

WORK IN PENAL INSTITUTIONS

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THE SIGNIFANCE OF WORK

'Il lavoro è un vero beneficio perchè è una distrazione che mitiga la noia e inganna la pena.

'La pena è una necessità sociale quanto la legge che la sanziona, ma la società ha diritto di aspettarsi meno infesto il malfattore al suo ritorno, e colla subizione d'un castigo reso migliore. Il che non è mai a sperare da una benchè lunga dimora in reclusori penali senza lavoro.

'La noia della reclusione porta essa stessa a desiderare un'occupazione: l'è un conforto.

'Il lavoro forzato è solamente una fatica imposta: perciò se accettato dall'angustia non può essere che rifiutato dall'infingardaggine. Una fatica sotto la verga dell'aguzzino è un avvilitamento che toglie anzi che ispirare un'attrazione al lavoro: il lavoro è funzione propria della vita se libero, tortura se coatto. La spinta naturale del lavoro è la promessa d'un ricambio: toltagli questo stimolo l'arsenale che si meditasse levare sulle amarezze della schiavitù penale rimarrebbe sempre un progetto.'

Present-day prison reformers and penal administrators still echo these words written by Dr. Nikola Zammit M.D. in 1888.¹ Even before him, in the 1840s, Carlo Cattaneo had pointed out:²

'Il Parlamento (britannico) voleva che il lavoro costituisse pena, e fosse perciò quanto più si potesse ruvido e faticoso; il che corrisponde al vulgare principio del lavoro forzato. Ma nelle solitarie celle di Gloster si scoperse che il lavoro era mitigazione all'insopportabile tedio della solitudine e che i prigionieri lo imploravano come sollievo e beneficio. *Per tal modo era còlto il secreto di rendere accetto e prezioso il lavoro a quelli sciagurati, che l'ozio aveva istradati al malfare.*'

And, quoting Tocqueville and Beaumont:³

¹*Pensieri d'un Retrogrado*, Chapter XXV entitled 'Lavoro e Pena', pp. 293-308 (Malta 1888).

²'Delle Carceri', one of three papers in *Della Riforma Penale*, p. 17 (published 1906).

³ibidem, p. 23.

'Visitando il Penitenziario di Filadelfia andavamo trattenendoci con tutti i carcerati. Nessun d'essi che non parlasse del lavoro quasi con gratitudine, e non si palesasse persuaso che, senza il conforto d'una occupazione, non avrebbe potuto resistere al peso della vita. Che avrebbe del prigioniero nelle lunghe ore di solitudine, se fosse lasciato ai rimorsi e ai terrori della sua mente? Il lavoro affatica il corpo, ma conforta l'animo.'

The Quaker ideal of reforming the offender by placing him in solitary confinement where he could meditate, reflect and repent, has long been abandoned. And, though the Maltese Criminal Code (Chapter 12) still provides⁴ for that measure as an aggravation of imprisonment, it is normally used only as a disciplinary measure for certain breaches of conduct as provided by the 1931 Corradino Prisons Regulations,⁵ having given way to the principle of allowing prisoners time for association during which they are meant to participate in interesting and meaningful occupations designed to protect them from the otherwise degenerative effect which imprisonment may have, and to instil in them a sense of responsibility and self-respect. The basic argument outlined by the nineteenth century writers of work being a mitigation of the tedium and demoralisation of custody still holds water. However, the outlook towards the concept of work in penal institutions has undergone a further important change, viz. the therapeutic effect it has if correct attitudes are adopted, thus furthering the process of social reintegration or rehabilitation of the prisoner.

A RIGHT TO WORK

The prisoner is considered to have a RIGHT to work as any member of the free community. The Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations in 1955 and, in a revised form, by the Council of Europe in 1973, regard penal labour as essentially similar in status to that possessed by free labour. The Rules of both documents state in this respect:

'The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.'

'Where prisoners are working for private contractors they shall always be under the supervision of the Penal Administration. The full normal wages for such work shall be paid by the per-

⁴ s. 7(1d).

⁵ Regs. 65 - 68.

sons to whom the labour is supplied, account being taken of the output of the prisoners.'

'Safety and health precautions for prisoners shall be similar to those enjoyed by workers outside.'

'Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to workers outside.'

'The maximum daily and weekly working hours of the prisoners shall be fixed in conformity with local rules or custom in regard to the employment of free workmen.'

Certain forms of integration with free labour have already been experimented with in several countries, though not entirely with the desired effectiveness owing to pressure of circumstances. Inadequate resources, prejudice and the incoherence of a variety of penal philosophies as well as operationally and politically inhibiting factors all contribute to this failure. The effective organisation and management of work in prison by competent persons ensured of receiving the administrative blessing would go a long way towards helping overcome these inhibitions.

'HARD LABOUR' AND THE PRISONS BILL, 1975

At the time of writing, the Maltese penal system still incorporates the possibility of imposing a sentence of imprisonment with hard labour.⁶ 'Hard labour', actually meaning 'forced labour',⁷ is an additional sanction imposed by the Court in those cases prescribed by law on the fundamental punishment of depriving a person of his liberty.

With the recognised therapeutic value that work may have in a prison setting, it becomes ineffective as an additional sanction, the punishment lying in the imposition rather than in the work performance, and, conversely, having one's work taken away. Gone also are the days of the 'chain-gangs' who performed literally 'hard' work. Inmates at the Corradino are no longer set to perform such work as oakum picking or hardstone breaking. Work is now generally regarded as a normal process of the daily prison routine which can be used as a means of furthering the prisoner's rehabilitation through inculcating in him the habit of regular and purposeful work at a tempo and in conditions as close as possible to those of outside industry.

Section 9 of Bill No. 231, entitled the Prisons Act 1975,⁸ is pro-

⁶ s. 7(1b) Criminal Code (Chapter 12).

⁷ The Maltese text speaks of 'lavuri furzati'.

posing the abolition of 'hard labour' from the Maltese penal system by:

(i) the construal of every law conferring power to pass a sentence of imprisonment with hard labour as conferring power to pass a sentence of imprisonment;

(ii) the prohibition on the Courts or any other competent authority to pass a sentence of imprisonment with hard labour; and

(iii) the subjection of every prisoner sentenced to imprisonment, whether with or without hard labour, to serve a sentence of imprisonment.

However, the same section also provides that 'every sentence of imprisonment, whether with or without hard labour, passed upon any convicted prisoner shall subject the prisoner during the term of such sentence . . . to perform such work as the Director may in accordance with regulations made under this Act direct.' The idea behind this clause is, as explained by the Honourable Minister of Justice on the 9th July 1975,⁹ to prevent idleness and make prisoners perform such work as the Director may, on the advice of the prison doctor, direct. One cannot fail to notice the contradiction inherent in this section. In effect it means that while the jurisdiction of the Courts to decide whether to impose a sentence of imprisonment merely or, in the cases prescribed by law, of imprisonment with hard labour, is being abrogated, every sentence of imprisonment would henceforth be regarded as implying *both* the deprivation of liberty *and* the imposition of labour.

The Standard Minimum Rules mentioned above provide that 'prisoners under sentence may be required to work', and the European Convention on Human Rights, which protects individuals from 'forced or compulsory labour', provides in article 4 that such labour does not include 'any work required to be done in the ordinary course of detention'.¹⁰ But, the Rules provide, 'prison labour must

⁸ Objects and Reasons: 'to repeal the Prisons Ordinance (Chap. 44) and to replace that law by more up to date and more orderly provisions.'

⁹ Parliamentary Debates (1975), pp. 1203-1215.

¹⁰ Article 36 of the Maltese Constitution safeguards 'any labour required in consequence of the sentence or order of a Court'. But it protects specifically such 'labour required of any person while he is lawfully detained by sentence or order of a Court that, though not required in consequence of such sentence or order, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained or, if he is detained for the purpose of his care, treatment, education or welfare, is reasonably required for that purpose.'

not be of a punitive nature'. It is submitted that the contrary is the case in the proposed law since every sentence of imprisonment will henceforth carry with it the imposition of work. In the penological field, where rehabilitation is concerned primarily with attitudes, the correct attitude must originate from the law. Hence, the success or failure in using work as a therapeutic tool depends very much on the attitude that is adopted towards its function within the prison regime.

The Standard Minimum Rules describe very well what the correct attitude should be. 'Work' should constitute one of the means meant to establish in prisoners 'the will to lead law-abiding and self-supporting lives after their release and to fit them to do so', as well as to 'encourage their self-respect and develop their sense of responsibility'. The work performed must be 'useful' work which, so far as possible, will be 'such as will maintain or increase the prisoner's ability to earn a normal living after release'. To these ends vocational training in useful trades should be provided for prisoners able to profit thereby and especially for young prisoners. Moreover, within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, *prisoners shall be able to choose the type of work they wish to perform*. The proposed law goes nowhere near this desired approach to work in penal institutions but still considers it as something to be imposed.

It is true that a number of prisoners sentenced to imprisonment refrain from making use of the option to work allowed them by the 1931 Corradino Prisons Regulations¹¹ – an unfortunate choice because inactivity breeds boredom which breeds contempt. The alternative of imposing work, however, is none too commendable either. 'Offenders are sent to prison as a punishment, not for a punishment'.¹² The punishment which they suffer by being deprived of their freedom should not be increased by rendering their living conditions as irksome as possible. Once inside, the emphasis must move away from punishment towards constructive training for liberty. Work should thus be opted for by the prisoners themselves, if necessary at the instigation of a competent prison officer and made attractive by a number of incentives, meant to enlist the prisoners' interest and give them a sense of purpose, to afford them an opportunity to exercise their skill and gain confidence in their ability to work and to instil in them good working habits. As Dr. Grünhut says, the object of prison labour is 'training for work and training

¹¹ Regs. 139, 151.

¹² Paterson: *On Prisons*, p. 23.

by work'.¹³ The degree of response could be used as a factor in assessing the feasibility or otherwise of allowing the prisoners remission of their sentence and, if introduced into the Maltese penal system, early release on parole.

Employment in prison may be the first steady work experienced by many prisoners. However, it is perhaps not too far-fetched to suggest that providing an offender with his first regular and rewarding work experience of appreciable duration, even if it is in prison, is a major step toward promoting in him the work habits and values necessary for a stable noncriminal life. Some motivation is required.

INCENTIVES TO WORK

Under the Maltese penal system, prisoners serving sentences exceeding one month are entitled to a maximum remission of one-third of their whole sentence 'by special industry and good conduct',¹⁴ the period of remission being determined by marks – four marks for every day of imprisonment, one additional mark for a fair day's labour and two additional marks for steady hard work and full performance of the task allotted for the day.¹⁵ The prisoners' full co-operation can thus ensure his obtaining full remission of sentence; what should primarily be considered, it is suggested, are his response to treatment and his likely behaviour on release.

The award of equitable remuneration for work performed is a major incentive for prisoners to work or to train for jobs that they intend to or might obtain on release. Under the system envisaged by the Standard Minimum Rules, the prisoners should, moreover, be allowed to spend at least a part of their earnings on approved articles for their own use (preferably obtained, I submit, from a prison canteen) and to allocate a part to their family (though not at the expense of State social benefits) or for other approved uses, e.g. donations to charities. This enhances the prisoners' sense of responsibility and self-respect and helps to promote ties with the outside. Provision should also be made for savings to be accumulated for the prisoners' benefit on release.

The philosophical validity of this system rests partly on equity and partly on the belief that financial resources are of therapeutic value in the training of prisoners. In fairness, I do not believe that remuneration should be equal to or surpass the statutory minimum wage earned by free labourers. Nor, at least in the preliminary

¹³ Grünhut, *Penal Reform*, p. 209.

¹⁴ Regs. 138, 140, 1931 Corradino Prisons Regulations.

¹⁵ Reg. 141, *ibidem*.

stages of reform, should the total annual income reach taxable proportions, lest several administrative complications arise. On the other hand, remuneration should not be as small as the absurdly low weekly gratuities paid in our Prisons until the reforms being heralded by the proposed new Prisons law: 10c0 for Lower Grade prisoners, 15c0 for Middle Grade and 20c0 for Upper Grade. The award of monthly payments known as 'meritorious service awards', as in the U.S.A., to selected prisoners on non-industrial jobs, and the payment of piece-rates, as in the U.K., for manufacturing work, would provide even greater incentives for carrying out good and efficient work; for it is well-established that increases in pay have resulted in higher productivity.

Some reforms on the lines above mentioned have now been officially announced in the Maltese House of Representatives.¹⁶ Prisoners are to receive a remuneration of £M6 for a 30-hour working-week. Of that sum, £M1 will go to the prisoners as pocket-money and the remainder diverted to their family. If the family is receiving national assistance, they will receive £M2.50 and the remaining £M2.50 accumulated for the prisoners' benefit on release. Skilled workers are to receive 50c0 more as pocket-money for productive work. Increases in productivity would entitle prisoners to increases in remuneration. Gratuity rates for those prisoners unable to work are to be increased.

Significant increases in pay will not, of course, take us beyond a certain point. Much more is involved. Indeed, highly paid people in unsatisfactory roles are often found to perform badly. Conversely, modestly paid people whose morale is high as a result of enjoying desirable work, environmental and personal relationships are high performers. Thus, although material awards are important, it is necessary to aim at the creation of a general environment conducive to high motivation with a commensurate performance derived from the individual's acceptance of the usefulness of his activity and appreciation of the value placed upon it by those whose respect he needs, namely the staff, his fellow prisoners, family and, indeed, the society to which he must return. Proper management and prisoner participation (i.e. the association of prisoners with various aspects of life in the institution and particularly in the provision, organisation and operation of work regimes), coupled with a prison staff conscious of the rehabilitative, and not merely custodial, role it must play, can cultivate this atmosphere.

¹⁶ 22nd October 1975, Parliamentary Debates, pp. 1485-1543.

THE NATURE OF WORK: DIFFICULTIES

The object of effective management is to harmonise the share of physical, financial and human resources and the way in which they are deployed and used to maximum advantage in pursuit of the policy objectives, individual needs and the statutory obligations of the penal authority. One cannot, however, ignore the several practical difficulties involved in providing suitable work for ALL prisoners.

The prison management has no control over the size of its labour force from year to year or even from month to month. Nor has it any control over the quality of its labour force, often of very low quality both as regards skill and aptitude. A high proportion of prisoners have never managed to hold down any kind of job, skilled or unskilled, for any length of time; which is probably why they are in prison. The physical and mental capacities of the prisoner must be taken into account when work is offered. Moreover, a high percentage of prisoners serve sentences of less than six months,¹⁷ not time enough to teach them intricate methods of working, let alone teach them any skills. Consequently the only available and suitable work tends to be low both in quantity and quality.

In addition to these considerations, one must take into account the attitude of the outside world to prison labour. Demand tends to be low, the main or only source of work being contracts for government departments. Furthermore there is a natural hostility on the part of trade unions to what they consider unfair competition and sweated labour, while at the least sign of unemployment the principle of less eligibility begins to militate against the prisoner in this context above all. This is a problem which can only be solved when society as a whole accepts that prisoners do not work in an economic vacuum and that though temporarily safeguarded, they are not economic outcasts. There is, however, an obligation to provide some form of work for all prisoners.¹⁸

The prison work that is available to prisoners can be widely classified into productive and domestic. The former includes industrial, construction work and farming (including horticulture and forestry); the latter covers kitchen work, gardening and cleaning. Both from a penological and economic standpoint, the best work for

¹⁷ According to the Report for the Prisons Department for 1973/74, 70% of prisoners were serving sentences of under six months, of whom 41% were serving sentences of under one month.

¹⁸ 'Work for prisoners shall be assured by the Penal Administration in its own workshops and farms or with private contractors, where practicable' (Standard Minimum Rules, Council fo Europe, Rule 74(1)).

the majority of prisoners is that provided by building construction and, principally, in workshops,¹⁹ generally the most relevant to the probable experience of a man after release.

Some stimulus to development and production is obviously necessary and, though an assured internal governmental market is valuable in this respect, it should not prevent prison industries from seeking new markets where prejudice to private industrial interests cannot be caused thus avoiding the arousal of adverse public opinion. The interests of the prisoners and of their vocational training should not, however, be subordinated to the purpose of making a financial profit. The workshops should also cater for those prisoners lacking even the minimum skills and who are incapable of anything but the simplest forms of mechanical work. Some of the latter category will find their way into domestic work, probably the best allocation for them. However, in order to prevent labour from gravitating to menial and undemanding roles, domestic work should be made the least attractive of employment options, thus also avoiding over-manned domestic parties. Farming too has its significance, providing the opportunity to learn a variety of skills, though it is normally available to those men who can be allowed to work outside under minimum supervision. Where practicable, work with private contractors or with Government departments should be found, the prisoners remaining under supervision but being paid the full normal wages for their work output.

Two innovations are suggested where the prisoner is allowed to work outside without being supervised. The first is a system of work release whereby the longtermers's reabsorption into society is facilitated. The prisoner serving three to four years or more is, in the last six months or so of his sentence, allowed to leave the prison daily in order to work. In this manner, the prisoner provides authorities with far better knowledge of his readiness for complete release than they could otherwise obtain from the prison setting. Besides, prisoners are made to see the contrast between freedom and imprisonment every day, making the deterrent effect of imprisonment more lasting. Work release also permits the prisoner to cope with his adjustment problems in the free community on a gradual basis rather than suddenly.

Another system is that of semi-liberty²⁰ which, however, stems

¹⁹ Workshops at the Corradino Prisons provide training in bookbinding, matmaking, carpentry, tailoring and shoemaking. Inmates can also receive training in plumbing, welding, interior decorating and bakery work.

²⁰ See 'Short-Term Treatment of Adult Offenders' by the author *V Id-Dritt* 83-93

from the sentence of the Court. The semi-free offender can keep his job, remain out of continuous contact with other offenders but still subject to a certain degree of supervision and social guidance. Provided the offender has not committed a particularly heinous crime, and he shows to the satisfaction of the Court that he has a job or is attending a course of education or vocational training or is undergoing medical treatment, the Court may decide to pass a sentence of imprisonment to be served under the system of semi-liberty. The prisoner would be required to return to prison each day at the end of the period needed for the activity and to remain there on days when, for whatever reason, the activity does not take place.

The limitations imposed by penal regimes and the duties that prison administrations owe to society in general and the courts in particular will always inhibit the operation of work activities. Finance, physical capacity, staff and the diagnosed needs of prisoners too tend to be inimical to the pace and quality of industrial progress in penal establishments. But the policy and planning function of management can provide the context in which significant progress can be sought on a wide front. That progress, despite the difficulties involved, can and must be related to the well-defined penological objectives of the organisation. In that way work can contribute in a positive manner to the management process and operational situation in penal establishments, thus strengthening the penological performance of the prison system.

Finally, it would be opportune to mention that in Resolution (75) 25,²¹ the Committee of Ministers of the Council of Europe emphasizes the value of work for training and rehabilitating prisoners and sets out the basic requirements for work management in penal institutions. Governments are recommended to:

(i) Grant a defined status and a defined priority to prison labour;

(ii) Make suitable resources available for the support of work programmes according to institutional needs;

(iii) Fully utilise to this end adequate and modern management systems, techniques and production processes;

(iv) Adapt conditions of work, performance objectives and remuneration as far as practicable and taking account of the special nature of work in prison with outside standards;

(v) Recognise the importance of work and its implications for

²¹Text published on the 6 November 1975.

management at all levels when staff are being selected and trained;

(vi) Co-ordinate the labour allocation system with the other aspects of the management of penal regimes.

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