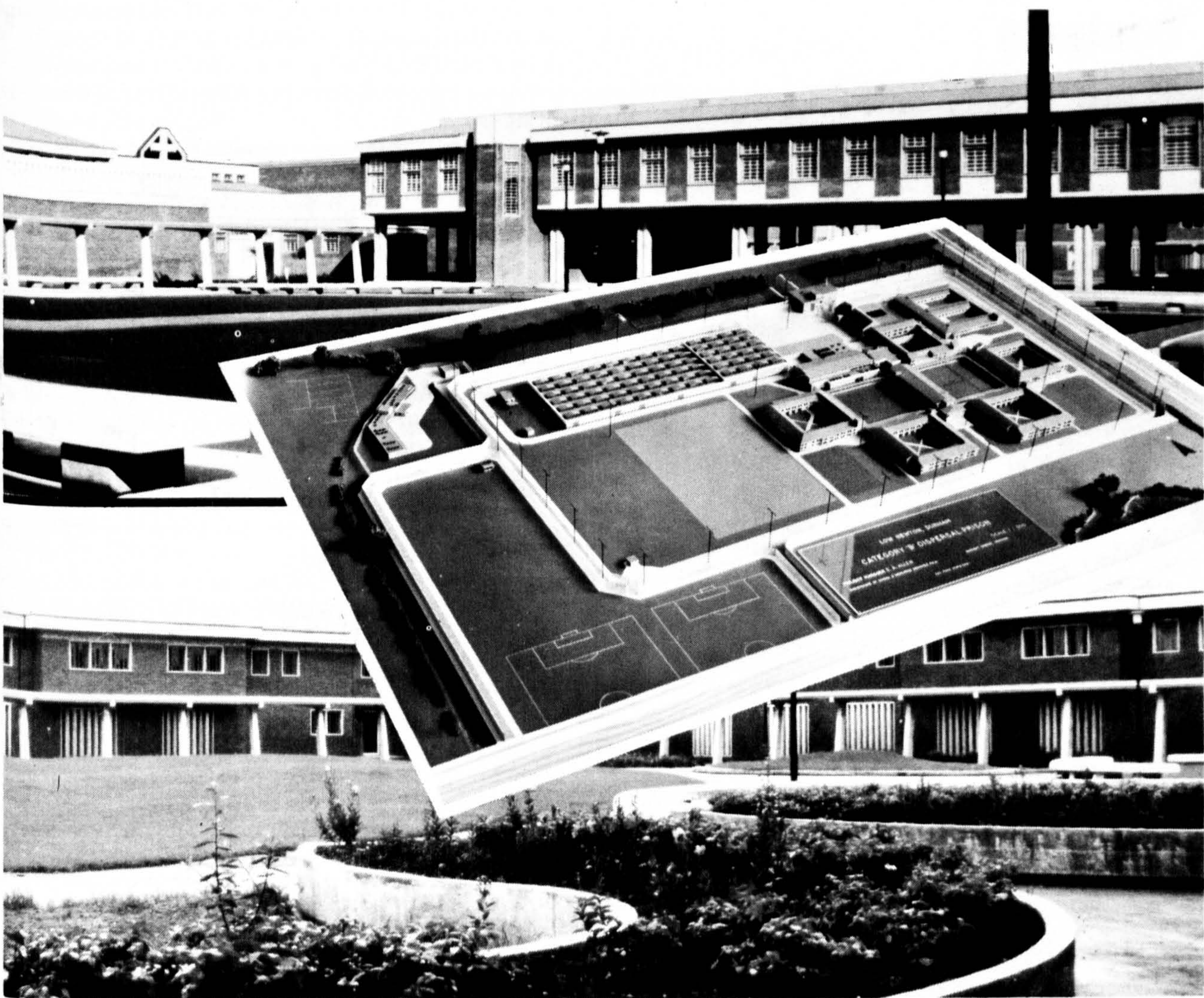


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**RIGHTS**

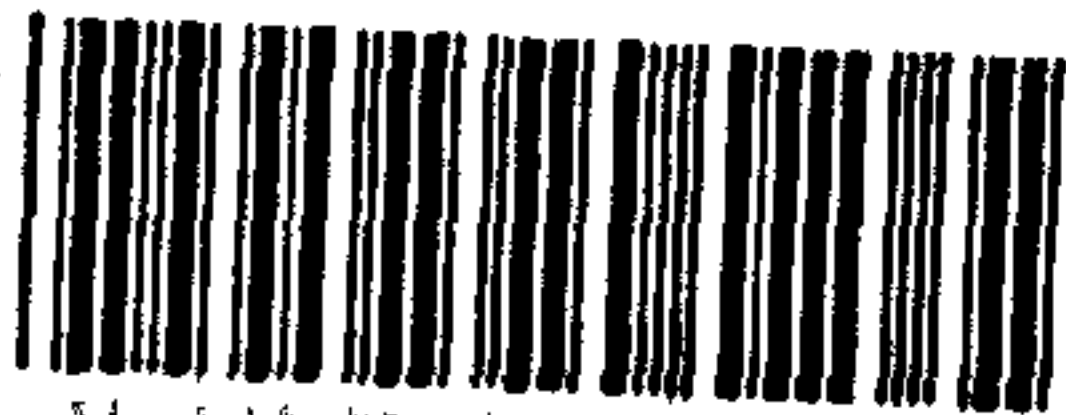
# PRISON SERVICE

# JOURNAL



FRANKLAND PRISON





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*The editorial board wishes to make it clear that the views expressed by contributors are their own and do not reflect the official views or policies of the Prison Department.*

## Comment

As I put together this issue on 'rights' I came to realise what a minefield it is for the contributors. 'Rights' have many connotations in the prison service but almost all of them raise anxieties and resentment (either for too few or too many). But as consideration is given to the wider issue of the human rights enjoyed by members of society so the same spotlight must turn on our closed institutions. We should not be apprehensive about this; in the end the better we can provide for the rights of staff and prisoners and build in the necessary safeguards to uphold them the more we shall be able to deal with the conflict and friction Arthur de Frisching describes. For me one of the revealing notions of this theme issue is the way in which Colin Steel demonstrates the interwoven nature of the rights of staff and prisoners.

It seems that we must consider 'rights' at two levels—the physical and the participative. At the physical level the Council of Europe Standard Minimum Rules while providing a base line are too widely drawn to effect the kind of improvements required in our hard-pressed and grossly overcrowded local prisons. Imagine the improvement in basic rights for staff and prisoners if there were legislation stipulating single occupancy of cells and setting a minimum cubic capacity for a cell. In the same way we need to remember that the physical conditions of the prison pertain for the staff as well as the prisoners.

At the participative level we have been slow to allow prisoners more normal access to outside society through visits and letters; like many closed societies we have perhaps feared that this would lead to unreasonable and impossible demands on us whereas the truth may be that improved communication will actually lessen some of the demands on us while allowing prisoners the benefits and disbenefits of having the means to negotiate their own affairs. To return to conflict and tension it may be that establishing basic rights for all in institutions and making them aware of them and the process through which they can legitimately be exercised will not prove to be the danger that we may have believed but will instead lead to a reduction in tension as people regain some control over their lives.



# Conflict in Prisons

Arthur de Frisching

*An edited version of an address  
given to the Howard League Summer School, 1981*

I have been asked to speak about how prison governors can help to resolve conflict in prisons. When Martin Wright wrote to me to explain how my contribution might fit into the conference as a whole he said: "The idea of the summer school is that there is inevitably a lot of friction in prisons, and it is important that methods and management styles and traditional attitudes do not exacerbate it. So I should like you to look at possible points of friction, ranging from the way prisoners are spoken to, to the practice of summoning the "heavy mob" to see whether some of these could be eliminated. Secondly, when nevertheless incidents do occur could some of them be resolved by discussion or some other means rather than by disciplinary action.

## Conflict and Friction

I would like to begin by making two obvious but necessary points to serve as a base line as it were, for what I shall be going on to propose. The first is, as Martin Wright acknowledged in his letter, that some conflict and friction is inevitable in prisons. On the one hand prisoners do not like being in prison. But the majority adjust remarkably well and serve as a striking example of human adaptability—a point worth remembering and emphasising from time to time. They get on with their bird—as the jargon has it. It is the minority who cannot or will not. Some cannot cope with the system and its pressures: they become depressed, withdrawn, perhaps even suicidal. They

may end up on Rule 43 or in the prison hospital. For them the conflict leads to retreat. Others fight the system. They may do this overtly and directly: by refusing to obey staff, by going on hunger strike, by organising rackets, or by trying to escape. Or they may do it indirectly but not necessarily less

threateningly, by an endless stream of applications, letters and complaints and litigation of various sorts.<sup>1</sup> Each group in its own way wears down and sorely tries the patience and the tolerance of staff and tests their resilience and that of the system at times to breaking point.



Educated Corpus Christi College, Cambridge and LSE. Joined Prison Service 1965. Served as Assistant Governor at Wormwood Scrubs, Pentonville and Prison Department Headquarters. Deputy Governor Gartree 1976/78, Governor Reading 1978/81. Governor Winchester since May 1981. Member of Governors' Branch Committee since 1978. Vice-Chairman 1981.



### Security and Control

On the other hand, staff have as their primary task the maintenance of security and control. Lest there should be any doubt about that remember Blake, remember Hughes, remember Brixton. To do this necessarily involves them in carrying out certain unpleasant tasks which are immediately fertile ground for conflict: prisoners have to be required to change their cell periodically; cells and prisoners have to be searched, sometimes at stressful moments, for example at the end of a visit; hobbies which have been painstakingly and delicately made have to be inspected before despatch. The question is, of course, not so much what is done as how it is done.

Secondly, staff have to ensure that they remain in control. They have to see that the prison is as far as possible a safe, orderly and reasonably civilized place where people (staff and prisoners) are not in danger of one another or at the mercy of exploitation and intimidation. That involves being constantly on the alert. It means observation and the gathering of intelligence. It means policing the institution—but sensitive, careful community policing. It also means saying no to prisoners—and that is not always an enviable or easy thing to do. If staff feel that they have lost, or are in danger of losing control, they will do one of two things. They will either abdicate<sup>2</sup> or they will take the law into their own hands. Neither, of course adequately safeguards the position of prisoners. At the end of the day prison is an authority system. It is not a democratic society. Staff and inmates are not on an equal footing. Prisoners have to do what staff tell them, if even on occasions it seems unreasonable or unnecessary from their point of view. (You cannot always have a long discussion about whether a prisoner is going to go into his cell.) And so there is a permanent, underlying conflict. The management task is how to reduce and resolve conflict without jeopardizing society or losing control. It is that delicate balancing act which is what trying to be a good prison governor is all about.

So, I want to touch on a few ways in which conflict can be reduced and tension eased. I shall concentrate mostly on internal question, largely of management method and style rather than on issues of access to the outside world (access to outside bodies, the right to vote, censorship, etc.)—not because I believe them to be unimportant but because I have got to be pretty selective.

I believe very strongly that the best and in the end the only way of reducing conflict and promoting greater respect is by restoring and developing the position of the prison officer on the landing. It involves giving him authority and confidence—authority to act on his own account and confidence to know that he will be supported providing that he is acting professionally and within the limits of his discretion. We have to tackle first and foremost the alienation of prison officers. That is a large enough subject in itself. Suffice it to say here that it means speaking and acting in the same way—not paying lip service to the notion that the landing officer is the focal point of the institution and then making it clear by the organisation of shift systems, by the system of pay and allowances, by the introduction of more and more specialists, that he is not.

### Management Structure

So what does it mean in practice and on the ground? It means drawing up a management structure which delegates as many decisions to prison officers as is possible—but with proper supervision, control and support, so that prison officers do not merely dish out and collect razor blades, sit in a workshop for a complete shift, fetch and carry prisoners for others to see and wait for the next meal break. Prison officers can read Standing Orders and Circular Instructions as well as governors, so they can do the majority of applications and call ups, giving prisoners good news as well as bad. But more than that they need to have discretion to interpret policy and make decisions which affect prisoners' lives: whether to advance a visit, whether to allow certain privileges, and that can be controversial, for the implications are considerable.

Of course I would be the first to acknowledge that there is nothing very new in this and that it goes on already and has done for many years informally: a wing officer decides whether a period of association can be extended to allow the end of a T.V. programme to be seen; a reception officer decides whether to allow in a particular piece of clothing; an instructor arranges a change of job. But the key word is "informally". My point is that this needs to be structured and built in so that there is proper authority to act and that there is a prescribed framework, so that both staff and prisoners know where they stand.

For that brings me to my second point: that if conflict is to be avoided

people need to know where they stand. Decisions must not be seen as capricious or arbitrary. The regime needs to be stable and predictable. This is quite different from its being rigid and inflexible. The need is for a set framework within which there is room for manoeuvre. For the governor, this means making it clear who has discretion to do what and where one person's discretion ends and another's begins. It means training and supporting staff in the exercise of that discretion, even if, inevitably on occasions, they are wrong. Secondly, it involves creating for prisoners, channels of appeal so that there are safeguards against an arbitrary or blatantly incorrect use of that discretion.

### Boundaries

Let me bring this down to earth by looking at the question of Applications. It seems to me that the role of the governor is not, generally speaking, to hear prisoners' Applications himself. It is rather to set down the boundaries of discretion for each level of staff (officers, Principal Officers, Assistant Governors) and to act as the final point of decision and appeal. But the Prison Rule about Application (Rule 8) allows every prisoner, as of right, unfettered access to the governor. Although this is superficially attractive as a safeguard, I would argue that it is actually counterproductive in its present form. For it enables a prisoner if he wishes to undermine the position of junior staff by insisting on seeing the governor as his first step, daily if need be and refusing to give reasons. ("Just put me down for the No. 1".) The governor is then faced with seeing powerful prisoners for trivial or inappropriate reasons, and having almost an inner circle of prisoners that he personally deals with. (I have seen this at work in dispersal prisons.) Conversely, he may not see prisoners who have a genuine grievance or legitimate point to raise. Incidentally, there is no equivalent right for staff. Although no governor would refuse to see an officer who asked to see him it is perhaps not without significance that there is no formal requirement on the governor to do so, as there is with prisoners. So, my proposal is—and this may seem a paradox—that Rule 8 would provide and make a better contribution to the well-being of prisoners and staff and act as a better safeguard if it was more tightly drawn. It should certainly provide access for prisoners to the governor, but on a more restricted basis, and it should



require the setting up of proper machinery for dealing with requests.

On the question of discretion let me turn now to disciplinary proceedings. I read into Martin Wright's briefing note the inference that the normal or usual method for dealing with incidents was the institution of disciplinary proceedings. It may be worth emphasizing that a great many incidents are dealt with informally or indeed just soaked up. Staff may put up with a great deal of venom and abuse without taking any action at all. In the four years I spent at Gartree I never ceased to be amazed at the way in which staff put up with hostility, aggression, and abuse day after day—sometimes when perhaps they should not have tolerated it. So often there is no action if the officer understands why the incident occurred and considers it over and done with. Alternatively, he may discuss it with the Principal Officer or Assistant Governor and the prisoner may be seen by them. If the question of disciplinary action is being considered the officer is expected to consult a Principal or Chief Officer. He can then be advised about whether or not a charge should go ahead and if so, what the charge should be. It can only be advice, for the decision is the officer's<sup>1</sup>; but it is usually followed and again it provides a safeguard.

Some of the most caring and compassionate work I have seen has been in punishment blocks. The care and sensitivity, the immense amount of time and trouble taken with the most difficult and disturbed prisoners is something that deserves mention and recognition. There is more time, the units are usually small with a fairly high staff ratio, and the officers selected with some care. But again there is a sort of paradox; the punishment block may actually be a place for reducing tension and resolving conflict rather than the seething cauldron it is sometimes depicted as being all the time. At times, of course it can be; but there is the other side as well, and it has to be pointed out.

So there is considerable discretion in the exercise of control. Dialogue is the normal starting point and it is only when that breaks down that formal machinery comes into play. The cut-in point depends on many things; the type of prison, the routine of the regime, tradition, history, culture. It will also depend on the particular circumstances at the time: the climate in the prison, the inter-action between the officer and prisoner involved and so on, even the time of day.

But here is the rub; the greater the pressure for formal rights and safeguards, the stronger the pressure for uniformity and standardisation, the more difficult it becomes to allow let alone develop and encourage discretion. For if you give discretion down the line—even with control and supervision—there will be some variation. I would argue that elasticity is desirable and necessary. But the climate of opinion is in the other direction. The current emphasis on consistency, fairness—at which in principle I go along with—pushes us towards a highly codified system in which there is less and less room for manoeuvre. Of course, it is a question of degree. It is not an "either or" situation. But you do have to decide where the balance of advantage lies. Too rigorous a system can actually increase tension and lead to a taking up of entrenched positions.

### Investigations

Let me touch on a couple of other points briefly. First investigations of incidents and complaints. To do this thoroughly and conscientiously is extremely time-consuming and expensive in resources. Governors do not have enough of either to devote to anything beyond a very small investigation; so I favour the idea of regional investigation teams drawn together if need be as the occasion demands, with a nucleus of regional staff augmented by staff from other establishments as required. In this way the team would have the necessary close working knowledge of the prison system to enable them to get to grips with the issue but just that detachment from the local scene which is essential. I would like to see the Board of Visitors having the right to sit in.

Secondly, I believe there is still room for a tighter system of management control and inspection. Good progress has been made; an Inspectorate outside prison department; and regional directors are required to carry out what are known as operational assessments. But there is still a reluctance really to inspect as distinct from monitoring what goes on, not least because it is very expensive and demanding on time and resources. This applies to governors within their establishments as well. And what about Boards of Visitors? I venture to suggest that in general they are too gentle on governors. They can and should be more searching in their approach. The problem is not, as I see it, their lack of powers, as is sometimes argued. They have very extensive powers. The

question is whether they use them. How often do Boards visit at night, in the evening, at week-ends? How often do they see a prisoner before authorising his segregation under Rule 43? Do they themselves give a prisoner the answer to his application? I would like to see more emphasis on a structured programme of visits to replace the very loose pattern of rota of visits. This would, incidentally, go a long way to demonstrating the greater interest in staff which the May Report<sup>3</sup> advocated. When was the boiler house last visited or the records office or the discharge clothing store?

### Information

Lastly, a very brief word on information to prisoners. As mentioned above, one of the most important ways of reducing conflict—if not *the* most important—is to try to ensure that people know where they stand. And this means good communications and the provision of information. It has to be said that the quality of information we provide for prisoners (and for that matter to staff) falls short of what is really acceptable. The standard cell cards are, perhaps inevitably, couched in general and rather legalistic terms. Some prisons provide local information booklets; others run induction courses. But the hard-pressed local prisons, where the need is greater, on the whole, do little. And yet it is here that prisoners are first received, where there is the greatest uncertainty, where a lot of things are happening to prisoners and where they are locked up for long periods. The minimum requirement is for a document setting out the daily routine, the system of applications, authorised privileges and avenues of appeal (to Board of Visitors and Home Office). Prison libraries stock an increasing number of official publications (including the procedures for adjudications); staff libraries, where they exist, are less well equipped. But it all requires resources.

At a more informal level, we need constantly to explain to staff and prisoners what we are about and why. Much has been made of the secretiveness of the prison system to the outside world. There is a sense in which there is an internal secretiveness—not deliberately, but as a sin of omission, a hangover from a more traditional, authoritarian style where people were expected to obey orders unquestioningly. I never cease to be amazed at how accommodating even the more difficult of prisoners are over restrictions or sudden changes in routine if you take



the trouble to explain the reasons. But—done in a structured way through staff. Staff must be adequately briefed so that they in turn can inform prisoners. You may recall that part of the reason we found ourselves in such difficulty in 1972 was that, by and large, we had no adequate machinery for communications and consultation with staff, let alone with prisoners. And so governors found themselves in a crisis bypassing staff and communicating directly with prisoners (either individually, collectively or with representatives). It was hardly surprising that staff frustration boiled over in the following year.

So—to try to sum up—what have I, albeit very sketchily, been trying to argue? In effect, that we need a more refined and finely tuned system of safeguards for prisoners which does not give them immediate and unrestricted access to the various levels of management but which encourages and requires them to deal with prison officer staff in the first instance. We need a structure which restores the position of the prison officer and gives him discretion and authority to act and make decisions. But to balance that: (1) prisoners need to be provided

with adequate information which tells him what the structure is and how he can take matters forward. (2) the governor and Board of Visitors should stand back at one or two removes from the prisoners and act mainly as a point of referral or appeal. (3) there should be a closer system of management control and inspection by Boards of Visitors, Regional Directors and the Inspectorate—and by governors within their establishments. The purpose of all this being to ensure that there is a consistent framework—but not uniformity—across the system, that arbitrariness is excluded, and above all that everyone (prisoners and staff alike) know where they stand, what is expected of them and how to make requests or seek redress. In that way, conflict will not be avoided—it will always be there to a greater or lesser extent—but it should be kept within tolerable and manageable proportions by a system of checks and balances, which aims to find some kind of equilibrium between the needs of prisoners, the needs of staff, and the needs of the system.

To try to draw this together I don't think I can do better than quote Peter Evans in his book 'Prison Crisis'<sup>4</sup>.

In his preface he says "I have become convinced that reform in prisons can, in the end, come only through the prison officer..." And a few pages on in his first chapter he comments: "The academic world and the thinking people who have formed an honourable tradition of concern about prisons have provided a formidable lobby for new approaches to custody. But in so glittering a display of the intelligentsia, the virtues of the prison officer do not seem to shine very brightly. The mistake was not to give ordinary commonsense and fair-mindedness greater recognition as a basis for dealing with prisoners. No theory can survive if it is not practical, or if staff do not see it as right and proper policy".

That is not a bad note, perhaps, on which to end. ■

#### FOOTNOTES:

<sup>1</sup>Report of an Inquiry by the Chief Inspector of the Prison Service into the events at HMP Hull, 31st August-3rd September, 1976 HMSO 1977, paragraphs 253-255.

<sup>2</sup>ibid, paragraph 256.

<sup>3</sup>Report of the Committee of Inquiry into the United Kingdom Prison Services, Cmnd 7673. HMSO 1979.

<sup>4</sup>publisher George Allen and Unwin, 1980.

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# EXPLORING RIGHTS

## *A Consideration of Moral Issues Relating to Rights in Prison*

Alan R Duce

*Chaplain, HM Prison, Greetwell Road, Lincoln*

**Demands for "rights" are a preoccupying feature of life in any prison. Claims are made by prisoners, by staff, and by sections of the general public. The entangled interests provoking these demands are sharpened by society's response to the handling of convicted individuals—a response based on compulsory deprivation of liberty in designedly punitive conditions where human emotions can be strained to the uttermost. Consequently the criminal justice system is a field prolific with value-laden questions of considerable complexity in relation to rights. However, the enthusiasm generated by the pursuit of rights could give impetus to fresh professional idealism among staff in the Prison Service.**

**In clarifying issues raised in this ethical discussion about rights an attempt will be made to present definitions. Attention will be drawn to features of institutional life that create demands for rights. Arguments will be presented on behalf of groups that have interests in rights. The notion of rights will then be viewed in relation to a desert and a need. In conclusion emphasis will be placed on a way forward for the Prison Service in building on the current interest in rights.**

### **Definition of Rights**

There are considerable difficulties about the concept of a "right". The word is used very frequently and used in circumstances where another word like "need", "demand", or "expectation" might have a much more precise application. Its obvious importance in the Prison Service lies in a legal context where it denotes an entitlement conferred by rules. Yet in Greek philosophy and Roman law "a right" seems to have been identified with what was right and just. In this more covert sense it is of fundamental importance today in relation to the spirit behind corporate ideals of the Prison Service. If the current preoccupation with rights is to be constructively used as a cohesive

force in prison life the deeper and more idealistic meaning needs to be uncovered for wider discussion. These contrasting emphases in the understanding of a right are noteworthy because they indicate the quest by legal thinkers from

the days of antiquity to make an instinctual need for self-protection relate to a generally acceptable body of law which protects society along lines that fit in with contemporary standards of fairness and decency.

In this general tension between individual and community needs "rights" are difficult to locate. Who has a right, from whom, for what and why? Glib reference to the notion seems to suggest that certain things in our universe are fixed; but this is not so in a field where values and legal norms are in a state of flux. For example, to talk of one person's rights implies that they will fit in with other people's rights; yet in the criminal justice system the picture is complicated by issues about culpability, social disadvantage, victimisation and scapegoating. One can limit the term "rights" to a purely positive sense by reference to legislation, but this only pushes the problem one stage further back because one then has to ask from where do such rights themselves derive their authority?



Parson bells have regulated Alan Duce's life as a Prison Chaplain for seven years. The attraction of bells now leads him to live within ear-shot of Lincoln Cathedral. His large and striking collection of bells at home contains shapely places—ever present in sound.



### Legal Rights and Ideal Rights

A starting point is the distinction that has often been made between ideal rights (also called moral, natural or human rights) and legal rights. Although the relationship between these two rights is not absolutely clearcut it permeates any ethical discussion about "rights" in the Prison Service. The former are claims which should be allowed in the tradition of natural human justice or be allowed according to principles of morality long recognised and protected. The latter may or may not have any moral basis but are in fact recognised by a particular legal system.

The importance of the broad distinction—as well as the inter-connection—between ideal rights and legal rights in the Prison Service can immediately be illustrated in relation to the current effects of international agreements about rights.

On an obvious legal level rights are enshrined in Prison Rules, Standing Orders and Circular Instructions. However, rights have their place on an idealistic plane. On the worldwide moral level prisons are potentially embarrassing advertisements for the quality of any system of government. While Home Secretary in 1910, Winston Churchill said in a famous speech:

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm and dispassionate recognition of the rights of the accused against the state, and even of convicted criminals against the state, a constant heart-searching by all charged with the duty of punishment...these are the symbols which in the treatment of crime and criminals mark and measure up the stored up strength of a nation and are the sign and proof of the living virtue in it".

Since those words were delivered, prisoners' rights in particular have become a long-term idealistic interest of the United Nations. This interest gathered impetus as a result of Nazi concentration camps, as a result of the steady movement in the last hundred years to set up an international forum to disseminate current criminological ideas, partly as a result of the way totalitarian regimes can use imprisonment for torture and political suppression, and also as a result of the call for supra-national guarantees for basic liberties. In 1955 the United Nations

issued its famous version of "The Standard Minimum Rules for the Treatment of Prisoners". In 1977 it promulgated a code of conduct for Law Enforcement Officials.

In Western Europe the impetus towards implementing basic rights—both legal and ideal—has been underlined by the instituting of the Convention for the Protection of Human Rights to which over twenty countries have become signatories. Through the European version of Standard Minimum Rules the Convention advocates basic prison standards almost identical to those of the United Nations. Although these standards are not legal rights they form a moral basis for rights and can be used in the European Court as guidelines in passing judgement. The existence of the European Court is of particular importance for prisoners. About two thirds of all applications are from people in custody. However, the stringent conditions that have to be complied with before a case is even considered prevent many cases from coming to court.

The post-war progress towards establishing and disseminating the rights of prisoners has important practical implications for standard setting in a prison. The philosophical and jurisprudential background to this area of rights needs far more emphasis than is currently given in the training of prison personnel.

### Regimes and Rights

Penal establishments provoke demands for rights because they are places of residence for large numbers of individuals cut off from society for appreciable periods of time and forced to lead a constricted, formally administered life. The all-encompassing character of a prison is symbolized by barriers to social life created by the physical plant. Bureaucratic organisations can also cause a split between inmates and supervisory staff. This antagonism is not helped by Government budgetary control, by buildings inherited from the nineteenth century and by deeply-ingrained attitudes.

### Prisoners' Rights

The prisoners demand their rights basing claims on physical deprivation and squalor. They say they have poor opportunities for practising religion, for working and for earning a realistic wage. Restricted communication with the outside, inadequate protection

against violence and extreme measures of medical experimentation feature in their grievances. Sometimes there is a complaint about the difficulty of admission to psychiatric hospitals. Others say the use of control units or the system for parole for complaints procedures, or participation in civil rights is unfair. All these examples are cited as examples of what happens in prison in ways not "inherent in the punishment of imprisonment".

### Staff Rights

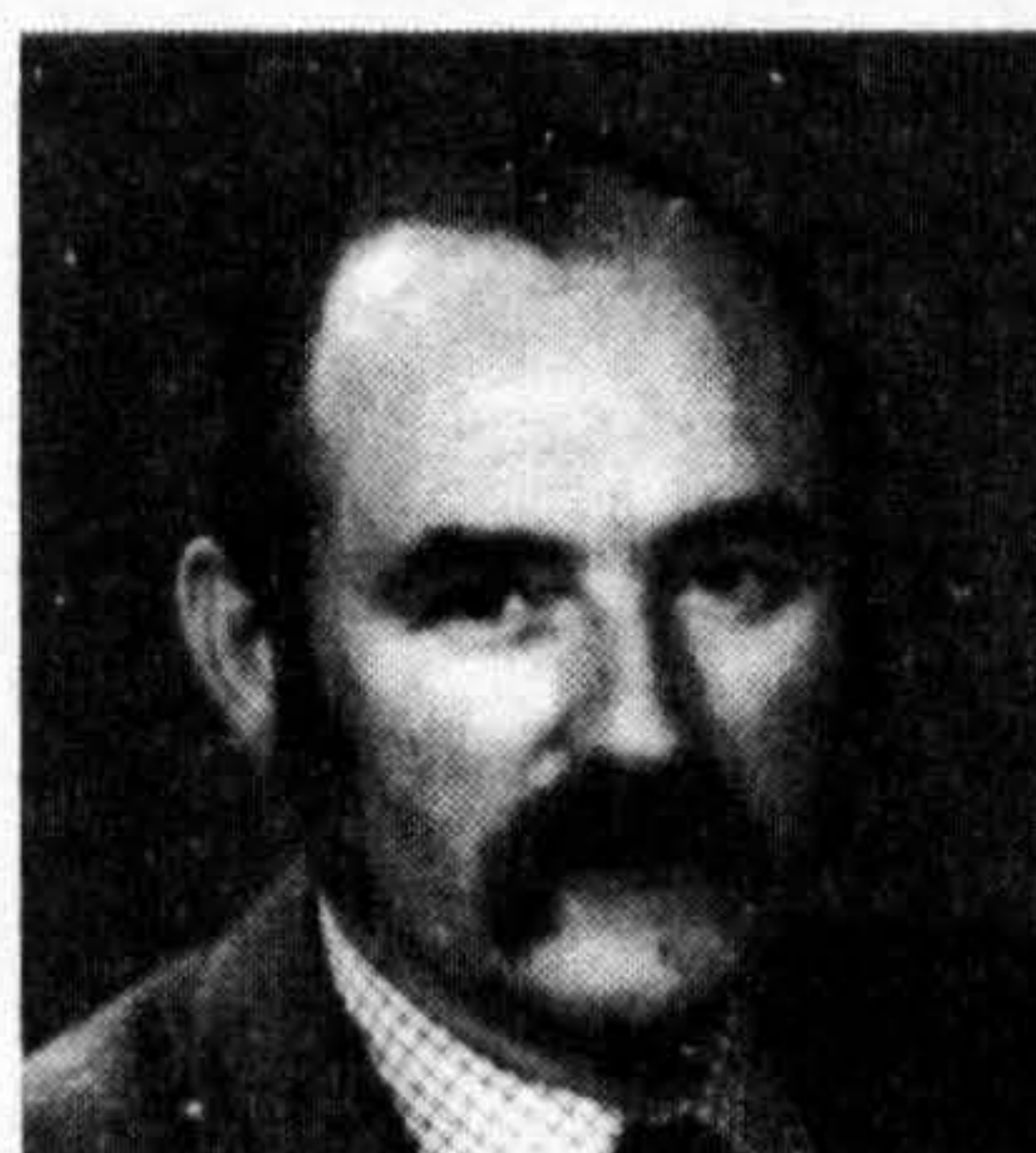
The staff also demand their rights, maintaining safety is crucial. They say it is an intolerable responsibility to look after men whom society cannot contain. Abolition of the death penalty, changing patterns of terrorist activity and a hardening core of recidivists are factors that leave potentially violent men in overcrowded and understaffed prisons. However, it has not been statistically demonstrated that serious assaults on staff have dramatically increased in the last two decades. Staff safety may be a convenient excuse for allowing the pressure to maintain the 'status quo' hold a dominant position. Staff often feel that they have a right to greater public esteem for their job and they seem to be claiming a right to firmer leadership and new approaches to dealing with men in custody. Prisons have to function with the co-operation of officers in particular; thus that group has considerable power in pressing for an advance in thinking about rights. Regrettably the recent advance in the legal rights of prisoners has resulted in an understandably cautious approach to implementing more ideal rights for prisoners. The prospect for staff of being involved in litigation or embarrassing publicity has had retrograde effects on progress.

### Public Rights

The general public also demands rights to compensation and protection as well as rights to punish men. The former claims highlight the emotional background to the discussion. Penal policies so easily raise deep-seated feelings swayed by fundamental instincts—often unrelated to a balanced grasp of the facts of a case. Furthermore the extent to which law and order services and the academic study of criminology have ignored the rights of victims has been claimed by the public and is being redressed. "Victimology" is now concerned with understanding the mental and physical effects of crime on victims and has become particularly

*continued on page 19*





Colin Steel was educated at St. Bede's Catholic Grammar School, Bradford, and served with the Seaforth Highlanders prior to joining the Prison Service at Leeds Prison in 1961.

He transferred to Albany at its inception, leaving on promotion in 1974. He then served at HMBI Wellingborough and returned to HMP Leeds, before joining HMP Bristol where he now is a Principal Officer.

As POA branch secretary at Albany, he was elected to the NEC of the association in 1973, became vice-chairman in 1977 and National Chairman, the office he currently holds, in 1980.

# STAFF RIGHTS *and the* INSTITUTION

Colin Steel

The danger with this article is that one could be patronising, paternalistic or presumptuous: I don't wish to be any of the three, my purpose is to reflect some of the concerns of the Prison Officers' Association in relation to the general trend within the service when the question of "Rights", either for inmates or staff is discussed.

The great tendency in an article of this kind is not to analyse and approach the problem in a balanced way. I would hope that this article reflects a balanced judgement irrespective of natural prejudice.

The Prison Officers' Association is anxious to listen to constructive views on the prison service. We believe that a balanced view of problems must be maintained if we are to protect fully the interests of all who work and live within the prison system.

The word "Rights" cannot be divorced from the word "Conditions" and in this respect the Prison Officers' Association believed that basic human rights also means basic human conditions. To some degree the prison service is subject to the whims and fancies of many people; some of them are committed to policies and practices that have little or no relevance in our system. Over the last ten years or so

we have been bombarded with a variety of theories about crime and punishment and how to reduce the population within penal institutions. The main voice, however, which has been absolutely consistent about its views on the reduction of the prison population, has been the Prison Officers' Association.

We are not opposed to examining schemes, wherever they are from, if there is any merit whatsoever within them. However this must be done as a joint exercise between staff and management. By the time that some of the schemes which are suggested become reality the person who suggested them in the first instance, especially if he is a political figure, has inevitably moved on and the operational difficulties are left for staff of all grades to iron out.

The POA are seeking a balanced approach based on partnership. We must avoid falling into predictable pitfalls if we are to attempt to change conditions in the penal system; this is why the Association has proposed alternative measures to imprisonment for certain categories of inmate.

We have consistently suggested that the inmates who clutter up the penal system and can be loosely

described as social inadequates, should not be there. For them prison is a refuge and that is not what prisons are supposed to be. The POA suggest that borderline defectives and mental cases should be found an alternative method of supervision—prison is not the place for them.

We suggest that a building programme, or the conversion of existing buildings, for clinics and hostels for the alcoholics and social inadequates should be immediately instituted. The application of any schemes within the broad ambit of prisoners rights and adjustment or alteration of them should involve full consultation with the staff representatives. The reason we say this is that the primary effect of any change in prisoners rights directly affects the rights of the prison officer and his working conditions. We agree that there should be an acceptance of responsibility by prisons to identify the variety of skills that prisoners have whilst they are serving their sentence and this should be done in conjunction with the kind of schemes that are presently operated in places like Pentonville, where prison officers try to find jobs and homes for prisoners before their release. This identification of skills is also being done by trained

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# PRISONERS' RIGHTS

J F Wittop Koning

*Head of the Legal Affairs Department of the  
Netherlands Prison Administration*

*Public concern  
for prisoners is  
very new. They  
should now be  
granted legal  
status and  
rights which  
they could  
defend by some  
official  
procedure.*

The penalty of imprisonment lies in the fact of being incarcerated and not in other restrictions which may be associated with it, unless they are strictly necessary for the maintenance of order and security. In other words, as the American criminologist Cressey put it: "one goes to prison *for* punishment, rather than *as* punishment". The Standard Minimum Rules for the Treatment of Prisoners, which were adopted in 1955 in an unofficial resolution of the United Nations and which the Committee of Ministers of the Council of Europe recommended as a basis for national regulations in 1973, are also based on this principle. This high ideal is accepted everywhere, or at least in all the Council of Europe member states whose societies and cultures are broadly similar. Even so, it has taken some time for more detailed ideas to emerge, although some of them have now been actually put into practice in certain countries.

#### **Experience of captivity**

The fact that numerous present-day leaders had first-hand experience of

captivity during the Second World War is said to be one of the reasons for the post-war reforms of the prison system. That may be true, although the system has also been updated in countries such as Sweden and the United Kingdom, which were not occupied. Whatever the reason, but certainly in part because of wartime experiences, there has been increased scientific interest in the prison community since 1945, and that interest has been reflected in other countries too. The desire to make prisoners better able to reintegrate themselves into free society is undoubtedly due to these new ideas. Even so, prisoners still have no rights, although they may be granted favours. Theoretically, they can obtain nothing or next to nothing unless concessions are made to them. They are admittedly entitled to food, medical care, etc., but their position is in no way comparable with that of free men. Up to a point, the authorities have absolute power to decide how much freedom to grant prisoners. Even if the prisoner already has certain rights, e.g. the right to correspondence and to receive visits from his lawyer, it is often

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# prisoners' rights

Alf Dubs M.P.



**In March 1981 I attempted to introduce a Bill in the House of Commons on the subject of prisoners' rights. The purpose was to provide a statutory basis for the rights of prisoners and to make those rights enforceable. The Bill was opposed and, on a vote, defeated by 135 to 117 votes. The vote was technically on a motion to ask leave of the House to introduce such a Bill. Even if it had been passed it is doubtful whether there would subsequently have been time for a fuller debate and it is almost certain that the Bill would never have become law. Nevertheless, the process of introducing the Bill did give an opportunity to draw attention to the whole question of prisoners' rights and to put the issue higher on the political agenda.**

Many of the conditions governing a prisoner's life are covered by the Prison Rules, Statutory Instruments made under the Prison Act 1952. In practice, however, much of the detail is contained not in the Prison Rules but in the Prison Department's Standing Orders and Circular Instructions. One main cause of concern is that prisoners do not have a right of access to the Prison Rules. Worse still, the Standing Orders and Circular Instructions appear to be secret, furthermore prisoners cannot get access to the Governors' Handbook which has the "rules about rules", or detailed instructions to Governors of how to interpret and apply the Prison Rules, Standing Orders and Circular Instructions.

The second difficulty is that the Prison Rules cannot be enforced in a

court of law. This was established in the case of Michael Sidney Williams v. the Home Office, the case concerning the control unit at Wakefield Prison. In this the High Court held that although the Prison Rules had been breached, these relate to internal administration and were a matter of concern only to the Home Office; the breach was therefore of legal indifference to the plaintiff. The effect of the judgement was virtually to give the Home Office a licence to break the Prison Rules with impunity.

The first two clauses of the proposed Bill on Prisoners' Rights provided that prisoners should be able to have reasonable access to the Prison Rules and that there would be the right to bring a court action if the Prison Act or Rules were breached.



Alf Dubs, Labour Member of Parliament for Battersea South was first elected in 1979. He is a member of the Home Affairs Select Committee and during the present Parliamentary Session was a member of the Standing Committee dealing with the Criminal Justice Bill. He is a member of the Parliamentary All-Party Penal Affairs Group and of two of its working parties which produced two reports recently: "Too Many Prisoners" and "Young Offenders—A Strategy for The Future". Wandsworth Prison is located in his constituency.



The 1979 Report of the Royal Commission of Legal Services said; "Persons on remand or serving sentences in prisons are at a disadvantage when seeking legal services, because they cannot visit solicitors and there may be some restrictions on their correspondence with their legal advisors". Another proposal in the Bill is to provide for confidentiality between a lawyer and a client prisoner. Apart from entitling a prisoner to receive visits from a lawyer and to confer with him out of the hearing of a prison officer there should also be no censorship of letters between a prisoner and his solicitor. At present even where the prison authorities are defendants in a legal action they may still censor letters between a prisoner and his solicitor which can be damaging to the prisoner's subsequent case in court.

Further clauses in the proposed Bill deal with disciplinary proceedings. In the case of adjudications conducted by a Board of Visitors, the intention is that the prisoner should know the charges against him in advance, know what the evidence against him will be and should be entitled to legal advice and representation and to call witnesses. As regards adjudications conducted by the Governor, the prisoner shall be entitled to know, in advance, the charge and to call any person he might reasonably choose to give evidence, even if such a person may be another prisoner or member of the prison staff.

Another major issue covered by the proposed Bill is the question of classification. The courts have held that despite the profound implications of a classification decision, the prisoner cannot now challenge such a classification.

The Bill would have entitled the prisoner to know why he had been given a particular classification and would enable him to make representations to the Governor to request a variation in such a classification. If the Governor refused to make such a variation there would be a further possibility of applying to the Secretary of State on this issue.

The Bill also provided for greater freedom of correspondence and visits and limited, though did not abolish, censorship of letters. Frankly I would have preferred to have abolished all censorship for prisoners in 'C' and 'D' categories but realise that this practice continues not because of the wish of the Home Office or the Prison Governors but because of the policy of the Prison Officers' Association.

I was less certain about another proposal, to give prisoners the right to vote in local and general elections. This is probably the most controversial proposal in the Bill and may have been the reason why it failed to get a majority in the House of Commons. Nevertheless, I think the question of giving prisoners the right to vote is one that should be discussed further though it does not compare in importance with the other proposals in the Bill.

The final clause of the Bill was intended to bring into Statute the protections in the Bill of Rights 1688 against cruel or unusual punishment; in the control unit case in 1980 Mr. Justice Tudor-Evans ruled that the Bill of Rights was not enforceable. Secondly, the clause sought to write directly into British law the provisions of the European Convention on Human Rights prohibiting torture and inhuman or degrading treatment or punishment.

The United Kingdom Government is bound by the European Convention, but a victim of a breach of the Convention cannot, at present, sue in the English courts.

Within recent weeks the Home Office has produced a booklet called "Communications in Prison". This is a short guide for prisoners covering their entitlements to visits, letters and to petition the Home Secretary. This booklet is to be welcomed as it does, apparently for the first time, supply information for prisoners covering at least some aspects of the Prison Rules. It is a well presented and clearly written document, its main weakness being the lengthy section justifying censorship of letters. That section is, of course, included to meet the wishes of the Prison Officers' Association.

It is inevitable that the argument about prisoners' rights will continue until many of the changes suggested above have been implemented. But some of them could be introduced without too much difficulty, although I concede that giving prisoners greater rights in disciplinary proceedings might result in more time being taken at the hearings, equally there might be occasions when the right to go to court to enforce the Prison Rules would be used too freely; such "abuse" also applies, on occasions, to other court proceedings and should not be an argument against giving a basic right to prisoners.

Despite the difficulties I feel that, on balance, the benefits would far outweigh the disadvantages and I hope that continuing pressure to give to prisoners some of the basic rights discussed above will, before too long, lead to a successful conclusion.

The following is a draft of a private member's bill prepared by Mr. A. Dubs M.P. It is published in connection with Mr. Dubs' article and for general interest.

## PRISONERS' RIGHTS BILL

**Classification** 1. (1) A convicted prisoner to be classified in accordance with the Prison Rules shall be informed of the reasons for such classification as it is proposed to make in his case.

- (2) A prisoner so informed may
- make representations to the governor in order to vary such classification.
  - in the event of the governor refusing to make such variation,

apply to the Secretary of State.  
(c) The Secretary of State shall consider such application taking into account any representations made by the prisoner or the governor and shall inform the prisoner of his determination in writing.

**Disciplinary Proceedings** 2. (1) A prisoner charged with an offence against discipline shall receive prior to the hearing of



such charge except where otherwise provided.

(a) a notice of such charge in writing.

(b) a fair and accurate summary in writing of the evidence to be adduced in support of such charge.

(c) the names of the witnesses to be called to give evidence by the prison authorities.

(2) A prisoner so charged shall be entitled to legal advice and representation at the hearing.

(3) A prisoner shall be entitled to a reasonable opportunity prior to the hearing to confer with his legal adviser.

(4) A prisoner shall be entitled at the hearing to a full opportunity to present his case and to call any person as a witness he may wish notwithstanding such a person may be another prisoner or member of the prison staff.

#### Governor's Adjudications

3. (1) Where a charge against a prisoner is inquired into by the governor and is not referred to the Board of Visitors the provisions of Clause 2 shall not apply to such an inquiry.

(2) A prisoner to whom this Clause applies shall

(a) receive notification of the charge prior to any inquiry by the governor.

(b) at any inquiry be entitled to a full opportunity to present his case and to call any person as a witness he may wish as provided in Clause 2.

#### Awards (cf. Rules 50-52)

4. (1) Where after inquiring into a charge against a prisoner the governor makes any award against him such award may not include any loss of remission to which the prisoner is otherwise entitled.

(2) Where after a hearing of a charge against a prisoner a Board of Visitors makes an award against him and it includes either cellular confinement or forfeiture of remission of sentence

(a) such cellular confinement shall not be for a period exceeding 28 days.

(b) any forfeiture of remission shall not exceed a period of 90 days.

#### Legal Advice (cf. Rules 37 & 37a)

5. (1) A prisoner shall be entitled to correspond with his legal adviser for the purpose of obtaining legal advice.

(2) A prisoner shall be entitled to

receive visits from such legal adviser and to reasonable facilities for conferring with him out of the hearing of an officer.

(3) The correspondence between a prisoner and his legal adviser shall not be stopped, opened or read.

#### Visits, letters generally (cf. Rules 33 & 34)

6. (1) A prisoner shall be entitled to correspond with and receive visits from any person he wishes, notwithstanding such a person is a representative of some organisation or body.

(2) Such correspondence shall not be stopped or read nor such visits prohibited unless there is reasonable cause to believe that security or public safety would thereby be prejudiced.

(3) Except as provided by Clause (2) of this subsection, there shall be no restriction as to quantity or frequency of such correspondence or visits.

(4) Any visit received by a prisoner shall take place out of the hearing of an officer.

#### Restraint

7. (1) Except as provided in the Rules it shall not be lawful to confine a prisoner to a special cell or place a prisoner under any restraint.

(2) Any breach of the Rules in exercising such powers as aforesaid shall render such exercise unlawful.

(3) In the event of such unlawful act any questions of liability and damage shall be governed by the ordinary rules of common law.

#### Voting

8. (1) A prisoner shall be entitled to vote in general and local elections in respect of such place as he is ordinarily entitled to vote.

(2) A prisoner shall be entitled to receive such leaflets and other publications relating to such elections as may be sent to him.

#### Medical Treatment (cf. Rule 17)

9. (1) A prisoner shall be entitled to the attendance of a registered medical practitioner or dentist named by him provided he pays any expenses thereby incurred.

9. (2) A prisoner may be treated by such practitioner or dentist.

#### Religion (cf. Rule 10)

10. (1) A prisoner shall be entitled to be treated as being of such religious denomination as named by him.

(2) A prisoner shall be afforded a reasonable opportunity to practice his religion and to receive visits from a minister of his denomination.



# PRISONERS' RIGHTS

Alastair Logan  
*Solicitor*

**The concept of prisoners' rights in this country was non-existent until a "stiff" came out of the back door from a prisoner who had been in Hull Prison in 1976 when the riot occurred there. Until that time the concept of prisoners' rights was alien both to the Prison Service and the Home Office. The view of both could be encapsulated in the view expressed by a Senior Prison Governor that the only right a prisoner had was to be released at the end of his sentence.**

The problem was not so much what the rights were but whether prisoners should have any at all. In the first case of its kind to come before the Courts of this country, prisoners who had been involved in the Hull riot sought Judicial Review of the decisions made by the Board of Visitors (B.O.V.) as to the punishments that should be imposed upon them for their alleged parts in that riot. Counsel on behalf of the Home Office and the B.O.V. at Hull argued that prisoners had no rights. They only had privileges. This astonishing view was dictated as much by attitudes deeply entrenched over the years in the Prison Service and the Prison Administration as it was by the pragmatic consideration if you once admitted that prisoners had rights some "damn fool" was going to ask you what they were. It followed from that that if you admitted that prisoners had rights those rights needed protection. That, after all, was what the law was supposed to do. The Lord Chief Justice in the St. Germain<sup>1</sup> case shied away

from what he saw as a wall of cases coming through the Courts and decided that the decisions of B.O.Vs. would not be subjected to Judicial Review because he said Boards were not Judicial or Quasi-Judicial bodies. To do so he had to decide the case on the basis of a case which had been expressly disapproved in the Court of Appeal and was therefore bad law. In the Court of Appeal, the Lord Chief Justice's decision was criticised as being expedient, and expediency, as their Lordships pointed out with devastating force, is the abnegation of the function

of a Judge. After all, if the attitude of the Home Office in the St. Germain case was correct that prisoners have no rights whatsoever, then they had no right to life, decent conditions, to medical care, visits from their families and so on.

The only time the word "right" is mentioned in the Prison Rules<sup>2</sup> is in Rule 49 which deals with disciplinary proceedings.

Despite the St. Germain case and the cases that have followed it, it is only now that the Home Office is beginning to abandon its attitude that prisoners



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have no rights. That argument was particularly attractive to them because the Courts have consistently held that privileges can be removed at will and the removal of privileges does not constitute the exercise of Judicial function. As such it would not be reviewed by the Courts.

In the latest case to come before the Courts, where a Governor was cited by a prisoner for contempt and deliberately interfering with his access to a Court, Lord Bridge said that a prisoner has all the rights that an ordinary citizen has save those which are necessarily removed from him as a result of the imposition of a sentence of imprisonment or removed by Statute.

The impact of the St. Germain decision has primarily been felt in the area of the exercise of judicial powers by the Boards of Visitors. Even so old habits die hard. Despite the experiences in Hull the Gartree Board was subjected to severe criticism in the case of Mealey and Brady<sup>3</sup> (which was heard by the Divisional Court in 1981), of their conduct of disciplinary proceedings after the Gartree Riot of 1978.

The problem which faces Boards was accurately set out in the Jellicoe Report which pointed out that Boards in exercising both administrative and judicial or quasi-judicial functions, could not be seen to be the impartial tribunal that they should be. Apart from appearing before them on disciplinary matters, the only times that a prisoner is likely to see them is in the company of Prison Officers doing tours of the prison or if the prisoner makes an application to them in respect of some complaint that he has. The traditional attitude of B.O.Vs. is to refer the matter to the Governor and to abide by his decision. In cases of doubt they can consult the Home Office but they rarely act in a manner which indicates that they have any power at all either to overrule or even to question a decision made by the authorities or to act as an impartial adjudicator on a dispute between the prisoner and the authorities.

In the Home Office statement on the disturbances in D Wing at Wormwood Scrubs on 31st August 1979 the B.O.V. did not exactly receive praise for what they did. According to the Prison Rules they have the power to go anywhere, at any time and see anything within a prison. The reality is different. For the most part they go where they are permitted to go and see what they are permitted to see. They do only those things which tradition

has allocated to them and will not disrupt prison routine. According to the powers that are vested in a Board it should have been possible for the Wormwood Scrubs Board to have carried out an immediate investigation and to have discovered all the facts that they needed to know in less than 24 hours after the incident in D Wing occurred. That they chose to do so in the manner that they did indicates the traditional role of Boards. They play second fiddle and indeed as the Wormwood Scrubs report indicates, are treated by the Governor and other senior staff as playing second fiddle.

The dichotomy is that the concept of prisoners' rights is alien to a prison regime which is run on militaristic lines where the authority of the "Officers" and "Non-Commissioned Officers" is absolute. You cannot have absolute authority and still invest the "Private" with rights. The problem of that attitude has been exemplified in a number of cases which have been taken before the European Commission of Human Rights. The prisoner is regarded as being on a lower grade than the ordinary soldier and, as such, unlike the ordinary soldier, does not have a manual of military law which gives him basic rights protected by Statute and the law.

Thus for prisoners' rights to be respected a basic and fundamental change must take place in the attitude of the Home Office and the Prison Service to prisoners generally with consequent alteration to prison regime. Indeed I would argue that such a change in attitude is essential if Rule 1 of the Prison Rules<sup>2</sup> is to have any meaning at all. I accept that in the present system it may be possible to do no more with most prisoners than to warehouse them for the periods of time specified by the Court. The whole philosophy of penology is supposed to be based upon the assumption that a man who transgresses the rules of the society in which he lives should be made to understand the purpose of those rules and learn to respect them and that such anti-social conduct to a greater or lesser degree attacks the society in which he lives. To treat him as a person without rights is at best to severely limit any prospect that he will leave prison in any better state than that in which he arrived. Indeed the available evidence is that in many cases he leaves in a far worse state—embittered against a society who put him there and made him live in those conditions and frequently suffering from psychological

trauma caused by imprisonment which society does absolutely nothing to try to counteract. Any prisoner who serves more than 2 years in prison faces psychological problems in readjusting to society. Any prisoner who passes the four to five year barrier faces in many cases a superhuman task. To give him back all his rights on the day that he completes his sentence without giving him the foundation necessary to exercise those rights responsibly or the psychological ability to adjust to the different conditions that he will find outside is as much a failure of the obligation that society is owed by our penal system as it is a failure to the prisoner himself.

The examples are legion. Ordinary medical treatment that a prisoner could receive if he were not in prison is denied to him by the endless miles of red tape that must be gone through before he can see a Consultant or receive even the most basic treatment that a hospital would be able to provide to an ordinary out-patient. The secrecy which permeates every aspect of prison life has not stopped at the door of the Prison Medical Officer. Not only is he required to sign the Official Secrets Act which gives him two masters, his employer and the Government to whom he owes obligations which rank in priority to his duty to his patient, but his own ability to function as a doctor is seriously impeded by the administrative routine and the requirement of secrecy that he must observe and the fact that he is regarded as one of "them" by his patients.

A number of clients of mine were informed that possession of the Prison Rules 1964 was regarded by the Governor of their establishment as an act of subversion although these could be purchased quite freely from Her Majesty's Stationery Office by anyone, including a prisoner. Clearly knowledge, in his view, was dangerous. Even the limited, out of date, edited version of the Prison Rules that is supposed to be in each prisoner's cell tells him largely what he may not do and not what he may do. The prisoner learns by a process of osmosis that the only way that he can get anything or better himself is to fight, scheme, plot and in some cases to use force to get it. The prisoner plays the Senior Officer off against the Chief Officer, the Chief Officer against the Governor, the Medical Officer against the Chaplain, the Board of Visitors against the Home Office, and all because the attitude of the authorities is an unreasoned "no"



to everything. The prisoner learns that only through this process has he any chance of achieving anything that he wants. Governors' applications become long diatribes of complaints by prisoners of unfair treatment or denial of facilities. In short the whole system has degenerated into a "them" and "us" situation.

Although no responsible Governor would be without his intelligence system within the prison, the intelligence system itself is capable of being misused and the system is powerless to prevent it. Grudges by one prisoner against another can often be worked out with the assistance of the Prison Intelligence Service. Prisoners' files, as was discovered in Gartree and Hull, often contain pieces of information which are wholly baseless and for which the person responsible has never been asked to provide the slightest shred of evidence to support any of the allegations. As such it is open to unchecked abuse. The Parole System which was designed to reduce the prison population and to provide some reward for prisoners who were prepared to behave themselves whilst serving their sentences is riddled with inconsistencies and cloaked in secrecy. The fact that it is contrary to the concept and definition of categorisation for a Category "A" prisoner to be considered for parole does not prevent Cat "A"s from going through the meaningless formula every single time. The fact that less than 40% of the prisoners ever get parole can hardly be considered an incentive for good behaviour. The fact that the prisoner can neither participate in consideration of his categorisation or effectively participate in the parole system leaves him powerless, confused and unable to put forward a case or see any benefit to him. It creates frustration and is a major cause of dissatisfaction and indiscipline.

Having said all this prisoners' rights are not an isolated subject although they may seem to be from the way that the media and the courts have been dealing with them recently. You cannot consider prisoners' rights in isolation. Society and Prison Staff have rights as well and any consideration of prisoners' rights in the absence of consideration of the rights of Society and Staff would be equally a meaningless exercise. Like the prisoner, the Staff have to work in archaic accommodation that should have been (and in some cases was) condemned years ago. The Staff have to work within an archaic system of prison management

in which reforms are more likely to come in the sphere of greater control and more sophisticated security and to bring in their wake more form-filling, more officialdom and, as a consequence, a gradual withdrawal of staff to a role of "perimeter security" leaving the ones to the gangs and the factions and the weaker to the mercy of the strong.

There can be no proper exercise of responsibility unless the individual accepts responsibility and he learns to accept the duties consequent upon responsibility. Equally responsibility without adequate protection of the individual's rights is self-defeating. That applies to the prisoner and it also applies to prison staff. For the prisoner there must not be a total cessation of responsibility for his family or for his own life. It may in certain circumstances seem to many that that is the only way to run a prison but that idea is crumbling. When it crumbles what will be left in its place? Continued applications by the prisoners to the Courts will result in a gradual accretion of law which will protect some of the rights of prisoners but will do nothing to solve the fundamental problems the system causes. In one particular area, and it is a vast area indeed, the Courts so far have said that they will not intervene. That is the area of administrative discretion. In other countries there are Administrative Courts which review administrative decisions. No such Court exists in this country and is not likely to exist for some time but it is in the area of administrative discretion that the greatest discontent amongst prisoners lies. It is a running sore which generates a mountain of paper work, increasingly involves the time of Governor Grade Staff and the expenditure of massive sums of public money. Consider the cost to the country of the cases being taken before the Courts of this country, the endless enquiries made by the Head Office to Governor Grade Staff in respect of complaints made by prisoners concerning their treatment to Members of Parliament and others (which will increase as a result of the revision and publication of the Standing Order 5), to say nothing of the cost of the innumerable cases taken each year to the European Commission of Human Rights. Most of these cases come about because a prisoner has not received a satisfactory answer in an atmosphere where he feels he has been treated fairly. Some come about because the system can attack the prisoner's personality so effectively that it is only

by such cases that the prisoner can keep a grasp on his own identity. And some come about as a way of getting back at the system. I would argue that the missing element which, whilst not eliminating all these cases, would go a long way to solving many of them, is the denial to a prisoner of easy access to an independent system of advice which would give him a fair hearing in respect of his complaint and less cause for feeling dissatisfied if he cannot, at the end of the day, win his argument. There is no-one currently engaged in the daily life of the prison who could be regarded in that light. All are regarded by the prisoner as being on the side of "them" rather than "us". As a result the prisoner is forced to go outside the prison for assistance and even if he can find someone to assist him they in turn can be intimidated by the mountains of rules, regulations, circular instructions, directives, standing orders and the like, most of which are totally secret and may not even be revealed to a Member of Parliament. Only the most determined can break through this barrier.

I am not, strange as it may seem, arguing that there should be a tribunal outside the prisons who should adjudicate on such matters. Prisons are of necessity closed institutions. Equally it is a truism to say that they are artificial societies and knowledge of such societies and their workings is essential to function in any such system. It is necessary, in my view, that any revision of the present system of dealing with complaints would have to be within the context of an internal tribunal.

I would suggest that as a first step Boards of Visitors be divided into two categories: those for whom the prime responsibility would be the administration of justice within the present framework of disciplinary procedures and those responsible for overseeing prison administration and checking with complaints. Those who perform the second function should never perform the first thus giving some reality to the separation of powers and to the concept of independence. I would suggest that as a matter of course a member of the Board should sit in on every Governor's adjudication although as an observer rather than a participant. I also would suggest that they perform their functions on either tier with less formality. Certainly I cannot see any justification for any Board conducting an adjudication at which the prisoner is kept standing either between two Prison Officers or with



two Prison Officers facing the prisoner and with their backs to the Board. If the justification for this mediaeval practice is that the prisoner is likely to attack the "court", I would suggest that if he is seated he has less chance of doing so without telegraphing his intentions. It is also more civilised. If we can seat Defendants in the Magistrates and other Courts of this country there is absolutely no reason why we cannot do it while Boards carry out their disciplinary functions. It also helps to underline the principle that a man is innocent until proven guilty and the B.O.V. is not and should not be a rubber stamp for an administrative decision.

I would suggest that as a matter of course, certainly in the long-term prisons, Duty Solicitor schemes should be set up as a matter of priority. For such schemes to be successful it is essential that the solicitors who participate in them have a good and sound working knowledge of the prisons and the prison system and are able to communicate with staff at all levels, particularly at senior level. They should be permitted to hold "clinics" at regular intervals in the wings of the prisons so that prisoners as a matter of their own choice can go and see them in privacy and discuss matters which concern them which can then if appropriate be ventilated internally. Perhaps by a regular review committee comprising both junior and senior prison staff and the Board and, if necessary, regional staff. In this way I would argue that there are likely to be less cases appearing before the Governor or the Board of offences of a disciplinary nature committed out of frustration, anger or helplessness. Further it will inject into the prison administration an independent element to whom the prisoner can turn for guidance and advice and who will assist the prisoner, particularly those who are less articulate than others, in framing his requests and complaints and getting what to him will be a fair hearing even if he does not achieve his object.

The cost of such a scheme, if linked with the Legal Aid scheme, would be minimal compared with the amount of paper work that is now required, to say nothing of the cost of the time of experienced personnel in dealing with such matters. It would enable the prisoner to assume a greater responsibility for his own life and to get advice on matters about which the Prison Service find difficulty in advising such

as family or personal problems. Separated by the fact of imprisonment, or divorce and the thousand and one other things that exercise the mind of a man confined to prison the most placid prisoner can become a time-bomb looking for a detonator. If properly conducted such a scheme could act as a safety-valve which the system at present is incapable of providing. It will not change the recalcitrant prisoner. It is not immune from manipulation by the determined prisoner and it is not a panacea for all the ills that currently affect the system. But it would make the system think about its rules and regulations and the way in which it treats everyone. It would make people sit down and justify some of those circular instructions and standing orders which accumulate like the leaves in autumn on the desk of Governors. It would give the Prisoner an opportunity to resort to argument and persuasion rather than violence, manipulation and subversion. That after all is what our legal system is supposed to encourage. It would hopefully encourage respect for the rules, for after all it was breach of Society's rules which resulted in the conviction and if they cannot be encouraged to see that there is a method other than rule-breaking by which their grievances, legitimate or otherwise, can be aired, then the future for the prison system, to say nothing of society in this country is bleak indeed. Unless something is done quickly there will be more incidents like Hull, Gartree and Wormwood Scrubs: in each of those incidents it is arguable that had an independent element been operating within the prison that the prisoners could trust, the incident might never have occurred at all. ■

1. *R v Hull BOV ex parte St. Germain* 1979 1 All ER 701 and *R v Hull Prison BOV ex parte St. Germain* (No. 2) 1979 3 All ER 545.
2. Prison Rules 1964 S.I. 388.
3. The Times 14/11/81.

#### STAFF RIGHTS AND THE INSTITUTION *continued from page 7*

prison officers at Ranby and Ashwell and it is hoped that the Prison Department will encourage greater involvement of prison officers by allowing the scheme to be introduced more widely throughout the system.

As an aid to those responsible perhaps the following points could be helpful in determining a consolidated view in relation to expanding the rights of inmates through the greater involvement of prison staffs:

- (a) By recognising that progress in the prison service is essential for the good of all who are affected by it.
- (b) By recognising that the involvement of prison officers at all levels in the consultative process is essential.
- (c) By recognising that if we are to change the system for the better the Prison Department must allow for an increase in the training of prison officers to better enable them to shape and meet those changes.
- (d) By recognising "that the true harshness of prison life does not stem solely from the deprivation of liberty and limited choice, nor from the actual physical conditions, but from the daily or hourly pressure which prisoners inflict upon each other. One must recognise the elements of personal insecurity involved in a situation where the weakest are exposed to the strongest, the vilest and the most violent, where the more powerful dominates and consistently intimidates. The shattering blow which prison involves is due to these aspects of personal security as much as to the more general deprivations".

The improvement of conditions and "Rights" for both staff and particularly inmates will only be achieved by greater involvement of staff who live cheek by jowl with them; by being aware as staff of the dangers of the views of extremists. The POA is concerned that any changes which are introduced into the penal system should be designed to benefit all and not just the select few who have the contacts to lobby, cajole and irritate people into concessions which are not in the interests of the majority.

We unfortunately seem to be going through a period which started in the early seventies where the more contact you have, the more money you

*continued overleaf*



STAFF RIGHTS AND THE INSTITUTION  
*continued from previous page*

have, the more troublesome you are as a prisoner, the more rewards you get. Good behaviour used to be rewarded and bad behaviour never tolerated but it would seem that parole; home leave; hostel and outworker schemes; radios and record players; special foods; shoes and clothes, restoration of lost remission are granted only to those who fall into the latter category.

What price conformity? What price uniformity? What price constructive behaviour?

The rules for prisoners don't change from the street to the cell—they remain basically the same. This Association has got positive views in relation to the role and rights of prisoners but the role and rights of prisoners are irrevocably entwined with the role and the rights of prison staff. The Association is no longer prepared to stand by with its mouth shut whilst other pressure groups abuse it and its members and ignore the constructive and valid concern of prison officers.

I will resist pressure, from all sources, whatever and wherever they are to drive this Association back to the traditional stance of a trade union which seems to be defensive and negative. It is my wish that the POA should be in the forefront of public debate on penal matters and to ensure that the collective views of our members are heard on trade union affairs.

We have got views, we have got ideas and we are involved in the progress within prisons for prisoners rights because they are, as previously stated, entwined with the working conditions of prison officers.

We will from time to time say things that politicians, governors and other people who work within the prison service find insular. The Prison Officers' Association's duty is to promote and protect the prison officer. We are, however, well aware that in order to improve the conditions for prison officers we are improving conditions for inmates.

That is the reality of working within the service as a prison officer. Change is essential and the "rights" of the keepers and the kept are often inseparable. There is, however, an even greater responsibility on prison officers and that is to protect the "Rights" of the general public, without whose confidence and support we could not function.

PRISONERS' RIGHTS *continued from page 8* the administration that decides how he may exercise them. As a result of their imprisonment, prisoners are unable to deal properly with all sorts of matters affecting their own material existence (rents, occupational and matrimonial problems). In addition, a number of legislative and administrative regulations deprive prisoners of social benefits, the right to vote, etc., usually for no other reason than that they are prisoners (*personae infamae*). I am sure this situation is not specific to the Netherlands but obtains in most other western European countries as well.

Improvements never come about overnight. They usually require a process of preparation. We have still not reached the stage where prisoners are acknowledged to have certain rights, specified in statutes or other regulations, which they may defend by a definite procedure. By this I do not mean the procedure open to all members of the public (including prisoners, provided they are authorised to use it), which enables them to take a case to court, but a legal remedy available exclusively to prisoners. And why should such a procedure not be provided for them since there are in our society a considerable number of categories of citizens, in a position of subordination to the authorities, who have for some time had legal status suited to their position? Civil servants, the armed forces and foreigners are three such categories. Prisoners, the mentally ill, minors in child welfare institutions and old people in homes are also in a—much more serious—position of dependence which imposes major restrictions on them. It therefore seems logical that their legal position should be more clearly defined. Over and above the desire for general social order and the theory of preparation for reintegration, a sense of justice pure and simple must prompt us to give a legal foundation to the position of prisoners. We must furthermore emphasise the need to respect prisoners as men too, which may prevent them falling victim to arbitrary and discriminatory actions. In penal establishments such as prisons, great importance is attached to order and quietude, and not entirely without reason. In a closed environment in which men are compelled to live with their guardians twenty-four hours a day against their will, the rules must be strict and clear. The prison administration must have reasonable discretionary powers but that should not prevent the most fundamental aspects of the prisoner's

situation, which are vitally important in his life in prison, being regulated by a system of rights and duties. The final element of the system is that the prisoner must then be truly able to defend his rights.

**A few examples**

Has this idea been put into practice yet? For years, in the Federal Republic of Germany, prisoners have been able to challenge any decision by the prison governor concerning them before an independent judicial body (the Vollzugskammer). A similar procedure has been in force in the Netherlands since 1977.

These two countries have also endeavoured to define prisoners' rights and duties exhaustively. The prison governor has to abide by the decision of the independent judicial body. Both he and the prisoner may appeal to a higher authority. In England, the Board of Visitors has the right to review the disciplinary sanctions imposed by the governor and can alter them as it sees fit. In the United States, several states are experimenting with procedures under which prisoners and prison officials consider complaints together. The prison governor is not obliged to abide by their decision but in practice he would usually do so. The experiments carried out in the Netherlands have undoubtedly shown positive results. They involve increasing the personal responsibility and independence of prison staff and prisoners and decentralising the administration, which is therefore forced to take decisions more on a case by case basis. In view of the proximity of prison staff and prisoners, the right to lodge complaints can, however, cause emotional friction and tend to put prisoners on a level with their warders. In May 1981, the Council of Europe began to take a specific interest in prisoners' rights. The directors of prison administrations in the member states agreed that prisoners should have clearly defined legal status, in particular to enable them to lodge complaints with bodies competent to hear them. As the main objectives of that legal status did not seem to differ greatly in the various member states, the meeting concluded that there was no need to harmonise regulations on this point. This result is perhaps disappointing but it will doubtless not be the last time this subject is raised at the Council of Europe. ■

*Reproduced from FORUM.*

*Editor's Note: the reference to the Board of Visitors' review powers is inaccurate.*



## Young Offenders and the Criminal Justice Bill

### YOUTH CUSTODY

*This article was written by Ted Cowper Johnson during April 1982 to meet the publication schedule for this edition of the Journal.*

*Legislation and proposals for its implementation were under early discussion at that time. The article is published now to act as a "curtain raiser" to Youth Custody provisions. Further articles and comment will be published in the January 1983 issue of the Prison Service Journal.*

# INTRODUCING YOUTH CUSTODY

WE Cowper Johnson

The Criminal Justice Bill is making uneventful progress through Parliament. In fact, its passage is singularly devoid of contention. In character too, the Bill is low-key; paying attention more to the legal framework rather than to any principles which might reflect a living approach that we might offer to the increasingly disturbed, often violent, and usually depressed young people who attract custodial sentences.

While change is still possible, the main features of the new legislation are becoming sufficiently clear to justify discussion on their implementation.

Detention is retained as the main short-term provision for young men who are relatively unsophisticated in terms of custody and who will attract sentences of between 3 weeks and 4 months.

A sentence of custody for life will replace HMP and life imprisonment. Section 53 of the Children's and Young Person's Act 1933, however, will be retained.

There will be provision for supervision on licence after most sentences and at the same point as for adult imprisonment there will be an eligibility for parole. Revocation of licence will be possible by order of the court.

In order to qualify as a youth custody centre, an establishment will need to provide a minimum standard of resources which comprise a training regime. Young men serving sentences between 4 months and 18 months will

Both borstal and imprisonment under the age of 21 years are abolished; their places are taken by a single determinate sentence of Youth Custody. Sentences will attract one-third remission and time on remand will count in calculating release dates.



Ted Cowper Johnson joined the Service in 1950. Most of his time has been spent in borstals and in training prisons. He is now Assistant Director (Young Offenders) in the Midland Region. He deeply believes in the effectiveness of treatment provided it really is relevant to the problem and its offer is restricted to those who wish it.



be guaranteed a place in a youth custody centre. Those serving longer sentences will be placed as far as vacancies allow: the remainder will have to be held in prisons or remand centres.

Young women will be sent to any female establishment, be it primarily for youth custody or adult imprisonment, provided it has a training regime.

From the age of 21, there will be power to convert a youth custody sentence to one of imprisonment. Over 18 but under 21, conversion to imprisonment will be possible but only on the recommendation of a Board of Visitors to the Secretary of State that a person is a bad influence or disruptive.

Given that the Bill becomes law in this session of Parliament, the provisions for young offenders are likely to take effect in the spring of 1983. Few changes have ever taken place in isolation or against the neutral canvas of a national non-event. The background may influence the reality of the outcome more than somewhat. Public opinion, or at any rate articulate opinion, is sounding frightened and angry about the rise in violent attacks upon people and property. There is an insistent demand that the criminal in general—and the young male offender in particular—should face harsher penalties. It would be unpopular just now to offer an institutional climate and patterns of treatment which truly reflected the needs of the young people sent to us. The present level of unemployment is the more frightening because economic upturn will bring no promise of improved job opportunities to most of the young folk who get themselves into custody. Their shocking, but realistic, loss of hope is a new dimension in their treatment.

There is, too, a need to note the micro-climate of our establishments. Over the last year or two, turbulence—and an increasingly violent response to custody—has been evident. It is not just physical attacks upon staff, though these have increased, but more frequently serious attacks upon each other and upon themselves. There has also been a sharp rise in setting fire to cells. The degrees of disturbances, particularly in the younger sector of our population, have become more widespread and individually less tractable. Understandably, this has led staff to be increasingly pre-occupied with the problems of control and manning levels.

Negotiations are presently pro-

ceeding on the common working agreement. Whether this particular form is agreed or not, no emergent system is likely to offer much other than skeleton manning during unsocial hours. This being so, there will be a growing pressure to share the traditional working day between competing claimants for training time. Simultaneously the ability of the Directorate of Industries and Farms to provide on-going and attractive work has been made more difficult by the recession.

### Centres

Detention centres will be less affected than other establishments by these changes. The replacement of half-remission by one-third will bring a technical increase in numbers in junior centres. Losing the 6-month sentence, senior centres will forfeit a steady element of their population on which they have come to rely for manning kitchens, maintenance gangs and courses. All detention centres will have to learn how to make meaningful experiences of very short sentences and how to cope with the instability of a much higher throughput.

Turning to the problems that will face the youth custody centres, the most obvious is the unknown: the behaviour of the courts in terms of allotting different sentence lengths. My guess is that, for the younger, sentences will tend towards the shorter end of the option implying, for a time, a faster "revolving door". Young people who persist will, however, as they head towards 19, begin to pick up longer sentences. Your guess is every bit as good as mine, but add to this that conversion to sentences of imprisonment is not going to be particularly easy to achieve (and is unhappily denied for sound, mature behaviour) we may be faced with a rapid turnover of youngsters and a longer stay, more sophisticated element. This may have a profound effect. From time to time, borstals have chanced their luck with local rules that could not have survived in an adult prison. This will not be possible any longer. Nor will it be prudent to describe trainees as boys.

Throughout the life of borstal training, staff have carried the burden of an impossible task—that of imposing treatment upon other people. Thankfully, this burden will be lifted in favour of a climate where it is likely and encouraged that young people will volunteer for and contract into treatment options. This will be difficult for some staff who believe, quite sincerely,

that without coercion nothing can be achieved.

### Allocation

Apart from the London area, where some other scheme may need to be worked out, allocation will take place in local prisons. As a first indicator to the decision, an algorithm will be completed. Special provision will obviously need to be made to concentrate young people who need medical oversight and treatment. Similarly, the small number of really secure establishments in the system will place limitations on where long-term and high security risk people can be sent. For the remainder, the issue will be simple—open or closed, and the nearest place to home.

This simplicity may prove over-ambitious. In the first place, there is no way that locals would carry the extra burden while the youth custody system kept unused spaces anywhere in the country. More important, however, is the age span. There is very little recent experience of holding the whole age range 15-21 in one institution without the safety-valve of re-classification to adult status on grounds of sophistication and maturity. It may work out but, on balance, particularly in closed establishments where young men are serving substantial sentences, there are reasons to doubt it.

The allocation of a young woman is going to be made on the basis of her individual needs and will be flexible: partly in the light of there being fewer outlets on the women's side but partly on her specialness as an individual person. This is true but it hallows the myth that the same is untrue for the young male.

### Staff

It is difficult to forecast what attitudes these changes will evoke in staff. Who will they perceive the youth custody trainee to be? To give an example, staff in borstals, particularly open camps, have had far more permission to risk their charges escaping than their opposite numbers in young prisoner centres and this has been reflected in manning levels and the openness and trust of regimes. Which way will the levelling go? Some members of borstal staffs are beginning to mourn the passing of the indeterminate sentence. Curiously, this indeterminacy, which started out as a spur to achievement and training, is now only perceived as an instrument of control.

Even more difficult to weigh up



is the likely perception of the new sentence by the young people themselves. Within his peer group, a young prisoner has more status than a borstal trainee and the ultimate goal is to get oneself promoted to the adult system. It is probable, therefore, that they will all seek "YP status". Staff may need to work hard on it if they are to make anything else more attractive and acceptable. Over the years, denial of

adult dignity has been a major cause of conflict in the male young offender system. Is it necessary to persist in this sterile encounter?

It is the right of those getting older to have misgivings about the future. I claim that right. It is, however, the privilege of the young to render such doubts into lies by their vision and enthusiasm. It is going to need every ounce that they have if these rather

dreary provisions are not to lead downwards to a dull form of juvenile imprisonment.

The young people in our care need more, far more than this. Time and again an under-inspired and under-resourced prison staff have rendered to the community better than it deserves. It is not unreasonable to hope that somehow they will once more perform the marvel of alchemy. ■

#### EXPLORING RIGHTS *continued from page 6*

manifest in locally-based victim support schemes. The Government also instituted a non-statutory scheme in 1964 in the Criminal Injuries Compensation Board for ex-gratia payments of compensation. On another level, the demands for public protection are loudly voiced at enquiries into the siting of new prisons—the prospect of a prison in the vicinity invariably brings discussion about rights into focus. This fact raises a corollary about the rights of a prisoner to restoration and reacceptance when in Churchill's phrase he has 'paid his dues in the hard coinage of punishment'. The basic principle of the 1974 Rehabilitation of Offenders Act was to protect ex-prisoners by using legal definitions to give a lead in society towards the broader protection of the ideal rights of rehabilitated ex-offenders.

#### **Rights—Deserts and Needs**

Wherein then lies justification for the public claim to the right to punish the offender? Explanations might be considered in terms of deserts and needs. These concepts tie in with the well established ambiguity between the retributive, backward-looking view of punishment and the utilitarian, forward-looking view. Within this general categorisation the inter-relationship between legal and ideal rights and the intricacies of disentangling these two emphases in any case are apparent.

Deserts easily come to mind in justifying punishment. In expressing benefit or punishment the word conveys a moral sense because men are said to deserve punishment for wrongs or privileges for good work. It is a comment on voluntarily chosen action and can cover a complex range of attitudes—sometimes conveniently covering facts and feelings not readily expressible but understood in the phrase "The prisoner deserves punishment". Deserts are backward-looking and based on past and present facts. Whilst a deserved right, benefit, or

privilege is an incentive it is doubtful whether a deserved punishment modifies a man's conduct for the better. The concept of deserts enables a prison governor to show appreciation for the behaviour, productive capacity, and effort of a prisoner. If the authorities continued to look for efforts that the prisoner makes to rehabilitate and reform himself the principle of deserts is significant.

The needs of a man can contribute to the basis of apportioning him rights. This is a fundamental political principle in our society and our system of justice requires that men have their "dues"—this being the principle that governs the National Health Service and Social Security philosophy. Needs can be identified sometimes from established legal rights, but even when not covered by prescribed norms needs, unlike deserts, can be impeccably identified and are instrumental for some further end. In this sense they are forward-looking. Yet they are also deficiencies which people do not like recognising in themselves and consequently they are often surrounded by codes of confidentiality. Needs can be used to suggest that if something is not supplied harm will ensue. This judgement is evaluative and independently depends on the observer's sympathies and moral standards. In a prison needs form a controversial part of the consideration of the rights of a prisoner. Convicted men can suggest that their criminal activities are part of a society that has neglected them. In this case needs, unlike deserts, are never related to moral considerations. Men can use needs as powerful devices for expressing the contention that their circumstances ought to be recognised by the State here and now as urgent rights. The anxieties of men in custody often evince this view and prisoners as a whole can appear to be people who demand instant gratification. Some people maintain that the current interest in rights has become downgraded

because of a confused distinction between the multiplicity of demands for distributive justice with traditional judicial guarantees of individual freedom. These people are the hard-liners who only identify rights in terms of legal norms.

#### **Rights in the Future**

Within the broad scope of issues about rights in the criminal justice system—important questions affecting the Prison Service have been highlighted. Particularly significant issues are apparent in relation to staff expectations. Employees seem to be yearning for a new step forward. An advance does not seem likely on the level of material progress or on the level of behaviour-modification techniques. However, impetus for improvement might be found in building on the current preoccupation with the demand for rights. The interest starts at the basic level of legal rights advocated by the rule book but that interest so easily leads on to questions about ideal rights advanced by a grasp of the deserts and needs of mankind. The spirit that motivates ideal rights comes before us not as a code of rules but through living individual example. It is therefore frequently associated with religion—but this is not a necessary connection as anyone may have a standard or hero as his exemplar. The impetus to search for a higher idealism in the matter of rights cannot come by external pressure and constraint but can only come by attraction and magnetic appeal.

If in the future a larger number of staff in the Prison Service are to have enhanced job satisfaction and a greater sense of work purposiveness it might be helpful to build on the current preoccupation with rights. Initially this may mean focussing on the self-interested level of legal entitlements but exploration of the ethical questions raised could help ferment and disseminate a more broadly enhancing interest in ideal rights. ■



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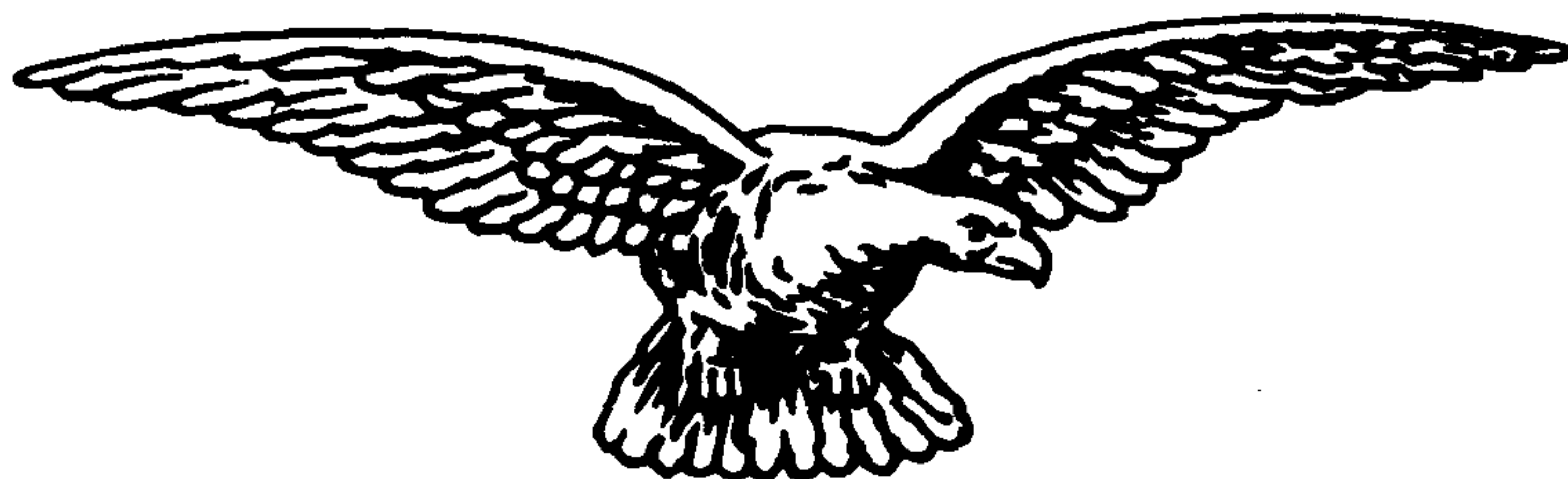
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