PRISON SERVICE
JOURNAL

May 2018 No 237

Special Edition

50 Years of the Parole System for England and Wales

An Idea Whose Time Had Come?

The Creation of a Modern System of Parole in England and Wales, 1960-1968

Dr Thomas Guiney *is a visiting fellow at the Mannheim Centre for Criminology, the London School of Economics and Political Science.*

'It has been said with truth that it is easy to imprison a man; the difficult thing is to release him…'
(Home Office 1959).[1]

It is more than half a century since a system of parole was introduced in England and Wales. This was a significant milestone in the evolution of British penal policy, but little is known about the complex chain of events that culminated in the Criminal Justice Act 1967. Drawing upon a range of archival sources this article will explore the competing ideas, trade-offs and moments of political controversy that defined the emergence of parole in England and Wales between 1960 and 1968.

Introduction

The *Criminal Justice Act 1967* introduced a new legal framework for the '*release of prisoners on licence and supervision of prisoners after release*' in England and Wales. Under the new arrangements a Parole Board was created to advise the Secretary of State on (a) the release on licence and the recall of persons; (b) the conditions of such licences and the variation or cancellation of such conditions; and (c) any other matters pursuant to the operation of the new Parole System.

Prisoners serving determinate sentences became eligible for parole once they had served one-third, or twelve months of their sentence, whichever was the longer. Since all prisoners were entitled to unconditional release for the final third of their sentence, under a system known as remission, the new Parole System only applied to prisoners serving sentences of 18 months or over. In practice, this meant that a prisoner sentenced to three years' imprisonment could expect to serve one year in custody, followed by eligibility for parole during the second year of their sentence and unconditional release in the final year subject to any time lost for bad behaviour.

A distinct system was created for indeterminate sentences. Under the Act, the Secretary of State could authorise the release on licence of a person serving a life sentence, if recommended to do so by the Parole Board, and after consultation with the Lord Chief Justice and trial judge if available. The decision-making process was further clarified by the Parole Board in their 1968 Annual Report which made clear, that in most instances, the first review of lifer cases should take place after 7 years had been served.[2]

To administer the new system, Local Review Committees (LRCs) were established in prisons across England and Wales. In advance of a prisoner's parole eligibility date (PED) it was the duty of the LRC to review a prisoner's case and submit a dossier to the Home Office providing a reasoned opinion on whether parole should be granted. A new Parole Unit, housed within the Home Office Probation and Aftercare Department, was created to manage parole applications and prepare all suitable cases for review. Initially, all decisions were taken by the Parole Board 'on the papers', typically with a recommendation as to the prisoners' suitability for parole, the appropriate date of release (or next review date) and the conditions to be placed upon a licence.

Since parole was positioned as a 'privilege and not a right' there were no oral hearings, prisoners were not informed of the reasons why their applications had been unsuccessful and the Home Secretary reserved the right to overturn the recommendation of the Parole Board if it was deemed to be in the public interest.

A 'recognisable peak'

While it is tempting to scour the historical record for the 'smoking gun' that signalled the arrival of parole in England and Wales the historical antecedents are inevitably diffuse. With the growth of penal transportation in the early nineteenth century an embryonic system of early release, known as the 'ticket of leave', began to take shape which granted convicts of 'good character' limited rights to live and work

1. Home Office (1959) Penal Practice in a Changing Society: Aspects of Future Development. Cmnd 645. London: HMSO.
2. Parole Board (1969) Report of the Parole Board for 1968. HC 290. London: HMSO.

within the colonies. As Johnston and Cox show elsewhere in this issue, the underlying rationale for the ticket of leave became firmly established within British penal practice and from the 1850s these techniques permeated into the release arrangements for convicts sentenced to penal servitude.[3]

In this sense, the events of the 1960s were not unique, but the latest attempt to address long-standing questions about the management of incarcerated populations, the defensible exercise of discretion and the administrative challenge of bridging the gap between custody and the community. In a series of influential reports from the late 1950s onwards the Advisory Council on the Treatment of Offenders would draw attention to the importance of effective aftercare and resettlement to reintegrate offenders back into the community.[4] The growing use of parole in much of the English-speaking world had not gone unnoticed by British policy-makers and the Murder *(Abolition of Death Penalty) Act 1965* brought much needed focus on the treatment of prisoners serving long determinate and life sentences.

Each of these concerns must be considered contributory factors in the emergence of parole onto the political agenda, but it is striking just how quickly these drivers of reform were located within a wider narrative bound up with prevailing justifications for punishment, particularly the therapeutic methods associated with the 'rehabilitative ideal'. Since the late nineteenth century, the arc of penal policy in England and Wales had been towards the rehabilitation of offenders and parole was attractive within this context because it gave administrative expression to high-level normative ideals that favoured indeterminacy (in the operation of both determinate and indeterminate sentences) and the personalisation of punishment. Since inmates differed in their response to 'treatment' this necessitated individualized doses of incarceration to allow for the early release of reformed prisoners and extended periods of detention for those requiring more intensive 'support'.

As Dr Rupert Cross, then a Lecturer in Law at Oxford University, would argue in a radio broadcast on the 15th February 1962, '*individualization of punishment is the current demand*' and within such a system sentencing judges are not well placed to adequately predict a prisoner's response to rehabilitation while in prison. Surely it was better that the executive, with access to real-time information on a prisoner's progress and prospects on release, should be able to vary the sentence accordingly?[5]

Since the late nineteenth century, the arc of penal policy in England and Wales had been towards the rehabilitation of offenders ...

A system takes shape

By 1964 support for the introduction of a Parole System was gaining traction, but it was not until the work of the Longford Committee that these various policy prescriptions began to coalesce into a workable programme of reform with political impetus. The Study Group, chaired by Lord Longford, was one of several policy reviews established to prepare the Labour Party for government. Published in April 1964, their landmark report, '*Crime: A Challenge to Us All*', set out an ambitious programme of penal reform and endorsed the creation of a modern Parole System for offenders serving medium-to-long prison sentences.[6]

This proposal was adopted almost wholesale by the incoming Labour Government. In August 1965, the Home Secretary, Sir Frank Soskice, wrote to the Cabinet Home Affairs Committee seeking approval to supplement a long-awaited Criminal Justice Bill with a new system of parole. Policy approval was duly granted, but by November 1965 it was clear that the Criminal Justice Bill had lost its place within the Parliamentary timetable. The Prime Minister, Harold Wilson, commanded a wafer-thin majority in Parliament and this political vulnerability greatly inhibited the government's legislative ambitious. As the prospects of a criminal justice bill dimmed, the Home Office moved to regain the initiative with the publication of a new White Paper. Published in December 1965 '*The Adult Offender*' set out the case for a modern Parole System in the following terms,

> *What is proposed is that a prisoner's date of release should be largely dependent upon his response to training and his likely behaviour*

3. Shute, S (2003) The Development of Parole and the Role of Research in its Reform, in Zedner and Ashworth (eds) The Criminological Foundations of Penal Policy: Essays in Honour of Roger Hood. Oxford: Oxford University Press. p.385.
4. Home Office (1958) The After-care and Supervision of Discharged Prisoners. Report of the Advisory Council on the Treatment of Offenders. London: HMSO.
5. Cross, R (1962) Indeterminate Prison Sentences. The Listener, 15 February 1962.
6. Labour Party (1964) Crime: A Challenge to Us All (The Longford Report). London: Labour Party.

on release. A considerable number of long-term prisoners reach a recognisable peak in their training at which they may respond to generous treatment, but after which, if kept in prison, they may go downhill. To give such prisoners the opportunity of supervised freedom at the right moment may be decisive in securing their return to decent citizenship'.[7]

Shortly thereafter, the Prime Minister announced a major Cabinet re-shuffle in anticipation of a summer General Election. Roy Jenkins was appointed Home Secretary and this change of leadership, bolstered by a decisive electoral performance in March 1966, helped to unlock a period of unparalleled productivity within the Home Office. It is at this time that the government brought forward proposals to streamline court proceedings and introduce a system of mandatory suspended sentences for all prison sentences of six months or less.

The Criminal Justice Bill

The Criminal Justice Bill 1966/1967 received its Second Reading in December 1966. Commending the Bill to the House, Jenkins presented parole as the centrepiece of a reform package that '*revolves around a single theme, that of keeping out of prison those who need not be there*'.[8]

Clause 22 left the decision of whether to release a prisoner on licence wholly at the discretion of the Home Secretary.

The proposals were warmly welcomed in Parliament. At this time, criminal justice was still largely insulated from party-politics and the government's proposals commanded a level of bi-partisan support that is uncommon in contemporary discourse. Yes, there was discussion of recall arrangements and the powers conferred upon the Home Secretary, but the proceedings are notable for the absence of any steadfast ideological opposition. In part, this reflected longstanding Conservative support for the introduction of a Parole System.[9] Briefing the Shadow Cabinet on 30th November 1966, Quintin Hogg (later Lord Hailsham) reflected upon the Bill in the following terms,

There can be no question of a party attitude on the majority of these proposals. They are essentially matters on which experts differ, and individuals will not be dragooned into a common line. Personally I support the great majority of the changes, for what they are worth (as to which a certain degree of agnosticism is permissible). I am against entrusting the new Parole System to the Secretary of State, and would prefer a Parole Board on the Canadian model.[10]

As Hogg had predicted, the one major area of contestation concerned the governance arrangements for the new Parole System. As originally introduced in the Commons, Clause 22 of the Bill left the decision of whether to release a prisoner on licence wholly at the discretion of the Home Secretary. This reflected the strong centralising instincts of the Home Office at this time and it is unsurprising that the merits of an independent Parole Board were debated at length during the passage of the Bill.

On Second Reading Quintin Hogg set out the opposition's preference for an independent Parole Board, arguing that it was essential that questions of liberty never became a matter for government ministers. The issue was discussed at length in Commons Committee and while the Home Office 'bill team' were unable to accept the proposed amendments, they were prepared to bring forward their own plans for the incorporation of an independent board. The Home Office honoured this commitment at Report (Commons) with a series of amendments intended to establish a 'Prison Licensing Board', a rather municipal title that was eventually changed to the Parole Board in the House of Lords.

Cautious first steps

The *Criminal Justice Act 1967* received Royal Assent in July 1967 and Lord Hunt was appointed the first Chairman of the Parole Board. The choice was symbolic. Jenkins was strongly opposed to a judicial chair and Lord Hunt, who led the 1953 British Expedition to Mount Everest, was a prominent public figure who commanded cross party support. The Parole Board was originally comprised of seventeen members (one of whom resigned) and was required by the Act to include amongst its membership; persons who hold or

7. Home Office (1965) The Adult Offender. London: HMSO. p.4.
8. Hansard: HC Deb 12 December 1966 vol738 c1502.
9. Conservative Party (1966) Crime Knows No Boundaries. London: Conservative Party.
10. The Churchill Archives Centre: Churchill/HLSM 2/42/2/16. The Papers of Lord Hailsham. Unpublished.

have held judicial office; qualified psychiatrists; probation officers and criminologists with a track record in the study of '*delinquency or the treatment of offenders*'.

The first tranche of parole releases took place on 1 April 1968 in order to clear an initial backlog of pending cases. A total of 406 prisoners were recommended for parole, of which 350 cases were approved by the Home Secretary. Thereafter, the total number of cases dealt with by the Parole System increased to around 10,000 cases a year by the mid-1970s, although a significant minority of prisoners continued to exempt themselves from this process. In parallel, the number of prisoners recommended for release by the Parole Board, and latterly by the LRCs under delegated powers, grew steadily from 1,835 in 1969 to 4,029 in 1975, representing an approval rate of approximately 40 per cent.

Establishing an effective system of parole did not prove to be an easy task. The Parole System had been premised upon continuing assessment of prisoners and the provision of high quality paperwork that would enable the Board to operate a sophisticated system of discretionary release. In reality, administrative mismanagement and historic under-investment in prisoner case notes meant that prison records were often of poor quality, incomplete and delivered late to the Parole Board. This state of affairs was further compounded by the fragmentation of criminal justice administration and longstanding communication failures between agencies.

In this context, it was perhaps inevitable that the fledgling Parole System would begin to court controversy. In August 1968, Sydney Williams made front-page news after shooting his wife and her new partner at their home in Staffordshire before committing suicide. Williams had been amongst the first prisoners to be released on licence and it later emerged that neither the Parole Board nor the police had been informed of the repeated threats Williams had made against his wife. This tragedy was preventable and the new Home Secretary James Callaghan ordered an immediate review of the nascent Parole System that resulted in new guidance stressing the importance of data sharing between all criminal justice agencies.

Conclusion

The enduring interest of these historical events reflects the challenge of unpicking the rather 'nebulous consensus' that characterised the emergence of parole in England and Wales; the different views and agendas of those engaged in the policy-making process, and the somewhat blurred lines between the underlying objectives of parole and its presentation to the public.[11]

Nonetheless, there are good reasons to conclude that parole was, at least initially, rooted in principle and inexorably bound up with the unfolding narrative of the 'rehabilitative ideal'. The likely impact upon the prison population and reductions in expenditure were undoubtedly important considerations and grew in significance as the prison population began to rise in the late 1960s. But these were secondary justifications that helped maintain the momentum for reform once the issue broke onto the political agenda. They were not, in and of themselves, the primary considerations.

Comparative historical analysis draws attention to these important continuities and dislocations with the past. As originally conceived, the Parole System was justified on the basis of a 'recognisable peak' in an individual's rehabilitation where the interests of the community were better served by the careful reintegration of the offender back into the community, rather than continued incarceration and the slow creep of institutionalisation. The system was by no means perfect. Parole was fiercely paternalistic, secretive and only possible within a society that was highly deferential to authority. We have come a long way in this regard, but it is also timely to ask whether the pendulum has swung too far away from the principles that motivated this earlier generation of penal reformers.

As the scope of automatic release has been extended, the caseload of the Parole Board has been repurposed to focus on the growing cohort of prisoners serving life sentences, extended determinate sentences for public protection and some determinate recall cases. With the emergence of a more contested discourse on law and order the burden of proof in these discretionary cases has been almost completely inverted and the onus is now placed firmly on prisoners to demonstrate to the Parole Board that the interests of the community are not better served by their continued, and prolonged incarceration.

11. See Guiney, T (Forthcoming) Getting Out: Early Release in England and Wales, 1960-1995. Oxford: Oxford University Press (Clarendon Studies in Criminology).