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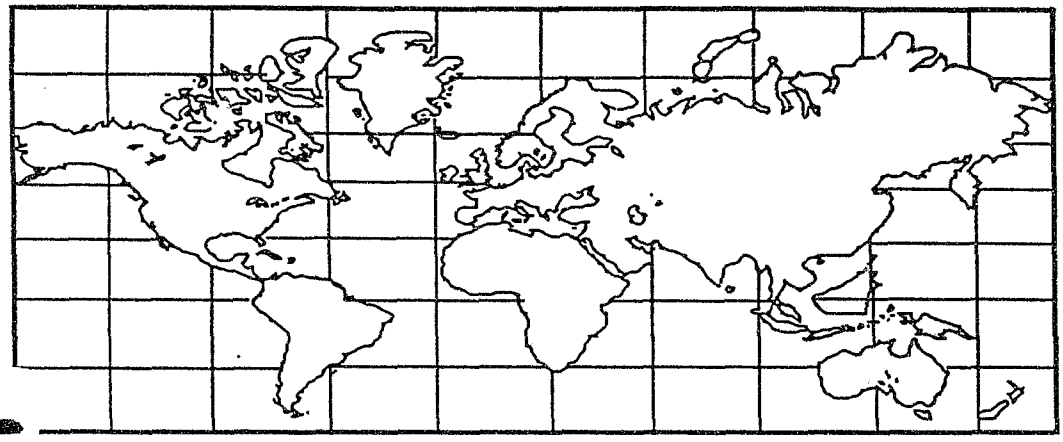
OBSERVATIONS ON PAROLE:

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



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ASSOCIATION OF PAROLING AUTHORITIES INTERNATIONAL

NOVEMBER 1987

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.

Raymond C Brown

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Director
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PART I

INTERNATIONAL PERSPECTIVES ON PAROLE

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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.