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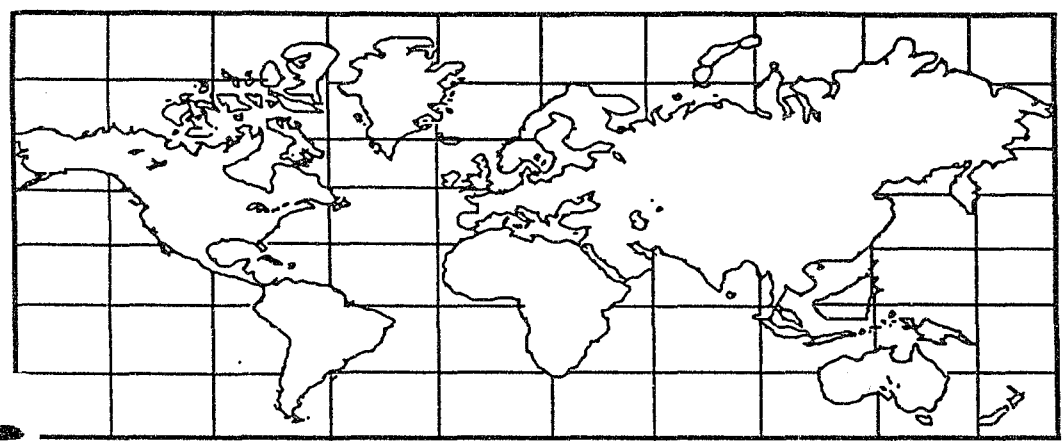
OBSERVATIONS ON PAROLE:

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



ASSOCIATION OF PAROLING AUTHORITIES INTERNATIONAL

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OBSERVATIONS ON PAROLE:

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Proceedings of the First
International Symposium on Parole
Compiled by

Edward E. Rhine
Program Chairperson

and

Ronald W. Jackson
President, Association of
Paroling Authorities International

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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.

Raymond C. Brown

Raymond C. Brown
Director
National Insitute of Corrections

ABOUT THE CONTRIBUTORS

Margaret Bensen is a Board Member, Ottawa Division and Appeals Committee, National Parole Board of Canada.

Allen F. Breed is a Criminal Justice Consultant, former Director of the National Institute of Corrections, and Vice President of the American Correctional Association.

John J. Curran, Jr. is Chairperson of the Massachusetts Parole Board.

Christopher Dietz is the former Chairperson of the New Jersey State Parole Board, and the immediate Past President of the Association of Paroling Authorities International.

Daryl R. Fischer is Director of Research for the Arizona Board of Pardons and Paroles.

Helmut Gonsa is Director of Prison Administration, Federal Ministry of Justice, Vienna, Austria.

Barbara Krauth is an Information Services Coordinator for the National Institute of Corrections Information Center in Boulder, Colorado.

Donnie A. Lee is a District Director for the Georgia Board of Pardons and Parole.

Bo Martinsson is Director General of the National Prison and Probation Administration, Sweden.

Eric Morrell is the Chief Probation Officer, Northumbria Probation and After Care Service, United Kingdom.

Richard T. Mulcrone is the General Manager of Corrections Systems, Control Data Corporation, Minnesota. He is a former U.S. Parole Commissioner and the former Chairperson of the Minnesota Corrections Authority.

William R. Outerbridge is the former Chairperson of the National Parole Board of Canada, a position he held for ten years.

William Rentzmann is Director for Kriminalforsogen, Ministry of Justice, Denmark.

Michael P. Sullivan is the Parole Guidelines Director for the Georgia Board of Pardons and Paroles.

Peter I. Tilton is Director of the Division of Probation and Parole, Department of Corrections, Maine.

Hans Tulkens is the Director of Prison Administration, Ministry of Justice, the Netherlands.

PART I

INTERNATIONAL PERSPECTIVES ON PAROLE

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.