

THE PRINCIPLES OF SENTENCING: OUIMET REVISITED

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INTRODUCTION

This paper comprises three parts. Part one is a brief review of the principles and purposes of sentencing reflected in the Report of the Canadian Committee of Corrections, the Ouimet Report. The purpose of this part is to identify the basic philosophical positions developed in that report. Part two attempts to provide a critical overview of contemporary doctrines used to justify sentences, not only by judges but by legal scholars writing in the field. In this part an attempt is made to trace the shift in emphasis that has taken place since Ouimet and to identify those aspects of contemporary doctrines which are now subject to criticism. In part three I will try to develop a new model of sentencing. It will be my thesis that when one rejects those aspects of contemporary doctrines which have no empirical support or are doubtful from an ethical standpoint, one principle remains. I shall argue that this principle is one holding offenders accountable for their actions and that if one is serious about implementing accountability, a significantly different criminal justice system would emerge. The paper ends with an effort to spell out in practical terms how a criminal justice system built on this notion would work.

PART I

THE OUIMET REPORT

The Committee members were highly respected individuals reflecting a broad range of professional experience in criminal justice matters.

The chairman was Mr. Justice Roger Ouimet. The vice chairman was our present chairman at this conference, J. Arthur Martin, who was universally acclaimed as the most senior and respected member of the criminal bar in Canada. R.J. Lemieux and Dorothy McArton provided perspectives from both public and private service in Criminal Justice and W.T. McGrath, member and secretary to the Committee, was and is acknowledged to be a major force in developing correctional policy and correctional reform. A blue ribbon committee indeed!

Let us start by setting the context. 1969 was a significant year. Two years after Canada's centennial, the country was still bubbling with enthusiasm and self-confidence. Restraint was unknown. Universities were being built and expanded, employment rates were high, public services were becoming professionalized, the "brightest and the best" were being drawn into government - nothing seemed impossible, no problem intractable and no challenge insurmountable. Those of us who were caught up in the fever of the times believed that we not only have the right but the capacity and the duty to reshape our legal environments. It is not surprising, therefore, that the rehabilitative ideal flowered. It was believed by many, if not most, that we could apply new values and new technologies to change people. In particular, we believed that we knew how to deter individuals from committing crime by the imposition or the threat of punishment, and we thought that given enough money, we could develop treatment programs which would fundamentally alter the personalities and behaviors of individuals coming before the courts. A few sceptical voices were raised, but those warnings went largely unheeded. Treatment and

deterrence were in, and punishment was out. Nothing could deflect us from optimistically pursuing those social engineering goals.

Let us now look at the report of the Canadian Committee on Corrections. The Report states in its opening chapter that "the basic purpose of criminal justice is to protect all members of society, including the offender himself, from seriously harmful and dangerous conduct". The Committee went on to suggest that "the Criminal Justice process can operate to protect society only by way of : (a) the deterrent effect, both general and particular, of criminal prohibitions and sanctions; (b) correctional measures designed to achieve the social rehabilitation of the individual; and (c) control over the offender in various degrees, including the segregation of the dangerous offender until such time when he can be safely released or, were safe release is impossible, for life." (emphasis added) The Committee went on to establish an order of priorities among these competing purposes and suggested that "[t]he rehabilitation of the individual offender offers the best long-term protection for the society, since that ends the risk of a continuing criminal career."

In chapter 11 the Committee reported its findings in matters of sentencing, summarizing its position as follows:

Segregate the dangerous, deter and restrain the rationally motivated professional criminal, deal as constructively as possible with every offender as the circumstances of the case permit, release the harmless, imprison the casual offender not committed to a criminal career, only when no other disposition is appropriate. In every disposition the possibility of rehabilitation should be taken into account.

The Committee frankly acknowledged that there was very little empirical research which demonstrates the capacity of the criminal justice system to deter or to rehabilitate, but the absence of such evidence did not shake the faith of the Committee in measures designed to achieve those aims. Retribution was specifically rejected as having any independent role in sentencing. The Report states that "[r]etribution may be understood as either vengeance or repudiation. The satisfaction of a desire for vengeance is a very expensive, and in our view fruitless, luxury Repudiation leads to the solemn denunciation of certain behaviour. It is the view of the committee that any sentence based on the principle of deterrence inevitably involves repudiation." (page 188)

To be fair it must be pointed out that the Committee emphasized the need for restraint in imposing criminal sanctions on offenders. It is interesting to note, however, that the notion of restraint did not arise from a belief that sentences should be measurably proportionate to the severity of the harms inflicted on victims (developed later by von Hirsch and others), nor did it reflect concern expressed much later by the Law Reform Commission of Canada, which called for restrictions on imprisonment because such sentences may not be cost-effective. Rather, restraint came from a commitment to humanitarian values. Taken as a whole the Report called for the modernization and correctionalization of our then existing criminal justice system, with scant attention paid to cost or the evidence which was beginning to surface casting doubt on the efficacy of the very measures being proposed. This is not, of course, to blame the Committee -- nearly all of us were trapped by the Cartesian myth.

CONTEMPORARY DOCTRINES IN SENTENCING

When the Ouimet Committee reported, few of us expected that the capacity of both judges and treatment professionals to deliver effective sentences would be undermined so quickly. A profession can be defined both in terms of its specialized skills, which give it its competence, and its core values which provide its ethical base and justifies its independence. The professional competence of both judges and correctional workers no longer commands the same unquestioned authority of but a generation ago. Attacks come from all quarters, but most of them fall into one of two categories.

The first category consists of empirical research which has demonstrated consistently that sentences imposed by judges do not rehabilitate or deter and that court ordered treatments offered by correctional workers do not cure. The rehabilitative ideal in sentencing which flowered only a decade ago is now being buried, with criminological researchers having acted both as midwives and pallbearers. While it is true that early research, which seemed to suggest that all treatments have an equal effect on recidivism but no more effect than no treatment at all, is now being re-evaluated, a fair-minded analysis of the evidence cannot lead to any confidence in existing correctional measures.

Research on deterrence is necessarily more tentative, given the complexity of the subject, but it is widely accepted that the doctrine of both individual and general deterrence depends more on the certainty of arrest and conviction than on the severity of the penalty that might be imposed. In any event, there appears to be no logical or empirical

support for deterrent sentences for the petty, inadequate offender, the compulsive or addicted offender, or the offender who may commit a serious crime against a person under overwhelming non-recurrent circumstances. Together, these categories comprise the bulk of our present prison population.

The deterrent philosophy is still evidenced in the judgments of our courts, particularly in provincial courts of appeal. Sentences of trial judges are frequently raised on the grounds that the original sentencing judge did not give sufficient weight to the deterrence of others. Minor upward adjustments in sentencing by provincial courts of appeal, ostensibly on the ground of the need to emphasize the deterrent factor, have led some commentators to suggest that what is really happening is the imposition of a tariff based on some notion of just retribution. Whether or not this is the case, it would be hard to demonstrate that a marginal increase in a sentence (for example, from three to four years), will yield a corresponding impact on potential offenders in the community.

Incapacitation through imprisonment may prevent some crimes by the prisoners concerned (at least those committed in the community), but as a justification it is no longer cost-effective if used on a large scale. It now costs in excess of thirty-five thousand dollars per year to keep one inmate in the federal system, and only slightly less in most provincial systems. Added to this are the human costs arising from the negative effects of imprisonment. More than any other factor this cost escalation is likely to promote changes that appeals to logic or to humanitarian values have so far failed to achieve.

The second line of attack questions the morality of any sentence based not on the conduct of the individual, but rather on what type of person he is, or on the likely impact that such a sentence may have on what he or others may do in the future. To punish a man for his own good, or for the good of others, is hard to justify from a moral point of view, given professed values of personal freedom and autonomy in a liberal democracy. It can be demonstrated that the rehabilitative ideal has not led either to humane or to effective sentencing decisions. Rather, it has led to massive disparity in the name of individualization, and longer sentences in the name of treatment.

Rehabilitation and deterrence imply a concept of man as object, lacking the capacity, the incentive or the right to make reflective choices, or to take responsibility for them. It follows that he may be used or manipulated, and his self-defined interests must give way to the social engineering goals of those who have power over him. The idea that we can coerce or cajole people into treatment or threaten people into changing their behaviour by holding up others as examples, reflects an overweening self-confidence that in today's world appears strangely out-of-date.

Finally, some social scientists and political theorists have pointed out that sentencing ideologies which focus on individual pathology, rather than the features of the larger social system such as inequalities in the distribution of power, resources and opportunities, at best can only secure the short term goal of repression, rather than the long term goal of prevention. While the control of crime is a worthy social goal, it has been argued that the rehabilitative and deterrent measures we now use tend more to buttress the vested

interests of those presently wielding power rather than those of the poor, the disadvantaged and the minority groups from whose ranks the majority of offenders are most often drawn. Contemporary criminal justice policy is slowly turning away from these orthodox measures and is beginning to emphasize primary and secondary prevention of crime as more promising avenues. It is becoming recognized that an adequate social response to crime must involve paying attention to the root causes of crime and that this involves intersectorial planning and response.

Individuals charged with the day-to-day responsibility of managing the existing criminal justice system must and do perform as best they can within the framework of existing knowledge and resources. Treatment professionals are now among the first to admit that the repertoire of "treatments" available to them can at best have a tenuous and indirect bearing on recidivism for certain types of offenders only and offers little, if anything, to the majority of people caught up in the correctional process. In particular, most psychiatrists no longer command the authority they enjoyed but a few years ago. Reliability problems in psychiatric diagnosis, the irrelevance of many diagnoses to sentencing options available to a court, weak predictions of success in treatment and overprediction of dangerousness are becoming accepted, by psychiatrists themselves, as the burdens borne by their profession.

Psychiatric opinion undoubtedly has some influence on the sentencing behaviour of some judges, some of the time. But research seems to indicate that, to the extent that these assessments move away from reliance on simple factors such as the offence, the age and previous record of the offender (all readily available to the judge

without the benefit of a psychiatric opinion) they tend to soften and have less predictive value.

Lawyers aware of these facts shop not only for judges but also for psychiatrists, and the public, to the extent to which it is interested, is witness to the fact that both legal and psychiatric justice is a very personal thing, depending more on the individual values, orientation and experience of the professional actors concerned than on universal laws, principles or an agreed upon information-base.

Nonetheless, a significant number of offenders are lured into treatment in the hope of achieving either lesser sentences or early release on parole. Apparent motivation and apparent success in treatment become the operating yardsticks in judicial and parole decision-making, turning judges and parole boards into treators and treatment personnel into gaolers.

The ethical dilemmas imposed upon the correctional professional are enormous, making it difficult to attract and to hold professionals to work in that setting. Perhaps the solution lies not in attempting to "force-fit" treatment into sharing the social control tasks of the penal system, but in freeing it from those demands so it may play out its historic mission based on the classical medical model of working on behalf of persons who freely recognize the need for treatment, seek it out, and are willing participants in it. Psycho-social intervention of this kind is consistent with the core ethical value in treatment: to assist individuals to obtain better control over their lives so that their personal goals of self-actualization may be realized.

What is left is retribution. It should not be surprising that retribution has re-emerged out of the rubble of shattered correctional

illusions. But it is a difficult concept at best. Whether it is seen as an end in itself (the wicked should suffer), as expiation of guilt (suffering is good for you), as a method of distributing rewards and punishments (H.L.A. Hart), as "just desserts" (von Hirsch) or as a limiting principle (Herbert Packard), it begs most of the important questions. What does a particular crime deserve? How does one measure moral culpability? Whose scale of judgement should be used?

Moreover, even the most sophisticated detailing of the retributive model, such as that developed by von Hirsch, fails to anchor the range of punishment at any particular point, thus yielding a pattern of sentencing decisions which may be fairly distributed one against the other, but taken as a group are arguably either too severe or too lenient. For example, if theft of \$200 is said to deserve a three month sentence and all more or less severe offences are distributed accordingly, one may obtain an internally consistent and fairly distributed sentencing pattern but one in which the range taken, as a whole, fails to reflect a rational response to crime. Since agreement as to where to anchor the scale cannot be achieved in a morally pluralistic society, "just desserts" and other versions of retribution do not provide practical guides to decision-makers. They are more likely to justify any retaliatory response to a person held responsible for a crime who is assumed under the scheme to deserve all that follows.

A purely retributive scheme may appear elegant on the surface but is likely to be clumsy in practice. Most sentencing guidelines are heavily offence-oriented. In my experience, none of them assist in

solving truly difficult sentencing problems, in which logic or humanity cries out for an innovative solution.

Slavish adherence to a retributive model, whether in guide-line form or some other formula approach, locks the system in, militates against change and is likely to do injustice in individual cases. Sentencing is, and should remain, a human process.

In sum, both at the level of theory and of practice, the concept of retribution, as usually formulated, cannot make necessary distinctions between different types of conduct. However it may be obscured by different terminologies, this concept as a justifying aim amounts to little more than socialized vengeance. It is altogether too negative and self-indulgent and is likely to defeat other legitimate aims in sentencing. I make this last point because, regardless of what academics might say, notions of deterrence and rehabilitation are alive and well in the rhetoric of Canadian lawyers representing offenders at sentence and continue to find expression in the reasons for judgment given by Canadian judges.

One of the problems with multiple purposes is that judges are forced to accommodate the contradictions posed. A retributive sentence or a sentence based on deterrence may well interfere with rehabilitation. A rehabilitative sentence may not adequately reflect the gravity of the offence. Incapacitation may make it more difficult for the offender to readjust in the community as a law-abiding citizen upon release. It would be nice if we could find a way of drawing from each of these doctrines those components which are not inconsistent with one another so that a single unifying purpose can be achieved.

The next section of this paper tentatively attempts some first steps along that path.

TOWARDS AN ACCOUNTABILITY MODEL

In moving tentatively towards a reformulation of the principles of sentencing, it is immediately recognized that there is an intimate relationship between philosophical aims, substantive content and procedural mechanisms. In the opinion of this writer, one of the weaknesses with most philosophical discourses concerning sentencing is that they fail to provide a detailed working model which can demonstrate how the new system is likely to look in practice.

What follows below is a working model of sentencing which attempts to define the role of judge and other professionals in sentencing in a way that gives each domain over what they can do best, and prevents each from assuming tasks that their training, role or professional codes make it difficult for them to discharge.

I do not intend to indulge in a speculative exercise particularly around such general and abstract notions such as punishment. Such a discussion is likely to become grounded upon semantic confusion (in current use there are at least five meanings to retribution, three to treatment, and two to deterrence). Rather I see my task as one of attempting to describe the shape and content of a criminal justice system that accepts the current state of knowledge and belief about aims and purposes and at the same time puts into practice those institutional mechanisms and procedures that are consistent with contemporary wisdom. The assumption here is that penal philosophy is concretized and made real in its institutional forms and patterns of collective action.

There are of course fundamental disagreements about aims and purposes. But this should not hide the fact that the debate has shifted significantly in the past few years. Nor should failure to achieve total consensus deflect us from our duty to shape the law in its institutional forms and ways that does best reflect what we value and what we believe.

My challenge to you is to contemplate the specifics of a criminal justice system that fully expresses our current belief system. In other words, what would we have if we really believed our rhetoric and had the courage and the capacity to put it into operation?

It is this kind of exercise that is more likely to reveal what we really mean when we use words like punishment, revenge or rehabilitation. If we do not like what we see emerging from the analysis, the occasion is created to pause and re-think our value base from which the specifics emerge. Moreover, it is my experience that real consensus can only be achieved when we stop playing games with words, and look to the outcomes of those words.

The model presented here is tentative and may be labelled a "Modest Proposal". It is modest in three senses, first of all it is modest in that it demands no more of judges and psychiatrists than they can deliver. Second, it is slightly tongue in cheek in the sense of Swift's modest proposal in that it attempts to force one to confront the likely consequences of putting what we say into practice. Third, it is modest in that it is only the beginning of an analysis which requires considerable detailing before it could be carried further.

It is assumed that the requirements of a good model are five. It should be valid on its face, internally consistent, capable of handling the data, or in other words incorporate our experience; ethically defensible; and, provide a practical guide to decision-makers.

In order to provide a reality focus, three assumptions will be made:

- 1.) The schema that emerges should be located within contemporary knowledge and belief, and therefore need not wait for the development of new technologies or belief systems.
- 2.) Whatever system emerges should be manifestly and demonstrably fair and just to the least advantaged person in the system, the offender himself, and
- 3.) Given constraints on public spending that are not likely to disappear in the medium term future, no new and additional funds should be necessary to implement the proposal, although it might be possible to make better use of existing expenditures.

When one rejects those aspects of the classical purposes of the criminal law that have no empirical support or are doubtful from an ethical standpoint, one principle remains. I shall argue that it is a principle that meets each of the five criteria mentioned above.

It is the principle of accountability. All that we have the right to ask or expect back from offenders is that they account for their actions. In exchange, and as a necessary corollary, the system must account to the offender and, equally important to itself and to the public.

This principle takes from rehabilitation its emphasis on the dignity and the uniqueness of the individual, holding out to him the hope of being able to manage his own life in a way that does not involve conflict with the law. It is also consistent with modern psychiatric and counselling practice, that takes as its initial precept that the first stage in successful treatment is past only when the individual owns his own behaviour and takes personal responsibility for it. But it rejects the paternalism of current correctional practice and its behavioural notions about the nature of man.

Accountability takes from retribution its deep concern for justice in a sense of requiring that punishment bears a measurable relationship to the harm actually inflicted, in order that harmony be restored. Whilst it emphasizes restoring the balance, it rejects vengeance as a form of self-indulgence that defeats its own purpose. Most importantly, it provides a framework lacking in the doctrine of retribution, as ordinarily understood, for practical decision-making at the time of sentencing and release. In other words it is self limiting.

It accommodates deterrence, both in its general and specific meanings, but it need not give way to that doctrine, as all that can be achieved through the deterrence is captured once an offender is arrested, convicted and held accountable for his actions. It acknowledges incapacitation as necessary in a limited number of cases, but restricts its application to those persons, whose past behaviour and present inclinations are such that they cannot account for their behaviour in the community. But it would require our prison system to be totally overhauled, so that even under conditions of confinement, offenders would be required to account for their crimes and discharge the responsibilities expected of other citizens in society of maintaining themselves at no charge to the state.

It follows that the principle of accountability provides no basis for denying the offender any rights, privileges or immunities given to ordinary citizens and imposes upon him one duty, and one duty only: to demonstrate through concrete, observable behaviour that he has accounted for his crime, at which point he must be released. This means that voting privileges, conjugal rights, the right to voluntary treatment and other social services, and the right to work and to be productive, would be preserved.

Gone from sentencing would be any notion of personal or religious conversion, attitude or personality change. Such matters would be left to the individual and his maker and in a secular world to the individual and his shrink. Access to treatment would be a right, but no specialized treatment programs would be provided for offenders exclusively. More importantly progress in treatment would bear no relationship to decisions as to type or length of sentence or to release date.

Gone would be phony treatment games, false conversions, mindbending exercises of any kind except those which the individual chooses to take part in as a citizen, but not as an offender.

What does an offender account for? When a crime is committed, the offender gains a special advantage both over his individual victim and those members of society who have chosen not to violate the law in their personal interest. The system, therefore, would require the offender to account to the specific victim, through restitution, compensation etc. and to the community at large whose norms and values he has violated. Requiring victim compensation only would leave no content to the criminal law, as it would be transformed into a civil dispute resolution process.

The criminal process provides an orderly way in which the values in the community may be expressed. The public need to participate in the dialectic between good and evil, challenge and response, fear and reassurance, and to feel catharsis at the end of such a struggle. Punishment beyond mere compensation is needed for the public to feel reassured that "justice" triumphs. The quantum of punishment demanded by the public, however, need not be much beyond that which is required for adequate reparation of harm. The dramatic display of collective will through the legal process can of itself have a cathartic and tension reducing effect.

We now turn to the content of a sentencing structure built on accountability.

The first plank in the modest proposal deals with the original sentencing hearing. Convicted persons would be required to present a concrete plan to the court indicating how they intend to settle the account. On his own or with the assistance of counsel, the offender would lay before the court a series of specific promises which he feels adequately corrects the balance both in terms of the individual victim and the community at large. †

The probation officer would offer his assistance to the offender in seeking ways to make effective reparation for the harm done and, through the medium of the pre-sentence report, would indicate his judgment of the likelihood of the offender being able to complete that plan.

If psychiatric treatment should be indicated, the offender would be free to make those arrangements and the State would be obliged to give that person the same access to treatment services as that enjoyed by ordinary citizens. Treatment, however, would not form part of the contract with the court. It is only a means to achieving the goal of accountability, and of itself is of no particular interest to that tribunal. The offender may wish to provide the court with a copy of a psychiatric assessment in order to assist the Judge in estimating the likely prognosis that the offender will deliver on his promises. Given the uncertainty of psychiatric diagnosis and prognosis and to avoid battles of experts, the Crown would not be permitted to present contrary psychiatric opinions.

Greater reliance would be placed on those types of sentences which fit the accountability model, such as restitution, community service work orders and fines. This means greater reliance on community based sentences. Probation in this scheme would be a vehicle through which the offender needing supervision would be provided with the personal supports necessary for him to work through his contract with the court. Probation conditions bearing no relationship to accountability would be unlawful. Once the offender feels that he can demonstrate to the court that he has discharged the contract, he may apply to be formally released from all further obligations.

Institutional sentences will be restricted to those persons whose past behavior clearly indicates that he cannot account in the community at an acceptable level of risk. However, committal to an institution would not provide the opportunity to an offender to evade responsibility. Large prisons would have to be dismantled and relocated near centres of industry where the offender can work, avail himself of social services that are ordinarily provided in the community and take active steps leading to his release.

Parole could be entirely abolished. It is generally accepted that an individual's adjustment to institutional life bears no relationship to his behavior in the community. It follows that there can be no new information available to a parole board that is not equally available to the court. Moreover, there is no specialized expertise needed to assess that information which is relevant, beyond that which most judges can be expected to have. Temporary absence would continue, however, because this measure is necessary in order to enable the offender to account and to gradually assume full community membership.

As a replacement for parole, an individual sentenced to a term of imprisonment in excess of three months would be able to apply to the original sentencing judge for release, once he has completed one quarter of his sentence. This re-sentence hearing may be on the record or, with the leave of the court, in personam. At this stage the prisoner would place before the court the various steps that he has taken in compliance with his agreement. The Judge would be able to: reject the application as being insufficient, modify the contract in the light of new experience, or accept the prisoner's submission and release him. This aspect of the proposal had the additional advantage of giving the original sentencing judge control over the case throughout its history, and provides him with the results of his own decisions - feedback missing from most existing sentencing structures.

If parole were to be retained (and it is possible to fit our existing parole system into the scheme) the criteria for release would change along the lines outlined above.

In order to respond to the problem of disparity, proposed sentences together with certain relevant facts concerning the case, would be loaded on a computer, which would automatically identify sentences which appear disparate from those ordinarily given in similar situations. The original sentencing judge would be given this information. If he wishes to depart from accepted practice he may do so, but only by giving written reasons. The attempt here is to strike a balance between the norms of consistency in judicial decision-making and creativity. The hard cases remain. Although relatively few in number, they put this and any other model of sentencing to the test.

What about the hopelessly inadequate offender who is in no position to account for his crime? It is here where the accountability of the State comes into play. It is in the long-term interest of both the State and the individual to provide sheltered workshops, hostels and half-way houses for those whose criminality is no more than the expression of failure; failure as citizens and failure as criminals. Because the crimes of these individuals are usually very minor, it should be possible to assist them to develop practical proposals that adequately discharge their responsibility to the community, while at the same time providing opportunities to learn life skills required to sustain themselves over longer periods of time.

What about the person convicted of "victimless crimes" such as possession of drugs? It must be conceded that a scheme built on accountability cannot accommodate crimes without specific victims. There is nothing to account for. If the theory is accepted then these offences should be removed from the criminal law.

What about the seriously mentally disordered offender? Most of these would not get as far as the sentencing stage of the criminal process as they would not slip through the screens of fitness to stand trial, the insanity defence, civil commitment and so on. Those remaining individuals in this category who cannot account for their actions due to severe mental disorder, would be diverted from the criminal justice system into mental health facilities or programs, provided that they meet the criteria established

by mental health legislation in the jurisdiction concerned. Once they have recovered sufficiently to be able to take hold of their lives, they would be returned to court and plans would be put forward that would discharge their criminality. From a treatment point of view this step would be seen as the ultimate test of successful rehabilitation.

What of the individual who has committed an individual crime so serious that it is impossible to account, such as homicide or major theft in amounts far beyond the individual's capacity of repay? Here the model must give way to economic considerations and humanitarian principles. In everyday life, parents, lovers, and friends forgive persons who have transgressed against them after the individuals concerned have demonstrated that all that reasonably can be expected has been done.

What about the individual who refuses to cooperate with the court and simply wants to "do his time"? That is a choice that must be given to the offender, but I see nothing morally repugnant in structuring his options in such a way that it is to his advantage to make a genuine effort to account. Given a sentencing structure which has fairly high maximum penalties, there is sufficient room for manoeuvre to impose sentences in such cases which on their face are punitive and unattractive to the accused. However, provisions should be made for convicted persons to change their minds, when facing or experiencing sentences that offers no hope of early release except through accounting adequately for past conduct.

If release from prison can only be secured by visible, concrete and measurable behaviour undertaken by the prisoner, then it can be expected that the dynamics of prison life would be fundamentally altered. Inmates would start demanding that the system provide real opportunities to account. Inmates could not be released by showing that they have repented, nor would it help to show that they have completed certain training programmes, changed their attitudes or even their personalities. The only route to release would be a verifiable pattern of conduct from which the victim and the community at large directly benefits.

Given the profound changes in the nature of institutional dynamics that this change would promote, the correctional system would have to yield to the demands of inmates for productive work, community service projects and other measures relevant to the inmates' interest in securing release.

Treatment professionals would have a significant role to play in this process, but only if they can free themselves from the social control tasks imposed on them by the law.

Some treatment orientations would be more relevant to the scheme than others. Those that see man as rational, basically good, trustworthy and wanting to move in a self-actualizing direction towards growth, health, self-realization, independence and autonomy, are more likely to fit in with this scheme. Those that see man shaped by environment with no volition or free will, but only learned reactions and thus being incapable of seeking out rational solutions to their life situations, would be less relevant.

Good fences make good neighbours.