

THE PERSISTENT PRISON? RETHINKING DECARCERATION AND PENAL REFORM by Maeve W. McMahon (Toronto: University of Toronto Press, 1992)

Some people are in prison for good reasons. Some people deserve to be in prison. Society has not failed just because some people are in prison. Society has not failed even more dismally this week because more people happen to be in prison this week than were in prison last week.

Maeve McMahon's scholarly book, *The Persistent Prison? Rethinking Decarceration and Penal Reform* does not make any of these points. Nonetheless and thus distinguishing it from the writings of at least some other writers in the field of penology in Canada her book is not bent towards the position that the four sentences in the opening paragraph of this review are unworthy viewpoints belonging only to the mentality of a radically moralistic right wing of society. A particular charm of her work is that she sets out to examine penological philosophies realistically and not with predispositions about the merits of particular alternative models. While she favours decarceration as a desirable manifestation of a free society, she does not ridicule incarceration as solely being a symptom of an oppressive police state in disguise.

This is an optimistic work, written with the sort of moderate methodologies of evaluation which befit an honourable democrat. She says, in effect, that a fair and diligent study both (a) of penological theories and (b) of penological facts and practise reveals that Canadian penal policies do not have to be either cruel or inept. After studiously examining what is available from research materials from a forty year span of Ontario history, (dating from the 1950s), she refuses to accept that we in Canada are doomed to have penal policies which are both. One is left, at the end of her book, with not merely a clearer understanding of the facts and beliefs which developed into penal policies over those four decades, but with a measure of confidence that, in light of that understanding, it is not impossible to develop penal policies which can strike a proper balance between the freedom we want, the protection we need, and the societal measures we can afford.

Maeve McMahon is no Pollyanna about this. Like others in her field, but more scientifically than some, she reveals that such policies and their implementation have shifted significantly over those years and not always for the better. Her analysis (which befits a 'hard science' as much as a social science) shows that punitive and liberative philosophies, with their attendant strategies, have, in effect, competed in the political arenas over that time. It also shows that the successful philosophy in a given era has tended to be that which has been most able to make a case for some sort of economic or utilitarian advantage although that 'case' seems in retrospect to have been little more than figure bending and propaganda in some instances. Like a deconstructionist, she demonstrates the influence of political factors (both hegemonic and bureaucratic) in all of this, but unlike a deconstructionist, she does not suggest that forty years of experience merely demonstrates that formal societies inexorably drift to state-based oppression.

Indeed, she seems, on occasion, rather impatient with the deconstructionist view. Such a perspective can be so fatalistic that it would deny that Canadians have the inclination, capacity and intelligence to devise a moderate system for penalizing breaches of our

important laws. The writings that she refers to in various places of her book directly or impliedly embody the ultimate assertions (afflictions) of most deconstructive thinking: everything is relative; nothing is basically good or desirable; power decides everything. She finds such cynicism to be unjustified by the materials on which it purports to be based, and to be fundamentally obstructive of the chance to develop civilized, merciful and effective penological policies and systems. She says:

The conventional wisdom on decarceration has reflected, and reinforced, problems in critical criminology more generally. Despite the progressive political aspirations of many critical criminologists, their theoretical frameworks have contributed to an activist impasse. With penal power being perceived as reprehensible, and with penal reform being depicted as contributing to the refinement and extension of penal control, recognition of any amelioration that may have taken place, and participation in criminal justice politics, are impeded.¹

In reaching this conclusion, Dr. McMahon describes and evaluates, the number-crunching of what might be called the reflex decarceration crowd, showing how sophisticated and yet misleading that can be. She suggests bias. As she notes:

Put crudely, decarceration analysts, and other critical criminologists, have been far more adept at analysing the ominous, as opposed to the admirable, aspects of any given phenomenon.²

For instance, she refers to the assertion of a phenomenon of 'net-widening'. This phenomenon could mean, in one sense, the outright imprisoning of larger and larger numbers of people, and larger percentages of the population as a whole. It could also refer to the possibility of expanding the options of social control whereby greater numbers of people are subjected to measures of social control, but lesser numbers of people are in fact incarcerated. Reading the available numbers in various ways could produce entirely different images.

Some critics seem anxious to see the gloomier picture. Others just blunder. Referring to a series of different writings, in Chapter 4, she says, about one work:

[They] obfuscate trends in the prison population ...³

and about another work:

A series of misunderstandings, ambiguities, and overgeneralizations are apparent in this brief summary ...⁴

and again:

¹ M.W. McMahon, *The Persistent Prison? Rethinking Decarceration and Penal Reform* (Toronto: University of Toronto Press, 1992) at 224.

² *Ibid.* at 214.

³ *Ibid.* at 54.

⁴ *Ibid.* at 55.

... questionable approaches have been taken in juxtaposing data on probation and imprisonment ...⁵

and, in sum:

Broad generalizations about net-widening have been made on the basis of aggregate trends in imprisonment, without much information being presented on the implementation and experiences of alternatives.⁶

In other words, Dr. McMahon points out that there are fundamental flaws in the substantive underpinnings of the argument in some quarters that imprisonment is "persistent" as the ultimate device in social control, to the point of being inevitable in one form only. It would appear that, to some, this type of reasoning is married to the deconstructionist belief that reforms, howsoever apparently benevolent, are shams and simply extend the police power of the state.

Dr. McMahon does not bring only the inadequacies of the reasoning of decarceral cynics into focus. She likewise exposes the fragility of the reasoning that supports cynicism of the opposite sort – i.e. the cynicism which would have it that there is nothing wrong with applying the law in its 'full rigour' since rehabilitation is a myth and attempts at it are a waste of time. As to the origins of the view, she notes that the initiators of the theory that 'nothing works' in rehabilitative efforts were probably as earnest as other forms of research, but the followup to that work also went astray and devolved to useless banalities said to amount to the wisdom of despair. She writes:

Martinson raised questions about the viability of rehabilitation itself. Having queried whether the lack of effectiveness might reflect only the need for "a more full-hearted commitment to the strategy of treatment," Martinson [1974: 49] stated:

It may be, on the other hand, that there is a more radical flaw in our present strategies – that education, at its best, cannot overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behaviour. Our present treatment programs are based on a theory of crime as a 'disease' – that is to say as something foreign and abnormal in the individual which can presumably be cured. This theory may be flawed.

Martinson's conclusions about the effects of rehabilitation became encapsulated in the buzz phrase 'nothing works' ... [which] became a code word for the more sobering belief that rehabilitation *cannot work* ... [which] contention soon became entrenched in correctional analyses."⁷

She rescues us from both positions.

In Chapter 6 of the Book, she discloses that, viewed objectively and realistically, positive and progressive trends in well-designed structures of both incarceration and decarceration can work and not merely serve political oppression. She notes that it has not

⁵ *Ibid.* at 67.

⁶ *Ibid.* at 71.

⁷ *Ibid.* at 16.

been shown that the simultaneous functioning of a variety of both institutional and community-based forms of correction and social control are ineffective, though the impression left by critics about these methods have been less than precise. A continuum, she notes, developed in Ontario as between the extremes of outright release and outright detention. This was done through the establishment of forms of institutions, group homes, halfway houses and so forth, with the result that it was difficult to be precise as to when incarceration or community release was a fair way to describe the situation.

Some critics, however, would have had it that resort to almost any of the different forms of incarceration/release along this continuum increases the overall use of state power:

Critical analysts have tended to assume that whatever is new and different in corrections is somehow worse, or more ominous, than what went before. Qualitatively, this judgment is expressed through the concept of stronger nets. As was true for net-widening, however, the issue of net-strengthening should be explored rather than accepted as a given. ...

... In brief, while those sentenced to incarceration undoubtedly experience strong nets of control as a result of community corrections, it is by no means clear that such nets are qualitatively stronger than more traditional forms of imprisonment. By contrast, where probationers are concerned, it is far clearer that community corrections have greatly increased the potential for their being subject to increased formal intervention.⁸

Critics at the other end would presumably contend that the various forms of release simply shift the risk of loss or cost to the proximate individuals who find 'near-prisons' and 'near-prisoners' in their 'back yards' as it were. This view might have it that any apparent saving in costs as compared with outright imprisonment, coupled with the alleged improvement in social co-operativeness, were mythical.

Dr. McMahon cannot see in the facts and figures the unqualified accuracy of either extreme viewpoint. In other words, the availability of a wide range of differing combinations of restraint and liberty can apply variations of state power in the social control of more people. Nonetheless, the degree of control is frequently as much carrot as stick, and seeks to achieve an effective measure of social control and public safety through an affordable (this is important to the taxpayer) allocation of public resources.

To the critics on both sides, who would probably either argue that any liberty of convicts endangers the 'honest citizen' or argue that any restraint has a primarily political purpose in regulating the conduct of the less-advantaged, Dr. McMahon says:

Advocating that critical perspectives of power be modified is by no means suggesting that a naive optimism should be substituted for radical pessimism. But a modest proposal can be made. Rather than

⁸ *Ibid.* at 114-155.

seeing the exercise of penal power as always, and everywhere, involving only more social control, repression, domination and subjection, the possibility should be raised.⁹

The possibility of which she speaks is the realistic development of a system involving a large assortment of social control methodologies unimpaired by the presumptions of extremists. As the author to the forward of his book proposes, extremist viewpoints tend to be "self-enclosed on whole fields of inquiry" and to have a "one-dimensional conception of power [which] leads to an obsession with failure."¹⁰

One would want to have a correctional justice system which could be both protective and humane. One would want the correctional system to protect both the people and the resources of the larger body politic while not unnecessarily restraining or debilitating the individual offenders. What's wrong with that sort of 'rethinking' even if it might actually enlarge the sphere of social control methodologies?

Maeve McMahon has made, in this book, a highly useful contribution to the discourse of criminology, penology and corrections in Canada. A rather minor quibble with her book might be that, like most modern day experts, she tends to use language which is complex, and even somewhat baroque; therefore at times it takes more than one reading of some paragraphs to fully grasp the point. However, it is not, in this case, a matter as Shakespeare put it, of having two grains of wheat in two bushels of chaff (and when you have found them, they are not worth the search). There is a lot of wheat here.

It has been said that the manners in which a nation (a) values and enshrines human rights and liberties and (b) treats its offenders, are the key indicators of the level of civilization of that nation. Canadians have been able to legalize our society around a core package of rights and freedoms that we call *The Canadian Charter of Rights and Freedoms*. Dr. McMahon's assistance in reconstituting our manner of thinking about how to deal with our offenders is both timely and appropriate.

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⁹ *Ibid.* at 218.

¹⁰ *Ibid.* at xvi.