PRISON SERVICE JOURNAL

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Contents

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Foreword

I am delighted to write this foreword for the 100th edition of the Prison Service Journal which, since its inception, has grown from humble beginnings to a publication which has gained status and credibility across the globe. This is due in no small part to the hard work and commitment of its editorial team over the years. Its very survival through successive governments and budgetary restrictions is an indication of its special value. I know nothing quite like it.

The Journal has continued to provide an independent forum for debate and discussion of prison issues and their place in the wider criminal justice system. Its readership is broad, with contributions from academic experts as well as prison officers on the landing. This has inevitably led to a frank and open exchange of views on a diverse range of issues, comparisons between different prison systems, private sector participation in the Service, management issues and diverse views on regimes and rehabilitation. The breadth and diversity of topics covered has enabled readers to step back from the day-to-day issues and take a wider perspective. I hope that the Journal will retain its objectivity and continue to have a practical effect on what we do in the Prison Service, by provoking thought and enhancing understanding.

Derek Lewis

Director General

This special edition is a celebration of more than 30 years of the Prison Service Journal and marks the publication of the 100th issue (second series). It consists of reprinted articles from some of our more distinguished contributors over the years together with items from the editors, all of whom have made a particular contribution to the development of the Journal.

Readers may wish to know that a book is in preparation which will, through selected reprints from the Journal, cover a wide spectrum of issues and be a unique window on the changing landscape of imprisonment over the past four decades. It is hoped that the book, which is being printed at Leyhill Prison, will be available early in the new year.

Comment

The Journal began its life in July 1960 edited by Mark Winston and was sold for the princely sum of six pence an issue. At that time the editor set out a policy saying that the Journal would 'provide an opportunity for comment and discussion on any topic relevant to the function which the Prison Service performs and the field in which it operates'. The editor went on to talk about the growing complexity of the work of the Service and the need for better communications.

It was in the name of improving communications by changing the size and format of the Journal in January 1971 that the first issue of the current series was born. Seven editors later the Journal has gone from being published twice a year to quarterly and now bi-monthly and from subscription only to free distribution to all managers in the Service. The issue you are reading is the 100th of this series. Communication remains a major concern for the Service and the work of the Service is certainly no less complex than when the very first Journal was published. Throughout that time until the present day the Journal has been printed at Leyhill. Credit to them for staunchly staying with the Journal all this time despite the infuriating delays in producing copy on time and the consequent disruption of carefully planned schedules.

Is there still a need for a Journal when the Service has so many more channels of communication than in the 60s? With such technological advances, if advances they be, as electronic mail, staff can communicate speedily and directly without submission to an editorial board. The current attempts to halt the flow and limit the content of such messages may have, it is earnestly hoped, some effect but longer term there will be ways of overcoming those attempts and such is the speed of change in technology that other ways will be found to pass on information.

What the Journal offers is the opportunity for authors to

Letters from the editors .....

MARK WINSTON

Mark Winston, the founding editor, retired from the Prison Service as Assistant Regional Director, North. He had previously been the Governor of Blundeston and started the Journal whilst serving at Wakefield college. Having set out the objectives of the Journal, in his opening editorial he went on to suggest that *'with the passage of time a periodical develops a personality of its own, and this is usually a reflection of the personalities of the readers and contributors .... the Journal will be the product of your interest, support and participation.'*

Mark Winston

DAVID ATKINSON

David Atkinson, who took over as Editor from Mark Winston, had *'an odd career'* in that he *'never governed a secure prison'*. Governor of Hewell Grange and Leyhill, David spent five years at the Staff College as Head of Social Studies. He retired as Governor 1, Lifer Section, but was *'recalled to duty'* for the Carlisle committee and was co-opted to the Advisory Board on Restricted Patients.

David, writing about the Service at the time he was Editor says, *'If I had to characterise that period I think it would be that I saw the beginning of change, uncertainty and perhaps decline ... We saw the role of the Journal as reflecting reality whilst encouraging ideas and publicising worthy initiatives. The PSJ should reflect the professionalism of the Service in all its diversity, and its essential links with other professions, but it was never to be a house journal for the Home Office. It was apolitical and the Board was prepared to sail quite close to the wind to preserve its rather shaky independence. George Blake and the Train Robbers had opened up new, bitter conflicts over security, which set the pendulum swinging inexorably against the 'treatment and training' persuasion. It was a time of managerial gimmickry, short-term panaceas and crisis management.'* Quoting his first Governor, David remarks, *'If you stay long enough in this game it will all come full circle'.*

'My very best wishes for the 100th edition and kind regards to you all.'

David Atkinson

ALAN RAYFIELD

Alan is Area Manager for the South Coast. He was Governor of Long Lartin, Parkhurst and Gloucester, Deputy Regional Director for South West, Deputy Governor of The Verne and tutor at Wakefield Staff College. He joined the Prison Service in 1961.

Alan was introduced to the editorial board by David Atkinson and followed him as Editor. *'I had two main tasks,'* he writes, *'to resist censorship and editorial interference from headquarters and periodic attempts to close the journal on economy grounds ... In order to ensure that we had more control over contributions we began the idea of commissioning articles based on themes. This gave a sense of coherence and purpose to the Journal .....We bullied colleagues into writing for us and discouraged others, especially earnest American academics pursuing peripheral interests. Like all editors I suppose, I had the continuing problem of achieving publication deadlines.'*

'Looking at the PSJ now I am delighted with the way it has developed. It has improved over the years and the current editor and his team must be congratulated on its quality and relevance. I have taken the PSJ from the first edition in July 1960 (price 6d) and I am sure its founders will be greatly satisfied to see their creation achieve its century in such style. Keep up the good work.'

Alan Rayfield

produce after considered thought, an article which took time to write and takes time to read. The author is not committed to putting forward any view other than a personal one. The views expressed come from practitioners and academics thus providing an important meeting place for a wide range of views expressed in a variety of styles some more accessible than others. But all aiming at exploring and explaining this complex prison world and to make sense of conflicting and competing ideas and policies. Imprisonment is a paradox in a free society trying to combine the deprivation of freedom with preparation for freedom. 'You cannot train men for freedom in conditions of captivity', said Paterson but the Service does, so how is sense made of it. The Service works in an atmosphere of ambiguity which leaves it vulnerable to the superficial certainty of those who seize upon its failures and criticise its work. How often has it happened that in response to some crisis an external investigation is begun to meet the immediate need to silence the clamour of the press? How often has it been seen after an initial claim to know what's wrong and an offer of some simplistic solution for the enquiry on going deeper to end up pushing us down the road we were following already?

The Journal tackles the issues that face the Service in a way that draws out the complexity of those issues and the different views which exist in and outside the Service about how those issues should be faced. In answer to the question whether the Journal is still needed, the reply is that for as long as those issues remain complex there is a need to understand the problems and to challenge the array of offered remedies. Even more so now when no-one is prepared to stand by any ideology but adopts a pragmatic stance and claims to be speaking for the people. Ideology is out and politicians want only a well managed system offering no embarrassments. Governors and staff are rewarded not for their aims, beliefs and values but their performance as measured against some dry statistics. The need for reflection and considered judgement to assess where the Service is heading is greater now than ever. The Journal too often falls short but, nonetheless strives to offer an individual and independent view of the Service ■

RICHARD TILT

Richard Tilt is the Director of Security and Programmes.

He was Editor following Alan Rayfield and recalls, *'we recognised that the Journal was popular and influential outside the Service and that it had considerable value in that respect, but we were anxious to reach a wider audience within the Service so that we could be a genuine exchange of a thought-provoking nature ... we laid the foundations for free circulation within the Service ... an idea which was later adopted.'*

Reflecting on Board meetings he says, *'they were always a great pleasure as all members took the responsibility very seriously and cared very much about producing a good quality product.'*

'I am delighted to send a goodwill message for the hundredth issue. The quality of the Journal is higher than ever and compares well internationally with similar organs from other Prison Services. It is a measure of the serious thinking that goes on in the Service about the very difficult but important job that we have to do. I hope the Service will continue to support the Journal in the way that it has over the last 30 years.'

R.R Tilt

MIKE JENKINS

Mike Jenkins retired from the Prison Service in 1992, his last five years being spent as Deputy Chief Inspector of Prisons and Area Manager, Central. He was the Governor of Oxford and Long Lartin, worked in Midland Regional Office twice, was a tutor at Wakefield Staff College and served at Manchester, Hewell Grange and Portland.

It was in his time as Editor that headquarters gave up its censorship of the Journal but as Mike says, *'I doubt if anyone noticed.'* He goes on, *'we promised to be neither a house-journal nor a political mouthpiece. We quoted Douglas Hurd (then Home Secretary) but carried criticism of policies that would inevitably increase the prison population. We picked up the early strands of Fresh Start and discussed AIDS in its early days. We argued about Sense of Direction, Throughcare and privatisation and even foreshadowed community prisons.'*

'It has been good to see the Journal pass through eager and (relatively) young hands and to grow in size and readership and I congratulate the present editor on reaching the 100th edition.'

Mike Jenkins

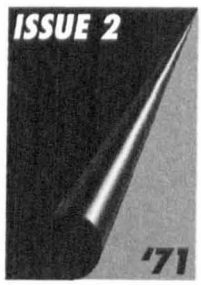
ALISTAIR PAPPS

Alistair Papps is currently Area Manager, North East. He was previously the Regional Director for the North and Governor of Acklington, Durham and Frankland prisons.

Al took over as Editor from Mike Jenkins in 1987 and quickly *'detected a heady sense of freedom as members of the editorial board began to taste the joys of entirely unfettered publication. However I was all too conscious that responsibility should accompany this new found freedom.'* In this context Al vividly remembers *'a long and agonising debate as to whether or not to allow the use of the copulative expletive!'* He took on the job *'with the avowed intent to make the Journal more relevant to the issues faced by practitioners in prisons'* and quoting from his inaugural editorial he goes on, *'under my Editorship the PSJ will be dedicated to the proposition that theory is theory and practice is practice and sometimes the twain must meet... Someone said that a society that has contempt for either its philosophers or plumbers is likely to find that neither its theories nor pipes hold water!'*

'Congratulations and best wishes on reaching the 100th Edition. Many happy returns - 100 down only 1,000 to go!'

A Papps



Tasks and Resources

Mark S. Winston

Apart from a brief policy statement in our first issue and an equally brief item on policy in the new-sized but old-priced issue of January we have never published an editorial as such. This is because the Editorial Board plans each number as a reflection of the current penal scene bearing in mind it is not the Journal's function to express an official view or represent any particular platform or pressure group.

Nevertheless, readers sometimes do ask: 'Why does not the Journal say something about our problems and what should be done about them?' We would reply: 'Look at the table of contents alongside, read the Journal and then say whether or not we have done precisely what you suggest'.

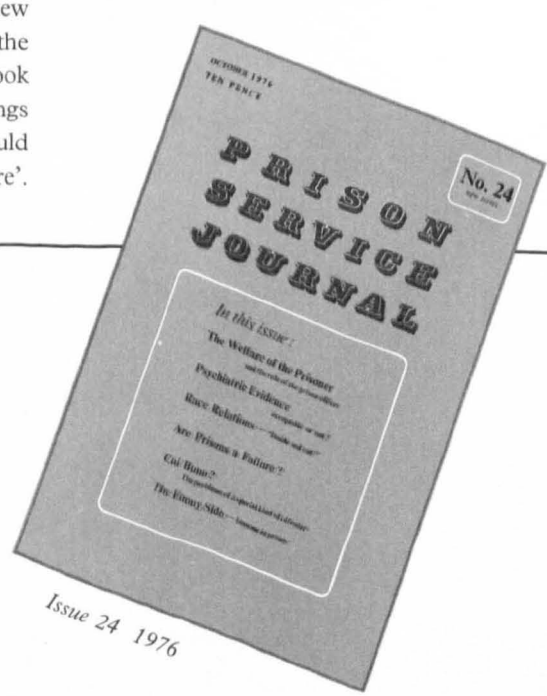
Looking at today's penal picture we cannot fail to see the sombre background which OVERCROWDING provides. Much is being planned which will eventually brighten the whole canvas but it is a process which may appear irritatingly slow to the onlooker.

Apart from any new buildings we must welcome any measure to reduce the prison population and we must be aware of any new thinking on CRIME CONTROL. Neither the American 'slant' on the Hawkins/Morris book (reviewed by Lord Stonham) nor its borrowings from the British way of tackling crime should encourage us to say: 'It could never happen here'. We need more Public-Police-Prison co-operation and understanding if indeed we are not to have some of the unpleasant American experiences repeated here.

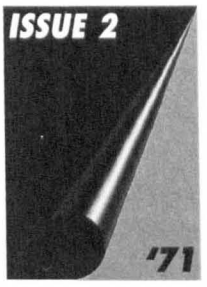
Even if the prison figure fell dramatically we should be dealing with human problems in an 'inside' situation with many 'outside' connections, so it is important to follow Herschel Prins' arguments about our relationships with other agencies, particularly at a time when new social departments begin operating in a changing environment, indeed Environment with a Department of its own. Nor must we forget people like our Boards of Visitors and Visiting Committees ... and other WATCHDOGS. They are partners with us, another link in the Public-Police-Prison chain.

These, our main items, represent our task. To fulfil our task we need resources, the most important of which is staff. Staff cannot work without knowledge of our problems.

The range of subjects covered in our review section is an indication of the Journal's part in bringing you some of the knowledge you need to fulfil your task ■



The Media and the Message



Alan Rayfield

After the excitement of the summer months caused by the Parkhurst riot there have been few sensational items of news about the Prison Service likely to cause joy in the hearts of news editors and television producers. Although some might regret this departure from the public eye, no doubt there was a corresponding easing of tension in governors' offices and the Press office. It is a sad but true fact that our Service only comes to the notice of the general public when it provides negative publicity: the everyday problems such as overcrowding or rehabilitation are dealt with in a lower key in the more 'responsible' newspapers and journals.

However, there was one cause to lift the liberal heart and that was the general question of remand prisons and of bail for first offenders in particular. On BBC television, the '24 Hours' team, through their reporter James Penrose, took a camera to Ashford and also followed up specific complaints made by the families of remand prisoners.

The resulting film concentrated almost exclusively upon these complaints and made much of the fact that a great number of remand privileges were not being granted. They also made allegations of staff brutality and commented upon the failure to communicate with some parents that their sons were in Ashford. These points were all made during the course of interviews with parents, friends and ex-inmates. The reporter also made an attack upon the non-granting of bail to first offenders suspected of offences committed during political or activist demonstrations such as the occupation of 144 Piccadilly. Following the usual policy on these occasions there then followed a discussion of the film in the studio between Alan Bainton, David Dimbleby and Pat Smythe who was described as an ex-magistrate and a youth officer.

It was very soon apparent that Dimbleby did not feel comfortable in the situation and played the role of inquisitor with some apprehension. He pushed forward certain specific claims made in the film with an air of 'what about that then?' but felt unable to argue very effectively with Alan Bainton who methodically dealt with each complaint in a very calm and reasonable manner. Perhaps an example of how one complaint was handled will stand for all. In the film the point was made that there had been allegations of staff brutality. An ex-inmate gave an account of an incident in which he had been involved and, as a result of editing, it appeared that there were several such incidents. Alan Bainton was able to point out that all the points made in the film referred to one incident in particular and that the member of the staff concerned had been disciplined.

This was a saddening experience because once again it appeared that sensationalism had been sought at the cost of objectivity and a chance to inform the general public about overcrowding and the remand situation had been lost. The studio discussion group was unqualified to comment upon why bail should be refused to certain types of alleged offenders and so wisely did not do so, but no attempt was made by the BBC to prolong an examination of this issue.

Prisons provided the topic for Malcolm Muggeridge's programme 'The Reason Why' on 11 October. The producer had gathered together a large collection of people who could claim to be interested in the subject including some who might charitably be called 'experts'. Malcolm Muggeridge stood in front of them all rather like a mediaeval choir master stricken with self-doubt and opened the proceedings with a few philosophical gems including 'one punishes to deter not for justice'. He was answered by Edgar Lustgarten who is a professional storyteller if nothing else and the whole thing began to move sweetly along in a predictable manner with other 'names' interceding as their cues appeared.

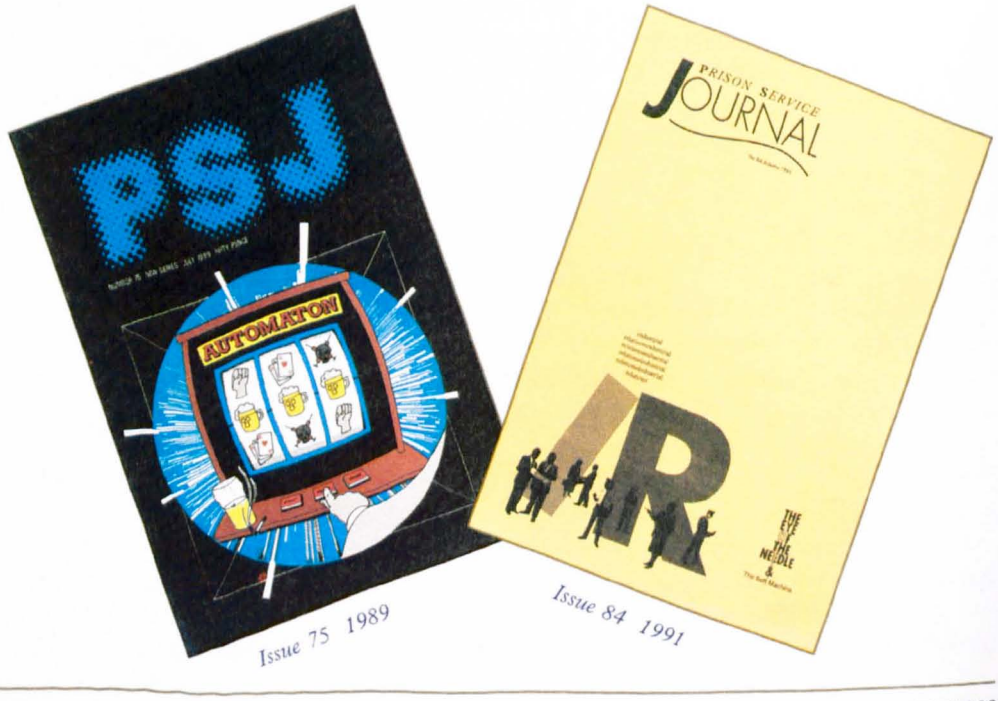
Suddenly it all went dreadfully wrong and I awoke with a start. There were several ex-inmates and their sympathisers in the group who had been silent until then but Edgar Lustgarten was getting into his stride and was regretting the abolition of capital punishment.

Jimmy O'Connor then leaped to his feet, pointed his finger at Lustgarten and said: 'You've made your living for 25 years out of murder and you love it!' Lustgarten lost his cool and shouted some ill-considered reply which was the signal for everyone to stop trying to be objective: the sigh of relief was almost audible.

Malcolm Muggeridge was still vainly trying to challenge the opinions and asking for evidence but was plainly upset when people would not obey the rules and refused to listen politely to the opinions of others. He was trying to referee the contest between Lustgarten and his team of assorted housewives ('some of my best friends are criminals') and Jimmy O'Connor and his lads. Muggeridge was frantically blowing his metaphorical whistle unheeded right up to the end as the boots flew in.

It was a real emotional bloodbath and the main casualties were Duncan Fairn (who was not helped by being referred to as 'Nairn' by Muggeridge), Douglas Gibson and Nigel Walker. Prejudice and opinion masquerading as 'fact' were the victors and few questions were answered save that with this polarity of feeling in existence the Prison Service cannot win.

Despite my remarks in the first paragraph, the serious daily and weekly newspapers devoted a good deal of space in the autumn and winter months to the problems of overcrowding and alternatives to imprisonment. Norman Fowler, M.P. wrote a series of six articles in the *Times* called 'Crisis in the Prisons' including one on the borstal system. He said nothing new but it was a competent survey of current problems. The *Guardian* concerned itself with an examination of the plight of men on remand and also published on 1 January 1971 a worrying extract from *Race Today*, the journal published by the Institute of Race Relations, in which black prisoners alleged ill-treatment by staff and other inmates both physical and psychological. The *Guardian* also produced an article considering the plight of mothers in prison and also devoted a full page on 25 January to the 'new' Holloway. An important article appeared in the *Sunday Times* on 24 January called 'Prisons: the reform that went wrong'. It examined the effect that suspended sentences have had on the prison population and maintains that there are thousands now in jail who would not have been there before suspended sentences were introduced. Prior to their introduction magistrates tended to use the tariff system of fine, probation and then imprisonment. Now they bring in the suspended sentence at once and miss out fines and probation. This means that the prisoner automatically goes to prison on his second Court appearance and stays there for longer than he would have done under the old system. The Probation Service has had its load reduced but the prisons have had theirs increased. Professor Radzinowicz comments that this should surprise no one who bothered to examine the evidence of other countries who have used the suspended sentence system in the past and found it wanting. In the past Britain has always relied upon probation and other forms of alternative treatment such as fines. In countries which have no such alternatives suspended sentencing is a forward step: where these alternatives do exist it can be retrogressive. No doubt the lawyers, politicians and social scientists will add to this debate in the near future as the prison population continues to rise ■

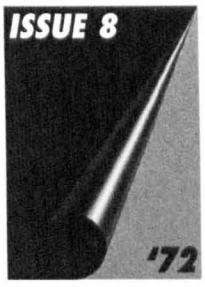


100th EDITION

Control • Treatment

WITH PARTICULAR REFERENCE TO LONG-TERM MAXIMUM SECURITY ESTABLISHMENTS

Al Papps



It has been said recently that the problems of the sixties in our Service were problems of security, and the problems of the seventies will be problems of control. This is clearly an over-simplified aphorism but, like many such dictums, contains considerable truth.

There is no doubt that in the sixties, and the late sixties especially, we were pre-occupied with security problems in their most obvious manifestation, namely, escapes. It is now generally felt that in terms of escapes, particularly from maximum security institutions, we can afford to feel confident about our perimeter defences in the light of more intelligent planning and co-ordination, together with sophisticated technical developments in this area. However, it is also generally thought that when the possibility of escape is remote there tends to be a rise in incidents within the institution of troublemaking behaviour – assaults, suicides, riots, 'smash-ups'. If this is so we can expect a higher incidence of control problems. What is more, western civilisation in general is now experiencing social control problems of increasing intensity in political, industrial, cultural and educational spheres. Authority in general is more readily questioned. There is little evidence to suggest that these trends will decrease in the seventies, and clearly what is happening in society at large will sooner or later be reflected within its prisons. Hence the problem of control.

A dual task

It is the purpose of this paper to attempt to develop the thesis that control is ultimately inseparable from treatment, and that truly effective control depends upon a dynamic, genuinely committed attitude towards treatment. By isolating control as a concept, by seeing it as 'the problem of the seventies', there is a great temptation to over-react and concentrate upon gaining immediate control to the exclusion or postponement of all else. One need only look to Northern Ireland to see an analogy. Before the assumption of direct rule one of the many 'fixes' in the very complex social control problem that is Northern Ireland today was precisely this attitude – 'we will only discuss a long-term political settlement once we have controlled the immediate situation'. In fact, both the gaining of immediate control and the search for an ultimate political settlement should be pursued concurrently and equally vigorously. Dr. Martin Luther King once described riots in another context as 'the language of the unheard'. The very cornerstone of successful penal treatment is listening courteously and attentively to our charges. The argument of this paper is that, paradoxically, if one concentrates exclusively on gaining control the chances of losing it are increased, and yet if one concentrates upon treatment the chances of gaining more effective control are enhanced. However, as T. S. Eliot pointed out:

The last temptation is the greatest treason,
To do the right deed for the wrong reason.

One must concentrate on treatment because one is genuinely committed to the ultimate betterment of the inmate, however difficult he may be, and not because one views treatment as merely a control device.

Some definitions may be helpful at this stage. Control has connotations of checking, verifying and hence regulating; calling to account, reproving, reprehending, exercising restraint or direction upon the free action of individuals; dominating, commanding, and ultimately overpowering. Treatment can be defined very generally as action or behaviour towards a person in some specified way. More specifically, in political terms, the verb to treat means the action or act of treating or discussing terms, parleying, reaching for agreement; dealing or carrying on negotiations with another with a view to settling terms; bargaining. In medical terms the verb to treat means to deal with, or operate upon in order to relieve or cure.

Both concepts, that of control and that of

treatment, involve an interaction between human beings – the interaction in the control area tending to have negative static connotations, the interaction in the treatment area tending to have positive, dynamic connotations. Dr. Peter Scott[1] has indicated that 'a closed or maximum-security unit, even more than other institutions, cannot stand still. It must either keep moving towards therapeutic goals, or else slip back into a custodial function which is ultimately inseparable from brutality'. In other words, where human beings are involved together in a captive community, individual relationships and the pattern of collective relationships can never remain static. They are always moving in one direction or another, either towards the more negative, static connotations associated with control or towards the more positive dynamic connotations of treatment. In the context of an institution 'moving towards therapeutic goals', control takes on positive characteristics, for it is geared to the ultimate benefit of individual inmates or the inmate community as a whole. In the absence of movement towards treatment objectives it becomes merely custodial which in the long run defeats effective control.

The nature of authority

Control is a manifestation of authority, and much has been written in recent years about the nature of authority and its use in the context of social casework. Eliot Studt[2] refers to the emergence of authority in an organisation as 'a device which is used when human beings come together to accomplish a given task', and Studt sees authority as a 'special form of legitimised power which is created in order to get the task done properly'. In other words, the use of authority and the exercise of control are only legitimate when used to accomplish a given task properly. In the context of long-term maximum security establishments, the task is long-term custodial treatment. A. G. Sheriffs[3] has commented on the same subject – 'He must, in setting limits on the activities of the client, do so in a reasonable and consistent manner. Always the goal must be the good of the client and society. A punitive authoritarian attitude, or an attitude of guilt for acting as authority, will remove the opportunity that exists for gain'. This statement is particularly applicable to dispersal prisons in the light of the Radzinowicz Report's comment[4] that 'prison authorities should never be, or be allowed to become, apologetic about the intelligent use of a segregation unit', provided of course that the unit is being used for the good of the inmate and the inmate society. Kenneth Pray[5] has pointed out that 'rightful social authority provides limits which – like those of physical strength and capacity, mental ability and social limitations – are relatively inviolable and real satisfactions can be found only within them'. Again control should be exercised in maximum security establishments for just the same reason in an attempt to help inmates to see that their true social satisfactions lie within certain social limits. In other words control should be exercised as an inextricable part of a treatment process.

In the particular context of social casework, Beatrice Pollard[6] has commented that 'even in work with delinquents, caseworkers cannot properly exercise authority for the sake of doing so or for punitive reasons. They can only exercise it intelligibly in the hope of fostering the client's authority over himself'. This fundamental principle is as applicable to long-term maximum security establishments, as much, if not more so, than to social casework agencies and in fact is the key to understanding control. For it means that control should be exercised, not for its own sake, or to relieve anxious feelings on the part of the staff, but ultimately for the benefit of the inmate, so that he may be enabled to develop self-control or be protected from his fellows. The corollary of this principle is that the inmate's ultimate benefit must be a matter of deep concern to the staff and this concern must be communicated. This applies to a Brady, or a Kray or a Straffen or a Richardson as much as it does to an inadequate feckless borstal boy. Foren and Bailey[7] have pointed out that when an authority enforces and controls 'in the interests of the client' it is 'perhaps even more important that such techniques should be applied with skill and understanding, compassion and concern, than it is in respect of more permissive techniques'. The segregation unit of a dispersal prison must be used with professional skill and expertise but also without loss of faith in human nature. The staff of a

1. Unpublished paper about secure establishments written in 1967. Dr. Peter Scott.
2. 'An Outline for Study of Social Authority Factors in Casework', Social Casework, vol. xxxv, No. 6, June 1954. (Reprinted in Social Casework in the Fifties. Ed. Kasius F.S.A.A., New York 1962.) Eliot Studt.
3. 'Authority in the Client-Worker Relationship—Asset or Liability.' Alex. G. Sheriffs.
4. 'The Regime for Long-term Prisoners in Conditions of Maximum Security.' Report of the Advisory Council on the Penal System, (HMSO) Para. 167.
5. 'Social Work in a Revolutionary Age and Other Papers.' Kenneth L. M. Pray.
6. 'Social Casework for the State.' Beatrice Pollard.
7. 'Authority in Social Casework.' R. Foren and R. Bailey.

segregation unit must work repeatedly for an inmate's repeated re-entries into the main community of the prison. As soon as an inmate is written off as untreatable a segreation unit becomes a mini Alvington. In fact, the nettle which the Radzinowicz Report grasped firmly, and in so doing rejected concentration in favour of dispersal, was that inmates with very long sentences, who have committed horrifying crimes and have behaved with bizarre violence, are nevertheless still members of our society with innate worth as human beings and must, therefore, never be written off and consigned to an Alcatraz-like Alvington. The fact that must be faced is that one day they will be released and we must, therefore, be working towards that end, with all the concomitant implications of preserving identity and mitigating the worst effects of long-term incarceration. An incidental pay-off of adopting this approach is that the chances of serious control problems are minimised. The more someone is written off as untreatable the more he will behave that way. The converse is also true.

Communications the key to control

Viewing the extreme situation can sometimes illuminate a subject. Extreme loss of control is the riot situation when inmates are united against their controllers - Parkhurst, for half an hour in October 1969 in one small area of the prison, Attica for several days in September 1971 throughout the whole prison - or when inmates are openly warring with each other and their controllers are unable to exercise control or collude with the warfare – so vividly illustrated by George Jackson in some of his letters from prison. Situations in which control has been lost, never existed, or is in the process of slipping away, are nearly always characterised by a lack of real communication between staff and inmates. The commanding, reproving, dominating role of authority is to the fore, and a 'siege', 'end of the road', 'no hope', 'eye-ball to eye-ball' confrontation mentality prevails, with well-established, deeply entrenched positions. It has been described by inmates and staff as a situation in which fear is almost tangible. The institution has regressed into a custodial function which is entirely negative and static. The dynamic 'room for manoeuvre', negotiating, discussing element characterising a treatment situation has withered away. The hatches have been battened down within the inmate community. The openness in communication, to be monitored to provide the regulating element characterising effective control, is entirely absent. Thus authority plays safe and control becomes purely coercive, dominating, commanding and ultimately brutal in that it attempts to overpower with sheer force.

On the other hand, the traditionally recorded characteristics of a successful treatment oriented prison community, are a flattening of the authority pyramid, a sharing of decision-making, and a very open pattern of communication between staff and inmates and between inmates themselves. In Dr. Martin Luther King's terms inmates are listened to with respect. In purely pragmatic terms, support for authority although probably latent, is diffused throughout all levels of the inmate community. The main body of the inmate population perceive their controllers as basically concerned about the quality of life within the prison and as people who care about the ultimate betterment of inmates. What little research evidence there is in this area would support the contention that trouble-making behaviour is closely related to the inmates' definition of the institutional situation as a negative opportunity structure, a negative authority structure, and an arbitrary and externally controlled environment.[8] The implication of this research for practitioners is that troublemaking behaviour can be minimised by ensuring that we define clearly that opportunities *are* available, authority *is* benign, and internal control and predictability *are* feasible.

In the context of an institution which has achieved this climate, it is far more difficult for extremist elements in the inmate population to generate and exploit grievances against authority, and particularly so, if this element is dispersed in several different establishments rather than concentrated in one institution. Inmate leaders, hostile to authority, ultimately depend upon generalised support within the prison community if they are to translate their hostility into purposeful action, in the same way as guerrilla leaders depend upon the support of the indigenous population. The IRA or the Viet Cong may be said to swim like fish within the waters of a disenchanted population. Additionally, this flattening of the authority pyramid involves what systems analysts would call a dispersal of the critical information points throughout the social system, thereby making the seizure of control more difficult.

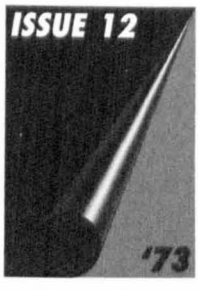
Yet, some so-called treatment regimes, especially in long-term establishments dealing with difficult inmates, develop a cynicism in their treatment techniques which springs from the need to achieve short-term control of people in whom it

8. 'Trouble-making behaviour in a correctional institution – relationship to inmates' definition of their situation.' American Journal of Orthopsychiatry. Wood, Wilson, Jessor and Bogan. Vol. 36, No. 5, October 1966.

is difficult to see any prospect of effecting lasting change. Traditional diagnostic assessment, subsequent meeting of individual needs with the resources available, together with intelligent sentence planning, the use of inmate committees, and even positive inmate/staff relationships, can too readily be seen as short-term control devices in themselves and not as tools with which to effect change to the ultimate betterment of the inmates concerned. This very understandable cynicism will sooner or later be communicated to the inmate population and effective control/treatment in the long run will be lost for the sake of short-term gains.

For control to be ultimately effective it has to be extricably bound up with treatment with the result that the interests and needs of the inmates must be of paramount concern, genuinely felt, and what is more, this concern must be communicated by the staff ■

9. 'A systems analysis of the July plot: the coup d'état as a support stress crisis.' P. A. J. Waddington. Unpublished M.A. dissertation, Leeds University, September 1970.
2, 5 and 6 – All quoted by Foren and Bailey in (Authority in Social Casework.)



Comment

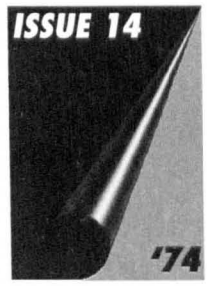
David Atkinson

When the penal history of this decade comes to be evaluated, the most significant feature to emerge may well be a sudden concern of the prison system for its staff. This is a more remarkable outturn than might at first sight appear, for it is a fact that all the chronicles of prison reform over the last century have a great deal to say (quite properly) about offenders, their causes and conditions, the moralities and practicalities and methods of deterring or rehabilitating them, etc., etc., and about the merits and demerits of prison buildings, but little or nothing about the men who really run the show (apart from the individual contributions of a handful of gold-dust governors), the conditions under which they work, how they see their task and its discharge, what they think and feel. Only one writer (J. E. Thomas) seems to have considered the *English Prison Officer* worthy of a book to himself – a book which will be found of increasing reference value to the 'professionals' and the policy-makers as they face the need to design a prison system for the last quarter of the twentieth century – a need which has been lent some urgency by the recent direct attention-seeking of both prisoners and officers.

Yet many governors and administrators (and a very few 'outsiders') have for long recognised that any system of dealing with the incarcerated, however inspired its philosophy or sophisticated its methodology, however sincerely meant and applied, must fall short of its aim unless subscribed to by the majority who have to implement it. For the dichotomy of prison exists not only between the seeming irreconcilables of custody and treatment, but in the self-cancelling (and for both inmates and basic staff the highly confusing and cynical) effect produced when fine phrases from on high are so patently denied by the day-to-day realities of their situation.

It is not a question in prison, any more than elsewhere in society, of taking a popular referendum about what should be done; it is the business of leaders to lead, and of staff to be guided. But it is a question of acknowledging, perhaps for the first time fully, that people required to perform a difficult, demanding, and often obscure task *matter*, that it is essential to attract and recruit sufficient of them of good quality, to look well to their pay and conditions of service, to consult, train and respect them. These things are not 'union' matters, they are part and parcel of the whole involved pattern of penal reform. To neglect them is to guarantee that the prisons will remain as ineffectual in the constructive aspects of their task as their worst critics declare them to be ■

Parole. Where next?



Lord Hunt

I hesitated before accepting the editor's invitation to contribute an article on the parole system in this number of the Journal. The moment of departure from the Board is not an ideal one for producing reflections upon a massive experience, both general and personal, which has had and will continue to have, important consequences for our society. What is more, it would not be proper for me, nor might it be helpful to the future of parole, if I were to expose at this moment the opinions about the future which have been shaping in my mind during more than six years. It is fortunate, from every point of view, that editorial space contrives to render my remarks relatively innocuous!

I propose, however, to recall some facts which may be significant for the way ahead, and to raise a few questions from which ideas are likely to stem. Historically, it is interesting to review the debates in Parliament during 1967, when our parole system was fashioned and made law; some of the points during these debates are undoubtedly relevant to any review of progress for the future.

There was, for instance, the general welcome to the proposal to experiment with conditional early release from prison on a much wider basis than had hitherto been attempted by young prisoners and extended sentence licences. The support given to a Labour Government for this proposition, and the collaboration across party lines in working out the system, provided a strong assurance of the political will to develop this measure.

Secondly, there was the relatively limited application of parole envisaged by the (then) Home Secretary, Roy Jenkins, who forecast in the House of Commons a release rate of about 20 per cent.[1] For some years now the releases on parole have doubled that original forecast.

Thirdly, and of particular importance, there was the Home Secretary's acceptance of representations by the Parole Board, that he should refer to us all cases which had been favourably recommended by the prison local review committees (LRCs), rather than only those cases which, in the judgement of Home Office officials, the Secretary of State would be ready to accept. By this momentous step, reinforced by a subsequent proposal from the Home Secretary himself to refer a number of other cases which were unfavourably recommended by LRCs, the Board was placed in the position of advising him, not only on the basis of risk but also in regard to the nature and gravity of certain offences about which he would be likely to have reservations. It is reasonable to assume that most, or all, of such cases would have been refused by officials or by the Secretary of State himself, without reference to the Board. Matters such as general deterrence in regard to certain heinous types of offence, and public attitudes about particular crimes, with the political consequences implicit in a decision to parole, brought the Board more into the cock-pit of controversy than we might otherwise have been.

Fourthly, there are certain constitutional features of the scheme devised by Parliament, which should be highlighted; they, too, will be focal points for attack or defence, in any proposed reform. There is the interesting character of an advisory board which has, at the same time, a strong negative (and a smaller positive) mandatory role. The Home Secretary has no power to release prisoners who have not been recommended by either the Board or the LRCs. There is the predictable impact of this position on prisoners' and the public's perception of the responsibility for the system. There is also the power of the Board, less obvious because it is seldom invoked by either party, to release a person who has been recalled by the Home Office without prior reference to the Board. Undoubtedly the Board

1 House of Commons Debates, vol. 738 cols. 70 and 194-5, 12 December 1966 and vol. 745 col. 1647, 26 April 1967. Mr. Jenkins estimated 'that the Board's work would take up roughly five working days a month and that the number of cases it would review ... would be about 750, perhaps rising to 1,000 a year'.

would be more popular in the eyes of some of those who have been recalled, if we felt able to do this more frequently!

The Board is vested with a hybrid task, which is no less intriguing and satisfactory to its members for the difficulties which it presents.

Then there are the problems posed by a system which operates through a number of different agencies, the focal point of which is the Home Office. The Prison Service, the Parole Board and the Probation and After-care Services are linked by a radial system of communications, rather than through a purpose-built or hierarchical chain of command. There are certain advantages in this arrangement, the most important one of which – at any rate in the eyes of the Board – is the independent role which this enables us to maintain. But there are weighty disadvantages in regard to the volume and speed of communication and the consequent perception of the system, in its constituent parts, by prisoners, prison officers and probation officers, to say nothing of Board members themselves.

Another constitutional feature to which I should draw attention, is the discretionary nature of release on parole, which introduced an indeterminate element into determinate sentences, in marked contrast to the pre-existing YP and ES licences; the latter, due to the way in which remission has been operated, placed the starting date for release on licence firmly in the hands of prisoners themselves. Among the questions to be considered in future is the effect of this uncertain factor on training for release and on the attitudes and state of mind of prisoners.

Among other constitutional points, I would also single out the choice of 12 months or one-third of the sentence, being the earliest date at which parole could be considered. It could, of course, have been fixed earlier, but there are some cogent arguments for not doing so. However, in a number of countries, conditional release is normally authorised as a general practice in the final third of a sentence. This practice could not be made generally applicable in this country because of the longstanding practice – albeit discretionary – of remitting the final third of a sentence without conditions. By thus making all prisoners eligible for release after serving a relatively short part of a substantial sentence, the question has loomed large as to whether it should become general practice to release almost all prisoners by administrative decision, at a point markedly different from the sentence imposed by the court.

Finally, I would point to the fact that, when a fresh offence has occurred during parole, responsibility for recall to prison is shared between the Home Secretary and the higher courts. Action may be taken judicially, or by administrative discretion, without any clear understanding as to where the primary responsibility for the decision should lie. It is interesting to note that administrative action to recall has greatly exceeded judicial action, but I have no firm evidence as to the reasons for this. It may well be that the courts are still not sufficiently aware of their powers in this regard. In 1972, the courts only recalled 16 parolees at the time of sentence, out of 100 fresh convictions during the currency of the licence, which resulted in recalls; the balance were recalled on the orders of the Home Secretary.

So much for historical background and some talking points arising from this. What are the results so far? For obvious reasons, I will not give detailed up-to-date statistics, since these will be published in the forthcoming annual report of the Parole Board. In general terms, however, here are some indicative figures. About 14,000 prisoners have been paroled since the first release in 1968, being 28 per cent of the total who have become eligible since that time. It will be remembered that a very cautious start was given to this scheme, when only 8.5 per cent of those who were eligible in the backlog situation, were released on 1 April 1968. The graph of releases rose steeply in 1969 and reached a plateau in 1970 of about 30 per cent parole releases in each calendar year, and this rate has been maintained to date. Opting out by prisoners has remained fairly low, with a national figure in 1972 of about seven per cent and a maximum of 17 per cent (Parkhurst) with fairly high figures from Albany (14.2 per cent) and Blundeston (14.4 per cent) in that year. These figures compare favourably with the far higher rates of self-refusals recorded in Scotland.

It is interesting to compare these figures with the percentages of paroles from the same prisons: 12 per cent (Parkhurst); 22 per cent (Albany) and 14 per cent (Blundeston) in 1972. To state the obvious, the low general rate of parole from certain establishments has not appeared to extinguish the individual expectations of inmates in those prisons.

The indeterminate effect of parole on the fixed sentence has been clearly reflected in the length of time for which prisoners have been released before their normal release dates. This has averaged about eight months. It is generally true to say that whereas the majority of those whose sentences have allowed for only one normal review have been paroled for all, or most of the middle third of the sentence, most prisoners who are eligible for more than one review have not been paroled at their earliest parole date. Obviously the overall average period embraces some very brief paroles of a matter of weeks, and a few very long ones of up to five years.

Undoubtedly the question of increasing the period of parole for long sentence prisoners is a matter for further consideration in future.

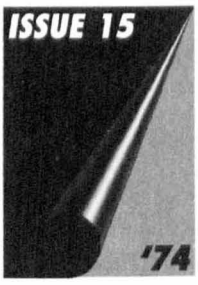
The area of agreement between the LRCs (both for and against parole) and the Board is currently in the order of 75 per cent. In general, the Board has agreed with LRC proposals for parole to the tune of 70 per cent, but has decided to parole 25 per cent of those cases unfavourably recommended by LRCs, which have been referred to the Board. The overall effect of this trend is an area of agreement and disagreement which tends to be favourable to prisoners and is, I believe, a healthy feature of the scheme. Incidentally, following the provisions of the 1972 *Criminal Justice Act* (section 35) a number of LRC recommendations for parole have been accepted by the Home Office without reference to the Board. By the same token, the Board has been in a position to consider some hundreds of additional cases which were not recommended locally, and has recommended a substantial proportion of these. I regard this as an important index of progress and a portent of further advance within the present framework of the scheme.

The recall rate has remained within a ceiling which seems to be tolerable to Parliament and public opinion. Since 1968 it has averaged seven per cent amounting to 975 prisoners of the 14,000 who have been paroled. It is an interesting question as to the point at which the scheme might be challenged by this yardstick. From experience so far, I would venture to say that the greatest danger to parole is not a relatively high percentage of recalls to prison, so much as the emotional impact on the public mind of particulariy spectacular offences, or even of lesser offences by especially notorious offenders. I would certainly hope that any prospective rise in the 'failure' rate would not deter the Board in future, from pressing on with the policy of helping many of the socially inadequate people in the community, where they may continue to be a public nuisance outside prison walls, but who are merely kept in a state of negative suspense while inside. I also hope it may be acceptable to grant more long-term prisoners some parole before their normal release dates.

Our parole system, for all its virtues, has certainly some drawbacks. Solutions to some of the many questions to which experience so far has given rise are likely to be found only by referring back to certain constitutional features of the scheme, to which I have drawn attention. I would certainly give it as my view that the biggest single weakness lies in the domain of communications. In an ideal situation it would undoubtedly be desirable to furnish reasons for all negative parole decisions to prison governors and their staffs, the LRCs and to prisoners. Moreover, a feedback of information on the progress and problems of parolees would also be a desirable and educative improvement if it were possible to increase the flow in a reverse direction.

There is also the question of whether the prisoner might be involved and helped more positively in the process of considering his case for parole and in the matter of recall than is the case at present.

Undoubtedly a more general use of the parole system would help to get over many of the difficulties under which the present scheme suffers. It would, for instance, bring into sharp focus the need for parole preparation in the course of prison training; it would reduce the problem of giving explanations for parole refusals and, in making the prospect of parole more assured, it would reduce the anxiety under which many prisoners labour at present. But any informed and objective student of criminology would have to admit that the realisation of such basic changes must be weighed carefully against the equally fundamental tenets on which the present statutes rest, about whose merits I remain convinced: the thoroughness, fairness, objectivity and caring by which decisions are finally reached, in each individual case, by an independent Board; the primary concern for the public interest and the determination that parole shall progress, albeit within the bounds and at the pace set by public acceptability. And before any fundamental reforms can be seriously considered the question must again be posed and answered: who should be accountable to the public for the operation of parole? ■



Talking About Prison

Mark Winston

Journalists do not talk much in public, except to each other in public houses in Fleet Street and elsewhere: they have to try to get other people to talk. So, before I came to prison for the first time in 1950 I had not done much talking, though five years as a probation officer had given me my apprenticeship with the Womens' Institutes and Mothers' Union where I had heard (and not for the last time) those encouraging remarks of Madam Chairman ... 'well, ladies, we have all listened to Mr. er ... er Wintthrop ... now next week we have a really good speaker ...'.

First week at Maidstone Prison found the governor, John Vidler, of happy memory to all staff and many prisoners, suffering from a cold, so the latest assistant governor had to get out talking about prisons, and I have been 'out' fairly regularly ever since.

At the old Imperial Training School in Wakefield there was more talking to do, and in such good company as that of Gordon Fowler whose command of words was, and is, impressive, and of whom a woman officer once said: 'I could listen to him for hours. I didn't understand it all, but it was lovely': and Gordon Hawkins, responsible for the saying 'In Wakefield you are not awakened by the birds singing, they're coughing'. Anyone who lived in Love Lane in the pre-diesel days knows what he meant. Bill Brister's carefully enunciated legal instruction, punctuated by some salty satire, is another contribution worth remembering. There were many more, John Keightley, Frank Ryan, Jim Haywood ... all of whose stories, scandalous or sentimental, gave me ideas about presenting prisons to a variety of audiences, outside the walls. Later, at Staff College, somewhat withdrawn from the hurly-burly of routine talking, I found it saddening to be told by a student some years later that he had heard the principal on two occasions, on arrival and on departure. I only hope I get the speeches in the right order.

Putting aside talking to staff, one wonders how much good comes from talking to church groups, university students, Rotarians, Round Tablers, any and every organisation who ask for a talk on prisons.

The man or woman in the street, or rather on the hard chairs of the parish room or the plushier but often more cramped seating of the business lunch, are certainly interested in us. Interested, even concerned, but are they likely to be prepared to be involved? Talk for half an hour, give your all, pull out all the stops, and what you may get at question time is often statement time. 'These layabouts need flogging'; 'Parole is wicked' or 'Hanging is too good for them' – are fairly typical quotes. Often the church groups, largely female, are understandably more vulnerable, torn between Old and New Testament thinking, and questions, and statements, centre round old ladies whose homes have been ransacked and beaten-up pensioners. Sometimes these groups express a real desire to help, but there is evidence of an equally real anxiety at prospects of meeting actual prisoners.

So, much talking must be about reassuring our listeners that many of our charges are really quite ordinary people, albeit people with quite extraordinary problems. I told a group of clergy that if I took all of them, changed them over with a group of prisoners I would not be able to tell the difference merely by looking at them. 'Prisoners are people just like you and me' was not well received: even telling them that I would be able to tell the difference when they began to talk did not entirely reassure.

You can slant a talk on prisons any way you wish. There is prison history, from the days of John Howard's horror at conditions in the county gaols, the cramped misery of the hulks, the slopping out in the Victorian prisons, then and now ... or you can slant it towards open prisons, open university, drama groups, the humanitarian work of the prison visitors, the improved menus of today ... and before you know where you are you have painted a Butlinesque landscape where every prospect pleases and even man is not so vile, a picture just as inaccurate as the darker canvas of

squalor, sadism and sadness of Cold Bath Fields (what a wonderful name for a prison: if it had not existed Dickens should have invented it). Can we persuade our audiences where the truth is to be found?

Public images in a world of very private relationships are not easily describable in the language of public relations. We see this today when 'Within these Walls' and 'Colditz' both come in for criticism. Anyone who has worked inside a prison knows that all Googie Withers suffers has been suffered by every governor since the Reverend Mr. Nihil (another notorious but nevertheless real name): there have always been chief officers who did not see eye to eye with 'father' or indeed 'mother' though 'madam' does not often seem to have been given the gentler name: I am sure, too, that many staff could remember chaplains and doctors who were described in the line of the hymn 'and some have friends who give them pain', yet one never doubted the professional and personal loyalties of these clerical or clinical colleagues.

True images of Holloway (sorry, Stone Park) cannot be presented in an hour, nor any more easily than can the image of Colditz: despite that difference, namely, that one is fiction (based on fact), the other fact, slightly fictionalised. It is interesting to note whence come the criticisms. In the case of Governor Googie, the TV critics have written, quite kindly, about the difficulty of presenting human stories without over-employment of the stereotypes, the 'good' governor, the over-enthusiastic assistant governor, the rigid chief with a heart of gold, even the near-caricature of highly-placed Home Office officials. With 'Colditz' it is the German Press, objecting on behalf of the German people, to the presentation of guards and security staff as crude, insensitive, cruel Huns. The German Press is therefore defending real people rather than cardboard characters.

Before my 20 years in and around English prisons I was in Stalag Luft III for two years. In both places I have seen (and I must add that I have also been) both the good and bad side of being a prisoner and a prison official. Life inside is not easy for either. It is hard for a prison officer to establish really meaningful relationships with prisoners; possibly harder for prisoners to become purposefully yet still legally involved with officers; it is probably hardest for both of us (and we know we should not say 'us' and 'them') to project ourselves, prisoner or prison officer, to a public who, having rightly rejected the prisoner and paid us to look after him, so often seems determined to see the worst in both captives and captors.

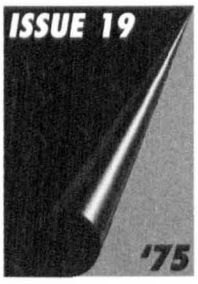
Centuries have passed since prisons were opened as peep-shows for the populace, and no one wants to see those days return. If you want to look at prisons today, there are not only the annual reports, but Tony Parker's books, the literary efforts of ex-inmates, plus much well intentioned and usually well informed comment from Press and TV. So, public relations-wise, we may be said to be having quite a good time of it.

If, however, you think this is only a job for the professional PRO, script writers or the anonymous 'spokesman' please do think again. Let them get on with their work, and in particular that part of their work which explains – not 'explains away' – but just explains the problems facing the Prison Service, the mistakes we make, the misconceptions of our critics (and our friends) and let you and me get on with the job of actually meeting real people and talking with them. Somebody actually in the community must talk to the Mothers' Institute and the Womens' Union (or have I got them confused?) Certainly confusion is very likely to occur when what we talk about gets into print. When some Blundeston prisoners escaped, the *Sunday Times* compositor misread what the crime reporter wrote. Readers were informed that 'Mr. Winston, the prison gardener, said ...'. This amused a lot of people, but what cheered me most (and prison staff need cheering up after an escape happens) was a post-card from Duncan Fairn, another good talker from Wakefield days, who wrote: 'If you are the prison gardener may I congratulate you on your crop of runner beans'.

And if you must talk, do not be surprised at audience reaction. After some prisoners had smuggled out a letter to the London Press, I was interviewed on Anglia TV where I imagined I had managed to put over a reasoned, accurate and at the same time, understanding comment on their rightful aspirations however illegally they had expressed them. Came the phone call. Not from 'Irate Viewer', not even from 'Prisoner's Friend'. It was to ask: 'And where did you get your smart-looking hearing aid ?'

Pardon me, there's the phone ... 'the Ladies' Circle? Yes, of course. About 20 minutes? Problems of Prison Today? Between the president's remarks and the jam and jelly judging ...'.

Ah! Well!! Next week, a really good speaker? ■



The Place of Prison in Punishment

Louis Blom-Cooper, Q.C.

For those in and out of the Prison Service who seek some respite from the effects of the rising tide of the prison population there is nowadays naught for their comfort. Following the inexplicable down-turn in the numbers imprisoned in the early 1970s, the daily average prison population is creeping back to the 40,000 barrier reached in the late 1960s. There seems no prospect of averting the earlier prognosis of the Prison Department of the Home Office that by 1980 there will be 65,000 prisoners. The fault for this depressing trend lies, as every prison administrator knows only too well, with the judiciary that determines exclusively who goes inside, and primarily for how long.

Judges choose the sentence to be passed upon the convicted criminal. Except for murder, treason, and in certain cases where a sentence for borstal training is obligatory, there is no fixed sentence for any crime. Although Parliament provides a maximum penalty for every statutory crime, the limits are pitched at such a high level that the judge's freedom of choice what sentence he will impose is scarcely fettered. The only regulator or moderator of sentences is the Court of Appeal (Criminal Division). Given the present framework for sentencing theory and practice, it is to the judges of that court to whom we must look for any kind of dramatic overall reduction in prison sentences.

The only sensible objective of the criminal law is to inculcate in offenders and potential offenders the sense that they should behave themselves, the former being asked to mend their errant ways, the latter to desist from crime. A prison sentence can supposedly serve this end in one of four different ways. First, it may deter the offender on whom the sentence is passed from repeating his offence, what we call individual deterrence. Second, the sentence may seek to be reformatory. In conformity with rule one of the Prison Rules, there is the pious hope in the sentencer that the prisoner may come out of prison morally a better man than when he went in. Third, there is the social defence approach. Even if the offender cannot be morally improved by imprisonment, or made more socially compliant by the threat of further punishment, incarceration will at least provide a neutralising interlude in his criminal activities. Fourth, the sentence may hopefully deter other people from offending, for fear that if they do a similar punishment inevitably awaits them. This is the general deterrence, to which the judiciary attaches much importance.

Long sentences for the really dangerous offenders – always supposing we can agree upon who is dangerous, and that once identified as a category we can accurately single out those who fall within the category – are seldom, if ever, justified by any of the other three aims of punishment – by the needs of individual deterrence, of rehabilitation, or even of general deterrence. There is no evidence to suggest that long sentences are any more effective than shorter ones in making the public, or even the individual offender behave. Even if longer sentences were marginally more effective, they would not be worth the additional cost, either in terms of money or in human suffering. Great numbers of prisoners will not offend again, however short the sentences passed on them. Others will not be deterred from crime, however long their sentences may be. At best they are removed from circulation. Against the backcloth of these general considerations the Court of Appeal's adherence in the Wembley robbery appeals to notions of deterrence, both individual and general, and its justification of long sentences makes depressing reading. While the judgement of the court, provides a refreshing and novel attempt to propound a penal jurisprudence, its reasoning (particularly its allusions to penal history) is seriously at fault.

In establishing a range of penalty for armed robberies from 15 to 18 years' imprisonment,[1] the court advanced three major grounds for setting the tariff at that range. By reference to historical development, it was necessary to establish a new deterrent element by way of lengthier sentences to

replace the previously supposed deterrents of the death penalty, transportation and corporal punishment. Second, criminals in the latter half of the twentieth century are, arguably, more dangerous and better organised than ever before. Third, the replacement of the death penalty for murder by life imprisonment called for a reappraisal of penalties for morally comparable offences.

As a prelude to these three grounds, the court indulged in a potted history of the role of imprisonment – so potted indeed that it is positively misleading and unhelpful. 'Imprisonment as a punishment', the court pontificated, 'was alien to the common law of England'. Prison, it proclaimed, was a place of detention, not of punishment, providing the more stern measures of death and transportation for the more serious crimes and monetary penalties, corporal punishment, the pillory and the ducking stool for lesser offences. This is not so.

At common law there were comparatively few felonies: murder, rape, arson, burglary, larceny and the offence of mayhem were virtually the only felonies. The judges, moreover, declined to extend the range of felonies; apart from murder and rape (mayhem was obsolescent by the seventeenth century) felonies remained mainly offences against property. At first there were a strictly limited number of common law misdemeanours, but here the judges were always willing to broaden the scope of the criminal law, so that until the distinction between felonies and misdemeanours was abolished by the *Criminal Law Act 1907* the bulk of the criminal calendar was composed of misdemeanours. The penalty prescribed by law for any felony, except petty larceny and mayhem, was death. The reforms of the nineteenth century by parliamentary intervention progressively restricted the application of the death penalty, until 1868 when the death penalty was available almost exclusively for murder. For common law misdemeanours the penalties of imprisonment or fine were, however, always available, in addition to whipping, the pillory and the stocks. Imprisonment as a form of punishment for a variety of crimes (other than felonies) had been known since Anglo-Saxon times. It is true enough that so long as mutilation, banishment and the infliction of physical suffering or public indignity were the principal methods of dealing with offenders, prisons were for the most part staging posts, places of containment rather than of punishment. But monetary penalties had always been available to punish offenders; and imprisonment was also available as an alternative to a fine in certain cases. For example, the penalty for inflicting a wound with a sword in the City of London was a fine of 20 shillings, or 40 days' imprisonment. Sentences of imprisonment were in practice rarely awarded, not because of their impracticability but mainly because in many districts there were no prisons in which the sentences could be served.

It would be fair to conclude that imprisonment was not, until the latter half of the nineteenth century, the core of the penal system that it is today. It was a subsidiary penalty to other penalties. But it was far from being 'alien' to the common law. Prisons were places of punishment for lesser crimes, but this was theoretically incidental to their main purpose. To the extent that they were used for punishment, it was for common law misdemeanours carrying short terms of imprisonment. The penalty of imprisonment, for example, was introduced for perjury in a grand assize by Henry II. And Henry III instituted one year's imprisonment for infringement of the forest laws. The ecclesiastical authorities also made use of imprisonment for offences within the Church's jurisdiction. Incest, which was only an ecclesiastical crime until 1908, was so punishable.

The duration of imprisonment for misdemeanours, which was always at the court's discretion, was understandably short. Quite apart from the lesser degrees of criminal responsibility for which imprisonment was available, Magna Carta itself had prescribed that penalties should not be excessive, and by the *Bill of Rights 1688*, it was provided that excessive fines should not be imposed, nor cruel or unusual punishments inflicted. While the latter was no doubt prompted because the floggings inflicted in 1685 on Titus Oates and others included in the Popish Plot were considered too severe for aliens, and the fine of £40,000 on John Hampden, the younger, for his part in the Rye House Plot was thought to be excessive, there is no doubt that the proscription on excessively severe punishment included imprisonment. Naturally enough the draftsmen of the *Bill of Rights* were more mindful of the rigours of prison life than of the actual period for which the criminal was deprived of his liberty, although it is to be recalled that this is the period of the assertion of the remedy of habeas corpus as a weapon against unlawful detention.

So long as penal instruments, such as the

1 R. v. French and others, 11 March 1975; a copy of the transcript of the judgement of Lord Justice Lawton, Lord Justice James and Mr. Justice Milmo was kindly supplied to me by the Registrar of Criminal Appeals. The court scaled down the sentences of 17 appellants, passed by Mr. Justice Eveleigh at the Central Criminal Court, from the highest sentence of 22 years' imprisonment.

shot drill, the crank and the treadmill, persisted as common, everyday accompaniments to prison life, a sentence of imprisonment was a severe penalty. Only with the disappearance of these harsh, not to say cruel punishments from the penal scene, were the courts willing to exceed, other than exceptionally, a sentence of two years' imprisonment. And when Parliament was forced to prescribe the maxima to replace the death penalty and transportation, maxima corresponding to the seven and 14 years' and life transportation, it established the alternative concept of penal servitude. This latter sentence was served in convict prisons administered by the central government, as opposed to imprisonment which was served in the harsh conditions of the local prisons under the aegis of the local justices of the peace. The disparity of treatment under penal servitude (where discipline and work were of a quite different order) and the conditions of imprisonment was eloquently reflected in the *Penal Servitude Act 1891.* That Act provided, among other things, that when a sentence of penal servitude was prescribed by a statute the court could alternatively pass a sentence of imprisonment not exceeding two years. Following the nationalisation of the prisons in 1877 the two systems – penal servitude in the convict prisons and imprisonment with hard labour in the local prisons – began to merge into a single regime, applied nationally.

Long before the *Criminal Justice Act 1948* abolished penal servitude and imprisonment with hard labour, the distinctions in the different forms of treatment had disappeared.

The treadmill, the shot drill and the plank bed, so vividly described by Charles Reade in mid-Victorian times, had been abandoned. The separate and silent system, ushered in by the proponents of the Quaker philosophy in the latter part of the nineteenth century, was itself jettisoned by the century's turn in favour of the Gladstonian philosophy of deterrence by deprivation of liberty and reformation of the prisoner. By 1880 at least, the courts acknowledged a right to impose imprisonment and a fine at their discretion. Until the reforms of the penal system, initiated by the Gladstone Committee's resounding declaration that humanity dictated the discarding of all harsh sentences, courts were reluctant to impose a penalty more severe than two years' imprisonment. But once the reforms of the early part of the twentieth century took place, the inhibition on longer sentences was removed. Thus longer sentences predated the abolition of corporal punishment. The reasons that led courts, as a rule, to confine sentences of imprisonment for common law misdemeanours to two years had disappeared. For felonies, long sentences were envisaged by the legislature as the necessary replacement to capital punishment and transportation. The courts, unused to passing sentences of imprisonment of any great length for the mass of criminal behaviour, nevertheless tended to keep their penalties for the more serious crimes well below the threshold fixed by Parliament. Throughout the first half of this century sentences of more than ten years were indeed exceptional.

These then were the reasons for sentences of comparatively short duration. The Court of Appeal, in its recent judgement, ascribes three wholly different reasons for the rarity of long sentences. Two of the reasons seem to be spurious. The third reason is an assertion that deserves serious study.

Corporal Punishment

The Court of Appeal asserts that in all cases of serious crime there has to be an element of deterrence. Up until 1948 'courts were able to add to the deterrent effect of a sentence of imprisonment the deterrence of corporal punishment. The existence of this further deterrent made the need for very long sentences for crimes such as robbery with violence unnecessary. But with the abolition of corporal punishment by the *Criminal Justice Act 1948* the courts were faced with the problem of what was to be the sentence for grave crimes involving violence or threat of violence. The only deterrent which they could use was that of a long term of imprisonment. Hence it comes about that since 1948 sentences have tended to get much longer than they were before that date'.

It is sad to see Appeal Court judges reviving the hoary myth of the deterrent value of corporal punishment. One had hoped that that argument was laid to rest by the Cadogan Committee in 1937, and not allowed to be resuscitated as a result of the report of the Advisory Council on Treatment of Offenders in 1960. And even if judges in the post 1948 period still fondly believed in the deterrent effect of flogging for adults, and in the absence of the judicial power to order it compensated for that fact by increasing the sentences that otherwise would have been meted out, the availability of the 'cat' before 1948 was severely limited. Corporal punishment was imposable in the inter-war years under five Acts only: the *Vagrancy Act 1824*; the *Security from Violence (Garrotting) Act 1863*; the *Larceny Act 1916*, for robbery with violence; the *Criminal Law Amendment Act 1912*, for procuration or living on the earnings of a prostitute; and the *Prison Act 1898*, for violent assaults on prison officers (a punishment not abolished until 1967). The

Garrotting Act 1863 also authorised flogging for any attempts to choke or strangle with intent to commit an indictable offence. The only offence for which corporal punishment was used to any significant extent in the years immediately before the last war was robbery with violence. Thus flogging was not generally available for 'grave crimes involving violence or threat of violence'. Even robbery with violence was both statutorily and statistically classified as an offence against property.

It would be tedious to rehearse the evidence about the lack of any deterrent effect of corporal punishment. Suffice it to note that the Cadogan Committee unanimously came to the conclusion that imprisonment plus corporal punishment were no more effective as a deterrent than imprisonment without it. If the *Criminal Justice Act 1948* did act as a catalyst for change in sentencing policy of the courts it was most probably the fact of the *automatic* remission of one-third of the sentence of imprisonment that led to the increase in the length of sentences passed.

Capital Punishment

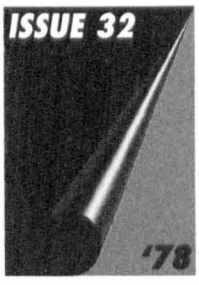
The Court of Appeal noted that the consequence of substituting life imprisonment for the death penalty in respect of murder created 'a difficult sentencing problem for the courts'. Has it and in any event should it? The court prefaces the problem, as it sees it, by asserting that some murderers are released after about ten years, but that very few are kept in custody after about 15 years. This was broadly true until 1965. Although insufficient time has elapsed since total abolition to make any firm statement, there is enough evidence to suggest that a growing, though small, proportion of murderers now serving life imprisonment will remain in prison for periods in excess of 20 years. Since 1965 the courts themselves have statutorily had the power of recommending minimum periods that murderers should serve. There have been over 60 such recommendations, a half of which were for 20 years or more. When the Court of Appeal asks: 'If a man is convicted of murder, and has a reasonable chance of being let out before the expiration of 15 years, what is the appropriate sentence for someone who has been convicted of a lesser offence than murder?', it states the equation erroneously. Quite apart from the incorrectness of fixing 15 years as the norm for the *worst* kind of murders, the court fails to observe that a life sentence does in one sense mean literally a sentence for life. A murderer, even when allowed his liberty, is subject to recall at any time thereafter – and some have in fact been recalled to prison, sometimes more than once. Moreover, the murderer is subjected to the uncertainties and vagaries of the indeterminate sentence of life imprisonment, while the violent robber, facing a definite term of years, can at least calculate the date of his release without any strings attached to his freedom after two-thirds of that term.

But the conclusive argument against the court's feeling that some kind of comparability between sentences for different crimes must be attained is the fact that murder is a crime apart. Unlawful and unjustifiable, intentional killing comprehends a whole range of human situations, from the mercy killing by a parent of a mongol child or an act of euthanasia, to the multiple slaughter by a terrorist or a coldly calculated murder by a professional criminal. Domestic killings account for nearly two-thirds of all murders. Nearly another third are committed by those who are to a greater or lesser extent mentally unstable or ill. Only a handful of murderers evoke the natural response of undiluted revulsion and revenge. Grave as their crimes are, and condign as their punishment should be, their penal treatment is altogether separate and apart from those whose crimes do not disrupt the social equilibrium by acts of homicide.

Dangerous Crimes

In three pithy sentences, the Court of Appeal comes nearest to a rational and acceptable explanation for long sentences for grave crimes: 'In the last two decades, criminals have tended to become much more dangerous. They have become better organised. The means they have used have been more sophisticated'. In those short sentences, without any elaboration of the permissible public and judicial response to organised crime, the Court of Appeal touches on the one reasonable justification for long sentences. Dangerousness is the one sound basis for a rational penal policy. The rest is judicial indulgence in a kind of Orwellian 'sentence-speak'. If the Court of Appeal's judgement was an isolated example of *sentencing for* 'grave crimes' and was not part of a policy involving a whole range of sentences for crimes, one might not be too perturbed at the 15-18-year tariff. But the trouble is that sentences for all other lesser crimes will be passed on a scale ranging downwards from 15 years. And that means that large numbers of offenders will be imprisoned for periods of time that are unacceptably inordinate in length. One might contend for a revised tariff in which there were larger gaps between the medium and lighter sentences. Thus while retaining 15-18 years for grave crimes, the upper limit of the medium band would be, say, seven years. There would be no sentencing between seven and 18 years.

Lord Justice Lawton and his two colleagues have done a service in articulating so clearly the sentencing policy of the courts. We have all been warned. The warning demands a parliamentary response revising drastically the maximum penalties for all crimes. This would have the effect of reducing the area of discretion in the length of sentences the courts could pass. Short sentences would become more common, resulting in a substantial reduction of the daily average prison population ■



Comment

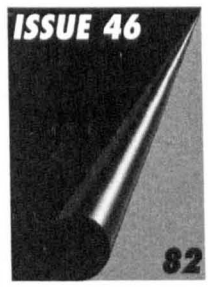
Alan Rayfield

The 'modern' Prison Service now enters its 101st year. The centenary is over, the Exhibition dismantled and put away for future occasions. Her Majesty has honoured us by her presence at what must have been a notable occasion in any country's penal calendar, has signed the book and gone. Now some 42,000 assorted felons and more than half that number of custodians, administrators and industrials, are left to get on with the routine business again. What are their prospects – not for the next 100 years (God save us from that kind of speculation!) but for, say, the next ten or 20?

We do not happen to believe that the Prison Service can solve its own problems from within, for they are all – overcrowding, poor conditions, subversiveness, staff unrest – the by-products of the main society's unhappiness. The root causes are political, economic, social (and some would say moral). The state of the Prisons, though, now as in Howard's time, offers to the main society a mirror image of its failings, and perhaps one of our principal tasks is to ensure that the conditions, the futilities, and not least the high cost of the operations we perform for our employers, the public, are continually kept before them, and the questions continually asked – is this what you want? Are you satisfied with this in 1980? Can you afford it?

But there are, too, less fundamental ways in which the Prison Service can unilaterally improve its effectiveness from its present base. We can decentralise much more and delegate much more. We can consult more widely in the area of policy and planning, especially in the planning of new capital installations and major rebuilding. We can grasp the nettle of staff participation in prisoners' rehabilitation, and put an end to the seeming interminable debate about the 'role of the Prison Officer'. We can pursue a more outgoing, and less defensive policy towards the media. We can encourage experimentation and originality in regimes, and provide money from within our budget to support schemes which appear to be getting results. We can demand more imaginative moral leadership and better management at all levels, so that we not only cope as well as can be expected with the inevitable, but are also occasionally inspired to raise our eyes above the levels of pure expediency ■

The Prison Reform Trust



Dr Stephen Shaw

The Background

Few people would deny that Britain's prisons are in a state of crisis. The present Home Secretary has admitted that prison reform is his most urgent task and the Director-General of the Prison Service has denounced prison conditions as 'an affront to civilised society'. Prison staff are increasingly militant in their demands and industrial relations problems abound. This results in part from the denial of the officers' positive aspirations for a change in their role. For their part, prisoners are denied many of the rights introduced for their counterparts in Northern Ireland. Some prisons have witnessed riots. And the prison population continues inexorably to grow.

The *Prison Reform Trust* (PRT) has been set up to help us break out of the present crisis. It intends to do so by promoting the widest debate about prison conditions, by encouraging community interest in penal establishments and by advocating constructive reforms of prison rules and of penal policy generally. It is our firm belief that prison reform is an idea whose time has come. However, it is not an idea which it will be possible to promote to a general public which is both uninformed and uninterested. By acting upon that chronic lack of information and of public interest, the PRT believes it possible to facilitate the changes in the system which are essential to meet the crisis. In this objective of changing public attitudes towards those who transgress against society's rules, we hope to follow the examples of Holland, Scandinavia and some states of the USA.

The Problems

In addition to the continuing battle against prison overcrowding – and who cannot be horrified by the Home Office forecast of a prison population of 48,000 before the end of 1984? – the *Prison Reform Trust* is keen to tackle some of the other features of our prison system which contribute to the present crisis. Some of the more obvious problems which have spurred us to take this initiative are:

a) The length of prison sentences.
b) The numbers of unsentenced (remand) prisoners and the conditions under which they are detained. In 1979 – the most recent year for which figures are available – the *average* period between committal and trial in London for those detained in custody was nearly 19 weeks.
c) The expanding population of young people behind bars and the 'short, sharp shock' methods now being introduced.
d) The insanitary conditions which exist within our penal establishments, based on the degrading ritual of 'slopping out'.
e) The under-utilisation of open establishments in the context of an overall shortfall of some 6,000 places.
f) The distorting effects of an excessive emphasis upon security.
g) The excessive secrecy and the general degree of censorship.
h) The numbers of socially inadequate petty offenders detained within penal establishments despite the fact that all authorities are agreed that they should be diverted from prison.
i) The endemic industrial relations problems and the low morale of prison officers.
j) The failure to develop a positive and welfare role for prison officers.

Nor is this an exclusive list of the problems facing society in its relation to its prisons. Many people are unhappy with the way in which parole operates and with prison disciplinary procedures. Moreover, no-one would attempt to justify prisoners being locked up for up to 23 hours a day as happens to many of those unconvicted or unsentenced prisoners who are remanded in custody.

This stagnation and squalor which characterises so much of Britain's penal estate

means that piecemeal patching up of the system will not do. Nor would the massive building programme, which some have advocated, be of help since this would merely consolidate the present pattern of sentencing, the present prison regimes, and the present penal philosophy. There is evidence to lead us to believe that the size of the prison population is supply-led, and we reject any building plans which add to existing capacity.

However, the alternative to a massive building programme is not simply to continue with the status quo. A better alternative is surely a planned and diversified programme of liberalisation, based on the example of other countries, which will set the pattern for penal policy in Britain well into the next century.

There is now a mountain of research showing that prisons serve a minimal rehabilitative purpose, and precious little in terms of containment which could not be obtained much more cheaply in community-based alternatives. If we free resources from the prisons there is far more we could do in crime prevention and in providing for the innocent victims of crime, for whom we reserve our greatest sympathy.

The Need for a New Organisation

The *Prison Reform Trust* has been founded by people – with the notable exception of Mr. Louis Blom-Cooper – not previously involved with the cause of penal reform. The Trustees have come together because they are appalled by the current state of our penal system. The PRT has been formed for a short period (probably only three years) in order to help bring about those improvements in the system which all the authorities consider to be urgently necessary. The PRT intends to promote a widespread understanding of the need for fundamental reform of the prison system so that no Home Secretary could fail to take account of it nor lack support among the public in introducing such reforms.

There are of course other organisations which already exist to promote penal reform. But no concentrated effort has been made to place the problems of the prison system before the public. Both NACRO and the Howard League for Penal Reform strongly support our initiative because they recognise the need for the public voice which the *Prison Reform Trust* will provide. The PRT will not duplicate the work of either organisation, which is of a quite different nature. NACRO is not primarily a prison reform group, while the Howard League has to work on a range of day-to-day issues – many involving individual cases – which are not confined to prison matters. The Directors of both NACRO and the Howard League will, however, play an important role in influencing the direction of the PRT's activities, and we will be drawing on their support and experience.

The *Prison Reform Trust* does not intend to become a permanent addition to the political scene. For this reason, and because we will be totally independent of the Home Office, we will be more able to comment openly and fearlessly than many existing organisations. We should state plainly that the PRT intends to operate with a high profile.

The timing of the launch of the PRT is particularly sensitive as the prison population reaches a new record high, after the temporary reprieve afforded by the prison officers' dispute. The timing also means that we can build on the signs emanating from the Home Office that it too would welcome the chance to open up our prisons to more public examination. In the past no other area of public responsibility has been less open to inspection and debate. Yet, as the May Committee noted: 'Closed institutions above all require open, well-informed discussion'. We believe that we will find a receptive audience among MPs and the general public to the argument that people have a right to know what is being done on their behalf in Britain's prisons.

Our Aims

The *Prison Reform Trust* has five stated objects. These are: to promote the constructive treatment of offenders; to promote the education of the public and to further knowledge of the penal system; to promote research into the penal system; to promote the education of the public and to further knowledge of the training of prison officers; and finally, to promote the above objects by the use of the media, publications, lectures and research projects.

Clearly these objectives are not independent of each other, for we believe that one of the major stumbling blocks to a more rational prison system has been the fear by politicians and officials alike of a backlash from public opinion. We believe we can overcome that fear by educating public opinion to see the need for reform. We are convinced that the Home Secretary and the Director-General of the Prison Service themselves favour broad changes in the way prisons are organised and will, therefore, welcome our endeavours.

Our objectives are interdependent for a further reason. More open access and greater community involvement in the administration of prison establishments are both methods of exciting public interest as well as characteristics of the reformed system which we wish to see. The demand for openness and accountability is both a

means to an end and an end in itself.

Obviously there is a balance to be drawn between short-term and long-term objectives, and between what can be achieved within the three years we have set ourselves and what could only be achieved over a longer period of time. In the short-term we think we should set ourselves certain specific targets by which we may be judged:

a) On the size of prison population. If by the end of 1984 the prison population has reached the 48,000 predicted by the Home Office we will clearly not have met our objectives. We believe there is much to be said for a planned reduction of the population involving specified totals.
b) On 'short, sharp shocks'. We confidently expect this 'experiment' to have been abandoned.
c) On Prisoners' Rights. We expect to see the conditions granted in Northern Ireland shared by prisoners on the mainland.

In the longer term we wish to see a replacement of the present prison structure by a structure based on smaller urban prisons with greater community involvement and a reduced emphasis on security. We also wish to see the development of a genuine penal policy and not the present mish-mash of political inertia and administrative convenience.

Our Methods

Given that it is our intention to generate a much wider spread of interest in penal affairs than exists at present, we shall:

a) Generate publicity about prisons both nationally and by running local campaigns through public meetings, regional newspapers and broadcasting. We expect the first of these local intiatives to be in train by Christmas.
b) Encourage community involvement and help to form links between the community and the prisons.
c) Advocate changes in prison policy and reform of the prison structure.
d) Seek a new impetus for the idea of prison reform with MPs and officials, complementing the work of the All-Party Penal Affairs Committee.

While in the main we will rely on existing sources of information, we shall also be commissioning some short-term research, as research in the prison system has been run down in recent years. We envisage research projects of about six months' duration which will assess the functioning parts of the prison system which we consider most constructive.

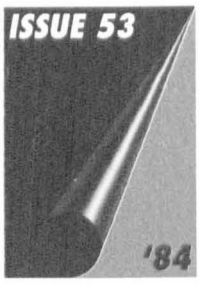
In addition to the general public, we hope to influence prison staff – especially on the issues of openness and prisoners' rights – as well as Westminster and Whitehall. We are particularly keen to involve prison officers, not only because of their very considerable power of veto at the operational level, but also because we believe there is a genuine desire by the officers to take on a more positive role than that of turnkey. We are thinking here particularly of the 'Social Work in Prisons' experiments. We believe prison reform could have substantial benefits for prison staff and we intend to carry them with us.

Addressing a conference of prison visitors last October, the Home Secretary, Mr. William Whitelaw, himself argued for an end to prison secrecy. He said: 'The more informed debate we have about the prison service the better'. We hope to encourage prison reform as a central topic to both the local and national media, and to various voluntary organisations. Women's organisations, for example, might consider the purpose of women's prisons and look at the problems of imprisoned mothers. Young people's organisations like the National Association of Boys' Clubs would be encouraged to take an interest in Detention Centres and Borstals. The *Prison Reform Trust* would facilitate these developments by providing information and organising meetings.

A Major New Initiative

The state of British penal establishments, the rules by which they are run and the numbers held within them represents both one of the greatest social anomalies as well as one of the most pressing political problems of the 1980s. Reform on a variety of fronts is long overdue, but reform will only be possible with public support and if the prisons are open to the widest examination. The *Prison Reform Trust* has been set up to promote that examination and to encourage that support. The PRT does not intend to be a permanent creation. Rather it aims for a once-and-for-all catalytic effect which will give the cause of penal reform the impetus it needs.

Public prejudice against prison reform has been successfully overcome in Holland, Scandinavia and in many states of the USA. In launching our appeal for support we are setting out to overcome public prejudice in this country. And indeed the reaction to the BBC Strangeways series of documentaries last year suggests that the public may not be as unsympathetic to our cause as they are sometimes portrayed ■



Prisons: The Last Twenty Years of the Twentieth Century

Robert Kilroy-Silk MP

The problems of our penal establishments vary from one part of the prison system to another – for example, the problems of the training and dispersal prisons are very different from the problems of local prisons and remand centres. However, any discussion of prisons in the last 20 years of this century must be dominated by the resource implications of catering, even at the most basic level, for the excessive number of prisoners the prison system currently has to cope with.

The prison population, as I write, stands at 44,600. If the 2-300 prisoners in police cells are included, the total number is approaching 45,000: 8,000 more than the figure of 37,000, above which the prisons become overcrowded. This situation requires over a third of those in prison to spend the majority of every 24-hour period in an overcrowded cell without access to integral sanitary facilities. Such conditions make a mockery of the prison system's stated aim of preparing prisoners to lead a good and useful life. They fail to meet the most elementary standards of human decency, violate internationally agreed minimum standards for prisoners, create tensions and serious hardship for prisoners and prison staff, and increase the risk of serious disorder in prisons. The Prison and Borstal Governors' Branch of the Society of Civil and Public Servants has pointed out that, if we are to achieve the minimal objectives of ending compulsory cell sharing and slopping out, we would need to reduce the prison population to 32,000.

Unless radical action is taken, the position will get worse. The official Home Office projection is that on present trends the prison population will rise to 49,000 by 1990.

We need to move forward simultaneously with measures to reduce the prison population, and also to improve regimes in prisons.

Measures To Reduce The Prison Population

Developing alternatives to custody

A substantial number of those in custody could and should be dealt with in other ways. Estimates of the number will vary, but Home Office research findings in the past have indicated that as many as a third of the average daily prison population (and it would be a higher proportion of those *sentenced* to imprisonment each year) are divertible from prison on the following criteria: no serious offences against the person, no suggestion of considerable gain from crime and no obvious competence in planning.

There is a great deal of scope for expanding the scope of existing alternatives to custody – for example, community service orders are still used on only 4 per cent of the adults convicted of indictable offences. We also need to pay particular attention to the probation order – supported by adequate resources in the form of hostels, day centres, workshops, and facilities for drug dependents and alcoholics as a viable alternative to custody for many of those who are currently imprisoned. Regrettably, the planned one per cent growth in probation service resources over each of the next two financial years allows little scope for an expansion of such alternatives. It is a tragedy, for example, that some probation areas have had to restrict the number of community service orders available to the courts because of inadequate resources. Unless adequate resources are devoted to the development of alternatives, the prison system will have to cope for the forseeable future with considerable numbers of offenders who could and should be dealt with in other ways but for whom the alternatives are simply not available.

We also need to develop new alternatives to custody, in particular those involving reparation by

the offender. In many parts of the United States restitution schemes have been established, where the offender, the victim and a mediator draw up a 'restitution contract' in which the amount and nature of compensation is agreed. This may be financial or it may be in the form of community service agreed by the victim. These schemes have several attractions. First, they confront the offender directly with the suffering which his crime has caused to the victim. Secondly, they involve the victim in the process in a positive way and do not merely use him as an aid to the prosecution in proving the offender's guilt. Thirdly, such schemes have a very welcome practical outcome in that they involve the offender in making restitution direct to the victim or to the community in a way approved by and agreed with the victim. Such schemes should be widely established and used as alternatives to custody.

The length of sentences

One of the main reasons for our high prison population is that most prison sentences in this country are longer on average, than in most other West European countries. The overwhelming weight of research now indicates that longer sentences do not produce greater benefits in preventing or reducing further offences than shorter ones, and that any impact which a custodial sentence may have occurs in the early stages. These considerations argue for a reduction in sentence lengths, except for the minority of offenders who are a serious danger to the public.

Supervised release

A reduction in maximum penalties is desirable, but would have only a limited impact because the majority of sentences are already well below the maximum. Therefore, some form of early release scheme is the only way in which a substantial reduction in sentence lengths could be achieved in a short time. One option would be a scheme of supervised release for short-term prisoners, which would reduce the prison population by up to 7,000. Under this proposal, prisoners would serve a shorter period in prison followed by a period of supervision in the community similar to parole supervision, with the threat of recall to prison if they misbehaved. There is now clear evidence from Home Office research that release on parole licence – which combines supervision by a probation officer with the deterrent effect of the threat of recall to prison for misbehaviour while on licence – reduces offenders' chances of reconviction. There are therefore powerful arguments in favour of a scheme combining the impact of a short period in custody with controls over an offender's future behaviour of the kind contained in a parole licence, quite apart from its likely impact on the prison population. A less radical but nevertheless useful measure which might be introduced in the meantime (the power is already there under the 1982 *Criminal Justice Act*) is to make short-term prisoners eligible for discretionary release on parole – a measure which would reduce the prison population by at least 2,000.

The Improvement Regimes In Prison

A substantial reduction in the prison population could be accompanied by the following improvements.

The development of enforceable minimum standards for prisoners

In the United States, there has been a movement in recent years towards the formation of minimum standards for prisons. For example, the standards laid down by the American Correctional Association require a minimum of 60 square feet if prisoners' confinement does not exceed ten hours a day and at least 80 square feet if prisoners are confined for more than ten hours a day. They also require prisoners to be housed singly. To be accredited by the Association, correctional agencies must comply with all the standards classed as 'mandatory', with 90 per cent of all standards classed as 'essential' and with 80 per cent of all standards classed as 'important'.

In this country the Prison and Borstal Governors' Branch of the Society of Civil and Public Servants has proposed the formulation of statutory minimum standards for prisons, and the report of the Chief Inspector of Prisons for 1981 said:

'We regret that there are no specific binding standards of entitlement which have been approved by Parliament concerning such matters as the size of the cell to which an inmate is entitled, or the hours he must spend outside it, and which would serve as guidelines for us'.

We must press for the development of such enforceable minimum standards in this country.

An improvement in the facilities for work and education in prisons

At present, substantial numbers of prisoners have nothing to do all day and many others have very short working days or poor quality work. Recently, there have been closures of skilled weaving and tailoring workshops at some prisons, for example at Manchester and Birmingham; prisoners' access to vocational training courses has

been reduced; the number of education staff has been cut; and a range of educational activities have been pruned. This is the precise opposite of the development of 'positive custody' advocated by the May Committee, for which we should argue strongly.

Contact with families

We should be particularly concerned to promote changes which increase opportunities for prisoners' links with their families, such as an extension of visits and home leave opportunities and a reduction of censorship of letters. For example, two recommendations of the Expenditure Committee report *'The Reduction of Pressure on the Prison System'* in 1978 remain just as valid now as they were then. The first was that home leave should be extended to more prisoners and that it should be given more frequently and for longer periods. At present, a terminal home leave period of five days is allowed to prisoners serving 18 months or over and may be taken only in the last four months of sentence. In addition, persons sentenced to three years or over may be granted an extra weekend of home leave in the nine months preceding release. Evidence from other countries with more liberal home leave policies indicates that our system could be extended without undue risk of pushing the breakdown rate beyond an acceptable level.

The second recommendation was that censorship of letters should be lifted in most prisons and for most prisoners. Limitations on correspondence are likely to damage relationships and censorship of letters tend to inhibit the expression of intimate feelings. Correspondence should therefore not normally be subject to censorship (although it is of course reasonable for mail to be inspected for contraband) except in a minority of cases where security clearly demands it.

A more constructive role for prison officers

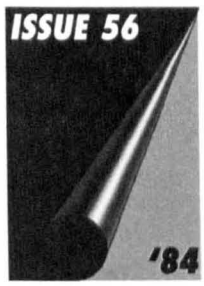
The Prison Officers Association has been pressing since the early 1960s for an increased involvement by prison officers in prisoners' welfare. In 1977, pilot experiments began operating in five prisons, whereby prison officers are involved in welfare work in partnership with probation officers. The results have been encouraging, and a number of other establishments have developed similar approaches. This approach should become the norm in prisons, not the exception.

A prison building programme

I am not one of those who oppose the idea of a prison building programme or take the view that, if only we could reduce the prison population, there would be no need to devote resources to prison building. So much of the penal estate is falling to pieces that a substantial building programme would still be needed to improve conditions even if we reduced the number of prisoners by 10,000 tomorrow. However, I am concerned that so many new prisons are built in remote rural locations, making it difficult for prisoners to maintain contact on a regular basis with relatives, probation officers and voluntary associates from their home areas of the kind which will assist their eventual resettlement. As the Home Affairs Committee recommended in 1981, the emphasis in the building programme should be on new urban prison building and on refurbishing and improving existing urban prisons, rather than, for example, building a new dispersal prison at Full Sutton when the places for Category A prisoners in the existing dispersal prisons are never full.

Conclusion

The more public knowledge there is of the work of the prison service, the easier it will be to explain the need for sufficient resources to provide decent conditions and facilities in prisons, the difficulties prison staff face, the ways in which prison should be used and why its use should be reduced. The prison service itself has a key role to play in maintaining and extending the attitude of greater openness which has developed in recent years. The Churches are among the other groups who have an important role to play in educating the public, and the excellent report *'A Time for Justice'*, produced in 1982 by the Catholic Social Welfare Commission is a good example of the role which the Churches can play both in raising public awareness of the prison system and in pressuring the Home Office for changes in penal policy ■



Pressure Groups, Penal Policy and the Gaols

Roy Light

A revised version of a paper given at the Prison Service College, Wakefield to the Second Command Course for Governors March 1984.

Penal Policy and the Gaols

That the prison system in this country is in a state of crisis has been clear for some time. What is not so clear is why little has been done to remedy the situation. It is not possible to look to a rational and authoritative statement of penal policy for England and Wales, it being characterised by its unwritten, informal nature, and piecemeal development. Changes are precipitated by the actions of interested groups and organisations, and these vary as to their nature, objectives and effectiveness.

'Penal Policy' in its widest sense encompasses all of the criminal justice system. In a narrower sense it relates only to the penal system, and for present purposes the emphasis will be placed on the prison, which stands centre stage as a penal measure. The bodies most pertinent to policy formulation and the gaols can be identified and evaluated: this will be done under the rough headings of 'official' 'quasi-official' and 'unofficial' (often termed pressure groups).

Official Bodies

'Official' is used here to denote bodies linked to, set-up by, or responsible to Parliament and/or the Government.

They may be specially constituted to inquire and make recommendations into a particular area, as with a Royal Commission, or may be more permanent bodies, called upon to investigate aspects of penal policy from time to time, as with the House of Commons Expenditure Committee[1], and the Select Committee on Home Affairs[2]. The Parliamentary All-Party Penal Affairs (PAPPA) Group has penal affairs as its only remit, and though technically an unofficial body, it is included here as it has a nominal membership of over 80 MPs and peers. It takes an active part in policy formulation and has produced some excellent publications[3].

Historically composed of informed lay-people with time to devote to them, official bodies today have more specialised members, usually with particular knowledge of the area of enquiry, and an understanding of the other groups working in the area, thus allowing cross-fertilisation of ideas.

Parliament is used in the examination of matters relating to penal policy, and individual MPs and groups such as the PAPPA Group make a valuable contribution. Parliament can be used both in the process of information gathering and in the public discussion of matters relating to penal policy. Much otherwise unavailable information on the prison system has been obtained by use of the Parliamentary Question. Discussion in Parliament on penological topics brings together ideas and proposals in an open and official forum.

Parliament also plays an important part in the shaping of penal policy when Bills are subjected to amendments at the committee stage: witness the amendments made to the *Criminal Justice Bill 1982*. Pressure groups and interested MPs can mount a lobby and generally exert pressure, for example through the media, in an attempt to secure the amendments they desire[4].

A Member of Parliament with a prison in his

1. See the Fifteenth Report from Expenditure Committee, Session 1977/78, 'The Reduction of Pressure on the Prison System', HMSO.
2. See the Fourth Report of the Select Committee on Home Affairs, Session 1980/81, 'The Prison Service', HMSO. One of the recommendations of which was the establishment of a National Criminal Policy Committee: the Government reply declined to accept the recommendation.
3. See, for example, 'Too Many Prisoners', 1980, Barry Rose.
4. See 'Parliament and Penal Reform', R. Kilroy-Silk, Prison Service Journal No 52, (Oct. 1983), (at page 2.)

constituency has the opportunity to make himself aware of that institution, and prison staff should encourage the Member to do so. It is not as a busybody that the MP will visit the prison, but as an MP carrying out his constitutional duty to subject prisons to Parliamentary scrutiny. Those who run the prisons are, via the Home Secretary, ultimately accountable to Parliament. MPs have not been as diligent as they might as regards this duty, but the situation is improving. The fact that a sentenced prisoner is disenfranchised may have been a factor contributing to an apparent lack of interest, and this coupled with the restrictions placed on prisoners' communications may have effectively excluded the gaols from the local MP's attention. Recent events at Strasbourg have led to a relaxation of the restrictions on prisoners' correspondence and this is making for an increased awareness of the state of the prisons, on the part of many MPs who are receiving letters from prisoners.

Ultimately, Parliament does not have the time needed to allow it to play a fully active role in penal affairs. And such matters may be seen to not warrant priority for Parliamentary time. Parliament can therefore be ascribed the task more of evaluating considerations of penal policy than of formulating and proposing them. But it is to the legislative process that interested opinion will be striving in order to get its policy proposals translated into practice.

The Home Office is the Ministry in control of the penal system, and the Home Secretary is constitutionally responsible for it. As a Government Minister he is accountable to Parliament for the exercise of that responsibility.

The Home Office directs policy on the official level. Its policy makers take account of the views of the advisory bodies – both official and otherwise – the results of its own research, and inevitably, the opinions and ideologies of the political party in power at the time. The Home Office engages heavily in research and produces many publications[5]. It should be the melting-pot for innovation and change, but it is not. The omnipotence of political considerations operates a stranglehold on its activities and this is further compounded by the innately bureaucratic structure of the organisation. Add to this perceived notions as to the 'climate of public opinion' and it is not difficult to see why even 'liberal' Home Secretaries often have proposals thwarted.

The Prison Department was set up in 1963 after the dissolution of the Prison Commission and the incorporation of its functions into the Home Office. The days of the great names in reform, such as Ruggles-Brise, Paterson and Fox disappeared with the Commission, and the work of the Department is today carried out by civil servants of whom little is known, or publicly heard. Incorporation into the Home Office inevitably led to a certain loss of independence, and the Department appears to involve itself with the administration and management of the gaols and to distance itself from considerations of policy.

The Department has adopted a 'new open' attitude and television programmes such as 'Strangeways' are pointed to as evidence of this. It also, following the recommendation of the May Report, set up its own public relations branch in 1981 to further this open policy. So far the Prisons Public Relations Branch seems to have done little other than to have accepted that which is already accepted, for example that local prisons are overcrowded. On particular issues the Deparment continues to remain silent. Thus during the recent hunger strike by female inmates of Durham's maximum security wing the press could only report that 'Senior figures in the Home Office Prisons Department are known to sympathise privately with the criticism' that the wing should be closed[6].

The Prison Department is not staffed by people intent on imposing an oppressive system, and the fair minded, liberal reformist tradition appears to be evident amongst individuals. But the Department's corporate acts often demonstrate a less than enlightened attitude. The Department is weighted down by inertia, it is a huge bureaucracy and it contains the many interests which are inherent in such a structure. Not least, departmental, career and personal ones.

The Prison Department has been the subject of less attention by the penal lobby than it deserves. This should be rectified. The Department, standing as it does at the centre of the practical administration of the gaols, is in a unique, exceptionally knowledgeable, and potentially very powerful position.

The Judiciary exerts a powerful influence on the penal system. In England and Wales the judges are responsible for sentencing policy as well as sentencing practice[7]. They are the gatekeepers of the prisons and can directly affect the size and

5. Details of publications are contained in Sectional List 26 – The Home Office HMSO. A more complete catalogue (which includes non-HMSO publications) is the Home Office List of Publications, published annually and available free of charge from the Home Office Library, Room 1007, 50 Queen Anne's Gate, London SWI.
6. The Guardian, 27 February, 1984.
7. See D. A Thomas, Principles of Sentencing, 2nd ed., Heinemann, 1979, and A. Ashworth, Sentencing and Penal Policy, Weidenfeld & Nicolson, 1983.

nature of the prison population. Judicial decisions on points of substantive law relating to the prisons may also contain important elements of policy. Recent decisions concerning 'prisoners' rights' are illustrative of this, and judges act in several extra-judicial capacities relating to the penal system. They sit on the Parole Board, chair Royal Commissions, and give public lectures, for example the recent 'Flood of heroin' lecture given by the Lord Chief Justice at Cambridge University[8], which attracted wide media coverage and contained many political implications.

Judicial policy is defined by a small cabal composed of some of the most senior members of the judiciary, and as such is often accused of reflecting the very narrow, privileged and insular background of these judges[9]. Although the judges may be susceptible to the influence of interested opinions, the nature and composition of the judiciary makes it one of the most difficult bodies to penetrate. So jealously do the judges guard their independence, that they are inclined to see any attempts to influence them as at worst a usurpation of and at best an interference with their powers. Nowhere is this more clear than in sentencing. The judiciary is seen by some as an intractable barrier standing in the way of advances in sentencing policy[10].

International Bodies have a role in penal policy in England and Wales, and should, because of their international nature, be capable of exerting strong influence, but they do not. The United Nations and the Council of Europe have drafted minimum rules for the treatment of prisoners and member states are required to file returns relating to observance of these rules. At the UN this practice has become almost a farce as so few states now make returns. And as might be expected, those states which come closest to compliance do make returns and those states which honour the rules more in the breach than in observance do not. The Council of Europe's returns are, in contrast almost 100 per cent, but again the states which do not make returns are probably most in breach. Of the 21 countries in the Council of Europe, not one has implemented all of the rules.

The rules themselves are being redrafted: they are out of date and too vague to be properly effective. Nevertheless, their existence will cause embarrassment to a government which flouts them, and they provide the demands of a pressure group which mirrors them with a kind of official international validation. The rules have also found their way into several official domestic publications, for example the reference to them in reports of HM Chief Inspector of Prisons.

Of particular note are the pronouncements of the Human Rights Court and Commission, which have led to substantive changes in the penal system. But the procedure is exceptionally long winded and it can take seven or eight years for a decision. It is also possible for a government to circumvent agreements it makes at Strasbourg. This appears to have happened to the agreement made by the United Kingdom, to forestall a court hearing in 1981, that it would publish and make available the Prison Standing Orders. Standing Order 5 was published promptly, but since then no more have been published. Further, there have been several amendments to Standing Order 5, which have not been publicised. It is essential not only that interested opinion keep abreast of the work of the international bodies, but also that it is vigilant in monitoring official responses to it.

Quasi-Official Bodies

'Quasi-Official' is used here to refer to bodies composed of people who work in the system, but which technically exist outside of the establishment and its influence. They are unofficial bodies, but the nature of their membership is such as to need to afford them a sort of semi-official status. Such a classification must, of necessity, be arbitrary.

The Prison Governors. Historically any interest in penal policy which exists at governor level has exerted surprisingly little influence. This is especially true in the case of matters of general penal policy. Several factors go towards accounting for the very limited role played by the prison governors.

The individual governor interested in penal policy has severe limitations placed upon what s/he may feel able to do. Restraints exist in the form of job (and possibly accommodation) security, career prospects, the Official Secrets Acts; and also perhaps the feeling of the need to protect, or at least not to publicly attack, a system of which one is a part. A governor who decides to take an active role will have to take these factors into account. Also instructive is the Home Office reaction to the publication of the 'penal dustbin' letter, written by the governor of Wormwood Scrubs, to the *'Times'* newspaper[11]:

'If a governor, like any other official,

8. The 1983 Darwin Lecture, University of Cambridge, Nov. 8, 1983.
9. See J. A. G. Griffiths, The Politics of the Judiciary, 2nd ed., Manchester U.P., 1981.
10. Witness the fate of the proposals for the extension of parole contained in the Home Office 'Review of Parole in England and Wales', 1981.
11. John McCarthy, The Times, November 19, 1981.

feels compelled to enter into political controversy on a matter within his official sphere of responsibility, his proper course would be to resign first'. [12]

A major obstacle to the governors making a full and effective contribution to the penal policy debate has been the absence of an organisation through which their views could be expressed: the recently formed 'United Kingdom Governors Council' intends to perform this function. The 'Council' is comprised of governors from England and Wales, Scotland and Northern Ireland. Its objective, contained in its draft constitution, is:

'To provide the means of influencing penal policy and protecting the interests of its constituent members'. [13]

The 'Council' intends to meet three times a year and more often in emergencies, and to act as a sort of pressure group for the service, rather than as an alternative professional organisation. As such it stands a chance of attracting the support of the service, which has shown itself to be rather conservative and somewhat suspicious of such organisations in the past.

The Council is to be welcomed, as the governors do not have their own organisation, being members of the Society of Civil and Public Servants[14]. In the same union are their superiors in the Prison Department and the Home Office. This is hardly conducive to full, free, and unfettered comment on the part of the governors. A separate organisation, the British Association of Prison Governors, was launched in the mid-seventies to specifically represent their views, interests and opinions. It folded after 18 months, having failed to attract the support of the service.

The Governors' Branch of the Society appears of late to be taking a more active role in matters relating to penal policy, and has issued statements on prison conditions. The Society has announced its affiliations to the Howard League stating:

'Another important aspect of affiliation is the opportunity that they can give Society members to further the aims of the unions. Members present at the annual general meeting of a recent affiliation – The Howard League for Penal Reform – were able to make their views on prison overcrowding known to the Home Secretary who was also attending the AGM'. [15]

Although still primarily concerned with matters relating to governors' pay and conditions of service, rather than wider policy issues, the union is beginning to accept that in reality the two are inseparable. Stronger pressure from the Governors' Branch and the existence of the 'Governors' Council' should provide the governors with the opportunity to make their views known.

On a local level in relation to individual prison regimes, the contribution of the governors has been much more apparent. Individual initiative and style of management have led to many regional developments and innovations[16]. Collectively these have contributed to the overall scheme of the prison system. But governors have at times quietly accepted the imposition upon them of intolerable regimes. As an ex-governor has put it:

'We did not make any noticeable noise about the introduction of imprisonment without trial in Ulster. We did not protest, from within the system, about Special Control Units. Both of these have been done away with, but not because those of us who work within the penal system felt that we would be corrupted by operating these measures. We just accepted them as we now prepare to accept more overcrowding and further withdrawal of resources, etc'. [17]

The prison officers are provided with a strong collective voice by the Prison Officers Association[18]. Since its establishment in 1939 the POA has played an active role in matters of penal policy. But a situation has been allowed to develop in which any reforms aimed at making the prisons less oppressive for the inmates are perceived as being aimed against the interests of the prison officers. Consequently an organisation

12. Home Office memorandum to governors dated December 1981.
13. Informer Extra April 4, 1984. Informer is an occasional newsletter issued to members by the Governor's Branch of the SCPS.
14. Membership of the Governors Branch on 6 June 1982 was 511 out of a possible 569 (89.8 per cent). Source: Informer. October/November 1982.
15. Opinion (Journal of the Society of Civil and Public Servants), March 1984, page 11.
16. For an encouragement to governors to expand this role and an outline of the ways in which a governor can link up with the local MP. see: Kilroy-Silk. 1983, op. cit.
17. A. A. Fyffe, 'A Most Peculiar Absence of Monsters', Prison Service Journal, No. 27. July 1977, at page 14.
18. An early (insider) history of the POA is provided by K. Daniel, Prison Service Journal. No. 32, Oct. 1978, at page 7.

capable of being a strong force for reform has instead become a strong force for exactly the opposite. The strict demarcation between the interests of the governors, the officers, and the inmates is more apparent than real as all three groups spend substantial periods of their time within the same institutions. Penal policy requires, if not that these three groups should become united and work together, that they should recognise the common nature of many of their difficulties. It is unfortunate that the pressure groups rather than working towards this have tended to exclude and further alienate the POA from the reform movement. [18a]

As a fully-fledged trade union, acting in the interests of its members, the POA is a powerful force as regards shaping the future of the prison system. Recent events, such as the industrial dispute in 1980, indicate that the POA is becoming more aware of long-term implications. But the way it was outflanked and had its industrial power effectively neutralised by the setting up of the army camps, while waiting for the report from the May Committee shows that it still has lessons to learn.

Other bodies exist which may be termed quasi-official, and are involved in the shaping of penal policy in relation to the gaols. These include groups such as the Magistrates' Association, the Justices' Clerks Society and the Police Federation. These bodies inform not only their own members, but also public opinion, and the penal policy debate generally – in other words they sometimes act as pressure groups.

Others that work in the prisons and are often termed the 'professionals', include education officers, psychologists, the chaplaincy, medical and probation officers. With the exception of the last mentioned[19] these groups have had little effect on penal policy. Conversely, the recently formed Association of Members of Boards of Visitors looks set to make an important and positive contribution to penal policy, especially in the area of prisoners' rights.

Pressure Groups

The term 'pressure groups' is a generic one. It refers to unofficial mechanisms for change which exist in a society. The term can be applied to huge and 'invisible' groups such as public opinion, or to smaller and more easily identifiable groups which may have specific objectives. Much penal reform has been lost because of the so-called pressure of public opinion, but such an opinion is extremely difficult to gauge and very easy to misrepresent [20]. A well organised pressure group conducting a carefully orchestrated campaign can defeat a much larger but less well organised body of opinion. The abolition of capital punishment, brought about in the face of public opinion, by small organised groups is an example of this.

In a liberal democracy different groups are allowed to organise and to propound their views. At least in theory, freedom of speech is afforded to all members of the society to express whatever views they wish. In practice laws may forbid this (for example, if they incite racial hatred), and de facto limits (for example access to the mass media), may greatly dilute this right. A particular aspect of the de facto limitation is the way in which the powerless or marginal in society can be pushed to the edge of the political stage. As in the case of the mentally ill, the disabled and the imprisoned. As Eriksson has put it:

'Now others are coming. Of fewer words. Who have long been forced to eat their own misery and swallow it as bitter dregs. They have nothing to lose. They know how much arrogance and humiliation are contained in the extravagant welfare attitude of the authorities. So now they mean business.

They come from juvenile correctional institutions and prisons, from youth hostels and hostels for vagrants, from condemned houses and slums, from mental hospitals, old people's homes, and institutions for alcoholics, from establishments for handicapped people and for the psychologically damaged, from depopulated areas and Lapp towns, from ghettos for gipsies and immigrants ...' [21]

Pressure groups work on behalf of the weak and the marginal and their main weapon is publicity. They must bring their causes to both public and official attention. Well researched information must be presented in a lucid and well reasoned way. The media is of great importance, not only must it give space to the arguments, but for them to be effective they must be treated sympathetically. They should not try to lead too

19. For a fuller account see J. S. F. King and F. V. Jarvis, The Influence of the Probation and After-Care Service, at page 74, in N. Walker (ed.), Penal Policy - Making in England, Cropwood Papers, Institute of Criminology, University of Cambridge, 1977.
20. See for example 'The People's Justice: a major poll of public attitudes on crime and punishment', Prison Reform Trust, 1982. Also M. Ryan, The Politics of Penal Reform, Longman, 1983, at Chap. 6.
21. Quoted in Mathiesen, T. 1974: The Politics of Abolition, Martin Robertson, page 123.

far too quickly, and proposals must be realistic. Again the moderate may fare better than the radical.

Another aspect of the de facto limitations placed on pressure groups is the way in which the government will be selective as to the status afforded to the various groups. The history of pressure groups is characterised by the feature that:

'...governments discriminate against radical pressure groups in favour of liberal or conservative groups whose views imply no fundamental critique of the existing economic and political order' [22]

This is apparent in the status granted to groups like RAP and PROP on the one hand and to the Howard League on the other[23]. To court official acceptance has obvious advantages and may lead to financial support, but the group will then be open to the charge that it is an official puppet. Credibility and impartiality may be undermined. A delicate balancing act is necessary to retain official acceptance, whilst maintaining an independent voice [24].

A wide variety of pressure groups exist, and many have an interest in penal policy. For some it is part of a wider brief (for example, the NCCL), others concentrate solely on matters relating to penal policy (for example, the Prison Reform Trust), whilst others are concerned with a particular area (for example, Women in Prison). The common feature is that they are all voluntary agencies which are seeking to bring pressure to bear to remedy what they perceive as an injustice or defect in the penal system. An outline of some of these groups follows.

The Howard League

The longest established of the penal reform groups, the League was set up in the 1860s. Based in London, with some dozen branches throughout the country, it is in the classic mould of the traditional British pressure group. Registered as a charity, it is funded partly from subscriptions and partly by donations from charitable trusts. The membership numbers some 1,000 and is predominantly middle class. Many members are associated with the penal system in capacities such as probation officer or lawyer. The executive council boasts many public figures and the League has connections with Whitehall and Westminster.

Its composition makes it, perhaps, the most 'respectable' of the penal reform groups, and with its contacts in high places makes it effective in bringing its policies to official and governmental attention. But it can be argued that such membership can produce only a conservative and establishment orientated organisation, promulgating policies which reflect this.

Certainly, it would be difficult to describe the nature and work of the league as 'radical'. Rather, its proposals reflect a rational, liberal and humanitarian approach to penal policy. The League is happy to work not only within the existing political order – and as a charity it must be careful not to act politically – but also within the established penal system. Consequently, its attempts to formulate a coherent and acceptable reformist policy on practices, which some groups would argue are unacceptable, have at times appeared very strained: the League's recent proposals on parole provide an example [25].

The League aims to publicise its policies and to act as an information service to those active in penal reform. As stated in the League's Annual Report for 1980-81:

'We have pressed our policies by all available means, such as a publication or meeting, letters to newspapers, ministers, MPs or the Home Office, press statements, and interviews on radio and television, and prompting Parliamentary Questions. In addition we have maintained the routine of providing background information to journalists and MPs participating in the Parliamentary All-Party Penal Affairs Group, dealing with enquiries, by letter and telephone, and continuing the constant campaign to attract more members and funds so that the League can continue its work at all'. (1981, p. 5/6).

It was though, generally felt that the League no longer maximised its impact, even in terms of middle of the road, liberal reform. It had become

22. M. Ryan, 1978: The Acceptable Pressure Group, Saxon House, page 1.
23. For an account of this particular example, see Ryan, 1978: ibid.
24. See further, for example, D. Wilson, 1984: Pressure: the A-Z of Campaigning, Heinemann.
25. Freedom on Licence; The development of parole and proposals for reform. Howard League. 1981.

almost too acceptable in the narrow area in which it was working. The League did attempt to answer this:

'The League has been criticised for being too close to the Home Office but... there is no point in antagonism unless it achieves something: no one, especially prisoners, would benefit if the League made itself such a nuisance as to cause the authorities to roll down their steel shutters and leave the League battering on them with its tiny fists'[26]

But the critics would not be silenced. Membership was also flagging and the close association with NACRO, whereby research, publications and even addresses had been shared, was being put on a new and less direct footing. The time for change had come.

The Howard Association founded in 1866, which in 1921 merged with the Penal Reform League to become the Howard League for Penal Reform, had its name changed in 1982 to read simply, The Howard League. A new Director had been appointed and a new prospectus issued, which announced 'a new structure and purpose for the Howard League'.

Under its former Director the League was keen to take action whenever a particular aspect of the system required it: under the new director the League is concerned to carry out research. It intends to act as a 'think-tank' for the criminal justice system and to involve both practitioners and academics. The role of rapid response commentator is no longer a primary aim.

Given the demise of the Advisory Council on the Penal System and the League's close association with the Home Office, could it be that the League is taking on the role of semi-official (although independent) research advisor to the Home Office?

The new prospectus was published under the title 'An intergrated approach to criminal justice and penal reform'. The scope of the League's activities has been considerably widened to take in the whole of the criminal justice system rather than just the penal system. This 'new approach' is claimed to allow a more comprehensive consideration of the issues involved in crime and punishment and to establish the League in an area of endeavour which does not duplicate the work of any other organisation. It is also hoped that it will broaden the appeal of the organisation, thus attracting more funds and influence, as well as additional membership.

The League intends to pursue its aims by working to develop increased public awareness, by undertaking research and by advocating 'rational and humane' policies. This seems to resemble very closely what the League has been doing for some time. Presumably the difference is that it will attempt to do it more effectively and in a broader context [27].

The League also intends to 'provide a forum where all interested parties may expect to have their views accurately represented, and subjected to honest and constructive criticism'. The League has in the past shown that it can act as an intermediary for the otherwise uncommunicative, as a depository and dissemination point for views and ideas, and has at its annual conferences brought together the whole spectrum of people involved, in whatever capacity, in the penal system. It is in this area that it may make its biggest contribution.

It is to be hoped that there will be no great diminution in the attention which prisons are afforded in the League's broader scheme of things. John Howard was best known for his attempts to effect reform of the prison system. The League took his name and took prisons as their central area of enquiry. Although from the beginning the League took the wider remit of the penal system, they devoted much effort towards the gaols. But to look back over the history of prison reform, it is impossible not to experience a sense of failure. The League working for prison reform felt this acutely.

NACRO

The National Association for the Care and Resettlement of Offenders

A government sponsored charity, NACRO was set up in 1966 as part of the reorganisation of after-care. The Report of the Advisory Council on the Treatment of Offenders, 'The Organisation of After Care', published in 1963, recommended that the work being carried out by the National Association of Discharged Prisoners' Aid Societies, in relation to prison welfare and after-care, should be taken over by the probation

26. Martin Wright. Director 1971-81, writing in the Prison Service Journal No. 31. July 1978 at page 18 – The Howard League and the Prison Authorities.
27. A more critical appraisal is to be found in 'The Abolitionist' Number 12, at page 13 – Enigma Variations. S. Smith.

service. The Report recognised that the probation service would need assistance in its new role and that the voluntary organisations still had a good deal to offer. NADPAS changed its name to NACRO, and with Home Office funding became a national organisation intended to co-ordinate voluntary effort and to inform public opinion. NACRO has developed into a large and complex organisation, which although based in London has offices and projects around the country. Today, it is not simply involved in projects which provide after-care, but also in projects to provide alternatives to custody.

NACRO's stated aim is the 'care of offenders and the prevention of crime'. NACRO's original brief relating to the discharge of people from custody has considerably broadened. NACRO now has a 'more general concern with the penal system and in particular, with finding ways of reducing the use of prison. Thus NACRO has established a number of projects including specialist accommodation, day centres, education units and employment schemes'. On a practical level NACRO has been very effective. It has teams specialising in the development and management of projects including accommodation, employment, education, day-care, community alternatives for young offenders, crime prevention and training for the staff of residential projects.

In addition to its practical work NACRO is involved in matters of penal policy. With many public figures on its council and much public money in its coffers it may be thought that NACRO would be subject to severe restraint in the matter of policy formulation. But it contributes to the overall scheme of things in several ways, not least of which is the indirect effect of its practical projects. NACRO also organises seminars, meetings and conferences on topical areas of penal policy, it engages in research, publishes papers and makes public statements.

NACRO runs a superb information service and also assists others to provide community facilities for offenders: it was instrumental in the setting-up of the National Association of Victim Support Schemes.

The tradition of NACRO is much the same as the Howard League: that of the well intentioned and concerned liberal. Its two great strengths are its practical success and its information and publications service. But it poses no direct threat to the status quo of the prison system, nor does it have much relevance to the inmate in his cell. It can be argued that NACRO merely serves to prop up the system, by making it more acceptable. So that in the long term it is counter-productive as regards radical reform. Those that NACRO have saved from prison and those who have been helped by NACRO on release would disagree with this view.

Radical Alternatives to Prison

The tide of political consciousness that swept into this country from France in the late 1960s led to a questioning of traditional criminology. As Taylor, Walton and Young have put it:

'We were propelled by a dissatisfaction not only with the parochialism, the puritanism and the correctionalism of criminology, but also by a powerlessness as to the possibility of affecting the national culture, the politics of social democracy or, indeed, the politics of the orthodox left itself'[28].

Academics, middle-class practitioners and even the deviants themselves changed their political orientation. Radical pressure groups came into existence. Groups such as Red Rat (psychologists), the Claimants Union (the unemployed), Gay Liberation (homosexuals), and RAP and PROP (prisoners) were formed to give public voice to the previously silent.

RAP was set up in 1970 by a group of people involved with the prisons. Not only were they profoundly dissatisfied with the prisons, but also with the existing reform movement. The traditional reform groups were perceived as not being 'interested in moving beyond the question of prison conditions to a consideration of the whole basis for imprisoning people'. RAP concluded that imprisonment was not 'a rational, humane or effective way of dealing with harmful behaviour or human conflict'. Prisons were seen to function 'in a repressive and discriminatory manner which serves the interests of the dominant class in an unequal society – whether capitalist or 'socialist".

RAP was founded to work towards the abolition of imprisonment. It did not see itself as a penal reform group, declaring that prisons had no place in our society. Further, RAP was not, despite its name, an alternative group, although it had originally espoused alternatives and had done much to bring the concept into sharper focus. It quickly realised that the alternatives being put forward were being used as 'cheap and easily administered forms of punishment or threat aimed at and intended for the same people who fill our

28. Taylor, Walton and Young. Critical Criminology. Routledge & Kegan Paul. 1977, at page 18.

prisons – predominantly those at the bottom of the social heap'. Being aimed against the same people and being based upon the same principles as imprisonment it is contended by RAP that they are not 'real' alternatives, but additional methods of punishment and control. RAP points to the fact that as a means of reducing the prison population such alternatives have failed. The proportion, as well as the number of persons sent to prison has increased for example since the introduction of the community service order.

RAP does not oppose the existence of alternatives, but argues that they should be backed by 'measures that ensure that they are used instead of imprisonment: e.g. the phasing out of custodial institutions for juveniles and the abolition of imprisonment for minor property offences'.

The setting-up of what RAP calls 'radical alternatives' was an important part of the original brief. These act outside the state system of control. They are extremely difficult to establish; due to problems of funding (as they should not accept state money) and difficulties in relation to the criminal justice system (as they must be attended voluntarily and be both non-coercive and non-punitive). The Newham Alternatives Project which ran in East London from 1973 to 1980 and the Brighton Alternatives to Prison Project are seen as being rare examples of true 'radical alternatives'. Whilst still strongly in favour of such initiatives RAP does not have sufficient resources to establish any more. It also recognises that by themselves such projects have a limited impact.

The abolition of imprisonment would involve fundamental change in society; which RAP admits is some way off. RAP now works *towards* abolition. RAP feels that it cannot ignore the worst excesses of the penal system and favours certain reforms – of the type which Mathiesen terms negative reforms[29]. Examples of these are the lifting of secrecy and censorship, the ending of compulsory work, the stopping of the alleged use of drugs for control purposes and the end of both solitary confinement and the system of security classification. RAP points to the Special Unit at Barlinnie Prison to show what can be achieved by a less authoritarian and restrictive approach.

As a radical commentator on the penal system RAP is not constrained by method of finance, composition of membership or inflexibility of approach. It has not sought registration as a charity due to the restrictions inherent in the adoption of the status. It is a small organisation with a membership of around 250. Funded shortly after formation by Christian Action it remains an Official Christian Action project. Funding from this quarter ceased in 1978, in line with Christian Action's policy of funding small groups to allow them to become established and then to expect them to achieve financial independence. Since 1978 RAP has been dependant on subscriptions, donations and sales.

The main work of RAP today, is to publicise its new strategy[30]. Broadly, this aims towards negative reforms, a prison building moratorium, a policy in the direction of abolition in the form of a massive reduction in the use of imprisonment and a re-evaluation of the 'serious offender', coupled to a re-evaluation of restitution and reparation. As RAP has put it:

'We are particularly concerned to communicate our ideas to people active in political parties, in the professions that deal with 'offenders', and in other positions where they are well placed to work for change; we see this as a more fruitful strategy for a group like ours than appealing either to the powers that be or (via the media) to the public in general – although we do both of these things as well, and are happy to talk to any audience that wants to listen'. RAP 1982.

A large part of the work is publication of 'The Abolitionist', and this magazine has become the central organ for the radical reform movement. It now includes sections from PROP, Inquest and Women in Prison, as well as from RAP.

PROP

PROP – The National Prisoners' Movement

PROP was conceived on the exercise yard of Dartmoor Prison by a small group of prisoners. The driving force was Dick Pooley, who had spent some 20 years inside. On his release in 1972 PROP (Preservation of the Rights of Prisoners) was born, with Pooley as national organiser. Fitzgerald describes PROP's public debut thus:

'On 11 May 1972, the national media gathered inside a small public house, the 'Prince Arthur', on the Caledonian Road opposite Pentonville Prison. They listened as

29. See T. Mathiesen op. cit., p. 202.
30. For a fuller discussion of RAP policy, both past and present, see Box-Grainger. 'RAP – a new strategy.' 'The Abolitionist' Number 12, at page 4.

Dick Pooley outlined the demands of 'Preservation of the Rights of Prisoners (PROP), the newly formed prisoner's union'[31].

The original group had all served time and PROP intended to supplement the 'largely futile efforts of middle-class liberals to improve the conditions inside prisons, without involving or even consulting the prisoners themselves'. PROP was attempting what Mathiesen has described as organisation from below – considered a rational answer to coercion from above[32].

Much of the ideology and direction of PROP parallels that of RAP and the two groups have always enjoyed a close relationship. The difference is that PROP is an (ex) prisoners' movement, although membership is not so restricted. Also while PROP concentrates exclusively on prisons, RAP takes in more of the penal system, and RAP concerns itself mainly with policy issues, whilst PROP is more concerned with current events inside the prisons.

From the start PROP performed the role which it still has almost exclusively - that of getting information out of the prisons. Examples can be found in the aftermath of the disturbances at both Hull and the Scrubs[33]. PROP performs a unique role in this respect, and contrary to what popular opinion may have expected from a group of 'ex cons', it has established a firm reputation for honesty and integrity – much to the embarrassment of the Home Office on more than one occasion[34].

Finance has always been a problem and although PROP somehow manages to survive it has no proper base and its resources amount usually to no more than one worker assisted by a few volunteers and a telephone. Considering its size and resources PROP has made and continues to make an important contribution to the penal lobby.

PRISON REFORM TRUST

The Prison Reform Trust

Set up in the autumn of 1981, the PRT intended to build on the consensus of opinion concerning reform. Its aim is to promote 'the widest debate about prison conditions, by encouraging community interest in penal establishments and by advocating constructive reform of prison rules and penal policy generally'. Its rationale is that a catalyst is needed to spark off reform which is said to be an idea 'whose time has come'. The Director of the Trust has said that its work will not duplicate that already being carried out by other organisations to promote penal reform[35].

The PRT makes a concerted effort to place the problems of the prisons before the public and to promote a widespread understanding 'of the need for fundamental reform of the prison system so that no Home Secretary could fail to take account of it nor lack support among the public in introducing such reforms'. To this end it seems to mobilise the influential sections of society; dignitaries, business people and members of the professions. 'Prison weeks' are organised at various prisons. These involve taking local worthies to see the gaols, organising media coverage, and generally attempting to bring the prison out of the background and into the glare of public scrutiny. That the PRT has managed to stage 'prison weeks' is no mean achievement: whether or not they will have any long-term effect is another matter.

The membership of the Trust reflects its philosophy of appealing to the lay, but influential public. Through its contacts and the publicity which it has generated, it has brought the facts of prison life into the world of many people who would previously have had little or no knowledge of them. Whether its work will prove effective in achieving its desired aims, remains to be seen.

Welcomed by most of those involved in the

31. M. Fitzgerald. Prisoners in Revolt. Penguin 1977, at page 136.
32. T. Mathiesen, op. cit. page 124.
33. See Don't Mark His Face, the account of the Hull Riot (1976), by the prisoners themselves. PROP, undated.
34. Perhaps most notably after the disturbance at Wormwood Scrubs in Aug. 1979, concerning the number of prisoners injured. See The Abolitionist number 11, at page 3.
35. The PRT would have found itself duplicating the work of the 'old style' Howard League in the area of prisons, but as the League has widened its field of interest and has moved away from instant media response and publicity in favour of long-term research, then both organisations have a role to play. See S. Shaw (Director PRT): 'The Prison Reform Trust'. Prison Service Journal No. 46. April 1982, at page 2.
36. POA Magazine. vol. 72, no. 3. March 1982, at page 76.
37. POA Magazine. vol. 72, no. 5. May 1982. Letters at page 180.

penal system, including it seems the Home Office and the prison governors, the PRT has raised the hostility of the Prison Officers Association. The Director made a brave, if perhaps over-optimistic attempt to put its case to the POA[36], but this provoked a very hostile, although misguided response[37]. The PRT was lampooned in the POA magazine as a '...load of double dyed Wallies', with the 'prison weeks' referred to as 'the Stephen Shaw Road Show', and the Branch Secretary of the Leeds POA writing:

'Beware of the PRT they are a bunch of titled, monied, bored people who condescend to give their time and energy to 'bringing to the public notice' whatever takes their fancy. They are wolves in sheeps clothing. If Lord Astor, Sir Monty Finniston and the irrepressible Dr Stephen Shaw are anything to go by then the PRT can do the prison service nothing but harm if they are allowed to[38].

A reply by the PRT expressed surprise and upset at this response, but went on to widen further the gap between the PRT and some parts of the POA by stating that the governor grades had made the most of the 'prison weeks', and that it was not the Trust's fault if the uniformed staff had not[39].

The PRT was established with specific targets to be achieved within three years. These were the reduction of the prison population, the abandonment of the 'short, sharp, shock experiment', and the extension to all prisoners of the conditions granted in Northern Ireland. The three years are up. The PRT has secured itself financially and produced much useful literature, and POA apart, it has been welcomed as an additional voice for penal reform.

The Campaign for Women in Prison was set up as an offshoot of the Violence against Women working party of the GLC's Women's Committee. It quickly drew in other women working in the field and is an exclusively female group[40]. Set up in 1983, WIP is campaigning on similar issues to PROP, but limits itself to women prisoners.

Inquest was launched in 1981. It is concerned solely with deaths in custody and with the procedures used to deal with them. It has, since October 1982, received funding from the GLC to monitor deaths in police custody and inquests on custody deaths in London. Inquest has published several briefing papers[41], and looks set to provide a valuable external voice on deaths which occur in custody.

Out of Court was set up in 1981 to co-ordinate the various bodies concerned with the imprisonment of the drunkenness offender. It aims to spearhead publicity and to mount political pressure for its sole objective, which is the provision of alternatives for drunken offenders.

The National Council for Civil Liberties is concerned with all aspects of civil liberties and not just with the gaols, but has devoted attention towards prison matters on many occasions. NCCL has mounted particular campaigns, such as that against the Special Control Units, it has organised conferences and issued publications. It is a well established and well respected organisation which in 1984 celebrated its 50th anniversary. During its 50 years the NCCL has had an uneasy relationship with the Home Office, especially during the latter part of the period, when it tended towards a quite radical outlook. It appears that under its new general secretary, the NCCL is to move back towards the middle ground.

Comment

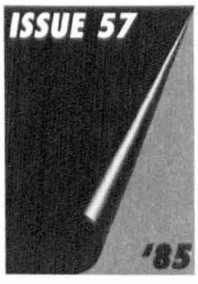
There is a multiplicity of interested opinion on the penal system, and with so many interests pulling in so many directions it is not surprising that change is so difficult to effect. Many groups have failed to be able to unite in what is in effect a common cause. Suspicion and hostility are often apparent as can be seen in a Home Secretary's statement:

'There is a strong distinction between those who wish to promote penal reform and those who seek to ferment discontent and indiscipline in prisons'[42].

The paradox in such a statement is self-evident, and an observer of the penal lobby may well feel confused. There appears to have been a bifurcation, a polarisation of interested bodies into

38. POA Magazine. vol. 73, no. 2. Feb. 1983, at page 83.
39. POA Magazine. vol. 73, no. 4. April 1983, at page 196.
40. See further The Abolitionist, number 14, at page 3.
41. See, for example. 'Nine Deaths in English Prisons', 'Murder near the Cathedral', and 'Coroners' Courts: An outline of Inquests proposals'. All 1983.
42. Robert Carr, quoted in Prison and the Process of Justice. A. Rutherford, Heineman. 1984 at page 82.

on the one hand groups such as the POA and the Police Federation, and on the other groups like LAG, PROP and RAP. The former forcefully pursuing a 'hard' line and the maintenance of the status quo: whilst the latter equally forcefully propounds radical change. The rest of the penal lobby sits uneasily between these: taking parts from each attempting to paper over the cracks, and trying to perform the unenviable task of pleasing as many people, for as much of the time as is possible. Meanwhile the prison crisis worsens ■



Life Expectancy

John Staples

It was one day last year when on my rounds in Wormwood Scrubs I entered a workshop which employed only life sentence prisoners. I was surrounded by some twenty men, angry, bewildered and resentful. It was of course the day the Home Secretary announced the changes he was to make in the way he exercised his discretion in releasing lifers and quoted the 20 year minimum for certain specific kinds of crime; murder of police or prison officers, terrorist murders, sexual or sadistic murders of children and murders by firearm in the course of robbery and added that other murders may merit no less punishment to mark the seriousness of the offence. He said too that the system for reviewing lifers would be amended and that the Joint Committee would be abolished. The lifers who had heard this on their radio wanted to know what it meant for them. They were angry with me for not having given them some indication beforehand of these changes and resentful at what seemed to them to be retrospective action. Others said that constitutionally it was improper for the Home Secretary to make such changes without the authority of Parliament or at least some public debate. These men had come into prison with a life sentence not knowing what that meant but after talking to other lifers and staff had developed some understanding of the system. Now that understanding was shaken, the rules had been changed. 'Had staff been consulted? What had governors advised?' they demanded to know. I had few answers to give because at that time I knew no more than they.

It was a tense and frustrating experience and all I could offer was to provide more information as it became available – the 'I'll look into it' response which governors sometimes have to give and which did lead, in the case of one of my colleagues who used that phrase too often, to the cynical epithet of the 'gypsy governor' because it was suggested that what he 'looked into' was a crystal ball.

In an irreverent moment I did draw some comfort from the idea that, perhaps, what I was going through with these angry lifers was not so dissimilar an experience to the one that some Conservative Home Secretaries have had to suffer when addressing fringe groups at party conferences when proposing that some measure of constraint be exercised by the courts over the length of sentences in order to provide decent conditions in our prisons.

Not only were lifers at Wormwood Scrubs affected of course. A number of men who had progressed to open prison in the expectation of release within the next few years had to be returned to closed conditions since it was apparent that under the new arrangements they would not now be released so soon. But the lifers I spoke of are at the beginning of their periods of detention and are faced with, what is sometimes a total, uncertainty about what a life sentence means. I recall one lifer I met from Birmingham, a simple minded man in his late 40s who had spent most of his life in institutions and received a life sentence for a sexual offence against a baby. He believed

that it was only a matter of time before he would be executed and it was a long time before that belief could be shaken. Another man, an estate agent, who had stabbed to death his mistress in a jealous rage had been told by the judge that his life sentence would be subject to frequent and regular review. What frequent meant to the Home Office was quite different from what it meant to that man. In an attempt to demonstrate his frustration and despair he took his own life. In a further case a lifer convicted of sexual offences against his own child was told in open court that the life sentence would enable him to receive treatment. The prison medical service found him unsuitable for treatment and so he demanded to know when he would be released now that the treatment was not available.

These are particular examples of where the indeterminacy of the life sentence was either not understood at all or a source of bewilderment. Those cases serve to underline what is a problem for all lifers. The anxiety that indeterminacy brings is accentuated by the need for the lifer to cope with imprisonment itself, the deprivations, the enforced company of 'criminals', loss of status. Some lifers are unsophisticated criminally and have no experience of imprisonment or the courts before this sentence. The picture the lifer has on coming in to prison is little different from the one most people have of prisons, forbidding places full of violent and dangerous criminals. An alarming and frightening impression to which a lifer has to adapt. On top of that is the need for the lifer to come to terms with his own feelings about the crime he has committed, the public condemnation of that act and indeed the reactions of his friends and family. These feelings sometimes find expression in the way many lifers fight their appeals arguing strongly that they can accept the life sentence but denying the intent to kill and asking for the conviction to be reduced to manslaughter because that would offer some evidence of mitigation.

Now that the new arrangements for the review of life sentences have been spelled out and we have seen it in action if only for a few months it seems that these arrangements can offer considerable help to the lifer and prison staff in working towards release. In the first place a major concern of lifers had been that the figure of 20 years of which the Home Secretary spoke would become the norm for all lifers or at least there would be a trend upwards from the current average of around ten to 12 years. The average is calculated on lengths of detention of released lifers and can, therefore, give a misleading impression. The dates lifers at Wormwood Scrubs have been given for their cases to go to the LRC so far do not support that concern. They seem much in line with what has gone before. This is not so surprising in that the types of crime which the Home Secretary quoted would have drawn from the judiciary through the Lord Chief Justice, under the former arrangements, recommendations for lengths of detention not far short of 20 years. Secondly, many staff were worried that by consulting the judiciary at a much earlier stage than previously when it was done only at the point when the Parole Board was seriously considering recommending release would mean a more cumbersome and drawn out procedure. This has not happened. The length of time a lifer has to wait before hearing when his case is to be put to the Parole Board is not lengthening.

The lifer now gets at around his third year of detention a date for having the case heard by the Parole Board whereas formerly those lifers who were likely to serve the longer periods of detention would have been told by the Joint Committee of the Parole Board and the Home Office that no date had yet been set but his case would be considered again in two or three years time by that committee. The latter system allowed and even encouraged false hopes which when dashed caused only bitterness. I recall a lifer writing from Wakefield Prison to the Home Office: 'I will not allow myself to be continually tortured in applying for parole when there is no intention of granting me it'. The new arrangements should mean that lifers will be considered by the Parole Board only when they have a real chance of release.

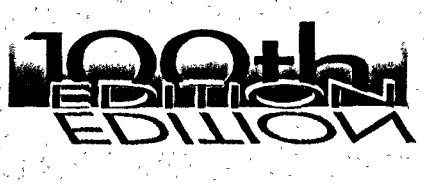
It might be argued that asking the judiciary to set a date before the Parole Board has seen the case, the reverse of what used to be done, is to limit too much the Parole Board's ability to modify the sentence in the light of individual circumstances of the case. There will be those who argue that once the trial is over the Judiciary should play no further part. That is an argument which applies with equal force to both the old and the new arrangements. What is happening now is that the influence of the judiciary is no greater but is more openly expressed. It has been expressed previously in several ways, some more open than others. Often the trial judge wrote privately to the Home Secretary giving a view on the comparative seriousness of the offence. A minimum recommendation might have been passed in open court. The Parole Board itself always had in its membership a number of high court judges, one of whom is vice-chairman and was a member of the Joint Committee. Furthermore the panel of the Parole Board which considered life sentence prisoners always included a high court judge. And of course as release approached the Lord Chief Justice and the trial judge would be consulted. So the judicial element in the release of life sentence prisoners has always been high. How far the

notions of retribution and deterrence were modified by other considerations would be difficult to assess but I note a reply given to a Parliamentary Question on 24 May 1979 that '80 prisoners have been sentenced to life imprisonment for murder since 1969 in respect of whom a recommendation as to the minimum sentence to be served had been made by the trial judge. None has been released'. The advantage of the new system is that the lifer and the staff will know much earlier and in every case when the Parole Board review is to be held and that is much better even if the date is many years ahead. The message I have received from lifers is that they would have preferred the certainty of a long fixed sentence to the uncertainty of a shorter indeterminate period of detention. However there is the potential now for a further advance.

At present the system of administration which grew out of the need to cope with a growing population of lifers (January 1957: 133, now nearly 2,000) provides for a progressive movement of the lifer from the main centres at Wormwood Scrubs, Wakefield and Gartree, where lifers are held for the first three years of detention after sentence, to prisons of lesser security as the possible date of release draws nearer. This system offers the lifer a concrete indication of his progress in milestones along the highway to release, thus allowing him to structure his time. For example, with a date for review by the local review committee preliminary to going to the Parole Board at ten years then he can reckon on a three year stay at a main centre, another three at Bristol, two at The Verne and finish at Leyhill. This movement also provides the Parole Board with the opportunity to have opinions of lifers expressed by different people within the prison system but in varying conditions of security and control. It is the practice for all lifers to spend their final years before release in open conditions and to have a spell on the hostel scheme. These experiences both test the lifer and help him to acclimatise himself to release. But the test remains obscure. It may be that in one case the Parole Board wishes to know how the lifer can cope with the close knit community life of the open prison or in another the Board may think that if the lifer can withstand the temptation to hop over the fence and have a drink in the local pub or, if he does so, to drink in moderation, then he has shown them something significant. I'm sure those kind of tests are in the minds of the Board but neither staff nor lifers are aware of them. If they were it could be that the lifer could cheat by pretending. I don't dismiss that notion and it may be a risk but if neither the lifer nor the staff know what is required surely it is an even greater risk that some genuine alarm signal might be missed. There are difficulties either way but by knowing the criteria I'm sure much fantasy and dishonesty would be removed without greater risk to the public.

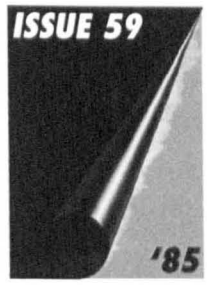
Already as part of the administrative strategy for lifers multidisciplinary teams have been established in all 26 prisons which now hold lifers after sentence. For those teams to work realistically with the lifer they should understand the criteria which the Parole Board sets for release. I emphasise working *with* the lifer because I see it as most important that he is contributing to the assessments made of him and that he feels he can have some impact upon the decisions which are made about him. At Wormwood Scrubs whenever there is a review the lifer is involved and his views are sought. For it to be otherwise leads to helplessness and dependency and a man who sees himself as having no legitimate part to play in the decisions made about him will either assert himself against the system and those around him in a violent way or withdraw into himself and in neither case is he likely to become safe to be released. And it is that safe release which is the joint aim of the Home Secretary, Parole Board, prison staff and the lifer.

Finally I would like to say how important lifers find the contacts they have with you and other similar bodies, SOVA and Prison Visitors. Lifers especially value your contribution, not simply because they may have no one else to visit and that is true of a number but because in their dealings with prison staff be they doctors, chaplains, landing officers or governors we all have a part to play in deciding the question of release and that must affect the quality of these relationships and the lifer knows it. You are independant of that system and make no judgements of them otherwise than that they are people who are worth visiting and being concerned about ■



Comment

Richard Tilt

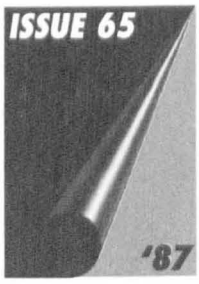


In an earlier issue this year we published a piece on the Control Review Committee report about the handling of Long-Term prisoners, and drew attention to the work currently going on in the Prison Department to evaluate the recommendations and see whether they can be translated into a plan of action and, if so, at what cost. We hope also to be able to draw on the experience of officials who have visited the USA to look at 'new generation' prisons. However, there is a sense in which the debate within the Service, opened up and greatly stimulated by the Control Review Committee report and subsequent presentations on it, is becoming a public one. The first sign of this for me was the Radio 4 programme written by Andrew Rutherford, which contrasted the running and apparent success of two 'new generation' prisons in the USA. The heartening conclusion of the programme was that whilst design is clearly crucial, so too is management and the quality and training of the staff. In other words, we need to be careful if we propose simply lifting the building design from one side of the Atlantic to the other. There are successes and failures within the same design and we need to be sure that we get management structure and support systems correct and that we make sensible staffing arrangements that increase job satisfaction but also leave staff feeling secure in their environment. The programme was highly informative and dealt with the issues in a most penetrating way.

Not so the recent article in the *Sunday Times*, however, on the same theme, which sought to explain the 'new generation' prison concept but did so in a thoroughly superficial way (although carpets would be a good idea).

What was most worrying was that this public debate seems to be moving us very quickly from the Control Review Committee recommendations of a better planned and controlled use of the existing dispersal system with some small numbers of disruptives removed to small units. The *Sunday Times* article talks of a decision to be made shortly between concentrating all our Category 'A' prisoners in one 'new generation' prison and continuing the present dispersal system. In other words, back to the dilemma of the 1960s.

It had seemed that the Control Review Committee had found and recommended a middle course and it is interesting that the treament the discussion receives in the national media may now actually be shifting the perception of the original recommendations. Whatever the outcome, it is an issue of critical importance to the Prison Service. It is one the Journal will keep in close touch with over the coming months ■



Comment

Mike Jenkins

There are those who look back into the past (distant or relatively recent) and see penal philosophy as clearer, simpler, more easily understood and therefore more whole-heartedly pursued. They may look to Du Cane and applaud his punitive regime or to Gladstone, Patterson, Llewelyn and their like and take a deep, uplifting breath. Cynics will argue that neither punitiveness nor treatment reduced delinquency. Since then we have seen the 'Justice Model' which deals only in tariff and measures the relative merit of particular criminal acts; it looks backward to what has been done, not forwards, with no speculative or reparative intent. This may unburden the mind, but seems to offer little to prisoners or prison staff; 'Justice' has a cold and clinical sound.

In setting out the aims of the Prison Service in 1984, the Prison Department settled for activities rather than a coherent philosophy and one might agree that it is better to set out the tasks so that we know what we have to do (and can be approved when we do them well) than to pretend to a philosophy that is bogus. It might be tenable to prefer continuing tension between, at its simplest, punishment and treatment on the basis that neither can exist on its own. Treatment in prison can hardly deny a punitive element and punishment without something more positive quickly looks unjust. Janus would then be our patron 'saint' as he looks in both directions at once, backwards to the deed and forward, on the other side of the gate, to release. While it is best to avoid the extremism of either one or the other, the Prison Service needs a clearer ethic than this form of co-existence. And it must get away from pretence, such as our present Rule I – 'the purpose of **treatment and training**' may well be that inmates may lead 'a good and useful life', but what is the purpose of **imprisonment**? Much imprisonment has all too little treatment and training available as the Inspectorate politely but firmly tells us.

In such debates the good sense of Archbishop Temple appeals:

'Now the most fundamental requirement of any political and economic system is not that it shall express love, though that is desirable, nor that it shall express justice, though that is the first ethical demand to be made upon it, but that it shall supply some reasonable measure of security against murder, robbery and starvation.'

Christianity and Social Order, SPCK 1976 edition (p61)

He also advises:

'Incidentally, it may be worthwhile to observe that our duty in this field is seldom to adopt one principle and see it through. Controversialists often demand this in the name of logic or of consistency. But the first requirement of sane logic is that we should consider what principles are involved and how we may do fullest justice to them all ... the real problem is to ascertain, as far as may be, all the principles and then combine them as fully as possible.'

(p78)

And Temple concludes:

'These two great principles then – love and justice – must be rather regulative of our application of other principles than taken as immediate guides to social policy.'

(pp79-80)

The British Council of Churches has been deliberating on such issues in a recent working party and has, in its report 'Breaking Out' (Speller, 1986) concluded that a synthesis is possible between the apparently antithetical elements. The argument is summarised thus:

'Moreover, it can be argued from this theory that it is needless to contrast reformation with punishment, since

punishment is itself the instrument for checking moral deterioration and promoting reformation. In addition, it is mistaken to contrast deterrence with retribution, because deterrence itself clearly implies a prediction of retribution. Punishment is considered to deter people from crime, precisely because it is inflicted for crime. The concepts of retribution, deterrence and reformation, therefore, are all essentially complementary, and need to be integrated in a balanced penal policy.'

(pp95-6)

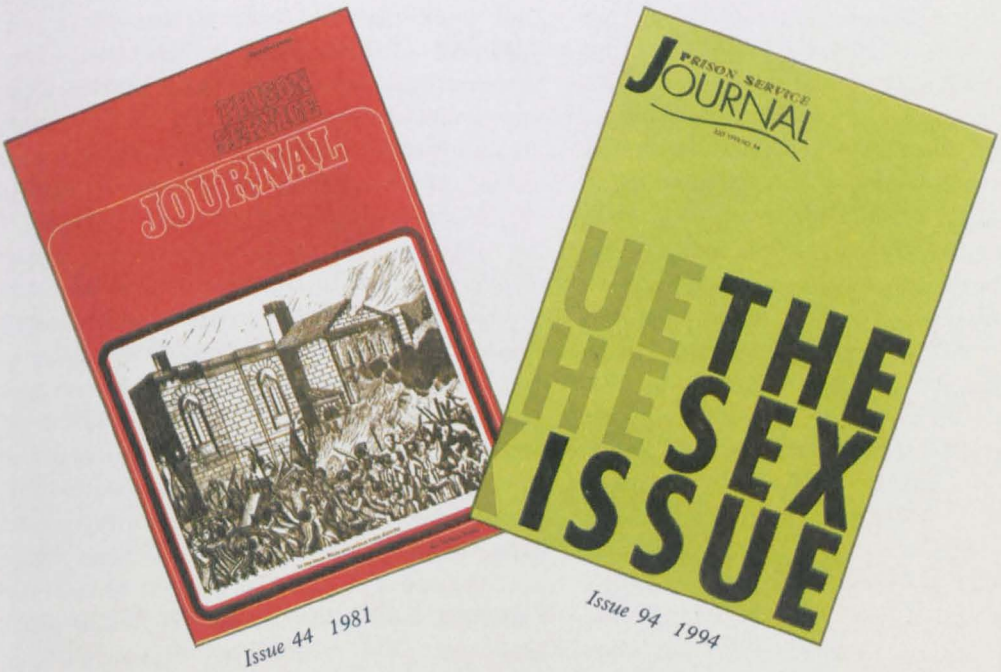
While wishing this attempt well, I doubt if a synthesis really convinces. I prefer Temple's concentration upon sufficient control to maximise freedom. The Queen's Peace is for everyone and probably falls more to the Home Secretary than to the Lord Chancellor to sustain it. The most effective controls are the least obvious but as controls become more public and more coercive it is vital that they are properly regulated – and lawyers are skilled at moderating any use or abuse of power. Prison as the most coercive control needs the most careful moderation and we need a philosophy of control that emphasises that, like force, no more of it than necessary is used. Prison is just at one end of a long spectrum of informal and formal control. Then the classical aims of penal action are not paramount but regulate or qualify or moderate the exercise of control; for example:

Control should be just: it should be applied deservedly, proportionately, according to standards and without caprice.

Control should identify what is alien, say so clearly and so reinforce peaceful behaviour.

Control should seek the good of the community **and** the offender by being informed, constructive, hopeful, humane and value for money.

We wish well the discussions that will flow from the publication of Ian Dunbar's 'A Sense of Direction' and look for a new statement of purpose as we prepare for a 'Fresh Start': and not for our own benefit only – we need hope but so do both community and offender. The Prison Service should renew its commitment to diverting its charges from future offending, for example, through its endorsement of 'shared throughcare'. Such attempts are not in vain (though the climate may be difficult) and we share a common interest – we do not wish to see the prisoner back inside and nor does he ■



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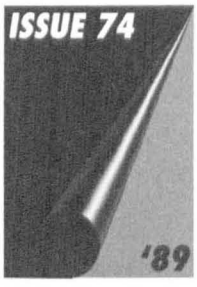


Comment

Alastair Papps

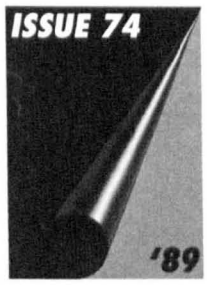
The greater part of this edition of the PSJ is devoted to publishing the 1988 Perrie Lectures, entitled – 'Remands in Custody: Problems and Prospects for Change' – and delivered in October, 1988, by Rod Morgan and Andy Barclay, at the Prison Service College, Newbold Revel. We make no apology for devoting so much of this edition to their very detailed exploration of the issues in this important, but often neglected, area. We believe that their views should be brought before a much wider audience than was able to attend their lecture at Newbold Revel in October of last year.

The privatisation debate to which they refer in the latter part of their two-handed delivery is taken up in the open correspondence which we publish between senior staff of Risley Remand Centre and the Home Office Prison Department Remands Unit. Much of the public response to the Green Paper 'Private Sector Involvement in the Remand System' (HMSO 1988 CM 434) has been critical of the principle of any involvement of the private sector in the process of curtailing the liberty of the subject. The cry 'Prisons for Profit' has been bandied about by various groups, sometimes as a slogan with which to obscure dispassionate and rational debate, and at other times, as a means of defending vested interests. It is to be regretted that any debate involving privatisation swiftly becomes politicised, often on party political lines, with both sides seeing privatisation as the means towards furthering party political dogma rather than viewing it as objectively as possible to see whether or not it can provide more effective solutions to hitherto intractable problems.

Much of the criticism of the proposed involvement of private companies in the management of the remand system has been directed towards the difficulty of maintaining adequate public accountability and civilised standards of treatment in an environment in which profit looms large. It is indeed right that proper safeguards against exploitation are built into any new proposals. However, the debate has too often been clouded by inapposite analogies with the conditions in 18th and 19th Century England which helped to bring about the nationalisation of the Prison Service and the assumption of state control of hitherto privatised areas of activity. Late 20th Century England with its independent Prison Inspectorate and all pervading media involvement cannot readily be compared with earlier eras. Indeed, as Mike Jenkins makes clear, in his article on accountability and the Prison Inspectorate, which we publish in this edition, judicial review now plays a much greater role in safe-guarding the rights of prisoners than it has ever done before.

The two inescapable facts highlighted by Morgan and Barclay are first, that the increased remand population has contributed significantly to the overcrowding of the English Prison system in recent years, and secondly, that this overcrowding has meant that the State's record of civilised treatment of those held in custody, deemed innocent until proved guilty, is deplorable by any standard of civilised behaviour. Thus a privatised remand system would have to achieve very little indeed to improve on the hitherto disgraceful recent history of the State's activities in this area.

Furthermore, if, as the Green Paper envisages, the Prison Department could save staff at present committed to servicing the Courts, it could at one stroke, both reduce overcrowding in the Local Prisons, by hiving off the remand function, and free the staff thus saved to concentrate on developing civilised regimes in the Local Prisons for the convicted, the custody of whom, most commentators would agree, should always remain the prerogative of the State. This would represent considerable progress towards the removal of a persistant post-war blot on the penal landscape. The proposals in the Green Paper should therefore be given careful consideration and not discounted lightly and unthinkingly ■



A Personal View

Accountability and H.M. Prison Inspectorate

Mike Jenkins

History

While this article is about the present independent Prisons Inspectorate, it needs to be seen in the contexts of history and of contemporary thinking about accountability. The history need consist of only ten items because Judge Eric Stockdale[1] has already published a meticulous article on the subject.

1735-6 William Hay proposed a Parliamentary Bill which would have made the Lord Chancellor responsible for inspecting houses of correction; it failed. How different our penal history might have been if he had succeeded!

1773 John Howard appointed High Sheriff of Bedfordshire and

1777 published 'The State of the Prisons'.[2]

1823 Robert Peel's Gaol Act set out 24 basic rules for prisons; Quarter Sessions were responsible for carrying them out and reporting annually to the Home Secretary.

1835 First Inspectors authorised in England by statute.

1877 Convict prisons and local prisons integrated in one system.

1966 George Blake escaped and Inspector General appointed after the Mountbatten Report.[3] The House of Commons Expenditure Committee[4] recommended a Prisons Inspectorate which would be independent of the Prison Department and report directly to the Home Secretary.

1979 The May Committee[5] recommended likewise.

1981 The Home Secretary appointed an independent inspectorate.

In their early days, prison inspectors had inspected the city and county gaols on behalf of the Home Secretary, but after nationalisation inspectors and commissioners alike were members of senior management and in time their roles were combined. For certifying cells, regional directors have now assumed their functions. The Inspector General briefly exercised executive authority - but this is not enough, as Professor Martin[6] argued:

'Prisons, therefore, are a test case for the integrity of public administration; a balance has to be achieved between the needs of the individual and of society; inmates and staff should partake in an ordered but humane regime and, above all, the public must be satisfied that the power exercised in private, on its behalf, has been used justly and without excess.'

p. 159

and

' ... the problem ... (is) ensuring that proper standards of care are not only laid down, but achieved in practice. If in the process, one comes to repeat the famous question 'Who guards the guards?' - it is not to assume the worst, but to point to the acid test of those given power to maintain the law. Some failures are inevitable; the task is to see they remain peripheral.'

p. 161

The 'famous question' was first asked by the Roman satirist Juvenal, but in a different context:

'Put on a lock and keep your wife indoors - but who is to ward the warders? They get paid in kind for holding their tongues as to their young lady's escapades; participation seals their lips. The wily wife arranges accordingly and begins with them.'[7]

We now ask the question with more gravitas!

Accountability

To answer the question we need to look

broadly at accountability. Jon Vagg and Ralph Vossen[8] recently defined it thus:

*'In the context of prisons, accountability broadly means that officials, from guards to directors of prison systems, can be held responsible **for** the performance of their functions and **to** their immediate superiors.'*

While that is straightforward, their conclusion after studying systems in England, France, Holland and West Germany was different:

'Similarly in no country have bureaucratic controls over prison management included any significant element of accountability to prisoners.'

'Accountability to prisoners' is more of a political issue - is it also more than rhetoric? Genevra Richardson[9] had earlier written:

'The aim would be to endow the prisoner with special rights resulting from his relationship with the prison authorities.'

p. 23

And she had already envisaged 'A judicial role ... to help improve conditions and control prisons.' (p.11) Let us look at the extent of accountability.

Line Management

Since acceptance of the recommendations of the May Committee, the Governor's accountability for his establishment has been stressed. He or she has a budget to manage, a continuing duty to release inmates precisely as ordered by courts and more recently a 'contract' to specify the functions and regime. All is monitored; account must be given by way of a chain through the Regional Director to the DDG, to the DG and ultimately to the Home Secretary. Constitutionally he is answerable to Parliament; there is no written constitution and no Bill of Rights in England; and while the European Court of Human Rights (ECHR) can judge us against the Convention, that is not part of our domestic law. Lord McCluskey[10] recently defended the status quo (against those who press for incorporation, including some very senior judges) and said:

'The judge is never answerable, whether to his fellow judges, to Parliament, or to public opinion for his decisions ... His grosser excesses may be curbed on appeal. But he cannot be called to account in the way an elected representative is.'

p. 9

'American judges are the guardians and interpreters of a written constitution ... The mistakes our judges make are not woven into the fabric of a supreme law beyond the reach of the legislature.'

p. 41

'There is no escape from the fact that a constitutional provision which gives judges a substantial but ill-defined power to overrule the decisions of Parliament involves a shift of power from elected representatives who are accountable to unelected appointees who are not.'

p. 45

Prison staff are thus accountable to the Home Secretary, he to Parliament and Parliament to the electorate but that does not preclude other checks upon the exercise of power.

What can the individual do?

We appreciate that prisoners have an internal complaints procedure through application to the Governor and through to the Regional Director and Regional Principal Medical Officer as 'visiting officers of the Secretary of State' and that they can petition the Secretary of State. Both avenues are regularly used. Prisoners can also take their complaints externally to the Board of Visitors or to MPs or to the European Court of Human Rights. None has executive authority but MPs can expect replies to letters and Parliamentary Questions and they can refer allegations of maladministration to the Parliamentary Commissioner. Friendly settlements or judgments can follow cases pursued beyond the admissibility hurdle to the ECHR. The Board of Visitors can refer a case back to the Governor and draw the Home Secretary's attention to grievances in their annual report - which can now be made public. The system is fully described and discussed in the Inspectorate's Thematic Review[11] - 'A Review of Prisoners' Complaints.'

However, the courts have accepted that complaints procedures are not enough. While it is still true 'that no legal action is possible where a prisoner has suffered inconvenience or detriment as a result of a breach of the Rules' (Zellick[12]), Judicial Review by the High Court has been increasingly used, primarily but not exclusively, in respect of adjudications. In his review of applications for judicial review, Sunkin[13] recorded that prison cases in his sample periods were second only to immigration cases. It is a growth area and its use has been encouraged by judges, e.g.

'A convicted prisoner retains all civil rights which are not taken away expressly or by necessary implication and in particular his right of unimpeded access to the courts.'

Lord Bridge [14]

and

'The citizenry of this country ought to appreciate better that the Divisional Court ... provides the means of obtaining speedy assistance if they think that they are oppressed by authority or that they are failing to receive the assistance which Parliament has required authorities to afford them.'

Lord Donaldson [15]

Lord Scarman[16] appeared to limit remedies to cases where 'the Secretary of State must have taken leave of his senses' but this was not in a prison case. More recently the application made by Michael Benson[17] seems to have been decided upon the Home Secretary's 'reasonableness'.

Judges are careful to avoid constitutional clashes with Parliament in general and involvement in the administration of prisons in particular (Birkinshaw[18]). But prisoners have used judicial review in many instances. But is that enough - in addition to the internal and external avenues of complaint? 'No' was the answer of the Expenditure Committee, the May Committee, the Home Secretary and Parliament. For in 1981 the independent Prisons Inspectorate was established and written into the *Prison Act* (in 1982):

's5A

(1) Her Majesty may appoint a person to be Chief Inspector of Prisons.

(2) It shall be the duty of the Chief Inspector to inspect or arrange for the inspection of prisons in England and Wales and to report to the Secretary of State on them.

(3) The Chief Inspector shall in particular report to the Secretary of State on the treatment of prisoners and conditions in prisons.

(4) The Secretary of State may refer specific matters connected with prisons in England and Wales and prisoners in them to the Chief Inspector and direct him to report on them.

(5) The Chief Inspector shall in each year submit to the Secretary of State a report in such form as the Secretary of State may direct, and the Secretary of State shall lay a copy of that report before Parliament.'

The European Prison Rules, 1987 (which are persuasive rather than authoritative) include among their basic principles:

'4. There shall be regular inspections of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be, in particular, to monitor whether and to what extent these institutions are administered in accordance with existing laws and regulations, the objectives of the prison services and the requirements of these rules.'

However, the next rule goes on to say:

'5. The protection of the individual rights of prisoners with special regard to the legality of the execution of detention measures shall be secured by means of a control carried out, according to national rules, by a judicial authority or other duly constituted body authorised to visit the prisoners and not belonging to the prison administration.'

The independent Prison Inspectorate is not involved in this second function and prisoners must therefore pursue their 'rights' by applying for judicial review and petitioning the ECHR. So it cannot be said that judges control prisons in any sense because the Home Secretary is accountable to Parliament for prisons; however, there is 'a judicial role to help improve conditions' (as urged by Genevra Richardson) because the third Chief Inspector happens to be a Judge.[19,20]

The Role of the Independent Prison Inspectorate

The Chief Inspector can be said to inform and advise the Home Secretary but he has no executive authority and no access to any budget for prisons. He can make recommendations to the Home Secretary, the Director General, the Regional Director and the Governor in respect of each institution where a full or short inspection takes place and he submits an annual report. Publicity and recommendations are the extent of his power; he is in no sense accountable for prisons but assists the Home Secretary to discharge his accountability. Inquiries and Thematic Reviews are also published. Thus in four respects the Chief Inspector contributes knowledge about the working of prisons. He and his staff also pay unannounced visits to ensure regular contact with and knowledge of establishments.

Full inspections usually last four days; the

Chief Inspector normally opens them and the Deputy closes them. The inspection team will cover every aspect of the establishment; it normally consists of a Governor I, a Principal, a Governor IV, a Medical Inspector and a Building Inspector. In a large establishment the normal team would be expanded and occasionally guest inspectors participate. In line with the *Prison Act* the main focus is on 'the treatment of prisoners and the conditions in the prison' and Chapter 3 will usually be the largest chapter of each report. Following Fresh Start, this chapter describes 'Residential' aspects, Operations, Activities, Services and Medical provision. It is preceded by an introduction and a description of the context, physical and managerial. In Chapter 4 of the report conclusions are drawn and the establishment is considered against the general criteria of humanity, propriety, justice and value-for-money. Recommendations follow in Chapter 5 and Appendices include factual information. The aim is to complete between 16 and 20 full inspections each year but the total number depends upon any direction to conduct enquiries.

The reports of all inspections are submitted to the Home Secretary a few weeks after the inspection and he publishes the reports with his own commendation; this is based upon views presented by the Prison Department. An independent view of the Inspectorate's work has been published by NACRO[21] and a later briefing[22] gave a detailed digest of ten reports published in 1986 and 1987. Such reports identify good practice and make recommendations where improvements would appear to be needed. Some are more positive than others - any regular reader will recognise our phrase 'Consideration should be given to ...', where we believe change is needed but someone else should do the work. Any follow-up work is done by the Prison Department, usually the Governor and the Regional Director.

Outstanding Issues

It was said earlier that English practice does not square exactly with the European Prison Rules and that the European Convention on Human Rights had not been enacted as the law of the land. The present position was recently reviewed by Maxine Lees[23]; but there are other issues too.

First, the May Committee envisaged a five-year cycle between inspections but some establishments have not yet been 'independently inspected', though all have been visited. It is hoped to complete the first cycle in 1989 and thereafter to ensure that all the large and most important establishments at least have an inspection every five years. Short inspections seek to cover the present long gap between full inspections; these are based on a small team visiting for two days and selecting areas that should be especially covered.

Second, the criteria are sensible but general. Many[24] have urged that minimum standards should be published and that establishments should be measured against such criteria. It is possible to deduce some standards from prison rules, etc. - such as an hour's exercise daily and a visit every 28 days for each convicted adult - but no set has been published as in many other countries, especially the USA. On the other hand governors and regional directors are measuring and recording the items of regime delivered and if these are published the public will have more detail about life in prison and know what is being achieved year by year across the broad variety of establishments.

Third, the Inspectorate has no remit to look beyond penal institutions. Any comments about sentencing or court processes are incidental and strictly obiter dicta.

Fourth, there remains the question, in what sense and to what extent are prisons accountable to prisoners? Samuel Tuke's[25] comments about 'The Retreat' at York are helpful:

'In the construction of such places (as asylums), cure and comfort ought to be as much considered as security, and I have no hesitation in declaring that a system which, by limiting the power of the attendant, obliges him not to neglect his duty and makes it his interest to obtain the good opinion of those under his care, provides more effectually for the safety of the keeper, as well as of the patient, than all the apparatus of chains, darkness and anodynes.'

So much depends on the quality of the relationships between staff and prisoners that the question still needs to be asked 'who guards the guards?' but it has a broader meaning - not just are they controlling themselves and their prisoners properly? but are they doing so constructively and helpfully? Reseach by McDermott and King[26] seems likely to suggest that with more staff provided, more energy is being devoted to guarding the guards than to preserving the regime for prisoners, let alone enhancing it!

And this leaves a fifth issue: if private prisons were to be reintroduced into the system as remand centres, how would they be 'guarded'? Would the Home Secretary ask his Chief Inspector of Prisons to inspect them? Or would he rely upon supervision of the contracts? What terms would be put into such contracts or what standards might be specified? Would prisoners as consumers be able to sue if contractual standards were not achieved?

In what sense is the contract enforceable and by whom? Accountability for prisons and prisoners seems set to be a very live issue ■

Based upon a paper given to the MA Criminology Course at Keele University in November, 1988.

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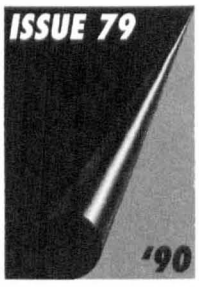

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An Open Letter to Lord Justice Woolf

Vivien Stern

I recently had the privilege of speaking to a group of Prison Governors being trained for higher things at Newbold Revel, the Prison Service Training College. Talking to them I was once again struck by their high level of commitment, deep professional knowledge of their job, clear understanding of what was wrong with our prisons and wise analysis of how to put it right.

So perhaps the first question you and your very experienced assessors should ask is how a prison system, in the hands of such capable and admirable people, is nevertheless so deeply appalling.

What's Wrong with Prisons

That it is appalling, many people will tell you. You will hear about slopping out – and the familiarity we all now have with the details of this process should not dull our sense of outrage at the imposition of such deep humiliation on our fellow citizens. You will hear about the lack of activities. Your judicial colleague, the Chief Inspector of Prisons, Judge Tumim, says of Manchester Prison when he inspected it in July 1989,

'We were impressed with the way in which day time and evening association was being quietly developed in the prison. A man had to have been at Manchester for two months before he might apply for association.'

What this actually means is that people in the prison were working hard at letting prisoners out of their cells sometimes for a few hours for activities and after two months not being allowed out a prisoner might apply for such an opportunity. This is what our system is asking skilled prison staff to aspire to in 1990, letting some prisoners out sometimes after two months locked up. And our system has reached such a low point that our Chief Inspector is moved to comment favourably on such a development.

You will also hear no doubt that the prison culture has been allowed to flourish and rule to the extent that those prisoners despised by the others have to be kept apart and locked away in specially secure parts of prisons for protection, living an impoverished existence in fear of their lives. The significance of this acceptance by the system of prison values at their worst and the construction of an elaborate system to deal with it should not be underestimated.

So there is the first question for your Inquiry to reflect upon, how such excellent people, all of whom would wish it otherwise, perpetuate such an unacceptable system.

Why Doesn't it Get Better?

Then there is another question - how to account for the strange, pervasive powerlessness which affects normally energetic and dynamic people once they are responsible for prisons. Take the example of Hull B Wing. Here are held juveniles, boys aged 15 and 16, on remand. In September 1988 Judge Tumim inspected Hull. On 6 April 1989 his report was published. He was so shocked by B Wing that he gave over the whole preface to his report to describing it. The cells were 'scruffy and battered'. The whole place was vandalised. The windows were broken. Most of the youngsters were locked up for 20 hours a day. 'On wet days, when the normal one hour's exercise is not available, many do not leave their cells at all, save for a few minutes to collect meals on trays, and to slop out.' Education for those who attend was only two hours a day. No evening classes were held. Visits by families to those boys of 15 and 16 were limited to 15 minutes per day. 'There is much self-mutilation. More than one inmate a week on average cuts his wrists or arms and needs medical attention.'

The Chief Inspector concludes, 'B Wing remains no place for boys of 15 and 16.'

And everyone would agree. Certainly those with responsibility for the system would not wish their own teenage sons to spend one night there.

Yet there was no outcry when the facts were revealed. The wing was not closed immediately. A *Panorama* programme shown in December last year drew attention to it again. Yet we are powerless. According to the responsible Minister, David Mellor, answering a Parliamentary Question on 22 March 1990,

'Some relief may be provided by a new local authority secure unit due to open in Hull in mid-1991, and a new Remand Centre at Everthorpe will be ready early in 1992. Until these are available, there is no feasible alternative to the use of B Wing at Hull Prison for juveniles on remand.'

Is there perhaps not something deeply wrong with the system, spending £1.3 billion a year with a capital building programme of another billion, that lacks the innovative capacity to find a more civilised building and a more appropriate regime for about 130 children entrusted to its care on any one day before they come to trial.

Certainly no easy answers come to mind to explain the inexorable failure of the prison system to deliver what its managers want to deliver or to change when all civilised opinion would expect it to change.

Military Ethos of the Prison Service

But there are some clues. A clue emerged unexpectedly in a press release which reached NACRO from its fraternal organisation in New Zealand, The Prisoners' Aid and Rehabilitation Society. Last November, the New Zealand Minister of Justice announced a major package of prison reform - and not before time. The New Zealand Prison Service is also nothing to be proud of. And in announcing the reforms he said,

'The major problem of the system is its reliance on an outmoded British semi-military regime embodied in the 1954 Penal Institutions Act.'

Perhaps the New Zealand Minister of Justice has put his finger on a point of concern for us too. Perhaps we are running an 'outmoded British semi-military regime'. Certainly, much about our prison service has military overtones; for example, the uniforms with the aggressive peaked caps; the way prisoners are addressed, usually by a surname, often shouted; the use of 'sir' to superiors. All these evoke a military connotation.

Yet a prison is not an army. An army is concerned with instilling discipline for purposes of defence or attack. It presupposes some sort of shared mission. It is often nowadays composed of volunteers who can buy themselves out if they want to. A prison is a bit like a hospital, somewhat like a training college, has some relationship with an asylum of refuge for society's rejects and dropouts, but it is nothing whatsoever like an army.

Maybe that is one of our mistakes - that we have not faced up to and routed out the traditional military ethos of our prison service.

Laws, Prisons and Prisoners' Rights

Reference to other countries also highlights another peculiarity of our system that may be of particular interest to a Lord Justice of Appeal. There are no lawyers in it.

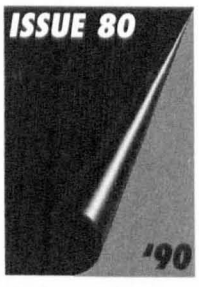
In Western Europe it is a very different picture. Lawyers are prominent in the system. In France the prison system was run for a time by a prominant lawyer in the Ministry of Justice. She is now the President of the Court of Appeal in Paris. In West Germany the administrators in the Ministry of Justice are lawyers. Prison administration is one of the jobs they can do during their career. Judging is another. In Denmark, the head of the prison service is a position only open to a lawyer.

Does this divorce of the law from the prisons account for the remarkable disregard in the prison system for prisoners' rights? Does it explain the lack of awareness of the need for a framework of formal systems within which imprisonment can be run, grievances resolved and the explosiveness safely released from the system? Certainly prisoners' rights as a concept does not find a place on the agenda of our administrators. The Control Review Committee Report of 1984, that excellent document produced by a most talented group of governors and officials, drew up a suggested list of tasks for the prison service. At the head of the list was 'to ensure that prisoners' lawful rights are respected.' Unfortunately, no one listened. When the prison service eventually produced its long awaited mission statement, prisoners' rights did not feature. The prison service had duties, to keep prisoners in custody, to look after them with humanity and to help them lead law-abiding useful lives.

The proposition may be worth considering that a service wholly staffed by people who are not lawyers has a view of prisoners as objects, things to be looked after, to be treated with kindness and humanity, and to have things done to them. However, they are not persons like us, with rights and entitlements. One does not need to take account of them as people, to discuss with them how the institution where they might live for many years is to be run, to involve them in making even the smallest decision about their daily lives.

What Needs to be Done

It is indeed hard to change a system deeply imbued with a semi-military ethos and profoundly lacking in any consciousness that prisoners may have rights which should be respected. What the prison system needs to do if it is to avoid the periodic, tragic eruptions of the 1980s is easy to see. Prisons should be run on the basis of much smaller units. The staff will need to be retrained for a different role. The basis of activities will need to be individualised programmes for prisoners, oriented as far as possible towards the outside world. The proper legal framework of rights, entitlements and standards will need to be drawn up. Most important of all there will have to be a sea-change, a sea-change in the way management sees staff, staff see prisoners, and prisoners see each other ■



Recall

Another Fresh Start?

David Atkinson

Whether our Prison Service will be as much in the news when these thoughts come to be printed as it is at the moment, in the aftermath of the Strangeways disaster, I have no means of knowing. Lord Justice Woolf's inquiry, which now seems to be taking on the dimensions of a Royal Commission, should be well advanced, though it may not have reached its final stages. If prison governors and staff organisations make the most of their chances, as they must, this is surely an unparalleled opportunity to restate some fundamental principles.

Explosion of Evil

It is certainly no time for tinkering, for we have been through an extraordinary period, and one cannot but feel that there is an air of finality about it, that the buck, so to speak, may really have stopped. I could be wrong. Outsiders (which includes former governors shooting from the safe haven of retirement) do not necessarily see more of the game. Yet for some time now there have appeared trends, signs of change which the sheer ferocity of what Brendan O'Friel interestingly called an 'explosion of evil' only threw up in stark relief.

There were no lack of portents. It is, I think, ten years since another courageous and talented governor wrote a letter to *'The Times'* exposing the kind of conditions 'up with which no decent public servant ought to put.' It did not make him popular with the Establishment, but the disease which John McCarthy reported at Wormwood Scrubs a decade ago had already gone unchecked and untreated for many years, and is surely now seen to have been terminal.

Hindsight and Myopia

Hindsight may be the wisdom of myopia, but even hindsight can be constructive when accompanied by the will to make belated amends. We know successive governments have allowed penal policy to drift at best, and on occasions (notoriously at Party Conferences and the like) have seemed bent on kicking it further down the slope, against all advice and even, one may surmise, often against better judgments. Part of the problem is the facility with which politicians are able to do this kind of thing when there is no legally binding minimum code of standards to restrain them. The British have always eschewed written constitutions, relying on tradition and what used to be called an innate sense of decency, so that when Churchill said a nation's claim to be civilised might be judged by the way it treated its

offenders, we were by definition clean, and it was the foreigners who needed to look to their record. But these are destructive times, and if he were still with us the Greatest Englishman might have observed that never had so many been locked up for so little and by his own famous yardstick, with such barbaric indifference.

Political and Economic Expediency

How did this truly awful state of affairs come about? (And just how awful only members of the Prison Service now knocking at least 50 years of age can fully appreciate). The truth is that without absolute legal longstops there is nothing to prevent the gradual erosion of standards for political and economic expediency, when circumstantial pressures mount. It is a scenario by now familiar enough. Penal reform gathers no votes, and never has, rising crime enrages the populace and alarms its elected representatives, whose urgent exhortations for severer penalties meet a traditionally compliant response from a judiciary jealous of its independence and ill-provided with information or appealing alternatives. In such a climate nobody is too interested in causes, especially when the dominant philosophy equates wrongdoing exclusively with individual morality, and denies any role in it to the malaise of a 'society' whose very validity is questioned. And of course there is no money, even if money were the answer. The Treasury is quite properly an amoral institution.

I remember that my friend the late Douglas Gibson was once asked, at a conference when he had passionately argued the case for more humane provision for offenders, how he could justify giving priority to such a cause in a world where so many more deserving cases cried out for consideration. He replied that it was not his job to right all the wrongs in society - he had to put his heart and soul into the ones he could do something about. So in lambasting the politicians (always a gratifying exercise), whilst keeping, hopefully, a sense of proportion and context, we do not have to apologise for fighting our corner.

Impressive Voice

Who fights that corner today? Notably, a Chief Inspector of Prisons, an impressive voice, who commendably 'tells it like it is.' As, indeed, his predecessor did for many years with little effect. Predictably, a faithful background chorus of independent organisations - the Howard League, NACRO, the Prison Reform Trust.

Like most people I keep a stable of hobby-horses, two of which in particular recall events which for me were quite seminal in changing the nature of the Prison Service. One, called The Great Escape, gave birth to the new religion of security. There was an inevitability about it, because although in the sixties we still had soul, so to speak, there is no denying that the real estate had got into bad shape. Cells may have been clean, and mainly in single occupation, but a well-directed kick could, and literally did in the case of one George Blake, effect an embarrassing breach in the fabric.

Many of us remember poignantly how not only the spy but hell itself then broke loose. Hitherto unimaginable sums of money materialised, festooning every wall overnight with lethal wire. Television, from its humble but useful role of 'extra officer,' took up bird-watching. But more important than these miracles was the sea-change in the culture and philosophy of the prison task. Security became the password not only to safer containment but to an unquestioned priority in regime and resources.

Overkill

There was a price, and not only in money. In any local situation where activities competed for staff time, security won, however tenuous its claim, and other routines were curtailed or made immensely difficult. Worst of all, there was created a bandwagon onto which were able to climb the disaffected and reactionary elements of which prisons, like other human institutions, have always borne their share. Those who had undervalued the rehabilitative role, either from principle or from personal inadequacy to undertake it, were presented with a fascinating new toy, officially approved. A long overdue refurbishment in prison estate and in one element of the prison task, together with the overcrowding which was already growing fast, was achieved at the expense of diminishing and demoralising the rest. The new religion proved, in fact, the ultimate gob-stopper to penal reform. It was crude political overkill, and many years later the Home Secretary of the day, Lord (then Roy) Jenkins, had the courage to admit as much.

Of course all positive work did not cease, as I know well from my travels with lifers, and there have been some excellent if limited new initiatives. The personal relationships between staff and prisoners, that priceless seam which keeps these curious places (mostly) viable, survives, but from that time the Prison Service became, it seems to me, prey to a whole new range of conflicts.

Prison Commission

It also lost its relative independence, which trots out my second hobby-horse of change - the

demise of the old Prison Commission. This I believe, again with notorious hindsight, to have proved an almost unmitigated disaster. The Commission, like an old favourite cardigan, was shabby and flawed, but retained a human shape. It was perhaps a last stronghold of what used to be known as the reign of the gifted amateur. If it had not been killed off it would have had to adapt and change, react to overcrowding, terrorism, drugs, political hostility. How would it have coped? Was it an anachronism from an idealistic, unstressed age, less fitted to tackle 'explosions of evil' than the mighty monolith of Queen Anne's Gate? Would a revamped but still discrete organisation, with an independent leadership and career structure, have been better suited to the present task than one section of an enormous Department of State, headed by generalist civil servants working directly to elected politicians?

To the Home Office, of course, these are scarcely serious questions. They worked hard for the takeover and have been working hard ever since to make it go. I think the case can now be put quite strongly that they have failed.

Commitment

Prison staff commit themselves to an active service with rich tradition, in which they expect to pass their working lives, contributing not merely labour and expertise to the immediate task, but personal skills unique to a highly specialised situation. They expect also, over time, to acquire the right to shape policy, through their professional leaders and within the general constraints of public facility provision. It is a commitment neither inferior nor superior to, but different from, that of the generalist administrator who moves from division to division, from desk to desk as they say, applying ministerial policy across a broad canvas of public service. The former system places an intermediary between ministers and those who work directly to them, the latter reflects the immediacy of ministerial will.

It is certainly not a question of individual qualities. The career civil servants who run the Department in the higher echelons are extremely able, some are brilliant. They can be good company and stimulating to work with, as I can testify. Moreover, some of them, and many more in lesser roles, have long experience in prisons work and are no less committed. Neither the view held in the wider Civil Service that this field enjoys low status, nor that met with sometimes in the Home Office itself about the departmental grades - that they are politically naive and tend to make emotional judgments - are necessarily true or relevant. The problem is rather one of structure.

Leadership Crisis

There is one overriding issue which betrays the inherent weakness in the present system, and it is the key one of leadership. There has been no effective leadership, I firmly believe, in the Prison Service since the Home Office takeover - except for one brief, controversial, but in retrospect highly satisfying period post-Mountbatten. There has been plenty of 'management,' indeed a steady stream of schemes and directives, designed to secure central control, but in practice adding to the burden of running prisons rather than resolving problems. One after another has failed and been superseded, generating mountains of paperwork which will never be looked at again, and leaving a legacy of mistrust. What we have witnessed has been a classic demonstration of the inability of a centralised bureaucracy to run a highly individualised, sensitive and volatile 'workface' service by remote control.

Nowhere is this sort of management revealed more wanting than in the handling of crisis situations, where it has resulted in much damage to its public image, and generated even more private contempt. Many must feel angry and humiliated by the inept, second-rate performance played out for the national media on these occasions. When things are falling about you, whether it be roof slates or brickbats from the tabloids, the immediate need is for someone clearly identified to the world and its cameras as the professional head of the Service, who takes the responsibility and fields the questions; not like an ill-rehearsed understudy winkled from the wings, but with the bold profile of authority and - let nobody underestimate its importance these TV-conditioned days - charisma. I confess it saddens me to see the stage so regularly dominated by POA representatives - not because they don't have the right to be heard, nor that they don't aquit themselves well, as they often do - but because there is simply no one else available to speak for what is after all their service too. Governors do their best, but appear woefully unsupported. To any observer there is a clear lack of co-ordination on these occasions. Who is in charge? Who is really running this outfit?

And when we are not in crisis (which is to say when the situation is not acute but merely chronic) manifest leadership is surely no less necessary, to keep before public and politicians, as well as staff themselves, the principles as well as the practical aims on which the whole enterprise depends. It is the catalyst which can make essential management changes work, and render them acceptable to a suspicious and divided workforce. It is the vital tool missing from the armoury of a Secretary or Minister of State

sincerely wanting to make permanent headway with longer-term problems.

Political Profit

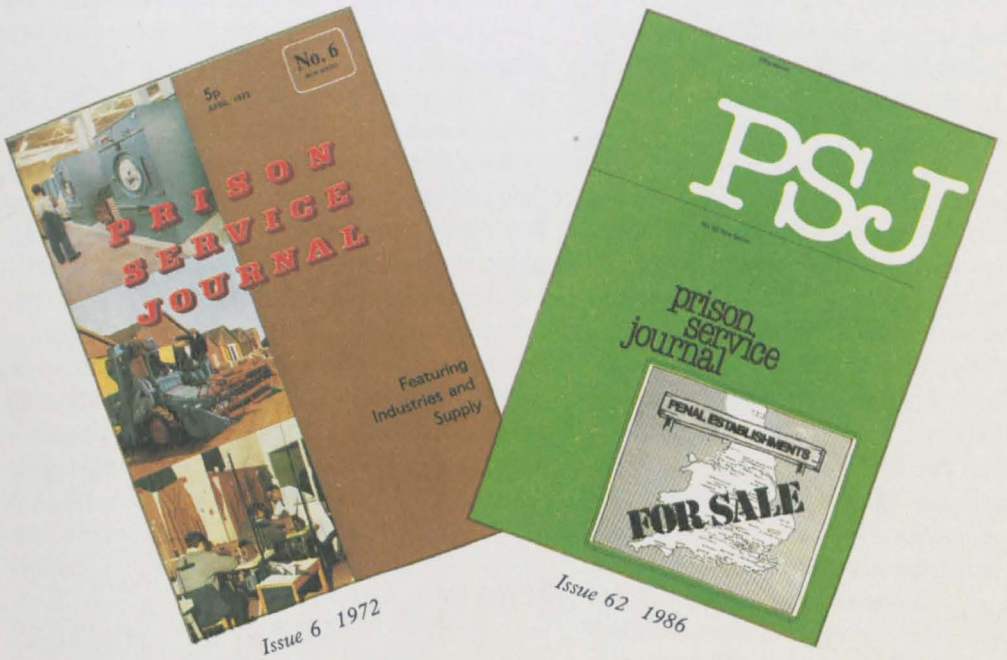
On the political front I do now believe there are some grounds for optimism. Whatever the neglects and excesses of the past, even the very recent past, one can detect a new willingness to tackle at last the real prison problem, which is the overuse of it for inappropriate ends; to work out with the judiciary and others realistic alternatives and a fairer system of parole, to provide and fund new measures and educate the public in their effective use, whilst reassuring people that they will not be any less well protected against violent criminals (and will certainly be better off in pocket). The recent White Paper holds out, I believe, in its general sweep, real prospects for improvement.

Adversarial or Truth?

One would ideally like to see even more dramatic changes - no less, for instance, than a move away from the whole adversarial system of justice, which many like me believe to be a root cause of the 'British disease,' towards a system dedicated to establishing truth rather than winning cases. And the setting-up of a sentencing council to produce guidelines that would clarify the principles of justice and help reduce the damaging 'Heinz' factor across the country. But these are subjects, perhaps, for other occasions.

Damage Limitation

Finally, if there is hope on the political front, what about the organisation? I am not so naive as to believe that there is the slightest prospect of the Prison Commission's being reborn, or that it would be the answer now. Eggs are notoriously hard to unscramble. But a remodelled prison authority is not unthinkable - if not a divorce, then perhaps some form of legal separation? The leadership problem remains unresolved. It is damning to morale, and if nothing else Strangeways will have reinforced the need for this void to be filled. Our Service may be too small, and in a sense too parochial, to sustain a succession; but equally the Home Office is too remote, too bureaucratic and too close to short-term political pressures. I very much hope that governors meantime will not weaken in their resolve to resist the further fragmentation that has been planned, and that the Home Secretary will, as it is rumoured, be persuaded to agree to a moratorium on any further structural tinkering, until after Lord Woolf has reported. It seems the least to expect at this juncture, in the interests of damage limitation ■



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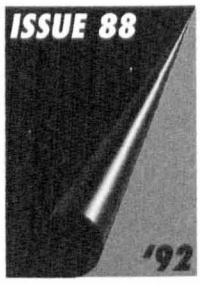


A Necessary Evil?

John Staples

When John Major was shown on prime time TV in the House of Commons nodding assent to a Conservative back-bencher bad mouthing the POA it gave vivid expression to the hostility towards that union from a range of sources. That hostility has been a factor in the accelerating privatisation programme for the Prison Service. For some, it would seem, the POA can be blamed for all our ills.

But isn't that just too easy? Are we not simply making a scapegoat of that Union or Association as they prefer to be called? Some seem to separate the Union from the staff, condemning the one but praising the other. How then can we account for the very high membership figures of the Union and isn't it being forgotten that the POA are an elected body.

In part the solidarity can be explained as an essential element of the job; when the alarm bell goes we just run - it's no time for asking questions. So, at Trades Union meetings the tendency is to go for unity, not division, in debate.

That may explain the loyalty to the Union but not necessarily the deep sense of distrust that has existed for so many years between the Union and Management at all levels. True, a Trades Union and any Management come at issues from different standpoints and inevitably that means conflict, but the bitterness that is around in the Prison Service is both unwelcome and defeating for both sides. Such an atmosphere does not make for good decision making nor for the effective carrying out of those decisions.

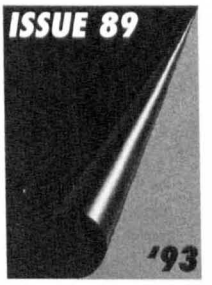
It is argued that with privatisation the power of the POA has diminished, is diminishing and will be abolished. But if the POA are simply an outward and visible sign of what most staff feel and think but don't always express, then all that will happen is that those tensions and conflicts in the workplace will have no outlet in the national forum but have to be expressed in any number of diverse ways within the institution. For whatever happens to the Union, those conditions of Service won't change.

The advent of Agency in April 1993 is meant to distance us from Ministers. If we can distance ourselves from that highly public condemnation of our staff expressed in Parliament, then maybe inroads can be made into a more positive industrial relations climate. The welcome reduction in the number of disputes in the past year is a good omen but to achieve a more lasting and constructive relationship between Staff, Management and the Union then action needs to be taken to:

- Extend the involvement of ACAS begun last year with six establishments as an experiment.
- Clear and explicit policies on postings and other personnel issues.
- Devolved personnel work to enable decision making to be closer to those affected.
- Personnel work integrated with the line so managers have to consider personnel issues when making decisions.
- Regular and routine consultation with all staff in decision making in their area of work.
- Local recruitment and locally managed promotion arrangements to minimise house moves and the added stress of domestic change on top of job change.
- Counselling and care services offered to all staff and families when facing abnormal stress.

Management and Unions deserve each other and their relationship is co-created. To compete with the private sector it will be necessary to work more closely together in a new framework of trust and sense of purpose ■

Prison staffing issues in Europe



Richard Tilt

Introduction

This article is based on a Churchill Fellowship I undertook in the winter of 1991-92 and is, for the most part, a synopsis of the full report prepared for the Churchill Memorial Trust. I was Head of Industrial Relations for the Prison Service for three years from 1989 and during that time became increasingly concerned about what might be done to improve the state of industrial relations in the Prison Service.

Few people would disagree that matters were most unsatisfactory with constant tension and not infrequent conflict between management and the Prison Officers' Association - the Woolf Enquiry into Strangeways articulated this, entreating all concerned to work for an improvement.

As a former Governor, I could well understand the frustration and difficulties encountered at local level which make the job of running an establishment such a difficult one. In searching for new ideas and insights to see if the mould of industrial relations could be broken I was interested to know what our European colleagues were doing, to see in the first place whether the problem was intractable for everyone or whether there were better ways of proceeding. In other words, was there something about the history and approach of the Service in England and Wales that invited a negative response from the Prison Officers' Association or were the difficulties experienced simply the result of an unreasonable trade union? After three years of conducting disputes meetings at national level I was very unsure about the answer to this conundrum. Hence the application for the Fellowship which provided the opportunity to look in more detail at the prison systems in France, Germany and Holland.

Methodology

These three countries were selected as the ones most likely to provide useful comparators on the following basis:

France - a country with a similar sized overall population and prison population, known to have considerable industrial relations difficulties in the Prison Service.

Germany - a country with a similar sized overall population (prior to unification) and prison population, known to have relatively harmonious industrial relations in the Prison Service.

Holland - a rather smaller country with a proportionately significantly lower prison population.

I set myself the following objectives for the study:

- to examine the state of industrial relations in the three countries visited
- to examine the basic personnel procedures in relation particularly to:
  - assessments of staffing numbers of prison officers
  - working arrangements for prison officers
  - pay and conditions of service for prison officers
  - recruitment and training for prison officers
- to examine the procedure for handling industrial relations
- to draw out the underlying differences in the systems as they relate to the industrial relations climate.

In each country I arranged to spend some time first in the central HQ (in each case the Justice Ministry) followed by a number of visits to establishments and usually a final meeting in the Justice Ministry for discussion of the issues raised by the visits.

In all I visited about 30 penal establishments and in the case of France was invited at the end of the study to speak to a conference of Governors which provided a further opportunity to discuss

Table 1	Total Population	Total Prison Population	Prisoners per 100,000 Population
ENGLAND AND WALES	50m	48,000	96
FRANCE	57m	52,000	91
BAVARIA	11.5m	9,500	83
BADEN-WÜRTTEMBERG	10.0m	7,400	74
NORDRHEIN/WESTFALIA	17.5m	14,500	83
HOLLAND[1]	15.0m	7,800	52

1 The population figure for Holland contains 400 inmates of special hospitals which are administered there by the Prison Service.

impressions and test out ideas in their developed form. Table 1 provides an overview of the scale of the different systems I saw. Wherever money values have been used they have been calculated on the basis of OECD tables to produce equivalent purchasing power.

For the purpose of this article I will address simply the main issues that emerged around the four themes of:

- use of staff resources
- pay
- training
- industrial relations.

Use of staff resources

I was interested to see how the other systems assessed their staff resources requirement and how this translated into practice. Tables 2, 3 and 4 provide the summary data which requires little comment other than to point up the wide variance in staffing ratios between France at the one extreme and Holland at the other. Our own position is closer to Holland and the difference between ourselves and Holland is largely explained by the Dutch preference for running small establishments - they like establishments of 100 or less and are worried that their recent building programme which contained establishments with 250 was a serious mistake. As far as method of determination is concerned only Holland is using a formula to calculate staffing numbers centrally with other countries, like ourselves, building up the numbers by an examination and aggregation of the work in each establishment.

Table 2	Prison Population	Prisoner Places	Total Staff[1]	Ratio
ENGLAND AND WALES	48,000	44,000	33,700	1.42
FRANCE	52,000	42,000	22,250	2.33
BAVARIA	9,500	9,900	4,200	2.27
BADEN-WÜRTTEMBERG	7,400	7,800	3,400	2.20
NORDRHEIN/WESTFALIA	14,500	16,000	8,000	1.80
HOLLAND	7,800	7,800	7,200	1.07

1 The total staff figures do not include Headquarters or Regional Office staff.

The differences in staffing ratios have, as one might expect, much to do with the basic level of supervision on a living unit or landing. The Dutch and ourselves usually employ two prison officers for this where the French and Germans use one. Not surprisingly the cost per prisoner per day reflects this significant difference. The German Land of Nordrhein/Westfalia falls midway between the two extremes.

This is however only one side of the picture. What is equally important is what level of service is provided with these levels of staff. It was most interesting to see that in both France and Germany no consideration at all was being given to measuring the output of staff resources in terms of regime delivery or anything else. In complete contrast the Dutch, like ourselves, are very interested in this and are beginning this year to measure performance in great detail based on a contractual process between the Governor and his line manager. It may of course be no coincidence that the two countries paying attention to outputs and performance measurement are the two with the most expensive systems to run.

But to return to what is achieved with a given staff resource one can only record subjective impressions in the absence of objective data (except in this country). In France the time spent out of cell by prisoners is certainly less. There is no tradition of communal association with other prisoners and the system runs very much on the basis that prisoners will spend all time in cells unless at work, education or exercise. Whilst the range of these activities is similar to ours the availability is lower. To balance this apparent deprivation however one must remember that all prisoners have a TV set in cell and may use very much higher prison earnings and/or private cash to enhance their standard of living with cell possessions and food and drink. Regime delivery in Germany is at a slightly higher level than France but again there is no tradition of communal association although an interesting arrangement exists whereby friends can apply to spend a weekend day together locked up in one of their cells. Education and work is more widely available in Germany than France and vocational training is better. The experience in Holland is similar to ours although they have telescoped all activities into the normal working day by requiring prisoners to work no more than four hours a day

and using two shifts in each workshop. Whilst there is always a range, in general I did not see better regime delivery in the countries visited than here.

The output from staff also depends crucially on levels of absence and especially sick absence. Table 5 shows the relative position across the countries with ourselves and France losing the smallest amount of time on both counts and our own sickness level of five per cent coming out as the lowest even though it is higher than we allow for (three per cent) and we rightly continue to make strenuous efforts to reduce it.

Finally in any consideration of staffing levels one must have regard to the differing levels of physical security. In France and Germany watch towers with armed guards are the norm and in France particularly, greater regard had been had for physical security solutions and alarm systems. This approach will inevitably assist with lowering staffing levels.

Table 3	Total Establishments	Total HQ Staff[1]	Total Establishment Staff	Total Prisoners	Cost per Prisoner per day (Sterling)[2]
ENGLAND AND WALES	125	1800	33,000	48,000	55
FRANCE	180	850	22,250	52,000	20
BAVARIA	30	30	4,200	9,500	29
BADEN-WÜRTTEMBERG	20	40	3,400	7,400	34
NORDRHEIN/WESTFALIA	39	180	8,000	14,500	38
HOLLAND[3]	60	280	7,200	7,800	70

1 The figures for Headquarters staff are not entirely comparable. All the systems except England and Wales have pay and superannuation matters dealt with by a central authority and require no Headquarters staff. The same is true generally of new building and refurbishment. Only very minor maintenance is managed by the other services other than England and Wales.

2 The cost per day figures are the latest available for each system but cover a period ranging from mid 1990 to mid 1991.

3 The cost figure for Holland includes 400 inmates in special hospitals.

Table 4	Prisoner Population	Total Uniformed Staff[1]	Ratio Prisoners/ Uniformed Officer
ENGLAND AND WALES	48,000	24,750	1.94
FRANCE	52,000	17,200	3.02
BAVARIA	9,500	3,200	2.98
BADEN-WÜRTTEMBERG	7,400	2,500	2.99
NORDRHEIN/WESTFALIA	14,500	6,100	2.37
HOLLAND	7,800	4,600	1.70

1 Uniformed staff has been taken to mean the equivalent of the England and Wales grades of: Principal Officer, Senior Officer, Officer, Prison Auxiliary, Night Patrol, including all specialists in these grades.

Pay

Turning to another ingredient in the motivation of staff I compared relative levels of pay for prison officers. Table 6 provides a summary of this. It shows comparative figures and pay has been taken to mean the gross amount paid including allowances for the normal working week (which in itself differs slightly across Europe). The figures do not contain any overtime working. They show very clearly that prison staff in this country are considerably better paid than their counterparts in the other countries and rather surprisingly perhaps, that German staff are the least well paid. Additional hours over the normal working week are worked in some measure in all the countries ranging from two hours per month per person in France through 12 hours per month in Germany to 16 per month in Holland. It is paid as overtime in France and Holland and can ultimately be in Germany although the normal practice is for it to be recompensed by time off. The German 'time off' system is very close to ours but in some German states the amount of time owed is as high as 100 hours per person whereas the average here is more usually about five or six. It is fascinating that the German level causes no great problem or concern whereas this has been a continuously contentious issue here since the introduction of the system in 1987.

Training

On the training front there are also marked differences as summarised in Table 7. Both the Germans and the Dutch place greater emphasis on training and devote more resources to it; in part that is a reflection of wider national policies in relation to producing a skilled workforce. While the Germans concentrate on specialised training the Dutch believe also in taking every opportunity to widen general education. The French are about to double the length of their initial training to eight months, without specifically enlarging the content, which will leave us with by far the shortest initial training.

Table 5	Allowed	Non effective time[1] Actual	Sickness rate
ENGLAND AND WALES	20%	22%	5%
FRANCE	16/19%	21.5%	8%
BAVARIA	25%	28%	10%
BADEN-WÜRTTEMBERG	30%	30%	9%
NORDRHEIN/WESTFALIA	20%	35%	10%
HOLLAND	24%	32%	14%

1 Non-effective time is defined as the time taken to cover the absence of uniformed staff by reason of leave, sickness or training.

Table 6	Pay for Prison Officers per year - Pounds sterling 1	2	3	4
ENGLAND AND WALES	14,745	16,892	17,684	21,306
FRANCE	8,914	10,314	14,571	15,536
GERMANY	10,383	11,520	12,657	13,987
HOLLAND	10,591	12,910	14,608	16,429

1. First year officer 2. Five year officer 3. Top of scale officer 4. Principal officer

All these values are expressed in pounds sterling and have been converted on the basis of purchasing power parities.

Table 7	Prison Staff - Initial Training Time[1]
ENGLAND AND WALES	3 months
FRANCE	4 months
BAVARIA	2 years
BADEN-WÜRTTEMBERG	2 years
NORDRHEIN/WESTFALIA	2 years
HOLLAND[2]	4 months

1 All the systems use about half of the initial training time for supervised practical experience in an establishment.
2 The initial training in Holland has a further 70 days spread over the first three years.

Industrial Relations

The French service has suffered the same kind of disruption and difficulties as our service over the last ten years with various forms of industrial action and in fact at the height of tension in 1988 and 1989 actual strikes and blockading of establishments. The police were used widely at this time to clear blockading prison staff and to run 15 establishments for about a week. This despite the fact that industrial action for prison staff is prohibited by statute. There are a greater number of trade unions (ten) who represent prison staff and these are mostly large national organisations that represent workers across a wide range of work. The tradition in France is for most negotiations to take place at national level and there is very little industrial relations activity at local establishment level with formal meetings between Governors and local union representatives very much the exception.

By contrast in Germany and Holland a wholly different tradition exists of detailed rights and responsibilities being assigned by statute to representative staff councils at local level (with equivalent machinery at regional and national level). Whilst staff join trade unions and the trade unions nominate members for election to the local staff council, by no means all representatives will be union sponsored. In fact in Germany I found usually about 50 per cent of the staff council were union nominated. The staff council then has a constitutional position in the management of the establishment in the sense that there are many issues on which the Governor requires the agreement of the staff council before he proceeds, on others he must consult. The detail of this varies slightly from state to state in Germany and again in Holland.

While it would be too simplistic to say that this arrangement produces much more orderly and peaceful industrial relations one has to record that both Germany and Holland have been virtually free of industrial relations conflict and continue to be so although some of the management initiatives now being taken in Holland will put this system under considerable strain.

Summary

I wanted to see if I could understand why prison industrial relations were more harmonious in some countries than others. This article has been a very brief resumé of my full report and I would be happy to supply copies of that on request (F1 Division, Home Office, Queen Anne's Gate, London) but in summary I pointed to four things that I thought might be significant in separating the Dutch and German sheep from the English, Welsh and French goats:

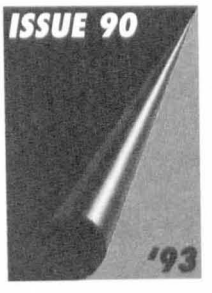
- staff mobility
- staff training
- industrial relations machinery
- arbitration.

We and the French operate national recruiting and posting systems that inevitably place many new staff in areas of the country they do not want to be with acute housing and domestic

problems. The Dutch and Germans do not, they recruit locally and staff move only on application for specific posts. The Dutch and Germans place greater emphasis on training and have consequently a better prepared and better motivated workforce. The industrial relations machinery in Holland and Germany provides for a much greater degree of involvement and influence for staff at local level than in France or here. Finally the availability of arbitration itself is seldom necessary but it provides the necessary reassurance to staff to work for the resolution of disputes at a lower level. In my last year as Head of Industrial Relations I chaired 53 national level disputes meetings. Whilst much of the work involved was aimed at a negotiated resolution of the dispute it is wholly understandable that union representatives would see it as far from independent.

These then are the four areas where I believe we need to review our policies. Conversely we may need to pay less attention to pay where we are in the lead and where the countries with the industrial relations difficulties are respectively at the top and the bottom of the pay league ■

The future of the Prison Service



Tony Blair MP

It is a very great pleasure to be here and can I apologise straight away for being so badly delayed. It was apparently due to a failure of the electricity grid and when I got on the train at Coventry I sat down immediately opposite Norman Fowler! I can lay my delay fairly and squarely at the door of those who I consider responsible for the electricity privatisation. It has also been a very lively time in the Home Affairs brief; in fact I think I feel subject to the old Chinese curse about "Living in Interesting Times". But we have had an obviously tremendous amount of debate about the Criminal Justice System and I suppose it is at a point in time when it is very much in the public eye and there is a possibility of moving the debate on, indeed moving it on to ground that allows us to come to some conclusions.

The Purpose of the Criminal Justice System

I would like to begin my lecture by paying tribute to the person who's honoured by these lectures and the tremendous service that he gave to the Prison Service over the years. I believe that when you come to a new brief such as I have to the Home Office, you are continually aware of the danger that people are in when they separate one particular part of the system from all the other parts. There is a tendency to isolate one part and have policies and responses to it without seeing how it fits in the overall system. I want to begin my lecture on the future of the Prison Service by saying to you that I don't believe that we can analyse the future role of the Prison Service without setting it in the overall system of Criminal Justice. If we abstract and treat it as if it were a self-contained unit without any implications for other parts of public policy, then we will make a very serious error indeed. The purpose of the Criminal Justice System in my view is first of all to try and prevent crime arising altogether. Secondly, to divert as many people as possible from the necessity of custody. Thirdly, to imprison those whom it is necessary to imprison, only. Fourthly, to understand that the purpose of imprisonment is to ensure that the best chance of rehabilitation is given to those who are in prison. What we require is not a series of policy initiatives that are reflex responses to particular events occurring in our Society, but a thought out policy, a strategy if you like, that deals with all the various aspects of the problems that we face and doesn't attempt to isolate the Prison Service from the rest of the Criminal Justice System. The problem in

this area at a level of policy has been the belief that somehow you have to choose between a liberal agenda and a hard agenda. That belief that you have to make that choice distracts us from trying to seek out a coherent strategy that starts from the point of view that people want to live in a safer community and ends with the belief that those who are in prison should be rehabilitated. We should not engage in some ideological choice between a 'liberal and hard agenda', but we should understand that from the point of view of our Society there is no choice between prevention and punishment. What the people desire in our society most of all is to have crime prevented, but recognise the need to punish where it is necessary.

The Prison System in Context

I think the best way of starting and seeing how that works its way through is to look at what actually happens to people on the ground in the communities in which we live. In my surgery in my constituency a couple of weeks ago there was an old lady who came to see me whose door had been battered down in her council house, she had then been seriously and violently assaulted and robbed. I would start with what that old lady wanted to see happen as a result of that. She needs help obviously as a victim, she will want the offender dealt with promptly, detected and put through the Criminal Justice System. She will want it done in a way that is efficient. She wants that offender to come out at the end of serving the custodial sentence, if that's what the court decides, in a better shape to take his place in society than when he went in. But most of all, she'll wish that it had never happened in the first place and that the society in which she lived did not give rise to this type of behaviour. So she will want all those things dealt with, she won't want them dealt with bit by bit, she will want a programme that enables us to tackle every aspect of the problem that she has faced. That's why when you look at the enormous Home Office budget (£6 billion or more) and the £1.5 billion we spend on the Prison Service and if you add in the Local Authority money of at least say some £5.5 million, it seems rather extraordinary that the bill for crime prevention is round about £15 million slightly more if you add in the Department of the Environment; it is curious that our priorities should be engaged in that particular way. And so, what I would say to you is that we start by setting the prison system in context, we do not isolate it.

Woolf Report

Now the conundrum that Sir Brian Cubbon (former Permanent Under-Secretary of State at the Home Office) addressed in the Australian Conference in 1988 of the relationship between the prison capacity and sentencing policy, takes us to the heart of the debate on the position of the Prison System within the Criminal Justice System and the inter-relationship between the different parts of that system. Now this was of course addressed by Lord Justice Woolf in his report on the Prison System published now over two years ago. The Woolf Report proposed that a Criminal Justice Consultative Council should be set up to provide a national forum for agencies in the system and that that would be backed up by 24 local committees at a lower level. In December 1992 the Consultative Committee published its first discussion paper *'Prisoners Awaiting Trial'* which looks at the unconvicted prison population. It asks Local Committees to look at the scope for, amongst other things, reducing custodial remands without putting the public at risk, reducing the time spent in custody awaiting trial and considering the potential of the increased use of powers to hold remand hearings at courts close to where remand prisoners are held. Now the Consultative Committee clearly has an important role in improving liaison between Agencies, though I think it would be fair to say it's not yet seen as a major player in key debates. The Committee in itself is insufficient to meet the need for a closer relationship between sentencing and prison capacity and I would like to set out for you today four basic principles that I think that we should bear in mind when discussing sentencing in the future for the Prison Service. So having said my belief that you must put the Prison Service in the context of an overall strategy for Home Affairs, I would then like to add these four basic principles.

A Council for Sentencing Policy

Sentencing policy was obviously outside Lord Justice Woolf's remit and so he was unable to address the issue of sentencing at all. But the Labour Party, along with many other individuals and organisations has, for some years, been arguing the case for the establishment of a Sentencing Council, and that Council would allow for consistency in what is at the present time a grossly inconsistent system and the development of a coherent sentencing framework. Now I am well aware that a Sentencing Council has been the Labour Party's policy for a considerable period of time. I would say that insufficient attention has really been focused on it, and I think that because of the way that the public mood is changing, there is a much greater possibility of focusing people's attention on it now than there was before. And I think that is particularly so when we look at the recent research that has emerged from the Home

Office of the cost of the Criminal Justice System which is being provided under Section 95 of the 1991 *Criminal Justice Act.* That research shows the percentage use of immediate custody by Crown Courts in 1990, and a quite extraordinary disparity in the sentences that have been given at different courts. At one end of the scale there is Snaresbrook and Woodford Crown Courts where they sentenced 35 per cent of indictable offences to immediate custody. Norwich and Chelmsford in the south sentences 49 per cent for immediate custody, and outside the south east Mold and Carnaervon Crown Courts used immediate custody in 59 per cent and 60 per cent of cases respectively. The range of custodial sentences for domestic burglary is equally diverse, the Stafford Crown Court using sentences of a custodial nature in 37 per cent of cases and Mold in 72 per cent. Now that is obviously a disparity that cannot be explained simply by reference to the facts. Such a sentencing lottery should not be accepted. A Sentencing Council which builds on the sentencing guidelines, assisting the Court of Appeal by providing a structure of guidance across the offences will bring some consistency to the system. The Council can then suggest ceilings for different types of offences, detailing weight to be attached to such factors as age, convictions, guilty pleas and repeat or multiple offending. It would be a far more coherent approach to sentencing than that attempted by the Government so far in the *Criminal Justice Act.* That Act did attempt to reduce the unnecessary use of custody by introducing proportionality, but as the White Paper *'Crime, Justice and Protecting the Public'* said in 1990, prison can be an expensive way of making bad people worse. The prospects of reforming offenders are usually better if they stay in the community, provided that the public is properly protected.

Criminal Justice Act 1991

I believe that that would also provide a more complete framework, than the few clauses that have been put in the legislation so far, and I think that it would help at least in trying to clear up some confusion presently surrounding Clause 29 of the *Criminal Justice Act.* Everybody understands what Clause 29 was designed to avoid, and that was a series of trivial offences being aggregated together and then a custodial sentence being put into effect in circumstances where it was not really necessary. But it is vital that the features that relate to aggravating factors that can be taken into account by the courts are properly understood, and properly understood within a coherent sentencing policy, otherwise some of the confusion that is apparent at the present time will grow worse. There is a risk therefore that all of the sentencing considerations behind Clause 29 could be put to one side, and that could be a mistake. Since the original invitations to this lecture went out last summer, these key sections of the *Criminal Justice Act* have come into effect and since that time also there has been a large, somewhat unpredictable fall in the prison population. Home Office predictions suggest that the prison population will be increased to some 57,500 by the end of the decade, whereas in fact the actual population has fallen by some 8,000 between April and the end of December with a steep rate of decrease from September. On April 4 there were some 48,000 prisoners, by September 4 there were 46,000 and this had fallen by 6,000 to 40,000 on December 31, 1992. Now I think it is important that we understand the reasons for this decline in numbers. It would be encouraging if we were sure that it was part of a deliberate and considered policy. However, there are some indications that the fall can simply be linked to problems in other parts of the Criminal Justice System. There has, for example, been a marked drop in the number of cases that are coming before the courts, and at a time of rising crime there was a somewhat staggering report of some 50 per cent fewer cases being heard in the London area last year, accompanied by a 12 per cent reduction in arrests by the Metropolitan Police. In Hull, the workload of the Magistrates Courts fell by 19 per cent last year. These may be connected with the policy of the *Criminal Justice Act,* but I think it is important that we at least understand why that happened, because others are giving explanations such as the demoralisation of the police with excessive paperwork and problems arising in particular courts. We don't know, but it is imperative to find out.

Diversion from Custody

Whatever the reason, at least one thing has happened and this is the second principle. The fall in the population has given us an opportunity, a breathing space, in which we can influence more clearly some of the Woolf proposals, particularly with regard to overcrowding. The Woolf Report is regarded in revered and reverent terms - it is one of those reports where there appears to be virtually a consensus that it is a wonderful idea and should be implemented as quickly as possible, but what is more difficult to see is whether it is actually being implemented in quite the way that Lord Justice Woolf indicated, or indeed with the speed that he wished it to be. But it has to be said that at least there has been some progress and improvements in the Prison Service, but there is

also a very very long way to go indeed, and in his last Annual Report the Chief Inspector of Prisons, Judge Tumim, whilst noting that the improvements had taken place, said that there were many many defects that still want to be remedied. Many local prisons, for example, he said did not 'offer sufficient time out of cells or a satisfactory range of opportunities. Those visited in 1991-2 remained overcrowded with very little space and while the quality of activity offered in some regimes for young offenders had improved, it is disappointing to report a decline in the hours they spent out of the cell in closed establishments.' He also commented on inmates' work, noting that too few inmates were engaged in worthwhile work. He criticised the ridiculous meal times and that some prisons continued to require food to be served in adjacent recesses.

Purpose of Imprisonment

Now, I think that we need to be very clear about the purpose of implementing the Woolf Report. As I said at the very beginning, it is right that part of our strategy should be the rehabilitation of those that are in prison. I think it is very very important that we stress the fact that the punishment that people have meted out when they are sent to prison is to be imprisoned. We don't then send them into prison so that their life is simply continual punishment whilst they are in prison. Our objective at the end is to ensure that people come out more able to face up to their responsibilities as decent law abiding citizens in our society. And if we don't, and if the prison regime as such tends to produce people that are more likely to re-offend at the end, the notion that that is somehow tough on crime seems to be absurd, because what that old lady that I described who came to see me wishes, is that person when he comes out of prison to be more likely to be a law abiding member of the community and more responsible than when he went in. And so the idea of implementing the Woolf Report is not simply because one feels a sense of responsibility to those who are put inside the prison, but because it is in the public interest that they have the best chance of rehabilitation whilst they are there. And that is why, then, it seems there must be much greater urgency in the way that we implement the Woolf Report, and I have to say that it appears to be the case that the Prison Officers' Association and those that are engaged in the Prison Service management are keen to get on and to implement the provisions of the Report.

Privatisation and Accountability

I therefore come to my third principle which is that that is the priority that we should face within our prison system, not privatising the prisons or indeed market testing the management of it. Now I should say to you that I think that the argument in general terms about privatisation of public services is one that is much bigger than the scope of this lecture, but is one that the public has seen political battles over the last few years. I'll leave aside for the moment any ideological predisposition that anyone may have towards the public and private sectors, but I think that there are particular reasons in relation to the Prison Service why privatisation is not the right way we should go. I have to say that I am fundamentally opposed both in principle to the privatisation of the Prison Service and indeed in practice. In principle I am opposed because I believe that people who are sentenced by the state to imprisonment should be deprived of their liberty, kept under lock and key by those who are accountable primarily and solely to the State. Now, of course I have said that many of those who wish to take over part of our prison system do so with the best of motives, but the fact is this really can't be because the commercial firm coming in to run part of the Prison Service or indeed run a prison, is running it as a commercial enterprise. It can be said therefore that the primary responsibility is to the shareholders of that organisation, and whereas I don't doubt that it may well be the case that there are those with very good motives who want to assist in the Prison Service and running of prisons in the private sector, I do not believe that it is right, when you deprive people of liberty that you do so under any auspices other than those of the State. I also believe there are two additional objections which are particularly relevant.

Punishment for Profit

Firstly, I think there is a danger that if you build up an industrial vested interest into the penal system, and as part of that interest they are designed obviously to keep the prison population such that it satisfies those commercial interests, then I think there is a risk that that distorts the penal policy that otherwise you would introduce.

Secondly, I believe that privatisation is a diversion of our energies from where those energies should be properly set. I will make it absolutely clear and I repeat again today at the risk of offending anyone I would not support any form of restrictive practice that stands in the way of progress and reform within our Prison Service. If you think of the time and the energy and the debates in Parliament on privatisation rather than how we improve the Prison Service, then I think the point that I am making about the diversion of

energy in resources and time is well made. According to the *Guardian* recently, the first priority of the newly appointed Chief Executive, Derek Lewis, is to make recommendations to Ministers about the form and timing of further private sector prison management. I think that rather underscores my point about the priorities in the prison system.

Now let me make one further point. I think if you have one or two privatised prisons within the system, partly because of the novelty, partly because there would be so much attention focused upon them, then they are likely to be fairly well run and make a contribution to the prison system. I don't say that the existence of those one or two would undermine the concept of the Prison Service, but I do think it is impractical to think that you could run vast parts of the Prison Service in that way. Secondly, when we debate with Government Ministers, as we often do, about the Prison Service, and they say well look at the Wolds and the very good regime that is there and why should the Labour Party be opposed to that. If you look at what is good about that prison regime it is the specifications laid down by the Home Office, that was part of the contract of running the Prison. Now if that is right, then that is something that has come about by Government will. Government has decided that they will lay down these criteria in the way that the Prisons are to be run. My response to Government Ministers is well if this can be done as a demand made upon the private sector, why can it not be implemented in the public sector where the Government is actually in control of management itself. I have a feeling sometimes that the purpose of this is to introduce decent specifications in the private sector, pretend that is then the result of the private sector, whereas as a matter of fact it is the result of the Home Office actually taking responsibility to introduce a proper prison system, but introducing it only in the private sector and not introducing it with sufficient vigour in the public sector. Therefore, I believe that the diversion of privatisation is draining away some of the energy which could be used to improve the public sector.

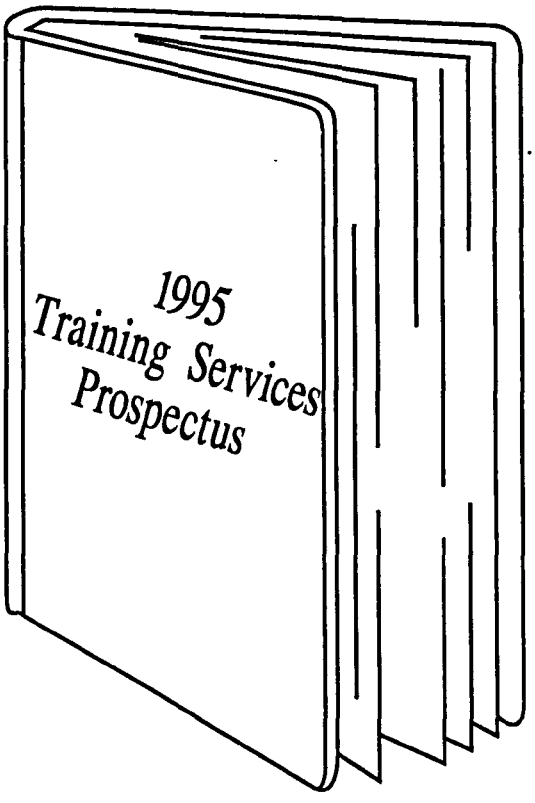
Secure Accommodation for Young Offenders

The fourth matter I would like to raise, and I will deal with this very briefly, is with the Home Secretary's recent announcement about the new institutions for young offenders. I say new, but the fact is that we are re-living the past here. I really do not believe that setting up a series of new centres for young offenders is the right way to deal with this problem. Now I agree that there is a problem. I have consistently said that there is a problem of persistent juvenile offending that is causing great distress within local communities, and we have to deal with it. And I agree too that there are those who are out of control and beyond the ability to be controlled properly either by their parents or the rest of society. Then there is a case for using secure accommodation for those young people. It is a tragedy, I don't pretend there is any form of answer to it, but there are people in my constituency and elsewhere who desire protection. But we can build upon a system that is already there. Setting up five or six new centres is simply to go over the mistakes of the past. I point out to people who say that this is all about training and education now and not simply about punishment that they should recall borstal training. It has always been said if you look at young offenders institutions and the prospectus for them, the prospectus is actually extremely good. It's a bit like when you read a Chinese Bill of Rights, the Rights are absolutely fantastic but the worries are whether they are actually implemented. And if you look at the prospectus of the Young Offenders Institutions that is all about training and education. That is not the problem. It's not that there doesn't exist goodwill in these institutions, indeed they attempt to make the best of their situation, but, the reason why I believe it to be so fundamentally wrong, is that the last thing that you want to do with those persistent young offenders is to put them alongside 40 or 50 other persistent young offenders and lock them up for a considerable period of time. All the evidence is that they come out worse than when they went in. Therefore I think that this is a mistake, I think we should be building on the secure accommodation that is already there, but most important of all, and this comes back to the very point I made at the beginning, by the time these youngsters have got to that situation, let's be brutally honest with ourselves, there's probably not a great deal that anything other than time is going to be able to help. We can do as much work as we possibly can, and we should, and there is secure accommodation that helps us now, but the aim should be to prevent and divert those who ever get into that position in the first place, and that's why it is insane to set up these new centres at the same time as the local authorities are having to close some of their facilities for disturbed young people in communities throughout the country. When we find that the service has actually been cut in some parts of the country! When we find that employment and training opportunities for young people are being withdrawn! When we find that some young people are facing the situation now as a result of the changes in the benefit system where they are without benefit, they are without a job and without training! Now, it seems to me, that if

we are to look at this as a part of the coherent strategy in dealing with juvenile offenders, then we put at the end of the chain the notion of secure accommodation for those that we deem it is necessary. We don't say that that is the policy for dealing with juvenile crime because we all know it isn't.

In Summary

That brings me back to the very point that I started from and that is to put sentencing policy within an overall strategy of the Criminal Justice System. The purpose of that system should be to make our community safe, that those that are in prison should be there in order that they get the best chances of rehabilitation. The Prison Service goals that have been established by the Woolf Report, are agreed across a very broad spectrum, must be implemented. Privatisation is a diversion. Above all we regard the Prison Service as an integral part of the process of justice. In the end crime is a problem that arises through a breakdown of a community, and unless we are prepared to take the steps to reform both our Criminal Justice System and the Prison Service, the steps that I think most people now agree are necessary, we shall be forever dealing with the consequences of the breakdown in the community in which we live ■



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