

# Ahead of His Time

## MEMORIES OF SIR LIONEL FOX

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THE BRITISH CIVIL SERVICE is a constant source of amazement to Americans in its capacity to develop executive personnel with a high degree of versatility that enables them to shift from one field of work to another. Sir Lionel Fox was one who did so with exceptional adroitness and success. Although he was primarily a penologist he spent, in the middle of his career, eight years with the Metropolitan Police District. In 1942 he became Chairman of the Prison Commission and soon demonstrated that as a penologist he would follow in the tradition of the world-renowned Alexander Paterson. As a matter of fact, Sir Lionel worked closely with Paterson on the Prison Commission between 1925 and 1934 and again after 1942. He frankly acknowledged that Paterson had helped him tremendously in shaping his

own thoughts and opinions on the difficult problems of prison management.

I had the great privilege of meeting Sir Lionel several times over the years. He was affable and pleasant and had all those characteristics that make Englishmen so attractive to Americans. He also had the knack for feeling the lash that stings another's back and I think that this sense of empathy had much to do with his success as a prison administrator. One of our great Presidents, Abraham Lincoln, once said that most people lack this quality and understanding comes to them only when the lash strikes their own back. One of our great Civil War historians echoed this philosophical observation. He wrote that this lack of sensitivity "is one of the commonest and most disastrous of all human traits, because it consents to

cruelty and injustice; and it consents largely because the insensitive person does not even realise that these things exist unless they touch him personally. He can live next to monstrous wrong because he does not really know that it is there; it affects another person and so he does not feel it. Society approaches a respectable level of civilisation only when it develops an active spirit of compassion."

It speaks well for British civilisation that Sir Lionel had that active spirit of compassion. In his writings he frequently quoted Oscar Wilde, whose imprisonment was such a traumatic and painful experience. Sir Lionel was also conscious of his heritage and referred often to John Howard, the British penal reformer whose own sense of compassion was apparently implanted ineradicably when he himself became a prisoner in France and suffered the indignities common to the imprisoned of the eighteenth century.

Like John Howard, Sir Lionel was a penological figure of international significance. He gave much of his time to the United Nations, where we were friendly collaborators in trying to improve the treatment of prisoners around the world. He stood shoulder to shoulder with us in developing the Standard Minimum Rules for the Treatment of Prisoners which the United Nations ultimately adopted. The Rules reflected much of his

thinking and will stand for many years, with their recognition of basic human rights and privileges, as a credit to civilized nations.

During our long friendship I had many discussions with him on basic penological problems, sharing for example deep misgivings over the shortcomings of the sentencing methods in our respective countries. I knew that in England offenders were commonly sentenced by magistrates untrained in the law and I urged him to work for legislation which would put the determination of final sentences into the hands of a board, as in California, or which would make them more completely indeterminate. He had some doubts that either plan would work in England, and countered by pointing out to me that the disparities in sentences were even more severe in the United States where sentencing was performed by judges with a competence in the law. I admitted the disparities but told him that they were as much due to penal laws permitting a severity bordering on barbarity as they were to the judges who differed greatly among themselves as to sentencing practice and philosophy.

When I last saw Sir Lionel in 1960 I was able to report to him that in the Federal jurisdiction at least the sentencing process had been virtually revolutionised. Until 1958 a judge could, for most offences except narcotics viola-

tions (for which statutes provided a severe mandatory penalty), sentence a defendant to a term of years within the statutory maximum under which he would become automatically eligible for parole when he had served one-third. This was a rather rigid system, and it made no allowance for differences in offenders in their response to rehabilitative programmes. In 1958, Congress of the United States enacted an omnibus law which was intended to invest the sentencing process with much more flexibility and at the same time, more consistency. The old sentencing system was made discretionary, and to it were added new discretionary elements. If the judge felt the old way of sentencing did not fit the defendant's case, he could impose any maximum within the statutory limit as before, but he could also specify that the U.S. Board of Parole would determine when the defendant would become eligible for parole—imposing, in effect, an indeterminate sentence. Or, if in the interests of giving force to society's disapproval of a given act he wanted to make sure that the defendant spent at least a certain amount of time in prison he could fix the defendant's eligibility for parole at any point up to one-third of the maximum sentence imposed.

The authors of the legislation also realised that in some cases the judge lacked enough information

upon which to base an intelligent sentence and wrote in a provision which would enable the judge to commit the defendant for a period of up to six months for observation, diagnosis, and sentencing recommendation. After receiving the recommendation the judge could impose any sentence that he thought was indicated, within the statutory maximum. Another provision of the bill authorised the Parole Board to terminate the supervision of a parolee who had proved that he could get along well in the community. Still another extended the Federal Youth Corrections Act, roughly similar to the borstal system (providing for most defendants sentenced under it a six year indeterminate term with parole mandatory not later than four years after the beginning of the sentence) and until 1958 limited to youths under the age of 22, to selected youths up to the age of 25.

It is apparent that while this new flexibility would enable the courts to tailor sentences more fittingly to the requirements of the individual cases it also would increase the potential for disparity. To offset this possibility and to make further efforts to minimise disparities the legislation authorised the Federal judges to convene periodically in institutes and seminars to discuss sentencing problems and to work out a consensus in philosophy and practice.

This new legislation has been put to good use. More than 25 per cent of the approximately 14,000 annual commitments to Federal institutions are now made under some form of indeterminate sentence, and the proportion is growing annually. The judges are also committing more than 500 difficult sentencing cases a year for diagnosis, and in nearly all instances they follow the recommendations of the Bureau of Prisons as to disposition.

The sentencing study is a highly co-ordinated responsibility in our System, and the ultimate recommendation represents the distillation of the work and views of a great many experienced people in our institutions and in our central office. After the detailed studies are made in the institutions and the data has been reviewed and evaluated in our central office, I personally participate in formulating a sentencing recommendation in each case. There are few of our responsibilities that we consider more important. In the final analysis it is the sentence that determines what can be done with an offender and it is in the sentence that we find the most realistic expression of the public interest.

Each day's mail sees a number of these recommendations forwarded to the courts. The other day one case involved a housewife who, overwhelmed by

indebtedness and emotional problems, gulped down some whiskey and tried to rob a bank; after studying her we recommended a three-year indeterminate sentence in order to give us time to stabilise her emotions and work out a release plan which would fit her economic circumstances. A second case was that of a 41-year-old man convicted of forgery who also had a history of burglary and arson with overtones of sexual aberration; we found that although competent for trial he was a chronic psychotic and recommended to the judge that he be retained in prison only until such time as we could arrange his commitment to a state mental hospital. In a third case we recommended the maximum term possible for the offence of which the defendant was convicted, mail theft. He had spent most of his life in institutions, he was seriously handicapped physically, and his other problems, emotional and social, were such that he could attempt a satisfactory adjustment only within the environment of an institution. The protection of the public requires that in some cases we quarantine an anti-social person no matter how understandable his crime may be.

The sentencing institutes have been helpful too. By this time every circuit in the Federal jurisdiction has held one or more meetings of this kind and more

are in prospect. At the meetings the judges listen to the views of representatives of various government agencies as to the sentences that should be imposed on specific types of offenders—income tax violators, bank robbers, and so on. The judges also get together in workshops to discuss actual cases and to try to reach some accord on the sentencing issues that these cases bring up. The judges vote on the kind of sentence they would impose in each case, once at the beginning of the workshop sessions and again at the end of the sessions. The differences in the initial poll are amazing, much similar to those recorded in a similar experiment at a quarterly meeting of magistrates that Sir Lionel told me about. Needless to say, there is much more agreement evident at the close of the workshop session than at the beginning.

The judges have already developed a tentative agreement on a number of sentencing issues. They agree that probation is a preferable disposition unless other factors dictate confinement. They agree that in dealing with juvenile and youth offenders rehabilitation is the primary purpose of the sentence. On the other hand, in such white collar offences as income tax evasion they agree that deterrence is the sentencing factor of almost exclusive significance. They agree that judges ought to give reasons for the sentence when

imposing it and also that judges ought to visit the penal institutions regularly so that they know what happens to offenders and what their sentences actually mean. But they have failed to agree on some issues too, as for example the question of whether an offender ought to be shown leniency for pleading guilty and thus saving the time of the court in contrast to an offender who has been found guilty after insisting on standing trial.

Sir Lionel thought that the judicial sentencing institute was a good idea and one that might well be emulated by the magistrates of England. He expressed his intention of arousing interest in the idea among them but before he could do so fate intervened. At the time of our discussion in 1960, however, he did take some comfort in the fact that severely excessive and disparate sentences could be appealed in England, under a statute that had been in existence for more than 50 years. I had to admit that in the United States there was no similar provision in most States or in the Federal jurisdiction, although a proposal of this kind has been under consideration in the Congress for several years. For the correction of excessive sentences we have to depend upon the exercise of executive clemency. In this respect, incidentally, President Kennedy has been more

active and helpful than any of the several Presidents under whom I have worked.

Perhaps the most pressing problem that Sir Lionel and I shared and about which we had the most extended and mutually sympathetic discussions was prison overcrowding. Sir Lionel told me that the English institutions on the whole held a third more prisoners than they could accommodate comfortably and that these institutions, physically, had long outlived their usefulness. I had to respond that much the same problems existed in the United States, but that the last decade had seen much improvement. More new construction has been undertaken in the various penal systems of the United States over the past ten years than during the previous fifty.

In the Federal system, after an interval of twenty years during which no new prisons were built, we have a number of institutions on the drawing boards and under construction. A new maximum custody penitentiary was opened at Marion, Illinois, this year. It is designed to be attractive even to the imprisoned, equipped with the most up-to-date facilities needed for modern treatment techniques, and laid out to facilitate the day-to-day, hour-by-hour activities of the prison program. In North Carolina we are planning a new facility for the treatment of men-

tally ill prisoners, and while this facility embraces many of the aspects of both a prison and a hospital it looks like neither. Its very design, intended to uplift the human spirit, is a part of the therapy that has been conceived for its patients. We also have a juvenile training school under design and are working on the concepts of a new youth institution and a women's reformatory.

In England too there has been an unusual amount of prison construction in recent years, much of it, I am sure, due to the persuasiveness of Sir Lionel in his attempts to solve the problem of overcrowding. I note that in 1962 alone the English system opened eight new establishments and that a number of others were under construction; the time element alone suggests that the groundwork for their construction must have been laid during Sir Lionel's tenure as Chairman of the Prison Commission. Of all the problems with which he was faced there were few that he felt more keenly than that of overcrowding.

We were in substantial accord concerning the overall requirements of prison design, particularly such basic elements as John Howard once proposed—space, privacy and sanitation. But it was on the details that we differed. I thought that it was useless to build a wall unless it was guarded by gun towers; he thought the wall

alone provided sufficient security. He preferred dining facilities in each housing unit; I preferred a central dining room for the entire institution. I felt strongly that a prison should be designed to make highly economical use of personnel. This factor wasn't as important to him, and he pointed out the ratio of personnel to prisoners was much more equal in England than in the United States where the prisoners outnumbered the personnel several times.

We resolved our points of view on this note. Our cultures were different, and solutions that might be appropriate for one country would not necessarily be appropriate for the other. For example, in the United States we feel that our police must be armed, and in England the citizens feel equally strongly that the police must remain unarmed. But both systems seem to work, reflecting the fact that the content of crime in the two countries is far from identical, and the ways of dealing with it cannot therefore be the same.

Sir Lionel worried about the problems of the released prisoner. He quoted Oscar Wilde on this point too:

"Many men on their release carry their prison about with them into the air, and hide it as a secret disgrace in their hearts, and at length, like poor poisoned things, creep into some hole and die. It is wretched that they

should have to do so, and it is wrong, terribly wrong, of society that it should force them to do so."

He was distressed at the high rates of recidivism and he sought to find some way of reducing it. He was convinced that most ex-prisoners wanted to make good and needed only a chance. England, under his leadership, was one of the first to experiment with the hostel system, beginning in 1953, and I am pleased to note that it is being steadily expanded to-day.

In America we have adapted the hostel idea, as we have adapted several other ideas that we picked up in the United Kingdom. While the English hostels are usually located on the grounds of a prison, we have opened what we call pre-release guidance centres, located in the downtown areas of several large cities. The programme has so far been confined to juveniles and youths who have completed periods of institutional treatment and are ready for parole. They live in the centres, typically a part of a large Y.M.C.A., work at jobs in commercial firms, and in off-work hours participate in counselling and planned recreational programmes. The guidance centres have been so successful in reducing parole violation rates among the most difficult group of youngsters that we are now laying plans for an expansion of the programme to include more communities and older types of offenders.

Much of Sir Lionel's distress over recidivism stemmed from his reception statistics indicating that two-thirds or more of the newly-committed offenders had been institutionalised for crime before. We have similar statistics in the Federal system in the United States, but for many years they were misquoted to suggest that it was this proportion of prisoners released from Federal institutions who got into trouble again. A five-year study of released Federal prisoners, recently completed by the University of Illinois under a Ford Foundation grant, disclosed that, as Sir Lionel guessed, about 90 per cent of all ex-prisoners earnestly desire to make good and make at least one sincere try to obtain honest employment. Unfortunately, too many of them are unsuccessful because of the hostility of employers, discriminatory laws, and union rules. But the same study showed, more encouragingly, that two-thirds of the ex-prisoners persevered in their effort and managed to avoid further trouble with the law.

Recidivism could be greatly reduced, Sir Lionel argued, if society was more receptive to the ex-prisoner. Sir Lionel put himself in the place of the ex-prisoner and he sensed keenly the barriers and the rebuffs to his reassimilation in the community. He confided to me once that although the after-

care societies were doing a commendable job in minimising the problem, it would not be completely resolved until society had progressed through several more civilising generations. After all, he told me, it was only 150 years since England was confronted with the misery, degradation and corruption of the bridewells, the hulks and the transportation system. Today these evils would be unthinkable and yet only a few generations ago it was a rare individual who concerned himself about their existence. Like John Howard, for example.

Sir Lionel Fox belongs to the same tradition as John Howard, with whom he will stand in the pages of history along with such giants as Captain Machonochie and Alexander Paterson. The name of each of them was the very synonym for enlightened penology in their day, just as Sir Lionel Fox's name is today. In any nation, and in any generation, the men who can match their stature are too few. And when they have gone it seems, at least for a time, that no one can ever take their places.

Fortunately for Sir Lionel's successors, he built with an eye toward the future. He could not himself leap into tomorrow, but he certainly accelerated the pace of the rest of us in our journey toward it.