities in sentencing. He expressed a more positive view in that restitution and community service order schemes could assist in compensating for the inadequacies and incapacities of the criminal justice system.

Professor Morris concluded his address by calling on correctional workers to recognise that while offending behaviour has it's roots in social experience quite removed from the territory of corrections, correctional workers must fulfil the community expectation that they make differences, however marginal, to the rates of repetition of crime by convicted offenders.

Commentators on Professor Morris's paper included his long time colleague and co-author, Professor Gordon Hawkins, currently at the Earl Warren Legal Institute UCLA, Mr Christopher Train, Director General, H.M. Prison Service, UK, Professor John Ekstedt, Simon Fraser University, Canada and Senator Michael Tate, Federal Minister for Justice, Australia.

Responding to the commentators, Professor Morris said that, in summary there were good developments within every area. He emphasised the need to be realistic and to accept marginal gains. He was critical of Senator Tate's commentary.

"If Senator Tate thinks that more than marginal gains are achievable by police, courts and corrections, then he should believe in the tooth fairy.

"It's nice to believe in the tooth fairy but there is not a good deal of evidence supporting its existence." he said.

Professor Morris said that he was in agreement with Senator Tate on "the undesirability of what is called in America 'bark and bite' sentencing."

He stressed the need to build a graduated armamentarium in which lines of demarcation are not so drastic and one in which community based punishments are backed-up by enforced, and enforcible realistic prison based punishment.

DR JOHN ELLARD

SOME MAJOR LESSONS LEARNED FROM THE HISTORY OF CORRECTIONS

The role of corrections has diminished greatly, Dr John Ellard said in the Keynote Address which he presented on the second day of the Congress.

Dr Ellard said "the catalogue of acts perpetrated in the name of corrections is large".

He cautioned those attending the Congress from presuming that Australia's 200 years of correctional history represents correctional progress.

In a historical tour de force, Dr Ellard set out on a search for a bench mark for untangling the mysteries of corrections.

His interpretation of correctional developments challenged any notion, hope or conclusion that correctional workers are living in an age of correctional enlightenment.

He claimed that while there may have been collective pride in the abandonment of rude and crude punishment practices, that we hardly deserve congratulations for the correctional practices that have been substituted.

"It is not an act of compassion to propose a daily routine which combines hard labour, compulsory attendance at religious services, solitary confinement and structures of supervision when one is not so confined," he said.

Dr Ellard's compelling historical angle does not question the integrity of the correctional prophets nor does it question the administration, but what he does suggest is that those who have mapped new correctional territory have been consumed by a cultural fog.

Progress, if it can be called that in corrections, is to be measured more by the abandonment of primitive practices than by the accommodation of new correctional programmes.

Dr Ellard expressed the fear in the assumption that development in the behavioural sciences and the revolution in electronics bestow a regulatory right for the controllers to robotise the controlled.

"It is obvious enough," he said "that if one has complete confidence in one's capacity to regulate the lives of some of the people, one might go ahead and regulate all of them".

Dr Ellard concluded that it was a misjudgement to assume that what will motivate one group of people will necessarily motivate another.

Correctional relevancy is protected, he says, because, while correctional services are inefficient ways of achieving uncertain goals, "inefficiency should be preserved." ■

NORMAN A. CARLSON

"PRACTICAL ISSUES FOR CORRECTIONS IN THE 1990's"

AIDS is basically a medical issue but the implications for correctional administrators were enormous, Mr Norman Carlson, the recently retired Director of the United States Federal Bureau of Prisons, told the Congress in the third Keynote Address.

"We should turn to our colleagues in the medical profession for advice and guidance", Mr Carlson said, because the primary questions of testing isolation and disclosure were "essentially medical issues" beyond the expertise of correctional workers.

He said: "Intravenous drug users and homosexuals are over represented in the prison population of virtually every country in the world."

Mr Carlson, who is currently a Visiting Fellow at the University of Minnesota, USA, also nominated prison overcrowding as a critical problem for correctional workers.

"Overcrowding is related to population growth, demographic changes, increased crime rates and changing public attitudes," he said.

He claimed that solutions were elusive and that the choice must be made between expanding prisoner accommodation or creating programmes that can soak up excessive numbers with new and intensive supervision regimes in the community.

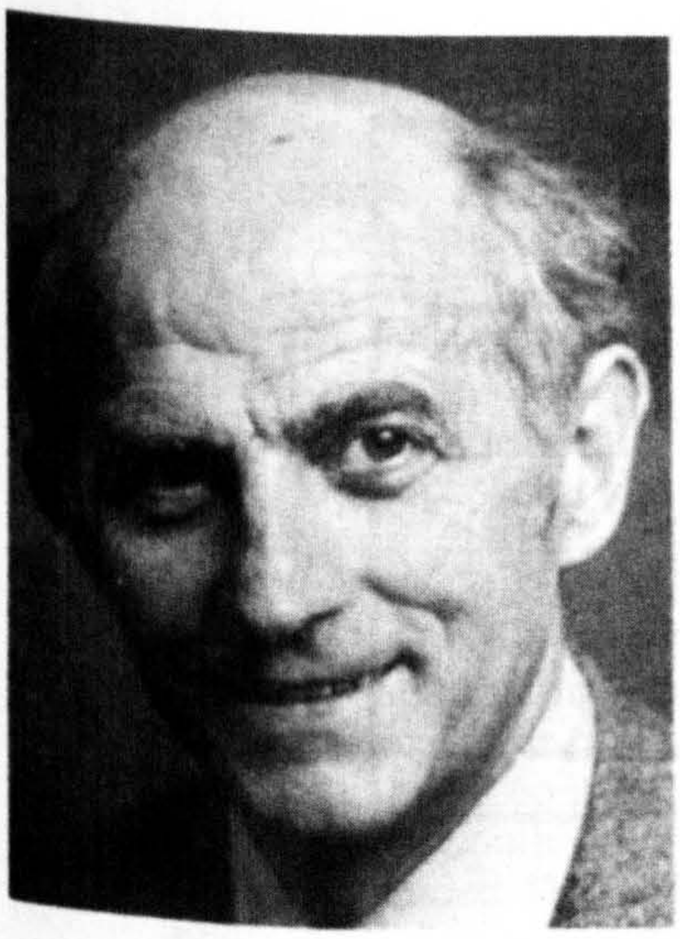
"Unless these changes in serious offender management are made, community supervision becomes an essentially meaningless programme".

On the question of the role of the public in corrections, Mr Carlson said that "to say that the public is confused concerning the objectives of corrections is an understatement and in a very real sense, corrections is caught up by the conflicting opinions and reactions of the public: 'Punish all offenders but do it without increasing taxes and not in my neighbourhood'".

He said that one of the reasons for this public confusion was that in the past various claims have been made that certain approaches or programmes are effective in reducing the incidence of crime.

"Frequently, aspiring politicians claim to have a solution to the problem and as we know from history, these simplistic solutions are in most instances not effective. Unfortunately, they only serve to add to the public's frustration and confusion."

At the conclusion of his speech Mr Carlson emphasised the point that the "history of corrections is literally a graveyard of discarded panaceas" and any "denial of the complexity of correctional issues will destine endeavours to failure". ■



MR JUSTICE HELGE ROSTAD

ENSURING PROFESSIONAL STANDARDS IN CORRECTIONS

Mr Justice Helge Rostad is a Judge of the Supreme Court of Norway and has had a distinguished career encompassing many areas of criminal justice admin istration. Prior to his appointment as a Justice of the Supreme Court in 1975 he was Director-General of the Prison Administration of Norway.

He was the Norwegian delegate to the Council of Europe Committee on Crime Problems from 1968 to 1984, and since 1980 he has been the president of the International Penal and Penitentiary Foundation.

It was not surprising therefore that Mr Justice Rostad showed a keen awareness of the pivotal importance of the role of prison personnel in the process of reform. "Prisons do not consist of walls alone" and this emphasis is nowhere better illustrated than in the European Prison Rules, with which Mr Justice Rostad has had a long and intimate association through his work with the Council of Europe and his present role.

In his address Mr Justice Rostad emphasised the part of the process of accreditation as a means of strengthening the professional standards of prison staff. The experiences in the United States have shown that accreditation is something that prison administrators strive for and consequently can be influenced by this process to produce "best practice."

(The Prison Service Journal hopes to be able to publish all of the Keynote Speeches from the Congress in due course, and a selection of other papers presented to the Congress as appropriate.) ■

THE AUSTRALIAN BICENTENNIAL INTERNATIONAL CONGRESS ON CORRECTIVE SERVICES

OPENING SESSION: 24 JANUARY 1988

HISTORICAL ADDRESS BY
SIR BRIAN CUBBON
PERMANENT UNDER-SECRETARY
HOME OFFICE LONDON

It is a great honour and privilege for me to address this congress at its opening session.

I am very conscious of the part played two hundred years ago by my predecessor at the British Home Office, Evan Nepean, in the arrangements for despatching the First Fleet which have led us all to be together this evening. The final plans for a convict colony at Botany Bay were drawn up largely by Nepean. He was the second Permanent Under-Secretary at the Home Office: I am the twenty first.

It was also an age of younger men! Nepean was in his 30s. Pitt, the Prime Minister, was in his 20s.

Background to the decision to send the First Fleet

The penal crisis of the 1780s originated in the American Rebellion. Between 1717 and 1775, some 40,000 English convicts were exported to the American Colonies.

The Declaration of Independence in 1776 signalled the end of that. The Hulks Act, passed in the same year as a stop-gap until the expected American defeat, permitted 400 convicts to be detained in obsolete naval vessels, or hulks, until a destination could be found for them. In 1779 a House of Commons Committee endorsed the novel principle of State penitentiaries, but no finance was found for them. The American peace treaty in 1783 convinced even the optimists that transportation to America was at an end. Meanwhile, the hulks became more and more a cause for public alarm. They were overcrowded. They posed a considerable hazard of epidemic. There was escape and riot. Last (and

probably least), they were visibly inhumane— even by the standards of the day.

When a certain Mr Townshend reluctantly resumed the Home Secretaryship in 1784, Ministerial responsibility for the problem again fell to him. No-one would claim that he tackled it with energy. He was in his mid 50s. He proposed a convict settlement in tropical squalor up the River Gambia in Africa. A Parliamentary Committee under Lord Beauchamp lambasted Townshend's proposals for an "African Grave" for convicts. The committee then had a go itself and after considering New South Wales as an option, recommended Das Voltas Bay, in South West Africa. A survey expedition returned in July 1786 with the disappointing news that the Das Voltas region would not support even a convict colony.

I recognise the Whitehall scene of July 1786. Pitt, the Prime Minister, has for some time taken charge of the problem, bypassing the Home Secretary. The Government has been under attack politically, by Members of Parliament for towns where hulks are moored. Two years have been lost chasing the African solution.

London is muggy. Tempers are frayed. The Lords Commissioners of the Treasury, who must authorise any money needed, are to adjourn for two months on 18 August. A decision, any decision has to be taken.

Step forward Evan Nepean, my predecessor, a very modern 'can do' official who produces in a couple of weeks or so a plausible scheme to send 750 convicts to Botany Bay. It is Nepean who writes the key document for the Prime Minister and the Treasury: "Heads of a Plan for the Transportation of Convicts to New South Wales". Nepean has been Permanent Secretary at the Home Office virtually since it was established in 1782. His reputation amongst politicians is high. Pitt trusts him. He is described as 'intelligent, attentive and obliging' and 'remarkable for his indefatigable attention to business'.

Nepean has been working at the options and the logistics for some time: he has lacked only a decision on the destination. He now writes a swift investment appraisal showing that the Botany Bay option was only 15% more expensive per capita than the cost of the hulks. In his paper for Ministers there is no mention of any need to reconnoitre the site, which had been visited only once before, 16 years previously, by Captain Cook. Instead, Nepean, who knows his Ministers, throws in at the end of his paper some seductive generalisations about the fertility and good climate of the region, its strategic value and its economic promise as a source of flax and pine.

The proposal secures Treasury approval only a month after the collapse of the Das Voltas idea. The Cabinet no doubt goes on its summer hols. And the First Fleet is financed, equipped and eventually despatched—after a series of delays—in May of 1787.

Note, incidentally, the characteristic differences in the public acknowledgement given to the politician and the public servant. Nepean is commemorated in the name of the River Nepean in New South Wales, and also in Nepean Island—a dubious honour, as the island served as the punishment block for the Norfolk Island outpost, itself the punishment block for the mainland penal colony. It is Townshend, the ineffective Minister, who had this beautiful city named after him, having been raised to the peerage as Viscount Sydney.

The subsequent story of the First Fleet and of the early years of the colony is moving and disturbing. Bravery and perseverance are intertwined with appalling degradation and brutalisation. The Home Office washed its hands of it very quickly, when the Colonial Office was set up in 1801.

And now, with all the luxury of hindsight, Nepean's successor returns to the scene to draw some parallels between the worlds of the penal policy maker then and now.

The context of penal decision-making

My first point is that the context of penal policy-making has not changed much over two centuries. In Botany Bay, Nepean provided Prime Minister Pitt with a policy **patch**—a solution cobbled together to meet short-term political exigencies. Its virtue was that it was **some** solution, not that it was a **good** solution. It worked, miraculously. But, as so often, it was political will and management drive, rather than intrinsic merits, which ensured its successful completion.

Against the criteria by which it was justified, the selection of Botany Bay fails on almost every count:

> It turned out to be totally unsuitable for settlement, and the expedition was forced to find an alternative—Port Jackson;
>
> The colony failed to become self-sufficient within the expected two years; so much for investment appraisal;
>
> The promised benefits of flax and pine never materialised;
>
> New South Wales was too remote to serve any strategic purposes; and
>
> The costs of the colony were almost double Nepean's projections.

Like the penal administrators of today, Nepean and Pitt were in the business of selecting the least unattractive from unattractive options. Provided that 'the lid stays on', prisons have low priority in the competition for political attention. Prisons policy commands public attention when things go wrong, and never captures enough attention to put things properly right. At times when crime is on the increase—be it 1788 or 1988—a state of near-crisis seems endemic to the penal system. Near-crisis does not energise policy. It traps it in the treadmill of short term expedience.

Punishment as a finite resource

My second point—related to the first—is that the dynamics of prison overcrowding are the same now as in the 1780s. Punishment is a finite resource, and sometimes the demand, based on unquantifiable emotions, outstrips the supply. In the eighteenth century, rising crime—and rising public concern about crime—fuelled demand; whilst the supply of punishment was unexpectedly curtailed by the American rebellion. Insufficient adjustments were made to bring supply and demand back into balance: crisis ensued.

In the 1970s and 80s, most economically developed countries have also seen increases in demand for punishment, stemming from increased offending rates or tougher sentencing policies. The obvious solution is to extend capacity and build more prisons; and my country's Government has embarked on a building programme which should yield an additional 21,000 places by 1995. But we all know that extending prison capacity is the necessary solution which never quite solves the problem. Will we never find a point of intervention in sentencing decisions themselves? Can we never contemplate inserting mechanisms of 'demand management' into the sentencing process, so that the volume of demand for imprisonment can be more closely tied to the available supply?

continued on page 26

CAPTAIN
ARTHUR PHILLIP

FATHER
OF
AUSTRALIA

Captain Phillip's Journal

CAPTAIN PHILLIP'S JOURNAL

At the age of 48 Captain Arthur Phillip was given command of a small fleet of 11 ships, and charge of over 700 convicts: his task to sail 15,000 miles to Australia and there to make the first settlement. throughout the voyage and the five years he was in charge of the settlement, Arthur Phillip kept a daily journal. The following edited excerpts give a taste of what life was in those dreadful days—.

13 January 1788
"I saw the land very clearly, but it was a case of so near yet so far, as the winds blowing against us together with a strong tide we could no more approach Botany Bay and pass through the heads to anchor than a man can climb a greasy pole."

15 January 1788
"Though we tacked the *Supply* (Phillip's ship) four times in the course of the day our little brig gained, then lost ground in trying to approach the elusive Botany Bay entrance, the winds and currents are still against us. We have experienced 24 hours of sheer frustration."

18 January 1788
"Today the long awaited day eventually came as *Supply* hauled in for Botany Bay. At three Lt Dawes, King, Myself and some officers on *Supply* landed on the northerly side . . . we observed some natives. I think it is easy to conceive the ridiculous figure we must appear to these poor creatures, who are perfectly naked."

20 January 1788
"On shore today we had people from the *Supply, Friendship, Scarborough* and *Alexander* hurriedly cut grass for the remaining livestock, catch fish for the humans, make peace with the natives and try to find running water and good soil for a land base, but none seemed suitable."

21 January 1788
Having sailed further round the coast the next day Phillip reported—"had the satisfaction of finding the finest harbour in the world, in which a thousand sail-of-the-line may ride in the most perfect security . . . The natives showed great confidence and manly behaviour. They seemed desirous of our hats and attempted to seize some. Bowes had to order pants to be pulled down for the 'Indians.' They expressed a wish to know what sex we were."

23 January 1788
"We arrived back in our little boats in the evening and I immediately sent a signal from *Sirius* for the agent and all the masters of all the transports to come aboard. They were ordered to prepare their ships for sea immediately. Clark was delighted with the projected move from Botany Bay to Port Jackson".

25 January 1788
"At 6 am the *Sirius* made the signal for all ships to weigh. Mr Clark expressed his views to me in unmistakable terms —'I am very happy that we are not to stay here, for if we had stayed here, it would have been the grave of all of us'."

26 January 1788
"A flagstaff was erected at Sydney Cove and possession was taken for his Majesty. In the evening the whole of the party that came round in *Supply* were assembled at the point where they had landed and a Union Jack displayed. I and my officers drank the health of His Majesty and success to the new colony".

27 January 1788
"I gave strict orders that the natives should not be offended, or molested on any account, and advised that wherever they were met with, they were to be treated with every mark of friendship. In case of their stealing anything, mild means were to be used to recover it, but on no account to fire at them with ball or shot".

1 February 1788
"The start of our first full month on shore, I realise that I will have little help and a lot of hindrance from Major Ross, the man appointed to be my Lieutenant-Governor and Commander of the Marines . . . I had not been asked to choose any of the personnel for this settlement".

3 February 1788
"The Rev. Richard Johnson, our official chaplain to the settlement conducted the first divine service in Sydney, preached in the open air on a text from Psalm 116".

6 February 1788
"All the convicts are now disembarked and at night when the last of the women were landed, the blackening skies released a most terrible tropical storm. The male convicts unleashed frustrations built up in the twelve months they had been chained below decks, broke loose from their temporary gaol-yard and into the women's camps".

9 February 1788
"Speech to the convicts . . . 'my attitude enables me to stand before you as one human being to another. I appeal to whatever goodness is in you to face this new opportunity and to accept the the necessary discipline to make something more of yourselves. The laws affecting this colony are English laws, they are not Phillip's laws'."

11 February 1788
"Bramwell a marine has been sentenced to 200 lashes for striking a female convict, and Barsby, a convict to only 150 lashes for striking a sentry. Bowes noted that the severity shown to the marines and lenity to the convicts has already excited great . . . discontent among the corps".

15 February 1788
"The cook of the *Prince of Wales* (a negro) going on shore by the hawser rope was shacked off it and drowned. My Judge Advocate sentenced two women to receive 25 lashes each for theft, and one man 45 lashes for theft. The *Supply* cleared the heads at 8 am bound for Norfolk Island".

19 February 1788
"I have allocated a small piece of land to each convict to grow things for himself. I am trying to give some interest and incentive by setting them all a certain time in which to complete their jobs for the day. If they finish early I will allow them to work on their own plots of land. The main concern I have for the settlement is still clearing and building".

23 February 1788
"I have endeavoured to lay out my first plan for the settlement . . . The ground marked for Government House will include the main guard, civil and criminal courts . . . Land will be granted with a clause that will ever prevent more than one house being built in the allotment which will be 50 ft in front and 150 ft in depth".

1 March 1788
"Today I pardoned five convicts, one of them being convict Freeman on the condition of his becoming the public executioner for and during the term for which he was transported to this country, and of his residing within the limits of this Government for and during the term of his natural life".

9 March 1788
"I am authorised to emancipate the convicts for good behaviour, for being industrious and I am further authorised to grant land to them. Authority being withheld for my granting land to the marines is just, for their endeavours are required elsewhere. Today the first reference to the first court martial convened to hear charges against two marines . . . ".

19 March 1788
"It is good to see the return of *Supply* today, she has anchored in Port Jackson in close to Sydney Cove. It is 34 days since her departure to Norfolk Island. The chief acquisition that we hope may accrue to our settlement from this island is the turtle, of which we hope to have many a feast".

2 April 1788
"I find the great labour in clearing the ground will not permit more than eight acres to be sewn this year with wheat and barley. At the same time the immense number of ants and fieldmice will render our crops very uncertain".

5 April 1788
"I see the necessity of a regular supply of provisions for four or five years, and of clothing, shoes and frocks in the greatest proportion. More females are needed in the colony if it is to thrive as they are at present a very small proportion".

7 April 1788
"—the stealing of food is now punishable by execution. If I had not made it so then I would have encouraged those who would steal food to bring about the slow death by starvation of those who would not steal".

30 April 1788
"— convict Peter Hopley was charged with the suspicion of stealing a quart tin pot, the property of Margaret Stewart. Hopley said he found it on the beach and admitted he did wrong in not finding an owner for it. He was found guilty and sentenced to receive 100 lashes. This I approved of".

2 May 1788
"This morning John Bennett a convict received sentence of death for robbing the Charlottes' tent of bread, sugar and other articles to the value of five shillings, he was taken from the Court House to the place of execution and was hanged immediately".

4 June 1788
"Being His Majesty's Birthday the same was observed with every demonstration of joy permitted. *Sirius* and *Supply* fired each 21 guns . . . The soldiers drank their sovereign's health in porter, convicts were allowed half a pint of rum a man . . . Three convicts condemned to die received full pardon, and all cheerfully joined in singing God Save the King round their bonfires".

16 June 1788
". . . I have no account of the time for which the convicts are sentenced, or the dates of the conviction, some of them, by their own account, have a little more than a year to remain, and I am told, will apply for permission to return to England, or to go to India!"
and by Christmas . . .

23 December 1788
"Yuletide is almost upon us and my hope is by no means exhausted despite the difficulties met with; given time, and additional force; together with proper people for cultivating the land . . . I know that I can make a nation."

■

Correctional Programmes For Juvenile and Young Offenders

A PAPER BY

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PRESENTED TO

THE AUSTRALIAN BICENTENNIAL INTERNATIONAL CONGRESS ON CORRECTIVE SERVICES

Introduction

It is an extreme pleasure for me to join colleagues from other countries in the world to share ideas and thoughts on significant topics within criminal and juvenile justice. I particularly wish to thank William Bailey and John Griffin, past and present chairman for their generous efforts to include several Americans as participants. In our research efforts within the United States we know that we have yet to solve the problems of young people in trouble. Even though the United States and Australia are still considered young countries we do take some consolation in the fact that countries in Asia and Europe all continue to struggle with problems of juvenile delinquents.

From my perspective we always seem to be a decade or two behind the wave of what professionals really believe should be done to prevent juvenile delinquency. Since our collective history seems to indicate we haven't changed much in the eons of time let me begin with the current situation in the United States. It can be too dreadful for a practitioner to become too philosophical. We should attempt to leave that role to our academic colleagues.

The First Juvenile Courts

Ninety years ago the first juvenile court in the United States was created in Chicago, Illinois. Replicated across the nation, this court was developed in response to the recognition of the need for special treatment of children who were "dependent, neglected and delinquent."

The assumption that children who become involved in the court system should be treated differently than adults has not always been universally accepted in the United States, nor is it today. However, state juvenile codes and legal options specifically designed for children continue to be developed and amended. The juvenile system, although continuously being modified is in the United States to stay, even though we have fifty-five different states and territories and 4,000 counties administrating programs for both juveniles and adults.

Those youth who come to the juvenile court as a result of illegal acts present a special problem to society. As a result, juvenile justice professionals in the United States are faced with the continuing challenge of attending to the public's safety while carrying out the mandate of a system which treats troubled young people differently than adult offenders. Debate continues over the means the system should use to maintain this delicate balance.

Although the number of juvenile arrests continues to decline, public officials express concern over juvenile crime, particularly that which is characterized as violent crime. As a result some states have lowered the age of majority from 18 to 16 years of age, for all delinquents coming before the courts. Other states have created legislation which requires that juveniles

be tried in the adult system for certain crimes. For instance, Illinois juveniles who are at least 15 years of age and are arrested for first degree murder, armed robbery, aggravated sexual assault, possession of designated dangerous items on school property and major violation of the controlled substance act must be tried in criminal court. If found guilty and sentenced these juveniles will serve time in juvenile facilities until age 21, at which time they are transferred to adult prisons. In other states juveniles are tried in adult courts at the discretion of the juvenile court judge and may serve time in adult prisons. The variance among state statutes in this area illustrates the diverse nature of the U.S. juvenile system.

Status Offenders

While United States society appears to be demanding tougher sanctions for serious juvenile crime there has also been significant moves in recent years to remove status offenders from the juvenile justice system. Status offenders are underage youth, normally under 18, who commit acts that are illegal only because of their as a minor.

This movement, supported by the United States Government, has resulted in fewer of these children being placed in secure custody; however, some see difficulties in removing these children from the system. Alternatives must be created to meet the very real needs of these young people. Some jurisdictions have addressed this problem, successfully. For example, the Orien Center in Seattle, Washington, has developed a program designed to meet the needs of street youth and youth involved in prostitution. Operated through reciprocal agreement with five other agencies, the staff of Orion Center are committed to re-establish the youth's ties to networks away from the street. It is a comprehensive approach to helping high-risk youth.

Because of the varied success of jurisdictions in meeting this challenge, debate continues about the appropriate treatment of status offenders. Where no alternative system exists, some youths have received no services. It is argued that youth who have been removed from the juvenile court system have been left literally out in the cold. On the other side individuals argue that re-entering status offenders into the system will increase the likelihood that the sanctions for their behavior will be too severe, that is, they will be held in secure detention. Providing the appropriate variety of services for these youth is of deep concern to all United States Jurisdictions.

Secure Detention

Juvenile justice professionals are not only concerned with the inappropriate detention of status offenders, but with the appropriate secure detention of juveniles who commit illegal acts. There is much discussion in the field about the development of appropriate intake criteria, who should make intake decisions, and the effective classification of juveniles. Professionals are interested in determining the juvenile's risk to himself and society and the juvenile's emotional and developmental needs. Because of this interest many localities and state systems are searching for effective classification instruments. Both private and public concerns are moving toward the development of these measures. The American Correctional Association has developed a policy statement which speaks to this issue. (Appendix I).

The decision to hold a youth in secure detention should be based on the juvenile's risk to society or himself. If those risks are minimal or non-existent then alternative placement should be made. Following this value of placement in the least restrictive setting, many jurisdictions have developed non-secure alternatives to secure detention which appear to be effective in reducing the reliance on secure beds. One such option is in-home detention. In this type of program the youth is returned to his home with the understanding that he will receive intensive supervision from juvenile court personnel. Other options currently being used are group homes, temporary shelters, and emergency foster care.

One of the most creative systems developed is the Michigan Holdover Network. This system, designed to meet the needs of a rural area consists of a number of non-secure holdovers, usually rooms in public buildings, where youths are held with an attendant for 24 hours or less until a court hearing is scheduled. The State Department of Social Services reimburses the county for the expenses incurred by this program. This option is used in conjunction with a number of other detention alternatives.

Juveniles are not only placed in secure detention as a result of an intake decision. They can also be placed in detention as a sentencing option in some areas. This controversial practice is considered by those who practice it to be an appropriate finite response to a specific illegal act. Most detention professionals see it as an inappropriate decision which creates extreme difficulties for those providing detention services. Juvenile detention centers are designed for short-term temporary care of juveniles awaiting court action. For sentenced juveniles to be placed in detention centers increases the programmatic and other service demands of the center, often without an increase in resources to provide those services. Also, young people who have yet to be found guilty of any offense are mingled with those who have been convicted of illegal acts. Almost all national corrections and detention organizations, including the American Correctional Association, agree that sentencing youth to detention is a practice that should not be condoned.

National Jail Removal Initiative

In 1980 the "National Jail Removal Initiative" was begun by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention to remove juveniles from adult jails and lock-ups. OJJDP began to assist states in developing plans to accomplish this goal. From an acceptance of separate cells for juveniles, professionals had moved to feel that juveniles should not be held in any adult jails at all. Often separation means isolation which appears to contribute to the high number of suicide attempts by juveniles in adult jails. Also, adult correctional officers are not trained to deal with the special problems of adolescents. Those states participating in the plan, all but three, have until 8 December, 1988 to accomplish the goal of removing all juveniles from adult lock-ups and jails or lose federal funding.

In contrast to juvenile detention systems, which are generally administered by local jurisdictions, United States juvenile corrections agencies are organized on a statewide level. These agencies provide services to adjudicated youth. After a youth is sentenced it is possible for a juvenile court judge to commit that youth to the statewide organization responsible for the care of such young people.

In the past these agencies often viewed secure residential placement as an end upon itself. Historically, city youths were seen as needing "the

country" to shed the evils of city life and acquire healthy rural values. Youth were separated from families, placed in the correctional facility, and then returned with the hope that fresh air and country living would lead to the development of model citizens. Most old congregate training schools are still in the "country setting" as are many of the newer ones.

As our view of adolescence has changed so has our approach to treatment. What began as a system designed to reform moved to an emphasis on rehabilitation. Rehabilitation was replaced by education which gave way to treatment approaches. Currently many are looking at the difficulties these youngsters face as a result of poor social skills. Therefore, skill-training in a variety of areas has become the growing emphasis in juvenile corrections.

Corrections administrators are beginning to see the scope of their responsibilities as broader than residential placement. the system is seen as an opportunity to provide services in assessment, a variety of placement options and aftercare. Value is being given to providing a variety of placement options, programming specialized foster care, non-secure group homes, and other residential settings with varying degrees of security levels.

To effectively place young people in treatment programmes which meet their needs and consider the security risk they present, corrections administrators are also concerned about classifying juveniles effectively. Proper assessment is not only necessary for designating the appropriate levels of security both within and outside of a residential setting but essential in attempting to build a program which is uniquely suited to the individual juvenile.

As the field of juvenile corrections continues to develop appropriate programming for the "typical" juvenile population, professionals are also concerned about coping with special-needs juveniles. Juveniles who have been assessed as substance abusers, sex offenders, serious offenders, emotionally disturbed, developmentally disabled, etc. present special challenges to administrators. More and more specialized programs are continuing to be developed in an attempt to provide a meaningful response to the problems of these young people. One such programme is the offender program in the Hennepin County Home, Minneapolis, Minn. This secure residential setting has a program specifically designed to treat male adolescents who have been adjudicated for a sexual offense. A long term treatment program, Hennepin County Home appears to be very effective in reducing recidivism among the youth who complete the program.

The effectiveness of specialized programming as well as regular programming depends on the availability of resources to provide these services. There must adequate, well-trained staff and just plain space to provide good residential care. Unfortunately, many United States juvenile corrections facilities are faced with overcrowding of their buildings. More commitments and longer lengths of stay are creating very serious crowding problems in many juvenile systems.

Frequently, administrators feel that state legislators do not give equal attention to the needs of the juvenile system as opposed to the adult corrections systems. As a result juvenile systems often do not receive adequate appropriations to carry out their mandates, whether in providing residential care or community based programming.

Another concern in juvenile corrections is training of professionals in the field. States have developed various responses to this pressing need. Whether as part of an adult corrections training academy, an academy specific to juvenile staff, or a training department within the facility, it is rare for systems to feel that training available to them is adequate. A comprehensive, accessible training curriculum which will ensure the professionalism of juvenile workers is greatly needed.

Some states are moving to de-institutionalization as a method of reducing the number of youths held in secure settings and providing the least restrictive setting for other juveniles. After assessing the security needs of the youths, placement is made to one of a variety of settings and programs, some of which are provided by the state system and some by private providers. Emphasis is placed on keeping the juvenile close to family and community so that transitioning becomes a continuous process. Massachusetts was the first state to close their large training schools and develop community alternatives. Utah, Colorado and Maryland are three other states attempting to reduce their states over reliance on secure beds. As this trend continues hopefully those juveniles who are truly a danger to society will be the only ones behind locked doors. However, it is increasingly evident that certain facts of life are difficult to deal with:

- We know that crime grows best in the complex mega cities we continue to create.
- Our salvation from youth crime in the mega cities must come from our ability to change the environment.
- Families and schools must re-accept the responsibility for preventive programs.
- Enormous shifts of resources from high cost programs must eventually take place.
- Political leadership must be led by empirical evidence rather than emotional reactions.

Several other issues that are of concern to professionals in both corrections and detention are the following:

- The increasing percentage of minority youth held in secure detention and public corrections facilities.
- Suicide prevention within facilities.
- The effects of privatization on the juvenile justice field.
- The use of prison industries in juvenile corrections.
- A rational approach to AIDS-related issues.
- Gaining public support for innovative programming.
- Designing new building construction around facility programming.

In an attempt to provide national direction and coordination of federal programs the United States Congress passed the Juvenile Justice and Delinquency Prevention Act of 1974, later revised in 1980. Funds appropriated by Congress to support the act are distributed through the Office of Juvenile Justice and Delinquency Prevention to states to assist primarily in jail removal activities and to discretionary grant projects.

One of the Office of Juvenile Justice and Delinquency Prevention grantees is the American Correctional Association. Our grant is designed to provide training and technical assistance to juvenile corrections and detention. As we continue our work on this project, the American Correctional Association is increasingly seen as a resource for information and assistance to the juvenile field. Our plans for this year include:

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WOMEN and Corrections in The United States

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(a paper presented to the Australian Bicentennial International Congress on Corrective Services, January 1988)

Purpose and background

Throughout the history of corrections in the United States, women have suffered discrimination. Although discrimination against all women in the United States has been well documented, (Mead and Kaplan (eds.), 1965; Kirp et.al, 1986), we maintain that women in the correctional arena have received more discriminatory treatment due to the double jeopardy of being 1. women and 2. in corrections. This dismal story of women and corrections has been brightened from time to time by enlightened, innovative and daring women administrators.

We shall discuss three major areas of concern: educational and vocational/industrial programming for women offenders, the treatment of women prisoners and their children, and the roles of women correctional personnel.The first part of the paper will review the past and the second part will concentrate on where we may go in the next century.

One factor that helps to explain the extent of discrimination is the relatively small number of women who commit crime and the even smaller number who come into the correctional system. Women currently make up approximately five to six per cent of the incarcerated population in the United States which is as high as it has ever been. Housing for women offenders has been primarily of two types – a separate cell block or building as an adjunct to a male institution or a completely separate and indepen-

dent institution.

The bureaucracy of corrections departments has always been predominantly male as has been the population served. This has meant that women's needs in corrections have traditionally been slighted and molded to the needs of men – a pattern which often does not serve women well. What is most important is that this has led to underfunding and political neglect of the needs of women offenders.

Another factor that contributes to the treatment of women in corrections is a specifically gender-related ideology prevalent in our cultural framework. One aspect of the Judeo-Christian tradition is that all women are seen as either "good, moral, innocent" *or* "wicked, immoral, depraved". Women who commit crimes and are sent to prison are automatically seen to be of the latter category.

Gender-related factors have resulted in: 1. women being sexually used by their keepers and male inmates, 2. educational and vocational/industrial programming for women being non-existent or limited and oriented towards domestic service and family life, 3. services and programs for pregnant women and mothers and their children being inadequate, and 4. women staff being paid less than men for comparable work and with fewer opportunities for advancement. Related to the issue of inadequate opportunities, innovations by women administrators have often gone unnoticed due to lack of the public's and policy makers interest or, just the opposite, they have generated grounds for dismissal of the administrators as being too radical. Much has been written on the first problem above. In what follows we concentrate on problems two, three and four.

Programming

Men's prisons, or at the very least their programs, both industrial and agricultural, have traditionally been run for profit. They have usually offered a variety of options for men to work at in order to realize the profit. Women's prisons are fewer in number with fewer inmates who, because of their sex, are deemed unable or unsuitable for industrial, profit-making work. They have been, therefore, a financial liability.

From the beginning, if work has existed for women who are incarcerated, it has been institutional maintenance or work at a traditionally female job. In the 1840's at the Mount Pleasant Female Prison, Ossining, New York the inmates were engaged in traditional women's work: button-making, hat-trimming and sewing clothes for male inmates (Rafter, 1985, pp. 18,19). In the 1980's, the vocational training for female prisoners was still largely "womanly" work such as sewing, cosmetology, nurse's aid, cooking, and waitressing. Institutional maintenance assignments have been the rule throughout the decades, taking precedence over vocational training (Bowker, 1982,p. 243).

Today women fare better than in the past as far as educational programming is concerned. Even the smallest facilities are able to offer adult basic education, high school equivalency, basic math, specal education, and business education often through federal and state grant funding. But this has not always been the case. When the separate reformatories for women opened up at the beginning of the century, they were not provided with any equipment for teaching their clients many of whom were illiterate. In 1913, May Caughey, the Superintendent at the New Jersey Reformatory for Women, wrote in her November monthly report, "One of the great obstacles to overcome in getting up school work and preparing for Sunday chapel is the absolute lack of material to turn to. One who has never been far from a library, does not appreciate the difficulty involved in such a lack of books" (Quarles, 1966, p.66).

While the isolation, neglect and lack of support for women offenders generally has offered them fewer opportunities, it has offered those responsible for managing the women and the institutions the challenge to innovate. We can find examples of their progressive thinking in the histories of many such institutions. For instance, in the 1840's, the Chief Matron at the Mount Pleasant Female Prison referred to above not only introduced "womanly" work there, but because she believed that the criminal predilictions of woman could be changed, she introduced school subjects for the women and modified the total silence rule. These innovations were considered much too radical by her male superiors and she was forced to resign (Rafter, 1985, pp. 18,19).

In 1913 the New Jersey Reformatory for Women had no books or other standard educational equipment. The first superintendent added outside construction work to the standard school work. When a walk was needed around the back of the house, she used this as an opportunity to teach arithmetic.

During the first half of the twentieth century, Jessie Hodder and Miriam Van Waters, Superintendents of the Reformatory for Women, Framingham, Massachusetts allowed women in indenture status (work release) to do other things beyond domestic work which was prescribed by law. They allowed the women to take courses at the local college and work in commercial establishments. While Jessie Hodder's male commissioner sanctioned these activities, this policy was the basis of 27 charges brought against Miriam Van Waters in 1949 by a newly appointed Commissioner of Correction (Rowles, 1962, p. 293).

In Massachusetts in 1987 there were three vocational education programs for women at the Framingham Correctional Institution. The comparable male facility, the Correctional Institution at Norfolk, had nine such programs. Similarly, in Rhode Island, the Women's Division offers no vocational education programs for medium and maximum security women, whereas a variety are available for the men. The situation is similar in most other states. In the 1980's T.A. Ryan's **Adult Female Offenders and Institutional Programs** reports a long list of "Innovative Programs and Services." these include among many: data processing, industrial maintenance, horticulture, heavy equipment training and handicapped program (Ryan, 1984, pp. 57–59).

Today at institutions of all sizes throughout the country there are examples of creative solutions for industrial/vocational programming for women offenders, though not all states have adopted them.

Women Prisoners and Their Children

Perhaps the major difference between the needs of female and male inmates relates to the presence of children and the role of mother. It is estimated today that over 70 per cent of incarcerated women are mothers and over 50 per cent are mothers of minor children. Many of these women are single parents. The care of these children has been, and continues to be, varied and a major concern to the mothers.

Ward and Kassebaum in their book **Women's Prison** state:

> There is one sense in which it seems warranted to view imprisonment as more severe for women than men. It is usually the case that women are regarded as more closely linked to the care and upbringing of children than are men.The separation of mother and child is countenanced only under extraordinary conditions (Ward and Kassebaum, 1965, p. 14).

Ward and Kassebaum argue that the separation of women prisoners from their families is the most severe deprivation they face.

The first separate prison for women, Mount Pleasant, in New York State, in the 1830's provided a nursery for the babies born to women inmates. As the reformatory movement in the latter part of the 19th century and early part of the 20th century saw the development of separate institutions for women most of these provided nurseries and programs for children up to two years old and in a new institution up to four years old. Some had hospital facilities and resident physicians for childbirth. Others sent the women to local hospitals for the birth, and then mother and child were brought back to the institution. While this policy, whether by accident or design, allowed the "bonding" so crucial to the mental and physical health of both mother and the child, problems were raised which led to the eventual closing of all but the Bedford Hills, N.Y. nursery by mid-twentieth century. Psychiatrists questioned the effect on a child of being raised in a prison; children born and raised in a prison or reformatory were stigmatized, and it was very expensive to run a good nursery program.

Unfortunately, in most instances the change in handling maternity and infant care was severe. Institutions with delivery facilities and/or nurseries closed them. Mothers were now sent to community hospitals to deliver the baby, and, within 24 hours (barring medical complications), sent back to the institution. The baby was left in the hospital nursery until ready to be discharged to a relative of the mother, or child welfare services.

The maintenance of ties between inmate mothers and older children has always been a problem. Because women inmates were traditionally labeled as "wicked, immoral, depraved", the people and agencies responsible for the care of inmates' children too often excluded her. They felt " . . . the mother, at least while in prison, was an unimportant member of the family, an individual whose opinions were not important for case planning, and whoe status did not require the sharing of information with her . . . ". Indeed, some of the children's social workers thought that it would be harmful for the children to visit their mothers in prison because they visualized it " . . . as a gloomy, depressing institution without adequate visiting facilities. . . . " (Zalba, 1964, pp. 94, 94).

The women's movement of the last two decades combined with increased knowledge of the importance of the mother-child bond in human development has led to considerable effort by public and private agencies to improve services for inmate mothers and their children. James Bourdouris' **Prison and Kids** (1985) and T.A. Ryan's **Adult Female Offenders and Institutional Programs** (1984) list numbers of programs from parenting classes and special children's visiting rooms, to arrangements for bringing children to the institutions, to trailers or camps for weekend visits.

These efforts must be expanded and their continuance assured by putting hard dollars into their funding. In many instances the programs are contracted by the state from private agencies with no assurance from year to year that they will be continued.

Staff – From Matrons (Mother Figures) to Correctional Officers

As the number of females sent to prisons grew in the nineteenth century, it became necessary to hire women to supervise them, and the office of matron was established. These women were expected to serve as role models who could instruct "the ignorant and neglected female prisoner how to economise her means, so as to guard her from the temptations caused by waste and extravagance" (Rafter, 1985, p. 14). The matrons who were first appointed were usually the only person to supervise the total female prison population. They lived in the prisons and often were on twenty-four hour duty. Sometimes they were the wife of the warden. As they were under the authority of the male warden, they were hired, supervised and fired by him.

By the end of the nineteenth century, as totally separate institutions for women were established it was deemed necesary that they should be administered and staffed by women. The "Report of the Women's Reformatory Commission Appointed by Virtue of Joint Resolution Number 2 the (New Jersey) Legislature of 1903" recommended:

> A reformatory for women, established upon proper lines, suitably equipped, managed by a body of specially trained, intelligent women, would accomplish not only the punishment of the offender and the repression of offences by others, but also, in a large majority of instances, the prevention of further offenses by the individual, and her reformation (Quarles, 1966, p. 45).

Since almost no women had served in administrative capacities in prisons up to this time, those who were appointed as superintendents were usually "committed to social reform and often had more education than their male counterparts. Of the first five superintendents in this country, two had Ph.Ds" (Hunter, 1984, p. 79). Susan Hunter points out:

> These women reformers concentrated on eliminating the abuse women offenders had experienced, and because of the public's lack of interest in women's prisons, were allowed to experiment with reform. Many of the correctional practices we take for granted today began in women's prison: the use of eating utensils; humanized environments; outdoor exercise; the use of volunteers; programs for drug addiction; use of research to better understand offenders; secular education; libraries; cultural programs; even work release programs" (Hunter, 1984, p. 80).

Unfortunately working conditions for these early women reformers were not commensurate with the positions they held. Their salaries were low, their working hours long, and the day to day requirements of the job were overburdening. May Caughey, the first superintendent at Clinton Farms in New Jersey, left the position in 1917.

> At the time the superintendent left, she was carrying an impossible number and variety of duties. She was, of course, responsible for the usual, external duties of superintendent, of representing the institution to the legislature and to the public, of speech making, and of course, contact with the state

and local agencies; and internal duties of executive management of the institution, of taking women's histories, of censoring mail, of interviewing visitors to the women, and of meeting liberally the personal demands of the women of her time and energy. She was responsible for planning for an expanding institution and of preparing budgets for the State House. In addition, due to the combining of the duties of matron and teacher in one person and lack of a relief officer, she had to substitute for members of the staff off duty. . . . She also was conducting the daily hand work class, was taking groups of the girls to the field, or was responsible for those who for one reason or another were left in the house while the others were at work or in school (Quarles, 1966, p. 56).

In 1940 matrons and relief officers at the same institution worked twelve hour shifts, were required to live in the cottages, received $50.00 to $70.00 a month plus maintenance. Male guards in the reformatories for men worked eight hours a day and received a minimum of $150.00 a month (Quarles, 1966, p. 132).

The staffing patterns for women's correctional institutions, the long hours and low salaries as compared to male correctional officers, and the job opportunities for women in corrections remained virtually unchanged until the women's movement which began in the 1960's challenged the status of women in the United States, including corrections, and federal equal employment opportunity laws provided a mechanism for change.

In 1965 the cottage officers at the women's reformatory and the correctional officers at the male reformatories in New Jersey received the same salary scale, the women officers were no longer required to live on the grounds, and male correction officers were first assigned to work at the women's institution. By the 1970's females as well as males were given the title of corrections officer and female corrections officers were free to apply for positions in all the male facilities.

The American Correctional Association's Monograph, **Women in Correction** details the social, political, and legal aspects of equal opportunity for women in the field, the bona fide occupational qualifications (BFOQ) exception to Title VII of the Civil Rights Act, and the constitutional right of privacy. We shall not attempt to discuss them here. It is important to note, however, that many states and the Federal Bureau of Prisons now hire women as corrections officers to serve in male prisons and thus allow the women opportunities for advancement that they are denied when they are confined to working solely in women's institutions.

Women are slowly being promoted to administrative positions in men's facilities and almost without exception performing well. But these changes come very slowly and often with strong resentments and subtle and outright hurtful behavior against the women in the positions.

In 1870 the National Congress on Penitentiary and Reformatory Discipline stated in its final Principle, "This congress is of the opinion that, both in the official administration of such a system, and in the voluntary co-operation of citizens therein, the agency of women may be employed with excellent effect" (Wines, 1870, p. 517). In 1987 the American Correctional Association at its Annual Congress adopted a policy statement on Women in Correctional Employment advocating "equal employment opportunity for qualified women in all areas of adult and juvenile corrections". There is strong evidence over the last one hundred and seventeen years that women have been employed in corrections "with excellent effect". The challenge is to utilize more fully and equitably the women who are committed to working in it.

Looking Toward the Twenty-First Century

To look at where we may go in the 21st century, the discussion will address offender-related issues, women working in corrections, and general trends that will affect both.

As previously described, the critical issues for women offenders will continue to be educational and vocational/industrial programming, the treatment of women prisoners and their children, and programming for various gender specific areas. The percentage of women offenders in the correctional system will continue to increase as well as the competition for adequate resources. As quoted by Charles Friel in his report **Lessons of Corinth, Sparta and Athens – Thoughts on the Future of Justice,**

As increasing numbers of women are brought before the bench, the traditional chauvinism of the courts will decline and increasing numbers of women will be committed to correctional institutions. This will not only affect the architecture of prisons, but also programming and standards for care and treatment. Possibly by the turn of the century as many as thirty-five per cent of the nation's prisoners will be women (Friel, 1982, p. 33).

Programming

A phenomenon that will impact women offenders and programs available to them will be the increasing numbers of women staff in the corrections field. As women staff become more represented throughout the criminal justice system, issues related to women offenders will receive more prominence. Moving to administrative and policy-making positions, women can be a voice for women offenders when resources are allocated and programming issues are decided. To quote Price and Sokoloff in **The Criminal Justice System and Women,**

> To the extent that policy making agencies are better representative of the sexual ratio in society, they should be better able to advocate the needs of women. As this happens we will find more equitable treatment of women who have been accused or convicted of crime. For this to occur, more women must be employed at every level in the criminal justice system (Price and Sokoloff, 1982, pp. 488-489).

As the women's movement has succeeded to some degree in raising awareness about the need to provide equal opportunity for all women in all professions, vocational opportunities have opened for women generally in our society. Vocational training programs for women offenders in non-traditional areas are described in T.A. Ryan's work **Adult Female Offenders and Institutional Programs.** These include such things as building maintenance, graphic arts, firefighting, forestry, etc. Current information is that women inmates are performing well in these non-traditional areas (Ryan, 1984, pp. 57-79). Such programs will be expanded, allowing women offenders in institutions to take advantage of a broader range of vocational training programs. This should also translate into more prison jobs that are available to women offenders. As these women

demonstrate their skills and abilities in areas that are currently available in prison industries, they will be more available for inclusion in these industrial programs.

In addressing the effect the women's movement has had on women offenders, Freda Adler explains,

> New opportunities have linked up with old abilities and women are no longer content to be men's symbols of femininity or virtue or sexuality. They are passing through a stage where they are imitating men's roles because identification is the most expedient way to learn, but it is unlikely that they will be content to become smaller, weaker, softer men (Adler, 1976, p. 253).

It may be well into the 21st century before we see co-ed correctional industries on a wide scale, however, there are some industries that lend themselves to individualized programs in which women could participate in a portion of an industry's overall project. An example would be an assembly line product.

Co-correctional facilities are currently operated in a number of states with varying degrees of acceptance and success. There is some evidence that those initiated and managed by women have met with greater success. Those who advocate for co-ed programs believe that overall the benefits outweigh the limitations.

In her work, **Sex and Supervision - Guarding Male and Female Inmates,** Joycelyn M. Pollock states,

> We may hypothesize that there is a moderation in the extreme behavior differences of men and women in co-correctional facilities, that co-correctional facilities decrease the amount of homosexuality and assaultiveness among both men and women and that there is less of a tendency to supervise the sexes differently in the same facility as when they are housed in separate facilities (Pollock, 1986, p. 109).

Positive co-correctional experiences as described by Pollock will be instituted in many systems to take advantage of efficiently providing programs to large numbers of inmates, both male and female. The private sector may also view this as efficient when they develop programs, both residential and outpatient, for offender populations that public agencies are increasingly looking to private providers to supervise.

As far as educational programming is concerned, it is anticipated that the programs outlined above will continue as major provisions within women's institutions. Additional educational programs will be added to respond to our rapidly increasing technological advances. Computer courses will be added to prepare women offenders as operators and programmers. Advances in computer assisted courses will make inclusion of women offenders in educational programs more attractive to those who believe male and female offenders should have no contact. We therefore do not see any sign that women offenders will be offered inadequate educational opportunities.

Women Prisoners and their Children

As noted above, the issues surrounding women prisoners and their children are paramount in planning for the female offender population. Because our society places a high value on families and the importance of the mother and father relationship to the child, programs which attempt to provide incarcerated women opportunities for regular interaction with their children will continue.

However, an area that plagues these programs and is expected to become more severe is that of liability. When governmental agencies develop programs that include children, they increase their liability. Areas which must be addressed include providing appropriate nutrition, life safety protection, medical and educational opportunities. As litigation expands in those areas where children are involved in programs, there will be reluctance on the part of governmental agencies to make an attempt to provide programs that increase their liability. The private sector may be a more appropriate provider for these kinds of programs if commercial insurance companies are willing to insure them. A critical requirement for any governmental agency to contract with such a private endeavor would be the above-stated insurance coverage.

Staff

Due to the greatly increased number of offenders, there will be an increased number of women who work in the corrections systems, and they will enter at the line level. As they become more prominent within the line level and gain experience, those with the abilities and skills will be promoted into upper level managerial positions. We have already started to see this phenomenon. There are women throughout our systems at every level.

This trend will continue even as we see increased violence in institutions where for years men have risked their lives, and some have lost them. although there is some evidence that violence is decreased when women work in male institutions, we may well see instances where women lose their lives. This will not, however, be a justification for not allowing women to work in male institutions. We shall see that once women are recognized as professional in male institutions and able to confront situations in a cell block, they will be viewed as potential administrators, executive directors, etc.

The other phenomenon that will facilitate acceptance is the perception of male co-workers. Many men of the baby boom generation have been working side by side with women throughout their professional careers. They no longer view women as incapable of performing jobs at upper level echelons, an obstacle that has been existent in the past and currently exists, to some extent, today.

One barrier to the increase of women in the corrections system has been the issue of offenders' right to privacy. Overcoming this barrier opened the door to women employees in male inmate institutions. Clarice Feinman explains to us in her book **Women in the Criminal Justice System,**

> In jurisdictions where integration has been implemented, women have certainly gained both employment and promotional opportunities. By 1979, according to a survey by CONtact, almost all states and several cities had complied with federal legislation and had assigned women to male institutions, although, almost all placed severe limitations on where women could work and what they could do. Most do not permit women to be in direct contact with male inmates or to work in housing areas. Most of the states did not notice any negative impact from women working in male institutions, but rather that women became a 'positive addition to the prison environment' (Feinman, 1986, pp. 143, 144, 145).

For women to move into administrative positions in the corrections system requires experience in the adult male institution. Women

have been obtaining that experience and are now moving into management and upper level administrative positions. Charles Friel believes that:

> The entry of women into policy positions in the latter part of the decade will change the character of justice, not in kind, but in quality and attitude. The traditional obstacles to female advancement will not melt away quickly, nor will the pressure from the operational level exerted by competent, aspiring young women. As a result, the women who do move into policy positions . . . will likely be better-educated and more competent than many of their male counterparts. . . . The movement of women into policy positions should substantially improve the quality of administration and bring new perspectives and values to those areas of the justice community in most need of renaissance (Friel, 1982, p. 34).

This harks back to the trends at the beginning of the twentieth century of highly educated women managing women's institutions.

There are varying perspectives within the corporate world and governmental agencies that echo Mr. Friel's assertion. In their book, **Reinventing the Corporation,** Naisbett and Aburdene divulge that,

> Women are more flexible, less deceptive, more empathetic, and more likely to reach agreement, while men are just the opposite. . . . Now in the information society, as the manager's role shifts to that of a teacher, mentor, and nurturer of human potential, there is even more reason for corporations to take advantage of women's managerial abilities because these people-oriented traits are the ones women are socialized to possess (Naisbett and Aburdene, 1985, pp. 241, 242).

Since women's talents are being recognized in corporate America, they will soon be acknowledged in the public sector. Their participation in the public sector will add to management styles already existent. Naisbett and Aburdene quote Alice Sargent, author of **The Androgynous Manager,**

> The appropriate style for the manager is an androgynous blend, one that combines the best of traditional male and female traits. The message is that men and women should learn from one another without abandoning successful traits they already possess. Men can learn to be more collaborative and intuitive, yet remain result-oriented. Women need not give up being nurturing in order to to learn to be comfortable with power and conflict (Naisbett and Aburdene, 1985, p. 242).

This all bodes well for women's participation in corrections at every level. From the above quotes it would seem that the challenge from the twentieth century, to utilize more fully and equitably women who are committed to working in corrections, is well on its way to being met.

Although this paper has been limited to programming, women prisoners and their children, and staff, we cannot totally overlook the impact that overcrowding is having and is projected to continue to have on the total correctional field. It is at a crisis stage in the United States today. Massive construction projects are taking place in many states to provide institutional space for offenders who are being committed to our prisons. Construction costs are extremely high. The number of construction projects will decline when those providing the funds, i.e., state lawmakers, federal lawmakers, and local officials, find the operational costs even more prohibitive and extensive than the construction costs. This will require systems to look for cost-effective facilities and programs to handle the overcrowding. This overcrowding issue has various implications for women which we cannot address in this paper.

There are many other areas concerning women in corrections that time limitations prohibit us from addressing, such as, classification, medical, recreation, probation, parole, etc.

We have tried, however, in this paper to detail three major areas which have been, and will continue to be, of primary concern to women in corrections in the United States: programs, women prisoners and their children, and staff.

In addition, we have tried to highlight the part played by enlightened and innovative women administrators in the twentieth century. These women were primarily confined to working in a single sex environment. As we move into the twenty-first century, we look towards women administrators utilizing their unique abilities and talents throughout our entire correctional system.

Historian Mary Beard, in **On Understanding Women . . .** "developed the thesis that woman is 'the elemental force in the rise and development of Civilization.' "

We hope we have been able to show where women in corrections have exemplified this thesis. ■

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The History of Transportation

1787-1868

KEITH ROBINSON

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HM Prison Durham

In early times political offenders were sometimes sentenced to 'Banishment from the Realm' as an alternative to execution but it was not until the reign of Queen Elizabeth I that 'Transportation' became a legal sentence as part of the famous Elizabethan 'Poor Law'.

Transportation in those days usually meant that prisoners were sent to the galleys as oarsmen but with the advent of ships without oars this practice ceased. There were, at that time, no penitentiaries where long sentences could be served, only 'Houses of Correction' and 'county Gaols'. The Houses of Correction were for the punishment of 'idle apprentices' and vagabonds whilst the County Gaols were merely for holding prisoners awaiting execution.

By the end of the 17th century, however, it became apparent that something would have to be done to dispose of the increasing number of prisoners and in 1717 it was decided to send some of them to labour in the sugar and tobacco plantations in Barbados and Virginia. It is on record that in 1762 a man could be reprieved if he consented to have a limb amputated 'to test the styptic medicines discovered by Mr Thomas Price', or he could choose to serve in the Army or Navy to escape execution and large numbers of criminals took advantage of this.

During the 'Highland Clearances' of 1746-1747 many Scots who had supported Prince Charles Edward Stuart in the 1745 rebellion were sent to the plantations in America.

Then in 1775 the American Colonials revolted and convicts could no longer be sent there from the mother country and other methods of disposing of them were discussed in Parliament. Some M.P.s voted to send them to Canada, Nova Scotia, Florida or the Falkland Islands whilst others suggested that they be kept at hard labour on hulks moored in the Thames Those in favour of the hulks won and this type of containment was authorised for two years but in actual fact was still in use 82 years later. In 1777 a Commons Committee reported that 'Transportation to unhealthy places, in place of sending better citizens, may be advisable' and considered the possibilities of Gibraltar, The Gambia and Senegal in Africa.

However, Sir Joseph Banks, who had accompanied Captain Cook on his famous voyage of discovery informed Parliament that, in his opinion, Botany Bay on the eastern coast of the newly discovered continent of Australia would be a suitable place to dump surplus convicts. He said that it had a mild climate, no wild animals, no hostile natives and would be a difficult place from which to escape. The Government, however, decided not to take any action at that time but to continue to use the hulks.

Parliament was divided on the subject, some favoured transportation whilst others advocated the building of a large penitentiary so that, in fact, nothing was done to dispose of the ever increasing numbers of convicts.

At long last, in 1786, it was decided to send some of them to Botany Bay and preparations were put into operation. The owners of suitable merchant ships were asked to submit tenders and also to allow their vessels to be examined as to seaworthiness by Naval Surveyors. Having selected the ships, it was decided to use marines to guard the convicts and these marines would remain at Botany Bay as a garrison. Stores, tools and seed to last for two years would also be taken and the convoy was to be commanded by Captain Arthur Phillip of the Royal Navy who, on arrival, would take over as Governor of the new colony.

The transports were the *Lady Penrhyn, Alexander, Charlotte, Friendship, Prince of Wales* and *Scarborough*. The three store ships were the *Borrowdale, Fishburn* and *Golden Grove* and the escorts *H.M.S. Sirius and H.M.S. Supply*. The transports embarked 568 male and 191 female convicts mostly from the hulks and the convoy put out to sea on 3 May, 1787 from Spithead.

Before they were out of sight of land there was talk of mutiny among the seamen, some of whom had not been paid their full wages. Then it was discovered that the drinking water, which had been taken aboard from the Thames, was foul and the fleet had to

put in to Tenerife for fresh supplies.

The masters of the transports reported that they found it extremely difficult to prevent the female convicts prostituting themselves to the crews although on some ships a blind eye was turned to this.

Offences committed on board ships were punished in the usual way by flogging with the cat o'nine tails, 300 lashes being quite common. On some ships the convicts were allowed on deck for long periods where they would dance and play games whilst their quarters were fumigated but on others the masters were so afraid of mutiny they kept them below decks and in irons for most of the voyage.

The fleet arrived at Tenerife on 2nd June and anchored in the roads at Santa Cruz. It was just in time for the Spanish festival of Corpus Christi and most of the ships officers took advantage of this to make a trip ashore. The remainder, however, had to be content with remaining on the ships and the convicts were allowed on deck for short periods.

Having taken on fresh water and vegetables the fleet sailed on the 10th June and set course for Rio de Janeiro and arrived there on Monday 6th August. They entered the harbour at 1.30 pm to a 13 gun salute from the fort. Captain Phillip and his staff were welcomed at the Viceroy's palace and a guard of honour turned out in his honour. Captain Phillip had previously served in the Portuguese Navy and had distinguished himself in the war between Portugal and Spain. The people of Rio de Janeiro remembered him and soon the ships were being inundated with gifts of fresh fruit, wine and other produce which alleviated the lot of the convicts and crews and made a welcome change from the salt beef and biscuits which had formed the main part of their diet so far.

The convoy remained at Rio until 4th September when they sailed for the Cape of Good Hope arriving there on 13th October. Here they took on board the livestock which was to accompany them to the new colony, chicken, sheep, pigs and cattle, and the fodder to keep them alive on the voyage. They sailed from the Cape on the final stage of their journey on 12th November.

This was to be the worst stage of the passage. Fog, storms and icy cold temperatures beset them. Several ships were damaged and all were taking in water due to strained timbers. At last on 1st January 1788, the coast of Van Diemen's Land was sighted and on 20th January the fleet anchored in Botany Bay after a voyage of 12,000 miles.

Parties of seamen and marines were ferried ashore to establish a camp site but after a short exploration it became apparent that what Cook had described as lush pasture land was nothing more than swamps and totally unsuitable for cultivation. In addition to this the supply of fresh water was inadequate to sustain over a thousand people.

Phillip, therefore, decided to explore further up the coast for a more suitable site for a settlement and despatched Lieutenant Hunter in two longboats with a party of seamen and marines. They set out on the morning of the 21st January and by midday found themselves in the fine, natural harbour of Port Jackson. The following day they discovered a cove, some six miles inside the harbour with a plentiful water supply and an excellent anchorage.

Phillip decided it was here would establish his settlement and next day, 26th January, the fleet left Botany Bay and anchored in the cove which was then officially named 'Sydney Cove', in honour of Viscount Sydney. The Union Flag was raised, the marines paraded and fired three volleys, the officers drank a toast and Phillip claimed the Territory in the name of His Majesty, King George III. *H.M.S. Sirius* fired a twenty one gun salute to mark the occasion.

The new colony was officially inaugurated on February 7th, 1788 and Captain Phillip installed as the first Governor, Major Ross as Lieutenant Governor and Captain Collins of the marines as Judge Advocate.

The settlement, at first, consisted mainly of tents but then, when the supply ships were unloaded of the stores which included timber, cabins were built and a scattered township began to take shape.

Suitable clay for brickmaking was found nearby and the first brick building to be completed was a barracks for the marines who were to remain and act as guards.

For the first two years the population almost starved. There was very little game and the first attempts at crop growing failed, partly because the seed had become contaminated by salt water on the voyage and partly because the soil was poor and there were very few convicts who were skilled at farming. The crops which were successful were plundered by other convicts and even marines.

Captain Phillip embarked a number of them under the command of Lieutenant King in the *Sirius* to establish another colony on Norfolk Island in the Pacific where the soil was more suited to farming, in the hope that supplies of food could be eventually obtained from there to sustain the inhabitants of Port Jackson.

The convicts were usually transported for seven years and at the end of that time were released.

The Governor had the power to offer grants of land to time expired convicts and also to time served marines. These grants consisted of:
Convict—30 acres + 20 acres if he had a wife + 10 acres for each living child
Marine NCO's—130 acres
Privates—80 acres

Each land grant was to include seed, tools and provisions to last for one year. If ex-convicts did not wish to take advantage of a land grant they were left to fend for themselves, to work for wages, steal or starve. They could not, legally, be prevented from returning to Britain but the Government made it clear that it would take no steps to facilitate this and they hoped it would be made difficult for them to do so.

The next tragedy to befall the infant colony was the foundering of the long awaited supply ship 'Guardian'. This meant they would have to rely on their own efforts for another year and Captain Phillip considered evacuating Port Jackson and transferring everyone to Norfolk Island where, at least, crops would grow. However, he decided to make one last effort to feed his starving people and despatched his one remaining ship, the little brig, *Supply* to Batavia in the Dutch East Indies. She was to be commanded by Lieutenant King and his orders were, as the *Supply* was too small to carry a lot of cargo, to hire a larger vessel from the Dutch, load it with the necessary provisions and return to Port Jackson with the utmost speed. He sailed on 17th April, 1790.

In the meantime a second fleet arrived bearing more convicts but of these, large numbers had died on the voyage and those who did disembark were in such a sick, emaciated state that they only added to the burden of the settlement.

Medical supplies had long since been expended and food was now desperately short. Parties of marines

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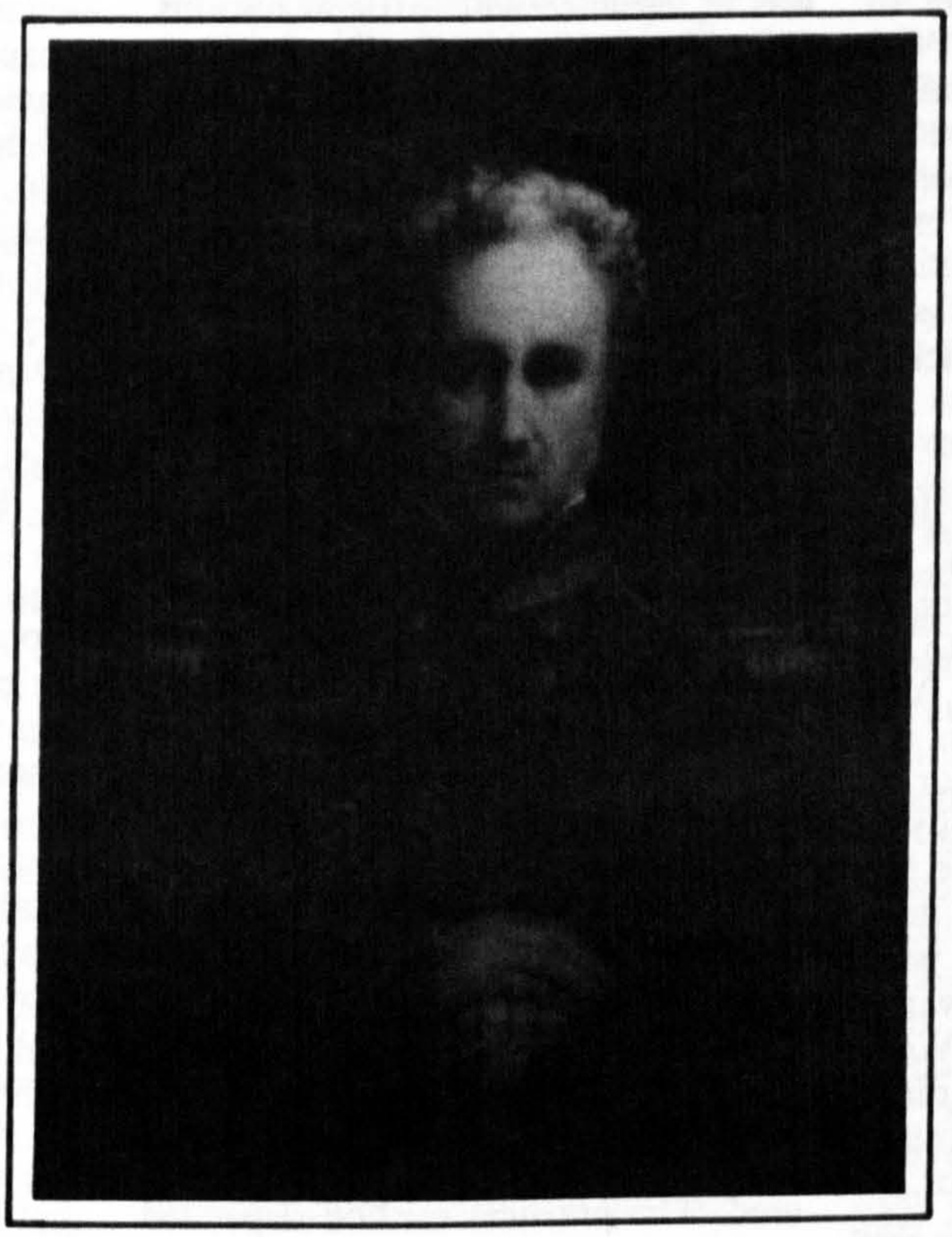
Captain Alexander Maconochie RN.KH



"Men will do for liberty what they will not do for lashes"

1787 Born

By age 28 Commander, Acting Captain in the Royal Navy

1830 First Secretary of the Royal Geographical Society

1834 First Professor of Geography (by some 70 years) University of London

1840-1844 Commandant Norfolk Island Penal Colony

1849-51 First Governor of Birmingham Prison

1860 Dies

MIKE SELBY—*Governor H.M.P. Grendon*

Norfolk Island

Norfolk Island set mid way between between Australia and New Zealand, is a paradise. It was also a place of degradation within the Australian convict experience as well as witness to the most heartening failure in prison history. For a short time between 1840 and 1844, it became the temporary home of Captain Alexander Maconochie RN, KH, and his family, a man whose influence on the prison system is profound and still prevails. He has been ignored by most historians, the Dictionary of National Biography has no entry, and it was not until 1958 that his first biography was published by JV Barry, an Australian High Court Judge. However, Robert Hughes in the recently published "The Fatal Shore" rightly calls him "the one and only inspired penal reformer to work in Australia throughout the whole history of transportation."

Convict settlements were put into Australia for a combination of strategic and trivial reasons but as each colony became settled and attempted to civilise itself, the search for a receptacle for the waste products of Humanity began again. Norfolk Island became this place of last resort and thus was brutalising. Under one Commandant Major Childs 26,024 lashes were inflicted in the last 16 months of his command. On some mornings "The ground on which the men stood at the triangles was saturated with human gore as if a bucket of blood had been spilled on it, covering a space three feet in diameter and running out in various directions in little streams two or three feet long. I have seen this."

Maconochie was sent there in 1840 because he was a self-righteous prig who put forward the revolutionary proposition that the State has a duty to reform its criminals. Furthermore he brought together the theories of the utilitarian theologian William Paley who wrote in 1785 that "The punishment of criminals should be measured not by raw time but by work in order to excite industry and to render it more voluntary." His Mark System embodied this novel idea that discipline could be used as a carrot not a stick.

Interest in Penal Matters

Maconochie arrived at his life's work by a series of accidents. He accompanied the famous explorer Sir John Franklin as his secretary, to the Lieutenant Governorship of Van Dieman's Land, abandoning his distinguished position as Professor of Geography at London University in order to explore the Pacific. The formative influence of his life was however, the experience of three years confinement as a prisoner of war in Verdun during the Napoleonic Wars. But his specific interest in the direct experience of imprisonment was aroused almost casually. The Society for the Improvement of Penal Discipline, concerned rightly, with the appalling conditions that convicts suffered—asked him to investigate and answer 66 questions when he went out to Australia. He did so, but the 67th was open-ended and his response changed his life. This asked him to "Make such general remarks as occur on the whole system of the colony, and its effects on the moral and social state of the community . . . making any observations which may be instructive or useful in regard thereto."

Essay on Convict Discipline

Within three months of his arrival he had composed an "Essay on Convict Discipline" which he submitted to Franklin for onward dispatch to London. His conclusions were that the penal system in the colony was futile, cruel, unjust and misconceived. Its operation was morally corrupting to both sides—paragraph five has a succinct introduction worthy of an essay by Francis Bacon "The servants being made slaves, the masters are made slave holders and the peculiar modification of slavery thus introduced is of the worst character." The result of its publication was explosive and forfeited any chance he had to work within the colony—it left him both friendless and jobless.

This essay proposed a system that included both philosophical assumption and a plan of action. The philosophy was at variance with official notions and the methods radically different from those currently employed. Clearly he was aware of the findings of Beccaria and was prompted by the Quaker Missionaries James Backhouse and George Walker. So his starting point was the utilitarian concept that punishment is an evil to which the the state is justified in resorting only if it is necessary for the prevention of a greater evil and that the measure of punishment should be public utility. His proposals rest on two fundamental beliefs. Firstly, that brutality and cruelty debase not only the person subjected but also society which deliberately uses and tolerates it. Secondly, that the treatment of the wrongdoer during his sentence of imprisonment, should be designed to make him fit to be released into society again, purged of the tendencies that led to his offence and strengthened in his ability to withstand temptation to offend again. In essence, all punishment was to be constructively used. The practical method depended on three related principles—first, making the prisoner's release dependent on their earning a certain number of Marks, varying in accordance with the severity of the crime. The second, making these Marks the sole currency of exchange within the prison. The third, that positive endeavour was to be the criterion—not the mere passive acceptance of incarceration.

Utilizing his experience as a naval officer, he was aware of the strength of human relationships, and the need for loyalty to each other, and so harnessed this to his social system. The first stage was to be one of punishment, the second of individual effort but that which led to a prospect of actual release could only be gained as a member of a group—preferably about six in number. The prisoner was required to find a group of associates who could and would work with him and all his earnings were pooled so the group earned their release collectively. This was based on his theory that only in a group could men learn or reacquire a sense of responsibility for their own and others' behaviour—each, literally became his brother's keeper.

Theory Translated into Practice

He complained vociferously that the conditions imposed upon him in Norfolk Island made his scheme inoperable, but finally accepted this as his only opportunity. With his long-suffering wife and six children—the eldest aged 17, Mary Ann—"Minnie"—was to be sent home in disgrace because she formed a liaison with her convict tutor, he joined the Nautilus which arrived in Sydney in February 1840. It was full of male convicts straight from Dublin and with these to form the basis of the experiment they sailed to Norfolk Island—930 miles north east by north of Sydney—five miles long and two and a half miles wide.

He found there waiting for him the Old Hands, those who had subsequently offended as convicts throughout the system. These had been subjected to bestial cruelty and were men without hope. Of these, a fellow prisoner described in court "Let a man be what he will, when he comes here he is soon as bad as the rest, a man's heart is taken from him and there is given him the heart of a beast." Maconochie was orderd by the Colonial Office that these men must remain locked away and were not to be part of his experiment, but recognising that this was an impossibility, he disobeyed that order. Hughes describes the scene "A few days after landing he had the Old Hands mustered in the jail yard at Kingston and strode in to front the collective stare of twelve hundred men, nameless to him, masks of criminality and evasion burnt by sun and seamed by misery, the twice convicted and doubly damned Scottish bank clerks and Aboriginal rapists, Spanish Legionnaires and Malay Pearlers, English killers and Irish Rapparees. 'A more demoniacal looking assemblage could not be imagined, and nearly the most formidable sight that could ever be beheld was the sea of faces upheld at me.' They looked at their new Commandant with utter scepticism as, exalted by the thought of laying his balm of such scars, he described the end of the old system and his system of Marks which would replace it."

This meeting and their response, determined Maconochie that only the most prompt and radical action could help them. So he wrote to the Governor of New South Wales, Sir George Gipps informing him that the order to separate the Old Hands from the new was impossible, therefore he proposed to disobey it. The Governor replied with a stern rebuke but this reached the Island just before the birthday of

the young Queen Victoria, May 24, 1840; the new commandant ignored it. For to provide or rekindle a sense of loyalty, he proposed to celebrate this young Queen's birthday by setting aside the following day as a public holiday for everyone, bound and free.

A twenty-one gun salute boomed across Kingston, turning out of bed the old hands who were stupified to find the great gates of the walled prison compound standing wide open. They could wander as they pleased on the island, swim, stretch and frolic on the sand and at lunch eat fresh pork and drink a toast to Queen Victoria in diluted rum. This experience can only be compared in intensity to the chorus of the prisoners in Beethoven's Fidelio. There were three cheers for Queen Victoria and three cheers for Captain Maconochie. And there was also entertainment—the comic opera "The Castle of Andalusia". The star, a convict named Lawrence who previously had been sentenced under Major Anderson to 50 lashes for singing a song in the barracks. There were sports and then fireworks. When the last spark had faded away, Maconochie noted that "not a single irregularity, or anything approaching an irregularity, took place, . . . every man quietly returned to his ward, some even anticipated the hour."

He submitted an account of this event and it was the mainspring of his dismissal four years later. Emphatically, this was not above all what the good colonists of Sydney wanted nor the Colonial Office in London when it eventually heard about this event.

Quickly he impressed his personality on the island. Within a fortnight of his arrival—in an environment where his predecessors would only travel protected by a platoon of soldiers and where an official's wife had written "During the 12 months we were on the island 119 were shot by the sentries in self-defence and 62 were bayonetted to death." ,—he was riding round the island—unarmed and unescorted. Whenever he came across a group of or even a solitary man, he would stop, ask for details—their names and numbers and enter it into his notebook Everyone was exhorted, if they felt the need of special help or advice to come and see him. And they did—in droves; Mrs Maconochie and the children were hard put to it supplying them with cups of tea. He continued to see men individually throughout his time there.

Furthermore he was able to demonstrate the practical efficiency of his system. Surprisingly it was more effective with the Old Hands but was inevitably subject to mishap, which was gleefully misinterpreted by his enemies. His treatment of all men with dignity extended posthumously to the dead, allowing carved headstones for previously unmarked grave mounds. He built two chapels and provided catechists. The prisoners were allowed their own gardens even to the extent that "I allowed them also to grow and use tobacco, not to encourage its consumption but to legalise an indulgence which it was impossible to prevent." He started a school and provided teachers and musical instruments thereby creating a band. He attempted, for the first time, a form of self-government, even encouraging the prisoners to provide the elements of a jury system. Above all it was the force of his personality encompassing the concept that "I never knew a man so bad that he had some good in him." which formed "An ability to infuse his own spirit into all his officers, not by force but by power of his own heart, will and brain" as described by the Reverend John Clay. Thus he gave the regime both heart and purpose.

Dismissal

He was, however, unable to fulfil the purpose of awarding his Marks to allow liberty. It was certainly not part of the "exclusives" intention to accept back criminals to Australia however reformed, so the promised release could not be given.Sir George Gipps —not known as an admirer—exasperated by the rumours of indulgence and lack of discipline sailed over to investigate. After a thorough inspection, he was impressed. He was particularly intrigued by the sight of a prisoner trimly dressed as a sailor in charge of the signal station atop Mount Pitt. This was Charles Anderson whose violence was so uncontrollable, because of brain damage, that he had in the past been chained to a rock in Sydney Harbour. Maconochie had placed him previously in charge of untamed bullocks and "very soon a marked change was apparent in the man. He became less wild, felt himself of some value and won praise for his good conduct and successful management of his bullocks. He and they grew tractable together."

By now not even the approval of Gipps could save Maconochie, "Despite the use of irons and lash greatly diminished" the cost argument won, for it had increased from £10 18s 4d to £13 3s 11d per convict per year. Lord Stanley the Colonial Secretary gave Maconochie "the fullest credit for his exertions and propriety". His note of dismissal said "I gladly acknowledge that his efforts appear to be rewarded by the decline of crimes of violence and outrage and by the growth of humane and kindly feelings in the minds of the persons under his care." That this was the coup de grâce was emphasised by the passenger in the same ship bringing the dispatch announcing dismissal. It was Major Joseph Childs of the Royal Marines, his successor, described as a "harsh blundering turkey bringing orders to make the island a place of exemplary terror once more". So it happened, within two years 17 men were hanged during a seven week period and the Colonial Office expressed no criticism.

Significantly, before he left Maconochie was allowed one last dispensation. All the men promised discharge would get it—those with their ticket-of-leave would go on probation to Van Diemen's Land. For years afterwards Maconochie received letters from Norfolk Islanders from all over the world telling him of their progress. Kenneth Maconochie —his grandson—wrote "without further references a man could get a job anywhere in the Australian Colonies —if he could simply say "I am one of Maconochie's men"."

Return to England

So he returned to England, seeking to propagate his theory and find work. However, the climate of opinion was against his system—the rigour of the silent and separate system was taking hold. So he wrote a book "Crime and Punishment—the Mark System framed to mix persuasion with punishment and make their effect improving yet their operations severe" published in 1846. Largely ignored in his lifetime in England except by Charles Dickens, it was adopted by the Irish Penal System and formed the basis of the Elmira New Reformatory in New York—opened in 1876 "Elmira offered a host of educational and vocational programmes and promised early release to those who reformed themselves".

Then there came the last opportunity. Through his friendship with the liberal barrister Mathew Hill, the Recorder of Birmingham, he was chosen to be the Governor of the new

prison of Birmingham and was given cautious permission to try out a modified Mark System. It ended in tragedy; too occupied with proselytizing his methods elsewhere he paid insufficient attention to the activities of his sadistic Deputy Governor—a former Naval Officer William Austin, whom he had recruited. In two years Maconochie was dismissed and by a tragic irony Austin was himself imprisoned for the cruelties imposed in the Governor's absence but under his authority. Maconochie was now 64, bitterly disappointed but too proud for self-pity. He continued writing but was never to be employed again and died in 1860, aged 73.

Curiously what did survive of the Mark System, as he foresaw, was only the apparatus not the spirit. Indeed, the operations of the Mark System earned one of the few approving commendations of the Gladstone Committee of 1895 —paragraphs 43 and 44 "We think that the Mark System works well. It is the practice to restore marks forfeited by inadvertence and some trivial offence subsequently compensated for by diligence and good conduct. We think that great care should be taken to ensure this practice."

Maconochie's Legacy

His legacy is pervasive if unacknowledged. He was the first man to demonstrate the practical possibility of imprisonment as a coherent activity. He addressed the important factor—"to ascertain by experiment the effect of establishing a system of reward and punishment not founded mainly upon the prospect of immediate pain and immediate gratification." "To teach convicts to look forward to the future and remote effects of their own conduct" was a sophisticated perception. And does this not have a modern ring? "Let us offer our prisoners, not favours but **rights** on fixed and understandable conditions." He proposed and made effective the intention that "The fate of every man should be placed unreservedly in his own hands . . . there should be no favours anywhere." In applying these he invented the principle of men earning their discharge and in so doing —the Token economy; an embryonic form of group therapy; the direct personal accountability of the Governor for every man in his care; the constructive and purposeful use of education, music and drama and the use of animals in assisting treatment for disturbed prisoners. His thinking was pervasive in America and strongly influenced the work of Thomas Mott Osborne in Auburn Prison. In England, echoes can be heard in the Principles of the Borstal System (the little grey book) written by Alexander Patterson, "The task is not to break or knead him into shape but to stimulate some power within to regulate conduct aright . . . so that he himself and not others will save him from waste." Re-reading the "North Sea Camp—A Fresh Borstal Experiment" by W W Llewellin is to re-create the feel of Norfolk Island in somewhat bleaker conditions. In more modern times, the White Paper on Adult Offenders published in 1965 provided the impetus for the Criminal Justice Act of 1967 Which introduced parole. It stated "A considerable number of long term prisoners reach a recognisable peak in their training at which they may respond to generous treatment but after which if kept in prison they may go down hill. To give such prisoners the opportunity of supervised freedom at the right moment may be decisive in securing their return to decent citizenship." This could well have been written by Maconochie 120 years earlier, compare his words "The proper object of prison discipline is to prepare men for discharge . . ."

The failure of his system in England was attributed to others lacking "his determination to reform criminals" and in the end it was the power of his personality, his charisma, which is the most remarkable aspect of his work and that legacy has been handed down through men such as Llewellin, Vidler, Almeric Rich and Bill Perrie. ■

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1788 and 1988 as penological boundary marks

Finally, I would like to suggest that the 1780s and the 1980s are the boundary marks of a particular penological tradition. Until the 1780s, punishment was seen as directed at the prisoner's body—to kill it, maim it or ship it out of the country (to follow the words of John Hirst).

The 1780s marked the start of a period of reform characterised by rehabilitative ideals. Radzinowicz detects in 1777 the first signs of opposition in Parliament to a further increase in the severity of punishment. It was the 1779 Committee on Transportation that recommended the establishment of penitentiaries.

In the 1780s, Bentham was in Russia, trying to convince Catherine the Great of the virtues of his Penal Code. He returned to London determined to show the superiority (and economy) of his panopticon over transportation.

The reformers could not, would not, exclude the possibility of 'redemption'. Bentham had secular redemption in his sights; Wiberforce and in their turn the Evangelicals a more spiritual variety.

Today, of course, we no longer have Bentham's optimism about rehabilitation. The aspirations which supported the penal system for two centuries are in doubt. Incapacitation has a new vogue. It may be a longer word than the whip or the lash, but it is still a form of corporal punishment. If it is allowed to stand on its own it contains the same awful potential for abuse and brutalisation as did transportation.

Of course, we shall not revert to the principles and attitudes of the mid eighteenth century. We shall hold on to the belief that prisoners are human beings, and so must be correctional officers, and penal policy makers. We shall find some way of evolving from what is best in the last two hundred years.

What that is, and what direction we take, is for this Congress. The calling of this Congress, and its subject, is an inspired choice. We owe a debt of gratitude to the Government of New South Wales and to the National Organising Committee for their work.

I wish the conference well. I am sure that the proceedings will prove of tremendous value to us all. I look forward to a very stimulating week ahead. ■

THE EUROPEAN PRISON RULES

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The adoption of the European Prison Rules by the Committee of Ministers of the Council of Europe in February 1987, was a landmark in the evolution of a common penal philosophy for treatment and practice in the member States, and for others that share the aspirations of the European prison administrations. The new Rules are to be seen as a natural extension of the commitment of the Council of Europe to the ideals and principles enshrined in its Statute and the European Convention on Human Rights. The concept of a comprehensive range of international rules for the treatment of prisoners is older than either of these latter documents. However, they all spring from historic common approaches based on humanity, justice and international co-operation to promote the fundamental values they are designed to uphold. It has been averred, with reason, that the Rules for the treatment of prisoners constitute the most important international document in the prison field. The Rules are a formal expression of the moral standards and philosophical purposes that have inspired what is best and most progressive in prison systems. This article will indicate, in general terms, the historical background to the European Prison Rules, the reasons for the decision to undertake the new formulations, the approaches on which the work was based and venture some thoughts on the future role and influence of the Rules.

The Historical Perspective

At the outset of the work of preparing the drafts of the new Rules and associated documents, it was apparent that it would be burdened with technical and procedural problems. The major task, however, was to reconcile the concepts of a fresh formulation embodying contemporary thinking, and considerably enlarged in presentational scope, with the traditional values and texts, on a basis that would find support from all member States of the Council of Europe. The underlying strength of the historic role of the Rules and the common commitment to them as a code of standards for prison administration made this possible. It was also essential to see the task as part of an evolutionary process derived from the experience of more than a hundred years of international discourse and co-operation in prison affairs. That co-operation has its roots in the international penal reform movements that began to flourish towards the end of the nineteenth century. There was, of course, even then, a much longer tradition of international penal activity and of the exchange of knowledge and experience. All that, largely relied on the reforming zeal of determined individuals or small, ephemeral groups. It was with the conferences and official inter-service liaison from about 1870 that the pattern of international co-operation in penal affairs as we now conduct it at state level really began. Thus, when on 28 September 1935, the League of Nations, at its 16th Ordinary Session, adopted a Resolution instructing the Secretary General to request those governments which accepted the Standard Minimum Rules for the Treatment of Prisoners to give those Rules all possible publicity, the devoted work of the International Penal and Penitentiary Commission came to fruition at world level. Those Rules did not purport to define a model for prisons systems and were based on practical considerations. Furthermore, although tentative in some respects, they did prescribe minimum conditions of imprisonment based on humanitarian and social criteria. They represented an internationally agreed code that, even if in practice it was not thereafter, in all parts of the world, strictly complied with, has never been seriously challenged. Certainly no other international document imposes the same comprehensive influence on the disciplines of prison administration as do the international Rules.

After the war of 1939-45, in a climate of high moral aspirations and social renewal, the United Nations, at the First Congress on the Prevention of Crime and the Treatment of Offenders, accepted a revised version of the League of Nations Rules on 30 August 1955. This was subsequently approved by the Social Commission of the Economic and Social Council and the General Assembly of the United Nations and promulgated to member States with a request for regular reporting of progress with the application of the United Nations Rules. Although rather less ambitious, but arguably more realistic in the

conceptual aspects than the earlier version, the arrangements for monitoring progress could be seen as an important step towards higher world standards. Unfortunately, the responses to that were not consistent or as effective as had been hoped. The future strength of international Rules has thus come to be seen as lying within the competence of more cohesive regional arrangements. An adaptation of the United Nations text, in a Council of Europe version that was adopted by the Committee of Ministers in a Resolution (73) 5, came into force in Europe on 19 January 1973. The broad purposes of this version were stated to be to meet the needs of contemporary penal policies and to encourage the better application of the Rules in Europe. Under the terms of the Resolution the member States were recommended to be guided, in legislation and practice, by the principles of the Rules and to report quinquennially to the Secretary General of the Council of Europe on progress with implementation. Stress was laid on the value of common principles for penal policy and contemporary developments in penal treatments.

Since then the European version of the Rules has symbolised the Council of Europe's ideals and values in regard to humane and constructive approaches to prison administration and has been an important influence in safeguarding minimum standards and stimulating progress. However, even when the European version was promulgated there was already a developing body of opinion in the European Committee on Crime Problems and among the Directors of prison administrations in Europe that something more definitive, forward-looking and rigorous was needed. The opportunity was thus taken, at the first quinquennial review in 1978, to appoint a Select Committee of Experts to report on the purposes and nature of a future revision and to consider the more difficult problem of the supervision of the Rules in Europe with a view to their more effective application. The Select Committee reported in 1980 and its conclusions were approved by the European Committee on Crime Problems and subsequently by the Committee of Ministers in June of that year. Its findings and recommendations are set out in the published report of 4 July 1980 and summarised in Appendix III of the new Rules. Suffice it here, to note that its proposals led to the establishment of the Committee for Co-operation in Prison Affairs in 1981 and the decision of the European Committee on Crime Problems to commission the drafting of new European Rules. Within the ambit of its wider role in prison affairs the Prison Committee was given special responsibilities for the application of the Rules in Europe. The movement for a European initiative in regard to the International Rules was given further support by the Parliamentary Assembly of the Council of Europe in Recommendation 914 (1981) on 29 January 1981. The responsibility for the new Rules was subsequently assumed, at the request of the European Committee on Crime Problems, by the Committee for Co-operation in Prison Affairs in consultation with the Directors of prison administrations in Europe. At its 35th Plenary Session in 1986 the European Committee on Crime Problems agreed the draft Rules and the associated documents for submission to the Committee of Ministers which, as indicated at the beginning of this article, approved the documents in February 1987.

The formulation of the European Prison Rules

The decision to undertake a comprehensive reassessment of the content and character of the then existing Standard Minimum Rules was taken against the background of major changes in social circumstances and penal philosophy in the immediately preceding decades. Societies disrupted by war, economic crises and fundamental shifts in social attitudes and behaviour had been exposed also to radical new ideas, changing moral and religious disciplines, structural unemployment and, important in this context, threatening manifestations of criminality. These insistent, minatory themes had also been mirrored by commendable parallel influences towards higher ethical standards and community responsibility. In prison management, novel regime developments, changing operational conditions, advanced technology and more sophisticated human and material resources had intruded new dimensions into treatment and administration. A formidable array of enquiries, studies and experiments, much of this sponsored by the Council of Europe, had also promoted fresh thinking and activity within the prison scene. It was necessary, it was agreed, that the new European Prison Rules should be compatible with the realities of this changing environment and the implications of that for prison treatment and administration. They must also satisfy the needs of modern social expectations and prison management with scope for future development and a more convincing discipline in application.

The criteria that were applied to the task may therefore be broadly summarised in the following terms. The new Rules should reflect the contemporary social background in Europe, the development of new penal philosophies and changing practices in prison administration and treatment. They should be related to current and probable future standards in European prison services taking due account of identifiable programmes and policies as well as the economic and political considerations that may be expected to inspire or inhibit them.

So far as textual development was concerned the process was designed to accommodate an Explanatory Memorandum to put the new Rules into a modern philosophical framework and to provide a statement on the practical dimensions of their application to guide prison staff in their work and to enhance the overall influence of the Rules. The Rules would be amended and re-organised to offer a more logical and orderly presentational sequence of the subject matter so as to exert new emphasis and to associate more closely the related areas of prison treatment and management to facilitate their application. In the detailed development of the drafts, account would be taken of the reports, studies and conclusions of European provenance over the last twenty years, recent work by other international bodies and authoritative individual contributions to penal thinking. Specifically, the new Rules would be informed by the practical experience and detailed proposals for revision put forward by the European prison administrations and other competent authorities. Overall, and in specific Rules, the new standards would be aimed at extending and raising the level of the requirements and encourage better application, recognising that there were prison administrations in Europe already operating above the level of most of the existing Rules. It will be apparent that it was inherent in this criteria and

approaches that the new formulation would, for the first time, involve a significant departure from the concordance with the traditional texts as represented by the current United Nations Rules.

The new European Prison Rules are thus introduced by a positive statement of purposes in the Preamble. The first six Rules (Part I) embody the basic principles which define the ethos and fundamental status of the Rules. The new Rule 1:

> "The deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity and are in conformity with these rules"

epitomises the philosophical and stylistic differences that distinguish the European Prison Rules from the previous international versions. The intrinsic strength and authority of this prime requirement is manifest. What was a sub-clause (3 of Rule 5, 1973 Rules) has become the Rule of first priority and principle as well as being strengthened by the unequivocal reference to compliance with the Rules as a whole. All of the Rules are enlarged and supported by the related texts of the Explanatory Memorandum in Appendix II of the Ministers' Recommendation. Together with the historical and philosophical statements in Appendix III, the three documents provide a comprehensive statement as regards the concept and authority of the Rules in advance of anything that has previously been promulgated at international level.

Beyond Part I, the remaining areas of the Rules are set out in separate parts dealing collectively, in a well defined sequence, with the standards for the management of prisons, personnel, treatment objectives and regimes, each of which is the subject of further articles in this edition of the Prison Information Bulletin. Meriting special mention here is the introduction of new requirements or emphasis concerning compliance, inspection, personnel and developments in prison management and regimes. These are all areas of prison work and practice in which significant change has been experienced in the recent past.

The role of the Rules

Although the merits of a major statement of principle and an agreed code of standards of international validity are self-evident, it is more difficult, briefly to describe the influence of the Rules in national practice. The Rules are expressed in various ways within the domestic legal frameworks of the member States, ranging from incorporation in Statute law to a systematic reflection in local regulations and management instructions. In the various ways in which they intrude upon prison administration they represent the only international yardstick that can be seen as applicable across the whole spectrum of prison treatment and management. Application at national level is a matter for the domestic authorities. Their governments have also accepted the moral and political obligations that flow from their subscription to the Recommendation that embodies the Rules. There is also now an expert and supportive capacity at Strasbourg with formal responsibility to oversee and to encourage the application of the Rules. That has begun to function in a positive way in the work of the Committee for Co-operation in Prison Affairs. The bi-annual Conference of the Directors of Prison Administrations in Europe also has a duty to follow and further the application of the Rules in practice. The involvement in this process of the Committee for Co-operation in Prison Affairs has already promoted some progress in the application of the Rules at national level and it may be expected that this aspect of the work of the Committee will develop further in co-operation with the Directors of Prison Administration in the European prison services. The new Rules 1, 4 and 6 are germane to this purpose and should help to encourage more progress than has been possible in the past.

There is a view that the Rules concerning minimum standards could be more usefully expressed in detailed specifications and measurable criteria than in the more generalised terms that are the common currency of international documents. That may be so at national level and the new European Prison Rules provide a valid international framework for such an approach. Because of the wide differences in local circumstances and the need to meet the requirements and expectations of a large number of countries with significant variations in their constitutional, economic, social climate and geographical circumstances the codification of standards on the basis of agreed detailed specifications would not be feasible or appropriate in an international formulation on such a comprehensive scale as that of the Rules. An extension of the European Prison Rules on this basis would be technically complicated and seems to be essentially one that would benefit from local implementation. It is likely that it will develop in this way in many countries as part of a wider application in national practice that will include prisons within its scope.

Those concerned with the management of prisons, and others with a similar concern for the human and social aspects of imprisonment should find in the new texts substance to strengthen their belief in the efficacy of the Rules as an instrument for improving prison practice as well as a more powerful statement of purpose than has hitherto been agreed internationally. If the new Rules are to be employed for the optimum benefit of society, prisoners and staff they will need to be given a wide circulation as has been requested by the European Ministers and given a more conspicuous role in prison management. It is to be hoped that the new Rules will give a fresh impetus to modern prison treatments by strengthening the base for prison management in the context of contemporary standards and the traditional values. A positive attitude to the new Rules, with their detailed supporting texts, would provide an opportunity for imaginitive evaluations of existing practices and standards, a useful vehicle for staff training and a framework of reference for developing modern regimes and management styles. The expertise of the Committee for Co-operation in Prison Affairs and the authority of the European Committee on Crime problems is available to support developments in these areas of prison administration. However, the initiative that has been taken in Strasbourg now rests mainly with the prison administrations in Europe. It is within their authority that the European Prison Rules must now find practical expression, in terms that will further improve the conditions in which people are imprisoned and prepared for release and help to enrich and reward the work of the staffs of the European prison service.

KENNETH NEALE

Part 1: The basic principles

In the process of revising the European version of the Standard Minimum Rules for the Treatment of Prisoners (Resolution (73) 5 of 19

January 1973) it was unanimously agreed that the most important general principles, which are to be regarded as the very basis of any contemporary prison system, should be clearly formulated and complied in a new Part 1. Thus, the six rules of Part 1 of the European Prison Rules reflect the fundamental philosophy on which our prison systems are based. All the other rules should be seen and applied in the light of these six basic rules.

Rule 1 lays down that the deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity and are in conformity with the rules. This rule states, as the old Rule 5.3 already did, that due respect for human dignity is obligatory. The additional reference to conformity with the rules is new and intends the strengthening of Rule 1.

According to Rule 2, the European Prison Rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, birth, economic or other status. The religious beliefs and moral precepts of the group to which a prisoner belongs shall be respected. This rule follows the former Rules 5.1 and 2. The provisions of Rule 2 are in conformity with Article 9 and Article 14 of the European Convention on Human Rights. Rule 2, which seeks to respect individuals and their beliefs, governs the spirit in which many, often very delicate, arrangements are to be made in everday life in penal institutions.

Rule 3 states that the treatment of persons in custody shall be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release. Rule 3 reflects the old Rules 58, 59 and 66.

The purposes of imprisonment, as they are prescribed by law or generally acknowledged in many states, are, on the one hand, social rehabilitation to enable the offender in future to lead a socially responsible life without committing criminal offences and, on the other, the protection of society, security and good order. The reference to treatment in Rule 3 creates the general basis for a wide range of treatment strategies. It indicates, in the broadest sense, all those measures, (work, vocational training, schooling, general education, social training, reasonable leisure-time activities, physical exercise, visits, correspondence, newspapers and magazines, radio, television, social-work support, psychological and medical treatment) employed to maintain or recover the physical and mental health of prisoners, their social re-integration and the general conditions of their imprisonment. All treatment strategies lead sooner or later to the preparation of prisoners for release and pre-release treatment and aim at their social rehabilitation. The main goals of preparation for release programmes are the cultivation of the work habit; proper vocational training in marketable skills; the sustaining of social links to family, relatives and others; the acquisition of appropriate life and social skills; specific assistance and expert guidance to meet individual needs of the prisoners. Obviously, the extent to which treatment strategies can be applied in practice will vary according to the opportunities provided, the length of sentences, the custodial environment and the personal circumstances. Nevertheless, the general demand of treatment and its aims is of the greatest importance.

Rule 4 demands that there shall be inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to monitor whether and to what extent these institutions are administered in accordance with existing laws and regulations, the objectives of the prison services and the requirements of these rules. This Rule follows the old Rule 56.1.

The value of regular inspection has been emphasised by the priority given to this as one of the basic principles. The arrangements for the inspection process will vary from country to country. The effectiveness and credibility of the inspection services will be enhanced by the degree of independence from the prison administration that they enjoy and the regular publication of the results of their work.

According to Rule 5, the protection of the individual rights of prisoners with special regard to the legality of the execution of detention measures shall be secured by means of a review carried out, according to national rules, by a judicial authority or other duly constituted body authorised to visit the prisoners and not belonging to the prison administration. The great importance of this Rule, which follows the old Rule 56.2, is self-evident. Its priority has been recognised by including it as one of the basic principles in the new Rules. Rule 5 elucidates the fact that the sentenced offender is still a member of society and that law applies to prisoners too. Such a grave intrusion by the state into the life of a citizen as a prison sentence represents needs a solid legal basis to warrant it. It is not enough for the rights and duties of prisoners to be clearly laid down; the prisoners must also have the legal remedies available to assert their rights.

Rule 6 provides that the European Prison Rules shall be made available to staff and to prisoners in the national languages and in other languages so far as it is reasonable and practicable. This Rule is new. It is important for the effective application of the Rules in practice.

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Member of the Committee for Co-operation in Prison Affairs

Part II: The management of prison systems

Part II of the European Prison Rules deals with the arangements which should be made for the reception and accommodation of prisoners, for their physical, spiritual and social needs and for the maintenance of discipline and control in penal establishments.

The Rules governing the reception and registration process no longer require that a register with numbered pages be maintained as a record of prisoners received, instead, Rule 8 merely requires that "a complete and secure record . . . shall be kept". This takes account of recent advances in information technology and the increasing use of computers which can provide management at all levels with immediate access to a wide range of information about the prison population. This section of the Rules has also been extended to include, in Rule 9, a reference to the need for reception procedures to take account of the fact that those committed to prison are likely to have personal problems that require urgent attention. It is to the advantage of both

staff and prisoners that such problems are tackled as soon as possible after reception into prison and thereby help to reduce the level of anxiety and alienation. There are, of course, considerable organisational and resource implications but the arrangements which are made and the manner in which staff respond to the needs of prisoners at this time can have a significant influence on future relationships, attitudes and behaviour throughout the period of custody.

By including in this section a requirement for full reports and a training programme to be prepared for each prisoner, (Rule 10), added emphasis is given to the well established principle that preparation for release should begin as soon as possible after a person is received into prison. The aim should be to individualise the treatment of prisoners in an institutional setting taking account of their physical, mental and social needs. The custodial experience should provide the means and the opportunity for prisoners to change should they wish to do so. The details of each programme will depend upon a number of factors including sentence length, resources available and, not least, the attitude and capacity of the prisoner concerned.

Rules 11 to 13 are concerned with the principles to be applied to the inter-related procedures by which prisoners are classified and subsequently allocated to specific establishments or regimes. Rule 11, which provides guidance on allocation criteria, has been formulated in such a way as to accommodate developments in regimes, institutional design, resource management and other penological initiatives which would require, or would benefit from, some relaxation of the rules requiring separation of groups differentiated by age, sex or legal status. It is clear that this flexibility must be exercised with care and with proper regard for the status and needs of the prisoners concerned. Rule 12 now includes a specific reference to re-classification and thus reinforces the provisions of Rule 10 which require reports and information about prisoners to be kept up to date. This takes into account that diagnosis is an ongoing process and encourages establishments to recognise as well as encourage changes in attitude and behaviour. Rule 13 advocates the provision of discrete accommodation for the use of different categories of prisoners and to meet specific treatment needs. The extent to which the provisions of this Rule can be observed will depend on the number, size and design of establishments and the security and treatment needs of the prisoners. At a time when many countries are experiencing an increase in the size of the prison population, as well as an increase in the number of violent prisoners and those sentenced for terrorist activities, keeping these elements in a state of equilibrium is a daily preoccupation of prison managers and administrators. The operational reality is that the availability of discrete and dedicated accommodation may frequently fall short of that which would be required to give full effect to Rule 13.

It is an often stated and widely accepted principle that sufficient accommodation should be available to ensure that there is no enforced sharing of cells. Rule 14 acknowledges and reinforces that principle but at the same time recognises that there are circumstances in which it may be advantageous to provide for accommodation to be shared. The attitude of prisoners to cell sharing varies according to personal preference, institutional conditions and, perhaps, length of sentence. There are some, naturally gregarious people, who will always prefer to share accommodation rather than be on their own; others will be influenced by the extent to which they are able to mix with other prisoners at work or recreation and how long they are locked in their cells. Those who enjoy an open and active regime in the company of other prisoners are more likely to prefer the privacy of their own cells at night. In those establishments where the regime is restricted and there is limited opportunity for social inter-action more prisoners are likely to favour cell sharing. Objections are likely to be reduced where integral sanitation is provided. Some prisoners, regardless of regime considerations and general living conditions, undoubtedly find it very stressful to be locked alone in a cell and in these circumstances cell sharing can be an important factor in reducing tension and, in extreme cases, reducing the risk of suicide.

Apart from the personal needs and preferences of individual prisoners, there are more important managerial considerations which bear upon the issue of accommodation sharing. Responsible resource management requires that the optimum use is made of all available accommodation. There is a general move towards the provision of single cells or, exceptionally, purpose designed double cells, but many prison administrators are left with a residue of dormitory accommodation which, because of financial considerations and sustained population pressures, cannot simply be discarded. Rule 14 provides a clear indication of the standard to be achieved and at the same time recognises the operational realities and imperatives. Rules 15 and 16 provide guidelines for the development of technical specifications which define the standard of accommodation to be provided to meet local needs and to reflect local conditions.

Rules 17 and 18 deal with sanitary and bathing installations. The 1973 version of those Rules was mainly concerned with the adequacy of provision whereas the new Rules place greater emphasis on the need for prisoners to have improved access to these facilities. The standard of maintenance and cleanliness of an institution has a considerable influence on the morale and quality of life of both staff and prisoners. It is therefore appropriate that Rule 19 has been amended to require that the whole institution, and not only that part occupied by prisoners, should be kept clean and properly maintained. This recognition of the need to improve the working conditions for the staff of institutions is long overdue and particularly welcome.

Rules 20 to 25 deal with personal hygiene, clothing, bedding and food and the text is little changed from that which was contained in the 1973 version of the Standard Minimum Rules. The Explanatory Memorandum places considerable emphasis on the importance of food not only to the health but also to the morale of prisoners. It urges those concerned with the management of prisons to pay particular attention to the quality, presentation and variety of food taking into account ethnic needs, the training and supervision of the catering staff, the need for consultation with health authorities and for the involvement of the institutional medical staff as a matter of routine. No-one with the experience of institutional life or with the management of prisons would doubt the wisdom of that advice nor underestimate the seriousness of the consequences of failing to follow it.

Similar considerations apply to the provision, nature and quality of medical services to which Rules 26 and 32 apply. A number of minor textual amendments have been made but there have been no changes of substance. The duties and responsibilities of the Medical Officer remain largely unchanged though the opportunity has been taken to remove the requirement for the Medical Officer to advise upon the observance of rules relating to physical education and sports. These activities are now the subject of more extensive treatment in Part IV of the Rules.

Rule 32 directly links the medical services of the institution with the resettlement of the prisoner after his release and requires that the full range of medical services available in the community be provided to meet the particular needs of the prisoner. This provision reinforces the principle that the quality of medical care available to prisoners should be no less than that which prevails in the community at large. It is important that the institutional medical staff keep abreast of professional developments, particularly those concerned with transmissable diseases such as AIDS. The Rule also emphasises the importance of and the need for medical through-care. This process, which has not yet been fully developed, has special relevance to to the treatment of drug addicts and in this context there is a need to establish close links with outside agencies such as the Probation Service and other specialist support groups.

Guidance on the means by which discipline may be maintained and punishments administered is contained in Rules 33 to 40. The main changes are the enhancement of Rule 33 to set the need for discipline and control in the context of the treatment objectives of the institution, and a new requirement under Rule 35 to provide access to an appellate process. Whilst the former provision should present no difficulties to prison administrators, the latter may not so easily be accommodated. As the Explanatory Memorandum makes clear, there is no universal acceptance of the need for an appellate process and even if the need were to be accepted there may still be many organisational and resource problems to be overcome before a separate authority and the procedures for access to it could be established. This new provision signals the need for prison administrations to review the existing disciplinary procedures to determine whether the additional safeguards of an avenue of appeal is necessary or desirable in the interests of manifest justice.

Rule 37 prohibits collective, inhuman or degrading punishments and its centrality to the application of Rule 1 is reinforced by further emphasis in Rule 38. The principle and its application commands widespread if not universal support. Rule 39 prohibits the use of instruments of restraint as a punishment and, together with Rule 40, prescribes the type of restraint, the circumstances in which they may be used and the authority for their use. Of particular significance is the new requirement that when an instrument of restraint is used on medical grounds it should be applied not only on the direction, but under the supervision of the Medical Officer.

Rules 41 and 42 deal with the provision of information to prisoners and with the arrangements which should be made to enable them to make requests or complaints. The only change of substance is the requirement that prisoners should be given the opportunity to make requests or complaints daily rather than on weekdays only. In accordance with the 1973 version of the Rules the emphasis is on the importance of ensuring that prisoners fully understand their rights and obligations and on the need to provide an effective means by which requests or complaints can be dealt with fairly and expeditiously.

Closely associated with the institutional information and communications systems are the arrangements to enable prisoners to maintain contact with the outside world. Rules 43 to 45 incorporate amendments intended to give added emphasis to the need for managerial regulation of the means by which contact with the outside community can be strengthened and maintained. Rule 43 now requires that prisoners should be allowed visits as often as possible and that a system of prison leave should form part of the treatment programme. There is a tendency for prison populations to become increasingly multi-national and the need to give special consideration to the needs of foreign prisoners is reflected in the expanded text of Rule 44. This Rule, which requires that foreign prisoners should have access to their diplomatic or consular representatives, now includes a specific reference to the need for prison administrations to co-operate fully with these representatives in the interests of foreign prisoners who may have special needs. Rule 45 which deals with the need to provide the means by which prisoners can keep themselves informed of the news now requires that special arrangements be made to meet the linguistic needs of foreign prisoners.

Only minor changes have been made to Rules 46 and 47 which regulate the provision of religious and moral assistance to prisoners. Rule 46 has been modified to allow a prisoner to have in his possession both books and other literature necessary to satisfy his spiritual and moral needs. Rule 47 facilitates religious links with the outside community and establishes the right of access to a qualified representative of any religion. The new Rule also makes it clear that prisoners have the right to refuse to be visited by a religious representative.

There have been no changes of substance to Rule 48 which is concerned with the arrangements to be made for the handling of prisoners' property. The Rule requires that procedures should be established through which the stewardship of the personal effects of prisoners can be properly exercised and accounted for.

Rule 49 deals with the procedures needed to ensure that prisoners and their families are notified in the event of death, illness or transfer. There is no change in the provisions contained in the 1973 version of the Rules. Rule 50, which applies to the arrangements for the transfer of prisoners, has been changed only so far as to extend the prohibition on transport arrangements which would subject prisoners to either physical hardship or indignity.

Part II of the European Prison Rules provides a framework of minimum standards for the management and regulation of prisons in accordance with the basic principles enunciated in Part I. The functions and status of staff and the rules governing treatment objectives and regime delivery are more extensively dealt with in Parts III and IV respectively. ■

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Part III: Personnel

Part III does not seem to differ very much from the rules of the former Standard Minimum Rules (46-55). They are indeed basically the same as the new Rules (54-63).

Still the changes should not be underestimated, since they present a change of importance and approach towards staff requirements, not so much a change of content.

As it is said in the explanatory memorandum to the Rules the importance of staff, their functions and status have been increasingly recognised. Defining rules, introducing more liberal regimes, efforts to encourage prisoners to work positively towards their future life in free society, it is all a waste of time unless staff truly, ably and energetically co-operate.

It is the staff which creates the social atmosphere in prison. It is the staff, not the Rules or the facilities, which show interest or lack of interest in the individual prisoners.

Therefore it depends on the staff whether prisoners generally get along with each other and with the staff and whether they allow each other to engage co-operatively in activities and assistance made available to them.

The importance of staff has not always been as great as it is nowadays. In prisons where, by tradition, prison officers play a merely guarding rôle, where maintaining order and discipline are their major if not sole task and where organisation and management are built on these principles only, staff as it were are a continuation of the prison's physical structure, just needing good health, strength and alertness.

Social change however has not left prisons out. Prison conditions developed and the prison officer's function with it. The old-style prison does not and cannot exist any longer. Either prisons—staff, structure, regimes—are or become adapted to the overall social change or tension, conflicts, violence, riots will and already did arise and even prison officers have shown their discontent. So, within the limits of required security, a today's prison is or inevitably has to be an environment for living, working, learning, recreating, individually and socially. And nevertheless, it is and will remain a paradoxical environment, consisting of two groups of people, one still in charge of the other and against the other's will. There exactly lies the problem. How to make the wanted environment an environment of co-operation? The answer to that question is the quality of staff of prison officers in particular.

Of course, the quantities of staff are relevant too. In that respect the member States of the Council of Europe differ considerably. According to an article in the Prison Information Bulletin No. 4, December 1984, page 3 the number of personnel per 100 inmates varies between member States from less than 40 to more than 140. It might have been worthwhile to try and develop norms for the required numbers of staff in modern prisons. Differences however too are related to the size and type of prison buildings and their security levels. Because of the national differences in these respects realistic norms are difficult to define. However, from the rules about staff quality in a way some quantitative conclusions can be drawn. Maybe in the future explicit attention could be paid to matters such as staff ratio, size and structural requirements of prison buildings, differentiated norms for closed and open prisons and for levels of security. Up to now the European Prison Rules link up with the former Standard Minimum Rules in that they are restricted to matters of quality.

The increased importance of staff in that respect is stressed in the new Rules by introducing two new Rules (51 and 52) and two partly new Rules (53 and 55). The first two Rules accentuate the prison administration's responsibilities and the necessity of "training, consultative procedures and a positive management style" in order to further the staff's skill and attitude. Rule 55 even stipulates the importance of permanent education, especially desirable since nowadays in prisons and prison regimes changes are many and staff have to skillfully respond to them.

Rule 53 extends the old Rule (46/2) by stressing the significance of information of the public and the development of an active public relations' policy. This indeed is of high necessity. The prison officer's attitude and confidence in fulfilling his or her duties depends to a large degree on the public's opinion about what imprisonment means and what it seeks to do.

The Explanatory Memorandum elaborates on these matters. In essence Part III of the European Prison Rules show an improvement on the old Rules in that they are not restricted any longer to the humane guarding requirements of prison staff, especially prison officers, but that they demand a professional standard of staff, of prison officers in particular, who must be able to work with people and to assist them in finding their way back to society.

HANS H. TULKENS

Part IV: Treatment, objectives and regimes

This part dealing with the concept of treatment and the rules covering the main instruments used in applying it enlarges on the concepts embodied in the "basic principles" of Part I.

The aims of treatment are described in the light of major advances by prison research in recent years. As well as reiterating the intrinsic value of humanisation of the sentence, the essential *harmfulness* of imprisonment is indirectly pointed out by stating as one of the aims of treatment that of reducing the adverse effects of imprisonment to a minumum. Contacts with the family and the outside world are advocated as primary conditions for constructive treatment, while it is emphasised that the provision of such treatment does not automatically lead to social rehabilitation. In fact any regime activity merely increases the chance of rehabilitation without guaranteeing it; everything depends on the individual concerned and the receptiveness of normal society (65(d)).

The system of segregating prisoners is still regarded as useful, but is now flexible and informal and recommends the use, wherever possible, of open institutions with ample opportunities for contacts with the outside world (67.3). The work of the Select Committee of Experts on dangerous prisoners, which gave rise to Recommendation No. R (82) 17 concerning custody and treatment of dangerous prisoners, stresses that it is preferable to use moderation in classifying dangerousness and to adopt as few custodial measures as security will allow.

As in the past, the expediency of prisoners' involvement in the treatment applied to them is emphasised, and a new rule (70.1) recommends that preparation for release should begin as soon as possible after their reception.

Rules on prison leave and non-discrimination between nationals and aliens are laid down by the new European Prison Rules derived from specific recommendations of the Council of Europe.

There have been no radical changes in the rules applying to prison work apart from the reference in Rule 72 to modern principles of management and organisation of production, whereas the rules on education have been completely updated. For instance, new rules state that education is to be placed on the same footing as work if it is part of an individual treatment programme (78). The rule on libraries (formerly 40) has been appositely included in the same paragraph (82). It stresses the expediency of establishing a link between the prison library and community library services.

Physical education, sport and recreation, which were formerly covered by a single rule, are now the subject of a whole paragraph. Its four rules indicate the importance of organising physical activities with proper facilities meeting the special psychological and physical needs of people serving custodial sentences.

As to pre-release preparation programmes, the content of the new rules is amplified compared to the old ones by a more realistic outlook as to what can be achieved for instance in respect of employment for released prisoners. Former Rule 81.2 stipulating the duty to provide accommodation and employment inter alia has now been transformed to the effect that the prisoner must be "assisted" (89.2). This alteration stems from a realistic analysis of the employment situation in Europe. It should also be pointed out that active relations between the various agencies dealing with the difficult post-release stage are indispensable.

Part V: Additional rules for special categories

Laying down rules for each category of prisoners as in the former rules certainly does not mean establishing a special and exceptional set of rules. Indeed, Rule 90 states at the outset that all the rules in Part IV must also be applied as far as possible for the benefit of certain special categories, and that they are strictly additional.

As regards remand prisoners, who should be only exceptionally and briefly present in the prison system, despite which they are detaned in large numbers and for long periods in certain countries, the new rules are generally in line with the old ones. There is a new rule (92.3) on the private life of the prisoner, who in general cannot be compelled to have contacts with the family and the outside world. Also to be noted is a major change prompted by experience as regards the arrangement of cells; Rule 94 now makes it possible to avoid solitary confnement in case of potential danger (eg risk of suicide).

Rule 99 corresponding to former Rule 94 is no longer entitled "Condamnés pour dettes" ("Civil prisoners") but "Condamnés par une procédure non pénale" (C"Civil prisoners"). The content is unchanged, although the omission of any formal recognition of a type of sentence less and less commonly used in the judicial systems of European countries was contemplated.

The provisions on insane and mentally abnormal prisoners are virtually unchanged.

In conclusion, there are now 100 new European rules compared to the former 94. Fifteen are new, while 9 old provisions have been deleted (1-4, 57, 84.1, 85.2 and 87). ■

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CORRECTION PROGRAMMES
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- Maintaining the growth of the existing Juvenile Detention Resource Centers and expanding their workshop presentations, while establishing a new Detention Resource Center in the West.
- Establishing three Juvenile Training School Resource Centers.
- Developing and testing an orientation training curriculum for juvenile careworkers.
- Presenting a Manager/Mid-Manager workshop for detention managers using the curriculum developed by NJDA.
- Developing a substance abuse resource guide for juvenile corrections administrators.
- Conducting a juvenile corrections and detention forum.
- Continuing to provide both detention facilities and corrections agencies with technical assistance.
- Facilitating information exchange and increasing networking among leaders in the juvenile justice field.
- Providing training and resource materials to juvenile justice professionals on AIDS-related issues. This project includes presentation of a major conference and two training workshops.

The American Correctional Association feels privileged to have so many members who are actively involved in the field of juvenile corrections. We are fortunate to be able to look to these members for advice and counsel and are committed to assist the field in any way possible.

When Cook County first began the juvenile justice system in the late 1800's, the answers to society's troubled children seemed clear. Based on the thinking of Jane Addams and her work in Chicago's Hull House the juvenile court was committed to the social work model. As society has changed and the effectiveness of this approach has been challenged the system has changed dramatically and yet the juvenile justice system remains. Debate continues over issues within the structure and over the existence of the system itself. But one thing appears clear: Every generation has produced young people who break the law. As a civilization it is our responsibility to remain committed to changing the thrust of these young people's lives. The fields of juvenile corrections and detention have been given this responsibility. It is a great challenge and I am sure the professionals in this field will continue to meet it. ■

Privatization and British Prisons–Past and Future

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On March 30 1988 the Home Secretary told the House of Commons that he intended to consult widely about the private sector becoming more closely involved in the running of prisons. (Weekly Hansard Issue No. 1444 columns 1083-5). Mr Hurd's announcement followed the setting up of a parliamentary committee of seven Conservative and four Labour members and a report representing the views of the Conservative majority of the committee to the effect that the role of private contractors shoud be urgently encouraged in the prison system. (Home Affairs Committee Fourth Report. Session 1986-7 H.C. 291). The Labour members of this committee voted against adopting the report.

This report referred extensively to The Corrections Corporation of America which manages around half of all those American prisons run under contract by entrepreneurs. The report writers argued that they wished to see experiments in contract management in British prisons subject to stringent public inspection and denied that this was 'privatization'. They argued that The Corrections Corporation of America was a highly efficient builder and manager of prisons which provided a wide range of services to inmates and they rejected the arguments of the Prison Officers' Association against contract management. In particular they criticised the notion that the state should remain the sole provider of a prison system which they believed required major reforms.

In their attack on public monopoly of prisons the report writers therefore urged that 'problems of out of date and overcrowded prisons' could not be overcome by the present system that 'given the long standing squalor of the state provided system (of remand) there is no reason to suppose that privately managed institutions could not improve conditions to the benefit of inmate and public alike.' (Report p. vii). Subsequently the Home Secretary made clear that he was concerned by the large number of remand prisoners held in police cells and linked this to industrial action by prison staff. Against this background he dismissed opposition complaints that contract schemes were 'irrelevant nonsense'. (Weekly Hansard Issue No. 1444 column 1086).

The running of prisons has been a a state monopoly for a long time. Even before the 1877 Prisons Act which centralised the administration of English and Welsh prisons under the London based Prison Commission, initially chaired by Sir Edmund Du Cane, the county and borough magistrates who had charge of the local gaols and houses of correction had no doubt that the state should be solely responsible for the administration of the prisons. Their objection to the 1877 Act was not that it represented a new theory of state control rather that it required a different kind of state control, the replacement of local by central mechanisms of management. Indeed we have to go back to the turn of the eighteenth century before we encounter a widely held notion of entrepreneurial prison management.

John Howard, for example, found many prisons run as enterprises for profit in the late eighteenth century as he toured the prisons recording voluminous detail about them. Most commonly he found prisons where tables of fees were drawn up according to which the "keeper" or "gaoler" would provide such things as bedding, food, alcohol; even discharge from prison could be charged even though no legal justification for further custody existed. It was typical of many prisons that the gaoler was bound by articles to carry out certain functions such as secure custody or delivery to court but for the rest he (or she as at Exeter) was in the business of prison management as a private enterprise. Indeed Howard found some prisons which were regarded as the actual property of a private individual.

This was in keeping with much legal and social policy in the eighteenth century. For example workhouses were often contracted out to entrepreneurs in the early eighteenth century and and these hoped to profit from paupers' labour. Lunatics were frequently placed in private madhouses which were undertaken as a profit making enterprises. The apprehension of criminals was often undertaken as a profitable livelihood, encouraged by such statutes as that of 1692 guaranteeing £40 for apprehension of a highwayman or that of 1741 offering £10 for securing conviction of offenders killing animals unlawfully.

In prisons, therefore, the state monopoly of administration has not remained constant through history. Admittedly it has seemed like this for over one and a half centuries but it is clear now that during the years ahead there will be great pressure upon those who wish to retain public monopoly of prisons to reconsider their view and to accept some private management in the prison system.

The principle of state management was indeed the subject of virulent dispute by the end of the eighteenth century. It was agreed by all that the prisons were an unworkable mixture

of public and private management principles and battle was joined between those who wanted state run prisons and those who wished private contractors to manage.

John Howard and the well organised evangelical and Quaker reform movement which came after him demanded that prisons be staffed only by salaried officials of the public authority superintended by committees of benevolent impartial men of known moral worth and public spirit who would ensure adherence to law in the prisons and promote schemes of reformation. These writers based their arguments on two main grounds, firstly that prisoners were subjected to inhumanity and cruelty as an endemic feature of entrepreneurial government of prisons and secondly that only the public trustees and their salaried staff would have the probity and high sense of mission necessary to ensure rehabilitative programmes of training, Christian ministry and impartial discipline. They argued that in the unreformed prisons, where the entrepreneurial motive was strong, prisoners wallowed in unrestrained association and vice behind the walls of the prison (provision of drink or other indulgences being profitable to the gaoler) and that this led to moral debasement and criminalization.

These assumptions were challenged by the philosopher Jeremy Bentham who in the late 1780's embarked upon one of the main projects of his life, the promotion of privately run prisons which he called Panopticons. From 1787 to 1811 Bentham argued his case persistently and came close to persuading the government of Pitt the Younger into implementing his scheme.

Bentham argued that the public management lobby was entirely mistaken in its claims. He wanted prisons to be built and run by a private contractor who would be bound to adhere to a detailed contract containing itemised financial reward and penalty clauses which would make it in his interest and that of his employees to carry out the wishes of the state. Thus the contractor, the first of whom would have been Bentham himself, would receive a fee for each prisoner and profit from the labour of prisoners, but if there were escapes or if a prisoner reoffended, thus showing the insufficiency of the reformatory endeavours of the contractor, he would be fined under the terms of the contract. Bentham's hugely complex contract therefore required the entrepreneur to act in such a way that the satisfaction of his needs would coincide with the meeting of the needs of the state and of the prisoner, a scheme based on Bentham's assumption that all men do what gives them pleasure and avoid doing what gives them pain. The state would have a duty of inspection and Bentham wanted unrestricted public access to his panopticons so that the people themselves would keep watch on the contractor.

Bentham very forcefully pressed the advantages of his scheme. It would he said, be cheaper than public management. The contractor and his employees would be induced by financial rewards to adhere rigidly to the contract. Everything would be open to inspection. The prisoners would naturally work hard and be enthusiastic because effort and obedience would be rewarded. Staff numbers would be held down to no more than necessary in contrast to public management which was characterised by "an unfrugal practice . . . keeping of more cats than will catch mice". (Bowring vol.4 p58). The greater the success of the contractor the greater his fees. Flexibility and adaptability would naturally flourish in a market place where contractors competed for the fees of the state and the profit of prisoners' labour.

Bentham thus attacked the public model. He urged that it was inherently flawed because public officials on fixed salaries had nothing to lose by being inert and negligent. In the prisons of the time therefore, it was wholly surprising to Bentham that the magistrates and judges, who did in fact have a duty of inspection, neglected this for, according to his theory, it was not in their interests to do anything else. In the same way there would be a lack of energy on the part of the honorary visiting magistrate or trustee which would be concealed by defensive claims of public spiritedness: "I am a gentleman. I do your business for nothing. You are obliged to me . . . I am to get nothing for this. I despise money. I have a right of confidence . . . leave me to myself. Never mind me. I'll manage everything as it should be. I don't want looking after. Don't you put youselves to the trouble". This Bentham saw as specious hypocrisy and believed that the position of the contractor was much more realistic and honest: "examine me as often as is agreeable to you, gentlemen . . . I'll go before any court you please . . . if you catch me doing the least thing whatever that should not be, let my Lord Judge say go and out I go that instant. (Bowring vol.4 pp 130-1)

Bentham's scheme was decisively rejected by a parliamentary select committee which reported in mid 1811. By then opinion had swung against privatization of the prisons and a number of members of the committee such as William Wilberforce and George Holford were already committed to the public management model. The committee as a whole were especially swayed by magistrates of Gloucestershire and Nottinghamshire who had pioneered Howardian regimes under the superintendence of magistrates' committees and run by fixed salaried public employees who were forbidden to charge fees.

The select committee pointed to the dangers which members saw in Bentham's plan. They feared that the contractors who succeeded Bentham would lack his probity and that peculation would flourish over such matters as contracts for food for prisoners. They feared that "pecuniary advantage" would outweigh rehabilitation, especially since prisoners' labour would be a major source of income to the contractor and therefore education and Christian ministry would be neglected in favour of it. They also suspected that the contractor would ignore grievances and complaints of prisoners since it was not in his interests to consider these. They also felt that Bentham's scheme of external inspection was weak and that the employees of the contractor would not dare to complain to him or the public inspectors about conditions because they would lose their jobs. In short therefore, the members believed that in the event the contractor would overlook all but his wish to maximise profit and that no inspection system could prevent this. Neglect and abuse would become endemic and rehabilitation would be swept aside by the pursuit of profit. (Penitentiary Houses Committee. Parliamentary Papers pp 1810-11 volume 3).

The entire British prison system from 1811 to the present has therefore been based on the model of public management involving some unsalaried people of reputed probity (e.g. visiting magistrates) and a large proportion of publicly salaried staff. This came about because it was assumed that the state alone was competent to prevent neglect and cruelty and to create and maintain reformatory systems of prison discipline.

Regarding the reformatory aspect there have been a plethora of schemes. There was the notion of cellular isolation and spiritual rebirth known as the separate system in the 1840's, the Borstal system of Sir Evelyn Ruggles-Brise and Sir Alexander Paterson, the projects and enthusiasms of the interwar years, the promotion of psychological treatment and industrial training in the post war era. Yet many remain suspicious that government has never effectively resourced or committed itself to these schemes and certainly the actual evidence of their capacity to reduce reconviction rates has so far eluded discovery.

It must be at once pointed out however that this does not discredit modern reformatory projects. The work of prison staff of all grades in these has been of huge importance in recent times. Indeed Winston Churchill correctly referred to such endeavours in 1910 as "the symbols which in the treatment of crime and criminal mark and measure the stored up strength of a nation and are sign and proof of the living virtue in it" (Hansard 5th Series volume 19 column 1354). Whether entrepreneurs would do any better will doubtless again be the subject of dispute although there is less faith today in rehabilitative programmes in prisons than there was in Churchill's time and concern over this matter is unlikely to be as intense as it was.

It is over the issue of standards of care in an overcrowded prison system that the debate will be most keenly waged. Convinced adherents of public management will clearly be concerned about the capacity of the entrepreneur to evade the inspection of the state whilst those who support private enterprise will point out that under the present system in the local prisons conditions are such that three are confined to a cell for long periods of the day and at night with slopping out, boredom and tension. The public management school will claim, as was feared by the 1811 committee, that private contract, although at first sight a beguiling solution to the problems, is in fact a short term and in the long run ineffective nostrum for difficulties which it is the duty of the state alone to confront. The private contract supporters will argue that inertia, inflexibility and inability to respond effectively to new pressures are endemic flaws of public monopoly of prisons, as Bentham argued, and will add that morale of prison staff is in their view declining as overcrowding pressures them into a mere turnkey function in local prisons. Private contract, they will add, would give a real opportunity to respond flexibly and innovatively to the problems posed by overcrowding and they will ask what harm can there be in an experiment with, say, one or two privately run prisons.

The dispute between public management and private contract in the early nineteenth century was characterised by a reluctance on the part of each side to consider seriously the arguments of their opponents. Each assumed that the other was wrong and indeed passions ran very high. So angry and distressed was Bentham by the rejection of his plan that he wrote: "I do not like to look among Panopticon papers. It is like opening a drawer where devils are locked up—it is like breaking into a haunted house". He was indeed convinced that George III had conspired with the government to destroy his scheme (Bowring vol. X p 250, vol. XI p 96). Today it is likely that there will be bitter and passionate argument for there is no doubt that prison privatization reaches to the heart of the current dispute between supporters of collective state provision and advocates of private marketing of social and welfare provision.

This strength of feeling may make it difficult for constructive dialogue to take place between those who hold such very different views. Yet it is important that the Prison Service does bring to bear its long experience and stored up wisdom to bear on radical alternatives to accepted practice in a thoughtful and informed way. There can be no doubt that the debate which last took place in 1811 has now begun again this time closely watched by a Prime Minister very well disposed to the principle of privatization and likely to reject derisively any blanket claim that privatization is unnecessary or irrelevent. This is in contrast to the situation in 1811 when the tide was strongly running against private prisons to the extent that the findings of the committee were in reality a foregone conclusion. Time will tell whether Jeremy Bentham's haunted house will, so many decades and governments later, at last be opened for business. ■

Reference

The Bentham references are all to: J. Bowring **The Works of Jeremy Bentham**, Edinburgh (1843).

HISTORY *continued from page 22*

were sent into the bush to shoot anything edible they could find but they only managed a few crows and an occasional kangaroo.

After some years, however, with the success of further crops, the colony began to thrive and expand. Further fleets arrived with a greater number of artisans than had previously been the case and as a result a building programme was started.

As time went by many of the convicts completed their sentences, were given grants of land, married and began to raise families. More free settlers arrived from Britain and eventually they decided they wanted no further convicts in their community. Therefore transportation to New South Wales ended with the arrival on Christmas Eve 1849 of the *Adelaide* from London, after a voyage lasting 129 days.

Convicts had been arriving in Van Diemen's Land since 1812 and continued to be sent there until 1853. The last ship to arrive there was the *St Vincent* of 630 tons from Spithead via Gibraltar, her voyage having taken 128 days

From 1803 until 1849 transports had also been sent to Port Phillip in the south of Australia, the last ship, the *Adelaide*, arriving on 13th December 1849.

From 1840 to 1847 a limited number of convicts arrived at Norfolk Island, the last ship being *Eliza IV* via Hobart having taken 127 days.

Two transports only were sent to Moreton Bay, the *Mount Stewart Elphinstone* on 1st November 1849 and the *Bangalore* on 30th April 1850.

From 1850 until 1868 all further transports went to Western Australia, the final ship being the *Hougumont*. Capt. Wm. Cozens, arrived at Perth on 9th June 1868 after a voyage of 89 days.

There have been various estimates of the total number of convicts who were transported between the years 1787 and 1868, but it is generally agreed that the figure must have been around 157,000 of whom at least 13,000 were females. Whether or not it served any useful purpose is debatable, but in the words of Herman Merivale, Professor of Political Economy at Oxford 1837-1842 'As a means of making men outwardly honest, of converting vagabonds, the most useless men in one country into active citizens of another and thus giving birth to new and splendid centre of civilization, it has succeeded to a degree unequalled in history'. ■

Criminal Law, Criminality and Penal Policy in a Socialist State

Friedbert Krebs

British criminologists are apt to coin the phrase "Marxist criminology" as a shorthand term which gathers together the philosophies of a number of radical commentators under a convenient label. There is seldom an attempt to relate the theory to other than domestic penal practice. There is little in the literature available in English that addresses the subject matter of this article. Friedbert Krebs is a lawyer and a diplomat, presently working in London. Part of his work has involved him in visiting British prisons and a detention centre.

It is the express affair of socialist criminal law that crimes should not only be punished but also prevented Is such a task realistic in the fight against crime? Many criminologists in the West support the thesis that in highly industrialised countries there will be an inevitable rise in crime as technology and urbanisation progress. In contrast, the socialist world considers that it is possible to achieve real advances in combating crime under the conditions prevailing in this order of society, visible proof being rendered for this in the GDR.

Fall in crime rates

Since 1945, the total number of criminal offences has declined by more than two thirds. Up to 1948 the average annual total of criminal offences reported in what is today the GDR was registered as approximately 472 000. For the 1950s it was about 157 000 and at present the figure is 110 000.

Many of the worst forms of serious crime have been eradicated in the GDR -banknote forgery, white slavery, bank robbery, drugs offences and kidnapping have not been seen for a long time.

Of the total number of punishable offences committed, only 5 per cent are true crimes and of the remaining 95 per cent many are only minor offences which can be handled by lay courts. Lay courts are established, often in the work place, and comprise elected chairmen and representatives of the work force. However, it would be illusory to believe that it is possible to eradicate crime root and branch in the in the process of transforming society along soclialist lines.

Tasks and functions of socialist criminal law.

The Penal Code of 1968 forms the legal basis for combatting punishable offences.

Socialist criminal law is not only intended to punish offenders justly, but is mainly concerned with the prevention of crime. It calls on everyone to take an active part in preventing and detecting crime, removing the causes and conditions for it and bringing the guilty persons to justice.

Of course, the Penal Code contains exact stipulations on what actions are considered as punishable offences (for instance, theft, fraud, assault and battery, etc.) and what penalties may be imposed. In 1975 a number of amendments to the criminal law were put into force, chiefly designed to

increase the effectiveness of probation sentences, compensation for the damage caused by the offender playing a greater role than in the past and offender's duties vis-a-vis the court and society being defined in more concrete terms.

Many out-dated criminal law provisions were replaced, because they had no place any more in the socialist society of the GDR or because they were an expression of obsolete modes of thinking and narrow-minded moral standards. Thus the Penal Code of the GDR no longer contains any laws penalising adultery. Laws punishing male homosexuality were also abolished.

GDR law and international law

GDR criminal law conforms to the standards of international law. The generally accepted norms of international law relating to the punishment of crimes against peace and humanity and war crimes are directly relevant in the context of the history of the GDR. Accordingly, the Penal Code lays down exactly what punishments are fitting for such crimes.

Take, for instance, the case of the former SS Obersturmfuhrer Heinz Barth who was put on trial in the Berlin Municipal Court in 1983. A member of the Nazi police force, he was involved in the murder of 92 hostages in Czechoslovakia back in 1942. In addition, he was one of the officers of an SS unit which razed to the ground the French village of Oradour-sur-Glane near Limoges on 10 June 1944. The villagers were either shot dead or driven into the church and burnt alive. Following systematic investigation, he was identified in the GDR in 1981 and arrested. The court sentenced him to life imprisonment.

Respect for human dignity

The aims and objectives of the GDR's criminal law are humanitarian in accordance with socialist society.

The fundamental principle behind GDR criminal law is **nulla poena sine culpa, i.e. innocent until proven guilty.** It is essential before any conviction is made that the guilt of the accused be proven beyond any shadow of a doubt. In the GDR it would be unthinkable for innocent people to be sentenced to lose their freedom for decades because of thin circumstantial evidence or unfounded testimonies. Section five of the GDR Penal Code states quite clearly and unambiguously that a person is considered guilty if he commits what is defined by law as being a crime or offence, if he does this through irresponsible behaviour and if there were any reasonable possibilities open to him of acting otherwise. Further stipulations define the two sorts of guilt: intent and negligence. The consistent application of the principle of fully proving the accused's guilt is one of the main ways of guaranteeing the individual citizen's rights and human dignity in criminal proceedings.

An action can only be punished as a criminal offence if there is a law which expressly states that it is an offence or a crime and if the action has all the characteristics defined in the law as constituting a crime. The only sentences that can be passed are those which the law defines for the respective deed. The Constitution guarantees that no criminal law is introduced with retroactive force. An action which, when it was carried out, was not punishable by law can not be punished later on.

Nobody may be dealt with as guilty of a crime until his guilt has been proven and declared beyond any shadow of a doubt in a court of law. It must be proven in criminal proceeding that an accused has committed an offence and acted culpably. The principle of "presumed innocence" and **"in dubio pro reo"** (if there is any doubt, the decision is made in favour of the accused) is applied. It is inadmissible to impose the burden of proof onto an accused, i.e. accused persons are not required to prove their innocence. The right of defence is not limited in any way. The accused has the right to acquaint himself with the exact nature of the charge and the evidence against him.

Punishment is not revenge

Respect for human dignity, which socialist society also practices towards the offender, is a vital part of the administration of justice and the execution of the sentence. In prosecution proceedings the rights of the citizen are only allowed to be limited as much as is legally permissible and absolutely necessary. Revenge is not taken on the wrong-doer. The state takes no retaliatory measures. The reformatory nature of the GDR's criminal law makes it impossible that sentencing should have as its aim the physical or mental suffering of the offender, or his degradation and humiliation. Such misanthropic theories as of the "born criminal" or "criminal type" are resolutely rejected in socialist society as well as in the West.

Criminal law is based on the idea that every offender can become a useful member of society, providing the gravity and atrocity of their crime does not place them completely outside the pale of society. This is why we act on the principle that in order to re-educate an offender it is by no means always necessary to impose a term of imprisonment. The very classification of punishable offences takes account of this. On the whole, indictable offences may be punished with sentences of more than two years. Summary or lesser offences are generally handled in a way which involves no imprisonment, but criminal proceedings before a lay court. More serious misdemeanours may be punished by imprisonment, but never for a term of more than two years. Examples of indictable offences are the planning of wars of aggression, acts of terror, murder and manslaughter.

As far as determinate sentence is concerned, the maximum term is 15 years and the minimum term is six months, in exceptional cases three months. In the majority of cases sentences that do not involve deprivation of liberty are used, about a quarter of all offences being dealt with by lay courts. Non-prison sentences include probation, fines and public reprimand. Probation is aimed at encouraging the guilty person to prove that he is a worthy member of society and to make good the harm he has caused.

Juvenile delinquency and the penalties involved

The rate of juvenile delinquency has for years been showing a downward trend-even more so than the crime rate in general—but, nevertheless, much is being done in the GDR to prevent the danger of any criminal activities.

An important role is played by the youth welfare service in the field of juvenile delinquency. In most cases this welfare service suggests to the judicial authorities that, in keeping with the law, proceedings be waived and better care, guidance and training be provided for the young persons involved. One possible educational measure consists in sending the juvenile to a young offenders home, an establishment run completely by the Ministry of Education and not being an institution of the police or the judiciary. In such homes there are no police guards and the juvenile delinquents are educated and supervised by experienced teachers. The period

spent there cannot be regarded later on as a "previous conviction". The young person is sent to the home to be educated, job-trained and brought to respect the normal standards of the community.

Sections of the Penal Code regulate the special features of juvenile proceedings and the responsibility under criminal law of young offenders, taking into account their background and the fact that young people's insight into the nature of social norms and requirements is only just starting to develop.

Even when young offenders are brought before the court, the usual penalties applied do not involve imprisonment. The emphasis is on legal stipulations which are aimed at rehabilitating the offender through his own achievements, for example, making good the damage caused by the crime, performing socially useful work or completing a course of vocational training.

In cases where it is necessary to sentence the juvenile delinquent to a term of imprisonment, he is sent to an establishment exclusively designed for young people. The educationalists working at such establishments are especially suited for the work and have undergone a course of training in education and psychology. The law states that general and vocational training must be provided. It is meant to make the young offender capable of behaving responsibly in the future by means of general school education, vocational upgrading, civics education, cultural pursuits and sporting activities.

Imprisonment and re-integration

Of course, imprisonment is always a hard blow to one's personal life. The purpose of prison is to have a positive effect on the criminal so that he draws the correct conclusions from his errors and that he is enabled to find an equal place again in society. This is the principal idea behind prison sentences in the GDR. The main means of rehabilitation is work, sensible work together with other prisoners in teamwork. Prisoners' capabilities, vocational experience and other skills are taken into account when work is assigned to them. Medical care and supervision are constantly on hand. Prisoners' work is remunerated. The wages are basically the same as those of a free worker. A certain proportion is deducted for board and lodging. Part of the wages is sent to the prisoner's family for their upkeep. Another part is given to the prisoner as a monthly allowance for additional shopping and the remainder is put into savings which are handed to him when he is released. The humanitarian aims of sentencing in the GDR can be seen in the fact that job training and skilled worker's training are both part of the re-education programme.

The court can remit part of the sentence if it believes that the prisoner has developed positively and the aim of the sentence has been achieved. At the same time, it lays down a parole period of between one and five years and it can also give the released prisoner certain duties to carry out such as one finds in probation cases. Central government may also declare an amnesty and thus order the release of particular classes of prisoner to the community at any point during sentence (1).

All the efforts made to rehabilitate the offender while in prison would be useless and pointless if society were to reject him when he is released or if the responsibility of the state and of society were to stop at very moment he steps through the gates of the prison. This is the basic idea underlying the Act on the Re-integration into the Life of Society of Citizens Released from Prison in its revised wording of 1977. According to that law it is the state, and particularly the town and village councils, that are responsible for ensuring all the measures necessary for the re-integration of such persons. They are required to provide the released prisoner with suitable working conditions and training, and, if need be, find him a place to live. For young people they must ensure that any training begun in prison is to be completed.

Footnote

The amnesty is a device frequently employed in the jurisdictions of continental Europe, east and west. The most recent in the GDR was drawn up in the following terms and took effect on the order of the Council of State.

1. The general amnesty declared on the occasion of the 38th anniversary of the founding of the German Democratic Republic shall apply to those individuals who have been sentenced to punishments either involving or not involving detention, which are final.
2. Individuals who have been sentenced to punishment involving detention shall be released from prison. The sentence shall not be executed, if execution has not yet started. Punishments not involving detention (conviction on probation, public censure and pecuniary penalty as the main or additional punishments) shall be remitted if they have not yet been put into effect. Other additional punishments and measures of rehabilitation ordered by the court shall persist. The amnesty shall not waive damage claims.
3. Preliminary investigations against individuals and criminal proceedings not concluded as final, which were started before 7 October 1987, shall be dropped, if there are no reasons for exclusion that are contrary to the cause of the amnesty and if the comprehensive detection of the crime is ensured during the period until the conclusion of the amnesty.
4. Release from prison and pre-trial confinement shall be conducted from 12 October to 12 December 1987. Releases shall be thoroughly prepared. Rehabilitation shall be provided under the Rehabilitation Act of 7 April 1977. The local councils shall ensure the rehabilitation of those granted amnesty by integrating them into the work process on an equal footing and by taking into account the qualification they have, by assisting them in taking up and continuing to attend qualification courses, by making available housing accommodation and by organising social care and assistance.
5. If individuals who have been granted amnesty are sentenced within three years because of an offence wilfully and knowingly committed, the so far not executed punishment shall be executed in addition or the discontinued criminal proceedings shall continue.
6. The Chief Public Prosecutor of the GDR, in co-operation with the heads of the central judicial authorities and security organs, shall ensure the implementation of the general amnesty and shall report about it to the Council of State. ■

The Journal will complement this account of penal policy in the German Democratic Republic with a piece about the same subject in its Western neighbour in the Federal Republic. It is hoped that the article will appear in our next issue.

INTERNATIONAL TRAINING FOR PRISON MANAGERS

CAROL SCOINES

Training Adviser
Training Services Division—
Crown Agents

In chilly February a group of men from very much warmer climates shivered their way into Hove in Sussex—ten delegates from their respective Prison Services, as far apart as Turks and Caicos Islands (West Indies) to Malaysia. This was the start of another Training Course on Advanced Prison Management, for overseas prison staff. These courses, derived from those previously offered in Wakefield, have been developed between the Crown Agents and HM Prison Service, and are now an integral part of the standard courses run annually in the UK by Crown Agents' Training Services.

Since the first in 1982, some sixty visitors have been trained in Prison Management Techniques. The class of '88 included Superintendents and officers from Botswana, Malaysia, Turks and Caicos, Mauritius and Uganda and Head Office staff from Zimbabwe. Previous years have also seen delegates from the Pacific Islands and the Indian sub-continent. Many go on to be promoted and are instrumental in sending colleagues for training, having found it beneficial themselves.

The courses are held at a centre on the south coast. Hotels equipped for training, with conference rooms, audio visual aids and good facilities for long term visitors are carefully selected. More importantly the quality of service and friendliness of the staff are supremely important factors to ensure the success of the whole training experience and great efforts are made by everyone involved.

All the delegates must have single study rooms with private bathroom, TV etc, and a routine for meals, coffee breaks etc is quickly established. We invariably and inevitably encounter initial difficulties over meal arrangements. Simple problems, like Moslem diets and individual preferences are easily and quickly overcome. More intriguing are the sympathies for our Moslem visitors during the period of Ramadan and the cutlery needs of the stricter sects. It is always the case that with discussions and understanding the hotel staff are most sympathetic and put themselves out to cater for every reasonable requirement. Indeed, most of the staff have found it educational and have become experts in dealing with overseas visitors—an important element in the selection of the training centre.

The course is designed well in advance and follows a well defined pattern, based on previous successes, but with continuous refinements reflecting evaluation, changing situations and the individual needs of the course delegates.

The training lasts nine weeks, and is frequently supplemented by attachments, after completion of the formal programme. The curriculum consists of four main elements:

Operations

1 Development of the Prison Service
Techniques and skills for the operational management of a prison

2 Management of Staff
Management of prisoners
Human Resource Development

3 Attachments and practical training
Visits to various types of establishments

4 Preparation of individual action plans to be implemented at home.

Within these four broad areas the topics covered include organisational structure, peripheral bodies, incident control, control of drugs, assessment of prisoners, prison industries, HM Inspectorate, contingency plans, manpower management, training, recruitment, communications, presentation skills, and many more that arise outside the formal programme, as a result of exercises or experiences during attachments and visits.

It has to be remembered that many of the most routine operations in UK prisons are quite unfamiliar to many delegates from developing countries. It is always refreshing to see the enthusiasm for a topic that may seem passé or of diminished relevance to the situation in more advanced systems. Indeed this is the contribution Crown Agents can make,

with specific knowledge of the environments and problems of public servants in developing, under resourced countries.

The emphasis is always on the transfer of skills and the training is therefore always practical. Classroom sessions have great use of exercises, role play and participation, rather than mere "chalk and talk" and the visits frequently involve demonstrations as well as actual observation. It is a tribute to the course participants that they enter into the spirit of participation so fully, since often their experiences in their institutions at home, and cultural differences might lead to barriers. On the contrary, the groups always blend extremely homogenously and many contacts and friendships are formed which will continue for many years. Also any reservations about participation, once overcome, are invariably converted into a commitment to manage staff in a more enlightened and consensus fashion.

The attachments are the most problematic, and often the most rewarding part of the programme. Problematic due to the minutia of arrangements; rewarding because the classroom sessions come to life and are validated. Two non-consecutive weeks of attachments are arranged for each delegate. We try to arrange them in pairs, for company and support, but addressing the specific training needs of the individual as far as possible. The same applies to the second attachment—but with changed partners and changed establishments! The permutations make the arrangements and co-ordination a full-time job—and indeed it is. To achieve this we employ the services of one person, wholly engaged on this for at least one week. Initial interviews are held to establish backgrounds and preferences, lists are then drawn up of possible establishments and the the telephoning starts. At this point I should like to pay tribute to the goodwill of so many Prison Governors and their staff. Their interest and desire to help is always heartwarming —and much appreciated. Where it is not forthcoming is only ever through circumstances beyond their control, and their regret is obvious. Similarly the reception and assistance given to our delegates is invariably outstanding, and this in times of severe operational problems.

The delegates always report on their attachments and it is clear that they benefit from this complement to their training sessions.

The visits to different establishments take place weekly, and the delegates are able to observe a range from Brixton to East Sutton Park, from Dover YCC to Winchester.

As well as the direct support of the individual prisons, there is the interest and contact of P7 branch of the Home Office, who give overall assent to the programmes and the use of the establishments.

The management of the programmes include the appointment of a Course Manager. This is always a former member of the Prison Service, usually Governor grade, who helps in the design of the course and the arrangements for speakers and visits. Work starts in earnest on the arrival of the delegates when he takes on the role of mentor and virtual father. As well as a training role, he helps with any individual problems, domestic, health, misunderstandings with the hotel and advice for the best use of free time. Mostly resident for the duration, he is available for consultation 24 hours a day and also assists with tutoring for the action plans. It is little wonder that the course manager is usually seen as 'surrogate father' by the end of the Course. Many delegates maintain contact for several years and the Course Manager always finds his own horizons and knowledge broadened by the experience.

The contributors to the training sessions are drawn from serving staff with special knowledge on their topics, as well as training consultants who work regularly for Crown Agents in the areas of management skills.

The course is thoroughly reviewed at the end and comments are freely given on all aspects of the whole training experience. These are always constructive and as far as practicable suggestions are always incorporated into the following year's programme. The review of the 1988 course included a plea for more time on hostage incidents, a great interest in the use of dogs and increasingly a need to address the problem of drugs. The latter is not too much of a problem yet in many developing regions, but preparation for the inevitable increase is prudent. Favourite course topics always include industries and especially rural farm prisons and 'Stress Management' was obviously well received when one delegate commented that he had learned that he was suffering from stress he had not been aware of!

The Course is suitably completed by a special luncheon, with a VIP from the Prison Service to present certificates. This is a most congenial affair with strong overtones of the "end of term" atmosphere. The celebrations this year included a demonstration of traditional African dancing and song, to the delight of all. Nevertheless, it was tempered by the sadness of leaving so many friends and colleagues. Perhaps it is the camaraderie of the service but without exception the delegates to this particular course always earn the highest compliments from hotel staff, visiting lecturers etc, for their friendliness, politeness and enthusiasm to learn.

This course is one of several arranged by the Crown Agents in the UK. The Crown Agents is a unique organisation, a public service, that works for over one hundred countries. Set up in 1833 by the British Government to act for countries that were part of the British Empire. Independence of most of these by the 1960's has led to these services being made available to countries outside, as well as within the Commonwealth. Initially the Crown Agents were a buying and financial agency but we have added technical services to these, including consultancy and training. Our UK training courses include programmes on Supplies Management, Site Management, Maintenance Management, Commercial Law, Customs Management, Training Management, as well as Advanced Prison Management. In addition we can train in-country, tailoring courses to a specific Government's needs, and plans are in progress for prison courses in Africa and the Caribbean. HM Prison Service post some advisors on secondment and these are a regular source of course delegates.

In the case of Customs Training, a similar relationship exists with HM Customs & Excise, as with the Prison service, for overseas visitors training.

It is our long experience in dealing with the special needs of developing nations in all aspects that is a feature of the training courses and enables these to operate to best advantage with all the possible attendance problems to be overcome. A delegate wishes to travel on to Europe—we can advise on and arrange visas. Allowances need to be administered—we can help with banking arrangements. Sponsorship is needed to pay for the courses—

continued on page 44

BOOK REVIEWS

Books for review to be sent to:

The Reviews Editor, Prison Service Journal,
Trevor Williams, HM Prison Service College,
Love Lane, Wakefield, W. Yorkshire,
WF2 9AQ.

The Roots of Football Hooliganism

ERIC DUNNING, PATRICK MURPHY and JOHN WILLIAMS

Routledge & Kegan Paul, London. 1988.

Most of us have views on football hooliganism. For some, these views have been shaped by observing actual incidents; for others, like myself, they are influenced by working with football hooligans in custody; for the majority of people however, opinion is probably influenced by what is seen on television and what is read in the newspapers. As we know, such sources of information can be misleading. 'The Roots of Football Hooliganism' attempts to take an objective approach to the subject, not simply looking at hooliganism in its present form, but tracing it from its historical origins and development to the present day.

Data from Football Association Minute Books, newspapers and a wide range of publications on crowd disorder associated with football have been collected, dating from the 1870's. Language of football crowds, crowd break-throughs, attacks on match officials, attacks on players, vandalism, fighting between fans, and disorderliness outside and away from grounds are compared, in the pre-First World War Period, the years between the Wars, and in the years since the Second World War. Numbers of incidents, ground closures and warnings are tabulated to allow the reader to compare different periods, and some data on employment of persons reported as being involved in football-related disorders are shown from as far back as 1895.

The research has been very thorough and is essential reading for any serious student of the subject of hooliganism. It will also be of great interest to the general reader. Fascinating extracts from the newspaper publications in the early part of the century are included, and give a snapshot of everyday social life of the period, as well as an insight into the social development of football.

This book challenges most of the popular theories on hooligan behaviour. The authors argue against simplistic causes such as, today's violence being the result of 'permissiveness' of the 60's, poverty and unemployment or, conversely, a consequence of growing affluence. Their arguments are based on the historical perspective which they have adopted and their ideas are thought-provoking, although sometimes open to debate.

Much of the book is very readable, interesting and the arguments are easy to follow. It is however subtitled 'an historical and sociological study', and as such addresses itself in some detail to sociological theories, particularly in the final chapter and conclusion. Not being a sociologist, I found some of the theories difficult to understand, particularly since those sections of the book adopt a sociological writing style and 'jargon' with which I am not familiar. I found it was worth persevering to follow the arguments in those parts of the book however. Refreshingly, the authors do not simply see 'hooliganism' as part of a class struggle, nor necessarily the expression of working class frustration and resentment against 'the system'. Part of their conclusion is that hooliganism is probably more attributable to a pleasure and excitement gained from fighting and aggression by individuals with limited opportunity for gaining status through legitimate channels. This would I think coincide with the views of those people who have worked closely with offenders convicted of offences associated with football hooliganism.

'The Roots of Football Hooliganism' does not offer any simple solutions to the problem of hooliganism, nor does it have any practical advice for those working with 'hooligans'. It represents part of a long-term study, and describes the research carried out into the historical background of the problem. Further research is being carried out to consider hooliganism and social policy and will be published in the future. Whilst I do not always agree with the assumptions and conclusions which the authors drew from the evidence of their research, and, selfishly, I would have liked to see more discussion of the psychological characteristics which contribute to the football hooligans behaviour, nevertheless I was impressed by the thoroughness of the research and stimulated by the ideas presented.

CYNTHIA MCDOUGALL.

The Lust to Kill

D. CAMERON and E. FRAZER

Polity Press. 1987.

'The Lust To Kill' is not the stuff relaxing bedtime reading is made of. In fact, I'm not sure it is suited to any casual setting; it is a serious text book befitting a Sociology or Criminology course.

The book is clearly well researched, but kept giving me nasty pangs of conscience relating back to my undergraduate days as a sociology student where one already knew the conclusion, but felt a need to go over all the available evidence in detail in order to show that it was the right conclusion.

The conclusion in this case (and I am not about to refute it) is that there is more to sexual killing than mysogyny and terrorism. The common denominator, the authors tell us, is masculine sexuality (surprise, surprise); . . . "It is under the banner of masculinity that all the main themes of sexual killing come together: misogyny, transcendence, sadistic sexuality, the basic ingredients of the lust to kill". (p167)

Whilst the authors astutely point out that two thousand years of man as subject and woman as object will not be easy to undo, I don't feel this book takes us very far towards that goal since it is difficult to read, stodgy and, sad to say, boring.

H. A. LYDON

Grievance Procedures in Prisons

JOHN DITCHFIELD and CLAIRE AUSTIN
Home Office Research Study 91
H.M.S.O.

The stated aim of the study is to attempt to identify variation in practice between prisons and to assess the confidence of staff and inmates in grievance procedures. Practitioners do not always welcome researchers nor applaud their work. The researchers acknowledge the welcome they received in the prisons and as a practitioner I welcome the research document. It is good to read research which acknowledges the difficulty of isolating particular factors in prison life and accounting for them. The researchers faced these difficulties openly and their research in part has to infer explanation rather than account for it.

The research was completed in six prisons – two locals, two Training Prisons and two Dispersal Prisons. The prisons were chosen in each pair because of the variation in practice they showed. It is interesting to learn that a high or low application rate at one level reflects itself at other levels including petition rates. The research was not able fully to account for the differences but concludes it reflects the atmosphere of the prison including the régime and characteristics of the prisoner population. Research reveals the importance prisoners attach to being able to see the Governor himself although they accept that his answer will invariably reflect the answer of his subordinates.

The research shows that the majority of petitions are submitted because of the needs for referral. This suggests there is little scope for a reduction in the numbers. There are few petitions resulting from arbitrary or poorly considered local decisions. Despite a lack of faith in the system and despite knowledge of how few petitions are successful the evidence is that prisoners will continue to exercise their right to petition. Of those that do, the evidence is that they believe in their case and believe they will receive a favourable reply.

The research demonstrates a need for replies to petitions to be more detailed although the researchers accept there are more detailed replies than are credited. What the

research does not consider is whether more detailed replies will lead to more litigation by petition. Governors and prisoners were agreed on the needs for more detailed replies and speed appeared less important to prisoners than to Governors. Prisoners showed little confidence in Boards of Visitors and did not see them as independent in the watchdog role. Boards are now to retain their adjudication function. It may be there is a need to look again at how they relate to the prison and how they could project a greater independent image than has been projected to date. This research would suggest removal of the adjudication function in itself was not the answer.

W J ABBOTT

Interactions within the Criminal Justice system (Collected studies in criminological research-Volume XXV)

COUNCIL of EUROPE.

This book, in the standard format in which the Council of Europe publishes these reports, records the proceedings and conclusions of the 17th Criminological Research Conference (1986). It is introduced and summarised by the General Rapporteur, Professor Andrew Rutherford of Southampton University. Its scope and purposes were broadly defined by the European Committee on Crime Problems to which the conclusions and recommendations were, appropriately, addressed.

There are some general reflections to be made on the style and value of these publications. But, first it is convenient to adumbrate the results of the proceedings of the Conference and the overall arguments that seem to have inspired the printed submissions and the debates.

In approaching its task the Conference was reminded of the interaction, often in terms of conflicting effects, between raising the efficiency and performance of the criminal justice agencies and the protection of the fundamental freedoms that are central to the concepts of a modern democracy. Such a broad, conventional, but essential philosophical discipline naturally promotes detailed arguments about accountability, co-ordination, discretion, diversity and integration, all of which are complex and well-worked areas of international debate. Criminology and penology are not spheres in which it is easy to come across new and refreshing thinking. I was interested therefore, in the context of the overall approaches to this debate, to note the development of the concept that envisages the apparatus of criminal justice as a 'network' rather than as a 'system'. That deft adaptation of terminology implies a level of interdependence that encourages effectiveness without generating systems perspectives that might be irrelevant or even unhealthy in the concept of a free society. That is a subtle philosophical notion that, in appropriate formulations, could valuably inform a wide range of issues that intrude organisational influences into problems that are essentially human in character.

The specific problems that attracted most attention in the conference papers and were reflected in the conclusions included the management of the machinery of criminal justice and the criminal processes for which it exists; questions of balance and social policy in the approach to certain areas of criminality; at a more general level, questions of broad purposes, priorities, standards and guidelines; inevitably, suggestions for experimentation and more research also found their place in the proceedings.

It is quite impossible, in a brief review, to try to evaluate the work of the Conference in any sensible detail. For people working in the social agencies this report is of an academic standard and level of philosophical interest that makes it well worth reading for its broad perspectives and foci. For those with the appetite for more, a full account of the Conference is available from the Division of Crime Problems in Strasbourg. That raises the general point referred to earlier concerning the merits and usefulness of international statements of this kind. They are manifestly of value in influencing the minds of those who participate or are otherwise involved with policy-making or concerned with the subject in academic roles. Although that is a restricted audience it is the definitive one and that alone justifies the expense and effort that are devoted to producing the reports. But it is a pity that such useful material is not made available, with due discretion, in a more 'popular' medium, either by national administrations or the Council of Europe itself, so as to inform the larger constituency of people working in prison systems, other social agencies and the political debate in general. There are, salted away in the detailed statements, technical jargon and statistical data many points of general importance and intellectual merit that deserve to be more widely understood. It is at this point that the bulk of the excellent work that results from international collaboration fails to be fully exploited.

KEN NEALE

'Living with AIDS and HIV'

D. MILLER

Macmillan, London: 1987.

David Miller is probably the most experienced counsellor to people living with AIDS and HIV infection in Britain. He is currently working as the principal clinical psychologist at the Middlesex Hospital, one of the foremost centres for the treatment and care of people with HIV. He is a consultant with the World Health Organisation on AIDS and the author of six books on the subject. He was largely responsible for the design of the National AIDS Counselling Training workshops which are recognised internationally and he is a member of the home office AIDS Advisory Committee.

This latest book is based on his experiences as facilitator of the longest running group for people with AIDS, their families and loved ones. It is an immensely readable, compassionate guide to the problems encountered and faced by those who are infected with HIV.

Its strength lies in that it is not a medical text book—the language throughout is simple, clear and direct and does not therefore require detailed prior information on the disease nor an understanding of medical and psychological terminology.

It begins by describing the virus and how it has spread, explains in simple terms the clinical manifestations of HIV infection before going on to deal with the implications of this for the individual concerned. The chapters on coming to terms with diagnosis and with the practical and psychological adjustments which this implies are addressed to the person who may be infected and is intercut with extremely moving statements from people with HIV about how this felt and how they reacted.

In each area covered the author faces up frankly to the problems presented in a way that is both humane and practical. In discussing safer sex, for example, he explains in detail not only what **not** to do but explains what can be enjoyed with safety. Each topic is dealt with in the same reasonable way by someone who has close knowledge of his patients and also knows them as people. The difficult issues, such as suicide, are not shied away from but are discussed frankly and openly.

This book would be very useful reading for anyone facing HIV disease. It would not terrify them nor depress them but would give them a sense of not being alone and would demonstrate the courage of others who face the same difficulties. It is **essential** reading for anyone involved in counselling, treating or managing people with HIV infection. For this reason it is recommended to trainers who will be using 'AIDS—Inside' and will also be recommended required reading for those who will be delivering 'AIDS—Inside and Out', the package designed for prisoners.

HIV is something that all of us working in the prison system will have to know about. This book is one of the best to begin that process.

LEN CURRAN.

INTERNATIONAL TRAINING

continued from page 42

we can advise on contacts and likelihood.

Many of the delegates to our courses are sponsored by funding agencies, such as the British Council, UNDP, World Bank, EC or by specific organisations such as the CAA. The majority of Prison Managers are sponsored by the British Council who maintain contact with each individual throughout the course, and also provide a Certificate of Course completion.

Because of the relationships which form on these courses, it is often possible to follow an individual's career—no mean feat when training 250-300 delegates a year in UK alone. However, it is heartening to note the rapid promotions that frequently follow training. The transfer in skill and knowledge in this area is a fine balance between instructing in advanced techniques that cannot be optimist in less endowed infrastructures, and equipping a manager with the skills for the future, to hasten development. Disillusionment versus need to know. Delegates to the UK are invariably conscious of their good fortune in being selected for such courses and know that they will be regarded on return as the oracle on latest developments. It would therefore be wrong to deny them all ostensibly irrelevant input, but the course design must take care to allow for the correct emphasis and context.

Thus, it seems to work well, the training is well received, learning obviously takes place and invaluable experience is greatly appreciated. The bringing together of people from vastly different backgrounds but in the same service can only add to our own experience of the international scene as well as being an integral part of the learning event. ■

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Articles, letters and ideas for publication would be welcomed.

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