

Paul Kennedy

Welcome to *Ideas*. I'm Paul Kennedy with the concluding episode of "To Hurt or To Heal." In this series, David Cayley has been examining the rationale underlying our criminal justice system in the light of the emerging movement for restorative justice. This movement has argued for a healing justice that tries to restore social harmony rather than just punish wrongdoers. One of the obstacles it faces is a political climate in which public safety and victims rights continue to be equated with more punishment rather than less. Tonight's program examines this climate and then asks about the institution which is expected to ensure public safety: the prison. What can it do, what can't it do for a society that hopes for so much from it? "To Hurt or To Heal," Part Five, by David Cayley.

David Cayley

One hears again and again that the public is upset about crime, that the public lacks confidence in the criminal justice system, that the public wants judges to lock people up for longer periods. The media say so, politicians say so, and public opinion surveys seem to back them up.

But survey research on public attitudes to crime and punishment also shows something that is less frequently noted: what people say they want changes with what they know. Tell them more about the circumstances, or give them alternatives, and they become significantly less punitive. One of the researchers who has demonstrated this interesting effect is Tony Doob, a professor of criminology at the University of Toronto. He and his colleagues conducted surveys in which they first presented people with bare situations and then offered alternatives.

Tony Doob

We did things like ask people whether in a particular case somebody should be imprisoned. And as soon as you put alternatives to

imprisonment, they're less likely to want imprisonment. Or as soon as you make the costs of imprisonment salient to people, they're less likely to want it.

When we asked people whether even a ten-year-old kid who'd done a serious, violent act should be brought to court, people said, "Yes, they should." Our survey was a cross-Canada survey, and 70 per cent of people said, "Send him to court." Why do they say that? Because they're thinking about it as being court or nothing, because that's really what we asked them. You give them another choice and say, "There are other alternatives. You can take the young person to youth court, or you can deal with him in the child welfare, mental health system. What's your choice there?" All of a sudden, it goes from 70 per cent wanting him to go to court to about 23 per cent, I think, wanting him to go to court. It's a huge, huge drop. And really it's because people say, "Oh, there is an alternative. We can actually deal with this in a more productive way." People have the understanding that punishing a ten year old, who's probably been over-punished already, isn't necessarily going to make their world any safer or make this kid's life any better.

There's the same kind of research which shows that people aren't as punitive as soon as they know something about the offender. One of my graduate students gave a number of different scenarios to people and said, "What do you think should happen to them?" It seemed like almost any kind of information you gave to people about an offender, they became less punitive, I think because they're thinking of the person as a real person, as a real person who might be sitting across the table or might be living across the street from them. So when they get that information, they look for something which is a little bit more productive.

David Cayley

Tony Doob's research shows punishment as a

reflex that will often give way to more considered and more compassionate responses when more is known. But it is frequently the more immediate, less thoughtful response that seems to dominate the politics of crime. The reason, Tony Doob thinks, lies in the kind of appeal punishment makes.

Tony Doob

Punishment is easy. From a politician's perspective or from a newspaper columnist's perspective, punishment is the easiest thing. You have a theory, which people don't challenge until they start thinking about it, which says that punishment works. The fact that the research shows that punishment doesn't work is irrelevant to this. A parliamentarian says, "I'm going to show my constituents that I am against evil, and not only am I against evil, but I'm going to solve the problem of evil in our society. So I'm going to sponsor a bill, I'm going to introduce a bill, I'm going to change the legislation to make things more punitive." So the parliamentarian can turn around to his or her constituents and say, "Look, I've done exactly what you wanted. I have condemned evil by making the punishments harsher, and I'm making you safer by doing that." That sounds much simpler than my saying, "I'm going to take kids who are ten years old who are having real problems in school, and I'm going to address the problems, and I'm going to work on them. So two or three years later, we will actually have fewer kids who are doing very serious kinds of violence in their early adolescence." The relationship there, although it can be shown in research, is not as clear. But the second thing is, it's taken me eight times as long to explain it. A politician can say, "We want harsher penalties. Bring back the death penalty. Pull out their fingernails" — whatever it is that these twits are saying.

David Cayley

The appeal of punishment is well-illustrated by our current treatment of young offenders. Despite the widespread impression that the

Young Offenders Act is almost laughably lenient, Canada actually sends a higher percentage of young offenders to jail than any other Western country, including the United States — a policy which Tony Doob thinks makes no sense.

Tony Doob

We're sending 25,000 young people to prison every year. When you look at what they're there for, it's hard for me to believe that we couldn't find some other way of dealing with these problems. Of the 25,000, about three-quarters are offences which aren't the ones which are really upsetting the public. They aren't the murders, the manslaughters, the aggravated assaults, the sexual assaults and so on. They're the thefts, the failures to appear in court, the breach of probation, break-ins. Break-in is our most serious property offence. My suspicion is that, if we were creative — with many, or even most of the break-ins — we could find ways of satisfying society and the victim outside of the use of prison for these kids. They're going to go to prison for three months, six months at the most for these kinds of offences, because they aren't all that serious. At the end of that, we've accomplished nothing. Prisons are very destructive, grim, unproductive parts of our community. They really are the end, with almost nothing good that can come of them. When you talk to kids in prison and say, "What did you get out of prison?" they'll say, "At least, it forced me to go to school," or, "I had to give up smoking" or whatever it might be "...when I went to prison." You say, right, this is our best way of getting a kid to go to school, because we force him to do it, because it's the only thing he can do in the mornings when he's in the custodial facility. Surely we can find better ways to even accomplish that goal. I think we can look at these in a more interesting way and find more interesting things to do.

David Cayley

The new Youth Criminal Justice Act, which is currently before Parliament, does set out more

productive, more restorative alternatives for the kind of offences that now account for the three-quarters of incarcerated youth that Tony Doob just mentioned. But the besetting problem remains. Despite conclusive research showing that there is no connection between the amount of imprisonment and the amount of crime, the belief persists that punishment is the best way to prevent crime.

Tony Doob

Our problem is that we link crime to the operation of the criminal justice system. We link crime to a more punitive or to a less punitive system. Therefore, the way in which we're going to be dealing with crime is, we're going to tinker with our criminal justice system. That's just simply wrong. The way you deal with crime is to deal with the problems that create crime, that create crime in particular groups of people and not others. A lot is known about that in terms of early experiences that kids have, in terms of support that they have in school, in terms of things which happen to them in adolescence. We can intervene more or less any time we want to, and we can reduce crime. But what we would do if we were interested in reducing crime would be to work on crime, not the criminal justice system. Work on the criminal justice system separately. The United States has a huge incarceration rate. It could reduce that dramatically by changing criminal justice policies. It wouldn't have any effect whatsoever on its crime rate.

David Cayley

Delinking crime and punishment is politically feasible, Tony Doob believes, because politicians could appeal to the more thoughtful public attitudes that his research has shown are latent within apparently more punitive stances. But at the moment, things appear to be going in the opposite direction. One index is the number of Private Members Bills pertaining to criminal justice that are currently before Parliament. Mary Campbell has kept a close eye on these

bills as the Director of Criminal Justice Policy for the Ministry of the Solicitor General, a position she just left to take a new job training judges. And she says that she has recently seen a dramatic change.

Mary Campbell

There's been an explosion of private members bills in the past year. By my count, there are now over 60 Private Members Bills dealing with criminal justice in one way or another. Out of those 60-plus bills, there are 11 or 12 that are absolutely about lengthening sentences. There are a couple more that would reinstate the death penalty. There are another 10 or 12 that would criminalize behaviour that currently is not criminalized. It's very much that law-and-order focus.

What it means is that now, more than ever, you see single-issue bills before the House. They're not connected to any broader agenda for criminal law reform. They're not connected to any more coherent approach to whatever the problem is. They tend to be very ad hoc and focussed on a particular constituency or a particular set of concerns.

David Cayley

One of the things that worries Mary Campbell about the recent upsurge in Private Members Bills is the underlying politicization of criminal justice policy that it reflects. As a civil servant, she has been involved for many years in the development of criminal justice legislation, a process that she thinks should be based on a coherent body of knowledge and a careful weighing of evidence. The proper role of the civil service, in her view, is to bring this knowledge forward. But this becomes much harder to do, she says, when politicians discount evidence and treat criminal justice policy as an entirely political question.

Mary Campbell

I think that the best public service is one that is

knowledge-based and one that does not attempt to play on the political field. I'm not here to assess the political benefits or risks of any particular policy. That is for others in this building to do. I think, unfortunately, there has been a little bit of a drift in recent years, moving away from a civil service based on expertise or experience or knowledge and moving more to a model of general management, if you like. So a good public servant is someone who is flexible and adaptable and can work in one environment one day and another environment six months or a year from now. There may be a role for that at a certain level, at a fairly high level. But I think it is my role to say, for example, Here is the research on long sentences, here is the research on long sentences and deterrence. We know that longer sentences do not deter. That is the knowledge that I bring to you. Now, if you decide you still want longer sentences for some other reason, that's fine, but I think my role is to provide that kind of knowledge and research. I see a weakening of that in recent years.

The other aspect of politicization of public servants, I think, is that the pressure to become politicized comes from elsewhere. It's not so much that I am taking on a political role but that others may perceive that in me. I think that that relates to the absence of strong voices on the left side at a political level, and so if I put forward a statement that longer sentences do not deter, there has been an increasing tendency to see that as a political statement or as an ideological statement and for me to be put into a dialogue, sometimes with Members of Parliament, that's really inappropriate for me to be in as a public servant.

David Cayley

The decline of the left and the politicization of crime that Mary Campbell points to have occurred in almost all Western democracies in recent years. The result has been that crime policy has become more of a political commodity, offering enticing possibilities of

political advantage on the one hand, but also posing new dangers for politicians, who risk being outbid on the right if they take complex, considered positions.

Another civil servant who's been at the centre of the fray over criminal justice policy is Ole Ingstrup, the head of the federal Correctional Service of Canada, the CSC, as it's called, which administers all prison sentences longer than two years. Ingstrup has twice been the commissioner of the CSC, holding the position from 1988 to 1992 and then taking it on again in 1996. During his second tenure, he has been a frequent target of the Sun newspaper chain, the Government of Ontario and the Reform, now Alliance, Party. A recent article by Michael Harris in the National Post, describing the CSC's treatment of prisoners as a "system of unbridled appeasement," gives some of the flavour of these attacks. But Ole Ingstrup has held his ground and continues to insist that the CSC is in fact enjoying outstanding success in fulfilling its mandate.

Ole Ingstrup

We measure ourselves against certain criteria. In our case, it is, what kind of contribution do we make to a safer society? We measure that primarily through the recidivism rate, which means the number of offenders who commit new offences after they have left our institutions but while they are still under our care in the community. The amount of crime committed by offenders being released from our institutions is going down, and it's been going down over a number of years, and it is now at a level that is probably the lowest one can find anywhere and certainly less than half of what it was just 10, 15 years ago. So in that sense, we are making a greater contribution to the protection of Canadians through what we're doing.

David Cayley

One of the reasons for this lower recidivism, Ole Ingstrup says, has been the CSC's success in

supervising prisoners who have been released but are still under sentence. Interestingly, the number of offenders in the community is one of the things for which he has come under attack. A couple of years ago, Ingstrup suggested that there should be a 50/50 split between the number of offenders in institutions and the number on conditional release, and the CSC set this as a goal. This goal was immediately attacked by the Premier of Ontario, amongst others, as a quota system which would see criminals go free, not because they posed no danger, but in order to fulfill the quota. The CSC denies that there has ever been anything like a quota in that sense. But there is clear evidence, Ole Ingstrup says, that offenders who spend more of their sentence under supervision in the community are less likely to re-offend.

Ole Ingstrup

What we know is this: if we release people somewhere between one-third and two-thirds of their sentence, their recidivism rate, after the whole sentence has been served, including the community part of it, is about half of the recidivism that we seen in the group that has been released at a much later stage in their sentence. Now, it doesn't just mean that, therefore, everybody should go out much earlier. That's not what I'm saying. It means that we're pretty good at assessing what is the high risk and what is the low risk, so we keep the highest risks longer than the low-risk cases obviously. But it also indicates to me that a longer period of supervision has a positive impact on recidivism. We see that over and over again.

One thing that we are looking at is to increase the program delivery in the community after they have been released. Often it is booster programs, where people have taken programs in the institution, and we continue to keep these skills alive when they get out of prison, deliver that in the community. And it seems to us that when we continue our programs into the community, the recidivism rate is even lower.

I also think that a number of approaches that we have taken in terms of getting to know the inmates a lot better, a lot earlier in their sentence has made it possible for us to tailor-make a correctional program to them so that their recidivism can be reduced. We have extremely sophisticated assessment systems in place initially when the offender comes in, as they go through programs, shortly before we present cases to the National Parole Board and when they're in the community. So we constantly follow the risk that these people represent, and if the risk goes beyond a certain relatively low point, we will bring the individual back, at least for a period of time, to get that risk under control again. I think that means a lot.

David Cayley

One of the things the CSC has done in recent years, Ole Ingstrup says, is to foster changes in the attitudes of prisoners. This task is made more difficult by the fact that the CSC has inherited prisons from almost every era of Canadian corrections, many of them built on principles of isolation and control that don't correspond with the Correctional Service's current philosophy. But in their newer institutions and the ones they've refitted, he says, they have been able to abandon the monolithic prison architecture of old and group prisoners together in houses where they have to learn to get along and to look after themselves. And they have also been able, he believes, to make changes in the code that governs prison life.

Ole Ingstrup

Prisoners are a lot more ready to deal with the problems that led them into crime through the programs that we offer than they were 20 years ago. There was an attitude 20 years ago that programs and psychologists and social work and whatnot was for the birds. That's not the attitude anymore. Of course, there are some hardcore people who still believe that. But by and large, inmates want to go to programs, and they want to participate, and I think we have helped them

realize that the only way for them to get out of a life full of imprisonment and full of crime is to participate in some of these programs and develop some skills to live in a different way after they have left our institutions. So in that sense, yes, I think there has been a change, maybe even a significant change, in the inmate's attitude.

David Cayley

Ole Ingstrup is proud of the CSC's record in reducing re-offending, but this does not mean that he, therefore, thinks that prison is the best place to send most offenders. Prison should be used only as a last resort, he believes, first, because re-offending can often be prevented even more effectively in the community and, second, because prisons, by their very nature, remain tough, potentially brutalizing environments. He has said publicly that he thinks Canada over-uses incarceration. And he thinks likewise that some members of the public continue to hold an unrealistic idea about what imprisonment can actually accomplish.

Ole Ingstrup

There are people out there who forget that the only reason we have these prisoners is that they couldn't manage them out in the community. They got totally out of hand. And then, in a moment of despair, they sent them to us, which, in many cases, is a very reasonable reaction. But then they expect us to do — I don't know what — to them and turn them all into choir boys, and they will leave in one long, peaceful procession out of our prisons. This is not exactly what is happening. These people have often been in trouble with all kinds of rules and regulations in their school and their family, and they've been through youth institutions, they've been through provincial institutions, and they have a huge number, statistically, of social problems. Over 70 per cent of them have drug and/or alcohol problems. Half of them do not have a literacy level of grade seven. Many of them have a history of broken employment, and

on and on and on it goes. So obviously the so-called raw material, if you wish, that we get is not exactly the easiest, and yet people tend to think that once they've gone through prison, they've got to be cured, it's got to be a totally different human being that comes out. That we cannot deliver. But we can deliver a helluva lot more safety than we did a number of years ago.

One of Ole Ingstrup's antagonists in the current Parliament has been the Reform/Alliance party member for the British Columbia riding of Kootenay-Boundary-Okanagan, Jim Gouk. Jim Gouk has visited prisons in every part of the country as a member of the House of Commons Committee that recently completed a review of the Act which governs the Canadian prison and parole systems. And though he recognizes the CSC's achievement in re-integrating offenders into the community, he has come to the conclusion that there is insufficient discipline in many of their institutions. In conversations with both guards and prisoners, he says, he has heard repeatedly that troublemakers misbehave without serious consequences.

Jim Gouk

You and I, living in everyday society, have consequences for every action that we take. Prisoners, by and large, inside have very little. I won't say they have none, but they have very little, and I think that's wherein lies our problem. We take someone. We put them into jail for six years. They get out, and they'll have a lot of people that are sympathetic to prisoners saying, "Oh, the poor person, they're having trouble fitting into society." Well, of course, they are. For six years, they haven't had to measure up to the responsibilities of society, so that's one of the reasons that some of these people have so much trouble fitting back in. There has been no consequence for six years or whatever their time incarcerated has been, and all of a sudden, they're on the outside, where there is a consequence for your action. We're not giving

them a good model to fit back in, and that may be part of why people have a problem.

David Cayley

At the heart of Jim Gouk's position is the view that prisoners have too many unconditional rights and privileges. The Corrections and Conditional Release Act states that, "offenders retain the rights and privileges of all members of society," except those necessarily removed by their confinement. Jim Gouk argues that convicts should enter prison with no other right than decent treatment.

Jim Gouk

As far as I'm concerned, once you're convicted by a jury of your peers and sentenced to a federal prison, you should lose all rights, except the right to humane and healthful treatment. But I think you should have the ability to earn back those rights. I think the loss of those rights is a consequence of your crime. You should have the ability to earn them back by appropriate behaviour. You've lost them because of inappropriate behaviour. You should have the ability to earn them back by appropriate behaviour, and, likewise, if you then misbehave inside the prison, you should have the ability to lose some of those rights again. That includes everything from recreational opportunities or work opportunities, getting paid for your work — it's not a great pay inside, but it's still pay — access to the canteen, possibly even things like visiting, certainly conjugal visits, right up to and including parole, including the level of incarceration you're kept at. How you behave should determine whether you get to more desirable facilities and less restrictive facilities, and when you misbehave, there should be the consequence that you move backward.

David Cayley

One of the keys to better controlled prisons, Jim Gouk believes, is the abolition of what is called statutory release. As things now stand, prisoners are automatically released at two-thirds of their

sentence, and the onus is on corrections officials to show cause if they want to hold a prisoner to the very end of the sentence, or to warrant expiry, as it's called. Jim Gouk, speaking for his party, wants to see this provision removed, because he believes it encourages prisoners to simply wait for release rather than working for it.

Jim Gouk

It's my position -- very firm -- that we should revoke statutory release, and what I would agree to is replacing it with statutory consideration, which means that they automatically get considered for release, even without applying at two-thirds of their sentence, but that we take the reverse onus requirement out. While I do strongly support the idea that it's better to have the prisoner released with supervision and with conditions placed on them during the reintegration period, I don't believe that we should just automatically open the doors and let people out. Some who would keep statutory release argue — and I've heard these arguments now from quite a few people — saying that if you don't have statutory release and you're relying on the Parole Board to release these people, many of them won't get released, and they'll stay to warrant expiry. What kind of message is that sending out to the public, saying statutory release causes us to release prisoners who cannot qualify for parole, in other words, who the parole board feels should not be out, but we're going to let them out anyway? That sends a very bizarre message, it seems to me.

I think what you need is, you need more conditions in the system that make it more conducive to prisoners behaving, saying, You're not getting out, certainly before your sentence is up, if you do not behave. If you behave, you'll go from maximum to medium to minimum and then out. You'll get privileges that others won't get that aren't following your behaviour patterns.

I'd like to make it so that if someone does not behave inside a prison and ends up in

maximum security, misbehaving all the way to warrant expiry, that they are still subject to a six-month supervised period when they're released. If they commit another crime and they're convicted of that crime, then they go back to jail. That's straight. They have to have six months clear before they're released from supervision.

David Cayley

Jim Gouk thinks that abolishing statutory release and creating more incentives for responsible behaviour might have the initial effect of increasing prison numbers, but that it could well reduce them in the long term. He supports efforts to keep minor offenders out of prison and, in his own riding, has been a strong supporter of community justice forums, which divert first-time, non-violent youthful offenders out of the courts. In fact, he thinks the same kind of thing should be done with adults. But he is convinced that the current system is just too tolerant of the bad apples who refuse to reform. His whole philosophy, he has said, can be summed up in an old proverb: Fool me once, it goes, shame on you. Fool me twice, shame on me.

Jim Gouk wants to see a sterner disciplinary regime in Canadian prisons and, to that end, would grant prisoners only the rights that they earn. His proposal assumes that prison administrations will exercise the power to grant or withhold rights in ways that are benevolent and just.

Allen Manson takes a more skeptical view of the Correctional Service. Manson is a professor of law at Queen's University and one of the handful of Canadian lawyers who have consistently argued for the rights of prisoners during the last 20 years. He points out that the Correctional Service of Canada has on occasion abused its prisoners, as was recently shown by the Arbour Inquiry into the troubles at the Prison for Women in 1994. The inquiry found that the CSC had systematically violated the law under which it is

supposed to operate. To Manson, the potential for such abuse is always inherent in an institution exercising a power so total and so removed from public scrutiny. Consequently, he worries about whether the CSC's existing disciplinary powers are being exercised fairly. One of the things he's been concerned with, for example, is how decisions to transfer inmates to other institutions are made.

Allen Manson

I'm a warden. You're a prisoner. Someone comes and confidentially says to me, "I know what David Cayley's been up to." I hear this story and it's dreadful. I'm the warden of a medium security institution, so I'm going to give you your 48-hour notice. You're entitled to, in writing, explain to me why I shouldn't transfer you to maximum security now that I understand you are planning X, whether it's an escape, an assault, something vicious. You write back and say, "Well, I'm not." Well, you're going to be transferred, because I now have confidential information that says you are. Am I obliged to provide you with that information? Well, no.

Eventually you get to this maximum security institution. Maybe you'll be able to contact a lawyer. Maybe — and this is very, very unlikely — that lawyer will either volunteer to provide you with free legal services or maybe be able to persuade a Legal Aid plan to fund it. Very, very unlikely. That lawyer's now going to challenge this decision-making process by having you swear an affidavit that I know nothing about this allegation, I wasn't doing X, I'm not involved in X. That's what goes in front of the court, along with the respondent's material, which will be an affidavit from a senior official, like a warden, saying, we had confidential information that... The judge only sees what's written down on paper and rules on that basis.

David Cayley

With only this limited information, Allen Manson says, judges have tended to side with the

administration. His example indicates how vulnerable he thinks prisoners are. The right to judicial review exists, but it is difficult to exercise and very uncertain of success when the source of an allegation is allowed to remain secret. And it's because of his experience of how hard it is for prisoners to exercise their rights or make their voices heard that Allen Manson remains a somewhat wary observer of the Correctional Service of Canada. He worries, for instance, that the CSC's new focus on community reintegration will work to the disadvantage of longer-term prisoners.

Allen Manson

My concern about the Correctional Service of Canada today is not that it hasn't made progress, but while it's making progress, especially through its new reintegrative focus and providing resources to those who are being moved out of the system, it's not paying attention to those who may well be in the system for a long period of time. There are problems in maximum security institutions, long periods of lockdowns within the institution, where virtually all movement and programming is just terminated for long periods of time. There are large numbers of prisoners who have mental health problems. There are special-needs prisoners.

So the point that I'm trying to make is that the new reintegrative focus, which is valuable and important, can't be pursued at the expense of putting on the shelf the hard questions, especially at a time when we're seeing an aging prison population, when the number of people being released on parole has reduced. The concern from my perspective is the number of people who may find themselves being ignored, especially because they represent poor release prospects. They have little in the way of skills. They have little contact with the community. Their contact with family and friends dissipates over time. So you do see a number of people who've been in jail in Canada for very long

periods of time who are not good candidates for release and are in fact being ignored.

If you look at the statistics for the release of murderers in Canada, especially with our new, since 1976, first-degree murder sentence with parole ineligibility of 25 years, it is estimated that the norm will be service of 28 years, which, compared to other countries in the world, is extremely high and is very close to the United States norm, where, in most jurisdictions, it's a life sentence without parole. Still when you take into account executive clemency et cetera, we're only a short bit behind them.

David Cayley

Allen Manson's concerns lie with the long-term prisoners and with the weak, the mad, the inarticulate and the isolated. There is a danger, he thinks, that limited resources will move to those with better prospects and leave the more troubled ones behind. He sees this possibility at work, for example, in one of the policies of the Ontario government.

Allen Manson

Shortly after the government changed in 1995, a number of provincially sponsored halfway houses were closed. In response to the public concern that followed, the answer was, those resources are going to go into another mechanism: the provision of electronic monitoring for people who are released. The first time I heard that, I stopped in my tracks and thought, but we're talking about two different groups of people. The people who need halfway houses are the people who don't have homes and jobs to go to and who need some help to find a way to reintegrate in the community, or they're going to be back on the skids. The people who can benefit from electronic monitoring to speed up their release to the community are people that have a home to go to. That's the whole point of electronic monitoring. It's a form of house arrest. You have to have a house. So it's two completely different

groups of people. It just struck me that one group has a high failure rate, and resources had been taken away from them and plugged into a group that has a high success rate. So we're enhancing failure for one group at the same time that we're enhancing success for a group that's usually going to succeed anyways. And there didn't seem to be any kind of serious public debate about this.

David Cayley

This particular decision of the Ontario government is just one instance of what Allen Manson sees as a growing trend towards hastily and carelessly improvised penal policy. Another example, for him, is the trend to longer sentences and longer periods of parole ineligibility for people on life sentences. Governments, he says, have begun to follow their electorates on criminal justice policy rather than leading them.

Allen Manson

Penal policy ought to be developed in a way that is responsive to real needs and the real situation. A few years ago, I remember one day getting the recent crime statistics that indicated that the rate of violent crime had diminished, which it has been doing for a number of years, and the next day, seeing a press conference and watching one of the senior ministers being questioned about this, and the senior minister said, "Well, that's all well and good, but the public perceives it differently, and we have to respond to the public's perception." I found that shocking. If the public misperceives the reality, surely it's the responsibility of the political leadership to try to inform the public accurately, even if it's not a particularly popular thing to do. To suggest that, because there's a misperception, we'll respond to the misperception rather than correcting the misperception is an abrogation of responsibility. There's no votes in appearing to be soft on crime, but the real response, it seems to me, ought to be to assert the importance of the rule

of law and some basic principles of fairness, some basic principles of efficacy. We don't run around the world doing vicious things to people for no reason. At least in Canada, we don't or we ought not. And the criminal justice system ought not to be doing vicious things to people for no reason.

David Cayley

In tonight's program, two quite different questions have been raised about Canada's criminal justice policy: first, is it just? And second, is it effective? The questions overlap and yet remain distinct. Allen Manson, for example, has raised the question whether a corrections policy that focusses on effectiveness and, therefore, gives the lion's share of its attention to those with the best prospects of rehabilitation might not be unjust to those whose condition makes their prospects worse.

In what remains of the program, I want to focus entirely on the practical question: what can be shown to work in corrections? It's a question that Paul Gendreau has spent a long career trying to answer. Gendreau worked for many years as a psychologist in Ontario prisons and now heads the University of New Brunswick's Centre for Criminal Justice Studies in Saint John. When he began his research in the 1970s, there was a widespread perception that rehabilitation had failed and that all that could be hoped for from corrections was fairness. Paul Gendreau set out to show that rehabilitation is possible. Working with a new technique called meta-analysis, which allowed him and his colleagues to accurately sort out the existing research, they gradually put together a clear picture of what works. Their findings can be boiled down, he says, to three principles. The first is that most effective therapies are behavioural.

Paul Gendreau

You have to target very specific behaviours. You're not dealing with the unconscious so much. You are not being non-directive. For

goodness sakes, one needs to be highly structured and very directive in changing skills and behaviour. I'd ask you or anybody to think of it in this sort of way: if you want to change a longstanding skill, whatever it may be, a problem, how are you going to do it? Are we going to be rooting around the unconscious? Goodness knows where that gets you. Often it can lead to, I think, worse effects. Are you going to let the person discover for themselves how to rectify their problems? You're not going to discover new solutions or strategies when you don't have them in the first place. It's just like learning new skills in a school or an academic kind of setting. You need to target those behaviours directly. You need to reinforce the new skills continuously when they appear. And you have to do it within the context of that person's environment.

David Cayley

Paul Gendreau's second principle is that effective interventions concentrate on those most likely to commit crimes, not on minor offenders. And the third is that programs that work focus on actual criminal behaviour and not on the offender's personality or self-concept.

Paul Gendreau

These behaviourally oriented programs must target what we call the criminogenic needs of the offenders. What does that mean in plain English? It means that the salient factors in offenders that lead to their continued criminal behaviour are anti-social attitudes and values and behaviours, thoughts, beliefs. No matter how you phrase it, these are the strongest predictors of future criminal behaviour. So if you're going to change the offender with any degree of success, you must have your behavioural program focus on, target these criminogenic needs, these anti-social attitudes, values, beliefs and skills.

On the other hand, we know there are some factors — and this is an interesting feature — that

are not good predictors of criminal behaviour. By and large, these fall within the category of self-esteem, personal inadequacy kinds of factors. Again when we look back at earlier attempts at treatment, we found therapists trying to treat the self-esteem of the offender, their personal inadequacies. Frankly, most offenders have a quite adequate self-esteem. Many of them are quite convinced that they are good fellows. I'll refer to the men, since they're the great majority of offenders. Those programs, even if they're behaviourally oriented, that target these kinds of non-criminogenic needs, are failures.

David Cayley

Paul Gendreau's principles are notable for what they exclude as much as for what they include. He has found, for example, that getting tough, in all of its many variants, either does nothing or increases recidivism. What works, he says, is well-trained people making a consistent, focussed effort to, in effect, re-socialize offenders. And when this is done, he says, he and his colleagues can consistently show a significant decrease in re-offending.

Paul Gendreau

On average, you will see, compared to good control group comparisons, a 25 per cent reduction in recidivism, when recidivism is defined by any re-arrest or reconviction or re-incarceration.

Now, you could say to yourself, "Oh, my goodness, this effect isn't large enough." One of the problems — I'll go back now — that corrections professionals, like myself, made over the years was that we were far too optimistic as to how effective correctional treatment programs would be. People in the old days often talked about treatment reducing criminal behaviour by 80 per cent or 70 per cent. An occasional study will do as well as that, but on average, you're reducing criminal behaviour by about 25 per cent with these programs that have these basic sorts

of principles.

This kind of overall treatment effect is not something to sneeze at. When you take a look at interventions in the psychological arena generally — never mind the criminal justice system — the average reduction in the problem behaviour is around 25 per cent. When you take a look at a lot of medical treatments, you will find, on average, a lot of medical treatments reduce the disease or problem by about 25 per cent. Some recent studies, one by Mark Cohen, looking at how much you save by turning around the life of a high-risk, chronic offender over their career put the figure at around \$1-million. So relatively small gains have large effects when you take a look at it in those terms.

David Cayley

Paul Gendreau is talking about interventions taking place both in prisons and in the community. But programs administered in the community will generally be more effective, he says, because there new behaviours can take root in daily life, which is where they will ultimately be tested.

Paul Gendreau

You're going to get a better bang for your buck, better results for a treatment program based in the community. Because there you can work right within the natural environment of the offender. And in an institution, you do your best, you change behaviour, and then out they go. There's much more slippage in an institutional treatment program. So one of the crucial links, which is often not made in corrections, is to make sure, if you do something usefully and successfully in a prison, that when they get out into the community, very intensive services have to be carried out to help that offender deal with those issues.

We are attempting to do that here in this part of the country. A state-of-the-art, intensive probation supervision program is being

established here in this part of New Brunswick — with joint funding from the CSC and the province — whereby we will be trying to develop as intensive services as possible for probationers and parolees coming from the federal penitentiaries and the province institutions once they leave prison. So it's nice to see, under the leadership of the federal government, the CSC putting money into community corrections.

David Cayley

The work that Paul Gendreau and a number of colleagues have done over the last 25 years in defining effective corrections has made Canada a recognized leader in this area. And during this period, he says, the CSC, the Correctional Service of Canada, has done a generally good job in putting the principles he has outlined into effect.

Paul Gendreau

This is an agency that has had, by and large — and I should note at the outset now that I get funding from them, so let's put that out on the table, but I think I'm being relatively objective and fair, because I've had the chance to travel extensively and see other systems — that has had continuity in leadership. And it happens that the leader has a well-articulated view that supports research, that supports evaluation, that supports rehabilitative services.

In contrast, I come across so many correctional systems that are inflicted with the deadly virus that is such a problem in corrections, and that is panaceaphilia, one quick-fix solution after another. Too many correctional organizations have too many content-free administrators who are political hacks and appointments, and they'll pick any flavour of the month.

CSC, on the other hand, has had a continuity of vision and purpose, by and large. It's stuck to the task. So after a number of years, it's in a much better position to do something pro-active. Why? In part, because it respects experimental

evidence.

David Cayley

Respect for knowledge and evidence, Paul Gendreau says, has not generally been the hallmark of corrections. This brings us back to our starting point in tonight's program, which was the political conditions that make the false promise of punishment so much more alluring than a patient, sustained commitment to reforming offenders. Paul Gendreau has been in the game a long time, and he knows that the struggle will continue to be uphill.

Paul Gendreau

It's interesting about the criminal justice system: everybody is an expert. If I were to ask you or the audience why here, in the Bay of Fundy, the finback whale shows up about a month earlier and further inland than the right whale, anybody have a bright answer? No, people would be scratching their heads and saying, "Well, I guess we should ask a marine biologist that question." But when it comes to the criminal justice arena, when I speak to my classes, when I speak to audiences, "What do you think we should do about the crime problem?" almost everybody has an opinion, and they think their opinion is right. So that's one of the problems in failing to generate effective policies. It's an area that leads to quick-fix, common-sense solutions that are just opposite what the literature says.

Paul Kennedy

On *Ideas* tonight, you've listened to the fifth and final program of "To Hurt or To Heal." The series was written, produced and presented by David Cayley, with the assistance of Richard Handler. David Cayley is also the author of **The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives**, published by House of Anansi Press. Technical production and studio direction was by Dave Field. Associate Producers: Catherine Hughes and Liz Nagy. The Executive Producer of *Ideas* is Richard Handler. I'm Paul Kennedy.

Transcript by Ian Godfrey