

Prisons – Can they be Human – Can they even Rehabilitate?

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Presented in Canberra on 26 February 2008
at a forum conducted by Christians for an Ethical Society.

Introduction

When I was approached to take part in this evening's event, it was on the understanding that I am not an expert on what has been happening in Canberra. I was around in 1984-85 when there was an enquiry that I chaired into a number of social issues including the prison system. I have read somewhere that we moved or suggested or recommended that a prison be created in the ACT. Well, we didn't, actually. The ACT, at that time, had a comparatively low rate of imprisonment and, maybe in part, it was because the facility was not there; there wasn't a gaol, there was only the Belconnen Remand Centre. The magistrates and those in charge of sentencing seemed to be very much aware of that fact and it may have contributed, along with their own wisdom, to keeping the prison population of the ACT at a level very similar to the level in the best or leading European states. The Netherlands was second to the ACT, at that stage, in having such a low rate of imprisonment.

Those opening words would lead you to expect that I haven't come to praise the creation of prisons. I know John Paget, the person who conceived the prison and developed a plan for it; I know him to be a very fine person. He was once a commissioner in NSW and I'm sure that the best of intentions accompany the creation of this prison but I'm a sceptic and I hope by the end of half an hour to convince you to be sceptical.

I'm not someone who has come to tell you that we don't need prisons. I have met a number of people, in the course of my paroling days and administering the prison system, for whom there is no other choice but to use incarceration. It is the care with which we use or misuse or overuse that institution, however, that I will be anxious to make you wary of.

A need to deal with the social roots of offending

We have to start, in considering what would be the signs of a prison system that was travelling well or as well as it can, with some comments on what should precede the creation of a prison. The first priority - everything I have been involved in from day one tells me this, I just become more committed to the idea the older I get - is that we must deal first of all with the social roots of offending. You can have the shiniest, best prison in the world but, if we are not moving upstream to try to do something about the very readily identified factors that seem to put people on the path to breaking the law, then what's the use of the prison?

The key manifestations of community disadvantage throughout Australia is something I've studied in recent times and I can tell you that, whichever State you look at, you will find that the markers of the most disadvantaged communities are, first of all, an inadequate education. Of course, I was aware of this as the one-time head of the Department of Corrective Services when I knew that sixty percent of people couldn't write a letter or address an envelope.

Anything I've seen since, particularly in the course of an enquiry into public education in NSW and meeting little children aged four from disadvantaged areas who hardly possess a word or two; who will even, in the course of trying to speak with one, will strike themselves because they can't articulate the sounds; who, when asked: "Boys go there, Girls go there", remain uncertain as to what their gender is at aged four. Then I've been in the presence of the very springs of disadvantage from which flow these troubles that later result in people being put in prison.

Prior to any talk about gaols, then, let's talk about the social roots of the problems which ultimately see people in places like gaols. So much so, that the best prison systems that I've seen - and I reckon I could probably be in the Guinness Book of Records on this one (I was told so in Europe) - in the Netherlands, Sweden, in any of the countries I've visited, as well as the direct experience I've had in Australia, every one says that prison must be the last resort. We must try everything else first. It's the principle to which almost every prison system attests. Yes, we must do this when we have no other way to go forward but where are these sentiments expressed in a concrete way? Only in the countries where there is least optimism about any gains that will come from prison.

There is a conservatism now that is sweeping the Western World, we know that. I may now be a couple of years out of date but I have seen the best prisons that people have been able to speak about, in the Netherlands and in Sweden, and those prison systems were not based on any notion of putting people right. They have rather more in mind the idea - or they did a couple of years ago - that we have to have some way of indicating to people that their behaviour has gone beyond the pale. The prison exists as a means of reinforcing basic morality in society.

That was the view taken and all the research that those countries had conducted, particularly in the Netherlands, told people that nothing good would come of it but, if you manage to put people out the back door no worse than they were when they came in the front door, that would be a big achievement. Isn't it ironic that the places that have least expectations of prisons finish up having what people acclaim as the best ones? Because they're not pulling their leg - they're not saying that prison is a miraculous cure for social ills. Prison is really a sign that we have run out of options.

Prison as a last resort

So you would have to have, to bolster this notion of prison as being as good as we can get it to be, an absolute commitment to its being the last resort and that would mean, as it does in some places, that a judge or judicial officer would have to defend the decision to put somebody in gaol. Not a readily, easily arrived-at conclusion that it would be something that would need to be justified.

The other thing that would need to happen would be the abolition, in the thinking of the society and the thinking of those who make these decisions, of the notion of - and it has a fancy title - the 'penal ladder'. This simply refers to the fact that, every time you come back, the expectation is you'll get, regardless of its appropriateness, a longer sentence or you'll go up another rung on the punishment ladder.

The decision that has to be made for an appropriate use of prisons is whether there is something else that is available that would meet the public's requirement - and I don't hide

from the fact that it is a public requirement - that crime be punished but in a more constructive way, a less damaging way than the use of gaol. In this regard, you will read about an idea that sometimes is called 'alternative forms of punishment'. Places that talk about alternative forms of punishment are really saying the norm is gaol. The language is crucial at this point. It really has to be a menu of different forms of punishment but gaol is not to be regarded as the norm.

Now, all of what I'm going to talk about - more positive things in the prisons that can make them a tolerable, affordable prison system - has to be credible in these terms. If some one is put in gaol, it must have effective security. If you have decided to use gaol as part of the response to crime, then the architecture, the security regimes, the sniffer dogs, the metal detectors, all of these things become part of the scene because the most discrediting thing for prison systems is to have people scaling the walls. I'm somebody who has had to bear responsibility for people occasionally scaling the walls and I know that it makes the rest of what we as a group would like to promote the more difficult, if that happens. So you have to be concerned about it.

The procedures, however, are not applied willy nilly. The best of the prisons that I have seen have involved community representatives in very close contact with what happens behind those walls. The best of what I've seen has available to prisoners the right of appeal, in the first instance, to a panel of people from the local community. This is in relation to whether or not they have received just treatment. The first line of appeal is to a group of people who might appear within 24 hours to conciliate or even to say that, by their lights, this was not a just punishment. That's how closely involved the community has to be when you have real safeguards to keep prisoners as clean as you can possibly keep them.

The prison that is attempting to be respectful of the rights of those detained will be staffed by people who see their role much more broadly than just as turnkeys. I think that's obvious. In the best of the prisons I've seen, however, the daily task of the warder or the guard or whatever designation is used, is to keep a finger on the pulse of the prison. The conviction in some countries is that the best security you can have is when the staff know what's going on - personal contact with the inmates, taking an interest in the well-being of the inmates, in fact, being the frontline supporters of inmates, supported by professional staff and guided by professional staff.

A good prison is not one where the guards fade into the background. They are deeply involved and, in order to be deeply involved, there are systems I admire where you can't take on the job unless you possess a skill that will be respected by the inmates and which will enable you to engage them in a close relationship. You must have some skill whether it's art, debating, sport, something that will become a foundation for that degree of closeness which is absolutely essential. In the really good prisons, you will see the officers writing every day: "During my shift, I noticed this tension" or "I noticed this conflict" and that will be at changeover of the shift, effectively communicating to those who are coming thereafter. There is a sharing of responsibilities between the officers.

The best prison institutions that I've seen around the world always work on the basis that the best-made plans can come asunder. So they are well prepared, partly for their own protection - and why shouldn't they be - and partly to minimize the harm to the inmates in the institution. They have plans which are intended to deal effectively with a disturbance with a minimum of bone-crushing and skull-breaking. In 1984, I was made to sit up when I was

involved in the committee down here for the review because there had been a disturbance at the Belconnen Remand Centre and two guards had no idea what to do when the prisoners turned sour, so they locked themselves in a cell. One of the first things we tried to do in that circumstance was to say to the Minister “We’re not going to wait until we write a report about this – we’ll get some people down here, develop an emergency plan and every one will know what they have got to do”.

I’m trying to emphasise, before I come to the things that will get more agreeable expressions on your faces, that the whole thing can easily collapse if a prison system is not attending to these sorts of issues. I don’t know, in such a small scale prison, that what I am about to say will be a big issue but any system that locates the most difficult of prisoners together - concentrates them - is inviting trouble. When the Nagle Royal Commission was held in NSW in the 1970s, the principle was disperse, don’t concentrate or you get a rerun of the horrific scenes that preceded that Royal Commission, of people so easily being able to say, “We have the worst people on the earth here in this unit” and that justifies cruel and oppressive action.

Some countries are insistent on using precisely the same methods of engagement, drawing out the best in the inmate, with all inmates; the same methods are used with the people who are proving most difficult. In Holland, it was called the ‘as if principle’. Let us always approach the prisoner ‘as if’ reasonable conduct on our part is bound to elicit a good response from that other human being. If it doesn’t work, they’re well rehearsed in what to say next. I’ve witnessed it: “My friend, I offered you a finger and you took the whole hand. In you go, into the cell”. The guard or the staff member will often go and sit with the prisoner and talk through why that was a disastrous response. The idea is that you don’t have a differentiation of the methods you use for the most troublesome people from those you use for the general run of prisoners.

I also think that Murphy’s law or some variant of it is extremely important to have in mind in the running of prisons. If something terrible can happen today in prisons it will. For that reason and because these closed institutions can have such a corrupting influence on those who work in them, you do need some kind of independent investigatory team which is apart from those who do the regular work of the institution.

Of course and this is amply reflected in the plans for the new prison, it’s very wise - universally considered wise - to separate different groups of inmates, the remandees, those with high security classification and so on. The thing about prisons, however, is that you can be rigid about some things but not about everything like that because I’ve seen gaols in some countries, admittedly low-security ones, where men and women are housed together. Now normally, you would think that the women would go to one institution and men to another. As so often happens when I see these places, I must have expressed my surprise and the person running the institution has said: “Look, I can’t vouch for the fact that the women here are not going to go with the men but, unlike what’s happened in the past, it will be a decision on their part. It won’t be something that just happens, something in which they capitulate. We are training them to have regard for themselves, to handle their gender relations constructively and not to be submissive”.

The daily operation of the prison should turn on this notion that we have a good way of working with people. It’s a matter of engaging them. This can be carried to a point where, as a visitor, for example in Sweden, I have sat in a cell with five inmates and we talked about

the problems they experienced and so on. One young man said, "You know I just can't control my temper. Anger wells up in me and I get so angry." A shortish gentlemen in the cell put his hand on his shoulder and said, "But we're helping you now aren't we? You're getting better at that." That was the first moment I knew that he was a staff member, indistinguishable in the conversation, and I said to the inmates, "Look, do you find this kind of interaction with the person who is employed here helpful?" "Oh yes," they said. "We find it extremely helpful". Why? "Well, he's so bloody normal and hopeless, we think that if he can manage to keep out of gaol, we should be able to". 'All our problems are his problems' was the kind of bottom line.

The social effects of imprisonment can contribute to crime

Another aspect that I think relates to social justice and ethics is that, as the prison population expands, not only in Australia but in many countries, the evidence is there, I believe, that it's not a matter of throwing the net more widely. It's a matter of drilling deeper and deeper into the same neighbourhoods and communities and the material I have recently gathered bears that out. I think there are terrible implications in this for the families and the children of the prisoners. To increase the more-intensive mining of these areas can actually be what they call 'criminogenic'. It can contribute to creation of crime because there are fewer and fewer adults in some of our suburbs and some areas to carry on parental responsibilities.

In Sydney, where I have accompanied St Vincent de Paul and other organizations going around, just to make sure I keep my feet on the ground, recently we went to one home where a man was looking after a whole lot of children. The man who seemed to be running the house said of a little boy "His mother has gone away" and the little boy said: "She ain't gone away, she's in gaol".

I think in some of these areas, there's an increasing burden being placed on people of limited resources to try to deal with the family and developmental problems of these children. Why shouldn't it be part of the Department of State's responsibility to report to the community on the impact of this ever-expanding prison population on the lives of those who are left behind? I believe they should be contributing to the debate by researching those issues and bringing the consequences before the public and certainly before those who govern us.

I'm sorry if I keep moving between what a lot of people would call the "gaol system" and the "justice system" but I find it very hard to separate the two. One of the hall marks of a constructive a prison system as you can have is to have certain flexibility of sentencing even after the person has been put in gaol. There are systems around the world where the final word has not been uttered when you go to gaol to do your two-year stretch or three-year stretch. There is the opportunity once you have established your bone fides as someone who is interested in improving her or his situation, of going back to the authorities and saying, "Here is an alternative plan that's been devised by the social workers and I myself have committed to it. I would like to be moved from prison to this treatment home on the understanding that, if I don't live up to the requirements of that program, I shall be back in gaol quick smart." If we are interested, not in magically transforming people through what prison has to offer but at least feeling an ethical obligation - having plucked people out of the world, out of their families, leaving families often destitute - we have an ethical obligation to put in the offenders' way the best opportunities of improving their situation.

A lot of this did surprise me because we are so conditioned to thinking of gaols as having iron gates. You walk in or usually it starts with some one saying: "This is the worst case I've ever heard of etc, take this person away." So we have to be deconditioned in a way from the concept of prison that is almost, by the standards of many countries, rather colonial and reminds one of the early days of Australia.

Addressing features that make prisoners work-ready upon release

Work is another crucial variable, 'work' broadly defined. If it's true that, certainly in NSW, sixty per cent of those in prison can't address a letter, an envelope, then we have to have a range of work opportunities that go all the way from acquiring an elementary skill to something more profound - and that's more likely to be for some one away for quite some time. Alternatively, it may be somebody who simply learns the most rudimentary things that they failed to acquire when everyone else was doing so at the beginning of their lives. This has to be realistic - a life that has been led to that point, with no particular involvement in society, dodging work; a very large proportion of people at the time of their arrest are not working.

In order to break that pattern, we need realistic incentives, positive incentives. In Sweden, they talk about "market-related" ways but I've yet to find any prison that gives you as much as you would get in the outside community. It's not \$20 per week or \$30 per week or even \$50 per week, it would have to be a couple of hundred dollars a week. There would also be some requirement that that money not just be squandered but that it would go to support the family so that, already, the person is beginning to do something to make reparation to those who have been left outside.

As far as the training is concerned, it's no use continuing with the kind of occupations that have fueled our gaols for years. We have to use the Australian Bureau of Statistics data to identify where the shortages are for the short-term training and for the longer-term training. One can see in many systems a combination of employers providing the equipment - not some antique lathe or whatever but something that's current, that's being used in the industry that that person represents, having contractual arrangements with the gaol which have to be observed just as they would in the outside world, a supervisor who is really imparting skills to the person and who will accompany that prisoner or former prisoner when she or he leaves the gaol and will visit on the job to make sure that this has been a meaningful training experience that is consolidated outside - real world requirements, intensive work with the offender and intensive follow-up. As a matter of fact, that arrangement more than any other thing that has been devised has at least a meagre claim to doing good.

Counseling - to how many generations of people have we taught counselling? It would be lovely to think that the counselling that goes on in the gaol would be effective but all the evidence suggests that acquiring a job, acquiring a practical skill, being sustained in that and followed out into the community and supported, that's the most important, possibly the most important thing that can be done.

On the personal side, gaols are fantastically effective at destroying relationships. We did a project in my time where we followed the bond between the prisoner and partner and it used to follow a typical pattern. People came closer together at the beginning, some tensions began to develop and fifteen months into the sentence the relationship was virtually severed.

We have to do things to keep the good relationships, the important relationships in people's lives afloat. What can we do?

We thought we were doing something pretty good by allowing contact visits and children being held by their parent or allowing a mother to retain the care of her child in the prison until an age like four or five but I've seen now something that should be emulated here in the ACT. I hope it will be. Where the staff will take the children when they arrive at the prison, entertain them, look after them, while a private visit takes place. Now people immediately jump to the conclusion that that's a sexual visit but it's not necessarily. It's a private conversation between someone who's incarcerated and often the most important person in that inmate's life. There has to be privacy and communication.

Maintenance of the prisoner's civil rights

The crux of all this is, what do you forfeit when you go to gaol? If you forfeit your citizenship, then what I am about to say won't apply but I don't think it's necessary. The punishment that you're suffering is the deprivation of your liberty. You're still going to come out with teenage children. You're still going to come out needing to try to get back into the job you had. We must keep all those things alive, otherwise we are just sowing the seeds of destruction in people's lives.

It may be, for example, (and this is an example I have experienced) that an imprisoned father is anxious to make a contribution to help his teenage daughter to come home and to leave the company she is in. It cost no one very much for a prison staff member to accompany that man from gaol, still a prisoner, to visit the milk bars, the bottle shops and the pubs till in an area until his daughter is found. In the case that I recall, the man had a private conversation with the young woman and then came back to gaol. What's wrong with that? That's preserving the parental role of the prisoner.

In summary, as far as these rights are concerned, all rights in the best of prison systems are retained except for those rights that are necessarily compromised by the need for security. In the past, people have found a thousand reasons why people can't continue to exercise their rights – I spent three years saying, "I can't see the connection with security". It's a compromise that may be necessary. If there's been a disturbance in the prison, visiting may have to be cancelled but these sorts of things happen infrequently and it's the loss of liberty that is the essential punishment.

Perhaps it is because of our penal origins that we do not, as occurs in Europe, realise what a grave step it is to place a fellow citizen in a prison. In many countries a year-long sentence is considered a disaster. Such an act imposes great responsibilities on a community. We console ourselves by believing that it will take a year to straighten a person's behaviour. However, there is not a skerrick of evidence that imprisonment will have such an effect. More often than not we would do better to keep the person oriented to the world outside to which he or she is going to return?

Rights that are absolutely central concern the legal rights of the inmate, the right to have legal materials and legal assistance under private conditions. It was not that long ago in Australia that a visiting magistrate adjudicated the alleged misbehaviour of a prisoner sitting in the governor's chair with the governor standing alongside. That's very recent history. Any prisoner who is going to be before a judicial officer should be legally represented. That's an

essential right to preserve. When appearing before prison tribunals of any kind, confidential legal documents must be kept confidential. There should be the right to speak in confidence with the lawyer representing the prisoner.

One of the sad bits of realism is that prisoners who may have had indifferent success in life in forming romantic attachments seem to have, for many people visiting, an enormous appeal. People fall in love with prisoners left, right and centre and so you have people, even as lawyers, disregarding the rules of the prison. The way to deal with that is not to prevent them from having confidential discussions but to exclude them when breaches of the rules are discovered. You don't undo a whole set of arrangements that uphold the rights of the inmate because someone does the wrong thing.

Prisoners have a right, in any civilized country, to convey to the authorities, the things that they find unjust, unhelpful, preventing their development. Things like prisoners' committees are essential if the prisoners are going to have a voice and play some part in developing a certain supportive culture in the prison environment.

In a prison not far from here – I think it's about 100 kilometres up the road - on one occasion, it was one of my main desires to make sure that prisoners had a genuine, authentic chance to speak out, respectfully, in an orderly way about things that were not right. When I visited this prison, my first question was, "When does the prisoners' committee meet with the authorities here?" "Oh, there's no need to, there are no grievances". So I said, "If you don't mind, I'll just go by myself now around the prison." I collected sheets of things that they'd submitted which had been totally ignored.

These arrangements can be written down very easily but you've got to work hard to make them work. This is where community involvement, community representation will be so important. Wherever possible in the best of the systems that I have seen, professional services have been provided not by the department but by ordinary services in the community - gynaecological services, medical services generally, psychiatrists, general practitioners – to the maximum possible extent. You avoid the denial of rights by trying to keep people involved from outside rather than instituting something within the department itself. The same range of programs that are projected in the documents for the prison must be available to women on the same basis as to men.

I realize my time is just about up, so I will conclude with a few more quick points. In a good prison system, each person admitted will develop a personal plan. In the best of prisons, sometimes the inmate will say, "I know you mean well but I'm not coming back again so there's no need to worry." They will be told, "Well, you said that last time. We are anxious that you do something that will combat the particular problems that you have." A personal contract will then be drawn up with the prisoner.

Maybe a separate part of the institution will be set aside for particular problems. In Sweden, if you have recurring drug dependency, you'll be told, "Well, you can go your own way if you want to but you really must, you should, for your own sake, make sure you don't think about drugs, use drugs, talk about drugs." Anything less than that absolute prohibition is considered by the authorities to be a bit of a waste of time, so they require that. There is a personal contract drawn up and the people who help to implement it are the custodial staff. The professionals are in the background, being consulted by the custodial staff and, where

necessary, come into the picture but it's the warder, the 'carers' as they are called, who have to assume the front-line responsibility.

Coming towards the end of the sentence the question is do you get thrown out of the gate just as you came in or is there going to be an adequate preparation for that? Considerable flexibility is needed at that stage. An example: trial runs with employers accompanied by appropriate staff. Rehearsals of job applications is another. Especially important is the anxiety that many prisoners feel about restoring their personal and intimate relationships once they come out of the gaol - there is a tremendous amount of anxiety about that. Well-run group discussions are advantageous and they might involve some people who have gone out and managed these matters well.

Again, forgive me for mentioning Sweden so often but, in an earlier life, I was a Viking so I can't help it. The most interesting institution I've ever been to was a place where the families joined the soon to be released prisoners in what was essentially a lumber camp. Wives and partners were lined up on one side of a large room and they were asked what the man would need to do to be a good husband, good partner or a good parent. They role-rehearsed the suggested improvements during their stay at the camp.

Finally, all will come undone unless there is respect for the officers. Officers' physical fitness is often poor and they need help with that. They need health services. They need good amenities or otherwise you finish up with a situation where workers can reasonably say (in their words) "Everything is going to the crims and we get nothing." So there has to be a balance struck in the way that the officers are also looked after.

As I said at the beginning, I intended this to be a discussion starter, so I think maybe I'll stop at that point. Thank you.