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Rose: The Struggle for Penal Reform

James V. Bennett

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should be resolved against the doctor when his medical judgment involves the prescription of drugs.

JOHN M. MURTAGH†


The English penal system has had a grim history and reforms have not come easily. The infamous hulks and the unbelievable cruelties of transportation were finally abandoned after much criticism in the 1850’s, but a crime wave in the early 1860’s brought tremendous pressures for renewed severity in the treatment of prisoners. The Howard Association, forerunner of today’s Howard League for Penal Reform, was born in 1866. Its efforts to transform English prisons into places in which the prisoner could be rehabilitated rather than punished have been chronicled in meticulous detail by a member of the League’s executive committee.

Sometimes the proponents of rehabilitation prevailed, sometimes not, but the ceaseless pressure that was maintained by the Howard Association for nearly one hundred years was a major factor in the reforms that were accomplished. The local prisons, 193 of them, all virtually autonomous when the Howard Association came into existence, were described in 1850 by a Select Committee of the Commons: “A harlequin’s jacket is a consistent colour in comparison with the variety and discrepancies of the so-called systems which prevail in this country.” By 1880 the prisons had been brought under centralized control. This was a necessary first step and facilitated the many later improvements that would have been impossible had the Association to deal with a multiplicity of systems.

The Association attempted initially to get the insane, the defectives, and the alcoholics out of the prisons. It succeeded to a degree with the first two and temporarily with the third, during the early 1900’s. Reformatories were established for the treatment of alcoholics, but they were abandoned during the First World War for the very simple reason that no one knew how to cure a drunk. More notable successes were the establishment and subsequent refinement of the Borstal and probation systems as methods of dealing with offenders.

It was after the war that the Howard Association and the Penal Reform League merged into the Howard League for Penal Reform, and the strengthened organization pressed successfully for numerous prison improvements. In mar-

†Chief Justice, Court of Special Sessions, New York, N.Y.
shalling public opinion they were aided by the published accounts of conscientious objectors who had been imprisoned during the war and subjected to the indignities prevailing in the prisons of that time. The rule of silence was abandoned, the use of the convict crop and the broad arrow abolished, the system of classification improved, and educational facilities introduced. Better provisions were made for such ordinary prisoner privileges as shaving, receiving visits, and even for the previously prohibited practice of using the lavatory in the evenings. The two decades of the post-war period also saw the Howard League active in bringing about more adequate provision for legal aid for indigent defendants, a more equitable use of probation (some courts used it in less than one percent of all cases, some for as much as 40 percent), improvement of the juvenile courts, the provision of specialized facilities for children and for older juveniles, and the establishment of the first “open prison.” After World War II the League tackled the still unsolved problem of persistent overcrowding of prisons and the consequent need for new construction, the introduction of such professional personnel as psychiatrists and social workers into prison programs, and capital punishment.

Penological progress in the United States was made at a substantially similar rate and along much the same lines between the Civil War and the mid-twentieth century, but it was accomplished through the efforts of a few dedicated individuals rather than through the pressures of a civilian group such as the Howard League. In England the original Howard Association was born out of indignation with existing prison evils and the substantial impetus its work gained after World War I largely resulted from published accounts of prison evils as experienced by the conscientious objectors. In the United States such evils were self-evident to penal administrators who labored to eliminate them largely in the face of public and governmental apathy. Occasionally, in the wake of some sensationalized prison irregularity, local or state groups were formed to improve the prisons, but none on a national level approaching the effectiveness of the Howard Association in England.

In the United States a strong citizens’ organization could be of real assistance in accomplishing many needed penal improvements, but it is difficult to get influential citizens interested. For the civic-minded, there are too many other ways to be a “do-gooder.” Every occupational and professional group has its own organization, with its own goals, and its own demands on its members’ time. City planning groups, fund drives for various physical and social ills, and other work with the poor of the United States and underdeveloped nations enlist the efforts of those who are inclined to add their bit to social progress. But only a pitiful handful take an interest in prisons.

I am inclined to believe that this is in large part due to a common belief that the day of prison evils has long since departed. It is true of course that instances of physical brutality are increasingly rare, the food has improved,
and more creature comforts are provided, but it is equally true that prisons are still not the constructive, rehabilitative agencies they were designed to be. Where once the mistreatment of prisoners was physical, now it is chiefly psychological.

The American prison, for example, is typically and chronically overcrowded. Privacy is commonplace for the ordinary citizen, but it is a luxury only to be dreamed about by the prisoner. Lack of privacy, as those who have experienced it even for a day or two, rasps the nerves and stimulates a resentment and hostility toward those from whom one cannot get away even for a moment. This result has profound implications for a prison program intended to instill more socialized attitudes in its charges.

The prison is used as a virtual charnel house or burial place for many of society's misfits. The Howard Association indicted the English penal system for crowding with the professional criminal the mentally ill, the mentally or physically handicapped, and the alcoholic, but the same evil exists today in American institutions. Most of our prisons are poorly equipped even to treat the incidental or habitual offender; they have utterly no facilities or staff to treat the misfits. They are put in prison to be forgotten, and this is certainly cruelty of the most refined variety.

Many prisons still lack a genuine rehabilitation program. Some states, as for example Tennessee and South Carolina, make no pretense of providing one. Elsewhere, in the state prisons of New Jersey, Maryland, and Ohio, to cite a few examples—the institutions are so aged and outmoded that the development of meaningful rehabilitation programs is to all practical purposes impossible. The prisoner confined in one of these institutions is fully aware of the fact that he has been written off by society. This rankling knowledge was one of the factors behind the many violent riots of the 1950's. The warden is charged with the task of socializing this prisoner, but it is not surprising that instead the prisoner emerges from his experience with his hatred of society undiminished and perhaps intensified by a demonstration of neglect that amounts to gross mistreatment.

As many as half the prisoners in our state institutions must suffer the spiritual corrosion of idleness. Their numbers are so great that the prisons can barely house them, much less provide opportunities for employment or occupational training. State laws have placed further restrictions on the use of prison labor in the mistaken impression that private industry and free labor are being protected. Many administrators have given up as futile their efforts to get the state laws amended and are now turning to the Federal government, requesting modification of a presidential order restricting the use of prison labor on federal projects. Although there is much work to be done in the forests, parks, and reservations of various kinds that would not bring prison labor into competition with free labor, the present rate of unemployment in
this country frustrates any attempt to modify or repeal the archaic laws and regulations now limiting the use of prison labor. Most likely, prison populations will remain idle in their cells or aimlessly milling about prison yards, the blind vindictiveness of society burning in their consciousness, until some strong citizens' group backs up the prison administrators in making available healthful and constructive work. For an able-bodied man, idleness is a stultifying experience that is never forgotten.

The capriciousness of the sentences imposed on offenders is an evil that has persisted unabated since the device of imprisonment for crime was first conceived. A sentence depends not so much on the offense that is committed, or the characteristics of the offender, as it does on the temperament and philosophy of the judge upon whose calendar the case appears. A forger convicted of passing a $50 bad check may get a fine before one judge, probation before another, or a prison term ranging from a few days to 15 years and more before another. In two virtually identical cases of bank embezzlement in the same Federal district recently, for example, one offender received six months from one judge and the other fifteen years from the judge's colleague. The two prisoners went to the same institution, the second man I suspect nursing a soul-searing sense of injustice. With so many different judges it is of course unreasonable to expect perfect consistency in sentencing practices, but the extremes in misplaced leniency and severity can be mitigated. If judges were required to have some experience and training in the criminal law and the social sciences as a prerequisite for appointment or election to the bench, the more extreme instances of sentence disparity would dwindle in number. But it will take an alert and aggressive citizens' group to secure the kind of legislation that would prescribe such qualifications.

The lack of centralization in many prison systems of the United States perpetuates these evils. The multiplicity of prison systems—military, national, state, and local—is compounded by the fact that in many jurisdictions each prison is virtually autonomous and responsible only to the governor, to a self-perpetuating Board of Trustees or a legislative committee for its operation. This weakens the ability of our prisons to compete with other government services for appropriations, and deprives it of professional administrative supervision. There are many other evils that make imprisonment an exercise in cruelty rather than the opportunity for self-improvement that it is intended to be. The correction of these evils would keep a nationally coordinated group of citizens constructively busy for years. The American Correctional Association, the National Council on Crime and Delinquency, and similar organizations are largely composed of professionals in correctional work. They accomplish a good deal in keeping the professionals in communication and exchanging ideas and techniques. But if American penology is to accelerate its rate of progress—which it certainly must to meet the threat of phenomenally rising crime and delinquency—the citizens of our nation must bring the necessary pressures to
bear. Those pressures in our specialized society can be generated only by a vigorous group of citizens organized for that purpose. Gordon Rose's book describes the techniques used by the Howard League in struggling for penal reform in England. But it fails to tell us how an apathetic public can be aroused to form a similar group in the United States to fight the modern-day evils that characterize our prisons.

JAMES V. BENNETT†

†Director, Bureau of Prisons, United States Department of Justice.