

LDIR#014
CRIMINAL
PENALTIES
BACKGROUND
MATERIALS

ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

LEGISLATIVE AFFAIRS AGENCY

An Outline
of Preliminary Suggestions for Revision
of the
CRIMINAL CODE

Submitted to the Members of the Alaska Bar Association to elicit discussion by and comment from the state bar, local bar associations, committees and individual members in order to eventually develop a report and accompanying legislation to be referred to the Legislative Council and then to the Legislature.

May

1966

APPELLATE REVIEW OF SENTENCES

Summary of Pamphlet of Hearings
of a Sub-committee of the U. S.
Senate Judiciary Committee on
Senate Bill 2722

During the last session of Congress the Senate approved a bill sponsored by Senator Roman Hruska of Nebraska which would provide for appellate review of criminal sentences imposed by U. S. District Court. Senator Hruska recently explained to Chief Justice Nesbett that there is reasonable hope that during the next session of the Congress this bill will become law. Senator Hruska provided a copy of the pamphlet containing the hearings before the subcommittee on improvements in judicial machinery of the Senate Judiciary Committee as held on March 1 and 2, 1966.

The pamphlet was received too late for inclusion in the binder provided for committee study. The summary shall be considered as a supplement to the material on sentence review previously submitted for this study.

The proposal would add the following new section to Title 18, U. S. Code.

"§3742. Appeal from sentence

"(a) In every case arising in a district court of the United States in which a defendant has been sentenced to imprisonment for one or more criminal offenses where the term or aggregate terms total more than one year the defendant may, upon application to the United States court of appeals within ten days after entry of the final judgment or order imposing the sentence, appeal from the sentence so imposed

P R O G R A M

ALASKA SENTENCING CONFERENCE

Centennial Building
Sitka, Alaska

December 12-13, 1968

Presented by

THE ALASKA JUDICIAL COUNCIL

Mr. V. Paul Gavora, Lay member, Fairbanks
Mr. Frank M. Doogan, Attorney member, Juneau
Mr. Peter D. Meland, Lay member, Sitka
Mr. Lester W. Miller, Jr., Attorney member, Anchorage
Mr. Michael A. Stepovich, Attorney member, Fairbanks
Mr. Jack Werner, Lay member, Seward
Chief Justice Buell A. Nesbett, Chairman, Anchorage

THE ROLE OF CORRECTIONS
IN
THE ADMINISTRATION
OF
CRIMINAL JUSTICE
BY
RAYMOND W. MAY, DIRECTOR
DIVISION OF CORRECTIONS
DEPARTMENT
OF
HEALTH AND WELFARE

A PAPER READ
AT
THE SENTENCING SEMINAR
SITKA, ALASKA
DECEMBER 12-13, 1968

APPENDIX A: Comparison between penalties in Alaska Statutes and Carter Code (1900). *

	Present Statute (Alaska Statutes)		Carter Code (1900)	
Murder 1st Degree	11.15.010	20-life	Sec. 3	death
Obstructing Rail- road Causing Death	11.15.020	20-life	Sec. 4	life-death
Murder 2nd Degree	11.15.030	15-life	Sec. 5	15-life
Rape	11.15.130(c)	1-20	Sec. 15	3-20
Mayhem	11.15.140	1-20	Sec. 16	1-20
Robbery	11.15.240	1-15	Sec. 26	1-15
Kidnapping	11.15.260	term of years-life	Sec. 27	1-10
Arson 1st Degree	11.20.010	2-20	Sec. 31	10-20
Burglary in Dwelling	11.20.080	1-10	Sec. 37	1-15
Burglary Nighttime	11.20.080	1-15	Sec. 37	1-15
Burglary if Human Being in Dwelling	11.20.080	1-20	Sec. 37	1-15

*Source: Ernest Z. Rehbock, "Criminal Sentencing Statutes in Alaska."

IS PUNISHMENT NECESSARY?*

JACKSON TOBY

Dr. Toby is Professor and Chairman of the Department of Sociology in the College of Arts and Sciences of Rutgers University. From 1959 to 1963, he served as a regular consultant to the Youth Development Program of the Ford Foundation. Dr. Toby received the M.A. degree in economics in 1947, the M.A. degree in sociology in 1949, and the Ph.D. degree in sociology in 1950 from Harvard University. He is author of *Contemporary Society: Social Process and Social Structure in Urban Industrial Societies* (1964) and co author (with Harry C. Bredemier) of *Social Problems in America: Costs and Casualties in an Acquisitive Society* (1960), both published by John Wiley & Sons, New York. Dr. Toby's articles have appeared in a number of leading professional journals.

To what extent does a "victim constituency" influence the incidence of punishment? What is the deterrent value of punishment? What is its value as regards the morale of the law abiding? Does punishment have a role in the rehabilitation of offenders? In the following article, Professor Toby considers these and related questions in the course of examining the currently general assumption that punishment will completely give way to treatment and rehabilitation measures in the handling of offenders.—EDITOR.

Of 11 contemporary textbooks in criminology written by sociologists, ten have one or more chapters devoted to the punishment of offenders.¹ All ten include a history of methods of punishment in Western society and, more specifically, a discussion of capital punishment. Seven discuss punishment in pre-literate societies. Seven include theoretical or philosophical discussions of the "justification" of punishment—usually in terms of "retribution," "deterrence," and "reformation." These theoretical analyses are at least as much indebted to law and philosophy as to sociology. Thus, in considering the basis for punishment, three textbooks refer both to Jeremy Bentham and to Emile Durkheim; three textbooks refer to Bentham but not to Durkheim; and one textbook refers to Durkheim but not to Bentham. Several textbook writers express their opposition to punishment, especially to cruel punishment. This opposition is alleged to be based on an incompatibility of punishment with scientific considerations. The following quotation is a case in point:

"We still punish primarily for vengeance, or

* This article is a revised version of a paper presented to the 1959 meeting of the Eastern Sociological Society.

¹ BARNES & TELFERS, *NEW HORIZONS IN CRIMINOLOGY* (3d ed. 1959); CALDWELL, *CRIMINOLOGY* (1956); CAVAN, *CRIMINOLOGY* (1955); ELLIOT, *CRIME IN MODERN SOCIETY* (1952); KORN & MCCORKLE, *CRIMINOLOGY AND PENOLOGY* (1959); RECKLESS, *THE CRIME PROBLEM* (2d ed. 1955); SUTHERLAND & CRESSEY, *PRINCIPLES OF CRIMINOLOGY* (5th ed. 1955); TAFT, *CRIMINOLOGY* (3d ed. 1956); TAPPAN, *CRIME, JUSTICE AND CORRECTION* (1960); VON HENTIG, *CRIME: CAUSES AND CONDITIONS* (1947); WOOD & WAITE, *CRIME AND ITS TREATMENT* (1941).

to deter, or in the interest of a 'just' balance of accounts between 'deliberate' evildoers on the one hand and an injured and enraged society on the other. We do not yet generally punish or treat as scientific criminology would imply, namely, in order to change antisocial attitudes into social attitudes."²

Most of the textbook writers note with satisfaction that "the trend in modern countries has been toward humanizing punishment and toward the reduction of brutalities."³ They point to the decreased use of capital punishment, the introduction of amenities into the modern prison by enlightened penology, and the increasing emphasis on non-punitive and individualized methods of dealing with offenders, e.g., probation, parole, psychotherapy. In short, students reading these textbooks might infer that punishment is a vestigial carry-over of a barbaric past and will disappear as humanitarianism and rationality spread. Let us examine this inference in terms of the motives underlying punishment and the necessities of social control.

THE URGE TO PUNISH

Many crimes have identifiable victims. In the case of crimes against the person, physical or psychic injuries have been visited upon the victim. In the case of crimes against property, someone's property has been stolen or destroyed. In pressing

² TAFT, *op. cit. supra* note 1, at 359.

³ RECKLESS, *op. cit. supra* note 1, at 450.

charges against press hostility in a socially a with the victi but those who done to them—the punishment argued, the ne human interac constituency to elimination of course, the size and those who Empirical stud by offense. Th one identifies v relatively few mailer. The g stituency, the punitive reacti

It would be size and the c encies for vario tion. Since the might hypothe greater punitiv that degrees of or imaginary ex girls might ex rapists than h might predict t expressed by t with the victi daughters in th express more p males lacking v

Such a study the wellsprings if victimization other reasons f such motivatio spondents to ex toward offenses e.g., gambling, a different kind. I offense the vic Survey research ing the oppositi offenses. It wou comparatively collar crime. Pe

⁴ Gouldner, *The Statement*, 25 AM.

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WHAT'S WRONG WITH PUNISHMENT?*

JAMES B. APPEL and NEIL J. PETERSON

Dr. Appel is an Assistant Professor of Psychology at Yale University and the Director of Behavioral Research in the Psychopharmacology Laboratory, Departments of Psychiatry and Pharmacology, Yale University School of Medicine. He received an A.B. from Columbia University in 1955 and a Ph.D. from Indiana University in 1960.

Dr. Peterson was educated at the University of Minnesota, where he received a B.A. in 1958. He then went on to obtain a Ph.D. in experimental psychology from Harvard in 1962 and is now working toward an M.D. at Yale.

The two authors have been working closely together for two years and have published several reports of their research concerned with the effects of punishment on animal behavior. The present paper was adapted from a talk given by Dr. Appel at the joint meetings of ASC and AAAS in Cleveland, December, 1963. Editor.

It is possible to distinguish at least three ways in which punishment or the threat of punishment is used in our complex society. (1) To re-assert or to advertise legal, ethical, and moral principles. It is wrong to commit a premeditated murder; the murderer must therefore be punished. (2) To deter others from committing an offense. If we impose a severe sentence for burglary, the frequency of this crime should be reduced. (3) To suppress an individual's disposition to behave in a certain manner. If we slap Johnny's hand when he puts it into the cookie jar, we will reduce his tendency to reach for a second cookie.

In the first two examples, punishment is used to promote the welfare of the punishing agency; no benefit to the punished individual need be either implied or intended. The third use of punishment is of particular psychological interest and the exclusive concern of this paper; it presupposes that such treatment can modify the behavior of the individual who is being punished, hopefully in such a way as to make him a more socially desirable person. We maintain, however, that while punishment may indeed suppress behavior, it can, by itself, have no such therapeutic or beneficial consequences because its effects are usually transient and depend on continuous and repeated applications.

*Much of the research reported herein was supported by Public Health Service Research Grants, MH 3363 and MH 07239, from the National Institute of Mental Health. An earlier draft of this paper entitled, "The Control of Behavior by Punishment" was read by the first author at the joint meetings of the American Association for the Advancement of Science and the American Society of Criminology in Cleveland, December, 1963. We thank D. X. Freedman, M.D. for his support.

The use of punishment, in spite of, or perhaps because of, recent modifications in techniques of education and of psychotherapy, seems to have increased in popularity during the last few years. This can be seen in the growing number of experimental and clinical studies involving aversive control of one kind or another¹ or in what has been called "aversion therapy."² As just one example of the "therapeutic" use of punishment in the clinic, a recent report from a hospital in England can be cited.³

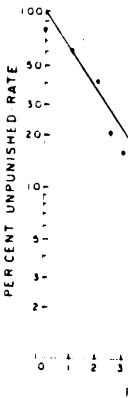
A single male transvestite was placed in a room the floor of which was an electrifiable grid. Every time he was instructed to put on his favorite female garments, a shock was given through this floor. Disrobing terminated the shock. This unfortunate individual's symptoms were reported to have been eliminated for six months, presumably as a result of his treatment.

While we may wonder both about the generality of this finding and whether the abnormal behavior was in fact eliminated or was emitted discreetly at home, it is not our purpose to further discuss data of this kind but to present some results of experiments on punishment from controlled and restricted environments. These laboratory studies have been replicated several times and seem therefore much less subject to scientific objections. They are, by their very nature, however, far removed from clinical situations and, to generalize from

¹ For example, Appel, *Analysis of Aversively Motivated Behavior*, 10 ARCHIVES GEN. PSYCHIAT. 71 (1964).

² Rachman, *Introduction to Behavior Therapy*, 1 BEHAV. RES. THERAP. 3 (1963).

³ Blakemore, Thorpe, Barker, Conway, and Lavin, *The Application of Faradic Aversion Conditioning in a Case of Transvestism*, 1 BEHAV. RES. THERAP. 29 (1963).



The function of punishment and its further explanation.

experiments on complex human behavior. Nevertheless, general interest.

In the experiments with animals are the pressing a lever, light attenuation, pecking at an subjects are given a 6-hour experiment. During these responses are initially followed by these responses is given once variable intervals and rate of primary interest.

After the first attempt at punishment by on-going or by to be discussed intensities were being each (inter at this stage a simple pattern depression of occasionally by shocks were given lever and the punished through electrodes.⁴ In

⁴ Azrin, A. T. 2 J. Exp. Anal.

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SOME BASIC CONSIDERATIONS REGARDING PENAL POLICY

ROBERT S. REDMOUNT

The author received a Ph.D. degree in psychology from New York University in 1949. He has had a varied experience in this field, in clinical work, research and administration. He has held positions at the University of Michigan and in the State and Federal Mental Health Services.

In 1957, he received the LL.B. degree from Yale University, where he was an editor of the *YALE LAW JOURNAL*. Mr. Redmount is a member of the Connecticut Bar. He developed the present paper while serving as a Research Associate under a National Institute of Health Grant to the Yale Law School. — EDITOR.

The three brief and separate discourses that follow are intended only to vex the mind concerning some of the critical issues that preexist any systematic understanding and application of penal policy. It is, of course, a matter of record that a spate of words has been written on the subject of penal policy, and it is sometimes thought that these conclude what is worthy of expression. As a matter of conviction, however, it is the better view that impartial study of the subject offers the prospect of only a beginning in understanding. Analysis, not synthesis, is the object of the present writing, and no effort is made to catch all of the issues in a single integration. Integration, when so many problems are outstanding, and require persistent inquiry, would be a breach of respect for the complexity and importance of the whole subject matter.

The present effort views penal policy from three perspectives. The first is concerned with the character of various alternative penal concepts, and with the consequences of conceptual cross-currents. The second views the problems that beset a penal policy, notably, the widely espoused policy of deterrence, when it is confronted by the variegated realities of personal and social dispositions and behavior. The third discourse exposes the difficulties that face a decision-maker, notably a trial judge, when he makes a conscientious attempt to apply penal policy to an individual case, once and for all and with a limited range of choice of sanction.

If the analysis succeeds in its proposal, there is no basis for any present affirmative conclusions. There is only the prospect for an aggregate of studies, reflective and empirical, which will (1) rigorously define and separately evaluate alternative concepts and operations of penal policy, and (2) systematically compose the interaction to be

achieved between policies, and between policy makers.

I. THE CONCEPTUAL TERRAIN OF PENAL POLICY

"The end of all penal laws is, that they may *not* be applied."

Fichte, *THE SCIENCE OF RIGHTS*, p. 345

Penal policy, through the years, attests to the rationalizing skills of man. Nietzsche makes this point, somewhat acidly, in a rhetorical question sequence. "What tactics have our moral genealogists employed up to the present in these cases? . . . They find out some 'end' in the punishment, for instance, revenge and deterrence, and then in all their innocence set this end at the beginning, as the *causa fiendi* of the punishment."¹

At the present time we are concerned essentially with four explanations, *qua* rationalizations, of penal policy. Perhaps the most ubiquitous, and the most grating, of these is the policy of retribution. Another policy, to which Bentham² and Beccaria³ devoted passionate energy, stresses the instructional character of penalties and is aimed at the general deterrence of crime. A third policy, to use a term developed by Oppenheimer⁴ stresses the "disablement" of the offender so as to render crime, at least theoretically, a physical impossibility. The fourth policy focuses on the rehabilitation potentials of convicted offenders and emphasizes the importance of salvaging human resources, whether for moral, practical or aesthetic reasons.

¹ NIETZSCHE, *THE GENEALOGY OF MORALS*, in *Collected Works*, V. 13, p. 89 (Levy ed. 1909-13).

² BENTHAM, *PRINCIPLES OF MORALS AND LEGISLATION*, particularly 170-203 (New ed. 1823).

³ BECCARIA, *ESSAY ON CRIMES AND PUNISHMENTS* 73 and *passim* (1801).

⁴ OPPENHEIMER, *THE RATIONALE OF PUNISHMENT* 254 (1913).

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⁶ *Id.*

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⁸ *Op.*

⁹ REP

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¹⁰ *Id.*

¹¹ STF

V. 2, 82

¹² *Ibid.*

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1877) 1933 Description of a Notation for the Logic of Relatives. Resulting From an Amplification of the Conceptions of Boole's Calculus of Logic. Volume 3, pages 27-98 in Charles S. Peirce, *Collected Papers*. Cambridge, Mass.: Harvard Univ. Press.

1878) On the Theory of Errors of Observations. U.S. Coast and Geodetic Survey, *Report of the Superintendent* [1870]:200-224.

1878-1878 Illustrations of the Logic of Science. *Popular Science Monthly* 12:1-15, 286-302, 604-615, 705-718; 13:203-217, 470-482.

1878a) *Photometric Researches*. Leipzig: Engelmann.

1878b) 1956 The Probability of Induction. Volume 2, pages 1341-1354 in James R. Newman (editor), *The World of Mathematics: A Small Library of the Literature of Mathematics From A'h-mosé the Scribe to Albert Einstein*. New York: Simon & Schuster.

1878c) 1956 The Red and the Black. Volume 2, pages 1334-1340 in James R. Newman (editor), *The World of Mathematics: A Small Library of the Literature of Mathematics From A'h-mosé the Scribe to Albert Einstein*. New York: Simon & Schuster.

1881) On the Logic of Number. *American Journal of Mathematics* 4:85-95.

1883) A Theory of Probable Inference. Pages 126-181 in Charles S. Peirce (editor), *Studies in Logic*. Boston: Little.

1884) The Numerical Measure of the Success of Predictions. *Science* 4:453-454.

1891) The Architecture of Theories. *Monist* 1:161-176.

1893) Evolutionary Love. *Monist* 3:176-200.

Collected Papers. Edited by Charles Hartshorne et al. 8 vols. Cambridge, Mass.: Harvard Univ. Press, 1931-1958. → Volume 1: *Principles of Philosophy*. Volume 2: *Elements of Logic*. Volume 3: *Exact Logic*. Volume 4: *The Simplest Mathematics*. Volume 5: *Pragmatism and Pragmaticism*. Volume 6: *Scientific Metaphysics*. Volume 7: *Science and Philosophy*. Volume 8: *Reviews, Correspondence, and Bibliography*.

SUPPLEMENTARY BIBLIOGRAPHY

AIRY, G. B. 1856 [Letter From Professor Airy, Astronomer Royal, to the Editor.] *Astronomical Journal* 4:137-138. → On the work of Benjamin Peirce.

BUCHLER, JUSTUS 1939 *Charles Peirce's Empiricism*. New York: Harcourt.

FRIBLEMAN, JAMES 1946 *An Introduction to Peirce's Philosophy, Interpreted as a System*. New York: Harper.

GOODMAN, LEO A.; and KRUSKAL, WILLIAM H. 1959 Measures of Association for Cross Classifications: II. Further Discussion and References. *Journal of the American Statistical Association* 54:123-163. → See especially pages 127-132, "Doolittle, Peirce, and Contemporary Americans."

HURD, THOMAS A. 1950 *The Thought of C. S. Peirce*. Univ. of Toronto Press.

HURD, B. A. JR. 1855 On Peirce's Criterion for the Rejection of Doubtful Observations, With Tables for Facilitating Its Application. *Astronomical Journal* 4:61-67. → On the work of Benjamin Peirce.

LEWIS, C. I. 1918 *A Survey of Symbolic Logic*. Berkeley: Univ. of California Press.

MURPHY, MURRAY G. 1961 *The Development of Peirce's Philosophy*. Cambridge, Mass.: Harvard Univ. Press.

NEWMAN, JAMES R. 1956 Commentary on Charles Sanders Peirce. Volume 3, pages 1767-1772 in James

R. Newman (editor), *The World of Mathematics: A Small Library of the Literature of Mathematics From A'h-mosé the Scribe to Albert Einstein*. New York: Simon & Schuster.

PEIRCE, BENJAMIN 1852 Criterion for the Rejection of Doubtful Observations. *Astronomical Journal* 2:161-163.

STEWART, R. M. 1920a Peirce's Criterion. *Popular Astronomy* 28:2-3. → On the work of Benjamin Peirce.

STEWART, R. M. 1920b The Treatment of Discordant Observations. *Popular Astronomy* 28:4-6. → On the work of Benjamin Peirce.

THOMPSON, MANLEY H. 1953 *The Pragmatic Philosophy of C. S. Peirce*. Univ. of Chicago Press.

WIENER, PHILIP P. 1949 *Evolution and the Founders of Pragmatism*. Cambridge, Mass.: Harvard Univ. Press.

WIENER, PHILIP P.; and YOUNG, FREDERIC H. (editors) 1952 *Studies in the Philosophy of Charles Sanders Peirce*. Cambridge, Mass.: Harvard Univ. Press.

WILSON, EDWIN B.; and HILFERTY, MARGARET M. 1929 Note on C. S. Peirce's Experimental Discussion of the Law of Errors. *National Academy of Sciences, Proceedings* 15:120-125.

WINLOCK, JOSEPH 1856 On Professor Airy's Objections to Peirce's Criterion. *Astronomical Journal* 4:145-147. → On the work of Benjamin Peirce.

PENOLOGY

- I. THE FIELD Daniel Glaser
- II. PROBATION AND PAROLE Daniel Glaser

I
THE FIELD

Penology is the branch of criminology concerned with government policies and practices in dealing with persons convicted of crimes. Its etymology, from the Latin *poena*, meaning "pain" or "suffering," reflects the early conception of punishment as the primary objective of state action toward criminals. However, in modern times interest in punishment has been largely replaced by concern with changing the abilities, interests, attitudes, and emotions of criminals. Accordingly, as we move farther into the second half of the twentieth century, we often find the term "corrections" being used instead of "penology."

The treatment of criminals has always been motivated by (1) the feelings of hostility and desires for revenge that criminals arouse in their victims and in those who sympathize with the victims; (2) abstract philosophies, ideologies, and religious beliefs regarding punishment; (3) prevailing theories of crime causation. Usually all three of these motives and rationales operate simultaneously, but the sequence in which they are enumerated above corresponds to the historical shift that has occurred in the relative power of each to determine



AMERICA'S SYSTEM OF CRIMINAL JUSTICE

The system of criminal justice America uses to deal with those crimes it cannot prevent and those criminals it cannot deter is not a monolithic, or even a consistent, system. It was not designed or built in one piece at one time. Its philosophic core is that a person may be punished by the Government if, and only if, it has been proved by an impartial and deliberate process that he has violated a specific law. Around that core layer upon layer of institutions and procedures, some carefully constructed and some improvised, some inspired by principle and some by expediency, have accumulated. Parts of the system—magistrates' courts, trial by jury, bail—are of great antiquity. Other parts—juvenile courts, probation and parole, professional policemen—are relatively new. The entire system represents an adaptation of the English common law to America's peculiar structure of government, which allows each local community to construct institutions that fill its special needs. Every village, town, county, city, and State has its own criminal justice system, and there is a Federal one as well. All of them operate somewhat alike. No two of them operate precisely alike.

Any criminal justice system is an apparatus society uses to enforce the standards of conduct necessary to protect individuals and the community. It operates by apprehending, prosecuting, convicting, and sentencing those members of the community who violate the basic rules of group existence. The action taken against lawbreakers is designed to serve three purposes beyond the immediately punitive one. It removes dangerous people from the community; it deters others from criminal behavior; and it gives society an opportunity to attempt to transform lawbreakers into law-abiding citizens. What most significantly distinguishes the system of one country from that of another is the extent and the form of the protections it offers individuals in the process of determining guilt and imposing punishment. Our system of justice deliberately sacrifices much in efficiency and even in effectiveness in order to preserve local autonomy and to protect the individual. Sometimes it may seem to sacrifice too much. For example, the American system was not designed with Cosa Nostra-type criminal organizations in mind, and it has been notably unsuccessful to date in preventing such organizations from preying on society.

The criminal justice system has three separately organized parts—the police, the courts, and corrections—and each has distinct tasks. However, these parts are by no means independent of each other. What each one does and how it does it has a direct effect on the work of the others. The courts must deal, and can only deal, with those whom the police arrest; the business of corrections is with those delivered to it by the courts. How successfully corrections reforms convicts determines whether they will once again become police business and influences the sentences the judges pass; police activities are subject to court scrutiny and are often determined by court decisions. And so reforming or reorganizing any part or

procedure of the system changes other parts or procedures. Furthermore, the criminal process, the method by which the system deals with individual cases, is not a hodgepodge of random actions. It is rather a continuum—an orderly progression of events—some of which, like arrest and trial, are highly visible and some of which, though of great importance, occur out of public view. A study of the system must begin by examining it as a whole.

The chart on the following page sets forth in simplified form the process of criminal administration and shows the many decision points along its course. Since felonies, misdemeanors, petty offenses, and juvenile cases generally follow quite different paths, they are shown separately.

The popular, or even the lawbook, theory of everyday criminal process oversimplifies in some respects and overcomplicates in others what usually happens. That theory is that when an infraction of the law occurs, a policeman finds, if he can, the probable offender, arrests him and brings him promptly before a magistrate. If the offense is minor, the magistrate disposes of it forthwith; if it is serious, he holds the defendant for further action and admits him to bail. The case then is turned over to a prosecuting attorney who charges the defendant with a specific statutory crime. This charge is subject to review by a judge at a preliminary hearing of the evidence and in many places if the offense charged is a felony, by a grand jury that can dismiss the charge, or affirm it by delivering it to a judge in the form of an indictment. If the defendant pleads "not guilty" to the charge he comes to trial; the facts of his case are marshaled by prosecuting and defense attorneys and presented, under the supervision of a judge, through witnesses, to a jury. If the jury finds the defendant guilty, he is sentenced by the judge to a term in prison, where a systematic attempt to convert him into a law-abiding citizen is made, or to a term of probation, under which he is permitted to live in the community as long as he behaves himself.

Some cases do proceed much like that, especially those involving offenses that are generally considered "major": serious acts of violence or thefts of large amounts of property. However, not all major cases follow this course, and, in any event, the bulk of the daily business of the criminal justice system consists of offenses that are not major—of breaches of the peace, crimes of vice, petty thefts, assaults arising from domestic or street-corner or barroom disputes. These and most other cases are disposed of in much less formal and much less deliberate ways.

The theory of the juvenile court is that it is a "helping" social agency, designed to prescribe carefully individualized treatment to young people in trouble, and that its procedures are therefore nonadversary. Here again there is, in most places, a considerable difference between theory and practice. Many juvenile proceedings are no more individualized and no more therapeutic than adult ones.

What has evidently happened is that the transformation of America from a relatively relaxed rural society into

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Case & Comment

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on
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to the
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