

# The Correction Conundrum—What Punishment is Appropriate?

**T**o Cicero, it was simple. Let the punishment match the offense, said the Roman statesman. In the ensuing 2,000 years since Marcus Tullius Cicero spoke, civilizations have been struggling to match the punishment to the crime, with varying degrees of success. In North Carolina, we still labor to devise appropriate sentences for the crime committed. Traditionally, we have made prisoners of those we convict of a crime. That prisoner becomes a ward of the state—ours to feed, clothe, shelter, protect, and sometimes rehabilitate.

In the process, however, we too often have created prisons that test the constitutional limits of what are "cruel and unusual punishments." Consider these assertions from sworn affidavits filed in federal court in 1986 regarding several North Carolina prisons: "I feared for my safety and life every day I was at Caledonia," said one inmate. Wrote another: "I . . . saw two incidents of forced homosexual activity. The two victims were young inmates who were forced to commit the act by several other inmates."

A prisoner at one southeastern N.C. unit said he heard a Department of Correction guard offer this remark about another inmate involved in a fight the day before: "Well, you can kill him for all I care. Just as long as I don't know about it." The affidavits speak of bribery of prison guards; of rainwater running down the inside of walls and along the floors of triple-bunked dormitories; of homosexual rape while guards watched but did nothing to stop it; of guards dispensing medicines even though they could not read the dosage instructions; of the easy availability of weapons. "I

estimate that I owned 15 to 20 street knives while I was at Columbus County Prison," said one inmate.

Such descriptions of our prison system make a mockery of the original meaning of the word *prisoner*. It stems from the Old French. A thousand years ago, mercenaries captured in battle by the French were called *prizes* from the Latin *prendre*, to take. Where else to put these prizes? In *prizen*, of course, and later, prisons. But few today would regard the prisoners of the state as anything close to prizes—costly prizes at that.

If anything, most of us would regard the prisoner as a burden, and usually our attention is focused on *how* we punish them—often losing sight of *why* we punish. In 1930, a Pennsylvania appellate judge (and later Chief Justice of the Pennsylvania Supreme Court) named P. J. Stern outlined in his review of a murder case the four commonly-accepted theories "as the basis upon which society should act in imposing penalties upon those who violate its laws. These are: (1) to bring about the *reformation* of the evil-doer; (2) to effect *retribution or revenge* upon him; (3) to *restrain* him physically, so as to make it impossible for him to commit further crimes; and (4) to *deter others* from similarly violating the law."<sup>1</sup>

Because it was a murder case, Stern dispensed with reformation or rehabilitation because the defendant would not be in contact with society again "and since secular law is concerned with one's relation to the community and not primarily with his inward moral development, the spiritual regeneration of a defendant is not, in such a case as this, a dominant factor. . . ."

The second theory, retribution, "may be regarded as the doctrine of legal revenge, or punishment merely for the sake of punishment. It is to pay back the wrong-doer for his wrong-doing, to make him suffer by way of retaliation even if no benefit result thereby to himself or to others. This theory of punishment looks to the past and not to the future, and rests solely upon the foundation of vindictive justice. It is this idea of punishment that generally prevails, even though those who entertain it may not be fully aware of their so doing." This, he went on, is not "a proper basis upon which to impose the penalty of law."

But, wrote Stern, restraint of the wrong-doer in order to make it impossible for him to commit further crime is not only "a justifiable basis for action but . . . one which is vital to the protection of society. To permit a man of dangerous criminal tendencies to be in a position where he can give indulgence to such propensities would be a folly which no community should suffer itself to commit, any more than it should allow a wild animal to range at will in the city streets."

The final basis for punishment, the judge went on, is deterrence—"the theory which regards the penalty as being not an end in itself but the means of attaining an end, namely, the frightening of others who might be tempted to imitate the criminal."

Too often, these four purposes of punishment are lost in the public clamor for locking offenders away, out of sight and out of mind. Little thought may be given to which of these purposes is best suited to an individual offender's own circumstances. Moreover, little thought may be given to the possibility that there may be better ways—better deterrents to crime, cheaper ways to punish, safer ways to punish offenders, and more efficient means to protect society—than locking criminals behind iron bars and forgetting them. As state Parole Commission Chairman Bruce Briggs told *Insight*, "The whole damn thing is out of kilter."

A year ago, Gov. James G. Martin introduced his prisons package, titled "Corrections at a Crossroads." In a sense, the state *is* at a crossroads, a critical juncture where state officials and the 1987 General Assembly must make choices now that will serve as the state's prison policy for years—perhaps decades—to come. As state Sen. Anthony Rand (D-Cumberland) puts it, "Addressing the prison problem may well be *the* most important thing we do this session."

In this theme issue of *North Carolina Insight*, the N.C. Center for Public Policy Research seeks

to provide state policymakers, legislators, professional groups, the news media, and the public with a primer on criminal justice policies as they have evolved in North Carolina. Our purpose is to help focus the debate on the state's prison system and the alternatives to incarceration that could help solve North Carolina's corrections conundrum. Should North Carolina build more prisons? Should it expand alternatives to incarceration? Should it alter its goals of imposing criminal sanctions, or modify the range of crimes for which people are imprisoned?

This primer begins with an explanation of prison demographics—who is in prison and why the system is so overcrowded. Following it are articles on who makes correctional policy and why the state lacks a cohesive corrections policy; a description of a series of federal lawsuits challenging inhumane conditions in North Carolina's prisons—suits which have driven prison policy in this state to the current brink of a possible federal court takeover; and an interview with Secretary of Correction Aaron Johnson.

The next section examines three policy issues that have a direct bearing on the correction conundrum. It examines suggestions that might solve the problem—or which might exacerbate it. First, we examine how the state's Fair Sentencing Act, adopted six years ago amid uncertainty over its impact on the prison system, has actually helped hold down the growth in the prison population—and how some proposed alterations in the law might reverse that course and contribute to more prison crowding. An article on alternatives to incarceration illuminates the full range of options available to state policymakers for ways other than imprisonment to punish offenders, and offers a number of specific recommendations that North Carolina might follow in its trek through the legal minefields. Finally, we examine the Martin administration's proposal to contract with private businesses for for-profit prisons, a proposal that has stirred hot debate because of the legal, moral, and constitutional implications.

We trust that this primer will contribute to solving the prison puzzle—and help fulfill Cicero's admonition to make the punishment fit the crime.

—Jack Betts  
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<sup>1</sup>*Commonwealth v. Ritter*, Court of Oyer and Terminer, Philadelphia, 1930, 13 D.&C. 285.