Mr Julian Knight
CRN 49821
Port Phillip Prison

Sentences – 2009 Annual Literary Competition

Section 5:
Essay on how the prison system can be improved
(3,000 word limit)

"How the Prison System Can Be Improved by the Three 'R's: Reformation, Rehabilitation & Reintegration"

The prison system won't be improved by the traditional "three R's" – reading, (w)riting and (a)rithmetic – but by the application of the penological three R's: reformation, rehabilitation and reintegration. To these three can be added a fourth R – remorse – that is not to be demanded but encouraged. As the traditional three R's are considered to be the basic subjects of education, the penological three R's should be viewed as objectives that can achieve a productive, successful prison system. Their adoption as guiding principles could give a true meaning to "corrections".

Reformation, rehabilitation and reintegration are terms that are often used interchangeably in everyday conversation, but in the penal context they have meaning beyond their dictionary definition. In *The Australian Oxford Dictionary* reformation is defined as 'the act of reforming or [the] process of being reformed, esp. a radical change for the better'.[1] To reform is defined as 'make or become better by the removal of faults and errors'.[2] The *Macquarie Dictionary* defines reform variously as 'improvement or correction of what is wrong', 'improvement of behaviour', 'to cause a person to give up wrong or evil ways of life', and 'to bring back to a former and better state'.[3] Rehabilitation is defined by *Oxford* as being to 'restore to effectiveness or normal life by training etc. esp. after imprisonment'.[4] It is defined by *Macquarie* as being 'to educate and help a person to take up normal activities again'.[5] As for the final R in the philosophical penal three R's, reintegration, Oxford defines it simply as to 'integrate back into society'.[6] By their simple dictionary definitions the three R's constitute a comprehensive, chronologically aligned set of principles for the treatment of prisoners.

The additional R of remorse is a more elusive concept. Defined by *Oxford* as 'deep regret for a wrong committed',[7] and by *Macquarie* as 'deep and painful sorrow or regret for one's wrong doing',[8] it is something the prison system neither actively encourages nor facilitates in a meaningful way. Remorse is something that may be a mitigating - but is not a determinative - factor in the sentencing process. An indication or proof of it may justify a reduction in the sentence that would otherwise have been handed down, but an absence of it will not necessarily result in a greater sentence. Section 5 of the *Sentencing Act 1991* (Vic), provides sentencing guidelines. Remorse is not included in the list of 'purposes for which sentence may be imposed', although rehabilitation is – see section 5(1)(c). Section 5(2C) does, however, provide that in the sentencing process the courts 'may have regard to the conduct of the offender on or in connection with the trial as an indication of remorse or lack of remorse on his or her part.' The conduct of the offender most often considered by the courts as being indicative of remorse is a plea of guilty. The High Court has said that a plea of guilty 'is usually evidence of

some remorse on the part of the offender', and 'is also sometimes relevant to the aspect of remorse that a victim has been spared the necessity of undergoing the painful procedure of giving evidence'.[9] The Supreme Court of Victoria has, however, stated that the reduction of a sentence following upon a plea of guilty is not 'necessarily to be dependent upon that plea being the product of remorse – either wholly or in part'.[10]

The Supreme Court of Victoria has also commented on the nature of remorse. In the words of a former President of the Court of Appeal,

> It has been said, in my opinion properly, that it is rare to find convincing evidence of genuine remorse. Indeed, remorse is an elusive concept which is not to be confused with such emotions as self-pity.[11]

In prison post-sentence remorse has even less of a role to play than it does in the sentencing process. It is not mentioned anywhere in the *Corrections Act 1986* (Vic) or the *Corrections Regulations 2009* (Vic), or in any of Corrections Victoria's manuals or other publications. Remorse is also not a determinative factor in the granting or withholding of parole. Indeed, it is a matter that is rarely, if ever, even raised by the Parole Board in its meetings with prisoners. What mitigates against remorse playing a role in sentence management is that it is almost impossible to prove and it is too easily dismissed: after shown it is liable to be dismissed as only regret at "getting caught"; prior to sentencing it is dismissed as being solely an attempt to obtain a sentence reduction; after sentencing it is seen as self-pity; prior to release it is invariably said to be only a ploy to gain parole.

A fundamental problem with remorse playing a role in sentence management is that the prison system in Victoria does not assign it any role, nor does it have any procedure, process or program in which it can be exhibited to those entitled or with a need to be shown it, namely, victims. To improve the prison system - and enhance the whole notion of justice – such procedures, processes and programs need to be considered, formulated and implemented.

Unlike the situation in other states, such as New South Wales and South Australia, Victoria has no system or program of "restorative justice". In the words of the Supreme Court of South Australia, 'if greater use is to be made of sentencing options based on principles of restorative justice, it is necessary for the executive government to provide programs and procedures with appropriately qualified staff who have that necessary resources'.[12] The primary focus of restorative justice, however, should not be the rehabilitation and forgiveness of the offender, but the rehabilitation of the victim. The answer to the following question always needs to be kept in mind: is a victim more likely to find some consolation in knowing that the perpetrator of the wrong done to them is contrite and remorseful, or by being led to believe that the perpetrator is unrepentant and remorseless? To improve the prison system by abiding by the principles of restorative justice, government, prison authorities and the media need to make the interests of victims paramount to their own interests. Portraying offenders as remorseless may garner votes, help justify the repression of prisoners, and increase ratings or circulation, but it relegates the distress and anger it causes victims to being nothing more than "collateral damage".

What, then, are signs of genuine remorse? The Victim Support Service of South Australia has submitted 'that the family of a victim (and the victim in the case of injury) will often wish to engage in a process that would involve the

offender meeting with the family and with the victim, and that would permit and perhaps require demonstrable proof of contrition and remorse, for example, by the offender engaging in community service or undertaking appropriate treatment for aggressive behaviour, or for the abuse of alcohol or drugs'.[13] To improve the prison system such service and treatment need to be encouraged, implemented and facilitated, and not for the purposes of supplying cheap labour, or justifying custodial sentences and providing an excuse to deny parole, but with the aim of providing a pure form of justice. It has to be remembered, as it is almost always forgotten or neglected, that remorse is an emotion that needs to and should be exhibited by an offender to his victims, not to third parties with no connection to the crime in question. It is not a display to be put on for or demanded by prison authorities and parole boards. It is a deeply personal matter between an offender and his victims.

In relation to community service as a means of showing remorse and resipiscence (a recognition of error and a change for the better), it has been said that reparation shows contrition. Corrections Victoria, however, considers reparation solely as the employment of prisoners within the prison system. The Department of Justice Annual Reports includes the statistics for the employment rate of prisoners under the heading 'Reparation-employment'. For the year 2007-2008, it was reported that 86.1% of prisoners were employed.[14] Most of these prisoners, however, were employed in prison industry or service industry jobs. The Department's view of the benefits gained from prisoner employment is stated thus: 'Prison industries not only develop prisoners' work skills and habits, but they also assist in reducing the operating costs of prisons through service industries such as kitchens and laundries, help to offset expenditure through income generated by commercial industries, and provide opportunities for reparation through environmental and community work'.[15] The emphasis of reparation, as seen by the prison authorities, is on reducing the operating costs of prisons and generating income. To improve the prison system a greater emphasis needs to be placed on reparation through environmental and community work. Only the prisoners in Victoria's four minimum security prisons, however, are permitted to do such work. Only 440 of Victoria's 4,300 prisoners are in these "open camps" [Victoria has the highest percentage of prisoners in walled prisons of any Australian jurisdiction] and not all of them are employed doing such work. In the wake of Victoria's "Black Saturday" bushfires on 7 February 2009, for instance, only 20 of the 120 prisoners at Beechworth Correctional Centre were employed in the prison's fencing crew rebuilding fencing.[16]

Victoria's bushfires provide a glaring example of an opportunity for prisoners to make reparation in a significant, tangible and visible way – by providing Country Fire Authority or State Emergency Service crews in regional areas. If reparation is 'the making up for wrong or injury done, compensation',[17] then serving in the State's volunteer emergency services can provide no better example. The result of increased regulation of these services has been that ex-prisoners (due to their criminal record) are precluded from joining these organizations after their release. Prison-based CFA or SES crews headed by prison officers, however, would provide at least four permanently manned stations in four separate regional areas (Beechworth, Murchison East, Trawalla and Maldon), available for immediate call-out at any time. A number of prison officers at these prisons are, or would have been, CFA volunteers. These officers would provide an existing pool of trained and experienced CFA volunteers if CFA

stations were created at these prisons. A system of volunteer fire-fighting stations at “open camp” prisons has been in operation in California in the USA for many years, which provides evidence that such systems are viable and are of value. In addition to the benefits that such a system would have for the community, it would also provide prisoners with a strong sense of reconnecting with and serving the community. Aside from the advantages of being located in four different rural areas and being manned 24 hours a day, 7 days a week, the establishment of CFA stations at these prisons would have the additional benefits of the number of volunteers at each station remaining constant, all prospective volunteers being able to be trained at the same time at the same location, and a regular supply of trained volunteer fire-fighters being returned to the community. Such a program would seem to embody and give effect to the principles of reformation, rehabilitation and reintegration.

It has long been said that “prisoners are in prison as punishment, not for punishment.” Since the early 1990s, it has been widely accepted that the loss of liberty inherent in incarceration is, and should be, the sole punishment that a sentence of imprisonment imposes. In the words of a clinical psychologist and university lecturer who has worked in maximum security prisons;

> It is not intended that any punishment should be inflicted upon prisoners other than the loss of their freedom. There is no role in prisons for making life “tough” through such activities as hard labour or any other form of aversive mechanism. To achieve punishment, mere loss of liberty is enough.[18]

Prisons have been philosophically seen as serving either a retributionist or a utilitarian purpose. The retributionist position is that imprisonment as a punishment inflicted for committing a crime is commensurate with the crime that was committed. It is a position that holds that society has a moral obligation to punish a prisoner in accordance with his “just deserts”. It is also a philosophy that does not include the concepts of reformation, rehabilitation or reintegration. Nor does it include any form of reparation as an objective. On an emotional level, it is to be equated with revenge. The utilitarian position, in contrast, is that prisons should provide a social utility by aiming to prevent crime by imposing a punishment (incapacitation) and by correction of the offender (reformation and rehabilitation). To improve the prison system the executive and prison administrators need to abide by a utilitarian philosophy of imprisonment, given that retributionist aim of imprisonment is achieved by imprisonment itself.

Rehabilitation as the main goal of imprisonment was replaced by a punitive view of the aim of imprisonment in the mid-1970s. The shift away from rehabilitation as an aim of imprisonment resulted from the published conclusions of a number of penologists that “nothing works” in terms of the rehabilitation of prisoners. This doctrine of penology was based on the conclusion that there was a lack of empirical evidence that correctional treatment effects resulted from imprisonment. It was a doctrine that was accepted by governments of all persuasions and led to the implementation of retributionist “just deserts” and “get tough” penal policies. These policies, however, provided no ideology for prisons.

By the early 1990s, the retributionist policies of the 1970s and 1980s began to be supplanted by a modified view of rehabilitation based on the “what works” principle. Many prison administrators recognized that ‘they have an obligation to the community to manage prisoners in such a manner as to reduce the likelihood

of prisoners re-offending on release.'[19] They saw that while retribution and incapacitation were goals of sentencing that were achieved by incarceration, the "correction" of prisoners had to be a goal in relation to their management and preparation for release. This recognition of how prisons needed to be managed in order to be successful in reducing crime was based on two penological facts: that all but a very select few prisoners will be released back into the community, and that around 6 in every 10 prisoners released will return to prison.

Concurrent with this recognition of what prisons needed to achieve, however, was a significant rise in the number of prisoners, and a concomitant increase in the need for new prisons along with a corresponding decrease in the financial resources available. The number of prisoners in Victoria rose from 1,784 in 1984, to 2,523 in 1994, to 3,624 in 2004. To cope with the ever increasing number of prisoners prison authorities came to adopt corporatism and managerialism in their management of prisons. To improve the prison system the need for the effective and economic "warehousing" of prisoners needs to incorporate the goal of addressing offending behaviour, by the delivery of suitable programs and other means, into their management philosophy. The management of prisons should not be simply a logistical exercise in accommodating prisoner numbers,

Over the past 20 years, fundamental changes in both prison management and prison design were made. Unit management, case management sentence planning were progressively introduced as means of managing prisoners, and all three became interrelated. The concept of unit management involved prison officers being assigned to a specific prison unit for an extended period, in order that they came to know and develop a working relationship with the prisoners in that unit. Case management involved each officer taking responsibility for a number of prisoners in their unit, and developing local plans for each of those prisoners. As such, case management became an integral part of unit management. Overlaid on these two concepts was sentence planning. On a system rather than a local level, this involved formulating a sentence plan for each prisoner whereby placement and program goals were set and the stages of a prisoner's sentence were mapped out. In terms of prison design, new prisons were built on campus-style designs that consisted of a secure perimeter wall or fence, with a corresponding reduction in the number of internal barriers. Gun towers were replaced with sophisticated electronic surveillance systems, and traditional large Pentonville-style divisions were replaced with smaller modern units.

The last 20 years have also seen the introduction of a range of reformative and rehabilitation programs based on the "what works" principle. Designed to address offending behaviour, these programs were implemented because prison managers recognized that they made good managerial sense, the community expects prisoners to undergo "correction" whilst in prison, and there is empirical evidence that some treatment programs are effective in reducing criminal behaviour. These programs have generally consisted of psychotherapy based on one-to-one counselling, group therapy targeting specific offender groups - namely drug, violent and sex offenders – and the teaching of life and vocational skills. The programs found to be most effective in reducing recidivism are those specialised programs that address specific offending behaviour along with general antisocial behaviour, and which enhance social and cognitive skills. To improve the prison system these programs need to be constantly evaluated and resourced.

To improve the prison system the community and government needs to ask themselves what they want prisons to achieve.

(2,901 words)

Endnotes:

1. *The Australian Oxford Dictionary*, page 1084.
2. *ibid*, page 1084.
3. *The Pocket Macquarie Dictionary*, page 870.
4. *The Australian Oxford Dictionary*, page 1086.
5. *The Pocket Macquarie Dictionary*, page 873.
6. *The Australian Oxford Dictionary*, page 1087.
7. *op cit*, page 1090.
8. *The Pocket Macquarie Dictionary*, page 876.
9. *Siganto v The Queen*, (1998) 194 CLR 656, at 663-664.
10. *R v Gray* [1977] VR 225, at 231.
11. *R v Whyte* [2004] 7 VR 397, at [21] 403.
12. *R v Payne* (2004) 146 A Crim R 98, at [57] 115.
13. *R v Payne*, at [57] 115.
14. Department of Justice, *"Annual Report 2007-2008"*, Section Four, page 125.
15. *ibid*, page 127.
16. Darren Gray, *"Prisoners do their bit"*, *The Age*, Wednesday 11 March 2009, page 5.
17. *The Pocket Macquarie Dictionary*, page 878.
18. Guy Hall, "Corrections" in *"Crime and Justice"*, page 397.
19. *ibid*, page 400.

References:

Adult Parole Board, ***"Annual Report 2006/2007"***, Melbourne, 2007.

Auditor-General Victoria (J.W. Cameron), ***"Addressing the needs of Victorian prisoners"***, Performance Audit Report, Audit Victoria, Melbourne, November 2003.

John R.L. Bernard (ed) *"**The Pocket Macquarie Dictionary**"*, Second Edition, The Jacaranda Press, Milton, 1989.

Correctional Services Commissioner, Office of the, ***"Statistical Profile: The Victorian Prison System 2001-02 to 2005-2006"***, 7th Edition, Department of Justice of Victoria, Melbourne, January 2007.

Corrections Victoria, *"**Sentence Management Manual**"* (Version 02/07, 04 December 2007).

Kayleen M. Hazlehurst (ed), *"**Crime & Justice: An Australian Textbook in Criminology**"*, LBC Information Services, North Ryde, Sydney, 1996.

Department of Justice of Victoria, *"**Annual Report 2007-2008**"*, Melbourne, 2008.

Bruce Moore (ed), "***The Australian Oxford Dictionary***", Second Edition, Oxford University Press, South Melbourne, 2004.

Ombudsman Victoria (George E. Brouwer), ***"Conditions for persons in custody"***, Victorian Government Printer, Melbourne, July 2006.