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## Penology and Ideology: Ethics and Criminal Responsibility

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IN DETROIT BEACH, Michigan, recently, a woman watched her 4-year-old grandson stabbed to death by a teenager who apparently sought the \$.40 the child had in his pocket. Two years ago, in New York City, police charged six people with murdering three elderly and penniless men by asphyxiation. One died with his prayer

shawl stuffed into his mouth . . . Crimes such as these, serious and violent crimes, now occur at a rate, based on the population, of more than double that of 15 years ago.<sup>1</sup> Despite numerous criminological studies and millions of dollars of Federal funding for Law Enforcement Assistance grants, serious crime continues to accelerate.

<sup>1</sup> Alvin Rudoff, "The Soaring Crime Rate," in *Criminal Justice as a System*, ed. A.R. Coffey and V.E. Renner (Englewood Cliffs, Prentice-Hall, 1975), pp. 28-36; J. Newman (ed.), *Crime in America* (Washington, U.S. News and World Report, 1972), pp. 13-29. See also D. Glaser, D. Kanefick, and V. O'Leary, "The Violent Offender," in *Critical Issues in the Study of Crime*, ed. S. Dinitz and W.C. Reckless (Boston, Little, Brown, and Co., 1968), pp. 107-11. For a recent popular analysis, see "The Crime Wave," *Time* 105 (June 30, 1975), p. 10.

### *The Need for a Consistent Correctional Philosophy*

Why has crime continued to increase at such a devastating rate? Perhaps one reason is that there

is not yet any clear, consistent rational policy regarding whether to pursue a correctional philosophy of rehabilitation or of retribution. Often criminologists, as well as corrections officials, operate at cross purposes because some judge criminals alone to be accountable for their acts and emphasize retribution. Others maintain that offenders need rehabilitation or therapy, since their behavior is the product of a disease or pathological condition and not the result of a free and responsible choice. Complicating the situation even further, some experts since 1975 have held a "nothing works" doctrine. Arguing that since neither rehabilitation nor retribution lowers recidivism rates, proponents of this third view have pushed for a correctional philosophy of incapacitation. Incapacitation without therapy, however, comes down to a variant of punishment. Hence the more recent, "nothing works," doctrine results pragmatically in a punitive approach. This means that one is left basically with a choice between some form of retributive correctional philosophy and some form of rehabilitative theory.

Not only is there wide disagreement, theoretically speaking, regarding what *ought* to be done in corrections. There is also no consensus as to what is currently being practiced, overall, in the United States. Some corrections experts maintain that since the early 1970's, belief in rehabilitation has disintegrated and we are turning back toward a more retributive approach.<sup>2</sup> Other authorities argue that we now are moving away from punitive

practices and progressing toward more use of rehabilitation.<sup>3</sup>

Who is right? The purpose of this article is to answer this question, not as regards which policy is currently being put into *practice*, but to determine what is the best correctional *philosophy*. Discovering this, however, presupposes that we have an accurate concept of criminal responsibility, since one's theories about treatment of offenders must be consistent with the degree to which they are realistically accountable for their actions, and hence capable of changing their behavior. In the following paragraphs I will focus on how different views of criminal responsibility result, logically, in various correctional philosophies. Specifically I will attempt to (1) summarize the two main views regarding this public policy issue of treatment of criminals; (2) examine the central assumptions of each of the value systems underlying these two competing philosophies; and (3) suggest what the perspective of a philosopher can contribute to understanding the symptoms of, and solutions to, this problem.

### *The Two Dominant Philosophies Regarding Treatment of Criminals*

Ever since humankind began to doubt the wisdom of the "eye for an eye, tooth for a tooth" principle as a means for deterring crime and for responding to it, sociologists, psychologists, criminologists, and philosophers have divided themselves into two main camps regarding this issue. Maintaining that the key to the crime problem is a retributive theory, so-called "conservatives," such as Jacques Barzun, Ernest van den Haag, and C.S. Lewis,<sup>4</sup> have argued that the criminal has recently been given more rights than the victim.<sup>5</sup> In order to achieve a completely just and consistent policy and an increased respect for human life, proponents of this theory have called for increased penalties for all serious crimes. They insist that the essence of an adequate policy for dealing with crime necessarily involves the recognition of the offender's guilt, and his consequent, severe, and well-deserved punishment.<sup>6</sup> Other retributivists, such as Martinson and Wilson, maintain that since rehabilitation does not lower recidivism rates, there is no reason to forego traditional modes of incapacitation or punishment in favor of therapeutic approaches.<sup>7</sup>

On the other hand, so-called "liberals," such as Karl Menninger and Ramsey Clark,<sup>8</sup> have maintained what has been called a humanitarian theory

<sup>2</sup> J.P. Conrad, "We Should Never Have Promised a Hospital," *FEDERAL PROBATION XXXIX* (December, 1975), pp. 3-9; see also O.J. Keller, "Sand Castles," *American Journal of Correction* 38 (July-August, 1976), pp. 5-6, and Stuart Adams, "Evaluation: A Way Out of Rhetoric," in R. Martinson, Ted Palmer, and Stuart Adams, *Rehabilitation, Recidivism, and Research* (Hackensack, N.J., National Council on Crime and Delinquency, 1975), pp. 75-91, esp. p. 89.

<sup>3</sup> B.J. Malcolm, "Incarceration . . . Rehabilitation or Vindictiveness," *American Journal of Correction* 37 (January-February, 1975), p. 21; see also E.J. Hubeck and T.G. Bond, "Mental Health and Humanization," *FEDERAL PROBATION XXXVIII* (September, 1974), pp. 50-54, and Ted Palmer, "Martinson Revisited," in Martinson, Palmer, and Adams, *op. cit.*, pp. 41-62. The Palmer article originally appeared in *Journal of Research in Crime and Delinquency* 21 (July, 1975), pp. 133-52.

<sup>4</sup> Jacques Barzun, "In Favor of Capital Punishment," in *Contemporary Moral Issues*, ed. H.K. Glivetz (Belmont, California, Wadsworth, 1974), pp. 18-25. C.S. Lewis, "The Humanitarian Theory of Punishment," in *Philosophy and Contemporary Issues*, ed. J.R. Burr and M. Goldinger (New York, Macmillan, 1972), pp. 71-76. Ernest van den Haag, *Punishing Criminals* (New York, Basic, 1975).

<sup>5</sup> Barzun, "Capital Punishment," pp. 19-20. See also J. Barzun and W.H. Taylor, *A Catalogue of Crime* (New York, Harper and Row, 1974).

<sup>6</sup> Barzun, "Capital Punishment," p. 19. Lewis, "Humanitarian Theory," pp. 75-76; see also Ernest van den Haag, *op. cit.*, pp. 8-23, 51-72, 181-267.

<sup>7</sup> Van den Haag, *op. cit.* Martinson's classic and controversial defense of this thesis is found in Robert Martinson, Douglas Lipton, and Judith Wilks, *The Effectiveness of Correctional Treatment* (New York, Praeger, 1975). A more concise and popular version is found in Robert Martinson, "What Works? Questions and Answers about Prison Reform," *The Public Interest*, no. 35 (Spring 1974), pp. 22-54. See also James Q. Wilson, *Thinking about Crime* (New York, Basic Books, 1975), pp. 168 ff.

<sup>8</sup> Menninger, "The Responsibility of Criminals," in Burr and Goldinger, *op. cit.*, pp. 71-76; Ramsey Clark, *Crime in America* (New York, Simon and Schuster, 1970); see also Menninger, *The Crime of Punishment* (New York, Viking, 1968).

to support a quite different philosophy on this public policy issue. Arguing that it is primitive and barbarian to speak of punishing criminals, proponents of this view cite the well-known facts that, statistically speaking, roughly 60 percent of all crimes are committed by socially, economically, and educationally disenfranchised members of minority groups.<sup>9</sup> As Caryl Chessman put it, most criminals are from the ranks of the friendless and the fundless.<sup>10</sup> They are society's victims before they victimize society. Hence according to proponents of the humanitarian theory, they are to be helped, not hurt. They deserve rehabilitation and therapy, not retribution. Moreover, in spite of the strong arguments (by scholars such as Martinson) that rehabilitation does not work, "humanitarianists" such as Adams and Palmer maintain that certain treatment methods work only for some offenders, while different approaches are more successful for other persons. Hence, they claim, rehabilitation does work, provided that one doesn't attempt to use one method for all offenders.<sup>11</sup>

### *Value Frameworks Underlying the Two Theories*

What can a humanist, and specifically, a philosopher, contribute toward resolving this issue? At best, he or she might unearth the different systems of values that underlie each of these two positions, since clearly it ought to be our investigated, articulated, and chosen values that determine our positions on public policy issues, and not our positions that somehow reveal our values. (This latter case would represent a sort of "ethics by default.") If we understand the ethical and social assumptions built into both sides of pressing correctional choices, perhaps those decisions would be both more equitable and clearer. Let's look at the two policy options regarding crime.

Citing extensive statistics which establish the facts that a majority of criminals come from environments of poverty, poor education, inequity, and child abuse, proponents of the humanitarian

theory argue that it is unjust to give criminals punishment or retribution. They argue, for example, that there are certain run-down sections of Chicago that have continually had a high crime rate, relative to the rest of the city. These ghettos have always been inhabited by whatever group, at the time, was the poorest of the poor. They have housed a succession of Swedes, Poles, Germans, Italians, Syrians, and now, blacks. The one constant of these ghettos has been the high crime rate.<sup>12</sup>

For reasons such as these, proponents of the humanitarian theory maintain that *society* must be held morally accountable for crime, and not the offenders who are members of the "permanent underclass" created by society. In viewing the criminal as victim, and hence as not having *freely* chosen his actions, proponents of this theory make a logical transition to the fact that he is also not *responsible* and not *punishable*. For, as Kant noted, responsibility presupposes freedom. Advocates of this position point out that our ethical/legal/political system is neither consistent nor just in allowing verdicts of "not guilty by reason of insanity," yet at the same time disallowing verdicts of "not guilty by reason of chronic social disenfranchisement." In both cases, justice demands recognition of lessened (or absent) responsibility and hence lessened (or absent) punishment, since it is morally doubtful whether the criminal was acting freely. Proponents of rehabilitation argue that, given the criminal's conditioning and his unmet needs, the offender never had a real choice to behave other than as he has.

Epictetus once said that only the educated are free, and proponents of the humanitarian policy might well argue that only the educated, the well-fed, and the loved are free, and therefore responsible. Therefore, they claim, one cannot have minimal expenditures of tax monies for health, education and welfare, and at the same time, minimal crime rates. It is inconsistent to demand both, they argue, for the two issues are irrevocably tied together. For the proponent of the humanitarian policy, this ethical inconsistency is not only *unjust*, but also *impractical* as well. Failure to admit the real causes of crime, and to address these, results in meaningless imprisonment which never really focuses on resocialization of the criminal. Just as Kant pointed out that war creates more monsters than it destroys, so proponents of a

<sup>9</sup> Newman, *op. cit.*, pp. 31-45; Stephen Lewin (ed.), *Crime and Its Prevention* (New York, Wilson, 1968), pp. 9-64; Barry Krisberg, *Crime and Privilege* (Englewood Cliffs, Prentice-Hall, 1975), pp. 1-79, 195-196. See also van den Haag, *op. cit.*, pp. 84-104, 117-123; E. van den Haag, *Political Violence and Civil Disobedience* (New York, Harper and Row, 1972), pp. 63-69.

<sup>10</sup> Caryl Chessman, "A Letter to the Governor," in Girvetz, *op. cit.*, p. 33.

<sup>11</sup> Adams, *op. cit.*, and Palmer, *op. cit.*  
<sup>12</sup> Wicker, Olin, and Morris, cited in "The Crime Wave," pp. 14-15. See also van den Haag, *Punishing Criminals*, pp. 73-94; Travis Hirschi, *Causes of Delinquency* (Berkeley: University of California, 1972); R. Mansfield, L.C. Gould, and J.Z. Nemenwirth, "A Socioeconomic Model for the Prediction of Societal Rates of Property Theft," *Societal Forces* 4 (June, 1974). See also Irvin Waller, "Conditional and Unconditional Discharge from Prison: Effects and Effectiveness," *FEDERAL PROBATION XXXVIII* (June, 1974), p. 10.

therapy policy argue that prisons create more criminals than those they incarcerate.

The system of values central to this "humanitarianist" position places a high priority on justice to the offender, and on rendering the degree to which he is judged "accountable" ethically consistent with the extent to which he is said to be free. As such, this framework of values requires one both to admit societal responsibility for crime and to recognize the barbarism and psychological naiveté central to philosophies based on punishment or incapacitation.

The retributivist policy, on the other hand, also has a logical and ethical framework to recommend it. On this view, human beings are, and should be held to be, free, responsible, and punishable. Proponents of this theory maintain that it is far more desirable in terms of *justice*, to have one's penalty related retributively to one's crime, than to have the criminal diagnosed as sick.<sup>13</sup> How is it possible, they claim, to decide who is "sick" and who is not? Is the dissident Soviet physicist, Andrei Sakharov, "sick," as has been alleged by penal authorities in the USSR? Also, how is it possible to tell when a socially maladjusted person is rehabilitated? When he or she acts in accord with majoritarian values? . . . with popular sentiments? . . . with the prejudices of the psychiatrist or psychologist? Moreover, claim its proponents, is not the retributive theory correct, at least, inasmuch as it is impossible to show *mercy* to the criminal unless there is a consistent framework within which he can be shown *justice*? In other words, how can an offense be pardoned if there is no real offense at all, but only the deviance of a victim of society? Besides, is not an attempt to control one's mind and condition one's behavior a far greater violation of one's civil liberties than a mere physical incarceration? And what is the role of equal justice under law, as decided by a trial before one's peers, if one assents in toto to the humanitarian position? Would not *trial by peers* be ex-

changed for a medical or scientific *decision* by non-peers, namely, psychiatrists and psychologists?<sup>14</sup> And who insures the "justice" of their professional decision? . . . other professionals? . . . one's peers, who are laymen?

Apart from the philosophical validity of these retributivist questions regarding the therapy policy, advocates of retribution also base their arguments on a pragmatic system of values. They cite statistics noted by Martinson, Wilson, Van den Haag, and others, that "rehabilitation" doesn't work, since recidivism rates do not decrease when therapeutic, instead of punitive, measures are used.<sup>15</sup> If anything, retributivists such as Wilson argue, only punishment works, since there appears to be a correlation between the criminal's higher certitude that he will be punished, once caught, and lower crime rates, and a correlation between lower certitude of punishment and higher crime rates. In other words, criminals seem to be quite free and quite rational; they seem to use a clear "cost-benefit" analysis and to become offenders whenever crime does pay. Wilson points out that England has significantly lower crime rates than does the United States, perhaps because once captured, the criminal in England is much more likely to go to jail than in the United States.<sup>16</sup> *If* therapy has really been tried, and *if* some other parameter cannot account for the success of the English—two big "ifs," among many others needing examination—then perhaps the retributivist philosophy is correct.

The system of values central to this position places a high priority on justice to the victim, and on the ethical connection between justice and mercy, justice and trial by jury, justice and behavioral conditioning. As such, the retributivist policy is based both on a pragmatic system of values (since it is alleged that therapy doesn't work), as well as an ethics of individual responsibility.

### A Philosophical "Resolution"

From the preceding brief comments, it seems clear that there are, at least in part, sound ethical, social, and political values to recommend both the retributivists and the humanitarianist position. The question is, which value framework is more desirable? Was Mayor Rizzo right when he reduced the two positions merely to a matter of personal interest? He claims, regarding retributivists and humanitarianists: "a conservative is a liberal who was mugged the night before."<sup>17</sup>

<sup>13</sup> As Lewis puts it (*op. cit.*, p. 73): "It will be in vain for the rest of us, speaking simply as men, to say, 'but this punishment is hideously unjust, hideously disproportionate to the criminal's deserts.' The experts with perfect logic will reply, 'but nobody was talking about deserts. No one was talking about *punishment* in your archaic vindictive sense of the word. Here are statistics proving that this treatment deters . . . What is your trouble?' " See J.Q. Wilson, *op. cit.*, p. 171, who also argues against indeterminate sentences.

<sup>14</sup> See Lewis, *op. cit.*, pp. 75-76; as Lewis points out, rehabilitative "treatment" could only be criticized on *technical* grounds, if one accepts the humanitarianist philosophy. In this case criticism of "therapy" could never be made "by men as men and on grounds of justice."

<sup>15</sup> See Martinson, *op. cit.*, pp. 22-54; Martinson, Lipton, and Wilks, *op. cit.*, pp. 525 ff; Martinson, Palmer, and Adams, *op. cit.*, J.P. Conrad, *op. cit.*, p. 3; Van den Haag, *op. cit.*, pp. 188-90; and J.Q. Wilson, *op. cit.*, pp. 168 ff. See also W.E. Amos, "The Philosophy of Corrections: Revisited," FEDERAL PROBATION XXXVIII (March 1974), pp. 43-46, and J.Q. Wilson, "A Long Look at Crime," *FBI Law Enforcement Bulletin* 44 (February 1975), pp. 2-6, esp. p. 6.

<sup>16</sup> Wilson, *Thinking about Crime*, p. 201; see also pp. 54-55, 174-75.

<sup>17</sup> Quoted in "The Crime Wave," p. 18.

Rizzo's answer seems too simple, and so does the opposition between the two policies outlined in this discussion.<sup>18</sup> Perhaps complete acceptance, of either position, represents our penchant for easy solutions rather than realistic ones.

Near the end of the first section of one of the greatest poems ever written in the English language, the American expatriate, T.S. Eliot, wrote: "Human kind cannot bear very much reality."<sup>19</sup> His words are a simple, poignant commentary on the fact that we humans have a penchant for myth-making, for believing that easy answers will work. And unfortunately, once we have *made* our myths, most of us *continue* to believe in them. We still like to believe the myth that crime doesn't pay. Yet it obviously does, or so many people would not turn to crime. We like to believe the myth that rehabilitation is a realistic possibility for *all offenders*, rather than just a few.

Further inquiry reveals the extent to which both of these theories about crime depend on myth. At least partially, the proponent of the humanitarian theory has fallen victim to the myth that the poverty and pathology which breed crime can be eliminated by greater expenditures of *money*.<sup>20</sup> And, at least partially, the proponent of the retributivist theory has wrongly accepted the myth that stronger penalties are necessarily a greater deterrent to crime than are weaker ones. This thesis fails, of course, because (statistically speaking) juries are less likely to impose stronger penalties than weak ones, and hence the strength of penalties "on the books" has little effect.<sup>21</sup>

Both of these theories are mythical to the ex-

tent that they are based on *gross oversimplifications*. Obviously the criminal alone cannot be held accountable because, statistically speaking, the person for whom societal conditions have not permitted an adequate income, education, employment, and family structure is many times more likely to resort to crime than is someone who has obtained these benefits. Despite these statistical facts, however, large segments of the population seem to persist in the myth that criminals are wholly responsible for their actions. If we did not persist in this myth of complete individual accountability and retribution, it would be hard to explain how we could tolerate the high financial costs and animalistic conditions of many of our prisons.<sup>22</sup> We seem to claim that, when freely chosen, error has no rights, and then we proceed to ignore, in many instances, the deterioration of the rights of the imprisoned.

On the other hand, large segments of the population seem to subscribe to the deterministic myth that society alone is completely responsible for criminal behavior, or at least that the conditions and institutions of society alone suffice to predict how various persons within that society will behave. As Virgil expressed it, in the *Aeneid* (II, 65): "From a single crime, know the nation." Obviously, however, this myth is in part false, not only because it presupposes that every person has absolutely no control of his actions, but also because it suggests that we (as social scientists, humanists, parents and lawmakers) have predictive power over crime. The fact is, that *no one* can say, given societal conditions and institutions of type x, a given person y, will definitely commit crime a. In addition, dire consequences would follow from the thesis that societal conditions were completely determining, and that the individual had no responsibility for his actions. In treating persons as not responsible, they might become so, simply because of our treatment. As Simone de Beauvoir says: when an individual (or a group of individuals) is kept in a situation of inferiority, the fact is that he (they) will become inferior.<sup>23</sup> Likewise if one follows the humanitarianist position, and treats criminals as if they are not responsible for what they have done, then one conditions them to become irresponsible. One encourages even more crimes which they can "blame" on the society in whose ghettos they were "conditioned" to behave as criminals. Perhaps, on this view, the humanitarianist position is the ultimate crime. In refusing to admit that offenders

<sup>18</sup> Besides the humanitarianist position and the retributivist position (including the "nothing works" view), there are many alternative ways of presenting various correctional policies. Louis Tomaino, "The Five Faces of Probation," *FEDERAL PROBATION XXXIX* (December, 1975), pp. 42-45, focuses on five correctional philosophies, the first two of which might be called humanitarian, and the last three which might be called retributivist. They are: "Let him identify"; "Help him understand"; "Make him do it"; "It's up to him"; and "Have it make sense."

<sup>19</sup> T.S. Eliot, *Four Quartets* (New York, Harvost, 1971), p. 14.

<sup>20</sup> J.Q. Wilson indicates that this is a myth, for he points out that low socioeconomic status cannot be correlated simply with high crime rates; rather, the lack of supportive family ties provides a better correlation with high crime rates. See *Thinking about Crime*, pp. 206-207, and "A Long Look at Crime," p. 3. See also D.M. Gottfredson, "Assessment of Methods," in L. Radzinowicz and M.E. Wolfgang (eds.), *Crime and Justice III* (New York, Basic, 1971), pp. 357-60; see also S. and E. Glueck, "Glueck Method," pp. 388-97; M.M. Craig and S.J. Glick, "Ten Years' Experience," pp. 398-408; T. Hirschi and H.C. Selvin, "Making Proper Inferences," pp. 409-415; A.J. Kahn, "Public Policy," pp. 415-28; and P.G. Ward, "Validating Prediction Scales," pp. 428-34, all of which also appear in *Crime and Justice III*.

<sup>21</sup> J.Q. Wilson, in *Thinking about Crime*, p. 181, substantiates this point. See also Martinson, Lipton and Wilks, *op. cit.*, pp. 299-300, 518, 522.

<sup>22</sup> Commenting on the poor conditions in many of our prisons, Tom Rallsback, member of the House Judiciary Committee, writes ("Corrections: A Long Way To Go," *FEDERAL PROBATION XXXIX* (June, 1975), p. 48.) that the degree of civilization in a society can be judged by entering its prisons. He then concludes that the United States is just now coming out of the Dark Ages in this respect. Moreover it usually costs in the neighborhood of \$10,000 per year, per person, to provide such poor conditions. For cost data, see Rallsback, *op. cit.*, p. 48, and C.W. Nelson, "Cost-Benefit Analysis and Alternatives to Incarceration," *FEDERAL PROBATION XXXIX* (December, 1975), p. 60.

<sup>23</sup> Simone de Beauvoir, *The Second Sex*, tr. and ed. by H.M. Parshley (New York, Vintage, 1974), p. xxviii.

have freely chosen crime, proponents of the therapy position may encourage the crime of believing there is none. Moreover if one assumes that societal conditions are completely determining, then we could never speak of praise, blame, progress, or regress with respect to human actions. And, from a very common-sensical point of view, adherence to the myth of complete societal determination is inconsistent with the myriad ways in which we do hold persons accountable for their actions. Despite the falsity of this myth, however, large segments of the population seem to subscribe to it. Otherwise, we would not have listened so easily to talk of how, singlehandedly, society has made the criminal "sick." Moreover, the myth (that society, and not the criminal, is wholly responsible for crime) must account at least in part for our reluctance as a society to send more than 1/7 of these arrested for specific crimes<sup>24</sup> to jail.

In accepting the myth of complete societal responsibility we do the criminal a double disservice: We teach him to believe he is not responsible, and we teach him to condition us to believe that our half-hearted rehabilitative therapy has "worked" on him, when in more than 70 percent of cases, it has not.<sup>25</sup> Thus we increase his frustration with, and alienation from, a society that refuses to admit that the price of its not offering equal opportunity to all is, in part, a higher crime rate.

If neither side of this simplistic dichotomy has a complete, consistent, and workable system of values, where does this leave us? It leaves us, in part, with what corrections officials have known for years, viz, that there are no easy ethical answers and no convenient myths that tell us how to treat the offender and that reveal whether he, or the society that created him, is ultimately responsible for his deviant actions. Perhaps the only solution to the problem is a difficult one: acceptance of the fact that both society and the criminal are responsible for crime. This is a complex solution, and perhaps an unworkable one, because it gives us no means of knowing precisely *to what extent* either the offender, or his environ-

ment, is to blame for his crimes. This answer means, too, that corrections officials (who might attempt to implement a philosophy recognizing both types of accountability) will find favor neither with retributivists nor with humanitarians.

Rather than attempt the impossible, and try to develop a correctional policy which admits the importance of both retribution and therapy, because the offender is both responsible and (in some sense) not responsible, there is another course of action open. This is to recognize that after-the-fact solutions to crime don't really work. Asking whether to use conditioning, retribution, or both, as a deterrent to crime is really like asking whether to use chemotherapy, radiation, or both, to arrest cancer. In both instances the disease has often progressed so far, that any treatment is too late. Cancer deaths and recidivism rates substantiate the thesis that prevention is the best solution.<sup>26</sup> But prevention is much more difficult because it challenges a societal system of values, and not just the adequacy of technical skills or financial resources. This policy issue, like so many others, is at root a problem of ethics and social philosophy. The United States learned long ago, for example, that foreign aid used to buy contraceptives for third and fourth world countries doesn't control the population problem. The real problem is that destitute parents in a dying land have a greater chance of enduring the poverty of old age when they have many survivors to support them, than when they have only a few children. Money for contraceptives, like money for crime prevention programs, is useless in the face of recalcitrant social structures, alienated families, and unequal opportunities for minority groups. These problems are bigger than any correctional philosophy is able to handle, or ought to be asked to handle, alone.

Moreover these social issues may be too complex for any policy actions, whether preventative or correctional, to resolve. Perhaps crime prevention is successful only to the extent that every individual in society is essentially a community-oriented person. It is simplistic, but nevertheless correct, to point out, for example, that "Son of Sam" would not be a criminal if he had a community-oriented philosophy of life. If he did, then his conscience would be the source of judgments about social responsibility. Likewise it was the same sense of social responsibility or community orientation (absent in the killer but present in his

<sup>24</sup> See J.Q. Wilson, *Thinking about Crime*, pp. 54-55, 174-75, 201.

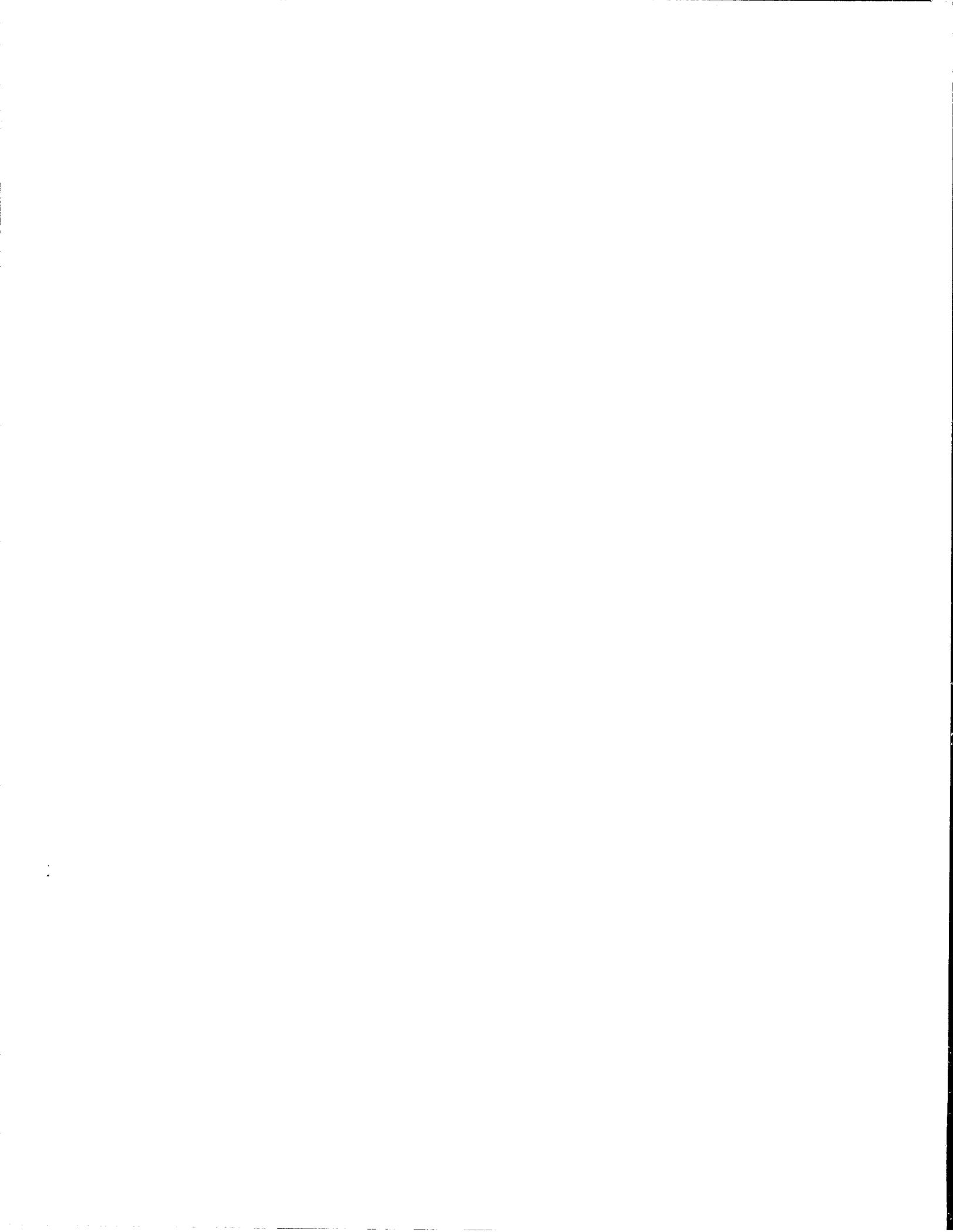
<sup>25</sup> For recidivism statistics, see Waller, *op. cit.*, pp. 9-14; Daniel Glaser, "How Many Prisoners Return," in Radzinowicz and Wolfgang, *op. cit.*, pp. 202-211. See also Newman, *op. cit.*, p. 45; and Irvin Waller, *Men Released from Prison* (Toronto, University of Toronto Press, 1973).

<sup>26</sup> A number of current writers have suggested taking the "prevention" approach and have also emphasized community-based corrections. See, for example, Stuart Adams, *op. cit.*, pp. 82-91, and L.W. Pierce, "Rehabilitation in Corrections: A Reassessment," *FEDERAL PROBATION XXXVIII* (June, 1974), pp. 14-19. See also Martinson, *op. cit.*, p. 50, and Wilson, "A Long Look at Crime," p. 2.

neighbors) that led to the prevention of further murders by "Son of Sam." If the New York woman walking her dog and the apartment dweller who lived near "Son of Sam" had both "minded their own business," and ignored their community responsibility, they would not have contributed to the prevention of further crime. Their disclosure of information about the suspect represents the embodiment of a social philosophy too often missing in contemporary culture. Their example illustrates the very point, made by philosophers as diverse as Plato and Marx, that a necessary precondition for any societal change is the change of heart of most individuals in that society. This means that crime, in some sense, represents a failure of every individual, including the criminal. It also means that correctional institutions cannot be expected to compensate for the many ways in which we all fail to be, and to expect others to be, socially responsible.

One reason that we may have failed to become, and to teach our children to become, socially re-

sponsible is that we have valued our constitutional freedoms too highly. American liberal traditions have created, to an extreme degree, a "cult of personal liberation." Consequently neither the offender nor the nonoffender has developed a true *social* conscience. Admittedly development of a community-oriented responsibility is made more difficult by the heterogeneous and pluralistic nature of culture today. We cannot eliminate crime in a society in which as happened recently, the Mafia is free to picket the FBI. Realistically speaking, the persistence and the acceleration of the crime rate is testimony to more than the absence of social responsibility in our framework of ethics. Neither is the crime rate merely an indicator of faulty correctional policies. Rather in a positive (but sometimes too extreme) sense, our current correctional problems bear testimony to the success of a far-reaching system of civil liberties. Without such liberties, crime prevention would be easy. Correctional officials have the difficult task of achieving both.



**END**