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HOWARD LEAGUE *for Penal Reform*



ILL-FOUNDED PREMISSES

The logic of penal policy and the prison building programme

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1974 15p.

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ILL-FOUNDED PREMISES:

the logic of penal policy and the prison building programme

A statement by the Howard League for Penal Reform.

1. The need to restrict imprisonment by avoiding the use of prison for petty offenders is now generally accepted. It raises two issues. The immediate one is the problem of providing reasonable accommodation for those at present in prison and those who are still being sent there; the second is what should be the long-term policy with regard to the use of imprisonment.
2. In 1971/72, 2400 new prison places were started, and 2,000 in 1972/73. Planning clearances are held for 15,000. The planned total number of places by 1977/78 is 45,600. The capital cost over a five-year period is at least £100 million. About half the new building is officially designated to reduce overcrowding and contain the predicted increase in prison population; the remainder, to replace obsolete buildings.
3. Meanwhile, prison staff is to increase from 19,693 in 1972/73 to 25,027 in five years' time. But the official forecast for 1973/74 has a footnote saying "Present recruitment trends indicate that there might be a shortfall". This alludes to a staffing crisis of such proportions that in 1973 the system was brought to its knees merely by a union ban on more than 14 hours' over-time per week. The staff shortage is of course aggravated by the increasing number and size of establishments.
4. All these plans have been evolved to meet an undeniably serious situation. Prisons are overcrowded and understaffed; apart from the appalling and insanitary conditions which prevail in many of them, there is a considerable shortage of provision for work or any other constructive activity.
5. We believe, however, that the policy is founded upon false premises. We cannot accept the logic of building more prisons, when the overcrowding is largely due to the imprisonment of people for whom provision could and should be made in the community, often at a lower cost; and it is surprising that it was ever accepted by the Treasury. In addition, some of the existing methods which could often be used in place of prison, such as fines and restitution, do not even require extra resources.

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6. To develop better regimes for those who currently remain in prison the prime need is an improved staff ratio, which would allow the staff better working conditions and the improved training which is so important in carrying out their exacting work. It would be far preferable to achieve this by reducing the number of inmates, rather than by further expansion of an unwieldy system which has already doubled in twenty years.

7. This statement of Howard League policy seeks to consider the current building programme. It is based on the proposition that a major aim of penal policy should be to limit the prison population, during the next ten years, to those who present a serious danger to society; on any calculation this number ought to be a small fraction of the estimates quoted below (paragraph 8). We believe that the case for such a drastic reduction is widely accepted although we realise that it come about only through a co-ordinated policy on the part of the Prison Department, the Probation and After-Care Department and the courts. It will also be necessary to consider the definition of dangerousness, and for the time being we feel it is better to concentrate on defining categories which should not be sent to prison. Here we confine ourselves to the short-term prison programme.

(A) The Position Today

8. Since its peak in 1970 of 40,000, the prison population in England and Wales fell to 35,010 on 31st December 1973. The Home Office has predicted a rise to 60,000 by 1980, and is still proceeding on the assumption that the dip in the graph may be purely temporary: the current estimate is 41,600 by 1977/78. But it is quite wrong to assume that the rise is inevitable and to base a prison building programme solely on predictions derived from past practice, and hence biased by the past lack of alternative provision. It is claimed that the revised forecasts make allowance for the increased use of non-custodial measures by the courts. But if projections are to be a sound guide to policy, they should be based, not on proportion of those convicted: whom, according to the predictions, courts are likely to imprison, but on the proportion who do not require a custodial sentence, or could be helped by alcoholics' hostels, day training centres, remedial education and other forms of community support. It would then become clear how much of the financial allocation for prison building and staffing should be transferred to providing these resources.

9. Even if the prison population declines, replacements are, admittedly needed for the Victorian slum fortresses. The statistical predictions enabled the Prison Department to extract money from the Treasury for new building. Only part of this is supposed to be used for replacement; but if the downward trend continues, leaving a surplus of buildings, the assumption seems to be that the old ones can be thankfully demolished, and the Treasury will be pleased to realise the capital value of their city centre sites. (Powers to do so were taken in the Criminal Justice Act 1972). This opportunist policy must be questioned.

10. There is a danger that, by a penological Parkinson's Law, the number of prisoners will increase to fill the cells available for their detention. This would not happen directly, but indirectly: as the more glaringly bad conditions in prison are improved, it becomes less difficult for courts to overcome their reluctance to send people there. The more modern the prison, the greater this risk, especially when community resources are inadequate. Many homeless people are sent to prison by well-intentioned magistrates: "At least you'll be fed properly and have a roof over your head". But this perpetuates the problem.

11. Hence the total number of prison places should be progressively reduced. We support a programme of renovation of prisons, accompanied by the demolition of outmoded premises: but the key to avoiding unnecessary overcrowding should be the reduction of the prison population, with the provision of alternatives in the community wherever necessary. We accept that the Home Office has a duty to provide up-to-date accommodation for those sentenced to imprisonment, but only those who constitute a real danger should receive such sentences.

(B) Transfer of resources: what government departments can do

12. The executive cannot, of course, control the sentencing policy of the courts. But it can and does influence it (though with too little drive), simply by creating alternatives. The Home Office has initiated 'out-patient' remand schemes for medical reports; started to provide adult probation hostels (though only 12 out of 110 exist as yet); introduced community service orders and day training centres; and enabled NACRO to set up experimental centres such as the Bristol New Careers project.

We hope that it will soon take powers to open bail hostels, which it has so far omitted to do (Times, 22.12.73). All of these help to reduce the prison population. Meanwhile, indirectly the Urban Aid programme is stimulating projects, which are potentially not only alternatives to imprisonment but preventive measures. It is to be hoped that the Department of Health and Social Security will soon provide the facilities to keep destitute alcoholics out of prison, and that similarly the Department of Environment will come to grips with the need of single people for accommodation without which they are forced into the crime of vagrancy.

13. It is also no longer entirely true that the Home Office must hold people for as long as the court directs. Home leave, pre-release employment, the borstal hostel at Ipswich, borstal community service, parole, and in a way open prisons, all allow considerable discretion in the return of the offender to the community - and all of them could be extended, even without legislation. It could be argued that Prison Department's first obligation is no longer to hold people for the prescribed length of time, but to encourage and assist each eligible man to qualify for one of these schemes as soon as possible. This, too, would reduce the inmate population.

14. The Treasury plays a vital role. In 1973 five building projects were cancelled. But what is to happen to the people who were expected to go to those institutions? To take some hypothetical figures: if a prison place costs £6,000 and £6m must be axed, it is not enough to cancel 1,000 places. The figure must be more like 1,500, and the extra £3m must be made available to provide 1,500 places in community projects. The money budgeted for staffing should be similarly transferred. There should, for example, be grants rather than mortgages for voluntary bodies running hostels, including those for persons at risk as well as convicted offenders.

15. We advocate a substantial transfer of resources of finance and manpower from the custodial penal system to non-custodial measures, combined with steps to persuade courts to take advantage of the new facilities in the community.

(C) The Sentence of the Court

16. It should be stressed that some of the available ways of reducing the prison population do not require the provision of any new alternatives. Many people are now imprisoned who are not dangerous and have been severely punished merely as a result of being found out, and require no particular attention from the social or medical services. Where prison is used, sentences could often with advantage be considerably shortened. There is also scope for avoiding the imprisonment of unconvicted people, as will be shown below. In other cases, fines, restitution orders, and confiscation of motor vehicles are all possible alternatives.

17. Progress could be made in several ways. The judiciary should have much greater knowledge of the effects of penal measures, and the scope of the recently introduced training in sentencing should be widened accordingly. The National College for the Judiciary of the United States, which trains newly elected judges, has a programme on sentencing and corrections during which the judges are jailed for 24 to 48 hours. (Ciba Foundation Symposium No. 16: Medical Care of Prisoners and Detainees, Amsterdam; Elsevier, 1973; p. 43). We strongly believe that this should be part of British judges' training. Sentencers should also be encouraged to have the fullest possible information on the person before them, and hence to make greater use of social and medical reports, especially when a person is liable to prison. This applies both when prison is being considered for the first time, and when it has been used previously without success.

18. There has been a welcome reduction in the percentage of persons convicted of indictable offences who are sent to prison: this proportion has fallen from 44.0% in 1953 to 19.7% in 1972. But still too many people are inappropriately remanded in custody, given prison sentences, and denied social enquiry reports. The first year of community service orders and day training centres, for example, has revealed great unevenness in the use of these new measures: five London courts made less than 5 CSOs each, while one made 30. We recognise that in some areas probation officers may have been less ready to recommend the new measures than in others; but the decision rests ultimately with the courts.

19. It has always been a function of Parliament to keep the courts' powers of imposing punishment within acceptable limits. Certain offences, such as those consequent upon hornlessness and alcoholism, should be removed from the criminal law or become non-imprisonable.

Mandatory suspension of prison sentences should be re-introduced for certain categories of offender, and steps taken to require the courts to make adequate use of new non-custodial measures. There would be wide support, especially among those familiar with the results of long-term imprisonment, for a "Serious Offenders Act", to put a ceiling of ten years on any sentence, except life imprisonment (subject to lower maxima already in force for particular crimes). Except for dangerous, or persistent serious offenders, the maximum should be five years (as proposed by the US National Advisory Commission on Criminal Justice Standards and Goals); and the first prison sentence, with similar clearly defined exceptions, should be no more than three months (as proposed by Professor Rupert Cross in Punishment, Prison and the Public 1971). There should be a considerable liberalization of the parole and work-release regulations.

20. In short, the provision of more community resources should be accompanied by parliamentary restrictions on the courts' powers to impose imprisonment and more training of members of the judiciary in the effects of penal measures.

(D) Prison before trial.

21. Remands in custody raise special considerations. At about 4,000 they comprise over 10 per cent of the daily average prison population; this is far too high, and it is hoped that measures following the report of the joint working party of the Home Office and the Magistrates' Association on bail will reduce the figure by at least a third. Resources should be transferred to bail hostels; but here again it should not be assumed that the creation of alternatives is the only way. Only a proportion of those remanded would need bail hostels; more use could be made of existing facilities within community, as in NACRO placement schemes, and some people could be released on their own recognizances if the criteria for bail were revised (as proposed in the Howard League report Granting Bail in Magistrates' Courts). The schemes for out-patient remands for medical reports, which have been disappointingly under-used, could be extended, mandatorily if necessary; preferably the remand would not be to a prison but to a hospital or clinic. In all these ways we could avoid exposing unconvicted people to the stigma associated with institutions, and spare them unnecessary separation.

22. For those who must be detained, the criteria are: easy and direct access by families and legal representatives, proximity to the courts, and conditions appropriate to people who have not been convicted.

Hence either those parts of existing local prisons which are at present used for remands should be rebuilt as small units; or consideration should be given to incorporating remand facilities in new court buildings. In London especially, there is an overwhelming case for building a magistrates' court adjacent to the remand centre, to deal with all eight-day remands for the area.

23. Only exceptionally should people be held in custody awaiting trial, or be remanded in custody for social or medical inquiries. Where custodial remands are unavoidable they should be in local institutions, suitable for the purpose and accessible to the prisoner's family and legal representative.

(E) Young Offenders

24. Young offenders are another special case. Here the main problem is the remoteness of many institutions; physical conditions do not give cause for anxiety, except in a few borstals such as the old buildings at Rochester. It is widely expected that the Advisory Council on the Penal System will recommend a far more community-based policy. A moratorium on new custodial institutions for young adults should therefore be imposed. Similarly for women and girls: the only possible exception would be a small institution to enable the mammoth new Holloway to be used for men as a replacement for Pentonville or Brixton.

(F) Out of the way

25. In discussing the numbers of prison places required, too little attention has been paid to the question of location. The old prison buildings are grim (though it is significant that some modern prisons, too, have been riot-prone); but they are at least central. The importance of this has been well summarized by the Standing Conference on London and South East Regional Planning in its report Penal establishments in the South East (1971);

- (i) so that prisoners may be encouraged to maintain home ties and family relationships (by being accessible for easy and cheap visiting, including by public transport, from the main populated areas of which Greater London is the most significant).

- (ii) so that the opportunity exists for staff not required to live adjacent to the prison to be housed in the local community.
- (iii) so that staff obliged to live in at the prison can have reasonable access to education, shopping etc. (It is Home Office policy to provide most houses for prison staff. It is necessary that a minimum of 25 per cent of these houses should be located immediately adjacent to the establishment. The location of the remainder of the houses is one of the matters discussed between the Home Office and the planning authority when a site is being considered).
- (iv) so that certain staff can be recruited locally without too much difficulty (there might be of the order of 30-40 posts for a variety of jobs, including clerks, typists, temporary prison officers, and plant attendants).
- (v) so that teaching staff appointed by the local education authority may give part-time instruction at the establishment mostly in the evenings.
- (vi) so that prisoners may benefit from contacts with local people.
- (vii) so that establishments dealing with psychiatrically disturbed offenders may be accessible to good medical and consultant facilities.
- (viii) so that at establishments accommodating prisoners in the higher security categories, 'police intervention time', in the event of prison incidents, is reduced to a minimum.

Surprisingly, the report omits a further important consideration:

- (ix) the proximity of a range of employment, to make it easier to bring work into the prison and especially to enable prisoners to go out to work.

A Howard League survey has shown, however, that many new and projected institutions are in small towns and even tiny villages, many miles from a centre of population, and attract the highest rates of inconvenience-of-locality allowances for prison staff.

26. The inference is clear: new prison projects in the outback, such as Wrabness, should be cancelled. Those already built will presumably have to stay, unless they can be converted to other (e.g. military) uses, but should not be enlarged - size in itself is an adverse factor in the running of an institution. As the prison population declines, remote fastnesses such as Dartmoor and the ancient urban ones, should be demolished (a ball and chain would be an appropriate implement). Rebuilding should take place on the central sites, but only to the extent necessary for a much reduced prison population, in smaller units, with adequate facilities for work and other activities, designed so as to be adaptable for other purposes subsequently.

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WHAT THE HOWARD LEAGUE DOES...

The Howard League works for the prevention of crime by constructive penal and social policies, to encourage and enable offenders to make better use of their lives, instead of relying on the present largely punitive and unsuccessful methods. What is crime? Why is it increasing in our society? Why is the existing system so ineffective in prevention and treatment? These are the problems of which the Howard League tries to promote a wider knowledge and understanding, with the aim of developing more informed methods and thus reducing the number of people who suffer as a result of crime.

This is how the Howard League works—

- by factfinding

The Howard League acts as a watchdog on the operation of the existing penal system. When the system is not working as fairly, effectively and humanely as possible, or is not attaining the standards claimed in its public statements, we propose improvements.

- by encouraging reform

Study groups of the Howard League put forward improvements and new methods of preventing crime and treating offenders, and comment on draft legislation where necessary. The League presents evidence to Royal Commissions, Departmental Inquiries and the Advisory Council on the Penal System. It offers background information to members of both Houses of Parliament. It consults with, and makes informal recommendations to, Government officials, which often lead to improvements. When necessary, it raises issues in public by publishing the facts and showing up the need for reform.

- by supplying information

Information is available to members of the League, journalists, radio and television producers, students, and schoolchildren. We issue pamphlets, organize meetings and conferences, and publish the *Howard Journal*. A small *Library* is available to members.

- by providing training

The Howard Centre of Penology, set up by the League in 1967, is concerned with the training in new techniques of those engaged in treatment of offenders and in the prevention of crime.

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