THE ABOLITION OF BORSTAL TRAINING: A PENAL POLICY REFORM OR A FAILURE TO REFORM PENAL POLICY?

The experiment in a penal reformatory for young offenders which moved to Borstal (Rochester) Prison in 1901 was a response to the Report of the Gladstone Committee of 1895. That Report laid down the philosophy in favour of reformation for offenders which has been the dominant official justification for the treatment meted out to prisoners in Commonwealth jurisdictions throughout the twentieth century, although it has been subjected to increasingly sceptical reassessment in recent years. The Gladstone Committee rejected the "hard fare, hard bed, hard labour" notions of retributive punishment generally accepted in the nineteenth century in favour of dealing with prisoners so that they should be enabled to lead a good and useful life upon their discharge from custody. Deterrence was accepted as a concurrent object of imprisonment but, in the phrase made famous by Paterson, it was accepted than an offender went to prison "as punishment not for punishment". A key recommendation of the Committee was that there should be careful classification of offenders so that younger offenders should not be incarcerated with older prisoners. In the penal reformatory for the younger offenders staff were to be expected to be capable of "giving sound education, training inmates in various kinds of industrial work, and qualified generally to exercise the best and healthiest kind of moral influence". The aim of all this was to reduce the number of "habitual criminals".[1] The experimental scheme which started at Borstal in Kent was introduced into this country with the penal institution at Invercargill being set aside for persons under the age of 25 after the passage of the Crimes Amendment Act 1910.[2] Borstal training was put on a proper statutory footing with the enactment of the Prevention of Crime (Borstal Institutions Establishment) Act 1924 and it remained one of the most significant forms of custodial sentence available to the Courts — in recent years borstal receptions have comprised about 14% of the distinct male prisoners received into custody each year and about 30% of female prisoners.[3] With effect from 1 April 1981, however, borstal training was abolished when Part II of the Criminal Justice Amendment Act 1975 was finally brought into force in accordance with the Criminal Justice Amendment (No 2) Act 1980, s 7.

The essential elements of borstal training included: reformation of the offender as the paramount avowed purpose of the sentence; indeterminacy with respect to the length of time trainees spent in custody; and the clear stipulation that the sentence was available only for young offenders. It is rather unusual for the Legislature to directly state the theoretical objectives of a penal institution in the enactment which empowers courts to pass a particular sentence, but all of the elements of borstal training listed above were specifically spelt out in the Prevention of Crime (Borstal Institutions Establishment) Act 1924 and in the Criminal Justice Act 1954 which replaced it. The 1924 legislation empowered the Supreme Court to sentence offenders of not less than 15 nor more than 21

1 For a review of the origins of borstal training see L. Fox, *The English Prison and Borstal Systems* (1952), or R. Hood *Borstal Re-Assessed* (1965). The Gladstone Committee Report was entitled *Report from the Departmental Committee on Prisons* (Cd. 7702, 1895).

2 *Review of Borstal Policy in New Zealand* (1969), 1.

3 J. F. Robertson, *Penal Policy and Practice* (1980), Table 1.

years to a Borstal institution for a term of not less than 2 years with an indeterminate date of release up to a maximum of 5 years, and it empowered a Stipendiary Magistrate in dealing with offenders of that age to make an order of detention *in lieu of conviction* for a term of 1 year minimum and 3 year maximum. In both courts the sentencer was required to make orders of detention when it appeared "expedient that [the person] should be subject to detention for such term and under such instruction and discipline as appear most conducive to his reformation and the repression of crime" (ss 7 (b) and 8 (1) (c)). In the Criminal Justice Act 1954 the two tracks to borstal were amalgamated, the scope of the sentence was enlarged to include 15 and 16 year olds, and the period of borstal training became an indeterminate sentence of up to 3 years (ss 18–20). The Court had to be satisfied that such a period of training would be expedient for or conducive to the person's reformation and the prevention of crime (s 18).

The high profile, legally speaking, of the ideals of reformation and prevention has rendered borstals peculiarly susceptible to charges that they have 'failed' if statistics indicate a high rate of recidivism for ex-borstal inmates. The obvious fact that all penal institutions tend to be punitive total institutions of a distinctly criminogenic nature may perhaps be overlooked. Penal institutions which are stated to be punitive or deterrent in aim do at least fulfil their custodial function of "protecting the public" even if concurrent or subsidiary aims relating to reformation are belied by the recidivism statistics. When reformation is prominently displayed as *the* purpose of borstal training, however, then the reconviction of trainees for offences committed after release is a self-evident indication that the sentence has 'failed'. For many years now it has been accepted that borstals were very 'successful' in producing ex-inmates with a veritable string of further convictions rather than in contributing to the prevention of crime. Some efforts were made to improve the chances of at least some borstal trainees. Thus in August 1961 an "open borstal" was established at Waipiata in Central Otago at a former sanatorium with a 1200 acre farm. Its trainees were "carefully classified" at other borstals and then selected for Waipiata if they were regarded as "better than average potential for good citizenship".[4] The results of this effort were anything but encouraging for the Justice Department. Whereas 67% of all borstal trainees released between 1957 and 1965 were reconvicted within 2 years of release, 69.7% of Waipiata's 1962–1965 intakes of potential good citizens were reconvicted during the 2 year follow-up![5] The researchers responsible for gathering this data tried to put a gloss on these figures as follows:

> Two research officers who had been responsible for all the coding conducted a detailed examination of each youth's post-release record. They concluded that 76 trainees had in fact settled down after some minor offending in their parole period and could be considered 'successes'. This result reduces the 'failure' rate for Waipiata borstal youths from 70 percent to 40 percent.[6]

Some dramatic unverifiable assumptions are made in this gloss. The general pattern of detected criminal offending is that it is committed by young working class males almost all of whom "settle down" in their later 20s. It is submitted that a spell in Waipiata or any other borstal is unlikely to have been a positive

4 *Penal Policy in New Zealand* (1968), 7.
5 M. Schumacher, *Waipiata: A Study of Trainees in an Open Borstal Institution* (1971), 9.
6 *Ibid*, 10.

good citizenship experience leading to "settling down" as a result of the instruction received from borstal staff. On the contrary, in view of the significant correlation between borstal training and a subsequent history of re-offending, the most interesting question for research is why about 30% of inmates were *not* detected offending and reconvicted within two years of release despite being forced to socialise only with fellow young offenders during the period of borstal incarceration. There is no evidence to suggest that the 'failure' of borstal should be attributed to the failure of staff to attempt to carry out government policy or to the failure of the Government to properly fund the institutions. Indeed in the borstals' last year of existence the gross per capita annual cost of running the institutions was $14,157 — even more expensive than the $13,792 per person spent on prisons.[7]

The fact is that figures relating to recidivism were only relevant if one took the statutory aims of the sentence seriously. Judges and Magistrates clearly paid no attention whatsoever to the legislative injunctions which were supposed to circumscribe their sentencing discretion. They sentenced young offenders to borstal in the near certain knowledge that the sentence would *not* be expedient for nor conducive to reformation. As the Justice Department admitted in 1969:

> The great majority of young male offenders received in borstal are not strangers to crime and to the penal system. On the contrary, they are the hard core of delinquents who have failed to profit from less severe penalties.[8]

Successive Ministers of Justice remained wedded to the ideological principle that when some form of imprisonment or detention was necessary then "every possible reformative influence must be brought to bear" on the imprisoned or detained.[9] As late as 1969 Mr J. R. Hanan, the then Minister, was proposing that three new small open borstals should be established. He had no new philosophy to replace the aims of the system as it had been operating in spite of its "high initial failure rate", but he hoped that the new borstals would "be run by dedicated imaginative people who can organise a vital programme. We seek exceptional characters".[10] Yet Mr Hanan's own legislative policies had created the situation in which sentencers flagrantly violated the terms of the Criminal Justice Act 1954, s 18. First, a moral panic about "juvenile delinquency' (in the aftermath of disturbances when the Blossom Festival parade at Hastings in 1961 was cancelled due to rain) led to the hasty introduction of the sentence of detention in a detention centre. This was a short sharp shock type of sentence entailing a finite 3 months detention (less remission of up to 1 month) which was available to the courts for 16 to 20 year olds without previous custodial experience. A medical report of fitness to serve the sentence was a condition precedent to imposition of the sentence.[11] Then the semi-custodial (and now

7 *Report of the Penal Policy Review Committee 1981* (1982), 37.

8 *Report on the Department of Justice for the year ended 31 March 1969* as cited in Schumacher, *op cit*, 9.

9 *A Penal Policy for New Zealand* (1954), 6. See also *Crime and the Community* (1964); *A Penal Policy for New Zealand* (1968); *A Penal Policy for New Zealand* (1970).

10 *Review of Borstal Policy in New Zealand* (1969), 5–6, 11.

11 Detention centres were statutorily provided for, without coming into force, in the Criminal Justice Act 1954 (ss 15–17). These sections were repealed and replaced pursuant to the Criminal Justice Amendment Act 1960, s 4. The substituted sections were brought into force by the Detention Centre Orders 1961 and 1962. The author was a young non-participant observer of the Hastings 'riots'! See also Barnett, "The Detention Centre in New Zealand" (1971–73) 6 *VUWLR* 288.

non-custodial) sentence of periodic detention was introduced by the Criminal Justice Amendment Act 1962 (Part I) initially for 15 to 20 year olds.[12] Moreover, since the Summary Penalities Act 1939 (s 5), which was incorporated as s 14 of the Criminal Justice Act 1954, there had been a general direction to courts to sentence persons under 21 to imprisonment only when no other method of dealing with them was appropriate. All in all, it was clear that borstals had long since come to be treated as the dumping place for all young offenders who, in the sentencers' opinion, had to be incarcerated for a number of months because they did not deserve any leniency or because they were not eligible for other sentences.

The first step towards the abolition of borstals was taken by the third Labour Government in the hectic rush of legislation passed in the last few months of its existence. Part II of the Criminal Justice Amendment Act 1975 purported to abolish borstal training. Detention centres were also abolished by Part I and finite sentences of six months corrective training or three months corrective training were to be established. The tenacious ideological hold of the reformation ideal still afflicted the mind-sets of the legislators — the new sentence was to be *corrective* and it was to be *training*! The requisite Order in Council to deal the final blow to borstals was not forthcoming when the new National Party Government took up the reigns of office, however, and it was not until 1980 that a number of statements by the Minister of and Secretary for Justice heralded the three Criminal Justice Amendment Acts which were passed in 1980. At long last the reformation ideal has been publicly acknowledged to be somewhat tarnished:

> In New Zealand we are now, so it seems, disillusioned with the ability of rehabilitative programmes to fulfil their objective. The recidivism rate that we are only now beginning to really learn about is adequate demonstration that these programmes have not succeeded in a reduction of reoffending.[13]

So the eyes of the blind have been opened at last; or have they? The new catch-cry of penal policy is "reparation". A new sentence of community service was introduced by the Criminal Justice Amendment Act 1980 and a new reparation sentence has been put before the House of Representatives in a Bill introduced late in 1983. The 6 months corrective training sentence was struck out by the Criminal Justice Amendment (No.2) Act 1980 (s 2) but the 3 months corrective training was now brought into force. Moreover the 'corrective' benefits of the 'training' may now be imposed without a medical check and more than once (s 3) so that the detention centre notion of shock of a first custodial sentence for all detainees is no longer possible. It seems that this sentence may become a new dumping ground type of sentence even for those who are quite unable to cope with "what is really a very hard sentence".[14]

The institution which replaces the borstal is the youth prison. These were established by the Penal Institutions Amendment Act 1980 and most of the former borstals suffered an instant metamorphosis in becoming youth prisons and becoming known as Youth Institutions on 9 April 1981 pursuant to the Penal Institutions Notice (No.2) 1981. At last, one might have thought, a spade

12 The same Act in s 25 reduced the period of borstal training to a maximum of 2 years.

13 Robertson, *loc cit*, 5. See also *Speech Notes, Hon. J. McLay, Minister of Justice to the Auckland Branch NZ Association of Social Workers . . . 1 April 1980*, 21–22.

14 *Report of the Penal Policy Review Committee* (1982), 80.

has been called a spade. Youths now receive determinate finite sentences of imprisonment in an institution which is explicitly designated as the prison which they have always been. All three essential elements of borstal training have now been eliminated: reformation of the offender has disappeared from the statute book; sentences are no longer indeterminate; and the strict classification of youths in custodial institutions completely separate from adults has now been abandoned. As to this last point the Penal Policy Review Committee has rejected

> the received wisdom for generations that younger prisoners should be kept apart from their seniors because of the fear of contamination and bad influence their elders may have.

The Committee argued that there

> may be positive gains from the judicious placement of offenders of different ages, and perhaps the older first offender or others not professionally devoted to crime, and not institutionalised, may have a beneficial influence on younger inmates.[15]

The Secretary for Justice has the power to make such "judicious placements" granted to him by s 8A of the Penal Institutions Act 1954 as inserted by the 1980 Amendment (s 4), and one gathers that he is experimenting in that direction. Yet when all is said and done, the humanitarian gloss by administrators on the privations of imprisonment is hard to eradicate completely. Thus in 1981 it is still said of youth prisons:

> They have a regime directed towards reformation and development rather than punishment.[16]

In conclusion then, things change and yet they stay the same — names change and yet the places remain the same — policies change and yet the same old things are done in the carrying out of the new policy. In 1980 young people 20 or under comprised 41.4% of the inmate population with a further 24% being 21 to 24 years old.[17] Year by year Maori inmates comprise about 40% of male inmates and 55% of female inmates.[18] Between 1959 and 1980 the imprisonment rate per 100,000 mean population has never been lower than 68.8 with a peak of 92.5 in 1976 and an average of about 89 in recent years.[19] Without a shadow of doubt several thousand young working class males will be locked up as result of court sentences this year as they were last year. Borstal training is no more, but has there been a penal policy reform or has this been just one more of so many Criminal Justice Amendment Acts which, in their ever more frequent appearance on the statute books, have sought to disguise the fact that there has been a failure to tackle genuine reform of the fundamentals of penal policy in this society?

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15 *Ibid*, 66–67.
16 *Ibid*, 22.
17 *Ibid*, Table 5, 224.
18 Robertson, *loc cit*, 10.
19 *Report of the Penal Policy Review Committee* (1982), Table 3, 222.