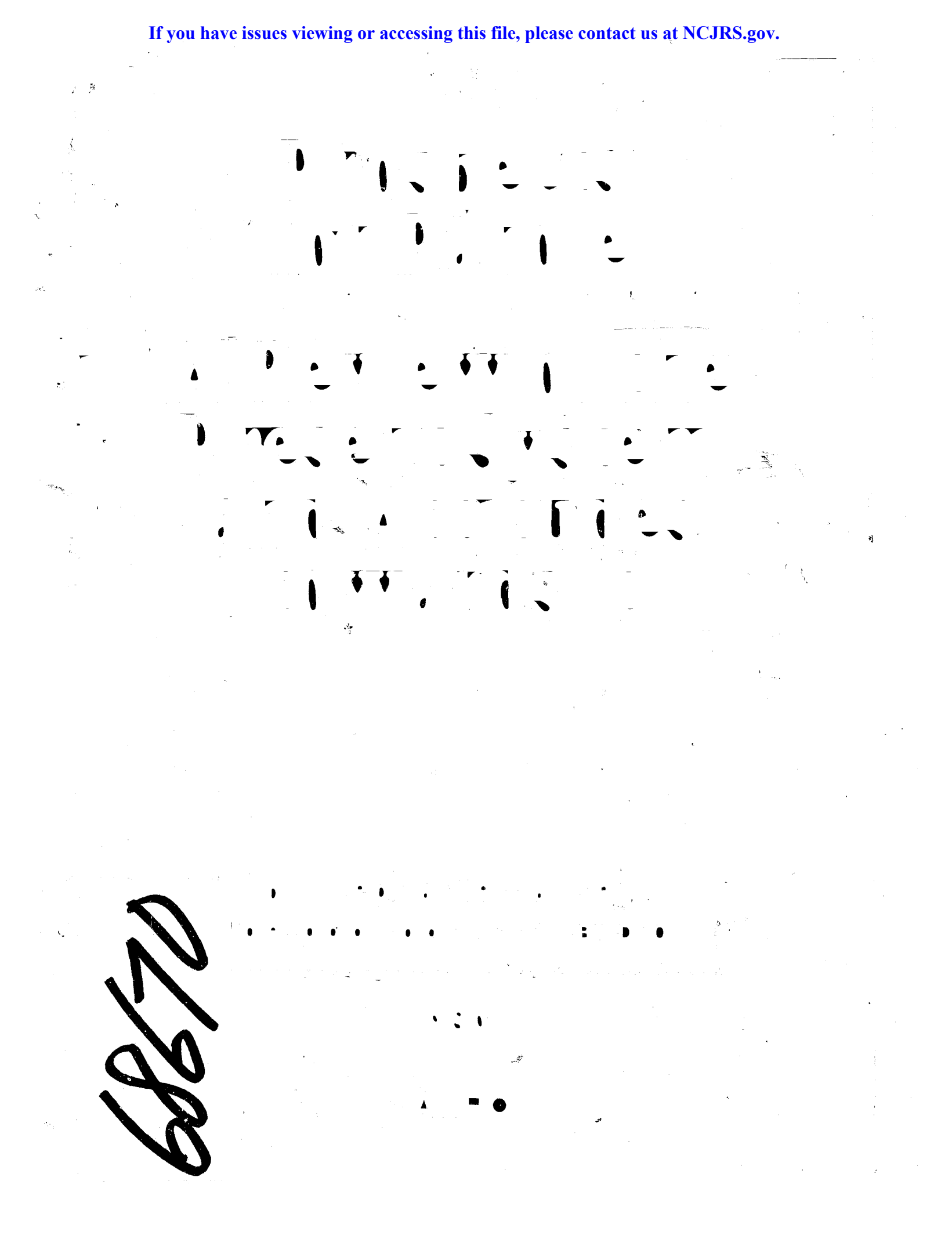

Prospects for Parole

A Review of the Present System and Attitudes towards it

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Foreword by Lord Hunt KG CBE DSO

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FOREWORD

As one of those who were entrusted with the task of giving effect to the conditions under which early release could be granted to prisoners under the terms of the Criminal Justice Act of 1967, I have no doubt that the parole scheme has served the public interest well during the 12 years of its existence. Within our penal system the operation of the scheme has had the effect of greatly improving the documentation of prisoners, thereby creating a better knowledge and understanding of inmates by the staff. Closer co-operation has been generated between the Home Office and the prisons, the prison service and the probation service, as well as with the Review Committees and the Parole Board, and with other agencies concerned with the war against crime and the welfare of prisoners.

Nor can there be any doubt about the benefits to many thousands of offenders whose detention in prison has been shortened, and who have been able to complete their sentences in the community under the supervision of and with support from the probation and after-care service.

In all these respects, the introduction of parole into our penal system has proved to be a positive asset.

But the scheme has also revealed important defects which have given rise to understandable concern. A review carried out by the Home Office will shortly be published, which will provide an opportunity for open debate.

This booklet, which reviews the history and present operation of the system and examines attitudes towards it, is a helpful contribution to constructive discussion of this key instrument in the treatment of offenders and in the wider efforts to reduce crime.

John Hunt

Part 1 — THE PRESENT SYSTEM

Introduction

When parole was instituted in 1968 it set out to gain public acceptance. As the 1968 *Report of the Parole Board* states:

> "There are bound to be doubts about the very concept, reservations regarding the extent to which it should be applied and differing views about the methods of administration. There will be inevitable set-backs. In all these respects, the successful establishment of parole will depend to no small extent, on the sympathy and confidence of the public." [1]

When one examines the percentage increase of prisoners paroled between 1968 and 1978 it would appear that parole has gained public acceptance. This point is developed further in the later section on Statistics and Research. This may well have been achieved by the caution exercised by the Parole Board, and also the Local Review Committees (LRCs) in deciding who was suitable for parole selection.

Whilst its successes must be recognised the parole system has been a topic of discussion since its inception. Criticisms have been levelled against it; alternative systems have been proposed, changes within the present system have been suggested. In fact there is widespread agreement that the present system is in need of revision although feelings differ as to what form this revision should take. Some critics go further and favour abolition.

One proposal often canvassed is that there should be a system whereby automatic release combined with supervision for most prisoners should be granted after a set portion of the sentence has been served. Certain cases would still need to be reviewed, but, were this method to be adopted, the work of the Parole Board would be greatly reduced and the new Board could be reconstituted as a judicial body.

The specific changes most often put forward by those who would retain the present system but in an amended form include:

(a) Prisoners should be given reasons for the refusal of parole.

(b) LRCs should either be abolished and replaced by Regional or District Parole Boards of a higher status so that the process is shortened * and the prisoner is given a personal hearing together with a decision at the end of the hearing, or, alternatively, those appointed as members of LRCs should receive such training as would lead to a greater consistency in decision-making. It is generally agreed that the Central Board should be retained, but views differ on what its function should be.

(c) Prisoners should be better informed about how parole operates. Such information being made available is dependent upon the ability and willingness of the Parole Board to state its criteria more clearly than it has done to date.

The basic assumptions on which the system rests have also been criticized especially by those who favour a more judicial model. Our parole system is an administrative one, and decisions are made by executive authority through processes which are closed to scrutiny and are not judicial.

Other less widely held views include:

(a) The consent of the Home Secretary is not necessary in all cases where parole is granted and the removal of this requirement would decrease the overall length of the process and thereby decrease the period of anxiety which the prisoner and his family undergo while awaiting a decision.

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* Not all commentators agree that the replacement of LRCs by Regional Parole Boards would lead to a shortening of the parole process. Some would argue that the bulk of the delay occurs within the Home Office.

(b) The qualifying sentence for parole eligibility should be reduced from 18 months to nine months.

(c) The role of the probation and after-care service has been problematic. Some probation officers doubt whether the probation and after-care service is the most appropriate body to supervise parolees and some also question if sufficient weight is given to the recall recommendations made by them to the Parole Board. (This was brought to the notice of the author when attending conferences on the subject of parole.)

The Background to Parole

The present parole system grew out of interest expressed in the need for compulsory after-care. In 1958 the Advisory Council on the Treatment of Offenders presented the case for compulsory after-care in the belief that certain offenders needed "guidance and help on release". They hoped that this "guidance and help" would prevent further criminal behaviour. [2] Legislation for such a scheme was provided in the Criminal Justice Act 1961, to be implemented as soon as the probation service was in a position to be able to undertake such a duty. However this section of the 1961 Act was not implemented. In 1964 a Labour Party Study Group published a report, entitled *Crime – A Challenge to us all*, which presented a case both for compulsory after-care and for parole. Of parole the group said:

> "We doubt the value of keeping men in prison after they have learned their lesson; at this point the cost of continuing to keep them in prison is no longer justified. Parliament has provided that borstal sentences shall not be for more than two years, but that the Prison Department can release any borstal trainee under supervision after he has served at least a quarter of this period. We recommend that the Home Secretary should appoint a Parole Board, with one or more representatives of the judiciary upon it, with similar powers in relation to any sentence of imprisonment." [3]

When the White Paper *The Adult Offender* appeared in December 1965, it was apparent that the idea of compulsory after-care for all prisoners had been abandoned, but emphasis was placed on the idea of parole, of which compulsory after-care would be a constituent element, but only for those prisoners selected to be released on licence. In advocating parole the White Paper put forward the proposition that "a considerable number of long-term prisoners reach a recognisable peak in their training at which they may respond to generous treatment, but after which, if kept in prison, they may go downhill. To give such prisoners the opportunity of supervised freedom at the right moment may be decisive in securing their return to decent citizenship".

Elizabeth E Barnard, until recently a lecturer in criminology (at the University of Sheffield) and a former member of the Parole Board, comments:

> "The official objective was clearly rehabilitative: after some decades of optimism about the potential of training and therapy in the custodial setting, it was thought that further progress could be achieved by some flexibility on discharge dates and by supervision during the difficult period of transition to ordinary life. It was alleged that prisoners reached a "recognisable peak" in their potential for good post-custody adjustment, and that if they were detained for longer, they may deteriorate. It is interesting to compare this notion with the dominant academic theories of the period on the effect of imprisonment. There was little British research on the topic, though the Morrises' Pentonville study and West's and Hammond's respective studies of preventive detention supported the idea of deterioration, if not peak. Although piecemeal comparisons of criminal justice systems must be treated with extreme caution, some reference to relevant American work may be appropriate. Wheeler, validated by Glaser and others, suggested a trough, rather than a peak in the prisoner's adaptation to conventional norms. As this finding emerged from a system of indeterminate sentences and parole, it may not have been applicable to Britain, but it had not been tested. However, Mannheim and Wilkins had found a small independent positive correlation between early release and absence of reconviction among borstal boys, who were more comparable, in age, career and penal situation, to Wheeler's reformatory sample. It is safe to say that the theory underlying the proposal to introduce parole to Britain rested on weak empirical foundations." [4]

Dr Roger Hood, Reader in Criminology and Fellow of All Souls College, argues that no research has shown a statistical relationship between length of time in custody and subsequent reconviction. [5]

Parole was introduced by the Criminal Justice Act 1967 and the first parolees were released on 1 April 1968. Fixed sentence prisoners are eligible for parole after serving one third of their sentence or 12 months from date of sentence, whichever is the longer. Because prisoners are normally released after serving two-thirds of their sentence, this means in practice that parole applies only to those serving more than 18 months.

The Machinery of Parole

All eligible candidates for parole, except the proportion who each year decline to be considered * have their cases reviewed annually. The candidates are considered first by the Local Review Committee of their prison, which is appointed by the Home Office. The Local Review Committee (LRC) is composed of a senior member of the prison staff, a member of the probation and after-care service, a member of the prison's Board of Visitors and two independent members. One member of the Committee interviews the prisoner whose case is under consideration before the Committee meets. During the interview the interviewer should make note of what the prisoner has to say but he should not add his own personal assessment.

When the LRC meets to consider the case the governor or his substitute (in his capacity as a member of the LRC) as well as one member from each of the groups mentioned above and two representatives of the public should be present. The LRC considers a parole dossier which may include reports by prison staff including that of a probation officer within the prison, a recent home circumstances report prepared by a probation officer working in the prisoner's home area or the area in which he intends to live on release, police reports concerning the present offence and previous convictions, a copy of the social enquiry report which was presented to the court, medical reports where appropriate and copies of routine prison records. The prisoner is also allowed to make a written statement to the LRC, setting out all the points which he wants to be sure they will take into consideration. A wife or other relative can write to the LRC to support his application, as may prospective employers to confirm a vacancy. Having reviewed the case, the LRC then forwards the case papers together with its recommendations to the Parole Unit at the Home Office.

In some cases, under S35 of the Criminal Justice Act 1972, the Home Secretary grants parole on the LRC's recommendation without referring the case to the Parole Board. It was agreed in 1975 that, if the LRC unanimously makes a favourable recommendation, prisoners serving sentences of up to and including four years could be released without reference to the Board, except where the offence involved sex, violence, drug trafficking or arson. Prisoners serving sentences of up to two years for the above excluded offences can also be released solely on the unanimous favourable recommendation of the LRC. All other cases with favourable recommendations from at least one LRC member are considered by the Parole Board.

At the Home Office Parole Unit, the key features of the case are fed into a computer which has been programmed to give weighting to various factors, based on extensive research, and which provides information on the percentage probability of reconviction within two years of release. The Parole Unit refers cases to the Parole Board for consideration if the LRC recommendation was unanimously unfavourable but the computer reconviction score is less than 50%. Cases are also referred if the prisoner is a woman; if the sentence is nine or more years and it is the third or a later review; if there has been a favourable recommendation for an associate who is serving a similar sentence; and if the case has previously been considered by the Parole Board. If the LRC recommendation was unfavourable and the case falls into none of these categories the prisoner is informed that parole has been refused.

The Home Secretary is not obliged to accept a favourable recommendation from the Board, but he almost always does. On the other hand, he cannot release on parole a prisoner who has not been favourably recommended to him. In practice only a small number of cases are referred to the Home Secretary personally.

Members of the Parole Board are appointed by the Home Secretary. When set up in 1967 the Board consisted of 16 members. Because of the increasing caseload with which the Board has to deal the membership has been steadily increasing. The Board as at September 1979 had 48 members of which there were

* LRCs have to consider those who opt out, if only to ensure that it is their intention, and staff must write reports on such prisoners.

three High Court Judges, four other judicial members, seven psychiatrists, five chief probation officers, three criminologists and 26 independent members. The Criminal Justice Act 1967 stated that the Parole Board should number among its members:

(a) a person who holds or has held judicial office;

(b) a registered medical practitioner who is a psychiatrist;

(c) a person with knowledge and experience of the supervision or after-care of discharged prisoners;

and (d) a person who has made a study of the causes of delinquency or the treatment of offenders.

The term of membership is not usually for more than three years. Annually the Board deals with about 5,000 cases. Cases are usually considered by panels of about five members.

When the panel reaches its decision the recommendation is forwarded to the Parole Unit which, if the recommendation is favourable, decides whether there are any features in the case which would necessitate referral to a Minister. The prison is ultimately notified of the result. If the final recommendation is favourable, then notification of not less than three weeks is given so that a supervising probation officer can be appointed and other necessary arrangements may be made for release.

Although neither body states reasons for refusing parole in individual cases, both the LRCs and the Parole Board follow criteria agreed between the Home Secretary and the Board. The current criteria were issued in December 1975. They state the factors to be considered and the weight to be attached to them under the following headings:

nature of the offence

criminal and other history

prison behaviour and response to treatment

medical considerations

home circumstances and employment prospects on release

co-operation with parole supervision

Prisoners released on parole are subject to compulsory supervision by a probation officer and must comply with conditions laid down in their parole licence. Failure to comply with any conditions may result in revocation of the licence and recall to prison. If the supervising probation officer judges that a parolee is in danger of committing another offence, this may result in recall. The standard conditions of release require the parolee to report to a probation office, to be supervised by a probation officer, to remain in contact with the officer as required, informing him of any changes of address or employment and to "be of good behaviour and lead an industrious life". Further conditions may be inserted if the recommending panel desires them.

Except in the case of prisoners under 21 and a small number of prisoners serving extended sentences, the period under compulsory supervision runs from the date of actual release up to the date when the prisoner would have been released, given one-third remission, if no parole had been granted. Prisoners serving life sentences remain on licence for the rest of their lives, although supervision may be terminated, and are therefore subject to recall at any time should circumstances warrant it.

Statistics and Research

When the first prisoners were released on licence in April 1968, there was great disappointment on the part of prisoners accompanied by an outcry in the press because fewer than 10% were actually granted parole.

Clearly the Parole Board considered that there was a need for caution in its approach. Perhaps this caution can partially be explained by the need which the Board felt for balancing both the hopes and fears attendant on the introduction of parole.

Since 1968 however the paroling rate has increased. In the year ending 1 April 1968, of all prisoners eligible for parole, only 8.5% were recommended. In August 1975 an announcement made by the Home Secretary indicated that he felt the use of parole could be extended. Statistics show that it has been. The overall paroling rate (i.e. the percentage of determinate sentence prisoners eligible for parole who receive it at some stage during their sentence) rose from 44.9% in 1974 to 49.6% in 1975, 54% in 1976 and 62% in 1977. In 1978 it fell to 59%. Between 1974 and 1977 the recall rate has risen from 7.7% to 10.3%. In 1978 however it fell again to 9.1%. According to *Prison Statistics — England and Wales 1977,* [6] the reconviction rate of adult males who were released on parole when compared with the reconviction rate of those who were eligible for parole (i.e. served sentences of over 18 months), but served their full sentence less any remission, shows that in every sentence range, the reconviction rate for those paroled was lower than that for those released after serving sentence in full. When a more detailed analysis was carried out it became evident that there were large differences in the reconviction rates of those paroled and those not paroled who were serving sentences of over four years. (See Appendix — Tables 1 and 2)

It should be noted that when the Home Office Research Unit (HORU) had previously carried out a similar exercise comparing the reconviction rates of paroled and non-paroled offenders released in 1968 and 1969/70 its findings showed that "there was no evidence that parole reduced the number of those reconvicted over a two year period." * However an analysis carried out at six months after release showed that parolees' reconviction rates were better than expected. HORU suggested:

> "This could imply that parole does have an effect in reducing reconviction during the currency of the licence. But as the non-parolees did worse than expected this is also consistent with a selection effect i.e. parole authorities considered factors not included in the predictor, for example the prisoners plans on release." [7]

The later findings concerning those released in 1973 remained consistent over a lengthy period: data contained in *Prison Statistics — England and Wales 1978* demonstrated that after three years discharge large differences between the reconviction rates of those paroled and not paroled remained for those discharged after serving sentences of over four years. Moreover, this remained true for all risk groups. The data offers some support for the notion that a beneficial effect on the reconviction rate may have resulted from the fact that those discharged from longer sentences were under supervision for a longer time than those discharged from shorter sentences. This is because "amongst those classified as 'medium risk' or 'high risk' who were discharged from sentences of over four years and up to ten years, the proportion who were reconvicted amongst those released on parole rose much more slowly than the proportion amongst those released without parole, during the first six months after discharge, when the majority of those paroled were under supervision. This difference was much smaller for those discharged from shorter sentences. Later on in the follow-up period, however, the difference between the proportion of those paroled and those not paroled who were reconvicted stabilised or contracted, showing that in the later period those paroled were being reconvicted at the same or a faster rate". [8]

However a selection effect could also have played a part:

> "The lower reconviction rate of those on parole from sentences of over four years could also have resulted from the use, by the Parole Board, of relevant selection criteria not taken into account in the classification of risk. For example, when assessing suitability for parole, the Parole Board takes account of the availability of a job and permanent accommodation, which although they cannot be included in the risk group classification may also contribute to the lower reconviction rate of those paroled." [8]

* For details see Home Office Research Unit Study No.38, chapter 6.

Each year between 6% and 10% of eligible prisoners choose to opt out of consideration for parole.[9]

HORU[7] has documented the existence of considerable discrepancies between criteria adopted by the various Local Review Committees. Seventy-two LRCs exist in England and Wales, and it is acknowledged by both the Home Office and the Parole Board that it is important that there is consistency in the recommendations made by LRCs. The Parole Board in its Report for 1971 observes:

> "We feel it is important to stress that the criteria used by the local review committees and by the Board in considering the merits of each case for parole are the same and are based on the guide lines which had been identified by criminological research as the factors significant for success or failure after release from custodial sentence."[10]

That consistency did not exist was illustrated by a survey, carried out by HORU between January and May 1972, which involved the first review decisions of 24 LRCs. Expected recommendation rates were wide-ranging; of those eligible for parole, 7% at Parkhurst, 8% at Dartmoor and 67% at Leyhill were expected to be recommended for parole. It was found that at open prisons LRCs tended to make positive recommendations for a larger percentage of prisoners than was expected, whilst in closed prisons, with the exception of Gartree, the opposite was found to be the case.

HORU not only found that some prisons recommended a higher or lower proportion for parole than expected but also that people with the same probability of reconviction stood very different chances of being recommended for parole depending upon the prison they were in. *

The study states:

> "LRCs have considerable independence; parole administrators have been reluctant to interfere greatly with their discretion, save by providing general guidance on the criteria to be applied in assessing suitability for parole, and by specifying desirable procedure. This relative autonomy, combined with the fact that LRCs are concerned almost exclusively with local issues and act largely independently of one another, makes it difficult to ensure that they apply comparable selection policies. The problem is exacerbated in a scheme where parole is expected to fulfil a number of conflicting aims."[7]

According to the Home Office, although some inconsistency in LRC recommendations will still occur, it now provides considerable training for LRC members (including case study exercises) which should produce more consistency than when the HORU study was carried out. The Home Office claims too that the refinement and development of the Parole Unit's use of prediction scores since 1972 has helped to counterbalance inconsistences between LRCs. The procedures for submitting cases found unsuitable by LRCs to the Parole Board are also intended in part to mitigate these discrepancies.

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* For a more detailed discussion see chapter 3 of HORU Study No.38.

PART 11 – A SURVEY OF ATTITUDES

Presented in this section are views and findings from those organisations and individuals with an interest in the parole system and its effects.

The Parole Board View

The administrative approach to parole which has been adopted in Britain had its basic premises reiterated in the *Report of the Parole Board for 1976:*

> "When parole was first introduced only the exceptional prisoner received it and the onus was firmly upon him to demonstrate that he was worthy of parole and had earned it. Poor behaviour in prison or the likelihood of a return to crime still precludes parole. But when a candidate is under consideration and the grant of parole would not be likely to expose the community to danger, more emphasis is placed on the desirability of giving the prisoner the encouragement of release on parole and the blend of control and support provided by compulsory supervision.
>
> The broadening philosophy of parole does not, however, go so far as the suggestion which has been made that parole is a right. Although parole is awarded as far as possible in a sympathetic and constructive manner, it is still an opportunity and a privilege; and the parolee though released into the community is still serving his sentence and liable to recall if he does not observe the conditions of his licence." [1]

The "privilege not a right" theme is a view to which the Parole Board seems deeply committed and it is frequently referred to in Parole Board publications. Defending the system, Sir Louis Petch, Chairman of the Board, when giving evidence to the House of Commons Expenditure Committee (Education, Arts and Home Office Sub-Committee) on the Reduction of Pressure on the Prison System (Monday 20 February 1978), said:

> "I like this paternalistic approach, with the possible modification of giving the man reasons."

In summarising the objectives of parole as seen by the Board Sir Louis stated:

> "Parole was in fact introduced in the public interest with an eye to steering offenders away from a life of crime. The basic philosophy is that it is possible to pick out from the prison population those individuals who offer a better prospect of rehabilitation if they can be released on licence before the end of their sentence, subject to the control and supervision of a probation officer, with the sanction of a return to prison if they go astray. The public interest is the paramount consideration and the gain to the prisoner himself incidental; for that reason safety is a major consideration in the operation of the system, and particular care is taken to avoid the risk of possible violence or other crimes against the person by people released on parole."

When questioned about change or improvements in the system Sir Louis replied:

> "We are working on this business of giving reasons and it may be that at the end of the day we can do something about this to help the individual prisoner ..... For the rest, the only other thing that I would like to keep working on is this three-month period between the start of the processes and the answer getting to the man. I attach more importance to that from the point of view of the man's family rather than the man himself. I think we can be a little too sensitive about the prisoner; after all he put himself there..... The family get steamed up about it and they have to wait this three months' period too. So I would like to see that shortened but how we are going to achieve it I do not know. Apart from that I think we have got a good system..... I do not want to move to a judicial system..... I am against automatic parole, simply because one has to take account of what happens while a man is in custody in deciding whether or not he can get out on parole. I do not like the idea of automatic parole. Perhaps it sounds rather smug but with those two reservations I think that the system is working pretty well."

Views expressed by Organisations and Groups

Views expressed by the Prison and Borstal Governors' Branch of the Society of Civil and Public Servants [2]

The prison governors see parole as one method of achieving a reduction of the prison population. They lend their support to the scheme but advocate some changes within the present system:

> "We recommend devolution of the Parole Board's responsibilities to a regional authority and a reduction of the qualifying period for parole from eighteen to nine months. Whilst administrative problems and shortage of experienced Parole Board personnel would create difficulties in the primary stages, we are convinced not only of the beneficial effect on the prison population but of the reduction in delay, anxieties and frustrations inherent in the present penal system."

Views expressed by the Prison Officers' Association [3]

The POA in its evidence to the House of Commons Expenditure Committee on the Reduction of Pressure on the Prison System strongly recommends a move from secrecy within the system and advocates the giving of reasons for parole refusal since it feels that this change would make the prison officer's job easier. As Peter Waugh, speaking on behalf of the POA, states:

> "One of the problems of parole is not just the disappointment at not getting it; it is not knowing the reasons why they do not get parole. This is a question that people like me face every day. A man comes to me and says "I did not get parole", and I say "I know, I am sorry, lad". Then he says "What did I do wrong?" and I say "I do not know...We have submitted reports and everybody has submitted reports." So then he says "Can you tell me how to put myself right so that I will be more favourably considered?" and I say, "No, because I do not know either." These are the factors which create the problems, not the fact that a man is disappointed."

Views expressed by the Chief Probation Officers [4]

Although the Working Party Report on Parole to the Chief Probation Officers' Conference came out in favour of parole as a privilege rather than a right, it did point out what it saw as failures in the present system, namely that it does not operate in such a way that the average prisoner – and indeed at times the prison staff – can comprehend the procedure; that it is much too impersonal in that it does not actually involve the prisoner to an extent where he can feel himself to be part of the process; that the time taken to make the actual parole decision is much too long; that discrepancies exist in the way that decisions are made by the different LRCs; and it is also felt that the public should be made aware of just how little control the supervising officer can exercise over the parolee.

It argues for the setting up of District Review Committees as part of a tiered system with an independent Parole Board which would deal with indeterminate sentences and sentences over six years. The Home Secretary would still maintain overall responsibility for the system, but the National Parole Board would have control over its own functioning.

The District Review Committees are seen as an extension of LRCs, but they would have more wide-ranging duties including responsibility for the vast majority of decisions and for recall arrangements. Their membership would be broader and more experienced, and rather than working within the prison they would operate from independent premises with the professional and administrative support of a parole administrator seconded from the ranks of probation officers, social workers, assistant governors or prison officers.

Together with the setting up of District Review Committees, the report proposes a new-style dossier containing only pertinent information. Also proposed is a personal hearing rather than a mere interview and written representations. The CPOs also propose a clearly written booklet explaining the system to prisoners and public alike.

They believe that together with speeding up the process "such developments would make parole an even more important part of the penal process than it has yet become and would enhance its credibility with prisoners, staff and public."

Views expressed by the National Association of Probation Officers [5]

In its evidence to the House of Commons Expenditure Committee on the Reduction of Pressure on the Prison System NAPO states:

> "It seems that shorter sentences are as effective as longer ones in their deterrent effect upon those who receive them and it is a commonplace that sentences in many countries are much lower than ours. It would be useful if the Home Office Research Unit were to look further into the effects both of shorter sentences and of parole.....
>
> In addition we suggest that it would make sense to introduce a presumption that prisoners will automatically receive parole unless strong reasons are adduced to the contrary (such reasons to be stated)."

Views expressed by the Conservative Party Study Group [6]

The aspects of the parole system to which the Conservative Study Group on *The Proper Use of Prisons* addresses itself are the role and function of Local Review Committees and the setting up of Regional Parole Boards. With regard to the former it is proposed that LRCs should bear responsibility for even more decisions to be made without consultation with the Parole Board, that more training should be given to LRC members and that they should serve for a specified period and then retire. With regard to the latter, it is felt that Regional Boards could help reduce the workload of the National Parole Board and thus speed up the decision-making process.

On the question of the setting up of Regional District Boards the Parole Board in its 1977 Report notes what it sees as two disadvantages:

(a) It allows no scope for intervention by the Home Secretary, which most members of the Board regard as desirable.

(b) It makes no provision for ensuring reasonable consistency on a national basis between decision and decision; an appeals system would have to be devised to try to remedy this. [7]

It is interesting to note the latter objection in view of the findings of the HORU study that LRC recommendations were inconsistent.

Views expressed by Individuals

Views expressed by Dr Keith Hawkins [8]

Like so many others Dr Hawkins (Centre of Socio-Legal Studies, Wolfson College, Oxford) is concerned with the issue of giving reasons for parole refusal. He feels that since reasons are formulated in any case for administrative purposes the argument that the Board repeatedly puts forward that the results of collective decisions are difficult to formulate is not convincing. Like Peter Evans, Home Affairs Correspondent for *The Times* [9] Hawkins argues for the disclosure of reasons on the ground, among others, that when reasons have to be given decisions must be thought through much more thoroughly. The Franks Committee on Administrative Tribunals and Enquiries (Home Office, 1957) produced a similar argument. Like G J Borrie, a former member of the Parole Board, [10] he (Hawkins) questions the fairness and justice of a system which refuses to give an account of itself, and points out that Mental Health Tribunals which deal with cases at least as sensitive as those dealt with by the Parole Board have provision for the giving of reasons if a case is turned down.

Hawkins, as well as considering improvements in the present system, also proposes an alternative system involving the abolition of LRCs. These he would replace with Regional Parole Boards of higher status, the members of which would be appointed by the Lord Chancellor for a fixed period. Prisoners would appear before these Boards and be entitled to assistance from an independent individual. He suggests that an advantage of Regional Parole Boards would be that with members becoming familiar with the types of prison with which they are dealing greater consistency in decision-making could be achieved. For this system to work satisfactorily it would be necessary to have parole-eligible prisoners clumped together. The Central Parole Board would not be abolished but rather is envisaged as a body to "formulate policy,

establish guidelines to decisions, and act as a public relations body, representing and interpreting parole to a sceptical community ".

There are obvious similarities between this model and those proposed by both the Chief Probation Officers' Conference and the Conservative Party Study Group.

Hawkins also suggests that were the Home Secretary's authority removed from the parole process the length of time which parole decision making takes could be considerably shortened. Provision should however be made to allow him to intervene in cases of national security.

Hawkins concludes:

> "If apologists continue to justify the parole system as a method of rehabilitation they should question how far the present approach is consistent with this aim. Is the public interest best served by the present procedure? Those who are less convinced that parole has some rehabilitative value also need to question whether the system meets reasonable standards of fairness. Even though a man has been convicted of crime and imprisoned, the vital decision as to whether or not he should be restored to liberty should be made according to certain standards of fair procedure."

Views expressed by Professor G J Borrie [10]

G J Borrie, a former member of the Parole Board, in addressing himself to the status of the prisoner in parole decision-making, draws specific attention to the following points. The prisoner is not accorded a personal hearing, nor is he aware of the criteria which will be used by the LRC and the Parole Board in reaching a decision, nor is he given an explanation should parole be refused.

On the question of a personal hearing Borrie comments:

> "I have read many written representations from prisoners. Obviously, they vary considerably in their value and quantity. Some are extremely articulate.....But it is plain that a much larger number of representations are written by prisoners who do not know what is expected of them or what they ought to touch on. They may well not do themselves justice. Some, of course, make no written representation at all."

On the quality of the prisoner's interview with a member of the LRC he comments:

> "Many interview reports I have read are poor. They may merely report factual information available elsewhere in the dossier.....Interviewers vary a great deal in what they feel is expected of them.....Even now when LRC members may have had many years' experience (and I leave aside the question of whether they tend to serve too long), I wonder if they all appreciate that the purpose of the interview is to assist the prisoner to put his own case for being granted parole and to elucidate the particular points the prisoner wishes to take into account."

Borrie questions the fairness and justice of a system which refuses to give an account of itself.

Views expressed by Dr Roger Hood [11]

Dr Roger Hood has proposed an alternative parole system, which would operate as follows. For all prisoners serving sentences of up to and including three (or four) years, release on parole should be automatic after, say, one third of the sentence (subject to an extra time imposed for offences against prison discipline) with supervision up to the end of the sentence. For those sentenced to over three (or four) years imprisonment, the courts should have at their discretion the power to order that the prisoner should not be released before the end of his sentence (minus a period of, say, one sixth remission) without the approval of the Parole Board. The court would have to give reasons for each decision and the criteria for such a decision could be laid down by Parliament: e.g. a past history of committing certain serious offences when released on licence, the extremely serious nature of the prisoner's offence and his potential dangerousness in terms of possible repetition of serious crimes against the person. A prisoner could appeal against this decision to the Court of Appeal. In these cases the court could fix a minimum period of parole eligibility, which would be between one third and, say, three fifths of the sentence. The Parole Board would continue to deal with life sentence cases.

With such a greatly reduced number of reviewable cases, Local Review Committees would be redundant. The Parole Board would be constituted as a judicial body with the authority of the High Court, its membership remaining representative of the present interests involved. The members would be chosen by the Lord Chancellor. The Board would be peripatetic, for relatively few prisons would hold the men concerned, and it could give the right of a personal hearing to each prisoner who (with legal advice and representation if he desired) would state his case for parole and contest arguments. The Parole Board would give reasons for its refusal to grant parole, the presumption being that the prisoner would be released unless positive reasons are adduced to show why he or she is unfit for parole.

The licence for those granted parole would terminate at the completion of the sentence, whereas for those not paroled there would be a statutory period of supervision subject to recall of the last sixth of the sentence, plus a further year.

The justification for making exceptions to automatic parole after one third of the sentence is two-fold. First, it is possible that a system which has no review system for potentially dangerous prisoners would be politically unacceptable in the foreseeable future (although it is notable that, in the highly charged Northern Ireland situation all convicted prisoners are now conditionally released after half their sentence). Secondly, as Dr Hood points out (Criminal Law Review, October 1975):

> "It is a social fact that the courts have on occasion to deal with offenders whose present crimes and history of offending call for action which will allay public fear for the repetition of similar grave crimes. In those cases the judge will impose a long sentence both to mark the gravity of the offence and to protect the public. If one were to ignore the social reality and provide only a determinate sentence with release after one-third (or even one-half) the judge would either have to resort to a very long determinate period to ensure that the one-third to be served in custody was without doubt long enough, or to use the wholly indefinite sentence of life imprisonment. Review of sentence within a definite maximum set by the court is therefore justified on pragmatic grounds."

Views expressed by Professor Stan Cohen and Professor Laurie Taylor [12]

Cohen and Taylor, drawing upon a paper originally prepared for the National Council of Civil Liberties by Bill Birtles, argue for the complete abolition of parole. Central to their argument is the fact that the parole decision is made by an executive rather than judicial body which nevertheless is carrying out a resentencing process "because it takes into account information which the court had in mind when sentencing". (This is an argument which has also been advanced by Roger Hood). Sentencing, they believe, should be something which remains firmly in the hands of the judiciary since they have greater experience of the sentencing process. They also believe that executive interference changes a determinate sentence into an indeterminate sentence and that all non-fixed sentences are unjust. Indeterminacy can lead to great anxiety on the part of the prisoner. They are also very concerned with the emphasis placed on "treatment" and its results by the parole system. They feel that any sort of prediction made on the basis of treatment criteria is unreliable. With reference to this they state:

> "If the justification for executive release is that the offender has reached a state of "treatment" at which he is less likely to re-offend than when he went in, there is no evidence that custodial treatment, even in the most progressive institutions has this effect, or that if it has, custodial staff can tell when it was."

This is an argument to which John Harding, Assistant Chief Probation Officer for Devon, lends his support, although not himself proposin abolition of the parole system. In an article [13] he cites a study * carried out by Professor F H McClintock in 1977 which " exposed the hollowness of linking response to treatment with parole plans."

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* McClintock followed up 1,000 men released from prison in Scotland over a two year period. Approximately 40% of that number received parole and at the two year point 61.3% had been convicted. Of the remainder who did not receive parole, 63.2% were reconvicted at the two year point. The percentage differences are too small to be of statistical significance. The Scottish Parole Board, in discussing the significance of these findings, could have justifiably released 100% of those eligible for parole and still come up with the same reconviction rate. [13]

Cohen and Taylor also strongly criticise the secrecy which surrounds parole decision-making and the resultant refusal to state reasons in the cases where parole is denied.

They emphasise that the abolition of parole must of course be made as part of an overall policy of reducing the length of sentences. Otherwise it would be an inhumane reform.

Views expressed by J E Hall Williams [14]

Hall Williams, a member of the Parole Board, is basically in favour of maintaining the system as it stands. In discussing the future prospects of parole he feels it is important that the system should ensure coherence and predictability or reliability. He argues against devolution of the Parole Board into Regional Boards, despite acknowledging that one of the main reasons for the lengthy decision-making process stems from the fact that the system is "extremely centralised, simply because every case eventually has to be reviewed by the Home Office". However he is not totally opposed to the idea of two Parole Boards, one for the North and the Midlands, and the other for the South and the West.

As regards speeding up the release of short-term prisoners he feels that the parole process cannot be speeded up within the present arrangements involving a three-stage review. Rather he observes:

> "My own view is that for short sentences it might be better to rely on the opportunity provided by the Criminal Law Act 1977, which allows courts partially to suspend sentences of imprisonment between 6 months and 2 years in length, by declaring that so much of the sentence shall be served and so much suspended." *

One change which he suggests as possible is in the scope of the parole licence:

> "It may be that new conditions can be attached to licences such as participation in a day training scheme or a supported work scheme."

As far as parole recommendations are concerned he acknowledges a possible weakness at LRC level:

> "If there is a weakness in parole recommendations, it is more likely to lie in the variations which occur at the LRC level than in the decisions of the national panels. When I realise that more than half the prisoners considered for parole by LRCs are not recommended (51.7% in 1976) and that the Home Office referred to the Parole Board in 1976 over 1000 cases not recommended (out of some 4000) of which 377 were recommended for parole, then one sees clearly that here lies one of the weaknesses of the present system. Talking to members of LRCs one finds to one's astonishment how rarely they are called upon to sit on an LRC, in some prisons no more frequently than once in every two or three months. No consistency of policy or coherence of decision-making can be expected from such a casual activity."

With reference to the giving of reasons for refusal his view is:

> "First, trying to give reasons without the possibility of allowing them to be reviewed by appeal or otherwise is quite impracticable. Secondly, I am no longer sure that it would be desirable or helpful. What prisoners need above all else, and what is so difficult to provide in an inscrutable system, is to have confidence in those whose duty it is to make the recommendations. I believe that, with a little more openness at the early stages of the review, before it reaches the LRC stage, confidence might be acquired, at least to some extent. But in the end, because I have myself such confidence in the parole system, both at the LRC and the Parole Board level, I would prefer their recommendations to remain inscrutable. After all, there are other areas of our public life where this still applies, not least in the operation of the jury system. No-one has suggested that juries should give reasons but, if they did, I think they would command rather less respect than those of the Parole Board."

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* This section of the Criminal Law Act 1977 has yet to be implemented.

Views expressed by Lord Hunt [15]

Speaking in a debate on the parole system in the House of Lords on 22 March 1979 Lord Hunt, former Chairman of the Parole Board, made the following points:

The purpose of parole seems to have changed during its life-span. Whereas in 1967 its official value was that of rehabilitation, its official value now appears to be the reduction of the prison population. He comments:

> "Seen in this perspective, parole could be dubbed a mere palliative for an expensive, largely negative penal policy in regard to the use of imprisonment and the length of prison sentences in our criminal law."

He does however point out that the achievements of parole should not be denigrated because of this change.

He considers that parole is neither a wholly executive or a wholly judicial process. It is a hybrid, the judicial element coming to the fore in the resentencing process carried out by the Board or LRC when taking account of the gravity of the crime. He admits that he found the resentencing process acceptable when he was Chairman of the Board but has since reviewed his ideas. He comments:

> "For a long time now, I have been convinced, so far as the Board are concerned that [retrying a case] is wrong. It should be axiomatic that gravity is a matter for the courts and very exceptionally – in the case of determinate sentences – for the Home Secretary."

Although parole is not a right nevertheless prisoners are entitled to certain rights within the process, namely, the right to refuse to be considered, the right to a hearing before a Review Committee and the right to be given reasons for refusal. On the issue of reasons for refusal he comments:

> "There has been a good deal of experimentation but there has been a failure to fulfil a matter of natural justice for too long."

This particular comment from someone with such experience of the system is interesting in the light of the decision, made public in the 1978 *Report of the Parole Board,* not to give reasons for refusal:

> "The Board still feels that the giving of reasons is incompatible with the present administrative system of parole, and that it would be wrong to alter the system except by recasting it under new legislation. However the final decision lies with the Home Secretary, and we have sent him a full account of our thoughts on the matter."

Lord Hunt feels that the machinery of parole should be made less cumbersome. He would change the system "making regional boards responsible for a wide range of cases. Such boards might well dispense with the need for local Review Committees.....and thus (reduce) the element of inconsistency".

PART 111 – SOME CONSIDERATIONS

In analysing the attitudes presented in Part 11 of this document it would seem that most views presented could be classified under one of the four categories listed below.

Favourable	i.e. those who wish the system to be maintained in its present form but concede that perhaps one or two changes could improve the system. Both the Parole Board and J E Hall Williams adopt this stance.
Reformist	i.e. those who wish the parole system to continue in operation but with certain changes. The majority of the views presented are based on this position.
Radical	i.e. those who wish a parole system to continue operating but would like to see certain major changes made. Prominent in this field is Roger Hood.
Abolitionist	i.e. those who would abolish the present parole system. Prominent in this field are Stan Cohen and Laurie Taylor.

Before considering the views put forward by the above four groups it may be of interest to examine some general issues pertinent to parole.

Objectives and Philosophy of Parole

Elizabeth E Barnard writes succinctly on this subject. [1] She states:

> ".....behind any parole philosphy is the notion that behaviour in prison is an important element in parole decisions. Whereas parole is never seen simply as a reward for good behaviour, it is nevertheless regarded as essential for good prison management that morale in the institution shall not be undermined by granting parole to those of bad behaviour, though this may happen, especially among prisoners who may be described as "manipulative". So assessment of prisoners' conduct is an important part of the paroling process, giving the administration at least some role in decisions..... Whereas one of the objects of parole is to improve the scope for good prison management, it has often served to increase anxiety and lower morale, particularly in institutions from which few get parole..... Management is a two-edged weapon, for prisons face the problem of handling the rejects. Furthermore, the remission system is long established and a more relevant means of achieving the required standard of behaviour within the prison."

She then goes on to list five objectives of parole and comments on each:.

"(1) The long-term *rehabilitation* of the prisoner..... Traditionally this has been the dominant official goal, particularly at the introduction of parole.

(2) To modify the sentence of the court in the light of later behaviour, as a *reward* to the prisoner. This has been played down officially, but has been seen as influencing actual decisions.

(3) To give correctional agencies more control over their work, by

(a) affecting the population of prisons,

(b) providing an incentive to good behaviour.

In this respect, parole is a *management* tool.

(4) To reduce public *expenditure,* as keeping people in custody is considerably more expensive than other penal measures.

(5) For public *protection,* by providing controls over ex-prisoners, rather than discharging them absolutely, without supervision."

Professor F H McClintock states that parole has been seen as "a political trick to reduce the prison population without interfering with the sentencing powers of the judiciary". [2]

Conceptual Models of Parole Decision Making

The two models discussed below are the administrative and judicial models. Again Elizabeth E Barnard, who summarises both, is the source. [1]

> "In the judicial model parole is seen principally as a sentence, and the criteria that govern decisions are those of sentencing. Primary among these are the importance of maintaining equity in the treatment of offenders in respect of the seriousness of the offence, and the public interest in being protected from dangerous persons. The control aspect of parole supervision is stressed..... At the same time justice demands the protection of the prisoner by due process; he should be permitted to speak and to call evidence on his own behalf; he should have legal advice and representation; there should be provision for appeal. Parole and revocation both involve a new sentence, so both should be covered by due process provisions. Decisions should be made by a body wholly independent of prison management, and it should give reasons for its decisions.
>
> In contrast to this, the administrative model sees parole as no different, in decision-making terms, from allocation of a prisoner to a particular institution or a particular work assignment. The major objective is "treatment"; it may be part of the rehabilitative needs of the offender to be discharged from prison under licence, with the help of parole supervision. Not so frequently referred to officially, but of considerable practical importance, is the usefulness of parole as a tool of prison management..... It is also attractive to governments in reducing the direct and indirect costs of imprisonment. Legal arguments which have been employed in support of this procedure include the idea that parole is an act of grace, granted by a benign administration, but not a right; that parole is a contract, under which the offender agrees to certain conditions governing his behaviour, but not giving him the right to dispute if the administration withdraws the privilege; and that parole does not change the status of the prisoner, who remains in legal custody, but has been granted some measure of liberty."

McClintock suggests that the British system is "an amalgam of a criminal justice, or 'just deserts' model, and the rehabilitative treatment model, related to prediction or risk of subsequent criminality". [2]

Parole and Rehabilitation

Elizabeth Barnard points out in *The Context of the British Parole System* [3] that between the second world war and recent times the state had taken upon itself to assume that it was in a position to solve social problems. Central to this mode of thinking was the rehabilitative ideal. Within the context of the criminal justice system the proponents of the rehabilitative ideal assume that the objectives of this system are to reduce criminal activity, and that within the system this objective can be achieved by means of professional skills.

It was, as has been pointed out in Part 1, within such an atmosphere that the legislation providing for parole came into existence. Morris and Beverly point out that the government documents *Penal Practice in a Changing Society* (1959) and The Report of the Advisory Council on the Treatment of Offenders – *The Organisation of After-care* (1963), both precursors of *The Adult Offender* (1965) "drew attention to the inability of the prison system to handle the rapidly increasing numbers of prisoners and at the same time recognised that the social and emotional problems of offenders require more prison help than was being offered". [4] Both of these documents advocated compulsory after-care for all, and legislation for it was provided in The Criminal Justice Act of 1961. As has been noted in Part 1 this legislation was not implemented. In discussing this Elizabeth Barnard states:

> "Although lack of resources was given as the principal reason, another consideration was that such blanket provision was unnecessary, and that it would be better to *select* on an individual basis, those prisoners whose rehabilitation *required* it."

She adds:

> "Although the *case* for a parole system rested almost entirely on correctionalist criteria – that an offender may change while in prison in ways that could not be taken account of by the sentencing judge and which make it appropriate to terminate the imprisonment and substitute for it the supervision and treatment of a probation officer, in order to increase the rehabilitative potential of that offender – the *form* in which it was finally introduced was not a wholly correctionalist one." [3]

Between 1958 and 1968 when parole was actually introduced the mode of thought had changed from compulsory after-care for all prisoners to compulsory after-care only for those selected for parole. This move rather begs the questions – is rehabilitation something suitable only for the selected few and on what criteria is it decided who is suitable for rehabilitation. Indeed from a rehabilitative point of view it can be argued that, since the "better bets" get parole, the prisoners who most need supervision and support on release are often the very ones who do not get it.

Although the case for parole may have been argued from a correctionalist standpoint the actual reasons for its introduction may also have included more pragmatic considerations. Morris and Beverly (1975) state:

> "The number of jurisdictions which believe that it is preferable to return a prisoner to the community through a period of supervised liberty is large and is increasing. In many, parole is seen as an integral part of the total penal system, but this has so far not been the case in Britain where initially early release was seen simply as one part of a multiple attack on the problem of overcrowded and costly jails. Together with the introduction of suspended sentences, and with restrictions on the powers of magistrates to send offenders to prison, it was regarded as a piece of penal machinery designed to do little more than reduce the prison population and to negate the necessity for a large and expensive programme of prison building. Little has changed since those early days, and parole continues to be viewed largely from a standpoint." [4]

From the above comments one could draw the conclusion that rehabilitation was the theoretical justification for a system which in practice was designed to reduce the prison population. On this basis it would seem that a healthy scepticism might not be amiss when one is faced with arguments defending the present system on the grounds of rehabilitation. It is difficult to reconcile the view of Morris and Beverly that the main reason for the introduction of parole was the reduction of the prison population with the very small proportion of eligible prisoners who were paroled during the schemes early years. Scepticism about rehabilitative arguments for parole might, however seem justifiable when one considers that the rehabilitative ideal has been losing credence. Elizabeth Barnard states:

> "Ironically at the very time when British policy was most committed to correctionalism, in the 1960s, evidence was building up in the USA which was a damning indictment of what the American Friends Service Committee summarised as "compelling evidence that the individualised-treatment model, the ideal towards which reformers have been urging us for at least a century, is theoretically faulty, systematically discriminatory in application, and inconsistent with some of our most basic concepts of justice". [3]

At the same time, however, it should be noted that figures published in the 1977 and 1978 *Prison Statistics* (see section on Research and Statistics) could be interpreted as giving guarded support to rehabilitative claims for parole. However more research would be necessary before such a claim could be substantiated.

Favourable Views

Those with favourable views see the present parole system as a successful venture. It may lack "justice" but an administrative system by definition is one in which judicial elements have no role to play. It may be cumbersome but it has a low failure rate. It may be paternalistic but such a system has served its purpose well in that an increasing number of prisoners are being paroled each year. It accords well with the English view of how English administration should be conducted. Of English decision-making Evelyn Shea observes:

"England, if we may use such a gross generalisation, still seems to live in the tradition that the election of honest and capable men is the best guarantee citizens can have that the decisions made by their judicial or administrative bodies will be just and appropriate. This is not to say that the English are unaware of human imperfections. But rather than limiting the discretion of its organs by statutory regulations, and thus perhaps interfering with the flexibility of the decision, they prefer to set up a second or even a third body to control the decisions of the first. Hence, the main legislative effect for parole has been spent in creating a hierarchy of parole authorities and in regulating their respective competency, whereas no attempt has been made to formulate any criteria to guide the actual parole decisions. The only other aspect which has been regulated to some extent is that of the requirements for eligibility for consideration". [5]

"Parole is now established as an important element in the penal system." So states paragraph 2 of the tenth report of the Parole Board which was published on 15 June 1978. Those with favourable views seem happy that it should remain as it is.

Reformist and Radical Views

The most important of these will be considered individually.

Reasons should be given when parole is refused

The Parole Board and five selected LRCs worked for some time on an experiment to see if it is possible for reasons to be provided. Discussion of this first appears in the 1973 *Report of the Parole Board:*

"Our discussions about giving prisoners reasons for the refusal of parole have continued with the Home Office. We are well aware of the importance which many people place on this issue which is, however, by no means simple to resolve." [6]

By 1975 seven paragraphs of the annual report are devoted to this. It is suggested that although in theory the giving of reasons is desirable, in practice it is not as yet possible:

"One argument for the giving of reasons for the refusal of parole is that "natural justice" requires it. Those who wish to see parole as a judicial process with the "rights" of the prisoner determined by due process of law take this stand. We have not adopted a judicial model for our parole system; but this does not dispose of the argument for giving reasons. Even in a paternalistic system, it can be urged that anyone who is refused a privilege should in fairness be told why; if imprisonment is in part a rehabilitative process, this imposes an obligation to demonstrate to the prisoner how he may or may not be able to help himself. There will certainly be cases where a man can improve his future prospects of parole if he knows why he has failed to achieve it in the past." [7]

By 1977 note is made of an experiment in progress, the purpose of which is to assess if it is feasible within the present structure of the system to provide reasons for the refusal of parole. The Board has satisfied itself that it is possible to select reasons for refusal by the use of standardised "causes for concern". The experiment was therefore extended to five LRCs, and the Board states that when the outcome of this stage becomes known it will then have to be decided whether reasons in this form should be communicated to the prisoner. The Report states:

"This is the difficult question. It will involve assessing the likely effect on the attitude and morale of the prisoners themselves and the implications for the prison staff. The ultimate decision will lie with the Home Secretary and it must be stressed that Home Office Ministers are not in any way committed on the issue." [8]

In the Report published in June 1979 the Board states that it sees no prospect of telling prisoners why they have been refused parole. It thinks reasons are not feasible within the present system, and regards any fundamental changes within the system as a matter for Parliament.

It is interesting to note this comment in the light of what was said by the Prison Officers' Association in their evidence to the Expenditure Committee. (See Part 11.)

Perhaps this reticence on the part of the Parole Board is the partial result of an anxiety that such a step would open the door for appeal against refusal and might be the thin edge of the wedge in the conversion of an administrative system to a judicial system. Another reason is that in some cases it might be embarrassing to give reasons, for example in those cases where the Parole Board recommends release but the Home Secretary denies it. In such cases would the Home Secretary have to give reasons for his decision? Some of the cases are political ones and one would expect the Home Secretary may find himself in difficulty in supplying reasons for such cases. In other cases, giving reasons for parole might identify individual members of prison staff who were responsible for giving adverse reports and that may open those members of staff to the possibility of reprisals. It is, however, arguable that greater resentments towards prison staff result from the present situation of suspicions and fantasies about what the prisoner suspects staff might have said about him in the parole dossier.

Devolution and Consistency

The proposal to set up Regional or District Parole Boards needs to be seen in the light of the proven discrepancies between LRCs: the fear of similar discrepancies between regional boards is understandable. However if the creation of such boards were to (a) shorten the period of waiting for the prisoner and (b) give the prisoner the opportunity of personal representation, these factors might possibly override the problem of discrepancies which could hopefully be controlled by a national Parole Board. This would not be so overburdened as it presently is, but would exist rather in an advisory/training capacity for the Regional Boards, and deal only with cases which have attracted notoriety or where national security is at risk.

The main difficulties with autonomous Regional Parole Boards – other than consistency – are the constitutional position and the administrative problems. On the first point, would Parliament agree to a system other than one in which a Minister answerable to Parliament is responsible for the parole decisions? On the second point, because of the movement of prisoners between prisons, and the problems of recall, it seems that each of the regional parole boards would end up trying to duplicate and update all prisoners files. To whom would prisoners' families, MPs and others write? And to whom would supervising officers apply for recall. Such problems are not insuperable but they do need consideration.

The Right to a Personal Hearing

This would allow the prisoner an active rather than passive role in parole proceedings and might serve to lessen the frustration caused by the fact that an individual's future lies in the hands of a faceless decision-making body. However it is probable that the Parole Board would see such a step as another move away from an administrative process towards a judicial process.

It is observed in the Board's 1977 Report:

> ".....it is by no means certain that a personal appearance by the offender before the deciding authority would be helpful. Personal hearings, whilst they might work to the advantage of the sophisticated criminal, could disadvantage the unsure and the inarticulate. There is much to be said for the view that good documentation by people with knowledge of the prisoner over the years is the best means of guiding those who have to decide whether parole should be granted." [9]

It is significant that the Board regards lack of sureness and articulacy as an argument against personal hearings, rather than as an argument for allowing the prisoner to be represented as in court.

Elizabeth Barnard comments:

> "Although many would advocate greater involvement of the prisoner in decisions made about him, I think access to documents, representation and appeal are unlikely to be introduced in the foreseeable future. For it is fundamental to our notion of a convicted offender that he has lost certain rights, and prisons are run on the principle that the inmate's prime obligation is obedience; indeed a major reason why due process exists in the courts is to ensure that a person is not stripped of rights unfairly. So a re-orientation in official thinking about prisons and the ways in which other decisions about prisoners are taken, is needed before the full package of due process is likely to be adopted." [1]

Reduction of Qualifying Period and Reduction in the Length of the Overall Process

The prison governors have argued for the reduction of the qualifying period for parole from 18 to nine months. The Parole Board argues that nine months is not long enough to assess a prisoner's progress. This argument is of course based on the notion that progress or rehabilitation can take place within the prison environment. * Sir Louis Petch observes in his evidence to the House of Commons Expenditure Committee (Education, Arts and Home Office Sub-Committee) on the Reduction of Pressure on the Prison System:

> "I would have thought myself that there was not much point in reviewing anyone until he had been in prison for a fair amount of time. At the moment anyone who has a sentence of 18 months or more is in the parole field. If a man's sentence is 18 months, then unless he is a naughty boy he will obviously have to serve 12 months. If you are going to parole him at the end of that 12 months period you have got to start the review process not very much after he has done six months inside. Six months inside is not very long in terms of enabling the prison staff to form a clear evaluation of an offender. Therefore I would have thought that we had pushed parole to its bottom limit and that for the shorter sentences there is not much scope."

With reference to the shortening of the overall process Sir Louis states in his evidence:

> ".....from the local review committee first considering the case to the answer coming back from the Parole Board there is a lapse of time of about three months. I would like to shorten it but so far that is the best we have been able to do."

Automatic Parole for the Majority of Prisoners

The chief exponent of this proposal is Roger Hood. Some commentators have suggested that advantages of this system would include:

(a) Many more prisoners would know for certain that they were going to receive parole on a definite date, thus cutting down the amount of uncertainty and the degree of unfairness attached to the present system.

(b) The scheme would free the Parole Board from having to make decisions in cases which are not regarded as dangerous. The amount of time and labour saved would be considerable. The procedure should also help to speed up parole decisions. Since LRCs would cease to exist, cases which are currently considered first by the LRC and then by the Parole Board would instead go straight to the Board. Furthermore, because the Parole Board would make an actual decision and not merely a recommendation to the Home Secretary, some time would be saved by cutting out what is now the last stage of the process.

(c) Since more prisoners would receive parole, overcrowding in prisons would be relieved to some extent.

(d) If there is anything in the assumption that parole supervision reduces the likelihood of re-offending, the public would be better protected if more prisoners were subject to supervision and conditions on release.

One should note that the automatic grant of parole might be partly counteracted by increases in sentence length if provision was not made for safeguards against this. As in the present situation of automatic one third remission, the role of the Court of Appeal would be potentially of great importance in preventing such increases.

* On this point the Home Office comments:

> Someone with a nine month sentence would be eligible for parole after three months. By the time he has been allocated to a prison, there would only be time for the staff to make his acquaintance before being called to assess him. The assessment, therefore, would have to depend on information that was before the court at the time of sentencing. Parole would then become a straight re-sentencing process by the executive and this is the main objection.

In considering Roger Hood's system, the Parole Board in the 1977 Report states:

> "The basic weakness of this proposal is that in the shorter sentence cases it would not be possible to take account of anything which happened while the offender was in custody – either related to his own behaviour in prison or to developments in the external environment to which he would be returning. Moreover, it would give parole to the minority of prisoners who quite clearly are not going to make good use of it."

In answering a similar argument presented by Professor Nigel Walker, Dr Hood states:

> "The main case for executive discretion rests upon the plausible belief that at the time of sentence the judge cannot know how a man will be likely to behave two or three years hence and that a later review will reveal the necessary information which justifies executive action to release some men earlier in their sentence than others in view either of their improved likelihood of avoiding reconviction or before further imprisonment actually increases the chances of recidivism. The problem is that no evidence exists either that the length of time a man spends in custody is related to the probability of his reconviction or that review bodies can spot a man's readiness for release on the basis of knowledge gained through observing his behaviour in custody. We know that a prisoner's chances of reconviction can be predicted at the time of sentence and no-one has yet discovered indices of prison response which improve on that basic prediction. Even those few studies which have shown some improvement in the rate of reconviction following some custodial "treatment" have not demonstrated that the time in custody is an essential element. Nor have they shown that the staff have been able to predict the "successes" nor that an indeterminate element in the sentence is helpful. In fact the available evidence would suggest the opposite, staff and inmates preferring a definite period within which to work." [10]

It is interesting in view of the Parole Board's comment that the Home Office has not proposed abolition of the compulsory supervision to which all offenders under 21 are subject on release. Indeed, in defending the blanket nature of this supervision, the Home Office recently commented:

> "It is arguable that it is the offender whose conduct in custody has shown him unsuitable for early release who will most need supervision if he is to resettle in the community." [11]

The Education of Prisoners in the Workings of the Parole System

The CPOs have proposed that a clearly written booklet explaining the system to prisoners and public alike should be produced. It would seem desirable that something similar to the Howard League publication *The Parole Decision* – A Guide Compiled from Official Sources, by Keith Hawkins, should be made freely available to all prisoners eligible for parole. The Home Office guide *Parole – Your Questions Answered* would seem to be inadequate in so far as it does not deal with the selection criteria used by the Parole Board and LRCs.

In summarising the reformist position Elizabeth Barnard comments:

> "What I have referred to as the reformist position is concerned primarily with issues of justice, mainly in procedural terms, i.e. proposals have been made to introduce elements of due process, to shift the system from an administrative to a judicial one. For example, Hawkins advocates the establishment of regional paroling authorities with greater prestige than LRCs, who could conduct hearings and give prisoners their reasons if they decided not to grant parole. The central board would assume the functions of an appellate body. What such references do not consider sufficiently is what effects these judicial bodies would have on the courts themselves. In discussion I have found judges who have been members of parole boards to have been strongly opposed to such a move, as diminishing the distinctiveness of the parole process, and thence their own role." [1]

The Abolitionist View

The abolitionists would quite simply abolish parole which they see as a facade, masking the true nature of imprisonment. In contemplating the complete abolition of parole it is worth taking account of the following points.

It is very possible that if parole were abolished the average period spent in prison would lengthen. In the unlikely event that political opinion could be swung to favour the abolition of parole, this would probably come about through an alliance between those who favour shorter but determinate periods inside and those who favour a punitive policy involving prisoners spending longer periods inside and dislike parole because it shortens sentences. Such an alliance might result in the abolition of parole, but is unlikely to result in sufficient reductions in the length of determinate sentences to compensate. The result would be an overall increase in lengths of time spent in prison.

On the other hand, there is a possibility in the next few years of achieving lower maximum penalties and some scaling down (even if only slight) of the sentencing tariff, and it also seems likely that there will be more pressure for a quasi automatic use of parole. Either reform is considerably more likely to be achieved than the abolition of the parole system.

PART 1V – CONCLUSION

The basic aim of this paper has been to bring together current views held on parole, and to stimulate thinking which will at least bring about certain necessary changes within the present system. It would seem at this stage that an alternative system is politically unlikely.

The Home Office is carrying out an internal review of the Parole System. There have also been calls for an independent enquiry. When commenting on parole in *The Reduction of Pressure of the Prison System,* the Expenditure Committee states:

> ".....We regard the internal inquiry by officials as too limited in response to the criticisms of parole, and the great importance of the system to the smooth working of the penal system. We recommend that an independent inquiry should be instituted into the whole parole system though we have no views to the form it should take other than that it should not be limited to an internal review by officials."

The Home Secretary stated in the House of Commons on 14 June 1979:

> "I have noted the recommendation of the *Fifteenth Report from the Expenditure Committee* and, whilst I accept that the time would seem to be ripe for a public debate on parole, I am considering how best this might be achieved."

It is commendable that the Home Office intends to issue a consultative document. However, since this document is bound to reflect only internal Home Office views, it would seem appropriate to set up an independent enquiry to consider all the available evidence.

It was stated in the introduction to this Review that there is widespread agreement that the present system is in need of revision although feelings differ as to what form this revision should take. Lord Longford in a debate in the House of Lords (22 March 1979) stated that "when you get the need for change generally admitted but a widespread difference of opinion what usually happens is precisely nothing." Let us hope that this will not be so with the parole system.

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APPENDIX

Table 1

Adult males discharged in 1973: proportion reconvicted within 2 years of discharge: by sentence length

Percentage

	Over 18 months up to and including 4 years	Over 4 years up to and including 10 years	Over 10 years	Total
Paroled	39	26	21	33
Not paroled	58	52	33	55
Sample size	591	372	22	985

Table 2

Adult males discharged in 1973: proportion reconvicted within 2 years of discharge: by sentence length and risk of reconviction

Percentage

	Sentence Length								
	Over 18 months up to and including 4 years			Over 4 years up to and including 10 years			Over 10 years		
	High Risk	Medium Risk	Low Risk	High Risk	Medium Risk	Low Risk	High Risk	Medium Risk	Low Risk
Paroled	70	48	21	51	26	15	(1)	(1)	(1)
Not paroled	73	52	24	62	56	29	(1)	(1)	(1)
Sample size (2)	170	148	128	101	103	109	12	3	6

(1) Samples were too small to produce meaningful figures.

(2) Samples exclude those for whom no risk assessment was available.

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END