

PROPOSED LEGAL REGULATION OF APPLIED BEHAVIOR ANALYSIS IN PRISONS: CONSUMER ISSUES AND CONCERNS

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The letter of the law deals with the acts of man; the spirit of the law takes note of his desires.

As a former prisoner, it is my purpose to set forth the prisoner's view of applied behavior analysis. Before responding to Friedman's article,¹ however, it is necessary to set the background and identify the environment and the people who are to be subjected to these programs. While this may appear to be an emotional presentation of prison life, it is essential to an understanding of a prisoner's attitudes toward behavior modification programs.

The Effect of Prison Life upon Inmates

The criminal offender's² perspective changes from the time of his initial jailing—where he first learns that he is “guilty until he can prove himself innocent”—to the time he is ultimately released from the overt prison setting. While awaiting trial he is confined in a 6 by 8 foot jail cell for up to 23½ hours a day, where his mind becomes his last place of refuge and the fantasies that he uncovers there are of the sort that will deliver him from the iron-hand oppression of his keepers or drive him mad. At this point, the prisoner sees things much differently, and of course, he has seen the influence that affluence has upon the American criminal justice system. He knows that if he had been wealthy he probably would not have been jailed and that his conflict with the law would have been handled very differently. Embittered and confined in clearly inhumane conditions, the prisoner begins to feel and to tell him-

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1. Friedman, *Legal Regulation of Applied Behavior Analysis in Mental Institutions and Prisons*, 17 ARIZ. L. REV. 39 (1975).

2. Who are this nation's prisoners? They are thousands of men, women, boys, and girls from economically poor families who have lived most, if not all, of their lives in ghetto areas of the cities. The average prisoner is an ethnic minority member, aged in his late teens or early twenties, a high-school drop-out who has adopted the materialistic values of the larger society without having the educational credentials and employment opportunities to realize success within the rules of the system.

self that he would prefer serving time in the state prison on a conviction than to suffer any further annihilation of his humanity from his confinement at the jail. The cruel and animalistic treatment that he received at the jail has prepared him to take his place among his poor and undereducated ethnic minority brothers and sisters in the state's prison, euphemistically called a correctional institution.

Upon conviction, the first stop in the penal process is usually at an orientation unit. It is there that the offender is interviewed, tested, and sometimes given a medical examination. Next he is informed of the prison's rules and regulations, placed in a housing unit, more commonly known as a cell, and assigned to an institutional job that will be useless to him in the free world. The function of the orientation unit in prison is also significant to the prisoner because it is there that the prison's adjunct psychological service launches its "we're ok—you're not ok"³ psychological attack upon what remains of a prisoner's self-reliance. From this point on, the prisoner becomes an object that is spoken of or to, but never spoken with. To speak *with* prisoners is viewed by prison administrators as a clear and present danger to the security of the institution.⁴

The offender must now sacrifice major portions of his individuality. He has begun a conditioning that will leave him practically helpless in making any decisions for himself. He is told such things as when to sleep, when to eat, and how his clothes must be worn, to reply "yes sir" and "no sir" to guards, and a whole gamut of other such commands of harassment. This may not seem like much of a sacrifice to those in the free world who perceive a need for some prisoner control within the closed institution. However, what may not be so readily perceived by the free world is the systematic shaping of both male and female offenders into total dependents of the penal system and its overseers.⁵ Add to the inhumane treatment that he has received throughout his period of incarceration, the prisoner's lack of participation in personal decisionmaking and the time factor of several years incarceration, and the result is a person who has already been aversively "conditioned." Most troublesome, he has been alienated from that mental part of himself

3. T. HARRIS, I'M OK, YOU'RE OK: A PRACTICAL GUIDE TO TRANSACTIONAL ANALYSIS (1969).

4. If he were not already familiar with the prison's policy of having rules for the sake of rules, the prisoner would probably be baffled by this philosophy. Contrary to the view of administrators, the prisoner knows that it is the iron curtain between himself and the administration which really constitutes a threat not only to the security of the prison, but ultimately to the security of the community at large.

5. It should be understood by all concerned citizens that this mental state of dependency does not automatically end upon a prisoner's release. The dependency created during imprisonment could well be a major cause of recidivism.

which enables him to make reasoned decisions.⁶ To permit this is to perpetuate the sick myth that prisoners are subhuman and not deserving of ethical and humane consideration.

The Prisoner's View of Behavior Modification: "Treat Me the Same as You Want to Be Treated"

Prisoners are concerned that "applied behavior analysis," the term utilized in Friedman's proposals as a more delimited meaning of behavior modification, is but a euphemism for the more expanded network of behavior modification programs. In any prison behavioral program, a person's behavior is manipulated by using various experimental learning approaches, and while it is stated that these programs do not have as their design an actual physical touching of the prisoner, they do, nevertheless, have an effect upon his or her mental processes which is the most severe kind of touching.

The prisoner feels that criminologists, sociologists, and prison administrators have failed to employ their knowledge to expose the real causes of crime and the reasons that people became victims of those causes. He resents their approach to his situation in terms of the old "Why did you do it?" theme. He is aware of the fact that his problems with the law began in the community under various stress factors, and he knows that it is in the community that his problems must ultimately be solved.

The prisoner feels that he should be a part of the planning and development of criminal justice programs rather than a part of some behavioral program that he sees as just another attempt to sustain a prison system that has failed miserably. He does not feel that his behavior needs to be modified. Rather, it is the overwhelming consensus of the prison population throughout this nation that what needs to be corrected is the system which has fostered lives of crime.

The prisoner considers behavioral programs to be the last step before a wholesale attack is made upon his existence. He views this new wave of behavior modification programs in the prisons as a concerted genocidal⁷ attack upon ethnic minorities, not much different from the

6. The prisoner's inability to make reasoned decisions raises questions concerning his ability to give an informed consent. Since a prisoner is often undereducated, he is easily exploited by those with a degree of formalized higher education. Couple his lack of education with his decreased ability to make reasoned decisions, and it becomes questionable whether a prisoner can ever give a truly informed consent.

Even the extensive procedures for securing consent proposed by Friedman are not enough to solve the problem. See Friedman, *supra* note 1, at 97-99. In all fairness, the consent of any prisoner should be considered suspect unless the consent is given for participation in an employment program which has a corresponding educational program in the community to which he is to be released.

7. The prisoner believes that these programs will eliminate his right to be different

types of procedures that were employed by the Nazis during their politico-fanatic war against the Jews. According to the prisoner, America is on a road to limiting freedom and "killing" those who dare to be different.

Surely the prisoner has a right to view behavioral procedures in this light. If this were not the case, behavioral scientists would be confronting prison administrators in an attempt to rectify psychologically destructive penal conditions instead of collaborating with them to take further advantage of the prison population. If behavioral scientists really meant to bring sanity to an insane system, they would employ their expertise to construct more humane, progressive, and civilized alternatives to prisons. Additionally, the prisoner can point to the fact that if behavioral scientists knew what they were talking about, they would know that the prison community is not the place to attempt to deal with problems that are essentially socioeconomic in origin.⁸ The prisoner needs a salable skill so that he can support himself and his family upon release. No prison-based program can or will alter this obvious fact. It therefore does not make sense to suggest behavior modification programs for prisoners.

The prisoner also thinks that people in the free world underestimate his capacity to react in a hostile manner to behavior modification procedures that negate his personality and subject his consciousness to unnecessary travail and isolation. He is convinced that these procedures are permitted because society feels that he is subhuman. He knows that he is being systematically destroyed. He grows bitter day by day and finally he will explode.⁹

Conclusion

The use of behavior modification procedures in prisons is reflective of the backward methods which society continues to employ in seeking a solution to crime. It is easier to destroy the offender than to

and to entertain different ideas, and thus will result in a complete control of his thoughts by officers of the state or federal government.

8. Any man who is denied work and who has hungry children to feed cannot be considered sick and in need of some special kind of behavioral treatment simply because he would rather break a law than see his children suffer. This man is not sick. Rather, it is the conditions which caused him to break the law that are sickening. It is always easier to blame crime upon the person who commits it. In this regard, the law demands a respect that has and hopefully will always be denied it. So long as millions of Americans suffer deprivation and are economically exploited, there will be some type of crime regardless of the cosmetic and repressive programs that are constructed to silence the poor and appease the rich. We must begin to attack the real causes of crime, if crime is to be eradicated.

9. Many prisoners believe that neither behavior modification, nor its alternative, applied behavior analysis, can coexist with the punitive philosophy of the present penal system. See A. Saunders, *Behavior Therapy in Prisons: Walden II or Clockwork Orange?*, 1974 (unpublished manuscript), on file in the *Arizona Law Review* office.

admit to and correct the deep-seated causes of crime. Since prisoners still face joblessness, poverty, and loneliness upon release—the same causes which motivated them toward crime in the first place—society actually gains nothing by the imposition of inhumane mental and physical procedures on prisoners. The prisoner does not question that he has a right to treatment because he is the recipient of the most wicked kind of treatment imaginable. He is receiving treatment on a daily basis, but I assure you that it is not the kind of treatment that would speak highly of the American culture as a civilized one. What then must be done? We must give preference to the ideas of prisoners. We must go to the prisoner, reevaluate our estimate of his basic worth, replace our vindictiveness with understanding, and help him to shed light on his problems. Only through these methods, not through continued use of behavior modification procedures, will inroads be made in solving this country's crime problem.