OLD GHOSTS, NEW GHOSTS: A LOCK-UP HISTORY

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Abstract

In 1910, in a House of Commons speech, Winston Churchill stated that "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country".

In Europe, the rise of prisons as an agency for punishing convicted offenders was a slow and gradual process, which extended over several centuries. The medieval bridewells - workhouses, houses of correction, papal prisons or, later on, penitentiary houses, as forerunners of the modern prison – were crude structures employed to confine unruly vagrants.

The paper herebelow analyses the betterment of prison conditions across the continent, but mostly in Romania, with special reference to the reform of the penitentiary system. As part of the larger context of the justice reform, this is a prerequisite of the much debated accession to the EU.

Denial of freedom as punishment for crime was particularly attractive in the Middle Ages, a time when the revolutionary struggle over freedom became commonplace. What could be more punitive than taking freedom away from deviant individuals?

But restraint and punishment did not alone support the idea of imprisonment.
In the early beginnings of the 16th century, when the first prisons were actually built in Europe, there was a good deal of interest in utopias (see Sir Thomas More's *Utopia*) which, combined with strong religious fervour, came to justify and rationalize imprisonment on philosophical and moral grounds.

Though it may seem strange today, early prisons were designed to be utopian societies, models not only for control and treatment of criminals, but also examples of a social order that could be generalized.

One of the most important European trends leading to the creation of prisons was the closing of the English monasteries by Henri VIII, as a phase of the English Reformation. This increased the number of vagrants and the need for more bridewells. These bridewells (from St. Bride Well, the

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site of the institution created in 1557) were the earliest congregate prisons, having large open dormitories and no separate cells.

Another influence stimulating for the origins of the prison was the Christian humanitarianism of the Catholic Church. Fillipo Franci, a Catholic Humanitarian in Florence, set up a small workhouse for recalcitrant and vagrant boys about 1650. The work of Franci is thought to have inspired the creation of the papal prison for delinquent boys, opened in Rome, in 1704, by Pope Clement XI, as a section of the hospital Saint Michael.

Probably the first north European workhouse, which took on the outstanding characteristic of the modern prison – cellular confinement and the use of hard work as a disciplinary and reformative measure – was that built by Hippolyte Vilain at Ghent, Belgium, in 1773.

The movement for a more humane body of criminal law, an aspect of the 18th century period of Enlightenment, also encouraged the rise of prisons. The greatest figure here was Cesare Beccaria, who published his famous *Essay on Crimes and Punishments* in 1764. In this, he argued vigorously for the abolition of brutal criminal codes, with their proliferation of capital crimes and barbarous corporal punishments.

The English reformer, John Howard, who was stimulated by both Beccaria's ideas and his own experience with the terrible conditions in British jails and prison hulks at the time, took up the battle to reform the English criminal law and to build better jails. Howard twice visited the papal prison at Saint Michael. In 1779, aided by Sir William Blackstone and Sir William Eden, he succeeded in getting the English Parliament to pass an act to establish penitentiary houses based on the idea of cellular confinement and the employment of prisoners.

This law was never systematically carried out, but several improved local jails and penitentiary houses, containing cells, were constructed. It had considerable influence on American reformers, for it was studied by the Philadelphia Prison Society and warmly commended by them in a pamphlet published in 1790.

In fact, some very important ideas and practices which led to the establishment of prisons in Europe are still associated with the American Quakers. Two types of prisons were developed in the United States, and for a number of years advocates of one kind argued with advocates of the other over their relative merits.

One type of prison was developed in Pennsylvania and reflected a strong Quaker influence. Its major characteristic was solitary confinement of prisoners; it was sometimes called the "segregate" prison system. Inmates, held in solitary confinement, were allowed no contact with the outside world or each other and were expected to remain in their cells, read the Bible, reflect on their crimes and "repent". Hence the term "penitentiary".

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A different kind of prison was built at Auburn, New York, where prison inmates were held in cells at night, but released during daytime to work together at various forms of hard labour. This "congregate" system rested on the belief that the way to repentance and reform, as indeed the way to salvation, is by hard work. Both systems imposed total silence on prisoners, and in New York an elaborate form of marching – a shuffle called the "lock-step" – was meant to move prisoners in silence from their cells to their places of work.

These prototype maximum-security prisons became world famous, were visited, evaluated and had their merits debated by European scholars, politicians and reformers. David Rothman, a historian who did extensive research into the origins of prisons, asylums and other "welfare" institutions, comments:

"Americans' understanding of the causes of deviant behaviour led directly to the invention of the penitentiary as a solution. It was an ambitious program. Its design – external appearance, internal arrangement and daily routine – attempted to eliminate the specific influences that were breeding crime in community and to demonstrate the fundamentals of proper social organization (…). A structure designed to join practicality to humanitarianism, reform the criminal, stabilize American society and demonstrate how to improve the condition of mankind, deserved full publicity and close study (…). By the 1830s, the American penitentiary had become world famous".

A singular combination of the two types of penitentiaries is to be found at the British legal and social reformer, Jeremy Bentham. He worked out a plan for a circular prison with outside cells, which became famous in history under the name of the "Panopticon" or the "inspection house", because of the ease with which the whole institution could be observed from a central position within. Bentham derived the idea from the plan of a factory designed for easy supervision. He first outlined his architectural plan in 1791. No panopticon was constructed in England, though the Millbank prison, whose construction started in 1812, was so designed that all cells could be seen from a central position within the institution.

Despite the harsh living conditions of the inmates, Bentham's panoptic prison stands out as a reformed facility; so, it is worth reflecting that, by the time he had imagined his hyper-organised machine, it was common for prisoners to be herded together promiscuously in unhygienic places, where disease and death were common fates. However, critics argue that Bentham's master plan was not so much a result of humanitarian impulses, as a need to extract economic value from the prisoner's labour in order to pay for their incarceration. A few panoptic prisons, with modifications of Bentham's original plan, were erected on the continent in the early 19th century.

The dungeons, "gaols", workhouses and similar short-term arrangements, destined to hold offenders only until they could be executed, pilloried, branded or deported, were thus replaced with prisons. They were developed as alternative internal penal colonies, receiving and holding

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"outlaws" banished from local communities and transported to the closed, walled communities called penitentiaries.

The conditions experienced by early penitentiary inmates were at best drab and unpleasant, at worst degrading and brutal. In theory, penitentiaries were not designed to be *places **for** punishment*, but rather *places **of** punishment*. That is, merely being there was punitive; additional punishment was added for better internal control, not necessarily as a purpose of the law.

Prisoner lifestyle was controlled by the principle of "least eligibility", applied in contemporary societies by communist regimes. This principle limits the kind of food, housing, care and treatment affordable by prisoners to levels common to the poorest, "least eligible", free citizen. In short, penitentiary conditions were not permitted to exceed bare minimum necessities.

Both structurally and in their internal programmes, penitentiaries were austere, stark and uniform, providing minimum caloric diets, minimum standards of heat, light, education, training and recreation. They would use various methods to subjugate prisoners, one of these being that of shaving their heads and clothing them in striped uniforms, stripping them of any identity.

The question that arises then is how much have conditions of imprisonment changed since the early days of Panopticon or Auburn?

Many of the prototype prisons built in the beginning of the 19th century still exist, only they bear different names: "correctional facilities", "penitentiaries". The silent system is gone and the ready use of whip and lash to enforce conformity is no longer allowed.

Yet, incarceration in modern penitentiaries is still a harsh experience, brutal and brutalising. The ghosts of the past have not disappeared. The general lack of privacy, in which no man sharing a cell can ever be alone, is dehumanising. The restrictions on having baths or showers and the infrequent provision of changes of clothes, the lack of access to a lavatory, all contribute to the brutalising of those living in a penitentiary.

It is true that, in accordance with the new European standards, some of these buildings have softened the architecture and reduced the drabness of steel bars and grey paint. In France, for instance, most of the penitentiaries were designed by the famous architect Guy Autran.

Educational and training programmes in many of these "pastel prisons" are better, more closely related to outside work opportunities than the original forms of hard labour. But they hold only a few selected prisoners. In the main, the walls, the cells, the treeless yards and regimented existence of early prisons remain the pattern in maximum-security institutions today.

Measured against progress in the European society generally, changes in conditions of imprisonment are minimal. This is very much the case with current Romanian penitentiaries.

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In the perspective of a future integration in the European Union, Romania is expected to respect also the rights of the persons detained in prisons and penitentiaries. This translates by a real improvement in the state of such facilities.

Is is essential to bear in mind that incorporation of the acquis into the field of justice is not in itself sufficient; it will also be necessary to ensure that it is actually applied to the same standards as those which apply within the Union (the issue was highlighted by the European Council in Luxembourg).

In Romania, the former General Directorate of Penitentiaries – presently the National Administration of Penitentiaries (NAP) is subordinated to the Ministry of Justice since 1991, being part of the Romanian judicial system, so that the reform of the latter as a whole cannot possibly be achieved without also improving the very functioning of the penitentiary system.

An analysis of the existing situation reveals the main problems the penitentiary system is confronted with: an antiquated legislation since 1969, which is no longer in compliance with the new socio-economic changes in Romania, buildings older than 100 years, dark, dismal, in a state of disrepair, poor sanitary devices, the highest European disproportion between prison staff and prisoners, budgetary subventions below the necessary minimum and overcrowded spaces: on December 31st 2003, there were 42,815 persons held in the prison units against an accepted capacity of 37, 995 spaces. The overcrowding of penitentiaries considerably reduces the staff concerns and efforts towards the prisoners' rehabilitation and social reintegration as well as towards the achievement of the punishment's goals.

Despite the efforts made towards the modernization of penitentiaries, most of them are still below the European standards in the field. In most penitentiaries, prisoners are held together in cells of 50 to 100 beds, with water-closets below normal standards, no showers or places to deposit food and personal belongings. With few exceptions, penitentiaries have no refectories, and meals are served in severe conditions inside the cells.

All these make a visit to a Romanian penitentiary for the first time a deeply disturbing experience. It is an assault on the senses: the banging of cell doors on the echoing landings, the sight of several men in a cell built for one, airlessness, clanking heavy keys, flaking paint. The most pervasive impression of all derives from the deplorable physical conditions.

The authorities' ignorance or refusal to deal with such problems just a few years ago betrays a certain myopic view to the situation and thus to its solution. Such aspects of life in prison will make future historians be amazed that an otherwise tolerant and humane society could have shirked prison reform for so long.

In its 2001 Regular Report (on Romania's progress towards accession), the European Commission mentioned that "overall prison conditions are often extremely poor and prisons remain severely overcrowded". The same conclusion is reached in the 2002 Regular Report: "..prison

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conditions continue to be extremely poor. While certain positive developments have taken place…, these have only had a limited effect. Despite a small reduction in the prison population, severe overcrowding is the most serious problem… living conditions remain harsh and the poor quality of food, limited medical care and unhygienic conditions are issues which still need to be addressed".

In Romania, petty offenders tend to overpopulate prisons. Manuela Stefanescu (programme coordinator within the Association for the Protection of Human Rights, Helsinki Committee), a participant in the "Legal System Reform in the Balkans", stated that theft accounts for about half the convicts in Romanian penitentiaries. In the other EU countries, such minor offences benefit from the so-called "alternative punishments", such as community service. The overpopulation of penitentiaries resulted in situations in which a roughly 30sqm room is "packed up" with as many as 18 convicts, so that the relevant EU standards – 4sqm per convict – remain an objective almost impossible to attain. Mrs. Stefanescu also added that in Romanian penitentiaries, a psychologist, who plays a key role in the convicts' social reintegration process, is allotted to an average of 500-600 inmates.

The 2003 Regular Report states that "While efforts have been made to improve prison facilities, overall prison conditions are very poor: the quality of food is below acceptable standards; educational and cultural activities are insufficient; and staff shortages mean that many inmates spend all day locked in their cells".

All these Reports reach a dominant conclusion: the changes that have been made were made slowly and reluctantly. Insignificantly, above all. The life of a penitentiary inmate today is still one of strict regimentation, rigid rules and scandalous lack of hygiene.

This entails a simple reasoning, i.e. there can hardly be a "positive" atmosphere in prison. Such statement is supported by Michel Foucault, who excellently demonstrated the structure of criticism of the modern correctional institution. It is composed of six observations which, taken together, unremittingly denounce "the failure" of prison to perform the functions officially assigned to it at different periods. This criticism may be formulated synthetically as follows : "*prisons do not bring down the rate of crime*", "*confinement causes recidivism*", "*prison necessarily produces offenders*", "*prison encourages the structuring of a criminal milieu*", "*the situation open to prison-leavers is conducive to recidivism*", "*prison produces offenders indirectly by impoverishing the prisoner's family*".

To these pertinent foucauldian observations, related to the malfunction of detention, two more sociological "accusations" could be added: the pathogenic meaninglessness of vacuous time in prison and still more comprehensively, the patent disconnection between real prison experience and punishment as it is construed in judicial discourse. These critiques are still quite consonant with concrete, qualitative findings as to the present-day correctional scene, with its stigma, uncertainty,

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powerlessness, broken families, corporal punishment, disaffiliation, unequal prison conditions, physical and symbolic violence, etc.

The history of corrections has shown that it is precisely the search for emergency solutions to the most crucial problems and to the most intolerable situations which has enabled the institution to adjust to contemporary sensitivities. This adjustment turns out to be essential for any correctionalist project.

So far, Romania has witnessed a few important changes in the penitentiary system, among which one of the most relevant is the progressive demilitarization of the system (e. g. appointment of a civilian manager (a former magistrate) as General Director of penitentiaries and of civilian directors in about one third of the country's penitentiaries). In the 2002 National Programme for the Accession of Romania to the EU it is stipulated that the Law on the status of the penitentiary personnel, by which demilitarization is accomplished, will be adopted.

More precisely, the enactment of a Law on the status of the probation personnel is stipulated for January 1st 2006, a date which is thought to bring about the implementation of a new managerial system, in compliance with the European practice in the field. It is worth mentioning that by its actual enactment, the current bill will have been opposed democratically to various NGOs (e. g. APADOR-CH, GRADO, the Commission for Social Dialogue) in order for the latter to reflect upon the initiative .

The Ministry of Justice, through the NAP, has been developing several cooperation programmes with Dutch prisons, within the MATRA Programme, including with NGOs, such as Terre des Hommes, CREDU, Prison Fellowship Romania, Family and Child Protection Foundation, Foundation for an Open Society. The latter has initiated (through the Centre for Legal Resources) some projects destined to act as catalysts in the reform process started by the NAP; they mainly aim at: training senior penitentiary staff in the management of penitentiary administration and in human rights, developing inmate knowledge as regards their rights and duties, controlling disease spreading inside penitentiaries, extending the current network of establishments by new penitentiaries and probation services.

As a staunch supporter of enlargement, the United Kingdom remains strongly committed to Romania's accession to the EU and to helping Romania in the associated reform process. To this end, the United Kingdom is engaged in a wide range of practical support in key areas for Romania's efforts to prepare for EU membership.

Through the DFID (Department for International Development), the UK will assist our country in the future strengthening of a national probation service, advising on legislation and training for probation officers. The UK is actually junior partner in the EU Phare Twinning Project on Reform of the Penitentiaries and the Probation Services.

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Over the last few years, aiming at the system's reform, the NAP has focused on adapting its activity to the European Prison Rules, on inducing the penitentiary staff a new mentality, on "humanising" penitentiary rules and discipline .

Another primary goal of the Penitentiary Reform has been the prevention and combating of drug traffic in penitentiaries, and the protection of inmates serving prison sentences. Thus, the penitentiary staff was trained to identify drug use as well as the means by which narcotics are smuggled into prisons. Special training was envisaged for the personnel working with long-term prisoners and lifers.

Furthermore, the newly proposed prison order legitimates itself through rethinking imprisonment strategy for juvenile delinquents: proper accommodation conditions, schooling, feeding, equipping etc. All these facilities are intended to help all prisoners, but mostly young offenders become less dependent and more self-disciplined, and as a result, acquire a more positive self-image.

If prisoners are to survive as law-abiding citizens when they are released, it is essential that they maintain contact with their families. Prison regulations provide for a minimum number of visits of minimum duration, allowing individual prisons discretion to increase them.

Unfortunately, the combination of overcrowding and the organisational problems this creates, while coping with the different arrangements for visiting of remand prisoners, results in many penitentiaries providing for little or even no visiting above the minimum .

The psychological effects on families and prisoners alike are enormous. Many relatives have to travel considerable distances to see prisoners, making the short time allocated per visit particularly harsh. Most inmates are allowed daily visits of no longer than ten to fifteen minutes, an absurdly short time. In this respect, the NAP experts have understood that something has to be done about the inconvenience; it would surely be less frustrating for prisoners and relatives alike if more time per visit with fewer visits were allowed.

Maintaining contact with families and friends through letters was constrained by oppressive rules a few years ago. All letters, incoming or outgoing used to be censored by prison officers. The fact that letter writing was scrutinised on a large scale resulted in many prisoners feeling inhibited and giving up this little "luxury". It added to the distance between them and the outside world and made re-establishment of close ties upon release more difficult.

Things have apparently changed due to the scheduled reform. The right to correspondence as well as the right to petition public authorities, both national and international, is now unlimited and total confidentiality is guaranteed. Also, a recent concession has been made in some penitentiaries, allowing inmates free access to the media.

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A delicate issue approached by the promoters of the Penitentiary Reform was the situation of women in prison. These women suffer more than men because of these arrangements, as the smaller number of women in prison means that women compartments are widely dispersed in several penitentiaries. Since many women in prison have children, the psychological damage caused by the severance of family relationships is especially acute. Besides, the total lack of privacy in which visits take place in Romanian prisons is yet another deprivation the reformers have to fight against.

A definite priority has been to provide better living conditions for imprisoned women and ensure the right to medical assistance to prisoners..

With the aid of external loans from the EU, contracted by the Ministry of Justice and guaranteed by the Romanian Government, penitentiary hospitals have been properly equipped.

In the same spirit, in order to assure the prisoners' rights, the Romanian Government passed the Emergency Ordinance no. 56/2003, approved by Law no. 403/2003.

Yet another important issue, related to the larger framework of the Penitentiary Reform, was addressed, namely the prisoner's transportation. According to the UN Assembly on Prisoners' Treatment: "Prisoners' transportation in bad conditions of ventilation or lighting as well as by any other way that could produce them physical suffering is forbidden" and to the European Prison Rules: "Prisoners' transportation by means of conveyance without the necessary ventilation or lighting that could provoke them any kind of harm or debasement is forbidden".

In close connection with the former, the technical improvement and upgrading of the electronic surveillance system has been a major preoccupation of the NAP members.

These problems pertain to the internal aspect of prison life, which strictly defines shorter or longer periods of detention. The "after-life" of former convicts, i.e. the life following the release from prison, is totally disregarded.

Many, if not all of the ex-prisoners are homeless when released. Due to the lack of accommodation, ex-prisoners face further problems in claiming social security benefits, finding work or establishing themselves in a normal life. Not surprisingly, homelessness is a major influence upon re-offending. Former prisoners also suffer from employment problems. It is amazing that no accurate statistics exist, but it is known that most prisoners are released to life on the dole.

Few prisoners have a job arranged on release, a situation which has been exacerbated by the high unemployment rates of the last decade. Many employers are reluctant to take on people who have been in prison for fear that they might be unreliable. This turns into a self-fulfilling prophecy, since people without a job are more likely to drift back to crime.

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A little more imagination, rather more attention to the evidence in front of them, and greater political courage in the field of justice affairs would have led Romanian authorities down a quite different path.

One possible solution would be laws that carefully reduce the prison population. It ***can*** be done, as the Dutch, French or German (or many others) experiences demonstrate. Substantial sums of public money could be saved, even after investing more resources in community service orders and other non-custodial sanctions.

Having fewer men and women in prison would make it easier to provide a more humane regime, admitting that imprisonment must and does involve an element of retribution, but with the essential objective of the rehabilitation of prisoners.

By their actions, some men and a few women in all societies forfeit their right to their freedom. Prisons will always be needed for the small number of human beings who cannot control their aggression and who behave violently towards the others, or whose uncontrollable greed undermines the society in which they operate. They should not be used as dumping grounds for mentally ill or socially inadequate petty offenders, nor for undisciplined and immature adolescents and young men, who, given careful handling and a little help, will in most cases grow out of their criminal behaviour.

The task is clearly set out in penal policy, there is no miscomprehension ahead. Yet, the Reform of the Penitentiary System is still miles away from attaining its long-term, even mid-term goals.

One role that imprisonment clearly fulfils is that of taking action against socially defined deviants. It seems though that most prisons only give the impression of doing so – or of doing something. In a society unable or unwilling to address the fundamental social and economic causes of criminality, this symbolic action substitutes for substantive reform.

Initiated about 1996-1997, the thorny process of prison reformation, an intrinsic part of the Justice Reform, has had its ups and downs. It remains a largely feasible project in theory, yet a regrettably inconsistent one in practice, probably due to that ancient "historical inertia" we keep complaining about.

Dostoevsky once remarked that he measured the quality of a society by the quality of its prisons. In the present case, it may be as appropriate to judge us by their quantity, too.
In either case the judgement would be too harsh indeed.

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