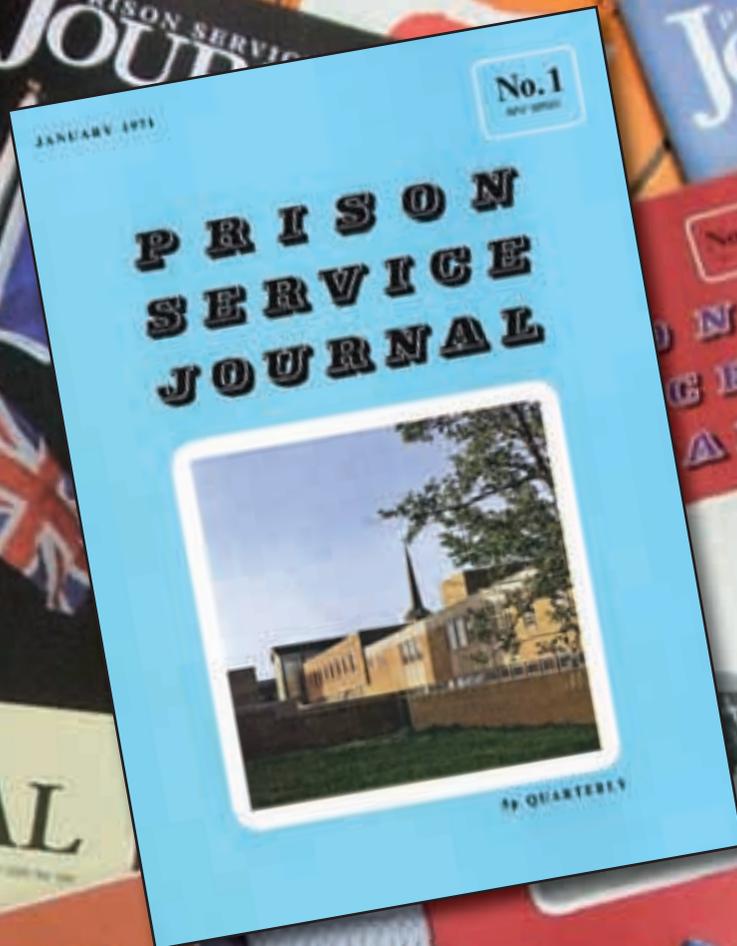


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# Reflections on 'About Parole'

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**It is fascinating to read Alan Bilton and Keith Bottomley's article about parole. It seems so topical — and yet it also seems to come from another age! Bilton and Bottomley had interviewed 40 men in March-April 1970 about their experiences of the newly introduced parole process. Many of their findings — the prisoners' lack of understanding of the system, their cynicism about 'those bits of paper'— resonate today. In this article, I shall briefly trace the history of parole, and then contrast Bottomley and Bilton's findings with a comparable small study I carried out this summer, also interviewing prisoners about the parole (and recall) process.**

## The history of parole

Early executive release has long been a feature of the English prison system, of course: remission of a third had become the norm long before the Parole Board was created, by the Criminal Justice Act 1967. There were two main justifications for the creation of the Board. First, somewhat pragmatically, was a belief that early release would reduce the prison population. Secondly, there was a belief that the rehabilitation of offenders would be encouraged by releasing them into the community at the 'right' time in their sentence under the supervision of a probation officer to whom they were required to report regularly. At the time of Bilton and Bottomley's research, prisoners were eligible to apply for parole after they had served one third of their sentence, or 12 months, whichever was longer. They applied to a local review committee, which then made a recommendation to the Parole Board. Over the first few years there were numerous changes, perhaps most importantly with the Home Office soon taking back more of the decision-making from the advisory Parole Board, in order to increase the low release rate<sup>2</sup>. As Bilton and Bottomley's article makes clear, some prisoners in 1970 declined to be considered for parole. This seems unsurprising, since the system was perceived to be unfair and uncertain, and parole was granted relatively rarely.

There have been frequent changes to the parole or early release process since then. Leon Brittan announced at the Conservative Party conference in October 1983

restrictions on the release of offenders convicted of offences of violence and of drug trafficking, whilst reducing the minimum eligibility period to six months. Further major reforms were implemented in the Criminal Justice Act 1991, largely as a result of the recommendations of the Carlisle Committee (1988) which had been asked to review the parole process (though only at the process for determinate sentence prisoners, not lifers). The Carlisle review had recommended that a discretionary or selective system of release for shorter-term prisoners was both undesirable and impractical. In Bottomley's words, the review 'challenged a number of cherished principles and practical achievements of the parole system over the previous two decades'<sup>3</sup>. The Committee was concerned that any release system should not undermine the proportionality of sentences passed by the courts: as they saw it, it should not be for the Parole Board to assess whether a prisoner had served sufficient time to satisfy desert criteria. Yet they acknowledged the positive value in ensuring that few prisoners should emerge from prison without any period of supervision by a probation officer. This therefore resulted in the parole scheme which survived from 1991-2005. Local Review Committees were abolished. The relevant process depended on the length of a prisoner's sentence:

- ❑ Those sentenced up to 12 months: these prisoners were released automatically at half time on Automatic Unconditional Release (AUR)
- ❑ Those serving 12 months and up to 4 years: these prisoners were also released at half time, but on license conditions, that is on Automatic Conditional Release (ACR)
- ❑ Those serving 4 years or more: these prisoners were eligible for Discretionary Conditional Release (DCR). They were eligible to apply for parole from the half way point in the sentence, and would be released even without parole at the two thirds point. They were supervised by the probation service until the  $\frac{3}{4}$  point, and liable to return to custody if they re-offended up to end (which meant there was a 'parole window' between  $\frac{1}{2}$  and  $\frac{2}{3}$ rd, decided by Parole Board, with supervision continuing to the  $\frac{3}{4}$  point).

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1. I am very grateful to Professor Bottomley for his comments on a draft of this article.  
 2. Once the Home Office realised how cautious the Parole Board was, they decided to release many prisoners automatically on the recommendation of the Local Review Committee. See Morgan, N. 'The shaping of parole in England and Wales' [1983] *Crim. L.R.* 137-151 for a review of those early years.  
 3. Bottomley A K (1990) *Parole in Transition: a comparative study of origins, developments and prospects for the 1990s* in M. Tonry and N. Morris (eds) *Crime and Justice* (Chicago: University of Chicago Press), at page 357.

- Those serving indeterminate sentences (lifers): as a result of a number of critical decisions of the European Court of Human Rights, the Criminal Justice Act 1991, sections 32-34, created for the first time the right of lifers to an oral hearing before a Discretionary Lifer Panel (DLPs) of the Parole Board. A panel of three members, chaired by a judge or other legally qualified member, goes to the prison where the prisoner is held, with a member of the administrative staff of the Board, to hear the case<sup>4</sup>.

The next major changes to early release were those of the Crime and Disorder Act 1998, sections 99-100, which saw the introduction of Home Detention Curfew, earlier than half time release on electronically monitored curfew. Originally this could be release for two months earlier than half time, for those sentenced to less than four years, and there was a cautious policy of release<sup>5</sup>. In 2002, presumptive HDC was introduced and the length extended to 90 days. In 2003 it was extended further to up to 135 days. The rules have been amended several times since, and there may well still be worrying variations in practice<sup>6</sup>.

The Criminal Justice Act 2003 saw another revolution in parole law and practice, introduced from April 2005<sup>7</sup>. AUR, ACR, and DCR were all abolished. Instead, all determinate sentence prisoners are now released automatically at half time. Many remain eligible for HDC, which means that they leave prison electronically monitored, and on complex licenses. Now the workload of the Parole Board is focused almost entirely on decisions in relation to lifers and in relation to the growing number of people recalled to prison having been previously automatically released at half time. So a study of parole today is likely to focus on the release of the hugely increased number of life sentence prisoners, and on the recall process.

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### Bilton and Bottomley's research<sup>8</sup>

Bilton and Bottomley article is reproduced here so I draw only a brief summary. They interviewed 40 men in Hull prison early in 1970. Three had been granted parole and were approaching their release date, 2 had not applied for parole, and 35 had been declined. Interestingly, eight of the sample had been recommended for release by the Local Review Committee. The authors mention the prisoners' 'disappointment' with the working of the system. Shockingly, more than a third said they had no idea why they had been refused. Several had deeply skeptical and cynical comments to make about the process. Bilton and Bottomley comment that 'the present scheme was offering largely false hopes and appeared to be only for the few'. The vast majority of prisoners felt strongly that they should have the right to a personal appearance before the Local Review Committee. Yet their opinion of the value of a preparatory interview with a member of the LRC and of written representations were divided. They felt there was too much emphasis on written reports ('those bits of paper').

It is interesting, too, that Bilton and Bottomley sought the prisoners' opinions on the effects of the introduction on prison organization. It seems that they did not think it had had much effect. Perhaps this is a message which should have been picked up on in more detail: the parole system was grafted on to an existing prison 'organization' without any real attempt to allow prisoners to manage or plan their sentence in a way which meaningfully prepared them for a successful application. How true that remains today.

Bilton and Bottomley's prisoners were ambivalent about the value of supervision. They were concerned about license conditions, and their enforcement. Some

4. For a history of these DLPs, see Padfield, N. (2002) *Beyond the Tariff: Human rights and the release of life sentence prisoners* Willan. See also Padfield and Liebling, HO Research Study No. 213, 2000; Padfield and Liebling, HO Research Findings No 132, 2000.
5. Dodgson, K et al, *Electronic monitoring of released prisoners* (Home Office Research Study No 222, 2001).
6. See Dodgson, K. et al (2001) *Electronic Monitoring of Released Prisoners*, Home Office Research Study No. 222; Marie, O, Moreton, K, and Goncalves, M (2011) *The effect of early release of prisoners on Home Detention Curfew (HDC) on recidivism* Ministry of Justice Research Summary 1/11. Meanwhile an extra early release mechanism, designed simply to cut the prison population, End of Custody Licence, came and went (2007-2010). The deportation or removal of foreign prisoners remains fraught with difficulties.
7. The system saw significant changes in the Criminal Justice and Immigration Act 2008. The best practical guide is Arnott, H. and Creighton, S. (2010) *Parole Board Hearings Law and Practice*, 2nd edition, LAG; see also Padfield, N. (2009) 'Parole and early release: the Criminal Justice and Immigration Act 2008 changes in context', *Criminal Law Review* 166.
8. The research is analysed more fully at Bottomley A K (1973) Parole Decisions in a long-term closed prison' 13 *British Journal of Criminology* 26.

would have preferred to report to the police. Bilton and Bottomley have a key regard for procedural fairness, and the prisoners themselves wanted to be more involved in the process.

### A comparison with a project 40 years on<sup>9</sup>

I recently carried out a not dissimilar project interviewing forty-six prisoners (36 men and 10 women) in two local prisons about their experience of being recalled to prison. The primary aim of this small project was to increase understanding of the recall process. The two specific research questions were

- ❑ Are the reasons for recall clearly understood (both by prisoners and those who work in the criminal justice system)?
- ❑ What can be done to reduce the number of prisoners recalled to prison?

These prisoners were serving a wide variety of sentences, from life (3), extended sentences (9), to less than 2 years (10). At the same time, a wider 'snap-shot' of recall was obtained by a review of 129 prisoners' files, and context-setting interviews were held with a number of probation and NOMS staff.

In interview, several prisoners felt that they had been 'set up to fail' by unreasonable licence conditions, which had been inadequately discussed with them. Their relationship with their probation officers varied, and some prisoners showed real sympathy with their officers for the difficult decisions they had to make. However, many felt 'let down'. They told powerful stories about the difficulties of building law-abiding lives when on licence. Some accepted the reasons why they had been recalled, but could not understand why it was taking so long for them to be re-released. Most seemed to think that their probation officer had far too much power, and many argued for a more judicialised process.

Thirty-three of the 46 prisoners (including the 7 fixed term recalls) interviewed had been recalled for allegations of fresh offences. For some this was a 'fair cop', but many strenuously denied the offences, some suggesting (sometimes very convincingly) that they had been 'stitched—up'. Several were not subsequently charged, or the charges were later dropped. Others were acquitted at court. None of these prisoners could

understand why they remained in prison as recalled offenders. Even those who had pleaded guilty, or intended to do so, were angry at some of the perceived injustices of the process: for example, the fact they did not have remand prisoner status, or that, although they had completed a short fresh sentence, their period of recall continued.

Thirteen of the 46 had been recalled for breaching conditions of their licence, not for allegations of further offending. These 'unacceptable failures' included being expelled from Approved Premises, failing to demonstrate motivation to deal with drug addiction, associating with known offenders, using a computer, and not making contact or losing contact with their probation officers. It is interesting to note that recall was not really an issue in 1970 — or perhaps it was

simply not the focus of Bilton and Bottomley's research. Today recall has become a glaring issue: the numbers of recall cases considered by the Parole Board reached 14,669 in 2006/7, an increase of 58 per cent which the Parole Board (2007) itself called 'staggering', only to see it increase by another 30 per cent to 19,060 the following year. In 2009-10, a total of 13,900 determinate sentenced offenders were recalled to custody, up 18 per cent from 2008-09 (11,800). The totals have since decreased, the latest figure available being 14,159 in 2010/11<sup>10</sup>. The number of people on life licence who are

recalled to custody in some years approaches (or even exceeds) the number of those released.

It is depressing to note that Bilton and Bottomley's comments on the unfairness of the parole process ring so true even today. Why does the recall process today appear so unfair? All recalled prisoners receive a 'recall pack' or 'recall dossier' after they had been returned to prison. For many, this is too complicated, and many are irritated by the negative and outdated account of them given in the dossier, and by the reliance on risk predictors, which seem impossible to challenge. The overwhelming impression given by the prisoners in the 2011 study was that they had little knowledge or understanding of what was being done to progress their case. This is what resonates most closely with Bottomley and Bilton's article. The invisibility of those empowered to make the decision to release them, and the uncertainty

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9. A copy of the research report is available from the author, at nmp21@cam.ac.uk

10. See Parole Board Annual Report, 2011.

which surrounds the release process are both enormously debilitating. Parole Board panels are perceived as part of a distant bureaucracy which takes unreasonable and uncertain time to reach decisions: nothing has changed. The different roles of the Ministry of Justice's Public Protection Unit and of the Parole Board are not understood. Prisoners feel that they are not given reliable information. Prison staff are seen as uninformed, or at worst, deliberately unhelpful. There is widespread misunderstanding of the process, now as then: for example, the criteria for the somewhat rare 'fixed term' recall; or whether a 'standard' recall is for a fixed or indefinite term. Even those who understood the process were deeply frustrated by it.

Many of the prisoners in my study felt that they had had little support whilst on licence. Back in prison, they could pass weeks, or months, wondering what was happening to their 'case'. Prisoners described a level of support in prison which often seemed almost non-existent. This could appear inhumane, unfair and counter-productive. It was also a wasted opportunity. What this small study would suggest is that, if the 'system' of recall is to be perceived as fair and legitimate, prisoners deserve more information, more advice, more certainty and much less delay. My survey, like that of Bilton and Bottomley, was of course unrepresentative. Bilton and Bottomley pointed out, 'this is a representative group of prisoners at Hull, and therefore the attitudes are only likely to be as typical as Hull itself is a typical prison'. HMP Hull had just been brought into the new dispersal system, following the Mountbatten *Report into Prison Escapes and Security* (1966) and the Advisory Council on the Penal System's *Report on The Regime for Long-Term Prisoners in Conditions of Maximum Security* (1968). Perhaps all researchers working in prisons in recent decades have felt that they are working in a period, or a moment, of immense change? My 'snap shots' of the perceptions of recalled prisoners were taken at two local prisons, one in the private and one in the public sector, at one moment in the on-going history of English prisons. It is salutary to pick up lessons from 1970.

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### Implications to be drawn from Bilton and Bottomley's study today

Bilton and Bottomley started their article with a quotation from Lord Hunt, then Chairman of the Parole Board. It seems just as apt today. Prisoners still do not have enough 'say'. This is important for a number of reasons. First, we know from the literature on desistance that it is very difficult to maintain a decision to abandon crime, and that for probation supervision to 'work', offenders must feel engaged and committed to the release and supervisory process. They face huge hurdles and what often feel like endless setbacks in their attempts to go 'straight'<sup>11</sup>.

Secondly, prisoners can only have trust in the parole process if they have some understanding of how it works. What was particularly difficult for prisoners in both studies, it would appear, was the lack of information. In my study, several believed that their case was being considered on a certain date, although there was no evidence of this on the file. One prisoner interviewed in June 2011 firmly believed that she had had a parole review on 22 March and that she had simply to wait patiently for the outcome:

*The officers say they ask custody, I've put in apps and complained to the IMB — everyday I ask my personal officer and he says he's heard nothing and I'll be the*

*first to hear when he does. I'm not getting anywhere with them, I feel they just can't be bothered.*

This prisoner's file gave no evidence which suggested a March review, only that the PPU would be reconsidering the case and wanted prison reports by a date in June. It was not at all clear where she had got this apparently false information from, yet she was convinced. The overwhelming impression given by recalled prisoners was that they had little knowledge or understanding of what was being done to progress their case. Some recognised that they would get no clue of the timetable:

11. See for example Maruna, S. (2001) *Making Good: How Ex-Convicts Reform and Rebuild Their Lives* American Psychological Association Books.

*I'll just get a white envelope under the door, which will tell me if I'm getting out. I should be told the exact date when they are going to meet, and I should get the paperwork, which they are going to get, but I don't. I don't know if my solicitor does.*

The process is also painfully slow. There is much confusion about who actually makes key decisions. It would appear that even though the PPU has the right to refer cases back to the Parole Board at any stage, there was no obvious mechanism to ensure that all cases were reviewed as swiftly as possible. Prisoners deserve better general advice on both release and recall (perhaps, leaflets, video etc), as well as better individual advice (oral practical advice on the wings, as well as confidential legal advice, perhaps by way of 'champions' on the wings<sup>12</sup>); they should receive reliable and regular updates on the progress of their applications for release and re-release.

Bilton and Bottomley's prisoners were skeptical of the value of probation supervision. The complexity of parole licenses must be worse today than it was then: many prisoners have a bewildering number of (sometimes contradictory) conditions with which to comply, particularly if they are also on HDC and/or living in Approved Premises. Prisoners in my study were clear that many licence conditions were inappropriate and unnecessary. What's more, there was an immense sense of frustration at the fact that they had no input, and were not consulted. Their sense of powerlessness shone through discussions:

*Plans were made for me without anyone telling me.*

*She wasn't having any of it. She just wanted to be **herself**. Do what **she's** got to do. Do what **she** thinks is best. But it wasn't the best thing for me.*

*[My probation officer] blocked my path.*

*The person who sets the conditions should actually meet the person to get the feeling for what conditions are going to work.*

To me, Bilton and Bottomley's discussion of the value of probation supervision in the early 1970s is particularly fascinating. I would not have guessed that prisoners would have been quite so vocal in pointing out their 'adverse experience' of probation supervision or that several would have preferred to be reporting to the police than to a probation officer. The role of probation officer as both licence enforcer and sympathetic supporter of released offenders was clearly a problem, in theory and in practice, then as it is now. And we are no nearer developing effective 'beginning to end' sentence management, which should include the transition of offenders from prison to the community (and, if necessary and appropriate, back to prison).

What of the prisoners' comments heard both in 1971 and in 2011 on the organization of prisons? Perhaps it is the probation service which should be the focus of our attention at the moment. It suffers from what Raynor and Maguire identified back in 2006 as 'the potential fragmentation of the system, together with poor staff morale in the face of contestability, confusion over officers' roles and a continuing focus on organizational change rather than the necessary staff skills development'. They concluded that these factors made the establishment of close supportive relationships an unlikely prospect in the near future at least<sup>13</sup>. A more recent and even more hard-hitting analysis is to be found in the recent report by House of Commons' Justice Committee:

*There needs to be a better, more seamless, approach to managing offenders. Prisoners are shunted between one establishment and another, in an attempt to avoid overcrowding, and the need to ensure continuity of their sentence plan is not a priority. This is unacceptable. The MoJ and NOMS need to devise and implement a strategy to ensure*

. . . we are no nearer developing effective 'beginning to end' sentence management, which should include the transition of offenders from prison to the community (and, if necessary and appropriate, back to prison).

12. Not a new idea: what happened to the Carlisle Committee's recommendation of local voluntary parole counsellors in every prison?

13. Maguire, M. and Raynor, P. (2006) 'How the resettlement of prisoners promotes desistance from crime: or does it?' 6 *Criminology and Criminal Justice* 19.

*that the end-to-end management of offenders is a reality and not just an unachieved aspiration.*

*If NOMS is to work effectively through the two services, there does need to be an enhancement in prison of offender management skills. This could be achieved through better training for prison officers or the appointment of probation officers or probation service officers to work in prisons on sentence management and to follow the prisoner 'through the gate'. Unfortunately, neither of these scenarios is likely given the current prison population and funding restraints.<sup>14</sup>*

Of course, Bilton and Bottomley's article is interesting for what it does not discuss as well as for what is there. They are not concerned by race or gender issues, for example, and barely mention lifers. At that time, there were relatively few lifers: it was not until the creation of Imprisonment for Public Protection in 2003 (brought into force from April 2005) that we saw the real explosion in the number of prisoners serving indeterminate sentences. Mental health issues and the problem of long-term drug addiction may be more obvious today than they were in 1970.

### Conclusions

The role and work of the Parole Board has transformed almost out of all recognition in the last 40 years. Then the Parole Board was an advisory body, focusing on the decision whether to release prisoners serving any sentence longer than 12 months. Now the Board focuses its attention on the release (or not) of lifers and of those who have been recalled. Yet much has not changed. Their decisions remain cautious. They continue to act under directions issued by the Secretary of State, and both staff and prisoners find it well nigh impossible to disentangle the relative roles of the Ministry of Justice and the Parole Board. Prisoners

remain confused and cynical. Worse than that, many remain full of despair<sup>15</sup>. Comments such as these were not uncommon in 2011:

*I hate prison but I can't cope outside. I feel I'm lost between two places. I want to succeed but it's overwhelming. ... It's like they are leaving me here to rot.*

*I am just on hold. I have been on hold for nine months now.*

This despair can be fuelled by the prisoner's realisation that they had been doing so well (for them, by their standards). Bilton and Bottomley's prisoners would sympathise with the view expressed in 2011 that

*There are a lot of ways of dealing with a problem, but locking them up doesn't help, it's like sweeping them under the carpet.*

Bilton and Bottomley were perhaps the first to research prisoners' perceptions of the parole process. Bottomley was later to become a member of the Parole Board (from 1980 to 1982) and continued to write about release and parole. But the subject remains massively under-researched (swept under the carpet?). In 1984, again writing in the *Prison Service Journal*, Bottomley seemed amazingly optimistic when he wrote 'even if parole cannot easily be justified (criminologically speaking) in terms of its proven effectiveness in reducing the crime rate or as consolidating the rehabilitative work of imprisonment, it can nevertheless contribute significantly towards reducing the unintended inhumanity of our penal system and even potentially promote a sense of fairness in the way we treat those who we imprison'<sup>16</sup>. This assessment seems today somewhat and curiously up-beat: to what extent do prisons, in particular prison release and recall procedures, today really seek to promote a sense of fairness? Research into prisoners' perceptions remains as important as ever.

14. House of Commons, Justice Committee (2011) *The role of the Probation Service*, HC 519-1, paras 110-111.

15. 29 (14%) of the 208 prisoners who killed themselves in prison investigated by the PPO between 2007-9 were recalled prisoners: see Prison and Probation Ombudsman (2011) *Learning from PPO investigations: self-inflicted deaths in prison custody 2007-9*, at page 9.

16. in 'Questioning Parole: Whose discretion? What principles?' (1984) 56 *Prison Service Journal* 21, at page 23.