The Victorian Origins of a 'Group 4' Prison Service

John Black

Under the present Conservative Government the Prison Service is being drastically altered. Prior to the 1877 Prisons Act, prisons in England and Wales were administered under two distinct and quite separate organisations. There was the Convict Prison Service, established in 1850 when transportation was in decline, and under central Home Office control and headed by a director. The second tier of administration were the local prisons which were administered under many local variations. These prisons included a mixture of local authority-controlled prisons and private or franchise prisons.

Under the provisions of the Criminal Justice Act 1991, a dual prison system will emerge once again, for the current legislation allows for the privatisation of at least two newly purpose-built penal establishments, the Wolds Remand Centre, Humberside, and Blakenhurst Prison, Worcestershire, a high-security local prison. The course of modern penal history in England and Wales has now come full circle, since the last privatised prison was taken over by the Home Office in 1878. The Home Office Prison Service Department itself adopted agency status from April 1st, 1995.

What, then, were the reasons that led to the Prisons Act of 1877, and to the of the end of this previous dual practice of prison administration? A variety of arguments were made at the time defending a dual system on the basis of a number of principles, especially as the Prisons Bill of 1877 passed through its Parliamentary stages. The major issues raised included principles of constitutional, moral and legal theory. Such issues are once again being raised over the privatisation of the Prison Service.

As is happening today, mid-Victorian society experienced a rising juvenile crime wave, which caused a moral panic amongst the middle classes, who demanded retribution which would reflect a deterrent. The most common and increasing street crime of the day was garroting, a type of crime very similar to what today we call 'mugging'. Due to the public pressure, in 1862 Parliament passed (with undue haste) the Garrotters Act. Offenders were liable to be statutorily imprisoned and hanged as a fixed penalty. As garroting was a summary offence, offenders were therefore incarcerated in local prisons which drastically increased an overloaded and inefficient local prison system. This put greater financial pressure on the local ratepayers. As the decade progressed, new legislation involving social welfare made ever greater demands thereby substantially increasing the rate burden. As a result the rates issues became a major one during elections. Other pressures had been placed on prison administration. Only a few years prior to the Garrotters Act, in 1857, the transportation of convicts had ceased altogether. The centrally-controlled Convict Prison Service had been established in 1850. In essence it was the Convict Service that was to become the model for the post-1877 Prison Service.

The distribution of local prisons, their regimes and the conditions of prison staff varied from one authority to another. In many cases the gaolers and guardians of locally administered prisons received no pay from the rates and were expected to act as self-employed agents, who paid the prison authority for the privilege of the franchise. The gaoler or turnkey made his living from extortions, bribery and trafficking. Even prisoners were deployed as assistant gaolers. The system combined inequalities with location of prisons, a lack of standardisation or any form of uniformity of regime, rights of prisoners regulation or diet, despite attempts made previously under Peel's Gaol Act to achieve these objectives. The majority of local prisons were administered by the justices of the peace, who later opposed the 1877 Prisons Act.

Alongside the local prisons were also prisons whose origins lay in the franchises held by ecclesiastical and secular lords, lords of the manor including Oxford and Cambridge Universities, the Royal forests and the Stannaries. By the mid-nineteenth century franchise prisons existed mainly as debtor prisons. They were run as a profit motive operation operating for the sole benefit of franchise owners – a system not too divorced from the privatisation of prisons today.

Tune well spent? An 1870s engraving showing the tread-wheel and oakum shed at Holloway Prison – punishments as mentally degrading as they were physically harsh.
Unlike the local system, the Convict Service was strictly regimented; here convicts are marched back to prison hulks from labour at the arsenal, with no recourse for appeal. Only after 1898 was an independent Board of Visitors appointed to each prison. The regime of the Convict Service, unlike the local system, was highly regimented, uniform and quasi-military in structure. This is hardly surprising as the two most renowned Victorian directors, Sir Joshua Jebb and Sir Edward du Cane, were both Major Generals in the Royal Engineers. Du Cane in particular remained on the army active list by holding the dual role of Inspector General of Military Prisons as well as the Director of the Convict Service. The du Cane model became the standard regime of the local prison system after 1878.

A select committee of the House of Lords was established in 1863 under Lord Carnarvon to inquire into prison administration and discipline. From the Carnarvon inquiry were sown the first seeds for a national prison service. A halfway stage was reached by the passing of the 1865 Prisons Act, which according to Sidney and Beatrice Webb was the major turning point towards a national prison system, rather than the 1877 Act. The major clause of the 1865 Act, for which it is best remembered, is that it abolished imprisonment for private debt. This was achieved by 1869. As a consequence, all franchise prisons were closed. The imprisonment of civil debtors had been a major factor in the deterioration of local prisons generally.

Disraeli's Conservative government was elected to office in the January 1875 general election on a manifesto to reduce the burden of both central and local taxation; previously, the 1867 electoral reforms had increased the franchise. There were strong demands for a restructuring of national fiscal policy. This pressure mainly came from large entrepreneurs who were enjoying a boom in the trade cycle, and were benefiting from unparalleled prosperity.

The Great Outdoors: women prisoners gardening at Gloucester Prison at the turn of the century.
R.A. Cross (later Sir Richard) became the new Home Secretary and was initially cautious in taking steps to increase central government authority over local prisons. As a liberal Conservative, Cross had his roots in the rising industrial middle class, and held utilitarian economic and political views. He had also been a magistrate and was sympathetic to the magistracy role in local prison administration. Cross was convinced that the provisions of the 1865 Prison Act were sufficient for the administration of the local prison system.

However, by 1876 the electorate were restless for a fiscal change in government policy. Lord Eustace Cecil warned Lord Salisbury that unless the problem of the rates was resolved, then the chances of the Conservatives winning a second term of office were slim. Cabinet pressure forced Cross to submit an agreed plan for the centralisation of the local prison system, under the administration of prison commissioners, appointed by the Home Secretary. The Prison Commissioner system remained until 1965.

The objective of the 1877 Prisons Bill was not altruistic in nature, as the 1865 Prisons Act had been. The Bill submitted by Cross was a plan to shift the burden of criminal justice as it applied to local prisons from the ratepayer to the taxpayer. Economies would be made by closing inefficient prisons, and rationalising the diseconomies of local prison location. Some counties supported numerous local prisons, others none.

Cross submitted two Prison Bills: the first was presented to the Commons on June 1st, 1876. Cross had planned to get the Bill through the various stages of Parliament by the end of the session in August 1876, and have it implemented by April 1877, but it ran into considerable opposition. It entered the committee stage late, on August 1st 1876, but five days later it ran out of time when the Parliamentary session ended. Cross stated in the Commons the reasons for the Prisons bill:

Our prisons and our whole system of gaol discipline are kept up for the safety, not only of real property, but of public property, which did not pay its share, and not for the safety of property simply, but for the protection of life.

No doubt Cross was referring to the more recent Chatham and Portland mutinies of 1861 and 1864, and the illegalities which led to two suicides at Birmingham and Leicester prisons some twenty-three years previously. Cross also, in his statement, made a suggestion that more people paid taxes than rates. He was critical of prison distribution, pointing out that in Rutland there was one prison for 20,000 inhabitants. However, in Lancashire there was a prison for every 469,000 inhabitants, and Staffordshire one prison for every 858,000 inhabitants. Costs too varied. At Salford Prison it cost £151.5s.1d. for the annual upkeep of an inmate, whereas in Oakham Prison the same cost was £150.4s.2d. Also the quality of staff, inmate discipline, punishment and dietary matters varied too, despite attempts made by the 1865 Act to standardise these areas.

Opposition to the Bill came from a mixture of Tory backbenchers, Liberals, independent radicals and the Irish members. Attempts were made to show that local prisons were more economical to run than convict prisons. The opposition to the second Prisons Bill was less severe than for the previous Bill. International events and the threat of war was dividing political and parliamentary attention.

Cross emphasised that the major objective of the Prisons Bill was to shift the burden of financing the criminal justice system from the rates to the Exchequer. He anticipated that the local rates would be nationally relieved of £392,000, at a cost to the Exchequer of £285,000, a net saving of more than £100,000 per annum. In answering the critics of increased centralisation, Cross successfully defended the Prisons Bill by stating that the Home Office would not directly control the prison system through the intermediate and quasi-independent appointment of Prison Commissioners, as had previously existed in the Convict Service. Under the Bill five Prison Commissioners would be appointed to establish a uniform national service under the chairmanship of Sir Edward du Cane.

Opposition to the Bill never seriously threatened its survival through Parliament. Minor amendments were made, in particular towards prison labour; under Forsyth's amendment, prison labour could not compete with free labour. Forsyth in particular quoted the case of the Bristol brushmakers, who feared prison labour would decimate their trade. This amendment meant that prison labour for the most part was mainly meaningless and unproductive, involving salvaging oakum or the manufacture of mailbags. It was only repealed by the Prisons Act 1952.

The Prisons Bill received the Royal Assent in July 1877 and came into force on April 1st 1878. According to Sidney and Beatrice Webb, the entire prison population of locally-run prisons, numbering some 113 establishments in England and Wales, numbered some 21,000 inmates whilst 10,000 convicts being held in the convict prisons were transferred to the national Prison Service. The Prison Commissioners quickly began to economise the system and thirty-eight local prisons were immediately closed.

Interestingly, one area of penal policy in England and Wales was left with the authority of the sheriff of each county. This was the appointment of the public executioner and the arrangements and payments for judicial executions within the sheriff's county authority.

The memorial to du Cane's silent hard regime is HM Prison, Wormwood Scrubs, which was built in 1879 as a model to this philosophy. The du Cane regime of a silent world shrouded in almost complete darkness remained until well into the twentieth century despite attempts to alter the regimes after 1898.

The reasons for the Bill and its aftermath have largely been forgotten, or ignored. Cross himself never mentioned, in his autobiography, the Act nor his involvement as Home Secretary with the passage of the Act. Nor does Paul Smith, the historian of Disraelian social reforms, make any mention of it. Perhaps Cross ignored the issue as he may have been coerced into taking action. The 1877 Prisons Act tended to be more concerned with fiscal policy than with penal reform.

The Prison Service seems to have come full circle since 1877. Present government prisons policy involves...
Recycling Old Ideas

Klaus Larres

We stand today at a unique and extraordinary moment ... Out of these troubled times, ... a new world order can emerge; a new era – freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace, an era in which the nations of the world, East and West, North and South, can prosper and live in harmony.

At the end of the Cold War, in the midst of US-USSR collaboration in the Gulf crisis and shortly before the unification of Germany, President George Bush uttered these words before a joint session of the American Congress on September 11th, 1990. On some other occasions in the course of the Gulf conflict, Bush and his senior officials, particularly National Security Adviser, Robert Gates, made use of the term ‘new world order’. But once the Gulf war was over, it was conspicuously absent from their speeches. This, however, did not stop ever-increasing numbers of journalists, political analysts and contemporary historians picking up Bush’s phrase and applying it to the post-Cold War world.

Political writers have always been fascinated by historical ‘turning points’. The years 1989-90 certainly qualify as such a watershed and may soon be seen on equal terms with 1789-94, 1814-15, 1918-19, 1945-47. However, it is often assumed that the new world order is something new, something which has not existed before. Yet it should not be overlooked that in the wake of almost every upheaval, a new generation hoped to be able to create a new international system to obtain everlasting peace and stability – peace in our time.

This was particularly the case at the end of major wars. The Napoleonic Wars, the First and Second World War, and, of course, the Cold War come to mind. At the Congress of Vienna in 1815 the major states of the day embarked upon the creation of a new ‘balance of power’ and the imposition of a new order on the war-ridden European continent. Their efforts also constituted an attempt to maintain control of the profound changes which had taken place during the previous decades and would undoubtedly continue shaping the world. After all, the industrial and scientific revolutions were already well advanced, the American and French revolutions had just occurred and the continuing influence of liberal and radical philosophies could be expected.

It can be assumed that even without these events the old