

Remission

Earning One's Release

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Punishment For The Past, And Training For The Future



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1. Introduction

At a recent consultation by Justice Action, prisoners of the Alexander Maconochie Centre (AMC) said that they felt helpless and hopeless as they awaited the expiration of their jail-terms. It was revealed that for many prisoners, their only means of escape was through the effects of drugs. As such, remission was suggested to provide prisoners with an incentive for good behaviour and self-improvement, and to prepare them to contribute to society upon re-entry.

2. What is Remission?

Remission is the reduction of the term of a prison sentence, usually due to good behaviour or conduct. It refers to a structured system with criteria for prisoners to meet in order to encourage good behaviour, rehabilitation and self-improvement, with the ultimate benefit being the release of the prisoner.

3. Psychology of Remission

The motivation for a penal system involving remission arises from the belief that a prisoner's desire for self-improvement would be significantly increased if their conduct directly affected their jail-term, effectively placing their fate into their own hands.

Therefore, a system of remission is founded on the principle that it encourages beneficial conduct as it has a positive impact on a prisoner's psychology. By allowing them to take charge of their own lives prisoners develop a sense of responsibility, and are given an incentive to serve their time productively and with a mindset of moving forward.

4. History of Remission: Maconochie's 'marks system'

Captain Alexander Maconochie, a notable Norfolk Island Prison Governor and penal reformer, first proposed a system of remission in the nineteenth century based on the principle that prisoners' liberation

should be dependent on their own efforts, not solely upon the lapse of time,¹ and that prison sentences should be reformatory in order to prepare prisoners to re-enter into society.²

When men's minds are raised to the idea that their daily or even hourly conduct may have an influence on their ultimate liberation, they are in a much more improvable state – they have a stronger motive to resist temptation, and stronger inducements to regular exertion.³

Maconochie's system was extremely successful with less than 2% of the 920 prisoners discharged under his supervision found to recidivate,⁴ and his principles were so revolutionary that Canberra's newest prison, built to reform not punish, and labelled as Australia's first human rights prison,⁵ has been named the Alexander Maconochie Centre.

Maconochie introduced a 'mark system' where prisoners' respective sentences, conduct, and character were factored in to award, fine or deny marks, which could be traded for indulgences and ultimately, one's release.⁶

Prisoners also formed themselves into messes of six where they were responsible for each other's conduct, with the group gaining or losing marks according to the behaviour of each.⁷

Through Maconochie's remission system, punishment for crime became less vindictive, and greater emphasis was placed on strengthening a prisoner's desire and capacity to observe social constraints.⁸ The system of earning marks and trading them for indulgences and ultimately a prisoner's release also encouraged the development of good practices, such as nurturing industrious habits and frugality.⁹ Thus, Maconochie's system was tailored to ensure that prisoners were 'trained for the future'¹⁰, so that they would be able to contribute to society in a positive way upon release.

The uniqueness of Maconochie's system has been summarised into five distinct characteristics as it:

- Placed individual reform of prisoner over deterrent or retributive objectives
- Advocated task sentences rather than time sentences
- Introduced a marks system where prisoners were awarded for achievements, fined for misconduct, and rations and indulgences could be purchased
- Encompassed a two stage sentence: punitive stage and reformatory or moral training stage
- Introduced a new object and spirit to whole penal system.¹¹

5. Other Forms of Remission

¹ Clay, John, *Maconochie's Experiment*, John Murray Publishers Ltd, London, 2001, pg. 12.

² Ibid, p.145

³ Ibid, p.164

⁴ Ibid, p.249

⁵ Richard Aedy, *Life Matters*, ABC National Radio, Wed 23 June 2010,

<http://www.abc.net.au/radionational/programs/lifematters/the-alexander-maconochie-centre-australias-first/3033926>.

⁶ *Encyclopaedia Britannica*, <http://www.britannica.com/EBchecked/topic/365619/mark-system>.

⁷ Clay, John, p. 146.

⁸ Barry, John V., *Australian Dictionary of Biography*, 'Alexander Maconochie',

<http://adb.anu.edu.au/biography/maconochie-alexander-2417>.

⁹ Ibid.

¹⁰ Clay, John, p. 75.

¹¹ *Encyclopaedia Britannica*, <http://www.britannica.com/EBchecked/topic/365619/mark-system>.

Remission has been granted for external factors in the past, such as strikes by prison wardens or royal visits. Strikes by prison wardens saw prisoners neglected and mistreated, and as such, their sentences were shortened in compensation. Prisoners were also granted remissions by monarchs, who could exercise the Royal prerogative of mercy. This was seen as a symbol and exemplified by the State of mercy and generosity. Prisoners were granted remissions as a result of visits by Her Majesty the Queen to New South Wales in 1970, 1973 and 1977.¹²

6. Benefits with Remissions

Remissions always give prisoners a chance to change and hope, rebuilding their family.¹³ It is a recommendation of encouraging prisoners to take on co-operative behaviour.¹⁴ In societal perspective, remissions can solve overcrowding in prison and break down the cycle of recidivism for long-term good.¹⁵ It also provides prison management with an additional tool. To reduce the number of conflicts they can exercise of granting and removing time left on the prisoner's sentence.

7. Problems with Remission

The principle of 'Truth in Sentencing' was raised in 1989 in NSW as the main concern regarding a system of remission, as it was described as deceptive to the layperson. Most people would assume that when a judge sentenced a prisoner to a term of imprisonment that would be the amount of time the prisoner would serve. However, with remission, prisoners understood the reduced sentence to be their maximum sentence, as any loss of remission would only result from disciplinary action an extra punishment. Therefore, the 'Truth in Sentencing' movement sought to ensure prisoners served the full amount of time they were sentenced to, rather than a mere portion, and then being released on parole or remission.¹⁶

A remission system also raised issues of favoritism and inconsistency in individual approaches as prison officers would be heavily relied upon for reports and feedback on the behaviour and performance of prisoners.

Lastly, there is the issue of corruption regarding remission. In 1987, NSW Minister for Corrective Services Rex Jackson was sentenced for taking bribes to secure the early-release of prisoners.¹⁷ He was sentenced to seven and a half years in prison, and served 3 years until being released early.

8. Australia

In 2006, the Law Council of Australia expressed its support of a system of earned remission in its submission to the Australian Law Reform Commission discussion paper,¹⁸ stating that where a prisoner

¹² *Report of the Royal Commission into New South Wales Prisons*, 1978, p. 461

¹³ *Public Law 110-199 – April 9 2008*, 122 STAT 657-694

¹⁴ Goldsmith, Israel & Daly, Remission programs, Ch.16 Prison and Imprisonment, *Crime and Justice: A Guide to Criminology* 3rd Ed. 2006, p. 340

¹⁵ *Public Law 110-199 – April 9 2008*, 122 STAT 657-694

¹⁶ Simpson, Rachel, *Parole: An Overview*, New South Wales Library Research Service, 1999, p. 8

¹⁷ Whitton, Evan, *Can of Worms II*, <http://netk.net.au/Whitton/Worms20.asp>

¹⁸ Australian Law Reform Commission, *ALRC Discussion Paper 70: Sentencing of Federal Offenders*, Law Council of Australia, 17 March 2006, http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=8A08B075-1E4F-17FA-D233-75CBF6B6BAD0&siteName=lca

behaved particularly well in prison and demonstrated real rehabilitation, then there should be a mechanism available to reduce the non-parole period.¹⁹

A 2006 report by the Australian Law Reform Commission²⁰ supported in principle a system of earned remissions, but conceded that it would be difficult to implement on a federal level due to differing state laws. The report quoted a federal offender as saying:

Remissions must be re-implemented to assist the rehabilitative process and to encourage good behaviour. It also allows the offender to be released without being imprisoned for longer than absolutely necessary. One must consider the point in time in an offender's sentence where the sentence stops being rehabilitative and starts to become detrimental to a person's psychological wellbeing. It would be in interest of society to release a rehabilitated offender from prison rather than an offender who has been profoundly affected by an excessively long sentence.²¹

The Nagle Royal Commission conducted in 1976-1978 recommended that NSW adopt a remission system where all remissions should be earned, and any remissions should be taken off both head sentence and the non-parole period.²² This recommendation was adopted and provided prisoners proper incentive to work hard, behave well, and strive towards self-improvement, until it was repealed in 1989.²³

9. International Examples

Although Australia does not currently have its own remissions system, they are widespread throughout the world. Under labels such as earned remission, early release, supervised release or reduction credits, similar schemes have been implemented in common law countries including Canada, the United States and the United Kingdom.

Canada:

Earned Remission is available to all provincial offenders in Canada. Essentially, prisoners may 'earn' early release at a rate of up to 15 days each month of good behaviour.²⁴ Emphasis is placed on community reintegration as the *Prisons and Reformatories Act* defines good behaviour as 'obeying prison rules and conditions governing temporary absence and by actively participating in programs...designed to promote prisoners' rehabilitation and reintegration.'²⁵ This was shaped by the Corrections Planning Committee's

¹⁹ Australian Law Reform Commission, *ALRC Discussion Paper 70: Sentencing of Federal Offenders*, Law Council of Australia, 17 March 2006, p. 13,

http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=8A08B075-1E4F-17FA-D233-75CBF6B6BAD0&siteName=lca

²⁰ ALRC Report 103 *Same Crime, Same Time: Sentencing of Federal Offenders*, Commonwealth of Australia, 2006, <http://www.austlii.edu.au/au/other/alrc/publications/reports/103/>

²¹ Confidential, *Submission SFO 8*, 8 March 2005 in ALRC Report 103 *Same Crime, Same Time: Sentencing of Federal Offenders*, Commonwealth of Australia, 2006, <http://www.austlii.edu.au/au/other/alrc/publications/reports/103/>

²² *Report of the Royal Commission into New South Wales Prisons*, 1978, p. 247-249

²³ *Sentencing Act 1989* (NSW) Sch 3 cl 8 (repealing *Prisons Act 1952* Pt 11).

²⁴ Corrective Service Canada, 2008, *Commissioner's Directive*, viewed 6 December 2011 <http://www.csc-scc.gc.ca/text/plcy/cdshtm/716-cd-eng.shtml>

²⁵ *Prisons and Reformatories Act 1985* s 6 (1) (Canada)

classification system, which significantly influence hierarchical standards, depending on security threat in statutory remissions and earned remissions.²⁶

Canada has one of the most effective remissions programs in the world. It strikes a considerable balance between the need to encourage better behaviour for prisoners while at the same time ensuring protection where needed for members in society. For example, courts ensured that forfeiture of remissions would depend on civil and criminal misconduct, especially when repeating offences. This includes lack of adherence to internal prison rules. This is in contrast to merely disobeying external regulations. In *R v Casserly*, the Ontario Province Court stated that unless the Prisons and Reformatories Act does not explicitly indicate that failure to comply with external fines while serving sentence will suspend eligibility for remissions, one is still entitled if well behaved or better, reformed.²⁷ It follows that whoever is able to comply with standards set forth in legislation while in prison; they are able to earn remissions.

Canada has very recently pushed to emphasise public safety, while at the same time stressing the need for earned remissions rather than statutory remissions in the *Corrections and Conditional Release Act*.²⁸ Earned remissions have been found to ensure greater public safety, by reforming and reintegrating prisoners back into society, and in doing so, maintains rights of the individual. In order to stimulate greater success in reintegration, in its report: '*A Roadmap to Strengthening Public Safety*,' it recommended improving physical infrastructure to ensure a more sensitive, nurturing prison environment, and developing employability, employment skills through social skills training, improve problem solving and comprehension.²⁹

This is to be supplemented by adequate safeguards such as increasing the monitoring of prisoners in their progress, raising their accountability, and providing more communication with victim. Such an Earned Remissions approach not only ensures relatively greater public safety by encouraging the perpetrator to participate in reintegration, it involves the victim and enhances the individual's right to liberty and life.

United States:

A system based on reduction credit points operates in the United States. Federal prisoners sentenced to more than one year of imprisonment (excluding those with terms of life imprisonment) can receive credit of up to 54 days for each year served.³⁰ Credits are awarded on the basis of fulfilling desired behaviour including work attendance, program participation, cooperation, personal hygiene and education/vocational training.

The Residential Drug Abuse Program (RDAP) allowed all eligible inmates to receive up to a twelve months sentence reduction and 6 months Re-entry Centre, Half-Way House or Community Corrections Centre (CCC) Placement.³¹

Remission should be increased although it may have indirect impact on individual and community. It is because remissions are positive solution for crime control, such as, reducing recidivism and breaking the

²⁶ Corrections in Canada, Correctional Service Canada, 5 February 2010 <http://www.csc-scc.gc.ca/hist/1960/index-eng.shtml>

²⁷ Earned Remission, John Conroy Q.C. <http://www.canadianprisonlaw.com/pr/earned.htm>

²⁸ Amendments to the Corrections and Conditional Release Act, Public Safety Canada, 16 June 2010 <http://www.publicsafety.gc.ca/media/nr/2009/nr20090616-1-eng.aspx>

²⁹ <http://www.publicsafety.gc.ca/csc-scc/cscrprprt-eng.pdf>

³⁰ *Sentencing Reform Act of 1984* 18 USC s 3624(b)(1) (US)

³¹ American Prison Consultants, *Federal Bureau of Prison Early Release Program*, viewed 8 December 2011 <http://www.americanprisonconsultants.com/rdapinstitutions.html>

cycle of criminal behaviour. President Bush has signed Second Chance Act of 2007 on April 9 in 2008, which related to Omnibus's Crime Control and Street Safety Act of 1968.³² Although it does not have description on remission, it suggested that providing an opportunity for prisoners to learn (education) and use their time productively (computer uses in cells and job training) could actually help to reduce recidivism (10% reduction in the rate of recidivism over a two years period)³³ and long-term solution for prison population.

A reason set under the California and Washington Early Release Programs is reducing problems of overcrowding and budget constraints. Remissions do naturally play a role in decreasing prison populations, especially when there is a given quota set under a law, hence statutory remissions. Such an approach has been subject to great controversy, as it is a quantity based, rather than a behavioural approach. The California Penal Code s 4019³⁴ and Washington Senate Bill 5990³⁵ indicates that working in prisons enables one to pay off fines and as part of the credit reduction scheme, reduce sentences. This would apply to most state prisoners. A very basic criteria applies in terms of earned remissions, as it focuses on the labour of the individual rather than their reformation.

Earned Release Programs (ERP) on the other hand, enable much greater flexibility for the prisoners to enhance themselves and become less of a societal threat. Alcohol, drug treatment, dependency, addiction, relapse prevention, rational behaviour training, responsible decision making and restorative justice concepts are all catered for as part of earned release training.³⁶ These programs have recently been introduced in Wisconsin and Mississippi, whereby the Bureau of Offender Classification and Movement select eligible offenders. Excluded offenders include: life imprisoned, habitual, sexual, escapee or attempted escapee, and those that have not served their mandatory time in prison.³⁷ Even though these schemes do not incorporate all prisoners, it nonetheless serves as a developed means to improving the outlook for prisoners and crime reduction.

United Kingdom:

'Earned Early Release' has replaced the more traditional remissions scheme in the UK. Those serving sentences of more than one year may be released early on license, where an offender is able to serve the remainder of their sentence while living in the community and adhering to specific guidelines. Early release is capped at 20% of the original sentence and is earned through cooperation and positive good behaviour in prison.³⁸

The Early Prisoner Release Scheme in the UK is subject to intense public scrutiny. The scheme's operability is subject to political manipulation, under the discretion of the Justice Secretary. In months before the 2011 election, the Early Prisoner Scheme was stopped. Political adherence to public confidence has been one obstacle.³⁹

³² *Public Law 110-199 – April 9 2008*, 122STAT 657-694

³³ *Ibid*, p. 666

³⁴ California Penal Code s 4019, OneClec, 15 January 2011 <http://law.onecle.com/california/penal/4019.html>

³⁵ 'Would early prison release save Washington cash?', Nicholas Geranios, 2 April 2011 http://seattletimes.nwsources.com/html/localnews/2014670654_brokenbudget03.html

³⁶ Earned Release Program, Wisconsin Department of Corrections, 25 August 2008 <http://www.wisconsin.gov/erpweb.pdf>

³⁷ Earned Release Supervision Program, Mississippi Department of Corrections, 3 March 2011 http://www.mdcor.state.ms.us/earned_release_supervision_progr.htm

³⁸ *Crimes (Sentences) Act 1997* part II (UK)

³⁹ 'Prisoner Early Scheme to be halted by April,' BBC, 23 February 2011 http://news.bbc.co.uk/2/hi/uk_news/8528868.stm

Politicians have not independently expressed any humanitarian prospect for remissions. The Scheme is basically based on necessity, rather than mercy. Only after excess demand is there is when the scheme is by and large open. So reliant is the UK prison system on early release upon lack of capacity that two men convicted of terrorism were released earlier in 2008 to help cool off prison crowding.⁴⁰ However, when 2500 spare beds were present in February 2010, prisoners lost entitlement to the scheme. Such a demand based approach lacks incentives for better behaviour, and could explain the relatively greater rates of recidivism in the UK.⁴¹

Northern Ireland:

Prisoners in Northern Ireland are entitled to remission at a rate of 50%. Remission is accessed based on principles of good behaviour, and is in fact attained by the vast majority. Security Minister Paul Goggin did however suggest a tightening of rules regarding those released earlier, in making releases conditional.⁴²

Even though under the Criminal Justice Order 2008, the 50% requirement still exists, those serving sentences of 12 months or more, as well as dangerous/sexual offences are treated differently. If released earlier, under s 23(1) of the order, the court is able to make recommendations of conditional release, subject to treatment, restrictions and supervision for those sentenced greater than 12 months or greater for any offence in prison.⁴³

This is to the exclusion of those who are serving life sentences or who have been convicted for sex offences.⁴⁴ Under the Criminal Justice Order 2008, s14 (3), a sex offender aged above 21 is to be kept in prison throughout their sentence or equivalent and maybe subject to an extended period as well.⁴⁵ For those serving indeterminate period or an extended period, as per section 18(1), the parole commission is unable to consider remission, unless the secretary of state has made a recommendation after the prisoner has served the required minimum sentence under s13.⁴⁶

Paul Goggins, the Northern Ireland Security Minister stipulated that the provisions are mainly intended for violent, dangerous and/or sexual offenders. In an interview with BBC, he stated that those who commit minor offences, although would likely have conditioned releases, will largely be free, except to serve re-integrative roles in the community: "Viable alternatives such as unpaid work."⁴⁷

Such conditional releases proportional to the quantity and nature of offences is a reflection of Northern Ireland being a small, close-knit community. In the journal 'Remission Revision', Northern Ireland legal researcher Rosemary Craig highlights how the numbers of prisons are declining from 5 in the 1970s with Northern Ireland's population being under 1.5 million people to three with 1.75 million people, implying

⁴⁰ Ibid

⁴¹ 'Re-offending rates top 70% in some prisons, figures reveal', Alan Travis, Thursday 4 November 2010

<http://www.guardian.co.uk/uk/2010/nov/04/jail-less-effective-community-service>

⁴² Parliamentary Debate, House of Commons Official Report, Wednesday 8 July 2009, vol.495 no 108, viewed 9 December 2011 <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/chan108.pdf>

⁴³ Criminal Justice Order (Northern Ireland) October 2008

⁴⁴ NI Direct Government Services, 2010, *Custodial Sentences*, viewed 6 December 2011

<http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/sentencing-prison-and-probation/verdicts-sentencing-and-appeals/custodial-sentences.htm>

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ An interview with Paul Goggins, 50% Remission, BBC Radio, November 2007, viewed 9 December 2011

<http://www.bbc.co.uk/northernireland/nolan/goggins/>

this is unsustainable.⁴⁸ Craig failed to regard the fact that crimes have declined since then, in which remissions, as a recidivism-reducing tool, has played a positively correlated.

Craig used two examples in which sex offenders had been released earlier. One isn't noted to have repeated an offence, while the other went on to commit murder. This produced a massive public outcry, which reflected the subsequent amendments made under Criminal Justice Order 2008. However, these examples appear to be exceptions and as indicated above, provisions have been made for serious offenders to have more restrictions and monitoring imposed on them. The Journal does not refute the correlation between remissions and lower recidivism. Notwithstanding, it conveys the most fundamental barrier to greater remissions, concern for public morale. Combining this with views of Paul Goggin, it does highlight the link between the mass public pressure and political servitude as well.

Republic of Ireland:

In Ireland remission is viewed as a right accessible to all prisoners, to the exclusion of those with sentences of life or of less than one month. A sentence may be reduced by as much as a quarter, depending on 'good conduct' whilst in prison. In certain circumstances, where a prisoner has undergone specially approved activities that are seen to have the effect of reducing the prisoner's likelihood of re-offending, the remission rate may be increased to one third. Alternatively, remission may be cancelled in part as disciplinary punishment.⁴⁹

Remissions in Ireland serve an economic purpose. They provide jobs for many teachers, security officers and researchers, while alleviating excess prison crowding. Researchers are especially able to observe the general trend of training practices and rules and their success in reforming prisoners. Barrister Paul Anthony McDermott conveyed that prisoners' remissions entitlement is an economic decision built upon addressing the need to reduce prison crowding. He expressed criticism on the issue that lack of funding is occurring in rehabilitative practices.⁵⁰ This means that many offenders, such as sex offenders, who may still be subject to remission by good behaviour, may be released earlier without access to rehabilitative practices.

Promising signs have been shown for further reform to incorporate such rehabilitative practices. A significant need is expressed that for or both prisoners and social members, there is to be greater assurance made for public safety via application of re-integrative practices. Minister for Justice and Law Reform Dermot Ahern displayed willingness for a follow up report that thoroughly addresses need to stimulate funding in rehabilitation programs for the sake of ensuring public safety. Hence, Public safety and Individual rights are integrated.⁵¹

Conclusion

It is inhuman to remove all control from a prisoner's life. By allowing them a chance at affecting their own fates, remission brings hope to the lives of vulnerable and will help make it easier for them to adapt

⁴⁸ Craig R. 4 January 2008, Remission Revision, *New Law Journal*, vol 158 issue 7302, viewed 9 December 2011
<http://www.newlawjournal.co.uk/nlj/content/remission-revision>

⁴⁹ *Prison Rules 2007* s 59 (Ireland); Citizens Information Board, 2008, *Remission and Temporary Release from Prison*, viewed 6 December 2011
http://www.citizensinformation.ie/en/justice/prison_system/remission_and_temporary_release.html

⁵⁰ Remission of Sentences in Ireland, Fiona De Londras, 11 August 2010,
<http://www.humanrights.ie/index.php/2010/08/11/remission-of-sentences-in-ireland/>

⁵¹ Ibid, p. 50

when they are released. The option of remission encourages building needed skills for such adaptation, progress and prosperity in life, core factors that enable a free and just life to be lived.

The legacy of Alexander of Maconochie can only be built upon in transforming remission systems locally, state wide, nationally, and internationally. The concept of revenge via retribution in society may perhaps be changed in its very nature into being more nurturing, rehabilitative, and understanding of the root causes of why prisoners are the way they are.

Significant recognition has been made by the Law Council of Australia regarding the importance of remissions as a tool to reform prisoner lives. This has been preceded by the Nagle Royal Commission that illustrated need to encourage productivity among prisoners to work towards goals rather than merely being patient and affording lack of effort in reforms.

In implementing a wide ranging remissions system in all states and federally, Australia will be accompanied by similar movements among fellow Anglophonic nations including Canada, Ireland, Northern Ireland and the United States. This will help to ensure Australia is amongst the leading and influential nations in the field of prisoner reforms