

**THIRD INTERNATIONAL SCIENTIFIC CONFERENCE ON  
TRANSBALKAN LEGAL COOPERATION**

“Trans-Balkan Legal Cooperation after the Balkan Crisis at the End of the  
20<sup>th</sup> Century.”

**December 1-3, 1999, Belgrade, Yugoslavia**

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*Pendulum Paradigms and the Dilemmas of Corrections*

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# Pendulum Paradigms and the Dilemmas of Corrections

**True sanction of political laws is to be found in the penal legislation; and if that sanction is wanting the law will sooner or later lose its cogency. He who punishes the criminal is therefore the real master of society. (Alexis de Tocqueville, *Democracy in America*.)**

## **Introduction:**

This paper examines the relations between punishment and society. It considers the common forces and dilemmas that impinge on the management of contemporary prisons systems (e.g., poor recruitment and inadequate training of prison staff). Following the political changes in central and eastern Europe in the period 1989-1991, the countries of the region have made reform of the national prison system(s) a priority requirement. This situation has instigated a new look at the purpose and place of the prison system in connection with the community order. Prison systems previously based on a total-militaristic model are shifting to a para-military model with a more open and professional correctional agency mission. In developing this paper I draw from my field visits to international and United States prison systems. jlm

## **The Historical Shadow**

The historical structure of the eighteenth century penitentiary continues to thrive in the contemporary para-military and bureaucratic penal enterprise worldwide. Bentham's *Panopticon* is the architectural figure of this psycho-historical composition. The *Panopticon* assures the automatic functioning of power by inducing in the inmate a state of conscious and permanent visibility. Foucault (1979:89) iterates the intrinsic and regenerative bureaucratic-character of prison systems:

**Shift the object and change the scale. Define new tactics in order to reach a target that is now more subtle but also more widely spread in the social body. Find new techniques for adjusting punishment to it and for adapting its effects. Lay down new principles for regularizing, refining, and universalizing the art of punishing. Homogenize its application. Reduce its economic and political cost by increasing its effectiveness and by multiplying its circuits. In short, constitute a new economy and new technology of the power to punish: these are no doubt the essential raisons d'être of penal reform in the eighteenth century. (p.89)**

This primogeniture of the formidable right to punish "concretely" continues to fully influence the management of prisons in all societies. So, too, does the need to establish a principle of moderation for the *power of punishment*.

Foucault (1979:92) displays the intrinsic and universal tension of penology and punishment in Jean Paul Marat's classic essay: *Plan de Legislation criminelle* – 'What are the means of alleviating the rigor of the penal laws in France without damage to public Safety' – *Academie de Chalon-sur-Marne*, 1780.

**Here the principle takes root that one should never apply "inhumane" punishments to a criminal, who, nevertheless, may well be a traitor and a monster. If the law must now treat in a "humane" way an individual who is 'outside nature' (whereas the old justice treated the 'outlaw' inhumanely), it is not on account of some profound humanity that the criminal conceals within him, but because of a necessary regulation of the effects of power. It is this 'economic' rationality that must calculate the penalty and prescribe the appropriate technique. 'Humanity' is the respectable name given to this economy and to its meticulous calculations. 'Where punishment is concerned, the minimum is ordered by humanity and counseled by policy.' (92,312)**

### **Modern Penology and Dilemma Theory**

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. The instability and anxiety of dilemma requires resolution, or the situation will progress to catastrophe (Maghan, 1997). To avoid choosing one alternative or the other, various attempts at unifying the opposite positions are attempted, but ultimately fail. A socio-historical context is essential in maintaining a balanced perspective, as Jacobs (1983:121) 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."

This swing of the pendulum characterizes the history of many phenomena including, most definitely, 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). Especially in America, 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.

Consequently, well-meaning attempts to improve prison conditions lead instead to a worsening of the overall situation. Thus, 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 (Durkheim, 1900; Wilkins, 1973; Farar, 1982; Kalinich & Banas, 1984; Maghan, 1999). The irony of this phenomenon is well characterized by Amoretti and Landreville (1996:26) in their analysis of recidivism among ex-offenders in the United States and Canada.

**As a survival measure, the penal institution has in fact transposed what was once seen as its failure to rehabilitate (high recidivism rates), into its success in supervising (high return rates). In doing so, the penal institution has achieved a double success: by isolating itself from the strong critiques launched against it, and by providing itself with a solid (although questionable) internal measure of its own system performance. (p. 26).**

The magnitude of the incarceration industry in the United States provides an Orwellian laboratory of 21<sup>st</sup> century prison operational priorities. For example, we are witnessing an increasing incorporation of sophisticated cyber-surveillance and video-technology and the construction of super-maximum security prisons to service an unprecedented industrialized incarcerative-capacity. This situation is further augmented by a growing gulag of private-for-profit prisons in worldwide locations (e.g South Africa, United Kingdom, Australia, and the United States).

### **The Paradigms of Corrections**

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, as well as manipulation.

Paradigm 2 holds instead that reality consists of processes, waves, and patterns. Understanding and explanation are reached through synthesis, relating, and by building a whole greater than the sum of its parts.

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

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

Currently, Paradigm 2 is in ascendance, congruent with the popularity of social psychology, whereas Paradigm 1 often seems to belong to a fading age of classical penology and correctional theory. However, the relationship between these two paradigms is that of a meta-dilemma. 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 and penology (Maghan, 1997; Milovanovic and Henry, 1991).

Fogel (1998:2) 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. (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.

The process of comparing prison systems is precarious because of the inherent political, demographic, and geographic dynamics involved. This process often falls into a critical comparison. However, my experience has readily revealed a commonality of forces both internal and external in the governing of prisons (Garland, 1990; Walmsley, 1996, Maghan, 1997). Therefore this study focuses on examining these factors as a potential contribution to the improvement of the prison infrastructure everywhere. *There is a COMMON GROUND* of concerns and strategies.

**The form and severity of punishment, whatever the rationale provided, is shaped by public sensibilities about punishment, which go to make up a society's penal values. Those penal values seem to be related, among other things, to a society's relative egalitarianism: the greater differentials in terms of income and other rewards and the greater the gaps between the rich and poor in society, the more extreme the scale of punishment will be (W. Young and M. Brown, 1998:189).**

In the past decade, I have had the opportunity to see first hand the workings of some prison systems in Eastern and Southern Europe, South Africa, and the People's Republic of China. The intended purpose of these visits was to conduct a comparative analysis of the operational mandate and mission of these prisons. Initially, I anticipated marked differences between the correctional systems of these diverse places. But as I explored their respective environments and spoke to staff and inmates, I was struck by common concerns and predicaments expressed by those involved in the correctional systems everywhere.

The emphasis of these comparisons was on the quality and control of prison staff, including administrative, supervisory and line-level prison custodial correctional officers. My professional interest, my research, and my writings focus on the "other prisoner"--- the prison guard --- the custodial officer of the prison. Where do these officers come from? What are their social and occupational aspirations? How are they selected, nurtured, and trained to perform their duties? How are they socialized into the occupation of correctional officer? What is the influence of the occupational culture on the individual officer? These are some of the most compelling questions guiding the research on men and women correctional staff in the United States.

The inherent political character of prisons in any society both compounds and enlightens these comparisons. Everywhere there was desire for developing an improved professional standing for prison service personnel and operations. As in the United States, I found the occupational field hungry for professional development and a respected and legitimate identity as a public safety occupation. Here are some of the concerns expressed:

## **NO PUBLIC CONSTITUENCY**

Unlike public safety officers such as police and fire fighters who interact with the public on a daily basis, prison guards operate behind the walls and are, essentially, out of sight and out of mind. Their problems and concerns are rarely a matter of public interest. They find it difficult to lobby for improved salaries, benefits, and working conditions and are often viewed with the same disinterest as the prisoners they supervise. As one officer from the Czech republic commented, "**We, too, [are] isolated. We are really just doing time with the confined.**"

## **SEVERELY INADEQUATE BUDGETS**

Over and over again, I heard the same expressions of frustration from administrators and staff. Most had innovative ideas and wanted to provide programs for the inmates to relieve idleness and tension, but were unable to do so because the resources were simply not available. They were greatly distressed over the lack of literacy and vocational training, the poor medical services, and the absence of recreational programs for inmates. They were equally concerned about impact of budgetary restrictions on their welfare and opportunities for advancement.

## **POOR RECRUITMENT**

The changing governments of Eastern Europe and South Africa have had a dramatic effect upon the correctional workforce. In Eastern Europe, every country has dismissed thousands of "old regime" prison officers. And despite the high unemployment rate, the prison service continues to have difficulty attracting quality personnel. The negative legacy of the prison system under the communist governments and the low salaries offered prison personnel continues to have an impact upon the recruitment of qualified men and women. Fortunately the situation is changing and, increasingly, professional people who could not locate work in other areas are entering the prison service. Most of these correctional systems are attempting to change their image by providing new uniforms and improving the recruitment and public relation strategies.

## **INADEQUATE TRAINING**

Interestingly, the training of staff in all three regions was formerly developed and, in some cases, of longer duration than in the United States and other Western democracies. However, these curricula essentially involved structuralist duties such as security, custody, and control. There was equal concern expressed for expanding curricula to include interpersonal-relations skills, negotiation and conflict resolution, anger management and stress awareness, officer-officer relations, and cultural awareness. The ongoing training of veteran personnel, supervisory and leadership training was also a matter of high concern. **According to a correctional supervisor in South Africa, "the most important thing we need is understanding how to manage change."**

## **NO RETENTION STRATEGIES**

The retention of personnel is a perennial problem in correctional systems. The prison service has difficulty competing with less demanding and more attractive job opportunities. Little is offered to correctional personnel that improves their self-esteem and sense of contribution to society. One officer from the People's Republic of China lamented, **"We only have each other to mirror our world."**

## **INFRASTRUCTURE IMPROVEMENT**

As in the United States during the last decade, it became apparent that the physical plants of most prisons were antiquated, inadequate, and in need of repair. In past regimes, prison construction and repair was handled by prisoners. New legislation now restricts inmate labor in these areas and has caused the physical plants to further deteriorate. This situation coupled with the budget crisis in most of these countries is causing a new awareness of the conditions of confinement for inmates and condition of work for officers. As one officer in the Slovak Republic said, **"Neither one of us, prisoner or staff, can 'escape' the conditions here."**

## **NEW FACILITIES**

The idea and the reality that new prisons will have to be built is a matter of active discussion among prison officials in the countries I visited. There was a keen awareness of the massive prison construction in the United States and other parts of the world including the development of private prisons. The most common inquiry concerned juvenile facilities and prisons for women. There was a great desire to visit these facilities and observe them in operation. The large-scale free movement of inmates in the prisons in the United States is a matter of interest among international correctional officials since most of their facilities are operating on a custodial lock-down model.

## **ENVIRONMENTAL HEALTH AND COMMUNICABLE DISEASES**

These visits have clearly revealed that overcrowding is a problem for most prison systems. Within these populations, inmates are less healthy and many are infected with contagious diseases such as tuberculosis. Emotional and mental health problems are rising and the correctional staff urgently need assistance in coping with this health crisis. A young female gypsy inmate in Hungary pointed out a chicken farm across from the prison compound and noted that the chickens at least had a yard and some sunshine of their own. Most of the prison medical clinics were sparsely staffed and poorly equipped during the time of my visit. **In many places inmates avoid the prison "hospital" as a place to "get sick."**

## **PRISONER RIGHTS**

This is an area of encouraging development. The United Nations minimum standards to improve the conditions and legal status of persons in pretrial detention and sentenced facilities have become increasingly essential to the credibility of governments. Even though these standards have yet to be fully adopted in most places, nonetheless they serve as a point of reference for prison officials, legislators, the press, human rights associations and concerned citizens. There is an interest in understanding how lawyers represent correctional systems vis-a-vis how lawyers represent inmates in the United States. We can observe a keen interest in the disciplinary process, inmate grievances, and that due process proceedings are gaining ground. As a correctional administrator in South Africa noted, **"Our new penal code will greatly assist in clarifying the appropriate relationship between the keeper and the kept."**

## CONCLUSION

This journey has reaffirmed my belief that the best way to approach a dialogue is to make one's primary purpose and mission as attempt to understand the mind and argument of the other person -- not that of enlightening him or her with one's own solutions. An admonition that Foucault (1979:235) has so poignantly put forth in *Discipline and Punish* serves to edify this perspective.

**The prison should not be seen as an inert institution, shaken at intervals by reform movements. The ‘theory of the prison’ was its constant set of operational instructions rather than its incidental criticism – one of its conditions of functioning. The prison has always formed part of an active field in which projects, improvement, experiments, theoretical statements, personal evidence and investigations have proliferated. The prison institution has always been a focus of concern and debate. Is the prison still, then, a dark abandoned region? Is the fact that one has ceased to say so for almost 200 years sufficient proof that it is not? (235)**

Transparency and rule of law are the guiding principles for the establishment of effective and humane prisons. The global “laboratories of correctional reform” that I have had the privilege to visit are currently addressing and finding answers to many of the problems confronting corrections. Naturally, geography and regional interests, borders and crime patterns, historical and cultural factors will prevail. The international community can offer positive networking and resources for policy makers in the Balkan area. We need to watch and support our mutual efforts and find the common ground that will help us build more humane and effective correctional systems in all countries.

J. Maghan, November 12, 1999

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