

The Place of Prison in a Modern Penal System

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I HAVE BEEN invited to read this paper* on the place of prison in a modern penal system. What follows are my thoughts on this subject, and while they are based on many years of work in penal institutions they do not necessarily represent the views of the Home Office.

I shall resist the temptation to ignore the complexities of this question by assuming some ideal society where all negative attitudes to the offender have been removed if only because if one can make this assumption it would be as easy to assume the possibility of an ideal society in which crime ceased to exist, or the availability of unlimited money and an abundance of devoted people with the skills to deal with obdurate problems with the assurance of success. I am aware that to deal with the reality of the problem will be to appear unimaginative. I shall concern myself with an

analysis of the situation and that which is possible.

A prison, quite shortly, is a place where people are kept in captivity and to which they are committed by due process of law. The process serves a number of functions; it ensures the appearance of offenders for trial, protects the interests of the prosecution and less obviously in some cases the accused; it is an expression of society's indignation at an act which is inimical to its interests or an affront to its code of morals, and as such is a reinforcement of society's values. In that it punishes it is an act of revenge; if it deters the offender from a repetition of his criminal behaviour and others from similar acts this is a social gain; if for the period of his imprisonment it prevents a persistent offender from committing crime it may appear justified; if it reinforces anti-social attitudes it is seen to be harmful; if it were to reform we

*At the British Congress on Crime, September 1966.

might argue for an extension of its use.

The aims then are in conflict. The conflict originates in society at large; the confusion which this produces bears hardly on those whose task it is to administer prisons.

The emotional need to punish expresses a rejection of the act of the offender; the need to forgive an acknowledgement of common frailty; they are not equally balanced and some offences produce outright and continuing condemnation and others general compassion. However, the two elements produce a condition of guilt which is projected on to those who carry out the penalties imposed by the courts. This was seen most clearly in society's attitude to the public hangman and the duty formerly imposed on the prison service in conducting executions. It exists noticeably in the confused attitude towards those offenders recently sentenced to terms of 30 years' imprisonment, and is an element in the consideration of all penalties. This equivocal attitude implies an inability to define the task of the prison and attracts to its performance contradictory criticisms which inhibit the development of those aims which the prison service is in process of developing within itself.

There have been attempts to simplify the task. The introduction

of special forms of custodial treatment for young offenders, the use of probation, the imposition of fines, the recognition of conditions of reduced responsibility leading to alternative forms of treatment, have kept offenders out of prison but have underlined the use of imprisonment as the ultimate sanction available to the courts.

The resolution of the conflicts which divide any community in regard to the commission of an offence has been made more difficult in the increasing urbanisation of society and the atomisation of groups and individuals within it. The offender may, for his immediate family and friends, represent one whose virtues outweigh his shortcomings, but to society at large, he is categorised by his offence. The failure of individuals and of groups to identify with the community, facilitates the commission of offences, enables offenders to reject the judgment of the courts and leads to an exacerbation of the conflict which exists between those who are responsible for the execution of the judgement and the offender. The larger question as to how we are to deal with the prevention of crime by the inculcation of more acceptable social attitudes is beyond the scope of this paper, but if, as is often the case, committal to prison is an act of despair in a failure to deal with this larger problem, it would be unrealistic to

expect of prisons any simple success.

The task is difficult and enormously varied. Those who come to prison range from those who are an embarrassment to society and for whom there is no obvious alternative disposal, to those whose activities constitute a war on society and whose callous and purposeful acts provide little indication that the process of penance followed by amendment of conduct can be expected. Whilst numbers of those who come to prison are young healthy adults whose offences are casual and determined largely by occasion and not by any pre-determination of the crime and respond to an unpleasant experience by avoiding further committals to prison, there are amongst them those who exhibit the whole range of physical and mental disabilities, and although those who can be dealt with under the Mental Health Act are removed to mental hospitals the disposal of the psychopathic offender is made difficult by the liberal treatment which now characterises mental hospitals so that they have difficulty both in ensuring safe custody and the protection of staff and other inmates from the excesses of behaviour of this type of offender.

Whilst diagnosis of the offender in psychiatric and social terms has reached some point of sophistication, treatment poses considerable difficulties. It is known that

offenders who are able to recognise and accept the need to change can be helped, but many are unable or unwilling to recognise this and it is often clear that the pathological adjustment of the offender to the totality of his defects and situation present such a delicate balance that any assault on the condition is not to be attempted without regard to the possibility of contriving a worse result. There are those who belong to sub-cultural groups whose ethos is not that of the larger community and who are sustained in the commission of offences and in enduring the penalty by the acceptance of the group and its continuing approval. Even in those cases where treatment is desired and possible, there is no matching of the period spent in custody with the needs of treatment, so that the sentence may be too short to enable treatment to be carried out or so long as to destroy its good effects.

Finally, this confusion is dealt with for the greater part in buildings which were designed for a system which served a much simpler society in the performance of a much simpler task and which have outlived their useful life.

The positive elements in imprisonment—the enforced recognition on the part of the offender that he has offended and the encouragement that should normally follow—that by an act of expiation he may regain an accepted place in society—are vitiated by the

collective attitudes of society towards the convicted criminal and the adverse factors that are to be found in imprisonment itself. These are the antagonisms that exist between inmates and staff in the efforts of the former to resist the depersonalising effects of imprisonment and the solidarity of the inmate culture in preserving their identity, and the contradiction that the defective socialisation which has produced the delinquent is confirmed by his isolation. Where criminal acculturation is not a pronounced factor and these antagonisms are absent and are replaced by dependence, the offender is robbed of initiative, and the consequent institutionalisation unfits him for life in a free community.

The efforts to maximise the positive elements in this situation and to minimise those that are harmful are to be seen in the improvement in prison conditions, the establishment of educational and recreational activities in all prisons, the engagement of the prison staff in methods of treatment, the retention as far as possible of prisoners in prisons near to their homes, the determined attempts to provide better work and the preparation for discharge in the introduction of pre-release hostels and working-out schemes.

Perhaps the greatest barrier to the effective application of treatment is the finite nature of the

sentence. Since discharge is predictable, unless delayed by some overt act of indiscipline, the prisoner is enabled to avoid full participation in those provisions intended to aid his reformation and indeed is often sustained in his opposition to such processes by the collective attitude of the prison population. Whilst an element of indeterminacy may produce in prisoners a compulsion to offer a superficial acceptance of treatment programmes which may be seen as an argument against such a principle, it can be argued that the growing awareness in prison staff of the institutional situation and an increasing understanding of the complications of their task would enable it to be used positively.

The inadequacy of after-care in that no sufficient means exist, as yet compulsorily, to sustain most prisoners through the difficulties of the post-release period is matched by the lack of adequate physical provision for those who, left to their own inadequate resources, are likely to fail.

Finally, the prisons are grossly overcrowded. The result of this has been to aggravate prison problems and to reduce for lack of space and staff, the effectiveness of what has been attempted, and to attract attention more to the state of the prisons than to the factors in society which have produced the increase. And since there is an awareness that those

qualified under the law for admission to prison vastly exceed those for whom, for a variety of reasons, it is thought justifiable, it may be necessary to restrict even further those who are committed to its care

I have set down, necessarily in simple form, what must seem a depressing catalogue of the difficulties because no one who works in prison can be effective without conscious recognition of them, and those who are concerned with the place of prison in a modern penal system will need to consider the whole situation. Too often consideration of the question proceeds on the assumption that society is devoted quite simply to the treatment of the offender, and that if only we were able to devise effective treatments for what is only rarely a specific condition, we might abolish imprisonment and institute treatment centres and with reluctance concede that treatment would have to contain some element of compulsion and often have to be custodial to ensure its effectiveness and the protection of the public.

It will be sufficient to quote the Lord Chief Justice as reported in the *Manchester Guardian* on 18th June, 1966. Referring to an outcry in the national Press when a savage assault on the police resulted in the offenders being fined, he said: "With assaults on the police it has been said over and over again that magistrates

must depart from their old ways and say 'this has to stop'. Some form of detention whether it be a detention centre, borstal or imprisonment, must be meted out in all cases, regardless of whether they have a good character or not".

Let us turn to what may be done.

It has often been said that many offenders are sent to prison unnecessarily. In the sense that this has not demonstrably done them any good, that where they have not returned this has been in spite of their prison experience and not because of it, and where they have returned the system may be regarded as having failed, that other methods of treatment would have done as well are observations that might well puzzle the court in dealing with the individual offender in whose case it is not at all clear which particular remark would apply. The proportion of offenders who appear before the magistrates' courts and who are committed to prison is small, and I suspect the feeling of magistrates is that they exercise considerable leniency. A simple exhortation to reduce the number of offenders sent to prison in the absence of the provision of acceptable alternatives is hardly likely to produce any significant result. Where the inappropriateness of committal to prison is disclosed on examination after sentence, this points clearly to the need to make available to

the courts some adequate diagnostic function and the evaluation of forms of treatment. Neither is generally available. The usual course is to use forms of treatment in progressive severity as each one fails and, indeed, in the absence of any clear indication as to the appropriate treatment this is clearly the most humane approach. But we have seen that even this approach is conditioned by overriding considerations of the need to satisfy public opinion both with regard to punishment and the need to deter.

The restriction in the number of people committed to prison would be possible by the provision of alternatives which would both express society's condemnation of the offence and lead to amendment in the offender. The use of fines as penalties might be more flexible in their application in that the ability of offenders to pay varies with their circumstances. However, where an offence has been committed partly or wholly because the offender has insufficient to support his needs, the imposition of a fine will serve to increase his difficulties, and since such a situation will tend to enlist sympathy rather than to incur condemnation, the action of the court may be to provide assistance rather than to impose penalties. This, however, assumes that full information as to the nature of the difficulty is available to the court. Where an offender is so well

provided for that the imposition of a fine is regarded as little more than an inconvenience, we are reduced to the dilemma of providing a sufficient sanction, and here, as perhaps in other cases, the suspended sentence may prove effective.

There is nothing reformatory as such in the provisions of deterrents of this nature, and it may be fairly observed that not all offenders are in need of reformation. There are many in need of treatment, if by that term one refers to a whole catalogue of ill-defined physical and mental defects which are both a product of poor socialisation and a contributory cause of it, and there are some who are a clear charge on the mental health services but who, with the establishment of the open-door principle in mental hospitals, can no longer be detained. It is true that the short sentences of imprisonment in such cases are not useful since they contribute to the crowding in prisons that makes the individualisation of treatment impossible and the lack of after-care and supportive services confirms their condition.

The most helpful general observation is that by and large the magistrates' courts deal with less serious offences and the less determined offender. There is every reason why, in the interests of institutional treatment where this is considered necessary, these petty

offenders should be separated from the more serious offenders, both in the eyes of society for whom imprisonment is a general term about which it is ambivalent and unable to make valid distinctions, and because this inability imposes on a great many petty offenders the rigours of close custody in traditional security prisons. The separation of this problem, which is characterised by offenders who constitute no great danger to society, and who, in that their terms are short, will shortly be restored to freedom, would enable them to be housed in conditions of reduced security and enable them to profit from increased social experience and place them in an institution from which the pronounced ill-effects of the prison sub-culture would be removed. Since if they are not received into the ordinary prisons, where they constitute nearly three-quarters of the committals and a third of the standing population, the task of the prisons would be considerably simplified. Further, it would be possible to isolate groups of offenders who are now committed to prison in the absence of suitable alternatives. Those whose chronic inability to deal adequately with the complexities of modern life would be more humanely and not more expensively dealt with by institutional care which, by its acceptability, would not need the compulsory element of imprisonment or a court order. For those

offenders who have surrendered to bail and pleaded guilty, and in whose cases the courts nevertheless find a period of custody the appropriate sentence, there is much to be said for a stay of execution, first because this would reduce to a large extent the painful embarrassments which attend the forceful removal to prison and the mess of disrupted relationships and obligations which this entails, and secondly because this would remove from an overburdened welfare service the execution of simple tasks which at present fall to them.

We are left with problems in the difficult area of reduced culpability and the need for treatment. Whilst it is easy in the extremity of cases to find the existence of reduced responsibility there are many cases where only too obviously the selfish disregard for others merits the discouragement of penalties. In the absence of accurate diagnosis and the devising of appropriate treatments the advice to the courts will be too general to be of particular use.

In the absence of a complete diagnostic service to the courts it is incumbent upon prisons to establish their own diagnostic procedures, certain that this will be by far the smaller part of the problem, and by the particularisation of treatment evaluation procedures.

With the establishment of particular treatments in prison or, in

the case of short sentences, the appropriate institution, adequate supportive services will be needed on discharge and, for social derelicts, an attitude of acceptance which precludes punishment and expresses an intention to relieve suffering.

For the more serious offender for whom imprisonment may still be the appropriate treatment a measure of indeterminacy in the duration of the penalty, offering the inducements to co-operation in those who are trainable, and the prolonged detention of those who are an active danger to society, would do much to raise the response of prisoners to training programmes, although it must be admitted that the necessary skills to make a fully meaningful assessment are yet to be produced.

The holding of prisoners on remand or for trial is a function not to be confused with the imposition of penalties, yet the general conditions under which they are held, the increase in the work of the courts, the subordination of the organisation of the remand prison to the convenience of those courts, produce an effect far from the intention. Here the solution must be the removal from the local prison situation of the bulk of convicted prisoners into establishments offering a variety of treatments, since without this necessary simplification of task, progress will be impossible. It need hardly be said

that an improvement in the physical conditions under which trial and remand prisoners are housed is urgently necessary.

May I sum up. The conflicts which a developing society finds within itself are mirrored in its laws and institutions. The growth of understanding of the difficulties which face individuals in adjusting to the increasing complexities of modern urban life have led to a more sympathetic approach to the offender; at the same time the decay of the formerly strong supportive influences in society have led to an increase in crime. This has heightened the essential ambivalence which society reveals in its attitude to the offender. We are required to treat and punish, and whilst these are not invariably incompatible, the combination presents great problems. Where a need for treatment can be clearly established and the means exist, such as in mental conditions likely to respond to clinical treatment, the course is clearly indicated, but for the greater part we follow a course of awarding penalties of increasing severity as each fails, only interrupting the process when its inappropriateness becomes obvious. The ultimate sanction for those who have been dealt with in society and those who have experienced custodial treatments which are an alternative to prison, is prison itself. There is every reason why the use of the ultimate sanction should be delayed, but considerations other

than the treatment of the offender will often dictate otherwise; the seriousness of the offence, exemplary punishments in the interests of deterring others, and the need to protect the public are considerations which cannot be ignored. Prisons will, therefore, continue to exist. At present their purpose is confused, both by the society's conflicting demands upon them and by the numbers which overcrowd our out-of-date buildings. It is necessary to simplify the situation. The prisoner's ability to avoid meaningful participation in

training programmes is both a reflection of the prison sub-culture, and a result of the system which secures his automatic discharge by efflux of time, and if training and treatment are to have their full effect it will be necessary to alter this by introducing an element of indeterminacy, establishing adequate diagnostic services, and particularising and validating forms of treatment: and since treatment in a restricted environment cannot be completed will be necessary to provide supportive services on discharge.

WELFARE OFFICERS AND THE STAFF

To the Editor, P.S.J.

Sir,

In the January edition of the Journal, the letter published from A. J. Marshall mentioned that there was "no link up between themselves (Welfare Officers) and the staff around them".

Surely this is a matter for local management. At my establishment we have co-opted the work of the Welfare Officer into our in-service training programme. Officers will spend, over a three-month period, a set number of hours each month with the Welfare Officer, to observe, comment and understand the role expected of the Welfare

Officer. We find that this two-way flow of information is working well and a much better relationship is already developing.

In return the Welfare Officer will spend time with the discipline staff on the same exchange basis; this in turn sets up a team.

It would appear that such an arrangement can be modified to suit most establishments and would therefore alleviate some of the disappointments expressed in A. J. Marshall's letter.

Yours etc.,

M. J. TERRY,

H.M.P. FORD