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PRISONS AND LOW-INTENSITY CONFLICT: THE NEED FOR A PEACEBUILDING APPROACH

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Introduction

Much of the literature on the role that penal policy can play in reducing the level of political violence has come from those who have advocated either the 'criminalisation' of politically motivated crime or else have taken a militaristic approach to the problem. This article argues that such approaches are limited in their efficacy and that a conflict resolution approach is a necessary aspect of the state's approach to ending low-intensity conflicts. It is, however, important to define the term conflict resolution as it is used in this article as conflict resolution has both narrow and broad definitions. Some see it as primarily being that of groups participating in high-level (elite based) political talks. However, the academic discipline of conflict resolution is far more inclusive than this narrow interpretation. The discipline first emerged in the 1950s and is the examination of conflict with the objective of seeing how it can be resolved.^[1] This means that as well as looking at mediation, in all its forms, peace making and peace keeping mechanisms also fall within its remit. Conflict resolution has not previously looked in any detail at the role of prison policy in low-intensity conflicts. Where criminology and conflict resolution have met in the past it has primarily been in areas such as victim/offender mediation and the alternative to violence project where conflict resolution techniques have been used to try and help reform the individual prisoner or offender by making them come to terms with the harm they have inflicted and then learn new ways in which to respond to events other than to use violence (*Peace Matters*, Autumn 1997: 8-9). This article agrees with the contention of Kieran McEvoy and Brian Gormally (1997) that the conflict resolving possibilities of penal policy will need to be expanded to also include the importance of prisoners in low-intensity conflicts.

The justice and deterrence approaches

The justice approach to criminology, which justifies punishment as an end in itself and rejects the idea of reform, has resonance's with some writers who deal with political violence. There are a number of writers who have felt on ideological grounds that any politically motivated offender should be tried and severely punished for their crimes regardless of, or indeed because of, their political motivation. While the concept of deterrence is well developed within the field of criminology its applicability to the field of political violence is some what more problematic. Just as the concept of deterrence has been questioned by writers addressing criminally motivated offences the concept is also problematic in the context of politically motivated offences. If a person belongs to a group that has decided to carry out acts of political violence they will tend to think in similar ways to a conventional soldier rather than a criminal. If as some criminologists suggest the principal role of deterrence is based on the likelihood of discovery rather than the severity of the punishment (Ashworth, 1994: 821) there is an instant problem in applying this to politically motivated offenders. While the prospect of capture and punishment is not welcomed by the political offender it is nonetheless not only

seen by such offenders as an occupational risk but also as a necessary price to pay for the transformation of society. How can one deter someone who is prepared to die for a cause which they think is right?

Non criminological writers who have addressed the problem of political violence have argued that the concept of deterrence and justice is still important. Paul Wilkinson and Richard Clutterbuck emphasise the importance of justice and punishment when dealing with political violence. Wilkinson says that society has the right to see '*a penalty appropriate to the scale of punishments laid down for the offence in question.*' He goes on to argue for the necessity of punishment, not so much to deter the individual deviant but as a '*general preventive against law breaking*' (Wilkinson, 1977: 20-23).

The Church of Ireland Primate of All Ireland and Archbishop of Armagh, Robin Eames, has voiced the need felt by the wider community in Northern Ireland to see that the justice system deals with the perpetrators of political violence:

There is a strange feeling of community satisfaction when a terrorist is tried and convicted. That conviction will never bring back his victims, but some people see conviction as one less terrorist free to carry out more atrocities... the removal from society of such a person will produce proof, if proof is desired, that crime does not pay and that terrorism is being met by a judicial process which is society's real safeguard in the long run. (Eames, 1993: 63-4)

The classification of (for want of a better word) 'terrorism' as a crime to be prosecuted by the due process of law has in Northern Ireland become known as 'criminalisation'. This strategy began under a Labour government in the mid-1970s but became synonymous with British strategy during the 1980s when Margaret Thatcher was Prime Minister. Criminalisation, which was combined with the policy of police primacy and the abandonment of internment without trial, attempted to de-politicise the conflict in Northern Ireland by removing its more overt political aspects (Rees, 1985: 275-81). In the case of criminalisation it seems that the classification of political offenders as criminals was primarily motivated by political ideology rather than on criminological grounds.

The ultimate form of punishment, which should theoretically have a deterrent effect, that the state can resort to in dealing with political violence is execution. However, as this is a punishment that has fallen into disuse or been abolished in most democracies (with the notable exception of the United States) it will not be addressed directly in this paper except to say that there is little evidence to suggest that the use of this penalty has ever worked in deterring political violence.^[2] While execution obviously leaves little to be discussed in the terms of reform and release, it is still possible to impose substantial punishment on an individual without having to kill them. This normally involves long terms of imprisonment for terrorist related crimes. In the Italian case emergency legislation known as the '*Cossiga*' law made '*terrorism and subversion*' an aggravating factor in sentencing. This led to an increase of some sentences specifically because of their political motivation (Porta, 1993: 185). This did indeed prove in the longer term to have a role in suppressing some aspects of Italian terrorism. Similarly in Northern Ireland between 1989 and 1995 prisoners convicted of politically motivated violent crimes (scheduled offences) had a reduced remission rate of one third compared to criminal prisoners who received 50 per cent remission during this period. (*Hansard*, 6 December 1989: col. 212) There has, however, been little evidence that this policy had any effect on the level of political violence at the time. However, more minor outbreaks of politically motivated crime such as the campaign by the British anarchist group the Angry Brigade have been nipped in the bud by rapid and efficient use of the judicial process which saw the vast majority of the group under arrest or serving prison sentences thus physically preventing and restricting their ability to carry out acts of violence (Wilkinson, 1977: 139). On the other hand the experience of many conflicts including West Germany and Northern Ireland have demonstrated that if the use of state violence is seen to be disproportionate there can be a backlash in the form of increased support for the prisoners.

A key problem that the justice approach is unable to address satisfactorily is that under most conventional penal systems in all but the most exceptional circumstances, at some stage the prisoner will have to be released. This presents a new debate in whether, or what level of, remission or other such benefit should be passed on to the prisoner? Early release of the individual prisoner is the approach is taken by the more conventional penal and sociological writers in this area and is based on the treatment of criminal offenders. Early release, at least initially, was a penal safety valve that allowed the state to deal with excess numbers by releasing prisoners before the end of their sentence (Cavadino and Dignan, 1992: 143-7). Among the earliest versions of this was the ticket of leave system introduced to Ireland during

the nineteenth century, which involved the early release of prisoners who had worked through several stages of a prison regime and were then released on licence. In its current manifestation, early release in the UK takes the form of remission of sentence for good behaviour which can lead to release on parole. In the case of life prisoners, their is release on licence after a tariff period is served (Leech, 1995: 280-87). These schemes have sought both to reward prisoners for good behaviour while also allowing the state to save on the expense of holding them in gaol. In this context, while the prisoner is given the freedom of returning to normal life, he or she is still subject to the indirect control of the justice system through the parole and probation officers as well as charitable groups which seek to help the released prisoner reintegrate.

It has been alleged in the US that parole and remission has been used by the Federal authorities as a method of coercion against politically motivated prisoners. In the case of Federal prisoners, they are awarded eight to ten 'clean' days each month for good behaviour which can be taken away by the authorities. Further parole, which in America is in most cases obtainable after between one third and two thirds of a sentence have been served, is also dependent on the inmate's collaboration with the prison administration. It has been alleged that in the case of politically motivated prisoners, this has amounted to a form of coercion (Dunne, 1992: 76-7) This would fit Michel Foucault's argument that the role of the penal system has been transformed from that of punishment to surveillance (Foucault, 1977: 298-308).

In summary deterrence is only really effective in dealing with small isolated groups of individuals who have resorted to furthering their cause through violence and is only effective if the infrastructure of the state's criminal justice system remains unaltered. In the case of significant organised political violence sufficient strain is frequently placed on the normal judicial system for it no longer to be able to cope with the stress. This means that the judicial system is adapted resulting in the legitimacy of any punishment imposed being questioned and increasing the probability that a conviction may be unsafe. The use of disproportionate punishment can lead to significant damage to the state's cause and can breed dissatisfaction in the wider community, creating sympathy for the insurgent groups rather than deterring them. Further, with the obvious exceptions of capital punishment and 'life meaning life' sentences, the excessive use of punishment does not address the problem that sooner or later the prisoners will have to be released into society possibly more aggrieved against society than they were prior to their arrest. Thus while punishment and deterrence may in the short term be politically attractive, it is a sticking-plaster approach to political violence which does not set out to address the problem from a long-term perspective.

The counter-insurgency approach

The role of the prisoner, as viewed by the positivist counter-insurgency/counter-terrorism school of thought, was developed by the generation of post-war British colonial administrators, police and soldiers who dealt with the instability caused by the end of the British Empire. Perhaps understandably, the philosophy is firmly rooted in the realist paradigm of political thought and is based less on the philosophy behind imprisonment as punishment and more at the best way in which the state can win low-intensity conflicts. The principal writers and practitioners in this school have been the soldiers Richard Clutterbuck and Frank Kitson, the former civil servant Robert Thompson and the academic Paul Wilkinson, who along with Richard Clutterbuck has transferred much of counter-insurgency theory to the field of counter-terrorism.

The captured insurgent is primarily seen as a source of information, although prisoners are also key elements in psychological warfare strategy. This approach takes the pragmatic view that the interest of the state is to bring an end to political violence rather than the punish the individual. While the historical origins of this approach can be traced to pre-war Burma and the Middle East it arguably began during the Palestine Mandate and the confrontation between Jewish militants and the British army in the immediate post-war years. It subsequently evolved in Kenya, Cyprus, Malaya, Vietnam and more recently Northern Ireland.^[3]

Robert Thompson was the first practitioner to construct a theoretical understanding based on his experience in Malaya between 1948 to 1960 and his time as an adviser in South Vietnam between 1961 and 1965. He argues that the first requirement of a psychological warfare

campaign is to decide on the terms of an offer to allow insurgents to surrender. The actual offer must be both sufficiently attractive that insurgents will take it up, while it should not be too lenient or vague or may create an impression that this is an amnesty. He was against the concept of an amnesty at the beginning of an insurgency, as this might leave the impression that immunity would also be granted in the future (Thompson, 1987: 89-91). He was in favour of maintaining as close to a normal legal system as possible during an insurgency. Consequently, this meant that insurgents guilty of serious crimes should be put on trial for their crimes. Despite this, Thompson argues that the state should allow the subsequent sentence to be dependent on the collaboration and general behaviour of the prisoner. This taking over of sentencing by the executive from the judiciary is a convenient way of maintaining the semblance of a judicial system in combination with a state of emergency. Aside from gaining information, Thompson saw advantage in encouraging defections from guerilla organisations as defections will cause dissension within groups and reduce the size of the enemy. It also allows the reintegration of lower level insurgents back into society relatively quickly, allowing a return to normality.

Richard Clutterbuck argued that the real breakthrough in a guerrilla war came '*when the guerrillas or their active supporters defect and give inside information*'. Using Malaya as an example, he describes how of the 4,000 guerrillas who were captured or had surrendered, around 2,700 were ultimately willing to collaborate with the authorities and became known as SEPs (Surrendered Enemy Personnel). The SEPs were offered new identities and resettlement in exchange for their cooperation. By the end of the insurgency, even the second in command of the insurgents, Hor Lung, defected helping to bring the insurgency to an end (Clutterbuck, 1990: 128-9). The role of defectors in undermining the morale of insurgents has also been recognised by the United States and this was used to some effect in defeating an insurgency in the Philippines and to less success in South Vietnam. It was in part this success that led to three American researchers to argue that a well co-ordinated defection programme was one of the most effective tools in counter-insurgency warfare (Molnar, LeNoir and Tinker, 1969: 333-4).

Frank Kitson, who fought in Malaya and Kenya, wrote about his thoughts on the two campaigns in his autobiography (Kitson, 1977). He agreed with Thompson's approach, although he looked on the prisoner not simply as a source of information but also as a potential recruit into the security forces. Former insurgents would be deployed either as soldiers in his counter or 'pseudo' gangs or as transmitters of pro-government propaganda (Kitson, 1960: 290). Kitson argues that the use of brutality during interrogations is counter-productive and argues that prisoners who have defected or may be about to do so should not be held with hard core prisoners who might dissuade them from collaboration. Regarding the information that a prisoner can produce, Kitson argues that an interrogator pressing for short-term tactical information can endanger the long-term cooperation of the prisoner. The background information that a prisoner can provide is of greater importance to the security forces than any short term information that may be lost by taking a longer time in gaining the cooperation and trust of the captured guerrilla. (Kitson, 1960: 151)

A key element of the counter-insurgency school of thought addresses the wider community. This has meant that any grievances that are seen as legitimate by the authorities have to be dealt with. In Malaya and Kenya, land reform was introduced as well as the provision of an improved infrastructure including roads and better sanitation facilities. Further, many of the political grievances had to be addressed. Britain's primary interest in both Kenya and Malaya were economic; thus in both cases, moves were started to grant the countries political independence in such a way that the economic interests of the UK were protected. Thus, prisoners did not exist in a vacuum; in parallel to their conversion and rehabilitation, the British counter-insurgency school also saw the rehabilitation of the communities from which they came as part of the same process (Mockaitis, 1990: 126-31).

This use of the prison as a tool of psychological warfare was transferred to Europe with the outbreak of the 'troubles' in Northern Ireland. In 1971 Kitson was transferred to Northern Ireland and was to apply his theories to the situation there. Northern Ireland's population is, however, essentially urban and it is in this environment that most paramilitaries operated in rather than the rural battlefields typical of the former empire. Historically this period has become notorious for the heavy handed treatment of the nationalist community by the security forces.^[4] Internees were treated with such brutality that in January 1978 the European Court of Human Rights found the British Government guilty of the '*inhumane and degrading treatment*' of internees.^[5]

Prison releases tend to be seen by counter-terrorist writers in terms of defections and the damage that defectors can inflict on organisations, rather than the reintegration of the individual into society or the role that the prisoners' release can play in the resolution of a conflict. The principal difference between the counter-insurgency and counter-terrorist approaches are that the former was developed far out of sight in the colonies prior to modern communications while the latter was developed in the full gaze of the world's media. Further, this time the security forces were directed against a proportion of the civilian population of the home country. As one academic has observed:

The Army's counter-insurgency doctrine, evolved over 25 years of fighting insurgency in the empire, was difficult to apply in Ulster because the doctrine was not designed for domestic use... The restrictions and harsh measures which had made a successful campaign possible in Malaya could not be applied in Britain, with its long traditions of individual liberty and freedom of the press. (Charters, 1977: 22-7).

The logical conclusion of this process in Northern Ireland came with the supergrass system of the 1980s. This scheme which rewarded paramilitaries willing to turn Queen's evidence with freedom and a new identity was ultimately discredited through what one legal critic of the supergrass tactic has pointed out was the very lack of democratic accountability in the strategy:

... the advice of professionals, such as the police and the army has generally been given greater weight in the determination of law and order policy than any other opinion. stripped of the jury, the Diplock courts have lost a vital safeguard in the trial of the most serious offences. The result was the... supergrass system destroyed by the judiciary in an attempt to save the legal system from further damage to its credibility. (Greer, 1995: 276-7)

Further, objections have been made by the National Association of Probation Officers (NAPO) to the use of prisons in such a way. Tim Chapman (1986: 8), of NAPO, has argued that while it is right for the state to punish politically motivated offenders it is morally wrong for the state to attempt to influence the political views of the prisoner even if those beliefs are the reason for the prisoners offence.

The successful development of a supergrass type strategy in Italy and the early promise of the supergrasses in Northern Ireland during the early 1980s have demonstrated that conversion can be a rewarding strategy for the state. While the British had applied the supergrass principle both against insurgents in Malaya and organised crime gangs in London, the use of supergrass evidence was used in Northern Ireland during the 1980s until the judiciary put a stop to it. Alison Jamieson has argued that in Italy, *pentiti* (supergrass) evidence proved devastating against groups from both the left and the right and was an essential contribution to ending political violence in Italy (Jamieson, 1989: 198-210). In contrast, a 1984 report to the US Senate did not see the *pentiti* as playing a particularly decisive role in Italy. This is, however, a rare dissenting voice among most studies of this period (US Senate, 1984: 51). As time has progressed, most of the writing on this area has concluded that the *pentiti* were important, although of questionable morality as their use aided public order rather than justice. The Italian sociologist Donatella della Porta (1993: 168) has argued that the Italian experience of emergency legislation has been that the use of punitive sentencing failed to have a strong deterrence effect against groups of both the right and left and that it was more effective to encourage the defection of the prisoner rather than punish them.

As with those who advocate deterrence counter-insurgency theory is cast in the framework of victory or defeat, but the situation of prisoners is seen to be a political rather than a specifically judicial problem. Counter-insurgency writers see political violence as a military threat which needs a specific response, a key element of which is an attempt to win the 'hearts and minds' not only of the civilian population but also of the perpetrators themselves. This places the prisoners in a very important role as they would be the single most important group from which potential defectors can be recruited. Perhaps not surprisingly, imprisonment frequently makes prisoners potentially receptive to options that could earn their release. This approach prioritises order over law and is open to criticism as it both attempts to change an individual's political perspective and over rides the liberal democratic principle of the separation of state powers. A justice system which is seen to protect society by punishing wrongdoings is a fundamental plank of democracy and this is undermined by the trading of punishment for defection. Further, the priority of information over punishment is unfair as the more important information is normally possessed by the more seriously involved prisoners, normally guilty of the more serious crimes. Thus a person who may only be peripherally

involved in a conspiracy is not judged important enough to justify being released while a leader, possibly guilty of far more serious crimes, may be able to gain early release, this is both unjust and unfair.

The need for the creation of a peacebuilding approach to politically motivated violence

The deterrence, justice and counter-insurgency approaches to political violence have major deficiencies to them in terms of peacebuilding. While they can be useful in countering acts of political violence if and when they are used appropriately it similarly is the case that there can come a time in a conflict when a peace making approach is more appropriate. However, the literature on the role of prisons in conflict resolution is not extensive. This is unfortunate, as the position of prisoners is often of key importance to any sub-state group that has been militarily confronting the state. This is especially the case if the conflict is being resolved without the *raison d'être* of the group having been achieved, as is currently the case for instance in Northern Ireland.

The conflict resolution discourse has argued for some 20 years that the underlying causes of conflict are the same regardless of whether they are political or personal and has challenged the strong state centric model of much of political and international relations research into violence. While conflict resolution can not be described as fitting into a specific theoretical paradigm in the way that the approaches discussed above can be there is still sufficient common ground amongst writers to say there is such a thing as a conflict resolution approach to violence. There has not been that much work in the discipline that has examined the problem of political violence and prison policy but this does not mean that there is no need for it. Peter Sederberg (1995: 305), has argued that the granting of concessions to terrorists is a viable and defensible option especially if you wish to seek some form of resolution of a conflict. This is because if actors in a conflict feel that they will have more success in achieving their aims non-violently most groups will normally opt for this option. In the case of most major sub-state conflicts, the position of prisoners has always been a key issue to terrorist or guerilla groups which gives the prisoner an important role in both mediation and post-conflict peace building.

That prisoners are an issue in high level political mediation is beyond doubt. In the case of Northern Ireland the political parties allied to the paramilitaries have demanded that prisoners should be released. John White of the Ulster Democratic Party, which is linked to the Ulster Defence Association (UDA), baldly states that the UDA will continue to exist as long as its members remain in prison. (NIACRO, 1995: 56-7) Similarly, *Sinn Féin* lists the unconditional release of all political prisoners as a key step on the road to their primary objective of a united Ireland. *Sinn Féin's* President, Gerry Adams, has on a number of occasions made clear that the release of prisoners is a key aim of the republican movement. In 1987 he wrote that as part of the demilitarisation of Northern Ireland '*All political prisoners would be unconditionally released*' (Adams, 1988: 92). In the context of the Northern Irish peace process in December 1993, Adams also made clear that this policy aim remained. '*A negotiated settlement will remove the symptoms as well as the causes of the conflict. As part of this, it is obvious that all prisoners must be released*' (*Independent*, 21 December 1995).

The paramilitaries have seen the release of prisoners as a key part of the demilitarisation. In July 1997 when the *Sinn Féin* leadership issued a statement calling on the Provisional IRA to restore its ceasefire it made clear that understandings had been reached with the British government over the issue of prisoners (Adams and McGuinness, 1997). It was, however, some time before the nature of this understanding as regards the prisoners became public. The issue of Provisional IRA prisoners in English gaols was dealt with almost immediately when the Home Secretary announced that most Irish republican prisoners would be transferred to Northern Ireland or the Republic by the end of 1998 (*Guardian*, 19 November 1997). Over Christmas 1997/98 there were complaints from loyalist prisoners who felt that while republicans had been benefiting from British policy they were being ignored. The Northern Ireland Secretary of State, Marjorie Mowlam, then entered the Maze Prison and talked directly to the prisoners. In a statement released immediately afterwards Mowlam accepted the importance of the prison issue to the paramilitaries but said '*there will be no significant changes to release arrangements in any other context*' except the success of the talks process (Mowlam, 1998: para. 13). This recognition of the importance of the prison issue

was further highlighted a week later when the UK and Irish governments issued a joint statement on '*Propositions on Heads of Agreement*' which outlined their thoughts on likely a peace agreement in Northern Ireland. This statement included a mention that the prisoners issue would have to be included in any final settlement (NIO, 12 January 1998: para. 9) This was reflected in the agreement that was signed on the 10 April 1998 which included the aspiration that prisoners belonging to groups observing a ceasefire should be released in a relatively short period of time.

In 1995 a comparative study by the Northern Ireland Association for the Care and Resettlement of Offenders was written with the intention of contributing to the debate over the release of politically motivated offenders in the context of the two ceasefires in Northern Ireland. This work compared the situation in Northern Ireland with the experience of other areas which had suffered periods of political conflict and the role that the release of prisoners has played in each circumstance. This report makes clear the authors' belief that a prison release is an essential part of the peace process and they go on later to argue that prison itself should be regarded as a form of coercive violence. (Gormally and McEvoy, 1995: 12)

A number of clergy have also contributed towards the idea that prisons and prisoners are vital to the future chances of peace. The Catholic priest and human rights activist, Denis Faul, has for several decades observed the importance of the prisons generally and prison releases specifically to the future prospects of peace in Northern Ireland. In December 1991 he stated: Releases are the quickest road to peace and the only way to get the relatives and friends of prisoners to put any trust in the police or judiciary is if a kind and generous treatment persuades them that the absence of police or army persons in jail is not an imbalance of justice. (Faul, 1991: 11)

He goes on to say that in his view families are far better controllers of the future actions of the former prisoners than the security forces could ever be. Given that Faul had been given national and international prominence during the 1981 hunger strike, which he brought to an end by persuading the strikers families to intervene and save the lives of the men on the fast, this lends some weight to his arguments. These sentiments are echoed by an Italian priest, Carmelo di Giovanni. He argues that a vital part of a post-conflict process involves the release of prisoners. In the Italian case this was in the context of disassociation, where the individual prisoners ultimately came to terms with their actions. His book is an account of fifteen individual Italian prisoners of both the right and the left, who renounced violence and were involved in creating new peaceful lives (Giovanni, 1990).

Prison release was also an important issue during the Spanish transition to democracy after the death of the dictator Franco. In this context the release of many of the political opponents of Franco, including those who had opposed him violently, was seen as an essential part of the negotiations between the democratic opposition and the transitional government. In early 1975, just as the dying dictator was preparing to sign the death warrants of two Basque separatists and three anarchists, a Madrid political magazine *Cuadernos Para El Dialogo* (Jan/Feb 1975: 48-9) was supporting church calls for an amnesty that would help to heal the wounds of the Spanish Civil War. It argued that the amnesty of 23 September 1939, which had favoured the victorious rebels over the defeated government forces, had not been sufficiently generous. It argued that Spaniards exiled due to the Civil War should be allowed to return. Because of the dictatorship at this time, the magazine could not overtly argue that more recent opponents should be included but this was almost certainly the subtext of this article. This was certainly the point that was advanced by José Marié Portell in 1977. He charted the increasingly militant campaign by the Basques who argued the need to see an amnesty as part of a resolution of the Basque-Spanish conflict and made it clear that he felt that the issue should be dealt with. (Portell, 1977)

In Israel/Palestine, in the context of the peace process between the Israeli authorities and the Palestine Liberation Organisation (PLO), a large number of prisoners have been released. This has been in the context of the negotiations: initially some 9, 500 prisoners were in Israel's prisons but after the agreement in Cairo that introduced self-rule in Gaza and Jericho, the transfer of 5,000 prisoners to Palestinian jurisdiction was announced. (*Guardian* 15 June 1994) Yet by May 1995 some 1700 prisoners had yet to be transferred and the authorities were still releasing small groups such as the 258 prisoners released on the 8 May 1995 in order to add life to the negotiations. Thus, the prisoners were being quite deliberately used as bargaining chips, resulting in the failure of Israel to release prisoners in defiance of the Cairo agreement. Further indications of the problems that can be brought by a prison release can be seen by the vetoing of the release of rejectionist Palestinians by the *Shin Bet* intelligence

organisation in defiance of the Cairo agreement. Further, the fervent opposition from the right wing *Likud* party created problems and slowed the release - just as among Palestinians the failure of the PLO to gain the release of more prisoners resulted in increased support for rejectionist groups (*Guardian*, 9 May 1995). Thus in the case of Palestine/Israel the release of prisoners is perceived to be a vital negotiation tool but is also a divisive political issue among all parties to the conflict.

In April 1997 an interesting development also occurred in Spain which suggests a further role for the prisons in the resolution of low-intensity conflict. Negotiations were opened up between the leftist group GRAPO (*Grupo de Resistencia Anti Facista Primero de Octubre*) and the Spanish government inside a prison in Sevilla. The prisoners had been congregated together specifically so that they could hold peace talks (*El País*, 14 April 1997). While the negotiations floundered on a number of issues including the legalisation of the GRAPO's political wing and weapons decommissioning it nonetheless indicated that the Spanish government was willing to use a prison as a negotiation venue. Similarly, in Colombia a guerrilla group the ELN (*Ejército de Liberación Nacional*) tried to conduct negotiations through imprisoned members of its leadership with the government in 1995 (*Cambio16 Colombia*, 29 May 1995). These talks ultimately led in early 1998 to a pre-agreement accord signed between the ELN and the Colombian government in Madrid.

In the past while prisons have been used as a channel of communication as has been the case in Northern Ireland but it has been relatively rare to use the prison as a venue for negotiation in itself. In 1984 the Italian leftist group *Prima Linea* did dissolve itself after discussion between the chief prosecutor and prisoners, however, this was primarily to negotiate a surrender rather than come to a peace deal. It must be observed, however, that at the point of writing the negotiations in Spain have ground to an inconclusive halt. Further, the African National Congress (ANC) leadership refused to negotiate with the South African government within the prisons in 1985 specifically because of the imbalance in power represented in the prisoner/gaoler relationship (Mandela, 1994: 511). So perhaps it would be wise to temper one's enthusiasm for this specific role while nonetheless observing that it has occurred.

The move towards majority rule in South Africa has also produced a body of work on the role of amnesty in the democratisation and reconciliation programme during the transition to majority rule. Two important books were published as a result of conferences held in Cape Town that dealt with, among other things, the nature of amnesty and the tension between the need for an amnesty and the punishment of great human rights violations, whether committed by the forces of the state or the ANC. These conferences included delegates from Latin America and eastern Europe who spoke of their own transitions to democracy and the necessity to confront the past and not forget it. (Levy and Boraine, 1995 and Boraine, Levy and Scheffer, 1994)

In Spain the largest ETA victims group is fundamentally opposed to the use of early release, seeing the reduced punishment as a travesty of justice. This illustrates an important remaining tension which might conflict with a high-level conflict resolution process where high-level actors see prisoners in abstract roles ignoring the suffering they may have caused to other individuals. The NIACRO report attempted to resolve this tension by pointing out that one could preserve an aspect of punishment in an early release programme. This was to be achieved by reforming remission rates for sentenced prisoners while releasing life prisoners after an accepted tariff was served. It suggested that a precedent was made in the case of members of the Official IRA who were released after serving seven years of a life sentence. (Gormally and McEvoy, 1995: 28-38)

It is, therefore, possible to note that there are important peace making potentials to penal policy in the reconciliation of low-intensity conflicts. These need not contradict those other approaches outlined by those who believe in the justice, deterrence or counter-insurgency approach. Indeed each approach has a role depending on the stage that a conflict is at. The use of justice and deterrence theory is primarily appropriate at the beginning of a conflict or else when the group or groups involved in violence are of small size and have little popular support. The counter-insurgency approach is appropriate in more widespread outbreaks of political violence. However, if it becomes clear that the state is unable to achieve a victory the conflict resolution role becomes important. The prisons can be an area where the state and sub-state groups can contact each other and hold a dialogue. Further, the issue of the release of prisoners is an important bargaining chip for the state in actual negotiations and finally the release of prisoners, taking into account the sensitivities of victims and other groups, can be

used to both cement a peace process and engineer the reconciliation within society which is essential if a conflict is not to break out again.

Notes

1. Two good introductions to the academic field of conflict resolution are Burton & Dukes (1990) and Mitchell (1981). [\[Back to text\]](#)
2. It is interesting to note that two British military theorists have opposed the use of the death penalty on strategic grounds seeing capital punishment as counter productive when used against politically motivated offenders (Fox, 1978: 419-23 and Clutterbuck, 1990). Indeed the only execution of a member of the IRA in Northern Ireland was in 1942 despite the retention of the death penalty until 1973 (Walker and Hogan, 1989: 154). [\[Back to text\]](#)
3. For further information on the development of British counter-insurgency doctrine see Mockaitis (1990). [\[Back to text\]](#)
4. A critique of British security policy in Ireland can be seen in Faligot (1983). [\[Back to text\]](#)
5. A detailed description of the internees' complaints is contained in McGuffin (1974). [\[Back to text\]](#)

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