
Prison Reform Through the Legislature

by James F. Smith

Virtually all legal protections for those accused of crimes have been the result of judicial construction of the federal Constitution rather than of legislative action. Federal judges, who are appointed for life, are considerably less susceptible than elected officials to pressure from public outcry against "coddling criminals" or "permissiveness." Consequently, they have been decidedly more protective of civil liberties than state judges, U.S. Congressmen, and state legislators who must stand for reelection. To a large extent the conservatism of elected officials concerning crime and punishment stems from the economic base of campaign funding. Both Democratic and Republican parties are dependent upon funding from the very rich, who tend strongly to see their interests served by a repressive criminal justice system. Many politicians have built their careers on condemning "softness on communism" or "coddling of criminals." In addition, the conservative policies of public officials on these issues are to an important extent the result of the political effectiveness of the police and prison establishment (police associations, district attorneys, associations of prison officials). These groups are well organized throughout the country. They main-

tain pressure on politicians to retain or increase harsh penalties, and they are quick to condemn judicial leniency.¹

This kind of political pressure has not been challenged by a countervailing political force. Teachers, consumers, ecology groups, and labor unions have established themselves as viable political influences in many statehouses. Prison reform groups have not.² A myriad of community groups, friends and relatives of prisoners, prison lawyers, convict unions, and radical prison movement groups exists. These groups, however, have not yet allied to launch a concerted political challenge to the conservative influence of the police establishment. These groups are the most knowledgeable about, and dedicated to, prison reform, but they remain unwilling or unable to concentrate their energies and resources on legislative bodies.

Given the enormous frustrations of trying to influence a state legislature, it is easy to understand why prison reform groups have not actively tried to work through this body. It is nonetheless true that fundamental change in the prison system on a state or federal level necessarily involves legislative reversal of previous enactments. The courts simply cannot do it alone. In response to the high level of publicity in the press and elsewhere about the problems of American prisons, legislatures are likely to enact some kind of change in the prison system. But unless prison reform groups are actively involved in the politics of those legislative bodies, these changes will probably be more in line with the wishes and interests of the police and prison establishment than with the wishes and interests of prisoners.

This chapter presents a detailed discussion of the attempts at

1. For an excellent analysis of the political sophistication of the law enforcement lobby, see William W. Turner, *The Police Establishment* (New York: Putnam, 1968).

2. The word "reform" is not meant to exclude the abolition of prisons, but merely to characterize any changes or modifications (including abolition itself) of the penal system.

prison reform in the 1971 session of the California legislature. Although California has certain special problems, the fate of prison reform legislation is illustrative of similar reform attempts throughout the country.

PRISON REFORM BILLS IN THE 1971 CALIFORNIA LEGISLATURE

In the 1971 California legislative session, more than 150 bills were introduced on the subject of prison reform. This had become a popular legislative issue, seen by politicians as favorable to their image. Most of the bills were hastily prepared without benefit of research or understanding of the problems faced by prisoners, and most were totally irrelevant to the convicts' powerlessness vis-à-vis the Department of Corrections and state parole boards. The majority were not seriously pushed by their authors but were allowed to die in the initial policy committee. At most, 20 of the bills dealt with significant reform issues: the indeterminate sentence, parole granting and revocation procedures, the extensive use of solitary confinement or adjustment center cells, civil rights and First Amendment protections, and attempts to set up a prison ombudsman or other machinery for resolving prisoner grievances.

The Adult Authority

The bill that received the most publicity during the session was one which was widely heralded as a measure that would end the abuses of the Adult Authority. It was originally introduced in the 1970 session (designated AB 1511) by a bipartisan coalition of assemblymen and senators. As drafted, the measure provided that the Adult Authority must "determine the length of time a person shall be imprisoned" within 12 months of the end of such person's minimum sentence if five years or less, or within 30 months if his minimum sentence is higher. Furthermore, the Adult Authority would be required to set forth in

writing the grounds for denial of a parole. The bill attempted to establish a standard that every prisoner should be paroled at his minimum term unless "his offense was substantially more serious than usual"; "he has a history of excessive criminality"; "there was a substantial danger that he would inflict serious bodily injury on others if released"; "he was previously granted parole"; or another provision of the law required that he be imprisoned for a longer term. Finally, the bill provided that the Adult Authority should consist of the director of the Department of Corrections as chairman, one attorney experienced in criminal justice, a social or behavioral scientist experienced in deviant behavior, an educator experienced with disadvantaged or handicapped pupils, and a law enforcement agent.

Even in its original form, it is questionable whether AB 1511 would have significantly limited the discretionary power of the Adult Authority. The existence of an all-powerful parole board authorized to decide when, if ever, a prisoner would be paroled was maintained. There was nothing in the bill that precluded the Adult Authority from setting a prisoner's term at the maximum until such time as it decided to do otherwise. The refusal to grant parole could be justified under the terms of the bill, merely because the prisoner had previously been paroled. This, in fact, would involve a very high percentage of those serving long terms. Moreover, the parole board could easily assert that any given prisoner's crime was "more serious than usual," or that he had a "history of excessive criminality" whenever it wished to keep the man in prison. The bill set forth no requirement that the Adult Authority show meaningful evidence in making these determinations or that the prisoner be protected by due process in the parole hearings.

AB 1511 was essentially "window dressing"—the kind of reform that politicians always propose when a system is under attack and the politics of the problem necessitate the appearance of reform. The most important substantive issue in reforming the Adult Authority—the abolition of the indeterminate

sentence—was not even considered. As the bill meandered through the legislature in the 1970 session, it was repeatedly watered down. When it finally reached the senate, it was amended, just before it was killed, to emphasize what was already evident: nothing in the proposed law shall be construed (in the words of the amendment) “to create any right for the prisoner to be released on parole not later than a minimum term prescribed by law.” The Adult Authority’s unbridled discretion was not touched.

In the 1971 session the amended version of AB 1511 was reintroduced, with virtually no changes, as AB 483. With considerable fanfare, AB 483 was touted as the most significant prison reform measure to be introduced in the 1971 session.³ The bill passed the assembly, but its author let it die quietly in the senate after the alleged escape attempt by George Jackson from San Quentin prison in August, 1971. It seemed that even a mild reform was too controversial.

The Adult Authority reacted to all of this by proposing its own ostensible reform measure. In October, 1971, the parole board announced the passage of a resolution that would abolish the indeterminacy of the Indeterminate Sentence Law, “alleviate the tension in the correction system and take away the main gripes that the inmates have.”⁴ On closer examination the resolution simply provided that inmates were to be given “contingency parole dates” within one month of their minimum sentence if they had no substantial disciplinary write-ups; but the date could be taken away for any disciplinary between the contingency parole board hearing and the parole date. The hypocrisy of the Adult Authority’s reform measure is transpar-

3. Newspapers carried the story that Assemblyman Leo Ryan, the author of AB 483, had conceived of the provisions of his prison bill while spending a few (very well publicized) days inside Folsom prison in the spring of 1970. In fact, Mr. Ryan’s bill was virtually identical to the previous year’s bill.

4. Memorandum to Adult Authority Chairman Henry Kerr from Adult Authority member Curtis Lynum, dated August 30, 1971.

ent when one considers that most disciplinaries are totally subject to the discretion of the individual guards and that the most typical disciplinary is for violation of Director’s Rule 1201 (“Inmate Behavior”), which states: “Always conduct yourself in an orderly manner. Do not fight or take part in horseplay or physical encounters except as part of the regular athletic program. Do not agitate, unduly complain, magnify grievances, or behave in any way which might lead to violence.”

Of almost equal importance to the question of due process during parole hearings is the question of due process during parole revocation hearings. AB 1180 was an attempt to provide minimal procedural safeguards for parolees in revocation hearings. Although the bill still made it possible for parolees to be ordered into custody without notice for alleged violation of their parole, it required a formal hearing within 10 days after the prisoner had been taken into custody. The bill further provided that the parolee was entitled to a notice setting forth the alleged violation, and that at the hearing before the Adult Authority the parolee had the right to have counsel present to represent him and present evidence in his behalf. The Adult Authority was instructed not to base its disposition upon any alleged violation other than those found to be true. This bill was the most limited possible implementation of due process. It hardly reduced the discretionary power of the Adult Authority to abruptly terminate a paroled prisoner’s freedom.

The issue of due process in parole revocation hearings was one problem which seemed ripe for reform by 1971. The U.S. Supreme Court, in the case of *Mempha v. Rhay* (389 U.S. 128, 1967), had ruled that the defendant, who had been placed on probation for two years under the Deferred Sentencing Law of the state of Washington, was entitled to counsel at a hearing where his probation was revoked and the deferred sentence imposed. Several lower court decisions had followed suit, requiring counsel or counsel substitute at parole revocation hearings.

AB 1180 easily passed the state assembly, but failed to clear the Senate Judiciary Committee. Even though the bill was extremely moderate, and even though the courts had set the stage for reform, the committee saw it as politically risky, and so they stopped it.

The Prison Ombudsman

The most significant success of the 1971 legislative session was the passage by the state assembly and senate of a bill to establish a correctional ombudsman for the state of California (AB 1181).

Despite California's reputation as having one of the most advanced penal systems, its institutions, in fact, contain thousands of prisoners who seethe with resentment. Channels for communication and resolution of grievances are essential to avoid the hopelessness and despair that preceded the tragedies of Attica and San Quentin. When such channels are blocked, or nonexistent, prisoners have utilized riots and the taking of hostages in order to inform the free world of their grievances. Most of the major penal reforms that have occurred have been, at least in part, the result of riots or scandals.⁵

The California Department of Corrections receives more than 300 letters per month from prisoners under its jurisdiction. The Adult Authority also reports a large volume of monthly correspondence, including: 100 formal appeals of Adult Authority actions, 200 prisoner complaints or requests for information, and 300 additional letters from prisoners' families. According to the CDC's estimate, at least one-third of the prisoner correspondence concerns matters which do not come under its jurisdiction (for example: criminal convictions, legal issues). Most prisoners' grievances receive a routine reply from the Department's grievance coordinator, or are sent back to the institution

5. Perhaps the best example of how reform follows scandal is the Arkansas prison system. See T. Murton and Joe Hyams, *Accomplices to the Crime* (New York: Grove Press, 1970).

where the individual is confined. The practice of referring a complaint back down the chain of command often results in an investigation by the very staff against whom the complaint is lodged. The prisoner accurately perceives that his grievances are not treated seriously, and he is powerless against the injustices and deprivation he suffers.

In December, 1970, the California Assembly Interim Committee on Criminal Procedures conducted a hearing on the desirability of a correctional ombudsman. From their extensive investigation, a committee report was filed and the correctional ombudsman bill, AB 1181, was introduced into the assembly. Under the terms of the bill, the correctional ombudsman was to be supervised by a joint legislative committee consisting of four state senators and four state assemblymen. The ombudsman was to be appointed by the joint committee for a term of four years. The committee was authorized to appoint a maximum of 13 investigative deputies (one for each of the state prisons). The ombudsman and his staff were to include a minimum of one person schooled and experienced in law, one person schooled and experienced in investigative technique, and one person schooled and experienced in criminology and corrections. The ombudsman was to have the power and duty to establish procedures for receiving and processing complaints, for investigating the administrative acts of the Department and state parole boards, for reporting his findings, and for suggesting appropriate remedies.

Although the bill provided that no person has a right to be heard by the ombudsman, the ombudsman was required to inform the complainant of the reason for refusing to investigate a complaint. In the course of his investigations, the ombudsman could make inquiries, obtain information, enter the prisons without notice, and hold hearings in public or in private. He was required to maintain secrecy with respect to the identities of the complainants, except as disclosure might have been necessary to enable him to carry out his duties and to support

his recommendations. He was authorized to bring suit in an appropriate state court to enforce these powers and to present his opinions and recommendations to the governor, the legislature, or the public.

From the very beginning, it was clear that state funds would not be available for the correctional ombudsman. Accordingly, the Law Enforcement Assistance Administration in Washington, D.C., assured the bill's supporters of full financial support under the Federal Omnibus Crime Control Act.

Despite the fact that the author of the ombudsman bill was the minority whip leader in the assembly, the bill faced severe opposition, particularly from supporters of the Reagan administration. The major confrontation came in the senate. Instead of the usual procedure of sending the bill to the Senate Judiciary Committee, the correctional ombudsman bill was sent to the Senate Governmental Organizations Committee for almost certain death. The bill received strong opposition on the first hearing. Many of the committee members hesitated to support the bill because of their apprehension concerning legislative interference in administrative matters. Others felt that they could not support the bill because the California Correctional Officers' Association, owing to recent prison disorders, had not yet decided what position to take on the issue. In spite of these objections, the bill did in fact pass the committee, largely because of the energy exerted by the author of the bill in personally lobbying the individual members of the committee. After considerable debate on the senate floor, the bill was passed and sent to the governor. Many observers thought that the Republican credentials and the untarnished moderate reputation of its author would assure the governor's approval of the bill. It was vetoed.

Exactly why the governor vetoed this measure is difficult to determine, but the influence of the police establishment was certainly very important. Reagan's legal affairs secretary,

Herbert E. Ellingwood, advised the governor on criminal justice issues. As the former lobbyist for the Peace Officers' and District Attorneys' Associations of California, Mr. Ellingwood was well qualified to act as the political spokesman for the police establishment. Whether or not Mr. Ellingwood delivered the *coup de grace* to the correctional ombudsman legislation, unquestionably the political sophistication and power of the police lobby was a major factor in its ultimate defeat.⁶

Conjugal Visits

The prison system has historically disengaged itself from the community. In 1950 attention was finally directed toward outside communication when the American Prison Association established the basic principle that outside social relationships are a crucial stimulant for the prisoner's successful adjustment. The association's conclusions denounced prison administrators' continued restriction on visiting programs and their use of visitation as a privilege, to be applied as reward or punishment for conforming behavior.

The Administration of prison must regard it as a duty to establish adequate conditions, pleasant settings . . . to restore to the inmate some of the more normal feelings of social living and to prevent institutionalization with its resultant deterioration and spoilage of attitudes and behavior. . . . Visits from friends and relatives are a human right, although not a legal one. It would be very unfortunate,

6. Ellingwood expressed the importance of the police lobby this way: "It is not possible to list the many notable achievements of law enforcement legislative activity. We can look with pride to such things as the Commission on Peace Officer Standards and Training, the state teletype system, the State Department of Justice, the laws on conspiracy, the narcotic penalty and rehabilitation program, and many others as our work product. In addition, we have been able to retain the death penalty, stop unworkable changes in criminal responsibility, and indicate to the legislature many proposals which would have a detrimental effect on the citizenry . . . law enforcement's role in legislative matters must be one of aggressive leadership. . . ." Cited in Turner, *The Police Establishment*, p. 236.

however, if the idea prevailed that because visits are a privilege that they are permitted merely as a generosity on the part of the prison officials. On the contrary, visits rank with food or medicine as meeting basic needs of inmates and as leading toward their reformations.⁷

In the past, California prisons have attempted various temporary projects which focused on the prisoner's outside contacts, but such programs have been relatively few and far between.⁸ Finally, in 1968 the California Correctional Institution at Tehachapi began an experimental program in extended family visiting for selected prisoners. Even though family-conjugal visiting as a correctional technique has existed for more than fifty years, the Department spent two years testing and recording the results of the family visiting program.⁹ With all indications being positive, the California correctional system began in 1971 to slowly institute a limited form of special family visitation.

In response to the interest surrounding visitation, a bill was introduced (AB 2063) which provided for the majority of state prisoners to have private visits up to 48 hours (minimum of 24 hours). Prisoners would be eligible three times a year for this special visitation with families and friends. The legislation was designed to establish visiting as a right and to allow more prisoners to receive outside contact, thus furthering the possibilities of successful parole. Unfortunately, the legislative proponents of conjugal visiting seemed more interested in utilizing the bill as a publicity mechanism than pushing it seriously. The visitation bill ("sex bill") quickly developed into a highly controversial issue which barely received passage in the assembly's policy and fiscal committees, even though both committees are "lib-

7. American Prison Association, *Handbook on the Inmate Relationship with Persons from Outside the Adult Correctional Institution*, 1953, p. 26.

8. Norman Fenton, *The Prisoner's Family* (Palo Alto: Pacific Books, 1959).

9. D. F. Miller, "Inmate Attitudes and Views of Two Experimental Programs," *Australian and New Zealand Journal of Criminology*, vol. 14, no. 1 (March, 1971).

eral." It was evident that it was doomed unless further amendments were accepted. The author consented to take a less radical approach. However, he was, unwilling to expend further energies on behalf of the bill. It was soundly defeated after a jocular barroom session on the sexual implications of family visiting.

Adjustment Centers

Legislative reaction to the issue of the Adult Authority's administration of the indeterminate sentence was artificial and contrived, dealing with the politics, rather than the substance of prison reform. Community groups, the United Prisoners' Union, and prison lawyers were, however, able to persuade sympathetic legislators to introduce more substantive legislation to deal with the extremely important issue of the abuses of prison disciplinary procedures and the "adjustment center."

The use of solitary confinement cells almost invariably means that the prisoner is sentenced to additional months and often years of confinement. The Adult Authority is very unlikely to parole men so confined because it considers such confinement evidence of their failure to be "rehabilitated." Psychological studies have indicated that the monotony of prolonged solitary confinement and the concomitant extreme sensory deprivation cause mental deterioration in most subjects. In November, 1971, a Department representative testified that some 850 prisoners were confined in these small cages. However, an extensive report commissioned by the state disclosed that 1,224 men were so confined on January 7, 1971, which, according to the report, is a higher percentage than other states.¹⁰

Many California prisoners are sentenced to life imprisonment under the indeterminate sentence law. Those in the adjustment

10. Robert E. Keldgord (program director), *Coordinated California Corrections*, vol. 1, "Institutions," (Sacramento: Board of Corrections, Human Relations Agency, 1971).

center for indefinite periods are sentenced to an indeterminate sentence within an indeterminate sentence, as well as to a prison within a prison; they never know when, if ever, they will be released from the cage.

A coalition of the Prisoners' Union, prison attorneys, and community groups convinced several state legislators to introduce in their respective houses a bill to require procedural due process for inmates whose alleged disciplinary violations could cause them to be sentenced to the adjustment center. These protections included the right to advance notice of the disciplinary charges, the right to call witnesses and to cross-examine accusers, the right to be represented by staff or fellow prisoners, the right to have guilt determined on the preponderance of evidence, and the right of appeal. The bills also required a superior court finding that a prisoner was "incurably violent" before long-term adjustment center confinements could be approved (more than 60 days in any six-month period).

The senate bill died quickly in the Senate Finance Committee. The assembly bill passed the assembly and was sent to the senate. In order to become state law, it had to pass the Senate Finance Committee and the senate floor, be returned to the assembly for concurrence on amendments, and then be sent to the governor for his approval.

Like most legislative bodies in the United States, California has a "graveyard committee" where progressive or reform bills are weeded out. In the California State Legislature it is the Senate Finance Committee. This committee must pass on any legislation having a fiscal impact on the state. Its members have a remarkable record for stopping reform legislation.

The committee is ruled with an iron hand by its chairman, a rural conservative Democrat who has been a member of the state senate since 1938. At first he refused even to schedule a hearing for the assembly bill. Subsequently, a former Catholic chaplain at Soledad prison made a special trip to Sacramento to

speak to the chairman and ask him to hold a hearing. The chairman agreed; it is hard to turn down a priest.

Four days before the adjournment of the 1971 session, the assembly adjustment center bill was finally heard before the committee. The chairman reflected the general atmosphere of the hearings when he remarked, after a witness testified that one man had been held in solitary confinement for as long as five years, that prisoners like that "must be hard nuts to crack." To make matters worse, the ostensibly neutral and expert legislative accountant also testified against the "policy" of both bills. He argued, along with the Department of Corrections, that the bills would unnecessarily tie the hands of the Department as well as cost the state some \$700,000 for the hearings required. (This position fails to take into account the fact that adjustment center confinement is more than twice as expensive as general population confinement.) Throughout the hearing the Department of Corrections grossly misrepresented the nature of the adjustment center, characterizing long-term solitary confinement as merely a "part of our classification program." Seven votes were needed for passage. One Republican voted for the bill, along with three Democrats, but three other Democratic senators, who had previously indicated their support for the measure, were "absent," and the bill thus failed to pass.¹¹

The assembly adjustment center bill went further in the legislative process than any significant prison reform legislation other than the ombudsman bill. This relative success was attributable to the author's personal commitment to the bill, as well as to the tenacious efforts of its supporters.

11. Being "absent" is often a politically tactful way of withdrawing support for a bill or of abstaining from support. It is one device by which a legislator can get credit for having verbally supported a bill, without really taking the political risks of working for a measure which might be controversial.

THE APPEARANCE OF REFORM

Legislators are often much more concerned with their public image than with their substantive legislative accomplishments. With a hot political issue like prison reform, the legislature, like most political bodies, is skillful at appearing concerned and dedicated to resolving the problem, while at the same time endlessly delaying any meaningful change that might be controversial.

Many techniques are used to create this illusion of reform. First of all, politicians are good at introducing legislation which they loudly proclaim will solve the problems of prisons, but which, in reality, is "window dressing." And if a bill does in fact deal with some of the real problems of prisons, it is likely to be amended into window dressing as it struggles through the legislative committees. In the 1971 legislative session, the various bills designed to reform the Adult Authority were this kind of empty reform.

A second technique of appearing concerned with reform is to introduce high-sounding, "relevant" legislation at the beginning of the legislative session, and then to ignore it, allowing it to die quietly in the course of the session. The legislator thus gets good publicity for being concerned about the issue in question, without having to face the political consequences of really doing something about it. Most of the bills introduced in the 1971 session represented this kind of tactical political show of concern without any commitment to the issue.

A third approach to creating the appearance of reform is the "exhaustive study." This is an attractive technique because it has the advantage of taking a great deal of time, of indicating a rational, cool-headed, yet concerned approach to the problem, while still not involving any actual changes in the system itself. The California legislature has conducted five major studies of the California prison system in the period 1968-1971.

These studies have painstakingly documented, among other things, the failure of California prisons to rehabilitate, the arbitrariness and irrationality of the parole boards' practices, the excessive length of California prison sentences, and the dismal failure of the correctional industries program. Many of the suggestions for prison reform that have been derived from these studies have been made before in federal studies and criminology reports, or are simply conventional wisdom among penologists. Despite the redundancy, the California legislature continues to pass resolutions calling for additional research, and the well-heeled federal Law Enforcement Assistance Agency has been most generous in granting hundreds of thousands of dollars to fund these studies on state as well as federal levels.

Not to be outdone, in 1970 Governor Reagan commissioned yet another exhaustive study of the California criminal justice system. He announced that no prison bills would be signed by him until the completion of the study. The California Council of Criminal Justice (the state planning agency for the Omnibus Crime Control and Safe Streets Act) granted the state \$250,000 to fund the study. Fifty-seven expert penologists were hired as consultants. The study was conducted under the leadership of Robert E. Keldgord (the California director of the National Council on Crime and Delinquency, 1962-1968, and author of numerous studies on American criminal and correctional systems). The goal of the study was to compare present practices with the conventional wisdom of academic penologists and criminologists, and to develop a model system of corrections aimed at "protection of society by minimizing the probability of illegal conduct." Although the Keldgord Study had been reviewed prior to George Jackson's alleged escape attempt at San Quentin, the governor commissioned yet another study on September 8, 1971, directing the Board of Corrections to conduct "a thorough review of security procedures in our prisons." The report was promptly issued, placing the blame for any and

all prison violence or discontent on amorphous and sinister outside agitators, "revolutionary attorneys," the underground press, and other misguided individuals.

Through these techniques the California legislature has managed to confront the violence and oppression of California prisons and do absolutely nothing about it. Until concerted political pressure is brought to bear on the legislature to act rather than merely talk, this is likely to continue. Those few legislators who are sincerely committed to prison reform will be unable to push through significant legislation until they are strongly backed by a well-organized, vocal political organization.

LEGISLATIVE POLITICS AND PRISON REFORM

The 1971 session of the California legislature is both encouraging and hopeless. It is encouraging to know that a Republican legislator was able to secure legislative passage of the correctional ombudsman bill, even though it was eventually vetoed; and it is slightly encouraging that the assembly adjustment center bill went as far as it did. Nevertheless, the essential elements for achieving major prison reform through the legislature seem hopelessly unattainable. Above all, the obstacle of an extremely conservative governor on the one hand and the absence of a well-organized coalition of prison reform groups on the other make the prospects for meaningful reform very slim.

The governor's office in California, as in other states, has immense influence over the legislative process, whether in prison reform or any other area. The governor can exercise his veto over any legislation of which he disapproves, thus negating in a moment the enormous energy necessary to get progressive prison legislation through the legislature.¹² In addition to the power of the veto, the governor has at his disposal the vast lobbying power of the Department of Corrections (which in

12. A veto can be overruled by a two-thirds majority, but this almost never happens in state politics.

1971 had a budget exceeding \$130 million) and of the state's parole boards. In the 1971 session, the governor used both the threat of veto and the lobbying influence of the Department of Corrections and the Adult Authority to discourage and defeat every constructive prison reform bill introduced in the session.

Without the pressure from a politically sophisticated prison reform movement, even relatively liberal governors and state legislatures are unlikely to enact major revisions of the prison system. In order for prison reformers to become effective in applying this pressure, they must involve themselves in the mundane chicanery of partisan politics (this is not meant to exclude the creation of new political parties). Since they lack the wealth to become important sources of funds for political candidates, they must build their influence with people's time and energy in day-to-day political activity. They must become involved in party platform conventions and registration of young and minority voters. And very importantly, they must participate fully in political campaigns and work to exact pledges from candidates prior to their election.

Most leftist groups in America have been unwilling or unable to participate this way in establishment politics. They express outrage at the inhumanity and repression of the criminal justice system, but refuse to become involved in conventional politics as a way of dealing with these problems. Instead they engage in armchair discussions of revolution and "increasing political consciousness." For many it is a matter of ideology, a firm belief that the system cannot reform itself. For others it is a matter of life style, an unwillingness to make the personal compromises in dress, language, and personal activity that are necessary to deal with the "straight" world. For some it is a matter of inertia. The impotence of the American left is not so much a matter of its intrinsic weakness as rather its pervasive unwillingness to unite and gain political power through established channels.

It is perhaps unfortunate, from a moral and pragmatic point of view, that the United States is not on the verge of revolution.

But until a revolutionary situation exists in the United States, conventional politics has the undeniable advantage over *arm-chair* revolution in that it can accomplish some positive changes.¹³ If prison reform groups are to have any real hope of modifying the prison system in the foreseeable future, they must begin to focus their energies on established political institutions, for in the foreseeable future it is through these institutions that change must come.

13. Participation in conventional politics should not be considered inconsistent with the long-run possibilities of revolutionary change. Every modern revolution has been preceded by a period of halting social reform which appears to have whetted, rather than satisfied, the appetite of the oppressed for liberation.

CHAPTER 14:

Change Through the Courts

by Brian Glick

Courts and lawyers have always been very important to the prisoner. They put him behind bars and yet, at the same time, offer one of his few hopes for early freedom. Since the 1960s courts and lawyers have also begun to deal with the internal operation of prisons. Lawyers have filed suits to protect prisoners' legal rights and improve prison conditions and they have won some major courtroom victories. Some of this increasing legal activity on behalf of prisoners has strengthened the political struggle to change both prisons and the class and race relations which determine how prisons are used. It has not, however, had significant direct impact on prison life. Its limits are rooted deep in the American legal system and revealed throughout prisoners' experiences with the law.

PRISONERS AND THE LAW

Prisoners know, better than most people, the sham and corruption, and the class and race bias, of criminal law enforcement in the United States. They know the assembly-line processing that passes for representation by public defenders. They know that judges and prosecutors are political appointees