

The Future of the Prison System

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Preface

This book arose out of our dissatisfaction with the deliberations of the May Committee of Inquiry into the United Kingdom Prison Services, which reported in October 1979, and our belief that some more systematic view of the prospects for the future of the prison system was required.

The Inquiry was announced on 2 November 1978 when the escalating industrial actions of prison officers began seriously to disrupt the work of the courts and the prison governors warned that the prison system was in imminent danger of collapse. Industrial relations in the prison service had been deteriorating for some time, and matters had come to a head ostensibly over what were known as 'continuous duty credits'. But the prison system had been passing through the most troubled decade of its history. The prison population had continued to rise and many prisoners were housed in appallingly squalid conditions; a National Prisoners' Movement (PROP) had grown up in an attempt to protect the rights of prisoners; and the powers of the Home Office were being challenged in courts at home and in Europe; serious disturbances and riots had occurred in maximum security prisons which had led to reprisals against prisoners; and prison staff generally had lost any confidence they might have had both in the way their tasks were defined and in the nature and quality of central management. Most informed commentators felt that a wide-ranging independent review of the prison service was long overdue.

On 17 November the Home Secretary announced the terms of reference for the Inquiry. In an ill-considered attempt to kill two birds with one stone the Home Secretary set the industrial relations issues in a broad context. While the terms of reference left some important matters outside the Committee's remit, there was enough within it to give the appearance of a comprehensive review. Indeed in other circumstances something might well have been achieved. Two factors seriously undermined any hopes of success, however. The first was that from the outset the Minister had stressed the urgency of the Inquiry: prison officers had suspended their actions temporarily but would not wait for ever and the Home Secretary wanted a report by the end of March 1979. The second was that the Committee seemed lacking in the kind of expertise that would be required. It comprised: a mayoress, a person-

nel director, a senior trade unionist, a company managing director, a member of a prison board of visitors, a former director of NACRO, an Irish mayor, and a Scottish sheriff and a retired chief constable, presided over by a member of the judiciary. Few could claim special knowledge of the prison system. The Committee had no staff, other than a small Home Office supplied secretariat, and no resources to speak of. It did not seem likely to be in a good position to evaluate the evidence it received.

With only four months at its disposal, the May Committee invited written evidence by Christmas 1978. Like many others we strove to meet this preposterously short deadline. It seemed obvious that the main concern would have to be with industrial relations and we had no serious expectation that the Committee would, or could, do justice to the underlying problems in such a short time. Though we had little or nothing to say about continuous duty credits or any of the other staff grievances, we were anxious that broader issues should not go by default. Our fear was simply this. That since the terms of reference appeared to go far beyond industrial disputes then, if this opportunity was missed, it might take another decade of even more serious troubles before the prisons were looked at again. Accordingly we prepared two fairly substantial documents for the May Committee, one by the Christmas deadline, the other a few weeks later.

The May Committee soon decided that the Home Secretary's timetable was unrealistic, and that it would be inappropriate to make an interim report on prison officers' pay and related issues. On 21 February 1979 Merlyn Rees announced that the Committee's findings would not be available until the summer of 1979. We took the opportunity of this delay to edit our evidence, which was then published by the Universities of Bath and Southampton in April 1979. We hoped that others might be encouraged to join the debate. Meanwhile the Committee, with our permission, invited the Home Office to comment on our evidence. At our request we were subsequently afforded an opportunity to reply to the Home Office, both in writing and in oral evidence which we gave to the Committee in May 1979.

Whatever the merits of the May Committee Report — on the immediate matters of industrial relations, for example, and on its modest proposals for reforming the organisation structure — in our view it failed, as we had feared it would, on the larger problems. We reach this judgement not because our own alternative strategies for the future of the system were rejected, but because *all* alternative strategies were rejected. Although the Committee expresses satisfaction that their Report 'does proper justice' to what they were required to investigate we cannot share that view. The fact is that on virtually every issue of

importance the May Committee recommendations represent the reaffirmation of existing Home Office assumptions and policies. It is important that neither the Government nor the public should be left to believe that the Committee did do justice to its wider task. We were therefore extremely grateful to our publisher, John Irwin, for his suggestion that we should up-date our analysis of the future of the prison system in the light of Mr Justice May's Inquiry.

In preparing the present volume we have reviewed most of the written evidence that was submitted to the May Committee; and we would like to thank all those organisations and individuals whose unpublished evidence was made available to us. Our own views on the future of the prison system have not changed much in this process, and many of the ideas expressed in the first four chapters were already contained in our original evidence. We have, however, substantially re-worked them for this volume to take account of the evidence of the Home Office and others, as well as the verdict expressed by the May Committee. We have not had the space to go into quite the same detail about some of our proposals in this volume as we did earlier. Details can be discussed if there is any willingness on the part of the authorities to listen. For the present it seems more appropriate to get agreement about general principles and the setting of standards.

We are no more expert now than we were before on continuous duty credits and the like, and this book gives virtually no attention to such matters. This is not to say that we regard these as unimportant. But, unlike the other issues discussed here, pay and conditions are matters for negotiation between the Home Office and the POA, and they will have to be resolved in that way whatever the framework for the prison system as a whole. We should also make it plain that we have not tried to provide a comprehensive coverage — there is nothing for example on Scotland or Northern Ireland — because it seemed better to concentrate on those aspects of the prison system we know best. For this reason we have been very glad to commission chapter 5 on Prison Management from Dr J.E. Thomas and chapter 6 on Maintaining Standards from Professor J.P. Martin. Although we had written something about these matters in our evidence, we claimed no special expertise on them and had no time to develop it for this volume. Accordingly we turned to those of our colleagues who did have that expertise and whom, we felt, were likely to share our general perspective. We are most grateful to them for their contributions; and with Professor Martin we would like to thank Joan Higgins, Graham Zellick and Professor Francis Jacobs for their valuable comments on chapter 6.

The rest of this book has been very much a collaborative exercise. Purely as a result of an enforced division of labour to meet our

publisher's deadline, Roy King wrote the Introduction and chapters 1 and 3, and Rod Morgan wrote chapters 2, 4 and the Conclusion. We hold ourselves jointly responsible for their contents although we were glad to have John Martin's comments on chapter 1.

We are, as ever, greatly indebted to our wives and children: Janet, Simon and Matthew King; Karin, Magnus, Toby and Benjamin Morgan.

Thanks are also due to Alison Heywood who typed the final draft.

We hope that this book will make some contribution towards the making of a smaller, more humane and more justifiable prison system — but at the time of writing it is hard to be optimistic.

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Rod Morgan, Bath

March 1980

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Introduction

This book is about the future of the prison system. It has been written in the light of the findings of the *Committee of Inquiry into the United Kingdom Prison Services* under the Chairmanship of Mr Justice May which reported in October 1979. Although this is obviously not the place to embark on a detailed history of the prison system it may be helpful to some readers if we say a little about the development of the service and to provide a brief account of the events which led to the establishment of the May Committee. The initiated will probably prefer to go straight to chapter 1.

Some historical background

It is in the nature of prison administration that its history is punctuated by scandals. In the eighteenth century gaols were administered by local justices. They were numerous, most of them were small, and as John Howard's account of *The State of the Prisons* (1777) testified, they were corruptly run and riddled with disease. By an Act of 1823, however, local justices were required to reform their prisons and provide quarterly reports to the Home Secretary. In 1835 an independent inspectorate was set up, albeit with powers that were largely limited to the shaming effects of criticisms in their published reports.

Central government at that time was responsible for some convicted felons, who would formerly have been transported or executed, and these were housed in the notorious prison ships or 'hulks'. In 1821 the first national penitentiary was established at Millbank and this became the nucleus of a system of convict prisons administered by a new Directorate formed in 1850. The first Chairman was Colonel Jebb, the architect of Pentonville, who had earlier been Surveyor General of prisons and advisor to the Home Office and local authorities on prison construction. There followed a period of intense prison building activity and a more or less determined attempt was made to impose a uniformity of design and regime on the Pentonville model. These efforts were greatly strengthened in 1865 when the Secretary of State acquired powers to withhold monies from recalcitrant local authorities.

In 1877 a new Act effectively established a single prison system, with

central control of convict and local prisons vested in a Prison Commission, assisted by the Inspectorate and a departmental staff. The first Chairman was du Cane, who had been Jebb's successor as Surveyor General. Many small and redundant prisons were immediately closed in a process of rationalisation that continued into the twentieth century. In the prisons that remained du Cane operated a regime of silence, separation and penal labour that survived for nearly twenty years. But a series of newspaper and magazine articles about the brutalising consequences of this policy gave rise to such misgivings that a Departmental Committee under Mr Herbert Gladstone was set up to investigate prison conditions. The Gladstone Committee went considerably beyond their terms of reference and argued for a more individualised regime that would be more likely to serve reformatory or rehabilitative ends.

The principles laid down by the Gladstone Committee in 1895 have served as guidelines for the prison system ever since, though developments were slow, patchy and sometimes contradictory. Du Cane was replaced by Ruggles-Brise who, as well as founding the Borstal system, implemented many of the recommendations of the Gladstone Report. Yet the era of Ruggles-Brise ended with an indictment of the prison regime comparable to that which concluded the era of du Cane. The experiences of imprisoned conscientious objectors and suffragettes led the Labour Research Department to set up an unofficial enquiry in 1919 — much to the consternation of the authorities. The report was published by Hobhouse and Brockway under the title *English Prisons Today* in 1922. Ruggles-Brise retired whilst this latest attack on the prison system was in the press and he was succeeded by Waller. At about the same time Alexander Paterson, formerly a director of the Borstal Association, was appointed a Commissioner. Though never the Chairman he became the most celebrated and influential of prison administrators. His paternalistic yet inspirational approach was able to withstand the backlash following the so-called Dartmoor 'mutiny' of 1932, when the staff regained control of the prison only with the use of carbines and the help of the police. Under successive Chairmen from Waller to Fox, Paterson was associated with many liberal developments. It was Paterson who coined, or borrowed, the famous aphorisms: 'It is impossible to train men for freedom in a condition of captivity' (Prison Commission, 1932, p.12) and 'Men come to prison as a punishment not for punishment' (Ruck, 1951, p.23). These aphorisms have sustained, though often confused, the prison service to this day.

Paterson died in 1947. It was left to Fox, Chairman of the Commission from 1942 until 1961, to incorporate the concept of 'the training and treatment of convicted prisoners' into the Prison Rules of

1949; and to develop an organisational structure for the prison system within which training might be carried out on a more systematic basis. But Fox faced problems that had been largely unknown since the time of the Gladstone Report. At the end of the Second World War, after long years of stability which in turn had followed upon years of decline, the prison population began to rise. The local prisons, which received prisoners from the courts, began to fill to overflowing as prisoners awaited places in the training establishments. Fox's answer was twofold: a demand for more research that would help to defeat recidivism and a demand for more prisons. The former was answered, in some degree, by the establishment of the Home Office Research Unit and an Institute of Criminology at Cambridge. The latter by the building programme put forward in the 1959 White Paper, *Penal Practice in a Changing Society* of which Fox was the leading draftsman. The White Paper also looked forward to a 'fundamental re-examination of penal methods, based on studies of the causes of crime' that could become 'a landmark in penal history and illumine the course ahead for a generation' (Home Office, 1959, para 24).

In 1964 the Government decided that the time was right for that fundamental re-examination and appointed a *Royal Commission on the Penal System*, under the Chairmanship of Lord Amory, with the widest possible terms of reference. Two years later six of its eighteen members resigned, convinced that no set of general principles for the foundation of penal policy could be found. The only Royal Commission in history not to produce a report was therefore dissolved on 24 April 1966, and in its place the Advisory Council on the Penal System was established to deal with such topics as the Minister might refer to it on a piecemeal and pragmatic basis (Morgan, 1979).

By then, however, important developments had taken place in the prison system. In 1963 the Prison Commission was dissolved and merged into the Home Office. Peterson, who had succeeded to the Chairmanship of the Commission two years earlier on the death of Fox, became the head of the new Prison Department.

In the next few years some of the most notorious prisoners in the country succeeded in escaping, thereby exposing the extent to which the Patersonian influence had actually contrived to disregard a basic pre-requisite of any prison system – security. Not surprisingly, perhaps, the pendulum then swung the other way. At the end of 1966 Lord Mountbatten presented his *Report of the Inquiry into Prison Escapes and Security*, and recommended that all high security risk prisoners should be placed in a single new escape-proof prison. Two years later, the Advisory Council, who had been asked to consider *The Regime for Long Term Prisoners in Conditions of Maximum*

Security, overturned Mountbatten's proposal and suggested that high risk prisoners should be dispersed among several maximum security prisons. The suggestion was accepted by the Government and a new era was ushered in.

Despite the prison building programme, the Victorian heritage of local prisons remained overcrowded and in need of redevelopment. Though they were not the dens of vice and pestilence that Howard had found their predecessors to be, they hardly spoke well of 200 years of civilised development.

Between these extremes of overcrowded squalor and oppressive maximum security, the rest of the prison system continued with its attempt to offer treatment and training that would prevent prisoners from coming back into the system. All the results of research showed that they were failing in that endeavour.

A new White Paper, *People in Prison* (Home Office, 1969) tried to reconcile the proven need for security with the disproven effectiveness of prison treatment against the background of a prison population that was reaching ever new heights. But with no great success, for the decade which followed was the most troubled in the entire history of the system. The latest authoritative account of prison policy and practice, *Prisons and the Prisoner* (Home Office, 1977) can only seem a rather glossy public relations exercise in the face of the mounting difficulties.

The events leading to the May Inquiry

The troubles that beset the prison system in the last decade came most immediately from the dramatic actions of prisoners and staff. Although arguably these troubles had much deeper roots, in the continuing failure to bring nineteenth century aspirations into line with twentieth century realities, it is sufficient here to draw attention to the more visible events which led to the establishment of the May Inquiry.

In the three years preceding the May Inquiry the numbers of incidents of what the Home Office calls 'concerted indiscipline' by prisoners averaged about thirty per year (Home Office, 1979, para 88). Roof climbing by prisoners had become one of the most difficult problems the authorities had to face, not only because it placed staff at a physical disadvantage but because it gave prisoners immediate access to the press and television. If prisoners had learned nothing else in their attempts to redress grievances they had learned the value of publicity. The general level of indiscipline had, if anything, declined since the

peak year of 1972, but the 1970s were characterised by prisoner disturbances in a way that had not been seen in any earlier decade.

The actions of prisoners were of two kinds, and it is important to distinguish them. On the one hand were broadly based, and largely passive demonstrations designed to draw attention to prison conditions and to the need to protect the rights and civil liberties of prisoners. The Home Office had acknowledged in the title of its 1969 White Paper that there were *people* in prison, not just inmates. Inspired by the development of prisoner unions in North America and Scandinavia, a group of ex-prisoners and academics unveiled the embryo National Prisoners' Movement (PROP) in May 1972. It was dedicated to radical penal reform and to improving the conditions for people in custody. Civil disobedience demonstrations were held, peacefully and often with good humour, in prisons of all types throughout the country. They were either co-ordinated by PROP or were in sympathy with its aims (Fitzgerald, 1977). These quasi-industrial actions culminated in a national prisoners' strike on 4 August 1972 which, even on the most conservative official estimates, involved 5,500 prisoners in twenty-eight establishments (Home Office, 1973, para 147). Although these activities have continued, neither the Home Office nor the Prison Officers' Association has been prepared to acknowledge the existence of the prisoners' union.

On the other hand were a series of spectacular and often violent disturbances and riots, which caused considerable damage to prison property and placed many prisoners and staff in fear of personal injury, either in the course of the incidents or in their aftermath. Though none of these events were on the same scale as those of Attica, New York, in 1971 or Santa Fé, New Mexico, in 1980, the fears of both staff and prisoners were sometimes justified. Without exception the most serious disturbances of this kind occurred in the maximum security dispersal prisons: at Parkhurst on 24 October 1969; Albany on 8 September 1971 and 26-28 August 1972; Gartree on 26 November 1972; Hull between 31 August and 3 September 1976; and Gartree on 5 October 1978. Often these riots and disturbances were accompanied by sympathetic demonstrations at other establishments. The Parkhurst riot was perhaps chiefly notable for the fact that subsequently seven prisoners were convicted in the criminal courts and sentenced to further terms for their part in the violence. The Hull riot will go down in history because it was members of staff who were subsequently tried and convicted for their contributions to the reprisals that occurred afterwards. The riots also produced some internal reviews of policy which generally led to a hardening of attitudes. Following Albany and Gartree in 1972, the Home Office introduced special 'control units' for

trouble makers over and above the existing segregation units. They had hardly been used before a public outcry forced their abandonment in 1975 and recently their legality under the Prison Rules was challenged unsuccessfully in the courts. Following Hull in 1976, the Home Office introduced specially trained riot (MUFTI) squads to quell disturbances.

Incidents of industrial actions by staff were far more numerous, however, than protests by prisoners. From 1973 to 1975 branch members of the Prison Officers' Association were in dispute, on average, on seven separate occasions per year. In 1976 the number of industrial actions rose to thirty-four and in 1977 to forty-two. But in the year preceding the setting up of the May Inquiry there were no fewer than one hundred and fourteen separate actions in sixty different establishments (Home Office, Evidence, II, Paper IIE2, para 8). Yet historically industrial actions by prison officers had been virtually non-existent.

Only gradually has the prison service emerged from its militaristic tradition. From the earliest days of the Prison Commission recruits had been drawn largely from the armed services. Industrial attitudes were discounted in favour of loyalty and a sense of duty. The *Prison Officers' Magazine* which first appeared in 1910 was opposed because it was too 'militant'. When prison officers joined police officers in a strike action in 1919 they were dismissed from the service. For the next twenty years the Commission was able to hold the line with a Prison Officers' Representative Board, but in 1939 the right to unionise was conceded and the POA was born. Throughout the days of the Prison Commission, however, prison officers were expected to know their place. Paterson is quoted as saying: 'I don't want to attract to this service young men who are concerned about their pay or their careers' (Watson, 1969, p.70).

After the War, and especially after the end of National Service, the young officers were drawn from a broader spectrum. This was also partly a matter of deliberate policy, because it had long been felt that the military-style prison officer had not been sufficiently receptive to the liberalisation of the prisons. At first the change in recruitment had a barely perceptible effect. But in the last fifteen years or so the numbers of prison officers virtually doubled, and new staff have come more and more to reflect the prevailing attitudes towards industrial relations.

Perhaps not surprisingly it was the advent of the National Prisoners' Movement, with its protests about prison conditions, that first brought matters to the boil for prison staff: for it is a truism that staff share the same conditions as prisoners. The POA opposed PROP from the outset and prison officers repeatedly and publicly dismissed all types of

prisoner disturbances as the work of trouble makers and subversives. Staff attitudes began to crystallise around the perceived weakness of the Home Office in relation to the growing number of demonstrations — so much so that staff industrial actions and prisoner disturbances began to intermesh. At least one major disturbance was provoked in Albany, for example, because the POA threatened to work to rule unless a stronger line was taken against subversives (King and Elliott, 1978).

Most of the early industrial actions by the Prison Officers' Association were led by the National Executive. But from 1975 onwards it was, more often than not, the local branches which took the lead, sometimes in defiance of the authority of the NEC. As a result it was becoming at least as tenable to speak of 'subversive staff' as of 'subversive prisoners'. The real escalation of industrial actions occurred in 1976, when restrictions on public expenditure led to the imposition of budgetary control over the hours of overtime. Until then, as the tasks of prison officers had grown, first through the demands of treatment and training and later of security, the POA had been remarkably successful both in getting a huge increase in staff and in maintaining high levels of overtime for their members. With budgetary control, overtime was reduced and take home pay fell significantly for many prison officers. The POA adopted a stance of non-co-operation and local branches began to make a variety of claims for special allowances that would compensate for loss of overtime. These were usually backed by the threat, and often the reality, of industrial action.

Most types of industrial action served at once to disrupt the administration of prisons and to restrict the regimes of prisoners. Depending on the nature of the action, quite profound effects could be achieved in any type of institution. But industrial action was likely to be especially effective in the local prisons and remand centres where the administration is complex and the regime already restricted by the poverty of facilities and the pressure of numbers needing to use them. The POA, however, had adopted a policy that industrial action should not be allowed to disrupt the work of the courts or to interfere with the administration of justice. With few exceptions that policy was respected by local branches until 1978, when the dispute over 'continuous duty credits' — payment for meal breaks taken during duty hours — came to a head. In September and October of that year Ashford branch delayed the production of some prisoners at court and refused the reception of others who had to be held in police cells. Following an unofficial conference at Pentonville in October, widespread industrial action was threatened with effect from 5 November which would include court disruptions regardless of any instructions or advice which might be

received from the National Executive.

The question of who runs the prisons had been posed in no uncertain terms. In a letter to *The Times* on 30 October 1978, prison governors complained at the 'deplorable lack of leadership' from the Home Office and warned that the prison system was in imminent danger of total breakdown. On 2 November, the Home Secretary, Merlyn Rees, announced to the House of Commons that he intended to set up 'an Inquiry to consider the causes of the present situation that exists in the prison system'.

The May Committee

Although it was obvious that the Inquiry was established to head off the threatened actions, and would therefore have to address itself, and quickly, to matters of industrial relations, it was no less obvious that there were more deep seated problems facing the prison system. There had been no searching appraisal of them since the work of the Gladstone Committee of 1895. The Royal Commission of 1964-6 which might have illuminated 'the course ahead for a generation' had been disbanded in disarray, and events had moved on dramatically since then. Rupert Cross had concluded his delightful Hamlyn Lectures as long ago as 1971 with the message that 'no matter what the source may be (Advisory Council, Departmental Committee, Inter-departmental Committee or Royal Commission) we want another Gladstone Report' (Cross, 1971, p.190). Perhaps this Inquiry would provide that opportunity? In any event the Press and interested parties from inside and outside the service persuaded the Home Secretary, if indeed he needed persuading, to widen the issues.

On 17 November 1978, Merlyn Rees announced that Mr Justice May had been appointed Chairman of the Committee of Inquiry with the following terms of reference:

To inquire into the state of the prison services in the United Kingdom; and having regard to:

- (a) the size and nature of the prison population, and the capacity of the prison services to accommodate it;
- (b) the responsibilities of the prison services for the security, control, and treatment of inmates;
- (c) the need to recruit and retain a sufficient and suitable staff for the prison services;

- (d) the need to secure the efficient use of manpower and financial resources in the prison services;

To examine and make recommendations upon:

- i. the adequacy, availability, management and use of resources in the prison services;
- ii. conditions for staff in the prison services and their families;
- iii. the organisation and management of the prison services;
- iv. the structure of the prison services, including complementing and grading;
- v. the remuneration and conditions of service of prison officers, governors and other grades working only in the prison services, including the claim put forward by the Prison Officers' Association for certain 'continuous duty credit' payments and the date from which any such payments should be made;
- vi. allowances and other aspects of the conditions of service of other grades arising from special features of work in the prison services;
- vii. working arrangements in the prison services, including shift systems and standby and on call requirements;
- viii. the effectiveness of the industrial relations machinery including departmental Whitley procedures, within the prison services.

Although some matters of importance were excluded from the May Committee's terms of reference, the remit was sufficiently wide for a quite comprehensive review of policy. After all, as Cross had noted, the original terms of reference of the Gladstone Committee related to 'prison conditions' but this did not prevent them from making 'statements of principle which were to operate as guidelines for seventy years to come' (Cross, 1971, p.190). There were, however, two problems that seemed likely to inhibit a comprehensive review. The first was the shortage of time and the second an apparent lack of relevant expertise.

The Home Secretary wanted a report in four months, by the end of March 1979, and the Committee began its work on this basis calling for evidence to be submitted by Christmas 1978. In the event it could not meet the deadline, and the Home Secretary announced a delay on 21 February 1979. The Committee took ten months over its labours, delivering a report to the Home Secretary in September, which was then published in October 1979. Time enough, and more, for intelligent