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This Issue in Brief

ACQUISITIONS

Homicides Related to Drug Trafficking—Homicides as a result of business disputes in the distribution of illegal drugs appears as a new subtype of homicide in the United States, report authors Heffernan, Martin, and Romano. In this exploratory study of 50 homicides in one police precinct in New York City noted for its high level of drug dealing, 42 percent were found to be "drug-related." When compared with non-drug-related homicides in the same precinct, the "drug-related" more often involved firearms and younger, male victims.

Management Theory Z: Implications for Correctional Survival Management—Increased workload and decreased budgets are realities facing correctional management during the remainder of the 1980's, reports Dr. William G. Archambault of Louisiana State University at Baton Rouge. This means that fewer employees must be motivated to produce more and higher quality services. Faced with a similar dilemma, American business and industry have "discovered" Theory Z management and have created its pragmatic version. This article analyzes the utility of Theory Z in correctional organizations and outlines the steps necessary to implement this approach.

Making Criminals Pay: A Plan for Restitution by Sentencing Commissions—Attorney Frederic E. Kalogris writes that the recent controversy over the insanity defense has focused public doubt over the criminal justice system. It highlights the need for further tinkering but for wholesale reform. This recent proposal would classify offenses according to harm and enforce restitution in every case. In this way, would sweep away the entire uncoordinated panoply of postconviction proceedings and replace them with a well-staffed sentencing commission of experienced trial judges whose assignment would be to assess the harm done by the offender and collect judgment to repay the victim and the state.

Information Processing in a Probation Office: The Southern District of Georgia Experience—Chief Probation Officer Jerry P. Morgan believes there is a place for word/information processing in the probation office. In establishing a system in the Southern District of Georgia, local sentence comparison became the first project followed by

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Federal Probation Quarterly

Federal Probation is published by the Administrative Office of the United States Courts and is edited by the Probation Division of the Administrative Office. All phases of prevention and corrective activities in delinquency and crime control within the field of interest of Federal Probation. The Quarterly is intended to provide a wide range of editorial and news articles, which are not limited to Federal matters, and should also serve as a basis for the prevention and control of delinquency and crime in Federal institutions.

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Making Criminals Pay

A Plan for Restitution by Sentencing Commissions

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Two highly publicized incidents in the recent past have served to focus public attention on the criminal law. Mark David Chapman did not deny having fired several pistol bullets into John Lennon, ending his death, although his attorney sought for a time to obtain an innocent verdict on the ground of insanity. John Hinckley, who tried to assassinate President Ronald Reagan on March 31, 1981, were subject to the greatest degree of intensive news coverage, does not deny having fired his pistol at President Ronald Reagan in order to kill him, and yet his lawyers sought—and obtained on June 21, 1982—a not-guilty finding by reason of insanity. Under the insanity defense an accused may plead and prove innocence of a serious crime without denying that the act prohibited was in fact committed, and that the accused committed it. The insanity defense is not a post-trial sentencing device to obtain hospitalization instead of incarceration for one who admits criminal conduct. It is a complete defense to guilt and a denial of the public power of imposing criminal sanctions.

To conduct themselves so as to present harm to innocent citizens, who suffer from a recognized mental abnormality, deserve to have their mental condition taken into consideration in determining appropriate sanctions. But this should not remove serious harmful conduct from the jurisdiction of the criminal courts. It is evident from this practice that the present system of making critical decisions, finding the facts and implementing the necessary response, is in dire need of wholesale reexamination. The insanity defense is not the only problem with our criminal justice system but rather one of implementing the necessary response, is in dire need from this practice that the present system of recognition mental abnormality, deserve to have whose actions on March 31, 1981, were subject to criminal conduct. It is a complete defense to guilt and a denial of the public power of imposing criminal sanctions.

Crime is common because it is cheap, and it is cheap because we make it so. The essence of crime lies in injury to the innocent. Our civil law has for centuries made the knowing perpetration of such injury very expensive to those responsible, imposing civil remedies for money damages. It is time that we made this lesson a fundamental part of the entire legal order.

The criminal process performs two major functions, those of trial and sentencing, finding the facts and determining the appropriate and effective response. When, as in its excessive concern with legalisms, it has lost sight of the single major criterion which should guide all of its operations: the prevention of harm to innocent citizens. The system fails because it does not carry out the intended and continuing inquiry which criminal conduct warrants and impose sanctions accordingly. It is a system which suffers from a woeful lack of organization and understanding of the individuals who by their conduct are brought into contact with it. Its procedures are dominated by traditions which, although they have been reviewed piecemeal in countless individual court cases and special legislative tinkering, have never been reevaluated in their entirety since their derivation from ancient forms of action in England and Europe.

The essence of our criminal procedure, dating from the Middle Ages, is the adversarial trial. A particular charge is drawn by a prosecutor and results in a trial and punishment. The system must, finally, begin to address the plight of the victims of criminal conduct in a coherent and effective manner. It must, to the greatest extent possible, pair punishment with redress for the victim. In placing a greater emphasis on restitution it will bring home to the offender the intolerable social cost of criminal conduct.

The history of correctional philosophy reveals a number of noble experiments, which have brought much humanitarian improvement since the age of corporal punishment, but which have, on the whole, proved failures. We have tried to bring religion, rehabilitation, and research to bear on the problem of crime, but we have neglected the most obvious way of making the individual offender, and the entire society, aware of the stakes involved. By ignoring the cost, we have lost our ability to effect repayment. In every domain of our lives we learn to consider the consequences to others the answer to crime is to apply this lesson to the criminal.
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Board appointments are not subject to the same limitations. Dismissing parole decisions, and putting nothing in their place, would be undisturbed by other duties. The correctional commissions will be responsible for assuring accurate and timely assistance to the victims of crime.

Therefore, the Rion Society makes the following proposals. The first proposal is for the creation of independent correctional commissions which will be responsible for assuring accurate assessment and consistent sentencing of criminal offenders at each stage of the process, operating under public scrutiny and a clear set of standards. Such commissions should operate under the judicial branch of government, as their major function will be to assure that all sanctions are consistent and humane. The correctional commissions will end the need for the insanity defense. Through the use of independent commissions, their actions should be subject to review in the appellate courts under the standards currently employed in administrative law. They will be responsible for all major decisions concerning offenders, from sentencing on.

We do not recommend that the commissions be given prosecutorial powers or that the parole boards be given traditional commission responsibility, but only that the commissions be assured two powers which are consistent with our judicial tradition and which are capable of adapting sanctions to the stage of the process, operating under the power of supervision of the mentally disturbed or degraded, as well as all other types of criminal offender.

The second major proposal for improvement of the criminal justice system in the United States would substantially reduce our dependence upon overcrowded jails and prisons and will enhance our ability to deal effectively with new or nonviolent offenders who are nevertheless responsible for our Execute innocent criminals. It will also enable the system to convey to the offender the cost of his conduct in suffering to others. This proposal consists of requiring an assessment of the degree of harm to others in every criminal proceeding, and a judgment against the offender for the harm in money damages. The offender would then be required to make full restitution either to the victim or to a fund for future victims of crime, and this judgment would remain until paid.

A substantial proportion, and likely the majority, of crimes would not be committed if there existed a real possibility that they would have to be paid for in full by the offender. With few exceptions, existing civil laws provide remedies for victims against those who inflict wrongful harm. However, these remedies are rarely used due to the expense of hiring lawyers, the burden of maintaining a private lawsuit, and the likelihood that collection may be affected against the defendant. These obstacles can be removed by making assessment of the harm and damage from criminal conduct part of the criminal proceeding, and making collection part of the criminal sentencing process. It would be placed on notice that the consequences of their acts will be speedily evaluated after judgment of guilt, while the evidence is still fresh. They will be required to make full restitution as part of the sentence, under supervision of the correctional commission. Judgments from criminal violation will not be subject to removal in personal bankruptcy. All property owned by the offender at the time of the commission of the crime will be liable to attachment for satisfaction of such judgments to the extent as for other civil judgments. When confinement is deemed necessary by the commission, offenders will be required to work in prison industries to pay their victim damages. Such judgments will assist in establishing funds for criminal victim relief in order to provide immediate compensation to the victims of crime.

The Rion Society urges that implementation of these proposals be initiated at the state level. Questions of implementation, including the manner of assessment of particular offenses, need not be answered here but should be debated first by state legislatures. The private payment of victim compensation or victim relief in this country lies with the states, and individual state legislative action provides an excellent proving ground for national policy. We believe that these proposals may succeed where other experiments have failed, and that if tried in one or more states they could dramatically reduce the level of criminal offenses, relieve the plight of the innocent victim, and substantially reduce the cost of crime and the administration of criminal justice.