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G. S. Friedman

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BOOK REVIEWS

PRISONS: HOUSES OF DARKNESS. By Leonard Orland.
New York: Free Press. 1975. Pp. 224.

*Reviewed by G. S. Friedman**

The American prison system within the last year has witnessed a number of significant events. Martin Sostre, America's most vocal political prisoner and a man greatly responsible for active inmate litigation, has been pardoned and released. Eldridge Cleaver, whose profile of degradation and anger in prison, *Soul on Ice*, aroused public consciousness, has returned to prison. Joan Little has been acquitted of murdering the prison guard who had sexually assaulted her in prison. Two grand juries investigating the senseless murder of inmates and guards on September 13, 1971, at the Attica Correctional Facility have been dismissed. Today, the prisoners at the Southern Correctional Facility in Ohio, Lucasville, are on a hunger strike, and the guards are on the verge of striking. It seems appropriate that as America celebrates its two hundredth birthday, its prison system is being assaulted from inside the institutions as well as from outside.

The American prison has been the subject of many literary works. In 1842, writing in his *American Notes*, Charles Dickens observed of the American prison:

The system . . . I believe . . . in its effects, to be cruel and wrong. In its intention, I am well convinced that it is kind, humane and meant for reformation; but I am persuaded that those who devised this system . . . and those benevolent gentlemen who carry it into execution, do now know what it is they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon its sufferers . . .¹

In 1975, writing of the tragedy of American prisons, New York Times columnist Tom Wicker, an observer of the riots at Attica prison, remarked:

So he could not turn away from the prison, it seemed to Tom Wicker, in the chill drizzle of the night, under the loom of the walls. There was nowhere to turn. Inside or out, fear and hatred circled each other endlessly; inside or out, the guards could never turn their backs on the inmates. In that sense, Malcolm X had seen it clear — America was itself a prison whose occasional flaring D-yards could no more be tolerated than Attica's.²

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¹ C. DICKENS, *AMERICAN NOTES* 155-56 (1842), *quoted in* L. ORLAND, *PRISONS: HOUSES OF DARKNESS* 29 (1975).

² T. WICKER, *A TIME TO DIE* 325 (1975).

From Dickens to Wicker, prison literature has vividly portrayed the malignancy of the prison system in the United States. Yet, few authors have offered a viable alternative to that which exists.

Leonard Orland in *Prisons: Houses of Darkness* has made a significant contribution toward a clearer understanding of America's self-defeating correctional system. Comparable to Judge Marvin E. Frankel's *Criminal Sentences*, Orland's book is another powerful brief in support of drastic change in the manner of imposing punishment under the present criminal justice system. In order to develop his thesis, the author first explores the nature of prisons, and then examines the role of the courts in changing punishment. Finally, after criticizing the status quo, Orland proposes his own formula for change.

The most satisfying part of Orland's treatise is his presentation on prisons. The history of the American prison is particularly instructive for those eager to change the present form of punishment. As Orland notes, prisons were created in colonial America as a humane alternative to the repressive forms of corporal punishment prevalent in Great Britain and Europe. Through the good intentions of a Philadelphia group led by Benjamin Franklin, America's first penitentiary for convicted felons was opened on Walnut Street in Philadelphia in 1772. It was there that solitary confinement was introduced to the American penal scene. Yet, the irony, as clearly illustrated by Orland, is that such confinement was not promoted to drive the prisoner to madness through seclusion, which it often did, but rather to support the Quaker belief in solitude and prayer as a means toward personal redemption.

In his brief history of the American penal system, Orland provides many telling points. For instance, he points out that prison architecture was originally hastily conceived, primarily to implement the Quaker principle of solitary confinement. Most prisons are modeled after Auburn State Prison, which opened in New York in 1819 and which was designed with back to back interior cells within a hollow building; the reason for this structural scheme was not to facilitate rehabilitation or even punishment but simply to economize. One need only look to Ohio's new major penitentiary, Lucasville, to detect the shadow of this nineteenth century penitentiary model.

Nowhere is the failure of America's prison system more clearly demonstrated than in Orland's account of the reformatory. The development of the reformatory was largely attributable to the pressures of the nineteenth century prison reform movements. The object, as noted by Orland, "was to graduate conduct, as well as its rewards."³ Rehabilitation became the cry of reformers, and the indeterminate sentence and the parole board were conceived in response to that cry. The indeterminate sentence and the reformatory were created with the same singular reformist breath. The indeterminate sentence afforded the prison and, later, the parole boards the power to decide when an individual prisoner was ready for release. Its theory emphasized individualized justice and allowed the punishment to fit the rehabilitative

³ L. ORLAND, *PRISONS: HOUSES OF DARKNESS* 31 (1975).

needs of the inmate who was sentenced to a maximum but no minimum sentence.

The reformatory was the perfect testing ground for this new and humane theory of punishment. Elmira Reformatory, the original institution of its kind, opened in 1879 to house young adults between the ages of 16 and 30 who were imprisoned for the first time. Although the physical structure of Elmira was identical to that of Auburn State Prison, the Reformatory offered educational and vocational programs. Inmates were encouraged to participate in these programs in order to expedite their release. The reformatory system, however, peaked in 1931 when it was declared a failure. Nevertheless, reformatories, the indeterminate sentence, and parole boards, although under heavy criticism today, remain an integral part of the American correctional system.

Orland's succinct presentation of American penal history vividly illustrates a pattern of failure. It is thus no wonder that the rate of criminal recidivism is high. Indeed, one may conclude from Orland's observations that nineteenth century England's policy of prisoner banishment to distant continents was a more effective form of punishment than the United States' present correctional process.

As a law professor and former member of the Connecticut Parole Board, Orland places much faith in the courts as a vehicle for penal reform. The author states that

[t]o a large extent, the Bastille has been stormed in the quiet of the courtroom. The effect, however, has been no less dramatic. What has emerged is a grass-roots political entity — a people's movement. Significant, peaceful change has been wrought by prisoners themselves. Such a development is unprecedented in the annals of Anglo-American penal history.⁴

There is no question that significant inroads have been made in recognizing the civil rights of inmates. Certainly, Martin Sostre alone has served as a catalytic agent in raising the issues of freedom of expression in the prisons. Orland in his chapter on "Institutions in Conflict" effectively capsulizes the most recent court decisions relating to prisoners' substantive rights. Support for his premise that the courts are reforming prisons can be found in Judge Frank Johnson's recent decision holding the Alabama prison system cruel and unusual and contrary to the eighth amendment of the United States Constitution.⁵ And yet, it seems that with the exception of Alabama, the courts are retreating and deferring to the institutions on the crucial issues raised by inmates.

Although the courts have continually rejected the claim that an inmate has the right to counsel in parole revocation and disciplinary hearings, they have maintained that some due process is required. The press still does not have free access to the institutions, and inmates must generally look to the mail as their primary means of communication with the outside world. Recently, in the case of *Baxter v. Pal-*

⁴ *Id.* at 11.

⁵ *Pugh v. Locke*, 406 F. Supp. 318 (M.D. Ala. 1976).

migiano,⁶ the United States Supreme Court harshly ruled against expanding inmate rights in disciplinary hearings. The Court reaffirmed its holding in *Wolff v. McDonnell*,⁷ recognizing that due process should prevail in institutional disciplinary hearings but further stressing the importance of the state's interest in such hearings. In a sense, the Court revitalized the concept of the "hands off doctrine." This doctrine is equivalent to judicial restraint in matters relevant to the legal issues and conflicts of prisons. The Court, however, did not stop there. In *Palmigiano*, the Supreme Court held that an inmate's decision to remain silent during a disciplinary hearing could be used against him; in that case, the defendant was awarded thirty days punitive segregation for his silence. This ruling suggests, however, that Orland's enthusiasm for judicial resolution of the controversy over inmate's rights is overstated. The quiet revolution he speaks of in such positive tones is substantially waning. In this regard, the *Palmigiano* decision is particularly significant since the disciplinary hearings represent the inmate's structured judicial system within the institution. It would seem that if one's silence can be used against him, the hope for justice within the institution is but a faint hope.

Unlike many critics of America's prisons, Leonard Orland presents his own alternative to the status quo and a blueprint for change. Recognizing political realities and priorities, Orland presents a radical approach and a reformist approach to change; the key to both emerges in terms of shorter criminal sentences.

Under Orland's radical approach, indeterminate sentences and parole boards would be abolished, and maximum sentences would be no greater than five years. This in essence, evidences a return to the flat sentence theory of punishment. Orland's radical approach, however, further provides that a person could be kept in prison beyond the five-year period if after a full judicial determination he was deemed too dangerous for release. Although this approach does not appear to be truly radical, it is not without merit, for such a judicial proceeding would ostensibly be more fair than modern parole procedures.

The reformist approach advocated by Orland, which seems to be the one to which he is most committed, represents an adoption of most of the recommendations proposed by the American Bar Association and the National Commission on Goals and Standards. It includes appellate review of sentences and would require that penal institutions be more publicly accountable for their actions. Orland would also require sentencing judges to justify each sentence by written opinion. Finally, it is important to note that Orland, as a former member of a state parole board, is adamant concerning the need, at the very least, to substantially curb the power of parole boards and, at best, to eliminate them altogether. His message is clear: criminal sentences are criminal.

Leonard Orland in *Prisons: Houses of Darkness* has written a con-

⁶ 96 S. Ct. 1551 (1976).

⁷ 418 U.S. 539 (1974).

cise brief in support of change in America's prison system. Though this reviewer takes issue with his *modus operandi* for change, Orland has performed a valuable service in presenting such a readable and precise indictment of prisons and sentencing practices in America. This is a book that should be read by anyone interested in the quality of justice in the United States. It is a portrait in miniature of the malignancy within our system of justice.

