

U.S. Penal System 'Truths' Questioned

By Leroy Aarons
Washington Post Staff Writer

LOS ANGELES—Out of the violence and turmoil inside American prisons that boiled over into the public realm in the late '60s and early '70s, a new consensus is emerging. Mainly, that the basic assumptions on which most prisons have been operating for the last 50 years have been disastrously wrong.

The very basic elements of the penal system are now suspect—the indeterminate sentence, the concept of forced treatment and learning as a condition of release, the belief that future behavior of prisoners could be predicted.

All of these previously unquestioned "truths" are being debated and re-exam-

ined by both conservatives and liberals among academics, prison rights groups, and correction officials across the country.

There are no obvious answers, although the trend appears to be away from indeterminate sentences to fixed sentences, and from forced vocational and psychological treatment to voluntary rehabilitation. The trend, too, is to cut back the authority of parole boards.

A recent issue of Corrections magazine, a new and respected journal of prison affairs supported by the American Bar Association, devoted 27 pages to an article on the current ferment in the field.

See PRISONS, A4, Col. 1

The article concluded, based on interviews with wardens, administrators and students of correction around the country, that:

- There is little or no evidence that correctional "treatment" programs work.
- The gradual restructuring of the correctional system over the last 50 years around the notion of individualized and enforced treatment for all offenders was a mistake.
- A radically new approach is needed that will provide both better protection for the public and a

This is one in a series of occasional articles dealing with the problem of the rising crime rate in America. and insert tr for pickup.

more realistic view of what can and cannot be done to cut recidivism, the return to criminal behavior.

"What that new approach

should include is a matter of dispute," the article said. "But there is a consensus that it should not include the indeterminate sentence."

The almost unanimous condemnation of the indeterminate sentence is a major departure.

It is a notion popularized by movies from the '30s—that the criminal is a social and psychological deviant who could be reclaimed for society if only he received the "right" kind of counseling and treatment, be it the kindly ministrations of the chaplain or the selfless dedication of the prison psychologist.

Before the prison reform movement at the turn of the century, sentences were long and erratic and prison conditions extremely harsh. With reform came the belief that prisoners could be changed, and deterred from further crime, with effective treatment in prison. Sentences would not be fixed at time of commitment, but based on an inmate's "progress" behind prison walls.

Ultimately, most states adopted a system in which judges set broad parameters (from one year up to life) for a convict's term, and the specifics of sentence and release were left to prison and parole officials. Prisons became "correctional institutions."

But, in giving such enormous power to these officials, the early reformers set the stage for the perversion of the original concept into a weapon of control, punishment and, not infrequently, political manipulation.

Jessica Mitford, in a disturbing study of prisons, "Kind and Usual Punishment," described the indeterminate sentence as "the perfect prescription for at once securing compliance

and crushing defiance, because the prisoner is in for the maximum term and it is theoretically up to him to shorten the time served."

Proponents of unfixed terms have always linked them to in-prison rehabilitation. But a 1970 landmark survey by sociologist Robert

Martinson of all the studies in the field produced the unexpected conclusion that "with few and isolated exceptions, the rehabilitative efforts . . . have had no appreciable effect on recidivism."

(Old ideas die hard, however: New York state, which commissioned the study, suppressed the report for five years before it was dislodged by court order.)

Nowhere has the indeterminate sentence treatment model been carried to greater sophistication than in California, where the prison system is larger and more complex than in any other state.

And, perhaps, nowhere else is its failure more apparent.

California pioneered the indeterminate sentence system, creating in the process a massive treatment establishment. In the '40s and '50s the state was hailed as a model of progressive prison administration, an image that still lingers.

The real picture is less flattering.

California has the largest adult prison population, the longest terms, and more prison violence than almost any other state in the nation. Much of that record can be traced to the indeterminate sentence and its ramifications.

At the heart of California's prison system and its problems is a parole process pioneered by the state in the mid-1940s.

In order to oversee the fixing of release dates and the remodeling of prison behavior, California in 1944 created the Adult Authority, a glorified parole board appointed by the governor and traditionally composed of ex-policemen and prosecutors ("eight cops and a dentist," as it is known in the "joints").

The AA has the autonomous power to judge prisoner's rehabilitation progress or lack of it and the power to set or not set release dates—all of it accomplished behind prison walls with no right of appeal.

Tales of Adult Authority abuses are legion; it is the most hated and feared body

in the system. It is not unheard of, for example, for an inmate serving five years to life for robbery to wait 15 years without having his final release date fixed because of his failure (often unexplained) to impress the AA with his progress, or for being what that body concludes is a "troublemaker."

A dramatic example of its power occurred in 1970, when, in a reform mood, the

AA began setting release dates at a high rate. The state's prison population dropped from a high of 28,000 in 1968 to 19,000 in 1972.

In that same year, the Reagan administration, responding to the Attica rebellion in New York and growing turmoil within California prisons, ordered a "get tough" policy on releases. The AA abruptly reversed course, driving the prison population back up. As of early this year, California prisons held 25,000, roughly one in every 10,000 residents in the state—a per capita level 1½ times as high as New York's and twice that of Pennsylvania.

In 1974 a legislative committee concluded that "there is no longer any doubt that the wide variation in practices (of the AA) often results directly from political influence."

The AA's crackdown on release dates in 1972 led to overcrowding, especially of maximum security institutions, and in the view of many corrections officials, contributed to the rash of stabbings and killings that in December, 1973, forced a massive lockdown of San Quentin and other facilities. In a lockdown inmates must remain in their cells 24 hours a day.

Another offshoot of the rehabilitation model was the Adjustment Center—invented in the mid-1950s, again under a humane banner. Its purpose was to isolate the violent, troubled portion of the prison population and give it "intensive

care," a program of vocational and treatment services that would redeem alienated and nonconforming prisoners.

In fact, the Adjustment Centers became the despised and infamous "holes" of the prison system, where "troublemaker" prisoners are locked in 6-foot-by-10-foot cages for 23 hours a day. Inmates segregated in these centers never know when they will emerge. Some have been kept there for 5 to 10 years.

It was at O-Wing, the Soledad Prison Adjustment Center (later declared unfit for human habitation by a legislative unit, yet still in use, that the 1970 slaying of black inmates by a guard gave rise to the Soledad Brothers case and the long, bloody chain of events surrounding the personality of black revolutionary George Jackson. (Jackson himself was serving an indeterminate term for a 1960 gas station robbery.)

It was at the Adjustment Center in San Quentin that Jackson was killed during an escape attempt in 1971.

It was at the Adjustment Center at the Medical Prison at Vacaville, Calif. that correction officials toyed with the idea of per-

forming psychosurgery on prisoners with long histories of violence. (Publicity scotched that project, but it was later learned that three brain operations had been performed in 1968.)

At any one time, 5 to 10 per cent of the prison system's population is in Adjustment Centers or some other form of lockup.

If California is a prime exhibit of the failure of the rehabilitation dream, it also is the place where some fresh new departures are in the wind.

At least some of the new directions flow from the changes of administration this year in Sacramento, although the practice stance of the new governor, Edmund G. Brown Jr., on the prison issue is still unclear.

These are the trends:

• A change in leadership in the Adult Authority and a sharp shift of policy toward getting fixed dates of releases for all prisoners. New guidelines issued last April give suggested minimum and maximum terms for specific crimes, eliminate rehabilitation as a factor, but still give the AA considerable flexibility. The effect so far has been to begin a sharp downturn in the prison population.

The politics of the change

tations sharply both inside and outside the prison.

Procnier, they reasoned, could make some of those changes without incurring the wrath of conservatives or heightening the demands of the liberals. "We don't want an Attica," said one official. "And, remember, it was Richard Nixon who made the detente with Red China."

• Communication between corrections officials, Brown administration officials and prison rights groups has begun, in an effort to open the system to outside advice and criticism. Already certain civil liberties style revisions have been made—freer hairstyles, easier rules for marrying, easier access to the press — and others under consideration.

• Legislation that would eliminate the indeterminate sentence and the Adult Authority has been introduced in the California legislature. Known as the Nejedly bill after a conservative state senator who introduced it, the bill is undergoing compromise modification. But, in effect, it would go a long way toward taking uncertainty and cruelty out of serving time in prison. It is seen as having good chance for passage.

Depending on their viewpoint, observers see the movement as too far, too fast, or too little, too slow.

"A lot of it is just cosmetic," said Willie Holder, an ex-convict who heads the San Francisco prisoners union. "We're still waiting to see if they're serious."

Holder favors elimination of indeterminate sentencing, probation and parole, and he favors voluntary rehabilitation programs.

"Criminals should be punished," he said. "Society ought to admit that punishment is a form of retribution and not pretend that prisons are for any other purpose. I've heard many

prisoners say they'd rather be beat in the head with a shovel than have their brain constantly examined like they do.

"The important thing is that if you're going to punish, you ought to do it equally. If Spiro Agnew is a thief, he ought to get the same thing some ordinary burglar gets."

The concepts of equal punishment, predetermined by fiat and disseminated rapidly and equitably, is gaining popularity. President Ford has joined the chorus asking for fixed, mandatory sentences for certain crimes. The disagreement is over how severe these sentences ought to be.

Conservatives and liberals, who tend to agree about the principle, split on the issue of severity. Lost somewhere in the discussion, however, is the broader question of deference.

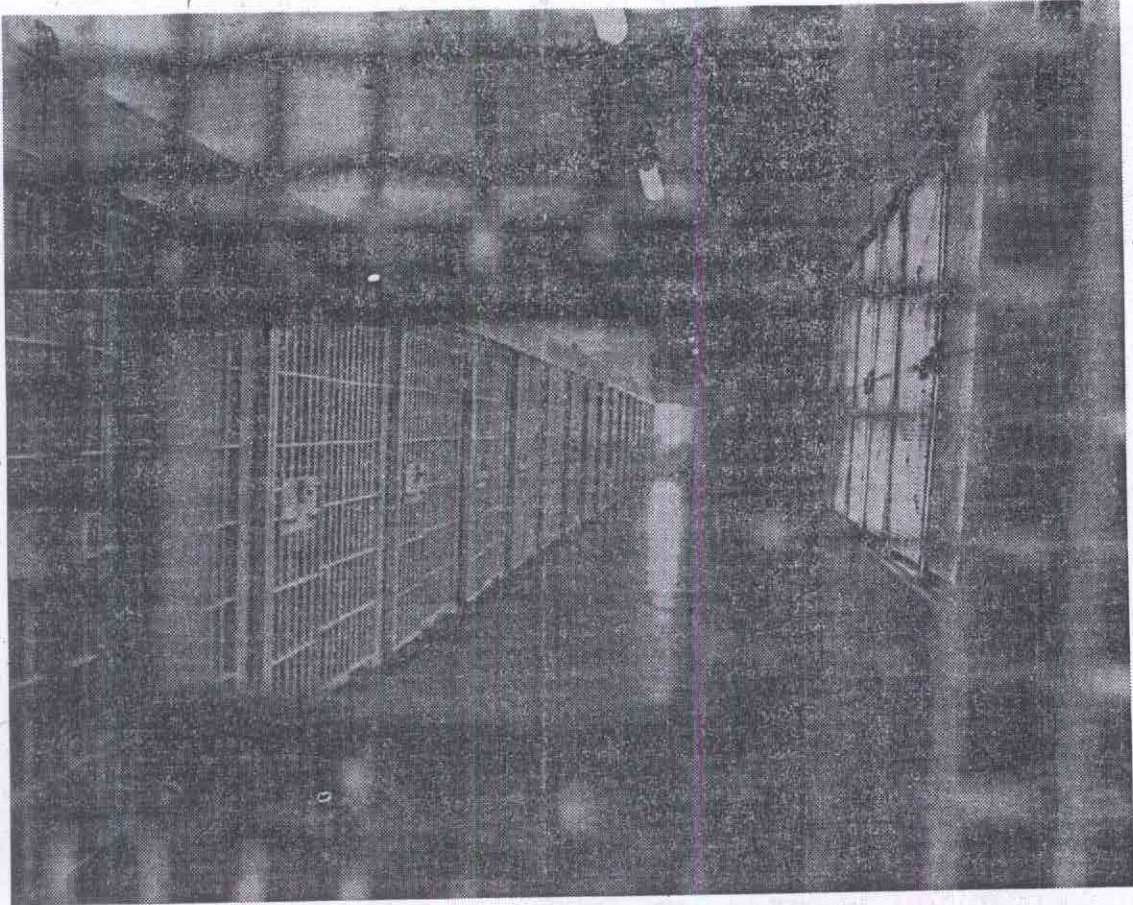
Other questions are also central to the re-examination of corrections policy:

Will fixed sentences do any better than indeterminate sentences in lessening crime on the streets or in executive suites? Should a certain measure of crime be expected as a given reality in any society? And, ultimately, how are crime and the criminal to be defined in contemporary society? For example, should a marijuana smoker be jailed? Should penalties be eliminated in so-called victimless crimes?

Finally, to what degree are prisons needed, and if they are needed, how should they be designed? (In Massachusetts juvenile prisons were disbanded in 1972 and young offenders sent to residential facilities. Early results on recidivism rates have been promising).

It seems clear that, in the long run, solutions to the age-old problem of what to do with those individuals deemed lawbreakers still elude society.

are interesting. Gov. Brown named Raymond Procnier head of the Adult Authority. Procnier had been the controversial director of the Department of Corrections for the eight years of the Reagan administration and had been identified by prison critics with many of the alleged repressive policies. Brown administration officials explained privately that while changes were needed, it was also important to avoid raising expect-



By Rick Tejada-Flores for The Washington Post

A corridor at San Quentin in California, the state with the largest number of adult inmates and longest prison terms.