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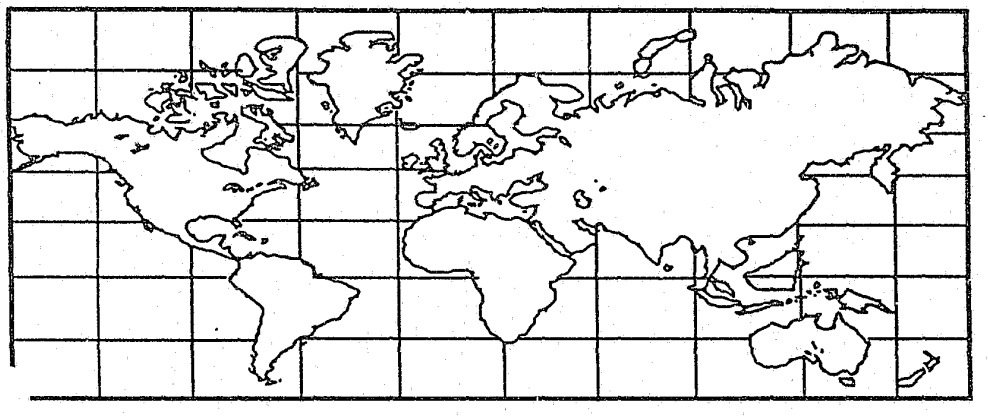
OBSERVATIONS ON PAROLE:

A COLLECTION OF READINGS FROM WESTERN EUROPE, CANADA AND THE UNITED STATES



ASSOCIATION OF PAROLING AUTHORITIES INTERNATIONAL

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OBSERVATIONS ON PAROLE:

A COLLECTION OF READINGS FROM WESTERN EUROPE, CANADA AND THE UNITED STATES

Proceedings of the First
International Symposium on Parole
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FOREWORD

On April 6-9, 1986, the Association of Paroling Authorities International (APAI) hosted the first International Symposium on Parole at the Lyndon B. Johnson School of Public Affairs, University of Texas in Austin, Texas.

The Symposium brought together over 150 parole and criminal justice professionals from Europe, the United States and Canada. For three days the participants discussed the many complex issues, and problems impacting on their respective jurisdictions. Of significance were the attendance and presentations by representatives from five European countries and Canada.

A majority of the presentations made during the Symposium are included in this document. They have not been edited or revised. Rich in detail, they cover a wide array of topics confronting paroling authorities in much of the Western world. The articles offer a "sympathetic" assessment concerning the current status and future prospects of parole, as well as the relationship of parole to the other components of the criminal justice system. Together, the articles provide far-reaching proposals and insightful analyses--written from the point of view of policymakers and committed advocates of criminal justice reform.

The National Institute of Corrections is making these papers available so that those who did not attend the Symposium can review the proceedings. The presentations contained here offer an opportunity to reconsider the issues and concerns voiced during the First International Symposium on Parole in the United States.

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PART I

INTERNATIONAL PERSPECTIVES ON PAROLE

PAROLE IN THE UNITED KINGDOM

By
Eric Morrell

An Overview of the United Kingdom

Since the Second World War, the total population of the United Kingdom has risen gradually to its present level of around 56 million. This unremarkable statistic conceals, however, two very fundamental changes in the structure of society within the United Kingdom which are relevant to criminal justice matters.

Population

About 20% of the United Kingdom's population is over retirement age. In economic terms, this obviously means that the non-productive population represents an increasing drain on the working population. In criminal justice terms, many believe--without statistical support--that a growing section of the population is especially vulnerable to criminal activity.

Ethnicity

Over the past 30 years, the proportion of the United Kingdom's population originating from either the Afro-Caribbean countries or from the Indian subcontinent, has now become a sizeable minority of the population. Many people believe that there has been widespread discrimination against these groups within the criminal justice system as elsewhere; it is suggested that blacks are more likely than whites to appear in court and that they are more likely to be sentenced to custody when they do appear in court. In recent years, there has been a backlash of black protest. The police are a particular object of black hostility.

Unemployment

Unemployment in the United Kingdom as a whole stands now at around 14 percent of the working population and seems to have settled at about this level.

Addictions

Drinking is a long-standing social problem within at least some parts of the United Kingdom and it is now on the increase. In addition, there is growing concern about drug abuse.

Homelessness and Bad Accommodation

Although the numbers of people affected by these problems are relatively small, the link between these problems and crime seems to be well established.

There are marked regional and local variations in the incidence of these social factors within the United Kingdom.

The Criminal Justice System in the United Kingdom

1. Crime Trends

The level of recorded crime in the United Kingdom has risen consistently over the past 20 years, though there is some skepticism about the accuracy of the recording.

2. Criminal Justice Authorities

a. Courts

There are essentially two groups of courts within England and Wales.

The great majority of criminal work is dealt with through Magistrates Courts whose greatest power is to sentence for 12 months imprisonment. Most magistrates are unpaid people from the community. Technically, they are appointed by the Lord Chancellor. In practice, they are proposed by local magistrate selection committees. Despite periodic grumblings that the magistracy is a self-perpetuating body from a rather narrow cross-section of society, it is widely supported within the United Kingdom.

The more senior court is the Crown Court at which a legally qualified judge or recorder, who has been appointed by the Lord Chancellor, presides.

b. Police

The 43 police forces in England and Wales are equally funded by the Home Office (the responsible Central Government Department) and Local Authorities. They are technically answerable to Police Authorities which comprise a mixture of magistrates (see above) and Local Authority counsellors. The Home Office has the right to inspect.

c. Prisons

The Prison Department is entirely centrally controlled.

d. The Probation Service

The Probation Service which only exists in England, Wales and Northern Ireland, is accountable to local Probation Committees which are comprised predominantly of magistrates. It receives 80 percent of its cash from the Central Government and 20 percent from the relevant Local Authorities. Despite that and contrary to the general current trend towards centralization, the Probation Service has traditionally had firm links with Local Authorities and has been heavily influenced by them.

3. Attitudes to Crime

a. There is a widespread fear of violent crime.

b. The British Crime Survey has shown that by and large, people are less punitive towards offenders than had traditionally been thought.

c. The cost of current Criminal Justice System is beginning to cause concern.

These attitudes have led to two developments.

a. There is a growing belief that fewer offenders should be processed through the courts, especially in relation to juveniles.

b. For several years now, there has been strong encouragement to all courts to consider alternatives to custodial sentences whenever possible.

Parole: An Introduction

1. Enabling Legislation

The Criminal Justice Act 1967 (Section 60) made provision for the release on license of any prisoner who had served one-third of his or her sentence, subject to the provision that he must serve a minimum period of 12 months. The Criminal Justice Act 1982 (Section 33) reduced this minimum period to six months. In practice, Section 60 cases now include those originally sentenced to roughly two years imprisonment or more, while Section 33 cases include those sentenced to roughly 1-2 years.

2. The Decision-Making Process

The decision to release on parole rests with the Home Secretary. He receives advice from one or both of two sources: the Local Review Committee at the relevant prison and/or the parole board. Local Review Committees comprise prison staff, probation officers and independent members (who might be virtually anybody). The parole board comprises about fifty members, including judges, psychiatrists, doctors, probation officers and lay members.

Local Review Committees have always considered every case and since 1972 have been able to make recommendations, in relation to less serious offenders, directly to the Home Secretary without routing their views through the parole board. In the early years of parole, the parole board had to consider every case. Since 1972, it has only considered the more serious offenders.

Decisions are guided by reports from prison staff, probation officers selected to work as welfare officers in penal institutions, probation officers in the home area and, when necessary, doctors.

There is one further important influence on the decision-making process. The Parole Unit within the Home Office uses a prediction score in relation to all cases which the board considers. It also produces that score for samples of cases dealt with by Local Review Committees as a check on the work of those Committees.

3. The Home Secretary's Use of Discretion

Home Secretaries theoretically exercise their discretion in relation to every case considered for parole. In practice, the Home Secretary is likely to take the final decision only in relation to the most serious offenders considered for parole.

In addition to these individual decisions, Home Secretaries have on two occasions issued general guidance which has influenced the development of parole in the United Kingdom. In 1975, Roy Jenkins effectively increased the use of parole after several early experimental years. In 1983, Leon Britton announced that he would exercise his discretion "to ensure that prisoners serving sentences over five years for offenses of violence or drug trafficking, will be granted parole only when release under supervision for a few months before the end of a sentence is likely to reduce the long-term risk to the public or in circumstances which are generally exceptional."

4. Total Releases

After some years of operation, the rate of discharge on parole settled at roughly 50 percent of all those considered. In 1980 for instance, 5,088 men and women were released on parole out of a total of 10,756 who were considered. The reduction of the minimum qualifying period has lead to a substantial increase in the rate of release on parole: more prisoners have obviously become eligible. In addition, the parole board has indicated that in the case of those serving shorter sentences, there should be a presumption in favor of release on parole.

In 1984 (the last year for which complete figures are available but, it is important to remember, a year in which the full effects of reducing the minimum qualifying period on July 1, 1984, had not yet materialized) 11,909 men and women were released on parole out of a potential total of 19,592. 53.2 percent or more serious offenders (Section 60 cases) were released, but 76.4 percent of short sentence offenders (Section 33) cases were released.

5. Supervision

Prisoners released on parole are usually subject to supervision during the middle third of their sentence; the main exception is that young offenders under 21 are under supervision for the final two-thirds of their sentence. All parole licenses include standard conditions relating to the parolee's contact with his/her supervising officer, behavior, residence and employment. Additional conditions can be inserted in appropriate individual cases.

The supervision of all parolees is the responsibility of the Probation Service.

6. Recall

Parolees can be recalled following either the commission of a further offense or a breach of the conditions of the license, usually on the authority of either the parole board or a Crown Court. In exceptional

circumstances, the Secretary of State can order a recall. In the last six months of 1984, 7.2 percent of Section 60 cases were recalled, while only 1.3 percent of Section 33 cases were recalled.

7. Current Views of the Parole System

a. Overall, the United Kingdom parole system is felt to be a powerful and positive influence within the prison system and a fairly effective control on men and women during the period of parole supervision.

b. There is unease about some aspects of the system.

i. The parole board has always refused to give reasons for its decisions and while on balance this is accepted, there are constant discussions about possible ways of saying more about the process to the prisoners involved.

ii. From time to time, the administration of the parole system becomes bogged down. At worse, decisions are only made after the date on which a prisoner becomes eligible for parole.

iii. There is also widespread misgiving that judges may at times adjust their sentences upwards to compensate for the possibility of early release on license.

These sources of unease, however, do not undermine confidence in the system as a whole.

c. There is a debate currently being waged about the substitution for parole of automatic release on license (possibly after the service of one-third of the sentence). Some persons predict that such a step would remove the important control elements of the parole system.

An Assessment of Parole in the United Kingdom

What follows elaborates on the strengths and weaknesses of parole in the United Kingdom and on the critical ingredients leading to relative success or failure.

The United Kingdom experience of Section 60 parole is encouraging and the factors contributing to the success of the system may be identified. Section 33 parole, a much newer and as yet relatively unknown component, must at this stage be regarded as an uncertain asset not least because some of the factors which contribute to the success of Section 60 parole are missing in the case of Section 33.

The Success Story

Section 60 parole which has now operated for approaching 20 years may be described as a success. Indeed, within the United Kingdom criminal justice system about which there is widespread pessimism and which is generally regarded as a graveyard for political and social aspirations,

Section 60 parole and community service are generally regarded as by far the most constructive and effective measures introduced in recent years.

Since Section 60 parole became fully established, it has allowed the Home Office to release roughly half of all prisoners serving sentences of two years or more into the community after serving between one-third and two-thirds of their sentences. The average length of license in recent years has been about five months.

Section 60 parole has also produced one other major benefit. There is little doubt that the prospect of parole has operated as an important control agent during prison sentences and possibly to a surprising degree during the period of license. The strain does occasionally become too much for an individual prisoner during sentence and there have been breakdowns--some of them dramatic--during license. On the whole, however, the controlling function of the parole system is demonstrable and widely regarded as a good thing.

The acid test of any social measure is, of course, public acceptability; on that score, the Section 60 parole system undoubtedly comes out well. The indicator for that is the absence of media coverage. The obvious point is that the United Kingdom media pays relatively little attention to parole which is by no stretch of the imagination part of the media staple diet. It is safe to conclude that the general public believes that the parole system includes enough control mechanisms. And those failures which have occurred have not been great or numerous enough to fundamentally shake that confidence.

That sense of public confidence has been largely shared by the judiciary. There are persistent misgivings that some judges adjust their sentences upwards to take account of probable releases on parole. There is also some suspicion that judicial confidence may occasionally rest on relative ignorance of the parole system. Against those rather jaundiced views, however, must be set the evident support of the judiciary, many of whose members have by now served on the parole board.

An Uncertain Quantity: Section 33

By contrast, Section 33 parole of which we so far have relatively little experience shows signs of being a much more problematic matter. There was the misgiving from the outset that this form of parole was a fairly blatant pragmatic attempt to simply reduce the prison population by a few thousand. The parole board itself, which plays relatively little part in the Section 33 process, has always appeared somewhat cool. And misgivings about Section 33 parole are currently being fueled by the apprehension--yet to be tested by adequate statistical information--that more of those released under Section 33 will reoffend during the period of parole than has been the case with those released under Section 60.

Section 33 parole will, of course, allow many more prisoners to be released. At this stage, however, it remains an open question whether or not the system can carry public confidence. And, if it does not carry public confidence, we must ask whether it can be allowed to survive and inevitably jeopardize the standing of Section 60 parole.

Factors Affecting Parole Success and Failure

Over the years, the United Kingdom parole system has attracted a great deal of discussion. These discussions remain lively during the current phase of uncertainty about Section 33. Six factors have quite clearly contributed to the success of Section 60 parole. The absence of some of those factors may well affect the future of Section 33 parole.

Among the six factors, four are tangible and measurable.

1. Parole Dossiers

During the 1970's, the format of the parole dossier for Section 60 cases became well established. Dossiers invariably comprise information from the police about the nature and seriousness of the original offense, a record of the prisoner's previous criminal history, a number of reports from prison staff on the inmate's behavior during sentence, a report by a probation officer on the offender's home circumstances and a report by another probation officer assigned to work as a welfare officer in the prison on a variety of matters including the inmate's response to previous supervision. Provided that the various reports are of a good standard, Local Review Committee and parole board members considering a case, should not have a shortage of information. Indeed, there is occasionally criticism that parole dossiers are too long and too cumbersome.

The Section 33 parole dossier is by contrast perfunctory; Home Office notes describe it as "routinized and abbreviated." It contains no police report on the original offense, relatively few prison reports. Moreover, the probation officer's home circumstances report is reduced to a very simple checklist.

2. The Decision-Makers

There are three critical groups of decision-makers in the United Kingdom parole system. All in my view--and the view of most other observers--have proved their worth over the years.

The first decision-making forum is the Local Review Committee (LRC) at the prison. Although a somewhat mixed bag of people and despite the fact that they have often failed to recruit a true cross-section of the community (they typically include relatively few manual workers and relatively few members from ethnic minorities) they have shown sound judgement. For practical purposes, Local Review Committees decide the outcome in the case of all prisoners sentenced to up to four years imprisonment for property offenses and up to two years imprisonment in other cases. It is quite clear that Local Review Committees have generally proved reliable judges with those groups of offenders. In the case of more serious offenders, LRC's act as the first filter and have again generally proved reliable: the correlation between their initial opinions and final outcomes is high.

One important contribution to their success has been the practice of ensuring that one member of the LRC interviews each

candidate for parole. The purpose of that interview is to check the candidate's personal statement and not to assess his suitability. Those interviews together with the various documents in the parole dossier have led to a situation in which LRC members are able to form a judgement on the basis of accurate information.

The parole board has similarly proved its reliability in relation to both release and recall decisions. Membership on the parole board is widely regarded as a distinction and has invariably been taken seriously by all professions which contribute to the board's work.

The Parole Unit (i.e., officers working for the parole board--not decision-makers but clearly an important influence) has refined its activities especially in the sphere of predictions. It plays a particularly important role in reassessing those prisoners considered by LRC's to be unsuitable but emerging with a low probability of reoffending. The Parole Unit has the power to refer such cases to the parole board and so has contributed to a substantial number of such cases being released without undue failure rates and without greatly taxing the parole system.

These decision-making groups have kept themselves almost entirely free of political influence. The only demonstrable political influences on the parole system throughout its entire existence, have been the two sets of guidance issued by Home Secretaries in 1975 and 1983.

Similarly, the decision-makers have avoided any influence by victims or victim's associations. Within the United Kingdom, Victim Support Schemes have multiplied rapidly in recent years. Those schemes, however, are designed to deal with the problems of the victims in the wake of offenses. There has never been a serious suggestion within the United Kingdom that victims should play any part in the subsequent treatment of offenders. Indeed, such a suggestion would be remote from thinking in any quarter of the United Kingdom. The only current links of any sort between offenders and victims take place within a few experimental reparation schemes which are quite separate from the parole system.

In short, the success of the United Kingdom parole system has been built to a very large extent on the reliability and independence of the decision-making process.

3. Effective Help on Release

Reviews of the Probation Service work with parolees over the years have consistently shown that probation officers devote a great deal of time to helping parolees resettle in the community. Both probation officers assigned as welfare officers in prisons and field probation officers maintain contact with inmates and their families, where they exist and help likely parolees arrange future employment. By way of back-up facilities, most probation areas have in recent years devoted a great deal of energy to the

establishment of special accommodation facilities and occupation schemes which can absorb parolees who are released without a permanent home and/or job to go to. Prisoners are simply not released to a life of homelessness or idleness. It can confidently be said for both Section 60 and Section 33 parole cases that the preparations for release are generally good.

The Probation Service believes that it must now pay substantial attention to the provision of adequate services to help those with addiction problems. Over the years, there has been endless debate within the United Kingdom about this situation and the debate has led to very little action. The development of services aimed at this problem will mark a further step forward in the process of re-establishing parolees in the community.

4. Sanctions

At an early stage in the history of United Kingdom parole, two sanctions were established.

The first relatively modest control is the practice of chief probation officers, in consultation with the Parole Unit, issuing warning letters whenever parolees break the conditions of their licenses in relatively minor ways or show behavior which prima facie could lead to further offenses. That well established procedure appears very insubstantial. Experience over the years has, however, shown it to be valuable to many cases.

The more serious sanction is, of course, the power to recall. That power is enjoyed by both the parole board and, in the case of parolees who have committed a further offense, by the Crown Court. Both the board and the Crown Courts have shown themselves willing to exercise this power of recall if there appears to be serious risk.

These two levels of control and sanction have been effective in the case of Section 60 parole. It is, however, difficult to see how they can be effective in the case of Section 33 parole; the brevity of the license period often makes it impractical to exercise sanctions in these cases. The likely absence of any true sanctions may well prove to be one of the most damaging features of Section 33.

Beyond these four relatively tangible features of the United Kingdom parole system, two more elusive factors have affected the fortunes of the parole system.

1. The Need for the Prisoner to Work for Parole

Parole in the United Kingdom is a privilege to be earned, it is not automatic.

Throughout the history of Section 60 parole, decisions have been made substantially on the strength of the prisoner's behavior during sentence and of his preparation, in collaboration with

the Probation Service, for release. The requirement that the prisoner contributes significantly to the outcome of his own application has done much to influence public and judicial attitudes.

The early history of Section 33 parole has been rather different. Parole is still a privilege and theoretically the prisoner still has to work to earn it. In practice, however, two factors reduce the need for the prisoner to make the sort of effort demanded of Section 60 cases.

a. The first problem comes from the fact that the timeframe only allows one parole review to take place in Section 33 cases. It appears that knowledge of that factor influences LRC's to err on the side of generosity regardless of the prisoner's behavior and future plans.

b. The second factor is the quite public statements from both the Home Office and the parole board that for Section 33 prisoners there should be a presumption in favor of parole. The public stance is supported by the practice of referring to the parole board all cases handled by a LRC which recommends for release less than 50 percent of Section 33 cases.

The requirement--or relative lack of it--that the prisoner must work for parole is in my view possibly the most critical factor affecting the standing in public and judicial esteem of the parole system.

2. A Sense of Justice

The other crucial if somewhat elusive influence in the outcome of the parole system is the degree to which it is seen to be a just system. By and large, Section 60 parole has been seen in this way, not least because it is clearly a reward for effort. The Home Secretary's 1983 guidance which in effect limited the prospects of parole for violent offenders in a way which was manifestly acceptable to the general public, served, of course, to confirm that sense of justice within the Section 60 parole system.

Section 33 parole suffers somewhat at this stage from a failure to establish itself as such a fundamentally just system. There are two problems.

a. First, it is difficult to argue that Section 33 parole is a reward for effort in a manner comparable to Section 60.

b. The second problem is easily missed. Section 33 parole fails in fact to distinguish between a large range of prisoners serving between roughly ten months at the lower end and eighteen months at the upper end of the range. All of these prisoners are eligible for release on parole after six months.

It has to be acknowledged that Section 60 parole has a similar weakness in that it could fail to distinguish between a man who was sentenced to as little as 21 months and a man sentenced to 3 years. In practice, the parole board has more room for maneuver at these sentence lengths and does succeed in distinguishing them to some degree.

This elusive quality is likely to prove a further fundamental influence on the future of parole. The system will survive in the long term only if it is perceived to be sound and just.

Conclusion

Within the United Kingdom, there is substantial confidence in the long-standing procedures for Section 60 cases. That confidence rests on six factors.

1. The parole dossiers are comprehensive.

2. The decision-making process has proved itself to be reliable and independent.

3. Release plans are generally sensible and thorough.

4. The existing sanctions are effective.

5. The system demands that the prisoner works for parole. This satisfies public opinion and creates in the prisoner attitudes which serve him well during the parole period.

6. It is believed to be fundamentally just.

The fledgling Section 33 parole system clearly does not yet meet all these criteria. Specifically:

1. The dossier information is far inferior to that for Section 60 cases.

2. The sanctions are less effective.

3. The system demands less from the prisoner.

4. There is less confidence that the system is just.

There is no serious question mark against the future of the Section 60 system as we have known it over the past 18 years. Within the United Kingdom, this system will continue for the foreseeable future vis a vis prisoners subject to sentences of about two years or over.

The future of the Section 33 system is less certain. In the short term, efforts to improve the system will be made. There will be debate about the possibility of introducing effective sanctions and the further possibility of making more tangible demands on the prisoner. If it proves impossible to replicate in the Section 33 system the features which have lead to the success of the Section 60 system, it is possible that the

Section 33 system will be eliminated and other alternatives pursued for dealing with short-term prisoners. Continuing weaknesses in the Section 33 system will not be permitted to damage the parole system as it currently operates for longer sentenced prisoners.

THE PAROLE SYSTEM IN CANADA

By
Margaret Bensen

An Overview of Canada

From the perspective of population alone, Canada is a strip about 150 miles deep, stretching 3,600 miles along the 49th parallel which marks the northern border of the United States. The population is 25 million, 6 million of whom are French-speaking. Canada is comprised of many ethnic groups who have tended to maintain their ethnic identity. In addition, regional identity is strong as well, leading to negotiation and conciliation in federal provincial relations.

Canada has a strong tradition of government intervention and a post-war tradition of support for the collective provision of public services (e.g., health insurance, public housing, family allowances, universal pensions and hospitals). There is generally less distrust of government than in the United States with the concomitant expectation that government is the appropriate body to deal with social problems. Public control is perceived as needed to provide regulated standard and efficient services. This attitude has been traditional but there are signs now that it is being questioned.

Canada is a Federal State with separation and distribution of powers between federal and provincial governments. The Criminal Law power is federal; therefore, there is one Criminal Code which applies throughout Canada. Provinces are able to create sanctions for violations of statutes which are under their authority to enact, e.g., in less serious driving offenses, liquor offenses, traffic offenses, etc. The delivery of education, health and welfare services, is already a provincial responsibility with the federal "presence" being maintained by funding/standards.

The Administration of Justice

The provinces are responsible in addition for the administrative of justice, including the appointment of prosecutors. The provinces also appoint the judges of the inferior or provincial courts, which try more than 90 percent of criminal offenses. The federal government appoints and pays judges of all the provincial superior courts. In most provinces, these include district or county courts and a supreme court divided into trial and appellate divisions.

The Supreme Court of Canada, administered by the federal government, is the court of last resort for the entire country. The Federal Court handles cases arising from actions of federal departments or agencies. This court is very active in litigation surrounding procedural safeguards and interpretations of the Charter of Rights and Freedoms.

The Charter, enacted three years ago, is Canada's constitution. It has, in effect, replaced the old British principle of Parliamentary supremacy and given to the courts, in essence for the first time, an interventionist role. How creative the courts will be is yet to be seen clearly,

although it is likely that they will continue to use the Charter to impose procedural safeguards to Administrative Tribunals, including parole.

The responsibility for prisons is split on the basis of length of sentence--less than two years, provincial; two years or more, federal. The provinces are responsible for probation, which is widely used and generally considered of good quality. This split is, however, not absolute: exchange of services agreements of a wide variety exist. The divided jurisdiction has led to an uneasy relationship between the two levels of government and some tensions between provinces.

Prisons average 400 inmates with a staff to inmate ratio that runs 11:2. Canadian Indians are overrepresented in penitentiaries. Double-bunking costs per inmate, range $30,000-$45,000 a year. The spiralling costs is an urgent problem.

An Introduction to Parole

The Parole Act is a federal statute which inter alia allows provinces who choose to set up paroling authorities for inmates in provincial institutions (i.e., less than two years). Three provinces have chosen to do this: Ontario, British Columbia and Quebec. The National Parole Board is responsible for all federal prisoners (over two years) and provincial inmates in the seven other provinces and the two territories.

Although there are sentences of life imprisonment and to preventive detention, (these inmates comprising 10 to 12 percent of penitentiary population), the majority of sentences are for definite periods imposed by the Court. The Federal Parole Board makes the consideration of parole eligibility of 1/3 or seven years of sentence, whichever is the lesser. Grant rates in the federal system average at roughly 38 percent; in provincial boards, somewhat greater. Although parole eligibility is at one-third, a gradual release program (day parole) can be granted after 1/6th of the sentence. In fact, gradual release is utilized in 85 percent of cases whether it is initiated at 1/6th (very few) or later in the sentence--often after parole eligibility, or just prior to mandatory supervision. For those denied parole, mandatory supervision becomes operative at the roughly two-thirds point in federal penitentiaries. Mandatory supervision does not apply to the provinces. Field supervision is undertaken by Parole Officers under the Corrections Branch who sometimes use private agencies (non-profit) to assist on contract.

The National Parole Board is responsible for temporary absences from federal prisons but the Provincial Boards do not have this responsibility. Appointments to the parole board are for varying terms but average at five years. The parole board has a great deal of autonomy, both from the legislative and the executive branches of government.

In Canada, parole derives historically from the Royal Prerogative functions (Executive Clemency), rather than from the rise of the indeterminate sentence (U.S. experience). Currently, Canada is in a great deal of turmoil with regards to criminal justice policy affected by many of the same factors as are affecting the United States, e.g., fiscal restraints, greater disillusionment with government, greater concern over violent crime. One factor which probably weighs more heavily on Canada than on more distant countries is the greater influence that trends in the United

States have on Canada through the media, etc. A major criminal law review is in process with the future direction somewhat uncertain. A sentencing commission is currently studying the imposition of guidelines on the judiciary. The judiciary which has a tradition of independence and conservatism is resisting. The differences in our history and tradition make "adoption" of U.S. ideas somewhat dangerous without considerable modifications.

The outcome of this is unclear. One of the possible "imported" solutions from the States is the abolition of parole. At the present time, parole authorities do not utilize guidelines because, inter alia, of the difference in our sentencing structure, and the stronger role that the courts have always maintained in the sentencing process. Canada does not have three quarters of a century commitment to the indeterminate sentence. Sentencing in Canada has been largely based on the determinate sentences structure, although limited use of indeterminate (life) sentences and those of preventive detention has been employed (10 percent current federal prison population). Judges have always maintained a strong influence on sentencing. Appellate review has resulted in a strong tradition of direction to the lower courts. Presumptive sentencing has no tradition in Canada and is being resisted by the judiciary.

In the public mind, there is a great deal of confusion over the meaning of sentence because of the many ameliorative mechanisms, e.g., parole legislation and remission that may modify the actual length of sentence considerably. Thus, credibility issues are underlying the dissatisfaction with the administration of justice. The second major factor is the impact of restraint and the increasingly desperate search by governments for more economical alternatives to the present system. The tension between the Government seeking more economical measures and the Courts requiring higher and more costly standards of procedure will obviously shape the immediate future.

The National Parole Board

Though stated above, the National Parole Board is responsible for;

(1) federal inmates serving sentences of two years or more

(2) provincial inmates serving less than two years in the seven provinces and two territories that have not established provincial parole boards. The board is comprised of 26 full-time members located in five regions across the country and in a headquarters office. In addition, nine person-years of part-time members are available to assist in the regions as well as a number of "community" members who vote solely on the potential release of those inmates serving life sentences for murder or indeterminate sentences as dangerous offenders.

Federal inmates serving two years or more are entitled to a panel hearing, when they are eligible for full parole (at 1/3 of any definite sentence) and every two years thereafter until released. Procedural safeguards include the sharing of information with respect to full parole reviews, written reasons for a denial decision, the right to an assistant at hearings, the right to a hearing following suspension, and a right to an appeal of most negative decisions. Provincial inmates under federal

jurisdiction have reviews on application and are not provided panel hearings.

Federal inmates serving definite sentences of two years or more are eligible for day parole after serving one-sixth or six months of their sentence, whichever is longer. They are eligible for full parole at one-third of the sentence or seven years, whichever is shorter. If not released on parole, they are released under mandatory supervision to serve whatever remission they have earned, of which the maximum is one-third of the sentence. Life sentences for murder have parole eligibility dates ranging from 10 to 25 years as set by the courts. Dangerous offenders are reviewed after three years and every two years thereafter.

Trends Impacting on Parole

In addition to the issues already discussed, the federal penitentiaries are facing overcrowding and double-bunking in some regions. This situation could be exacerbated. Concern about the release of violent offenders had led to new legislation being considered which would authorize the National Parole Board to detain some dangerous inmates beyond the two-thirds point in the sentence until completion of the full sentence. To counterbalance the additional pressure this would place on overpopulation, the legislation would, however, also provide for automatic review with panel hearings at the day parole eligibility date. While overcrowding is thus a problem facing correctional authorities, it is not a factor taken into consideration in individual parole board decisions.

A second trend relates to an increase in litigation. The Charter of Rights and Freedoms, enacted three years ago, has substantially increased the number of issues related to the parole process that are now coming before the Courts. These issues include under what circumstances hearings need to be provided, to what extent confidential information must be shared, and to what extent greater elements of due process, such as right to counsel, should apply. All administrative tribunals are coming under closer scrutiny by the Courts but particularly those such as parole boards whose jurisdiction touches on the liberty of individuals.

PAROLE IN THE NETHERLANDS

By
Hans Tulkens

An Overview of the Netherlands

The Netherlands is a small but densely populated and highly developed country situated on the North Sea at the estuaries of three major rivers. Consequently, it has come to seek its livelihood mainly in shipping, commerce and transit trade, the latter comprising the transport of goods to the countries lying further inland which are also densely populated, highly developed and highly industrialized.

The surface area is 37,000 square kilometers and the country has 14 million inhabitants, i.e, 420 per square kilometer. There is a working population of 5 million: 54 percent in the service sector, 40 percent in industry and 6 percent in agriculture and fisheries. Last year's figures are changing due to unemployment (16 percent of the working population) and cuts of the national budget.

The Netherlands is a constitutional monarchy with a parliamentary system. The parliament comprises the First Chamber (Upper House) and the Second Chamber (Lower House). The Kingdom of the Netherlands consists of the Netherlands and Netherlands Antilles which lie in the Caribbean and are on the verge of independence.

Dutch, a Germanic language, is spoken throughout the county. School attendance is compulsory for children up to the age of 16. There is a wide range of social provisions, guaranteeing everybody a minimum income level, family allowances, health provisions, education, etc. Because of the economic situation, these provisions are being lowered.

The Administration of Justice

The judiciary is independent. All courts are composed of judges who have been appointed for life. There is no trial by jury in the Netherlands. The normal administration of justice is in the hands of 62 Cantonal Courts, 19 District Courts, 5 Courts of Appeal and the Supreme Court of the Netherlands. The Cantonal Courts and the District Courts are courts of first instance. Whereas civil cases are instituted by the aggrieved party, criminal proceedings may be instituted only by the Department of Public Prosecutions (about 300 Public Prosecutors), which is hierarchically structured under the Minister of Justice. Only the Attorney General of the Supreme Court is not part of the hierarchy; he is independent and appointed for life.

Crimes are, generally speaking, dealt with by the District Court. The law recognizes the principle of opportuneness; the Public Prosecutor is not bound to institute criminal proceedings. In fact, only half of the cases registered with his office are brought before the Court.

The prosecutor may apply to the Court for a warrant to hold a person, being suspected of a serious crime, in custody for a term of 30 days, which may be prolonged by the judge for up to three months.

Sentencing dispositions include: no sanction, a warning, fines, imprisonment, or (in psychiatric cases) putting at the government's disposal (conditionally or unconditionally) annually to be reconsidered by the Court.

Fines and prison sentences are always definite; there is no minimum; there are legal maxima according to the types of the crimes; sentences may be (partly) conditionally and/or unconditionally.

The Community Service Order has been introduced recently. A bill is currently being prepared. In the interim, it is provisionally applied on the basis of a conditional sentence or as part of suspending a sentence.

The length of prison sentences decreased by 50 percent between 1950 and 1970; the average prison sentence in 1970 being about 2.5 months. Since then and particularly after 1975, the number as well as the length again have increased, the average length now being over three months. In 1984, 18,000 wholly or partly unconditional prison sentences have been imposed, i.e, 24 percent of all sentences. Of these, the number of sentences of more than one year is 1,440, or 8 percent.

The prison service comprises remand houses, mainly for persons remanded in custody awaiting trial, and prisons (closed, open and hostels) for sentenced prisoners. Apart from the very small hostels (about 20 places), the size of the institutions is between 25 and 250, with one exception: The Amsterdam remand house is a six-tower building for about 600 prisoners. For humanitarian reasons this facility is divided into six separate institutions with their own governor and staff.

The total prison population is about 4,700. The rate of incarceration is 34 per 100,000 (an increase of 50 percent within ten years).

Conditional Release: A Matter of Right

After having served two-thirds of his sentence and at least nine months, a prisoner may be conditionally released. The Minister of Justice is responsible for granting these licenses (V.I.). The rehabilitation agencies are in charge of the after care of the V.I. prisoners. Gradually V.I. has changed from a favor to a de facto right. Since 1975, the prisoner has the right of appeal against not, or not yet being granted V.I. and against suspension or revocation of V.I. by the Minister of Justice. A special chamber of the Court of Appeal at Arnhem has been appointed to deal with these appeals.

This legal change confirmed the practice of V.I. as a "right." Up to 1975, about 10 percent of the possible V.I. cases were refused; from 1977 on, only 1 to 3 percent were refused.

The legal change reflected the discussion about the value and form of V.I., which had begun in the 1960's. Compatibility of supervision with help and assistance, based on a relation of trust, was questioned, as was supervision itself and reporting to the Ministry and the Department of Public Prosecution.

The issue became what was the use of V.I. since it was granted "automatically?" A committee was set up (1980) to advise the Minister of

Justice about these and other questions. Its report (1982) "V.I. unless..." was partly followed, partly even surpassed; a new bill was proposed to parliament and agreed upon last January by the Second Chamber.

The most important changes are: V.I. (i.e., of the unconditional [part of a] sentence) will be allowed for six-month prison sentences and more and after two-thirds of the sentence having been served or--as to sentences between 6 to 12 months--after six months and two-thirds of the remaining part of the sentence having been served. V.I. will be rule; the public prosecutor may require a judicial decision to have V.I postponed or refused. V.I. will not longer be "on condition" and will be named "accelerated" or "early" release. Aftercare will be only on a voluntary basis.

The change of the V.I. regulation is combined with a change of the legal rules regarding Conditional Sentences (V.V.). Up to now, the judge may impose a (partly) conditional sentence of at most one year imprisonment. This maximum will be three years under the new law. It means that a sentence of three years imprisonment, of which six months is conditional, in fact results in 20 months in prison (two-thirds of the unconditional part) and six months, which may as a whole or in part be executed by a judicial decision in case the conditions (general and special) imposed by the judge are broken within the probation period. This period as well is defined by the judge in the sentence and may not exceed two years. During this period assistance and help may be given by the rehabilitation agencies as a special condition.

In January 1986, a new rehabilitation regulation came into force which states that the rehabilitation worker has to report about how his task of rendering aid and assistance to a conditionally sentenced person has been fulfilled, but leaves the supervisory task regarding the sentenced persons' (criminal) behavior with the public prosecutor.

Rehabilitation now comprises 19 District Agencies (500 social workers), 19 Consultation Bureaus for Alcoholism and Drugs (180 social and psychiatric workers) and country-wide the Salvation Army (80 social workers).

Differences Between Parole, Conditional Release and Early Release in the Netherlands

For a number of years, parole and conditional release have been coming under criticism, just as deprivation of liberty or the prison sentence. In reviewing parole it is necessary to study the whole penal system, as parole is an integral part of it. At the outset, however, it is necessary to compare some of the fundamental differences of the parole system in the United States and the system in the Netherlands. Ours is not a parole system, but a system of conditional release. And the latter has changed into a system of early release, without conditions and supervision.

This poses questions of comparability, only two of which will be touched upon, namely:

(1) the decision about the date of release from prison either by way of parole or of conditional release;

(2) the help and assistance upon supervision.

Changes in the Dutch System

To a prisoner, the day of release is probably the most important fact of his or her confinement. The sooner that day comes the better; and the more certain he or she can be of that date, the easier it is to do the time.

One big difference between the parole system and the practice of conditional release in my and other countries has to do with the certainty of the date of release from prison. Originally, that difference was small. In both systems, it was not sure if and when parole and conditional release would be granted. But time has changed. For 10 to 15 years, conditional release has been given in my country nearly always and for the full period. And just now, at the beginning of this year, a bill has been accepted in Parliament which makes conditional release automatic.

In the Netherlands, probation and parole are a combined function of the rehabilitation service. Before this year, that service consisted of private associations, independent from the State but 100 percent subsidized by it; and 19 governmental Rehabilitation Boards, one in every court district, to which a bureau of social workers was attached. Now these organizations are replaced by 19 Rehabilitation Services, private, but again 100 percent financed by the State. The task of the former Rehabilitation Boards was to advise the Minister of Justice about conditional release. The Minister had to decide because he is head of the Public Prosecution, which according to the Penal Code, is responsible for the execution of penalties.

Gradually, the recommendations of the Rehabilitation Boards became more and more favorable with respect to conditional release. A recommendation against conditional release represented the exception. The general concerns behind that policy were partly ideological, partly methodological. It was felt that almost anything was better than imprisonment, and that personal and social assistance has to be given on the basis of free will on the part of the client. Different from the parole boards, the Rehabilitation Boards were not and did not feel responsible for the protection of society and the prevention of recidivism.

In the exceptional cases of refusal or postponement of conditional release, prisoners mostly appealed against that decision with the so-called Penitentiary Chamber of one of the high courts. Mostly, the appeals were judged just and conditional release was granted. The reasoning was that since conditional release was a legal right and a method of rehabilitation, it should be refused only because of serious counter arguments, (e.g., the reasonable expectation of a prisoner's again committing serious crimes). Often such arguments could not be made plausible.

In additional, if was argued that analogous to normal penal procedure it is not the prisoner who has to demonstrate that he is fit for his return to society, it is the competent authority who has to show that he is not.

As explained above, the new law, soon to be introduced, confirmed this practice. This means that the term of imprisonment is now completely a matter of the court without any interference of other administrative bodies. Conditional release has been changed into early release without any conditions. It has not been abolished completely because of fear of

increase of length of prison sentences. The only mechanism in place to prevent early release is the public prosecutor's requesting the courts not to allow or to postpone early release. Here too it is not the prisoner who has to earn early release, but the judicial authority who has to make clear that the prisoner should not be granted the right of early release because of his being a bad risk to society.

Parole in Relation to Determinant and Indeterminate Sentencing Codes

There is a fundamental difference between the system of determinate and that of indeterminate sentencing, of which parole forms part. Indeterminate sentencing is based on a treatment philosophy, determinate sentencing upon a philosophy of proportionality between crime and penalty. Treatment is not a judicial matter. Consequently, the decision about its results and prospects is entrusted to independent parole boards. Proportionality is a matter of the courts. Treatment moreover is a process; proportionality a statement. That too marks the degree of difficulty of the two decisions.

Both decisions, the parole decision and the determinate prison sentence, define the date of release but with a different goal. While the prison sentence is finished when the "deserved" period has ended, the parole date depends upon much more complicated decision-making. This poses the question of the data upon which decisions are made and of their interpretation. Data about good will and good conduct have to be interpreted in terms of expectations about future behavior and the eventual risk to society after release. These data may be soft, their interpretation arbitrary, their prognostic value dubious.

The problem, therefore, is how to measure and weigh that sort of data. Many of these problems are solved by structured guidelines. The parole system is confronted with enormous difficulties about what and how to measure, how to interpret behavioral data, what data have a prognostic value, etc. Moreover, solutions in the form of guidelines are not 100 percent trustworthy and to the degree they allow less discretion they are more unpopular to those who have to work with them as well as those who are subject to them. The latter has to do with the fact, that neither the decision-maker nor the candidate parolee is able to influence that philosophy underlying the guidelines. Guidelines based upon the idea that protection of society, reduction of criminality and recidivism are the dominant goals, weigh special data differently from guidelines of which the primary goal is helping a prisoner to rehabilitate.

Looking at the determinate sentencing system, the problem of the proportionality between crime and penalty is not so much a technical problem of measurement but a problem of communication. Contrary to a judgement about somebody's conduct, attitude and intentions, a judgement of proportionality is not a matter of objective truth, however much relative, but a matter of subjective opinion. Moreover, it is not a matter of truth about persons, but a matter of public policy about crime and punishment. Decisions about persons require a higher level of fairness and objectivity.

The public prosecutor in my country has to request a sentence to be imposed; the judge has to decide upon it. The judge diverts in general relatively marginally from what is requested by the public prosecutor and mostly by lowering the requested penalty. The obvious solution in

achieving a reasonable national consensus about degrees of seriousness of crimes and proportionality toward penalties is to make public prosecutors discuss these matters and draw guiding principles and guidelines from it, which need not be "true" but only "clear." That makes a big difference to guidelines estimating behavior attitudes and expectations about the future, which thus have to be "true" and "clear."

In the Netherlands, a public prosecution's structure has been created covered by a meeting every two weeks of the five attorneys general of the five high courts, chaired by the Secretary-General of the Ministry of Justice on behalf of the Minister. Via this network, penal policy is developed and guidelines and instructions are proposed, discussed and established. As far as objectivity, fairness and simplicity of decisions are concerned, a court's sentence of proportionality, implying the date of release is preferable to the parole decision.

The question remains to be answered: When striving for social resettlement, what is gained by parole or what is lost by proportional sentences including automatic early release? That question may be answered after my having elaborated on the second issue I announced at the beginning, namely: the help and assistance under supervision.

Social Assistance and Detention

Given the recent changes in the law, rehabilitation work in the Netherlands is restricted to three penal stages:

(1) the pretrial stage of 4 days during a delinquent's stay in a police cell; the help to be offered is called "early aid;"

(2) the stage of detention, before as well as after conviction and sentence; this help is called "penitentiary rehabilitative assistance;"

(3) the stage of being conditionally sentenced (to imprisonment); the assistance offered is indicated by its general name rehabilitative assistance."

Since conditional release has been replaced by automatic early release, the rehabilitative service is no longer given to released prisoners except upon their voluntary request. Obligatory, supervised social assistance will not work though efforts have been made to convince prisoners who are in need of help to accept it after release.

These efforts can be made convincingly only if the whole approach of a delinquent during the time covered by the sentence, i.e., during imprisonment and parole as well is coherent, guided by the same principles and directed at the same targets. If that is the case, then a prisoner may have confidence of the authorities' intentions. To achieve this, two conditions must be fulfilled:

(1) the detention has to be consequently and purposefully aimed at preparing the prisoner's release;

(2) the prison authorities as well as the rehabilitation workers have to offer those services which are directly and individually meaningful to the prisoners themselves and not which are prescribed by tradition or ideology.

The first condition requires a systematic and individually planned allocation of prisoners from closed to open institutions and community centers, combined with an increasing frequency of home leaves. If it is not necessary, a prisoner should not start in a closed prison. This is a guiding policy principle in the Netherlands expressed by the notion that "the optimal security is the minimal one." It reflects too the idea that a prisoner is most aware of his problems when confronted with him in society. Prison should be community directed and thus contribute positively to the prisoner's return to it.

As to the second condition, in prison, a variety of activities and assistance should be available, which enable every prisoner a certain choice, and by which, as far as possible, his individual needs, potentials and interests are met. These activities should not be leisure time activities or for a minority of those confined but make up the full-day program of every prisoner. With an emphasis placed on the community directedness of a prison and of a chosen package of activities only then it is reasonable to expect from a prisoner a responsible, positive and cooperative attitude. This can never be achieved by force.

However, this requires a prison organization and the functioning of prison staff, especially of prison officers, not aimed at security, order and the smooth running of the prison in the first place but indeed on a helping function. Even more than restructuring the prison, it asks for a different attitude of staff. These detention requirements being necessary in a system of early or conditional release, it is even more necessary in a system of parole, especially when following indeterminate sentences. For imprisonment not offering chances of improving social, educational and other skills, is of no value to the parole decision.

Social Assistance and Attitudes

This second condition of a coherent approach is also of importance to probation workers. Research revealed that probation workers thought that their most important task was the assisting of their clients in solving their personality problems. Helping in practical matters, (i.e., housing, work, social security provisions, money) was considered of secondary importance. However, prisoners often are not very keen on rehabilitation service when such assistance offers little practical value.

Also, the probation workers answered questions about additional training they themselves might be in need of. They ranked out of 13 forms of training as the first 8 items: training of therapeutic methods, discussion techniques, more psychological knowledge and the like. I will not underestimate these needs, but they seem too dominant and one sided. However, they may not fit in with what prisoners want and therefore might impede a fruitful relationship. If I am right, here too a change of attitude is needed, namely from a treatment-oriented attitude to an attitude concerned about practical needs of clients.

When these conditions are fulfilled, I think a fundamental change of approach takes place in that the prisoners are taken as responsible persons. They are not made to feel dependent. It is no longer we who know best, but he or she who has a say in what has to be done.

Of course, the ex-prisoner will often not succeed in rehabilitating himself and maybe his or her efforts are not always very convincing either; but even so, we ourselves cannot guarantee the success of our efforts. We have to be realistic as to our expectations and accept that the crucial conditions of achieving constructive results is the prisoners' and the ex-prisoners' readiness to help themselves, as well as the community's readiness to offer them the opportunity to do so. These conditions are beyond the control of paroling authorities and even of the whole penal apparatus.

Conclusion

At the end, still the question remains: "What is the right date and what are the proper grounds to grant parole?" If the date and grounds are seen by the prisoner as unfair, even a positively determined prisoner maybe discouraged, may build up negative feelings or even may foster hatred. By contrast, a decision seen as a fair one and the certainty beforehand that these decisions can be trusted to be fair ones, encourage rehabilitative efforts and attitudes with prisoners.

Apart from rehabilitation and leaving aside financial considerations (to which the earliest release is the best one) the two main and opposing grounds are public safety and proportionality between crime and sanction. In my view, the date of eligibility for parole or conditional release marks the minimal prison term judged necessary by the court as being minimally proportionate to the offense committed. On the other hand, the maximum detention period imposed by the court on an offender marks the upper limit of proportionality.

If agreement could be reached that the date of eligibility should be the date of release, unless convincing arguments can be brought forward indicating serious danger to the public, and that a refusal to grant parole or conditional release may be appealed to an independent judicial body, then the question of when and why is answered fairly and encouragingly to prisoners. Thus, a favorable starting point will be created for rehabilitation, which never will be achieved by merely keeping people longer in prison in order to force them to a positive and rehabilitative attitude.

After all, when crime has been paid by the necessary punishment, it is up to the offender whether he wishes to rehabilitate or not. We may offer him or her assistance. That is all we can do. For changing people's attitudes and behavior is too delicate a matter as to try it by force.

CRIMINAL JUSTICE AND PAROLE IN AUSTRIA

By
Helmut Gonsa

An Overview of Austria

Austria is situated in southern central Europe, covering a part of the eastern Alps and the Danube region. The country has a wide variety of landscape, vegetation and climate. As Austria is situated at the heart of the European continent, it has always been a junction for communications between the trade and cultural and political centers of Europe.

Austria covers an area of 32,367 square miles (83,855 square kilometers); it has a population of 7.6 million. Austria's border has an overall length of 1,682 miles. Of these 509 miles are shared with the Federal Republic of Germany, 355 miles with Czechoslovakia, 220 miles with Hungary, 205 miles with Yugoslavia, 267 miles with Italy, 104 miles with Switzerland, and 22 miles with Liechtenstein.

The Republic of Austria is a federal state formed of nine provinces (Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tirol, Upper Austria, Vienna and Vorarlberg). Vienna with its population of 1.6 million is the Austrian capital and at the same time a federal province in its own right. It is situated in the east of Austria only about forty miles from the borders with Hungary and Czechoslovakia.

Austria has had its full share of all that history has brought to the European continent, including the suffering. Its history is as varied as that of the European continent as a whole: a Roman province, a border area in the southeast of the "Holy Roman Empire," its gradual rise to a major power, namely, the multi-national Austro-Hungarian Empire, sudden collapse after the first world war, the struggle for survival as a republic, ending in 1938 when German troops marched in, and finally the restoration of the republic after the Second World War. On October 26, 1955, the Austrian parliament passed the Federal Constitutional Law on the Permanent Neutrality of Austria.

The Courts

Pursuant to the Austrian Federal Constitution, judicial jurisdiction is exclusively the responsibility of the Federal State. Consequently, there exist only federal courts. There are no judicial authorities of the provinces. The Austrian Prison Administration is also entirely the responsibility of the Federal State.

According to their field of activity, the Austrian courts include courts of public law, civil courts and criminal courts. The courts of public law are the Constitutional Court and the Administrative Court. Criminal courts are District Courts, Regional Courts, Criminal Courts of Assize, Courts of Appeal and the Supreme Court.

The Purposes of Imprisonment

Life in any society is governed by a great variety of traditional--though constantly evolving--social rules and established customs. The essential social rules constitute the social value system of the respective society and culture. The social value system is regularly reflected, supplemented and strengthened by law.

Prevailing social values see criminal law as indispensable and penalties as socially necessary. Those kinds of socially deviant behavior that are considered serious enough to be punishable in the courts are defined by criminal law. When an offense is committed, the official reaction of the state is to inflict a sanction.

The catalogue of possible sanctions for offenses in national systems of criminal law nowadays ranges far beyond mere imprisonment. In addition to well known alternatives such as deviation, financial sanctions and suspended sentences, there are various court orders, disqualification, semi-detention and other forms of alternative sanctions.

It should be a basic principle of crime policy that imprisonment is inflicted only where no alternative measure can be justified. The sanction imposed on an individual offender should always be chosen to make the maximum contribution to resocializing the offender and to reduce the risk of his/her committing further offense, while at the same time affording adequate protection for society.

The purposes of imprisonment are determined by the law of each state. The purposes of imprisonment, as they are prescribed by law or generally acknowledged in many states, are, on the one hand, social reintegration to enable the offender in the future to lead a socially responsible life without committing criminal offenses and, on the other, the protection of society and general prevention. Whenever the purposes of imprisonment are discussed, there arises the inevitable contradiction between the purpose of treatment with its aim of the social reintegration of the offender and the objective of the protection of society. The possibility of any resocialization within a closed penal institution is often entirely denied, or at least it is emphasized that any imprisonment in a closed institution is damaging rather than conducive to socialization. One must be aware of what it really means to claim that imprisonment shall socialize; its natural effect is the very opposite.

Since we have sentences of imprisonment, we must have prisons; resocialization is a generally recognized aim of prison sentences, but there is also the need to protect society; it is essential that a state based on the rules of law should extend humanity to all, but it is also necessary to preserve law and order.

The Prison System

The organization of the prison system and the treatment of offenders serving prison sentences or under detention in "preventive measures" (i.e, indeterminate detention of mentally disturbed, alcohol or drug addicted offenders and the dangerous recidivists upon court order) is based on the "Act concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention involving Deprivation of Liberty" of March 26, 1969.

In Austria, there are 18 prisons attached to Regional Criminal Courts, 7 penitentiaries and 5 special institutions. The average total number of inmates at any one time is 8,400, while that of prison staff totals 3,450.

Effective Treatment in Confinement

The effectiveness of any enforcement of sentences that intends to meet the requirements of treatment as well as those of the protection of society and security and order, depends primarily on a good differentiation of the penal institutions, on the creation of appropriate prison regimes and a valid classification of offenders sentenced to imprisonment. These three measures are discussed below.

The basic idea of differentiation is rather simple: From all those in custody, one should separate the really dangerous prisoners who require special security measures as well as the mentally disabled psychopathic prisoners who need special medical, psychiatric or psychological treatment. In addition, juvenile and young offenders, first offenders and prisoners suitable for open, semi-open or other mitigated forms of detention should also be separated from prisoners requiring standard treatment.

If the separation of different groups of prisoners is to be of any practical use, architectural and organizational measures are necessary.

A security prison that does not aim to give any form of treatment could be organized in such a way as to ensure that, with a small number of staff, as many prisoners as possible are guarded, cared for, supervised, kept occupied and well sealed off from the outside world. The typical style of a traditional custodial institution is the big pentagon-shaped penitentiary.

Detention with special treatment, on the other hand, calls for only a limited degree of outward security. Its internal organization requires manageable groups, adequately trained specialist staff and the greatest possible degree of flexibility to meet the varying requirements of treatment.

Along with the necessity for a sufficient differentiation of penal institutions goes the creation of appropriate prison regimes. When choosing the appropriate prison regime in a differentiated system, the key problem is how far treatment facilities should be given precedence over security aspects. The choice of regime is intimately related to the question of which aim is dominant in the institution concerned.

The different regimes vary from open, semi-open and other mitigated regimes to standard regimes and to security and high security regimes. Special regimes exist also (for instance in Austria) for mentally disabled and psychopathic offenders, for alcohol and drug addicts and for dangers recidivists. For juvenile and young offenders as well as first offenders and traffic offenders, special regimes are common. In several penal systems, imprisonment in stages is introduced and all systems have pre-release regimes. There is, indeed a great variety of possible regimes.

Any differentiation of penal institutions and the creation of appropriate prison regimes require, as a logical consequence, a valid classification of offenders sentenced to imprisonment.

The organizational problem of distributing sentenced offenders to the penal institutions may be resolved in different ways. The criteria for the distribution can be formal and laid down in advance by law, decree, regulation or order. On the other hand, in particular when longer terms of imprisonment are concerned, the decision, where and under which regime the sentenced offender should be placed, can be made in every individual case by classification. It is necessary for the classification procedure to work promptly, without undue complication and effectively. The distribution of prisoners will, therefore, generally be solved in accordance with formal criteria such as sex, age, proximity to home, social ties, criminal record and accomplices. The classification must, however, also satisfy special treatment needs (e.g., the necessity for high security measures, special medical care or psychiatric treatment, vocational training, work, etc.).

The fact of imprisonment means that, to varying degrees according to the regime, the prisoner is kept in an artificial, regimented environment that contrasts with his/her normal state of liberty. It follows that imprisonment should consist of deprivation of liberty alone, without any further aggravating circumstances. A resolute endeavor must be made, especially in closed prisons, to counter any excessively pronounced "prison subculture," which impedes resocialization, and to reduce such negative consequences of long-term imprisonment as emotional disturbances, disturbances in comprehension and ability to think, obsessional ideas, infantile and regressive behavior and social contact troubles.

Well trained prison officers who have a human understanding of the prisoners in their care along with a willingness to listen and talk to them can work wonders in creating a good prison atmosphere. And such an atmosphere is always a first-class security measure in and of itself.

In recent years the idea that imprisonment should be entirely therapeutic has disappeared, for it recognized that not all prisoners can be resocialized and treatment depends on the individual's willingness and ability to cooperate. Today, therefore, the guiding principle is no longer compulsory treatment but fair opportunities for treatment for all those who are prepared to take advantage of them.

The notion of "treatment" in prison is a controversial one. There are feelings that, used in the context of prisons, "treatment" implies exclusively something comparable to a medical--even to a psychiatric--approach. There is a certain feeling that some other term, such as "management" or "education" should be used instead, but there is not unanimity about this either. It is now generally agreed upon in the Council of Europe that "treatment", broadly defined, includes all measures needed to maintain or to recover the physical and mental health of prisoners, as well as a whole range of activities to encourage and advance social reintegration. It should afford prisoners opportunities to acquire competence to live socially responsible lives and to disengage from criminality. "Treatment" therefore is to be understood as including social training, schooling, general education, vocational training, work, reasonable leisure-time activities, physical exercise, visits, correspondence, newspapers, magazines, books, radio, television, social work support, pastoral care and preparation for release, and, of course, psychological and medical (including psychiatric) treatment.

Parole and Offender Reintegration

Parole is an indispensable component within this context of treatment. The hope of an early release can, particularly in cases of longer terms of imprisonment, create the motivation and endurance to undergo treatment and to "deserve" earlier liberty. Parole can be a positive instrument to adapt the duration of imprisonment to the social development of the offender. As parole is often accompanied by instructions, orders, probation or other forms of after-care assistance, parole can facilitate the offender's transition from imprisonment to liberty and assist his/her efforts towards social rehabilitation. Besides this, parole is an important instrument of crime policy. It helps to mitigate the detrimental effects of long-term imprisonment, it may help to correct too rigid a sentencing policy, it is a means to decrease the numbers of inmates and, particularly in connection with probation, it takes into account the various difficulties of social rehabilitation.

One can discuss the conditions and the organization of parole, but one cannot give up parole without causing a serious loss for the administration of justice.

The substantive conditions for an early conditional release (parole) of persons sentenced to imprisonment are laid down in Article 46 of the Penal Code. These conditions are essentially the following:

(a) a minimum time in custody of six months;
(b) the person has served two-thirds of the prison sentence or, under specially favorable circumstances, one-half of the prison sentence;
(c) good prospects for the future (absence of new offenses);
(d) considerations of general prevention can oppose early release;
(e) conditional release from a life sentence is possible after serving 15 years.

Decisions on early conditional release (parole) are exclusively judicial. They fall into the competence of the Regional Criminal Court in whose area of jurisdiction the prison is situated. The court can combine a decision of conditional release with the appointment of a probation officer for the released person or with certain specific orders as to his or her behavior. The court practice in connection with early conditional release is rather cautious in Austria. Every year between 10,000 and 11,000 prisoners are released; the number of early conditionally released prisoners is between 1,00 and 1,100, or between 10% and 11%.

The institution of early conditional release (parole) itself is not currently a focus of controversy. There are, however, efforts to reach an increase of early conditional releases. The government has submitted a bill to the parliament with some modifications of Article 46 of the Penal Code aimed at increasing of the number of early conditional releases of prisoners. Behind this legislation is the belief that an effective parole system is indispensable.

CRIME, PRISON AND PAROLE IN DENMARK

By
William Rentzmann

Population

Denmark is a small county (45,000 square kilometers with a population of just over 5 million people). The community is characterized by a relatively homogenous composition of the population, relatively limited social tensions, a relatively established and old democratic tradition, and a relatively friendly political atmosphere. These factors very much leave their imprint on the crime-political development, and have had the effect that there is normally broad political backing of the crime policy conducted, whatever the party color of the government.

Criminal Offenses

The volume of crime reported to the police has shown a strong increase over the last 20 years, from approximately 150,000 cases to approximately 475,000 cases. Most crime involves offenses against property. It is fortunate that only a very small part of the total amount of crime involves violence (about 7,000 - 8,000 cases, corresponding to 1.5 percent). This share has remained fairly constant during the above mentioned period.

Even though the amount of crime has tripled, there has been no net extension of the prison capacity. When it has been possible to keep down the capacity and at the same time largely avoid overcrowding, this is because extensive depenalization has been carried out several times, including enlargements of the sector comprising conditional sentences and fines. Greater use has moreover been made of paroles, an experiment has been initiated with community service, and finally quite extensive reprieve arrangements have been carried into effect on various occasions, partly in connection with depenalization, partly towards convicted persons, who have had to wait exceptionally long to serve their prison sentence.

Public Prosecution

The structure of the prosecution is hierarchic. The political responsibility rests with the Minister of Justice, but in practice the Director of Public Prosecution enjoys a high degree of independence. The Director exercises instructive powers towards the lower prosecution instances, and conducts criminal cases for the Supreme Court. Otherwise, serious criminal cases are handled by district attorneys, and less serious cases by the chiefs of police. All of them are graduates in law from a university. The tribunal system consists of a little less than 100 district courts, two high courts and one supreme court. In district courts and high courts lay judges take part in the adjudication - except in minor cases and cases where the accused admits his guilt.

Penal Code

The Danish Penal Code from 1930 is based on general preventive as well as special preventive concepts. Since 1973, the side of the special preventive element called "treatment" has, however, been thrust somewhat

into the background in that the actual treatment sanctions (e.g., borstals, workhouses and preventive detention), the extent of which depended fully or partly on the results of the treatment, have been abolished. We are left with a relatively simple system based on three types of punishment: ordinary imprisonment, lenient imprisonment, and fines/dayfines. Imprisonment may be meted out with from 30 days to 16 years or life, lenient imprisonment from 7 days to 6 months. Imprisonment may be given in the form of conditional or non-conditional sanctions. Since 1982, the rules governing conditional imprisonment have formed the basis of an experiment with Community Service orders. All initiatives for changes of the penal legislation come from or are canalized through a small committee of penal code experts (The Permanent Committee on Penal Law) and this contributes to giving a certain coherence and consistency to the development.

The Prison System

Prison and Probation Administration is part of the Ministry of Justice. As the name implies it is responsible for the prison system as well as for the administration of probation, parole and aftercare.

The prison system consists of 14 State prisons, the Copenhagen prisons, and 45 local jails. The system is characterized by relatively small institutions. The optimum size of a prison is considered to be an institution with approximately 100 inmates. The number of inmates in State prisons fluctuates between 70 and 300, with an average of about 140. Then there is the Copenhagen Prison system which is, without comparison, the largest institution, capable of accommodating 570 prisoners. Among the State prisons, there are nine open institutions (with a total capacity of approximately 1,400) and six closed ones (with a capacity of approximately 800 inmates).

The Copenhagen Prisons which can house 570 inmates and the local gaols with a capacity of some 1,100 inmates in 45 institutions serve primarily as remand prisons. With very few exceptions, jurists are in charge of penal institutions. The total staff of the institutional sector is almost 3,800, with some 3,000 wardens, 300 work supervisors, 200 civilian therapists, and 300 in the administration. This gives a total staff ratio in the institutional sector of 1:1. The average cost per day per inmate is approximately Dkr. 700, or Dkr. 250,000 per year (with today's rate of exchange, just under $30,000 in U.S. currency).

The probation and parole and aftercare administration (PPAA) has been organized in about 30 departments all over the country. These departments have a staff of approximately 200 employees, primarily social workers, plus a number of voluntary, but paid, part-time employees. The average number of persons under supervision is about 4,000, of whom the major part are on probation. About one-quarter of them are parolees, and the rest conditionally discharged or subject to special treatment measures for mental deviants, etc. PPAA are finally in charge of the experiment with Community Service orders.

Probation and Parole

Pursuant to the Penal Code, an inmate is released on probation when he or she has served two-thirds of his or her sentence, but not less than two months. A release may, however, be regarded as imprudent, if the risk of a relapse into (not trifling) crime is considered too high, and it is not

considered possible to limit it sufficiently by means of supervision. This happens in about 5 to 7 percent of those cases where inmates are eligible for parole. In another couple of percent of the cases, the inmates refuse to subject themselves to the terms of a release on probation; and they are consequently not released on probation. On the other hand, about 10 percent of those who are eligible for parole are released after serving between half and two-thirds of their sentence, if there are special circumstances warranting it. According to this rule, foreigners to be deported may be released, and (other) inmates for whom the serving of the sentence is particularly burdensome.

In Denmark, releases on probation are purely an administrative act. There are no parole boards. The authority to release on parole--and to refuse a release on parole--has been delegated to institutional managers whose decision may be brought before the Ministry of Justice (Department of Prisons and Probation). Only in connection with the imprisonment for eight years or more has this authority been placed with the Ministry of Justice. In these cases, the question of release is dealt with at half-yearly meetings between the Ministry of Justice and the individual institutions. The authority to release before two-thirds of the sentence has been served also basically rests with the Ministry of Justice.

Since releases on probation were introduced in the Penal Code in 1930--and not least since it became an ordinary part of the serving of the sentence in 1956--the institution has been the subject of a lively debate. A point of view often expressed--both from political quarters and on the part of prosecutors and judges--has been that the administrative access to release on probation "undermines" the legal system and the conception of justice. It is often stated that it is difficult for the population, too, to understand the system.

Nevertheless, the access to release on probation has several times been extended, most recently in 1982, where the minimum period for releases on probation was reduced from four months to two months. More far-reaching proposals have been brought forward several times in public statements.

During the last two years the debate on releases on probation has become considerably intensified, and several political parties ranging from the parties of the Government coalition to the parties on the extreme left have advanced proposals for an abolition of the general access to release on probation, when two-thirds of the sentence has been served, against a corresponding reduction of the length of the sentences. The final political treatment is now pending a recommendation from the Penal Law Committee which will be given shortly.

Release Practices Under Debate

As was mentioned above, probation and parole release practices are at the moment subject to a heated debate. The outcome is as yet very uncertain.

Methods of Assessment for Conditional Release and Their Efficacy

Release on parole may take place when two-thirds of the sentence has been served, which is the normal practice; and at a time when between half and two-thirds of the sentence has been served, which is an exception. The assessment of whether the conditions for a conditional release have been

complied with differs, depending on which of the two types of conditional release we are concerned with.

Conditional Release When Two-Thirds of the Sentence Has Been Served

The first mentioned "regular" release on parole shall take place, unless the conditions of the sentenced person make a release inadvisable. In other words, it is the assumption that a release on parole shall be effected, and that the administration must therefore come up with some (good) arguments, if it wishes to refuse a release on parole.

It is not felt that too much importance should be attached to the convicted person's circumstances during his stay in prison, his disciplinary record, behavior, etc. This is because the prison environment as such is artificial, atypical and unnatural. It is not reasonable to expect inmates to behave "naturally."

What decides whether a release on parole should take place should be only whether there is reason to believe that the parolee will be able to manage without resorting to new crimes. In view of the well known relapse percentages, this is in itself a tall order--and if it were to be taken quite literally, there probably would not be too many prisoners qualifying for a conditional release. A realistic assessment would therefore be whether it is believed that the parolee--supported by supervision and subject to special conditions, (e.g., treatment for chronic alcoholism, for drug abuse, etc.) for a period of typically a couple of years--will refrain from committing crimes of any significance. Such as assessment should be based on what transpired after earlier conditional releases, on his cooperation or lack of same with the supervision authorities, and on the actual release situation (housing conditions, employment, family affairs, etc.). Importance should also be attached to the crime committed, in the sense that to accept a higher risk of new crime, when you are dealing with a harmless offender against property than when you are dealing with a criminal liable to carry out serious assaults on persons.

If practice is relatively stable--as the case is in Denmark--it is appropriate to delegate authority to the individual institutions which know the inmates best. Such a delegation has both advantages and disadvantages. The disadvantages are the risk, of course, that special, emotional antipathies against an inmate may lead to a wrong decision. This risk must be countered by suitable measures guaranteeing their lawful rights during the treatment of their case, (e.g., the right to contradiction, the right to reasons (in writing) of the decisions, and the right to have the decisions tried at a higher--and impartial--body).

According to the rules now in force in Denmark, the institutions' refusal to release prisoners on parole may be examined by the Ministry of Justice--but just now it is being considered whether it should be possible to either bring these cases before a court of law, or, more likely, before an independent tribunal. This will, where 90% of those eligible for parole are in actual fact released, hardly lead to any major changes in practice, but it would, in my opinion, still be the right thing to do to introduce access to an impartial hearing for psychological reasons, to remove the basis of any myths and to avoid that non-objective considerations enter into the picture after all, consciously or subconsciously.

The advantage of placing the authority to make decisions locally is quite obvious; on the other hand, especially if things are arranged in such a way that the decision is not merely a clerical decision made by the prison governor, but that on the contrary, all members of the staff who are involved with the inmate every day--in the wards, in the workshop, at school, etc.--in concert with persons who may earlier have been responsible for supervising the inmate, should have a decisive influence on the question of a conditional release. An arrangement of this kind, which has been formalized in Denmark, partly means that many different points of view about the inmate are included in the assessment, partly that the general staff will have a more meaningful job and a greater interest in the situation of each individual inmate. In practice, each of our institutions is divided up into a number of autonomous units with a fixed staff (officers, social workers, teachers,) who in reality make all the decision pertaining to the inmate. Formally, it is, however, the decision of the prison administration which sees to it that the decision is within the framework of rules in force and normal practice. It goes without saying that it is possible for the inmate to acquaint himself with the basis of the decision and to express his views to the decision-makers before the decision is made.

One indication that it is as a main rule the objectively correct decisions which are made is the fact that relatively few complaints are lodged, when release on parole is refused--and this, after all, is one of the most vital decisions which can at all be made administratively. This impression is also confirmed by the relapse statistics. While the relapse percentage for inmates released on parole is below 50%, this percentage for the groups who are refused release on parole due to the high risk of relapses) is almost 90%.

This may be taken as an expression that the assessment methods are comparatively effective.

Nonetheless, the delegation of authority to release on parole does not apply to the small group of inmates who--by Danish standards-- have lengthy sentences, i.e., sentences of eight years and up. Here the authority rests with the Ministry of Justice, and the decision is made following regular talks with the inmates (if they wish to have half-yearly meetings at the institutions between representatives of the Ministry of Justice and a wide section of the institution's staff). Here, too, it applies that the inmate is given the opportunity of expressing his points of view to the people taking part in the meeting, whereas he does not participate in the actual decision process.

Conditional Release When Half of the Sentence Has Been Served

The assessments to be made with respect to extraordinary, early release are of a somewhat different nature, and to some extent they are reminiscent of the assessments made on petitions for mercy. For one thing, the question is not automatically dealt with by the authorities, but requires that the inmate take the initiative. For another, the decision depends on contemplations less stringent than mere considerations of relapse. The elements incorporated in the assessment are primarily concrete treatment considerations, important humanitarian considerations (illness, for example), especially high or low age, whether it is a first offense, as well as an assessment of the risk of relapse along the same

lines as those valid for ordinary release on parole. The authority to release a prisoner, before he has served two-thirds of his sentence, as a main rule rests with the Ministry of Justice, but the actual handling of the case in the prison, including the staff involvement in same, corresponds to what has been mentioned above.

It is evident that here, where the assessment is to a higher extent based on opinions--discretion--more problems with respect to lawful rights will crop up which are harder to handle, precisely because an impartial authority would have little chance of examining these very concrete, difficult-to-compare decisions. On top of that, there is no guarantee that others in the same situation will be released. For that reason alone the question is never brought up. This might appear to support an arrangement ensuring that earlier release on parole be considered in all cases. Something like that is being contemplated at the moment, but it is hardly feasible to administer such an arrangement. The problem could better be solved through improved information to the inmates and prison staff of the possibilities there are of advanced release on parole.

The Nature of the Relationship Between the Paroling Authority and the Judiciary-- Problems and Advantages

One of the most frequently used objections to the administration's authority to release on parole is the fact that it "undermines" the function and competence of the courts of justice, and that it is difficult to understand--not least for the lay judges often taking part in penal actions.

Here it should be pointed out that a conditional release should not be viewed as administrative interference with the rulings of the courts. The rules governing release on parole, as we know them in Denmark, express the legislature's desire for a comparatively stable relationship between the length of the sentence given and of the sentence served. It is not the duty of the Ministry of Justice to examine the court' fixing of the sentence; and the courts know that according to the law, it is not their duty to decide in any binding way how long the sentenced person is to remain in prison.

It is also far from certain that the penal system functions best when there is always agreement between the term of imprisonment sentenced and the actual length of the say in prison. On the contrary, there would appear to be some rather tangible advantages when the term of imprisonment while being served may be shortened compared to the punishment meted out by the court. This is because the sentences of the courts are to a high degree determined by what is necessary from the general preventive point of view, and what degree of viciousness should be attached to the crime committed from society's point of view. These requirements and the need to express disapproval of the offense should first of all be asserted immediately after the crime has been committed, for instance, at the time the sentence is pronounced. However, the demand for punishment will typically subside little by little, as time passes. Concurrently with this, the regard for the sentenced person's situation and future prospects, and the understanding of what an ordeal the continued deprival of liberty is for him, will increase. In other words, our views on the usefulness and meaningfulness of imprisonment undergo a change.

Mechanisms that Structure Discretion: Guidelines--Numerical, Policy, or Legislative

As long as conditional releases are not compulsory, decisions of this kind will contain a certain element of discretion. It may be relatively small, as is the case with the Danish two-thirds rule, or relatively large, as the case is with the half-time rule. Logically speaking there should be nothing to prevent an elimination of discretion, if sufficiently detailed provisions are worked out as to when release on parole should take place. But it is hardly possible in practice to work out rules which take all possible situations into account that are or ought to be of significance, when a decision about a conditional release is made. Attempts of this kind have always shown that the rules become so complex that they are unintelligible--and there will still be a small remnant of discretion left, if the provisions are not to have completely unreasonable consequences in special situations.

It would probably be more fruitful to offer as detailed instructions as possible about the guidelines and considerations forming part of the assessment and supplement these with subsequent explanations of how the authority to release on parole has been administered in practice.

In Denmark, the comparatively few guidelines for conditional release are contained in those sets of rules which the inmates--and the staff--have access to. No inmate can, however, predict with 100 percent certainty that he will be released on parole when two-thirds of the sentence has been served, much less that he or she will be released on parole before that time. Inmates are able to study the elements forming part of the decision, and they can accordingly, with a reasonable amount of certainty, predict their destiny. Moreover, they also have a reasonable basis for evaluating whether, and if so, on what grounds, they ought to complain of a decision. The more discretion decisions contain, the greater is the need to have a system of checks and balances.

It is difficult to find a reasonable solution to this dilemma. Much can be accomplished by endowing the decision with sufficiently many procedural guarantees (contradiction, access to the records, etc.), but a release on parole system with more or less discretion will never work unless the parole authority is composed of unbiased persons having the necessary technical insight. This is partly a structural problem, partly a question of education and information.

Denmark is currently preparing an Act on Execution of Sentences addressing questions of this nature. If the conditional release institute is preserved--a question I shall come back to--it must be expected that the purely administrative way of making decisions, now known to us--including the administrative recourse--will be replaced by or supplemented with a impartial authority, either the courts of law or an independent tribunal. It is as yet too early to guess what the outcome will be, but there can be little doubt that now where the conditional release institute has in principle functioned on the same basis for more than half a century, the time is ripe for radical changes, the primary objective of which will be to increase the quality of the rules of law governing these decisions.

The Issue of Parole as a Prison Population Control Mechanism

One principal feature of the crime policy in the western countries is the wish to limit the amount of imprisonment as much as possible. In most European countries, and in Scandinavia at any rate, this objective has not given rise to any great controversies. But this cannot be said about the means which should be employed to reach this generally accepted objective.

It would probably be best, if the amount of imprisonment were reduced through a lowering of the punishment level by the courts of law. But as matters generally stand between the legislature and the judiciary in the western democracies, it is quite complicated to control such a development via the penal provisions.

With respect to control, it is probably far easier to make use of the release on parole provisions. Provided that the courts of law do not change the meting-out level concurrently with the changes of the provisions governing release on parole, it is relatively easy to link up the size of the prison population with the conditional release provisions. You can simply calculate that in order to obtain a certain, defined limitation of the number of prison inmates, the rules governing release on parole must be adjusted in this or that way.

It is problematic to use the conditional release rules as a means of reducing a sentence is that such a policy gives added strength to those who regard release on parole as undermining the courts' work.

Even with a system like the Danish one, where conditional release is not dependent on the inmate's more or less good behavior in the prison, there can be little doubt that a possible abolishment of the release on parole concept may have very serious repercussions on the prison climate. This is because the very possibility of a conditional release and the planning of the conditional release situation, including the whole process with various degrees of exits leading up to the conditional release, are a most vital motivation factor. It is a matter of creating contact between the inmates and the staff. The risk in abolishing the release on parole option is, therefore, that the inmates lose their motivation for having contact with the staff--and that the staff as far as that goes also loses part of its motivation to have close contact with the inmates--which may lead to the creation of an almost insurmountable gap between the inmates and the staff. And this, in turn, leads to mutual distrust and fear, and an increased possibility of escalation of conflicts.

Conditional Release and the Media (Issue of Public Education and Response - to Media Reactions)

Release on parole is a subject which both as a concept and when used in concrete cases often generates public debate. We are in the fortunate position, however, that in this particular field the press avoids gutter journalism. This is, among other things, due to some press-ethical rules adopted by the press itself which directly call on papers not to make any mention of concrete cases of release on parole. But it is probably also due to the fact that the Prison and Probation System in general has a good and open cooperation with the press. This is an expression of an entirely conscious policy on the part of the Prison and Probation System. The Department considers it a very important duty for the press to describe

what goes on in the prisons and in connection with the execution of sentences as such--and not least why the conditions and rules are the way they are. Only through education can we ever hope to obtain appreciation of the work we carry out, and this is not least true where conditions are concerned which are looked on as modifications of the execution of the sentence: leaves of absence, visits, releases on parole, etc. And it is a prerequisite, if the press is to be able and willing to describe these conditions generally and objectively, that it has easy access to the institutions and to information as such, and that it has the feeling that there is nothing to hide. For this reason, all the inmates may get in touch with journalists without being censored, in writing at least, but as far as the half of the prison population is concerned, which is placed in open institutions, also by telephone, and all prisoners may receive visits from journalists without being supervised.

Beyond that, we ourselves are very much aware of the need of issuing press releases, of rectifying any wrong information given, and of participating in the press debate in the form of interviews and articles.

This openness to the press in connection with the execution of sentences, and hence with the very radical encroachment on groups of society that often have very limited resources at their disposal, should be regarded as a must for the penalty-imposing authorities in any well arranged society.

What the Future Holds

In 1978, the Nordic Criminal Justice Committee argued for equality, proportionality and predictability in the use of punishment and in favor of a complete abolishment of the release on parole concept.

Similar considerations have been behind some of the political proposals put forward recently in the Danish Parliament concerning the future of the release on parole institute. One might say, roughly, that the proposals from the opposition aim at preserving the release on parole institute, but in such a way that it is largely made compulsory or that the decisions are made by the courts. These proposals are based on a certain distrust of the administration. On the part of the Government parties, the proposals aim at abolishing the general release on parole in return for a corresponding reduction of the sentence. These proposals, too, may be taken as an expression of a certain distrust of the administrative decisions plus a wish to strengthen the position of the courts.

Nevertheless, the development since the introduction of the release on parole institute in 1930 and until the most recent change in 1982 has moved steadily towards an extension of the release on parole options. Historically, the extensions in the early part of the period were primarily motivated by the possibilities of treatment during the release on parole, whereas the most recent changes have almost exclusively been motivated by the wish to limit the amount of imprisonment.

There are some indications that the Permanent Committee on Penal Law, which is to make a statement about these issues, may decide that the release on parole concept should be preserved to some extent, possibly in combination with a rule about compulsory release on parole at a point later than when two-thirds of the sentence has been served, or with some kind of an examination, where any objections raised with respect to equality and lawful right issues may be dealt with by the autonomous body. However, it is impossible to predict the outcome of the committee's deliberations on the rules governing release on parole.

IMPRISONMENT, REHABILITATION AND PAROLE IN SWEDEN

By
Bo Martinsson

Population

Sweden is 450,000 square kilometers in area but has only 8.3 million inhabitants, for an average of 18 inhabitants per square kilometer. The biggest cities--Stockholm, Gothenburg and Malmo--have about 16 percent of the national population.

Social Services

Swedish society is highly organized and is characterized by a comprehensive social services network. Social insurance, working life, public authorities, organizations and politics are all part of this pattern. Sweden has developed relatively quickly into a welfare society. The country was industrialized at the end of the 19th century. At the same time people founded organizations such as trade unions, free churches, etc. and worked to improve their conditions. Today's mass movement date from that period. They are democratically organized and have played an important part in the development of Swedish democracy and welfare.

Government

Sweden has a parliamentary constitution. The Government must have the confidence of the Riksdag (Parliament) and all important proposals must be approved by the Riksdag. The Government executes the decisions made by the Riksdag. The Government members head ministries or government departments which are responsible for different fields. Unlike their counterparts in other countries, however, the Swedish ministries are relatively small. Day-to-day activities are administered by officials of more than 80 national boards and agencies. The National Police Board, the National Courts Administration, and the National Prison and Probation Administration, for example, are administrations coming under the Ministry of Justice.

Crime and Imprisonment

Parallel to transformations in society, criminal offenses have also changed. The crime rate has increased considerably during the last 20 years and criminality is concentrated in urban areas (i.e., the three biggest cities). Traditional crimes like theft and crimes of violence are now mixed with new offenses such as traffic offenses, drug offenses, and various forms of white collar crimes.

When a crime is brought to the notice of the police, they generally start by investigating the circumstances. If a more serious offense is committed, the investigation will be directed by a prosecutor. He decides whether a suspect is to be detained and confined to a remand prison or a police cell for the maximum time of five days. In case of a serious offense, the prosecutor can bring the case before the court which has to decide to remand the suspect into custody during the police investigation. If a court makes a remand order, charges have to be brought by the prosecutor within a two-week period. Main proceedings are held in the district

court, which comprises the chairman, a judge, and three to five jurors. This type of jury is a very ancient and a distinctive feature of the administration of justice in Scandinavia. The jurors are men and women elected by the political parties. In Sweden, however, the decision on possible sanctions for the offender is made by the judge together with the jurors. The district court's decision made by the Court of Appeal can also be contested in the Supreme Court in Stockholm, if the case is considered to be of special interest as a test case.

The Swedish penal system has also been transformed during the present century. Efforts have been made to avoid imprisonment as far as possible. The reform and the reorganization of the prison and probation system in 1973-74 united all the political parties in the Riksdag in the belief that deprivation of liberty is damaging to the individual and should not be imposed unless necessary. The 1974 "Act on Correctional Treatment in Institutions" provided for a more liberal treatment of prisoners with generous possibilities for leaves, visits and other contacts with society. The probation organization was also built up, resulting in 66 districts. The number of staff increased as well reaching 850.

Under the reform, the prison system was reorganized and divided into local and national prisons. The national prisons total 19 with the largest able to confine about 225 prisoners. National prisons admit offenders sentenced to more than one year's imprisonment. The local prisons total 56 and are rather small in size, averaging 20-40 inmates. Offenders in these facilities are serving less than one year's imprisonment. Offenders with long-term sentences are also transferred to local prisons towards the end of their term in order to prepare for release.

Imprisonment is always imposed for a specified length of time. Sentences may not be shorter than 14 days and only in exceptional cases may they exceed 10 years. This limit may be exceeded by two years in the case of consecutive punishments for more than one offense. In certain serious cases of recurring offenses, imprisonment may be imposed for up to 16 years. Life sentences do exist but in reality the offenders only serve between 7 and 10 years. In such cases, the offender can petition the Government for clemency to receive a fixed imprisonment term.

The average number of prisoners per day in Swedish prisons is about 3,400. The average staff to inmate ratio runs 1.2:1. However, there are considerable differences in staff members between small open prisons and closed high-security prisons. For the budgetary year 1984-85, about 14,600 persons sentenced to imprisonment were received into the various prisons. About 65 percent of the newcomers were sentenced to less than 4 month's deprivation of liberty and 12 percent to one year or more. The average costs per inmate is 200,000 Swedish Crowns a year for open prisons and 347,000 for closed prisons (U.S. $1 = 750 Swedish Crowns; U.S. $ 15,000 and 26,000).

Rehabilitation

The "Act on Correctional Treatment in Institutions" provides for a variety of options directed at preparing offenders for their eventual release. The emphasis is on enabling the offender to maintain close contact with society. Sojourn away from the prison in accordance with Section 34 of the Act is one such option. Each year some 500-600 sojourns

are authorized. By far, the commonest reason for such a sojourn is to undertake a special form of treatment. For a majority of inmates, this means treatment for drug and alcohol problems. However, vocational or educational training which necessitates residence away from the prison and military service are other examples of sojourns in accordance with Section 34. According to a study of the outcome of Section 34 sojourns, two-thirds of all sojourns are completed successfully.

Another rehabilitative option is work and study release. It is primarily for inmates confined in local prisons, who may be permitted to work, to study or to participate in vocational training or other specially arranged activities outside the prison during their release. However, work and study release is not granted to prisoners as a reward for good behavior. Instead, consideration is given to the inmate's release situation and the extent to which work and study release may resolve his or her personal problems (e.g., unemployment, lack of training or education).

Work and study release are usually granted one to four months before the inmate's final release from prison. Special attention is given to finding employment which the inmate can maintain after final release. Approximately 1,400-1,700 inmates a year are granted release to work or study. According to a study on the outcome of work and study release, about 73 percent of the inmates still had some form of employment after six months in liberty.

Recall that inmates are often able to serve part of their sentence outside the correctional institution. The provisions for such a sojourn are given in Section 34 of the Prison Act. The determining factor in deciding whether an inmate should be allowed to serve outside prison is the degree to which this would help him readapt to society. Various types of placement can be considered, (e.g., boarding schools, therapeutic centers for drug abusers, carefully chosen private homes and military service). If the inmate is granted such a sojourn, he or she must accept all the special conditions required during his or her stay outside the prison. Inmates failing to do so are immediately transferred back to confinement. During the last year, about 600 prisoners served part of their prison terms outside the institutions.

Probation, Parole and Day-Fines

Probation is a sanction which is regarded as an alternative to imprisonment. A probation sentence does not entail loss of liberty though it does involve a substantial degree of intervention. A person sentenced to probation is supervised by a probation officer or a layman supervisor for a maximum period of three years. Supervision is normally discontinued after the first year of the trial period. In the budgetary year 1984-85, the total number of persons under probation supervision was about 8,200. In addition to these probationers, a further 2,890 persons were under supervision following conditional release from prison.

Conditional release (parole) has a long tradition in the Swedish correctional system, dating from the beginning of this century. In accordance with amendments to the Swedish Penal Code, which came into force on July 1, 1983, persons serving a prison sentence of more than two months but less than two years are always conditionally released after half of the sentence has been served. Matters of conditional release of persons

serving prison sentences of more than two years are reviewed and decided on by a special board, the Correctional Services Board. This board, whose membership is approved by the Government, is headed by a judge. Conditional release is granted either after half the term or two-thirds of the sentence have been served.

In Sweden it has become a tradition since the turn of the century to avoid whenever possible the deprivation of liberty in the criminal justice system. The first laws on probation and conditional release were promulgated in 1906. The first organized probation service financed by the government was begun in 1944. Until that time, released prisoners and probationers had to stick to private charity. In 1973 and 1974, the government and parliament approved a new Prison Act and a new Probation Statute. These initiatives clearly stressed that the offender should be treated in the community to the extent possible. The deprivation of liberty should be used only in the most serious cases.

The Prison and Probation Administration, which in the beginning of the 70's had small funds for probation service, received better financial resources to organize a more efficient probation service. For example, the case load for a probation officer was 150 in 1970 but averages 30 today. This does not only depend on new resources. The supervision periods have also been shortened during the period.

Sweden has one of the lowest rates of confinement in the industrialized world, about 44 per 100,000 inhabitants, including pretrial detainees. Those offenders who by various reasons are referred to the prison system get shorter sentences than in most other countries. Given the extensive use of probation the daily number of probationers exceeds that of prisoners by more than three times.

The day-fine system reflects an endeavor to create social and judicial equality between offenders from various incomes. The judge can give a sentence up to a total of 120 day-fines. In case of punishment for more than one offense the maximum is 180. The number of day-fines reflects the seriousness of the crime and the defendant's economic situation. The day-fine sanction is the most extensively applied punishment for most types of offenses against the penal code. Such offenses can be committed against property (e.g., shoplifting, and less serious crimes against a person) as well as for some cases concerning drunk driving and other traffic offenses. The number of cases in which offenders were punished with day-fines during 1984 was 80,000.

Conditional sentences may also be given instead of imprisonment. These sentences are mainly designed for offenders whose general situation does not require any particular support or control to prevent a further criminality. The convicted person is not subject to supervision during the trial period of two years. Under certain circumstances, the conditional sentence can however be combined with day-fines. The number of conditional sentences has increased significantly during the last few years. Ten years ago, approximately 6,000 such sentences were imposed. During 1984, there were 11,000 conditional sentences.

Probation can be ordered for crimes punishable by imprisonment. It resembles the conditional sentences in not entailing loss of liberty but differs from it to the extent that it results in a substantial degree of

intervention. Probation is a form of punishment which involves treatment. Supervision is mandatory, but it is normally discontinued after the initial 12 months of the two year trial period. The court may also combine the probation order with day-fines or even short-term imprisonment not less than 14 days nor more than three months.

In July 1983 a new parole system was implemented. Every inmate who is serving no more than two years is paroled on half time. Also, the so-called long-termers, which means those serving two years of imprisonment or more, are eligible for a half-time release with the exception of certain categories of inmates. Such categories are commercial drug dealers, repeat sex offenders, and violent persons who cannot on principle be paroled before two-thirds of their original sentence has been served. A parole board responsible for the whole country decides if an inmate belongs to one or more of these categories. Although inmates may belong to these categories, they can be released after having served between one half and two-thirds of their sentence.

The parole board is of very high quality. The chairman and the vice chairman are judges of the Supreme Court or of the Court of Appeal. Members are some parliamentarians, along with civil servants from the Ministry of Justice and the prison administration. Before 1983, we had a different system. For inmates who had to serve less than one year, the local parole boards had to make the decision if an inmate should be released after half or two-thirds of the sentence. The National Parole Board had to make decisions regarding all inmates who had to serve more than one year. At that time, the local parole boards had to make predictions on the future of the inmate. Now such predictions are limited to the National Parole Board and those special categories referred to above. The real short-timers, those who are sentenced to two months deprivation of liberty or less, cannot be conditionally released.

Parole (Conditional Release) Under Debate

The changes in sentence length and conditional release are currently being discussed. It is argued that the public will gradually lose confidence in the criminal justice system when people are sentenced to two years in confinement and are only obliged to serve one year. When they served two-thirds or five-sixths of the sentence, no one took issue. It may well happen that the judge, knowing that the prison sentence of one year in fact means nothing but six months, will impose a sentence of two years in order to keep the offender out of the streets for one year.

Against this background, a committee appointed by the Government is now working with a new system for conditional release. The committee will propose that the Parliament decrease the length of sentences for every crime and offense. The committee has reviewed the Criminal Act and other special criminal laws and has proposed significant changes. Generally, the length of sentences for most crimes and offenses will be decreased. In some parts of the Criminal Act, the length of sentences will not be changed, and in a few parts, the proposals will lead to longer sentences. To maintain the same prison population balance as today, the committee will propose that all offenders be released after having served two-thirds of the sentence. The committee has proposed that the changes not become law before July 1988.

If these proposals become reality, there will be no need for the National Parole Board. The more lenient rules will be used for all persons sentenced before the change.

The Swedish Ministry of Justice is now working with a proposal to implement a new community-based sanction called Conditional Imprisonment. That means that a fixed prison term of not more than two years might be suspended provided that the offender agrees to submit to a certain time of treatment prescribed by the court. The reason for this suggested sanction is a growing number of drug addicts among probationers as well as prisoners, and a serious drug situation in the correctional facilities. Instead of a period in prison where it is easy to become more involved in drugs and where a few addicts can be adequately treated, it is viewed as more reasonable to deal with those offenders whose real problem is not criminality but drug addiction via alternatives such as therapeutic communities or even policlinic treatment under necessary control.

Conclusion

Since the amendments to the Penal Code on conditional release came into force, a debate has been maintained among politicians, scientists and the public and the media. Many of its critics express the opinion that the system of conditional release--as it is regulated today--only causes a great deal of confusion among the public about the criminal justice system and the effects of imprisonment on criminality. Some of the political parties represented in the Riksdag argue for a return to the previous system of conditional release after the offender has served two-thirds of the sentence.

PART II

PAROLE IN THE UNITED STATES:

CURRENT ISSUES AND TRENDS

PAROLE:
CONTROVERSIAL COMPONENT OF THE CRIMINAL JUSTICE SYSTEM

By
Barbara Krauth

The 1970's: A Troubling Decade for Parole

During the past decade, parole has become the most controversial component of the criminal justice system. In almost every state, the function of parole has come under the scrutiny of legislatures, governors, pressure groups, and the news media. As a result, numerous changes to parole have occurred across the country, the most prominent of which include:

(1) reconstructing the parole release decision-making process,

(2) eliminating parole boards' authority to establish inmate release dates, and

(3) involving crime victims in the parole process.

While most of the changes are perceived to restrict or limit parole activity, in fact, the function of parole in some states has expanded in scope.

Beginning in the 1970's a number of forces were merging that led to significant changes in parole, especially to attacks on parole and calls for parole abolishment.

These pressures against parole were coming from several sources:

Reduced Support for Rehabilitation - With researchers such as Robert Martinson concluding that there was little real evidence of success for correctional treatment programs, support was eroding for rehabilitation as a correctional function. That change damaged parole in two ways. First, questions were raised regarding the justification for releasing prisoners early, if, in fact, their participation in programs was having no effect on behavior. Secondly, doubts were growing about the viability of treatment programs for parolees after their release from prison.

Structuring Discretionary Decision-Making - As information systems and planning/analysis activities increased within criminal justice, it became evident that decisions being rendered at many levels of criminal justice resulted in inequitable treatment of cases with similar characteristics. To increase fairness and justice, pressures grew for structuring discretionary decision points. As a result, guidelines emerged for functions such as pretrial release, sentencing, and classification designations for inmates. Parole was affected also, with more states reducing or eliminating the discretion of parole boards/committees to set prisoner release dates, or with boards themselves voluntarily adopting guidelines.

Growing Emphasis on Punishment & Incapacitation - With frustration growing due to society's apparent inability to reduce crime or reform criminals, harsher sentences and the isolation of criminals from society

were becoming the objectives for criminal sanctions. Parole, probation and other forms of community supervision were perceived as "too soft" as more conservative attitudes led to the expanded use of prisons. During the decade from 1975 to 1984, prison populations in the United States more than doubled. Lawmakers and judges were moving toward policies and laws that locked more criminals in prisons for longer periods of time.

As these forces converged and more questions were raised about parole, some parole officials found themselves unable to provide a defense for parole. Parole had become a complex process, difficult to explain and unable to attract a supportive constituency. Some contend that paroling authorities, in their efforts to respond to conflicting pressure groups, became ineffective at satisfying any.

These conflicting pressures included the traditional support for rehabilitation of offenders and correctional reform--support for release and treatment services. Prison officials were exerting pressure to release prisoners as a means of reducing prison crowding. Opposing pressures came from the media, victims, and elected officials to keep more offenders incarcerated, especially those involved in violent or sensational crimes. Parole boards were also attempting, in some states, to use parole release as a means of reducing the disparity of sentences handed down by criminal courts. And despite pressures to base parole decisions on objective criteria, many paroling officials resisted in order to permit some flexibility to balance interests of the diverse pressure groups in their decisions. But such subjectivity and the inability to articulate a clear mission complicated and weakened the ability of parole proponents to defend it.

Clearly, the time was right in the mid-1970's to review and revise parole. Maine was the first state to make a significant change, when in 1976 it abolished both the authority of the parole board to establish prison release dates and post-release supervision. Eleven states and the federal government would eventually eliminate the parole function of setting prisoner release dates. Prosecuting attorneys were the most active group leading opposition to parole; Joseph Palmer's research in 1983-84 revealed that prosecutors were key forces in nine of the states abolishing parole. The abolition of parole was frequently accompanied by sentencing guidelines that limited the sentencing judges to ranges established by legislatures or sentencing commissions. The authority for sanctioning criminals was, in over one-fourth of the states, shifting from the courts and parole boards to legislatures and prosecutors.

Clearly, parole was an easy target for those looking for political opportunities. The emotional appeal of an attack on the system that released criminals to the streets may have benefitted some political careers more than it actually addressed any of the complex problems of criminal justice.

Parole in the United States is still undergoing transition.

Parole "Abolished" in Some Jurisdictions

The parole process includes releasing offenders, setting conditions of supervision, providing supervision, and returning violators. The term "parole abolishment" has created confusion since not all aspects of parole

have been abolished by states significantly altering parole. Often conditional release aspects remain that include setting conditions, supervising, and revoking and returning violators to prison. Following are profiles of states that have supposedly "abolished" parole:

Maine - Abolished both decision-making and post-release supervision aspects of parole in 1976. A part-time parole board continues to function to handle residual cases sentenced prior to 1976. Several legislative efforts to reinstate parole have failed.

California - Adopted determinate sentencing in 1977 that removed the parole board from setting release dates in all cases except a life sentence. A period of post-release supervision is retained for offenders, with release dates determined by good-time laws permitting reductions of up to one-third of sentence.

Indiana - Implemented determinate sentencing in 1977 that eliminated the parole board's authority to set release dates. A full-time board continues to function to set conditions of post-release supervision and to revoke in case of violations. A mandatory conditional release system requires inmate's release when sentence minus "good time" credits has been served. Good time credits may equal 50 percent of sentence.

Illinois - Determinate sentencing implemented in 1978 that eliminated parole board's authority to set release dates. Inmates accrue "good time" (up to 50 percent of sentence), then are released conditionally to community supervision. A full-time board continues to function to establish conditions of release and revoke violators.

Minnesota - Abolished and eliminated parole in 1982. Determinate sentencing system (with sentencing guidelines for judges) now permits " good time" to reduce prison terms by one-third. Remainder of sentence completed under "supervised release". The Executive Officer of Adult Release has paroling authority over inmates sentenced prior to parole abolishment and also has authority to establish special conditions of supervision and revoke violators of "supervised release".

Connecticut - Implemented determinate sentencing in 1981 that eliminated the authority of the parole board to set release dates and also abolished post-release supervision. A part-time parole board continues to function to review cases sentenced prior to 1981.

North Carolina - Adopted presumptive sentencing law ("Fair Sentencing Act") in 1981 that eliminated discretionary parole release. A full-time board continues to function to process cases sentenced prior to 1981. Inmates sentenced under the "Fair Sentencing Act" are eligible for "re-entry" parole, a period of community supervision following completion of prison term minus good time reductions. Board may set supervision conditions and revoke violators.

Washington - Implemented new sentencing law in 1984 that will institute sentencing guidelines for judges and eliminate parole release and post-release supervision. The parole board is scheduled to terminate

operations in 1988. Provisions for paroling activities for inmates remaining under the old sentencing law as yet unresolved.

Florida - Adopted sentencing guidelines system in 1983 that abolished both parole release and post-release supervision. The parole board is scheduled for elimination in 1987. Questions remain regarding authority to parole and revoke offenders sentenced under old laws after 1987. Legislative efforts to restore post-release supervision are planned.

New Mexico - Implemented determinate sentencing in 1979 that eliminated the parole board's authority to set prisoner release dates. A full-time board continues to function, setting conditions for offender release, revoking violators, and phasing out parole activities for inmates sentenced prior to 1979.

U.S. Parole Commission - In 1984, Congress passed legislation to create a Sentencing Commission and abolish the U.S. Parole Commission. Sentencing guidelines are scheduled for implementation in 1987, with the Parole Commission to cease operations in 1991. Sentencing judges will have the option to stipulate post-release supervision (3 years maximum for serious offenses). Issues relating to parole supervision and revocation authority over offenders sentenced prior to date of implementation are yet to be resolved.

Idaho - An optional sentencing system has been adopted that permits the judges to sentence offenders to either fixed terms (with no parole eligibility) or to indeterminate sentences, with the parole board setting release dates. Approximately 10 percent of the inmate population are serving fixed terms.

Restoration and Expansion of Parole Considered in Some States

Despite the fact that 11 states and the federal government have reduced the discretionary power of the parole boards, there is, at present, a counter move both in those states and others to reinstate this power. State legislative action in 1985, for example, resulted in the revival of parole in Colorado. In 1979, Colorado had adopted determinate sentencing and removed the parole board's authority to set prisoner release dates. But a highly publicized case served as a catalyst to restore discretionary parole release in Colorado. The case involved an offender, convicted of a lesser crime due to complications in gathering evidence, who qualified for mandatory conditional release as defined in the state's determinate sentencing formula. Realizing that the parole board had no discretion to deny "parole" to the offender, the legislature reinstated the discretionary release power to the parole board. Ironically, the use of discretion to establish offender prison release dates has now been used both to attack and support the concept of parole.

While much attention since 1976 has been focused on parole "abolishment," the role of parole has also expanded to deal with prison crowding in some states. Thirteen states have developed accelerated release programs for certain types of offenders during periods of prison crowding. The programs have not been implemented in some of these states because overcrowding levels have not triggered the programs. Their existence highlights a controversial debate, however: should parole release decisions be

influenced by crowding in prisons? Many parole officials, legislatures, and criminal justice officials are opposed to releasing parolees in order to relieve crowding. They argue that such releases may compromise public safety and undermine the intent of the sentencing courts. They further argue that the intent of parole is to reward positive behavior and to release offenders at opportune times for personal adjustment. Others support the use of parole over alternative methods of release to deal with crowding problems. They indicate that crowding is a reality that must be faced. If additional cells cannot be provided, some prisoners must be released. Parole, it is argued, involves officials experienced in risk assessment, offender rehabilitation, and related factors to make the most appropriate release decisions. Georgia, Tennessee, and Texas have increased parole, provided additional resources for field supervision, and thereby reduced the number of state prisoners.

The parole decision-making process itself is also undergoing change. Seventeen states report that parole release decisions are now based on guidelines or specific criteria rather than totally relying on board discretion, which has been criticized for being "arbitrary and capricious." Some states structure guidelines on the basis of research that weighs variables such as prior convictions, offense severity, recidivism data, and age at time of conviction. At least three states have mandated the use of such guidelines through state statute: New York, New Jersey, and Florida. Others have adopted guidelines voluntarily, frequently in response to the pressure of legislative action or public opinion. Some states' guidelines are less structured, sometimes based on percentages of time served or on specific criteria that must be addressed by parole board members. The U.S. Parole Commission was one of the first paroling agencies to isolate and weigh factors for a parole release decision, a system they referred to as "Salient Factors."

Public Opinion About Parole and Rehabilitation Favorable

Perhaps the most surprising change in parole is a change in public attitudes. Although parole officials, judges, and attorneys widely believe the public favors parole abolishment, recent research suggests that they are wrong. A survey of attitudes toward parole was conducted in 1984 for the Figgie Report series on crime and justice. Sponsored by Figgie International, the survey was conducted by Research and Forecasts, Inc., of New York, using a national sample of the general public, judges, attorneys, and parole officials. The results of that survey are quite surprising. The researchers found, for example, that:

Only 8 percent of the general public favors abolishing parole, while 24% favor retention of current parole practices.

Public attitudes about parole are misread by judges, attorneys, and parole officials. Forty-three percent of attorneys and 25 percent of judges perceive the public favoring parole abolishment. Likewise, state parole board members (23%) and parole officers and supervisors (26%) significantly overestimate public support for parole abolishment.

Judges generally support involvement of parole boards in the sentencing process. Only 2 percent favor removing the authority of parole boards to set prison release dates. Only 1 percent of the surveyed

judges favor the elimination of post-release parole supervision of offenders.

State parole officers and supervisors cite excessive caseloads and limited resources for offender programming as the primary factors interfering in performing parole supervision. Almost one-third (32%) of the field officers supervise caseloads in excess of 100 cases.

The general public surveyed believe that a sentence modification is justified if innocence is later determined and for:

1. Correcting unfair sentences.
2. Inmate's substantial rehabilitation efforts.
3. Inmate's good prison conduct.

Only one-third of the public respondents thought that prison sentences, once set by judges, should never be changed.

The majority of public respondents (72%) opposed reducing terms of sentenced inmates to relieve prison crowding. Fifty percent of these surveyed indicated they would agree to a 1 percent increase in state income taxes for 5 years to build new prisons (44% opposed such a tax increase). However, almost half of the respondents (46%) underestimated the annual costs of incarceration. Twenty percent thought the annual cost of incarceration was less than $700 per year. Actual costs were between $15,000 and $20,000 at the time of the survey.

Parole in Transition

In conclusion, I would like to emphasize the fact that although parole has experienced more challenges and changes in the past decade than ever before, the movement to abolish parole seems to have peaked. While several states continue to consider measures to remove parole from the sentencing/release process for offenders, parole was reinstated in one state and has expanded its role in several others. No single approach to parole has emerged as "the model" for all jurisdictions.

In some states, no parole release or post-release supervision of inmates exists. In other states, parole boards function with full discretion to release prison inmates.

But the major facts influencing change can still be identified. Those factors include the following:

The shifting emphasis to punishment, incapacitation, and victim's rights, and the parole boards' ability to respond to and accommodate those shifts.

Paroling authorities' ability to justify their function and decisions based on an accepted role in the sentencing process and of defensible criteria.

The presence of influential political figures, special interests groups, or media that target parole for close scrutiny or attack.

The degree of prison crowding and the perceived role of parole in aggravating or relieving those conditions.

The environment and expectations that existed when parole was created have changed significantly. To effectively serve the public, parole must adapt to those changes. Ideally, modifications to parole or its abolishment will occur without policy makers exploiting appealing but unfair attacks on parole, but rather through rational analysis of the parole function, and via proposals for workable modifications or alternatives to parole. Under any method of inmate release, some criminals will commit more crimes. But every criminal cannot be incarcerated forever. Parolees who commit crime are highly visible, but crimes prevented by parole supervision cannot be documented.

Likewise, the public should base its opinions on accurate information and should not expect simple solutions to complex social problems such as crime. And paroling authorities, whether parole in their states is retained, abolished, or modified, need to continue to clarify the purpose of parole and seek more objective procedures both for granting release and for supervising parolees. Positive changes such as these are indeed occurring. It is also clear that the public recognizes the value of parole decision-making more than parole decision-makers have realized.

THE STATUS OF PAROLE IN MAINE

By
Peter J. Tilton

The Abolition of Parole

In the early 1970's, the Maine Parole Board was basically a passive organization consisting of five part-time members who philosophically believed that the burden of proof should be upon the state to show that an inmate should not be paroled. This basic concept was discussed and debated heavily during those years. Subsequently, a Criminal Law Revision Commission was formed. This Commission consisted of approximately 25 members, many of whom represented different disciplines within the criminal justice system but also many of whom failed to attend the meetings.

While this debate was ensuing, the parole board was continuing to parole nearly 97% of all inmates on first eligibility. A few of these inmates, who were obviously not ready for parole, committed some heinous crimes which created a great deal of furor and negative publicity.

The result was a combination liberal/conservative coalition which orchestrated the demise of the indeterminate sentencing system and the creation of a determinate criminal code which did not allow for parole for any inmates sentenced after May 1, 1976. Those proponents of the new criminal code "sold" its concept to the state legislature by indicating that it would reduce the disparity and that people would do a certain amount of time for a certain crime. It also showed as the liberal faction of the coalition stated that no longer would an individual have to "dress oneself up" in order to look good for a parole board which might necessarily act in an arbitrary and capricious basis anyway.

Consequences of Parole Abolition

This attempt to tout the criminal code as innovative, fair and one which would reduce disparity is something which has proven to be false. In essence, changes to this code have actually increased the latitude available to the state's judiciary and made it more impossible to make any case whatsoever for reduction in disparity. The criminal code allows for sentencing as follows:

Murder = 25 Years to Natural Life
Class A = 0 to 20 Years
Class B = 0 to 10 Years
Class C = 0 to 5 Years
Class D = 0 to 1 Year
Class E = 0 to 6 Months

This wide range in sentencing caused immediate variation of types of dispositions given by individual judges. The subsequent relaxing of good time statutes and the increase use in split-sentence options have resulted in an even wider increase in latitude and greater displays of disparity than those which were evident prior to the establishment of this criminal code.

An almost immediate result of the change in the criminal code was a marked and distinct trend toward prison crowding. Since 1976 the state has been forced to open four new institutions, handle over-flow populations from the county jails, order a major lock down in 1981 of the Maine State Prison (a maximum security facility), reduce programmatic availability to all inmates and deal with what is, to a large extent, the most serious problem of all within the prison system, the idleness resulting from a lack of work for inmates.

In Maine, Parole and Probation are not split entities but are a shared field responsibility within the Division of Probation and Parole which is a part of the Department of Corrections. When parole was eliminated, probation caseloads increased and the use of split-sentences (judicial parole), was implemented to such a large extent that actual field caseloads increased on a greater percentage basis than the prison population.

The Value of Parole

Having had an opportunity to serve as both a field probation/parole officer and an administrator of the Division of Probation and Parole, it certainly appears that the flexibility of parole is far superior to the rigidity which is so often present in probation. In a very brief manner I will attempt to outline what appear to be the obvious advantages of parole as opposed to probation.

1. Parole systems are free of the necessary evil of plea bargaining which is prevalent in all probation jurisdictions.

2. Parole decision-making is performed with maximum information available. A parole board never makes a decision without a case history, social background and criminal history record information. Many sentencing courts make sentencing decisions with an appalling lack of information being made available.

3. Parole decision-making takes place closer to the period of release and is not an arbitrary decision made at the time of sentencing without any information available whatsoever as to one's likelihood for readjustment into the community in five, six, seven or whatever number of years are assigned.

4. Parole decision-making is usually done by a panel of at least three persons, sometimes as many as seven. It is a collective decision. Members have the benefit of the insight and wisdom of fellow members which in turn leads to a greater and better decision-making process.

5. Revocation of parole remains within the hands of the parole supervising agency and the parole board. A parole board is not required, and is generally not inclined, to grant continuances for a variety of legal motions, etc. Revocation can be scheduled far more easily in parole than it can be in a crowded criminal court docket.

Elimination of parole appears to have merely shifted the discretion of the in/out and release decisions to the "up front" sentencing area and

as a result has increased the discretion available to law enforcement officials and prosecutors. There is now less discretion at the other end of the system by the people who are in a better position to determine someone's preparation and readiness for release. The same decisions which were being made at release are now being made in a "vacuum" at sentencing without any experience relative to an individual's adjustment or likelihood for satisfactory completion of certain conditions while incarcerated. The increase in good time availability and split-sentence options has resulted in a dramatic release of individuals whom a responsible parole board would determine to be "not yet" ready for release.

Although these preceding comments may appear to be an over simplification, it appears that they are so basic that the answer concerning whether or not parole should remain as a viable option without the criminal justice system is very clear. It not only should remain, the opportunity for responsible parole decision-making processes should be increased.

THE IMPACT OF SENTENCING GUIDELINES ON PAROLE IN MINNESOTA AND FLORIDA

By
Donnie A. Lee

History of Parole in Minnesota

In 1900, Minnesota abolished determinate sentencing, but releasing discretion continued to be exercised by the Governor through the pardoning power until 1911. In that year, Minnesota's first parole board was created, consisting of the Warden of the State Prison, the Superintendent of the State Reformatory and one citizen member. In 1923, the Superintendent of the Minnesota Correctional Institution for Women was added, along with another citizen member. In 1931, the ex-officio members were replaced by citizens.

Until 1948, corrections officials made releasing decisions governing juveniles committed to state correctional institutions, while the citizen parole board made releasing decisions for adults. In that year, the Youth Conservation Commission (YCC) was created to make releasing decisions for juveniles and youthful offenders (those between ages 18 and 21 at the time of conviction). The YCC consisted of part-time citizen members appointed by the Governor, confirmed by the State Senate, and paid on a per diem basis. In 1963, the adult paroling authority was replaced by the Adult Corrections Commission (ACC), and a new indeterminate sentencing law was enacted. The ACC consisted of four part-time citizen members appointed by the Governor, confirmed by the Senate, and paid on a per diem basis, and a full-time chairman appointed by the Commissioner of Corrections.

In 1973, the legislature abolished the YCC and returned juvenile releasing decisions to the Department of Corrections. The ACC was abolished and replaced by the Minnesota Corrections Authority, and its jurisdiction was expanded to cover youthful and adult offenders. It was Minnesota's first full-time adult paroling authority. The 1974 legislature changed its name to the Minnesota Corrections Board (MCB).

While it is clear that the 1973 legislature expected that a full-time parole board would make "better" decisions, the law provided no criteria or guidelines for the MCB to follow in making parole decisions. The primary change was to create a new parole board consisting of five new full-time members.

Origin of the Parole Guidelines

The MCB came into existence on January 1, 1974. It consisted of four full-time members appointed by the Governor, with Senate confirmation, to staggered six-year terms. The full-time chairman was appointed by the Commissioner of Corrections and served at his pleasure. The chairman was an officer in the Department of Corrections with the rank of deputy commissioner. While the chairman provided a link between the Department of Corrections and the MCB, the MCB operated as an in dependent executive agency of government.

The MCB approved any release of an inmate from state correctional institutions--via parole, medical parole, temporary parole (furloughs), or work release. It also had responsibility for the parole revocation process, and the discharge of sentences prior to expiration.

None of the members serving on the MCB had prior experience in parole decision-making. The legislation creating the MCB provided no criteria or guidelines to follow in making parole decisions. The 1963 criminal code provided only broad direction, stating that the purposes of the criminal code were to protect the public, deter crime, and rehabilitate offenders.

In 1973, Legal Assistance for Minnesota Prisoners (LAMP) filed a suit in federal court against the then part-time adult parole board, contending that the absence of criteria for parole decisions resulted in an arbitrary and capricious exercise of discretion. The suit was continued and amended to name the MCB after 1974.

The following factors, then, contributed to the development of parole guidelines:

1. The absence of prior parole decision-making experience by members of the new full-time board, and thus, their willingness to consider alternative methods of exercising their discretion;

2. The broad discretion conferred on the MCB, unguided by statutory criteria;

3. The possibility of federal court intervention.

Accordingly, in February 1974--one month after they came into existence--the MCB submitted a grant to the Governor's Commission on Crime Prevention and Control to develop parole decision-making guidelines. The grant was funded and became operational shortly thereafter.

The Minnesota Corrections Board (Parole) had three main goals: (1) to protect the public, (2) to deter crime, and (3) to rehabilitate offenders. In order to accomplish these goals, the Minnesota Corrections Board considered factors relating to risk of failure on parole, severity of the committing offense, and inmate behavior and conduct while imprisoned to determine the length of time individual inmates would be incarcerated.

The objectives of the parole decision-making guidelines were:

1. To provide a rational method of determining length of incarceration which allowed the Minnesota Corrections Board to accomplish its goals;

2. To establish a method of parole decision-making that assured equitable treatment of inmates.

3. To assign target release dates to inmates at their initial appearance before the Minnesota Corrections Board.

Development of the Minnesota Sentencing Guidelines

During the 1970"s social unrest, and the Attica prison riot, the value of parole came to the forefront in Minnesota. Sentencing reform captured the interest of policy makers throughout the country. Many states adopted major changes in sentencing laws aimed at increasing the certainty and uniformity of sentencing. Minnesota was not unusual in its concern with the issue of sentencing during that time. This brought about a strange relationship between the liberals (majority) and the conservatives (minority). Both groups were ready for a change.

The "liberals" wanted to:

1. Abolish Indeterminate Sentences because judges had too much discretion in imposing sentences. There was no proportionality between the offender who committed the offense and the type of offense committed. It was felt that members of the minority groups (blacks and Indians) received longer sentences than members of the majority group (Caucasians).

2. Introduce Determinate Sentencing to bring about "Truth in Sentencing" or the "Just Dessert" approach to sentencing offenders.

The "conservatives" wanted to:

1. Abolish Indeterminate Sentencing in favor of "flat time" because it was thought to be more punitive.

2. Implement Determinate Sentencing to punish criminals.

3. Abolish parole because there was no scientific proof that parole really worked.

Criticism of indeterminate sentencing reflected a number of concerns, including disparate sentences that resulted from individualized sentencing, doubts as to the efficacy of rehabilitation, and concern that the indeterminate sentencing sometimes resulted in lenient sentences that depreciated the seriousness of the offense committed. Not all critics agreed with all criticisms, but critics did tend to converge to support a sentencing structure that would (1) emphasize increased uniformity in sentencing; (2) base sanctions on factors related to a justice model of sentencing such as the crime committed instead of on the utilitarian goal of rehabilitation; and (3) provide a structure to reflect these changes in goals and philosophy--that is, eliminate parole and establish determinate sentences defined by the legislature and imposed by the judiciary, with the discretion of whether to imprison left to the courts. Also, largely at the insistence of the chief proponent of determinate sentencing, a state senator whose vocation was law enforcement, the proposed change in the sentencing structure had to result in prison populations that would fit existing state correctional resources.

Defenders of indeterminate sentencing maintained that extensive discretion in the criminal justice system was necessary to reflect differences among offenders and offenses, and to achieve the utilitarian goals of rehabilitation, deterrence, and incapacitation. Maintenance of the structure that had developed to administer indeterminate sentencing, principally

the Minnesota Corrections Board, was central to the campaign. Proponents of indeterminate sentencing felt that abuses arising from the exercise of extensive discretion could be effectively limited while retaining the existing structure and utilitarian goals by adopting administrative rules. The Minnesota Corrections Board implemented parole decision-making guidelines in 1976 in order to better structure their discretion while retaining the basic features and goals of indeterminate sentencing.

Throughout the legislative debate, the membership of the state Senate was virtually unanimous in supporting a determinate sentencing structure. The membership of the state House of Representatives was somewhat more divided, but the House Criminal Justice Committee, which acted as a gate keeper on sentencing matters, was strongly committed to an indeterminate system. The membership of the House of Representatives did pass a determinate sentencing bill in 1976, as did the Senate, but the Governor vetoed the bill, ostensibly because the bill lacked enhancement provisions for repetitive felons. Determinate sentencing never again mustered a majority in the House of Representatives; and in 1978, the stalemate was resolved with the passage of legislation that created the Sentencing Guidelines Commission.

The Sentencing Guidelines Commission was directed to establish the circumstances under which imprisonment of an offender is proper as well as fixed presumptive sentences. The Guidelines were to be advisory to the district court with the court required to make findings of fact as to the reason for the sentence imposed, and to submit written reasons for departure from the Sentencing Guidelines in each case in which the court imposes or stays a sentence that deviates from the Sentencing Guidelines recommendation. The indeterminate sentencing code with its long statutory maximums was left intact and available to the Commission in establishing Sentencing Guidelines and to the Courts in imposing sentences.

The legislation established that vested good time would be earned at the rate of one day for each two days during which no disciplinary violations occurred. The earned good time is deducted from the sentence and is served on supervised release at the end of the term of imprisonment. For example, a 24-month executed sentence could yield a maximum of eight months earned good time, with 16 months of the sentence served in prison and eight months of the sentence served on supervised release, at which point the sentence would expire.

The Commission was instructed to submit Sentencing Guidelines to the legislature January 1, 1980 for review. Unless the legislature acted to the contrary, the Sentencing Guidelines would go into effect for crimes committed on or after May 1, 1980.

The legislation determined the fundamental structural issue of where sentencing discretion would be exercised--essentially by the courts within the constraints of Sentencing Guidelines, with parole eliminated. The Minnesota Corrections Board retained jurisdiction over all inmates and parolees sentenced for crimes committed prior to May 1, 1980. No discretionary releasing authority was available for offenders committed to the Commissioner of Corrections for crimes committed on or after May 1, 1980, except through work release.

Observations on Sentencing Guidelines and Parole in Minnesota

1. Some judges favor Sentencing Guidelines because they provide a basis for "standard sentences."

2. Some judges do not like Sentencing Guidelines because they removed their discretion.

3. Some prosecutors like Sentencing Guidelines because they have inherited the discretion previously held by judges. Prosecutors can plea-bargain cases or stack criminal history points to manipulate the guidelines.

4. Some prosecutors do not like Sentencing Guidelines because they consider them to be too lenient.

5. Most Public Defenders like them because they know what sentence will be imposed upon their client before they go to court.

6. Most legislators like them because they can control the prison population by altering the guidelines.

7. Department of Corrections personnel like the guidelines for the same reason as the legislators.

8. The majority of the public has accepted guidelines as the best alternative for sentencing offenders.

9. Offenders like guidelines because 75 percent of the felony offenses result in a recommendation for probation.

Minnesota has the lowest incarceration rate of our 50 states. It has a population of 4.5 million and incarcerates 52 out of every 100,000 residents. The current prison population is approximately 2,700 inmates.

Perhaps one reason for this low rate of incarceration is the homogeneous population of Minnesota: 97 percent of the state is Caucasian, 1½ Black, 1% Indian and ½% other. This ratio of population, regardless of race, significantly reduces problems that stem from cultural or ethnic differences. Minnesota also has exceptional educational standards, above average wages and liberal social programs.

In the mid-70's, the legislature passed the Community Corrections Act that gave local counties the option of relying on the State Correctional System or developing their own correctional program. In Minnesota, there are 12 County Correctional Associations that service 60 percent of the State's population. This involves approximately 400 parole/probation agents and supervisors that service 20,000 clients. There are 48 counties that provide probation services involving 130 agents and 7,000 juveniles, and misdemeanants.

The Minnesota Department of Corrections serves 60 of the State's 87 counties, which accounts for 40 percent of the State's population. There are 71 state agents that serve 6,000 clients. There are approximately 33,000 to 35,000 offenders under supervision in Minnesota.

In 1974, the Minnesota Corrections Board (MCB) was established. It was the first full-time parole board and was given total discretion over the release of inmates. The board was composed of five members that were appointed by the Governor and confirmed by the Senate. Unfortunately, none of the members had any experience in rendering parole decisions. Their unbridled discretion and parole release decisions soon came under criticism. As a result, the legislature attempted to abolish parole in 1976 and 1977, but was unsuccessful. In 1978, the legislature created the Sentencing Guidelines Committee to study the feasibility of developing Sentencing Guidelines. The guidelines were implemented in 1980; and in 1981, the Committee recommended that the parole board be abolished. The legislature abolished the parole board in 1982.

For whatever reasons, it is my opinion that the parole board never had an opportunity to establish itself and function as a full-time professional board. Two years after it was created, legislation was introduced to abolish it. The board was fighting for its life rather than being about to devote its time and energy to rendering valid parole decisions.

Development of Sentencing Guidelines in Florida

During the late 1970's, two of Florida's Circuit Court Judges attended a judge's conference in Nevada. They attended a session on Sentencing Guidelines presented by representatives from the State of Minnesota. Returning to Florida, the judges shared the information on sentencing guidelines with the Chief Justice and Attorney General. Both men were favorably impressed and became strong supporters of Sentencing Guidelines.

Florida decided upon the theme of "Truth in Sentencing." A bill was introduced to the legislature concerning determinate sentencing. The Governor vetoed the passage of the bill with the stipulation that a blue ribbon commission would be created to study the feasibility of determinate sentencing. The Chief Justice was appointed chairman of the 15-member commission.

The Sentencing Guidelines Commission conducted extensive research to determine the length of sentences imposed for similar offenses. Later, a pilot project was conducted in four (4) judicial circuits. After a period of evaluation, the Commission made a recommendation to the Governor which stated that if the public and the legislature felt a change in the judicial system was needed to bring about progressive reforms, Sentencing Guidelines would be the best alternative. The Guidelines were then developed as a compromise between Indeterminate and Determinate Sentencing and became effective October 1, 1983.

The legislation states that "Sentences imposed by trial court judges must be in all cases within any relevant minimum and maximum sentence limitations provided by statute and must conform to all other statutory provisions. The failure of a trial court to impose a sentence within the Sentencing Guidelines shall be subject to appellate review pursuant to Chapter 924."

"The Sentencing Guidelines shall provide that any sentences imposed outside the range recommended by the guidelines be explained in writing by the trial court judge."

"A person convicted of crimes committed on or after October 1, 1983, or any other person sentenced pursuant to sentencing guidelines adopted under this section shall be released from incarceration only:

A. Upon expiration of his sentence.
B Upon expiration of his sentence as reduced by accumulated gain time, or
C. As directed by an executive order granting clemency."

Ofenses have been grouped into nine (9) offense categories:

Category 1 - Murder, Manslaughter
Category 2 - Sexual Offenses
Category 3 - Robbery
Category 4 - Violent Personal Crimes
Category 5 - Burglary
Category 6 - Thefts, Forgery, Fraud
Category 7 - Drugs
Category 8 - Weapons
Category 9 - All Other Felony Offenses

There are five (5) factors that the Court must consider when scoring an offender to determine the length of sentence to be imposed:

1. Primary offense at conviction.
   The primary offense is defined as the most serious offense at the time of conviction.

2. Additional Offense(s) at Conviction
   All other offenses for which the offender is convicted and which are pending before the court.

3. Prior Record
   Any past criminal conduct on the part of the offender, resulting in conviction, disposed of prior to the commission of the primary offense. Includes all prior Florida, Federal, out-of-state, military and foreign convictions.

4. Legal Status at Time of Offense
   Determine whether offender is on parole, probation, community control, in custody serving a sentence, on escape, fugitives who have fled to avoid prosecution, or who have failed to appear for a criminal judicial proceeding or who have violated conditions of bond and offenders in pretrial intervention or diversion programs.

5. Victim Injury (Physical)
   Physical injury suffered by victim shall be scored if it is an element of any offense at conviction.

Positive Results of Sentencing Guidelines

The most agreed-upon positive result of Sentencing Guidelines is the reduction of disparity in sentencing. Unless there exist mitigating or aggravating circumstances, the sentence imposed should fall within the range of time recommended by the guidelines. If the judge imposes a

sentence less than the one recommended by the guidelines, the State Attorney may appeal the decision. However, this seldom occurs. Should the judge impose a sentence greater than the one recommended by the guidelines, the defendant has the right to appeal. This occurs quite often and will also be addressed under the Negative Results of Sentencing Guidelines. In any case, if the judge imposes a sentence less than or greater than the one recommended by guidelines, he must give written reasons that are clear and convincing.

Other factors that received some favorable comment were the abolishment of parole and the idea that Sentencing Guidelines represented "Truth in Sentencing." A circuit court judge may have best described Sentencing Guidelines in his statement that he gave to the news media: "Sentencing Guidelines is a noble experiment that has provided some good research data."

Negative Results of Sentencing Guidelines

There are many negative aspects of the guidelines that were mentioned by Judges, State Attorneys, Public Defenders, and Probation and Parole Commissioners.

1. Limits the discretion of Judges.
2. Abolishes parole.
3. Guidelines are too lenient.
4. Offenders receive shorter sentences.
5. Gain time has increased.
6. Inmates serve shorter sentences.
7. No post-release supervision.
8. No Parole Commission to address if you oppose the release of an offender.
9. Appeals have increased.
10. Increased cost to taxpayers.
11. Increasing prison population.
12 "We are still playing games with the System," according to one State Attorney.

Status of the Florida Probation and Parole Commission

The Florida Probation and Parole Commission was created in 1941. It originally consisted of five (5) members, but was later expanded to seven (7) and eventually expanded to its current number of nine (9) members. While the Commission is comprised of nine (9) members, it votes in teams of two members, and a majority decision is not required for the parole of an inmate. Two board members may release any inmate considered for parole. This procedure provided support for negative criticism. Like any paroling authority, the Commission was criticized for making poor decisions.

Other sources feel the Commission was insensitive to the Department of Corrections and other criminal justice agencies. The Commission may also have been insensitive to the mood swing of the public. While the public wanted truth in sentencing, the Commission continued releasing inmates much earlier in their sentence. As one Commissioner explained, "one or two years on a life sentence." Judges also feel the Commission totally disregarded the length of sentence imposed. One Circuit Judge believes this one factor probably contributed to the downfall of parole. For whatever reasons, parole in Florida is scheduled to be abolished on July 1, 1987.

The theme of "Truth in Sentencing" sounded like a good idea and opponents found the concept difficult to argue against. Political supporters (members of the legislature, Attorney General, some Circuit Court Judges, and other elected officials) liked the theme because it could be sold to the public. The Sentencing Guidelines Legislation was tied to a bill to "sunset" the Florida Probation and Parole Commission for expiration effective July 1, 1987. According to the Probation and Parole Commission Chairman Kenneth Simmons, the Sentencing Guidelines bill which also provided for the abolishment of the Probation and Parole Commission passed by a single vote.

"Truth in Sentencing" has not come to fruition. The idea was to impose a specific sentence within a limited range of time, and eliminate the possibility of parole. Everyone in the criminal justice system and the public would know how much time the offender would serve. Three years would mean three years. However, at the same time, the Sentencing Guidelines were implemented and the Parole Commission sunsetted for extinction, the legislature increased the amount of Gain Time awarded by the Department of Corrections from approximately 33 percent to 50 percent and also passed the 98 percent law which states if the prison facilities reach 98 percent of maximum capacity for a period of seven (7) consecutive days, the Department of Corrections has the authority to release certain inmates that meet established criteria.

Sentencing Guidelines have failed to address the problems of increasing crime or an increasing prison population. Since fewer offenders are being sent to state prisons, Sentencing Guidelines may have temporarily transferred the problems from the state level to the county level. Seven out of eight cases are adjudicated Non-State Custody Cases and offenders are sent to county jails to serve their sentences. As a result, many of Florida's county jails are now under Federal Court Order due to overcrowding conditions.

The Sentencing Guidelines Act of 1982, which in effect abolished the Commission, also provides for legislative review to determine the future of the Parole Commission.

I believe Parole will be continued or reinstated in Florida. There are too many unanswered questions about the status of 27,069 inmates. Thousands already have a presumptive parole month scheduled after July 1, 1987. The Governor and his six cabinet members simply would not have the time to consider clemency or revocation of parole.

PAROLE AND DETERMINATE SENTENCING

By
Richard T. Mulcrone

The 1970's: Parole Under Seige

The parole process is important to the system of criminal justice in America, and it contributes to the orderly running of corrections. It is one of the ironies about the debate on parole which rages across the country. Paroling authorities are often painted with a liberal brush, but parole boards were never liberal. In fact, when corrections was speeding along at its breakneck fastest pace in the race to see who could out-rehabilitate the other, parole boards were the inertia which slowed the pace and held the process to a measure of reasonableness. However, the parole process was attacked by liberal groups for doing so and unappreciated by the conservatives in its efforts to hold the system together. Recall that it was the Friends Society report of 1973 which first suggested, in the wake of Attica, that parole might be the problem. Yet, the smoke cleared from Attica and there was no mention of parole as a problem by the inmates who met with the press, no mention of parole in the grievances which were presented to Commissioner Oswald; but months later, the Friends Society, a most liberal organization, struck the first blow which began the crumbling of parole.

The next most serious blow to parole's stability came from academia. First came Martinson arguing "nothing works" in rehabilitation. (Of course, Martinson never said that. What he said was that literally everything in programming worked for some numbers of people. The problem was that we could not predict with certainty who would succeed in which program.) Fogel with his "living proof" for the justice model, and the persuasive and articulate Norval Morris were joined by a legion of other academicians using LEAA money to find reasons why parole was ineffective.

Parole Boards Fail to Respond

And except for a few leaders in the field, parole did nothing. It sat, it ignored, it waited, but it did not lead. It was almost as if parole had a death wish; almost as if it did not appreciate the magnitude of the problem. It was almost as if paroling authorities did not realize that private citizens like Richard Figge were commissioning private studies of crime and circulating their results to the President, to every congressman, to Governors, to every influential legislator in every state, and to every corrections commissioner. And those reports were laying the blame at the doorstep of parole; the bad were getting out too soon, the good were staying in too long, and no one was being held responsible for recidivism. After his first study Mr. Figge concluded that parole should be held responsible for high crime rates and recidivism. Parole was, in fact, being held responsible for crime; for the fact that:

> In 1980, 23,000 Americans lost their lives at the hand of criminals. In one year that is half the deaths (47,752) that American incurred in ten years of fighting in Viet Nam.
>
> In 1979, 654,000 Americans were assaulted by criminals. In one year that is three times more than all of the physical wounds (155,419) inflicted on Americans in ten years of fighting in Southeast Asia.

VICTIMS: In 1981, nearly one of every three households in this land were victimized: 41.5 million victimizations were violent crimes; 34,872 million were property crimes. One out of six people in this nation age 12 or older were the victims of crime in 1981.

THE CRIMINAL: In 1981, 2.29 million were arrested for Uniform Crime Report Index Crimes: 464,825 for violent crimes; 1,828,928 for property crimes. There are 464,000 in prison and nearly another 200,000 are in jail; 1.5 million are on probation and another 250,000 are on parole.

LOSSES: Losses from personal and household crimes exceeded $10 billion in 1980; $600 million of that loss was damage caused by the criminal. Business lost another $1 billion plus. Even with those staggering numbers, much crime goes unreported.

Mr. Figgie said that parole played a great role in that blood bath and that economic drain.

The Changing Role of Parole

Well, it is not important at this moment whose fault crime is. The more important question is of the future of parole. What has saved parole so far is the problem of prison overcrowding. The criminal justice system has a need for parole to keeping a constant flow of people coming out of the institutions. If parole is to survive, it must become an active partner in that process. Now it is clear that many parole chairpersons do not believe that this is a proper role for paroling authorities. In another time, that may have been so, but 'the times, they are changing.' Parole needs to fit into a process where it is needed. Right now that is in helping to control crowding. At the same time, it needs to mount an attack on senseless sentencing changes which not only contribute to this crowding problem, but which do not contribute to safer communities.

Determinate sentencing, for instance, is a mindless non-answer to the crime problem. At its simplest, it means hold everyone--the young and the old, the novice and the sophisticate, the professional and the situational, the dangerous and the more hapless pest who often ends up incarcerated. Determinate sentencing is the worst of all worlds for everyone; society gets less protection from the really dangerous and it gets embittered results from keeping the non-dangerous for longer periods of time than they need to learn the lesson. It is the worst kind of injustice to treat the unequal equally.

Moreover, crime is a complex social phenomena the causes of which are often subtle and seldom clearly understood. What we do know, however, is that prisons are full of our have-nots and we as a civilized society should not cement them into long and hopeless sentences. We have to tell the public often about who is in prison. For the most part, men and women who are the: PRODUCTS OF POVERTY. We have to remind the public that:

PRISONS ARE FULL TO OVERFLOWING WITH THE POOR.

MOST PEOPLE WHO GO THROUGH THE CRIMINAL JUSTICE SYSTEM ARE REPRESENTATIVE OF SOME OF THE MOST SERIOUS EXAMPLES OF THE HAVE NOTS OF OUR SOCIETY.

THE HALLMARKS OF THOSE WHO VIOLATE OUR CRIMINAL CODES ARE ILLITERACY, A LACK OF JOB SKILLS, POOR OR NON-EXISTENT WORK HISTORIES, AND INADEQUATE LIFE-COPING SKILLS.

Parole: A Strategy for the Future

Parole authorities must be proactive and creative, if they are to stem the tide of parole abolition and the onset of mandatory and determinate sentencing.

First, parole authorities must see themselves as part of the state's correctional team; a team player intent on keeping the dangerous incarcerated while at the same time assisting to maintain institutional populations within acceptable limits.

Second, you must go on the circuit and tell your story. Wherever your adversaries are, you should be there also. There are great stories to be told by articulate parole board members. The stories are so interesting that there once was a popular radio series about parole board decisions.

Third, let no attack go unanswered. Let no hearing or meeting be held where parole is the subject without your presence.

Fourth, publish your own report. Even if you have to do it at home with your own computer or even with pencil and paper, do your own statistics, draw your own conclusions.

Fifth, know your enemies. Abolition legislation serves somebody's self interest. The dissolving of your discretion means that someone else will have more. Know who and your probably know who seeks your abolition.

Just as abolition movements rely on a very few people, stopping that movement only takes a few powerful people. Usually, the governor can stop it; sometimes the Commissioner of Corrections can stop it; a powerful key legislative Chairperson can always delay and sometimes kill it; a few of the right judges and law enforcement officers can head it off. Pick your friends carefully and you can stop abolition legislation. And keep your allies closely apprised of what you are doing. A few well placed people can do wonders in keeping trouble from developing.

Sixth, get accredited. Although money is tight and the process takes time, it will serve your best interests to accredit your board. You can still abolish an accredited board, but, believe me, it is harder!

Finally, develop a body of information on how decisions are made. Injustice, whim, or caprice at the hands of a parole authority is not better than those same shortcomings at other parts of the system. Develop systematic trackable processes by which the board makes decisions. Reason and rationality can be powerful defenses even for decisions which go wrong.

Well, what is the prospect for the future if parole does nothing? Bleak! Paroling authorities have the unique problem of being attacked by both liberals and conservatives. Various groups who can not agree on anything else, who will not sit down to discuss any other subject will meet to talk about parole abolition. Paroling authorities need to take the attack

away from them, and to counterattack with information, presence, and powerful allegiances.

Conclusion

In closing, it is necessary to emphasize that it is a terrible time in corrections today. The problems are well known: too little public support, too little political backing, too few resources, and too many people under your jurisdiction. Crime has become a staple on the American scene. Almost every evening, prime-time programs deal with it in some way; every news show, every newspaper, every magazine reports on the senseless, brutal, heinous crime of the moment. When we think that our sensibilities cannot be shocked any deeper, we are confronted with some new madness. When we have put to rest the last volley of barbs, slings, and arrows of a public and a press ready to blame corrections generally and parole authorities particularly for the seeming inability to protect the social order, some new vicious offense raises the public ire to new levels. Corrections administrators tumble, parole boards are abolished, new laws and new penalties are enacted, a new wave of fresh, corrections administrators take over and soon the process repeats itself.

It is nonetheless clear that, for the most part, prisons are not filled with madmen but with people who, for a variety of reasons, have become involved mostly in property crime. That is what makes the job of corrections and parole both meaningful and tough. The tremendous misinformation which abounds, and the cheap and meaningless political rhetoric combines all too often with a press more intent on sensationalizing the news than on delving for the human stories behind it. In all of this, parole boards must not become complacent. Parole serves and must continue to serve a vital function in the criminal justice system.

PAROLE RISK ASSESSMENT: A TOOL FOR MANAGING PRISON POPULATIONS AND RECIDIVISM

By
Daryl R. Fischer

Risk Assessment: An Introduction

Risk assessment and parole guidelines have become hot topics of discussion within the parole community over the last several years. The impetus toward early release as a population control mechanism, the concerns with community safety thereby engendered, as well as the movement toward greater fairness and consistency in parole decision-making have combined to foster an increasingly fertile atmosphere for the movement toward objective criteria.

The primary focus in what follows is on the issue of risk assessment in lieu of a discussion of the broader concept of parole guidelines. Although I do have considerable experience with the latter while serving as guidelines coordinator in Iowa for four years, nonetheless, I am of the opinion that the specific issue of recidivism and violence prediction is the more pressing of the two at this particular point in the evolutionary process; this is because serious recidivism by parolees is much more visible to potential critics than is inconsistency in decision-making.

I have been involved with recidivism research on almost a continuous basis since 1975, first in Iowa, and now in Arizona. Since August of 1985, I have held the position of Director of Research, Statistics, and Risk Assessment with the Arizona Board of Pardons and Paroles, where we are involved in validating and implementing a modified version of the so-called "Iowa Model" of offender risk assessment.

Parole Decision-Making and the Prediction of Recidivism

I would like to itemize some of the major findings of our research on recidivism prediction, and to briefly introduce the model now in use in Arizona. To begin, I am going to put forward a rather rash sounding statement, namely, that paroling authorities may realistically move toward increasing the frequency of parole grants, while simultaneously slashing the absolute frequency of serious recidivism and violence by parolees. It has actually been demonstrated in Iowa that such a scenario can work in practice. Beginning in 1981 and continuing to the present, the Iowa Board of Parole, with the assistance of various versions of the Iowa model of offender risk assessment, has been able to more than double the parole rate while simultaneously reducing the rate of violence by parolees by a third or more. Indeed, the increased parole rate was made possible in part by the confidence which the board has placed on the violence prediction component of the model.

Of course, the basis for the opinions as expressed above, and for the observed impact of risk assessment on parole decision-making in Iowa, lies in the fact that, despite popular sentiment, and in contrast to the prevailing wisdom in the field, serious recidivism and violence by released prisoners can be predicted with a high degree of accuracy by objective methods. The major reason that prediction and risk assessment have fallen

into ill repute is that historically the most popular instruments have been able to improve on chance or random selection by no more than 35-40% (MCR values). However, we're now talking a whole new ballgame, as all the most recent versions of the Iowa and Arizona models show a 65-70 percent improvement on chance, which translates into a "hit rate" or level of accuracy of 85-90 percent. This takes risk assessment out of the realm of educated guesswork and into the domain of what I believe to be informed insight.

Validation Study of Risk Assessment Instrument Underway in Arizona

To illustrate the predictive validity of the Iowa/Arizona instruments, I will submit to you a few of the early results of the current validation study underway in Arizona. Our initial efforts at validation have focused on paroling activity during 1985, examining pre-release risk assessments of parole candidates, of parolees, and of serious and violent parole violators. With reference to the validity of the violence prediction component of the model, we find that 12 percent of Arizona parole candidates, and correspondingly 4 percent of Arizona parolees, account for 64 percent of the 36 cases of parolees returned to prison for new violent crimes during 1985. This group, which we refer to as Very Poor Violence Risks, constitute a potential target group for future efforts at selectively incapacitating potentially violent offenders. To reiterate, 12 percent of parole candidates and 4 percent of parolees, PREDICTABLY account for 64 percent of the violent recidivists among parole violators.

In the broader context of predicting serious recidivism by parolees, including violent, property, weapons, and drug-related crime, 18 percent of Arizona parole candidates, and correspondingly 10 percent of Arizona parolees, account for 52 percent of the 61 cases of parolees returned to prison during 1985 with new prison sentences. This group, which we refer to as Very Poor Safety Risks, includes the Very Poor Violence Risks plus those highly likely to commit other serious but non-violent crimes while on parole. This latter group would provide a somewhat more expansive and potentially higher impact group for reducing serious recidivism by parolees, since the volume of criminal activity thereby effected is much larger, including burglary, larceny, forgery, drug dealing and others.

On the other end of the risk assessment spectrum, we find that 55 percent of Arizona parole candidates, and correspondingly 67 percent of Arizona parolees, account for no more than 17 percent of the serious recidivists, and no more than 15 percent of the violent recidivists among 1985 parole violators. This group, which constitutes "Good" and "Excellent" Risks both for serious recidivism and violence, would provide a generally suitable target for accelerated release and a means of reducing prison population pressures without increasing recidivism. Further, a mixed strategy of early release of Good Risks and delayed release of Poor Risks, the true "Selective Incapacitation Scenario," could hypothetically lead to what may seem to be strange bedfellows, namely an increase in the parole rate, coupled with a reduction in violence and serious recidivism by parolees.

(Post-Conference Note: As indicated above, the early Arizona samples of 36 violent recidivists and 61 serious recidivists [new prison sentences] are too small to allow sweeping conclusions as to the validity of the instrument in question. The results on these samples are no more than

hopeful indications of the final validation findings.

The basis for the claims made above lies for the most part in the results of a three-year study undertaken while the author was employed by the Iowa Statistical Analysis Center. The results of that study reveal a few of the findings of the same type as those given above for Arizona data. We found, for example, with a combined construction/validation sample of 1,000 cases of released prisoners followed for approximately four years each, that 15 percent of the cases, the Very Poor Violence Risks, accounted for 90 or 46 percent of the 196 cases exhibiting new violent felonies [charges or convictions] during the follow-up period. Similarly, 22 percent of the cases, the Very Poor Safety or Violence Risks, accounted for 53 percent of the cases of releases returned with new prison sentences. On the other extreme, the Good Risks, both for serious recidivism and violence, constituted 52 percent of the sample, yet accounted for no more than 9 percent of the violent recidivists and 19 percent of the serious recidivists. Both the construction [814 cases] and validation [186 cases] portions of the sample showed MCR values in the range of .65 to .75 for violence prediction and .55 to .65 for recidivism prediction [MCR indicates the fractional improvement over chance in prediction.] A statistical report on the subject gives extremely detailed findings on the predictive results using 16 separate measures of recidivism, with one, two, three and four-year follow-up results with selected measures.)

There are at least two alternative scenarios for implementation of the selective incapacitation philosophy via risk assessment. The first would maintain an unchanged level of paroles, but would correlate time served and the parole rate with risk (the Poor risks to serve more time and the Good risks less). The second scenario would maintain the correlation of risk with parole rate, but would incorporate also a total increase in paroles. We estimate that in Arizona the first scenario might lead to a 43 percent reduction in serious recidivism by parolees and a 50 percent reduction in violence, that is, 43 percent and 50 percent reductions with no increase in paroles. If paroles were to be increased as in the second scenario, let's say by 13 percent, we would estimate a 15 percent reduction in serious recidivism and a 30 percent reduction in violence. In either case, we have a highly significant impact on recidivism through the use of actuarial methods. These results can be obtained without seriously compromising the other major concerns present in the parole decision, such as consistency, fairness and desert, prison population control, and to an extent, rehabilitation and community reintegration.

Seven Basic Predictors of Risk

Perhaps the major advance during the last two years of research lies in the refinement of the scoring of predictive factors to enhance the apparent simplicity, reliability, fairness, and believability of the instrument. During this recent two-year period, techniques have been developed to synthesize predictors of a much more elegant and sophisticated nature than was previously the case, with the result of a tremendous increase in "economy," for lack of a better word. This increase in economy means greater simplicity, consistency, reliability, and fairness in scoring individual cases and a corresponding increase in attractiveness to potential users. There are seven basic predictors, plus what we refer to as a "Violent Offender Classification." (See Appendix A at end of article for a listing of parole risk assessment criteria.) The seven predictors are scored individually on simple unit-weighting scales, the results of which

are added to arrive at a single "Risk Score" which varies from 0 to 21. Offenders scoring high on the scale, "8-11" or "12 or more" are rated as Poor or Very Poor Safety Risks. In addition, if they are classified as Violent Offenders, that is, if they exhibit at least one clear violence-related factor, they will in addition be rated as Poor or Very Poor Violence Risks.

Of the seven predictors, the following items show the highest levels of predictive validity, as reflected in the greater variation in scores up and down the scale: Current Violent Recidivism (Item B), Prior Violence (Item C), Criminal History (Item D) and Substance Abuse History (Item F). The Prior Violence and Criminal History factors (Items C and D) deal with past incidents and reflect the number, recency and seriousness of such crimes. For the prior Violence factor, which deals with prior charges (or convictions) for violent felonies, age is scored in calendar time. For Criminal History factor, on the other hand, which deals with prior felony convictions, age is scored in street time. Thus offenders are not given credit for time off the street in measuring the age of their prior convictions. Both the Prior Violence and Criminal History factors are scored as twice the severity of the crime (on a 10 to 80 scale; e.g., Murder = 80; Robbery = 60; Burglary = 30, etc.) divided by one plus the age of the prior years--or in symbolic form 25/1-A. This makes the indices directly proportional to severity and inversely proportional to age, which I believe is the most logical method for rating priors.

This type of dually-weighted measure of priors improves by leaps and bounds on the more traditional measures based only on the numbers of priors of various types. Particularly worthless as predictors, without reference to age or severity, would be the factors (1) number of prior adult convictions, (2) number of prior adult felony convictions, and (3) number of prior adult incarcerations (or prison terms). Such measures are insufficiently sensitive to the dynamics of criminal careers to suit them for purposes of effective risk assessment. I'm not saying that they have no validity for predictive purposes, but just that the degree of validity is only very marginal compared to what the weighted measures exhibit.

Two other key factors in the assessment are Items B and F, Current Violent Recidivism and Substance Abuse History. The recidivism factor takes note of any new charge or conviction for a violent felony after the first arrest leading up to the present incarceration, such as during pre-trial release, on probation, while incarcerated, or while on a previous parole on the current sentence. This item is particularly useful for violence prediction. With respect to Substance Abuse History, PCP use, glue, paint, or other vapor sniffing, and the injection of non-opiate substance such as speed or cocaine, provide the best substance abuse predictors of violence, while opiate addiction and heavy hallucinogen use provide good predictors of non-violent but serious recidivism.

Our research indicates that high risk offenders generally exhibit one or more of the following characteristics

1) A recent close concatenation of felony convictions, such as in cases of a recent prior conviction or a new sentence while on a current probation or parole or while serving a current sentence.

2) A relatively recent prior conviction for a violent felony (as measured in street time).

3) Current violent recidivism (as in Factor B).

4) A recent prior arrest for a violent felony (as measured in calendar time).

5) A serious drug use history, particularly of the bizarre type such as PCP use, vapor sniffing or non-opiate injections.

6) Current major institutional violence (scored in Factor G).

Factors found not to predict serious recidivism or violence with any significant degree of accuracy include:

1) The severity of the instant offense without the presence of other good predictors of recidivism (instant violence enhances the prediction of future violence if other predictors of serious recidivism are present).

2) The number of priors of any type (except the number of juvenile delinquency adjudications or commitments, etc.), without reference to recency or severity.

3) A history of alcohol abuse (too many inmates exhibit such a history for this to be a good predictor of anything serious).

4) Institutional behavior (with the exception of major institutional violence or repetitive major misconduct).

5) Psychological/psychiatric evaluations (based too much on test results and not enough on the actual record of the inmate).

6) Time served (risk does not diminish much with time in prison, nor is risk higher in the case of early release).

7) Treatment and rehabilitative endeavors (many don't benefit because they are too low risk for treatment to have much of an impact on future serious criminal activity; others too intractable exhibit much change while in prison; NONETHELESS, DESPITE THE STATISTICAL EVIDENCE, WE AGREE THAT REHABILITATION PROBABLY WORKS FOR SOME PEOPLE--THE QUESTION IS "FOR WHOM?").

8) Reintegrative factors (probably reduce technical violation but not serious recidivism).

Conclusion

As unpopular an idea as this may seem, for the most part (70%), we can predict serious recidivism and violence at the point of admission to prison. However, we definitely need parole and discretion to deal with the remaining 30 percent and to adequately and consistently measure all of the pre-institutional factors that feed into the release decision.

APPENDIX A

ARIZONA BOARD OF PARDONS AND PAROLES
Parole Risk Assessment Criteria

A	CURRENT OFFENSE
3	Robbery/Larceny from a Person
3	Arson/Aggravated Burglary
3	Extortion/Terrorism
2	Homicide
2	Rape/Sex Offense
2	Kidnapping
2	Aggravated Assault
2	Other Violent Crime
2	Major Drug Crime
2	Escape/Jailbreak/Flight
2	Burglery
2	Motor Vehicle Theft
2	Forgery
1	Weapons Crime
1	Other Drug Crime
1	Other Property Crime
0	Non-Safety Crime
*	All categories include attempts, conspiracy, solicitation, etc.

B	CURRENT VIOLENT RECIDIVISM	
5	80+	Total Raw Current
4	40+	Violent Recidivism
0	0	Score

C	PRIOR VIOLENCE	
4	80+	Total Raw Prior Violence Score
3	40+	
2	20+	
1	10+	
0	0+	

D	CRIMINAL HISTORY	
7	640+	Total Raw Criminal History Score
6	320+	
5	160+	
4	80+	
3	40+	
2	20+	
1	10+	
0	0+	

E	STREET TIME AGE
3	0-19 Years
2	20-24 Years
1	25-29 Years
0	30+ Years

F	SUBSTANCE ABUSE HISTORY
5	Use of PCP/Animal Tranquilizer
5	Injection of Non-Opiate Substance
5	Use of Inhalents
4	Heavy Opiate Use
3	Heavy Hallucinogen Use
2	Drug Problem
1	Opiate/Hallucinogen Use
1	Alcohol Problem
0	No History as Above

G	INSTITUTIONAL RATING	
4	3+	Total Misconduct/Custody Score
2	2	
0	0-1	

TOTAL RISK SCORE

= A + B + C + D + E + F + G

= _____

VIOLENT OFFENDER CLASSIFICATION

Yes	Current Conviction for Violent Crime
Yes	Prior Conviction for Violent Crime in Last Five Years of Street Time
Yes	Major Institutional Violence During Last Five Years of Incarceration
Yes	History of Use of PCP/Angel Dust or Other Animal Tranquilizer
No	No Factor as Above

RISK RATINGS

E = Excellent
G = Good
P = Poor
VP = Very Poor

SAFETY/VIOLENCE RISK ASSESSMENT

Total Risk Score	Non-Violent Offender	Violent Offender
0-3	E/E	E/G
4-7	G/E	G/G
8-11	P/G	P/P
12+	VP/G	VP/VP

PAROLE GUIDELINES: AN EFFECTIVE PRISON POPULATION MANAGEMENT TOOL

By
Michael P. Sullivan

Prison Crowding and Parole in Georgia

The issue of prison population management is a topic of particular concern within Georgia. The Georgia State Board of Pardons and Paroles has been in the forefront of this issue since 1967 when it was first called on by the Governor to deal with prison overcrowding. The board's methods of dealing with this issue have evolved steadily during the last 19 years from a piecemeal approach to one which is systematic and incorporated within our parole decision-making process.

Georgia deservedly has the reputation as a conservative state which is punitive in dealing with criminal offenders. Unfortunately, political rhetoric does not effectively deal with the problem of prison overcrowding. We are all aware that prisons are expensive to build and even more expensive to maintain once completed. The rhetoric of increased incarceration is rarely coupled with calls for increased taxation or diversion of state revenues from more politically popular programs such as highways or education. Since the rhetoric alone does not solve the problem, it is imperative that within each governmental jurisdiction some agency or branch of government deal realistically with the issue of prison population management. If state governments abdicate their responsibility, then the federal judiciary will typically become the defacto Department of Corrections and Paroling Authority.

Georgia currently has no prisons under federal receivership and is pursuing a moderate build-up in the capacity of its prison system. Our current prison population stands at 16,500 which reflects 100 percent utilization. That is a massive number of state prisoners for a state with a population of only 5,800,000. Our per capita incarceration rate is typically one of the highest in the country and our prison population would be significantly higher still except for our continuing parole efforts which are geared to the problem.

In a typical month 1,000 persons are sentenced to our State prison system which as I previously mentioned can house 16,500 inmates. With no parole releases our prison population would accelerate to over 50,000 persons in three years. Typically, offenders sentenced to our state prisons are sentenced for non-violent offenses such as property theft or small scale drug offenses. Georgia was also one of the first states to make repeat drunk driving a felony. Since 1980, if you are found driving with a license in suspension, you have committed a felony punishable by up to five years in state prison. Thousands of what are called Habitual Violators flood our prisons annually. During Fiscal Year 1985, the board paroled 7,206 inmates. Of those 85 percent had been confined for non-violent offenses.

The key word in the criminal justice system of Georgia is discretion and that element is present with all components including the parole board.

There is substantial plea bargaining by our District Attorneys, and there is an array of sentencing options available to our Superior Court Judges. In terms of prison sentences, we have determinate sentencing where the judge sets the maximum term of confinement. For example, for a first-offender car thief, he can set a maximum term of one year or up to 20 years. For both violent and non-violent offenders, the judges have that same wide range of discretion. The courts have no set procedures for sentencing and as a result impose widely disparate sentences statewide.

The State Board of Pardons and Paroles also possesses wide discretion in its parole granting or denying process. Compared with other components, there are significant differences in how and why the board makes decisions. Constitutionally and statutorily the board can grant or deny parole to any inmate it is considering regardless of how little or how much time that inmate has served.

Parole Guidelines and the Management of Prison Population

Since 1980, the board has used a set of parole guidelines to aid it in risk assessment and to an extent to temper its discretion. The guidelines were developed by assessing certain predictive factors of several thousand Georgia cases. The factors, which are a combination of criminal history and social background, are assessed in each case presented to the board for their decision. Also, the inmates' offenses are classified in one of seven Crime Severity Levels. Using the Parole Success Factor score and Crime Severity Level, a recommended months to serve is provided to the board. The board members then accept or reject the recommendation. The board is not bound by the guidelines recommendation but typically agrees with it 80 percent of the time.

In 1982, the board was approached by the Governor who asked the board to implement procedures to monitor and control prison overcrowding on an on-going basis. This request by the Governor acknowledged the reality that the Board of Pardons and Paroles had been the State's only defense against the worst consequences of prison overcrowding for the past 15 years. It was also an acknowledgement that prison overcrowding was a long-term issue which needed to be dealt with through a long-term program rather than provisional crisis intervention techniques.

Starting in April 1983, the parole guidelines recommended months to serve was revised to reflect the maximum operating capacity of the prison system and allow for a 20 percent board deviation rate from the guidelines. Also implemented was the board's granting of parole to those who had served less than one-third of their court-imposed sentence, if the board felt that the inmate was a good parole risk. Certain classes of violent offenders and large-scale drug traffickers retain a one-third minimum time to serve.

Also during 1983, the Georgia General Assembly repealed the Earned Good-Time Law which had been administered by the Georgia Department of Corrections. This law had been one of the most lenient good-time laws in the county and had provided a mandatory unsupervised discharge to all inmates who had served 50 percent of their sentence with good behavior. Inmates now entering state custody are to serve the full term of their court-imposed sentence unless the board makes a discretionary decision to grant a parole release. If paroled, the inmate is to serve the remainder

of his sentence under supervision. At this time, there is no mandatory parole or good time statute in Georgia.

Conclusion

During the last three years, the Board of Pardons and Paroles has grown larger and has come under intense scrutiny. The staff of parole officers has grown from 100 to 250 and now supervises 7,894 parolees. During this time, the state prisons have been kept at 100 percent of capacity and even with the abolishment of mandatory releases, Georgia does not have the type of crisis situation which plagues many other states. At the same time, there has been a reduction in the commitment of other branches of state government to address the issue. Both the legislature and the judiciary seem more than willing to assume that we alone can deal with this issue. Other executive branch agencies also show a diminished concern with the problem. While prison management is not assisted by sensationalized rhetoric, it is not a problem which can be alleviated indefinitely by a parole board acting alone.

PART III

THE FUTURE OF PAROLE

PAROLE: PART OF THE SOLUTION TO THE PROBLEM OF CRIME

By
John J. Curran, Jr.

Parole Under Challenge

During the mid-60's, the Federal Government launched what came to be known as the "War on Poverty." One of the agencies spawned during this effort was the VISTA program. The recruiting jingle was kind of catchy. "If you're not part of the solution, then you're part of the problem."

That little aphorism summarizes the challenge to parole today. Parole has found itself for a number of years and in a number of places being defined as a part of the problem and not the solution. The results of that definition and characterization speak for themselves. To a public that has been perceived to be clamoring for longer and tougher sentences, less discretion for the courts and release authorities and a stiffening of attitudes in terms of how to treat offenders, parole has been a great target upon which to heap abuse and vent frustration. "Parole Boards need to be a scrapped," so the argument has gone, "because they're too lenient, they release dangerous offenders back on the street long before they've served their sentences, they care only about offenders and their needs and not the communities'."

These charges have been leveled at board's with varying degrees of success and consequence. In some states, legislators, perceiving the mood of the people to be very punitive, defined parole as part of the problem and moved to abolish it. In other states, it survived, but suffered a serious erosion of public confidence.

How does parole shed its image as a part of the problem and begin to be perceived as part of the solution? I think we have to examine how we got defined as part of the problem. Some of the reasons have to do with the themes that have come to enjoy popularity: determinate sentencing, a narrowing of discretion in the judicial system and a general stiffening of attitudes about sentencing.

Part of the explanation has to do with some givens about parole that have to be accepted as fundamental and as immutable to change. Parole will never be a highly popular activity; after all, we spend a good part of our time letting convicted felons out of jail. That is never going to win a lot of votes at the polls. And we are a bad news business by definition. We are most visible when we are most vulnerable. Nobody really is turned on by how many people are released each day uneventfully who did not become involved in further difficulty. That is supposed to happen. The story is the individual who is released on parole and commits some new and horrible crime.

But there is a feature about parole which I believe has had and continues to have much to do with its demise or vulnerability. That has to do with its lack of visibility as a part of the criminal justice system and therefore the lack of public understanding about its role and mission. Most people haven't the foggiest notion of what parole does and the complexities with which it must wrestle. And that lack of understanding is

present not only with the general public, but with large segments of those who work within the criminal justice system. As one who spent over ten years in the system as a defense attorney, prosecutor and administrator before coming to the parole board two years ago, I had almost no comprehension of what were the purposes of parole or what it sought to do. I believe this is true for large numbers of judges, probation officials, police, prosecutors and court administrators. The result is that parole does not enjoy a constituency out there even within the community of criminal justice practitioners with whom it deals most frequently.

Public Policy Initiatives for Parole

Is it realistic to believe that parole can come to be seen as part of the solution, given what appears to be the get-tough attitudes that are in vogue today? I think that it is. The concept of parole in the system is not at all inconsistent with what the public identifies to be the goals of its justice system. A well structured, firm but fair, parole component does not offend the notion of certainty of punishment, is in keeping with the public's legitimate right to feel safe in their homes and in the streets, and is surely part and parcel of an effort to return offenders back into communities with a realistic chance of leading productive lives.

Several policy initiatives are called for to inject a dose of new energy into the parole concept not only to assure its continued existence, but to strengthen and improve it.

First, parole boards have to begin to regard as one of the key priorities of their work education of the public on what we do and how we do it. We need to abandon the traditional low-key approach that may have appeared well advised on many occasions in the past but is counterproductive today. We must begin to develop strategies on how to creatively and aggressively explain our role in the system.

Part of this effort ought to be dedicated to a redefinition and articulation of the mission of parole, especially in light of substantially different environments in which we currently operate. Many of us are functioning in systems whose prisons are jam-packed and bursting at the seams. We are dealing with prisoners in many instances who have committed more and different types of crimes than may have been the case in a bygone era. The statutes which govern us are of little use in providing guidance as they speak in nebulous and archaic terms like releasing prisoners when they have realized the maximum benefit from incarceration. The pressures on boards from all sides are many, seemingly continuing to grow, and the resources are generally few.

We need to make clear that parole is a rational way to release people from institutions, the vast majority of whom are going to be returning to our communities anyway. We need to counter the notion that parole is a benefit only to the inmate and make clear that its primary benefit is and should be for the community. People need to understand that paroling authorities are sensitive to and concerned with the needs of the public for protection and safety and that we in a very real sense function as community boards trying to make balanced decisions about the appropriateness of release of individuals. We recognize that our decisions have enormous consequences for communities. It should be underscored that parole affords a vehicle for gradual release with opportunity for both supervision and service. To the extent we are able to meet the needs of an offender

returning to the community, we substantially enhance the likelihood that he or she will successfully reintegrate back into the community. Such an outcome, in the final analysis, is the best protection of all.

In effect, we must do what any other group or business does that seeks to project a positive image: we must "market" ourselves. We have to find time and resources to allocate to the tasks of highlighting the strengths of the parole system in a public way and the reasons why conditional release makes sense. And we should not be shy about approaching the media in this regard. Most of those who work in the press have little understanding of the criminal justice system, including those who cover it. This is particularly so with the parole function. I believe that it is time well spent to attempt to educate some in the media, especially the more responsible professionals, to make them aware of the conflicting demands that beset us, to make them cognizant of the many success stories that emerge in our work, and to reinforce the sound premises upon which parole is based. Yes, given the high risk, high stakes nature of parole, there will inevitably be the horror stories. However, taking an affirmative stance when dealing with the media permits us to use it in a positive way to communicate our message and not always to be in the public eye when we are trying to explain defensively and apologetically a particular decision.

A related, but more focused initiative must be the development of solid linkages with other agencies in the criminal justice system. We need to develop more and better interaction with the other players in the system (e.g., the courts, probation departments, correctional authorities) not only to make them aware of how we operate, but to attempt to assure that there is a continuity that exists across the several decision-making points in the system. Parole boards need to be perceived not as working on their own out on the fringe, but as a partner in the mainstream that shares the same goals and objectives as the rest of the agencies.

Communication is obviously the key. It sounds so simple and fundamental, but its absence is dramatically apparent. An example is the courts. I have been shocked by how little contact and dialogue there is between judges who impose sentences and parole boards who act upon them. Judges get upset with parole decisions without knowing why they were made, but board members in too many cases have little or no sense of what the judge had in mind when he or she imposed the sentence. We need to establish regular and frequent contact with other agencies in the system to promote efforts at cross training, to exchange information on issues of mutual concern, and to work hard on formulating ways to deliver our services in a more coordinated and comprehensive fashion.

This increased interaction will not only benefit the system, but it will help to develop a constituency for parole. We need very much the support and understanding of organized groups of people who recognize the importance of the parole function. A good place to start is with our colleagues in criminal justice. But we ought also to apply these principles to other influential groups in the legislature, social service and business communities.

Another initiative of unquestioned importance is the need to develop sound management information systems. We desperately need to have good

and accurate data both to inform us of the nature and types of cases with which we are dealing and the success or lack of same that we are experiencing with our various efforts. A good information system is invaluable to our endeavors at public education and is obviously vital in demonstrating how parole compares favorably with other release mechanisms presently in vogue.

Lastly, it is important that we constantly stress the limitations inherent in our work and to make sure that public expectations of us are not unreasonably high. While we should be diligent about doing public education, about highlighting the strengths of parole, building constituencies and coalitions, and working to improve our internal operations; we need to be just as forceful and unrelenting in pointing out that we can not fix all the problems we confront. Parole can not change by itself the products of a society which notwithstanding its massive material wealth, in spite of what seems to be for many, good economic times, has significant and deep social problems.

We have a divorce rate that hovers around the 50 percent mark. We know that large numbers of kids come home to no parent or adult to welcome them. We have an education system that many feel is in serious peril. We are beginning to discover the depths and dimensions of an ugly problem deeply rooted in a substantial number of our families, the abuse and sexual abuse of so many of our young children.

We are a people who in large numbers are hooked on the abuse of drugs and alcohol and the number of young people getting turned on is ever increasing.

We are witnessing a recent phenomenon in parts of this country that is both scary and unexplained, and that is the rise in teenage suicides.

Anyone who doubts the relationships of these factors to what is coming before our criminal courts need only sit for a day or two with a parole board to see the connection. For it is there that we see the failings of human beings, but in large measure we are seeing the failings of our social, educational and support systems.

Conclusions

The criminal justice system, much less the parole component, cannot begin to solve all of these problems on its own. Courts can help, corrections can assist but the problems are too complex and too deeply ingrained in the very fabric of our society. We need to turn back to our schools, churches, fraternal organizations, governmental agencies and the private sector to involve them in actively addressing these problems. In this effort, parole can truly play a role. If we conceive of parole as a bridge back into the community and if, in addition to supervision, we are a broker of services for the offender, we can and should seek to involve others in the search for answers. We can and should be helping to set the agenda for needed changes. If we are successful in helping to stimulate debate and discussion on these complex issues, then we in no small degree can be called a part of the solution.

PLUS CA CHANGE, PLUS CA PAREIL: PAROLE DURING THE NEXT QUARTER CENTURY

By
William R. Outerbridge

The "Rise and Fall" of the Rehabilitative Ideal in Canada

Forty years ago, in Windsor, Ontario, a man named Brophy addressed the Fourth Canadian Penal Congress, an event that, I admit, may well have been forgotten with the passage of time. Unlike the others attending the Congress, Brophy was not directly involved in criminal justice but his occupation had given him a chance to observe it in action. He had this to say about what he had seen:

> "During the years that I have watched judges and magistrates as a newspaperman, I have often considered what a weird volume the Criminal Code is. You can see them thumbing it as religiously as a farmer on the back concession consults his mail order catalogue. In the Criminal Code, you find all the crimes, big or little, each crime bearing its price tag, some of them cash and some them 'on time.' And so our judiciary carry on, year after year, prescribing penalties to fit the crime, rather than dealing out penalties to fit the criminal."

Brophy's remarks are in sharp contrast to the sort of thing we would hear today: namely, that sentences fit the criminal when they should fit the crime. The reason for the turnaround--or so we are usually told--is that some fancy detective work in the 1950's and '60's unmasked the rehabilitative ideal for what it really was: an excuse for coercion, tyranny and injustice. If Brophy and his friends might find that a bit hard to accept, it certainly is comforting to today's reformers. For it suggests that all we need do is get rid of the villain--the rehabilitation model and all its trappings--and we will be rid of, or at least have less, unfairness, inequity and coercion in our correctional system.

Some reasons for thinking that it might not be all so simple and straightforward as that came out of a historical study that we undertook at the National Parole Board in Canada. The purpose of our study was to learn more about the rationale for establishing an independent paroling authority in Canada in 1959. Up until then, parole had been largely a matter of clemency, granted by the Governor General on the advice of a cabinet minister, under the terms of an Act first passed in 1899. We undertook the study to examine the rationale for establishing an independent paroling authority in the fifties and also to identify the source of pressures and criticisms to which the board had been subjected almost from the outset. When we started the study, we rather expected our findings would more or less conform to the standard account of the 'rise and fall' of the rehabilitation ideal, although we suspected that there was something a bit more to it than that.

The problem, we learned, was that the historical evidence just did not gibe with the claim that what was responsible for the collapse in faith in the rehabilitative ideal were the studies of the fifties and sixties showing that treatment programs in the penitentiary had no observable effects on recidivism. Our research, and that of other historians, demonstrated that there was nothing new about such findings. No

sooner had the penitentiary became the major criminal sanction in the early 1800's than it had come under attack not only for failing to reform offenders but also for contributing to recidivism. Since then, the same criticisms have been repeated over and over, with monotonous regularity. First in the 1830's, then at the turn of the century, again after World War II, and finally in the 1960's, the penitentiary has been criticized for:

1) not reducing the crime rate;
2) functioning as a school of crime; and
3) producing hardened delinquents by putting them in an unnatural environment where they were subjected to the arbitrary power of the administration and all its abuses.

The striking thing was that, in the past, all of these criticisms had led to demands for greater emphasis to be placed on the rehabilitation of inmates and general deterrence as the primary purpose of imprisonment--that it should be done right! But now, the same observations were leading to demands for the reinstatement of retribution and detention as the primary purpose of penitentiary sentences; that it should be done differently!

It seemed quite clear that the standard explanation for the new willingness to abandon the rehabilitative ideal did not wash. There had to be something more to it than a set of the very same criticisms that had led to a very different conclusion in the past. But what? After casting around for a better explanation, we finally hit on the obvious: if penal reformers were ready to abandon the rehabilitative model, when others before us had not been, then perhaps it simply meant that rehabilitation had outlived its usefulness. But the answer begged the question--what uses had it served and what had changed?

In sum, we found that:

1) up until about World War II, imprisonment had served a variety of uses--some announced, other not--which more or less offset its costs;
2) some of the problems it managed are no longer of great concern to society, others can now be dealt with by different mechanisms than imprisonment;
3) while the benefits of imprisonment are declining, its costs are rising, creating an ever-growing pressure to release more offenders, earlier on in their sentences; and
4) the discretion of parole authorities gets in the way of the new cost imperatives and is largely under attack for that reason.

That was the minute-mile version of our findings. Now let me continue at a slightly slower pace to explain in a little more detail what uses imprisonment has served under the rhetoric of rehabilitation, and why they may no longer be so important. Having done that, I will discuss some of the implications of our findings--perhaps the most important of which is that the recent change in sentencing ideology to "just deserts" is unlikely to achieve the hoped-for reduction in discretion or in the petty tyrannies of our correctional systems. It is even open to question whether it will reduce costs.

The Invention of the Penitentiary and the Functions of Imprisonment

As we raked through the discussions of the purpose of the penitentiary over the past century and a half, we gradually came to share the conclusion of several authors that the principle of rehabilitation is not something which some late comer decided to apply to the penitentiary model in order to humanize it. Notions of rehabilitation were built into the very bone marrow of prisons from the beginning. And it was largely through Foucault's study, Discipline and Punish, that we came to see where the emphasis on reform had originated: not with the social sciences, but with the age-old art we call discipline first applied by the military. As he puts it:

> "[It] did not originate in the super-imposition of the human sciences on criminal justice and in the requirements proper to this new rationality or to the humanism that it appeared to bring with it; it originated in the disciplinary technique."

Of this technique, Foucault has a great deal to say. But the main points are that, when used to punish, its purpose is neither expiation--as it is in some other forms of punishment--nor even precisely repression. What it aims at, put simply, is to normalize individuals--to make them more like everyone else. And to do this, penal discipline employs a set of tactics familiar to all of us. They include differentiating individuals by separating them, ranking and examining them; by surveillance, and the imposition of constraints and rewards to induce conformity to a set of norms. The overall objective of discipline is to eliminate, or at least, reduce disorder and confusion in a particular group.

Now, in the early nineteenth century, at the take-off of the industrial revolution, when the penitentiary model was adopted, the authorities had no doubts about the source of disorder and confusion that they wanted to control. It was the disorder and confusion created by the lower classes, by the unruly mob. Sometimes the disorderly behavior constituted a threat to the polical order--either in the form of riots or an individual show of contempt for authority. In either case, retributive punishments of the past, such as public hangings, branding, whipping and banishment were proving to be inappropriate and ineffective.

Contempt for authority and political unrest were not all that the authorities feared from the lower classes. The threat of disease from the 'unwashed masses' was a serious concern; so too was the economic burden that resulted from the habits of idleness, drunkenness and promiscuity said to be particularly common among the lower classes. Here again, disciplinary punishment was far more appropriate than the old judicial penalties which offered little protection against either the threat of epidemic or of a growing number of social dependents. Remember, at this time, there was no public health system, no modern medicines: epidemics of cholera, typhoid fever, polio, venereal disease, even flu, were horrifying in their impact and almost impossible to control once started. Nor was there a public welfare network like today to reduce the threats to social order by the unruly, the unemployed and the destitute. Punishments that would check the effects of unacceptable behavior stemming from these massive social problems would be of more value than the gallows, the brand or the pillory. That these concerns fell within the purview of the law was not in doubt: all that was needed was a new, more effective manner of implementing them.

Listen, for example, to the words of Chief Justice Robinson of Upper Canada in his charge to the Grand Jury in 1832, a year in which cholera had swept through the colony:

> "The increasing population of this province demands attention to all that is connected with public justice and police. The inhabitants of this District now number more than 40,000 and to say nothing further of the importance, or ordinary grounds of maintaining the efficacy of the law among so large a body of people, the melancholy events of the last summer--the cholera epidemic--have placed, in a striking point of view, the indispensable necessity on the parts of the magistracy and courts of justice in enforcing as far as the law enables, the duties of order, cleanliness, and sobriety."

But how to go about disciplining an unruly mob, particularly a migratory one? The tactics of disciplinary power required a fixed setting; not just any fixed setting but one that permitted constant surveillance; one that kept people in their assigned places rather than throwing them into a confused hell: thus, the old dungeon would not do. Above all else, disciplinary punishment required a setting in which its subjects would not sit in enforced idleness.

All of these requirements were taken into account in the designing of the penitentiary. Through its very architecture discipline was to be both the means and the ends of punishment. In its confines, the inmate would be conscious that he could be observed at any time, thereby making it unnecessary to observe him all the time. Order would be instilled by regulating small actions, thus obviating the necessity of quelling big disturbances.

Thus, from the outset, the purpose of the penitentiary sentence was the deprivation of liberty, not only to punish crime but also to control delinquency--what Chief Justice Robinson would have called the failure to assume the duties of citizenship. But the purpose of the penitentiary as a disciplinary institution went beyond the neutralizing of social problems. Discipline had a further objective by this time which was to increase the utility of the individual to society--to normalize his conduct so he could assume the full duties of citizenship. This was true of discipline in the classroom; in the army; in the workshop; as it was to be in the penitentiary where the objective would be not simply to curb unwanted habits and attitudes but to instill their converse--that is, habits of industriousness, sobriety, fidelity and an attitude of respect for authority.

Unlike former punishments which sought to exclude offenders from society, the purpose of the penitentiary was to include them. Its purpose was not simply to punish but also to discipline. And it was not a matter of discipline simply for the sake of discipline, but for the sake of reclaiming human capital to make them productive contributors in a society increasingly driven by the imperatives of the industrial revolution. Sometimes this objective has been expressed in terms of saving souls, at other times, of reclaiming the young delinquent and still at other times, we have talked about teaching good work habits, training, education or treatment of the individual offender. Each of these objectives has at one time or another been part of the ideology of reform. And each round of reform that we have been through over the past century and a half has centered on the effort to find ways of improving our ability to recapture human capital, human potential--in other words, of realizing the rehabilitative ideal. Clearly, rehabilitation was not discovered in the 1930's.

Before I go on to talk about the factors that eroded the utility of imprisonment, let me just say a few more words about disciplinary punishment and the role that parole has played in it.

The Origin and Rationale for Parole

As we all know, discipline entails the use not only of punishment but also of rewards. We punish for deviation from the set standard or norm and reward for adherence to it. Constant assessments and frequent, if not continuous, surveillance are needed to assess the degree of compliance. It is this measuring of deviation from the norm that we call the individualization of sentences; the individual's needs stemming from the gap between his behavior and the norm. Points are awarded for abiding by the rules and subtracted for departing from them. It is a sort of micro-economy that entails on endless process of accounting--and, as we all know, a lot of paperwork. Periodically, the account is audited and if the balance is in the individual's favor, we reward them by granting a privilege. The privilege is usually that of moving on to the next stage of a defined progression. This progression from one stage to the other indicates that the individual is increasingly conforming to expectations, that he is becoming more normal or "useful.'

In this process, rewards function not only as incentives but as a means of modulating the level of discipline in keeping with the need for it. In this latter respect, rewards ensure that disciplinary resources are not expended wastefully or counter-productively. When parole was first introduced in Canada in 1899, and I think I can safely say when it was first introduced elsewhere, it was intended to function as a privilege which denoted that the offender had been sufficiently disciplined or 'normalized.' At one and the same time, it was to be an inducement to the offender and a means of ensuring that resources were used economically--both the offender's and the state's.

The point at which an offender was ready for parole was quite simply when he could contribute to society--when health had been restored, when habits of idleness, intemperance and profligacy had been broken and habits of industry, order and sobriety instilled; if a trade had been learned, all the better. Not surprisingly, those who received parole were the young and able-bodied and the non-criminogenic. Granting parole, or ticket-of-leave as it was called then, to the young was less a matter of compassion for youth than a desire to recapture their economic potential. Those who had nothing to contribute, or whose habits, attitudes and physical health made them a potential threat to society, were not released until the expiration of their sentences. Note especially that it is conduct <u>learned in prison</u> or conformity to institutional imperatives that were the key to preparedness for release.

Since parole marked the point at which an individual was declared ready to contribute to society, it was not something to be awarded lightly or by just anyone. The authority to grant conditional release was reserved for the very highest level of jurisdiction--the Executive. This, of course, meant that political considerations could, or might appear to, influence the parole decision--political influences in the best sense--those of social need. It was also expected that the vast majority of recommendations from the warden would be acceded to. Thus, institutional assessments would "drive" the parole granting system, and parole would

serve as the link between those suitable candidates and community needs. In this equation, the warden's judgement was given great weight.

The utility of segregating vast numbers of offenders from society, of disciplining them behind closed walls, persisted until about the Second World War. Despite frequent rounds of criticism during which the penitentiary was attacked for not reducing the crime rate; for contributing to recidivism and for failing to reform offenders--all familiar themes today--its continued use as a place in which to attempt to reform offenders was never seriously questioned. Despite, or even because of its proclaimed failings, it still served several purposes. If it did not check crime, it did check rebellion; if it contributed to recidivism, it also provided an army of informers to aid in controlling crime and if it did not reform offenders, it provided important means of isolating individuals whose habits were deemed a threat to society like transients, "fallen women," drunkards, and of providing a system of maintenance to certain of the unemployed that would in no way encourage unemployment. In Canada, nine grim penitentiaries, the liberal use of the lash, and a regime based on the silent-associated system gave eloquent testimony to this message. In summary, from mid-Victorian times to the end of the Depression, a model of prison management was imposed with prisons providing, in addition to punishment for crime, certain welfare, training and social control functions not provided outside the prison walls.

The Declining Utility of Imprisonment and the Changing Functions of Parole

The experience of the Depression coupled with that of World War II led to a new state of social and economic circumstances which significantly reduced the benefits of imprisonment. Among these were the development of the public welfare sector, the control of many contagious diseases through medical advances, and particularly a reduced demand for unskilled labor. All of these have reduced the socially injurious consequences of many of the habits and behaviors that prisons were designed to control. Thus, the need for imprisonment as a means to publicly denounce certain behavior and maintain a portion of the unemployed and indigent started to decline. Under the new set of social and economic conditions, the penitentiary was becoming a costly and cumbersome means of dealing with delinquency. Its disciplinary regime of hard labor and silence came to be seen as unnecessarily harsh and cruel and all too likely to foster enmity towards society amongst inmates, thus contributing to crime rather than normalizing criminals. This is what Brophy was talking about.

The prison reform movement of the 1940's and '50's was designed to correct this situation. Since society had less need of disciplined bodies and more need of disciplined minds, that became the objective of the new wave of rehabilitative programs. Towards that end, the new disciplinary sciences--psychology, social work, psychiatry--were hesitantly introduced into the penitentiary system. Efforts were made to distinguish, rank and classify offenders according to the new psychological, rather than the old physical or conduct-related criteria. Parole was revamped accordingly. The old rules were swept away. Behavioral scientists were brought in to make the final assessment of the inmate's readiness for release. In many ways, parole was to function as it had at an earlier time--it was still a means of adjusting the amount of control exerted over an individual based on auditing mechanisms--albeit based on different criteria than before--and in this respect was still a means of making economic use of resources. It

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was still a privilege and still a sign of progress. But now instead of marking the effective end of the sentence, parole marked the beginning of a period of supervision. It afforded a means of extending the surveillance of the penitentiary beyond the walls for those deemed ready for release.

One observer in the 1950's likened the penal system to a cosmic microscope and the offender to a bug wriggling beneath this infallible machine, attempting to vainly conceal the evidences of his evil nature which authorities resolutely discovered and recorded. But there were one or two problems with the cosmic microscope. For one thing, it was becoming very labor intensive and extremely expensive to operate. Many of the services being developed on the inside were being duplicated by more effective but cheaper services on the street. And for all the observing and recording of the behavior of one set of offenders, it became more and more obvious that there was a whole range of other illegal practices rising around us--such as organized crime, terrorism, commercial crime, etc., that were draining vast amounts out of the economy, and were virtually untouched by the agencies of criminal justice! At the same time, it was becoming increasingly obvious that the utility of prisons as successful agents in changing behavior could not be justified in the hard currency of reduced recidivism rates--and now, in the absence of the other benefits of imprisonment, recidivism became a more substantive concern.

Under the circumstances, the effort to increase the utility of imprisonment appeared to be a dismal failure. The alternative remedy to the diseconomy of imprisonment was to reduce costs. Rather then trying to bring the sophisticated and costly treatment programs to the inmate, we could channel the inmate towards them. Rather than using imprisonment as a welfare mechanism, we could link the surveillance function of the penitentiary to community welfare programs. Given the function of parole as a means of adjusting the controls exerted over an individual according to his needs, conditional release was looked to as the means of linking the inmate with the services and facilities in the community and providing the necessary supervision.

It all seemed fairly logical and straightforward--at least in theory. But in practice, the parole board was now expected to make release decisions abut the need for treatment, training, supervision on the outside and on the basis of assessments that had little to do with the individual's needs in these regards but more to do with this institutional performance. The lack of predictive value of institutional performance was identified rather early, and parole boards balked when faced with these factors as the basis for release recommendations. But by insisting on better assessments and reassurance of proper supervision and treatment on the outside, the inevitable result was an increase in costs-- something anathema to those increasingly aware of sky-rocketing costs and recidivism rates that did not respond to the benevolent ministrations of behavioral scientists' techniques of intervention.

Lacking more extensive assessments of an individual needs, paroling authorities came to rely heavily on the offense record as an indicator of risk. In the process, the function of parole ceased to be closely identified with a system designed to make an individual's behavior more predictable and became oriented toward trying to predict it in the future. Now, as I have just pointed out, the one thing paroling authorities could predict with some certainty was that at least half of released inmates

would eventually recidivate. That very fact made it seem logical to release more offenders under supervision for at least some portion of their sentence. But again, theory and practice differed. Three factors made paroling authorities reluctant to release more inmates. First, release was still a privilege for which boards were responsible and the data base from their major source of information--the institution--was limited; second, with costs being restrained, there were relatively fewer and fewer resources in the community to match an increasing number of released offenders and third, since the offense record was a major indicator of future behavior, and most penitentiary offenders were recidivists, the only conclusion that paroling authorities could often reach was that they were being asked to release poor risks--decisions inconsistent with their legislated mandate.

All of this led to an increasing dichotomy between prisons and parole, and because costs were increasingly driving penology, parole came to be seen as part of the problem rather than the solution. Pressure mounted for its abolition and the use of a statutory period of supervised release.

In the meantime, the decision to split off the welfare, treatment and training functions of imprisonment and to regroup these functions with surveillance outside the prison walls, left only two purposes for the penitentiary--segregation and punishment. Under the circumstances, it was not surprising to find that the emphasis shifted from rehabilitation and deterrence to retribution and detention as the purpose of a sentence of imprisonment.

And now we come to a crucial point from this somewhat revisionist review of recent penological history: the fact that this shift has taken place has much less to do with questions of equity and fairness than with the pressures of cost created by the loss of utility of the prison as a place of reform. Moreover, focusing on the failings of the rehabilitative ideal and on the inequities and unfairness it was said to bring with it, leaves a number of considerations unaddressed. Justice model apologists gloss over the fact that costs are largely responsible for the current situation and will continue to be the determining factor. They tend to ignore the fact that by sentencing according to the offense rather than the offender, we are likely to put more of the socially disadvantaged behind bars for offenses against the person, while leaving the perpetrators of the growing number of property offenses (e.g., computer fraud, drug trafficking) in the community. Whether this is a move towards greater equity and fairness in our criminal justice system might well be questioned. Further, they ignore the fact that eliminating the objective of reform will not effectively change the tactics of disciplinary punishment--it will simply lead to discipline for the sake of discipline with all of the same discretionary powers and the same, if not a greater potential for their abuse. And they ignore the age-old problem that has attended the use of what is effectively a form of military discipline--civil re-establishment.

The Future of Parole: Four Scenarios

What, if any, role there is for parole in the next quarter century is a question that has already been decided, at least for the moment, in some jurisdictions. In Canada and in some other places, the question is still unresolved. The factors that will have to be taken into consideration in reaching a decision seem to me to be the following:

1) Costs will continue to drive the system;
2) With no other objective in place, institutional concerns--the need to balance punishment with rewards--will continue to be brought to bear on the use of parole;
3) There will be increasing pressure to render the paroling authorities less visible--not more--in order not to attract attention to releasing practices;

These are not the only observations that can be drawn from a broader look at the factors that have led to the recent shift in emphasis in sentencing ideology but it touches on some of what I think are the most overlooked and the most critical. Where then does that leave us?

There would appear to be four major options that we may look to which I would like to enunciate rather briefly with a few commentaries about probabilities.

The first is to concede to the trend by recognizing that in the final analysis, costs will win out. This would result in the elimination of independent paroling authorities, the freeing of the discretion that they now exercise, and either letting it drift to what portion of the criminal justice system it will, or assigning it either to the institutional authority or to prosecutors. This would be rather easy to do legislatively and certainly, there is a decade of experience in the United States where parole has been abolished in the name of justice and fairness, but also driven by expectations of cost reduction. Evidence is now becoming more manifest that neither of these goals are being achieved. Thus, I would think that in the long run, this approach is unlikely to find long-term political acceptability.

The second option would be to turn the current trend around and to strengthen the control of parole authorities over the information flow, to place case preparation, supervision and prison programming directly under the jurisdiction of parole-like authorities with broader responsibilities. In Canada, a variation of this has been proposed by our Law Reform Commission in the form of a Sentence Supervision Board authority. In effect, it is saying that parole authorities should be given full responsibility for the flow of inmates through institutions and the monitoring of their discipline, albeit under the superintendence of the courts. I think that this alternative is equally unlikely to gain currency because if institutional imperatives and costs continue to run the system, it is simply too difficult for an external paroling authority to be sensitive enough to the institutional imperatives that run the system. Thus, although public safety matters might be stressed, it is not likely that this would be cost effective. It is more likely that the pressures that created the divergence between prison imperatives and parole imperatives would happen again. In addition, it would make paroling authorities become very deeply involved in the processing of inmate, as well as in the outcomes, and therefore, they would lose their independence--this value which has distinguished the responsibilities of the keeper and the kept. The recovery of "human capita," which was a very strong driving force in the setting up of parole is not an urgent issue today. Thus, this model is unlikely to "wash."

The third alternative would be to return to the original intention of parole as largely a figure head to review the flow of applications that are

generated within the institution, and occasionally, to act, to reject a positive recommendation that is found to be inimical with public safety. The history of parole during the last 25 years has certainly edged it in this direction. One of the signposts along the way during the late '60s and early '70's was the trend to separate parole services from paroling authorities, which removed the case preparation and particularly, the supervision functions from the direct responsibility of paroling authorities. The result of this of course was to make paroling authorities less able to exercise direct authority over those parole officers in the field who were exercising supervision on their behalf, but for whose conduct parole authorities were held publicly accountable. In addition, it has been resistance to the acceptance of this role that has created the conflict between prison authorities and parole boards, which I have referred to as the prison/parole dichotomy. If this trend were to be accepted, it could be formalized. Indeed, I would suggest that it should be formalized by legislation that would be based on the expectation of presumptive release after a certain denunciatory period has been served, with the parole authority being redesigned as a Detention Review Board rather than a parole board. What I mean by this is that the function of the Detention Review Board would not be to review every inmate and to select those who represent the good risks, but to review all inmates, otherwise heading for presumptive release, with the purpose of inhibiting the release only of those who are identified as bad risks. Another model of this could be an even more limited role and that is a Revocation Review model, which would be the policing and returning to prison only of those who are released automatically.

A fourth alternative might be a blend of options one and three, with decisions being made by panels comprised of those who clearly represent the community and those who represent institutional imperatives, who would review all cases with the purpose of identifying those upon which they could not agree--these cases being forwarded to some review body such as a Detention Review Board which would be responsible for the final decision. This would develop a model with some similarity to that which is found in Great Britain at the moment. Such a model would tend to distribute responsibility rather broadly on the one hand, localizing the selection process, and if appointments were made according to strict criteria, ensuring that strong community representation, as well as the institutional imperatives, were an integral part of the process. It also has the advantage of distributing responsibility for the selection process on a much wider basis than currently applies in most North American jurisdictions by ensuring substantial input by persons who would be seen as representing community interests much more immediately than professional paroling authorities. The result of this might reduce public criticism of the process.

I do not pretend that these are the only options, but I believe that they represent the range of scenarios that are possible outcomes of the pressures that are described in the body of this paper.

Conclusion

One thing for certain: We are embarking upon a decade of great uncertainty. It seems to me that we should therefore be embarking on this with a set of beliefs which can guide us. Let me enunciate to you what I would believe should be the principles were I to have an opportunity to influence this process.

I start from the premise that every citizen in a democratic society, even those in prison, has a right to be treated in a manner commensurate with the principles of that democracy: to the degree that they are not, the values of that political system and everyone in it are demeaned. Further I believe that prisons, by their very nature, tend to be dehumanizing institutions and that whenever you give man power over another, particularly in a system characterized by low visibility and high discretion, that that power will have a tendency to be misused, unless it is subjected to superintendence of some sort. If parole has played no other role in the last half century, it has served to distribute this power more broadly between correctional authorities and independent parole authorities. I believe this distribution has exerted a positive influence on the natural tendencies of what Goffman referred to as "total institutions." I believe that we are going to need to ensure the retention of these checks and balances of authority. In commerce, we have a very elaborate system to ensure that one man does not unfairly take advantage of another. These checks and balances are not to protect against the best of man's nature: for most people, a handshake is enough. But within all of us, there appears to reside a darker side for which the elaborate protections of commercial law and the purposes of general deterrence have been designed. Thus, equally, in penology as in commerce, there is a need to protect against the darker side, which I believe will remain as long as man's nature is as it is. There appears unfortunately to be some of the worst of us even in the best of us!

THE RENAISSANCE OF PAROLE

By
Allen F. Breed

The History of Parole: A Brief Overview

The history of parole--its rise and decline--are well known. I am going to share again some of that history, well known as it may be, because it lays the framework for my message this morning--"The Renaissance of Parole," and our personal responsibility in that rebirth. It is not that parole is dead--indeed it continues strongly in most states, and generally throughout the free world. To ignore the attacks made on parole in recent years, or to ignore the continuing pressure in some circles to abolish parole, however, creates a climate where we are deluded into being satisfied with our efforts while subtly, and not always so subtly, our ranks are infiltrated, the public is misguided, and opportunistic politicians make piecemeal changes in legislation which erodes and finally destroys discretion at the judicial and parole board levels.

Briefly, let me summarize a bit of that history. The incidence of crime, particularly violent crime, has led to a general public demand for some sort of corrective action. Politically sensitive legislators have sought to exploit the public fear by proposing more frequent use of incarceration and longer terms for the convicted. Long-term criticism of the gross disparities existing in sentencing practices from court to court has opened the way to the usurping of traditional judicial discretion through mandatory and determinant sentencing statutes. The result has been an unprecedented increase in the prison and jail populations. This whole series of developments has transpired at a time of taxpayer revolt which has resulted in decreasing corrections' ability to cope with an increasing workload. In the process parole boards have been targeted in many states, and at the federal level, as being possessed with too much discretionary authority and of being too liberal. And so legislative reform has sought to seriously limit or eliminate their discretion.

While reforms in both judicial and parole board discretion may well have been indicated, the launching of reformative measures in a political climate was, and is, acutely punitive. It seriously threatens the stability of a correctional apparatus that is undersized, undermanned and underfunded. Perhaps the greatest reason for the success of attacks on the parole system, however, was the absence of strong advocates--leaders who would speak out in support of a politically unpopular cause. The result was a loss of parole discretion in many jurisdictions by abdication, not by facts or logic. With the crime rate remaining high in spite of tougher penalties, and with more people going to prison for determinate periods that allow for no adjustment by paroling authorities, the inevitable result was easily predictable. The prison population has mushroomed at an increasing rate, and in 1985 exceeded the one-half million mark. The Department of Justice is predicting that there will be 566,000 inmates in federal and state prisons by 1990, which will be a 64 percent increase in a 10-year period. One must not overlook the fact that 12,000 prisoners are still locked up in local jails awaiting the opening of bed space in state prisons. Because of adverse conditions of confinement, 40 states are now

under court order or involved in litigation to reduce prison and jail populations.

California: Determinate Sentencing Contributes to Prison Population Crisis

The near catastrophic situation that can evolve as a result of the rush to incarcerate more people for longer mandatory time can perhaps be best illustrated by the crisis currently facing the California system. Throughout the 1970's the state prison population varied between 20,000 and 24,000, and by 1980 had reached the high figure. This, incidentally, was the approximate design capacity of the system. In the late 1970's the state legislature moved from an indeterminate sentencing system to a determinant one. Prison terms were mandated for certain offenses and terms were generally lengthened. In less than eight years, the inmate population has jumped to over 50,000 which exceeds the design capacity by 60 percent. To complicate matters, the system is growing at the rate of 200 additional inmates per week. Some California prisons have inmate populations which exceed design capacity by more than 100 percent. During the past two years, the Department of Corrections has added more than 3,200 beds. A 1.3 billion dollar construction program will add 12,000 beds by 1989. If there are no changes in the existing sentencing practices, the population is projected to each 70,000 by 1990. Then after spending billions of dollars in capital outlay that requires operational support at the multi-million dollar level, California's prison population will still exceed its design capacity by 50 percent.

These costs are too great for the average citizen to even comprehend. From a public policy standpoint, however, one should be concerned that ten percent of the total California state budget now goes to support corrections, when a figure of 1 and 2 percent has historically been sufficient. In five years, that figure will be raised to twenty percent. The only way California can meet the astronomical growth in correctional costs is to reduce expenditures for such programs as education, mental health, welfare and highways.

Is California atypical? I would suggest you could answer that with a resounding NO. But let us briefly look at a small state. Nevada has projected that over the next ten years it will have to build 3,500 new beds to meet the demands of its current incarceration rate. If parole is abolished, as some legislators have advocated, the state will have to build 5,500 beds at a cost of 200 million dollars. Similar conditions exist in most states--only the numbers are different.

Determinate Sentencing, Prison Management and Rehabilitation

Discouraging indeed is the prospect to those correctional administrators and staff who must implement and live with such sentencing reforms born of paranoia. And tragically, there is no reason to believe that the turmoil and cost will buy any reduction in recidivism or enhance the public's safety. Of additional concern, no one has been able to objectively determine what effect the overcrowded conditions will have on inmates' post release behavior. We do know that overcrowding has caused an increase in prison violence--an increase in prison idleness as numbers exceed program capacity--increased tensions and divisions between inmates and staff--and a reduced capability for maintaining any kind of stable atmosphere which is conducive to the productive use of program opportunities. As rehabilitative capabilities are reduced, all the factors and forces that make for greater criminalization of the inmate population are

enhanced, and the failure of the prison mission becomes more assured. As a result, the product that is released from prison becomes more embittered, more resentful and more likely to lash back at a society that contributed to his or her intensified criminality. The question we should be asking ourselves is, "What will the release of inmates from crowded prisons mean to public safety in the future?"

Those who have favored the elimination of discretion for parole promised that there would be an increase in deterrence, an increase in humaneness, a decrease in discretion, an increase in prison populations, an increase in penalties more appropriate to the offense, an increase in equality of penalties, a decrease in arbitrariness, an increase in public protection, and a decrease in harshness. I have reviewed the literature and research carefully, and it is apparent that the only aim that has been consistently accomplished has been an increase in imprisonment.

The Continuing Vitality of Parole

The plethora of criticism of parole was often justified, and (combined with the threat of statutory encroachment on the parole board function) some genuine self-scrutiny and a search for corrective measures occurred. In most cases, the reform efforts have taken place. Let me highlight some of the most consistent changes and those obvious reasons for the continued use of parole--a position, I might add, which is not currently politically popular, particularly at the federal level of government.

1) The central reform measure has been the formulation and adoption of guidelines for parole decision-making which has spoken to equity and the need for consistency. In this enterprise the credit for playing a leadership role would clearly seem to rest with the United States Parole Commission, which adopted guidelines in 1983. Since then, 30 states have adopted similar norms.

2) Significant changes have been made in parole revocation procedures which give a reasonable aura of due process.

3) There is evidence of movement to limit the number of "parole rules" or conditions that have provided the basis for technical violations short of any overt transgressing of the law.

4) All evidence that is available for review would indicate superior performance of parolees as compared to mandatory releases.

5) Sentence disparity is reduced. The paroling procedure, when conducted under carefully drafted guidelines, conscientiously followed, is the best method of assuring fairness and consistency in length of time served within the convicted group. With determinant sentences largely the product of a plea bargaining process, the resulting sentence may be more a test of the prosecutor's or the defense counsel's ability as a bargainer than it is a product of dispassionate fact finding and guilt determination. The parole boards have and can, when operating under adequate guidelines, do much to reduce or eliminate the capriciousness to which the conviction process is subject.

6) Parole provides an opportunity to recognize readiness for release. There is a real need for a system of rewarding superior effort by the

inmate beyond the passive avoidance of rule infractions, whether that consists of a bona fide and productive effort to improve skills or educational achievement, or demonstrated change in behavior and attitude. The numerous parole boards' guidelines provide norms for this adjustment to assure fairness and consistency. You do not judge a student's readiness for graduation on the basis of what he was like upon entrance to college. You expect certain criteria to be met and a judgement of readiness to be made. We must stop determining an inmate's readiness for release based solely on the crimes that brought him to prison. The decision of how long a person remains in prison must be decided at the point of release, not under the pressure-laden atmosphere of a prosecutor's office, where plea bargaining decisions are made, if we really believe that public safety is the foundation upon which our criminal justice system is built.

7) Parole provides a population safety valve--while parole boards have not always been sympathetic with prison administrators faced with overcrowding problems, they do provide a mechanism for relieving population pressures by subjecting carefully screened inmates to a reduction in time to be served. With prison overcrowding at the crisis levels as it is today, I fully recognize the need for emergency release procedures. Clearly, no such pressure release valve can operate safely where determinant sentencing statutes eliminate parole board discretion. I shudder whenever such releases are legitimated by statute and inmates are released solely on some arithmetic formula. As a private citizen, I resent the fact that California has a system in which dangerous convicts are daily brought in chains to the front gate of San Quentin and released into the community because so-called law and order legislators took away indeterminate sentencing and the parole board's discretion to retain those who have demonstrated in prison that they will be a threat to society.

Parole: Directives for the Future

If we believe in the indeterminate sentencing concept as the most responsible and safe method to determine readiness for release from prison, it behooves us as parole board members and advocates of the system to continue putting our house in order, and speaking out in defense of the process. Specifically, I recommend the following:

1) You must stop seeing yourselves as just individual decision-makers. You are part of a policy-making body. It is critical that parole boards develop release policies based on clearly articulated philosophies and goals, and supported by adequate data. Many boards lack a coherent set of policies or guidelines which all of the members have agreed to use in making decisions. This has resulted in attacks by the media, confusion of the public, ineffectiveness in results, and, usually, resulting criticism from legislative bodies.

2) If release decisions are based on risk assessment instruments, those instruments must be validated regularly. This is especially true if the instrument is borrowed from another jurisdiction. Research shows that risk factors which are valid for a prison population in one jurisdiction are not likely to be valid in another. It is also important in making a release decision to factor in the ability of

field services to manage difficult risk levels. It may be that with more intensive supervision, a board can release people with higher risk scores. This has certainly been demonstrated in states using intensive supervision, house arrest and electronic surveillance as aids to the parole process.

3) We must become more knowledgeable about what is actually happening in parole today. We must emphasize the importance of research. We must learn from each other and compare results. We must insist that the Department of Justice begin to reissue the extremely valuable Uniform Parole Reports. For two years, we have been without this information that helps us to be aware of how various parole jurisdictions are organized, who is on parole, for how long and how well they are doing. We know less about the operation of parole nationally today than at any time during the past two decades.

4) Speak out strongly in favor of discretion at the correction's level. Discretion is a legitimate and sensible element in the criminal justice decision-making process. It provides for equity, fairness and justice, and, when necessary, provides a safety valve for an overworked system. Discretion is used extensively at every decision point from arrest to sentencing, and there is little justification to limit the professional use of such authority at the corrections' end of the continuum. One can understand the reasons for reform of the inequities that previously existed in the parole decision process, just as there continues to be the need to standardize through guidelines the wide discretion and gross inequities that exist in the decisions made by police, prosecutors and judges. The effort to reduce discretion by eliminating parole has created a situation where there is just as much discretion in the system as ever. It has just been moved back to a less visible, less measurable point.

And so I urge you, do not relax--the battle is still to be won. The coalition of liberals and conservatives continues to attack parole and they will yet be successful if we do not actively support a decision process that is sensible and appropriate if properly used.

G. K. Chesterton once said that religion had not failed--it had never been really tried. The same reasons why parole was invented are with us in magnified form today. Parole did not fail--it was never really tried.

If we believe in public safety
If we believe in fairness and equity
If we believe that discretion is a reasonable and effective decision process
If we so believe, we must stand up and speak out and bring about a renaissance of parole.

PART IV

EPILOGUE

TOWARDS SYSTEMIC CHANGE IN CRIMINAL JUSTICE

By
Christopher Dietz

Parole and probation constitute that integral component within the criminal justice network charged with community supervision. Parole is the earned privilege of serving the remainder of a custodial sentence in the community with general and special conditions as appropriate. Traditional probation embraces this concept without initial punitive confinement. Custody as a condition of probation is an example of how the responsibility for supervision after custody has been confused for the public.

When a prosecutor with an iron clad case opts to dismiss in order to obtain witness cooperation to effect broader prosecution, judicial adjudication with its assessment of penalty has been preempted. Even for the best reasons, this further erodes the understanding of assigned responsibilities within a criminal justice structure.

An analysis of the laws governing parole anywhere in the world demonstrates no two jurisdictions are alike. This exemplifies the dilemma of criminal justice where a concept which is simple to define is incapable of consistent assigned responsibility.

The separate components of police/prosecution, judicial, corrections, and probation/parole rarely act in concert with identified responsibilities nor have they made the effort to share the mission of community protection. Rather, they act to secure independence and preserve autonomy, often in conflict, serving nothing and no one. The best intention becomes a paradox.

Criminal justice should be perceived as sifting (not shifting) offenders through a process to identify appropriate candidates for custodial punishment and/or incapacitation. There should be obvious fairness at every stage. The ultimate result should be community protection, victim restitution and offender rehabilitation. The public does not believe criminal justice is capable of accomplishing this, but this does not diminish the expectation.

Instead of resolving problems, blame is shifted, panaceas sought, with promises made which can not be kept. No wonder there is a continuing crisis in credibility.

History has proven time and again that when public concern for crime is met with the political rhetoric of harsher sentences, now cloaked as overdue victim concern, the mission of criminal justice is obfuscated. What is amazing is that society has not learned from experience the desperate need for stability while forging positive change. Solutions are implemented and abandoned with shocking regularity furthering pervasive distrust of criminal justice.

Public confidence has regressed to tolerating the mediocrity in which government service has rooted its security. The problems facing criminal justice are perceived as overwhelming and treated as unsolvable.

These problems have been studied ad nauseam with solutions identified but never sufficiently accepted to breakdown the well guarded prerogatives. There is a quiet distrust within criminal justice which competes for resources and ignores cooperative potential in a quest for domination.

Too few resources are directed for crime prevention and to sustain law abiding activity. Instead, the bulk of tax dollars are earmarked for crisis response. It is difficult to conceive the astronomical appropriations targeted for construction as the response to prison overcrowding. For the most part parallel solutions are abandoned. Unless more than lip service is given to the development of community based responses to criminal behavior, prison construction will continue unabated.

The issue is not the future of parole or for that matter any other component within criminal justice. Rather, it is whether government has the capacity to realistically identify the challenge required to restore public confidence, assign responsibility, forge mutual cooperation where shared responsibility must exist, and marshal the necessary resources to respond to the challenge of crime.

Human nature denies the possibility that criminal risk will ever be eliminated. The goal must be to minimize this risk, not establish levels of toleration. A great deal of care must be exercised to insure that decision-making guidelines are not frozen in matrices. Human beings are too complex to allow generalizations to predict individual conduct. There is a tragedy in the realization that effective evaluative tools are not utilized nor is there any present intention to do so.

Common sense must be restored to the government activity of criminal justice. Crime is inevitable when chemical addition, the skills to earn a living, and mental illness have no effective intervention. When the major effort is to restrain rather than change, hope to develop self respect deteriorates and the risk to society increases proportionately.

It is easy to become accustomed to negative evaluation where past behavior is a principal focus. If an offender has a history of the same criminal activity it is hard to argue reasons for offender change except the classic fatigue of doing time when no respect for intervention exists. No jurisdiction has refined a salient factor scale to measure self-respect.

If a criminal does not care what happens to him or her, how can he or she be expected to care what happens to society. Unless a maximum effort for intervention is made, which is not superficial with accountability assured, long term recidivism is inevitable.

It is a tragic reality that too many criminal justice decisions are made on inaccurate and/or unreliable information. Little effort has been effective in refining the reliability of the information parole, let alone the rest of criminal justice, must rely upon for informed decision-making. Although a defense counsel may prove error in a pre-sentence report to the court's satisfaction, amendment of all copies is virtually impossible and like a sound wave the error can continue indefinitely. Unless accuracy is assured, it is difficult to maintain accountability.

No criminal justice system is so complex as to defy an analysis which specifically sets forth unique and shared responsibility, identifies accountability and establishes the necessary resources to achieve success. To do so would not be a major accomplishment, but to make it work appears to be an impossibility.

To sustain credibility, all responsibility and accountability must be identified and assigned. When one component assumes more than its assigned responsibility it necessarily takes that responsibility from another component. As nature abhors a vacuum, when one component fails to exercise responsibility it inevitability is assumed by one or more other components. This has been historically true in criminal justice and has resulted in a process rather than a system, where accountability is rarely appropriately identified let alone assigned.

In the context of three autonomous branches of government, criminal justice must be viewed as a joint venture. Each component must recognize that it has a vested interest in the success of its sister components. Such an orientation creates greater certainty for total system success. A means to prescribe swift conflict arbitration so that components never operate at cross purposes must be agreed upon. A procedure must be established to resolve internal problems rather than letting them fester to the detriment of society.

The failures of criminal justice past and present can be attributed to a criminal justice process, rather than a system, which has neither shared responsibility nor maintained clear lines of authority (assignment). The success of a criminal justice system in the future must be premised upon maintaining the fine tuned balance of cooperation in the execution of assigned and shared responsibility.

For a system to work, principles of operation must be clearly established and followed. This has not been accomplished within criminal justice to date. The public has been unable to understand criminal justice and a perception of failure continues. The erosion of credibility must end.

The future of parole is intricately woven in the future of criminal justice and depends upon open lines of communication where education effects not only accurate public expectation, but clear understanding within the criminal justice components.

Labels for blame within criminal justice are meaningless. What is at issue is mutually achieving maximum community protection without diminishing intervention in the criminal cycle. Only then does recidivism become a credible standard to measure success. An integrated criminal justice system is finely tuned when any component's success is measured by the performance of the remaining components.

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