

LONG-TERM PRISONERS

1. The question of long-term imprisonment is historically linked to the question of the death penalty and the increased emphasis and discussion on this sort of deprivation of liberty is the direct result of the successful campaign for the abolition of capital punishment.

It is therefore important to identify the historical changes in attitudes to crime and punishment. They illustrate what has been attempted and allow a projection into the future on the basis of past experience and development. In other words one may try to draw a lesson from what has happened to what may possibly happen, to seek in the past an indication for future orientation taking into account the various stages of social development.

2. The social development of the European countries has for all practical purposes been parallel, faster in some and slower in other States. But they all move in the direction of a more democratic, more egalitarian and more understanding administration of justice.

3. This evolution has taken place over the last century or so. It is not the intention here to describe in detail the history of the abolitionist crusade, its many successes and its few setbacks.

It has recently been proposed by a governmental committee in France to replace the death penalty by legal provisions which would lead to increased emphasis on long-term detention. This example is the latest in a long series that started during the last century when Portugal in 1868 and the Netherlands in 1870 abolished the death penalty and replaced it by life imprisonment. In other countries the death penalty was abolished de facto at this time or even earlier, such as Finland, Norway and Denmark and death sentences were commuted to imprisonment for life

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or of long duration as a matter of administrative practice. This movement has been continued all through this century to the extent that today among the Western European States in addition to France only Spain and Greece still retain in practice the death penalty and in these countries its survival is far from certain.

4. Our period is indeed characterised by an increased reliance on other means of enforcing social norms and values, and in general accompanied by a general revision and relaxation of such norms. Moreover, our time has assisted at a general erosion of the penal sanction as such. Generally speaking prison sentences are shorter than was previously the case, other sanctions are being envisaged and applied, penal codes are being revised and the process of decriminalisation universally accepted.

5. The development in Europe may be of some interest. Running the risk of being accused of oversimplification, I would submit that States which have abolished the death penalty (or are about to do so), go through several stages.

a. The first stage is marked by the de facto abolition and/or decreased number of sentences and executions. The time gap between abolition de facto and de jure may vary; in Finland almost 125 years, in Denmark 40, in Norway 29 and in Sweden 11.

In France the number of executions has fallen from 15 a year around 1930 to 5 during the period 1969-76. At the same time the number of death sentences has with some fluctuation decreased. Such sentences are in most cases commuted to life imprisonment.

b. The second stage is characterised by the recourse to very long sentences either indeterminate or for extremely long periods. It is illustrated in particular by those countries which have recently abolished the death penalty or who retain the death penalty on the Statute Books, and practise very long terms of detention. The average period actually spent in prison pursuant to a sentence of life imprisonment is in Belgium from 20 to 25 years with an absolute of maximum so far reached of 43 years. In the United Kingdom an average of 20 years, in France an average of 19-21 years after which supervision is usually imposed after liberation for a period of up to 12 years.

Recently the Canadian Parliament - to quote an extra-European example - abolished the death penalty and introduced penal sanctions which do not leave the detainee with any hope of liberation before 25 years of imprisonment and that it is estimated that in 1992 there will, in Canadian prisons, be 2000 such detainees. This was probably required for political reasons but it is not difficult to foresee the tremendous human and social problems which will be created by the presence in prison of persons who have nothing to lose in refusing to co-operate with the authorities.

For similar political reasons the French committee for the Reform of the Penal Code referred to above has suggested a maximum sanction of 40 years imprisonment and where such imprisonment replaces the death penalty release should be possible only after twenty years imprisonment and depend on a renewed examination of the case by a jury court and on its consent. Moreover, if the person is a recidivist or a highly dangerous person, no release should be possible. It is, however, openly acknowledged by the proponents of this system that it is only transitory, i.e. meant to appease the public opinion and to be replaced in due course by less rigid rules.

c. The third stage is marked by increasing doubt as to the justification of such "perpetual" sentences. In 1973, and 1974 Denmark and Norway did away with indeterminate sentences which were introduced when the death penalty was abolished de jure. The reason was that these sentences were considered to be ineffective and inhuman. Also in Germany there has recently been a public debate on the justification in human and social terms of life imprisonment as highlighted by the decision from the Federal Constitutional Court earlier this year.

d. The fourth stage is marked by the recourse to shorter sentences. Society does not seem, for its protection, to rely on or even to need long-term detention even if under its laws it has retained this possibility. The Danish judicial statistics for 1972 show for instance that out of 3464 persons sentenced to prison only 2 received a life sentence and only 8 sentences between 12 and 16 years; the latter being the

maximum sentence of incarceration. Norwegian statistics for 1970 show that on 5464 prison sentences only 20 were for a period above 3 years. Even more explicit are the Swedish statistics which show that for the year 1967 of almost 10,000 convictions to prison sentences only 3 were for life and there was no sentence to 10, 9 or 8 years; 10 years being the maximum penalty of imprisonment under Swedish law. More recent statistics show that in 1974 of slightly more than 9,000 convictions, 2 were sentenced to life, one for 10, one for 9 and 5 for 8 years and in 1975 no sentence for life, one for 10, one for 9 and two for 8 years.

Moreover, conditional release or in case of life prisoners release by pardon occur at an earlier and earlier moment. It is difficult to fix by way of legislation the moment at which such liberation might be envisaged.

In Denmark, it was suggested to the Permanent Commission for Penal Law Reform about 10 years ago that an amendment to the penal code should be made providing an examination to see if liberation was possible after 12 years of a prison sentence had been served. This proposal was not adopted. The cases to which such a rule were to apply were too few and too varied to make it possible to make an abstract ruling on the matter. Moreover, such a rule would run the risk of interfering with any treatment or rehabilitation programme which would require the undistracted co-operation of the prisoner. A practice has now developed which assures the convicted person adequate treatment while he is in prison and at the same time guarantees that the question of his liberation will be examined in due course. Representatives of the central administration interview each prisoner twice a year. During this interview they attempt to define the personal situation and the personal problems of each prisoner in order to decide on the most appropriate treatment and rehabilitation programme and in the light of results obtained examine the possibility of eventual release. It goes without saying that the members of the prison staff, those who know the prisoner best of all, participate in this meeting and that they have their say in the matter. It is evident that during the first stage of the enforcement of a sentence the purpose is mainly the organisation of the treatment and rehabilitation and that the question of liberation or release does not present itself until after a certain time has elapsed. In practice the possibility of releasing a life

prisoner is envisaged after 8 to 10 years. The fact that the prisoner was either very young or very aged at the time he committed the offence would normally speak in favour of anticipated release. Practice is that release takes place after 10 to 12 years and it is very rare that any person spends more than 14 years in prison.

Danish practice contrasts on the one hand with the much more severe practice in most countries in Southern Europe (18 to 28 years) and on the other hand with the new practice in Sweden where in recent years the question of release is already examined after a period of 5 years and it is quite normal that the person is released after 7 to 8 years. Swedish practice should be compared with the fact that the maximum period of determinate imprisonment in Sweden is 10 years and it is felt that the effective duration of a life imprisonment should be adapted to this maximum in order to preserve a balance of equity between those who are convicted for a fixed period of imprisonment and those who have received a life sentence.

6. On the face of this admittedly rather summarised survey which points to more "lenient" attitudes in those countries which abolished the death penalty long ago, and varying degrees of severity in countries where this abolition is of more recent date, one might be justified in thinking that the future evolution will render prison sentences shorter, the actual time spent in prison shorter, prisons more humane and emphasise efforts to strengthen rehabilitation methods. Certain elements might however counter this evolution or might accelerate it.

7. One such element is public opinion. It is obvious that opinion polls should not be the foundation of the policy which governments pursue in the field of crime prevention, but in a democratic society based on public participation and support it is impossible to neglect the result of such polls. Political choices must take account of majority aspirations and if for instance important segments of the population strongly favour a given measure or strongly oppose a given measure it is difficult for politicians to ignore it entirely.

Thus, an evolution in our society may well be slowed down or temporarily obstructed or deviated under public pressure. It is indeed clear that public opinion is in many instances out of step with the present policy. Recent polls in the United Kingdom gave, for example, as a result that 89% were in favour of death penalty for terrorists who kill, and that 66% favoured the reimposition of the death penalty for all murderers. This is in full conformity with recent French polls. A poll in 1976 indicated that 71% favoured a retention of the death penalty. More surprising was a recent enquiry undertaken by the Institute of Criminology at the University of Paris among magistrates and lawyers attached to the public prosecutor's office, which gave as a result that 67% of them were against the abolition of the death penalty. While it might in many ways seem comforting that those who render justice are in full agreement with public opinion, this percentage is astonishingly high.

8. Another element which is likely to influence the future development of crime policy, is the general social and cultural tradition of attitudes to criminals and generally speaking here we witness a greater and more determined effort, also better supported by public opinion, to favour rapid resocialisation of offenders in Northern Europe than in the Latin European countries. It should thus be mentioned that countries such as the Netherlands and Luxembourg have in recent years pursued a deliberate policy of encouraging the depopulation of prisons. A Council of Europe enquiry undertaken in 1971 showed the figures of detainees per 100,000 inhabitants in the Netherlands: 22.4 and Norway: 37.1 as compared with the United Kingdom with 72.4 and the Federal Republic of Germany with 83.6.

9. The third factor which might affect the future orientation of crime policy is changes in social patterns. Our modern society has to cope with new forms of violent crime and professional and organised crime of a Mafia type which may force us to take stricter measures against those criminals which have, so to speak, declared war on society.

This development has not hit Europe evenly. Some countries have more or less been spared the manifestations of this new crime tendency - such as Denmark, Norway, Belgium, Luxembourg and Switzerland - whereas other countries have been forced to take very radical measures to counteract them. It is for instance difficult to foresee what the impact in the Federal Republic of Germany and elsewhere of the Baader-Meinhof group activities will be in the long run and what policy might be adopted in Italy to take account of the intolerable increase of violent crime.

10. A fourth obstacle is most certainly the present economic climate which obliges all governments to revise estimates, and goals and to foresee austerity for the 80's where the 60's witnessed liberal spending and investment. Most reforms cost money and however desirable, for instance the improvement of the quality and the training of the prison staff and the building of more adequate facilities, either new institutions or better follow-up treatment may be, money will hardly be available to meet all the needs and all the desiderata.

11. It is likely that the development in the European countries will tend towards a situation where for the vast majority of crimes prison will play a less and less important role, that the practice of diversion will be increasingly applied and most prisoners will be dealt with in other contexts than the prison context. The small nucleus of prisoners who would represent a potential danger to society if they were released will be maintained in prison under conditions which should take account of the evolution of the prisoner's personality and of a society's need for protection, on the one hand, and of the increasing awareness of the human problems involved, on the other.

12. A Belgian criminologist said towards the end of the last century that there are two categories of prisoners: those who should never have got in there and those who should never get out. While this is an oversimplification we should at least for those who remain in prison, always have in mind the Standard Minimum Rules as revised by the Council of Europe in 1973 and of the international instruments on human rights which apply to offenders in prison whatever the reason for the detention.

The European Commission of Human Rights thus stated in a case brought by a well known war criminal:

"Even if an applicant is imprisoned in execution of a sentence imposed upon him for crimes against the most elementary rights of man, this circumstance does not deny him the guarantee of the rights and freedoms defined in the Human Rights Convention".



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