Coxsackie

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Just as the Coxsackie reformatory would never have been constructed as it was without an underpinning of reform ideas, its eventual collapse was made possible—one might even say inevitable—by a dramatic retreat from those same ideas. Austin MacCormick’s vision, a New Deal–era project deeply rooted in progressive-era reformism, fell so far out of favor that few even fully remembered its substance. Attacked from nearly all sides of the political spectrum, the rehabilitative ideal, as critics understood it, was declared dead and buried by the mid-1970s. By that time, Coxsackie was no longer a reformatory, its rhetorical ambitions for vocational training and educational uplift cast aside in favor of more explicitly “get tough” punishment rhetoric.

Of course, the end of the liberal ideal in corrections has been the subject of considerable scholarly attention for decades. Most studies argue that the rehabilitative ideals of liberal prison reform collapsed quite suddenly, with various explanations all centered around the late 1960s and 1970s: a reaction to prisoner uprisings; a more general reaction to the failures of modern liberalism at home and abroad; or a newly assertive conservatism in criminal justice policy, born of the quasi-populist law-and-order politics served up by Richard Nixon, Ronald Reagan, and George Wallace, among others.¹ The problem with each of these explanations is their over-attention to what might be called the “end stages” of liberal corrections’ decline. The roots of that decline go back at least two decades before the bloody prison revolt at Attica in 1971. By the time Attica’s D yard filled with prisoners, many of them veterans of the reformatory system, Austin MacCormick’s ambitious vision of reform had already run its course.
Liberal Reform’s Postwar Existential Crisis

Throughout the 1950s, as reformatory officials struggled to manage changing prison populations, liberal critics began directing ever-sharper critiques toward the reformatory concept itself. These critiques were, at this point, still embedded in the language of liberal reform; they could have pointed the way toward improving New York’s response to the young adult offender and mitigating the worst aspects of reformatory life, which inmates already knew all too well. Instead, New York’s prison administration embraced a rigid view of what constituted reform, hewing strictly to the education and reformatory-centered programs of the New Deal era. This rigidity made it difficult to adopt and adjust critical assessments or alternative policy proposals, which occasioned a sense of existential crisis rather than constructive engagement.

The decade began with the publication of the most significant liberal challenge yet to Coxsackie’s educational program and, indeed, to the very idea of the reformatory. Bertram Beck, a social worker, prepared a report for the Community Service Society, made public the first week of January 1951. During World War II, Beck had worked for the military in the mental hygiene unit at Drew Field in Tampa. In follow-up work he conducted in conjunction with the Menninger Clinic, Beck was highly critical of therapeutic work done in an “authoritative” setting. Such settings, he concluded, were almost inevitably hostile to the aims of effective treatment and intervention, despite any good intentions. “The measure of authoritarianism,” Beck argued, “is not the manner in which the authority is exercised nor the degree to which it is exercised. It is the implied power and the potential power of the authority that counts.” He cautioned readers to consider “the threat that may be constituted by the psychiatric approach” and to come to terms with the idea that “the question of the patient’s assuming responsibility for his own life plans, which is so pertinent in the non-authoritarian setting, is almost completely beside the point in military casework.”

Beck then applied his emerging anti-authoritarian critique of institutions to the reformatory. In this, he was hardly alone. Indeed, as early as 1937’s *Youth in the Toils*, liberal critics of the reformatory had counseled against the construction of any more “Coxsackies” in New York State. But World War II sharply accelerated the liberal critique of the reformatory, as it merged with broader liberal concerns about the authoritarian state. Not surprisingly, these early critics emphasized the distortions in social organization produced by prison life. F. E. Haynes, writing in 1948, concluded: “The prison community with its conniving, its perversions, and exchange of crime techniques re-enforces the behavior
tendencies which society wishes to prevent. We cannot expect to break down anti-social habits in an atmosphere that is distinctly anti-social.”5 One of Haynes’s students, writing during the war, claimed inmate-on-inmate aggression was the product of autocratic systems.6

In this context of rising anti-authoritarian critique of state interventions, Bertram Beck was commissioned to produce a major study of the treatment of adolescent criminal offenders. To complete his work, Beck was given extensive access to the programs at Elmira and Coxsackie. His final report, however, was a stinging indictment of the reformatory system, and Beck saved his harshest criticisms for the educational reformers and the institutions they had created and still administered.7 Beck described Coxsackie and Elmira as having an appearance to “oppress the spirit and freeze the heart of the youngster . . . they loom like avenging hands out of the peaceful countryside.” How could the reformatory, dominated by “the eternal lock,” ever fulfill its supposed commitment to democratic education? “How to rehabilitate in an atmosphere so ridden by custody and dominated by instruments of oppression,” Beck concluded, “is indeed a problem.” Where MacCormick had placed his faith in the ability of good people to remake the prison, Beck was quick to claim that the failures of Coxsackie were not those of its personnel: “This situation is not the fault of the institutional administration, nor of the custodial officers themselves. They are all trapped by the nature of the established program.” Beck concluded that Coxsackie and Elmira were not particularly bad reformatories, nor ones in which brutality played much of a part in institutional life, but they were “exactly what might be expected of a peno-correctional philosophy which is in transition between a goal of punishment and one of treatment.”8

Prison educators, Beck argued, were fundamentally unable to deliver on their promise of rehabilitation. In part, he concluded, educators were increasingly dressing up their programming with the language of mental health fields, borrowing the terms of psychology “without borrowing the knowledge.” As for the many specific diagnostic evaluations undertaken at the Elmira Reception Center, each with their own specific recommendations for the treatment of young men, Beck found these quite detached from reality: “Treatment is prescribed by the various departments and then by the program committee in separate and distinct areas as if one gave a youngster vocational medicine, religious medicine, recreational medicine, all in separate doses with one area of personal development quite unrelated to the other.”9

Beck’s final report made two substantive suggestions for New York’s approach to the young male offender. On the one hand, he urged institutional au-
authorities to shift away from educational programming toward a program of mental health interventions. Beck was so critical of the existing reformatories, however, that his second suggestion was to shift New York’s resources away from grim prison facilities. As Beck observed, “Greater masses of institutional brick and mortar have been accepted without trial of more promising measures of rehabilitating young offenders.” This shifting of resources away from prison would be particularly valuable, he argued, in cases who “have never been in custody before and who could be expected to benefit by a program which was enabled to place less emphasis on security and more on rehabilitation.” To meet this goal, Beck was inclined toward youth work camps, modeled after the forestry camps being developed in California, which were rooted in the Civilian Conservation Corps experience. His report praised the California forestry camps he had visited: “Such camps could certainly teach the habit of work, but, more important, they could provide the setting where treatment, directed toward counteracting the wellsprings of criminal behavior, might be conducted.”

The publication of Beck’s report prompted a furious response from New York’s reformist prison administrators, the first public split between the correctional reformers and critics from the left. Elmira superintendent Leroy Weaver attacked the report’s endorsement of forestry camps, noting that young men from urban areas needed training for the jobs to which they would return, and that “they can’t learn that in a lumber camp.” Elmira Reception Center (ERC) director Glenn Kendall discounted Beck’s call for greater reliance on psychology and psychiatry: “They are not the complete cure for the ills of the juvenile penal system.” In their zeal to discredit Beck’s work, Kendall and Weaver nearly recapitulated the same hostile language with which conservatives had attacked MacCormick two decades earlier. They denounced the “theoretical and fantastic ideas promoted,” in their words, “by inexperienced social workers who have failed through their harebrained, coddling ideas.”

The strain in relations between the reform regime and liberals on the outside was never really resolved. Both sides agreed to attend a Welfare Council meeting in March, aiming for some measure of reconciliation. Instead, the meeting further highlighted the points of disagreement. Price Chenault represented the Division of Education at the meeting, looking to defend “education, vocational training, religion and other disciplines in our institutions.” Most notable, in light of the reform regime’s beginnings, Austin MacCormick sided against the state. He testily responded to Weaver that it “ill becomes the superintendent of the Elmira Reformatory . . . to brand the sound and sensible ideas of the Community Service Society report as ‘theoretical and fantastic ideas.’”
Later that year, MacCormick gave up on New York altogether, joining the faculty of the new School of Criminology at Berkeley, where he remained for the rest of the decade, urging colleagues interested in constructive reform programs to come to California.

Within the state correctional bureaucracy, Beck’s call for a new emphasis on psychiatry and mental health work was largely ignored, but the work camp idea was harder to dismiss. Key constituencies within state government began to push for the creation of these camps, despite the resistance from the reform regime. In 1955, the Governor’s Youth Commission recommended the creation of a forestry conservation camp for adolescent male offenders (ages 16 to 21), drawn from the ranks of the most promising reformatory inmates. New York’s conservation commissioner joined the call, approaching the Department of Corrections for help in maintaining the huge forests planted by CCC workers in the 1930s. With the reformatories struggling to manage the growing ranks of “uneducable” and “undesirable” minority youth, the forestry camps appeared to be another way of salvaging at least one segment of the young offender.

The first camp opened the following year, in 1956, at an old CCC camp set in the middle of a 40,000-acre forest. The humble group of buildings that became known as Camp Pharsalia may have housed only a tiny fraction of the adolescent male prison population, but it posed a much larger existential threat to the reformatory system. Although historian Volker Janssen has called California’s forestry camps “the penal welfare state’s liberal reform treatment for the ghetto,” the concept aroused considerable hostility from reformatory interests in New York State. After all, nothing about the camps reflected the worldview of the prison educators that dominated the Department of Corrections. The camps offered little or no formal educational programming, emphasized work habits rather than vocational training, and reintroduced aspects of military drill that the reformatories had seemingly purged from the system back in the thirties.

Though the Department of Corrections resisted any dramatic expansion of camp populations, the state did add a second camp (Camp Monterey) in 1958, and two more in 1960, after Governor Nelson Rockefeller enthusiastically embraced the concept. The governor and other state politicians found the camps to be a fine spot for a political drop-in, members of the press in tow. Indeed, the camps received consistently good press; stories tended to emphasize the positive qualities of the campers and the healthy and supportive relations between the camps and members of nearby communities—quite a contrast to the reformatories, which received little or no press coverage, save for brief coverage
of prisoner disturbances. A district forester for the state, who had worked with the old CCC camp, praised the young men and found “no grousing or complaining like there was in the CCC camps; it’s the greatest thing that has happened to conservation here.”\textsuperscript{19} As for the young men, media accounts suggested that they seemed “genuinely happy to be working in the woods instead of being behind bars” in Elmira or Coxsackie.\textsuperscript{20}

For the first time since they opened, Coxsackie and the other reformatories were no longer the institutions of first choice for the most promising young men. Having spent the postwar years desperately transferring undesirable youth to end-of-the-line institutions, Coxsackie and Elmira now found themselves losing the most desirable prisoners to the camps. Even more galling, the camp directors managed to secure for themselves the ability to come into the reformatories to select the inmates they wanted, through a “special screening process.”\textsuperscript{21}

Throughout the late fifties and the sixties, Coxsackie and the reformatories lost a number of their most tractable prisoners to the camps.

The existential crisis of the period came into clearest relief with the case of Roger V., a would-be college student.\textsuperscript{22} A 17-year-old from a rural upstate county, just two credits short of his high school graduation, Roger joined a group of friends in holding up a couple at gunpoint. Although the trial judge at sentencing agreed to designate the entire group as youthful offenders, he sent Roger and one co-defendant off to the Elmira Reception Center. At sentencing, the judge made the case that “great leniency” was expected by the family and the community, but that this leniency would have been just the sort of response that led the young men astray in the first place.

Roger arrived at the Elmira Reception Center in 1956, at a challenging moment for the reformatory system. With racial unrest, inmate uprisings, and growing doubts about the effectiveness of correctional education, the external critique of incarceration began to creep into the evaluative work conducted at the ERC. As much as any other case, Roger seemed to provoke questions at the reception center about whether any reformatory sentence was appropriate. Staff psychologist Chauncey Martin judged Roger to be “not a very serious case from the standpoint of personality deviation . . . he should be released as soon as possible so he may return to complete his high school work and go on to college.” Even Glenn Kendall, a staunch defender of the reformatory system, was led to conclude, “There is nothing to be gained by longer incarceration, very early release is recommended.” Roger should be sent to Coxsackie and then released in no more than six months’ time, Kendall observed, so that he could be home for the start of the 1957 school year.
The uneasiness expressed at the ERC provoked Coxsackie officials. Superintendent Donald Scarborough sided with the trial judge and complained to Kendall and the ERC that an early release would be just the sort of preferential handling that “had gotten the inmate in trouble in the first place.” Scarborough resisted the six-month limit on incarceration, pointedly writing to Kendall, “It is the understanding of the committee that no recommendation from the Reception Center is a binding one; that it is not the desire of the Reception Center to have us rubber stamp any decision made there.” When Roger made his first appearance before the Coxsackie program committee, reformatory officials declined to certify him for the parole board.

Roger’s failed appearance before the program committee prompted a new round of intense debate over Coxsackie and the role of the reformatory. Back home, his father began to apply significant pressure on the Department of Corrections in Albany. Interestingly, a counter-campaign of sorts emerged from Roger’s hometown. The vice-principal of the high school, for example, wrote to Superintendent Scarborough, urging him not to give into the pressure for Roger’s release, but to “set a firm example.” Albany caved fairly quickly, however, issuing a ruling that the Coxsackie program committee could not withhold certification in light of the ERC’s recommendation. The ruling prompted a flurry of animated correspondence between Scarborough and Commissioner McHugh.

At the heart of Roger’s case was a question as painful to reformatory officials as it was simple—was time spent at Coxsackie harmful to an otherwise normal and well-adjusted boy? The reception center seemed to imply as much, Superintendent Scarborough’s correspondence reveals that the implication was not lost on him: “The point which has bothered me more than anything else . . . is the implication (I have never seen it stated directly, and I doubt if anybody has thought of it that way) that it is going to be in some manner harmful for youth of basically sound background, to spend a little time in the institution . . . If there is anything these two youths need, it is to learn something of self-discipline; to respect the rights of others, and to realize they are no better than many other people. Thus, it is my firm conviction that a few months here will actually be beneficial.” Scarborough wrote to the program committee a memo that actually reversed the reception center’s implication, noting, “We have to decide whether these youths, because of their smirking attitude would be harmful to the institution and to the other inmates, who are perhaps more naïve.” Meanwhile, educational supervisor George Drojarksi stirred the pot a bit, point-
edly writing to the reception center, asking Kendall for guidance on the specific courses he felt the two young men should be taking while at Coxsackie.

In the end, despite the tensions between Elmira, Albany, and Coxsackie, and despite an apparently underwhelming performance before the program committee, Roger was held for the May parole board, and then for the August parole board, which released him in September, in time for the new school year. He was given exceedingly strict parole supervision by the standards of the case file sample—his parole file runs to fourteen pages, all of which was reported back to Coxsackie. Reformatory officials could learn every detail of Roger’s postrelease life, even the name and residence of his senior prom date. Still, as with many Coxsackie parolees, the highly specific parole terms weren’t strictly enforced—caught driving without a license, for example, Roger was retained on parole. By the time his period of supervision expired, Roger was a student at a prestigious university and married, with a baby.

Though Roger spent only a short time at Coxsackie, his presence managed to roil the reformatory system and raise some fundamental questions about what institutions like Coxsackie were trying to do. For critics, both outside and to some extent inside the system, large artificial institutions like Coxsackie could do no “normal” young man any good at all. For the defenders of the reformatory, the educational and vocational opportunities offered at Coxsackie were most appropriate for the “normal” young men of the system. As they attempted to purge the reformatory of the drug addicted, the gang affiliated, the mentally unstable, and a largely minority population of the “uneducable,” Roger and his kind were just the sort of young to benefit from their educational discipline. To suggest otherwise, in 1957, was to suggest that there was nothing to fight for and preserve. In response, the reformatory system at last began to undertake a scheme to prove its own effectiveness.

**Does It Work? The Reception Center Research Project**

When the Elmira Reception Center opened in 1945, part of its formal mission was to conduct research: into the causes of delinquency, the effectiveness of the center’s diagnostic tools, and the effects of subsequent reformatory programming. In fact, when Governor Dewey’s Interdepartmental Committee on Delinquency first proposed the center in 1943, it strongly urged an evaluation “after a reasonable period of operations.” Just one year into ERC operations, center personnel began planning for just such an evaluation study, going so far as to prepare a coding plan for prisoner data. But the study never moved beyond the
preliminary stages, largely because the center lacked sufficient state-funded staff positions. The professional staff of the ERC that might have engaged in careful study were, instead, confronted with the day-to-day challenges of processing large numbers of young men every month.

Over the course of the ERC’s first two decades, more than thirty-two thousand prisoners were processed through the facility, while research ambitions went largely unrealized. An external study of young offenders, completed in 1953, called on the state to more carefully assess the differences, if any, between the programming recommendations of the center and the actual program assignments prisoners experienced at the reformatories. This project was never undertaken. The Great Meadow uprising followed soon thereafter, and Commissioner McHugh complained that the department had been “operating blindly without even minimum research facilities.” In response, the state legislature finally authorized a Division of Research, and the Department of Corrections hopefully suggested that with the division in place, “voluminous data, long unused for lack of trained people to analyze it, can eventually be utilized now in thoughtful modification of existing programs and in realistic planning for new ones.”

The quest for program evaluation was, above all, a quest to affirm the value of correctional education. Commissioner McHugh said as much, speaking in 1955, when he asked, “Can it be proven that the investment the State is making in correctional education is a good one?” But even with the Division of Research in place, progress toward real evaluation was painfully slow for those who had invested so much in the state’s reformatory system for young male offenders. Division staff, led by Herbert L. Bryan, spent much of their time responding to data requests from the DOC and the federal Bureau of Prisons, responding to special legislative requests like creating a database on all serious sex offenders, and working on creating an IBM punch card system for collecting data on every prisoner entering and leaving DOC institutions.

The only substantial research on correctional education conducted by the state appeared in early 1961, a study of educational achievement of male adolescent offenders while under institutional custody. The following month, the DOC published a related study, in conjunction with the Division of Parole, to measure educational achievement and parole adjustment, one that found no real connection between academic progress behind bars and success after release. Although the report suggested that it was “almost axiomatic” that educational programs aided parolee success, the actual data suggested that this was mostly true of prisoners who arrived at the reformatory with a high level of educational attainment (a small portion of the reformatory population).
In the wake of the educational attainment study, calls from within the Department of Corrections for a comprehensive and definitive study of reformatory impact grew even more urgent. The Division of Research observed, “We do not have sufficient information to clearly evaluate the progress and potential of vocational training . . . In order to get this,” the Division noted, “we must set up basic data . . . this is long overdue.” In 1965, the Department of Corrections began to prepare for the design of a twenty-year plan, alongside its planning for the upcoming fiscal year. As part of the process, the department finally committed itself to a full-scale program evaluation. The context was clear: “Many of the administrative personnel in the Department have lived with the Reception Center operations since its conception and birth. Their views and interpretations of any research findings on the Center should be invaluable and time is running out on their availability for explanations and interpretations.”

Time is running out—the veterans of the 1930s, including Glenn Kendall, Walter Wallack, and Price Chenault, understood that mandatory retirement would remove them from active roles in reformatory administration by the end of the decade. This study would represent their final and best chance to defend the reformatory system they had built.

The first written proposal for the study, seeking special state funding, suggested a three-to-five-year project conducted using a sample of case files from the thirty-two thousand young men processed by the ERC between 1945 and 1965. The department noted, “A major issue in correctional research today is how to validate the relative emphasis to be given custody and treatment . . . we lack not only sufficient evidence on the extent to which existing systems rehabilitate their subjects but also comparative evidence to support the efficacy of current theories of treatment . . . the Reception Center Research Project represents, among other things, an effort to make a scientific and objective assessment of the results obtained by New York’s correctional system in rehabilitating the young male offender.” For the first time, the pitch to the legislature worked, and what became known as the Reception Center Research Project received a substantial funding commitment: $50,000 for FY 1966–1967, and another $100,000 for FY 1967–1968, with a request pending for a continuation of funding in FY 1968–1969. The legislative support allowed the Division of Research to support a project staff of five full-time researchers and four professional consultants.

The first stage would consist of a preliminary study to demonstrate the feasibility and utility of the project. The preliminary study included a statistical overview of the ERC cases between 1945 and 1965, as well as a small pilot postrelease
survey. The postrelease pilot was based on a sample of 220 young men who had been through the ERC and then released from a department institution in 1960. Research staff located roughly six in ten of the men in the sample group, and 95 percent of those located agreed to participate. The survey interviews were conducted by parole officers paid “on an extra-service basis” to assist with the project.

The pilot study was to have been the basis for a much larger postrelease study, one that would have conducted similar survey interviews with a 10 percent sample of the entire population of 32,000 ERC inmates. The full-scale project plan had four phases: an analysis of the precommitment characteristics of the center’s diagnostic findings and recommendations; an evaluation of subsequent institutional treatment and custody in relation to the center’s findings and recommendations; a similar evaluation of parole experience; and a determination of recidivism prior and subsequent to center commitment as well as a current personal interview with located subjects to appraise socio-economic adjustment and the effect of the correctional process on that adjustment.

The pilot project was nearing completion in early 1967 when Department of Correction officials assembled for their legislative budget hearing with the Ways and Means Committee. Commissioner Paul McGinnis arrived asking the state for additional educational and guidance positions, observing, “In our treatment . . . we place a great emphasis on education, in all its aspects, for there is convincing evidence that our inmates are generally under educated.” The legislators pushed back against the budget requests. Longtime legislative budget consultant Howard “Red” Miller, secretary to Ways and Means, pressed McGinnis on the need for expanding the commitment to educational programs. McGinnis protested: “If we didn’t have education, what would we have? You have to take education as the basic, the fundamental leg of this whole rehabilitation program.” When Miller responded, “I think we ought to have more evidence of this,” McGinnis promised that when the Reception Center Research Project was finished, “you are going to have definite evidence of it. I hope so. I really hope you do, because I hope his study will show what we are doing at the Reception Center and what we are doing in the institutions with these people after they leave has been helpful to them and had done the job on the rehabilitation we hope we are doing.”

McGinnis managed to use the word “hope” four times in his reply, consistent with the department’s growing sense that the future of the reformatory program would depend on positive research results. For Vito Ternullo, representing the Division of Education at the hearing, a comment from Miller that
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the department should wait for the results of the study before moving into “phase two” of program investment was a bit too much: “We have been in phase one for about 40 years now, and this is our problem . . . we have asked for money for research time and time again.” Even Ternullo, however, conceded that the results of the study were hard to predict with any certainty. “This study . . . is going to be a terrific boost, one way or another . . . if you were to ask me whether [correctional education] was really effective in terms of recidivism, I couldn’t give you an answer, obviously, because we have nothing to back us up on except some educated guesses.” Herb Bryan, representing the Division of Research, promised the pilot study would be done soon and in the meantime offered up a single happy case: “I don’t want to gold the lily, but the first case I looked at that came in that they had located upstate was a youngster who is 28 now and married and has four children. He is working as a manager of the computer center, and, interestingly enough, he built his own home, which he values at $18,500. He made $7,000 in 1966.”33

The full study was never completed. The pilot project was completed in April 1967, two months after the legislative budget hearing. Later that year, research staff selected the 10 percent sample from reformatory case records and microfilmed copies of the case files (the microfilm can be found today at the New York State Archives). While the case files were being assembled, the research staff received the unwelcome news that the federal Office of Law Enforcement Assistance had rejected their application for project funding (there is no record of why the grant request was turned down). By the time of the Department of Corrections 1968 budget hearing, prison officials were no longer talking about the research project, and there was a noticeable absence of research and education staff at the hearing. The Reception Center Research Project, understood as the last and perhaps best chance to demonstrate the positive impact of the reformatory system, was gone. Overwhelmed by events, the defenders of correctional education and the reformatories had run out of time, and the critics now took center stage.

The Governor’s Special Committee

Even as the Department of Corrections began planning the Reception Center Research Project, the reformatory system faced growing scrutiny from a state government previously deferential or simply inattentive. Long inactive, the Senate Committee on Penal Institutions began to rouse itself in 1966, with committee chairman Robert Lynch arranging for actual committee meetings and tours of “as many penal institutions as possible.” Those inspections were undertaken
by a freshman senator, John R. Dunne, whose resulting report adopted a critical tone regarding the state’s “determined although sometimes futile effort” in the area of correctional education.\(^\text{34}\)

By 1968, Dunne had become chairman of the Penal Institutions Committee and was now holding public hearings in Albany and New York City on the causes of criminal recidivism and the role of penal institutions in managing the problem. These hearings opened up a public discussion regarding prisons that had been mostly muted since the 1930s. Dunne himself was intrigued by the idea of using work-release programs to move criminal offenders from institutional to community settings. While the Community Service Society—the organization that had funded Bertram Beck’s work—professed itself “delighted” with the proposals and with the “enlightened and tireless” Dunne, the response from within a defensive Department of Corrections was more hostile. Commissioner McGinnis doubted that work-release programs in California “would withstand critical analysis,” and argued that federal work-release programs were for “an entirely different type of offender than on average we deal with.”\(^\text{35}\)

All of this was followed by the standard defense of correctional education programs, a mark of just how rigid state correctional policy had become by 1968, unwilling or unable to integrate alternative strategies for handling criminal offenders.

The reformatory system was also under siege from the executive office. Here, too, gubernatorial interest in corrections re-emerged in the 1960s after a long period of inattention. In 1965, Governor Nelson Rockefeller assembled a Governor’s Special Committee on Criminal Offenders and directed them to identify new and more imaginative approaches to the prevention of recidivism. Chaired by Department of Corrections Paul McGinnis and parole board chairman Russell Oswald, the special committee was stocked with high-level state correctional and welfare service administrators.

After about a year of the committee’s efforts being expended in several evaluative, legislative, and programmatic directions, Rockefeller narrowed their mandate to the production of a detailed report assessing the state’s post-adjudicatory system. The creative forces behind the report’s production were Executive Director Peter Preiser, Assistant Director John V. Delaney, and Deputy Assistant Director Douglas S. Lipton. The committee’s Preliminary Report appeared in early 1968, advertised as “the first modern comprehensive rationalization of the New York correctional system.”\(^\text{36}\)

Part one of the report, largely authored by Peter Preiser, went directly after the conceptual underpinnings of the New York prison system, “because the
Committee was unable to find a comprehensive focused statement of the principles of the system anywhere.” The committee’s own discussion of these principles—rather immodestly described in the report as “a landmark presentation”—were antithetical to many of the presumptions of the Austin MacCormick-era reformatory system. The report questioned the value of the wayward minor and youthful offender classifications, under which so many young men had entered the reformatory system. In the application of such categories, the report concluded, “The basis for the adjudication and the basis for the disposition are not rationally related to each other.” Youthful offenders “must trade the risk of a heavy sanction for the boon of exemption,” and in the process, minor offenders ended up swept into the reformatory system, while the most serious offenders would not be granted the same status and thus would head straight into the adult prison system.37 The critique of artificial juridical categories extended to the entire concept of the reformatory itself; in a revised system, the report suggested, there should “no longer be artificial . . . distinctions between types of institutions.”38 These distinctions were reflective of a system “bound in by a particular image which is a heritage of the past.”39

Most important, part one of the report re-introduced the concept of retribution into state-level policy discussions, a direct response to the growing public unhappiness with rising crime rates. The criminal sanction, said the report, must have “a sufficient degree of unpleasantness” to “reinforce the confidence of the public in the fact that the state is determined to uphold norms, through a demonstration of action taken against wrongdoers.”40 Using a bit of tortured sociological analysis, the report denied that this public demonstration of determination to combat crime was retributivist, claiming instead that it was merely the “prevention of anomie” caused by the state not meeting “the retributive feelings of the public.”41

Austin MacCormick, by now returned to New York from Berkeley, reacted strongly to this re-introduction of retributivist language in the Preliminary Report. Both before and after the report’s publication, MacCormick criticized the approach of the special committee. Karl Menninger wrote to MacCormick, asking “what we ought to think about the Committee Report of the Governor’s Special Committee on Criminal Offenders . . . Has it got a chance? Has it got your approval? Has it got our support?”42 MacCormick replied that the report was too scholarly and dense for legislators, with an “indefensible” emphasis on the prevention of anomie.43 As a member of the Citizens Advisory Committee, he took his concerns directly to Preiser, telling him, “It means in plain language that if a judge thinks an offender is a good risk for probation, he must think
twice before he puts them on probation and must worry that the public will think that he and all judges are being too soft on criminals. It is a concept you find only in a ‘dollar-ditch-water’ sociological treatise.”

In his meeting with the governor’s committee, MacCormick was particularly incensed by the idea that “the state must take the retributive feelings of the public into account . . . if you are going to sell this idea on the present attitude of American people on crime, kowtowing to it, falling in line with it and the old ideas of retributive punishment, I would not be willing to help.” To which the committee replied, “Like it or not, that is not the mood of this state.” Florence Kelley, administrative judge of New York City’s family court, at the same meeting argued that giving way to the anomie concept would “make the system crumble.” Liberal administrators like herself were starting to be “brainwashed” on the idea of returning to definite sentences, and “this time I’m really going to fight . . . I think we are too concerned with what the community thinks.”

The tremendous fluidity of thinking about corrections and punishment in the late sixties rendered the report contradictory and incoherent (multiple authorship did not help). For instance, although the report called clearly for the re-introduction of a retributivist rationale, it also offered up the outline of what it contended would be an entirely new approach to rehabilitative services. Calling for centralized and more powerful diagnostic centers, the report proposed an unwieldy set of “fourteen fundamental characteristics [that] can be postulated as being both social impedimentia and crime related.” These fourteen “may appear singly, or in combination of two, three, or four in one individual offender at one time” and were matched up with an even more unwieldy list of fifteen basic treatment options. The central diagnostic centers would create a “unified file” that would contain all the “data and the background material for the development of the diagnostic and treatment profile. This would then be summed up by use of a coding system.” The proposed plan for “a unified post-adjudicatory treatment agency” must surely rank as one of the most convoluted pieces of policy recommendation ever generated. It illustrates the extent to which progressive and New Deal reformism had devolved into a set of quasi-scientific recidivism-prevention impulses that, when fully expressed, had a farcical quality.

MacCormick was aghast at the proposal and observed, correctly, that it bore little or no relation to practical governance. “This whole system of places where you go for diagnoses and the board is there deciding something, and then somebody up on Albany deciding for children and another board for youths and another for adults,” he wrote to Menninger, “my God, you just don’t run a correc-
tional department that way. Where are they going to be while they are going through this lengthy diagnostic process? They are going to go home and wait for the decision to find out what they need done to them.”

MacCormick tartly chided the committee in person, observing that the Preliminary Report “amounted to very tedious reading, even for a retired professor of criminology who has had to read many a graduate thesis.”

Little of the specific treatment program apparatus proposed in the Preliminary Report was ever implemented. Indeed, in spelling out the complicated mechanisms required to diagnose and treatment criminal offenders, the report’s authors may have done more to illustrate just how unlikely implementation of a medical treatment model in corrections would be. The most influential dimension of the Preliminary Report, however, had nothing at all to do with the unwieldy treatment proposals but instead directly challenged the extent to which the state’s reformatory system had ever rehabilitated anyone and questioned the degree to which it ever could. In this challenge lay all the elements of a worldview that, by the mid-seventies, would be distilled into the pessimistic catchphrase “nothing works.”

**Freedom Rider: Robert Martinson on the Road to “Nothing Works”**

If Austin MacCormick could, in some sense, be described as the architect of New York’s reformatory system, Robert Martinson could be described as the architect of its destruction. This credits both with more individual responsibility than either really bore, but both were the most influential public faces of their respective intellectual and policy positions. A criminologist trained at the UC Berkeley School of Criminology, Robert Martinson arrived in New York in 1967, recruited to the governor’s special committee to work under the direction of Deputy Assistant Director Lipton. Martinson assisted in the preparation of a massive review of correctional program evaluations published since 1945. His work on the special committee helped influence a sharply negative critique of the reformatory system in the Preliminary Report and launched Martinson on a career as the highest-profile critic of rehabilitation.

The road traveled by Robert Martinson to the governor’s special committee serves as a case study in the disenchantment of the postwar left with the liberal state and with the development of neoconservative approaches to punishment. As a young undergraduate at the University of California, where he received his degree in 1949, Martinson became actively involved in left-wing student politics and activism on the Berkeley campus. Part of the anti-Stalinist Trotskyite student left, Martinson was an active member of the Socialist Youth League. The
central fight of his young political career involved the battles over a faculty loyalty oath introduced around the time of his graduation. Martinson led the fight against the anticommunist oath requirement, defending academic freedom against the encroachments of state politics.

The oath fight was a notably bitter episode in the history of campus anticommunist politics, and Martinson was discouraged by the failure of students and faculty to defeat the efforts of the regents to terminate nonsigning faculty. *Cold War on the Campus*, a pamphlet Martinson authored in 1950, was “dedicated to those students and faculty members of the University of California who have had the honor of being casualties of the Cold War on Campus.” He decried the extent to which “a barracks discipline, a regime of fear and distrust cripples an educational institution” and compared this to the manner in which fascist Germany and Stalinist Russia “encased their artists, scientists and intellectuals in uniforms and forced them to subordinate their ideas to the demands of the totalitarian state.” Stalinism embodied “reactionary social aims and totalitarian methods,” Martinson argued, and it would be particularly tragic to adopt these in the service of the anticommunist policing of university faculty. He denounced the “liberal inquisition” led by Sidney Hook and others and urged upon students the realization that any compromise would constitute a “death blow” to academic freedom.51

Martinson remained at Berkeley throughout the remainder of the decade, developing his critique of all forms of totalitarian structures. He completed a master’s degree in sociology and social institutions in 1953. His thesis, “The Role of the Communist Party in the Spanish Civil War: A Study in Totalitarian Organization,” examined the role of the party as part of a larger examination of “the modern totalitarian ‘movement.’” Spanish communists, he felt, had undergone a kind of transformation under Soviet influence, and what remained by the late 1930s was “the Russian pressure instrument with its definitely rigidified and ordered structure.”52 In Martinson’s view, rigid organization rendered the party “more and more impermeable to the influence of popular pressure,” even as it became “highly skilled in mass manipulation and organization.”53 Martinson was particularly struck by the extent to which the party began to attack its own allies and employ the apparatus of the police state to imprison and torture left-wing dissidents.54

Martinson spent the decade following the completion of his master’s degree as a sometime student and well-known peace activist in Berkeley. Cutting a striking figure, he participated in nearly every significant local political protest. He made a run for mayor in 1959, opposing the incumbent, retired UC vice
president Claude Hutchinson. Running as the candidate of the United Socialist Action Party, Martinson was handily defeated in the April elections. In 1961, Martinson joined other civil rights activists in one of the early groups of Freedom Riders, traveling to Mississippi to protest racial segregation. He was among those Riders arrested in Jackson, Mississippi, and eventually transferred to the maximum-security unit of Parchman State Farm—the state’s notorious prison farm. As had many civil rights activists before him, Martinson went to prison and, in the process, discovered some realities of life in institutional confinement.55

For Martinson, the salient part of Parchman was not the racism or the brutality, but the “absurd quality” of institutional life, with its strange web of “minute rules” governing every aspect of daily existence. In fact, he observed that the daily order that the Riders organized for themselves at Parchman was not really of their own making but “dovetailed with [that of] the guards’ and [was] partially built upon it.” Sitting in cell five with another Rider, Martinson observed that almost every decision—making the bed or refusing to make it, eating breakfast or refusing to eat it, returning the tray or refusing to return it—was oriented around the guards’ own rules and expectations for behavior. Even the social bonds of the Riders behind bars, he felt, had the “special quality” of an “indigenous solution to life in such a unit.”56

As Martinson forged the link between prison systems and the authoritarian regimes he had condemned in his political youth, he also grew disenchanted with the newer dimensions of radical politics. Working on his doctorate through the School of Criminology (from which Austin MacCormick had retired in 1960), Martinson’s peace activism now included implicit criticisms of New Left political tactics. Writing in the Nation, Martinson observed, “The anxieties of the atomic age have begun to penetrate every city, village, and hamlet in America.” He approvingly noted the work of the Eugene, Oregon, Steering Committee for Peace, which “broke with the traditional conception that peace is the monopoly of the Left” and instead tried to speak for the community as a whole. “Peace advocates,” Martinson argued, “must win over the vast, uncommitted, but politically decisive middle ground which will only respond negatively to hysteria, alarums, and mindlessness.” Civil disobedience, he concluded, “a responsible and appropriate response for the civil-rights struggle in the South,” might become “gauche and self-defeating when carried over uncritically to the peace field.”57

By the time of the Berkeley Free Speech Movement in 1964, Martinson had become disenchanted with the emergent New Left, and the veteran peace activist
committed himself to completing a dissertation in criminology. Working primarily in California institutions, Martinson's work before arriving in New York was profoundly critical of criminal justice systems, vigorously rejecting what he regarded to be the organizational rigidity and managerialism of liberal corrections. His work was also part of a larger explosion in social science, "guided by a reaction against the unabashed and unexamined moralism of early American social science." From this perspective, for example, the value of reformatory education could not and should not be rooted in any moral sense of the good to be gained through education—the old Deweyan-MacCormick view—but only in empirically measurable positive outcomes. Focusing on anything beyond recidivism was becoming, for critics, a mark of evasion and incompetence. An emphasis on outcomes and process meant that the substantive values behind the rehabilitative program became less important. The procedural values of the rehabilitative regime—emphasizing a heightening of state power, informality and discretion, and a minimization of due process—were woefully out of step with an emerging embrace of a new rights-oriented constitutionalism.

By 1966, Martinson had settled on a preliminary label for what he was observing: treatment authoritarianism. The “problem of transforming men,” he argued, had become so central to prison administration that treatment interests had taken over the “sphere hitherto ruled over by the uniformed officer class.” In other words, the compulsion to remake the criminal offender had produced a system of control that could be remarkably punitive for those prisoners who ran afoul of its demands. The “medical police” of the modern age had replaced more primitive correctional forms, Martinson argued, and could make “Orwell’s 1984 seem like a pleasant dream”—the very work he had invoked in discussing the Spanish Communists in his 1953 master’s thesis. Just as Martinson’s reflections on Parchman Farm largely passed over racism and physical brutality, his reflections on the modern prison dismissed the relevance of more traditionally brutal dimensions of punishment. “Those who will push and preach for the prison to become a ‘hospital,’” he suggested in a 1966 article, would have society “use the iron compression chamber of prison life to screw down upon the helpless, the aged, the misfits, the liars, the psychopaths, the drop-outs, and those who have almost accidentally got cause [sic] up in the correctional stream.” On the other hand, he felt, a purely custodial approach to imprisonment should not be regarded as inherently severe: “custodians need not be punitive” (emphasis in original). A year after that essay appeared in print, Martinson headed east to join the staff of the governor’s special committee, to help explore the committee’s pre-
liminary sense that “there was no available guidance on the question of what has been shown to be the most effective means of rehabilitation.” The task, Martinson recalled, was “to remedy this defect in our knowledge; our job was to undertake a comprehensive survey of what was known about rehabilitation.” Martinson’s job was to examine published evaluations of correctional rehabilitation programs, completed and published between 1945 and the end of 1967. A total of 231 studies were eventually compiled, containing between them 285 separate treatment findings. Consistent with the emerging critical social-scientific perspective, the project excluded measures of anything beyond recidivism: the impact of programs on adjustment to prison life, vocational success, educational achievement, personality and attitude change, or general adjustment to the outside community. Instead, the study dealt “only with the effects of rehabilitative treatment on recidivism, the phenomenon which reflects most directly how well our present treatment programs are performing the task of rehabilitation.”

With respect to the extant research literature, the Preliminary Report got right to the point:

For the purpose of setting these matters in the proper context, it is important to stress the fact that at the present time we do not have any organized collection of information—nor do we believe that a collection of information exists anywhere—to form a gauge or set of gauges by which we can judge the effectiveness of any program operated by the Department, or by any other State or local agency that administers post-adjudicatory treatment. In other words we presently have no reliable basis for stating whether anything any correctional agency in the country is doing at the present time is helping to prevent recidivism. In fact, some of the information that we do have shows that application of some of the most ‘advanced’ treatment techniques on an across-the-board basis (i.e. to undifferentiated groups of offenders) may actually increase the likelihood of recidivism for some offenders.

Nor were vocational and educational programming spared the general critique. The report made the case that there was “no reliable evidence anywhere” to show that these efforts had any effect “on reducing recidivism.” In fact, the report invoked one of the department’s own studies—the 1961 report on educational attainment and parole adjustment—to demonstrate the limited impact. For the tottering correctional education regime, the Preliminary Report offered this devastating conclusion: “Unless we utilize these programs in accordance with a rational design for prevention of recidivism . . . we may think of them only as methods of utilizing inmate time for constructive purposes.”
The Elmira Reception Center came in for withering criticism. The Preliminary Report observed that the process of managing the adolescent offender “does not constitute a system for formulating and pursuing specific treatment goals within the framework of an overall, centrally controlled, diagnostic-based plan.” As Bertram Beck had argued, the reception center was conceptually “isolated from the rest of the system.” It produced a product, in the form of the detailed program recommendations, “which other institutions may accept or reject, and receiving no feedback to help refine its diagnostic techniques . . . where its recommendations are not followed, its effort is largely futile . . . where its recommendations are followed . . . it has no way of applying experience to refine or correct itself.” The Preliminary Report also offered up an implicit criticism of the Reception Center Research Project, observing, “Without any centralized control, the prognosis for any type of systematic evaluative research on treatment effectiveness is quite poor.”

Although the Preliminary Report reflected deep skepticism about the potential of rehabilitative programs to accomplish the reductions in recidivism that would justify their existence, it did not quite offer the full-blown attack that Martinson himself wanted to deliver. As he later observed, the careful systematic review of research studies that he undertook with Douglas Lipton lacked a powerful policy conclusion, one that he then took it upon himself to supply. In doing so, he completed the conceptual bridge to the intellectual position that helped enable the modern age of mass incarceration.

The great, painful irony of Robert Martinson’s life story (and many other public and academic figures for whom he stands in as a representative) is that the attack on rehabilitation was not at all intended to support an expansion of imprisonment. On the contrary, Martinson believed that, shorn of its rehabilitative justification, the prison would lose its place in American society and gradually be replaced by noncustodial alternatives. All that remained for critics of the prison, then, was to give the whole pathetic apparatus one final shove and condemn the entire rehabilitative enterprise. Martinson, with plenty of company, did just that, making his now-famous case that “rehabilitation is a social myth” and that “nothing works.”

To make this case, Martinson first needed to deny one of the central premises of MacCormick-style reformism—that the most serious harms of imprisonment were caused by idleness, indifference, and cruelty. Like many of his contemporaries, Martinson argued that old-fashioned ideas of harsh justice had largely been banished, leaving the prison field entirely to treatment-custody bu-
reaucracies. Actual brutality was a self-serving myth perpetuated by those same bureaucracies. Indeed, the treatment prison was worse than supposedly now-extinct systems of harsh justice: “A relatively brief prison sojourn today may be more criminogenic than a much longer and more brutal sojourn a century ago . . . the early prisons left physical and mental scars but did not inhibit the offender from productive work, marriage, family.”

In the wake of the Attica uprising, Martinson decried the entire range of groups who attached themselves to the rioters—“posh white radicals . . . poverty lawyers, radical intellectuals, upper-middle-class legal professionals, reporters, mass media specialists . . . politicians dependent upon the inner-city black and Puerto Rican vote . . . members of revolutionary sects, academic guerillas and a few students.” He argued, “This movement incorrectly interprets convict insurrection as a response to ‘racism’ and ‘brutality.’” Martinson’s position was, in essence, a denial of the actual reformatory experience at Coxsackie and elsewhere, a forcible muting of the horrific experiences of thousands of young men.

Martinson also needed to take his criticism of rehabilitative programs a step further than the suggestion that they had not been shown to work and make the case that they could not work. Far from being a misinterpretation of Martinson’s research, the “nothing works” phrase was a reasonably accurate reflection of his many public statements. The high-water mark of this effort was the 1974 publication, in the Public Interest, of the essay “What Works?—Questions and Answers about Prison Reform.” Here, he concluded, “With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.” The more than two hundred evaluation students, he concluded, “give us little reason for hope . . . Maybe,” he wrote, “our programs are simply not yet good enough, but more likely . . . there is a more radical flaw in our present strategies—that education at its best, or that psychotherapy at its best, cannot overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behavior.”

So where ought prisons and punishment turn next? Here, Martinson embraced a return to determinate sentencing and fixed periods of confinement for the most serious offenders. “If we can’t do more for (and to) offenders,” he wrote, “at least we can safely do less.” High-risk offenders could be housed in prisons “which are nothing more (and aim to be nothing more) than custodial institutions.” Toward that end, he happily related, “lawyers and criminologists are returning to the long-deserted classical trail.” Martinson was hardly alone
The Slow Death of Prison Reform in New York

in his embrace of classical punishment. Even the venerable Correctional Association of New York, in 1978, dismissed concerns that this might lead to worse conditions:

Determinate sentencing is criticized out of fear that its adoption may result in prisons becoming more overcrowded and inhumane than they already are . . . Because determinate sentencing is generally viewed as rejecting the philosophy of rehabilitation, it is feared that the adoption of a determinate system will undercut the rationale for prison programs, and thus cause them to be reduced . . . while it is possible that prisons may become more harsh under a determinate scheme, that result is hardly mandated and would be contrary to the emphatic urgings of those recommending a determinate scheme. Prisons are already intolerably harsh; what is required is that they become more humane and decent.77

Martinson, at least until the mid-1970s, remained absolutely convinced that he was helping to end the reliance on the prison as a locus of punishment. Writing in 1972, he argued that the disintegration of the correctional treatment model was a necessary prerequisite for a “social planning” phase of development in which “prisons are necessary to some stages of civilization but can be gradually replaced by milder forms of control to the degree permitted by democratic crime prevention.”78 In the grandiose language that would have been absolutely familiar to anyone who had known the young socialist, the long-time peace activist, the Freedom Rider, and—above all—the committed anti-totalitarian, he wrote: “The long history of prison reform is over. On the whole the prisons have played out their allotted role. They cannot be reformed and must gradually be torn down . . . We shall be cleansed of the foreign element of forced treatment with its totalitarian overtones . . . The myth of correctional treatment is now the main obstacle to progress; it has become the last line of defense of the prison system; it prevents the sound use of resources to balance public protection and inmate rights; and it diverts energy away from defending democracy through widening opportunity. It is time to awake from the dream.”79

Life for Robert Martinson was its own kind of dream for a short time. Now a member of the sociology faculty at the City University of New York, he enjoyed a remarkable wave of public attention and popular approval. In a 1975 60 Minutes interview with Mike Wallace, he reiterated his view that rehabilitative programs had “no fundamental effect on the recidivism rate of people.” Wallace replied, “No effect at all?” To which Martinson responded, “No effect, no basic effect.”80 To a People magazine reporter in early 1976, he suggested that his attacks had thrown criminal justice into “a state of extreme intellectual crisis.”
Institutions like reformatories had been designed “to handle boy scout offenders, mildly criminal types, but now we are dumping serious criminals onto this system . . . No wonder people think it’s a farce.”81

A postprison vision for criminal justice proved to be its own sort of dream, one that faded quickly in the politics of the seventies. Harsh justice proved not to have been dead and buried; by the end of the decade, a new era of punitive punishment and prison expansion was clearly beginning to take shape. Given a substantial grant from the National Institute of Law Enforcement and Criminal Justice to undertake a massive new meta-analysis and create the Center for Criminal Justice Planning, Martinson disavowed his earlier methodology. Conscious of the direction in which the attack on rehabilitation was taking criminal justice, he no longer excluded all but controlled studies and instead embraced a much larger sample of research reports, encompassing 555 research studies published since 1945. Preliminary findings appeared in late 1976, but a series of personal and administrative conflicts plagued the center and the project, and no final study ever appeared.

By the time Martinson’s final publication appeared in the *Hofstra Law Review* in 1979, he had completely recanted his earlier position on rehabilitation. Noting that it “was misleading to judge criminal justice on the basis of . . . merely the experimental (evaluation) research,” he revisited his earlier conclusions. He had “thought it important” that his earlier conclusion be made public and debated and, Martinson now ruefully noted, “it surely was debated.” With an almost desperate directness, he wrote: “On the basis of the evidence in our current study, I withdraw this conclusion. I have often said that treatment added to the networks of criminal justice is ‘impotent,’ and I withdraw this characterization as well.” His final published sentence offered up a plea for a more thoughtful approach to prison programs: “Those treatments that are helpful must be carefully discerned and increased; those that are harmful or impotent eliminated.”82

Austin MacCormick and Robert Martinson serve as bookends to New York’s reformatory era. Although they each spent the decade of the fifties on the Berkeley campus, there is no evidence of any meaningful interaction between the two. Each left California for New York in the 1960s, MacCormick to try to sustain liberal prison reform, and Martinson to try to end it. Neither man lived to fully appreciate the direction in which American penal policy was headed.

MacCormick spent the last years of his life commuting from his Connecticut home into New York City, the elder statesman returned to serve as executive director of the Osborne Association, the outgrowth of his work decades earlier
with his mentor. He published an influential monograph against the death penalty, continued to visit state prison systems to support reformist policies, and supported continued investments in programs for juvenile offenders and for the support of prisoners postrelease. His pioneering educational work of the 1930s, however, was already fading into obscurity—work more cited than actually read—by the time of his death in October 1979.

Robert Martinson’s work, in contrast, stubbornly refused to fade into obscurity, even as the man himself struggled to maintain his position in the criminal justice field. No longer the public figure he had been only a few years earlier, Martinson was denied tenure at CUNY and suffered a series of personal setbacks. Apparently haunted by the rise of a new, punitive approach to punishment, and his own connection it, he wrote the *Hofstra Law Review* essay as a little-noticed attempt to put the cork back into the bottle. Two months before MacCormick’s death, Martinson took his own life.83 “Nothing works”—his argument, if not his exact words—lived on, however, at the heart of the new prison politics.