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## OPEN INSTITUTIONS

### SELECTION OF OFFENDERS SUITABLE FOR TREATMENT IN OPEN INSTITUTIONS

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UNITED NATIONS

Statements of fact in this report are the responsibility of the author, and opinions expressed are not necessarily those of organs or Members of the United Nations.

In accordance with the tradition of past Congresses, it has been possible to secure the co-operation of certain national prison administrations for the printing of documentation for the First United Nations Congress on the prevention of crime and the treatment of offenders, which is from an historical point of view the Thirteenth International Penal and Penitentiary Congress. Thus the present report has been generously printed by the Federal Bureau of Prisons of the United States of America, in the prison printing plant at Leavenworth, Kansas.

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*Note by the Secretariat.*

The preparation of documentation for the Congress was considered in June 1953 by the United Nations *ad hoc* Advisory Committee of Experts in the field of the prevention of crime and the treatment of offenders convened in pursuance of General Assembly Resolution 415 (V). With regard to open institutions, the Committee declared that in addition to the report by the Secretariat on the conclusions of United Nations regional conferences on the subject, it would be appropriate to submit to the Congress special reports on certain aspects of the problem of open institutions in relation to the prison system as a whole (Report of the Committee, document E/CN.5/298, paragraph 19).

The Secretariat was fortunate in being able to secure the co-operation of two consultants to prepare reports dealing respectively with *The selection of offenders suitable for treatment in open institutions* and with *The place of the open institution in the penal system and in the community*. The preparation of the present report, which deals with the former of these subjects, has been entrusted to Mr. José Agustín Méndez, L.L.D. Director, Institute for the Training of Prison Personnel, Ministry of Justice of Venezuela, Caracas.

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FOR TREATMENT IN OPEN INSTITUTIONS

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I

The selection of the offenders to be treated in open institutions is a necessary preliminary owing to the nature and the purpose of these institutions

Traditionally, the classification of convicted persons committed to the various types of prisons and penitentiary institutions was based on the nature of the sentence imposed. Consequently, the institutions themselves were classified according to the degree of severity of the treatment and to the rules applicable to the penalty to be served in them.

The idea of the open institution departs from this traditional view in that they are intended not for prisoners sentenced to a specific penalty but for prisoners likely to submit to the rules of the particular institution.

An open institution is characterized by: (a) a system of self-discipline; (b) the inmate's sense of responsibility towards the group in which he lives; and (c) the absence of physical precautions against escape, such as armed guards, walls, bars, locks, etc. Because of these features, it is a prerequisite for admission to an open institution that the prisoner should be predisposed to adapt himself to the system. For the purpose of determining whether he is in fact so predisposed his personality must be studied thoroughly so that the margin of error may be reduced to a minimum.

The prisoner's personality is not, however, the only factor to be taken into account in his committal to an open institution; the probable relationship between prisoner and open institution is an equally important factor, for life in an open institution should resemble life in freedom as closely as possible. Consequently, the type of decision to be taken respecting the prisoner inevitably also depends on his ability to adapt himself to the particular conditions prevailing in the open institution to which he is to be committed. If the system applied

in the institution is to approximate to conditions of life in freedom, men must be afforded normal scope for their physical and mental activities; this involves provision for work, cultural activities, religious worship, protection of life and health, sports, social intercourse, and a ranking based on personal aptitude and performance. Hence it is not enough that the prisoner should not want to escape; he must let himself be wholly integrated, without holding back or resisting, into the social group constituted by the open institution.

The third factor to be taken into account is the open institution's object of social readaptation. Prisoners are not committed to these institutions for the sole purpose of serving a sentence, but in order that, by the time they are released, they will have been cured of their anti-social habits and can live in a free society without being a danger to it.

It will be seen that the selection of offenders is of basic importance to the operation of open institutions. The absence of physical precautions against escape, the regime of self-discipline in place of physical coercion, and the resemblance to life in freedom—all these circumstances require on the part of the offenders committed to these institutions a voluntary and spontaneous acceptance of deprivation of liberty and their co-operation in the carrying out of the purposes of this penitentiary regime. If the criteria and methods of selection are bad, the usefulness of the institution will suffer, for its basic object of social rehabilitation will be vitiated.

Although there has been some progress in the methods of observing offenders, it must be admitted that they are not yet good enough. Because of the diversity of the factors which influence human behaviour and the difference in individual reactions to outside stimuli, the conclusions reached on the basis of observation of necessity vary from case to case. With all its defects, the method of criminological observation is the one which should be used in selection.

II

Legal or administrative category of the persons selected

What criterion should be applied for the purpose of determining the category of prisoners to be committed to open

institutions? The question is of obvious practical importance, and involves the consideration of a number of factors.

From a legal point of view, a person deprived of liberty may be either an untried prisoner, or a person convicted and sentenced to a penalty, or a person subjected to a security measure. The laws of the various countries, with a few exceptions, treat a person deprived of liberty differently according to which of these three categories he comes under. Accordingly, we shall consider to what extent the open institution system may be applied to persons in each of these categories.

A. *Untried prisoners.* An untried prisoner is deprived of his freedom while awaiting trial, as a provisional measure and for an indeterminate (although at times excessive) period. He is detained pending trial because it depends on the definitive judicial decision in his case whether he will or will not continue to be deprived of his freedom, which in turn depends on whether he is found guilty or not guilty. The detention is provisional in the sense that the penalty applicable to the case has not yet been determined. And it is indeterminate in that, until he is either convicted or acquitted, he remains an untried prisoner until the case has been finally disposed of. If he is convicted he will continue to be deprived of liberty until he has served his sentence, and if acquitted, he will be released at once.

Moreover, in the case of a person who is on trial the detention must be such as to answer the requirements of the trial, make possible an effective inquiry into the act for the commission of which he is being prosecuted, and offer to society the safeguards it demands whenever a punishable offence has been committed. The penitentiary authorities are merely the custodians of the accused. The responsibility for the person and safety of the accused rests with the judge dealing with the case.

The following arguments would seem to support committal to an open institution in the case of persons awaiting trial: (1) that, since the system represents deprivation of liberty in an attenuated form, those not yet pronounced guilty should be the first to whom it should be applied; (2) that, as no penalty has as yet been imposed on them, their deprivation of liberty should comport the minimum of restrictions, such as is to be found in the open institutions; and (3) that because a per-

son in such circumstances is less constricted in his personal freedom observation with a view to selection can proceed in a more natural and more favourable setting.

These seemingly convincing arguments collapse once account is taken of the legal difference between the position of the convicted person and that of an untried prisoner. The latter is temporarily deprived of his liberty in the public interest, because of the requirements of the trial and for his personal safety. He is detained "in the public interest" in so far as statute, in certain specific cases, prescribes the provisional but immediate segregation of persons accused of serious crimes which, in addition to being gravely prejudicial to the interests of individuals or the community, cause public alarm or apprehension. He is detained by reason of the requirements of the trial because the purpose of the trial is to sift the evidence relating to the offence and to determine the offender's liability, and the course of justice must not be impeded by leaving the offender free, perhaps, to do away with the evidence of the offence or of his culpability. Lastly, he is detained for his personal safety because while so detained he is not exposed to acts of individual or collective vengeance on the part of persons injured or affected by the offence.

A convicted person, on the other hand, cannot properly be so termed unless he has been held criminally liable by a judicial decision. This decision specifies the type and term of the deprivation of liberty and the legal status of the convicted person. The State, acting in its punitive capacity, exercises its statutory powers and by virtue of these subjects the prisoner to treatment in the existing penitentiary system.

We should not forget that an untried prisoner is faced with a judicial uncertainty. He may be either acquitted or convicted and if, after being subjected to re-educative treatment, he should be acquitted, such treatment would not in retrospect have been justified. While a certain category of untried persons should and may suffer deprivation of liberty in a milder form, the latter should be distinct from the system of the open institutions, the purpose of which is re-education.

For these reasons, we incline to the view that persons under detention pending trial should not be placed in open institutions.

B. *Convicted persons.* The discussion concerning the legal criterion to be used in the selection of prisoners for open institutions revolves primarily round persons who have been convicted and sentenced to a penalty. The view that such persons should not be placed in these institutions is defended by those who hold that the purpose of a sentence is to punish—a conception wholly at variance with that underlying the open institution. Whether or not the open institution system should be used at all is a question outside the scope of this paper and we shall therefore take it for granted that the system is applicable to convicted persons. The only question before us is whether all convicted persons are suitable for the regime of the open institution.

In order to reply to this question, let us first inquire what legal category of convicted persons may qualify for open institutions. For this purpose we shall base our discussion on two factors: term of the sentence and nature of the penalty.

(a) *Term of the sentence.* Let us first consider the position of prisoners sentenced to deprivation of liberty for life or for so long a term that the sentence is virtually a life sentence. If we reflect that one of the purposes, if not the main purpose, of the open institution is the social readaptation of the prisoners, we must ask ourselves whether it is worth-while attempting to retrain for social life persons who will not in all cases be restored to life in freedom. Moreover, life or long-term sentences are generally imposed only on offenders who have committed such serious crimes that they may be presumed to be utterly devoid of any sense of morality and integrity and therefore incapable of readaptation.

To give an absolute answer to such questions is, however, difficult, and would only lead to inaccuracies and errors. The conditions attendant upon deprivation of liberty must be considered in each case. One day the life sentence or its equivalent will be the subject of practical research. The view of prisons as places where men rot away has now become as repugnant both to the expert and to public opinion. At the same time, it seems that certain offenders, owing to their personality, their dangerous behaviour and their obvious unfitness for life in freedom, cannot be returned to society; in this case, life or long-term imprisonment should be regarded from the ontological

and teleological points of view. In countries where life imprisonment exists, thought might be given to grouping persons who are sentenced to this penalty and who are unlikely to regain their freedom in small institutions where they could do useful work compatible with the type of sentence served. Only by using such an approach can one consider sending such prisoners to open institutions. This approach does not, however, seem to conform to the letter and spirit of the law in countries where life imprisonment is still a recognized penalty.

(b) *Nature of the penalty.* In our opinion, not all forms of deprivation of liberty are compatible with the regime of open institutions.

The various conferences on the prevention of crime and the treatment of offenders organized by the United Nations have recommended that: "The life of the inmates of open institutions should resemble normal life as closely as possible." It is a logical corollary to this principle that the inmates of open institutions should enjoy a legal status which does not admit of corporal punishment or restrictions incompatible with the freedom of movement that is part of the regime of the open institution. If, despite the recommendations of the United Nations regional conferences concerning minimum rules for the treatment of offenders, such practices as corporal punishment and the use of chains and irons are still employed in some places, these practices are incompatible with the regime of the open institution. It is illusory to describe as an open institution one in which forms of deprivation of liberty can be applied that conflict, in type and nature, with the three characteristics typical of the open institution (see section I above).

Similarly, penalties involving various types of isolation, such as solitary confinement by day or by night, are incompatible with the regime of the open institution, inasmuch as they hamper its normal operation.

Apart from the above qualifications, the selection of prisoners for open institutions may be made from among persons sentenced to any penalty deprivative of freedom, so long as the penalty is not accompanied by these or similar restrictions.

(c) *Persons subjected to security measures.* Although not all legislations draw a clear distinction between penalties and

security measures, the fact remains that many do so, providing in certain cases for the concurrent or successive application of penalties and security measures and in others for the application of security measures only. Generally such provisions apply to abnormal or dangerous offenders and to certain categories of persons covered by special legislation, such as rogues and vagabonds. The question is whether persons subjected to security measures are fit for life in an open institution.

If it is borne in mind that, unlike other types of penitentiary institutions, the open institution is based on the premise that the offender must be treated as a human being who also happens to be an offender and that hence every effort must be made to rehabilitate him, the inevitable conclusion is that there is no reason to exclude from the open institutions persons subjected to security measures even where the measure in question is not the consequence of an offence already committed but of the person's dangerousness and pre-delinquent condition. The preventive nature of the security measure, especially in the case of rogues, vagabonds and the like, is in keeping with the character of the open institution, in which such socially maladjusted persons can easily find ways of re-entering the community as useful citizens.

Therefore, with the exception of special cases such as certain types of abnormal offenders (see section III below), we should admit the principle that persons subjected to security measures should be eligible for committal to open institutions. In Venezuela, for example, the Rogues and Vagabonds Order of 1950 provides that the agricultural colonies to which persons covered by the Order are committed are to be operated as open institutions.

### III

#### Criteria governing selection

##### A. Offenders

###### (a) *The economic and social function of the open institution*

If we consider that an offender committed to an open institution should have a sense of responsibility towards the group in which he lives; that the life of the inmates of such institu-

tions should resemble life in freedom as closely as possible; and that the admission of offenders should be based on a selective criterion which takes into account the offender's aptitude for adapting himself to the regime of the institution, the inevitable inference is that one of the criteria governing selection should be the economic and social functioning of the open institution.

In order to avoid misunderstanding, we should point out that, so far as the economic function is concerned, this does not mean that the offender should be selected for his economic value to the institution; rather, because work plays an important part in the activity of any group organized on the pattern of life in freedom (for work is an important aspect of normal life), it is logical to deduce that offenders selected for admission to an open institution should be able to carry on a productive activity which fits in with the nature and work scheme of the open institution in question.<sup>1</sup> All experts in prison law and technique now agree that education and work vitally and decisively influence the social readaptation of offenders. Education and work play a decisive part in open institutions.

Consequently, if offenders unfit for productive work and incapable of using their time intelligently were selected, serious difficulties would arise, among them a disinclination to co-operate on the part of offenders who are fit for productive work. For this reason, with respect to the economic function of the institution, the criterion governing selection must be interpreted broadly and in the sense that the institution, because its system closely resembles conditions of life in freedom, must offer a genuine setting of economic activity; its constituent groups should be on a footing of equality as regards individual and group performance. In this respect it must again be stressed that open institutions, unlike others, require a more harmonious combination of discipline and work.

So far as the social function of the institution is concerned, the criterion governing selection is of the utmost importance.

1. The question of the nature and of the work scheme of open institutions raises in its turn the important question of the extent to which these institutions should fit into the economy of the region of the country concerned. In other words, to what extent should the economic organization or rather the production of an open institution satisfy the country's or region's economic needs? The question is outside the scope of this paper, but its importance was emphasized in some debates which took place at the regional conferences arranged by the United Nations, especially at the Far Eastern Seminar, held at Rangoon in 1954.

Psychologically, what is vital to a prisoner's adjustment to life in an open institution is that he should have the feeling that he is not totally isolated from society. The sense of social co-existence among groups of inmates in open institutions and the fact that contacts with the outside world can be arranged more easily demonstrate the growing importance of the social function of these institutions. The selection should therefore proceed from the premise that the prisoner is capable of living and associating with his prison companions without interfering with the rules of group life. Whereas in the conventional institutions a feeling of isolation prevails and only certain limited forms of group life exist, it is essential that in an open institution all those committed to it should be able to adapt themselves to a wider community life. Therefore, in the selection of candidates for admission to open institutions, not only the prisoner's personal qualities must be taken into account, but also the extent to which such qualities fit in with the economic and social function of these institutions.

(b) *The offender's personality*

In discussing this factor the writer proposes to disregard the criteria inherent in the classification of offenders and in the theoretical analysis of their problems. For this purpose we shall perforce have to employ the method of rejecting the types which (in our opinion) are unsuitable for selection and reduce the field of selection to those not rejected.

Three factors must be borne in mind in the case of each prisoner: the life he led before committing the offence, his conduct during imprisonment, and the type of offence committed. From these three factors one can form an idea of the offender's personality, so far as it is possible to do so. An opinion based on an analysis of only one of these three factors may be mistaken. Accordingly, the criterion of selection based on a criminological examination of the offender must include a complete study of him based on the three factors mentioned.

Although many legislative systems and the majority of penologists consider that a minor does not come within the scope of criminal law, the fact remains that some legislative systems still provide for the punishment of offenders who are minors; in some cases this is the general rule, subject to certain statutory limitations, because there are no juvenile courts,

and in others, although such courts exist, the age limit is eighteen and occasionally twenty-one.<sup>2</sup> Generally, penalties are mitigated in the case of minors between the ages of twelve (or fifteen) and twenty-one years who commit punishable offences. Should persons under twenty-one who are liable to penalties be committed to open institutions? In the writer's opinion the methods of retraining young persons are distinct and different from those used in the resocialization of adults in open institutions. The readaptation treatment of adults is intended to correct deviations or deficiencies of already formed personalities. In the case of a minor, treatment forms the personality; in the case of an adult treatment corrects the deviations of the personality. For this reason, although there may be certain resemblances between open institutions for adults and institutions reserved for minors, it is advisable that young persons should not be committed to open institutions. It is, of course, possible not to do so in countries where, in consequence of a sound criminal policy, not only child protection measures exist but where in addition the treatment of delinquent minors is properly organized. In countries, however, where convicted minors are liable to ordinary penitentiary treatment, it is advisable that these should be committed to special sections of open institutions (if such institutions exist). Such a solution, although not of a technical nature, partly compensates for the defects in the treatment of young persons.

The relative gravity of the offence should not be a criterion in the selection of convicted persons for open institutions. If the seriousness of the offence has to be taken into account, it should be solely for the purpose of indicating the prisoner's anti-social attitude. The foregoing view is supported by the obvious case of offenders who commit an offence through negligence, but who may not have done so with any criminal or evil intent. It may happen, however, that for reasons inherent in the offender's personality and independent of the offence itself, he is unable to adapt himself to the outside world or to submit to the system of peaceful group-living required in open institutions. The converse may be true of

2. For particulars, see the United Nations studies dealing with juvenile delinquency (documents ST/SOA/SD/1, Addenda 1, 2, 3 and 4), and also the reports and summary records of regional conferences arranged by the United Nations under General Assembly resolution 415 (V) (documents ST/SOA/SD/GEN/1, ST/TAA/SER.C/15 and ST/TAA/SER.C/17).



persons who wilfully commit serious crimes. Even though the offence is evidence of an obvious anti-social attitude, the prisoner's conduct prior to the commission of the offence and his behaviour in prison may disclose a strong likelihood that a process of readaptation would produce results and hence that his criminal tendency may be eradicated. For these reasons, the relative gravity of the offence should be taken into account solely as evidence of the prisoner's anti-social attitude.

A prisoner's mental condition, on the other hand, must be regarded as one of the most important criteria governing selection. The ability to take part in group-living, which is required of prisoners committed to open institutions, calls for a well-developed capacity to understand and to like people. Self-discipline, a sense of responsibility, a high degree of mutual confidence between prisoners and prison staff, and a sincere desire for readaptation are likely to be understood and practised only by persons who have the normal use of the mental faculties. Selection must therefore be based on a psychological and psychiatric examination.

As regards the question whether first offenders or recidivists should be selected, logically the former should be preferred to the latter. This conclusion would be correct in the case of a country with a satisfactory prison system. But in some cases it may well happen that recidivism is the consequence of mistaken penitentiary methods which, far from rehabilitating an offender, merely conceal his anti-social attitude. Without wishing to offer any final answer, we may properly say that recidivism should be taken into account, together with all the other factors referred to above, in the selection of prisoners. In any case, it is hardly advisable to commit to an open institution an offender who will very probably break the law again upon release.

If a distinction could be drawn between offenders with a criminal tendency and those suitable for corrective training (a problem which so far remains unsolved), it is clear that the former should not be committed to open institutions. The reason is obvious. Since offenders with a criminal tendency do not act in accordance with free will when living in freedom, the restraining effects of the open institution would be useless.

Other criminological types need not be considered for the purposes of this paper. In accordance with the method men-

tioned earlier, the writer considers that only occasional offenders and persons guilty of offences committed on impulse or through negligence qualify for admission to open institutions. Recidivists may be selected in exceptional cases, if the observation suggests that recidivism is the consequence of wrong treatment received under a previous sentence.

(c) *The usefulness and effectiveness of the treatment given*

One of the basic characteristics of open institutions is that social readaptation takes precedence over punishment. The mitigation of the hardships of imprisonment, the system of self-discipline, the absence of physical precautions against escape, the close resemblance of life in the institution to that of life in freedom, and the development of healthy group-living habits—all these circumstances presuppose that the prisoner selected possesses the qualities which enable him to accept such a regime. Under the conventional prison systems coercion compensates for the deficiencies of the regime. In open institutions, however, coercion is replaced by the prisoners' confidence in the treatment they receive. In addition the system's success depends to a great extent on the care used in the selection. Therefore, in the selection of offenders for treatment in open institutions special attention must be paid to the usefulness and effectiveness of the treatment and in each case one must decide whether the person selected is suitable for the institution and *vice versa*.

In other words, the final point in the selection process is that at which it is decided whether the person selected, even though possessing all the general qualities fitting him for committal to an open institution, should be sent to any of the existing institutions or else to one specific institution by reason of the characteristics of this institution, his personal qualities and the likelihood of his readaptation. It is from the interplay of these various factors that one can tell how suitable a particular treatment will be for a particular person and how receptive he will be to the treatment.

This mutual suitability has to be considered because, for various reasons, not all open institutions offer the same prospect of readaptation to each and all of the prisoners selected. The specific choice of an open institution depends more on individualization than on the classification of offenders. The

choice should be based not only on the fact that the prisoner possesses the general qualities required for group-living and treatment in an open institution, but also on the specific qualities required for the type of group-living and the treatment given in a specific open institution. For this reason there must first be specific investigation of certain personal qualities with a view to a particular treatment or system and to future readaptation.

As a rule for the purpose of determining which would be most suitable, the usefulness and effectiveness of the various types of treatment and open institutions will have to be considered. Where different types of institutions do not exist, the open institutions should be so organized as to provide the necessary flexible and varied systems of treatment so that the required relationship between the prisoner and his treatment can be established in the various sections, which should not become isolated parts of the same establishment. Actually, it is not necessary to have a large number of open institutions; what is necessary is that in the existing institutions the educational programmes, the different tasks and the productive activity should be organized in a varied and flexible manner.

#### *B. Persons subjected to security measures by reason of their dangerousness*

In the countries where under the Penal Code of special legislation security measures may be applied to persons who are declared to be dangerous but have not actually committed an offence, these persons could be committed to open institutions.

Spain, Uruguay and Venezuela are among the countries which have enacted legislation concerning rogues and vagabonds, authorizing certain security measures to be applied to persons who, by reason of their past history, evil way of life or criminal tendencies, constitute a danger to society. If certain circumstances are present, proceedings are instituted in the course of which the person's individual and social background is investigated to determine whether he is dangerous or not. Persons declared to be dangerous—if their anti-social attitude is not attributable to endogenous factors—usually lack disciplined standards of life, habits of work and a desire to live peaceably in society. The deprivation of freedom in the form of ordinary imprisonment which the application of

the security measure normally entails, precludes a clear and precise prognosis of what the person's conduct is likely to be when he regains his freedom, because under the disciplinary system of the institution where the security measure is applied he will hardly behave naturally. In Venezuela, in the regulations made under the Rogues and Vagabonds Order, it is provided that persons who are declared to be dangerous and whose anti-social attitude is due exclusively to a lack of good social habits or whose conduct, after partial application of the security measure, becomes exemplary, may be sent to an open institution. The existing open institution is an agricultural and industrial colony.

The results of this procedure have generally been satisfactory. In cases in which the dangerous person was unaccustomed to work, shirked family obligations or was incapable of carrying on his occupation or trade, the regime of the open institution taught him how to develop family ties (wife and children), while the disposal of the products of his work through the director of the institution gave him the assurance that his efforts would yield a fair remuneration. As the prisoner's freedom within the open institution depends on their good conduct, they continue to follow the same habits and way of life after serving their term.

With the adoption of this system the open institution takes on a new significance and purpose: it teaches the person to lead a lawful life in society by his own efforts and in a manner acceptable to his fellow-men.

If the open institution is to retain its true character, it is very important to select inmates who genuinely desire reform and who are free of any endogenous defects which make self-control impossible.

We suggest the following criteria for selection: persons who are dangerous (but have not committed an offence) and who are committed directly to open institutions should be mentally normal and their anti-social behaviour attributable chiefly to exogenous factors; subsequent committal or committal after partial compliance with the security measure should depend on the conduct report of the body responsible for the observation. This body should, of course, make the final decision in either case.

#### IV.

#### Methods of selection

##### *General considerations*

In the earlier discussion of the legal or administrative category of persons selected for open institutions and of the criteria governing selection, we alluded in general terms to the considerations underlying the choice of offenders suitable for treatment in open institutions. These general remarks are in line with our view that the basic factors to be taken into account in the selection should be studied in detail when the methods of selection came to be discussed, for these factors have a direct bearing on the procedure and organs which are the subject of this chapter.

Before stating what method we consider advisable we feel we should discuss three possible situations: (a) that in which the basic criteria are laid down in legislation; (b) that in which they are left to the discretion of the administrative authorities responsible for applying the penalty; (c) that in which the selection is made by criminological observation centres.

(a) *If statute law applies.* Under the conventional penal system the committal of a convicted person to a particular type of penitentiary institution depends generally upon the sentence imposed. The decisive factor is usually the nature and gravity of the offence committed, and this in turn influences the type of punishment. This system, while answering the test of objectivity, is out of keeping with the essential nature and purpose of open institutions. The selection of persons committed to open institutions must be based on a study both of the offender's personality and of the type of institution. An objective criterion laid down by statute would defeat the institution's purpose.

(b) *If responsibility is vested in administrative authorities.* Under another system governing the committal of prisoners to penal institutions the responsibility for selection is vested in the administrative authorities who have custody of them. However, the detailed observation and study necessary to assess the offender's personality and estimate how committal to an open institution will affect him is undoubtedly a technical

rather than an administrative task. We therefore feel that this responsibility should not be vested exclusively in the administrative authorities.

(c) *Selection according to criminological findings.* Realizing that no single crime-producing factor predominates over all others, for the personality is a compound of all of them, criminologists have tended to individualize the offender, treating each one as a separate case. Consequently any decision about the prisoner's character must be made on the basis of observation.

This must take into account (a) the offender's personal history; (b) his present state; (c) his anti-social attitude and his offence. From the resulting data his personality should be pieced together.

The study of the offender's personal history should include heredity, birth, childhood and outlook on life. The study of his present state should probe into his position as an individual and in society. The study of the offender as an individual should include a medico-biological, psycho-physiological and psycho-pathological examination. The study of the offender as a member of society should include an investigation of family relationships, working surroundings and general environment. The study of his anti-social attitude and his offence should cover inquiries into anti-social behaviour before the commission of the punishable act, a judicial and non-judicial opinion on the offence for which he was tried and a criminological analysis of the circumstances in which he committed the punishable act. From the synthesis of the elements of his personality one should be able to form an opinion of the personality and of all the factors influencing it up to the time when he committed the anti-social act for which he was convicted.

As the object of the observation is selection with a view to committal to an open institution, particular attention should be given to the positive elements which offer a good prospect of the offender's resocialization. These should include the following psychological elements: (a) ability to regain his self-control; (b) ability to recover a sense of the ethical content of his actions; (c) ability to adjust his personal inclinations to the regime of the institution.

We have selected these three elements as being decisive in any forecast of the prisoner's behaviour in an open institution. If he can regain his self-control he will in all probability be able to understand and hence be willing to respect the discipline of the institution; if he can acquire a fresh or increased sense of the ethical import of his actions he will tend to play a useful and orderly part in group activities to his own and his fellows' advantage; if he can adjust his personal inclination to the regime of the institution there will be little chance of incompatibility.

For these reasons we believe that the selection of prisoners should be based on a criminological examination. Objective texts laid down in legislation (usually dating back some time) and the empirical judgment of administrative prison officials, though useful, cannot *per se* provide a clue to the prisoner's personality.

#### B. Procedure

For the purpose of the soundness of the selection, particular importance attaches to the procedure of selection and to the bodies responsible for carrying it out. It is not enough to establish bodies by the letter of the law; the means adopted and the persons employed to implement them must be such that the law is applied in the right spirit.

The purpose of the procedure is to apply suitable methods of action and investigation for ascertaining whether a prisoner is suitable for committal to an open institution. It depends largely on the soundness of these methods whether the selection is correct. Consequently rules must be laid down which will guarantee the most accurate diagnosis possible.

For the purposes of this paper what we are concerned with is not the relationship between the analysis of the offender's personality and the sentence to be imposed but the evidence relied on by the selecting body in its decision and also at which point it can begin the investigation which will culminate in the decision to commit a particular prisoner to an open institution.

The observation services are therefore indispensable. They should be given every facility for collecting the necessary data and for conducting the appropriate investigations during the trial and the period of detention, so that they can form an

opinion of the offender's personality. If a dossier relating to the prisoner is started during the criminal proceedings a copy of this should be sent to the authorities responsible for subsequent selection.

The observation procedure should ensure the utmost scientific objectivity on the part of those responsible for making the selection. For this purpose the methods of investigation should not be subject to any limitations other than those implied by the guarantee of personal rights, and the services should be as flexible as possible. The formalities which are so common in judicial proceedings and which hamper the investigation of the prisoner's personality should be avoided.

If the study of the personality is to be accurate it must embrace all the important details of the subject's life. The selecting body should therefore have broad powers of investigation and have free access to, or request the necessary co-operation of, all official agencies which can supply particulars of the life of the person in question.

As regards the point at which the investigation of the personality for the purposes of selection should begin, it would be desirable that it should begin at the moment of detention so that the decision will be based on observation during the whole period which the prisoner has spent in captivity.

In penitentiary institutions where rewards and punishments are awarded to prisoners on the recommendation of criminological observation centres, psychiatric wings or similar internal services, prisoners who feel that they are badly treated by such bodies often react unfavourably to the technical observation staff. For this reason the selection should be represented as a consequence of the general prison system and the decisions of the selecting bodies should not be disclosed to the prisoners. Accordingly, the final decision should rest with the higher authorities responsible for applying the penalty.

As the object of the selection procedure is to determine whether the offender is suitable or not for an open institution, and as the relevant decision is closely bound up with the offender's readaptation, it should be made clear that the ruling concerning the prisoner's fitness for committal to an open institution should not put an end to the process of observation. For one thing, the ruling may contain mistakes; for another

the selected person's behaviour may change. In either event the bodies responsible for the observation will have to reconsider the case and either revoke the earlier decision or else modify it so that the person selected may be sent to a more suitable open institution.<sup>3</sup>

The procedure may be either judicial or administrative.

If it is judicial, then, if a judicial authority is not responsible for applying the penalty, the selection—in cases where it is not made at a very early stage—would not come within the province of the court's powers. This would also be true in countries where there are visiting (*juéces de vigilancia*) or enforcement judges (*juéces de ejecución de la pena*). If we accept the view that selection should be the responsibility of technical services staffed by qualified specialists it does not matter within whose jurisdiction they are. As in most countries the administrative authorities are responsible for applying penalties there would obviously be closer co-ordination if the selecting bodies came under them. We therefore feel that, in keeping with the existing practice of applying penalties, it would be better if the selection procedure were of the administrative type and entrusted to the prison authorities in each country.

Also in most countries matters dealt with by the administrative authorities are disposed of more promptly than those referred to the judicial authorities, the reason being, almost certainly, that the latter are still often held up by "red tape".

### C. Services

As selection is of special importance in the committal of prisoners to open institutions, the services responsible for such selection are particularly concerned that it should be objective and efficient. The methods and procedures of selection can become valueless if the responsible services fail to remain independent or to observe scientific principles and methods.

We therefore consider that the technical part of selection should be entrusted to criminological observation centres and the administrative particulars to the higher authorities responsible for applying the penalty.

3. See the remarks on the usefulness and effectiveness of treatment, section III, A. c.

By "criminological observation centres" we mean the technical services, staffed by specialists, which study the personality of offenders, diagnose their criminological categories and forecast and observe the conduct of prisoners during detention. In some countries these functions are entrusted to so-called "psychiatric wards", "biotypological institutes", "criminological institutes" and similar bodies.

Criminological observation centres should be staffed by experts in psychology, psychiatry, social medicine and sociology, as applied in criminology and penology. Each expert should analyse the prisoner's personality from the point of view of his special subject and make a diagnosis accordingly. The opinion expressed concerning the prisoner should be based on a joint analysis of all the experts' reports, with due regard to the predominant factor in each specific case. The recommendation should represent the view of the experts as a team.

In the absence of such centres, an assessment of the prisoner's personality may be obtained by means of a medical, social and penitentiary study based on medico-clinical, psychological, psychiatric and behavioural examinations of his conduct during detention. The reports should cover the prisoner's attitude at school, at work, in his spare time and in the dormitory, as well as his relationship with relatives and friends, his disciplinary life and anything else that may offer a clue as to his subsequent conduct.

When an observation centre has declared a prisoner fit for committal to an open institution, it is the function of the higher authorities responsible for applying the penalty to order his admission. There may be reasons of an administrative nature, such as the capacity of the institution, the presence in the institution of employees or prisoners hostile to the person selected, or some other factor unconnected with the prisoner's personality, which the criminological observation centre has not considered and which may make admission to a specified open institution inadvisable.

In fine, we are of the opinion that the technical body responsible for selection should be a criminological observation centre while the admission order should be made by the higher authorities responsible for applying the penalty.

Countries which lack the proper means for selecting prisoners for open institutions should refrain from introducing the system.

It is necessary to stress that the staff of criminological observation centres or where no centres exist the persons responsible for the selection should be properly qualified for their duties. They should have not only experience of the branches of science which they are to apply but also an exact and clear idea of a prisoner's mode of living, of the conduct of a person deprived of liberty, of the natural reactions of any individual to interrogation and of all other factors which may give a better insight into the prisoner's personality. Consequently, before establishing criminological observation centres the country concerned should not only make legal provision for their existence and dispose of the necessary resources to maintain them, but should also possess a reserve of specialists capable of ensuring the best results. In the majority of cases where such centres have not produced the desired results, the cause has been insufficiently qualified or carelessly recruited staff, whose erroneous recommendations, rather than any defects in procedure or in the system have prevented the centre from attaining its specific purpose of correctly appraising a prisoner's personality.

Another factor which can contribute to efficient observation designed as a means of selecting prisoners for open institutions is the information received from the penitentiary or prison staff responsible for the custody of the prisoner in question. This staff, being in direct contact with the prisoner, can obtain the clearest picture of his spontaneous reactions. The resulting information, provided that it reflects a fair and accurate observation, is the greatest circumstantial value as evidence of the prisoner's spontaneous feelings and genuine views on his mode of living.<sup>4</sup>

4. These auxiliary observation functions assigned to prison staff are closely connected with the training and recruitment of such staff, which is an item on the agenda of this Congress. It is unnecessary to add that in countries where little or no provision is made for the training and recruitment of such staff, its co-operation in observation is a mere fiction. What has been said in this paper brings out the intimate connexion between the system of open institutions and the recruitment and training of institutional personnel.

D. *At which point should it be decided to commit an offender to an open institution?*

In the foregoing discussion relating to procedure and to the selecting bodies, we established the following principles:

- (1) The procedure should be designed to produce a study of the offender's personality, with a view to deciding whether he is suitable for admission to an open institution;
- (2) Observation should cover every fundamental aspect of the prisoner's life which may influence selection;
- (3) Observation should begin at the time of detention;
- (4) The principal question is whether the offender is likely to be readapted in an open institution.

On the basis of those premises we said that persons awaiting trial should not be sent to open institutions (see section II, A above). A committal order to such an institution may, however, be made in respect of persons who, although not tried for any offence, are deemed under statutory provisions to be a danger to society (see section II, B, c above). As a general principle, therefore, the only persons who may be ordered to undergo a course of social readaptation are those whose need of such treatment has been judicially confirmed, by reason either of an offence or of a dangerous condition. An important exception to that principle is the case of persons who, although sentenced to a penalty, are conditionally discharged if they meet certain statutory requirements. This form of conditional sentence exists in a number of European and Latin American countries and has its equivalent, in the Anglo-Saxon countries, in the probation system. Although each system has its distinct characteristics, both, by their very nature, preclude the offender's committal either to an open institution or to any other detention centre.

The question which we shall now examine is whether committal to an open institution may take place immediately after sentence, the prisoner not being first admitted to any other type of institution, or whether it may not be ordered until after the prisoner has spent some time in an institution of another kind. In the second hypothesis, committal to an open institution is regarded as a phase within a progressive system.



(a) *Committal at the beginning of the penalty*

If the penitentiary systems of all countries possessed sufficient facilities for observation, through which every convicted person had to pass before being committed to any type of penal institution whatsoever, the answer would be that the committal of selected persons to open institutions should take place at the beginning of the penalty. At present, however, such facilities for observation and classification exist only in some countries. It is consequently necessary to analyse the question under consideration cautiously and practically.

If we accept this premise, committal *ab initio* might be proper in the case of two types of offenders: (a) first offenders guilty of petty offences who are found, on observation, not to be dangerous and who have been sentenced to terms of short or medium duration; and (b) persons guilty of offences committed through negligence who possess a normal personality.

As regards a person in the first category, his fundamental interest is to serve the penalty imposed and to recover his full freedom and individual rights. An equivocal freedom on the fringe of the law would be inconsistent both with the nature of the offence for which he was sentenced and with his own personality. We have pointed out that the offender must be a first offender, as habitual or recidivist tendencies evidence a sustained, dangerous disposition liable to weaken the prisoner's self-discipline and respect for rules of conduct which are indispensable in the communal life of open institutions.

With regard to persons who have committed an offence through negligence, the absence of malice in the commission of the punishable act is evidence of a minimum of dangerousness. It may happen, however, that observation will reveal the prisoner to be of abnormal personality, either mentally or criminologically. In such cases, his conduct may indicate that he lacks the necessary outlook to qualify for admission to an open institution and that such an institution would not contribute to his readaptation.

(b) *Committal to an open institution as a phase in a progressive system*

Penalties involving deprivation of liberty figure on every statute book and the penitentiary problem which they entail

is of concern not only to experts in the penal sciences but also to peoples and Governments. The progressive penitentiary system is one of the most valuable and effective products of penology and open institutions are perhaps the crowning achievement of that system. Although there may be opponents of immediate admission to open institutions, nobody takes exception to such admission as a phase in a progressive system. The daily observation of the prisoner by the institutional staff, supplemented by the work of a criminological observation centre, can provide data for a reasonably accurate forecast regarding his future conduct. If a technical opinion suggesting the likelihood of a prisoner's readaptation is supported by his excellent conduct in a closed or semi-closed prison, it is very probable that the open institution is the proper place to make that readaptation a reality. And it is because the open institution is the bridge between a closed or semi-closed prison and life in freedom that the prisoner's sojourn there is the best means of confirming the accuracy and competence of the observation services and of the institutional staff.

We should stress that treatment in open institutions cannot be a phase of progressive treatment except in the case of prisoners who fulfill the conditions governing selection described earlier in this paper (see section II and III above).

V.

**The relationship between the term of confinement and selection**

Even though the term of confinement in no way influences selection, the fact that there has been no modification or revocation of a decision to send the prisoner to an open institution should be taken into account, *a posteriori*, in judging whether the recommendation of the observation service was correct. If, after selection, the prisoner adapts himself to the treatment and life in the open institution, the prognosis based on the observation is borne out and observation will have served its true purpose. Where, on the other hand, matters turn out otherwise, it becomes necessary to transfer the prisoner to a selection centre or, failing that, to a different type of institution,

A committal order to an open institution may be revoked or modified by reason of circumstances arising before, at the time of, or after selection. Such a course may be necessitated by the prisoner's conduct in the open institution or on grounds unconnected with his conduct.

Anterior circumstances may be disclosed by fresh particulars concerning the prisoner's personal history, whether of a criminal nature or otherwise, unknown at the time of observation. If these particulars reveal a criminal history they may produce one of two effects: (a) if, in the light of the fresh evidence, the prisoner has to face another trial, his legal status would change and the measure should consequently be revoked; (b) if he has already been tried for those hitherto undiscovered acts, the observation service will have to reassess the prisoner's personality in the light of the new evidence. If there is no criminal element in the history but there is something from which it can be inferred that the prisoner may have an unfavourable influence on the institution or on the conduct of other prisoners, or that he is not suited to the programme of the open institution, the decision should either be revoked or so modified as to provide for the prisoner's transfer to another open institution.

Circumstances arising at the time of the observation may include: (a) simulated conduct during the observation period; (b) defects in the observation itself; and (c) misrepresentation or inaccuracy in the information supplied to the observation service by the penitentiary officers responsible for observation in the institution from which the prisoner has come or by the officers of any other service from which information was requested.

A prisoner may be so skillful as to deceive the persons responsible for observation. Although the hypothesis is remote, for simulation should not deceive efficient observers, it must be recognized that some offenders may have considerable histrionic ability. As an example of collective simulation we may recall the case of a well-known penitentiary in South America, the Governor of which, a scholar and a minister of religion, observed that the vast majority of the prison inmates had become converts to the denomination which he represented. It subsequently transpired that the object of the conversion

was to win the Governor's confidence and so prepare a rising which was to culminate in a mass escape. There have been cases, in penitentiary experience, where observation yielded false results because of the powers of deception of some prisoners.

With regard to (b), errors in observation should be avoided, especially those attributable to routine or superficial methods. The open institution is a relatively new phenomenon, and repeated errors caused by the application of deficient methods could discredit the system of observation and hence the system of open institutions.

With regard to (c), misrepresentation or inaccuracy in the information supplied by penitentiary and other officers would have the consequence that observation services base their decisions, wholly or in part, on data which do not correspond to fact. In the case of penitentiary officers this can happen if the information which they are expected to supply is not properly checked and is based on particulars supplied by the warders of the institution concerned. Warders are not qualified to furnish such particulars.

Circumstances arising after selection are generally attributable to the prisoner's conduct in the open institution. His conduct may have an adverse effect either on the functioning of the institution or on the behaviour of the other prisoners.

We should stress that in any case where a term in an open institution is interrupted, or a committal order revoked, the prisoner concerned should again be placed under observation so that the factors which may have accounted for the mistake made in the selection may be determined.



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