Why do we punish those who break the law?

While there is perhaps a general agreement that criminals should be punished, we have still not come to terms with a more basic question: why should they be punished? The prevailing view among those members of the community interested in such questions is that the purpose of punishment is to rehabilitate the criminal. Yet the high rate of recidivism has shown that this is not necessarily the case in this regard. There are probably two reasons for this. First, the prison community provides an inmate with contact with more experienced convicts and provides him with greater "know-how" upon release. Second, the conditions prevalent in the prisons are likely to cause greater alienation and hostility so that a released prisoner is more, not less, likely to commit anti-social acts upon his release.

It would probably be helpful to examine what some thinkers of the past have said about this question. While this essay certainly does not pretend to be a detailed history of penal theory, it might prove enlightening to know that problems that we often find so difficult to deal with have been points of controversy in the past and to say the least, are not new questions.

Most penal theories can be divided into one or more of the following categories: retribution, rehabilitation, vengeance and deterrence. Yet, what all civilized societies have in common is the elimination of the legitimacy of private vengeance. If a person is wronged, the society will punish the wrongdoer.

Probably the first written criminal laws were contained in the Code of Hammurabi (circa 1750 B.C.) The punishments listed here were harsh but limited according to the crime. Thus a man who destroyed the eye of another should lose an eye. A man who struck his father would lose his fingers. However, some 350 years before this, under King Ur Nammu of Sumeria, there was a system of restitution and monetary fines rather than the infliction of pain for punishment of wrong-doers, a true concern for the victims since he would be made whole for his losses.

Plato wrote that no man should be punished because he did wrong because his wrong could never be undone. Punishment was necessary so that other members of the community would learn to hate injustice at least abate their instincts for evil doing. The so-called retributionist school, exemplified by Kant and Hegel theorized that the punishment for crime was a right in itself. Its purpose was not deterrence or reformation. A crime upset the moral order and a balance could only be struck when the crime is punished by his being made to suffer. Thus punishment is a ceremonial imperative required by a higher law.

According to Dr. Karl Menninger, Nietzsche's view was: "Along with the stone, we cast our own sins onto the criminal. In this way we relieve our own sense of guilt without having to suffer the punishment--a venenous and even pleasant device for us to live a life untroubled by our own sins but makes us feel actually virtuous."

This effect, is an attempt to prevent anomie, a sense of rootlessness and purposelessness that develops when traditional boundaries and values deteriorate. If crime is wrong, we must reaffirm the sense of wrongness by punishing the criminal. It is the punishment that tells us that the act is wrong. It tells us that our values are still intact.

Most penal thought is probably most influenced by utilitarian theories. Of this school of thought, Bentham was the most influential regarding crime and punishment. To Bentham, punishment was only justified when it tended to exclude a greater evil, and its sole function was to deter others from doing the same. Only those who voluntarily broke the law should be punished since the aim of such punishment is to prevent willful crimes. He wrote extensively concerning the extenuating circumstances such as insanity pleas and other states of mind that might vitiate punishment. Yet it has been pointed out that this is a contradiction from the purely utilitarian viewpoint. Since punishment of all wrong-doers would tend to prevent others from similar acts, why not also punish those who committed crimes without total willful intent? Would not punishing the insane have a deterrent effect on all potential perpetrators. Bentham was apparently tempering what would be a strictly utilitarian position with a humanitarian concern about punishment those who did not understand the consequences of their acts. As stated by Professor H.L.A. Hart:

"First, actual punishment of those who act unintentionally or in some other normally excusing manner may have a utilitarian value in its effects on others; and secondly, when because of this probability, strict liability is admitted and the normal excuses are excluded, this may be done with the sense that some other principle has been overridden."

Enlightened voices in the United States in the nineteenth century called for reform of criminals as the aim of the penal system. For example, the American Correctional...
Here at Fordham, we are not concerned with goodness and righteousness. We are concerned with the maintenance of that which is good. To whom, if not to the lawyer, may we look for guidance in solving the problems of a sorely stricken social order? Justice Harlan F. Stone, 1934.

In light of the Watergate scandal with so many of its principals being lawyers, including at least two Fordham graduates, perhaps it is time to reevaluate the attitude of the Deans of those with similar thoughts concerning the responsibilities of lawyers. Isn't time we ask, "Is it ethical?, or "How will this serve the needs of our society?" Because by our background, supposed perception of human behavior and society's workings, we have an obligation as lawyers to deal with all the consequences of our actions. We must not excuse all our behavior because it is in the interest of our clients. This attitude perpetuates some of the worse ills of our society. Sometimes we can go too far in serving our clients, as Watergate has demonstrated.

We have seen the spectacle of lawyers extorting illegal contributions from corporations, burning evidence, approving burglaries, etc. This is certainly not the proper activity for those who are supposed heirs of a legal system with a history of respect for human rights and due process of law that dates back even before the founding of our nation. Yet lawyers too often betray this tradition. This is partly because the very system that is fostered here at Fordham, "...will it stand up in court?"

Orville Schell, head of the Association of the Bar of the City of New York, stated: "A lawyer is supposed to be above all else, a citizen. Lawyers, as a group of writers, includes such varied topics as the law for the poor, women lawyers, political trials, black lawyers and even writings on mental perturbing. All discussion eventually centers on the question of whether a radical lawyer should be one who merely "services" the movement or one who takes on every aspect of his career. Most never really relate to people, with the question at all because under the bar there looms large and fundamental the whole question of the "validity" of the "movement" itself. There are thirty different articles under this heading. Basic criticisms can be leveled at all of them. To point this out. Mr. Black, movement lawyer extraordinaire, saw fit to write five articles about women's rights conspicuously toward the rear of the book. Moving in the opposite direction of some of the basic weaknesses in his own cherished radical stance. For other more obvious reasons, however, I will treat only of these articles on women. The first two are exposures of the oppression of women and that existing for a long, long time. The fact of this is the oppression of all. The other articles are less sharply put, but still represent a great deal of work by people who felt that the righteous been put to weakness of the institution with which they work. They serve a function that they were designed to do: incorporate the entire social system. All are moral systems. Anyone who is to be rehabilitated can exist now doesn't do anything. There are so many people in the system aren't meant to be rehabilitated. The system to mean to be a rehabilitated, society? whether they build things, or destroy one another,uts or resources. They are a function that they were designed to do: incorporate the entire social system. Everyone with a system of justice is supposed to be. They were designed to do: incorporate the entire social system. Everyone with a system of justice is supposed to be.

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**Punish lawbreakers...**

Institution adopted the following policy as its first meeting in 1970:

- Reformative, not vindictive suffering.
- The purpose of the penal treatment of prisoners.

- The prisoner should be made to realize that his destiny is in his own hands.

- Prison discipline should be such as to gain the will of the prisoner and conserve his self respect.

- The aim of the prison should be to make industrious free men. We respect the ordinary and obedient prisoners.

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**Postscript...**

On February 2, 1973, Ralph G. was acquitted of the charges against him. His second trial, the first ended in a hung jury on December 22, 1973.

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**Ralph G...**

State Commission of Corruption

The commission's decision is not subject to judicial review. An inmate whose history or behavior indicates that he would be unsuccessful in the program or that he would endanger others in a "free society" receives "particularly cautious examinations" that includes sex-offenders, drug addicts and alcoholics, but these individuals are not barred from participating in Work-Release.

The program is supported by a variety of services for the participating inmates. There is a staff of approximately sixty-five-volunteers who are appointed by the Secretary of the Department of Public Welfare. The Inmate Employment Bureau is assigned to select employers who are employed by inmates or who are employed by inmates. An inmate's personal desires for release, provided that they are consistent with the requirements of the program, may be accommodated. The program is designed to be a "constructive" program, not a "rehabilitative" program, which is the aim of the prison should be to make industrious free men.

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**Worl work in the Nassau County jail**

A work release program was instituted in the Nassau County Jail in 1969, which has accommodated two hundred and thirty-three inmates participating.

The theory of the program is: "The desire to escape incarceration of an offender is not merely punishments, but it also fulfills a learning process whereby he is helped to assume the role of a productive member of society, capable of contributing to that society and accepting his own responsibilities."

A work release program in a jail is under the supervision of a judge who is involved in the privatization of correction and who is responsible for the privatization of correction. The judge monitors the activities of the jail, and is responsible for the privatization of correction. The judge monitors the activities of the jail, and is responsible for the privatization of correction.

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One thing is clear: our jails
"A View from the inside"

OCTOBER 9, 1973

WHAT IS THIS, IN STANDING ALL DAY WHAT ROLE DOES IT PLAY IN THE LIFE OF A WOMAN? WHAT SKILLS DOES IT HAVE TO OFFER? HOW SHOULD IT BE EXPRESSED?" INNATE FOR THE SOCIETY THIS, WHEN EVER IT RUNS OUT, SHE MUST CHOOSE BETWEEN WHAT WAYS DOES IT TEACH SELF AWARENESS?

This institution was designed as a place for punishment, to house any woman regardless of race, creed or color, who rebelled against the capitalist society in which we live. The women are being punished inside the jails. On the average they are stripped trying to live a normal life can intimately relate to as being an animal of lower orders. Sure there is a school to attend, but they don't teach in the school is how to be civil towards each other. And outside the school they are so busy trying to keep you unaware of what's going on there that very little concern for the general health and welfare of the women they house.

Rehabilitation, in the sense of the word is the biggest farce to hit the eastern coast since the Emanu- capitation Proclamation. I ask those of you who really believe in reform a person who ran away from home by putting them in the same cell as the many cruel and murderous? Or a woman who was arrested on a morals charge (prostitution) in the same cell with a professional thief? And so on.

There is only one skill to be learned here is how to become a better animal of lower orders. They are arrested for. There is absolutely no training of the mind for advancement in the way of em­ ployment or self independence, outside of a few sentences that would only train you for factory work. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leonard, I am sure it will be forgotten as soon as the last show is over. There is also a Thes­ leo