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# Are we in Favour of Penal Reform?

Colin Ward

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THE BIGGEST SERVICE THAT GOVERNMENTS have done for the cause of penal reform has been in imprisoning war resisters; for its effect has often been to give them a lifelong concern with prison and prisoners; almost all the ameliorations of the prison system in this country in the last forty years can be traced in one way or another to their influence. The imprisonment of conscientious objectors in the first World War led to the formation of an unofficial committee, the Prison System Enquiry Committee, which produced in 1922 an immensely influential report, the 700-page volume *English Prisons Today*, edited by Stephen Hobhouse and Fenner Brockway. This "bible for the reformers" as Margery Fry called it, was compiled largely from questionnaires completed by 290 ex-prisoners, mostly conscientious objectors, and by fifty officials (which resulted in the Prison Commissioners forbidding any further disclosures by public servants). Direct results of this enquiry (beside the ending of several of the indignities of prison life like the broad arrows and convict crop which still constitute the cartoonist's view of prison) included the increase of 'association'

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and abandonment to a large extent of the 'silence rule'. Brockway himself followed this work with his book *A New Way With Crime* (1928), with its concluding question, "When shall we begin to treat mental and moral ill-health as we treat physical ill-health?"

The partial reforms of the 1920's however, seemed to dampen the militancy of the Howard League (just as the famous report of the Gladstone Committee in the 1890's had been accompanied by a complacent spirit in its predecessor the Howard Association), and in the second World War, several of the imprisoned objectors of the first war feeling that the Howard League was insufficiently active and critical, started a new and short-lived ginger group, the Prison Medical Reform Council. The League itself circulated a questionnaire in 1945 to 100 ex-prisoners, mostly conscientious objectors, whose replies were later edited by Mark Benney as *Gaol Delivery* (1948).

But the most radical and deeply impressive prison testimonies by war-resisters of the second World War came from America, both of them published under anarchist-pacifist auspices. They are Lowell Naeve's *A Field of Broken Stones* (Libertarian Press 1950, reprinted 1960 by Alan Swallow, Denver), and *Prison Etiquette: The convicts compendium of useful information*, edited by Holley Cantine and Dachine Rainer (Retort Press 1950, not yet reprinted, unfortunately). The editors of this book emphasise that "one thing we are not trying to accomplish is prison reform" and go on to declare that

We realise that a book of this sort should be primarily concerned with techniques for escaping, but unfortunately, such techniques are not easy to come by, for obvious reasons. We have had to content ourselves with the poor second best of relating methods by which one's stay in prison can be alleviated as much as possible, giving as wide a choice of alternative methods as possible.

whether or not it reforms the individual as in terms of what it does for society. Punishment creates social solidarity and reinforces the social norms."

Having said all this, one thing remains true: the fact that in the prison itself (as Donald West, of the Cambridge Institute of Criminology puts it),

the majority of recidivist offenders in prison have some degree of personality deviation. A few of these are abnormally aggressive and liable to hit out impulsively at anyone who gets in their way, but the greater proportion are what psychiatrists call 'inadequate', feckless types ...

He thinks that a more precise elucidation of these personality deviations and of the factors that produce them and the ways in which they may be managed or improved, is the most substantial contribution we can make at the moment to criminological research. It is also the most useful thing that can be done to help these people.

Whatever it is, it is unlikely to be done in prison, especially since they are unlikely to be incarcerated in either of the only two British prisons which retain the full-time services of a psychiatrist, and are still less likely to find their way to one of those establishments which are the pride and joy of the reformers. By far the most impressive attempts to help them keep out of trouble have been those of Dr. Maxwell Jones and his colleagues at the Henderson Social Rehabilitation Unit, and of Mr. Merfyn Turner at Norman House.

Even in this sense, it is outside the prison that we must look for the only radical reforms.

The reform argument assumes that reform is necessary and that we have the knowledge necessary to reform the criminal. This argument assumes we know the cause of crime and therefore the cure. It overworks the analogy between crime and disease. It overlooks the fact that crime is a product of society. In his book "Must You Conform?" the late Robert Linder argues that when we classify homosexuality as a disease and not a crime we are not really helping the homosexual but are in fact creating new oppressive measures to use against him. It is control disguised as reform and treatment. The same thing can be said for regarding behaviour of other types as a disease rather than a crime. If crime is the product of society, do we reform the individual or must we reform the society?

Beware of the man with simple solutions. 'Crime' and 'the criminal' are legal, not scientific or logical classifications. We are all criminals and we have all committed crimes. You cannot eliminate crime in human society because, as Durkheim argued, crime is a social necessity and a society exempt from it is utterly impossible. Moreover, as the psycho-analytical school maintains, society needs its criminals to act out and serve as scapegoats for its own anxieties and deviant fantasies. This is why it is, unhappily, useless to point out to the floggers, as Mr. Gordon Wilkins does in his article in the *Criminal Law Review* (Oct. 1960) that we are not in the middle of a crime wave, that "there has been no significant increase in crimes of violence over the past half century, having regard to the considerable increase in population", or that 0.9 per cent. of people found guilty in the courts are found guilty of violence against the person. People don't listen when you say these things, because they are not what they need to hear. This is why Clarence Jeffrey notes that "the use of punishment by society is not as important in terms of

Nor does their book seek in any way to exploit for public sympathy the 'idealistic' motives of conscientious objectors. Indeed, one of their contributors, Jack Hewelike, remarks

I have come to strong disagreement with many of the tactics used by C. O.'s in prison to impress the public ... and even now feel that the basic issue is individual evasion of service to the state and not what the public considers 'conscientious'. The most genuine protests were those directed against imprisonment itself (and the whole coercive apparatus of which prisons are a part). My own observation convinces me that these protests are constantly being made by inconspicuous prisoners branded as 'criminals' who have no civil liberty groups or clergymen to publicise their feelings, and who, accordingly, bring upon themselves the full measure of psychological and sometimes physical sadism which the State has devised to serve its ends. Inadequate and irresponsible as such protests may be, in contrast to the C. O.'s planned actions, carefully toned down so as not to offend certain sections of public opinion, they do reflect a craving for some kind of freedom which, in many cases, is not even expressed in positive terms. The capitalisation of 'honesty', 'sincerity' etc., has tended to alienate me from the majority of C. O.'s.

The tone here is not that of the righteous man 'unjustly' sent to prison, but of identification with all those who lie in jail, and it recalls the words of another American, Eugene Victor Debs, addressing the judge who sentenced him to ten years imprisonment in 1918 on a charge of obstructing the war effort: "Years ago I recognised my kinship with all living beings, and I made up my mind that I was not one whit better than the meanest on earth. I said then, and

I say now, that while there is a lower class I am in it; while there is a criminal element, I am of it; while there is a soul in prison, I am not free.”

The emergence in the last few years of new campaigns of protest against war preparations and of civil disobedience has brought a new wave of experience and concern with the prison system, as supporters of the Direct Action Committee, and its successor the Committee of 100, have been given time and opportunity at the expense of the government to reflect on the possibilities and limits of penal reform. Laurens Otter, while at Eastchurch during his six month sentence following the second demonstration at the Atomic Weapons Research Establishment at Foulness last year, was actually asked to give a paper on prison reform. This, he remarks, for a person who believes that prisons are essentially evil and not capable of reformation, was a little difficult. “It however made me start by asking the jackpot question – what, given the aim of maintaining existing society, is the point of prisons? How far can one make prisons sane, without thereby making people sane enough to wish to overthrow existing society?” Later in his pamphlet *Prison – From the Inside* (Socialist Current, 1d.) he pulls himself up, after declaring that prison should be, as far as possible, a self-governing community:

But steady, you’re going too far – self-governing community, constructive work: if you really mean this then you mean something that doesn’t exist in our society – and you can’t produce it in prison without causing people to want it outside. Perhaps one must revert to the old saying that in order to change the criminal one must have one’s prison reform not in prison but outside.

Ask an anarchist what should be done about prisons, and you will get the answer “Pull them down”. Ask a criminologist, and,

cure.

The Chief Constable should know that many men who are now serving from five to fourteen years’ preventative detention have never been involved in violence nor committed crimes of any seriousness but have been ‘put away’ because of their nuisance value to society – like the man recently who, two months after completing his second term of preventative detention (eight years), in a state of loneliness and uselessness stole from a motor-car, and telephoned the police so that they should arrest him. With no lawyer or friend to help him in court, he was sentenced to a third term of imprisonment – 12 years’ preventative detention.

What more does the Chief Constable want?

–MERFYN TURNER in a letter to *The Guardian* 8/3/61

One of the dangers implicit in the concept of crime as disease is that in sweeping away the concept of criminal responsibility, we sweep away such protection as the courts provide for the accused. Margery Fry saw this years ago, when juvenile courts were first being instituted. “I think,” she said, “there is a kind of feeling that a child’s matters are small matters, and can be met by kindness and goodwill, and there is a certain danger of not giving the child his rights if you do not maintain these laws” (the rules of evidence). And Clarence Ray Jeffrey, in his concluding essay on the historical development of criminology in Hermann Mannheim’s *Pioneers of Criminology* refers to the wholehearted acceptance of the crime-equals-disease formula by some American criminologists who propose such reform measures as the elimination of prisons, punishment, the jury system, the concept of free will, and other aspects of the legal system, and for the replacement of judges, juries and prisons by scientists and mental hospitals. Jeffrey comments:

should be detained for an indefinite period, long or short, until he is 'fit' to be released. This policy is already followed in this country, within the limits of maximum sentences, in committals to Borstal and in the last stage of preventative detention. It exists in reverse in the remission system where sentences may be shortened conditional upon good behaviour – forfeiture of remission being among the punishments imposed by the governor or by the “secret trials” of the visiting committee. But the cruelty of the idea of the indeterminate sentence, impeccable though its logic is from the point of view of the reformer, surely makes it repugnant from a human standpoint.

Or consider some of the implications in the concept that crime is a symptom of mental disease. We all subscribe to this view simply because we all have our private definition of crime. But there exists also the public definition of crime – any action forbidden by the law. When Colin Smart, one of the Direct Action Committee prisoners, reflecting on his prison experiences, recommends “making psychiatric treatment the basis of any sentence”, he forgets that he too is a ‘criminal’. An American friend of ours was incarcerated in a federal penitentiary during the war for his opposition to it. The war-resisters started a hunger strike against racial segregation in the mess-hall. They were taken off to the psychiatric ward and harangued by the psychiatrist about their dubious motivation. “Sure,” our friend replied, “sure I want to rape my grandmother. Now about this segregation issue ...”

We have overcrowded prisons not particularly because more men are being received into them but because the sentences imposed have become more severe. The Courts already have the power to imprison men for 14 years because they continue to commit crime. And they have the power to repeat the dose if the first – as it so frequently happens – effects no

more frequently than you might expect, you will get the same reply. But we live in a social climate in which although everyone seems to be fascinated by crime provided that it is of the more spectacular variety, few people are interested in the criminal, except to advocate physical violence on him. Three-quarters of the population of this country are said to favour the retention of capital punishment, and (according to the Daily Mail’s National Opinion Poll) 83% of the British public – including of course the Lord Chief Justice, favour the re-introduction of flogging and birching. The clamour on this topic at the annual conferences of the Conservative Party has become rather a joke among sophisticated people, and this year’s performance was very subdued, though if you heard the BBC’s report of the conference on October 12<sup>th</sup>, you heard a delegate declaring “They should be sterilised”, while another voice interjected, “Flog them first”, in a nice little psychodrama of the fantasies of pain and mutilation which accompany the urge to punish.

In such a society, where Parliament is more “progressive” than public opinion and the judiciary, and where the Prison Commissioners are more progressive than Parliament (and that’s not saying much), the question of whether or not we favour penal reform is an academic one. Just as we have always supported the various campaigns against the death penalty, so we are bound to support those measures which seek to keep society’s deviants out of jail and to alleviate the rigours of imprisonment, not because we think they will “solve the problem of crime”, but simply because we are humane people, and anyway it might be our turn next. In practice this means supporting – though with reservations – the Howard League, the product of the amalgamation of existing bodies at the time of the Prison System Enquiry Committee in 1921. The League is an influential private pressure group or lobby, as well-informed about prison conditions as the officials of the Home Office with whom it negotiates. Gordon Rose, in his recent book *The Struggle for Penal Reform* (1961), which is as interesting as a study of the

operation of pressure groups as for its detailed history, points very clearly to one of the would-be reformer's many dilemmas:

There is always a latent section of opinion amongst its supporters which feels that it is flabby, unenterprising and much too friendly with the authorities. 'Hit them hard and go on hitting them,' is a doctrine which recommends itself to the enthusiast who is disgusted with the state of the prisons or horrified by the continued existence of corporal or capital punishment. Thus, there is always a threat of splintering at the extremes, or at least of loss of membership. This is particularly true if progress in any sphere is slow or non-existent. The split in the women's suffrage movement is an obvious example of this. And indeed, well-timed and well-organised militancy may undoubtedly be effective.

The gently plodding reforming society is not organised for this, and may well be unable to seize the opportunity as it should. Thus, it may suffer by comparison with the activities of the militants. The best militant campaigns, however, do not last long – and the reforming society is likely to emerge shaken but still alive and kicking.

Nevertheless, there remains a conflict between the need to fight and the need to remain friends with the enemy. The only effective way of doing this is to convince one's opponent that it is really all for his own good. The Chairman of the Prison Commissioners has described the Howard League as H.M. Opposition to the Prison Commission, and this is largely true because he and his colleagues want it to be true.

This is a role singularly unattractive to anarchists, who would be quick to point out, as Bernard Shaw did, that "our prison system is a horrible accidental growth and not a deliberate human invention, and that its worst features have been produced with the intention,

not of making it worse, but of making it better." Not that this was the fault of John Howard or Elizabeth Fry; "their followers were fools: that is all". This view may seem capricious or antiquated in view of the actual character of the reforms promoted in this century by the Howard League (and by its allies on the Prison Commission like Alexander Patterson, who declined the chairmanship in order to remain as he put it, a missionary) in the face of public and parliamentary indifference or hostility, as well as that of the prison service itself. But you have only to look at them through the eyes of a convicted man to see how superficial they are. See for instance Frank Norman's *Bang to Rights*, or William Kuenning's "Letter to a Penologist" in *Prison Etiquette*:

The prisoner in the modern liberal and scientific institution has most of the same frustrations as the man in the old-style prison or modern county jail – but with this added disadvantage: he is now managed 'scientifically' from some remote control board to which he does not have access. No prisoner has any confidence that the immense amount of data which is collected on him will be used for his benefit. Most prisoners know that the subtle pressures constantly put upon them have nothing to do with their welfare but much to do with 'prison security' – and with the job security of the penologist. The prisoner's need to live and the system's attempt to live for him (and off him) can never be reconciled.

Consider one penal reform measure which has been mooted ever since Beccaria: the indeterminate sentence. Since one of the alleged purposes of imprisonment is to train the transgressor into becoming a 'useful citizen', it is obvious that the short sentence is useless and that the time it takes to 'reform' him may bear no relation to the sentence imposed by the court. Therefore the prisoner