

Prison Reform, The Rhetoric of Rehabilitation, And The Accountabilty of Custodians

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While all sorts of issues are raised by the six essays presented here, my comments focus on two themes which recur in these and in previous contributions to the journal. The first relates to “rehabilitation,” that grand justification which somehow finds its way into the rhetoric of nearly every prison regime as a way of asserting that incarceration is as much about “doing good” as it is about punishment. Yet despite this lofty principle, very few people believe that prisons can actually reform people in any more than a very limited sense — it is difficult to see how one might integrate someone into society by removing them from it. The second relates to the need for prison administrations to be publicly accountable for their actions. I also make a few comments about the implications of these issues for prison reform.

In his history of the penal press in Canada, Bob Gaucher identifies over 100 serial publications produced by Canadian penitentiary inmates. Some of these were short lived and published only intermittently. Others have been fairly durable; *Tightwire*, the periodical published by the inmates of the Kingston Prison for Women, is still in production 16 years after the first issue appeared in 1973. What is particularly interesting about Gaucher’s article, in terms of the two themes I am emphasizing here, is how the penal press was, in a sense, co-opted by prison administrators — a means of vocational training to fulfill a rehabilitative goal — rather than being allowed to flourish as a vehicle of prisoner expression.

In terms of their durability and continuity, prison publications were most successful in the 1950s and 60s. *The Telescope*, for example, a Kingston Penitentiary publication, lasted from 1950 to 1968. This was a period when there was a certain degree of accord between inmate and custodial

interests. It was the era of the so-called "New Penology," when prison administrations lent support and encouragement to the penal press in hope that it could play a positive role in the reform oriented prison - prison publications, sometimes funded by the administration, were rationalized as part of vocational training. The paradox of the penal press, however, is that in giving a voice to the prisoner, it provided the opportunity for critical expression - and therein lies the problem that the prison press always constitutes for itself. The expressions and views contained within it have to negotiate a difficult course between alienating custodial staff whose support, even if only begrudging, it requires to stay in publication and alienating the prisoner readership who demand that the press not inadvertently be subverted into becoming a mouthpiece for the authorities.

These problems came to the fore in the 1960s as the promise of rehabilitation gave way (as it always seems to have) to custodial concerns. As prisoners became aware that the press created a vehicle for airing their concerns, so the censorship of the press escalated. From promising to be a vocational tool the penal press had become a liability. One can only hope that the new wave prisoner publications Gaucher describes can avoid these pitfalls and remain an autonomous medium of prisoner expression.

In his essay "Powerlessness, a source of evil" Joseph McCormick discusses the issue of prisoner autonomy in a slightly different light. He suggests that the more a person feels that they are unable to influence their own situation, the more likely they are to resort to violence to influence it. For the prisoner the crucial issue is his powerlessness to change a dehumanizing situation. And most importantly in this respect McCormick suggests, this is a powerlessness which affects both guard and inmate alike. It is partly for this reason that the abiding irony of rehabilitation is that prisons promote the very behavior they are attempting to mend. Inmates learn how to manipulate guards, guards learn how to manipulate inmates. Custodial concerns come to dominate rehabilitative ideals. In McCormick's words, "Prison shelters offenders from life's realities, teaches them to cope by manipulation and coercion and fails to foster responsibility." This hardly sounds like a useful strategy for "reintegrating the offender into society." It is for this reason that the critics of prisons for the past 150 years have been saying that prisons reproduce the very behavior they are supposed to "correct." On this score it has been revealing for me to see the reactions of some people to Claire Culhane's presentations on prison conditions and prisoner rights. "What about the victims?" they would sometimes ask. I was always surprised by this response. It is as if a person's concern about prisoner rights somehow means that they do not care about the

victims of crime. This is not to say that prisoner rights should be safeguarded only for instrumental reasons -- rights must be conferred on prisoners simply because they are human beings. But in a more restricted sense it seems to me that victim and prisoner rights are not mutually exclusive, not a matter of catering unilaterally to one or the other. To be concerned about what happens to people while they are in prison is, in part, to be concerned about what happens to them when they are released. And part of this concern relates to how they will interact with other people in the aftermath of prison experience. If all incarceration manages to teach prisoners is how to scam, fight, and hate, prisons are obviously not doing much to safeguard the interests of potential victims since, according to this unintended agenda, the prison plays a central role in reproducing crime. Prisons victimize prisoner and crime victim alike. It seems difficult to contest McCormick's conclusion that the prison is an institution by which society exacts vengeance and little more.

Having reached this conclusion, however, one is left with quite a conundrum. Can the prison ever be anything but a means of incapacitating and punishing people? Is the prison ultimately susceptible to reform without wholesale social and economic changes in wider society? Given that the meaning of the term *rehabilitation* is to return something to its former state, are we to suppose that the object of prison rehabilitation is to return people to the states of poverty, disadvantage, and disenfranchisement from which most of them come? How do we deal with the apparent contradiction that to make short term gains by, for example, creating opportunities for some prisoners to "rehabilitate themselves," is to potentially add to the legitimacy of prisons? Should the possibility of this sort of co-optation mean that prisoners should give up struggles for short term limited objectives? If not, how does one ensure that short range goals do not hinder the longer term abolitionist objective of radically reducing rates of incarceration?

Obviously I am not going to answer all these questions here - I would like to say this is because I do not have sufficient space, but in reality, it is because I do not know all the answers (for discussion of many of these issues, see Mathiesen, 1973). Of one thing I am sure: in lieu of any major transformation of society, there would seem to be many good reasons for short range prison reforms, even if they do seem relatively limited in relation to the wider goal of reconceptualizing social reaction to the criminal offender. If the goal of "corrections" is to change the moral outlook of the prisoner, then the logic and principles by which such an endeavor might operate must be squeaky clean in every respect. If this is one of the exalted principles which invest prison authorities with power, they had better

expect the most rigorous kind of scrutiny in carrying out their mandate. In other words, they must be publicly *accountable* for their actions.

A classic example of a prison authority's need to clearly articulate the rules by which it operates is provided by Mumia Abu-Jamal's discussion of the censorship of revolutionary literature in various U.S. prisons. While it is not surprising that a prison administration might wish to censor literature which urges its readership to commit crimes, when censorial powers are exercised, it ought to be incumbent upon those who exercise them to provide details of exactly what is being censored and why. Yet despite appeals to provide this information, the administrators of Huntingdon Penitentiary in Pennsylvania merely reiterated that a rule had been violated without any explanation of their reasoning. The arbitrary nature of this decision is made all the more stark once we realize that the same authorities have not banned a series of neo-fascist periodicals which advocate white supremacy and other shades of racism, and allow prisoners to read various grades of pornography, at least some of which could be described as hate literature against women. It is also worth noting in this context that the issue of censorship goes far beyond prisoner rights to impinge upon fundamental Constitutional issues in the U.S. (and in other countries).

Another example of the need for accountability of prison administration decision makers is given by Little Rock in his indictment of the Southern Ohio Correctional Facility for its decision (a decision publicly denied by administrators) to prevent Native Indian prisoners from practicing their chosen religion. But the essay does much more than this, offering a general critique of the systematized suppression of Indian culture both inside and outside the prison. This restriction of religious freedom for Little Rock is just one more instance of the forced assimilation of Indians -- or "de-Indianization" as he puts it -- into white man's culture. Against this backdrop of capricious decision making one has to wonder how prison authorities expect anyone subjected to their power to gain a respect for "law," especially Natives for whom that law has represented one of the major weapons in the fight to eradicate their culture. Once again this argument relates to a prisoner's prospects for "rehabilitation," the suggestion here being that neither the systematic denial of religious freedom nor the suppression of cultural expression are in any way conducive to that goal.

In his discussion of the economics of educational rehabilitation, Jon Taylor also discusses some of the factors which might contribute to a prisoner's "rehabilitation." Beginning with a general description of the

massive expansion of the U.S. prison system in the post war period and the likelihood of its continued expansion into the twenty first century, Taylor disputes the idea that it is "constitutional safeguards for criminals" that are hampering police efforts and preventing prison authorities from doing their jobs. Rather, he suggests, it is the sheer enormity of the crime problem that now confronts Americans and the failure of the prison system to prevent recidivism that are hindering the realization goal of prisoner reformation. He suggests that one must conclude from these trends that either rehabilitation does not work, or it is not being effectively implemented.

Taylor favours the latter of these two explanations, at least when it comes to the success of various kinds of educational initiatives in helping to rehabilitate prisoners. In particular, he hails the general success of post secondary educational programs in providing prisoners with skills that help them to stay out of prison. Taylor suggests that with recidivism rates as high as 70% in the U.S. it would be cheaper to educate prisoners in order to keep them out of prison rather than paying the massive and relatively much greater costs of incarcerating recidivists. Taylor points out that it costs \$10,000 to put a prisoner through a four year degree program, i.e. only 40% of the cost of one year of incarceration. If prisoners with degrees go out and get jobs rather than arriving back in prison for a few more years, the cost savings are obvious, not to mention the additional savings in terms of crimes not committed, police costs not required, and so on. By comparison the same degree on campus would cost a university student \$25,000 including room, board, and living expenses etc. In the case of the prisoner, Taylor argues, he gets room and board anyway, whether he receives an education or not, so why not give him an education as well given the economic benefits that would result?

The argument is a neat one, and there can be no doubt that post secondary education does provide job opportunities. But this kind of argument also points to some of the difficulties of analysing what happens inside prisons in isolation from what happens outside them. In Canada, for example, there has already been talk about how to extract larger payments from prisoners for the education they receive, and there are signs of a growing backlash against prison education programs. The issue is that there is something peculiar about a system which provides what amounts to a free education to a person on the inside when a person on the outside, in order to get the same education, often accumulates a student loan debt which take years to repay. It is for similar reasons that fair pay for prison labour has always been a sore point with trade unions. In these respects we go right to the heart of much broader issues of social

justice involving the relationship between a person's educational opportunities and their ability to pay for them, and their right to work for a decent wage. And in this sense we are back to the issue of how much reform can occur within the prison without large scale reform on the outside.

In George Peter's discussion of preventive detention we return to the issue of the principles by which the justice system operates, general respect for the law in terms of the system's adherence to those principles, and the general role of the criminal justice system in incapacitating people who are dangerous to the physical well being of others. Since very few abolitionists suggest that everyone should be released from prison (does anyone really want to see Olson back on the street?) it would appear that there is a general consensus that, as long as we resist return to the death penalty, prison will be required to incapacitate certain offenders. The question is, who should be incapacitated, and under what circumstances? Peter's paper does not actually address this question head on, although it touches on it by raising the issue of whether preventive detention should be permissible in a legal system which operates according to the principle that an accused is considered innocent until proven guilty.

Peter points out that when it comes to predicting human behavior social science has no infallible diagnostic indicators; indeed it has virtually no accurate indicators at all. This inability to predict dangerousness is particularly bothersome when it comes to the issue of who should be incarcerated prior to a trial in order to protect society since the stakes are potentially so high. In order to prevent the recidivism of a small minority one would potentially have to incarcerate, at incredible expense, a very large number of accused persons. But to not use preventive detention at all, Peter notes, would mean the release of some "truly dangerous people" with the result that innocent citizens would be victimized. Is this an acceptable price for defence of the presumption of innocence?

George Peter's paper does an admirable job of pointing out the contradictions of preventive detention. But the next question is, where do we go from here? Is he calling for complete abolition of preventive detention? Would an abolitionist stance be saleable to any political constituency? Should we simply abandon the attempt to predict dangerousness? Should we be pressing for rapid court process so that preventive detention periods are negligible? I will leave these and the many other questions raised here to the reader in hope that they may provoke further commentary in the journal.

REFERENCES

Mathiesen, T.(1974) *The Politics of Abolition* London: Martin Robertson.