

WHAT IS TO BE DONE ABOUT THE CORRECTIONAL ENTERPRISE IN CANADA?

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For the observation that prison fails to eliminate crime, one should perhaps substitute the hypothesis that prison has succeeded extremely well in producing delinquency. So successful has the prison been that, after a century and a half of "failures", the prison still exists, producing the same results, and there is the greatest reluctance to dispense with it (Michel Foucault, 1977: 277)

Introduction

The notion that the modern prison has proven to be the most spectacular failure of contemporary society has been expressed by many observers of the prison system, traditional and radical alike. In its *Report to Parliament*, the Subcommittee on the Penitentiary System in Canada observed that:

Society has spent millions of dollars over the years to create and maintain the proven failure of prisons. Incarceration has failed in its two essential purposes — correcting the offender and providing permanent protection to society. The recidivist rate of up to 80% is evidence of both (MacGuigan 1977: 35).

Yet as Foucault suggests, we may be moving in the wrong direction by continually pointing to the contradiction between official penal rhetoric and the practice of carceral politics. If we see the problem as a failure of the system to meet its stated objectives, then we encourage either piecemeal reform to the prison system, or a political reformulation of the official objectives of the correctional en-

terprise. Piecemeal reforms to the prison system have been around as long as the prison system itself and have not resulted in much more than recognized failure. As Senger (1988), Sauve (1988) and others convincingly argue, the system has an ability to incorporate such reforms without significantly changing itself, while the agents of penal reform are often co-opted into agents of social control. Reformulation of official objectives has also been on the political agenda for most of this century in Canada, and while correctional ideologies have been negated several times over and have come full circle (MacLean and Ratner 1987), the practice of incarceration has been accelerated rather than reduced. While at first incarceration was argued to be for the good of the community, later it was for rehabilitation and now, as pointed out by the *Report of The Canadian Sentencing Commission* (1987), incarceration is for the purpose of punishment, not rehabilitation.

On the other hand, we might see the problem as a system which has been largely successful by other criteria and a system which has been long in operation with the full commitment of the public, politicians, and agents of control alike. This approach would lead us to recognize that there are consequences of the maintenance of the Canadian "apparatus of repression" (Gosselin 1982) which serve the interests of the power structure. At the same time, our own interests may be better served by attempting to grasp the nature of these consequences in order to incorporate them into our strategies for change. In this paper I shall briefly pursue this latter issue.

The expansion of the correctional enterprise in Canada.

One way to identify the interests served by penal expansion is to identify what kinds of changes have taken place in Canadian federal corrections in this century.¹ Figure 1 depicts the relative increases in the number of federal

1. For the graphs that follow, I have used federal level data unless otherwise specified. In order to easily comprehend the comparative growth of various components of the correctional enterprise, the values have been standardized. For Figures 1 and 2 the reported values for 1920 become the base unit. For Figures

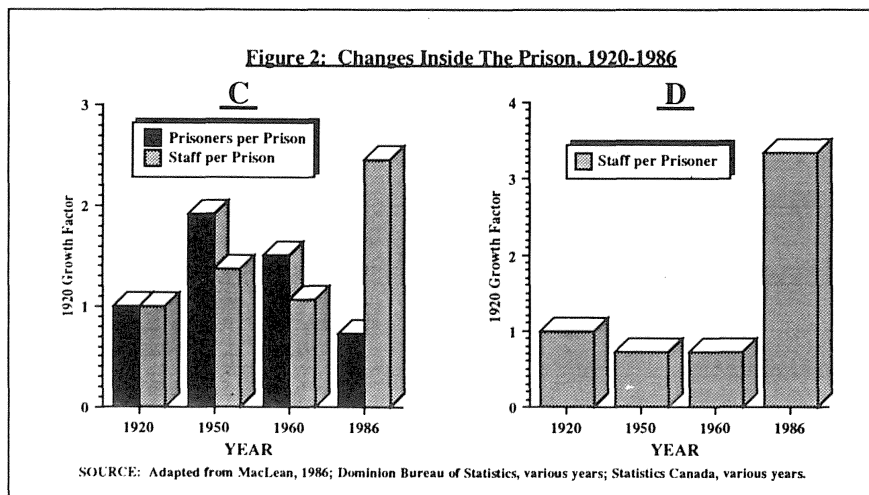
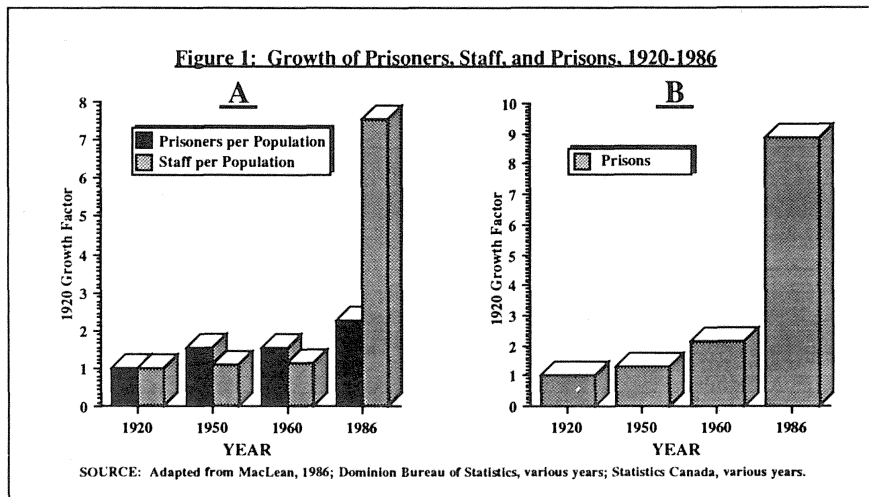
prisoners, the number of staff, and the number of federal prisons. For the sake of clarity, all changes are shown in relation to the values for 1920. Graph A compares the growth of the prison population to the growth of workers staffing the prisons. We can see that while the number of prisoners per unit population slightly more than doubles in the sixty-six years from 1920, the number of staff per population increases eight fold. Strikingly, the increase in staff occurs only after 1960, and then very rapidly, while the growth of the prisoner population increases much more gradually. Graph B shows that the number of prisons in Canada increases approximately nine fold in the same period. Significantly, the major growth here occurs after 1960 as well. From these graphs we can clearly see that there is change in official policy after 1960 which is reflected in the acceleration of the construction and staffing of prisons. While the number of prisons increases from seven in 1920 to sixty-two in 1986, this growth appears to accommodate the growth in prison workers more than the growth in the number of prisoners.

Changes to the prison system of the magnitude illustrated in Figure 1 have had an impact on the internal nature of the Canadian prison, as illustrated in Figure 2. Graph C depicts the relative growth of the number of prisoners and staff per prison. Gosselin (*ibid.*) claims that the ten year capital building programme of the 1960s was justified by the argument that we had too few prisons that were warehouse-like in nature, and that subsequently, the construction of more prisons would reduce this pressure. More prisons with fewer prisoners each would improve prison conditions for prisoners. Graph C shows the outcome of the prison construction program. While this program brought a significant reduction in the number of prisoners per prison after 1950, in reality it resulted in a level of prisoners per prison not substantially less than 1920.

3 and 4, 1950 is the base year. In this way, whatever values were reported for the base year are constant at 1, and all further years appear as the proportion of the original value. In this way, simple comparisons of the magnitude of growth for a number of indicators can be readily made.

By contrast, the number of staff per prison increases almost threefold during the same period after remaining fairly constant for the previous forty years. The result of such growth has been a substantial increase in the average number of staff per prisoner, as shown in graph D. In 1930, there were about six prisoners for every staff; in 1986 there are approximately one staff for every prisoner (*ibid.*; MacLean 1986). If the expansion of the Canadian federal correctional system achieved anything at all, it would seem that it achieved a much higher level of staffing, reflecting a serious increase in its annual budget for salaries. As Gosselin is quick to point out, however, expenditures on salaries can not be seen as expenditures used for rehabilitative programming.

Clearly, with the publication of the *Fateaux Commis-*



sion Report (1956), and the *Ouimet Commission Report* (1969) correctional experts began to talk in more rehabilitative terms. Following these reports, correctionalists argued that the purpose of the prison system was to rehabilitate prisoners and that one way this could be accomplished was by increasing both the numbers and professionalization of correctional personnel. Thus the increase is not merely an increase in the *number* of staff but also in the *kinds* of staff so that this period marks the emergence of the new “penal experts” such as classification officers, living unit officers, and case management officers. Within this context, the failure of the Canadian correctional enterprise to rehabilitate the prisoners in its charge is all the more remarkable. One cannot help but question whether the new found wisdom of the 1987 Canadian Sentencing Commission will lead to a decrease in the number of “penal experts” per prison. This writer is certain that such a decrease is unlikely.

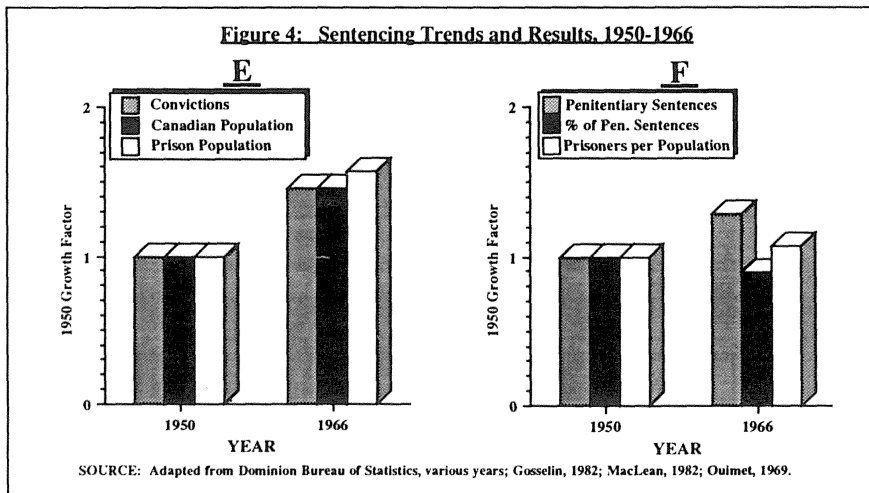
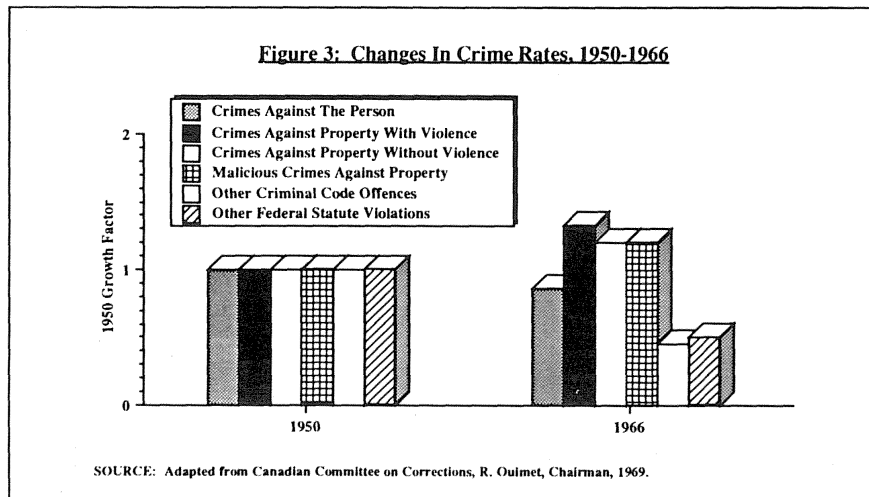
A second justification for the increase of prisons and their staffing was the argument that the crime rate was increasing at an alarming rate, and that as a consequence more prisons were needed to accommodate the larger prisoner population that this sudden criminal upsurge was surely to produce. As we can see, however, nothing could be further from the truth. Figure 3 illustrates the actual growth in crime rates² between the years 1950 and 1966, the period during which the prison system was extensively studied and during which the expansionist policies were formed and implemented. Figure 3 shows, that if anything, and contrary to the above logic, during this period the rates of crime *decrease*. Significantly, the rate of crimes against the person actually decreases while the rate of property crimes increases. Since most Canadians are concerned about crimes of violence, one might conclude that the period 1950 to 1966 was one in which the “crime problem” was reduced. Despite such a trend, however, it is pre-

2. The numbers in this graph represent the number of persons convicted of indictable offences, or those crimes considered serious by the criminal justice system. The rates are given as rates per 100 thousand population and have been indexed using 1950 as the base.

cisely during this period that we see the expansion of the prison system.

One problem with using *per capita* rates of crime is that these mask absolute changes. On this basis Figure 3 shows a decline of crime per unit population; however, because the Canadian population increases by approximately fifty per cent in the period 1950-1966, we can expect an increase in the absolute number of people convicted for indictable offences during the same period.

Figure 4 illustrates the accommodation of the changes shown in Figure 3 by the Canadian criminal justice system. Graph E compares the growth rates of the number of convictions for indictable offences with the growth in the overall population and the prison population. Here we can see that there was a slight reduction in the *per capita* crime



rates but that the absolute numbers of convictions increased by about fifty per cent (from 31,385 to 45,670). Thus, despite the fact that the number of persons convicted for indictable offences decreases slightly in relation to the population generally, the prison population increases at a faster rate than the population generally. This fact is particularly significant when Graph F is considered. This shows that the number of prisoners per population increases (as would be expected from graph E); however, what is surprising here is that the proportion of convictions for indictable offences which result in a penitentiary sentence decreases. This trend is further highlighted by the fact that the number of penitentiary sentences given by the courts does not increase at as fast a rate as the prison population. In short, penitentiary populations are growing during a period in which there are fewer crimes *per capita*; the proportion of convictions resulting in penitentiary sentences has been reduced; and the number of penitentiary sentences handed down by the courts increases at a rate less than the growth in the population, the number of offences, and the prison population.

These data clearly suggest that penitentiary sentences are getting longer during a period when the seriousness of offences is declining. This trend can be explained in part by the fact that fewer death sentences were being handed down by the courts, and more life sentences were being given out for culpable homicide; nevertheless, this transition accounts for only a small portion of the overall trend. The prison population has grown as a result of political processes not as a result of increased criminality or severity of crime. Because more people get longer sentences for less serious offences during this period than in the past, the penitentiary population rises more than it otherwise would have, all other factors being equal.

Given the trends of penal expansion during the past twenty-five years in Canada, it is clear that the justice system is becoming more repressive and not more lenient. The increase in the prisoner population is due to political will as is the growth in the number of prisons, the growth

in the number of workers staffing those prisons, the increase in the numbers of “penal experts”, the increase in the length of sentences, and the increase in the amount of time that prisoners are required to serve on sentences once they have been sentenced (MacLean and Ratner 1987). Two insights can be gleaned from this analysis of the problem of prison expansion. Firstly, we must stop confusing the rhetoric of expansion with the reality of expansion. Rhetoric tells us that the crime rate is increasing and that we must try to rehabilitate those that come into the system. Such an approach leads us to conclude that prisons are failing. However, reality tells us that, increasingly, more Canadians are coming into contact with the federal corrections system, guarded by increasingly more *other* Canadians. Foucault’s insight draws our attention away from the rhetoric of penal expansion and towards its real objectives. That is the prison system has been successful in creating more prisoners, not unsuccessful in reducing their numbers. It has been successful in creating more staff and more kinds of staff not unsuccessful in reducing their numbers. It has been successful in professional development of staff not unsuccessful in rehabilitation of prisoners.

A second insight might be that we must recognize that the process of expansion is a political process and that as a consequence the expansion of the prison system can only be arrested politically. Again this shift of focus away from the prisoners and towards the system sensitizes us to the need for political solutions for the reduction in size of this apparatus of political repression.

What is to be done?

Since the discussion in the previous section points to the problem as a political one, only political solutions can suffice. At the same time this is the point at which people active in the prison reform movement begin to disagree. What constitutes the proper way forward given the political reality within which we are confined to operate? Some people argue for radical change within the prison, while others argue for moderate change. Some argue for large

scale decarceration, while others argue for complete abolition. Some argue that we cannot alter the prison system without a large scale restructuring of society, while others believe that the prison is here to stay. In the words of John Irwin, ex-prisoner of Soledad and professor of Sociology at San Francisco State College:

My other strong interest in prisons involves radical change. Here is a dilemma. I hate prisons; that is, I hate what happens to convicts in prisons (my people I suppose). But unlike many with whom I work for change, I find the simple solution — abolishing prison — unfeasible. I cannot convince myself that society will ever stop punishing people for serious crime and that there is a sufficiently punitive alternative that is not fraught with other problems as serious or more serious than those attached to the prison. I am convinced that we are stuck with the prison, at least for the future that we can anticipate (1980: xxiii).

Personally, I do not share Irwin's pessimism, and my intellectual position should not be considered as utopian either. Like all movements for social change, the prison reform movement, or the abolition movement, is a political struggle. This means that we should not anticipate the future but rather that we forge the future through our own activity. In the case of the prison, this translates into a struggle for justice both inside and outside of the prison. Like all struggles this one is not an easy task. It is a struggle of the powerless against the powerful and such struggles should not be classified into the false dichotomy of reform or revolution. The first step in such a struggle is for those engaged in it to empower themselves. This Journal is a step in that direction. The contents of this edition provide us with a number of excellent arguments about what is to be done.

In his paper entitled *Methadone Maintenance for Prisoners: A Realistic Programme*, Dennis Lynes begins with the observation that prisons have failed to rehabilitate prisoners generally and that a strategy for reducing prison populations might start by a "radical restructuring of [penal] practices concerning the treatment of drug abusers." While

the idea of methadone maintenance is not a new one, a point which Lynes is quick to point out, his argument in favour of such a strategy is well reasoned. Because a considerable proportion of the Canadian prison population is serving sentences for drug-related offences, if correctional alternatives for this group were developed, a significant reduction in the prison population might be achieved. For Lynes, it is not the usage of drugs that is problematic *per se*, rather it is the life style surrounding the acquisition and use of drugs that leads the user into the process of criminalization. Due to their illegal status, the cost of drugs is exorbitant, and a lifestyle which centres around obtaining the cash necessary to acquire drugs, more often than not, keeps the user occupied in activities which ultimately lead to a prison sentence. Moreover, once inside the prison, the user maintains the activity of trying to acquire drugs, so that these prisoners are unable to improve themselves in ways that might make them productive persons. Thus the prison experience serves to reinforce rather than negate drug dependency and the life style which it engenders. Drawing upon the work of Howard Becker and the labelling tradition, Lynes convincingly argues that not all use of drugs is regarded as deviant. This logic suggests that if all drug usage were decriminalized, we would not only achieve a serious reduction in property crimes, but because prisoners regarded as drug dependent would not find it necessary to engage in "the game" any more, they would be able to settle into a program of real self-improvement.

Lynes is not calling for a wholesale acceptance of drug use in our society, however. Rather, after carefully reviewing the successful results of a number of experimental methadone maintenance programmes, he advocates the development of such programmes in Canadian prisons; however, he further advocates that proper monitoring and well planned controls should characterize these programmes.

Of central importance to Lynes paper is the observation that prisoners share the responsibility of agitating for meaningful programmes and that to stand by idly accept-

ing what is currently practiced might lead to an unwitting support of negative prison reforms. Thus Lynes recognizes that prisoners must actively participate in the struggle for justice inside the prison; however, as Lauzon demonstrates in his paper, *Stonewalled*, the voicing of legitimate dissent often results in disciplinary charges. The hearing of these charges often leads to the wholesale denial of prisoner's legal rights in disciplinary court. Recommendation 30 of the MacGuigan Committee states:

Independent chair-persons are required immediately in all institutions to preside over disciplinary hearings. Cases should be proceeded with within 48 hours unless there is reasonable cause for delay (1977: 164).

The logic behind this recommendation was that the Parliamentary Sub-Committee recognized that there was a crisis in Canadian Prisons concerning "Justice Inside The Walls" and that most prisoners viewed the old Warden's Court as nothing short of a sham. Lauzon convincingly demonstrates, however, that ten years after its inception, the disciplinary court is still viewed by prisoners as being a sham. The systematic denial of prisoners' rights by disciplinary courts around the country, and the abuses of the "reasonable delay" clause are discussed in detail. Excessive punishments such as "failing to earn the privilege" to attend open visiting family social functions within the prison are not only illustrations of vindictive and perverse forms of justice; they also reinforce the conception for prisoners that only the powerful get justice while the powerless get prison. How can the public expect prisoners to learn to accept justice on the outside, if there is no justice on the inside? Lauzon concludes with an answer to this question: a new internal justice system which is accountable to the public. Clearly, a restructuring of disciplinary procedures in Canadian prisons will only come as the result of struggle both inside and outside the prison. Lauzon also shows that repressive control tactics inside the prison have had the same effect as repressive justice practices outside the prison. On the inside segregation cells are overcrowded from the use of repressive control tactics; on the outside the fre-

quency of law-breaking is unaffected by repressive control tactics.

Perhaps, there is nothing more repressive than the current mandatory twenty-five year minimum life sentence for first degree murder in Canada. In her paper, *Homicide in Canada*, Bonny Walford convincingly argues that the abolition of the death sentence in Canada has resulted in harsher treatment for persons convicted of every classification of culpable homicide. Such practice is in direct contradiction to the public conception that the legal system is "soft on murderers". Walford suggests that there are a number of reasons why the current procedure for dealing with murder is open to abuse on a variety of levels. Due to the classifications of first and second degree murder and manslaughter, the police tend to "upcrime"³ most cases of homicide to first degree murder. In so doing, the police give themselves an unfair advantage in the plea bargaining process which often results in the accused's plea of guilty to second degree murder and a mandatory life sentence with a minimum of ten years. As Walford argues, while there is a saving of trial expenses in the guilty plea, these savings are more than expended in the costs of maintaining the prisoner for the indefinite duration of his/her sentence. Thus many prisoners are serving much longer sentences than would legally be adjudicated if a full and fair hearing of the case were held. For this reason, Walford recommends that the different classifications of homicide should be eliminated and replaced by a single classification. Once charged the accused would appear before a jury or panel of judges during which a full disclosure of the circumstances of the offence would be heard. In this way, Walford reasons that plea bargaining would be eliminated, the power to decide on the seriousness of the offence would be removed from the police and properly placed in the court,

3. The term "upcriming" has come to be used in the literature pertaining to policing practices. It refers to the practice of charging an accused with a crime more serious than the actual crime. For discussions of the implications of the practice of upcriming on the crime process generally see Ahluwalia and MacLean (1986); Blom-Cooper and Drabble (1982); Ericson (1981); Jones *et al.* (1986).

and the overall reduction in sentences would represent a saving of costs. If there is a flaw in Walford's argument, however, it appears in her recommendation to set sentences in a range of one to fifty years with the possibility of parole after one year. If the twenty-five year minimum sentence is overly repressive what can be said about a fifty year sentence? Clearly Walford would want to see the fifty year option invoked for the very few heinous murders, but as her own argument suggests, the tendency has been to over-sentence in homicide cases. One is left wondering whether the same trend would continue and result in the majority of persons serving fifty year sentences for homicide.

Earlier, I suggested that a portion of the increase in the prison population can be attributed to the abolition of the death sentence and the increasingly excessive use of the life sentence. As pointed out by The Infinity Lifers Group at Collins Bay Penitentiary in their paper entitled *Can You Hear Us?*, any person sentenced to life in Canada must appear at some point before the National Parole Board who will decide if they will be conditionally released. One of the serious problems addressed by The Lifers is that because there are virtually no suitable programs for lifers operating in Canadian penitentiaries, how is it possible for the Parole Board to make reasoned decisions. Prisoners will undoubtedly be evaluated on their demonstrated progress; however, with few ways available to demonstrate this progress and with the sometimes false or misleading information given to The Board by correctional staff, who evaluate prisoners on other criteria, the Board is destined to arrive at bad decisions which ultimately affect the public, the prisoners, and the Board itself negatively. The well thought out recommendations found in this paper illustrate that the prisoners are well aware that the majority of correctional expenditures are not found in prisoner programming and that they themselves must struggle to achieve justice inside the prison.

If the articles in this edition accomplish anything, they illustrate that prisoners of the Canadian correctional enterprise, recognize the need for change and that they have

taken up the struggle for justice in a non-violent manner. Their weapons are reasoned argumentation and thoughtful critique; their aim is justice within the Canadian correctional enterprise. But the struggle for justice does not begin and end with a few prisoners advocating reasonable changes in the prison. It is a struggle which transcends the prison and goes to the root of contemporary society, a struggle in which we all must participate. Prisons in our society do little more than dehumanize all who are inside them, guards and prisoners alike. The only reasonable solution is massive decarceration out of prison and into a caring, just and humane society:

There is no need for any great penetration to see from the teaching of materialism on the original goodness and equal intellectual endowment of man, the omnipotence of experience, habit and education, and the influence of environment on man, the great significance of industry, the justification of enjoyment, etc., how necessarily materialism is connected with communism and socialism. If man draws all his knowledge, sensation, etc., from the world of the senses and the experience gained in it, then what has to be done is to arrange the world in such a way that man experiences and becomes accustomed to what is truly human in it and that [mankind] becomes aware of [itself] as man[kind]. If correctly understood interest is the principle of all morality, man's private interest must be made to coincide with the interest of humanity. If man is unfree in the materialistic sense, i.e., is free not through the negative power to avoid this or that, but through the positive power to assert his true individuality, crime must not be punished in the individual, but the anti-social sources of crime must be destroyed, and each must be given social scope for the vital manifestation of being. If man is shaped by environment, then environment must be made human. If man is social by nature, he will develop his true nature only in society, and the power of his nature must be measured not by the power of the separate individual but by the power of society (Marx and Engels, 1975: 161-162).

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