

The Dilemmas of Corrections and the Legacy of David Fogel

Jess Maghan

Abstract: *Even the most cursory examination of the history of corrections reveals the absence of any lasting conviction as to the proper purpose and administration of a correctional system. Alternatives fiercely promoted in one decade fall victim to raging controversy in the next. In spite of decades of effort and experience, the expenditure of billions of dollars, and reform itself becoming a chronic process, no consensus has been reached: It is a history of dilemma. It is against this background that David Fogel conducted much of his innovative work to develop the justice model.*

The study of penal reform in the United States is an old and discouraging one. From the development of the penitentiary in the late eighteenth and early nineteenth century, to the determinate sentencing movement of the last two decades, penal "reforms" in this country have led to few real improvements in the practice of punishment. Even if the reforms alleviate past problems, in so doing they create new ones, requiring further reforms which lead to new abuses, and so on. (p. 771)

—*Samuel Pillsbury (1989)*

The history of the penitentiary in America is a running account of the dilemmas of penal reform. Three periods of major penal reform—the late 18th century through the early 19th century, the period during which the American penitentiary first appeared; the late 19th century through the early 20th century, the period when penal custodial institutions were transformed into a widespread corrections system; and the late 20th century, from 1976 to the present, a period in which penal reform consists largely of "correcting" the reforms—are defining factors to the basic character of contemporary American penology. This article will concentrate on this latter period of attempts to integrate past reform efforts, especially in juxtaposition with an emergent politically reactive and conservative response to the more liberal penal initiatives of the 1980s.

Every evaluation of the latest penal reform has found it to be a failure (Axilbund, 1976; Bailey, 1986; Bradley, 1969; Conrad, 1967; Durham, 1991; Morris, 1972; Norman, 1970; Siegel, 1972; Thomas, 1981; Wilson, 1979). Currently, enormous numbers of people are now incarcerated, while the overcrowding of penal institutions is believed responsible for increased institutional violence—

assaults against inmates and correctional officers—and other rapidly declining conditions (Anson & Hancock, 1992; Braswell & Miller, 1989; Curran, Blatchley, & Hanlon, 1978; Ellis, 1991; Illinois Task Force on Crime and Corrections, 1993; Kelly & Ekland-Olson, 1987; Light, 1993; Sechrest, 1991).

As Foucault (1979) observed, “The notion of institutions are not adequate to describe, at the very center, the carceral city, the formation of the . . . *sciences* that permit the fabrication of the disciplinary individual” (p. 308). In context, therefore, it is not opposing theoretical stances or philosophies that dilute reform efforts; rather, it is reform proposals that unwittingly, just as the first reform proposals had, increased the power of the state, increased the number of individuals involved, and failed to consider and incorporate the needs of the institutional bureaucracies or respond to the perceptions of the public (Pisciotta, 1981).

PENAL REFORM (1976-1996)

A third wave of major penal reform occurred in the last few years, 1976-1996. There has been a return to determinate sentencing, with a substantial increase in the length of sentences. Any notion of inmate reformation or rehabilitation, either through evangelical or scientific means, has been largely abandoned in favor of an ideology of rights, in which incarceration as retribution is viewed as proper, and in which equal and identical sentencing would replace the discretionary approach previously highly valued. The latest penal reform has been influenced by the current social climate, reflecting more conservative social attitudes and having as a major goal the control of crime by increasing the severity of punishment. In the ideological conflict over sentence length, crime control forces have won most recent battles (Pillsbury, 1989). The dilemma of meeting such goals continues. The insistence in the 1960s of the importance of minority rights and the success of the civil rights movement institutionalized the philosophical and legal position that every individual has certain rights that cannot be compromised or withheld. This view was positioned as the limits to majority rule, on which a democracy purportedly had rested.

Such a conclusive position allows few exceptions, and other groups adopted it. Not surprisingly, it was only a matter of time until inmates and others in the criminal justice system were determined to possess those rights (Jacobs, 1983a). Characteristically, Fogel (1979) forecasted the continuing minimizing of change in total prison operations as a situational dilemma of an organization totally contingent on other forces for its identity and mission fulfillment:

The lid has not yet come off Pandora's Box, but the offender is hesitantly peering over its edge. He looks a bit different now than in the past. He is still alive, despite those who persist in calling for the death penalty. . . . There are few enthusiasts left

in prison: the preachers and teachers and treaters have not produced a pay-off to equal their rhetoric. The prisoner-as-plaintiff now looks increasingly to the courts and the courts continue to draw narrow issues around prisoner complaints. . . . Not much may be expected in the way of enduring correctional change through the drama of litigation. . . . In any case “. . . prison reform cannot be made acceptable just by ensuring rights or the comfort of the inmates.” (p. 180)

The work of the United States Supreme Court during the 1960s and early 1970s, particularly under the leadership of Chief Justice Earl Warren, created legal restraints and review (due process) for almost all aspects of the criminal justice process, ending both the broad discretionary power of the system and its reliance on social scientific principles.

The role of punishment ignored the rehabilitative aspects, but rather was to be the just response to the crime committed. Responsibility was given back to the offender. As such, just punishment would reflect not the characteristics of the offender, but the severity of the crime. It was widely assumed that such a determinate sentencing model would lead to shorter prison sentences and fewer people incarcerated. Beginning in California (Clarke & Davies, 1984), and reaching the federal government in 1984, determinate sentencing became the accepted approach (Von Hirsch, Tonry, & Knapp, 1987). As usual, reformers were not fully in touch with a public that viewed crime as one of the nation's most important concerns, underlying a mass exodus from urban areas to the suburbs and influencing presidential elections from the 1960s to the present.

The arguments of the reformers in favor of determinate sentencing, in the hands of politicians responding to public fear of crime, led to a steady increase in the length of sentences, the increasing criminalization of various behaviors with minimum mandatory sentences attached, the elimination of much judicial discretion, and the elimination or limitation of parole or probation. The substitution of legislative bodies for judicial or corrections personnel in setting penalties, at both the state and federal levels, was a result of that politicization of “reform.” Fogel suggested a new and eclectic approach to full-scale and lengthy determinant sentencing: If entry (incarceration) is necessary, then it should be a determinate sentence, which does not exceed 10 years with the possibility of remission. This, then, is the dilemma of penal reform, which becomes not progress, but movement around a vicious circle.¹

THE CONCEPT OF DILEMMA

Because the patterns seen in the dilemma of penal reform are repeated in other dilemmas of corrections, it is necessary to examine in some detail the nature and production of dilemma itself. Only with such an understanding can we hope to resolve the dilemma and make true progress.

THE NATURE AND PRODUCTION OF DILEMMA

Dilemma is a condition familiar even to the earliest civilizations. The word itself is Greek, meaning "two propositions." In a dilemma, the propositions are related, one often the opposite of the other. Both propositions may be seen as meritorious. In fact, it is this partial desirability of each alternative that creates the anxiety and ambivalence that surrounds the dilemma. The dilemma seems ahistorical, immune to resolution, unnatural. This unnaturalness is at the core of the dilemma. Western cultures, more than non-Western ones, have embraced an analytical approach to knowledge and understanding. It is this almost unyielding pressure toward analysis that continually creates dilemma.

How does the analytical pressure produce dilemma? Dilemma is produced when a natural cycle is frozen in time and shattered into continua. Each continuum is then halved, and each half then purified, homogenized, and placed in opposition. After this analysis, a second important process occurs. Once isolated and given a name, behaviors and processes tend to become confused with the words that name them. The process becomes a thing. Concepts such as *honesty* and *cooperation* are treated like objects with dimensions in time and space like a book or a chair. Philosophers refer to this process as *reification* and point out the confusion and misunderstanding it produces.

Too often, a valuation is then given the word, and the thing becomes a good thing or a bad thing, independent of its current context or present desirability. The generalized valuation and labeling is itself a reification of an ethical process that can really occur only in the context of a specific act. And, as Pirsig (1974) noted, even when reification "works" in one culture, the values do not translate.

THE ANXIETY OF DILEMMA AND THE CREATION OF IDEOLOGY

Because the dilemma is not regulated or self-correcting, it is unstable and produces great anxiety and chaos. But unlike the fear produced in a simpler situation, this anxiety does not help us choose one course of action over another. Caught in the clutch of dilemma, we are, as Hampden-Turner (1985) has written,

simultaneously confused and threatened, endangered from without yet subverted from within, desperately wanting clarity yet deprived of it, needing to think clearly, yet betrayed by clamoring emotions. (p. 93)

To reduce anxiety to a manageable level, proponents of one alternative will focus emphases on their alternative alone, and a rigid ideology is created that allows no exceptions to its explanations. Ironically, too much emphasis on any one alternative often causes a sudden return to the opposing alternative, a process C. G. Jung (1971) termed "enantiodromia."

I use the term enantiodromia for the emergence of the unconscious opposite in the course of time. This characteristic phenomenon practically always occurs when an extreme one-sided tendency dominates conscious life; in time, an equally powerful counter-position is built up, which first inhibits the conscious performance and subsequently breaks through the conscious control. (p. 426)

This swinging of the pendulum characterizes the history of many phenomena including, as we have discussed, the history of penal reform.

This oscillation or dithering between alternatives or values of a dilemma creates systemic stress and strain as well (Hampden-Turner, 1984). Consequently, much of the time involved in prison management is spent acting and reacting to the accession and recession of opposing policy positions and external influences. Affect replaces effect as the common denominator of administration.

THE PROGRESSION OF UNRESOLVED DILEMMA TO DYSFUNCTIONAL OSCILLATION OR CATASTROPHE

An interesting source for insight concerning the consequences of unresolved dilemma has come from the work of a French mathematician, Rene Thom. Working in the area of differential topology, Thom (1975, 1983) modeled the development of "catastrophe," which resulted when one alternative of a dilemma is suppressed or repressed while the opposite is exaggerated and overvalued.

Resolution by catastrophe is the most primitive and common approach to the resolution of dilemma. Less obviously catastrophic is the Jungian union of opposites between the excesses of the *right* and *left*, which Hughes (1993) described: "We have entered a period of extreme intolerance which combines, as it sometimes does in America, with a sugary taste for euphemism" (p. 102). He seeks an evenhanded look at the forces that imperil vision from both sides by establishing some ground rules—ultimately rules of decorum—for recognizing ourselves as the multicultural society that we are and should aspire to be.

DILEMMA AND THE PARADIGMS OF CORRECTIONS

The instability and anxiety of dilemma requires resolution, or the situation will progress to catastrophe. To avoid choosing one alternative or the other, various attempts at unifying the opposite positions are attempted, but ultimately fail. A sociohistorical context is essential in maintaining a balanced perspective, as Jacobs (1983b) noted: "It is also well to remember that the nature of punishment and confinement is not a constant but a social and political outcome that varies from age to age and from place to place" (p. 1218).

Consequently, well-meaning attempts to improve prison conditions instead lead to a worsening of them. Reforms designed to reduce prison population increase it. Every effort to influence the institutional culture from outside results in greater powers and discretion for the institutions. Every emphasis on a benevolent conceptualization of the system leads instead to a strengthening of an opposing view (Farer, 1982; Kalinich & Banas, 1984; Wilkins, 1973).

FAILED EFFORTS TO RESOLVE DILEMMA, AND THE PARADIGMS OF CORRECTIONS

The unification of opposites occurs when both values or alternatives in the dilemma are expressed and interact, but are not truly integrated. A union of opposites remains unstable. Unification of opposites has been used not only in psychotherapy but also in seeking the bottom line of capitalism. In *The Managerial Grid*, Blake and Mouton (1964) attempted to describe a type of management that would combine the alternatives of concern for production and concern for human relationships, values that often seem in opposition.

Blake and Mouton suggested that only a single point on the grid is a proper solution to management dilemma. Although the solution avoids catastrophe by expressing both alternatives, without the incorporation of process and timing and without the self-regulating features that define a truly successful approach, the solution is liable to become dominated by one position or the other (Morgan, 1992).

A final variation of the unification of opposites concerns the dialectic. For Hume and the German idealist philosophers, the dialectical process was one in which contradictions were transformed—both in thought and as the objective, historical record of ideas—into a higher and unified truth. Truth is the whole, and error is one-sidedness, incompleteness, and abstraction. Fichte conceived of the process in terms of two alternatives, the thesis and antithesis, giving rise through conflict to a third alternative, the synthesis.

The formal principles inherent in this process are seen as the identity of opposites and the negation of negation. Hegel (1821/1942) called it “the grasping of opposites in their unity as the positive of the negative” (p. 28). Although the dialectic process may avoid catastrophe by the recognition of opposites and implies a process across time, it accomplishes stability only through conflict and destruction. The synthesis obtained does not contain all the attributes of the thesis and antithesis, but only those attributes that can coexist. Also, the process cannot readily regulate or correct itself, and, in practice, any possible correction is suppressed by the cultural practice of forced adoption of the consensus (Bauer, 1952). These resolutions fall short because they lack self-regulation and correction and lack a dynamic component.

THE PARADIGMS OF CORRECTIONS

The power of the dilemma is a consequence of the fundamental and powerful but opposing patterns of knowledge that underlie the extreme positions, or horns, of every dilemma.

Although one might be completely unaware of, or even disbelieve in, such patterns, the evidence is clear that such patterns do exist and are used by each of us, consciously or not, to ground and organize our experience and thoughts about the world, the workings of nature, our own actions and reactions, and our relationships with others (Kuhn, 1970; Schwartz & Ogilvy, 1979).

The dilemmas of corrections are related and represent the conflict between two paradigms, or patterns of a priori assumptions about the nature of what we are trying to understand.

Paradigm 1 holds that reality consists of things and objects of solid mass and clear physical dimension. Understanding and explanation are achieved through analysis, reduction of the whole, and isolation of the parts. Phenomena are assumed to be cumulative, linear, and sequential, and knowledge is based upon cause and effect, prediction and control, and manipulation.

Paradigm 2 holds instead that reality consists of processes, waves, dynamisms, and patterns. Understanding and explanation are reached through synthesis, relating, and by building a whole greater than the sum of its parts. Phenomena are cybernetic, nonlinear systems with the properties of self-regulation and homeostasis. Knowledge is based upon mutual interactions and synergistic relationships (Hampden-Turner, 1983).

The dilemmas of corrections may be aligned within these two paradigms:

| <i>Paradigm 1</i> | <i>Paradigm 2</i> |
|--|--|
| 1. Legal model of crime | 1. Psychosocial model of crime |
| 2. Control by the system | 2. Control by those outside the system |
| 3. Adherence to established procedures | 3. Continual reform |
| 4. Traditional values | 4. Diverse workforce |
| 5. Custodial placement | 5. Community placement |
| 6. Rights of victim/public | 6. Inmate rights |
| 7. Retribution | 7. Rehabilitation |

Currently, Paradigm 2 is in ascendance, congruent with the popularity of Einsteinian physics, quality circles, and social psychology, whereas Paradigm 1 often seems to belong to a fading age of Newtonian physics and Taylorism. But the relationship between these two paradigms is that of a metadilemma.

Paradigm 1 represents a valuable store of acquired knowledge and experience. The development of Paradigm 2 is of value because it is an enlargement, not an advancement, of our understanding of corrections.

Fogel (1988) illustrated the problems and promise of these positions.

A crucial problem with this typology is the possibility that both schools of thought view the criminal justice system as responsive. It may, however, only be something less than the total of its component parts. If this is plausible, then there is no way to affect "the system," because it does not exist. Thus, creative ideas may be initiated but are in turn impeded or even sabotaged by components within the criminal justice system. While it might be unrealistic to believe that a centralized criminal justice system can be created or controlled (not to argue its undesirability in a democratic society) we need not idly stand by wringing our hands. (p. 2)

The rigid adoption and excessive evaluation of one paradigm to the exclusion of the other leads to disaster. Movement between paradigms, rather than stagnation within one or the other, is the goal.

RESOLUTION OF DILEMMA THROUGH CONTEXTUALIZING, SEQUENCING, WAVING, AND CYCLING

From the perspective of the correctional experience in post World War II America, it becomes increasingly apparent that dilemma can only be resolved by supporting both alternatives simultaneously. Choosing one alternative and rejecting the other will lead either to the vicious circle seen in the history of penal reform or to catastrophe.

A successful resolution to dilemma occurs when movement replaces stagnation and involvement replaces alienation: a reweaving of networks, where each value or alternative is expressed in all its gradations while converting Möbiuslike into its complement. A monologue of "either/or" is replaced by a dialogue of "both/and," and the vicious circle becomes a virtuous cycle. Apposition replaces opposition.

Contextualizing, sequencing, waving, and cycling are not static solutions but dynamic ones of ongoing process, a fact reflected by their gerund construction. It is this process across time, and their self-regulating structure, that makes these synergistic solutions superior to resolution by catastrophe or by the unification of opposites.

In contextualizing, each alternative is contained within and constrained by the other. Text and context continually reverse themselves. Most individuals grasp text readily, but fail to notice context. In sequencing, the full range of both values or alternatives of a dilemma is used. Through alternation, a limiting choice of either X or Y is avoided, replaced instead by the choice of both X and Y. In sequencing, each value or alternative may be used to test the limits of the other.

In cycling, dilemma is resolved by returning it to a context of time passage. Rather than seeking stability by avoiding change, stability is achieved by the constant anticipation of change. Resolution of the dilemma then takes the form

of a cycle, with emphasis first upon one value or alternative preceding and following emphasis upon the other.

In waving, both alternatives are present, while the relation between the alternatives is constantly adjusted so that the most appropriate combination is available at any moment. This constant adjustment produces a wave form. Decision and choice then consist of formulating the best frequency and amplitude of the resulting wave form. With some understanding of the successful resolutions of dilemma, it is possible to sketch how progress in corrections might be made in some of the other dilemmas of corrections.

TRADITIONAL VALUES VERSUS A DIVERSE WORKFORCE

By using contextualization, we can more clearly see that the important text of the traditional values of corrections can be located in a nontraditional context. Through training, the potentially disruptive impact of conflicting attitudes is greatly lessened; uniform values and continuity of procedures can thus be achieved (Maghan, 1981, 1993; Maghan & Ryan, 1987). Research continues to reinforce the feasibility of this approach. A study of New York Police Department police recruits demonstrated that prior to the police academy training, attitudes held by the minority recruits in the class were significantly different than those held by the nonminority recruits. However, specialized academy training significantly modified the attitudes of each recruit. Although some tendency for minority and nonminority recruits to differ in attitudes remained, the measured differences were no longer of practical or statistical significance (Bader, 1981; Maghan, 1988, 1992).

A vivid illustration from a new generation employee is found in the valedictory speech of a Black probationary correctional officer at her Correction Academy graduation ceremony in May 1990. This speech was published in *New York Newsday*, a daily newspaper with readership in the five boroughs of New York City (Maghan & McLeish-Blackwell, 1991):

Our country must overcome its racism and take responsibility for all its children. We must see to it that every single child, regardless of race, color, creed or socioeconomic status, receives an equal opportunity not just to survive, but to thrive. Then and only then will the demand for "institutions of confinement" decline, and the quality of our lives take a turn for the better. (p. 85)

Such training must be carefully crafted. Training, especially that labeled "sensitivity training," which is superficial and unrelated to the core curriculum of the academy or nonrepresentative of the experiences of a working officer, will be perceived as insulting and derogatory in itself (Mobley & Payne, 1992).

INCARCERATION VERSUS COMMUNITY PLACEMENT

The presence in the community of former offenders has always been a source of fear and concern to the public (Menninger, 1977; Siperstein, 1990), with reinstitutionalization often the result. The oscillation between institutionalization and community placement is apparent throughout the history of corrections.

Instead, placement decisions might take a sequencing approach. Individuals needing to be incapacitated might be sent to some restricted setting. But the institutionalization should be seen as temporary and designed to prepare the individual to return to the community. Once in the community, the individual should be tracked, rather than ignored, so that short-term reinstitutionalization is again available should the need arise (Fogel & Hudson, 1981; Ray, 1983). Fogel (1988) has presented a model for such a sequencing approach.

Assuming a continuum from freedom to imprisonment . . . it is almost inevitably less destructive to the "client," beneficial for the victim, and less costly to the taxpayer to keep the offender out of prison when obvious tolerances permit. (p. 24)

In this approach, multiple approaches to sentencing, probation, and parole replace a monolithic approach in which expensive, high-level custody or negligent noninvolvement are the only options. For example, a waving approach would allow a consideration of victim restitution made possible by providing inmates with genuine marketable skills. Once offenders/inmates, and so on, are paroled, the corrections system would provide practical survival support while closely supervising their reentry into society in response to the public's desire and right to maintain order (DiIulio, 1989; Shoham, Morris, & Patrick, 1968).

Such an approach would encourage a revision of the various inmate classification schemes to define the individual differences that have been shown to determine how individuals adapt to imprisonment (Palmer, 1991) and to allow identification of those inmates most vulnerable to the potentially damaging aspects of incarceration (Bonta & Gendreau, 1990). It would encompass recent attempts to match the individual characteristics of offenders with various potential staff interventions, thus conserving staff resources.

INMATE RIGHTS VERSUS THE RIGHTS OF THE CORRECTIONAL OFFICER

This dilemma concerns the relationship between the correctional system, and the individuals who must work and live under it.

It is in this area of corrections policy that the most critical changes have occurred and that has been characterized by the creation of inmate legal advocates (Rice, 1991) and inmate's rights groups. As a result of extensive litigation,

correctional policy is largely controlled not by correctional professionals, but by the courts (Carelli, 1992; Durham, 1988; Mandel, 1992; Robertson, 1986; Rose, 1970; Sneed & Stonecipher, 1986; Spencer, 1991). In the past few years, several courts have reversed some policies (Carrizosa, 1990; Turner, 1991), while funds for inmate advocacy have been cut.

Successful resolution of this dilemma requires an awareness and understanding that the rights of inmates are best secured through an awareness and understanding of the rights of the correctional officers and staff (Ramirez, 1984). The birth of a mutual awareness and interest in the conditions of confinement, and thus the conditions of work, creates a groundwork for building a workforce that better serves both the keeper and the kept. Maghan (1981) has stated:

Prisoners' rights and the officers' working environment are inseparably linked. Improvement in one affects the other. In getting both to see their community of interest lies the promise of adding meaning to attempts to reduce the tension, confusion and danger they mutually face. (p. 247)

A sequencing analysis would demonstrate that the recognition of inmate rights has been followed by increased recognition of the rights of correctional officers and staff (Cordes, 1992). Sequencing would tailor efforts to improve inmate rights in such a way as to set the foundation for improvements in the rights and working conditions of correctional officers. Likewise, efforts at improving the conditions of imprisonment, such as overcrowding, would be structured to benefit both the inmates and correctional officers.

A sequencing approach would encourage the recognition that the commonalities shared by the inmate and correctional officer greatly outweigh their differences. Both inmate and correctional officer live in an environment that is a distorted mirror of the society outside (Jacobs & Retsky, 1975). Both are undervalued by the society outside (Peretti & Hooker, 1976; Walters, 1986; Wicks, 1974), are often poorly educated, and are subject to the dangers created when prison conditions decline. Both are subject to institutional stress (Brown, 1989; Launay & Fielding, 1989; Skiles & Henson, 1989; Lester, Leitner, & Posner, 1985) and the demands of an imposing bureaucracy that can affect their health, family relations, and, ultimately, their survival. Female correctional officers must cope with additional stressors (Morton, 1991; Zimmer, 1986; Zupan, 1986).

A synergistic approach would recognize that authority waxes with knowledge. A hierarchy may be established where several different positions of expertise and experience, professional and nonprofessional, corrections staff and inmate, gain authority over time. Programs established by the system should be corrected by the experiences of the offender-users. The extensive knowledge of corrections staff about the historical behavior of many individuals, which characterizes the system, may cycle in importance with the profound individual experience of the inmates (Duncan, 1988; Kerr, 1993).

RETALIATION VERSUS REHABILITATION

Recognizing that the purpose of corrections is to create justice for all parties, victim, offender, and correctional officer, incarceration with no other goal than retribution does not create justice for the offender, even if it appeals largely to those segments of the public with fundamental religious beliefs (Grasmick, Davenport, Chamlin, & Bursik, Jr., 1992). Likewise, rehabilitation programs that ignore the victim, or parole and probation approaches that do not consider the very real concerns of the public, fail to create justice (Sullivan, 1990).

A survey of treatment methods (Palmer, 1991) has indicated that rehabilitative intervention has again gained legitimacy and that it should no longer be "secondary to punishment." Von Hirsch and Maher (1992) observed an incongruous mix in this re-emergence of rehabilitation and behavior modification programs:

Some penologists—for example, Francis Cullen and Karen Gilbert—argue that a revival of the penal treatment ethic could help lead to a gentler and more caring penal system. Interestingly, such arguments sometimes come from penologists of the left—who once had been so critical of treatment-based punishments. (p. 25)

Fogel (1988) has extended the analogy of retaliation versus rehabilitation to the current reemergence of alternative sentencing programs:

There is a more subtle effect of alternatives; once identified as a criminal justice client for a relatively minor crime, an official dossier is initiated. While we know relatively little about the mind of the sentencer, we do know that "priors" play an important role in the escalation of penal sanctions. A prior sentenced offender may pay dearly for having betrayed a judge's magnanimity upon a second court appearance. In this sense, the alternative of a suspended sentence rather than a mild summary penalty may act as a long-fused time bomb. (p. 27)

The tendency of the past few years to equate control of crime with punishment and to equate punishment with incarceration (Conrad, 1971) has produced gridlock in the criminal justice system. In an article discussing late 20th century penal reform, Durham (1991) quoted Henry Pontell, who maintained that "our legal system was never designed to take on the entire task of social control. This seems true today, as the increased use of punishment has been revised as the 'solution' to the crime problem" (p. 332). Durham notes that Pontell made his statement in 1984, "when penal conditions were nowhere as dismal or as costly as they are today" (p. 332).

In spite of the efforts of the most recent penal reform to dismiss rehabilitation (Allen, 1981), the concept has emerged with new vigor (Von Hirsch & Maher, 1992), as might be predicted by an understanding of dilemma. Therefore, in all of this, for almost 200 years the principal agenda theme in reform has been the concept of rehabilitation, which translates into the notion of "individualized" correctional treatment; the changes in orientation have been moral, psychological, social (retribution, punishment), but the focus has always been on the inmate as

the unit of reference, and each period of reform has attempted to offer new approaches (despite oppositional differences) on how best to achieve this goal.

NEW DIRECTIONS

As a major factor in American life, the corrections system can no longer survive as a closed system but instead needs to be able to anticipate change and respond rapidly to changing resources, demographics, and demands (Bradley, 1969; Durham, 1988).

It is proposed that the future of corrections can best be assured by movement in new directions, where inquiry replaces ideology and administration policies are based on what can be demonstrated to work, rather than what is believed to be "right" (Kreissel, 1988).

Toward that end, an openness to practical knowledge acquired through the experiences of those within corrections and from other sources judged to be helpful must replace the stilted ideological basis for decision making and policy formulation that inevitably leads to a vicious circle of reform, decline, additional reform, and further decline.

The role that ideology played in the dilemma of penal reform has been clearly stated.

In most instances, [penal reform] is suggested by an idealist who links the proposed penal reform to a view of the ideal society prominent at the time. The idealist promotes a penal ideology which emphasizes the rightness or goodness of the proposed change in terms of society's relation to the criminal offender. (Pillsbury, 1989, p. 771)

The need to replace ideology with practical information has also been recently described. In one article, the authors comment that

most of the time, social scientists go about their research without worrying about [the basis on which they make decisions], which primarily interest philosophers of social science. This may be unavoidable and even desirable given the intellectual division of labor, but it becomes problematic when philosophical assumptions unduly contaminate the conduct of social science. (Shapiro & Wendt, 1992, p. 197)

The openness to practical information would tend to promote creative and innovative solutions to the problems confronting corrections. For example, the current popularity of high impact incarceration (correctional "Boot Camps") facilities stress the responsibilities of group living, anger management, discretion, and social restraint (responsibility) (Maghan, 1990). The training of astronauts involves a substantial effort instructing and guiding the astronauts to cope with the cramped and crowded conditions in which they must live and work (Manzey & Schiewe, 1991). Would similar training assist inmates and correctional officers to cope with the overcrowding that characterizes every prison and jail today?

There is a growing awareness of the value of policy-relevant research (Petersilia, 1991). Such research will only have value if it is based upon practical knowledge rather than ideology.

The replacement of economic nationalism by the global economy provides corrections with an opportunity to acquire practical information gained by correctional systems around the world. "Solutions to some of our most intractable problems in correctional services in the United States may be found in the current development of correctional services in these regions of the world" (Maghan, 1995, p. 5). By adopting a sequencing approach, American corrections could first study the best approaches from the international community, then refine the knowledge and produce a uniquely American approach that could be offered as a resource to the international corrections community.

Practical information has led in recent years to efforts that seek to identify bases for discriminating high-risk from low-risk offenders. Even though these results are tentative and preliminary, this may be a promising line of discovery and innovation in prison population reduction and in the expansion of sentencing alternatives to incarceration.

In dealing with the problem of corrections, agencies must formulate twofold strategies that will work in the short run to alleviate the inmate congestion that is itself an institutionally generated crime problem, and long-run strategies. A first step in this direction is an accurate demographic projection of prison population, including the velocity of movement within and among inmate populations (Stollmack, 1973; Stollmack & Harris, 1974). This approach, therefore, includes in-and-out migration trends occasioned by the increasing implementation of sentencing alternatives.

The sizable body of practical knowledge previously developed within the corrections field has been recently characterized "as part of the warp and weft of modern culture, articulating the mentalities and sensibilities of the age in a particular form for a particular purpose" (Garland, 1992, p. 403).

The replacement of ideology with practical knowledge would not be without controversy, as Jacobs (1982) observed in his analysis of racial integration in the corrections system:

Thousands of prisoners, black, white, and Hispanic, live in greater danger and insecurity because of what the symbol of an integrated society means to people whose own lives and institutions are far less integrated than those of prisoners. (p. 98)

Mair (1991) emphasized the need for a new paradigm in correctional thinking, one that can function within the ever-polarized dilemmas of reaction from external forces. Mair's observations portray the tendency of overly simplistic and "either/or" interpretations of correction strategies:

The question posed . . . is intended to expose the absurdity of the "nothing works" formula; "Nothing" is meaningless, and "Works" is only considered in terms of recidivism. The time is right for a new generation of evaluations of penal initiatives

which leave behind the sterile debates and re-hashing of the same research findings associated with “Nothing Works.” (pp. 7-8)

So long as the definitions of successful outcomes in corrections are left to the ideologues, the practical knowledge of “what works” will continue to be obscured. Application of practical knowledge, in a principled effort to improve conditions, is, after all, supposed to be the work of government.

CONCLUSION

To forge these new directions and seek resolution to the dilemmas of corrections will require an allegiance to practical knowledge rather than ideology, the courage to take on the toughest issues, and most important, a deep commitment to the dignity and value of each human life, be it offender, victim, or correctional officer.

Fortunately, these are the tools that David Fogel used in developing his justice model for American corrections. These, too, are the tools Fogel has provided corrections practitioners for resolving the dilemmas of corrections as we move into the correctional systems of the next century.

EPILOGUE

The search for resolutions to the dilemmas of corrections took on new importance and promise with the work of David Fogel. In his work, David Fogel never wavered from his personal commitment to the creation of justice.

The June 1980 issue of *Revue de Droit Penal et de Criminologie* gave David Fogel a precise and direct recognition of his correctional philosophy in its review of his book “*We are the Living Proof*”: *The Justice Model for Corrections*:

[Fogel proposes a model] both radical and humble, but also very rational and forward-thinking. It does not claim to offer solutions since it makes clear that ultimate goals are seldom reached; but it suggests new ways of reflecting on the means to deliberately work towards a fairer judicial system, since, for the author, means are what convey the message. Adding more psychiatrists to steel and concrete will not humanize the prison system as long as the system remains arbitrary. (p. 469)

It may be that our search for resolutions of the dilemmas of corrections may also prove more important than any particular solution. In that search, we join David Fogel, again and always, in the critical first step of creating justice in the ongoing saga of correctional reform in the 21st century.

As a prelude, the current intoxication with the return of private-for-profit incarceration is the most recent indicator of an emergent fourth wave of correctional reform at the cusp of the 21st century. The reappearance of prisons-for-profit as a fourth wave reform movement is opening old wounds and creating new

dilemmas of social engineering and the possibilities for positive change. The net-widening capabilities of privatized incarceration are ominous. The embodiment of new public and private correctional partnerships may be the end product of this aggressive correctional privatization. The mix of public and private correctional systems is inevitable. Reforms that will define and ensure the social accountability and integrity of these new partnerships will constitute the dominant interplay in the institutions of both sectors. The dilemma continues.

NOTE

1. Some would argue with the application of dilemma theory to the history of correctional reform. Professor Robert Kelly of Brooklyn College/CUNY prefers the term *cycles*, which describes "structural trends" and corresponds more to institutional realities. David Garland (1990) develops the theme that institutions are based on convention rather than nature "and have been surrounded by their own appropriateness and transparency" (p. 4); in this sense, they mirror *intransigence* in the larger society. Nonetheless, the term *dilemma* is considered a fitting approach to the current analysis of modern corrections. Haas and Alpert (1995) have used this theme for more than a decade of examining all aspects of correctional services in the United States.

REFERENCE

- Allen, F. A. (1981). *The decline of the rehabilitative ideal: Penal policy & social purpose* (Storrs Lectures). New Haven, CT: Yale University Press.
- Anson, R. H., & Hancock, B. W. (1992). Crowding, proximity, inmate violence, and the Eighth Amendment. *Journal of Offender Rehabilitation, 17*(314), 123-132.
- Axilbund, M. T. (1976). American prisons and jails. *Current History, 70*(417), 265-268.
- Bader, B. J. (1981). Training for change in corrections: Institutional barriers to the utilization of training by corrections personnel. *Dissertation Abstracts International, 41*, 3555.
- Bailey, V. (1986). Punishment and welfare: A history of penal strategies. *American Historical Review, 91*, 925-927.
- Bauer, R. (1952). *The new man in Soviet psychology*. Cambridge, MA: Harvard University Press.
- Blake, R., & Mouton, J. (1964). *The managerial grid: Key orientations for achieving production through people*. Houston, TX: Gulf.
- Bonta, J., & Gendreau, P. (1990). Reexamining the cruel and unusual punishment of prison life. *Law and Human Behavior, 14*(4), 347-372.
- Bradley, H. B. (1969). Designing for change: Problems of planned innovation in corrections. *The Annals of the American Academy of Political and Social Science, 381*, 89.
- Braswell, M. C., & Miller, L. S. (1989). The seriousness of inmate induced prison violence: An analysis of correctional personnel perceptions. *Journal of Criminal Justice, 17*, 47-53.
- Brown, M. M. (1989). Increasing incidence of tuberculosis in a prison inmate population: Association with HIV infection. *Journal of the American Medical Association, 261*(3), 393-397.
- Carelli, R. (1992, February 25). Court rules force by prison guards can violate inmate rights. *Chicago Daily Law Bulletin, 138*, 1.
- Carrazosa, P. (1990, February 14). Jailers immune from litigation in inmate rape. *Los Angeles Daily Journal*, p. 1.

- Clarke, D., & Davies, M. (1984, May 10). The Californian way of justice. *New Society*, 68, 222-224.
- Conrad, J. P. (1967, August). Prisons and prison reform. *Current History*, 53, 88.
- Conrad, J. P. (1971). Law, order, and corrections. *Public Administration Review*, 31(6), 596-602.
- Cordes, R. (1992). Judge finds for nurse infected with HIV during scuffle with inmate. *Trial*, 28(9), 19-21.
- Curran, S. F., Blatchley, R. J., & Hanlon, T. E. (1978). The relationship between body buffer zone and violence as assessed by subjective and objective techniques. *Criminal Justice and Behavior*, 5, 53-62.
- DiIulio, J. J., Jr. (1989). Punishing smarter: Penal reforms for the 1990's. *Brookings Review*, 7(3), 3-12.
- Duncan, M. G. (1988). "Cradled on the sea"; Positive images of prison and theories of punishment. *California Law Review*, 76(6), 1201-1247.
- Durham, A. M. (1988). The justice model in historical context: Early law, the emergence of science and rise of incarceration. *Journal of Criminal Justice*, 16, 331-346.
- Durham, A. M. (1991). Then and now: The fruits of late 20th century penal reform. *Federal Probation*, 55(3), 28-36.
- Ellis, K. (1991). Prison overcrowding, inmate violence and cruel and unusual punishment. *Criminal Justice Journal*, 13, 81-99.
- Farer, T. J. (1982). Innovating policies (solving violent crime). *Prison Reform*, 19, 10-13.
- Fogel, D. (1979). "... We are the living proof...": *The justice model for corrections* (2nd ed.). New York: Anderson.
- Fogel, D. (1988). *On doing less harm: Western European alternatives to incarceration*. Chicago: Office of International Criminal Justice.
- Fogel, D., & Hudson, J. (1981). *Justice as fairness: Perspectives on the justice model*. New York: Anderson.
- Foucault, M. (1979). *Discipline and punish: The birth of the prison*. New York: Vintage.
- Garland, D. (1990). *Punishment in modern society: A study in social theory*. Chicago: University of Chicago Press.
- Garland, D. (1992). Criminological knowledge and its relation to power: Foucault's genealogy and criminology today. *British Journal of Criminology*, 32(4), 403-442.
- Grasmick, H. G., Davenport, E., Chamlin, M. B., & Bursik, R. J., Jr. (1992, February). Protestant fundamentalism and the retributive doctrine of punishment. *Criminology*, 30, 21-45.
- Haas, K. C., & Alpert, G. P. (Eds.). (1995). *The dilemmas of corrections: Contemporary readings* (3rd ed.). Prospect Heights, IL: Waveland.
- Hampden-Turner, C. (1983). *Is there a new paradigm? Personnel management reference*. London: Shell International.
- Hampden-Turner, C. (1984). *The centrality and uses of corporate culture: Developments in the U.S. and in Europe. Personnel management reference*. London: Shell International.
- Hampden-Turner, C. (1985). *Creating values: Conceptual tools for the management of dilemma*. Unpublished manuscript, Berkeley, CA.
- Hegel, G.W.H. (1942). The philosophy of the right. In R. M. Hutchins, (Ed.), *The philosophy of history* (Great Books of the Western World, pp. 21-39). Chicago: Encyclopedia Britannica. (Original work published in 1821)
- Hughes, R. (1993). *Culture of complaint: The fraying of America*. New York: Oxford University Press.
- Illinois Task Force on Crime and Corrections. (1993, March). *Final Report* (A. R. Valukas, Chairman).
- Jacobs, J. B. (1982, March/April). The limits of racial integration. *Criminal Law Bulletin*, 18(2), 117-153.
- Jacobs, J. B. (1983a). The prisoners' rights movement. In J. B. Jacobs (Ed.), *New Perspectives on Prisons and Imprisonment*. Ithaca, NY: Cornell University Press.
- Jacobs, J. B. (1983b). Prisons: Prison subculture. In F. A. Allen, D. Glaser, W. R. LaFave, L. E. Ohlin, & F. Zimring (Eds.), *Encyclopedia of crime and justice* (Vol. 3, pp. 1218-1224). New York: Free Press.

- Jacobs, J. B., & Retsky, H. (1975). Prison guard. *Urban Life*, 4, 5-29.
- Jung, C. (1971). The archetypes and the collective unconscious. In H. Read, M. Fordham, G. Adler, & W. McGuire (Eds.), *Bollingen Series XX*. Princeton, NJ: Princeton University Press.
- Kalinich, D. B., & Banas, D. (1984). System maintenance and legitimization: An historical illustration of the impact of national task forces and committees on correction. *Journal of Criminal Justice*, 12(1), 61-70.
- Kelly, W. R., & Ekland-Olson, E. (1987). The response of the criminal justice system to prison overcrowding: Recidivism among four successive parolee cohorts. *Law & Society Review*, 25(3), 601-620.
- Kerr, P. (1993, June 27). The detoxing of prisoner 88A0802. *The New York Times Magazine*, pp. 22-27.
- Kreissel, R. (1988, December). Disadvantages of using social sciences in penal law. *Zeitschrift Fu Rechtssoziologie*, 9, 272-289.
- Kuhn, T. S. (1970). *The structure of scientific revolutions* (2nd ed.). Chicago: University of Chicago Press.
- Launay, G., & Fielding, P. J. (1989). Stress among prison officers: Some empirical evidence based on self report. *Howard Journal of Criminal Justice*, 28(989), 138-148.
- Lester, D., Leitner, L. A., & Posner, I. (1985). A note on focus of control and stress in police officers. *Journal of Community Psychology*, 13(1), 77-79.
- Light, S. C. (1993). The meaning of assaults on prison officers. *The Keepers' Voice*, 14(1), 31-34.
- Maghan, J. (1981, March/April). Improving corrections staff through ongoing training services. *Corrections Today*, p. 26.
- Maghan, J. (1988). The 21st century cop: Police recruit perceptions as a function of occupational socialization. *Dissertation Abstracts International*, 49(8a), Order No. 8821104. Graduate Center, City University of New York. Ann Arbor, UMI Press.
- Maghan, J. (1990). Staffing the shock: Enabling, training, and performance objectives for high-impact incarceration programs. In *The state of corrections proceedings: ACA annual conferences, 1990*. Laurel, MD: American Correctional Association.
- Maghan, J. (1992). Styles of control and supervision. In J. B. Morton (Ed.), *The effective correctional officer* (pp. 51-60). Laurel, MD: American Correctional Association.
- Maghan, J. (1993). The changing face of the police officer, occupational socialization of minority police recruits. In R. G. Dunham & G. P. Alpert (Eds.), *Critical issues in policing* (2nd ed., pp. 348-360). Prospect Heights, IL: Waveland Press.
- Maghan, J. (1995). Common ground [Guest editorial]. *International Journal of Offender Therapy and Comparative Criminology*, 39(2), 85-88.
- Maghan, J., & McLeish-Blackwell, L. (1991). Black women in correctional employment. In J. B. Morton (Ed.), *Change, challenge and choices, women's role in modern corrections*. Laurel, MD: American Correctional Association.
- Maghan, J., & Ryan, P. (1987). Correctional litigation—A resource for creative jail management and training. *International Journal of Offender Therapy and Comparative Criminology*, 31(2), 111-123.
- Mair, G. (1991). What works—Nothing or everything? Measuring effectiveness in sentences? *Research Bulletin*, 30, 3-8.
- Mandel, R. G. (1992, June). Prisoner civil rights: The need for the implementation of adequate inmate grievance mechanisms. *The Florida Bar Journal*, 66, 91-93.
- Manzey, D., & Schiewe, A. (1991, June). Psychological training of German science astronauts. *IAA man in space symposium* (Selection of Papers), pp. 17-21.
- Menninger, K. (1977). Envoi: Correcting the corrections. *Psychiatric Annals*, 7(6), 319-320.
- Mobley, M., & Payne, T. (1992, December). Backlash! The challenge to diversity training. *Training and Development*, pp. 45-51.
- Morgan, R. (1992). Prisons: Managing for change. *Public Money and Management*, 12(1), 17-22.
- Morris, A. (1972). *Correctional reform: Illusion and reality*. Boston: Correctional Association.

- Morton, J. B. (1991). Women correctional officers: A ten-year update. In J. B. Morton (Ed.), *Change, challenge and choices, women's role in modern corrections*. Laurel, MD: American Correctional Association.
- Norman, F. (1970). *Lock'em up and count'em: Reform of the penal system*. Hampstead, England: Charles Knight.
- Palmer, T. (1991, March). The habilitation/developmental perspective: Missing link in corrections. *Federal Probation*, pp. 55-65.
- Peretti, P. O., & Hooker, M. (1976). Social role self-perceptions of state prison guards. *Criminal Justice and Behavior*, 3(2), 187-196.
- Petersilia, J. (1991). The value of corrections research: Learning what works. *Federal Probation*, 55(2), 24-26.
- Pillsbury, S. H. (1989). Understanding penal reform: The dynamic of change. *Journal of Criminal Law & Criminology*, 80(3), 771-772.
- Pirsig, R. M. (1974). *Zen and the art of motorcycle maintenance: An inquiry into values*. New York: William Morrow.
- Pisciotta, A. W. (1981). Corrections, society, and social control in America: A metahistorical review of the literature. *Criminal Justice History*, 2, 109-130.
- Ramirez, J. (1984). Prisonization, staff and inmates: Is it really about us versus them? *Criminal Justice and Behavior*, 11(4), 423-460.
- Ray, J. J. (1983). Towards a more pragmatic penal system. *Australian & New Zealand Journal of Criminology*, 16, 224-230.
- Revue de Droit Penal et de Criminologie. (1980, June). We are the living proof: The justice model for corrections. *Soixantieme Annee*, 6, 623.
- Rice, S. D. (1991, January 21). Jail-house justice; Public interest law firm fights for penal reform. *Los Angeles Daily Journal*, p. 1.
- Robertson, J. E. (1986). Surviving incarceration: Constitutional protection from inmate violence. *Drake Law Review*, 35, 101-160.
- Rose, G. (1970). Penal reform as history. *British Journal of Criminology*, 10(4), 348-368.
- Schwartz, P., & Ogilvy, J. (1979). *The emergent paradigm: Changing patterns of thought and belief*. Menlo Park, CA: SRI International.
- Sechrest, D. K. (1991). The effects of density on jail assaults. *Journal of Criminal Justice*, 19, 211-223.
- Shapiro, I., & Wendt, A. (1992). The difference that realism makes: Social science and the politics of consent. *Politics and Society*, 20, 197-223.
- Shoham, S., Morris, N., & Patrick, C. H. (1968). Punishment and correctional substitutes: Critical issues in the study of crime. In S. Dinitz & W. C. Reckless (Eds.), *Critical issues in the study of crime—A book of readings* (pp. 255-291) Boston: Little, Brown.
- Siegel, H. H. (1972). Future trends for corrections. *Police*, 16(5), 53-55.
- Siperstein, D. M. (1990). Variations in penal philosophy as a function of crime severity. *Dissertation Abstracts International*, 51(06-A), 2163.
- Skiles, L., & Henson, B. (1989). Occupational burnout among correctional health workers. *Perceived Levels of Stress and Social Support*, 37(9), 374-378.
- Sneed, D., & Stonecipher, H. W. (1986). More freedom for the prison press: An emerging First Amendment issue? *Journalism Quarterly*, 63, 48-54.
- Spencer, G. (1991). Award to inmate for failure to detect TB. *New York Law Journal*, 206(123), 1.
- Stollmack, S. (1973). Predicting inmate population from arrest, court disposition, and recidivism rates. *Justice Research in Crime and Delinquency*, 10, 141-162.
- Stollmack, S., & Harris, C. M. (1974). Failure-rate analysis applied to recidivism data. *Operations Research*, 22, 1192-1205.
- Sullivan, L. E. (1990). *Prison reform movement: Forlorn hope*. Boston: Twayne.
- Thom, R. (1975). *Structural stability and morphogenesis*. New York: Benjamin.

- Thom, R. (1983). *Mathematical models of morphogenesis* (W. Brooks, Trans.). New York: John Wiley.
- Thomas, J. (1981). Prison conditions and penal trends. *Crime and Social Justice, 15*, 49-55.
- Turner, T. M. (1991). Constitutional law—Prisoner's rights—Prison regulation denying inmate the right to artificially inseminate wife held constitutional. *University of Arkansas at Little Rock Law Journal, 13*, 671-690.
- Von Hirsch, A., & Maher, L. (1992, Winter/Spring). Should penal rehabilitationism be revived? *Criminal Justice Ethics*, pp. 25-30.
- Von Hirsch, A., Tonry, M., & Knapp, K. (1987). *The sentencing commission and its guidelines*. Boston: Northeastern University Press.
- Walters, S. P. (1986). Alienation, powerlessness and social isolation among correctional officers. *Dissertation Abstracts International, 47*(7), 2752-A.
- Wicks, R. J. (1974). Is the correctional officer a second class citizen? *American Journal of Correction, 36*(1), 32-34.
- Wilkins, L. T. (1973). Crime and criminal justice at the turn of the century. *The Annals of the American Academy of Political and Social Science, 408*, 13-29.
- Wilson, B. (1979, July 27). Penal reform takes two steps backwards. *New Statesman, 98*, 116.
- Zimmer, L. (1986). *Women guarding men*. Chicago: University of Chicago Press.
- Zupan, L. L. (1986). Gender-related differences in correctional officers' perceptions and attitudes. *Journal of Criminal Justice, 14*, 349-361.

Jess Maghan, Ph.D.

Director, Center for Research in Law and Justice (M/C 222)
Associate Professor, Department of Criminal Justice
University of Illinois at Chicago
400 South Peoria Street
Chicago, Illinois 60607
U.S.A.