

## THE LAWBREAKER

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A CRITICAL STUDY OF THE  
MODERN TREATMENT OF CRIME

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## CONTENTS

CHAP.	PAGE
INTRODUCTORY . . . . .	ix
1. WHY DO WE PUNISH? . . . . .	1
2. PRESENT-DAY CRIME AND ITS CAUSES .	24
3. THE MACHINERY OF JUSTICE . . . . .	62
4. PRISON, YESTERDAY AND TO-DAY .	92
5. WHAT IS WRONG WITH OUR PRISONS?	123
6. PROBATION, FINES, AND RESTITUTION .	164
7. YOUNG OFFENDERS . . . . .	191
8. WOMEN OFFENDERS . . . . .	221
9. CORPORAL PUNISHMENT . . . . .	234
10. THE DEATH PENALTY . . . . .	259
CONCLUSION . . . . .	282
BIBLIOGRAPHY . . . . .	285
INDEX . . . . .	289

## INTRODUCTORY

Several recent events have combined to focus public attention upon the problem of crime and its treatment. The riot at Dartmoor Prison in January, 1932, though less serious than it might have been, was serious enough to show that all was not well with our prisons. The *Criminal Statistics* for 1930, published last April, revealed a serious increase in certain types of crime, and there is every reason for believing that when the figures for 1931 and 1932 are published they will show further increases. To these facts must be added the growing sensationalism of the popular Press, in which a criminal is now a "gangster", a shopbreaker a "smash and grab raider" and a robber a "motor bandit", which has created in the public mind an impression that present-day crime is worse than it is and has assumed alarming proportions.

It is common knowledge that the last twenty-five years have seen considerable changes in the treatment of crime. Fewer persons have been sent to prison than formerly, sentences have been shorter, and prison conditions less degrading. Many offenders who formerly would have been sent to prison are now released with supervision under the Probation Act, and, for young offenders, probation and Borstal are fast superseding prison as a penal method.

The superficial observer has not unnaturally seen an apparent correlation between these changes in our penal methods on the one hand and the reported increase in crime on the other, and even some of those who have welcomed the reforms of the past few years are beginning to ask whether reform has not gone too far. Prison reform, the probation system, and the shorter sentence have all been accorded their share of blame, and the view has been widely expressed that, in our zeal for reform, our treatment of crime has lost its deterrent effect and that a return to the greater severity of former days has become an urgent necessity. Already the Courts, always sensitive to changes in public sentiment, have begun to reverse the engines, to send more people to prison and to pass longer sentences. Our prisons which had begun to empty are becoming full again. Our closed prisons are being opened.

But before our modern penal methods can be saddled with responsibility for this state of affairs, some investigation not only into the causes of modern crime and the effectiveness of our present methods, but also into the facts of the actual situation is desirable. The growing irresponsibility of the Press, the increasing attention paid to dogmatic opinions expressed by men and women with a deserved reputation in one field of knowledge upon matters outside their experience, and the inaccurate statements of others who ought to know better, have all combined to create an erroneous idea of the facts. In the absence of accurate information the

country is in serious danger of being stampeded into measures which will only aggravate the evils which they are designed to remedy.

In recent months alarmist stories have frequently appeared in the popular newspapers of motorists having been held up by motor bandits. As a result many people have hesitated to give assistance to motorists on the road or to make journeys at night. Yet on 18th November, 1932, the Automobile Association announced that

“not a single case of motor banditry has been reported by patrols of the A.A. although these men are daily covering practically every road of any importance in the British Isles. . . . The A.A. with its membership of nearly half a million has no record of a complaint from any one of its members.”<sup>1</sup>

Sir Henry Dickens, K.C., on retiring from his position as Common Sergeant, recently contributed a long article to *The Times* in which he said that

“The state of crime in this country is most alarming . . . first because its principal characteristic is violence,”<sup>2</sup>

and a bishop, presiding at a meeting of a Discharged Prisoners' Aid Society, stated that recent statistics showed “a considerable increase, particularly in crimes of violence”.<sup>3</sup>

The average newspaper reader not unnaturally assumes from such statements, that there has been an enormous increase in murderous assaults, whereas

<sup>1</sup> *The Times*, 21st November, 1932.

<sup>2</sup> *The Times*, 19th October, 1932.

<sup>3</sup> *Hampshire Herald*, 13th March, 1931.



in fact violent crimes against the person such as murder, attempted murder, robbery with violence, wounding and the like, are not more numerous than before the war, and in the case of most such offences are considerably less so. The principal increase in crime in recent years has been in house-breaking and shopbreaking, which, because violence may be used in "breaking in", are officially classified as crimes *against property with violence*. That this increase is a serious matter which demands earnest attention is not questioned. But the creation of a general impression that an increase in house-breaking is an increase in violent assaults is only to confuse the issue.

Moreover, some understanding of the present-day incidence of crime and of the relative success or failure of our modern methods compared with those they have superseded is important to an understanding of the problem. Thus it is not without significance that the principal increase in crimes against property has been in the North, where the industrial depression is greatest, and in the densely populated urban districts outside large cities. It remains to be seen whether the recent increase in crime is due to changes in our methods or to new social factors which may have adversely affected the situation. The more severe penal methods of the past were abandoned not out of sentiment, but chiefly because they had proved ineffective. Again, the Dartmoor outbreak occurred in the one prison in the country which, owing to its isolated situation, had been largely outside the

scope of recent reforms. Far from being a failure, some of the modern experiments in the treatment of crime have proved in the event surprisingly successful. These and other matters must claim our attention. Besides, if, on the whole, our new penal methods are more successful than the old, that is no reason to infer that these methods leave nothing to be desired, or that they are as successful as they should be. There is urgent need for further study and constructive thought in regard to the whole treatment of crime, which in many ways remains illogical, ineffective and unscientific.

It is proposed in the following pages to make a critical examination of our modern penal methods in the light of past experience and with a view to future reform. The right treatment of crime is no simple matter, but a problem of the greatest possible complexity. The confidence of those who put forward simple solutions for our crime problems usually varies in inverse ratio to the knowledge and experience of those who propound them. No one has yet been able to work out a completely satisfactory penal system. But an increasing knowledge of the science of human behaviour, the experiments which have already been made, and the experience in our own and other countries of past and present penal methods, should enable us to see a little further along the road. There are gaps in our knowledge which only further study and courageous experiment can fill. But enough is known to show the direction in which a final solution should be sought. It is as

a contribution to a clearer understanding of this difficult problem that this book has been written.

The subject of crime and its treatment is so vast that it is manifestly impossible to deal in any detail with each aspect of it within the limits of this volume. For more exhaustive study the reader is referred to the books quoted in the text or included in the bibliography. In order that each chapter may be reasonably complete it has been necessary in a few instances to repeat information already contained in another chapter.

To the many friends who have helped us with suggestions and constructive criticism we would express our grateful thanks.

E. R. C.  
T. C.

*January, 1933.*

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## CHAPTER I

### WHY DO WE PUNISH ?

The problems associated with present-day crime and its treatment cannot be understood without some knowledge of the precise nature of crime and the purpose of the State in combating it.

The essence of crime is its anti-social character. An act is made a crime because the State considers it to be anti-social, so that what is called our penal system is the sum total of all those measures of punishment<sup>1</sup> taken by the State to protect itself against anti-social behaviour. "According to the most generally accepted writers—as, for instance, Beccaria, Blackstone, Romilly, Paley, Feuerbach—this hope of preventing the repetition of the offence is not only a main object, but the sole permissible object, of inflicting a criminal punishment."<sup>2</sup>

In fact, of course, this aim has never been, and is not to-day, the single purpose of our treatment of crime, and though an inquiry into the history of punishment would carry us farther afield than is

<sup>1</sup> The word "punishment" will be used throughout this book to include all those methods by which the State treats its lawbreakers and will not be given that more restricted meaning which would confine it to some retributive pain or penalty.

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desirable in this volume, some understanding of the origin of our punishments is necessary.

### *Origins of Punishment*

Much punishment can be traced directly to primitive instincts and had its genesis in the earliest days of community life.

Crime was regarded in one of two ways, either as a wrong done to some individual or his family, or as an offence to some deity. In the first event it was met by a payment by way of compensation or fine, but in the second it could only be met by a sacrifice of some kind, extending in serious cases to the offender's life or limb. The sociologist may trace these twin ideas underlying the development of punishment and running through its history,<sup>1</sup> and it is at all times well to remember that even in these days the conception of sacrifice is not absent from many current ideas about punishment, especially capital and corporal punishment.

In early times punishment was unlimited in degree and carried out, not by the community, but by the person wronged or by his relatives. The *lex talionis* of the Mosaic law, an eye for an eye and a tooth for a tooth, generally regarded to-day as vindictive and barbarous, was in reality an advance on previous practice, since it decreed that the retribution should have some relation to the offence committed. It should be "an eye for an eye", and not a life for an eye. As primitive

<sup>1</sup> See Hans von Hentig's excellent book, *Die Strafe*, Stuttgart, 1932.

communities developed, the right to punish was taken out of the hands of individuals because experience showed that privately inflicted retribution made the maintenance of ordered social life difficult. It is not without interest that in all probability the community first assumed the right to punish to protect itself, not against the law-breaker, but against the anti-social consequences of privately inflicted revenge.

In these early days there was little distinction between crime and sin. "The notion of an offence against the State is of entirely modern growth, and the theory that punishment is imposed for the sake of reforming the criminal and deterring others from following his example is even still more modern."<sup>1</sup> The reasons and theories which men have put forward belong to a much later period when the need was felt for explaining conduct which began as purely instinctive reactions. Instinct and theological concept have had far more to do with the evolution of our penal methods than logical thought about social necessity. Many punishments with a primitive and instinctive origin have been defended as necessary for the protection of Society long after their retention has in fact ceased to be in the best interests of the community. Take, for example, the principle of *retribution*, which has done so much to shape our penal system and is still used in justification of some of our penalties. Retribution is only another word for revenge, and

<sup>1</sup> Lord Justice Cherry, *Growth of Criminal Law in Ancient Communities*, 1890, p. 3.



is a primitive instinct rationalized by religious thought. It has nothing to do with the interests of the community except in so far as it may be advocated, on deterrent grounds, as the most effective method of protecting Society, in which case it ceases, of course, to be an aim, and becomes a method, justified not for its own sake but on grounds of expediency to achieve some other end. But in early times it was an end in itself, and was extended to animals and even things. Thus Xerxes scourged the Hellespont with 300 lashes because a storm wrecked his bridge.<sup>1</sup> In 1386, at Falaise, a sow was "sentenced to be mangled and maimed in the head and forelegs and then hanged for having torn the face and arms of a child, and thus caused its death".<sup>2</sup> The church bell at La Rochelle was whipped and buried in the earth in 1685, for having assisted heretics, but was subsequently rebaptized and restored.<sup>3</sup> Even to-day the same idea persists in much contemporary thought about punishment. When a lawbreaker is severely punished for some offence which has aroused public abhorrence, people say instinctively, "he has got his deserts", or "it serves him right".

Another idea of punishment closely associated with retribution is the *satisfaction of justice*. This also is primitive in origin and closely connected with the idea of sacrifice. It is conceived that an

<sup>1</sup> Herodotus, vii, 33-5.

<sup>2</sup> *The Criminal Prosecution and Capital Punishment of Animals*, E. P. Evans (1906), p. 140. The sentence, which was a strict application of the *lex talionis*, was carried out in public.

<sup>3</sup> Ives. *A History of Penal Methods*, p. 252.

abstract thing called justice has been outraged by an immoral act. The scales of justice have been upset. This can only be set right by meting out an equivalent amount of punishment to restore the balance. Such punishment may actually be against the real interests of the community measured in terms of protection and security, but it is considered essential to satisfy justice. And this view persists to-day. Recall the expression when an offender is put on probation instead of being sent to prison, "he got off." "The principle," says Professor Sidgwick, in a discussion of this subject,

"that punishment should be merely deterrent and reformatory, is, I think, too purely utilitarian for current opinion. That opinion seems still to incline to the view that a man who has done wrong ought to suffer pain in return, even if no benefit result to him or to others from the pain."<sup>1</sup>

It is necessary to realize that such a conception is associated with moral judgments and not with the protection of Society from anti-social behaviour. No sound theory therefore about crime and punishment is possible unless it is based upon a clear understanding of the distinction between *crime* and *sin*.

### *Crime and Sin*

Crime is not synonymous with sin, which is a violation of the moral law. Most crimes are necessarily immoral and many sins therefore are

<sup>1</sup> *Methods of Ethics*, p. 280.

crimes. But equally many sins, including some of the most serious, are not crimes. When the individual, faced with two courses of thought or action, one of which he recognizes to be on a higher plane than the other, chooses the lower he violates the moral law and sins. Sin is the conscious choosing of the lower of two moral alternatives. And many sins, such as avarice or heartless selfishness, may be practised with impunity outside the criminal law, a fact which is of importance when we come to consider the moral basis of punishment.

Though crime is anti-social, not all anti-social acts are criminal. Knowingly to convey infectious disease is an anti-social act, but, at any rate in this country, it is rarely criminal.<sup>1</sup> An anti-social act only becomes a crime when the law makes it so. But law is codified public opinion as registered by the majority, and majorities are sometimes apathetic and often wrong. Many acts not now regarded as anti-social were made into crimes by majorities in the past, and history is full of instances where men who went to prison were good citizens, not sinners but saints. There is also a curious "time lag" about the recognition of some anti-social acts. For example, theft is still considered more serious than dangerous driving, which actually is a much graver social menace. All this is of importance because it shows that the standard of judgment determining whether an act be criminal or not is by no means final. When a man sins he knows that he sins ; if he is unaware

<sup>1</sup> The communication of venereal disease is a criminal offence in Denmark.

of the immorality of his act, it is no sin. A man may commit a crime without realizing it, though ignorance is no defence. Again, his anti-social act may be the outcome of circumstances beyond his control and not the result of conscious choice, though this too is seldom any defence. Moreover, Society may punish as crimes to-day acts which to-morrow may be regarded quite differently and not be considered anti-social.<sup>1</sup>

But though many sins are not crimes it remains true that most crimes are sins, and crime carries with it therefore an element of moral condemnation. This fact has occasioned much confusion in regard to our treatment of crime. Our penal methods have been associated in men's minds for many centuries with theories as to the divine punishment of sin. In punishing the lawbreaker men have regarded the State as God's instrument for punishing the sinner.

When it is realized that many of the most grievous sins are not crimes, and not therefore punishable at law, it at once becomes apparent that to justify severe penalties for acts because of their immorality when they happen to be crimes, and yet to leave unpunished other acts equally or more immoral because they are not regarded as crimes, is to make a mock of all morality. It cannot be too strongly urged that the State is not primarily concerned with acts which are immoral because of their immorality, but because of their anti-social nature. In punishing crime, the State should be concerned with

<sup>1</sup> e.g. witchcraft in the seventeenth century and blasphemy to-day.

suppressing anti-social behaviour and not with exercising moral judgments.

It is sometimes said that one element in the punishment of crime should be the "satisfaction" of the injured party or his relatives. This is true only in so far as it means that the injured party should be reasonably satisfied that the steps taken record public disapproval of the crime and are likely to prevent its repetition. But in so far as it implies that the State should act as the injured party's agent in inflicting revenge for its own sake, this is based upon a false view of the State's function in punishment. Moreover, as we have seen, it is illogical when applied only to crimes, since retribution by the State, if justified at all, should be imposed for all sins and not only such sins as are also crimes. It is said that the absence of such "satisfaction" would encourage direct action against the offender. This was the difficulty in suppressing duelling, but there is no serious danger that the law and public opinion which successfully stamped out that anti-social practice should fail to subordinate private feeling to public interest in the treatment of crime.

#### *Retribution Unscientific and Unjust*

Quite apart from the fact that ideas of punishment associated with *retribution* and the *satisfaction of justice* are primitive or theological conceptions which should have no place in determining the State's attitude to crime, modern science has shown them to be unscientific and far from just. "The fuller,"

says Professor McDougall, "becomes our insight into the springs of human conduct, the more impossible does it become to maintain this antiquated doctrine [of retribution]." <sup>1</sup> The same is true of the idea of vindicating justice. Psychology is showing us that most crimes are greatly influenced either by physical or psychological abnormality or by social factors over which the individual may have comparatively little control. It is merely superficial to speak of justice in the abstract, for justice can only be measured in relation to responsibility.

Modern science is teaching us that responsibility is relative, and that we are all in some measure what our heredity and environment have made us. Moral judgments must be relative too. A man is "good" or "bad", not as he attains proximity to some absolute moral standard, but in the degree to which, within the limited area of freedom which he possesses, he gains mastery or loses control over such adverse hereditary and environmental tendencies as seek to influence him. To judge conduct apart from a consideration of such forces as heredity and environment is, in a very real sense, unjust. In some instances true justice would place not the offender but Society in the dock, for denying him decent conditions of life. To realize these facts is not to deny the existence of free will, but to recognize that the individual's degree of responsibility varies in relation to his past inheritance and experience. From these considerations, it follows that retributive and vindictive punishments

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<sup>1</sup> *Social Psychology*, p. 14.



are fundamentally unjust and a positive hindrance to right thinking about the problem of crime and punishment.

*Protection by Fear*

Since men regarded the State as God's agent for the punishment of sin and the criminal law as God's instrument for inflicting it, it is not difficult to understand why retribution has played such a large part in our penal methods. And retribution which began as a principle was retained as a means when the protection of society became recognized as the primary object of the criminal law. The terrible severity of the criminal law in the sixteenth, seventeenth, and eighteenth centuries can only be explained by the fact that retribution was then regarded not as an end in itself, but as a means of deterrence. The ferocious penalties of that period bore no relation to the offences for which they were inflicted, and went much further than retribution as a principle could support. The death sentence on a child for a small offence against property was not the application of the Mosaic Law. It was extreme severity for the sake of deterrence.

Our old penal methods demonstrate the working of attempts to protect Society by fear, for though our methods have varied with the centuries that aim until very recently remained constant. Whether we executed the lawbreaker for offences great or small, whether we transported him over the seas to face disease and death in the terrible convict settlements of the Antipodes, whether we confined

men in hulks on the Thames or shut them up for long periods of solitary confinement in prisons under degrading conditions of penal labour, the aim was the same—to make the consequences of wrongdoing so terrible that the offender would thereby be deterred from a repetition of his offence and others from any imitation of it. Protection by fear was the principle, sometimes ruthlessly applied, sometimes tempered by executive clemency, but always defended as necessary. Any proposal to mitigate the severity of the law met with the fiercest opposition and aroused the greatest apprehension, lest any such relaxation should endanger the security of Society. Transportation as the penalty for stealing five shillings and upwards from a shop was a terrible enough alternative to death, but when suggested it was thus opposed in the House of Lords in 1810 by Lord Ellenborough, Chief Justice of the King's Bench :—

“ My Lords, the punishment of transportation to Botany Bay is nine times in ten looked upon as no more than a summer's excursion in an easy migration to a happier and a better climate.”<sup>1</sup>

In 1813 Sir William Garrow, the Solicitor-General, actually opposed the abolition of drawing and quartering<sup>2</sup> :—

“ Can Government exist without such protection ? . . . Are the safeguards, are the ancient landmarks, the bulwarks of the constitution, thus hastily to be removed ? ”

<sup>1</sup> House of Lords, 30th May, 1810, *Hansard*, vol. 19, Appendix.

<sup>2</sup> *Hansard*, vol. 28, 1814 (Appendix for 5th April, 1813, c. xcvi).

In 1832 Sir Robert Peel opposed a Bill to abolish capital punishment for stealing over £5 from a dwelling-house, saying :—

“He looked upon this as a most dangerous experiment.”<sup>1</sup>

Deterrence may or may not have a place in an enlightened penal system, a matter which will be discussed later, but it is beyond dispute that the attempt in the past to protect Society by penal methods in which deterrence was the principal factor was unsuccessful.<sup>2</sup> It failed as it was bound to fail, because men cannot be made good by fear alone. Crime is the outward expression of an anti-social desire. Fear can do little more than curb the outward expression of the desire, which then remains to work itself out in some other way. Even if fear goes further than this, as some have urged, and curbs the desire itself, we now know that psychologically this is equally bad. Anti-social desires need to be, not repressed, but changed or sublimated ; and it is doubtful whether fear ever does this.

In the days of Queen Elizabeth picking pockets was a capital offence. Yet an Act passed at that time sets forth that the pickpocket was busy even at public executions :—

A certain kind of evil disposed persons, commonly called cut-purses or pick-purses but indeed by the laws of this land very felons and thieves, . . . in Fairs,

<sup>1</sup> *Hansard*, 30th May, 1832.

<sup>2</sup> The failure of severity to diminish crime will be discussed in later chapters.

Markets and other assemblies of the People, yea and at the time of doing of execution of such as been attainted of any murder, felony or other criminal cause, ordained chiefly for terror and example of evil doers, do without respect or regard of any time, place or person or of any fear or dread of God, or any law or punishment, under the cloak of honesty by their outward apparel, countenance, and behaviour, subtilly, privily, craftily and feloniously take the goods of divers good and honest subjects from their persons by cutting and picking their purses and other felonious sleights and devices, to the utter undoing and impoverishing of many.”<sup>1</sup>

In 1830, when death was the penalty for forgery, a petition signed by 725 bankers from 214 cities and towns was presented to Parliament praying

“that your Honourable House will not withhold from them that protection to their property which they would derive from a more lenient law ”.<sup>2</sup>

In this instance the primary difficulty was that the great severity of the punishment tended to prevent the prosecution and conviction of the offenders, and the protest is interesting as showing that severity of punishment may defeat its own object.

Though the conditions of transportation at Norfolk Island and Port Arthur were such that they were said to have

“carried the vengeance of the law to the utmost limits of human endurance ”,<sup>3</sup>

<sup>1</sup> 8 Eliz., cap. 4, section 1.

<sup>2</sup> *Hansard*, 24th May, 1830, c. 998-9.

<sup>3</sup> West, *History of Tasmania*, ii, 244.

the Royal Commission on Transportation reported that offenders were

“not infrequently transported to those Colonies a second time”.<sup>1</sup>

When transportation was replaced by imprisonment, experience proved that the harsh prison system which was substituted was no more effective in the protection of Society. Sir Evelyn Ruggles Brise, late Chairman of the Prison Commission, says of the recidivism of the period :—

“It seemed almost a mockery to talk of social progress when in the background was the silent, ceaseless tramp of this multitude of men, women and children, finding no rest but behind prison walls, and only issuing thence to re-enter again.”<sup>2</sup>

And even at the beginning of the present century, when solitary confinement was much reduced and the treadmill and the crank had become past history, prison was not reformatory. Society was not being protected, for, far from deterring men from crime, prison sent many of them forth to repeat crimes similar to those for which they had been imprisoned.

This failure of our old deterrent penal methods has been increasingly recognized in recent years, and with it has come the realization that we must find other and more constructive ways of protecting Society.

<sup>1</sup> Report on Transportation, 1838, p. xxii.

<sup>2</sup> *The English Prison System*, 1921. Introduction, p. 19.

*The Present Transition*

The lawbreaker is a social liability. We can make the consequences of his crime very terrible in the hope that we may thereby frighten him and others into becoming good citizens. This course has been tried and has proved a failure. Or we can seek to change him from a social liability into a social asset by reformative measures. Experience has already indicated that the latter is far more likely to prove the better way. Society is better protected from anti-social behaviour by educating the lawbreaker in citizenship than by intimidating him, though best of all by educating him and others before they break the law in the principles of right social conduct.

Thus, since 1885, when Colonel Du Cane, the first Chairman of the Prison Commissioners, urged that

“reformatory influences should predominate in dealing with the younger criminals, those whose minds and character are still unformed”,<sup>1</sup>

there has been a steady development of constructive reformative agencies, first for young offenders and later for other types of offender. It is not surprising that more progressive methods should first be applied to young offenders, for Society tends to be most cruel to those of whom she is most afraid. The severity of our penal laws in the past was primarily due to the menace to life and property felt by those in authority which arose from serious

<sup>1</sup> *The Punishment and Prevention of Crime*, p. 6.

factors in the social life of the time. The community is no longer afraid of the child offender, so the harsh treatment meted out to him in the past has given place to more rational methods. The main reason why primitive survivals such as corporal and capital punishment still persist for certain adult offenders is because fear of their offences has hindered a rational and dispassionate consideration of the most effective methods of punishment.

With this new approach has come, as we shall see, a decreasing faith in imprisonment as a reformatory agency. During the years preceding the war, the Reports of the Prison Commissioners contain admissions, at one time or another, of the failure of the prison method with many different classes of prisoners.<sup>1</sup> The professional or habitual criminal, the young prisoner under 21, the vagrant, the inebriate, and the feeble-minded, upon all these imprisonment is said to have had no beneficial effect. Sir Evelyn Ruggles Brise says very wisely that prison with all its consequences should

“be the last and not the first resort which, in the absence of well organized preventive and curative measures, it has far too often been in the past”.<sup>2</sup>

It is becoming increasingly recognized that if offenders are to be reformed, many of them should be *kept out of prison*. Thus we have seen in the last twenty years a striking decline in sentences of

<sup>1</sup> Quoted, A. Fenner Brockway, *A New Way with Crime*, pp. 21-2, ref. P.C. Reports. 1906-7, 1908-9, 1909-10, 1912-13; Reports of International Prison Congresses, 1900 and 1910.

<sup>2</sup> *Op. cit.*, p. 17.

imprisonment, while for those who are sent to prison the conception has changed as to what the object of imprisonment should be. The authorities have in fact reversed the whole penal theory upon which the prison system of the last century was based, and, as we shall see, are attempting to substitute training and reformation for degradation and fear.

The recognition that reformation may have an important place in the treatment of crime and the protection of Society marks considerable progress towards an enlightened and rational penal system. But our penal methods still bear upon them the hall-mark of obsolete ways of thinking, largely because old theories of punishment persist and still play their part in our treatment of crime. It is essential to progress that our ideas about punishment should undergo still more radical change. So far is this true that an unenlightened public opinion to-day is holding back the responsible officials from further reforms which they would like to carry out.

### *Deterrence versus Reformation*

It was said above that the primary object of our penal system should be the protection of Society. The ideas of *retribution* and the *satisfaction of justice* as aims in punishment should have no place there, founded as they are on conceptions which are unscientific and unjust.

But if this be so, can Society be completely protected by purely reformative measures? Is



reformation always possible? Are our penal methods to have no deterrent element? These are matters which demand our most careful consideration.

Let us admit at once that in our view the deterrent element in punishment seems to serve an essential purpose in our penal system and that it is difficult to visualize any successful penal system without it. But though the task of reconciling the reformative and the deterrent theories of punishment presents real difficulties, no useful purpose is served by exaggerating them. In practice it will often be found that reformative punishment may prove deterrent in character.

The State marks its disapproval of certain anti-social acts by the infliction of small penalties. By this means it is probable that many thoughtless people are made to see, for the first time, the anti-social nature of their offence, and that others, to avoid the inconvenience or even disgrace of being summoned, are led to light their bicycle lamps at the required time or to pay their taxes promptly. Failure to conform to social requirements of this kind is often the result of mere thoughtlessness, and it is hard to say whether penalties imposed for failure to observe such small social obligations are deterrent or educational in their aim or effect. Again, a sentence of institutional treatment under the degrading conditions of a prison of fifty years ago was definitely deterrent in aim, whereas under modern conditions where the emphasis is rather upon training than upon vindictive punishment, the aim

may be sometimes reformative. But even to-day the deterrent element is not absent. It is sometimes said that prison nowadays has lost its terrors. If those who make such a statement were to visit a modern prison and ask each man privately what he wished for above all else, the answer would almost invariably be : "To get out." Loss of liberty is in itself a great punishment. Furthermore, many of the changes introduced into our prisons in recent years have actually been unwelcome to the habitual criminal, who says he does not "want to be reformed", and who greatly preferred the old rule of thumb methods which he understood. Another example of this is the application of psychology to the treatment of crime. The Courts sometimes use a psychiatrist in dealing with persons whose offences indicate some obvious mental abnormality, and no doubt in future they will use him more. It is sometimes said, "If we treat the criminal as a patient, won't our methods lose their deterrent effect?" It is not recognized that mental treatment is at present a very great deterrent. Most offenders have an instinctive dread of insanity or mental instability, and they do not distinguish very much between the two. Many an offender when remanded for a medical report will protest that he is not "mad", and many a man fears a sentence of imprisonment far less than any suggestion that he is not mentally normal. These considerations support the view that our reformative measures are not necessarily less deterrent in effect than the less imaginative methods of the past ;

though we have to recognize too that this dread of mental treatment is in itself an evil which needs to give way to a new conception of mental health.

The real conflict between deterrence and reformation arises in regard to those severe penalties which are frankly deterrent in intention and character, and do not pay even lip service to the idea of reformation. Support for such a penalty was well expressed by Colonel Du Cane in 1885<sup>1</sup> :

For incorrigibles the only mode of protecting Society against them is that they should be entirely removed from temptation which they cannot withstand *and be made use of as examples to others.*

It is very difficult to see how this attitude to any man can be justified on moral grounds.

As the present Archbishop of York has said :—

“While few will be found to dispute the necessity for the deterrent element in punishment, all will agree that it can never be Christian to treat any human being whatever only as an instrument of deterrence.”<sup>2</sup>

To cause suffering or injure the personality of one man with the primary object of educating another in social responsibility is wrong because it is treating the person punished as if he were of no value in himself, and we are never justified in regarding any man, however depraved, in such a way. A sentence of fourteen years' penal servitude such as Mr. Justice Avory passed upon a fraudulent

<sup>1</sup> Op. cit., p. 7 (*italics ours*).

<sup>2</sup> Dr. Temple, *The Ethics of Punishment*, Howard Journal, 1930, p. 14.

company promoter two years ago was a purely deterrent punishment of this kind. Such a sentence did not pretend to aim at reformation, and obviously did more than mark reprobation. Under present prison conditions it can hardly fail seriously to injure the personality of the man who undergoes it. Yet it has been maintained that this very sentence has had a most salutary effect in tightening up the methods of many firms and in cleansing the business life of the City of London. But can we justify morally the ruin of this man's life in order to educate other business men in methods of honesty? Ought other members of the community to accept their education at such a price?

We believe the solution of this dilemma is to be found in the principle underlying the word *repudiation*. The community must repudiate the anti-social act of its member if it is to maintain its right standard of social conduct. The fault of our penal system in the past is not in the fact of repudiation, but in the fact that it has gone no further than this. To quote again the Archbishop of York :—

“Some act which may express the repudiation of the crime by the community must be the first thing—the first but not of course the last, nor the most important, nor that to which most attention must be called. It must be done, and done effectively, for the sake of the other members of the community, and equally for the sake of the criminal himself . . . There is a place for severity, and the severity must come in, not at all as representing the vengeance of the injured party, but as representing

repudiation by the whole community of the crime of its offending member ; and then, that secure, the standard being upheld, the whole energy of those responsible for the penal system must be bent towards devising treatment most conducive to the effective restoration of the offender according to the standard which has been accepted.”<sup>1</sup>

The justifiable criticism of Society's act in sending the fraudulent company promoter to whom we have already referred to prison for fourteen years was that after the repudiation—which after all was complete with the public shame of conviction at the Old Bailey—Society had no better method to use than our existing prison system. But suppose the community had said in effect : “ You have proved yourself unworthy of trust or of a position of authority. You must now undertake some much more humble but no less necessary task for the community under compulsory supervision.” It should not be impossible to devise some colony or institution where such a man could live out his life, disgraced but not degraded, and not deprived of the ordinary influences of normal family life.

We have taken as our example an extreme case, because Society in its penal system has to make provision for extreme cases. But in ordinary cases the shame of public conviction, and the unpleasant discipline of enforced treatment, however reformative its aim may be, will provide all the repudiation and all the deterrence which is essential. In its actual penal methods Society should direct

<sup>1</sup> *Ibid.*, p. 16.

its attention primarily to the task of reformation. That in itself will not be easy. It will, as has already been said, require much more study, effort, and courageous experiment than any country has yet been willing to give. But it is undoubtedly in that direction that the solution of the crime problem lies. When the possibilities of reformation have been fully explored it will be time enough to talk of offenders as incorrigible.

If indeed some are beyond the reach of reformation, they may have to be detained, as dangerous lunatics are detained, not as punishment, but for the protection of Society. But in that case such detention must not be under penal conditions. If Society assumes the right to shut a man up permanently there can be no justification for further depriving him of any reasonable amenities which might make his lot endurable.

But so little has yet been done in constructive efforts towards the rehabilitation of the offender that we are entitled to hope that with a fuller knowledge of the science of human behaviour and with more constructive reformative methods, it will become less necessary to deal with the "habitual criminal". And side by side with our reformative methods must be strenuous efforts to remove those fundamental causes of crime which make good social life difficult among a large section of the community.

## CHAPTER 2

### PRESENT-DAY CRIME AND ITS CAUSES

*Crime* is a general term which applies to all offences against the criminal law, whether they be serious crimes such as murder, robbery, or arson, or trivial offences, such as sleeping out or Sunday trading, which have little or no moral stigma attaching to them.

The technical distinction is between *indictable* and *non-indictable* offences.<sup>1</sup> The former, which include almost all serious crimes, are offences which may be tried "on indictment" at Assizes or Quarter Sessions, a mode of trial which involves a jury. The indictment is the document setting out the charges. In practice not all such crimes are tried by a jury or before these Courts, because for many years the Courts of Summary Jurisdiction or Police Courts have been empowered to deal with indictable offences, provided the accused person consents. The changes in procedure whereby more and more indictable offences are triable summarily, have not, however, affected the definition of indictable offences.

Non-indictable offences, although usually much

<sup>1</sup> Amongst indictable crimes there is an historical division between *felonies* and  *misdemeanours*, the former being the more serious crimes which involved forfeiture of property. To-day the distinction is arbitrary and should be abolished.

less serious than indictable offences,<sup>1</sup> are not without importance since they are far more numerous and throw considerable light on social behaviour.

For any accurate survey of the extent of crime in this country the student is largely dependent upon the annual volumes of official *Criminal Statistics* which are acknowledged throughout the world to have a high standard of accuracy and completeness. For the purpose of this book the *Criminal Statistics* for England and Wales, issued by the Home Office, will suffice. The Statistics for Scotland follow almost similar lines, and the slight differences in crime definitions and in crime frequency in the two countries do not call for special attention here.

What would be the best statistics of all, the *number of crimes committed*, will of course always be unobtainable, since a crime cannot officially be known until it is both discovered and reported. It must always be a matter of speculation how many crimes are never discovered at all. The number of bodies containing weed-killer which are committed unsuspected to their graves we shall never know. What we call the statistics of crime always exclude the most successful of all crimes—those which are never found out.

It should also be borne in mind that *discovered* crimes are sometimes not reported to the police because of an unwillingness on the part of the person who makes the discovery to subject the offender to

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<sup>1</sup> It is our defective sense of value that allows such offences as the adulteration of food to be regarded as minor offences.

treatment which he regards as unnecessarily harsh. This as we have seen was an important factor in changing the punishment for forgery a century ago,<sup>1</sup> and almost certainly operated, though in a lesser degree, in the days when our prison system was so degrading that even persons who were robbed, or wronged in other ways, hesitated to call the law into operation. Since the introduction of Juvenile Courts, the increase in the number of children charged is largely, if not entirely, explained by the fact that people are now more ready to charge children in the altered circumstances. With the development of probation and the new prison system the same is probably happening in regard to many adult offences. So also the prudery which would rather run any risk than mention a sex offence against a child has given place in recent years to an increasing enlightenment among the working classes, who are to-day more conscious of their rights and duties as citizens. This change and the introduction of women police have almost certainly resulted in an increase in the percentage of sex offences reported. All this is important in any discussion of the volume of crime because the more our penal system accurately expresses the common will, the more are our Courts likely to be used, and the greater the willingness of the general public will be to report crimes. This will result in an *apparent* increase in crime which will in fact be nothing of the kind, but only an increase *in the percentage of crimes reported*. This tendency has

<sup>1</sup> See p. 13.

undoubtedly influenced the statistics of the last twenty years. There may also be a reluctance on the part of certain citizens to report crimes because of a feeling that the offender will not be adequately punished by modern methods. We do not believe this factor can have influenced the statistics to any noticeable degree, but it shows the need for the education of public opinion.

The annual volumes of *Criminal Statistics* tell us the number of persons brought to trial each year, the nature of the offences with which they are charged, and the length of the sentences imposed upon those convicted and sent to prison. In regard to indictable offences, we are also informed as to the number of crimes "known to the police". In the companion volume, the annual *Report of the Prison Commissioners*, other facts are given such as the age, degree of education, and profession of prisoners and the number of times they have been previously convicted.

Indictable offences are recorded under three headings, (1) Offences reported to the police, (2) Persons tried, and (3) Persons convicted. As an index of crime tendencies these three classifications vary very little, but in such matters it is usually desirable to get as near the source as possible, and for this reason statistics of *crimes known to the police* are probably the best guide and, unless otherwise stated, they will be followed in this chapter. Non-indictable offences are not recorded under the heading "known to the police" since "it is impracticable to tabulate every petty offence that

comes to the knowledge of the police".<sup>1</sup> The statistics of non-indictable offences therefore relate to the "number of persons proceeded against". Let us now examine the actual facts.

### *The Crime Situation*

(a) *Indictable Offences.*—The table opposite sets out the number of indictable offences in England and Wales known to the police in 1930, both in actual figures and per million of population, and also gives comparative figures of the annual average of such crimes per million of population in each of the six five-yearly periods from 1900 to 1929.

The first fact which appears from this table is that the large majority of crimes in this country are crimes of "acquisitiveness" and very few are crimes of personal violence. Actually, 95 per cent of all the indictable offences are classified in the official returns as "crimes against property" and only 5 per cent as "crimes against the person".

It is important to realize that it is impossible to group all crimes together and to infer, for instance, that if crime is increasing there have necessarily been more murders, rapes, burglaries, robberies, and forgeries than formerly. A glance at the above table shows that burglaries, housebreakings, and larcenies form such a high proportion of the whole number of all indictable offences that the total figures are completely dominated by them. The numerical trend of this type of crime therefore

<sup>1</sup> Introduction *Criminal Statistics*, 1928, p. 42.

## PRESENT-DAY CRIME

29

INDICTABLE OFFENCES KNOWN TO THE POLICE, ENGLAND AND WALES,  
1900-1930<sup>1</sup>

Offences.	Proportions of Annual Averages per million of population.							Actual No.
	1900- 1904.	1905- 1909.	1910- 1914.	1915- 1919.	1920- 1924.	1925- 1929.	1930.	1930.
Murder . . .	4.7	4.2	4.2	4.2	4.0	3.7	3.1	122
Attempt, threat, or conspiracy to murder . . .	3.0	3.5	3.2	2.2	3.1	2.7	2.3	91
Manslaughter, in- fanticide . . .	5.1	4.1	4.0	3.3	3.0	4.0	4.5	178
Wounding . . .	36.1	36.5	33.3	16.8	17.2	27.2	36.2	1,443
Other offences of violence . . .	10.6	11.0	10.0	10.0	7.9	7.5	7.3	289
Unnatural offences and attempts, etc. . . . .	6.6	7.2	8.4	7.9	11.9	14.7	16.3	648
Sex offences against females .	37.0	38.7	51.7	37.7	52.6	61.9	63.4	2,524
Bigamy . . . .	3.8	3.7	4.4	16.0	14.9	9.7	9.4	374
Burglary, house- breaking, etc. .	273.2	343.2	332.1	299.9	448.6	516.9	651.6	25,937
Robbery and ex- tortion . . . .	8.3	8.3	6.1	4.4	5.6	5.0	7.8	311
Aggravated larcenies . . . .	347.8	306.7	276.2	289.2	235.3	247.4	251.7	10,019
Simple and minor larcenies . . . .	1565.3	1784.0	1654.9	1559.4	1645.6	1896.0	2127.7	84,697
Obtaining by false pretences . . . .	97.8	121.8	122.6	117.4	202.4	253.7	283.8	11,296
Other frauds . . .	10.9	16.4	16.5	9.1	21.6	40.7	51.4	2,045
Receiving stolen goods . . . . .	33.7	42.7	45.0	65.9	48.8	51.9	52.8	2,102
Arson . . . . .	8.1	8.4	8.3	4.9	6.3	4.9	4.6	185
Other offences against property	6.6	7.8	9.6	2.8	3.1	2.9	4.2	166
Forgery . . . . .	12.2	12.0	13.0	9.8	16.7	18.8	21.5	857
Coining . . . . .	4.0	6.0	6.4	1.5	2.5	4.2	5.4	215
Perjury . . . . .	2.6	2.4	2.5	2.1	2.4	3.2	4.2	168
Suicide, attempt- ing to commit .	66.1	71.6	66.8	36.0	41.5	65.2	76.7	3,053
Other indictable offences . . . .	13.2	17.0	16.4	9.5	4.9	6.0	7.8	311
Total of indictable offences known to the Police . .	2556.7	2857.2	2695.6	2510.0	2799.9	3248.7	3693.7	147,031

<sup>1</sup> Extracted from *Criminal Statistics*, 1928 and 1930, p. 20 in each case.

observes a number of variations in regard to other crimes which although far less numerous may be equally important.

The next fact which becomes clear from this table is that the impression, widely fostered by the sensational Press, that violent crimes against the person have increased to an alarming extent, is quite erroneous.

There has actually been a steady decrease in *murder* from 4·7 per million during the five years 1900-4 to 3·7 during 1925-9, and 3·1 in 1930. This decrease has occurred in spite of the war, which might have been expected to affect the homicidal rate adversely. *Attempted murder* shows a similar steady decrease. The *manslaughter* figures, no doubt influenced by motoring offences, are less steady, but even so the total figures are no greater than before the war. *Robbery*, which includes robbery with violence, certainly increased in 1930 compared with 1925-9, and has probably increased still more since the last published figures in that year. But the fact remains that the highest published figure since the war, viz. 7·8 per million in 1930, is lower than the average figure for the ten pre-war years 1900-9, when the country was not confronted with an unemployment problem comparable with that of the last few years.

*Wounding* has apparently increased considerably since 1925, the increase being in cases of *malicious wounding*, which is a misdemeanour, and not in cases of the more serious *felonious wounding*, which has decreased considerably since the war. But probably

this increase in malicious wounding since 1925 is entirely statistical. In that year the *Criminal Justice Act*<sup>1</sup> empowered the Courts of Summary Jurisdiction to try cases of malicious wounding summarily and as a result many persons who prior to 1926 would have been charged with assault, a non-indictable offence, were proceeded against for the more serious offence of malicious wounding. The Editor of the *Criminal Statistics* confirms this<sup>2</sup> :—

“As regards woundings, the figures of which show a small increase not proportionate to the rise in population, this small increase was due to the fact that after 1926, when Courts of Summary Jurisdiction were empowered to deal with offences of wounding, they dealt with them as such. Before 1926 they dealt with many of them by treating them as ‘assaults’ in which event they did not figure as ‘indictable offences’ known to the police.”

It will be seen below, when we come to consider non-indictable offences, that the number of cases of assault has decreased considerably in recent years, partly from this and similar causes, but mainly because of an undoubted tendency for violence against the person to decrease.

There is another apparent exception to the steady decline in crime against the person, namely in regard to sex offences against females. This is a further example of the ease with which those without an intimate knowledge of the subject may be entirely misled by statistics. Before the passing

<sup>1</sup> 15 and 16 Geo. V, c. 86.

<sup>2</sup> *Criminal Statistics*, 1928, Introduction, p. 11.



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<sup>2</sup> *Criminal Statistics*, 1928, Introduction, p. 11.

of the *Children Act*, 1908,<sup>1</sup> indecent assault upon young persons was an indictable offence which could not be tried summarily and—to quote the Editor of the *Criminal Statistics*:—

“it appears to have been the practice in suitable cases to reduce the charge to common assault in order to enable the justices, in the interests of the youthful victim of the offence, to dispose of the case summarily.”<sup>2</sup>

Under Section 128 of this Act, summary jurisdiction was extended to the major offence, and in consequence many offenders who previously were proceeded against for common assault were charged more accurately with indecent assault upon females. In the years immediately following this change in the law therefore, we find an *increase* in the statistics for the indictable offence of indecent assaults on females, which is, however, more than compensated for by a large *decrease* in the statistics for common assaults, due to this and other causes.

The fact that, in spite of the economic crisis through which the country is passing, practically all serious crimes of violence against the person are considerably less than they were before the war, and in most cases show a steady decrease during the last thirty years, is a matter of considerable encouragement.

The most serious aspect of these figures is, of course, the marked increase in many crimes against property, especially burglary, housebreaking,

<sup>1</sup> 8 Edw. VII, c. 67.

<sup>2</sup> *Criminal Statistics*, 1912, Introduction, p. 8.

larceny, obtaining money by false pretences, and fraud. Any attempt to understand the causes of this increase carries us to the more fundamental question of the causes of all crime, from which alone variations in the volume of crime can be explained and understood. This must claim our attention later.

The increase in bigamy is no doubt due to the loosening of the marriage bond which has been characteristic of the last twenty years, and the increase in unnatural offences may have resulted from a greater willingness to report such cases in recent years. Though both matters raise important social issues, they need not detain us here.

(b) *Non-indictable Offences*.—Turning now to the less serious, but much more numerous “non-indictable offences”, the number of persons proceeded against for such offences during 1930, both in actual figures and in proportion to population, together with the annual average per million of population in each of the six five-yearly periods from 1900–1929, will be found in the table on page 34.

It will be seen at once that during the thirty years under review there are very marked fluctuations in these figures, and that most offences show a considerable decrease. This is especially true in regard to those offences which indicate most criminality or a low standard of life. Assaults have decreased by over 60 per cent,<sup>1</sup> cruelty to children

<sup>1</sup> i.e. much more than could be accounted for by the changes referred to above, pp. 31–2.

PERSONS PROCEEDED AGAINST FOR NON-INDICTABLE OFFENCES, ENGLAND AND WALES, 1900-1930<sup>1</sup>

Offences.	Proportions of Annual averages per million of population.							Actual No.
	1900-1904.	1905-1909.	1910-1914.	1915-1919.	1920-1924.	1925-1929.	1930	1930
Assaults . . .	1849.2	1416.0	1184.6	831.4	995.6	738.1	653.2	26,001
Brothel keeping and living on Prostitute's earnings . . .	45.9	52.2	40.0	25.8	13.9	9.4	10.4	413
Cruelty to children	116.1	85.2	94.7	66.6	46.5	28.7	23.1	922
Indecent exposure	51.7	52.3	53.4	31.0	53.0	48.8	44.1	1,756
Malicious damage	516.6	447.1	403.9	472.5	391.0	355.7	310.2	2,348
Stealing, unlawful possession, etc. . .	172.3	150.3	133.1	179.9	101.8	86.1	71.6	2,849
Frequenting, found in enclosed premises, etc. . .	125.7	122.9	103.3	50.9	89.7	87.2	93.1	3,706
Betting and gaming	41.5	89.9	122.1	80.3	260.5	245.6	292.2	11,629
Cruelty to animals	452.5	386.6	361.8	258.3	182.0	130.4	88.4	3,519
Education Acts, offences against	2175.6	1429.4	1090.5	1503.1	706.9	395.5	278.1	11,071
Game laws, offences against	237.9	182.5	126.9	86.7	115.7	102.1	99.4	3,958
Highway Acts, offences against	1306.8	1555.1	1824.7	2196.5	4230.0	6275.4	6989.6	278,229
Intoxicating liquor laws, offences against . . .	6568.1	5909.6	5322.6	2271.2	2231.8	1743.2	1472.4	58,609
Police regulations, offences against	3988.9	3449.5	2715.0	1423.8	1854.5	1544.2	1442.6	57,425
Poor law, offences against . . .	296.9	296.4	191.4	48.8	94.4	100.5	72.6	2,890
Prostitution	321.6	315.9	294.1	168.0	113.1	80.4	33.2	1,323
Railways, offences in relation to . . .	150.3	163.4	168.6	195.1	187.3	177.4	179.2	7,131
Revenue laws, offences against	334.5	347.8	495.4	395.7	507.3	811.9	885.4	35,243
Sunday trading, etc.	158.0	177.6	249.1	268.8	554.3	748.4	781.0	31,090
Begging . . .	511.9	771.5	699.7	92.3	124.6	122.3	117.5	4,675
Sleeping out . . .	293.1	353.8	236.6	47.9	68.3	55.1	50.1	1,995
Gaming, etc. . .	744.8	693.9	687.4	646.6	486.2	353.3	284.0	11,306

<sup>1</sup> Extracted from *Criminal Statistics*, 1928 and 1930, pp. 18-19. The figures for offences against the Prevention of Crimes Act, Merchant Shipping Acts, other Vagrancy offences, and Naval, Military, and Air Force Offences have been omitted from this table.

and to animals by over 75 per cent, malicious damage by 40 per cent, and drunkenness, etc., by over 75 per cent.

The marked increase in offences against the Highway Acts may be explained, though not excused, by the growth of motor transport. Public opinion has not yet been enough aroused by the appalling toll of the roads, whereby seventeen people are killed and hundreds injured every day, and conviction for a motoring offence is not yet regarded with that social disapproval which it merits. Yet without such a public opinion, mere prosecution is powerless to check the evil. Ultimately it is not legal punishment which most people fear nearly so much as their neighbours' opinion.<sup>1</sup>

Increases in the offences of Sunday trading are peculiar in that 24,281 of the total of 31,090 prosecutions were taken in two East Coast towns, Hull and Grimsby. The increase in offences against the Betting Laws reflects the rapid increase in betting and gambling in recent years, and the creation of new offences under the Street Betting Act of 1906. Direct poverty offences, such as sleeping out and begging, have decreased considerably, no doubt largely because of the development of the State social services. The decrease in offences against the Education Acts is probably an indication that at the beginning of the century the population was not yet fully accustomed to compulsory education. Prostitution offences have decreased not because immorality among the general population

<sup>1</sup> See Chapter 1.

has lessened so much as because a growing sexual licence of a more general character has tended to reduce the number of professional prostitutes.

One general consideration must always be taken into account in regard to many of these non-indictable offences. Changes in public opinion towards them may influence the police in the proceedings which they may take, and fluctuations in the figures may reflect, not changes in the actual number of offences committed, but changes in the state of public opinion and in police practice.<sup>1</sup> Nevertheless there seems no reason to doubt that the last thirty years has witnessed a marked decline in many minor but not unimportant anti-social acts, and such decreases reflect a considerable improvement in social conditions and social behaviour. In any attempt to measure the extent and discover the causes and remedies for the increases in certain types of indictable offences against property the large decreases in these many other types of anti-social behaviour should not be forgotten.

### *The Causes of Crime*

The *Criminal Statistics* tell us how many crimes are known to the police, the age of the persons who

<sup>1</sup> For instance, persons charged with prostitution offences averaged about 4,000 during the years 1920-7, but fell to 2,992 in 1928, and 1,281 and 1,323 in 1929 and 1930. This sudden decrease was almost certainly due, not to a decrease in offences, but to changed police practice, as a result of the Report of the Street Offences Committee, the Royal Police Commission, and the Savidge Inquiry.

commit them, and how they are dealt with by the Courts. On these and kindred matters they are very informative. But the Statistics tell us little or nothing of the physical and mental make-up of those who commit crimes nor of the economic and social conditions of their lives. They tell us nothing of the source from which crimes spring. Punishment may and does have a place in the war against crime, but its effect is limited, and in any case prevention is better than cure.

Society will never be successful in its fight against crime until it has a much more complete knowledge of the causes which produce it. "Every criminal has a life history; that history is very frequently the explanation of his sinister career; it ought, therefore, to be tabulated, so that it may be seen how far his descent and his surroundings have contributed to make him what he is."<sup>1</sup>

What are the causes of crime? Is the offender wholly to blame for his behaviour, or must Society share the responsibility, because it tolerates social conditions which produce or encourage crime? Do the social and economic conditions of modern life make a certain amount of crime inevitable? Is crime merely a reaction against bad conditions or does it spring from maladjustment or from physical, mental or moral defects in the individual himself? What is the relation of heredity and environment to crime? These are some of the questions which must be faced if we are to understand the problem of crime prevention. They are not simple, and

<sup>1</sup> *Crime and its Causes*, W. D. Morrison, 1902, p. 4.



the more complex the Society is in which a crime takes place, the greater is the combination of circumstances which may have led up to it.

Far too little is known to permit dogmatic answers to be given to most of these questions, and one of the most urgent needs in regard to the whole problem of crime is more adequate research. England remains one of the few civilized countries which still has no Chair in penology or criminology in any of its Universities (though some of them possess schools of brewing and coal mining), and such research as has been carried out in this country has been almost entirely due to individual effort. Meanwhile, the Bench, the Press, and social workers continue confidently to propound views as to the real causes of crime, views which we may suspect to represent rather what those who express them wish to believe than any results of accurate investigation and inquiry.

### (1) *Poverty*

“The great mass of crime in this country,” said the late Judge Atherley Jones, “is based upon poverty,”<sup>1</sup> and it is certainly true that the large majority of those who come before the Criminal Courts are poor people. But it is equally true that the large majority of people who do *not* come before them are poor people.

In the table reproduced on page 29 it will be seen that 94 per cent of the indictable offences

<sup>1</sup> Newcastle Quarter Sessions, 9th January, 1925.

in 1930 were crimes against property, and Goring, in his masterly research regarding 3,000 English convicts, found that "95 per cent of all persons sentenced to imprisonment are convicted for committing acquisitive offences".<sup>1</sup> This suggests that crime is very largely economic in origin. But Goring also found that

"convictions for acquisitive offences are distributed with remarkable equality throughout all the occupational classes and . . . the professional and upper classes, under the name of fraudulent offenders, provide very nearly their proportional share of thieves. Four per cent of persons in the general population belong to the professional classes; the number of convicted thieves belonging to this class is 3 per cent."<sup>2</sup>

Much more detailed study is required before the precise correlation between poverty and crime can be known. It is clear that poverty has a considerable influence on crime, though it may be that its effect is less direct than indirect.<sup>3</sup>

## (2) *Other Anti-social Influences*

One of the effects of poverty which is likely indirectly to promote crime is *overcrowding*. It is fairly obvious that the huddling of persons of all ages and both sexes together in one stifling room makes decency difficult and tends to encourage sex offences of various kinds.

"In many cases whole families are born, live and grow up in one or two rooms. Often young children of

<sup>1</sup> *The English Convict*, by Charles Goring (abridged), 1919, p. 213.

<sup>2</sup> *Ibid.*

<sup>3</sup> See below, p. 48.

the ages of 6 and 7 sleep in the same bed with their parents, and children still older sleep on couches or beds in the same room.”<sup>1</sup>

Even more serious

“are the ceaseless friction and recurrent irritations which even among families the most patient and forbearing can hardly be prevented, while a number of individuals, differing widely in wants and in pursuits according to their age and station, are kept jostling every day and all day long, in the closest personal proximity within the four narrow walls of an overpacked apartment ”.<sup>2</sup>

Such conditions may easily promote quarrels and even personal violence. They may lead to the father and children, when old enough, spending their spare time out of the house, often in undesirable company. Cyril Burt found that whereas 11 per cent of the population of the county of London lived in tenements with more than two adult occupants to one room (two children under 10 counting as the equivalent of one adult), 21 per cent of the delinquent cases under his notice lived under such conditions.<sup>3</sup> Associated with overcrowding is the absence of those facilities for recreation which should be a part of normal life, and which are particularly needed in an urban civilization giving little scope for the youthful desire for activity and adventure.

Defective family relationships of various kinds,

<sup>1</sup> *Studies in the Psychology of Delinquency*, by Grace W. Pailthorpe, M.D. (H.M. Stationery Office, 1932), p. 39.

<sup>2</sup> *The Young Delinquent*, by Cyril Burt, 1925, p. 89.

<sup>3</sup> *Ibid.*, p. 87.

and especially the "broken home", may be responsible for much crime.

"On inquiry into the domestic circumstances of case after case the investigator cannot fail to be struck with the marked recurrence of one suggestive item—the presence of a foster parent."<sup>1</sup>

"Almost as difficult is the position of those homes where though no stepmother or stepfather has been added to the household, one or other of the parents is dead or has deserted or has been separated or divorced."<sup>2</sup>

Frequently the delinquent is the only child in his family.

"The ordinary child in an ordinary home is the member of a small and self-contained society, cared for by the united efforts of both father and mother, and possessing at least one other relative of his own age and outlook to play with him, to grow up with him, to keep with him and so to some extent to regulate his ways, or at least to report on any serious fault. The delinquent child too often is devoid of all such benefits. He leads an existence warped, one-sided, incomplete; and lacks the most natural check against lawless behaviour."<sup>3</sup>

Cyril Burt found that defective family relationships were more than twice as numerous among the delinquent as among the non-delinquent children under his notice.<sup>4</sup> Shideler has estimated that 25 per cent of all the children in the United States live in homes broken by death, divorce, or separation, while studies of groups of delinquents show that from 40 to 70 per cent of them come from

<sup>1</sup> *Ibid.*, p. 93.

<sup>2</sup> *Ibid.*, p. 94.

<sup>3</sup> *Ibid.*, p. 95.

<sup>4</sup> *Ibid.*, p. 95.

such homes. Young, another American authority, found that 52 per cent of the delinquents studied in Chicago in a certain district came from broken homes as contrasted with 17 per cent of the non-delinquents.<sup>1</sup>

Another factor often said to produce crime is *alcoholism*, though this has tended to become less important in recent years.

“Alcohol often produces poverty and so produces bad environment, evil companions, opportunities of bad experiences, lack of educational facilities, loss of parental control, disorganization in the home and quarrelling in the home, this last having far more serious results than is often supposed.”<sup>2</sup>

But alcoholism may be a primary condition or only a symptom of some underlying mental instability. Goring came to the conclusion that

“alcoholism is not directly but is only indirectly related to crime, through its relation to defective intelligence which itself is directly associated with criminal convictions.”<sup>3</sup>

Even so, alcoholism in the parent from whatever cause may presumably be a primary cause of crime in the children.

Again, much crime is due to *betting and gambling*, which lie at the root of many offences of dishonesty.

“It is an undoubted fact, which can be established by overwhelming evidence from those who have the widest

<sup>1</sup> *Annals*, American Academy of Political and Social Service, May, 1926, pp. 196-7.

<sup>2</sup> Hamblin Smith, *Psychology of the Criminal*, p. 14.

<sup>3</sup> Goring, *op. cit.*, p. 201.

and most intimate experience of the working of the criminal law, that a very large proportion of offences of dishonesty committed by first offenders, persons who have hitherto been regarded as honest, are attributable to excessive betting.”<sup>1</sup>

The widespread growth of betting and gambling in recent years may already have influenced the Criminal Statistics adversely, and any successful efforts to check this growing evil would almost certainly result in a reduction in some types of crime.

### (3) *Physical and Psychological Causes of Crime*

It is, however, upon the character of the individual delinquent that the influence, whether great or small, of these various environmental factors will be shown. There are many criminologists who believe that it is the mental and physical make-up of the offender which causes crime, much more than any outward circumstances, however adverse.

Some criminologists even go so far as to dismiss environment as a cause of crime altogether, though this is a conclusion we hesitate to accept. The Lombroso school, which a generation or so ago had many adherents, laid great emphasis upon the actual physical attributes of the criminal. In their view, “every organ and structure of his body, from the quality of his hair at one extreme to the deformity of his feet at the other . . . is beset with

<sup>1</sup> Home Office Memorandum to Select Committee on Betting Duty, 1921. Quoted *Betting Facts*, by E. Benson Perkins, pp. 12-13.

definite morbid physical stigmata.”<sup>1</sup> The hair of the criminal was said to be darker and thicker than the hair of people normally well conditioned. There were said to be two types of criminal heads, the one larger and the other smaller than the normal type, and five types of criminal head shapes. Typical criminal eyes were anomalous in colour with eyebrows characteristically bushy or scanty. The nose was defective in shape while the ears projected and were long. The skin was pale and wrinkled, and the lips frequently cleft. The chin was often receding or projected, and the limbs were morbidly constituted. The criminal was shorter in stature and lighter in weight than law-abiding people. His arms were longer, his legs shorter, his spine more curved. He was afflicted unduly with all diseases and suffered frequently from flat feet. In short, Lombroso’s theory was that the criminal was from birth a physical and psychical atavistic type, essentially different from the normal man both biologically and anatomically.

That this whole conception was based upon a fallacy has been so well established by recent research that it is no longer propounded. These abnormal characteristics were undoubtedly found among criminals, but they were equally to be found among the general population. Dr. Goring, after his careful examination of 3,000 English convicts, came to the conclusion that

“This anthropological monster has no existence in fact. The physical and mental constitution of both

<sup>1</sup> Goring, *op. cit.*, p. 13.

criminal and law-abiding persons of the same age, class, stature, and intelligence, are identical. There is no such thing as an anthropological criminal type."<sup>1</sup>

Dr. Hamblin Smith, Prison Medical Officer, says that statistics which he collected

"with regard to the relation between height and weight of 3,000 unselected convicts completely agreed with Goring's view."<sup>2</sup>

Dr. Healy and Dr. A. F. Bronner also examined 4,000 offenders and came to a similar conclusion.<sup>3</sup>

With the growth of psychology this view that the criminal is a pathological type has given place to another view that criminal conduct is entirely to be traced to the mental life of the offender, in consequence of which he will become criminal, however favourable or unfavourable his circumstances may be. Dr. Goring himself was inclined to this view. He dismissed almost entirely the influence of environment, or what he called "force of circumstances" upon crime.

"Relatively to its origin in the constitution of the malefactor, and especially in his mentally defective constitution, crime is only to a trifling extent (if to any) the product of social inequalities, of adverse environment, or of other manifestations of what may be comprehensively termed the force of circumstances."<sup>4</sup>

Whether or not this be true, which the authors doubt, it is clear that the study of crime will tend to concentrate more and more upon the mind of

<sup>1</sup> *Op. cit.*, p. 269.

<sup>2</sup> *Delinquents/2. Criminals.*

<sup>3</sup> Hamblin Smith, *op. cit.*, p. 31.

<sup>4</sup> Goring, *op. cit.*, p. 34.



the individual offender. It is by knowing more of his mental life that we shall understand what his response to his environment has been and thus arrive at the true cause of his crime. To quote Dr. Hamblin Smith :—

“The social and biological causes which assist in the production of delinquency are of great importance and we must not underrate them. They are worthy of deep study, and they should, if possible, be amended. But they are of quite secondary importance as compared with the study of the mental mechanisms of the individual.

“The subject may be an alcoholic yet the real cause of his delinquency may be congenital mental defect. The subject’s environment or his family history may have been hopelessly bad, but the true cause of his delinquency was some buried mental conflict. Here we see the true solution of the problem often put to us, why is it that of a number of persons in a given environment, or with a particular family history, or of similar habits, one or more become delinquent while the rest do not so become? We have but to consider this to reject, once and for all, the ‘general’ theories of crime. These easy ‘explanations’ have drawn us from our true goal, the study of the individual.”<sup>1</sup>

#### (4) *Heredity or Environment*

The relative importance of heredity and environment in causing crime has been a subject of controversy for many years, and when scientists disagree it is not for laymen to be dogmatic. But it may be that the two schools of thought are not as

<sup>1</sup> Hamblin Smith, *op. cit.*, p. 25.

irreconcilable as they appear. Further research and study may bring the recognition that heredity and environment both play their part in prompting individuals towards anti-social behaviour and that the two forces themselves may have a greater interaction than has been generally supposed.

After dismissing the theory of a criminal type, Dr. Goring goes on to say that

“It appears to be an equally indisputable fact that there is a physical, mental, and moral type of normal person who tends to be convicted of crime.”<sup>1</sup>

and that

“The one vital mental constitutional factor in the etiology of crime is defective intelligence.”<sup>2</sup>

The Report of the *Mental Deficiency Committee* of 1913 :—

Let us assume that we could segregate as a separate community all the families in this country containing mental defectives of the primary imbecility type. We should find we had collected among them a most interesting social group. It would include, as everyone who has extensive practical experience of social service would readily admit, a much larger proportion of insane persons, epileptics, paupers, criminals (especially recidivists), unemployables, habitual slum dwellers, prostitutes, inebriates, and other social inefficients than would a group of families not containing mental defectives. The overwhelming majority of the families thus collected will belong to that section of the community which we propose to call the ‘social problem’ or ‘subnormal’ group. This group

<sup>1</sup> Goring, *op. cit.*, pp. 269-70.

<sup>2</sup> *Ibid.*, p. 184.

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<sup>1</sup> Goring, *op. cit.*, pp. 269-70.

<sup>2</sup> *Ibid.*, p. 184.

comprises approximately the lowest 10 per cent in the social scale of most communities. Though the large majority of its members are not so low grade mentally that they can be actually certified as mental defective, it is possible that a not inconsiderable number of them might prove, if examined by expert and experienced medical practitioners, to be certifiable and subject to be placed under care and control . . .”<sup>1</sup>

We believe that in this theory is to be found the key to the interaction of heredity and environment upon crime. The ordinary normal man is not easily provoked into crime by adverse circumstances. The unemployed workman to-day is not a criminal. Incidentally, the marvel is not that crime has increased to some extent in the depressed areas, but that it has increased so little. Neither does the subnormal person, in favourable circumstances, as a rule become a criminal. It is only when he is faced with adverse environmental conditions that he finds himself unable to compete with his normal neighbours and lapses into various types of crime.

In our view the fact that the amount of crime appears to have some direct correlation with social and economic conditions may be largely attributed to the effect of an adverse environment upon members of the “social problem” group. We do not of course suggest that all criminals are members of that group. That would indeed be to oversimplify the problem. Every anti-social act has resulted from the complex mental life of an

<sup>1</sup> Report, part iii, p. 80, 1929 (H.M. Stationery Office).

individual. It may have its origin in some psychosis or neurosis quite unrelated to adverse environment such as we have been considering. The very definition of a crime is artificial, and many of the persons who commit crimes are not essentially different from normal members of the non-criminal population. But our contention is that the social problem group contributes much more than its share to the criminal ranks, and the influence of adverse environment upon that group is probably a very large factor in influencing the volume of crime.

We are not convinced that sterilization, as advocated by many people, is the right solution to this problem, and such a policy presents many difficulties. But the time has certainly come when an authoritative committee should be asked to study the question much more fully than has yet been attempted.

### *Recent Increases in Crime*

We must now consider to what recent changes in our social life, if any, may be attributed the increases in certain types of serious crime against property during the last few years.

(a) *The Industrial Depression*.—The most obvious change of this kind in recent years is, of course, the great increase in unemployment, and it is a fact that a graph drawn of the incidence of crime and the increase in unemployment shows a clear correlation.<sup>1</sup> On all sides, from the Home Office,

<sup>1</sup> S. K. Ruck, *Political Quarterly*, April, 1932, p. 207.

Probation Committees, Chief Constables, and from social workers, we hear that widespread unemployment is resulting in crime.

Thus the Editor of the official *Criminal Statistics* says :—

“It seems clear that acute industrial depression does lead to some increases in crime.”<sup>1</sup>

A recent Report of the Birmingham Probation Committee states :—

“The prevailing industrial depression has unfortunately been responsible not only for the initial appearance of many defendants before the Court, but also for their subsequent appearance owing to a further breakdown in conduct. Lack of employment, resulting in shortage of money, combined with an aimless and drifting way of passing the time, soon produces in undisciplined minds a type of youth with which it is exceedingly difficult to deal.”<sup>2</sup>

Mr. Frank Briant, M.P., well known for his social work among lads and boys, has said in reference to the increase in crime :—

“The fact of a fellow receiving the dole and having nothing to do seems to take away his self-respect. He is not wanted. He feels that he has no place in the community and idleness saps his morale. My impression is that a man who does not work always suffers demoralization. I can see no remedy but work.”<sup>3</sup>

<sup>1</sup> *Criminal Statistics*, 1929, Introduction, p. 5.

<sup>2</sup> Quoted in *Birmingham Evening Dispatch*, 18th January, 1931.

<sup>3</sup> *Public Opinion*, 8th April, 1932.

A special correspondent in *The Times*, after surveying the crime situation, reported that :—

“Chief Constables have noticed that most of the youths who fall into their hands nowadays are unemployed. While some are on the ‘dole’ others have reached the stage when their right to receive State help has passed and frankly admit that they have taken to crime to get a living, however precarious.”<sup>1</sup>

But to say that unemployment has a profound influence upon the crime situation is not to say that it is the only cause of the increase in crime or that its influence is simple and direct. Taking the old historic line north and south of the Trent, the late Mr. Locke, when editor of the *Criminal Statistics*, showed that though the industrial depression is relatively much worse in the North than in the South of England, this

“has not made the incidence of crime among mature men aged over 30 higher in the North ; at many points it is lower. Secondly, there are various indications that in the South, men and youths of ages 21–30 and youths of ages 16–21 are more prone than those in the North to offences of downright lawlessness. But as regards boys under 16, the number found guilty in the North of offences of dishonesty is out of all proportion higher than in the South ”.<sup>2</sup>

It is therefore clear that other factors influence the situation. It must also be remembered that unemployment may tend to cause crime, either through economic privation leading to poverty

<sup>1</sup> *The Times*, 19th May, 1931.

<sup>2</sup> Introduction, 1929 volume, p. 21.



and all its attendant evils, or through increased idleness with its resultant demoralization, or through both. And the effects of adverse environment will differ according to the character of the individual upon whom they fall. The ordinary unemployed man does not drift into crime; he has generations of moral principle behind him, and stands with his back to the wall fighting the demoralizing influence of enforced idleness year after year without resorting to crime.

Crimes against property have increased largely because, as we have seen, there are in the community a certain number of persons inferior in mental and physical equipment—not so much mentally defective as sub-normal—who are lacking in self-control, character, and training. Such persons keep straight in times of relative prosperity but cannot resist the increased temptations which come with economic stress. It is from these that many of the additional lawbreakers are probably recruited.

Though the relative statistics will not be published for some time it is common knowledge among persons in touch with the situation that convictions for certain crimes of dishonesty have still further increased since the autumn of 1931. Competent observers attribute this to the cutting off of tens of thousands of young persons from the transitional benefit under the Unemployment Insurance Acts. Thus Mr. Frank Briant, M.P., says :—

“Whatever may have happened in the past, my strong impression is that we are going to see an increase of crime

among young fellows as the result of their being cut off from transitional benefit. Although in theory that withdrawal of benefit may be justified, it means in effect that thousands of youths who, because they receive the dole, could afford to spend something on amusements—the cinema, smoking, and even an occasional shilling on a horse—suddenly find they have nothing to spend. As a result many who were by no means criminal are determined to get some pocket money somehow. That is an important factor in what we think is coming—an increase in young criminals who were not criminal. They will, as they say, ‘pinch’ things, but I think the danger is that a fellow who has once passed that point may go further.”<sup>1</sup>

The Chief Constable of Leeds in his Annual Report for 1931 confirms this by drawing attention to the fact that the number of larcenies increased suddenly when the cuts in unemployment pay took effect in the autumn of 1931.<sup>2</sup>

(b) *Decline in Emigration.*—Another factor which may have exercised a considerable influence on crime in recent years is the almost complete stoppage of emigration. A certain percentage of our lawbreakers are by no means of the sub-normal type we have been discussing, but are persons who combine courage, ability, and initiative with an anti-social and lawless kink. The successful “smash and grab raider” and a few of the ringleaders of the Dartmoor riot belong to this category. Mr. Herbert (now Mr. Justice) du Parc in his Report speaks of “a new type of prisoner in the last few years” who is

<sup>1</sup> *Public Opinion*, 8th April, 1932.

<sup>2</sup> *Howard Journal*, 1932, p. 4.





“usually young, determined, and adventurous. Speaking of one of them, Major Morris described him as a ‘leader of men’ and this description may well apply to others also. Their qualities, directed into evil channels, have made them great powers for evil. . . . They are capable of exercising great influence over the weaker minded prisoners. In any prison and certainly in Dartmoor there are many men of a very low order of intelligence and of very weak will”.<sup>1</sup>

The problem presents itself as to why this adventurous type has come to direct into wrong channels qualities which in the right channels would have resulted in successful lives. Though by its nature it is incapable of statistical proof, we believe there may well be a very definite relation between increases in crimes committed by this “motor bandit” type and the rapid decrease in the opportunities for emigration. Not only are the “young, determined, and adventurous” just the kind of persons who are likely to emigrate, but also before the war in many respectable homes it was customary to send the “black sheep” of the family off to the Colonies to live down some youthful offence or indiscretion. Until recently there had been for sixty years a large annual net outward movement from the United Kingdom. During the last four pre-war years 1910-13, the excess of emigration over immigration was no less than 266,620 per annum. During the five post-war years 1920-4, the average annual figure had

<sup>1</sup> Report on Disorder at Dartmoor Prison, p. 6. (H.M. Stationery Office), 1932.

fallen to 158,782, and for the five years 1925-9 to 135,032. In 1930, however, the figure fell to 25,955, and in 1931 there was actually an inward balance of 37,072.

It is often stated that this decline in emigration is due to an improvement in the standard of living, the provision of social services, and a decline in the birth-rate. The Overseas Settlement Committee dismisses these factors as principal causes, and adds :—

“The main cause of the fluctuations which have taken place has been the absorptive capacity of the countries of immigration.”<sup>1</sup>

It is not unreasonable to suppose that this virtual closing to emigrants of countries in a less crowded and more adventurous stage of civilization has in certain cases contributed to our difficulties.

(c) *The War*.—It is no uncommon thing to hear the increase in the volume of crime in recent years attributed to the influence of the late war.

During the war itself, though the crimes of adult persons decreased considerably (no doubt because a large section of the male population were then in the Army and there was little unemployment) the number of juvenile offenders rapidly increased, and in 1917 was double the normal. During the war fathers were in the Army, mothers in munition factories, and boys' clubs and other social activities were understaffed. This state of affairs, coupled with the nervous strain under which everyone was

<sup>1</sup> Report, 1932, p. 9.

living during those days, was no doubt responsible for this war-time increase in juvenile crime. The fact that such crime fell again after the war confirms the view that the increase was due to war conditions. But the young criminal of the 21-30 age group to-day belonged to that war-time juvenile age group, and may easily be the same juvenile offender become adult. Is the increase in crime among adults to-day the harvest of war-time juvenile delinquency? This supposition would at first seem to be confirmed by the Statistics for 1926, when crime increased considerably owing to the General Strike. The percentage increases in convictions for indictable offences among men and youths that year over 1925 for the following age groups were :—

<i>Ages.</i>	<i>Percentage rise.</i>
16-21 . . .	75
21-30 . . .	53
Over 30 . . .	42

The rise is thus seen to be greatest among those who were under 12 in 1917 and next greatest among those who were over 12 but under 21 in that year.

To quote the Editor of the *Criminal Statistics* :—

“ It seems a fair inference that many of those who as juveniles had contributed to the high rise in juvenile crime in 1917 broke out again under the stress of events in 1926.”<sup>1</sup>

When we turn to more recent years, however, we do not find that the persons convicted of crime

<sup>1</sup> Introduction to *Criminal Statistics*, 1929, p. 14.

during the years 1929 and 1930 who belonged to the 21-30 age group (and therefore formed the juvenile age group of the war-time years) formed a larger percentage of the total number of persons convicted of crime than has always been customary. Owing to changes in the methods of tabulating the records as a result of the passing of the *Probation of Offenders Act, 1907*,<sup>1</sup> comparative figures for all the years since 1907 are not available, but investigation shows that of the total number of persons over 16 found guilty of crime, the percentage belonging to the 21-30 age groups in the years 1898, 1907, and 1930 was 31 per cent in each case.<sup>2</sup> In other words, contrary to expectation, it is not true that the juvenile offenders of 1917, who became anti-social as a result of the war, thereupon embarked upon a life of crime and have consistently swollen the criminal ranks of the age group to which they have belonged ever since. Rather does it show that the treatment accorded to those war-time offenders was successful in preserving any undue proportion of them from a criminal career. But the exceptional increase in crime among juveniles during the war and among the same group grown older under the stress of the General Strike suggests that adverse environmental factors reacting upon the same group at different periods and different ages produced similar results. Does not this give support to the

<sup>1</sup> 7 Edw. VII, c. 17.

<sup>2</sup> See article by Miss W. A. Elkin in *Howard Journal*, 1932, pp. 73-4. The statistics for offenders under 16 have been omitted because the establishment of the Juvenile Court and the development of Probation has made the figures before and after 1908 not comparable, see pp. 204-5.



view that the volume of crime is largely influenced by the extent to which adverse environment reacts upon the "social problem group"?

On the whole then, it would seem that the war did not have any noticeable direct affect upon the present volume of adult crime, though indirectly the influence of the resulting industrial depression has, as we have seen, been considerable.

There remains one age group among which crime has unduly increased in recent years,<sup>1</sup> and which may reflect the war influence in a less obvious way. The number of young persons of 16-21 found guilty of indictable crime has increased from 8,862 in 1907 to 11,929 in 1930, an increase of 35 per cent. Are we to attribute this increase entirely to the industrial depression which may be more serious in its effects upon this young group, a large percentage of which has never had any employment, or does it provide support for the view that those who were babies or very young children during the war years are now reflecting in their present anti-social behaviour the abnormal mental strain of their parents during the war? Or again, is the increase partly due to a greater readiness to prosecute since the development of Probation?

(d) *The Motor-car.*—The last thirty years have witnessed the arrival of the motor age, and this revolution in our social life has undoubtedly influenced crime. The motor-car has been an active help to the lawbreaker and often a hindrance to the police. It has encouraged hundreds of

<sup>1</sup> See below, p. 205.

thousands of people who formerly lived in crowded areas which were easily protected to move to more scattered houses in the suburbs which are much more difficult to police. The motor-car has also widened the area of a burglar's activities and greatly improved his means of escape. New protective measures against crime are called for, which up to the present Society has not discovered. So long as defence continues to lag behind offence, crime will tend to be profitable and consequently more frequent. Side by side with the advent of the motor-car has come the growth of insurance, one result of which has been that the individual has been less concerned than previously in safeguarding his own property and also more prompt in reporting losses, which incidentally may tend to swell the records of "crimes known to the police". These changes provide fertile ground for increases in crimes of dishonesty, especially when they are co-existent with industrial depression and unemployment.

Most crimes against property are committed by young men, and the type of serious crime most on the increase is the "smash and grab raid" which requires for its success both the motor-car and the shop or warehouse where valuable goods can be easily stolen. Hundreds of thousands of young men are wandering about with no work, many of whom have never had any work since they left school. Most modern young men know a good deal about motor-cars and engines, and know how to drive. In every community hundreds and thousands of people make a practice of leaving in





the streets expensive motor-cars, into which anyone can step, put his foot on a pedal, and drive away. Until recently the public were actually forbidden by the police to lock their cars. A motor-car provides an effective instrument not only for stolen pleasure, but also for the commission of a crime. The question arises whether motorists should thus put temptation into the way of lads and young men who have not been brought up to resist temptation. Surely some method could be devised to make the stealing of motor-cars much more difficult? The theft of a motor-car is a much more serious thing than a mere menace to property, because it is facilitating the embarkation of our adventurous youth on a life of crime.<sup>1</sup>

(e) *The Moral Outlook*.—We come now to another factor in our social life which has probably influenced the volume of crime, and that is the changing moral outlook. We are passing through a crisis in morals. Conventional codes of conduct which have regulated and controlled men's actions for generations are being questioned. The greater freedom from restraint which is characteristic of our age, and which in many ways is a good thing, easily degenerates into licence. For instance, the decline in Church attendance during the last twenty years has resulted in hundreds of thousands of young people, who before the war would have been linked up with social activities of the denominational

<sup>1</sup> See address by Colonel G. D. Turner, Assistant Prison Commissioner, Hampshire Discharged Prisoners' Aid Society, *Hampshire Herald*, 13th March, 1931.

Churches, being left outside the restraining influence of any of these agencies. Without taking a narrow or puritanical view of these changes, there can be very little doubt that, whatever their ultimate effect, in the transition period they are not helping the crime situation.

This rejection of conventional standards which is characteristic of our age may be more potent in causing crime than the more obvious influences we have been considering. If this is so, it is clear that there is urgent need for alternative social activities. Such developments as Boys' Clubs, the provision of recreation grounds and Youth Hostels, and the Boy Scout movement, filling the gap left by older agencies, are to be welcomed as constructive alternatives. Above all, there is needed the development of a social conscience demanding a higher standard of personal behaviour. The rejection of outward standards can lead to increased licence, or to the development of an inward control of personal character. The moral standard of the community depends in the last resort on the moral character of its individual members.







## CHAPTER 3

### THE MACHINERY OF JUSTICE

The measures taken by the community to combat crime fall into two main categories, those by which it is sought to effect the detection, arrest, and trial of the lawbreaker, and those which concern his treatment, when his guilt has been proved and his sentence pronounced. The former constitute our police and judicial system, the latter our penal system. In this chapter it is proposed briefly to outline the nature and discuss the effectiveness of our police and judicial system.

#### *The Police*

The first line of defence against crime is religion, education and moral training. When that fails, Society next relies upon a well-organized police system.

The duties of the police fall under three heads, *first*, the prevention of crime—rightly regarded by the police themselves as their most important duty—*secondly*, the investigation of crimes committed and the detection and prosecution of offenders, and *thirdly*, various duties not connected with crime, which to an increasing extent in recent years have been imposed upon the police.<sup>1</sup>

<sup>1</sup> See Report, Royal Commission on Police Powers and Procedure, p. 6.

It is obvious that the mere existence of an active patrolling force, ready at all times to uphold the law, does much to maintain order and to prevent crime. The policeman's second duty, the detection of crime, also serves a wider purpose in its deterrent effect. If the criminal law were never brought into operation, human nature being what it is, it would either be ignored or the private citizen would take the law into his own hands and ordered social life would give place to lynch law.

It is a commonly accepted principle that certainty of detection, arrest, and conviction is far more potent to prevent crime than mere severity of punishment. This is clearly shown by the great reduction in crime which followed the mitigation of the criminal law a century ago, and which was not only due to the substitution of more lenient laws, but also to the steady development of well-organized bodies of police.

There is to-day no central organization of police in this country. There are nearly sixty county police forces with a total strength of 18,000 men and over 120 borough forces with a total strength of 19,000 men. The Metropolitan police force, which deals with an area of 15 miles' radius from Charing Cross (excluding the City of London), has an establishment of over 20,000 men. The City of London police force, controlled by the Corporation of the City, has about 1,100 men. The total police establishment for England and Wales in 1929 was 58,000 men, which was an increase of 16,000 over the number in 1900. The number of women police











serving in England was approximately 150. Up to that time none had been appointed in Wales.<sup>1</sup>

Various proposals have been made from time to time for greater centralization of the police forces, and as recently as the spring of 1932 a Select Committee of the House of Commons recommended that the police forces of non-County Boroughs with a population of under 30,000 should be merged into the County forces. Undoubtedly the present situation is unsatisfactory. Small forces, for example, probably lack facilities for recruiting and for the training of good detectives. The advent of the motor-car has greatly extended the law-breaker's area of operation and the police need to adapt themselves to the altered conditions. At the same time the long-established system of local recruiting and control is one not lightly to be discarded and a reorganization which would develop more effective co-ordination between one force and another while retaining local autonomy has much to commend it. The police in exercising their functions are to a peculiar degree dependent upon the goodwill of the general public, and any change would be unfortunate which tended to militarize the police by making them into a national unit, thereby destroying that confidence.

“The Police of this country have never been recognized either in law or by tradition as a force distinct from the general body of citizens. Despite the imposition of many extraneous duties on the Police, by legislation or administrative action, the principle remains that a policeman, in

<sup>1</sup> Report, Royal Police Commission, pp. 90 and 139-40.



the view of the common law, is only a person paid to perform as a matter of duty acts which if he were so minded he might have done voluntarily. Indeed, a policeman possesses few powers not enjoyed by the ordinary citizen, and public opinion expressed in Parliament and elsewhere, has shown great jealousy of any attempts to give increased authority to the Police. This attitude is due . . . to an instinctive feeling that as a matter of principle . . . their authority should rest on the broad basis of the consent and active co-operation of all law-abiding people.”<sup>1</sup>

The suggestion has also been made that the manifold traffic duties which now fall upon the police, and which since the advent of motor traffic have increased out of all proportion to increases in police strength, should be diverted to some other body of men, which would leave the police more free for their primary function, the prevention of crime. This is largely a matter for internal organization, but it is not unreasonable to suggest that any men required for traffic direction should be in addition to and not in substitution for the police formerly engaged in crime prevention. It is also open to question whether traffic direction requires a body of men of such varied training, equipment, and physique as is demanded by other police duties. A policeman is more highly paid and has relatively a shorter period of service than would seem to be necessary for a body of men required to undertake only traffic direction. The growing toll of the roads demands as one of its remedies much more

<sup>1</sup> Report, Royal Police Commission, p. 6.

extensive traffic control. It is indefensible to oppose on grounds of economy the appointment of more traffic police when a larger body of less highly trained men could undertake the work as effectively. And if after consideration it is decided not to transfer the direction of traffic to some other body, then, as the Royal Commission on Police Powers and Procedure said in 1929 :—

“ If the imposition of new burdens on the Police continues, their numbers must be adequately and proportionately increased and the public must be prepared to face the expense involved.”<sup>1</sup>

At present there is a disquieting decrease in the percentage of those crimes known to the police in which the offender is brought to trial, as will be seen from the following table :—

INDICTABLE OFFENCES. ENGLAND AND WALES<sup>2</sup>

Year.	Crimes known to Police.	Persons tried.	Percentage.
1920-4	106,837	58,857	55·1
1928	130,469	61,513	47·1
1929	134,581	59,921	44·5
1930	147,031	64,046	43·6

This decrease may be partly due to changing conditions, such as the advent of the motor-car, which have placed the police at an increasing

<sup>1</sup> Report, p. 82.

<sup>2</sup> Extracted from *Criminal Statistics*, 1928-30.

disadvantage. It may also be partly explained by the growing practice on the part of offenders when brought to trial, to ask the Court to take other offences into consideration in passing sentence, so that a large number of offences are "cleared up" without technically being the subject of trial. Thus many offences may go to swell the total of known crimes, which would never have been discovered if the offenders had not confessed to them in the dock.<sup>1</sup> But the decrease may also be caused by a diminishing efficiency on the part of the police, due in part to their preoccupation with non-criminal matters, and in part to the need for better training and a general modernizing of police methods.

If this is so, it must be a matter of grave concern. No improved methods of dealing with the law-breaker when apprehended can be a substitute for the possession of a police force effective to secure that a large percentage of those who commit crimes are detected and brought before the Courts.

During the last few years the suggestion has been made in some quarters that the police should be armed, in order to deal more effectively with certain criminals of the "motor bandit" type.

The *Observer*, in a leading article, went so far as to urge :—

"If certain grades of police at any rate were provided with revolvers and authorized to use them, not merely in self-defence but in preventing the escape of criminals caught red-handed or evading examination, a good many

<sup>1</sup> In 1930, no less than 35,115 indictable offences were "cleared up" without being the subject of trial, in most cases for the reason stated above.

evildoers would be stopped in mid-career and public anxiety to that extent lightened. Such a regulation is a commonplace in certain parts of the Empire and its advantages should be well weighed against precedent and whatever else stands in opposition. The frequency with which offenders are pursued but escape brings the would-be majesty of the law into perilous ridicule."<sup>1</sup>

This passage is a good illustration of the way in which a writer, whose opinion on other subjects is entitled to respect, is willing apparently with only a minimum knowledge of the history of the treatment of crime, in our own or other countries, or of the principles of our law, to rush in with remedies for our crime problem. We have a careful legal procedure for determining guilt which has stood the test of far more lawless times than these. Mr. Garvin would have us dispense with all this, and delegate to a policeman the task of deciding in less than a second, and without a trial, that any suspect who runs away from him is in fact guilty. He seems to regard the infliction of death or grievous bodily harm upon him as the only alternative to his permanent escape. Such a policy would no doubt increase the death-rate among persons rightly or wrongly suspected of being motor bandits, as well as the death-rate among policemen and innocent bystanders, but all experience both in America and elsewhere goes to show that it would not diminish crime. There is a vicious circle about the carrying of firearms. The criminal who knows he is in danger of being shot is

<sup>1</sup> 11th September, 1932.

much more likely to go armed and shoot the police at sight than to go quietly away. The present crime situation demands not the distribution of more revolvers, but a tightening up of the present regulations concerning their issue and disposal.<sup>1</sup>

### *The Courts*

Passing now from the detection and apprehension of an offender to his trial at law, we come first to the Court of Summary Jurisdiction or Police Court,<sup>2</sup> the lowest Court in the scale of dignity but by far the most important in terms of the amount of work it is required to do. Here a Bench consisting of at least two Justices of the Peace or one Stipendary Magistrate sits to hear and determine minor cases, or to conduct a preliminary investigation into cases which will be tried before a higher court.<sup>3</sup>

When a man is charged with an offence, he is either arrested and brought before the Police Court, or, in the case of a minor offence, summoned to appear at a given time. The vast majority of criminal cases are finally disposed of at the Police Court, and almost all the remainder begin there. Thus, in 1930, of the 673,716 persons charged with

<sup>1</sup> It is instructive that no loss of life occurred at Dartmoor on the occasion of the recent riot. This was almost certainly due to the fact that the prison officers inside the prison were unarmed. In the United States, where prison officers are armed, riots not infrequently result in heavy loss of life both to prisoners and officials.

<sup>2</sup> The popular name "Police Court" is not very happily inspired and should be superseded by some other which better describes its functions.

<sup>3</sup> A J.P., sitting alone, has certain limited powers.

criminal offences, 665,332 were tried by Courts of Summary Jurisdiction and only 8,384 persons by the higher Courts. Any person charged before a Court of Summary Jurisdiction with a criminal offence (other than assault and a few other offences), in respect of which he is liable on summary conviction to be imprisoned for a term exceeding three months, may claim the right of trial by jury, that is to say, to be tried on indictment at Assizes or Quarter Sessions, a mode of procedure which necessarily involves a jury. In practice, however, not all indictable offences<sup>1</sup> are actually tried before these Courts, for during the last seventy-five years a series of Acts have enabled an increasing number of such offences to be dealt with by the Courts of Summary Jurisdiction, with the consent of the accused. Since trial by jury in the higher Court often involves the delay of a month or even much longer, during which time the accused may be held in custody, he frequently elects, in those cases where the law allows it, to be dealt with summarily. Thus in 1930, of the 665,332 criminal cases disposed of summarily before the Justices, 55,662 were indictable offences. This constitutes no less than 87 per cent of the total number of indictable cases tried in all Courts.

The Court of Summary Jurisdiction consists of at least two justices of the peace who are men or women of standing in the locality, appointed by the Lord Chancellor, usually acting upon the recommendation of local Advisory Committees

<sup>1</sup> See p. 24.

which were set up after a Royal Commission in 1910. In London and in a number of provincial towns the work before the Court has been so great as to overtax the machinery of voluntary effort, and Stipendiary Magistrates, who must be Barristers of several years' standing, have been appointed to act with or without the justices and take responsibility. When the Court consists of lay justices, they may be advised on points of law by the Clerk to the Court, who, except in London, is usually a solicitor.

In those cases which are not triable summarily, or where the accused elects to be tried by a jury, or where the particular offence is so grave that the Magistrate or Justices, though empowered to deal with it summarily do not desire to do so, the Court hears the evidence and decides whether there is a *prima facie* case to send for trial at *Quarter Sessions* or *Assizes*. When an offender is committed for trial, the evidence for the prosecution is examined just before the trial by the Grand Jury. Except by direction of the Judge, the Grand Jury seldom exercises its right to find "no true bill" and serves no purpose which could not be equally well accomplished at the trial. The Grand Jury is a costly and useless historic survival which should be abolished.

The Court of Quarter Sessions has jurisdiction over indictable offences other than treason, murder, bigamy, and a few other serious crimes. In its oldest form it was a meeting of the justices of the peace of a particular county, held once a quarter or,

by adjournment, oftener. In London and Middlesex to-day the Sessions are held twice a month. In comparatively recent times over 100 cities and boroughs have been granted local Courts of Quarter Session presided over, not by a Chairman who is a justice of the peace, but by a Recorder, who must be a barrister of at least five years' standing, and who is the sole judge. Whether the Court consists of a bench of justices or of a Recorder sitting alone, trial is by a jury of twelve.

The Assizes are presided over by a Judge of the King's Bench Division sitting with a jury. They are usually held three times a year for each county, but in some cases oftener. In London and its suburbs for the last hundred years the function of the Assizes has been discharged by the Central Criminal Court (the Old Bailey), a special tribunal which sits every month. These Courts can try any indictable offence whatever, but generally speaking, the justices, in committing an accused person for trial, send the most difficult and serious cases to Assizes, but if the case is one which can be tried at Quarter Sessions they send it there, unless there are special reasons for a trial at Assizes, as, for instance, that this would involve less delay. In the same way, under the *Criminal Justice Act, 1925*, a Court may commit to *any* Assizes or Quarter Sessions outside the county to avoid delay.

There is a right of appeal from every conviction and sentence of a Court of Summary Jurisdiction to Quarter Sessions, which when hearing appeals sits without a jury. In practice, however, this right



is largely illusory, for as a preliminary the appellant is usually required to furnish sureties to the amount of about £50, which few of those convicted in the Police Court are able to do. In view of this it is not surprising that there were in 1930 only 267 appeals from Courts of Summary Jurisdiction to Quarter Sessions. Yet in no fewer than 74 of those 267 cases the conviction was quashed altogether, and in 81 other cases the sentence was modified.

There is also a right of appeal from conviction or sentence at Quarter Sessions or Assizes to the *Court of Criminal Appeal*. Here it is not necessary to furnish sureties. Out of the 461 appeals or applications for leave to appeal from Quarter Sessions or Assizes in 1930, the Court of Criminal Appeal quashed the conviction in 23 cases, quashed the sentence in two cases and substituted some other sentence in 26 cases.

There is something manifestly wrong with a procedure which makes it more difficult to appeal from the decisions of lay justices than from decisions in the higher courts, and it is satisfactory to know that a Departmental Committee has now been appointed<sup>1</sup> to inquire into the matter.

This outline of the work of the criminal courts would not be complete without a few comments upon some outstanding matters which need reform.<sup>2</sup>

Each year that passes tends to extend the jurisdiction of the Police Court, but with that increasing

<sup>1</sup> July, 1932.

<sup>2</sup> For a more detailed criticism of the Courts of Summary Jurisdiction, the reader is referred to *English Justice*, by "Solicitor", Routledge, 1932.

power there has been no corresponding improvement in the quality of the lay justices. Until the beginning of the present century the average magistrate was usually of one party and with all the limitations of his class. To-day, though justices are chosen from all political parties, they are frequently appointed as a reward for political services, and in many Courts it is rare to find a justice who does not owe his seat on the bench to his work for his party. It should be said, however, that this criticism does not apply with equal force to the appointment of women magistrates, where a much better tradition has been established. The local Advisory Committees which were appointed after the Royal Commission of 1910 to advise the Lord Chancellor on the appointment of justices, have in many areas increased rather than lessened the "wire pulling" that goes on to get magistrates appointed. Meanwhile, persons of standing in the locality who are not identified with local party politics, but would make excellent justices, are rarely appointed because they are not acceptable, or their names do not occur, to the party caucus.

It would be strange if a body so chosen should prove specially capable of exercising judicial functions. The Chairman of a Staffordshire Bench told a young man who was giving evidence on his own behalf a few years ago, "Here, young man, not so fast, not so fast. You must ha' done summat or you wouldn't ha' been summonsed." <sup>1</sup>

The proposal is frequently made that the office

<sup>1</sup> *Howard Journal*, 1931, p. 17.

of justice of the peace should be abolished and the work done by Stipendary Magistrates. We do not share this view. It would be an expensive change, and we believe there are advantages in keeping the administration of justice thus closely linked with the general public. We believe the remedy lies in improving the methods of appointing justices, and in making it easier and less costly to appeal from the decisions of the Courts of Summary Jurisdiction. There would then not only be more appeals, but all justices would learn from experience that it was always desirable to exercise care. Though it would no doubt be regarded in some quarters as a startling innovation, we see no reason why a limited number of inspectors should not be appointed to visit Courts and report to the Home Secretary. Inspectors already go to Courts of Referees under the Unemployment Insurance Acts which are presided over by barristers, and such inspection is not considered derogatory.

A further matter in which reform is needed is in regard to the work and appointment of the Clerk to the Justices. In many of the smaller courts, the Clerk is a solicitor in private practice, and the parties before the Court may be his own clients. In some country Courts the Clerk prosecutes for the police in all the surrounding districts. It is not necessary to suggest that such Clerks are influenced by their private interests to show that such a situation tends to undermine confidence in the administration of justice. The method of remuneration for "part time" Clerks is also

unsatisfactory. Many are paid for their services a lump sum to include expenses. It is a fact that some of the important and often admirable circulars sent down by the Home Office to the Clerks to the Justices are never seen by many magistrates, and it has been given as a reason that some Clerks hesitate to defray the cost of postage. The time has come when the Magistrates' Clerk should more frequently be a full time officer, if necessary undertaking the work in several Courts.

The *Poor Prisoners' Defence Act*,<sup>1</sup> 1930, has in some degree extended the facilities for the defence of poor persons, though the Act is not yet adequately used and many of the persons sent to prison from the Courts of Summary Jurisdiction are still outside the scope of the existing legislation. It is not unreasonable to suggest that any poor person charged with an offence which if proved would render him liable to imprisonment should be able to secure legal representation. If objection be raised to such a proposal on grounds of expense, we would point to the example of Scotland, where the facilities for poor persons' defence are far in advance of those in England, and have been so for many centuries.

A word should also be said about the age of those who sit on the Bench. It must never be forgotten that law is only codified public opinion, and much discretion remains with the judge or justice in his interpretation of laws and penalties in the light of prevailing custom. There are justices and High

<sup>1</sup> 20 and 21 Geo. V, c. 32.

Court Judges of over 75. Such men, whatever their record of public service in the past may be, cannot pretend to represent the spirit of the age, and are clearly unsuited to their responsible positions. Moreover, even a slight amount of deafness adds dangerously to the difficulties of arriving at a just decision. There is also an undesirable overcrowding of magistrates on some Benches. The interests of justice are not served when ten or fifteen J.P.s appear together at Quarter Sessions, to sit in judgment upon one prisoner. Overcrowding on the Bench is also an evil at many Petty Sessions.

### *Forms of Punishment*

When an accused person has been convicted of a criminal offence, the appropriate punishment is laid down by statute. Except for the crime of murder, where the only punishment according to law is death, there are practically no minimum punishments in English law.<sup>1</sup> Maximum penalties for various crimes are prescribed and within the limits of these statutory maxima the Court has absolute discretion.

Punishments may take the form of death, detention in a penal institution, corporal punishment, fines, or orders for restitution. Detention may be by way of penal servitude, imprisonment, preventive detention, or detention in a Borstal Institution or Home Office school. Alternatively

<sup>1</sup> Some excise offences have a minimum penalty.

the Court may in certain circumstances deal with the offender under the Probation Acts.

Penal servitude, which was established to take the place of transportation, may not be given for a term of less than three years and may for certain offences be for life. No person under 17 may be sentenced to penal servitude.

Imprisonment is a commonly used punishment for many crimes and may be inflicted at the discretion of the Court for all offences for which the punishment by Statute is penal servitude. The maximum sentence is for two years. No person under 14 may be sentenced to imprisonment.<sup>1</sup> Imprisonment may be in the third division with or without hard labour, or in the first or second division. Imprisonment in the first division is reserved for quasi-political offenders and is very rarely used. The distinctions between the other types of imprisonment were formerly important, but are now largely disappearing.

When a person is tried on indictment and found guilty of a crime and is also convicted of being an habitual criminal the Court may sentence him, in addition to a term of penal servitude, to a period of not less than five or more than ten years' "preventive detention" under conditions of modified prison discipline. Drastic changes in this system of preventive detention have been recommended by the Departmental Committee on the Treatment of Persistent Offenders (1932).

If the sentence of the Court is a fine, the offender

<sup>1</sup> Nor under 17 without a special certificate. See pp. 195-6.

may be sent to prison if the fine is not paid. It is now, however, customary for most Courts to grant a certain period for the payment of a fine before a committal order is made, though, as we shall see, many persons are still sent to prison without such an opportunity.

In certain cases the Court has power<sup>1</sup> to order the offender to make restitution to those who have incurred loss in consequence of his offence. In practice, however, these provisions are seldom used. Under the Probation of Offenders Act the Court may discharge the prisoner altogether, "bind him over" to be of good behaviour for a period not exceeding three years, or make a probation order requiring him to fulfil certain conditions under the supervision of a probation officer or some other person.

When an offender is bound over this is, in effect, equivalent to a suspended sentence. If the offender does not bring himself to the attention of the authorities again during the period named by the Court, no further action is taken. If, however, the offender commits further offences during that period, he may be brought before the Court and sentenced for the original offence. He is made to enter into a recognizance in a sum named by the Court to "appear for judgment if called upon". When an offender is "bound over" or released under a probation order by a Court of Summary

<sup>1</sup> Forfeiture Act, 1870 (33 and 34 Vic., c. 23); Probation of Offenders Act, 1907 (7 Edw. VII, c. 17); Criminal Justice Act, 1914 (4 and 5 Geo. V, c. 58), and the Larceny Act, 1916 (6 and 7 Geo. V, c. 50).

Jurisdiction, this does not count as a conviction, but it is a conviction if he is so dealt with by a Court of Assize or Quarter Sessions.

It is instructive to see to what extent the various penal methods authorized by law are used by the Courts.

Of the 8,384 persons committed for trial at Assizes and Quarter Sessions during 1930, 14 were sentenced to death, 13 were sentenced to be flogged, 532 were sent to penal servitude, 3,915 to prison, 476 to Borstal detention, 781 were "placed on probation", 1,038 were "bound over" without a probation order, 1,329 were acquitted, and the remainder were otherwise disposed of.

Of the 665,332 persons brought before the Courts of Summary Jurisdiction (including the Juvenile Courts) during 1930 charged with criminal offences, 496,139 were fined, 21,377 were sent to prison without the option of a fine, 17,158 were released with a probation order, 17,358 were "bound over" without a probation order, in 47,617 cases the charge was withdrawn or dismissed, and 61,784 cases were dismissed although the charge was proved. Of the juvenile offenders, 135 were sentenced to be whipped and 1,439 were committed to an Institution or Reformatory School.<sup>1</sup> Of the persons fined, 12,497 were subsequently imprisoned for the non-payment of the fines.

<sup>1</sup> For details of the work of the Juvenile Court, see Chapter 7.



*Where the Machine Fails*

In their dealings with the lawbreaker our Courts exercise a dual function, first that of ascertaining guilt and secondly that of determining treatment. This book is more concerned with the treatment of the guilty lawbreaker than with the steps which lead to his conviction. It is not, therefore, proposed to discuss in any detail the various problems associated with the procedure for determining innocence or guilt. In the opinion of the authors, that procedure, though by no means ideal, has attained a high standard in the Higher Courts, but leaves much to be desired in the Courts of Summary Jurisdiction.<sup>1</sup>

It is, however, relevant here to discuss the principles which actuate the Court in pronouncing sentence, that is to say, in prescribing treatment. It is at this point that our existing machinery proves to be totally inadequate.

In the first place the large majority of Judges and Magistrates *do not possess the necessary training or experience to qualify them to prescribe the best treatment.*<sup>2</sup> Psychology, the science of human behaviour, forms no part of a legal education, and the political services which are the principal prerequisite for the appointment of most justices of the peace and not a few Judges have nothing to commend them as training in the difficult task of prescribing treatment for lawbreakers. In allowing an appeal from the

<sup>1</sup> See especially, *English Justice*, *op. cit.*

<sup>2</sup> There are, of course, honourable exceptions.

High Court in 1932, Lord Justice Scrutton actually said that "the less sociological knowledge that was brought into the discussion of these legal questions the better".<sup>1</sup>

Most Judges and Magistrates are not only untrained for their task of determining treatment, but they are most of them ignorant of the nature of the treatment which they prescribe. Only a very small percentage of them have ever seen inside a prison, and then the brief conducted tour which usually constitutes a "prison visit" is wholly inadequate to give any real understanding of the nature of the treatment. And we doubt whether any judge has ever witnessed a flogging. How many times a magistrate sends a man to prison with hard labour saying: "Hard work will do him good!" Quite recently a magistrate asked the authors whether the work required of a prisoner sentenced to hard labour was too arduous for a man of fifty. Yet for many years in this country a "hard labour" sentence has meant deprivation of privileges, and has had no relation to the nature of the work. It was said—we do not know with what truth—during the recent Home Office Inquiry into the treatment of persistent offenders, that no judge ever visited the prison for Preventive Detention then at Camp Hill. In May, 1932, the Chairman of the Middlesex Sessions sentenced a young offender who would have been eligible for Borstal to prison, saying that there was a Boys' Prison in London where training similar to Borstal

<sup>1</sup> *The Times*, 7th July, 1932.

was given. This sentence was reversed on appeal, because, as the Lord Chief Justice explained, *there was no such place!*<sup>1</sup>

Secondly, our Judges and Magistrates, even if they were trained in psychology, usually *lack the necessary information about each case to enable them to prescribe the right treatment.* Crime is essentially an individual act. There is no single cause of crime, but as many causes as there are criminals. The same anti-social conduct on the part of two individuals may result from different mental processes and involve different degrees of moral culpability. In order to know what treatment is best calculated to benefit an offender and prevent a repetition of his offence, it is necessary to know something of the man himself, his previous history, his environment, and his mental life. On these fundamental points the Court at present has usually only the most meagre information. It usually knows the principal facts about the offence for which the prisoner is convicted, although even here the Court may not know *all* the facts, or even the most important ones. The majority of the persons sent to prison, especially by the Courts of Summary Jurisdiction, are not defended, and the accused is often too bewildered to give a coherent explanation. In addition the police usually report after conviction and before sentence whether the offender has been previously convicted.<sup>2</sup>

<sup>1</sup> *The Times*, 14th June, 1932.

<sup>2</sup> A few years ago a practice grew up whereby the police made inquiries from employers, neighbours, etc., as to an accused person's character and antecedents for the information of the Court. This was a practice which, except

But apart from facts concerning the offence elicited during the trial and reports as to previous convictions, the Court frequently knows little about the offender. He stands in the dock convicted of a criminal offence. The Judge has probably not seen him before nor spoken to him. If the man has not elected to give evidence, the Judge has hardly heard his voice. He may perhaps not even know whether the prisoner is married or single, employed or unemployed, or where he lives. He may know nothing of his physical health or mental condition, unless he suffers from some clearly recognized form of insanity or mental deficiency. He seldom knows what degree of temptation may have been present to the offender or what was his capacity to resist it.

So in the large majority of cases on the strength of the knowledge that the prisoner has committed this or that crime, and has, or has not, been previously sentenced to this or that punishment, the Judge sends him to prison for six months, for seven years or perhaps for life. He does so, because our Courts have not yet broken with the past when sentences were purely deterrent in character and were inflicted with little reference to the individual character and needs of the offender. Sentences are still to-day largely regulated by a tariff. Such an offence committed in such circumstances by such

at the request of the accused, was open to serious objection, since, however kindly the intention of the police, it risked damaging the reputation of a person subsequently proved innocent, and it was condemned by the Royal Commission in 1929 (Report, pars. 130-5). In any case it is obvious that information of this character if it is to be of real service to the Court needs to be obtained by trained social investigators and not by the police.

an offender is usually punished by such a sentence.

Prisoners are still sentenced in this way to five, ten, or fifteen years' penal servitude for serious offences such as manslaughter. Upon what rational grounds can these long fixed sentences be defended as the most effective and scientific action by the State to prevent a repetition of that offence? How does the Court know that the release of a man from custody before the expiration of his sentence would endanger the community, whereas his release at the end of the sentence would involve no risk at all? Of course the Judge does not know this or pretend to know it. The sentence is pronounced because it is the usual sort of sentence to inflict in such cases, and in a vague impersonal way it is considered that the infliction of such a penalty, without reference to the individual character, antecedents, and home conditions of the offender, will constitute a general deterrent and thus prevent crime. But the fact is that, whatever Judges may think, such rule of thumb methods are clumsy and ineffective and are not in the best interests of Society.<sup>1</sup>

A man is convicted of a sex assault on a child. Such an offender may or may not respond to medical treatment. But the Court seldom makes any effort to inquire or to obtain a report.<sup>2</sup> Instead, the

<sup>1</sup> It is sometimes argued that unless there is uniformity of treatment for similar offences a "sense of justice" will be upset. But this as we have already seen is an argument, not for the continuance of the present practice, but for the education of public opinion towards a more rational attitude. See p. 8.

<sup>2</sup> Again, of course, there are honourable exceptions.

offender goes to prison for six months and emerges from his unnatural prison life much more likely to commit such an offence than before. Hundreds of persons are sent to prison every year for these sex offences, many of them against children, without any medical inquiry and without any attempt to effect a cure. Yet it is obvious that if their abnormality is curable, such offenders should be given treatment, and if not they should be put under restraint for a long period for the protection of other children: Prison does not pretend to be a cure and usually aggravates the evil.

Some years ago a lad was sent to prison for two months by a North-country bench for brutal cruelty to animals. No expert evidence was called and no medical inquiry ordered. Shortly after his release he murdered his aunt.<sup>1</sup> Surely such a case proves the need of some provision for studying the mentality of the offender before sentence is passed.

An unemployed man with a wife and four children breaks into a shop to steal money and is arrested. The Justices in this case do not ask why he stole. They may not even know that he is married. They send him to prison for three months. When he comes out the same home conditions remain, but because of the prison taint he is now less able than before to remedy the situation by finding work.

A young man of good parentage living at home, goes out at night, breaks into several private houses and steals jewellery to pay credit betting debts.

<sup>1</sup> *Howard Journal*, 1927, p. 140.

He is arrested and bound over. But the Court does not ask why he stole, and no steps are taken to remedy the debt situation by a discussion with the boy's parents. So the offender resumes his nocturnal occupation, is convicted again and on the second occasion sent to prison.

There are, of course, some Magistrates and Judges who welcome guidance as to the right treatment for the offenders whom they are required to sentence. Here, however, there is a further difficulty, since there is at present very little machinery for providing them with the guidance they need. The Court may postpone sentence for a few days or a few hours to enable the Probation Officer to make inquiries as to whether a case is suitable for probation, but such inquiries can seldom be more than superficial.

"These Officers are hardly pressed and overworked men, who have already on their hands more than they can reasonably be expected to cope with. . . . These investigations if worth making at all must be made thoroughly, not perfunctorily. No report on home surroundings is worth having unless it is based on a personal visit to the home, and not a hurried visit either, for thoroughness takes time."<sup>1</sup>

The Court may remand the offender in custody and call for a report from the Prison Medical Officer as to his medical condition, but under present conditions there are very few localities where such a remand would result in a really useful report being made to the Court. Few such officials are trained

<sup>1</sup> Mrs. L. le Mesurier, *Boys in Trouble*, pp. 88-9.

in the study of mental abnormalities, and besides they are not given a report of the evidence before the Court, and are therefore handicapped in making a diagnosis. Furthermore, a prison, with all its unhealthy and depressing associations, does not provide the kind of atmosphere where a psychologist, even if available, is likely to obtain the best results.

It would be absurd to suggest that everyone brought before a Court charged with anti-social behaviour should be examined by a medical psychologist or remanded pending inquiries as to his status and home conditions. But it is not absurd, and indeed is vitally necessary, that every Court should be able to call upon the services of a trained social worker and a psychologist in cases where the Court considered it desirable.<sup>1</sup> Another useful reform would be to give the prison authorities in those cases where the offender is remanded in custody a statutory right to make recommendations to the Court as to treatment. At present the Prison Commissioners only make such reports in regard to young offenders eligible for Borstal, and even these are frequently confined to an offender's mental and physical fitness. But if the prison authorities were given the right to make reports in other cases they should be given a report of the evidence before the Court to guide them in their decision. The maxim for every Court should be, *when in doubt postpone sentence pending inquiries*. The provision of observation centres, such as were

<sup>1</sup> Some Courts already use the services of a psychologist in this way. There is no need for such persons to be full-time officers.



recommended by the Young Offenders' Committee,<sup>1</sup> to which persons in proper cases might be sent before trial and sentence is an elementary need, but a short-sighted economy has hitherto prevented their being set up. Their provision would not be an extravagance but an economy. An habitual criminal may cost the State during years of imprisonment many hundreds of pounds, which might be saved at the small expense of expert advice as to treatment at the outset of his career. Besides, certain things cannot be reckoned in terms of money. As we have seen, failure by the Courts to obtain expert advice in the past has led to sex assaults on children, crimes of violence, and even murder.

There is a real need not only for expert advice as to the right treatment of offenders, but also for the provision of facilities for giving the treatment known to be necessary. Enlightened Courts are confronted with the double difficulty first of securing expert advice as to treatment and then of finding institutions and agencies where that treatment may be given.<sup>2</sup>

Finally our Courts lack not only the qualifications, the knowledge of the necessary facts, and the machinery for obtaining expert advice, but also in many cases the desire to take advantage of that knowledge if they had it.

In 1928 a young man aged 24, of good parentage, was arrested for a series of robberies of jewel cases, which he had, evidently in the most barefaced

<sup>1</sup> H.M. Stationery Office, 1927.

<sup>2</sup> See below, pp. 206-8.

manner, taken from the bedrooms of various hotels and boarding-houses. The total loot was over £400, but of this nearly £300 worth was found in public lavatories and under bushes near the sea. The remainder was discovered in his bedroom. He had not worn, given away, pawned or sold any one article. He was not in need of money. At first he denied all knowledge, but at last confessed that he must have taken these things. He was sent for trial to Quarter Sessions. In this case relatives intervened, and while on remand he was examined by an alienist who reported that the lad was suffering from a form of mental defect, and also from the after-effects of *encephalitis lethargica*. At the trial, the offender pleaded guilty, the expert gave evidence in support of his report, and a strong appeal was made that the boy might be put on probation with a condition as to treatment, under the joint supervision of his father and a Salvation Army officer. But there had been two previous convictions for similar senseless theft in which no defence had been made. The Recorder acknowledged that the offender was not normal but sentenced him to six months' hard labour.<sup>1</sup>

A man of middle age had repeatedly written letters of an abusive nature to the municipal authorities accusing them of appropriating land which formed part of his property. Medical evidence was adduced to show that the man was suffering from delusions of persecution. The Court sentenced the man to a term of imprisonment with

<sup>1</sup> *Proceedings, Medico-Legal Society, London, 22nd November, 1928.*

the comment that "it was the function of the Court to cure delusions".<sup>1</sup>

On 18th February, 1931, a man came before Mr. Justice Avory at the Old Bailey charged with setting fire to his own house. The Prison Medical Officer gave evidence that the accused was insane, did not know what he did was wrong, and was unable to distinguish between right and wrong. But Mr. Justice Avory is reported to have said: "You are more bad than mad," and sentenced the accused to 20 months' hard labour.

The truth is that our Courts have not yet freed themselves from the view that the primary object of punishment is deterrence. In order to deter the hypothetical persons whom they believe their sentences will frighten into social virtue, the Courts sacrifice their opportunity of dealing in the most effective way with the actual offenders whom they have before them. The need is to change the emphasis, and to concentrate on the question: "What can be done to prevent this person from continuing to be a menace to the State?" When the Courts regard this as their aim, then they will be more ready to co-operate with the various agencies which do or should exist for transforming the lawbreaker from a social liability into a social asset.

<sup>1</sup> Cited by Dr. Odium, *Lancet*, 5th September, 1931.

## CHAPTER 4

### PRISON YESTERDAY AND TO-DAY<sup>1</sup>

During the last hundred years a sentence of imprisonment has been the generally accepted method of dealing with persons convicted of serious crime, but this has not always been so. Prior to the second half of the eighteenth century, though vagrants and certain religious offenders were committed to prison, prison was mainly used not as a place of punishment but for the detention of those awaiting trial.<sup>2</sup> The judge went on circuit, not to fill the prisons but to empty them.<sup>3</sup> Until a hundred years ago the penalty for all felonies was death or transportation, although even small offences against property were felonies. Misdemeanours were punished by whipping, the pillory and the stocks, by fines, and sometimes by mutilation.

There were at this time three kinds of prisons in England, the Common Gaols under the control of the county, the "liberty", or the township, the House of Correction (established under the Elizabethan Poor Law Acts for setting vagrants to work), and the Franchise Gaols, formerly the

<sup>1</sup> This chapter deals with the facts of the past and present prison system. Comment as to the effectiveness of our present prison methods is reserved until the next chapter.

<sup>2</sup> In the same way debtors were sent to prison not so much as a punishment, but for safe custody until they paid their debts.

<sup>3</sup> Hence his commission was often one of "gaol delivery".

privately owned prisons of the great nobles and bishops. All of these were small houses, rooms, or dungeons, attached to court houses, city gates, old castles, or public houses, and were merely places of detention. By the end of the eighteenth century the Franchise Gaols had fallen into disuse or had been taken out of the hands of their private owners, and the Common Gaols and Houses of Correction, which were often both under the same roof, had come to be used promiscuously. All were under the control of the local authorities.

When, owing to the American War, it was no longer possible to send convicts to North America, it was not unnatural that confinement in a prison should be considered as a possible substitute for transportation as a method of punishment. But since the existing prisons were used for other purposes, Parliament in 1779 passed the important *Penitentiary Act*,<sup>1</sup> authorizing the erection of national penitentiaries for the confinement of those previously transported to America. Before effect was given to this Act, however, the voyages of Captain Cook to Australia during the years 1770-7 had attracted the attention of the English government to a new field for transportation, and it was not until 1816 that the first State Penitentiary was erected. This was at Millbank on the site where the Tate Gallery now stands. In 1840, in consequence of an official survey of our penal methods and strong criticism of the results of transportation, it was decided that convicts sentenced to transportation should spend

<sup>1</sup> 19 Geo. III, c. 74.

the first period of their sentence in separate confinement in a penitentiary in England, and a second period in association on public works at home, before being sent "on ticket of leave" to the Colonies. As a result, Pentonville was built in 1842 and Portland in 1846.

Meanwhile, considerable changes had taken place in the status and conditions of the hundreds of county gaols, bridewells, and houses of correction which were still under local control. Up to the last quarter of the eighteenth century the conditions prevailing in these local prisons beggar description. They were most insanitary and so infested with disease that many prisoners perished every year from "gaol fever", a form of typhus. It was no uncommon thing in those days for Judges to catch the disease when prisoners were brought to trial. In 1730, at Taunton Assizes, the Lord Chief Baron, a Sergeant, the Sheriff, and some hundreds besides, died from the fever brought by prisoners from Ilchester Gaol, and in London in May, 1750, the Lord Mayor, an Alderman, and two Judges died from the fever brought from Newgate.<sup>1</sup>

Overcrowding, contamination, and immorality were rife. Innocent and guilty, corrupt and hardened, male and female, sick and well, were all herded together. There was an unrestricted freedom of communication between prisoners, and their friends and families, including prostitutes and burglars, were allowed to pass the day among them. Gambling was carried on, crimes were planned, and

<sup>1</sup> Du Cane, *op. cit.*, pp. 43-4.

even money coined and notes forged, inside the prison.<sup>1</sup>

Such was the state of the local prisons when in 1773 John Howard was appointed Sheriff of Bedfordshire, and began his self-appointed task of ascertaining and making known the actual facts. His patient inquiries, his accurate records and his painstaking methods of publicity created a demand for prison reform. But Howard worked as an individual and founded no organization to carry on his work. It is not therefore surprising that after his death in 1790 the demand for reform grew less active. The country was preoccupied with the French war, and Parliament had besides at that time little control over the local prisons, the conduct of which rested in the hands of the local justices. The various Acts which were placed upon the statute book as the result of Howard's efforts, though designed to ensure more adequate accommodation, the classification of prisoners, and the regular inspection of the prisons by the justices, were most of them disregarded by the authorities concerned. Thus, when Elizabeth Fry, inspired by the appeal of Stephen Grellet, the itinerant Quaker preacher, began to visit the women prisoners at Newgate in 1813, she found the conditions almost as bad as those which had compelled the protests of Howard forty years before. It became clear that the abuses would never be eradicated until all

<sup>1</sup> For a picturesque impression of the prison conditions in those days the reader can hardly do better than refer to Goldsmith's *Vicar of Wakefield* chapters 25-30.

the prisons were brought under central control, and the history of English local prisons during the century following Howard's disclosures was that of a struggle between the legislature and the local authorities, Parliament wresting progressively more and more power from the justices until by the *Prison Act* of 1877<sup>1</sup> all the 113 local prisons came completely under the control of the Home Office.

Thus it came about that in 1877 two kinds of penal institutions, quite different in origin, the old local prisons and the State penitentiaries, were brought together under the same State control. Considerable reorganization followed. The number of local prisons was reduced from 113 to 59 in eight years, and the number of superior officers reduced from 446 to 233 with a net annual saving in salaries of £40,871. A uniform system of diet, labour, and other conditions was introduced, and it was the boast of the first chairman of the Prison Commission, Colonel Sir Edward F. Du Cane, that after his reorganization there was complete uniformity of conditions in every prison in the country.

Acts of 1853<sup>2</sup> and 1857<sup>3</sup> provided for the substitution of a sentence of penal servitude, to be carried out in England, for all crimes punishable by transportation. Sentences of penal servitude shorter than those of transportation and had a maximum of three years. When transportation came to an end in 1867, there remained

<sup>1</sup> 41 Vic., c. 21.

<sup>2</sup> 21 Vic., c. 3.

<sup>3</sup> 16 and 17 Vic., c. 99.



three principal forms of punishment known to the law, death, penal servitude, and imprisonment. The "local" prisons, which even after 1877 retained this name, were used for prisoners serving sentences of two years or under, and the "convict" prisons were used for convicts serving sentences of penal servitude.

The Departmental Committee on the Treatment of Persistent Offenders, 1932, has now recommended the abolition of the distinction between penal servitude and imprisonment, and since November, 1931, persons serving a sentence of three years' penal servitude have been sent to local and not to convict prisons.

### *Solitary Confinement*

Confronted with the evils of promiscuous association in conditions of filth, demoralization, and disease, it is not unnatural that John Howard should have regarded the isolation of prisoners in separate cells as an ideal to be aimed at. Howard visualized the perfect prison as providing a separate sleeping cell for each prisoner at night, with workshops where men could associate under proper supervision without contamination during the day. Another school of thought, contemporary with Howard, with supporters both in Europe and America, advocated complete and absolute cellular separation both by night and by day. This system had been introduced by Pope Clement IX in the cellular prison of San Michele in Rome, which was erected

in 1703. Its advocates, who included Bishop Butler and Archdeacon Paley,<sup>1</sup> claimed that the uninterrupted introspection of complete isolation was calculated to produce moral and religious regeneration, and at the outset it was advocated less as a deterrent than as a reformatory device. Actually, of course, it produced insanity, but half a century was to elapse before the enthusiasm of the theorists who advocated it had to give way before the accumulated experience of its victims.

The *Penitentiary Act* of 1779, no doubt influenced both by John Howard and by this more rigorous school, provided that

“such offenders as shall be sent to either of such Penitentiary Houses shall during their hours of rest be kept entirely separate and apart from each other and be lodged in separate rooms or cells . . . and the said offenders shall also, during their hours of labour, in case the nature of their several employments will permit, be in like manner kept separate and apart from each other ”.<sup>2</sup>

As we have seen, this Act was not carried into effect until twenty-five years later, but meanwhile many local authorities, prompted by the work of Howard and the Act of 1779, set to work to erect

<sup>1</sup> *Moral and Political Philosophy*, 1785. On the other hand, opposition to solitary confinement is seen as early as 1799 in Coleridge's lines :—

“As he went through Cold-Bath Fields he saw  
A solitary cell ;  
And the Devil was pleased, for it gave him a hint  
For improving his prisons in Hell.”

*The Morning Post*, 6th September, 1799.

<sup>2</sup> Section 33.

local prisons on the solitary plan. Cellular prisons were put up at Horsham in 1775, at Petworth in 1781, and, most famous of all, at Gloucester<sup>1</sup> in 1786. In these prisons, particularly at Gloucester, the full rigours of solitary confinement were practised, and men were imprisoned for several years in complete isolation from each other, both by day and by night. In 1811 a committee of the House of Commons, appointed to inquire into the laws relating to penitentiary houses, highly commended this system of cellular confinement which had then been practised at Gloucester for twenty years.

Peel's Act of 1823<sup>2</sup> marked a temporary revulsion from the complete cellular confinement in the local prisons practised at Gloucester and elsewhere and aimed at the association of prisoners for work purposes, classified into five divisions according to the nature of their offences, etc. This Act provoked fierce controversy between the opponents and supporters of the solitary system as a reformative measure.

Meanwhile the State penitentiaries authorized by the Act of 1779 were being erected, and as prison authorities all over Europe had been greatly impressed by reports of the success of the complete solitary system of incarceration established at the Eastern Penitentiary in Philadelphia, Mr. Crawford, an Inspector of Prisons, was sent to America to report on the question. On his return he

<sup>1</sup> Gloucester Prison cost £50,000 to build.

<sup>2</sup> 4 Geo. IV, c. 64.

presented a voluminous report published as a parliamentary paper in 1835. Mr. Crawford warmly approved of the solitary system, and as a result Lord John Russell, who was then Home Secretary, issued a circular in 1837 to the magistrates expressing his own conviction of its efficacy as a means both to punish crime and reform the offender. Thus, in 1842, when Pentonville Prison was erected as a State Penitentiary it was built on the cellular plan for the practical working out of this new system, and convicts sentenced to penal servitude spent the first fifteen or eighteen months in solitary confinement by day and night.

About this time a new factor entered into the situation. The officials who carried out the system came to realize that solitary confinement was greatly dreaded by the men themselves, and in the next phase solitary confinement came to be regarded less as a reformatory agency than as an additional deterrent. Nevertheless, by 1853, the period of solitary confinement had to be reduced from eighteen to nine months, to satisfy public opinion, which had been roused by frequent reports from the inspectors of local prisons in regard to insanity.<sup>1</sup>

Meanwhile, a system had been devised in most local prisons whereby, except for a preliminary period of solitary confinement at the beginning of their sentences, prisoners left their cells during the day, working in large workshops or sheds, but

<sup>1</sup> For instance, the 1842 report of the Inspector of Prisons refers to frequent cases of insanity at Gloucester.

separated from each other in small recesses or cubicles.

Recent years have seen the progressive reduction of the periods of solitary confinement and their final abolition. In 1909, in convict prisons, solitary confinement was reduced to the first three months, and in local prisons to the first month, and then only for prisoners sentenced to hard labour. After the war the period in local prisons was reduced to two weeks. The prison regulations issued in 1930 altogether abolished solitary confinement, except as a punishment, in both convict and local prisons.

### *Prison Labour*

Prior to the Prison Act of 1877 there was considerable variation in the labour conditions in the local prisons.

“In some prisons there was complete idleness, in some unregulated association, in some an active industry conducted with a view to commercial profit: and in some a close and melancholy adherence to the rule of separate confinement and its concomitant hard labour.”<sup>1</sup>

In many prisons the labour was distinctly penal rather than productive in character, and in the Prison Act of 1865 first class hard labour was defined as including the treadmill, shot drill, crank, capstan, and stonebreaking. But in some prisons there was a considerable organization of productive work for profit, associated in some instances with a

<sup>1</sup> Ruggles Brise, *English Prison System*, p. 134.

system of rewards to prisoners in relation to work done. In 1877 Wakefield Prison had a mat-making industry employing steam power, bringing in, on an average, £40,000 a year. Difficulties arose, however, as to the sale of such goods in competition with the products of free labour, and this organization of prison industries for profit practically came to an end with local control, as did also the payment to prisoners for work done. Since 1877 prison labour has slowly developed into the system of production for State use which obtains to-day. The penal and unproductive labour of the treadmill and crank type was superseded by such industries as brushmaking and the sewing of mailbags for the Post Office, and when the Departmental Committee on Prisons of 1895 swept aside the solitary system except for short periods, it prepared the way for industrial labour in association.

Labour conditions in convict prisons have a different history. After a preliminary period of cellular confinement doing work of the penal treadmill type, convicts formerly worked in association on public works, such as building the breakwater at Portland, making excavations at Chatham, and carrying out the Dockyard extension at Portsmouth. When the practice of employing convicts on such work was abandoned,<sup>1</sup> convict labour began to approximate more to that in local prisons, except that convict prisons, being usually situated in the

<sup>1</sup> In Scotland convicts are still employed at Peterhead on "public works", constructing a breakwater for the Admiralty.

country, provided more opportunities for outdoor work. The term hard labour has long ceased to have any bearing upon the nature of the work upon which the prisoner is employed, and to-day the only difference which such a sentence makes is to deprive a prisoner of a mattress for the first two weeks in the case of men who are neither old nor infirm.

### *Voluntary Workers*

With the gradual discontinuance of solitary confinement came increasing opportunities within the prison system for making use of the services of voluntary workers. England has an honourable tradition in social service of all kinds, and voluntary work among prisoners, associated with such names as Elizabeth Fry and Sarah Martin, has become part of our history. But voluntary work necessarily depends on the nature of the system within which it must operate, and when our penal code knew only two punishments, death and transportation, social workers could do little more than comfort those awaiting these dread penalties. The grim prison system which emerged from the reforms of last century was such that voluntary work, though it was not entirely lacking, could hardly be expected to flourish. As early as 1835 the Inspector of Prisons was able to report that

“For seventeen years a most estimable person has almost exclusively given up her time to bettering the wretched conditions of the prisoners ”

in one of our gaols. She conducted services on

Sunday, classes in elementary education and handicrafts on week-days, and on their discharge she sought lodging and employment for her protégés.<sup>1</sup>

But this was in one of the local prisons, and local control made it possible for conditions to be not only behind, but also in advance of the times. In 1860, in another local prison, the experiment was made of inviting lecturers from outside, but this came to an end after two or three years. When the Act of 1877 brought the local prisons under central control, these opportunities were actually lessened. The first Chairman of the new Prison Commission was no friend of voluntary work, for he spoke of the visitors who succeeded Elizabeth Fry as a "source of difficulty"<sup>2</sup>; and in reference to education in prison, said: "It is obvious that it would be bad policy to diminish the deterrent influence of penal discipline in favour of those who are ignorant," and "special care ought to be taken that the education, whether literary or technical, should be carried out without sacrificing the great moral and disciplinary advantages of the separation of prisoners."<sup>3</sup>

Not until about 1890 do we find the first signs of a change of attitude. About that time women visitors were allowed to visit women prisoners, and although the Departmental Committee on Prisons of 1894-5 reported that

"The general opinion of prison officials appeared adverse to lady visitors unless specially qualified and selected with great care,"<sup>4</sup>

<sup>1</sup> Quoted Prison Commissioners' Report, 1928, p. 29.

<sup>2</sup> Du Cane, *op. cit.*, p. 48.

<sup>3</sup> *Ibid.*, p. 79.

<sup>4</sup> Report, p. 14.



the Committee went on to recommend that

“Under proper rules and regulations, outside helpers could be brought in to supplement the work of the prison staff. . . . There are many men and women in every centre of population who by training and temperament are amply competent to render valuable assistance”.<sup>1</sup>

Another Departmental Committee, on the Education and Moral Instruction of Prisoners, recommended in 1896 that the system of voluntary lectures to prisoners should be revived and lady readers appointed for classes of women prisoners.<sup>2</sup>

Some effect was given to this, for in 1906 the Prison Commissioners stated in their report that 285 voluntary lecturers gave their services during that year. Meanwhile, in 1900, a prison governor suggested that men prisoners should be visited on similar lines to women,<sup>3</sup> a proposal which had to wait twenty years for acceptance. But voluntary visitors to women were appointed in larger numbers, and in 1913-14 the Prison Commissioners' Report stated <sup>4</sup> that in that year 200 voluntary visitors paid 2,893 visits with 28,076 separate interviews. But voluntary work among men prisoners was still either non-existent or very meagre, and in 1922 Hobhouse and Brockway, in their monumental work *English Prisons To-day*, were able to say :—

“In the male prisons there is as a rule nobody corresponding to the lady visitor.”<sup>5</sup>

<sup>1</sup> *Ibid.*, p. 9

<sup>2</sup> Report, pp. 12-14.

<sup>3</sup> P.C. Report, p. 204.

<sup>4</sup> Report, p. 40.

<sup>5</sup> p. 200.

And in regard to lectures :—

“ There were practically no prisons where the adult male prisoner could attend a lecture more often than once in three months.”<sup>1</sup>

In this same year, 1922, after changes in the membership of the Prison Commission, the valuable part which social workers may play in a progressive and enlightened prison system was at last recognized, as the following extract from the Report of the Prison Commissioners for that year indicates :—

“ A beginning has been made in meeting a real need by the introduction of men visitors to the male prisoners to do work similar to that which has been done so well for many years by lady visitors among women. . . . We hope that at every local prison a sufficient number of suitable men visitors will come regularly in the evenings to visit the men in their cells and will become a permanent factor in prison training . . .

“ Experienced lady visitors have been invited at one or two prisons to visit the young male prisoners under 21 . . . The influence of an experienced and educated woman upon a lad who finds himself in prison seems likely to prove the most powerful influence for good that could be applied . . .

“ Voluntary helpers . . . are we think an essential feature of any system which has for its object the rehabilitation of a social failure and his re-establishment as a sound citizen. All their work is educational in the widest sense . . . and has made prisoners feel, perhaps for the first time, that the world is not all against them, and that there is yet hope for a decent and happy life.”<sup>2</sup>

<sup>1</sup> p. 102.

<sup>2</sup> Report, 1921-2, pp. 14-15.

In the following year the Commissioners reported :—

“ A new departure has been made. Faced with the fact that additional teachers could not be paid for, we resolved to make an effort to obtain volunteers. . . . Two decisions were taken, first that we should try to take advantage of the voluntary aid which we hoped to secure to organize a system of adult education throughout the local prisons, and secondly that at each local prison we should try to obtain the assistance of some person of standing and experience in the educational world . . . to act as educational adviser to the Governor.”<sup>1</sup>

These extracts tell their own story. In the words of the 1928 report of the Prison Commissioners :—

“ The number of voluntary workers in some of our prisons to-day is almost as great as the number of the official staff.

“ So completely has the work of voluntary visitors and teachers come to be part and parcel of the prison system that it is difficult to conceive of any advance in penal administration on any other basis.”<sup>2</sup>

### *Persistent Offenders*

In 1895 the Departmental Committee on Prisons proposed that the persistent offender should be dealt with otherwise than by punishing him for each specific offence :—

“ A new form of sentence should be placed at the disposal of the judges by which these offenders might be

<sup>1</sup> Report, 1922-3, p. 18.

<sup>2</sup> Report, 1928, p. 30.

segregated for long periods of detention, during which they would not be treated with the severity of first class hard labour or penal servitude but would be forced to work under less onerous conditions.”<sup>1</sup>

The Prevention of Crimes Act, 1908,<sup>2</sup> gave effect to this recommendation by providing that when a person with three previous convictions of crime is again convicted of crime and sentenced to penal servitude, and is also found by the jury to be “an habitual criminal”, the Court may for the protection of Society pass a further sentence of Preventive Detention for not less than five or more than ten years, to be served under less rigorous conditions. This Act, especially in the last few years, has been used decreasingly, largely because the double sentence had the appearance of punishing a man twice for the same offence. The percentage of men sentenced to preventive detention who have been subsequently reconvicted has been very high. But this is an indication, not of the failure but of the necessity of some such system, which is primarily directed not at reformation but at the protection of Society. The Departmental Committee on the Treatment of Persistent Offenders, 1932, has now recommended that a sentence of detention should be in lieu of and not in addition to a sentence of penal servitude, and has also proposed the provision of a shorter period of detention from 2 to 4 years for younger persistent offenders for whom a course of constructive training might be useful.

<sup>1</sup> Report, p. 31.

<sup>2</sup> 8 Edw. VII, c. 59.

At the beginning of the present century, attention was directed to the need for a better method than imprisonment of dealing with young people who appeared to be starting on careers of crime. The same Act which introduced Preventive Detention also established a sentence of two to three years of Borstal detention for young offenders between 16 and 21. Borstal is now an important part of our penal system, and some attention will be given to it in a later chapter.

### *The Modern English Prison*

As recently as the middle of last century, it would be true to say that prison was little better than a fortress where solitary confinement and degrading unproductive labour, combined with a rigid system of silence, aimed primarily at deterring others from crime. Little remains to-day of that regime. Humiliation there still is, for only the most hardened can fail to feel disgrace in the experience of public conviction, and in the loss of liberty which prison involves. There is humiliation, too, in compulsory association with other convicted prisoners as one of themselves. Even in these days the element of fear is present, for prison is a place of grim associations, and for the man who goes to prison for the first time there is the terrible fear of the unknown. Moreover, prison means enforced separation from family and friends. Many prisoners carry into prison with them the knowledge that they have left their dependents in anxiety and often in want ;

their first days and even weeks in prison are passed in ignorance of what has become of them,<sup>1</sup> and in realization that their own punishments have fallen most heavily on their innocent families. It is sometimes said that no one minds going to prison nowadays, but those who are in close touch with prisoners, especially in the first days of their confinement, have reason to think otherwise. No prisoner, unless he is mentally defective or one of those lamentable products of our civilization to whom liberty means return to haunts so degraded that even prison with all its irksome routine appears less evil, does not hate prison and long before all else for freedom.

At the same time, prison to-day is not the prison of the eighteenth and nineteenth century. The filth and disease of John Howard's day has given place—to quote the late Home Secretary's words—“to a cleanliness which is almost oppressive.”<sup>2</sup> Solitary confinement survives only as a punishment, and there is no strictly enforced silence rule. Prisoners work in association with other prisoners seven or eight hours a day<sup>3</sup> in workshops, where, in the words of a recent instruction, “there is to

<sup>1</sup> A prisoner is allowed to write one letter as soon as he arrives in prison and receive an answer to it. After that he must wait at least a month before writing or receiving another letter unless by special permission.

<sup>2</sup> Sir Herbert Samuel, annual meeting of Prison Visitors, *The Times*, 24th May, 1932.

<sup>3</sup> It is a deplorable fact that, since 1931, the working hours in association in most prisons have been reduced to five as a result of economies in staff which were forced on the Commissioners. It is a striking commentary on present labour conditions in prisons that it is an economy to make men work less. See below, pp. 151-5.

be no more talking than would be allowed in a well-regulated workshop outside." In addition, prisoners are required to work another two hours in their cells unless they are attending educational classes.

There is practically no unproductive work in the modern prison, though much of the industrial plant is primitive and uneconomic. All the mail-bags used in the Post Office and a considerable number of other articles for the Post Office and other Government Departments are made in prison, while a large proportion of the prisoners are employed on "maintenance work", cleaning, laundry, cooking, and keeping the prison buildings in repair. Though the whole position in regard to prison labour is in need of review,<sup>1</sup> the deliberate infliction of dull and unproductive labour as a punishment has no place in the present prison regime.

The prisoner is no longer humiliated on every possible occasion. The "prison crop" has gone, and a prisoner's hair is cut in a normal way. He has the use of a safety razor, and is not compelled either to grow a beard or have his beard cut with scissors as was the case only twenty years ago. The broad arrow with its degrading associations has given place to neat grey, brown, or blue prison clothing, which is neither conspicuous nor needlessly irksome.

During the last century education in prison was largely confined to the teaching of illiterate prisoners to read and write. Compulsory education has made

<sup>1</sup> A Departmental Committee was appointed in September, 1932, to consider it.

the number of such prisoners negligible, and to-day educational work in prison means the organization of evening classes, taken by voluntary teachers in a variety of subjects ranging from hobbies and handicrafts to book-keeping, English literature, foreign languages, economics, and ethics. There are (1932) over 400 such voluntary teachers in English prisons. In some prisons a high percentage of the prisoners attend classes several times a week, though this is by no means true of all prisons. In certain prisons where young offenders are collected, professional teachers from neighbouring towns are paid an overtime rate to give instruction in general school subjects, such as history and geography.

In addition to such educational work, there are now over 600 men and women visitors, whose work has already been described.

Prisoners are enabled by good conduct and industry to earn remission of not more than one-sixth of their original sentences. Male convicts can earn a quarter and women convicts one-third.

Attached to each local prison is a Discharged Prisoners' Aid Society, which is a voluntary organization working in co-operation with the prison authorities, receiving a small Government grant, but supported mainly by voluntary subscriptions. A prisoner on discharge usually receives a small money grant and, if necessary, clothes, and in rare cases he is found work. The various local Aid Societies are autonomous, but co-operate in the support of a Central Discharged Prisoners' Aid



Society with offices in London, to which cases of special merit or difficulty are referred. The persons discharged from convict prisons are helped by a quite different organization, known as the Central Association for the Assistance of Discharged Convicts, supported entirely by Government grants, and under the same direction as the Borstal Association for the After-care of Borstal boys.

At the time of the Prison Act of 1877 there were over a hundred prisons of various kinds in England and Wales. By 1913 the number had fallen to fifty-six. To-day<sup>1</sup> there are only thirty-six with a maximum accommodation for about 17,000 prisoners. Four prisons, at Maidstone, Parkhurst, Chelmsford, and Dartmoor, are Convict prisons used for men serving sentences of penal servitude, which may be up to life. The "Star" class of convict, consisting of first offenders and others not regarded as of confirmed criminal habits, are usually confined at Maidstone, while Chelmsford is used as a special training centre for young recidivist convicts. A number of selected local prisoners are also confined at Maidstone and Chelmsford. Part of Lewes Prison is used for men sentenced to periods of preventive detention from five to ten years as habitual criminals. The remaining thirty-one institutions retain their old name of local prisons, and are used for prisoners serving sentences of imprisonment with or without hard labour for a minimum of five days and a maximum of two years, and recently, as we have seen, for men sentenced

<sup>1</sup> 1932.

to terms of penal servitude not exceeding three years unless they are of the Star class or are suitable for training at Chelmsford. Brixton is used for remand and debtor prisoners in the London area. Lewes and Maidstone have separate sections which serve as local prisons. Women convicts are few in number and are almost all confined in a section of the local women's prison at Holloway, the remainder being confined in a building which is near the Girls' Borstal at Aylesbury.<sup>1</sup> Some, but not all, of the local prisons contain accommodation for women prisoners. The special problems associated with institutional treatment for women will be discussed in Chapter 8.

*The Prison Population Twenty Years ago and To-day*

We have already seen that in recent years imprisonment has been less and less used as a penal method. Thus in the five years ending 1914 the average annual number of receptions into prison on conviction was 158,782, compared with 38,999 in 1930. The daily average prison population in 1913 was 18,155, compared with 11,346 in 1930. The causes of this remarkable change are worth consideration.

It is to be attributed in part to a reduction in the number of committals and in part to a reduction in the length of sentences. A large number of offences formerly punished with imprisonment are now dealt with by other methods and, whereas in 1913

<sup>1</sup> The seven Borstal institutions will be dealt with in a later Chapter.

PRISON YESTERDAY AND TO-DAY 115

845 sentences of penal servitude were passed, in 1930 there were only 536 such sentences and they were relatively for shorter periods.

There has also been a striking decrease in the number of persons punished for those non-indictable offences which frequently result in imprisonment, as is shown in the following table :—

PERSONS DEALT WITH BY THE COURTS FOR

	1910-14.	1930.
Drunkenness . .	193,354	58,609
Assaults . . .	43,032	26,001
Prostitution . .	10,682	1,323
Begging . . .	25,419	4,675
Sleeping out . .	8,594	1,995
Gaming . . .	24,971	11,306

An improvement in social conditions and in social behaviour is therefore seen to be one of the causes of the decline in the prison population.

Again, there has been in the last twenty years a striking fall in the number of persons sent to prison for the non-payment of fines, due primarily to the Criminal Justice Administration Act, 1914,<sup>1</sup> which required the Court in most instances to allow time the payment of fines. Thus, during the five rs ending 1913, the average annual number of rsons sent to prison in default of payment of fines

<sup>1</sup> 4 and 5 Geo. V, c. 58.

was 83,187, whereas in 1930 the corresponding number was 12,497.

There has also been a reduction in the number of remand prisoners. In the year 1913-14, 15,402 unconvicted persons were remanded to prison awaiting trial who were not subsequently sentenced to imprisonment; the corresponding figure in 1930 was 7,504. This latter figure was, however, 1,083 more than in 1929.

Our next task is to consider in rather more detail who the people are who make up our prison population.

### *The Prison Population To-day*

To those whose knowledge of the treatment of crime is derived from the sensational popular Press, the people who go to prison are most of them desperate and violent men, and it is no uncommon experience for voluntary workers among prisoners to be asked by their friends whether they are not afraid, when going into cells, of "being knocked down". Such a picture is far from the truth. Mr. Herbert (now Mr. Justice) du Parcq, in his report on the Dartmoor riot, said "in any prison . . . there are many men of a very low order of intelligence and of very weak will",<sup>1</sup> and if the reader were to stand in the yard of most prisons at exercise time and watch the prisoners file past, his main impression would be, not of a band

<sup>1</sup> p. 6.

of desperadoes, but of an ill-assorted collection of social misfits, with a high proportion of men of subnormal development. And it will probably come as an additional surprise to the reader to learn that about half of all those sent to prison go there not because of criminal acts, but for failure to find sums of money.

There were, in 1930, 53,063 men and 6,873 women received into the prisons of England and Wales.<sup>1</sup> Of these, 13,276 (i.e. over 20 per cent) were "non-criminal" prisoners who went to prison "by civil process" or in plain English as debtors.<sup>2</sup> A further 12,497 (or 20 per cent) went to prison for the non-payment of fines, that is to say that though their offences were not considered serious enough to merit imprisonment, they suffered it, because they could not pay the fines imposed.<sup>3</sup> A further 7,504 (or 12 per cent) were unconvicted persons subsequently acquitted or sentenced to some penalty other than imprisonment, who were remanded to prison without bail before trial. A few of these were refused bail because they were charged with offences such as murder, so serious as to call for exceptional care, and some because they had no fixed abode, but the large majority went to prison only because they lacked the necessary means or influence to obtain bail.

Included in this large total of over 33,000 persons sent to prison for failure to find sums of

<sup>1</sup> These figures include 774 sentences to Borstal detention. See Chapter 7.

<sup>2</sup> See below, pp. 139-40.

<sup>3</sup> See below, pp. 140-2.

money—debtors, unconvicted prisoners, and persons imprisoned for the non-payment of fines—were undoubtedly many persons who were unsatisfactory in one way or another, and who presented social problems requiring serious attention. But it is the remainder of the prison population which represents the group usually associated with the word “criminal”.

The 38,999 “convicted” prisoners<sup>1</sup> received into prison during 1930 were sentenced for the following offences :—

OFFENCES FOR WHICH CONVICTED PRISONERS WERE  
IMPRISONED, ENGLAND AND WALES, 1930

Indictable Offences.	Men.	Women.
Larceny . . . . .	8,601	970
Burglary, housebreaking, etc. . . . .	2,069	—
False pretences . . . . .	1,160	147
Other offences of a fraudulent nature . . . . .	227	—
Sexual offences . . . . .	747	—
Offences of violence (murder, man- slaughter, wounding, etc.) . . . . .	421	70
Receiving . . . . .	451	37
Bigamy . . . . .	146	19
Forgery and coining . . . . .	183	—
Other offences . . . . .	371	93
Total . . . . .	14,376	1,336

<sup>1</sup> i.e. excluding prisoners received “under civil process” and unconvicted prisoners on remand awaiting trial, but including persons imprisoned for the non-payment of fines.

PRISON YESTERDAY AND TO-DAY 119

NON-INDICTABLE OFFENCES (AKIN TO INDICTABLE OFFENCES)

	Men.	Women.
Assaults . . . . .	2,402	118
Frequenting, etc. . . . .	1,221	—
Malicious damage . . . . .	780	80
Indecent exposure . . . . .	508	97
Cruelty to children . . . . .	178	109
Brothel keeping, etc. . . . .	—	51
Other offences . . . . .	297	51
Total . . . . .	5,386	506

OTHER NON-INDICTABLE OFFENCES

	Men.	Women.
Drunkenness . . . . .	5,937	2,674
Offences against Poor Law . . . . .	1,835	—
Begging or sleeping out . . . . .	2,050	129
Breach of Police Regulations . . . . .	1,112	312
Offences in relation to railways . . . . .	216	—
Disorderly behaviour of prostitutes . . . . .	—	249
Other offences . . . . .	2,629	252
Total . . . . .	13,779	3,616
Grand total . . . . .	33,541	5,458

The following are the personal particulars of the prisoners received during 1930 :—

(1) *Age*.—Of the total of 38,999 convicted,

prisoners received during the year, four were under 16 years of age, 2,732 were over 16, but under 21,<sup>1</sup> 10,691 were over 21 but under 30, 9,993 were over 30 but under 40, 8,141 were over 40 but under 50, 4,383 were over 50 but under 60, and 3,055 were 60 or over.

(2) *Education*.—1,228 were illiterate, 2,251 were said only to be able to “read and write imperfectly”, 33,180 had attained “moderate proficiency”, 2,234 could “read or write well”, and 106 were of “superior education”.

(3) *Nationality*.—558 were foreign born, of whom 109 were imprisoned for offences against the Merchant Shipping Acts or against the Revenue laws, or for drunkenness.

(4) *Employment*.—2,854 were vagrants, prostitutes, and others of known bad character. 19,985 were labourers, charwomen, and unskilled workpeople, 1,567 were domestic servants, 10,075 were miners, farm hands, factory operatives, and other skilled workpeople, 1,716 were shop assistants, clerks, etc., 511 were members of the Army, Navy, or Air Force, 264 were shopkeepers, tradesmen, farmers, etc., 141 were in professional employment or of independent means, and 1,886 were unclassified.

(5) *Previous Convictions*.—28,029 were known to have committed previous proved offences. Of these, 15,715 had five or more previous proved offences, and 5,565 over twenty such offences. Of

<sup>1</sup> Including 774 sentenced to Borstal detention.



the 28,029 persons with previous known offences, 20,384 had previously been sentenced to imprisonment, 1,468 to penal servitude or preventive detention, 1,575 to a reformatory or industrial school, 1,136 to Borstal, and 9,912 had been dealt with under the Probation Act.<sup>1</sup> Of the 20,384 who had previously served sentences of imprisonment, 15,644 had been in prison more than once, 9,244 five or more times, and 2,125 over 20 times.

(6) *Nature of Sentences.*—Of the 38,999 convicted prisoners received into prison, 505 men and 22 women were sentenced to penal servitude, and 37,531 to imprisonment.<sup>2</sup> Of the latter, 21,305 sentences were with hard labour, 14,824 in the Third Division, and 1,402 in the Second Division. No prisoners were confined in the First Division during 1930.

(7) *Length of Sentences.*—Of the 505 men received into prison under sentence of penal servitude, one was sentenced to penal servitude for 14 years, seven to 10 years, 31 to less than 10 and over 5 years, 92 to 5 years, 51 to less than 5 and over 3, and 323 to 3 years. Of the 22 women with penal servitude sentences one was for 10 years, one for 6, two for 5, two for 4, and sixteen for 3.

The 37,531 persons received under sentences of

<sup>1</sup> This figure includes not only persons released under a Probation Order, but also those bound over and cases when the charge was proved but dismissed. See Chapter 6.

<sup>2</sup> Most of the remainder comprised the 774 young offenders awaiting removal to Borstal detention and 119 persons whose sentences were postponed and who were subsequently ordered to enter into recognizances only.

imprisonment during the year had the following sentences :—

Sentence.	Men.	Women.
Over 18 months . . . . .	191	4
Over 12 months and not more than 18 months	661	21
" 6 " " " 12 "	1,950	130
" 3 " " " 6 "	3,997	360
" 1 " " " 3 "	7,589	798
Not exceeding 1 month . . . . .	17,778	4,052
Total . . . . .	32,166	5,365

Most of the sentences under one month were for a week or a fortnight. These sentences for periods not exceeding a fortnight account for 9,905 or 30.6 per cent of the receptions of men, and for 2,228 or 41.1 per cent of the receptions of women.

(8) *The Prison Population.*—The daily averages of prisoners in the various kinds of penal establishments during 1930 were 8,393 in the local prisons, 1,426 in convict prisons, 1,401 in Borstal institutions, and 126 in preventive detention prisons.

This necessarily short account of the development of our prison system and the human material with which it has to deal leads us to the consideration of whether the system is all that it should be and whether it is doing its work effectively. These are questions which must claim our attention in the next chapter.

## CHAPTER 5

### WHAT IS WRONG WITH OUR PRISONS ?

Confronted with the increase in recent years in certain types of crime, there are some who say that prison reforms have gone too far, that prison has lost its terror to the evil doer, and that to this cause is to be attributed the increase in crime. Foremost among these critics are two ex-prison Governors, who since their retirement have been most outspoken in condemnation of the present policy of the prison authorities.

Thus, Lieutenant-Colonel H. M. A. Hales<sup>1</sup> has said :—

“Imprisonment is no longer a deterrent. . . . A somewhat dull restriction of liberty is the only punishment. Such restriction is ameliorated by a liberal and varied diet, magic lantern lectures, debating societies, concerts, gymnastics, books, correspondence, petition writing, and the visits of prison visitors, with just enough work to invite a good night's sleep after (at worst) a boresome day. Within the last 12 years, prison amenities have increased almost daily. . . . It must be as clear to the protagonists of so-called prison reform as to the

<sup>1</sup> Late Governor of Parkhurst Prison. *The Times*, 6th August, 1932.

general public that prison is not doing its job, which is primarily to deter people from qualifying for prison.

“How then shall the violent criminal be cured? For the violent man, there is only one remedy—violence.”

Another retired Prison Governor, Lieutenant-Colonel C. E. F. Rich, expressed a similar view :—

“It seems to me that Prisons are losing their discipline. I do not believe in this ‘brother love’ business. When men behave like wild beasts they have to be treated like wild beasts and there is no use disguising it either.”<sup>1</sup>

The first comment to be made upon these statements is that they totally misrepresent the modern prison regime. The prisoner’s correspondence, which Colonel Hales deprecates, consists for a local prisoner of *one* letter written and received every *two months* and for a convict one every *four months*. The varied and liberal diet costs for a local prisoner about 3s. 4d. a week and for a convict 4s. 10d. a week. And it is a significant commentary upon Colonel Hales’ statement, that the Dartmoor disturbance occurred in the one prison in the country where, because of its isolated position, educational classes and visitors were not available for the majority of the prisoners. It is surely not sentiment but obvious common sense to provide prisoners not only with food for their bodies, but also for their minds. There would have been less chance of a riot at Dartmoor if the majority of convicts there, instead of being shut up alone in their cells

<sup>1</sup> Late Governor of Wandsworth Prison. *Sunday Graphic*, 2nd February, 1932.

from 4 o'clock in the afternoon until next morning thinking only of how to get out of them, had been occupied in other ways.

Colonel Hales and Colonel Rich write as if the homœopathic theory of curing violence with violence were something quite new. In fact, it is an old and discredited theory which has been tried and found wanting. The harsh prison system of the nineteenth century was given up because it proved itself a failure. To continue severity for its own sake long after it has proved ineffective is not sense but sentiment, for what is sentiment but emotion unrelated to knowledge and sound judgment? The old prison system did not reform, and its capacity to deter others was limited. It created a class of habitual criminals who preyed on Society. The recent changes in our prison regime have sprung from the realization that men cannot be permanently frightened into being good. As a colleague of these critics has said :—

“ In the old days, the whole idea of sending people to prison was to give them such a ‘ rotten time ’ that on their release they would be frightened to commit another crime. But people would not be frightened into behaving themselves. Every country in the world had tried that system and they had all failed.”<sup>1</sup>

Now, to quote the words of a recent Chairman of the Prison Commission,<sup>2</sup> the authorities are trying a more constructive way :—

<sup>1</sup> Mr. Gilbert Hair, Deputy Governor, Liverpool Prison. *Liverpool Post*, 10th October, 1931.

<sup>2</sup> The late Sir Maurice Waller, Prison Commissioners' Report, 1925-6.

“Prisons exist to protect Society, and they can only give efficient protection in one of two ways, either (*a*) by removing the anti-social person from the community altogether or for a very long period ; or (*b*) by bringing about some change in him. Any general application of the first method would not be supported by public opinion. The prison administration must therefore do its utmost to apply the second ; that is to say, to restore the man who has been imprisoned to ordinary standards of citizenship, so far as this can be done within the limits of his sentence. Unless some use can be made of the period of imprisonment to change the anti-social outlook of the offender and to bring him into a more healthy frame of mind towards his fellow citizens, he will, on leaving the prison gates after a few weeks or months, again become a danger, or at any rate a nuisance. He may, indeed, be worse than before, if the only result has been to add a vindictive desire for revenge on society to the selfish carelessness of the rights of others which he brought into prison with him.”

Those who, like Colonel Hales and Colonel Rich, advocate increased severity are not practical administrators, but theorists preaching the fallacies of a past generation.

With all its imperfections, the modern prison system is manufacturing fewer recidivists than the old prison system. Unfortunately, no comparable statistics are available, but there is every indication that a far smaller percentage of the special classes of first offenders and others discharged from Wormwood Scrubs and Wakefield Prisons during recent years are reconvicted than was the case with the first offenders who were subjected to the old prison

regime. Moreover, the statistics show that of the recidivists received into prison, the percentage with over twenty previous convictions is rising while the percentage of those with from one to five previous convictions is falling, a fact which gives strong support to the view that the present-day recidivist is much more a legacy from our old prison methods than the product of the new.

The views of Colonel Hales and Colonel Rich are not shared by the large majority of the modern prison staffs whose practical experience of prisons and prisoners is as wide and wider than theirs. The majority of those who say our prisons are too soft are not prison officials. They were well described by Major Morris, the Chief Constable of Devon, who until recently was one of our most successful Prison Governors, when he said :—

“The only people I have ever heard talking about pampering in prison are people who know nothing whatever about the subject. . . . I would very much like to rig up some of those critics in a prison suit of clothes, give them prison meals for a week, let them taste the alleged luxuriousness of cell equipment and see if they complain about the warmth of their cell.”<sup>1</sup>

In any case, even if our modern methods were less successful than the old—which is the reverse of the truth—the attempt to see in these changes the explanation of the recent variations in our volume of crime, would be to oversimplify the

<sup>1</sup> At Devon and Exeter Discharged Prisoners' Aid Society, *Western Morning News*, 17th February, 1932.

problem. For as we have already seen, social factors are far more likely to influence the volume of crime than any changes in our penal methods.<sup>1</sup> Unfortunately, it is easier to produce the lawbreaker than to cure him.

### *Where our Prisons Fail*

The real case against our present-day prison system is not that it is too humane, but that it is unconstructive.

Until recent years it was cruel as well as ineffective and not unnaturally prison reform became directed towards a removal of the more obvious cruelties. To-day it is probably true that prison reform has gone far enough in as far as it is conceived in terms of leniency. Prison is no longer cruel in the sense that once it was, though a prison sentence involves a good deal of suffering, some of which is unnecessary.<sup>2</sup>

But a prison system should be judged primarily not by its severity or leniency, but by its success or failure. The policy of sacrificing everything to the deterrent idea, and of making prison unpleasant in the hope that both those who experienced it and those who did not would avoid it for the rest of their lives, was given a very long trial during the nineteenth century and it failed so completely that no reasonable person can desire to repeat the experiment. The only rational alternative is a

<sup>1</sup> See Chapter 2.

<sup>2</sup> Such as the deprivation of letters except at rare intervals.



prison system directed towards making those who go to prison come out better than they went in. And with all their reforms our prisons are far from that goal.

The need is for such changes as will make our prisons real centres for the training of the law-breaker in social responsibility. How is that to be accomplished?

“The supreme stupidity of the Prison system lies in the fact that it takes criminals of every type and treats them in the same way. It matters not whether a man is a thief, a drunkard, a child assaulter, a political offender, a debtor, a forger, a bigamist, or is guilty of manslaughter. In all essentials they are dealt with alike.”<sup>1</sup>

On the outskirts of London a modern hospital and a modern prison stand side by side. One is for the treatment of persons suffering from maladies of the body and the other for persons suffering from maladies of the mind or soul. Nothing could be more dissimilar than the methods available to the authorities in these two institutions for the treatment of those under their care. The one is provided with all the equipment of modern science; the other in all its essential features still bears upon it the hall-marks of mediaevalism.<sup>2</sup> In the one, each inmate is an individual receiving individual treatment in accordance with his malady: in the other every inmate whatever his offence or condition

<sup>1</sup> A. Fenner Brockway, *A New Way with Crime*, p. 113.

<sup>2</sup> We are indebted to Mr. A. R. L. Gardner, author of *Prisoner at the Bar*, etc., for this analogy.

receives exactly the same treatment which consists of being shut up in a cell for so many hours a day and made to fulfil a regulation labour task. Imagine a hospital in which patients with broken limbs, tuberculosis, scarlet fever, or digestive disorders, some with diseases which were contagious, and some which were not, were all placed in the same ward, and where young and old were given exactly the same diet and the same doses of the same medicine. Yet physical disorders are as likely to respond to such rule of thumb methods as mental and moral disorders which are essentially individual.

It is not here suggested that a criminal is a patient in the same sense as a hospital inmate. But whatever our view of human conduct, whether we believe that the offender is entirely responsible for his own actions or that he is the victim of forces beyond his control, or whether, as the authors believe, he is a free moral agent within a limited area of freedom, it remains true that the offender is in any case an individual requiring individual treatment. That one man's meat is another man's poison is as true of the morally and mentally diseased as of the physically sick.

Imagine a hospital where the question of admission was decided not by a doctor but by an untrained layman whose word was final, the hospital being compelled to accept such patients as he chose, and to retain them for the length of time which he specified. Yet such is the recognized method of admission into an English prison. Every prison contains offenders known by the Governor and

Medical Officer to be unsuited to prison treatment, likely either to contaminate other prisoners or to deteriorate in character themselves. Thus the Governor of Wormwood Scrubs says :—

“ A number of lads under 21 are committed to prison who it would appear might have been placed on probation. This is a matter of great concern. . . . As many of them are committed for non-indictable offences, they run a grave risk of contamination from associating with lads who are criminally inclined.”<sup>1</sup>

The Governor of Holloway :—

“ May I again draw attention to the futility of giving these girls short sentences. They treat their sentences more or less as a joke and are a demoralizing influence while they are here.”<sup>2</sup>

The Governor of Birmingham :—

“ We still receive cases of young persons where imprisonment might have been avoided.”<sup>3</sup>

During the ten years 1921–31 no less than 2,625 persons after being sent to prison on committal were found by the medical officers to be certifiable under the Lunacy or Mental Deficiency Acts, and during the same period, 698 persons received into prison on *conviction* were subsequently certified in prison under the Mental Deficiency Acts.<sup>4</sup> Such offenders can be removed to appropriate institutions, but what of the thousands

<sup>1</sup> Prison Commissioners' Report, 1930, p. 55.

<sup>2</sup> Report, 1930, p. 49.

<sup>3</sup> Report, p. 48.

<sup>4</sup> Report, pp. 44 and 46.

of other offenders not certifiable for whom nevertheless prison was an unsuitable method of treatment ?

Every prison to-day contains prisoners who for their own sakes and for the benefit of the community should be released before the expiration of their sentences ; and every prison every year releases persons of dangerous anti-social tendencies, not because they are cured, but because the sentence pronounced by the Court has come to an end. The success of institutional treatment will always have some relation to its duration, and when the period necessary for its success is exceeded it may and frequently does work the reverse way and do more harm than good.

The whole of our penal system needs to be adapted to ensure that only those offenders likely to benefit are sent to prison, and that each person who does go there is accorded the treatment best calculated to train him in citizenship and equip him in his subsequent task of self-rehabilitation. The treatment of offenders not likely to be reformed by imprisonment is a further problem also demanding our attention. The two classes of offenders should certainly not be confined in the same institution or subjected to the same regime.

*People who should not be sent to Prison*

If our prisons are to be training centres, only for such offenders as are likely to benefit by a period of training, it is essential, as a first step, contains the Courts should be guided before sentence

by reports from psychologists, prison authorities or other persons qualified to judge whether a prison sentence should be given.

A considerable number of persons guilty of anti-social behaviour are suffering from various kinds of mental disease, and require neither punishment nor training but medical treatment. Many offenders imprisoned for assaults on children and for other sex offences (of whom there were in 1930 no less than 1,293) belong to this category. Prison is no remedy for such cases. It neither reforms the offender nor protects Society from a repetition of the offence. In some cases it actually aggravates the evil. We do not overlook the fact that in some such cases punishment may have a useful deterrent effect, since an offender may otherwise not think it worth while being cured of a tendency which, however unpleasant to others, nevertheless affords pleasure to himself. It still remains true that punishment without the opportunity of securing treatment is futile.<sup>1</sup> Many of these offenders should either be put on probation with a condition as to treatment or sent to an institution for treatment. Some of the offences are sufficiently serious to justify segregation for an indefinite period in the absence of cure. But such confinement, like that of other mentally abnormal persons, should be not by way of punishment but for the protection of Society, and should therefore be of a non-penal character. The presence of sex offenders in a prison is often bad for the other prisoners. There are besides, many persons sent

<sup>1</sup> Report, Persistent Offenders' Committee, p. 46.

to prison for offences other than those of a sexual character, whose anti-social conduct is due to some psychological condition requiring treatment. If there were adequate facilities for the treatment of such cases and for a more extensive examination of accused persons before sentence, most of these would never get to prison, but would be given the appropriate treatment.

In addition to those found to be certifiable under the Mental Deficiency and the Lunacy Acts, there is a large percentage of the prison population which is mentally subnormal but outside the definitions of the various Acts. Parkhurst Convict Prison has a number of such convicts—known in prison parlance as “the barmies”—who are unfit for labour, and who are allowed to wander up and down the prison yard under the supervision of officers. Such prisons as Pentonville and Wandsworth have a large number of similar prisoners. The interests both of humanity and economy would be served by removing them from prison altogether to some non-penal institution which could be of a far less costly type, without “maximum” security conditions or large staffs.

It is not only in the case of persons mentally abnormal or in need of psychological or other medical treatment that prison should not be used. There are thousands of offenders of other kinds, many of them guilty of offences so trivial that they “are more akin to nuisances than crimes”,<sup>1</sup> who are sent every year to prison at great public expense,

<sup>1</sup> P.C. Report, 1929, p. 9.

with no lasting benefit either to themselves or to the community, and to the distraction of the prison authorities who have more serious tasks to contend with. In the year 1930, no less than 21,830 persons were sent to prison for a month or less, of whom 12,133 went there for a fortnight or less, and 6,257 for a week or less.

These sentences are universally condemned by Prison authorities, social workers, and all who have practical experience of their working. Thus the Prison Commissioners state :—

“The short sentence remains an outstanding defect in our penal system and difficulty in prison administration. . . There is no doubt but that the prospect of prison has a strong deterrent effect on those who have never yet passed its gates ; nor that, once the disgrace of imprisonment has been incurred, much of that effect has been lost. It can also be readily understood what an impediment to the development of a sound system of prison training is the presence of a number of men who only come in for a few days, and cannot therefore be taught work other than the simplest.”<sup>1</sup>

But the best alternative to a short sentence is not, as some of our judicial authorities appear to think, a long sentence, but the application of some of those more constructive methods which are now being made available. Prison must no longer be regarded as the dumping ground for all offenders with whom the Courts do not know how to deal and for whom it is quite unsuitable. Prison must

<sup>1</sup> Report, 1925-6, p. 10.

be reserved only for those offenders likely to benefit from a relatively prolonged period of training.

As we shall see,<sup>1</sup> the right kind of probation is not used in anything like the right number of cases, and many offenders, now sent to prison for short sentences, could be satisfactorily dealt with by an improved and extended use of probation. Again, if fines were more justly graded according to individual capacity to pay, fewer persons would be imprisoned in default of payment, and fines might even be extended still further as an alternative to prison.

The extension of probation and a more rational method of imposing fines are practical alternatives to many short sentences, but the fact has to be faced that they are not always suitable. There are offenders who are not benefited by even the best probation system and who, being entirely without means, cannot pay any fine however wisely adjusted. What can be done in these cases? The matter is one of extreme difficulty and up to the present no entirely satisfactory alternative has been devised. This, however, is no excuse for continuing the present practice, but is an incentive to further study and experiment.

It has been suggested that something like the army "fatigue" might be useful in certain cases, and that a young offender repeatedly found guilty of some offence of the nuisance type should be required to report at the local police station or other public building on Saturday afternoons for a

<sup>1</sup> See p. 177.



period, for scrubbing or similar duty. Such a proposal has much practical common sense to recommend it, but it would require careful application. It would be difficult to supervise since it would be capable of abuse both on the part of the offender and of those under whose direction the work was done.

A more ambitious proposal is for the establishment of work centres, to which persons who refuse to maintain their dependents at the order of the Court, beggars and other such offenders, could be sent for compulsory labour for a period of weeks. In a large city like London, offenders could return to their homes each night. Such a work centre would not require the "maximum security" of a present-day prison and would therefore be less costly to administer. There would be greater difficulties in regard to offenders from scattered areas, but there is no reason why such centres should not be set up at once in London as an experiment.

The finding of suitable work would present a real problem, for no industry requiring much skill would be practicable owing to the short sentences involved. But the transfer to it of a section of the mailbag industry from the prisons would make possible the introduction of more suitable work for long term prisoners. Some system of wages is essential to a scheme of this kind, the money being allocated to the payment of the fine or the part maintenance of the dependents according to the nature of the offence. Even if such money payments were very small, they would be worth making

for the sake of the principle involved. Failure to conform to the regulations of the centre could be made an offence punishable by a relatively long period of imprisonment.

Such centres would need to be carefully distinguished from the modern Poor Law Institution. We hope that one day the long-standing dread of the Institution felt by the self-respecting poor will break down, and should regard as most undesirable any action which tended to associate the law-breaking and anti-social classes with the aged and infirm. We must also beware of creating a new kind of prison and calling it a work centre. A work centre, if it is to be a useful innovation, needs to be dissociated altogether from the prison tradition.

We do not suggest that such alternatives to the short sentence are easy or that they would meet all cases. The problem is manifestly one which admits of no simple solution. An extension and improvement of the probation system and a wiser administration of the law regarding fines would, we believe, go far to reduce the present evil. And though a final solution will not be easy to reach, we believe the time has come for courageous experiments along the lines we have suggested.

If it were possible by these and other methods to eliminate the short sentence and to remove offenders who require other treatment, let us consider what effect it would have upon the prison population.

In the year 1930, 59,936 persons were received into prison.

(a) 13,276 were received under *Civil Process or as debtors*. These included 6,778 committed to prison for the non-payment of maintenance or bastardy orders made by Courts of Summary Jurisdiction. At present it is common in many Courts for such orders to be made in the offender's absence, with most inadequate inquiry into the circumstances; the Court is not even required by law to satisfy itself as to means, and in many cases the offender goes to prison not because of wilful refusal, but because of inability to pay. Evidence of paternity in bastardy cases is often unsatisfactory, and men are sent to prison smarting under a sense of injustice. No committal should be made for a breach of a maintenance order unless the offender is brought into Court, and the Court is satisfied that he has means. In these cases committal orders might well be made to such a work centre as has been described, and not to prison.

2,119 persons were committed to prison by Courts of Summary Jurisdiction for the non-payment of rates and taxes. More adequate inquiry should be made in these cases as to a defaulter's capacity to pay, and where necessary he should be committed to a work centre.

3,810 of the persons sent to prison under Civil process are committed by the County Court under the *Debtors Act of 1869*.<sup>1</sup> That Act, which many people believe to have abolished imprisonment for debt; actually did nothing of the kind. Under its

<sup>1</sup> 32 and 33 Vic., c. 62.

provisions a County Court Judge may, after he has made an order for the payment of a civil debt, commit the debtor to prison for a period up to six weeks, if he is satisfied that since the order was made "he had or has had the means to pay". Though the law clearly intended a distinction to be made between the debtor who was unable to pay and the debtor who wilfully refused to do so, in practice the evidence accepted of capacity to pay is most unsatisfactory, and many debtors go to prison not for wilful refusal, but for inability to pay. The power to commit to prison for civil debt is not often used by ordinary tradesmen, but is the weapon of the tallyman, the seller on the doorstep of drapery and costly books on the instalment plan. Credit is frequently given in such cases, not on adequate security, but in reliance on the threat to imprison. Imprisonment for civil debt should be abolished altogether. It has been practically non-existent in Scotland for over half a century, and its abolition here would be found to remove undesirable forms of credit selling without in any way interfering with legitimate credit trade. To grant credit on inadequate security is a gamble and not genuine business.

(b) 12,497 were committed to prison for the non-payment of fines. A short sentence of imprisonment is a wholly ineffective remedy, continually criticized by the authorities. The following statement from a former Governor of Wandsworth Prison is one of many protests contained in recent issues of the Prison Commissioners' Report :—

“Attention is again called to the uselessness and heavy public expense incurred in sending men to prison for five or seven days in lieu of a fine of a few shillings, for being drunk, etc. During the past year no less than 866 such cases were received. The total sum in fines would probably not amount to more than £500, and the expense incurred would no doubt be ten times that amount, without any punitive or reformatory effect whatever being produced. Cases have come to my notice of men being committed, serving a few days’ sentence and again being committed for a similar offence within seven or eight days. All the incidental expense of arrest, prosecution, conveyance to prison, etc., being carried out twice within the seven or eight days—the alternative being two small fines. The remedy, to my mind, is a more liberal use of a probationary system and very much longer sentences in the case of those who are sent to prison.”<sup>1</sup>

It is clear in the first place that fines should be better adjusted to the individual capacity of the offender to pay.<sup>2</sup> In 1930 a girl who had been fined 22s. under the Shops Act was imprisoned at Birmingham for eleven days for failure to pay. Her offence was selling tomatoes after hours.<sup>3</sup> A lad was fined 12s. for riding a bicycle on the footpath, and was sent to Birmingham prison for non-payment. In this case his fine was actually paid by the Prisoners’ Aid Society.<sup>4</sup> Both these sentences of imprisonment are a grave reflection on the Courts responsible for them, but unfortunately there are many such cases every year. If in every instance careful inquiry were made as to the offender’s means

<sup>1</sup> P.C. Report, 1923-4, pp. 61-2.

<sup>2</sup> P.C. Report, 1930, p. 48.

<sup>3</sup> See below, pp. 189-90.

<sup>4</sup> Ibid.

—a fine of half-a-crown or even a shilling might be quite a suitable penalty in some cases—the number of persons who failed to pay their fines would probably be reduced to a few hundred. And in such cases if the offender cannot be dealt with by probation or in some other way, committal should also be to a work centre and not to a prison.

(c) 7,504 persons were received into prison on remand or when awaiting trial, and were subsequently sentenced to some lesser punishment than imprisonment or were acquitted altogether.—A few of these prisoners were, as we have seen, charged with offences so serious that the authorities rightly desired their detention as a precautionary measure, some were remanded for inquiries or for a medical report, but many were either unreasonably refused bail or lacked the means to raise the bail fixed.

A certain number of such persons will perhaps always require to be detained, but their number should be considerably decreased, and detention when necessary should in most cases be in a Remand Home or Observation Centre, and not a prison. The Courts should not, as frequently happens, fix bail at an impossible figure, nor should the police unreasonably oppose bail to save themselves trouble. That the latter occurs at present is obvious from the frequent comments of High Court Judges on the subject.

(d) 1,924 were committed to prison for drunkenness, without the option of a fine. We suggest that the time has come when it should seriously be asked whether these persons should be sent to prison at

all unless their condition is aggravated by some additional circumstance other than that of being "disorderly", such as assault or driving a motor-car under the influence of alcohol. Prison is a wholly ineffective remedy of great cost to the State. There are women committed to Holloway prison for drunkenness who spend most of each year there, in a series of short sentences.<sup>1</sup> The experiment might be made of committing some such offenders to homes for prolonged treatment, though to be effective it would need to be much more constructive than that attempted under the now disused *Inebriates Act* of 1898.<sup>2</sup> Apart from such a course we believe that a judicious use of fines, probation, and confinement in the police cells overnight should suffice. The last is not without an element of deterrence. In any case, the prison authorities should be excused from dealing with this troublesome but quite irrelevant social problem.

(c) 1,675 persons were sent to prison for begging, and a further 428 for the offence of "sleeping out". We suggest that in the case of such of these vagrancy offences as it is necessary to prosecute at all, the offender could be dealt with, either by probation with a condition as to residence in a Poor Law institution or by committal to a work centre. The former would be more suited to older and the latter to younger offenders. We are reluctant to suggest that the Institution should be associated with probation in this way, but at present we see no practical alternative. Persons who had no fixed

<sup>1</sup> See also below, p. 226.

<sup>2</sup> 61 and 62 Vic., 60.

abode and were sent to a work centre could be accommodated in the local casual ward at night. Every effort should be made in the case of younger offenders to reclaim them from the vagrant life by referring them to voluntary agencies with a view to transfer to a labour colony.

(f) 988 persons were sent to prison for neglecting to maintain their families under the Poor Law. Here again it is no remedy for a man who neglects to support his family to be sent to prison and thus made to neglect them for a further period. Arrest of wages as in Scotland or committal to a work centre where he would earn at least a small wage would be more constructive remedies.

(g) 439 were sent to prison for indecent exposure. Such an offence in practically every case is pathological in origin. Prison is no remedy for it, and many such offenders are recidivists. Probation with a condition as to treatment at a clinic would be suitable in certain cases. In the case of older and infirm offenders, compulsory supervision in some sort of non-penal colony is another possibility.

(h) 6,084 other offenders not included in the above categories were sent to prison without the option of a fine for periods of five days up to one month. We have already referred to the general recognition by the Prison Commissioners and others of the futility and harmfulness of short sentences. The right alternative to the short sentence is, however, rarely a long sentence, but usually a fine or probation. It is probable that if these and other methods were used, the large majority of these offenders would



not go to prison at all, and those who did would be sent not for a few days, but for a reasonable period of training. Such a reform necessitates changes in the law as well as in administration.

If the changes in treatment here suggested were carried out, our prison population would be reduced by the elimination of the large majority of the following offenders :—

Sex offenders . . . . .	1,293
Under Civil Process . . . . .	13,276
Non-payment of fines . . . . .	12,497
Remand prisoners . . . . .	7,504
Drunkenness . . . . .	1,924 <sup>1</sup>
Begging . . . . .	1,675
Sleeping out . . . . .	428
Neglecting family under Poor Law	988
Other offenders sent to prison for a month or less . . . . .	6,084
	<hr/>
Total . . . . .	<u>45,669</u>

Of these 45,669 persons let us assume that 40,000 would be dealt with by an extension of probation, by work centres, by reforms in the administration of the law relative to fines, and by medical and psychological treatment. Taking still the 1930 figures, this would leave a balance of 19,936, or say 20,000 offenders received into prison. But undoubtedly many prisoners in categories other than those already deducted should have been put on probation, or have been given

<sup>1</sup> These are the offenders sent to prison without the option of a fine. Many convicted for drunkenness are included under non-payment of fines.

psychological treatment, and many subnormal persons should have been transferred to non-penal institutions. It is not unreasonable to assume that at least 5,000 came under these heads.

And what of the thousands of recidivists in our prisons? Since our existing methods have failed to reform them, it is idle to continue the treatment. These should be withdrawn from our prison population and sent to colonies or institutions for persistent offenders.

When allowance has been made for these various categories the persons requiring constructive prison training may be reduced to a group of a few thousands. This group, however, would present a very different problem from the heterogeneous mass of offenders collected in the present-day prison, and the treatment required would be very different from the present prison regime. Prison might begin to serve a useful purpose in the community as a true training centre.

### *The Prison of the Future*

The persons unsuited to prison treatment who used to be and still are sent to prison are so numerous as to give support to the view, widely held by many progressive people, that "prison never reforms anybody". We do not hold that view. We believe that when the many people who should be dealt with in other ways are removed from the prison population, there will remain a residue—we do not believe it would be more than a few

thousands per annum—for whom some such institutional treatment is both necessary and desirable. The analogy of Borstal for young offenders is a good one. Probation successfully rehabilitates a large percentage of young offenders, and when the system has been improved and extended will reform many more. But there are a considerable number who go through the probation stage unbenefited or are unsuitable candidates for probation, who need the discipline and complete change of environment which Borstal training gives.

The same is true of certain adult offenders, particularly young adults of the 21-30 age group. Some young men in these days of widespread unemployment, after lounging at street corners for long periods, consorting with bad companions, have drifted into vicious or dishonest practices, and are in urgent need of discipline and training not dissimilar to that of a Borstal institution.

Even under present prison conditions we know of young prisoners who appear to have benefited by their prison experience, but the difficulties on discharge are now so great that unless the Aid Society or voluntary workers take a special interest the good is more than obliterated by the handicap of being an ex-prisoner. We believe that by drastic reform of our whole regime, this benefit could be made permanent and applicable to a much larger number. In the absence of such reforms it remains true that for most men a few weeks of our modern prison regime with its dull monotony of sewing mail-bags by hand and the dreary months of

confinement every evening after five alone in the cell, destroys all good resolutions and a man becomes a "good prisoner", lacking initiative, ambition, or resolve, to be released on the day of discharge to a hostile world, without employment, without friends, and without resources, not better but less well equipped to face the world than when he went in.

In their Report, the Persistent Offenders' Committee thus describes the weakness of the existing system :—

"The obvious evils of imprisonment are that it dulls the mind, deadens the sense of responsibility and power of initiative, and starves the social instincts; and if these evils are to be diminished, it is necessary to create conditions in which the prisoner has some liberty of action and some kind of communal life. In most local prisons, such conditions cannot be created except within narrow limits because of the mixed and floating character of the population. . . . In the administration of such an establishment, the Prison authorities are always faced with the dilemma that precautions which are needed to prevent opportunities for harm are liable to curtail opportunities for good. Moreover, in a prison containing persons of many grades of physical and mental capacity, the pace of work is slowed down by the inferior workers, and it is impossible to maintain a high standard of effort and activity. The prisoner's life is monotonous and irksome, but is not strenuous."<sup>1</sup>

If the large numbers of persons unsuited to prison treatment were removed from the prison population, some of the problems referred to by the Committee

<sup>1</sup> Report, pp. 23-4.

would become less acute. But the situation demands a constructive policy, and not only the removal of the worst difficulties.

(a) *Classification*.—A primary task is an adequate classification of offenders, not according to their offences, but according to their individual character, experience, and need.

The Persistent Offenders' Committee made the following comments upon the present regime in Wakefield Prison, where selected men with sentences of nine months and over are sent if they seem likely from their records, general character, and mentality to respond to reformatory treatment, and in Wormwood Scrubs Prison where men convicted in London and the surrounding counties are sent who have not been previously imprisoned.

“In these prisons where there are selected populations, a better pace can be set in the working parties and a better standard of work maintained, more prisoners can be allowed to work without continuous supervision, more association can be permitted at meals and for recreation, educational schemes can be more fully developed, voluntary helpers can be used more freely and more use can be made of methods of discipline which invite the co-operation of the prisoners and create in the prison community a feeling that the privileges of all depend on the good behaviour of each.”<sup>1</sup>

Such are the results already achieved within the existing prison system almost entirely by a rough and ready classification of offenders.

<sup>1</sup> *Ibid.*, p. 24.

But if our prisons are to be real Training Centres, such progress though welcome is totally inadequate. The classifications do not pretend to be much more than superficial. The mere fact of whether or not a man has been previously imprisoned is no adequate test for admission to Wormwood Scrubs, and the decision to transfer a man to Wakefield should not depend as at present chiefly upon the impression he makes on officials with no special training.

When our forefathers advocated solitary confinement they were not without their good reasons. The promiscuous association of all sorts of offenders a century ago undoubtedly resulted in serious contamination which solitary confinement was designed to prevent. That it produced other evils of greater gravity must not blind us to the fact that the danger of contamination through association is a real one. There are times when we have misgivings about the present-day experiments in the association of prisoners at meals and for recreation. Undoubtedly there are prisoners who make undesirable friendships under such conditions, and the stories of crimes planned in prison though exaggerated probably have a modicum of truth. The evils of solitary confinement are such that a reversion to that system would be a worse alternative. But improved classification is essential if increased facilities for association are to be developed as we think they should.

Any such classification must depend upon individual psychological reports. Any attempts to segregate all the burglars and all the sex offenders

and all the fraudulent company promoters ignores the fact that a man's offence is no certain index to his true character. A burglar serving his first prison sentence may have vicious habits which would make him a most unsuitable candidate for any institution with scope for considerable association, yet only an expert report would reveal the fact. Another offender may appear most undesirable to a Prison Governor at first sight, and yet be just the man whom such training would benefit. All classification must be based upon expert psychological and other reports, and this would necessitate a much higher proportion of psychologists among the Prison doctors than at present exists.

It must be recognized that any steps taken for the classification of offenders will make visits from relatives more difficult and expensive. It is not unreasonable to suggest, therefore, that where an offender, for classification purposes, is removed a long distance from his home, a limited number of free passes should be provided for occasional visits from his relatives. Thanks to the generosity of Sir William Morris, funds are now available to give such help in regard to Borstal.

(b) *Prison Industries*.—Speaking generally, it is at present true to say that prison industries are out of date, have almost no vocational value, and are wasteful and ineffective. That the need for improvement is recognized by the authorities has been shown by the appointment of a special Departmental Committee to investigate the whole problem in relation to after-care.

If men are to be trained in citizenship, prison labour should give a man habits of industry, help him to adapt himself to the requirements of the labour market outside, and in suitable cases be of value as vocational guidance.

The Prison Commissioners in their 1930 Report say :—

“The practical difficulties of finding suitable employments for prisoners remain acute. Certain prison industries provide occupations in which prisoners work with a will, but others are ill-calculated to stimulate interest or effort. One of the largest prison industries is the making and repairing of mailbags for the General Post Office, and under existing conditions the Prison Authorities are very glad to have this work. Without it they would be unable to find employment for numbers of prisoners. But for most prisoners work of this kind provides poor occupation. It calls for little muscular effort and little skill, and it provides no sort of industrial training. The prisoner knows that much of the work which he does by hand would be done by machinery in any place but a prison, and accordingly he looks on his occupation as an artificial prison task.

“Efforts are continually being made to find among the articles required by Government Departments work of such kind that it can be carried out in prisons without financial loss and will at the same time provide suitable training for the prisoners, but the limitations imposed by financial considerations, by the large number of short sentences and by the miscellaneous character of the prison population, make the task very difficult ; and at the present date when all Departments are reducing expenditure, it is becoming increasingly hard to find sufficient work of any kind on which to keep prisoners occupied.”<sup>1</sup>

<sup>1</sup> Report, p. 25.



These difficulties are serious only so long as prison remains the dumping ground for large numbers of short sentence prisoners, and so long as the Treasury continues its penny wise policy of refusing the prison authorities the necessary capital to equip the prisons with modern industrial plant.

If the thousands of persons unsuited to prison treatment were removed from the prison population, the Commissioners would have a daily population of a few thousand men to care for, the large majority of whom would serve sentences of not less than three or six months, and many of them of several years. Such a population is not impossible material with which to create up-to-date prison industries. It is not necessary to train all or even most of these men as craftsmen, and only a selected few are suitable for such work. Modern factory life demands not so much the man trained as a skilled carpenter or hand bootmaker as the man quick to adjust himself to many simple mechanical processes. Adaptability in modern industrial life is of greater vocational value for most men than craftsmanship, though the latter is obviously important in the development of character.

It is said that any such development of prison industries would create difficulties with the Trade Unions. The number of men involved is relatively so small that it is doubtful whether such difficulties would arise, especially if the co-operation of the Trade Unions were sought in the first instance. In any case, Trade Union opposition would be

directed not so much to the sale of prison products as their production under non-union conditions, which would result in unfair competition with the products of free labour. The payment of prisoners would obviate this difficulty. The payment of Trade Union wages, though impossible with the present heterogeneous population, would be practicable in a real training centre. There would be certain difficulties but they could be overcome. Such a practice would in addition help to restore an offender's self-respect, and would not necessarily involve additional expenditure. The experiment started in 1930 of paying selected prisoners at Wakefield and Nottingham Prisons a small wage based upon the corporate output of the workshops, resulted in an increase of work of nearly 100 per cent. The proposal to pay full Trade Union wages does not mean much more than a book-keeping transaction. Though the prisoner would receive a small monetary allowance, the greater part of the offender's wages would be allocated first to his maintenance, secondly to the support of his dependents, thirdly to aid him on discharge, and fourthly in proper cases to restitution. But the total wage, if included in the labour costs, would prevent that unfair competition with free labour of which the Trade Unions might complain.

There is, however, no necessity for the products of prison labour to be sold in the open market. Although it is clear that any prison industry must react upon the outside market, it has been an illogical but accepted principle for many years that

industries for State use were permissible in prison, but not the manufacture of goods for sale. We are satisfied that the demands of the Post Office, and other Government Departments, are much more than adequate to keep all the prisoners with sentences of three months and over busily occupied in up-to-date industry. We would transfer much of the mailbag industry to the work centres we have proposed, any balance of such work not completed being finished in prison by machinery. Among the industries for State use which might be transferred to the prisons if the necessary capital expenditure were made, we would include :—

Postmen's and other official uniforms and boots ; the manufacture of more string for Government use<sup>1</sup>; a large proportion of Government printing of a " non-urgent " type ; book-binding, wooden fittings and earthenware pipes for telephone equipment ; office furniture, the making of wooden boxes and packing cases ; and laundry work. If the County and Municipal bodies also used prison products the scope of prison industries could be extended to include hospital equipment and furniture (including bedsteads) for Mental Institutions. Much more could be done in some prisons with the growing of vegetables for prison use. In addition, there is no reason why the idea of " public works " should not be revived and schemes of land drainage, etc., the labour cost of which would otherwise be prohibitive, be undertaken by selected prisoners who could be trusted to work away from a " maximum security " prison.

<sup>1</sup> A certain amount is already made in prison.

(c) *Staff*.—Closely allied to the question of prison labour is the question of prison staff. The prison "warders" are now called "officers", and year by year are improving in quality and in status. Some of the officers are also industrial instructors who work with the men. But the duties and ideals of many of them still have too much of the "gaoler" tradition. It is most objectionable to go through some prison workshops or to a prison field where men are working and to watch a uniformed prison officer standing over his men, doing absolutely nothing except to see that nobody idles, runs away, or breaks the prison rules. There are real difficulties in arranging for the staff to work with the men, but they are not insuperable, and the balance of advantage is overwhelming. If our prisons are to get the staffs they need they should be recruited under better conditions, and receive a better remuneration. The present pay of a prison officer compares very unfavourably with that of other public servants, such as policemen.<sup>1</sup>

(d) *Self-Government*.—A constructive prison system must also give opportunity, in progressive stages, for increasing responsibility. A man who commits a crime usually does so because he lacks a sufficient sense of social responsibility. To confine him for months and years under conditions where he has no opportunity of exercising any responsibility is not to equip him, but to unfit him still

<sup>1</sup> Even after the recent reductions in police pay the starting pay of a Metropolitan police constable is £2 15s. plus 15s. 11d. emoluments, whereas a prison officer starts at £2 3s. 6d. with emoluments of 18s. 6d. per week (see *Hansard* (House of Commons), 14th November, 1932, cols. 766-8.

further, for citizenship. The prison authorities so far have shirked this issue. They have appointed certain prisoners "strokes" or "leaders" with certain "monitor" duties within the prison, but they have not yet promoted a scheme whereby, within certain spheres of prison life, there may be progressive stages of self-government. Yet no training scheme will be completely successful which ignores that principle.

(e) *After-care*.—There must also be provided a system of after-care able to ensure that a man has a reasonable chance of rehabilitating himself on release. The present practice in many cases is to hand to a man on discharge a small dole of ten or fifteen shillings. This is simple, but usually quite useless. Lack of funds by the various aid societies is not the only difficulty. A much wider conception of the scope and purpose of after-care is needed by many Aid Society Committees, and there is need for closer co-ordination.<sup>1</sup> This need becomes greater as the local prison loses its old character, and the process of classifying prisons to provide for special groups of offenders is developed.

After-care should not end as it usually does at present when the prisoner leaves the gates. A man's need is often greater a week after his discharge. We should like to see the development of a national parole service in which social workers akin to probation officers would be responsible for the friendly supervision of men after release, and

<sup>1</sup> There are of course some Aid Societies which are doing more constructive work.

would be willing to give advice and, in suitable cases, help to any ex-prisoner who needed it.

The present system of "ticket-of-leave" or the discharge of convicts under police supervision, is wholly objectionable, and its abolition has already been recommended by the Persistent Offenders' Committee. But it would in our view be a serious mistake to put nothing constructive in its place. The need for friendly supervision is as great if not greater among long term than among short term prisoners, and the reorganization of the Central Association for the Assistance of Discharged Convicts, with its system of local voluntary "Associates", could easily be made the beginning of a national parole system. Many probation officers are already recognized by the Central association as its "Associates", and we believe that the simplest and most practical way of creating a national parole system would be to transfer the parole work after release to the probation officers. Such objections as there are to the probation officer dealing with both probationers and ex-prisoners must, we believe, be subordinated to the obvious advantages of using a national organization which already exists rather than attempting to create new and expensive machinery. It is no economy for the State to withhold adequate funds from after-care work ; it costs hundreds of pounds to support an offender during a long term of imprisonment, and the expenditure of a few pounds at the end of his sentence may be the deciding factor in determining whether he is going to "go straight"

or to return to prison at a further heavy cost to the State. Moreover, if our prison industries were reorganized, and the prison population drastically reduced in numbers, there is no reason why the resultant saving to the State should not more than compensate for increased expenditure on after-care.

The Farm Prison at Witzwil in Switzerland has a farm attached to it to which ex-prisoners can go temporarily while seeking employment elsewhere, and the suggestion is frequently made that some such scheme should be tried here. It is doubtful, however, whether the needs of the two countries are comparable. Most ex-prisoners in England are city bred, and are neither equipped for nor desire land work. Most of them if they find employment at all must ultimately find it in the town, and residence on a land colony would mean absence from the only centres where work is likely to be found. A non-industrial town hostel for ex-prisoners presents even greater difficulties. The association of many different kinds of ex-prisoners together would either require such very strict discipline as to make it very unpopular or would result in such contamination as to make it most undesirable. We believe the project is one of those proposals which are attractive in theory rather than practicable. Moreover, an ex-prisoner who is to rehabilitate himself really needs to get away from prison associations and return to normal life. In our view the problem of the ex-prisoner is much more likely to be solved satisfactorily by individual treatment. The suggestion that there should be a section of

Borstal available for ex-Borstal boys who just after their release are having difficulties in securing employment would be open to less objection on these grounds, and might have something to commend it. Borstal discipline is strict though not penal in character, and a Borstal boy might willingly submit to conditions similar to those he had already known, while the knowledge that he had a place of refuge might remove that feeling of hopelessness which so often threatens an ex-inmate when he finds himself out in a friendless world.

Objection is sometimes made to giving help to an ex-prisoner on the ground that there are many honest men equally needy and more deserving of help. This dilemma is as old as the parable of the Prodigal Son. But a man who has been in prison is not necessarily worse than a man who has not, and may have been largely the victim of adverse circumstances or defective control. It is also in the interests of the community to help him, for without such help he may be forced into a life of crime. It is not always possible to be logical in regard to these matters, and reasonable help to an ex-prisoner is a common-sense compromise.

(f) *The Indeterminate Sentence.*—Attention has been drawn to the absurdity of fixing the length of a sentence before the effect of the treatment is known, a practice which is a pure relic of the retributive idea in punishment. If the drastic changes outlined above were made in our prison system and our prisons became real training centres for a selected group of persons believed to require such treatment, then we



believe that there should be a system of conditional release whereby sentences would be indeterminate within a legal maximum. Release would depend upon the recommendation of a Discharge Board. The latter should be a much more highly qualified tribunal than the Advisory Board which at present exists to advise upon the release of men undergoing sentences of preventive detention, and it should include a medical psychologist, members of the prison staff, the parole officer and perhaps a representative of the Court of conviction. Release would be closely associated with the arrangements for after-care, and have relation to the industrial training of the offender and the possibility of employment. Some such system has already been foreshadowed by the Persistent Offenders' Committee, which also recommends in its Report :—

“ In addition to the power of discharging an offender on licence there should be a power to grant temporary release on parole, so as to enable the authorities in appropriate cases to allow an inmate in a Detention Establishment to go out temporarily. For example, if arrangements can be made for a man to be allowed towards the close of his sentence to go out to work while returning to the Detention Establishment each night, this might be a useful method of accustoming him to liberty and of testing his trustworthiness.”<sup>1</sup>

(g) *The Persistent Offender*.—We believe that training centres such as we have outlined would form an important link in the State's chain of protective measures against crime. But we recognize

<sup>1</sup> Report, p. 31.

that some offenders would pass through such a centre, however well and wisely it were conducted, and remain unreformed and a continued menace to Society.

Doubtless with even the most perfect methods, there will always be a residue left of those who continue to lead a life of petty or serious crime, either because they lack the self-control to enable them to conform to modern social requirements, or because the anti-social instinct in them is so strong that nothing can deter them from criminal habits. When all our reformatory measures have failed, and punishment in the form of imprisonment has proved ineffective, it is as illogical to continue this form of treatment as it would be for a doctor to continue the use of a medicine after it had proved valueless. Nevertheless, Society must, at least in extreme cases, protect itself from repeated offences, and we confess that we see no remedy but prolonged segregation. But we need to be sure that such an offender really has had chances to rehabilitate himself, and that his anti-social conduct is of a sufficiently serious type to justify such a serious step.

If, however, such a person has served more than one period of training, has really had adequate opportunities to live honestly and still continues to break the law, he should be sent—if his type of offence really justifies it—to a colony for prolonged segregation. We believe that most such offenders would respond to modified forms of discipline, the conditions could be largely non-penal, and the

### WHAT IS WRONG WITH PRISON? 163

organization be of the "minimum" security type. Such colonies need not, however, be uniform, and for a limited number of actively anti-social persons a more strict regime would be necessary. But the section of the lawbreaking group which will require this segregation of the non-constructive kind will be smaller the more Society perfects its preventive measures against crime, not only by improving the probation system, providing facilities for mental treatment, and where necessary providing really constructive institutional training, but also by seeking to remove the fundamental causes of crime.

## CHAPTER 6

### PROBATION, FINES, AND RESTITUTION

“There are hundreds, thousands, of crimes committed in this country in the course of every year which would not have been committed at all were it not for the use which we have made of the Probation of Offenders Act.”<sup>1</sup>

“From long experience of the system the Committee is strongly of the opinion that the use of Probation has very considerably lessened the amount of crime, with great benefit not only to the offenders but also to the community.”<sup>2</sup>

The general public may well be confused when such contradictory statements as these are made by persons in authority as to the effectiveness of this widely used method of dealing with delinquency. Actually such statements are not necessarily contradictory, since it may be that probation prevents crime when it is intelligently used and encourages crime when it is used in unsuitable cases. Unfortunately, however, those who criticize probation most strongly seldom restrict their remarks to an appeal for more discrimination in its use. They usually belong to that section of the community which has

<sup>1</sup> Mr. W. J. H. Brodrick, Stipendary Magistrate at South West London Police Court, speaking at the annual meeting of the Royal Society for the Assistance of Discharged Prisoners, 16th March, 1932.

<sup>2</sup> Report of Derby Probation Committee for 1931, *Nottingham Guardian*, 29th January, 1932.

never really abandoned its belief in severity of punishment, and which sees in the present day increase in certain types of crime the evidence it desires to demonstrate the failure of our modern methods. Happily there is no reason to believe that these general charges against probation are in the least true. In 1930, for every two persons released with a probation order, three others were sent to prison, two bound over without a probation order, and six more had the charge, although proved against them, dismissed altogether. It would seem not unreasonable to assume that these other methods of dealing with the lawbreaker, since they were used five times as much, may have had at least as much if not more responsibility for our present difficulties. In much of this criticism probation is confused with other methods of dealing with the offender such as "binding over" or "dismissal" which are also authorized under the same *Probation of Offenders Act*. Much ignorance still exists not only among the general public but even among magistrates as to what the probation system really is.

If, as we believe, probation has shown itself a most effective instrument in the treatment of delinquency, even quite undeserved criticism must be taken seriously because, unanswered, it may shake public confidence in probation and so hamper the success of the system. Constructive criticism is always to be welcomed, as it should provoke a careful examination of the present position and lead to more effective work. Those who believe most

firmly in probation would be the first to admit that the probation system as it exists is far from perfect. What are sometimes spoken of as probation "failures" are often due to misapplications of the system and often to failures of other methods which are wrongly called probation.

It is proposed in this chapter both to describe the probation system as it is and as it should be, and also to discuss its degree of success.

### *What Probation Is*

Probation has been defined as "a process of educational guidance through friendly supervision".<sup>1</sup> It had its origin half a century ago in the United States and elsewhere, in experiments made in releasing an offender proved guilty of an offence, conditionally on his good behaviour. The Court naturally required some record of the conduct of offenders released in this way, and this led to the appointment of social workers to undertake supervision. The first such appointment was made in Massachusetts in 1878. In England the first legislative recognition of a similar principle was contained in the *First Offenders Act*, 1887,<sup>2</sup> which, as its title implies, could only be used in the case of a "first offence".<sup>3</sup> The principle was greatly

<sup>1</sup> Flexner and Baldwin, *Juvenile Courts and Probation*, p. 79.

<sup>2</sup> 50 and 51 Vic., c. 25.

<sup>3</sup> The term "first offence" as used by the Courts only means the first time an offender has been found guilty. He may have been guilty many times previously, but not detected.

extended by the *Probation of Offenders Act, 1907*,<sup>1</sup> which forms the statutory basis of the probation system as it exists to-day. This Act repealed the 1887 Act, extended probation to other than first offenders, and provided three methods of dealing with offenders<sup>2</sup> :—

Where a person is brought before the Court of Summary Jurisdiction and the Court thinks the charge proved, but is of the opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment or that it is expedient to release the offender on probation, the Court may

(1) dismiss the charge.

(2) discharge the offender conditionally on his entering into a recognizance with or without sureties to be of good behaviour and to appear for conviction or sentence when called for at any time during such period not exceeding three years as may be specified in the order. (This is commonly described as "Binding over".)

(3) Add to the recognizance referred to in (2) a condition that the offender be under the supervision of such person as may be named in the order and such other condition for securing such supervision as may be specified in the order. The order requiring the insertion of such conditions is referred to as a *Probation Order*. When a

<sup>1</sup> 7 Edw. VII, c. 17; as amended by Criminal Justice Administration Act, 1914; 4 and 5 Geo. V, c. 58, and Part 1, Criminal Justice Act, 1925; 15 and 16 Geo. V, c. 86.

<sup>2</sup> What follows is mostly extracted from Introduction to *Probation Officers Directory* (H.M. Stationery Office), 1932, pp. 4-7.

probation order is made the Court is required to furnish to the offender a notice in writing, stating in simple terms the conditions he is required to observe.

When a Court of Summary Jurisdiction deals with an offender under the Act, it is not usually registered as a conviction.

Courts of Assize and Quarter Session may also bind over or discharge the offender with a probation order. In this case a conviction is recorded and the recognizance requires the offender to appear for judgment if called upon.

The *Criminal Justice Administration Act*, 1914, further provided that

a recognizance under this Act may contain such additional conditions with respect to residence, abstention from intoxicating liquor and any other matters as the Court may . . . consider necessary.

When under these Acts the Court "dismisses" a charge or "binds the offender over", such a course is not probation, though it is frequently so described in the Press and elsewhere. The term probation is properly associated only with *the release of an offender under supervision*.<sup>1</sup>

The Criminal Justice Act, 1925, requires the appointment in every probation area of one or more probation officers whose duty it is to undertake the supervision of all persons in respect of whom supervision is required by a probation order, whether made by the Court of Summary Jurisdiction or by a

<sup>1</sup> See Report, Young Offenders Committee, 1927, p. 52.



Court of Assize or Quarter Session. Prior to that Act, though many Courts had probation officers, their appointment was not obligatory.

In large towns or populous areas there is now one or more probation officers for each petty sessional division. In country districts the probation area may be a "combined" area formed by order of the Secretary of State of a number of petty sessional divisions. Most of these areas have been formed by combining the petty sessional divisions in a County, excluding such large towns as are in a position to appoint full-time officers of their own.

Excluding the Metropolitan Police area there are<sup>1</sup> 1,026 petty sessional divisions in England and Wales, of which 433 are single probation areas, and 593 have been formed into forty-seven combined probation areas.

Every probation area, whether single or combined, has a Probation Committee of justices, whose duty it is to appoint probation officers where that duty has been delegated to them by the justices, to receive the reports of probation officers, and to afford them help, advice, and supervision.

There are two classes of probation officers, those who devote the whole of their time to probation and kindred work, and part-time officers. There are<sup>1</sup> 193 men and 81 women who are full-time probation officers in England and Wales, and 295 men and 237 women who are part-time officers.

Before the passing of the Probation of Offenders Act, work akin to probation work was carried

<sup>1</sup> 1932.

out by a number of voluntary societies, notably the Police Court Mission of the Church of England. These missionaries are still active, and 253 of the present probation officers (part-time and full time) belong to the Missions. The cost of salaries, expenses, and superannuation is borne by local funds subject to a Government grant amounting to one-half of the total expenditure. When a full-time officer is the agent of a voluntary society one-third of his remuneration is borne as a payment "in relief" by the Society, though the local authority remains technically his employer.

#### *The Extent to which Probation is Used*

The extent to which probation is used to-day in comparison with other methods of dealing with delinquency may be seen from the following figures :—

Of the 8,384 persons sent for trial during 1930, to Quarter Sessions or Assizes, 781 were released with a probation order, as compared with 4,447 persons sentenced to penal servitude or imprisonment, and 1,038 other persons who were "bound over" without a probation order. Of the 55,662 persons charged with indictable offences who were dealt with summarily before the Justices, 14,338 were put on probation, 9,847 were sent to prison, 7,396 were "bound over" without a probation order, 11,370 others were fined, while in 4,945 cases the charge was dismissed though proved. Thus of the total persons charged with indictable

offences during 1930 in all Courts, 15,119 were placed on probation as compared with 14,294 sent to prison, 8,434 "bound over", and 4,945 dismissed. The fact that for indictable offences, prison was used 500 per cent more than probation in the higher courts and probation 50 per cent more than prison in cases dealt with summarily, was no doubt principally due to the fact that offences dealt with in the higher courts are relatively much more serious.

Of the 609,670 persons charged with non-indictable offences before the Justices, 2,820 were placed on probation as compared with 11,530 sent to prison. In 56,839 other cases the charge was proved but dismissed, 9,962 persons were bound over without a probation order, and 484,769 persons were fined. The relative infrequency with which probation was used in the case of these offences was no doubt due in part to the minor character of many of them, and also to the fact that a very large proportion—such as traffic offences, which alone accounted for 278,229 or nearly half the whole—were more appropriately dealt with by fines. The fact remains, however, that for these minor offences prison was used four times as frequently as probation, in many cases for the non-payment of fines.

Mr. Kenneth Ruck, in a recent article, has well summarized the changed attitude of the Courts to persons charged with indictable offences :—

"In 1900 out of every 1,000 persons dealt with in the criminal Courts, 212 were fined, 528 were sentenced to some form of imprisonment, and 185 were granted

conditional release. . . . In 1929, 205 were fined, 289 were imprisoned, and 493 were granted conditional release, 256 of these being put on probation. The general effect of the change is that a quarter of the total of convicted offenders are placed on probation to-day who 30 years ago would have been imprisoned." <sup>1</sup>

It remains to be seen what degree of success has attended this revolution in the treatment of so large a percentage of offenders.

### *Is Probation Justified by Results ?*

"Success" and "failure" are vague words, depending largely on the mental attitude of the person who uses them. It is difficult to fix an objective standard of success.

It may be thought that a probationer is to be judged a success if he does not appear before the Court again, but it must be remembered that one of the means whereby a probation officer can exercise control over his charge is by bringing him before the Court for warning and admonition. A painstaking officer may bring an offender before the Court on comparatively slight grounds which might be passed over by a less careful or an over-worked officer, and a probationer summoned on several occasions for breaking the conditions of his probation may in reality have been a greater "success" than another offender who is never brought before the Court again.

The improvement and development of character

<sup>1</sup> *Political Quarterly*, April, 1932.

which should be the result of successful probation is not necessarily revealed immediately after the order is made. It may be of slow growth. Many experienced probation officers say that some of the probationers who give most trouble at first are the very ones who later on settle down and do well. It is also obvious that the success of probation depends very largely upon a number of factors such as the personality of the individual probation officer, the material with which he has to deal, and the conditions with which his probationers have to contend. If the Courts use probation for totally unsuitable cases they invite failure.

When an offence is largely due to some mental, physical, or environmental condition it is useless to try probation unless the order is combined with some constructive effort to remedy the condition which caused the offence. A young offender coming from a bad home may need removal to a hostel<sup>1</sup>; an offender whose offence has resulted from some psychological condition may need a probation order with a condition as to treatment. These things show how vital is expert examination and guidance before sentence, in order that the Court may know what is likely to be the most effective method of dealing with each offender.

So, too, much depends on the quality of the probation officer's work.

<sup>1</sup> But it must also be remembered that there are other cases where the visits of the probation officer to the home have led to the reform of the home and the better upbringing of the whole family. Many magistrates consider that the influence of the Probation Officer in the home is just as important as his work with the individual offenders placed in his charge.

“The whole probation system depends for its glorious success or pitiable failure upon the character and quality of its personnel. . . . In practice there is every sort and kind, every degree and grade of probation work, from the best to the worst, from the positive and inspiring to the negative and colourless, from the most efficient to the least competent. Sometimes the less satisfactory work is due to the wrong type of individual having been chosen for the post, but very often it is because an unreasonable number of cases has been allocated to him and it is impossible to give that individual attention to each which is the essence of a fruitful probation.”<sup>1</sup>

Everything considered, it is not surprising that when we turn to the various attempts which have been made to estimate the success of probation, we are at once confronted with a conflict of testimony. Extravagant claims are made from time to time by magistrates and probation officers that over 90 per cent of those placed on probation succeed. But what is success and what is failure? If by success is meant that the probationer becomes a reformed character, then those acquainted with similar assertions made on behalf of other penal methods must regard such a figure with caution. Inquiry usually shows that what is meant is that 90 per cent of those placed on probation do not again appear before the Courts *during their period of probation*.

This is probably a correct figure, and one which may even be exceeded in some areas where the work is exceptionally well done. The Criminal

<sup>1</sup> Mrs. le Mesurier, *Boys in Trouble*, pp. 185-6.

Statistics record that whereas in the three years ending 1930, 16,602, 18,839, and 17,989 persons respectively were released under probation orders, there were in these years 1,670, 1,882, and 2,211 persons under probation orders who were brought before the Courts again. The probationers thus brought before the Courts were not necessarily those placed on probation during the same year, because an order is, of course, often operative for more than one year. Assuming, as seems reasonable, that the average probation term is over a year, then the percentage of probationers not brought before the Courts again during the period of probation is about 90 per cent.

But such a test is inadequate, and it is a little misleading to group children and adult offenders together. A much more exacting test would be to ascertain the percentage of offenders placed on probation who are not brought before the Courts again for a number of years *after the expiration of the probationary period*. Unfortunately this information on any national scale does not exist, though the City of Cardiff has compiled some interesting figures on the subject. The Cardiff Court has collected information as to the percentage of probationers not reconvicted for five years after the probation order was made. These show that of the 767 persons placed on probation in Cardiff during the nine years 1919-27, 55.1 per cent had not been reconvicted five years after their probation orders were made. 509 of these cases were Juvenile offenders of whom 51.5 per cent had not been

reconvicted, and 258 were adults of whom 62·4 per cent had not been reconvicted during the period.

These figures being confined to one area necessarily depend a good deal upon local conditions such as the personality of the probation officers and the social and economic condition of the neighbourhood, and it is to be regretted that similar figures are not available for other areas. The fact that Cardiff is in one of the most seriously depressed areas in the country makes it a centre where successful probation work is relatively difficult, and comparable figures from other areas would probably show, were they available, better results.

But supposing the Cardiff figures accurately reflect the true position throughout the country, it is suggested that such a degree of success abundantly justifies the system. It must be remembered that some Courts put offenders on probation without guidance as to suitability in a haphazard way, that much of the probationary supervision is inadequate, and that many probationers live in an environment conducive to crime. We know of probationers not seen by the probation officer for six months, of mental defectives, and offenders whose anti-social behaviour is due to *encephalitis lethargica* or other forms of mental disease placed on probation as if normal, of probation officers overburdened with cases they cannot possibly supervise properly, of probationers returned to the very homes and companions which led them into their original crime. If in spite of all these faults and imperfections over half the



offenders placed on probation keep out of the Courts for five long years, it is fair to assume that many more would do well were our probation system what it should be. A system which with all its limitations satisfactorily disposes of half of those with whom it deals has justified itself by results. Though records are not available it is virtually certain that our old prison system did not show such good results. What is needed is not less probation, but more and better probation, in order that the substantial progress which has been made may be turned into even greater success. As one well-known Magistrate has put it :—

“There should in the first instance be a bias in the mind of the magistrate in favour of probation. As compared with a fine it is more constructive, it also saves the offender from the record of a conviction. As compared with any kind of detention it costs less, and you do not subject the offender to the concentrated companionship of others who have also erred in some way. Probation is reform in the open.”<sup>1</sup>

There are many offenders now fined, bound over, or sent to prison who should be placed on probation.

“Many magistrates still refer to the Probation Act as ‘the First Offenders’ Act’. It is as absurd to assume that every first offender is always entitled (like a dog) to ‘one bite’ as to think that because an offender has a list of convictions against him therefore he is necessarily unsuitable for probation. . . . A list of sentences of the same kind, perhaps one sentence of imprisonment after

<sup>1</sup> Mrs. C. D. Rackham, J.P., *The Magistrate*, April, 1932, pp. 577-8.

another, should be an indication to the Magistrate that it was time to change the medicine instead of continuing it. The criterion simply is how the person concerned would have the best chance to make good, and not a question of first or last or of young or old, or the importance of the offence."<sup>1</sup>

It is sometimes argued that probation is abused by offenders who trade on their chance of evading imprisonment. Mr. Brodrick, a London Police Court Magistrate, has said :—

“ On the first appearance of the culprit in a Police Court it is so invariably the rule to make a probation order, and to let the culprit go, that culprits are trading upon it. . . . I go further and say that members of the criminal classes are trading on the use that we make of the Probation of Offenders Act. . . . Expert criminals get hold of young fellows and say : ‘ Look here, there is a job to be done at this house . . . we will be waiting in the road to take the stuff from you. It does not matter if you are caught, you will only be bound over.’ Believe me, we have run the Probation of Offenders Act to death, and we shall have to pull up and go on a different tack.”<sup>2</sup>

There are two flaws in this argument. The majority of offenders who engage in anti-social conduct do so from improper motives, and the only difference between the offender whom Mr. Brodrick describes and other offenders is that while the majority trade on their chances of escaping

<sup>1</sup> *Ibid.*

<sup>2</sup> At the Annual Meeting of the Royal Society for the Assistance of Discharged Prisoners, 16th March, 1932.

detection this one has traded on his chance of escaping punishment. In neither case is it in the true interests of Society to choose any other penalty than the one most likely to reform the offender. Long experience has shown that imprisonment often only breeds crime, whereas probation offers a more hopeful alternative. But Mr. Brodrick does not distinguish between a probation order and "binding over", thus revealing a confusion of thought which invalidates his argument. If such an offender as is referred to is merely bound over, it is a bad mistake which justifies a criticism not of probation but of the magistrate who fails to use the Probation Act properly. Here was clearly a suitable case not for binding over but for a strict probation order. And if he had been released under a properly enforced probation order the offender, whatever views he might have entertained before arrest, would soon have learnt that the Court had not "let him off" but had given him another chance, and that if he associated at any time during the next two or three years with professional criminals he would be violating one of the conditions of his recognizance and would be liable to further penalties. Moreover, under a probation order an offender can be required to make restitution and also to pay costs. Which course offers the best hope of reform to such an offender, to send him to prison to associate with other criminals or to place him under friendly supervision upon conditions which preclude him from mixing with them?

The critic may argue that probation as at present practised is not able to provide such careful supervision. That may be true, but the remedy is not, like Mr. Brodrick, to denounce the Probation of Offenders Act, but rather the magistrates who do not use the Act properly and the false economy which hampers the probation system.

Probation, says the *Law Times*,

“ must be severed from false sentimentality and not tied down by false economy. Neither in numbers nor in standard of training are Probation Officers what they should be ”.<sup>1</sup>

It costs £44 net to keep an offender a year in a local prison, £66 in a Convict prison, and £58 in Borstal. An habitual criminal sentenced to preventive detention may cost the State £1,000 in institutional charges alone, to say nothing of the loss to the community which crime occasions in other ways. “ The annual cost of treatment of an offender under supervision of a probation officer is approximately £8.”<sup>2</sup> There is every argument in favour of trying the more effective and less expensive method of treatment whenever the occasion warrants it, and it is a false economy to under-staff and overwork the probation service at the risk of incurring the heavy liabilities which may result from probation work inefficiently done.

<sup>1</sup> 15th April, 1932.

<sup>2</sup> Lord Feversham, *Darlington Times*, 23rd January, 1932. In some counties the cost is said to be lower than this (see *Probation*, July, 1932, p. 182), but it must be remembered that the factors which reduce the cost may be the very factors responsible for ineffective probation work.

Let us now discuss what changes are necessary to improve the quality and extend the use of probation.

### *Necessary Reforms*

The success of probation will largely depend at the outset upon whether the Court knows its powers and uses them rightly. Many Courts never order restitution,<sup>1</sup> because they know nothing of their powers in regard to it. Many Courts almost invariably give a first offender the benefit of probation, forgetful of the fact that in certain cases something more drastic may be necessary. For instance, a gang of juvenile offenders may have evaded previous capture, but have many offences to its credit, and it may be necessary to remove the leader from the neighbourhood. Many Courts are far too ready to "bind over" offenders and let them go without inquiry, when investigation would often show that a probation order would have been much more suitable.

Good probation work must be based upon a thorough investigation of the individual case. No offender should be placed upon probation without previous inquiries as to his suitability for this form of treatment. In most cases there should be a remand to provide the necessary time for ascertaining something of the character, disposition, health, and mental condition of the offender. Often the probation officer should be given time to make

<sup>1</sup> See below, p. 184.

inquiries as to home conditions and other factors in the case. Such a remand presents difficulties. Bail is not always possible or desirable, and under present conditions a remand without bail usually means a remand to prison, which in most cases is open to the gravest objections. These difficulties must be overcome. When there are valid objections to bail, observation centres should be available where the offender could be sent for expert examination.

Where necessary probation orders should contain a condition as to treatment. In London and in some provincial centres there are already voluntary clinics staffed by highly skilled medical psychologists, who are willing to co-operate with the authorities in giving treatment in suitable cases. Hundreds of offenders suffering from mental abnormality are still sent each year to prison, where they become worse, when they could be more constructively dealt with by the use of a probation order with a condition as to treatment.

Probation officers should be adequate in numbers and training. Competent authorities say that sixty is the maximum number of probationers which a full-time probation officer can effectively supervise in a town, whereas in hilly country districts it is obvious that he could not deal with half that number properly. Many of our probation officers are also the Police Court Missionaries of the Church of England Temperance Society, and in addition to their missionary work have over a hundred probationers to supervise. Is it to be wondered at that many probationers get into further trouble for

lack of adequate oversight? Moreover, probation officers need not only time but training, including a knowledge of the elements of psychology and sociology.

“A mere elementary school education, even when followed by a short period at a training college, does not provide sufficient equipment for dealing with the very complicated problems of delinquency. Probation work has been subject to much and too often well deserved criticism and has met with many failures, but I think that in nearly every case such failures have been due to the employment of the wrong type of probation officer.”<sup>1</sup>

The present-day needs of the probation system also demand that the probation service should be a national service, paid for out of public funds and requiring a high standard of training from every member of it. The present practice whereby a large percentage of the probation officers are officers of the Church of England Police Court Missions and of other voluntary Societies, is open to such grave objections on many grounds that no recognition of the valuable pioneer work which these Societies have done in the past should be allowed to obscure them. The work of a probation officer calls for exceptional qualities of mind and heart which not all possess. A system which imposes religious tests and in practice excludes many suitable candidates for sectarian reasons must give way to a national service open to all candidates on a uniform basis of merit. There is no reason to

<sup>1</sup> The late Sir William Clarke Hall, *Children's Courts*, p. 145.

believe that such a system would be less likely to attract persons with a deep sense of vocation for the work, but on the other hand it would give the authorities a wider field of selection. Voluntary effort and assistance would still be necessary, but it would be auxiliary to, and not in substitution for, a national probation service.

Probation also provides an excellent means whereby the valuable practice of ordering restitution may be developed, a subject which must now claim our attention.

### *Restitution*

It is an extraordinary feature of our penal system that although 95 per cent of all indictable crime is against property, the question of restitution, which one might expect to be a first consideration in our administration of justice, is barely thought of at all. This fact no doubt is partly due to the influence of the retributory theory of punishment which was concerned with making the offender suffer and not with righting the wrong. So to-day when an offender steals or defrauds, the machinery of the law is directed, not primarily to restoring the stolen property or money in whole or in part to the person wronged, but to the punishment of the offender. The person wronged is usually left to take what civil action he wishes, at his own expense, to make good his loss. Yet surely an elementary sense of right demands that where possible the wronged person should be helped to



recover the goods or money he has lost, especially as one of the most effective means of bringing home to the offender the wrong he has done is to order him where possible to make restitution. When a wrong has been committed the first step towards restoring the balance is to right the wrong, and in this restitution may play an important part.

The principle of restitution cannot, of course, be applied in every case. The dead cannot be restored to life ; large sums of money squandered by a thief may be beyond his capacity to repay, and many offenders are without means and are genuinely unable to make restitution. In many cases where restitution would be possible there would be difficulties to overcome and adjustments to be made. But the principle should be an integral part of our system of justice, both in the interests of the persons wronged and of the offenders.

Though seldom used, statutory powers to order restitution do exist under the Forfeiture Act, 1870,<sup>1</sup> and the Larceny Act, 1916,<sup>2</sup> and such powers are greatly extended when used under a probation order.<sup>3</sup> There is an elasticity about the conditions which the Court may lay down under a probation order which permits of really constructive work. Probation, properly used, enables the Courts to escape from the dangers of false sentiment. Many first offenders who are ruined by being sent to prison or who are bound over or "get off" with a fine, would be far more successfully dealt with if

<sup>1</sup> 33 and 34 Vic., c. 23.

<sup>2</sup> 6 and 7 Geo. V, c. 50.

<sup>3</sup> 7 Edw. VII, c 17, and 4 and 5 Geo. V, c. 58.

placed on probation with a condition as to restitution. The following cases, all personally known to the authors, illustrate the scope for such a reform.

A bank clerk, single, aged 25, in 1929 embezzled £50 from his bank and bought a motor bicycle. He was prosecuted and "bound over" without a probation order, riding away from the court on the bicycle so dishonestly acquired. He should have been placed on probation with the condition that he sold the motor bicycle and gave the bank the proceeds.

A milkman, aged 24, embezzled £14 in 1932 from customers on his round and bought furniture with it. He was prosecuted and fined £2. His net gain therefore was £12, though he lost his employment. No inquiries were made as to whether he had any resources from which he could make part restitution, and he went round boasting that he "had got away with it". Here again a probation order with conditions as to restitution would have been the right treatment.

A young man in employment, single, aged 21, in 1927 acquired four musical instruments "on approval" from persons advertising them for sale, and dishonestly sold them for £40, which he put in the bank. He was prosecuted and sentenced to three months' imprisonment. Asked by a social worker subsequently whether he proposed to restore the money he said, "Oh no, the imprisonment wipes that out."

A young clerk, single, aged 23, and with a good record, got into debt in 1928 through betting and

stole £5 from his employer's till. He was prosecuted and sentenced to six months' hard labour, though it was a first offence. As a result, he lost his employment and reputation and was practically ruined. It would have been better both for Society and for the offender if the Court had made inquiries as to whether the employer, who was not unsympathetic, would reinstate his clerk, and if so, had placed him on probation with a condition that he should repay ten shillings a week from his wages by way of restitution until the stolen money had been replaced.

A Magistrate who believes in restitution has expressed the following views :—

“Restitution is not made anything like enough of in any part of our penal system. There is plenty of barren, vindictive punishment which does nobody any good, but any right-minded person when an offence has been brought home to him, would at once wish if he could to make restitution for the wrong which he had done ; and he should be assisted and encouraged to do that by those who are dealing with him.

“I have known cases which, even a few years ago, would have been dealt with as a matter of course by a sentence of imprisonment, a case of embezzlement for example, but the offender has been placed on probation with a condition of restitution, and then at the end of not weeks but months every penny of the money has been paid back with satisfaction and credit to all concerned. That can be done, under the safeguard of a Probation Order, when perhaps it might not be very much use to order it to be done if there were not a probation officer to supervise.”<sup>1</sup>

<sup>1</sup> Mrs. C. D. Rackham, *The Magistrate*, April, 1932, p. 579.

Most of the adverse criticism of probation comes from those who know least about it or who have observed it under unsatisfactory conditions. If those critics were to direct their attention to the way in which many Courts miss the excellent opportunities which probation offers of giving constructive treatment, their criticism would be better directed.

### *Fines*

Before closing this chapter, it is necessary to refer to one other kind of non-institutional treatment, widely used by the Courts, which is in urgent need of reform.

During the year 1930, 484,769 persons were fined for non-indictable offences (including traffic offences) by Courts of Summary Jurisdiction, and 11,370 were fined for indictable offences. 108 persons were fined at Assizes or Quarter Sessions. Of this total, 12,497 persons ultimately reached prison for the non-payment of the fines imposed. These figures compare very favourably with those for 1913, when no less than 75,152 persons were sent to prison for the non-payment of fines, the striking reduction in recent years being primarily due to the provision in the *Criminal Justice Administration Act, 1914*, that time should be given for the payment of fines. But of the 12,497 persons sent to prison in 1930, for the non-payment of fines, 8,063 were given no time to pay. Some of these cases were prosecutions under the Vagrancy

Act<sup>1</sup> for soliciting, where granting of time to pay might only provoke a repetition of the offence. There were no doubt other special instances where the action of the Court was justified. But in many cases, time should have been allowed.

A fine has proved itself an effective way of registering social disapproval, and will probably continue for a long time to play a useful part in our penal system. But a system of fines needs to have a much closer relation to the capacity of the individual to pay than is frequently the case at the present time. When the Court inflicts a fine it does so because the offence is not considered serious enough to justify imprisonment. So when a person goes to prison for inability to pay a fine, he suffers imprisonment not because of his offence, but because of his poverty. Who can defend a practice which for the same offence, deprives a rich man of money and a poor man of liberty? A fine fixed beyond a man's capacity to pay is a cruel abuse of the Court's power. An offender should only be fined if he can pay a fine. If he cannot pay he should be dealt with in some other way. Prison is not the only or most obvious alternative. Much more careful and individual inquiry as to a man's capacity to pay would probably result in a considerable reduction in the number of committals to prison for non-payment.

More care should also be taken by the Court to review the case before the committal order is acted upon. Just as under the Criminal Justice

<sup>1</sup> 5 Geo. IV, c. 83.

Administration Act, 1914, the Court has an obligation in most cases to allow time for the payment of fines, so it should be necessary for the defaulter to be brought before the Court and given the opportunity of explaining his failure to pay before being sent to prison. At present offenders are sometimes fined in their absence and go to prison for non-payment without the magistrate ever setting eyes on them at all.

Although it is no doubt true that—to quote a Home Office Report—“the whole system of enforcing certain necessary laws and regulations by imposing fines, under which nearly half a million defendants are dealt with every year, rests in the last resort on the power to enforce payment by committal to prison,”<sup>1</sup> persons should not be sent to prison for fines fixed so high that they are beyond their capacity to pay, nor should a committal order be issued before every effort has been made to secure payment. It is in the interests neither of Society nor of the offender to commit persons to prison unnecessarily.

<sup>1</sup> Introduction, *Criminal Statistics*, 1930, p. 18.

## CHAPTER 7

### YOUNG OFFENDERS

It is an accepted principle in every civilized country that young offenders against the law should be treated with special consideration and with the predominant aim of reformation. Even as far back as the tenth century, Athelstan enacted that "men should slay none younger than a fifteen winters' man",<sup>1</sup> and in the Year Books of Edward I it is recorded that judgment for burglary was spared to a boy of twelve years. Nevertheless, history abounds in stories of terrible severity visited upon young offenders. In 1629 a boy of 8 is reported to have been hanged for burning two barns, "it appearing," said the Judge, "that he had malice, revenge, craft, and cunning," and in 1708 Michael Hammond and his sister, aged 7 and 11, are said to have been hanged at Lynn for felony.<sup>2</sup> In one case a child of 7 was transported for life, and in 1829 a child of 10 arrived in Van Diemen's Land after three years' imprisonment.<sup>3</sup> As late as 1833 Nicholas White, a boy of 9, was sentenced

<sup>1</sup> Quoted Departmental Committee on the Treatment of Young Offenders, Report, p. 7.

<sup>2</sup> There are frequent reports of such cases, but we are disposed to doubt whether the sentences were often actually carried out. They may have been only pronounced.

<sup>3</sup> West, *History of Tasmania*, vol. 2, pp. 246-7.

to death at the Old Bailey for stealing two penny-worth of paint from the broken window of a toy shop, but was reprieved.

During the sixteenth, seventeenth, and eighteenth centuries legislation concerning the criminal law was dominated by such a panic belief in the deterrent effect of severity that all principles of reason and humanity and all sense of proportion were sacrificed to it. It was not until an improvement in the social life of the people and the development of a proper police system resulted in a reduction of crime, that fear gave place to reason and those more humane principles which were not altogether absent in earlier centuries began to be applied.

### *The Development of Special Treatment*

The first constructive experiments in the treatment of young offenders—as distinguished from mere leniency shown by the infliction of lighter sentences—were made by enthusiastic pioneers who established institutions to which young offenders might be sent as an alternative to prison. Thus the Philanthropic Society, which was formed in 1788, began to receive young offenders into an institution, and another “reformatory” was established in Warwickshire in 1818.

“These institutions and many others which grew up later on their model were based upon the idea of reformation rather than punishment. They relied entirely on voluntary funds and had no powers of compulsion over



the children whom they received. They were first brought into contact with the State by an administrative practice whereby a pardon was granted to a youthful offender under sentence of transportation or imprisonment on condition that he placed himself under the care of some charitable institution for the reception and reformation of young offenders."<sup>1</sup>

In 1838 there was a further development in the establishment at Parkhurst in the Isle of Wight of a special prison for offenders under 18, where the treatment should be such as was "most conducive to their reformation and to the repression of crime". Nevertheless, while at work, the boys were kept in chains and guarded by armed warders.<sup>2</sup> It became the practice to send these offenders to the Colonies after a period of detention.

From 1840 onwards various abortive efforts were made in Parliament to establish State reformatories for young offenders in which reformation and industrial training should be the predominant aim. In 1854 a *Reformatory Schools Act*<sup>3</sup> was passed, empowering the courts to send young offenders compulsorily to existing institutions, but these were to remain under private control, the State safeguarding its interests by a system of certification and inspection. This Act, though amended by subsequent legislation, remains in principle unchanged to this day. "Nothing," wrote Sydney Turner, who had much to do with this legislation,

<sup>1</sup> Report, Young Offenders Committee, p. 8.

<sup>2</sup> *Young Delinquents*, by Mary G. Barnett, 1913, p. 18.

<sup>3</sup> 17 and 18 Vic., c. 86.

and was subsequently made Inspector of reformatories and prisons, "has been more certainly demonstrated in the practical development of the reformatory system than that juvenile crime has comparatively little to do with any special depravity of the offender and very much to do with parental neglect and bad example."<sup>1</sup>

Another form of institutional treatment for young offenders, the *Industrial Schools*, had their origin in the Ragged School movement started in Portsmouth by John POUND in 1818 and the pioneer work of Mary Carpenter. The aim of these schools was to provide education and industrial training for the class of children from whom delinquents are mainly drawn. Under the *Industrial Schools Act* of 1857,<sup>2</sup> the Courts were empowered to send offenders to these schools, which were to be under similar conditions of management and control to those laid down for Reformatory Schools. In 1876 the various School Boards were given power to establish day Industrial Schools.

Until recently Industrial Schools were used for delinquent children under 12 or under 14 who had not been previously convicted and were otherwise suitable. A child could not be kept in an Industrial School beyond the age of 16. Reformatory Schools received convicted children over 12 and under 16, the period of committal being for not less than three or more than five years, nor to continue beyond the age of 19. In recent years legislation has tended

<sup>1</sup> Quoted Clarke Hall, *op. cit.*, p. 150.

<sup>2</sup> 20 and 21 Vic., c. 48.

to remove the original distinctions between Industrial and Reformatory Schools, though naturally some continued to be used for older and some for younger children. In 1932 *The Children and Young Persons Act*<sup>1</sup> rechristened them all under the general title of "Approved" or Home Office Schools.

At the time of this Act there were twenty-six Reformatory Schools in England and Wales, maintaining 2,049 boys and 176 girls, and forty-four Industrial Schools, maintaining 3,094 boys and 723 girls. There are also fourteen other schools used by the authorities for physically or mentally defective children, and a day Industrial School at Liverpool. Most of the schools are under voluntary management, and the cost of maintaining the children is borne equally by the Exchequer and by the local authorities.

Though Reformatory and Industrial Schools were given statutory recognition as alternatives to prison in the middle of last century, it was not until the *Children Act*,<sup>2</sup> 1908, that the power to send children to prison was restricted. This Act abolished imprisonment for persons under 14 altogether, and provided that a person over 14 but under 16 could be sent to prison, either on remand or on conviction, only with a special certificate from the Court stating that the young person "is of so unruly a character that he cannot be safely sent to a place of detention or that he is so depraved that

<sup>1</sup> 22 and 23 Geo. V, c. 46.

<sup>2</sup> 8 Edw. VII, c. 67.

he is unfit to be so detained".<sup>1</sup> The same Act provided for places of detention or remand homes to which offenders under 16 could be sent on remand or for detention up to one month after conviction. These provisions resulted in a reduction in the number of persons under 16 received into prison from 1,115 in 1906 and 572 in 1907, to 227 in 1909 and 51 in 1910. By 1925 the number had fallen to 8, though for some reason which it is difficult to explain, the number has increased again, and during the three years 1928-30 was 23, 26, and 38 respectively.

Meanwhile, as long ago as 1847 a Parliamentary Committee gave consideration to the question of reformatory treatment for young offenders over 16. This Committee formally consulted the High Court Judges about the possibility of introducing a reformatory element into prison discipline, but the time was evidently not ripe for such a change, for the High Court,

"speaking in the name of its most distinguished members, Lord Denman, Lord Cockburn, and Lord Blackburn, declared reform and imprisonment to be a contradiction in terms and utterly irreconcilable. They expressed a doubt as to the possibility of such a system of imprisonment as would reform the offender and yet leave the dread of imprisonment unimpaired."<sup>2</sup>

Half a century later the Prison Committee of 1895 returned to the charge and urged that 19-21

<sup>1</sup> Under the *Children Act*, 1932, no young person under the age of 17 may now be sent to prison without such a certificate.

<sup>2</sup> Ruggles Brise, *op. cit.*, p. 89.

was the dangerous age, and that special efforts should be made to introduce reformatory measures for this age-group of prisoners. In 1902, largely owing to the encouragement of Sir Evelyn Ruggles Brise, then Chairman of the Prison Commission, experiments were made, in the premises of the old Borstal Prison near Rochester, in the complete separation of young prisoners from adults, and in specialized treatment and training. This was followed by the *Prevention of Crime Act, 1908*,<sup>1</sup> which authorized the establishment of special institutions, called Borstal institutions after the location of the 1902 experiment, for the training of offenders between 16 and 21 who, "by reason of criminal habits or tendencies or association with persons of bad character, appear to be in need of such discipline."

There are now six such institutions for lads, the original one at Borstal near Rochester and five others at Feltham, Nottingham, Portland, Lowdham near Nottingham, and Camp Hill in the Isle of Wight. There is one girls' Borstal, at Aylesbury. A part of Wandsworth Prison is set apart for Borstal boys who have been recalled for breach of licence. Borstal boys, on sentence, are sent to a section of Wormwood Scrubs Prison, which serves as a sorting station, for examination as to their mental and physical condition, and to enable information to be collected as to their past history and environment. This information is then used for classification purposes, boys being sent to the various

<sup>1</sup> 8 Edw. VII, c. 59.

institutions, which differ slightly to meet the needs of different types of offenders.

Nearly all the boys sent to Borstal have been guilty of previous offences and over half have been previously convicted more than once. They have nearly all been placed on probation, or fined or imprisoned or sent to reformatory schools. Of the 609 boys discharged from Borstal in 1928, only 31 per cent "came from apparently decent homes with a normal complement of parents", while 27 per cent were either orphans or illegitimate, or had parents who were separated or had no home at all. "Twenty-four of the boys had serious physical defects, 107 serious mental defects, 5 had both, and in 53 cases there was a family history of insanity or mental defect. . . . Their crimes were almost wholly crimes of dishonesty."<sup>1</sup>

The Borstal system as it exists to-day more resembles a school than a penal institution. There is a strenuous working day devoted to industrial training and the evenings are given up to educational and hobby classes. Each institution is divided into Houses between which there is friendly rivalry. The *Borstal Association*, a voluntary society supported mainly by private subscriptions, seeks to provide work and give other help to Borstal boys on discharge.

Records show that 71 per cent of those lads whose time at Borstal was their first institutional experience afterwards do well, whereas only 55 per cent of those who have previously been in prison and

<sup>1</sup> *Borstal in 1930* (Borstal Association), p. 3.

49 per cent of those who have previously been in both a reformatory and a prison subsequently prove satisfactory.<sup>1</sup>

During the nineteenth century, wide powers were given to Magistrates to order corporal punishment for young offenders. The present position in regard to this penalty will be referred to later.

Just as the Industrial Schools and Reformatories had their origin largely in the desire to keep young offenders out of prison, so the probation system has made a special appeal to the Courts as a non-institutional method of dealing with young offenders. In London, for some years past, specially qualified women have been appointed by the Home Secretary as probation officers to the Juvenile Courts. In certain cases it is the practice for the Courts to make a probation order with a condition as to residence in an approved hostel, a Government grant being made towards the cost of maintenance in such cases. This treatment is useful where home conditions are unsuitable.

A century ago, the full machinery of trial by jury was brought to bear upon every child who committed an indictable offence, a procedure often necessitating detention in the ordinary prison while awaiting trial. In 1847<sup>2</sup> the Courts of Summary Jurisdiction were given power to try children under 14 for simple larceny and this jurisdiction was greatly extended by the Act of 1879.<sup>3</sup> The *Children Act* of 1908 established the *Juvenile Court* to sit at a different time from the sittings of the ordinary

<sup>1</sup> *Ibid.*, p. 4.

<sup>2</sup> 10 and 11 Vic., c. 82.

<sup>3</sup> 42 and 43 Vic., c. 49.

Court to deal with persons under 16, and, subject to the consent of the accused, with power to hear all charges other than homicide, except where the young person is charged jointly with an older person. The *Juvenile Courts (Metropolis) Act, 1920*,<sup>1</sup> provided that Magistrates for the Juvenile Court in London should be specially selected.

The *Children Act* of 1932 has now raised the age for the Juvenile Court from 16 to 17, simplified its procedure, and except for homicide abolished the right of trial by jury. In future the justices officiating in all Juvenile Courts are to be selected from a special rota of justices, and salutary rules have been made against the publication in the Press of the names and addresses of the children charged. The whole aim of recent legislation and administrative action in regard to the Juvenile Court has been to transform it from a place of terror where a child is brought for punishment into a place where he is brought for that wise constructive handling, which is most likely to promote his reformation.

### *Offenders and Treatment*

(a) *Juvenile Courts*.—In 1930, 11,628 boys and 522 girls under 14 years of age, and 11,920 boys and 592 girls aged 14 and under 16, came before the Juvenile Courts. Of this total of 24,662 young offenders, 12,198 were charged with indictable

<sup>1</sup> 10 and 11 Geo. V, c. 68.



## YOUNG OFFENDERS

201

offences, and 12,464 were charged with non-indictable offences. Ninety-one per cent of all the proceedings were in connection with the following charges :—

Simple larceny and minor larcenies . . . . .	9,529
Malicious damage . . . . .	3,707
Offences against the Highway Acts . . . . .	3,606
Offences against Police Regulations . . . . .	1,838
Housebreaking and shopbreaking . . . . .	1,622
Offences in relation to railways . . . . .	975
Stealing fruit, plants, etc. . . . .	611
Gaming . . . . .	533
	22,421

As we should expect, the form of treatment most frequently used is probation, so that of the 24,662 young offenders proceeded against, 7,042 were placed on probation. 5,177 others were fined, 1,734 released under recognizances, and 6,666 cases were dismissed though the charge was proved. 618 offenders were sent to reformatory schools, 586 to industrial schools, and 39 to institutions for defectives, etc., and 130 were ordered to be whipped. In 2,593 cases the charge was withdrawn or dismissed without trial, and the remaining 77 cases were dealt with in other ways.

(*l*) *In the Adult Courts.*—The returns made to the Home Office as to the persons brought before the adult Courts are not classified according to the age of the offender and complete information is not therefore available as to the extent and treatment of crime among young offenders of the

16-21 age group.<sup>1</sup> The *Young Offenders' Committee*, from detailed information specially collected over a three-months' period in 1925, estimated that the annual number of persons between the ages of 16 and 21 dealt with by the Courts of Summary Jurisdiction was about 91,000, of whom about 19,000 were proceeded against after apprehension, and 72,000 on summons.<sup>2</sup> Of the treatment accorded to those proceeded against on summons we have no information, though a large proportion were probably fined.

Similarly only incomplete information is available in regard to those charged with more serious offences, most of whom were proceeded against after apprehension. The Criminal Statistics for 1930 show that of the total of 56,767 persons convicted or against whom charges were proved for indictable offences, 11,929 belonged to the 16-21 age group. Of these, 1,355 were convicted at Assizes and Quarter Sessions and 10,574 dealt with summarily. The principal offences for which these offenders were found guilty were as follows :—

INDICTABLE OFFENCES, 16-21 AGE GROUP, 1930	
Larcenies . . . . .	10,064
Housebreaking, shopbreaking, etc. . . . .	744
Receiving stolen goods . . . . .	229
Sex offences against females . . . . .	244
Other offences . . . . .	648
<b>Total . . . . .</b>	<b>11,929</b>

<sup>1</sup> The Children Act, 1932, raised the age for the Juvenile Court to 17, and in future only young offenders of the 17-21 age group will normally come before the Adult Court unless a younger child is jointly charged with an adult person.

<sup>2</sup> Report, p. 15.

Of these 11,929 young offenders of the 16-21 age group found guilty of indictable offences, 7,306 were dealt with under the *Probation of Offenders Act, 1907*,<sup>1</sup> 4,941 being released with supervision; a further 720 were sentenced to Borstal detention, 1,893 were received into prison on conviction, and 4 were sentenced to penal servitude. No information is available to indicate the total number in the 16-21 age group who were fined as these are among the records not classified according to age. The only information we have in regard to the treatment of the persons of the 16-21 age group found guilty of non-indictable offences, is that 935 were released under the Probation Act with supervision during 1930, 54 sent to Borstal, and 839 received into prison.

### *Is Juvenile Crime Increasing?*

The establishment of Children's Courts, the development of probation and Borstal, and other reforms in the treatment of young offenders have coincided with considerable changes in the proportion of young offenders among the total number of persons found guilty of crime, as will be seen from the following table<sup>2</sup> :—

<sup>1</sup> 7 Edw. VII, c. 17.

<sup>2</sup> Extracted from *Criminal Statistics, 1929*, Introduction, p. 7. 1907 is the last year before the wide changes in the treatment of young offenders took effect, and is also the last year until 1929 for which this detailed information is available owing to an unfortunate change in compiling the statistics.

TABLE SHOWING THE PERCENTAGE OF PERSONS FOUND GUILTY OF INDICTABLE OFFENCES BY AGE GROUPS, 1907 AND 1929, ENGLAND AND WALES

Ages.	1907. Percentage of total.	1929. Percentage of total.
Under 16 . . .	15·2	20·9
16-21 . . .	17·6	19·6
21-30 . . .	26·8	25·4
Over 30 . . .	40·4	34·1
Total . . .	100·0	100·0

Such figures must also be considered in relation to changes in population, but this only accentuates the marked changes in the ratio, for while the percentage of persons under 16 in the general population decreased during the period 1907-1929 owing to the fall in the birth-rate, it is in this very group that the proportion of crime shows the greatest increase. This apparent increase is almost certainly due to the fact that, to quote the Editor of the *Criminal Statistics*<sup>1</sup> :—

“The number of juveniles found guilty in 1929 are swollen by the inclusion of many, dealt with in Juvenile Courts and under the Probation of Offenders Act, whom, in 1907, magistrates would have been loth to *convict*.”

The annual figures since 1910 of juveniles charged with indictable offences before the Juvenile Courts, which deal with the vast majority of juvenile

<sup>1</sup> Introduction, 1929, p. 12.

offenders, support this view. Except for the great but understandable increase in juvenile crime during the War, to which attention has already been drawn,<sup>1</sup> the numbers charged each year remain fairly constant in the neighbourhood of 12,000. They were actually lower in 1930 than in several pre-war years. It is clear, therefore, that the increase in young offenders since 1907 must have occurred between 1907 and 1910, when in consequence of reforms in the treatment of young offenders the public was more ready to take proceedings and magistrates to deal with cases than before the *Probation Act*, 1907, was passed. The increase, therefore, is not in actual offences committed, but in the percentage of offenders dealt with by the Courts.

When we turn to consider the number of offenders of the 16-21 age group, it has to be admitted that although the growing emphasis upon reformative measures has influenced the number of proceedings taken against this group also, the continued industrial depression has been an additional operating factor here, and has resulted in an increase in the number of offences *committed*.<sup>2</sup> This is a serious matter, the gravity of which must be frankly recognized as one of the worst consequences of our present unemployment conditions.

### *Necessary Reforms*

The importance of giving the right treatment in all cases of juvenile delinquency can hardly be

<sup>1</sup> pp. 55-8.

<sup>2</sup> See Chapter 2, p. 58.

exaggerated, not only because the education of the young is, always important, but because there is strong evidence that the habitual offender usually enters early upon his criminal career. Dr. Goring found that of 2,204 habitual offenders in the convict prisons, 53·3 per cent had been first convicted before the age of 20.<sup>1</sup> Since every persistent offender has been at one time a first offender, the way in which an offender is treated on his first appearance in Court on a criminal charge is likely to have a momentous effect for good and evil.

But what is the right treatment of the young offender? "The whole question," says Cyril Burt, "is one not so much for a legal or moral code but in the last resort for scientific investigation. A crime is not a detached and separate fact self-contained and self-subsisting. It is only a symptom." It is therefore in regard to the young offender that everything that we have yet written on the need of expert psychological examination becomes most urgent.

(a) *Observation Centres.*—In 1927 the Young Offenders Committee made the unanimous recommendation that<sup>2</sup> :—

"Much better facilities are required for the examination and observation of young offenders under 21 both by the juvenile Court and the adult Court. For this purpose at least three Observation Centres or Central Remand Homes should be provided by the State in convenient places."

<sup>1</sup> *Op. cit.*, p. 123.

<sup>2</sup> *Report*, p. 122.

Five years have gone by, the Act which was to have given legislative authority to the recommendations of the Committee is now on the Statute Book,<sup>1</sup> but there is no provision in it for these urgently needed observation centres. "The reason," said the Government spokesman in defending the Bill, "is economy."<sup>2</sup> Such a plea is absurd. It is not economy but inefficiency to refrain from taking obvious steps to prevent the manufacture of that most expensive product, the habitual criminal. As well might a man reduce his doctor's bill by proceeding direct to treatment without a preliminary diagnosis.

"Fines, probation, Home Office Schools, Borstal, all have their uses. But so long as they are ordered haphazard without any attempt to discern the difficulties and needs of the individual offender, they will do as little good and may do as much harm as bottles of physic served out indiscriminately by quack doctors to patients suffering from an infinite variety of diseases. The magistrate may know the law or he may not, he never knows nor is he given the means to find out the root cause of the trouble in the case of the 'problem child'. He may and often does give the right decision by accident. Frequently he bungles badly because he is charged with a job he is not equipped to perform. All other reforms relating to young offenders pale into insignificance beside the need for expert observation and diagnosis after trial and before sentence."<sup>3</sup>

<sup>1</sup> *Children Act*, 1932.

<sup>2</sup> Mr. Rambootham, House of Commons, 12th February, 1932.

<sup>3</sup> *Howard Journal*, 1932, p. 12.

In the absence of such centres, the Courts should make more use of existing voluntary agencies which can render some service in regard to psychological examination and diagnosis. Many Courts show a surprising reluctance to refer cases to the Tavistock Clinic and to the Child Guidance and other Clinics which exist in London and elsewhere and are willing to give help.

In recent years the prison authorities, who are alive to the need for careful examination of offenders before sentence, have concentrated in the Boys' Prison at Wormwood Scrubs all the lads over 16 remanded from the London area and those who have been committed to Borstal Institutions.

"The Boys' Prison is under a specially qualified medical staff who keep the lads under special observation and are in a position to furnish the Courts with much valuable information and advice on the medical aspect of each case. This medical work is supplemented by careful inquiries made into the home surroundings by a group of voluntary women workers."<sup>1</sup>

Useful as this development is, the Young Offenders Committee rightly endorse the view of those engaged in the work that

"it is greatly hampered by its surroundings, and we are convinced that these examinations ought not to be carried out in a prison."<sup>2</sup>

<sup>1</sup> Report, Young Offenders Committee, p. 44. An excellent account of work done at the Boys' Prison is given in *Boys in Trouble*, by Mrs. le Mesurier, who is the leader of the women workers at the Prison.

<sup>2</sup> Report, p. 44.



(b) *Prison*.—It is greatly to be deplored that a large number of offenders under 21 are still sent to prison. The last Prison Commissioners' Report shows that 1,872 boys and 86 girls were sent to prison on conviction in 1930, and that this figure was 300 more than in the previous year. Fifty-nine of the boys and one girl were only 16 years of age, 242 and ten were 17, and 322 and seventeen were 18. 464 of the boys were imprisoned for the non-payment of fines, and 895 were not known to have been previously proved guilty of offences. Their sentences included 239 of seven days or less, and 677 from eight days up to a month. 977 of the boys had been previously convicted, some on numerous occasions. In regard to these, the Prison Commissioners rightly say that

“*Prima facie* it would seem that Borstal sentences would have been more appropriate for many of these youths than sentences of imprisonment.”<sup>1</sup>

But the large majority of these young offenders required neither Borstal nor prison, but should have been dealt with in quite other ways. We are confident that were the reforms we have already suggested, both as to the infliction of fines and the more extensive use of probation, carried into effect, many of these young offenders would never see the inside of a prison.<sup>2</sup> Young offenders are still sometimes sent to prison, in default of the payment

<sup>1</sup> Report, 1930, p. 15. In this connection the existing law is unsatisfactory, for often a suitable candidate for Borstal is ineligible because of the nature of his offence.

<sup>2</sup> See chapter 5.

of fines, for such trivial offences as playing football in the street or for swinging on the wrong swing in a public recreation ground. Probation is too often passed over in favour of prison by magistrates and judges who still subordinate the principle of reformation to that of deterrence.

Unfortunately the two thousand young offenders received into prison on conviction are only some of the persons under 21 who go to prison each year. Excluding all cases of young offenders subsequently sent to Borstal, there were in 1928<sup>1</sup> 2,549 boys and 348 girls under 21 remanded to prison before trial of whom 1,672 boys and 289 girls were subsequently discharged at the Court and not brought back to prison on conviction. Of these, 1,236 boys and 237 girls were dealt with under the Probation Act, the remainder being discharged with or without conviction, fined, sent to institutions, or otherwise disposed of. The Prison Commissioners truly say that

“It is very undesirable that in so many cases where the Courts ultimately decide that probation is the proper course, the young offender should nevertheless be subject to all the disadvantages which detention for a week or so in a prison entails”.<sup>2</sup>

Some justices are known to favour a remand to prison in some cases in which it is not intended to impose a sentence of imprisonment, in the belief that “a taste of prison will ‘learn’ them”. Such

<sup>1</sup> P.C. Report, p. 83. Later figures not available.

<sup>2</sup> Report, 1928, p. 22.

## YOUNG OFFENDERS

a practice is wholly undesirable and condemned by the Prison Commissioner:

“ involves a misuse of the procedure of remand in custody<sup>1</sup> ;  
remand to prison has no deterrent effect,—in fact<sup>1</sup> de  
familiarizing a young person with prison conditions<sup>2</sup> ;  
likely to lessen his apprehension of a sentence of  
imprisonment ; it involves a social stigma and loss of  
self-respect and thereby makes it more difficult for the  
offender to re-establish himself when ultimately placed in  
liberty ; and it exposes him to risk of contamina-

No doubt it will always be necessary to remand some offenders in custody for inquiries as to their circumstances and condition. But here such remands should not be to a prison, but to the remand homes or observation centres which are so urgently needed. A remand to the London Boys' prison, though less objectionable than to an ordinary prison, is still undesirable in the large majority of cases.

After conviction, institutional treatment will be found to be even more necessary for certain types of young offender than for the adult. In the case of an offender under 21, institutional treatment should be in Borstal, a Home Office School, an Observation Centre, or a Probation hostel, but never in a prison.

(c) *Borstal*.—The Borstal system as at present carried out has so much to commend it in comparison with our old penal methods that the reform

<sup>1</sup> Ibid.

## THE LAWBREAKER

What is most needed is rather that the Courts should make a more intelligent use of Borstal than that the system itself should be changed. Nevertheless there are certain aspects of present-day Borstal treatment and the uses made of it which do require improvement. The fact that Borstal provides good training in the right cases is no justification for using it in the wrong ones, and there is no question that many boys—even first offenders—are sent to Borstal who should have been put on probation. This is not only bad for the offenders concerned, but contributes to the present overcrowding of Borstal institutions. It is most undesirable that an offender, destined for Borstal, should spend so much time in prison before he gets there. It is not unusual for a boy sentenced to Borstal to stay two months in the London Boys' prison awaiting transfer. So far as this delay is for the purpose of classification we have no quarrel with it, but only with the place where it occurs. There should be a Borstal clearing centre set up apart from any prison. But most of the delay occurs because there is no adequate room in existing Borstal institutions. Magistrates and Judges are urged to use Borstal and are using it freely, sometimes even too freely, but the Treasury remains five or ten years late in providing funds to build the necessary accommodation to meet the increased demand. In consequence, it happens that Borstal boys, who are often told by the Judge that they are "not going to prison" but to a place where they "will be trained", remain in prison for

weeks and months waiting for room, and on arrival at Borstal find themselves in an institution so overcrowded that the staff cannot possibly do their best work. Steps should be taken at once to provide at least two more Borstal institutions, or the success of the whole system will be jeopardized by overcrowding.

Another matter which needs attention is the nature of the industrial training given at Borstal. Though the Borstal authorities are making the best of a bad job, there is still too much of the old prison labour about many of the Borstal workshops. The reorganization of prison industries to which reference has already been made is specially necessary in regard to Borstal where every emphasis should be upon vocational training. So also it is necessary to extend the practice whereby Borstal Officers work with the boys and do not just stand over them. This question is especially acute in regard to some of the outdoor land work.

A more fundamental criticism of Borstal is its close adherence to what may be called the "public school" idea. Although Borstal has already proved that even under existing conditions it can and does have a large measure of success, we are not convinced that the public school model is necessarily the most successful form of institutional treatment for at least some young offenders. We believe there may be a place for an institution modelled more upon the lines of cottage homes, where in small quarters on an estate six or eight offenders might live with a house father and house mother, going out each

day to larger industrial groups. This would provide the more normal family life of which many of these adolescents are in urgent need, and would remove some of the sex difficulties which seem inseparable from a large boys' institution.

Before leaving the subject of Borstal, it may be well to refer to two criticisms of the system which are frequently made. One is that because habitual criminals are often old Borstal boys therefore "Borstal is a failure". We should have thought it would have been obvious to anyone that if a Borstal boy is a failure he probably has forty or fifty years left to him to advertise the fact in the Courts and the prisons of the country, and in consequence if only a small percentage of the boys discharged from Borstal each year become failures their sum total, after ten or twenty years, not unnaturally contributes a considerable quota to the prison population. No system can expect to achieve success in every case, especially with such material as that with which the Borstal authorities are sometimes called upon to deal. But for every Borstal failure who turns up again in prison, there are many more ex-Borstal boys and girls who have "glided into obscurity as good citizens".<sup>1</sup> The carefully compiled Borstal statistics show results which fully justify the system.

Another criticism which is sometimes made is that the success of Borstal is greatly hampered by a practice among the authorities of releasing inmates prematurely after a few months at Borstal.

<sup>1</sup> *Borstalians*, by J. W. Gordon, p. 281.

## YOUNG OFFENDERS

Thus the *Daily Telegraph*, in a leading article recently said :—

“ The Borstal system is found in practice broken again and again through the folly of releasing prematurely.”<sup>1</sup>

This criticism is ill-founded. During the years ending 31st March, 1932, of the 1,295 released on licence from Borstal institutions, thirty, or 2 per cent, were released before completing a year of their sentence, and out of this thirty, only three have been reconvicted.<sup>2</sup>

### *Whipping*

Under the existing law boys under 14 may still be whipped for any indictable offence except homicide, while boys of 14 but under 16 may be whipped for the same offences as adults, and also for a large number of other offences under the Larceny Acts, 1861<sup>3</sup> and 1916,<sup>4</sup> and various other Statutes. In all such cases the Court can inflict whipping in addition to imprisonment, but never in addition to a probation order. In recent years the practice has largely fallen into disuse. In fact, “ the number of cases in which this punishment was administered has fallen from 2,079 in 1913 to 130 in 1930.”<sup>5</sup>

The time has now come when this punishment

<sup>1</sup> 4th June, 1932.

<sup>2</sup> Home Secretary in House of Commons, 7th May, 1932.

<sup>3</sup> 24 and 25 Vic., c. 96.

<sup>4</sup> 6 and 7 Geo. V, c. 50.

<sup>5</sup> Mr. Oliver Stanley, Under-Secretary at the Home Office, House of Commons, 12th February, 1932.

## THE LAWBREAKER

abolished altogether. When the Children Bill of 1832 was before Parliament, the Government indeed propose its abolition, and this was done by the House of Commons without a dissent. Unfortunately, however, the House of Lords, by a vote of 44 votes to 35, against the wishes of the Government, insisted on retaining the penalty, and the Government, rather than lose the whole Bill, were compelled to give way.

The case for the abolition of whipping for young offenders is not a sentimental one. Long experience has shown whipping as a punishment to be both ineffective and harmful. The objections to it are much stronger than the objection to corporal punishment inflicted by parents or teachers, with whom—whether or not corporal punishment be desirable—the child has at least a normal relationship usually carrying with it a degree of respect or affection. The policeman in a police court who birches a delinquent child in cold blood long after the offence was committed is in quite a different category. As Mr. Oliver Stanley, Under-Secretary at the Home Office, said, in introducing the Children Bill in the House of Commons :—

“ The boy may very probably have been whipped already at home for the same offence, and he feels therefore an injustice in being twice dealt with for the same offence. It may happen and often does that the parents are angered by this punishment and they forget the original offence in their dislike of the punishment administered. Therefore at home the boy becomes a martyr. It may happen that the offence was merely a piece of showing off, of



trying to become a hero to his school companions, and the whipping administered, though it may be painful at the time, puts him much more effectively on a pedestal than would the offence that he has committed. Finally in the case of an offence against morals, this whipping is accompanied by no other penalty. It ignores the conditions and circumstances which may have caused the evil, makes no attempt to alter them, and he merely returns to those conditions."<sup>1</sup>

Nor is there any analogy between the public schoolboy and the slum child. On the former, whose life is one of comfort and happiness, pain may or may not have a salutary effect ; to the latter, brought up to misery and suffering, an added pain is merely an added evil. The policeman who wields the rod is the natural enemy, against whom a birching is only an added grudge.

The late Sir William Clarke Hall, who spoke with wide experience and deep insight in all matters concerning the treatment of young offenders, has said:—

“The type of boy who comes before the Courts charged with theft has little in his life of which to be proud, but he is proud of his own pluck and enterprise, and is usually supported in this by a small circle of admirers. To forfeit their admiration would be the greatest humiliation he could experience. After the sentence [of birching] his friends gather round him to see how he has taken it. The last thing in the world he would wish them to think would be that he was cowed or in any way deterred, and the obvious way to prove that he is not, is again to commit a similar offence.”<sup>2</sup>

<sup>1</sup> House of Commons, 12th February, 1932.

<sup>2</sup> Clarke Hall, *op. cit.*, pp. 81-2.

This is what frequently happens in practice. On 21st January, 1932, the Recorder of Leeds sentenced three boys to be birched. On 12th February the same three boys were again charged with a similar offence committed after the previous sentences had been carried out.

A representative of the Board of Education, after a careful study of the Juvenile Courts in four selected towns, reported<sup>1</sup> that in one town where birching was constantly ordered to be inflicted, it was found that one boy out of every four so dealt with was recharged within one month of the sentence, and that 80·34 per cent, or four out of five, were recharged within the two years covered by the inquiry. The writer of the Report says :—

“Far from proving deterrent, birching sometimes has the exactly opposite effect, as in cases where the boy leaves the Court to repeat his offences immediately. This happens often enough to demand attention.”

The Report gives some instances:—

(1) Boy charged with larceny, sentence six strokes. Six days later again charged with larceny; discharged with caution. One month later, again charged with larceny; six strokes.

(2) Another boy. Larceny; six strokes. Eight days later warehouse breaking; 21 days' detention.

(3) A third boy. Shopbreaking in March; six strokes. Larceny in April; six strokes. May—on enclosed premises to commit a felony; discharged with caution. October—shopbreaking; six strokes.

<sup>1</sup> *Report on Juvenile Delinquency*, 1920, quoted by Clarke Hall, pp. 80-1.

In his last book, Sir William Clarke Hall said :—

“For the last six years I have sentenced no boy to be birched, and I know of no circumstances which would induce me to pass this sentence again.”<sup>1</sup>

Dr. Cyril Burt, whose opinion is entitled to respect, has no theoretical objection to corporal punishment, and holds the view that in very exceptional cases a birching may be effective. But he goes on to say :—

“The infliction of pain is a negative and desperate form of discipline, to be applied only as a last and exceptional resort. . . . Once a boy has been flogged, the psychologist finds it hard to regain his confidence and reawaken his self-respect. . . . When all is said, in 99 cases out of a 100, corporal punishment, however inflicted, is likely to make the incipient transgressor, not more penitent but more furtive and defiant; and *impunity would do less harm.*”<sup>2</sup>

Thus the abstract problem of whether in very rare cases whipping may do good has no real relation to the practical administration of justice to-day in the Juvenile Court. The Courts have no means of knowing beforehand whether the boy is one of the ninety-nine on whom it will have disastrous effects. Now that the punishment is largely abandoned, the only Courts which still exercise the power to order the birch are almost invariably the very Courts which make little inquiry and show less discrimination. It is not necessary

<sup>1</sup> Clarke Hall, *op. cit.*, p. 80.

<sup>2</sup> *The Young Delinquent*, pp. 122-3.

to believe that in no single instance would birching prove useful before advocating its abolition. Experience has shown that in practice its use has been given up by most successful Courts. The time has come when the less enlightened Courts should be prevented by law from using the penalty which their more progressive colleagues have recognized to be both ineffective and harmful.

## CHAPTER 8

### WOMEN

Most of the matters discussed in the preceding chapters apply both to men and to women offenders, and little purpose would have been served by any detailed analysis distinguishing between the sexes. There are, however, certain considerations associated with the treatment of crime which apply specially to women offenders, and these it is proposed to discuss in the present chapter.

The first outstanding fact as regards women offenders is their relatively small numbers. Of the 66,049 persons proceeded against for indictable offences in 1930, only 8,298 were women, and of the 613,075 persons proceeded against for non-indictable offences only 66,592 were women. Women are thus seen to form only 11 per cent of the total offenders charged. Similarly of the 38,999 persons received into prison on conviction, only 5,458, or 14 per cent, were women.

Small problems are frequently left unsolved because they form part of larger and more difficult questions and are never seen as problems which admit of separate solution. We believe this is true of the treatment of crime among women. Actually the fact that women offenders are relatively few in

number makes reform in their treatment far less difficult, and for this reason alone such changes might well take precedence over other penal reforms and thus prepare the ground for larger and more courageous experiments.

### *Offences*

(a) *Indictable*.—When it is realized that house-breaking and burglary are rarely crimes of women, crimes of dishonesty account for a remarkably high percentage of indictable offences committed by women. Of the 8,298 women charged with such offences during 1930, 7,364, or 89 per cent, were charged with acts coming under the following heads :—

Larceny . . . . .	6,455
Fraud . . . . .	554
Receiving stolen property . . . . .	355
	7,364

Of the 934 offences remaining, 294 were cases of attempted suicide. Of the 8,298 women charged with indictable offences, 7,088 were found guilty. Of these, 1,336 were sent to prison and 4,065 dealt with under the Probation of Offenders Act. Of the latter, 2,295 were released under supervision.

(b) *Non-indictable*.—Of the 66,592 women charged with non-indictable offences, 86 per cent were charged with the following offences :—

## WOMEN

223

Sunday trading . . . . .	13,224
Offences against Highway Acts . . . . .	10,984
Drunkenness . . . . .	10,408
Offences against Police Regulations . . . . .	7,528
Assaults . . . . .	7,240
Offences against Revenue Acts . . . . .	5,153
Offences against Education Acts . . . . .	1,795
Prostitution offences . . . . .	1,173
	<hr/>
	57,505

The preponderance of the first three types of offence is striking. Separate information is not published as to the disposal of all the cases in which women were charged with non-indictable offences, but we know that 489 of the women found guilty of such offences during 1930 were released under the Probation of Offenders Act with supervision and that 4,122 were sent to prison. The large majority of women, as of men, found guilty of non-indictable offences are fined.

*Women Prisoners*

5,458 women were received in prison on conviction during 1930, as compared with 33,733 women so received in 1913 and 9,076 in 1923. The daily average of women prisoners in 1930 was 669,<sup>1</sup> as against 2,335 in 1913.

Of the total number of women received into prison in 1930, 1,336 were charged with indictable

<sup>1</sup> Excluding Borstal sentences.

offences, and 4,122 with non-indictable offences. Sixty-six per cent of the total receptions were accounted for by the non-indictable offences shown in the table below. The relative figures for 1913 are inserted for purposes of comparison :—

	1930.	1913.
Drunkenness, etc. . . . .	2,674	15,116
Disorderly behaviour of prostitutes . . . . .	249	8,063
Breach of Police Regulations . . . . .	312	2,730
Begging or sleeping out . . . . .	129	1,049
Other minor offences . . . . .	252	850
	<u>3,612</u>	<u>27,808</u>

In 1930, 22 women were sentenced to penal servitude. Of the women sentenced to imprisonment, 4,052, or 75 per cent, were sent to prison for a month or less, and only 155 for over six months. The sentences not exceeding a fortnight accounted for 2,228, or 41 per cent of the total receptions.

Of the total receptions of women after conviction in 1930, 2,781, or 51 per cent, were cases of imprisonment in default of payment of fines. In 1981 of these 2,781 cases the offence was drunkenness. Of the total of 2,674 women received into prison for drunkenness, 854 were over 50 and 1,842 over 40 years of age. Eighty-nine of all those received into prison on conviction were under 21, of whom thirty-four had no previous offences proved against them. Three were under 16.

Of the total number of women received, only 788,



or 14 per cent,<sup>1</sup> were not known to have been previously proved guilty of offences, whereas no less than 2,244, or 41 per cent, had been previously found guilty over twenty times before. A large proportion of the latter were sent to prison for drunkenness.

We have already seen that women convicts are almost all confined in a section of the local women's prison at Holloway where all women sentenced to imprisonment in London and the Home Counties are also sent. About eight of the local prisons in the provinces have accommodation for women.

#### *Women who should not be sent to Prison*

It was suggested in Chapter 5 that many offenders at present sent to prison should be dealt with in other ways. It is clear that this applies with special force to many of our present women prisoners.

As we have seen, 2,674, or about one-half of the women received into prison on conviction, were sentenced for drunkenness, most of them for short sentences of from five days to a month. To send habitual drunkards to prison is a futile, expensive, and often a cruel proceeding. It is axiomatic that no habitual drunkard is cured unless he or she co-operates in the treatment, and a short sentence is worse than useless. How stupid the short sentence is in such cases is shown by the recent investigations made by Dr. Morton, the present

<sup>1</sup> The corresponding figure for men prisoners is 30 per cent.

Governor of Holloway Prison.<sup>1</sup> Taking twelve cases of inebriates in the prison at random, he found that on an average each of these twelve women during the one year 1928 had been committed to Holloway no less than 13·7 times and spent 278 days out of the year in the prison.

Dr. Morton, who says he has "for some considerable time held the view that it is very doubtful whether prison is the right place" for women convicted of being drunk, has made the following alternative proposals :—

"Now what is to be substituted for imprisonment? Let me first take the young prisoners. I believe that these cases should not be disposed of by a fine or in default by a short period of imprisonment, but instead the person should be placed on probation with a condition of residence, i.e. placed in a suitable home for a period of not less than six months and in persistent or recurring cases I would suggest twelve months. I believe that this treatment of the young alcoholic would have a most beneficial effect, and that in a short time these girls would give up alcohol. Now take the senile alcoholics; many of these old women are on the borderland of dementia, although not certifiable as insane. Most, if not all, are unable to work, or at any rate to earn a living. I would suggest in these cases that come repeatedly before the Courts that the magistrates have power to commit these women to the Union for at least a year. I believe that in some cases the women would then remain in the Union voluntarily after a period of twelve months. If, on the other hand, the woman wished to leave, she should be given the opportunity to do so; should she be found to be

<sup>1</sup> *Howard Journal*, 1929, pp. 307, 310-11.

again taking to alcohol, she should be returned to the Union on a further detention order. There only remains now to suggest something for the adult alcoholics. Very briefly I suggest that they might be sent to some sort of Colony in the country, where they could be employed for the most part on the land and be to a large extent self-supporting. While at this Colony they should be under some form of medical supervision. Those cases that were found to be psychopathic should receive the necessary treatment; while those women who generally wanted treatment for alcoholism (and were prepared to cooperate in the treatment) should be given the opportunity of having it. After a certain period those cases that had received treatment should be allowed out on trial. If it was found that these cases were cured they would be eventually discharged, while those that recurred should be returned to the Colony for another period of detention and training."

These alternative proposals are not quite as easy as they seem. The suggestion that old and senile offenders should be committed to the Union is open to the real objection that any such course would tend to make the Poor Law Institution even more penal in nature than it is already. If it were proposed to associate such a condition as to residence with a probation order, there would be the added objection that such a course, extensively used, would be contrary to the true spirit of the probation system. The treatment of the confirmed inebriate is recognized to be a matter of great difficulty, and too much must not be expected of it. But Dr. Morton's suggestions are along the right lines, and should be pursued, investigated, and

experimented with as constructive alternatives to the present practice, which is both costly and futile. Whatever the right treatment of the habitual drunkard may be, it is usually a problem more for the doctor and the social worker than for our prison staffs. At present, the presence of such a high percentage of inebriates among the prison population is a serious hindrance to constructive prison reform.

It is common knowledge that women prisoners tend to be of a lower mentality than men prisoners. Dr. Pailthorpe, in her psychological researches among the women prisoners at Holloway Prison, found that of 100 typical cases, 36 per cent were of either subnormal or of defective intelligence, and that 84 per cent were deficient in what she calls "sentiment development".<sup>1</sup>

Most of those with experience of women offenders will agree that a number of women now sent to prison should be in institutions for the mentally deficient, and that many others are in need of psychological treatment. Dr. Pailthorpe reported that of all the women she examined at Holloway Prison, 37 per cent definitely required careful and permanent supervision or segregation, and a further 13 per cent might on further investigation be found to belong to this category. In her view, 56 per cent of all the women she examined, excluding mental defectives, needed psychological treatment in some form or other.<sup>2</sup> Without necessarily accepting Dr. Pailthorpe's conclusions as final, it is

<sup>1</sup> *Studies in the Psychology of Delinquency*, by Dr. Grace Pailthorpe, H.M. Stationery Office, pp. 16-17.

<sup>2</sup> *Ibid.*, p. 87.

clear from her researches that a large proportion of women prisoners are in need either of psychological treatment or of prolonged non-penal segregation, and should not have been sent to prison.

We have now dealt with the inebriate and mentally abnormal groups among women prisoners.<sup>1</sup> There remain the numerous women and girls who are still sent to prison through the failure of many magistrates to use the probation system in suitable cases, or through a harsh or unimaginative infliction of fines which the offenders cannot pay. In 1930, 800 women went to prison in default of the payment of fines for offences other than drunkenness.

There has been in recent years a striking reduction in the number of prostitutes imprisoned for disorderly behaviour, from 8,063 in 1913 to 1,297 in 1923, and 249 in 1930. This is due in part to a reduction in the number of professional prostitutes,<sup>2</sup> and probably in the last few years to changes in police policy and to good work done by the women police. In so far as the reduction is due to a change of policy we cannot believe that Society has suffered in consequence, nor do we believe that the present figure is necessarily as low as it might be. The "disorderly behaviour", unlike that which was prevalent last century, is usually quite technical, and it is always a mistake for the policeman to usurp the place of the moralist or social reformer.

We have seen above that the daily average of women in English prisons is 669. If the 2,674

<sup>1</sup> These groups are not, of course, necessarily exclusive.

<sup>2</sup> See above, Chapter 2.

women sent to prison for drunkenness and the subnormal and defective women were removed from the prison population, a larger use were made of probation in appropriate cases, and fines were more intelligently imposed, it is not unreasonable to suppose that the daily average of women prisoners might be reduced by over 50 per cent. What changes are desirable in the treatment of these who are left?

### *The Women's Prison of the Future*

Not only is the treatment of women offenders a smaller problem than the treatment of men, it is also an easier problem. "The number of dangerous women criminals is negligible, and the great majority of persistent offenders are a nuisance rather than a menace to Society. . . . In the case of the large majority of women, prison buildings of the fortress type are unnecessary for the purpose of security, and the effect of such buildings on women seems to be in many respects worse than on men."<sup>1</sup> Women are much less likely to escape than men, and a dismal and expensive fortress like Holloway with its 22 foot wall is grotesquely unnecessary. Furthermore, women adapt themselves more readily to institutional life, and the type of work involved in keeping up an institution is not only more familiar to women, but of more value as vocational training than the same work would be for men. Thus there is to-day a good

<sup>1</sup> Persistent Offenders' Report, pp. 38-9.

opportunity for real constructive training for the woman prisoner, but this demands not only the right staff but up-to-date institutions and equipment. Such work is impossible, for instance, at Holloway, where an excellent staff is hampered by dreary acres of stone floors which the prisoners spend much of their time in scrubbing, and where there is no adequate provision for classification, vocational training, or healthy outdoor life.

The problem would be solved by the establishment of two modern institutions, one in the North and one in the South of England, each with accommodation for about 150 women. They should be in the country in healthy surroundings, and have sufficient land to provide the opportunity for outdoor work, such as farming and gardening. Each institution should be built on the "cottage" principle, with small self-contained units each accommodating twenty to thirty women. This would enable the authorities to classify the offenders adequately, and the domestic work of each house would provide a good all-round training in housework. There should be no wall and a minimum of locked doors. The buildings and equipment should be as pleasant as is practicable, for it has been found by experience that women offenders respond to small amenities in a pleasant environment. In such an institution a certain amount of psychological treatment, which would be wholly ineffective in the atmosphere of a present-day prison, could be carried out with success for those offenders who were in need of it.

This proposal may sound Utopian, but such an institution is not necessarily more expensive than Holloway, and would be much more useful. Such a prison has existed at Clinton Farms in the State of New Jersey for twenty years, and has already proved a success, and modern American women's prisons conform to this type. In our own country, we are fortunate in possessing an able and sympathetic staff for the women's prisons, who wish for nothing better than the opportunity of making them really reformatory. What is lacking is public interest and support, and a public opinion which would be willing to invest State money in so good a cause.

We may, however, take encouragement from the recommendations of the recent Departmental Committee on the Treatment of Persistent Offenders, which has reported as follows in regard to this problem :—

“There were (in 1930) 353 women between 21 and 30 sentenced to imprisonment for indictable offences, and some of them would no doubt have benefited by a period of training under the sentence of two to four years' detention. There are also some women convicted of serious offences, for example, persistent thieves, false pretenders or professional fictionists, for whom prolonged detention would be more useful. Under present conditions, the training of women sentenced to imprisonment or penal servitude is carried on under serious handicaps, due to the small and mixed character of the female population in most women's prisons. Women prisoners sentenced to imprisonment and certain women convicts are now collected in nine local prisons; but in spite



of this concentration the number of women in certain of those prisons is . . . very small. . . . In these circumstances we recommend that in selected cases women sentenced to detention should be placed in a building of non-prison type. As a start, an old country house might be acquired for the purpose at a reasonable price. If numbers permitted, two or more institutions might be set up, which would allow of more effective classification and training. The experiment would start with the advantages that training in useful employments is easier with women than with men, and that detention in an institution other than a prison would avoid the complete loss of self-respect which women frequently suffer as a result of imprisonment.”<sup>1</sup>

An experiment along these lines for selected prisoners might be the forerunner of more extensive reforms in the treatment of women offenders, and we hope there will be no delay in giving effect to this recommendation.

<sup>1</sup> Report, pp. 38-9.

## CHAPTER 9

### CORPORAL PUNISHMENT

Whenever public attention is called to a particularly brutal crime or when it is reported that crimes of violence are increasing, there are always those who urge that the one effective remedy is flogging. Their enthusiasm does not seem to be diminished if, as has recently happened, the reports themselves are inaccurate and no such increase in crimes of personal violence has in fact occurred. Thus Colonel Hales, late Governor of Parkhurst Prison, whom we have already had occasion to quote as a critic of modern penal methods, says :—

“ Make flogging—above everything flogging—and if you like, a minimum sentence of penal servitude, fixed punishments for crimes of violence against person or property, and the ‘smash and grab raider’, the holder-up of banks and post offices, the motoring bag-snatcher will all become as rare as the great auk, if not indeed as extinct as the dodo.”<sup>1</sup>

Another correspondent in *The Times*, who says he has “been in Orders many years”, supports Colonel Hales “entirely”, and goes on to urge :—

“ that anyone who inflicts violence on other people, to say nothing of the consequence to the nerves and the whole

<sup>1</sup> *The Times*, 6th August, 1932.

system, should, *whatever may be the state of his own health, take the full consequences.*"<sup>1</sup>

The general public knows very little of the history and the facts about corporal punishment. In such a matter opinions are formed more as a result of emotion than of a rational study of the facts, and by letters such as those quoted public feeling is easily inflamed, especially as even *The Times* has recently shown a curious partiality for letters in favour of corporal punishment and a reluctance to publish letters against it.

Yet this country has had a long history of flogging, and contrary to popular belief, experience has not proved the lash to be effective to check crime. In recent years science has shown that quite apart from its futility there is that about corporal punishment which makes it positively evil. These matters must claim our attention later. But first the law relating to corporal punishment must be understood.

### *Offences for which Corporal Punishment may be Inflicted*

Until the beginning of last century, whipping was one of the ordinary Common Law punishments<sup>2</sup> for misdemeanors committed by persons of either sex, and it was frequently used. The whipping of

<sup>1</sup> *The Times*, 9th August, 1932. Italics ours. If this clergyman really means what he says, he is actually advocating flogging men to death in certain cases.

<sup>2</sup> The Common Law is that older body of English Law which is built up from decided cases as distinct from the more recent Statute Law which is based upon Acts of Parliament. The criminal law to-day is almost entirely Statute Law.

girls and women was made illegal in 1820,<sup>1</sup> and the infliction of whipping under the Common Law, which had long fallen into disuse, was legally abolished by the *Criminal Justice Administration Act, 1914*, which provided that "no person shall be sentenced to be whipped otherwise than under a statutory enactment".<sup>2</sup>

To-day males may still be whipped, with no limitation on the number of strokes, on conviction under the *Knackers Act, 1786*<sup>3</sup> (under which the slaughter of a horse without a knacker's licence is punishable by whipping); on sentence at Quarter Sessions under the *Vagrancy Act, 1824*,<sup>4</sup> as an "incurable rogue", a term which includes persons convicted of fortune telling or of importuning other male persons as a homosexual prostitute; under the *Criminal Law Amendment Act, 1912*,<sup>5</sup> for procuration or living on the earnings of a prostitute; and on conviction under the *Treason Act, 1842*,<sup>6</sup> for certain offences against the person of the sovereign.

Whipping can also be ordered on conviction for offences under the *Larceny Act, 1916*,<sup>7</sup> and the *Offences against the Person Act, 1861*,<sup>8</sup> as amended by the *Garroters Act*<sup>9</sup> of 1863. These offences include robbery under arms, robbery with violence, and garrotting, that is to say the attempt to choke or strangle a person in order to commit any indictable offence. Under these statutes the maximum

<sup>1</sup> 1 Geo. IV, c. 57.

<sup>2</sup> 26 Geo. III, c. 71, ss. 8-9.

<sup>3</sup> 2 and 3 Geo. V, c. 20, s. 3.

<sup>4</sup> 6 and 7 Geo. V, c. 50.

<sup>5</sup> 26 and 27 Vic., c. 44.

<sup>6</sup> 4 and 5 Geo. V, c. 58, s. 36.

<sup>7</sup> 5 Geo. IV, c. 83, s. 10.

<sup>8</sup> 5 and 6 Vic., c. 51.

<sup>9</sup> 24 and 25 Vic., c. 100.

number of strokes is twenty-five for offenders of 16 and under, and fifty for any other offender. In the former case the instrument must be the birchrod. In every case the Court must specify the number of strokes to be inflicted and the instrument to be used.

Under the Prison Act, 1898,<sup>1</sup> men sentenced to penal servitude or prisoners convicted of felony or sentenced to hard labour may be flogged for certain offences committed against prison discipline (usually incitement to mutiny or gross personal violence to an officer), the maximum number of strokes being thirty-six, or eighteen if the offender is under 18. Such sentences are subject to confirmation, modification or veto by the Home Secretary.

In practice, flogging is now only imposed (1) for robbery with violence, (2) for violent assaults on prison officers under the Prison Act of 1898, and, more rarely, for (3) procuration or living on immoral earnings under the *Criminal Law Amendment Act*, 1912, and (4) for importuning under the *Vagrancy Act*, 1824. The sentence must be carried out within six months, and in the event of an interruption of the flogging on medical grounds, the remainder of the sentence may not be subsequently inflicted. Before a person can be flogged he is medically examined, but a person is not necessarily exempt for physical disability, provided there is no danger to life. For example, a man suffering from infantile paralysis was flogged in 1928. During the three years 1928-30, 96 flogging sentences were imposed

<sup>1</sup> 61 and 62 Vic., c. 41.

under these Acts, 47 for robbery with violence, one for procuration, one upon "an incorrigible rogue", and 47 under the Prison Act for offences against prison discipline.

Flogging as a legal punishment has been discontinued in practically every other country in the world outside the British Empire. Among countries which have abolished it are Austria, Belgium, Czecho-Slovakia, Denmark, France, Germany, Greece, Holland, Hungary, Italy, and Switzerland. In many other countries where it remains legal it is seldom if ever used.

### *Robbery with Violence*

It is as an effective deterrent against various forms of robbery with violence that flogging is most commonly advocated in this country, and the majority of those who urge an extended use of flogging to-day do so as a defence against the so-called motor bandits, whose crimes are, of course, only a modern form of an old offence. Those who advocate this form of punishment frequently say that garrotting in the middle of last century was put down by use of the lash, and that Mr. Justice Day effectively stopped similar crimes in Liverpool in the "eighties" by flogging. Both these statements are quite untrue, but as they continue to be repeated and used as strong arguments in support of flogging, they require attention here.<sup>1</sup>

<sup>1</sup> In much of what follows, the authors are indebted to the excellent booklet, *Corporal Punishment*, by George Benson, M.P., and Edward Glover, M.D., published by the Howard League for Penal Reform, 1931.

Garrotting was the name given to a particular form of robbery with violence—the victims being attacked from behind and throttled—which suddenly became prevalent in London during the latter half of 1862, and was subsequently traced to a number of men who had returned from transportation. Lord Cranworth, a former Lord Chancellor, speaking in the House of Lords on 9th June, 1863, in regard to this outbreak, said :—

“ In the last six months of 1862, the crime of robbery with violence greatly increased . . . the number of cases reported to the Metropolitan Police within this period was 82, whereas in previous years during the same period the number was only 28 or 30. But since that time, no increase in the number of these violent attacks has occurred. . . . In December, 29 of these offenders who are rather loosely called “garrotters” were brought before the Criminal Court and convicted, and those who remember the sentences of Mr. Baron Bramwell will not think they were at all too severe. What has been the result? Why, we have heard of no garrotting since. I do not say that single instances may not have occurred.”

On 2nd March, 1863, the Recorder of London, Mr. Russell Gurney, said :—

“ I am glad to be able to say that there is an absence of those peculiar charges of robbery with violence of which there was so large a number towards the end of the past year, and which have been gradually decreasing during the last two or three months.”

Whether the severe sentences of penal servitude imposed by Mr. Baron Bramwell were responsible or whether the outbreak, like many other crime

epidemics, arose and disappeared from no apparent cause, it is certain that flogging had nothing to do with it, for up to the time when the Recorder of London spoke, garrotting was not a floggable offence. Three months later—in June, 1863—there was one isolated outrage of a similar kind in which the victim was a Member of Parliament. In consequence, Parliament in a panic passed the Garroters Act, which made the offence punishable by flogging. But this was three months *after* the Recorder had announced that the epidemic was over, as, with this one exception, it proved to be. It is clear, therefore, that the threat of flogging could not have stopped the crimes, which had ceased three months before the Bill was drafted, or the offence which gave rise to the Bill committed.

Mr. H. A. Bruce (later Lord Aberdare), who was Under-Secretary at the Home Office in 1862 and subsequently became Home Secretary, has also left a record of the facts :—

“ It is certain that when in November, 1862, I was appointed Under-Secretary to the Home Department, I found that the offence had practically ceased.<sup>1</sup> But not so the public terror, nor the use to which it was turned by interested persons. Shopboys who had embezzled their master's money, footmen who had been fighting at low casinos, drunken women who had fallen into the gutter and bruised themselves, these and many more declared themselves victims of the violence of garroters. The greater part of the real offenders were soon after tried and sentenced to heavy punishments, and garrotting

<sup>1</sup> i.e. the epidemic in London.



went out of fashion. In the following March, Sir C. Adderley brought in his Bills authorizing flogging for this and similar offences; these Bills became law, in spite of Sir G. Grey's (the Home Secretary's) opposition, and they have ever since had the credit of having suppressed a crime which had disappeared long before they were heard of in Parliament.

"Nor is it true that during the six years that followed, viz. from 1863 to 1869, there was any decrease of robberies with violence; on the contrary, there was a slight increase in these crimes. . . . It is therefore perfectly clear that the Acts of 1863 had no effect in reducing the number of the crimes against which they were directed."<sup>1</sup>

Speaking in the House of Commons twenty years later, Sir Farrer Herschell (an ex-Solicitor-General and afterwards Lord Chancellor) said<sup>2</sup> :—

"He knew it was the prevailing opinion that this punishment [flogging] acted as a great deterrent in the cases of crimes of violence—that it put down garrotting. He invited anyone who entertained that belief to be good enough to peruse a Return which was laid upon the Table of this House at his instance, because by that Return it was shown very clearly that garrotting had been put down before the flogging act was passed."

This interpretation of the facts was again confirmed in 1900, by Lord Oxford (then Mr. Asquith), when opposing a Bill in the House of Commons to extend flogging<sup>3</sup> :—

"As to garrotting, that crime had been brought to an end as a serious danger before the House in a fit of panic,

<sup>1</sup> *Lectures and Addresses*, Lord Aberdare, p. 264.

<sup>2</sup> *Hansard* 31st July, 1885.

<sup>3</sup> *Hansard*, 25th March, 1900.

due to one of its own members having been garrotted, resorted to legislation. *Garrotting was put down without resort to the lash.*"

A similar statement was made in the same debate by the then Home Secretary (Sir M. W. Ridley).

These facts effectively dispose of the myth that flogging put down garrotting.

Turning now to the attempt to check violent crime in Liverpool by sentences of flogging, we find that—whatever results Mr. Justice Day may have thought attended his efforts—the number of cases of robbery with violence in Liverpool was actually greater after his flogging sentences than it had been before. Mr. Justice Day went to Liverpool in 1886 and 1887 and inflicted sentences of flogging of the greatest severity upon twelve and twenty-five offenders respectively. With what result? Whereas the average annual number of cases of robbery with violence in Liverpool during the four preceding years 1882–5 had been 50·25, it rose in the four years after these sentences 1888–1891 to 62·25. In 1891 Mr. Justice Day again ordered ten floggings, and in 1893 the number of cases of robbery with violence in Liverpool rose to seventy-nine.

It is sometimes said that, whether or not the fear of flogging deters others, a man who has been once flogged never offends again. Reports in the Press from time to time show such a statement to be quite untrue, though unfortunately there are no published official records of recidivism among men who have been flogged, nor as far as we know has

anyone methodically collected Press cuttings on the subject.

In February, 1930, a man was sentenced to seven years' penal servitude for manslaughter who in 1926 had been sentenced to twenty strokes of the "cat" for robbery.<sup>1</sup>

On 24th November, 1932, a man was sentenced at the Winchester Assizes to three years' penal servitude and the "cat" for robbery with violence. In 1929 the same man had been sentenced at the same Assizes to twelve months' imprisonment and fifteen strokes of the "cat" for similar offences.<sup>2</sup>

At Birmingham Assizes in 1914 a man was sentenced to seven years' penal servitude for robbery with violence who had just been released from prison for an offence for which he had received eighteen strokes of the "cat".<sup>3</sup>

In August, 1931, a recidivist before the Courts was said to have been twice birched as a child for theft, and then among many subsequent sentences to have received eighteen strokes of the "cat" for assault with intent to rob.<sup>4</sup>

This experience is confirmed by prison authorities elsewhere. Mr. Elmer Leach, a Prison Governor in Delaware—one of the few States in the American Union to retain corporal punishment—recently told the American Prison Congress that in the five years in which it had been his duty to carry out

<sup>1</sup> *Empire News*, 16th February, 1930.

<sup>2</sup> *Daily Telegraph*, 25th November, 1932.

<sup>3</sup> *Daily Telegraph*, 18th March, 1914.

<sup>4</sup> *Herts Advertiser*, 14th August, 1931.

this law, there had been some men whipped *three or four times*.<sup>1</sup>

No one, of course, denies that flogging like any other punishment may have a certain deterrent effect. So, no doubt, would the thumbscrew if its use were revived. The question at issue is not whether it is a deterrent, but whether it is a more effective deterrent than other less objectionable penalties which might be substituted. There is no evidence to support the view that flogging is specially effective or that its abolition would be followed by any worse effects than the disappearance of any of the other cruel punishments the abolition of which proved nothing but a benefit to the community.

Robbery with violence is not punishable by flogging in Scotland. Both in England and Wales and in Scotland, robbery with violence has greatly decreased during the last seventy-five years. The fact that such crimes have decreased in the same degree in the two countries, where one retains flogging and the other has abolished it, surely suggests that not flogging but other factors common to both countries have been at work to produce a similar change. Such factors may include improved social conditions, improved street lighting, better policing, restrictions on the issue of firearms, and a decline in the practice of carrying large sums of money on the person. There was also a general decrease in most crimes of violence following the introduction of compulsory education.

<sup>1</sup> *Proceedings*, 1926, p. 80.

In any case it is clear that if Scotland can be adequately protected from crimes of violence without corporal punishment, England can safely follow her example.

### *Prison Discipline*

Corporal punishment, as we have seen, may be inflicted for offences against prison discipline and, although the majority of prison officers look with abhorrence on the duty of flogging, some of the older and more conservative of them regard it as necessary to prevent assaults. It must not be overlooked, however, that the same was said when the *Prison Act* of 1898<sup>1</sup> drastically restricted the power of prison Governors to order corporal punishment, although experience proved that violent assaults did not increase, though the number of floggings fell to less than one-third. "It was considered by some at the time," said the Prison Commissioners in their Report of 1902-3, "that the removal of this powerful deterrent would adversely affect the discipline of prisons and render it less easy to maintain. As a matter of fact, however, comparing the four years following the Prison Act, 1898, with the four years preceding it, the yearly number of offences against prison discipline had decreased from 147 to 131 per 1,000 prisoners."<sup>2</sup>

To-day, through an increasing use of probation and other forms of non-institutional treatment, the prison population tends not only to become smaller

<sup>1</sup> 61 and 62 Vic., c. 41.

<sup>2</sup> Report, p. 24.

but to contain a smaller percentage of accidental and "well behaved" prisoners, and a larger number of recidivists. Nevertheless, the percentage of prisoners punished for all prison offences fell from 37·7 in convict prisons and 9·4 in local prisons in 1901 to 13·4 and 4·3 respectively in 1930. This decrease is in part due to a relaxation of the rigid discipline of the last century when the most trivial acts were punishable, in part to the advent of a better type of prison officer, and in part to the great change of emphasis in the prison regime in recent years from degradation and punishment to training and reformation. Attacks on prison officers are far less frequent than they used to be, in spite of the fact that the greater freedom now accorded to prisoners in many prisons has actually made attacks much easier to carry out. That they have not increased must be largely due to the fact that recent reforms have brought with them a new relationship between officers and prisoners.

A study of the records of English prisons during the four years 1927-1930, shows that during that period fifty-five sentences of corporal punishment were carried out for offences against prison discipline, that is to say, an average of fourteen per annum. Of these fifty-five sentences, twenty-two took place at Wandsworth Prison, ten at Parkhurst, and only twenty-three at all the other thirty-five prisons. During practically the whole of this period Colonel Hales was Governor of Parkhurst, and in 1930 Colonel Rich was Governor of Wandsworth. Since these are the two retired officials who have been so

outspoken in their advocacy of flogging, and since it is clear from these facts that when they had the opportunity they practised what they preached, it is not without interest to examine the record of disciplinary offences at these two prisons. It should be said that Colonel Rich was preceded at Wandsworth by another Governor who also believed in the efficacy of flogging.

During the four years 1923-6 three sentences of corporal punishment were carried out at Parkhurst, but during the four years 1927-1930 there were ten. During the latter period the percentage of prisoners punished for offences of violence<sup>1</sup> increased from 10·9 per cent in 1923-6 to 13·3 per cent in 1927-1930. The percentage of prisoners punished for all offences, however, decreased from 57·8 to 46·6 per cent.

At Wandsworth Prison during the four years 1923-6 eleven sentences of corporal punishment were imposed, and in the four years 1927-1930 there were twenty-two. During the latter period the percentage of prisoners punished for offences of violence increased from 1·3 per cent to 3·7 per cent, and the percentage of prisoners punished for all offences also increased from 12·1 per cent to 22·3 per cent.

The records for six representative prisons taken at random which had no corporal punishment for prison offences during either period, viz. Bristol,

<sup>1</sup> Most of these offences of violence were cases of malicious damage to prison property and only a very few were acts of personal violence. They include, however, those serious offences against discipline which are not otherwise tabulated.

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Exeter, Leeds, Leicester, Oxford, and Portsmouth, show that for these prisons taken together the percentage of prisoners punished for offences of violence *decreased* from .92 per cent in 1923-6 to .88 per cent in 1927-1930, and the percentage of prisoners punished for all offences fell from 6.3 per cent in 1923-6 to 5.8 per cent in 1927-1930.

Whereas, therefore, the offences of violence rose in the two prisons which have the most recourse to flogging, they decreased in the prisons which did not use it at all.<sup>1</sup> There are too many unknown factors to permit of any dogmatic interpretation of these statistics. The nature of the prison population in particular prisons may have changed, and we suspect that the number of offences reported may be greatly influenced by changes in personnel among the uniformed staff. Some officers may make a practice of reporting more offences than others. It is possible to argue too that the increase in offences of violence at Wandsworth and Parkhurst was the occasion for the increase in floggings and not *vice versa*. We need to guard against *post hoc, propter hoc* reasoning. But whether or not the floggings at these two prisons provoked the offences of violence, it certainly did not stop them. To put it no higher, the use of the lash does not seem to have been very effective. Indeed, the records

<sup>1</sup> Since this book was written, information given by the Home Secretary in reply to a question in the House of Commons on 9th November, 1932, strengthens this assumption by showing that in 1931 violent offences *decreased* at both Parkhurst and Wandsworth, though there was only one flogging at each prison. Colonel Hales left Parkhurst at the end of August, 1930, and Colonel Rich left Wandsworth in July, 1931. The Wandsworth flogging took place before he left.

seem to indicate that when authority sets an example of violence, violent and brutal men will only tend to follow it.

Many of those intimate with prison life say that the causes of these occasional violent breaches of prison discipline are largely psychological. Nerves, temperamental incompatibility of individual prisoners and officers, and above all the personality of the Governor, play important parts. A prison Governor with insight, understanding, and character is a far greater aid to discipline than the "cat" will ever be.

Dr. Devon, a distinguished Prison Medical Officer and until recently a Prison Commissioner for Scotland, has said :—

"The conclusion cannot be escaped that offences are due more to an incompatibility of temperament between the prisoner and those over him than to anything else. . . . Not infrequently the prisoner is neither a malicious person nor the warder a stupid person and yet they cannot get on together. The obvious thing to do is to separate them ; the easy thing is to punish the prisoner."

Speaking of prison assaults, Dr. Devon adds :—

"I have seen very few, and the assailants were usually half-witted creatures who had conceived a dislike, which did not seem to be founded on any tangible reason, against the person assailed."

As in the case of robbery with violence, it is quite untrue to say that a prisoner once flogged never repeats his offence. Again, though the Home Office statistics give no complete figures, the Reports of

the Prison Commissioners in their record of floggings contain such entries as these :—

“The prisoner had been previously birched for a similar offence.”<sup>1</sup>

“The prisoner had incurred corporal punishment during his previous penal servitude sentence.”<sup>2</sup>

“The prisoner had incurred corporal punishment during several previous sentences.”<sup>3</sup>

“The prisoner was punished a short time ago for a violent assault on an officer and received 18 strokes with the birch (i.e. he was flogged twice in the same prison in the same year).”<sup>4</sup>

Further entries show that a prisoner, B. E., received eighteen strokes of the cat at Portland in 1900 and twenty-four strokes at Dartmoor in 1908. F. D. was both flogged and birched at Wormwood Scrubs in 1909, C. H. was flogged in 1909 and again in 1910, and F. S. was both flogged and birched in 1911.

Not only has flogging proved an ineffective deterrent, but there is much evidence to suggest that it is positively brutalizing.

Mr. Justice Hawkins (later Lord Brampton), a judge of wide criminal experience, said “if you flog a man you make a perfect devil of him”.

A retired prison official in a recently published book of his experiences, says in regard to corporal punishment :—

“I never in all my long experience knew of a single case in which the cat did not brutalize a man. I never

<sup>1</sup> Report, 1904.

<sup>2</sup> *Ibid.*, p. 84.

<sup>3</sup> Report, 1906, p. 83.

<sup>4</sup> Report, 1923-4, p. 81.

knew one of its victims who was not a worse man in every sense afterwards." <sup>1</sup>

"But," it may be urged, "though few would deny that there was too much flogging in the prisons of the nineteenth century and that to-day in most cases violent assaults can be avoided by a more intelligent handling of prisoners by officers and by a more enlightened administration, does it not remain true that in the last resort corporal punishment may be a necessary safeguard which it would be unwise to give up?"

There are two answers to this question. First, the position of a prison officer is not essentially different from that of the police who have exactly the same men to deal with, on occasions when escape is easier and therefore more likely to be attempted with or without violence. Yet the "cat" or the birch has not been found necessary to protect the police. Secondly, if it be argued that the police do not live in such an intimate and constant relationship with the criminal as the prison official, we would suggest that these conditions do obtain at Broadmoor. At a criminal lunatic asylum the attendants have to deal for long periods of years with many men convicted of violent crime, any of whom may attempt sudden and violent attacks. Corporal punishment is not used to maintain discipline or protect the staff at Broadmoor, yet one does not hear that the authorities have any difficulty in safeguarding the staff. Far from the service being

<sup>1</sup> *His Majesty's Guests*, by Warden (Jarrolds), pp. 131-2.

avoided on account of danger it is well known that there is considerable competition among local residents for the Broadmoor posts as they fall vacant. If the police and the staff at Broadmoor are safeguarded without this odious form of punishment, so also can the prison officials be.

As Dr. Devon, the Scottish Prison Commissioner already quoted, has said :—

“By all means let us deal with our blackguards, but let us deal with them rationally, not by whipping them in the hope that they will be good, but by placing them under such conditions as will prevent them from doing ill. That they are cruel to others is no reason why we, who claim to be better, should prove ourselves as bad as they by indulging our cruelty.”<sup>1</sup>

Moreover, we have so far discussed the subject as it affects the prisons of to-day. If the drastic changes in our prison system outlined in Chapter 5 were carried into effect and our prisons made real training centres and restricted to those likely to profit by such training, the problem of discipline would become much easier than it is to-day. And even under existing conditions, given the right officers and the right Governor, prison discipline presents no insuperable difficulties without the barbarism of corporal punishment.

### *Sex Offences*

We have seen that a person may be flogged on conviction under the *Criminal Law Amendment Act*

<sup>1</sup> Letter to *Daily News*, quoted *Corporal Punishment*.

of 1912 for procuration or living on the earnings of a prostitute. This Act was passed as a result of a sensational campaign of extraordinary fervour and inaccuracy amid the most fantastic tales of procuration and of the white slave traffic. The actual facts in regard to procuration cannot perhaps be better presented than in the following extract from the Report of the League of Nations special inquiry in 1927 :—

“At present there is no evidence of any traffic in women and children between Great Britain and any foreign country. As the outcome of a special inquiry in 1881, which showed that English girls were being systematically introduced into foreign brothels, the Criminal Law Amendment Act of 1885 was passed.<sup>1</sup> This Act was successful in destroying this traffic and for many years there has been no evidence of any recruiting of women or girls in this country for prostitution abroad.”

It is clear therefore that the flogging provision in the 1912 Act was quite unnecessary.

There remains the type of procuration which is largely confined to individual instances and not to regular trafficking. This is a comparatively rare offence in England, and the average annual number of persons tried for it during the ten years 1900–9 was eight. In 1910 the figure rose to twenty-five, and fell in the next two years to eighteen and fourteen respectively. Meanwhile, the hysterical campaign, already referred to, against the white slave traffic gained force and resulted in the passing

<sup>1</sup> 48 and 49 Vic., c. 69. This Act did not include corporal punishment.

of the *Criminal Law Amendment Act*, 1912, whereby procurement became an offence punishable by flogging. In the following year the number of persons tried for this offence *increased to seventy-three*, and in 1914 was forty-one. Since then the annual figure has declined to single figures with an average of nine for the years 1915-19 and six and five for the years 1920-4 and 1925-9.

The only serious increase in procurement therefore coincides with the period before and after the Act. This increase may have been merely one of these inexplicable epidemics associated with certain crimes. But sexual crimes are notoriously susceptible of suggestion, and the increase may in fact be largely due to the effect of suggestion caused by the irresponsible campaign to which we have alluded on certain types of mind. It is absolutely certain that flogging was no remedy, since the two years which followed the passing of the Act showed the highest figures for over a generation.

Flogging may also be ordered for another sex offence, viz. on conviction as an incorrigible rogue under the Vagrancy Act, 1824, which in this connection means for importuning another male person as a male prostitute. Corporal punishment is to-day very seldom imposed for this offence, but, quite apart from the strongest objection to such a penalty on other grounds, the infliction of corporal punishment for offences involving sexual abnormality is undesirable in view of the close relation between eroticism and flagellation. This aspect of the subject now demands our attention.



*The Final Argument against Flogging*

So far we have dealt with the fact that corporal punishment is unnecessary. We have seen that flogging was not responsible for the decline in garrotting in 1862, and that Mr. Justice Day did not reduce the cases of robbery with violence in Liverpool in the "eighties" by use of the lash. We have seen that procuration far from being checked by flogging became far more widespread immediately it was made a floggable offence. We have seen that a reduction in the number of floggings in prison coincided with a reduction in the number of prison offences, and that a widespread use of the lash in recent years in two particular prisons coincided with a noticeable increase in violent offences in those very prisons. We have seen that far from flogging acting as a deterrent upon a man once flogged there are many cases of such men subsequently committing similar crimes.

Flogging, therefore, is not the effective deterrent it is claimed to be. Indeed, there is reason to think that it acts in a contrary sense, which explains why a reduction in the use of corporal punishment in the past was accompanied not by an increase but by a decrease in the offences for which it was formerly inflicted. There is therefore reason to believe that its final abolition would have none but beneficial results.

But there is another reason, quite apart from its ineffectiveness, why corporal punishment should be abolished, and that is its relationship with sex.

The following facts are not seriously disputed by modern medical psychologists, and they constitute an overwhelming argument against flogging as a legal punishment.

It is a fact that in certain instances, much more frequently than most people realize, there is a manifest connection between an interest in beating and the sexual impulses :—

“ A very large number of people react to the very slightest stimulus relating to corporal punishment—a passing idea, a word heard or read, e.g. ‘ to beat ’, ‘ thrash ’, ‘ cat ’, ‘ whip ’, etc., etc.—with a variety of peculiar emotions and sensations. Others are fascinated by any aspect of the subject and have difficulty in restraining impulses to read up all available references with a painful avidity. . . . The emotions experienced vary from a state of fascination to one of repugnance or ultimate horror.”<sup>1</sup>

Psychologists now recognize that even small children sometimes become sexually excited on observing actual beating scenes. There are teachers who believe in the use of corporal punishment in schools who nevertheless never punish a child in public because the other children have been found to enjoy witnessing it. There are adolescents whose manifestations of sexual ripening take the form of erotic beating phantasies and practices. There are adults who are classed as “ perverted ” to whom beating in some form or phantasy is a condition of erotic excitement. It is, for instance, no uncommon

<sup>1</sup> Edward Glover, M.D., *The Psychopathology of Flogging*. Howard League booklet, *Corporal Punishment*.

thing for the police when raiding disorderly houses to find instruments for inflicting corporal punishment as a part of the equipment, and at an International Conference on Penal Anthropology, George Ives said : " the police showed us some frightful whips which had been used in various disorderly houses to gratify the amazing tastes of a proportion of their frequenters." <sup>1</sup> And there is, moreover, evidence that the practice of masturbation is in many cases associated with flogging phantasies.

It may perhaps be asked what this recital of abnormal and even little-known perversions has to do with the ordinary infliction of flogging as a legal punishment. The answer is that, quite apart from the obvious objection to maintaining a legal institution which encourages perversion in even a few, there is increasing evidence that the close relationship between flogging and sex is not confined to a small group of abnormal people. Psychologists tell us that :—

" All individuals responsible for the maintenance of a legalized flogging system, whether they are aware of it or not, are influenced in their attitude to this system by instincts derived from the sexual group." <sup>2</sup>

It is not suggested that the judge who pronounces a sentence of flogging, or the man in the street who advocates it, is a conscious sadist or a sexual pervert. But it is suggested that the fundamental basis of his support for corporal punishment (which he has

<sup>1</sup> *History of Penal Methods*, p. 362, note.

<sup>2</sup> *Glover*, *op. cit.*, p. 22.

rationalized into a belief in its deterrent value) probably lies in primitive and archaic human impulses which if present in an undisguised and conscious form would arouse a violent degree of self-reprobation and disgust.

And this is not all. Not only does support for flogging have a conscious or subconscious sadistic basis, but it is a fact that persons who have carried out sentences of corporal punishment are known to have experienced sexual excitement in doing so, and even some of the onlookers are known to have had the same sensations.

These facts being so, the commonly accepted social basis of corporal punishment is shaken to its very foundations. If our social life is to be cleansed from a pernicious influence and our prison officials exempted from a degrading duty, the sooner corporal punishment is abolished the better. Experience long ago proved flogging to be unnecessary. Science has now shown that it is disgusting and pernicious.

## CHAPTER 10

# THE DEATH PENALTY

This book would not be complete without some reference to the question of Capital Punishment,<sup>1</sup> against which there is to-day a large and growing public opinion. In 1930, after a most exhaustive inquiry, a Select Committee of the House of Commons specially appointed to consider this subject recommended by a majority that the death penalty should be entirely abolished for an experimental period of five years.<sup>2</sup> Though no effect has yet been given to this proposal, there is no doubt that it is receiving increasing support among thoughtful people.

### *The Present Position*

At law there are still in England four crimes apart from military offences which are punishable

<sup>1</sup> For a more complete examination of this subject the reader is referred to the Report of the Select Committee on Capital Punishment (H.M. Stationery Office, 1s. 6d.), and *Capital Punishment in the Twentieth Century*, by E. Roy Calvert, 4th edition (Putnam's).

<sup>2</sup> Had Parliament waited for unanimity in the past before reforming the criminal law we might still be executing children for small offences against property. The recommendations of the Committee were based upon the published evidence given before the Committee (H.M. Stationery Office, 2s. 6d.), which strongly supports the decisions of the Committee. See *The Death Penalty Inquiry*, by E. Roy Calvert (Gollancz), 1930.

by death, viz. : (1) High Treason,<sup>1</sup> (2) Murder,<sup>2</sup> (3) Piracy with violence,<sup>3</sup> and (4) Destruction of public arsenals or dockyards.<sup>4</sup> In the case of the last two offences the penalty has been completely abrogated by disuse, and with the exception of one execution for High Treason in 1917, all executions since 1838 have been for *murder*.

During the ten years 1921-1930 there was an annual average of 143 murders known to the police, of which 41 were cases of the murder of infants under one year. In 36 cases the supposed murderer committed suicide. In the same period an average of 71 persons were proceeded against for murder, of whom 24 were found to be insane, and 22 others were convicted of murder and sentenced to death. Of these, 12 were executed and 10 reprieved. Of those cases where no arrest was made, a large proportion were those of murders of children under one year by their mothers under conditions making the identification of the victim or the detection of the offender most difficult. During the ten-year period in question, two of the persons executed were women, and of the men executed four were under 21, two of them being 18 years old. By the *Children Act*, 1932, sentence of death may not be pronounced upon a person under 18, nor by the *Sentence of Death (Expectant Mothers) Act*<sup>5</sup> of 1931, upon an expectant mother.

There is widespread misapprehension as to the

<sup>1</sup> 54 Geo. III, c. 146.

<sup>3</sup> Will. 4 and 1 Vic., c. 88.

<sup>4</sup> 21 and 22 Geo. V, c. 24.

<sup>2</sup> 24 and 25 Vic., c. 100.

<sup>5</sup> 12 Geo. III, c. 24.

types of murder for which people are nowadays executed. It is frequently said that only "the worst murderers" are hanged, those who commit "cold-blooded and carefully premeditated crimes". An examination of the nature of the crimes committed by the fifty persons executed during the five years 1927-1931 shows that half were crimes of passion or sex, and that in no less than seventeen cases there was a medical history of abnormality of some sort, such as epilepsy or head wounds.<sup>1</sup> Many had near relations who had died in asylums; one had apparently been certified as insane and the certificate never acted upon, and in two cases medical witnesses pronounced the man to be insane in the dock. The legal definition of insanity still used in our Courts was formulated in 1843, when much less was known than at present of the science of human behaviour. And though the law makes provision for the special treatment of mental defectives in the case of all other crimes, no such provision is made in the case of murder. Thus, though some mental defectives convicted of murder have been reprieved, largely on other grounds, others have been executed even in recent years.<sup>2</sup> Contrary to the common belief, records prove that the murderer is only rarely a professional criminal with previous convictions.

A century ago, when all felonies were punishable by death, there were over 200 capital offences. Since then, though our penalties have steadily

<sup>1</sup> See *Thou Shalt Not Kill*, October, 1932.

<sup>2</sup> Report, Select Committee, 153; Evidence, 1791.

become less brutal, life and property have not become less secure. In the words of the Select Committee's Report :—

“ At each successive repeal in former days of the death penalty, it was asserted that if the Code were made more humane, crime would increase and the security of Society disappear. Yet those predictions and forebodings of evil were all falsified.”<sup>1</sup>

To-day, though the death penalty has long been abolished or discontinued for all other offences, it is still retained in the last resort for murder. The execution of some twelve persons each year is said to be the most effective way of protecting the community from homicidal crime.

### *The Question of Deterrence*

The will to live is an almost universal human instinct, and it is not surprising that to many people the punishment of death should appear to be the most effective deterrent. But examination shows that the problem is not so simple. The effectiveness of a penalty depends upon the circumstances and the state of mind in which the crime for which it is inflicted is committed. Most people do not commit murder, either because their moral codes (if they have any) prohibit it, or because of social disapproval, which in itself is a very strong deterrent. To other persons, unaffected by either of these two considerations, the fear of any severe

<sup>1</sup> Report, 455.



punishment is a deterrent, provided that it is associated with an effective administration of justice.

The people who, despite all fear of punishment, commit murder almost all do so under conditions which preclude a normal consideration of consequences. Most murders are passionate crimes committed under the domination of some violent emotion when consequences are not considered at all. Other murders are committed by persons so confident of their ability to escape detection that they never contemplate the possibility of failure. In neither case is the fear of punishment likely to deter.

Under present conditions there will perhaps always be a certain number of murders which no punishment will prevent. The number of murders in a country, like the number of other crimes, is influenced by many factors of which fear of punishment is only one. The level of education and the social conditions, the state of drink legislation and the position in regard to overcrowding and housing are all contributory factors. Some murders are committed by persons of unstable mentality and are due more to psychological disturbance than to environment.

Undoubtedly the death penalty is a deterrent, and there are to-day fewer murders than there would be were murder allowed to go unpunished. That, however, is not an argument in support of the death penalty, but a recognition of the necessity of punishment. The argument that capital punishment is necessary to protect Society from homicidal

crime depends, not upon the obvious fact that the death penalty is a deterrent, but upon the far less certain assumption that it is more effective than other penalties which could be substituted and which are open to less objection on other grounds.

Capital Punishment has been abolished by all our neighbours in North-West Europe and in many other countries. Holland has had no executions since 1860, Belgium since 1863, Norway since 1876, Denmark since 1892, and Sweden since 1910. Italy abolished the death penalty in 1889 until it was partially restored under the Fascist regime in 1930. Switzerland has had no Capital Punishment in most of her cantons since 1874, and has now by a new Federal Code abolished it altogether. Germany very rarely inflicts the death penalty. In the U.S.A. the death penalty has also been abolished in eight States which compare favourably in their homicidal record with other States in the Union, comparable in population and geographical position, where the death penalty is retained.<sup>1</sup>

Those who urge that the time has come for the death penalty to be abolished do so, not because they deny that it is a deterrent, but because they claim that there are in fact less objectionable penalties which have proved by long experience in these many countries which have abolished the death penalty to be equally effective. For, as we shall

<sup>1</sup> For detailed information as to the position in the various abolition countries see the Report of the Select Committee and *Capital Punishment in the Twentieth Century*, op. cit.

see, in none of these countries has the abolition of Capital Punishment adversely affected the homicidal rate.

The fact that persons convicted of murder not unnaturally make every effort to escape the gallows by obtaining a reprieve is sometimes urged as a proof that the death penalty is more feared than alternative penalties. There is, however, a great distinction between death which is imminent and inexorable and the distant possibility of death when a man is engaged upon a crime which he would never have attempted at all unless he believed he had a good chance of escaping detection. Edward Irving, the famous divine of last century, who as a prison chaplain had extensive experience of visiting persons under sentence of death, wrote of the terrible fear of execution shown by those who "saw that enemy at hand whom they affected to despise when at a distance".<sup>1</sup> And the Royal Commission appointed to co-ordinate the Criminal law reported in 1836 that :—

"It is a matter of ordinary observation that the fear of death, however strong when the event is near and certain, has no proportionate influence when the event is remote and uncertain."<sup>2</sup>

The fact that the very people, who by their behaviour after conviction show their fear of death, had previously committed a crime punishable by death, is a clear indication that in their case Capital Punishment was ineffective to deter.

<sup>1</sup> *For the Oracles of God*, 1823, p. 534.

<sup>2</sup> Second Report, p. 19.

*The Recent Parliamentary Inquiry*

The question whether Capital Punishment is more effective than other penalties as a deterrent against murder has now been conclusively determined—except for those who are either ignorant of the facts or who refuse to face them—by the inquiries of the recent Select Committee of the House of Commons.

That Select Committee, as one of its first acts, extended through the Foreign Office official invitations to the Governments of the principal abolition countries in Europe, including Norway, Sweden, Denmark, Holland, Belgium, Switzerland, and Italy, to furnish official information as to the experience of their respective countries in regard to the abolition of the death penalty. As a result, official reports were received and some of the most distinguished jurists and penal administrators in Europe attended in person before the Committee to give evidence as to the experience of their countries. From not one of these witnesses or reports from any of the abolition countries did the Select Committee obtain information to suggest that the abolition of Capital Punishment had caused an increase in murder or adversely affected the homicidal trend. Much positive evidence was obtained to the contrary. The Belgian Ministry of Justice informed the Select Committee :—

“The average of capital sentences has never been higher than it was during the period when the instrument of Capital Punishment was actually in use. Since it was

definitely abandoned the crime ratio has remained practically stationary. . . . The lesson has been learnt that the best means of inculcating respect for human life is to refrain from taking life in the name of the law.”<sup>1</sup>

Mr. Erik Kampmann, Director-General of Danish Prisons, told the Select Committee :—

“ I regard Capital Punishment in the same light as I regard the barbarous punishments of former days, flogging, torture, and the like.”<sup>2</sup>

“ The number of murders decreased [in Denmark] since the virtual abolition of the Death Penalty.”<sup>3</sup>

The Norwegian Government, in an official dispatch, stated :—

“ Experiences gained have strengthened the view that the abolition of Capital Punishment has not caused any increase in the number of murders.”<sup>4</sup>

The Swedish Government, in an official dispatch, stated :—

“ The correctness of the view (which appears to have been the principal motive for the abolition of the death penalty) that the State did not require this penalty for its protection, has hitherto not been contradicted by experience.”<sup>5</sup>

In Italy, Capital Punishment was reintroduced for certain types of murder in the new Penal Code of 1931. Dr. Dingli, Legal Adviser to the Italian Embassy, gave the Committee the following reason for its restoration :—

“ I think having once with the general approval of the nation established Capital Punishment for a variety of

<sup>1</sup> Evidence, p. 580.

<sup>2</sup> Evidence p. 522.

<sup>3</sup> Evidence, 5072.

<sup>4</sup> Evidence, p. 603.

<sup>5</sup> Evidence, p. 605.

crimes that one might term political, or semi-political or military, it was felt that it was unreasonable to withhold the same penalty, in the gravest cases at any rate, for private homicide.”<sup>1</sup>

Asked whether its reintroduction was occasioned by an increase in murder, Dr. Dingli said, “No, it was not introduced because of that,” and gave figures to show that murders had decreased since Capital Punishment had been abolished.<sup>2</sup>

Only in one State was there evidence that an increase in murder had followed abolition, though it was clear that abolition was not the cause. This was Austria, which abolished Capital Punishment in 1918, and where the terrible post-war economic conditions have not unnaturally caused an increase in crime. In this connection the British Minister in Vienna reported to the Select Committee that “the statistics of the post-war decade do not represent a normal state of affairs”.<sup>3</sup>

The evidence from these abolition countries, supported by a wealth of official reports and criminal statistics, was conclusive, as it was bound to be, and the Select Committee reported as a result of its investigations that :—

“Our prolonged examination of the situation in foreign countries has increasingly confirmed us in the assurance that Capital Punishment may be abolished in this country without endangering life or property or impairing the security of society.”<sup>4</sup>

<sup>1</sup> Evidence, 4219.

<sup>2</sup> Evidence, p. 576.

<sup>3</sup> Evidence, 4235, 4229, 4234.

<sup>4</sup> Report, 453.

Two assertions have been made by supporters of Capital Punishment to negative this emphatic evidence from other countries, *first* that professional criminals are only deterred from carrying firearms by the fear of death, and *secondly* that in any case the conditions in other countries are so different as not to be comparable with this country.

With regard to the first suggestion, it is obvious that, since crime is international, professional criminals would have taken to firearms in the abolition countries were the death penalty the only adequate deterrent. In fact, this has not occurred. In the words of the Select Committee :—

“We have had no evidence put before us that after the abolition of Capital Punishment in other countries, there has been any increase in the number of burglars arming themselves or in the carrying of lethal weapons.”<sup>1</sup>

With regard to the second suggestion, it is, of course, true that the abolition countries differ in race, in economic and social life both from this country and from each other. They are, however, remarkably representative. They include countries like Holland and Denmark, similar in race to Britain ; southern peoples like the Italians ; densely populated industrial states like Belgium and agricultural countries like Norway and Sweden. If all these different peoples have proved by long experience that they are safeguarded effectively from murder without the gallows to protect them, it follows inevitably that Britain can safely abolish

<sup>1</sup> Report, 255.

Capital Punishment, unless indeed we admit what a Dutch correspondent in *The Times* ironically suggested to be the only possible alternative, that, "unfortunately education, respect for the law, in general, humane manners in this country, are still so much behind the standard prevailing in the more progressive countries of Europe, that a reform which has proved possible there could not be adopted here without inviting great social disasters."<sup>1</sup>

In fact, however, the long and successful experience of many other countries without the Death Penalty makes the conclusion inevitable that a community can be as well protected from murderous crime without Capital Punishment as with it. The assumption that Capital Punishment is the most effective deterrent, however reasonable it may *primâ facie* appear to be, is in fact not supported by experience. The death penalty, to quote again the words of the Select Committee's Report, could be abolished "without endangering life or property or impairing the security of Society".

It is frequently suggested, by those who have hesitated to support complete abolition, but yet have wished to reduce the number of death sentences, that murder should be graded into murder of the *first* and *second* degree, and the death penalty reserved for murder in the first degree only. Quite apart from the fact that the time has come when Capital Punishment should be abolished altogether,

<sup>1</sup> 24th December, 1930.



there are many practical objections to grading, and most of the witnesses before the recent Select Committee, whatever their views about abolition, combined to oppose it.<sup>1</sup> Enough has been said in previous chapters to show that the Court is not qualified to make such a decision, and in addition many of the considerations which would need to be taken into account would not even be before the Court in evidence. When Capital Punishment is abolished the right course would be, not to have a fixed sentence pronounced by the Court on the principle of grading, but instead an indeterminate sentence the length of which would be decided by an expert Board far more qualified than the Judge on the Bench to determine when the offender could safely be released.

Not only is the death penalty unnecessary as a deterrent, but there are grave objections to it on other grounds.

#### *Capital Punishment an Advertisement of Murder*

There is strong evidence that it stimulates a great deal of morbid sensationalism, which has a demoralizing influence on the community and actually leads to imitative crime. In the statistics of murder furnished above<sup>2</sup> for the years 1921-1930, it will be seen that while on an average twelve persons were executed each year there were :—

(a) Thirty-six other cases in which the supposed murderers committed suicide at the time of their

<sup>1</sup> See the *Death Penalty Inquiry*, pp. 90-7.

<sup>2</sup> See page 260.

crime, in most cases in circumstances providing clear evidence of a disordered mind, and

(b) Twenty-four persons proceeded against for murder, but found to be insane.

There were, therefore, more than four times as many murderers found to be insane (either by Coroner's or Criminal Courts) as were executed. In addition, ten other persons were reprieved, and among the grounds for reprieve are mental deficiency or abnormality not amounting to legal insanity. Murder in this country is thus seen to be largely the crime of insane people.

The sight of a man on trial for his life with all the forces of the State arrayed against him tends to cause public sympathy to veer in his favour, and introduces a gladiatorial element into murder trials. This in its turn stimulates an orgy of morbid sensationalism in our Press. Who can say how many of these insane people who commit murder are provoked to do so by the sordid details published with so much relish in some of our newspapers? Speaking of this sensationalism, the late Lord Brentford told the Select Committee that "From the psychological point of view it does encourage morbid thoughts in the minds of other people".<sup>1</sup> A prison Governor said: "I am certain that young people particularly copy what they read in the Press as regards these murder cases,"<sup>2</sup> and another Prison Governor, asked whether he thought Press publicity led to imitative crime, said: "I am perfectly certain it does. . . .

<sup>1</sup> Evidence, 2441.

<sup>2</sup> Brigadier-General Dudgeon, Evidence, 4652.

One sees after a murder case which has attracted a tremendous amount of notoriety in the papers, a week later some poor weak-minded creature will go and commit some other murder, and the natural deduction is that he has been inspired by the newspaper accounts of the case." <sup>1</sup>

Such cases are not infrequent, and in the considered judgment of the writers, the abolition of Capital Punishment would not only remove an unhealthy influence from the community, but, by reducing the morbid publicity now given to murder trials, would actually reduce the number of imitative crimes committed by people on the verge of insanity. Indeed, a diminution of this publicity may be one of the factors which has reduced murder in recent years in abolition countries.

It would be most unwise to attempt to check this morbid sensationalism by legal restrictions imposed upon the Press, as in the reporting of divorce proceedings. Divorce cases are civil proceedings concerning the private lives of individuals. Censorship in criminal trials would undermine public confidence, upon which in the last resort the administration of justice depends. The remedy lies rather in the removal of the fascination which springs from the fact that in a murder trial a man is fighting for his life.

### *Irrevocability*

An obvious objection to Capital Punishment is its complete irrevocability in the event of a

<sup>1</sup> Captain Clayton, Evidence, 3041.

miscarriage of justice. The late Lord Brentford (Home Secretary, 1924-9) used to dismiss this objection by saying that there was no evidence of such a miscarriage of justice at the Home Office :—

“ I say at once, after the fullest inquiry—going back through my own lifetime—that no such case has ever occurred. There is no evidence of it at the Home Office.”<sup>1</sup>

Such an argument has been well answered by the *Solicitor's Journal* :—

“ We do take exception to this line of argument. Of all those concerned in a trial for murder, one person alone has certitude—the accused man. He knows ; others only infer. The inference may be irresistible, the demonstration of guilt conclusive for all others, but their certainty stops just short of knowledge. Then, after all the steps taken to safeguard possible innocence, the man is hanged. What evidence is there likely to be thereafter to demonstrate error ? No evidence at the Home Office ! Is it to be expected there would be evidence at the Home Office ? Nothing in the whole wide world is more difficult to establish than a negative. Merely to assert a negative is the idlest form of argument man can indulge in. This particular negative is comforting, but more robust doctrine would carry further. Justice, being human, must sometimes err. It is a solid argument that, when all that is possible has been done to minimize error, we must boldly act, with sorrow that we cannot be infallible, but with a fixed will to do right according to our lights. If it is so essential to the case in favour of Capital Punishment that no mistake can possibly be made, Capital Punishment stands condemned.”<sup>2</sup>

<sup>1</sup> *Evening Standard*, 6th December, 1929.

<sup>2</sup> 4th January, 1930.

No one would, of course, suggest that anyone would be executed if the Home Office officials had any doubt as to his guilt. But sometimes the most overwhelming evidence of guilt may be misleading, and when once a man is hanged, there is very little chance of an error being found out. The historic instances of miscarriage of justice have usually only been brought to light years after they took place. As Lord Buckmaster told the Committee :—

“Take the case of that man Oscar Slater. Had he been hanged, as he very nearly was, there would have been no agitation to get his sentence remitted. There would have been discussions here and there, and probably a paper read at the Crimes Club, ‘Do you think Oscar Slater did it?’ and there the matter would have ended. He would have been buried in the grave, and people would still have gone on saying that no innocent man is ever hanged. And why? Because when once a man is hanged the thing is done, and nobody, except as a matter of literary curiosity, ever goes into it at all.”<sup>1</sup>

The fact that miscarriages of justice do not often come to light in capital cases is no proof that they do not occur. Mistakes are known to happen in non-capital cases, and the same factors which cause them are present in murder trials. Mr. Justice Avory is recently reported to have said, speaking of the wrongful conviction of Adolf Beck, at whose trial he was Counsel for the Prosecution :—

“That is an historic fact long ago dead and buried. Identification is not the only matter in which mistakes are made. Mistakes are made every day by somebody.”<sup>2</sup>

<sup>1</sup> Evidence, 1402.

<sup>2</sup> *Evening Standard*, 19th February, 1931.

When a man is hanged, there is little incentive for that persistent agitation without which errors are seldom revealed. Over eighteen years elapsed before the unjust verdict was set aside in the Slater case, and it took Adolf Beck seven years to establish his innocence. Mr. D. N. Pritt, K.C., told the Select Committee :—

“ I regard it as impossible to believe that the only Court that never makes a mistake is the Court where a dozen men are placed together in a box, who have never seen each other before, presided over by a Judge who may never have tried criminal cases before, sitting down there, and, to the best of their ability, trying to sort out the evidence on one side and the other, and trying to arrive at the truth of a very difficult story about which, ex hypothesi, someone is not telling the truth. . . . It would be very painful, perhaps, to repeat names, but I know of two or three cases about which I felt the very gravest anxiety, and those men are now dead.”<sup>1</sup>

In its Report, the Select Committee endorsed the statement of this witness, who thus summarized his view on this question :—

“ The risk of a man being sentenced to death and hanged wrongly is a risk which is sufficiently serious to provide a very strong argument against the continuance of Capital Punishment unless the other arguments in favour of its continuance are overwhelming.”<sup>2</sup>

### *The Officials*

The Death Penalty imposes an odious duty upon the prison officials who have to carry out the

<sup>1</sup> Evidence, 4386-7.

<sup>2</sup> Report, 224.

sentence. "It is a horrible business," one Prison Governor told the Select Committee. "I felt quite unclean after having taken part in a hanging . . . I thought it was going to have a permanent effect on me, but I got over it in about a fortnight."<sup>1</sup> "Prison officials," said another, "have many unpleasant duties to perform. The carrying out of an execution is the most unpleasant."<sup>2</sup> "No one," said a Prison Chaplain, "can leave the slaughter shed without a deep sense of humiliation, horror, and shame."<sup>3</sup>

Without overwhelming proof of its necessity, Society has no right to impose so terrible a burden upon any public servant.

Then it must be remembered that there are other prisoners in the prison at the time of an execution. "The effect on the other prisoners is bad,"<sup>4</sup> one Prison doctor told the Select Committee, and a Prison Governor said: "It is definitely bad while it lasts."<sup>5</sup> Executions always take place in local prisons where the other prisoners are usually serving short sentences often for quite trivial offences. An unwholesome experience such as this is a deplorable incident in a prison treatment which is supposed to reform.

No one pretends that the executioner's task is anything but a degrading one. While this book was being written, Ellis, the former public

<sup>1</sup> Brigadier-General Dudgeon, *Evidence*, 4657-4660.

<sup>2</sup> Dr. Methven, *Evidence*, 407.

<sup>3</sup> The Rev. S. R. Glanvill Murray, *Evidence*, 3614.

<sup>4</sup> Dr. M. Hamblin Smith, *Evidence*, 3458.

<sup>5</sup> Captain Clayton, *Précis of Evidence*.

hangman, who officiated at 204 executions and had already once attempted to take his own life, tried to murder his wife and daughter, and then committed suicide.<sup>1</sup> This is no isolated incident. The public executioner in New York committed suicide in 1929, and the former hangman in Victoria cut his throat rather than execute a woman.<sup>2</sup>

The fact that the executioner is regarded as an outcast, and is usually shunned even by those who support Capital Punishment, is in itself an indication that the death penalty violates man's best impulses. As Dickens said long ago, "the hangman executes a law which when they once come near it face to face, all men instinctively revolt from."<sup>3</sup>

"I cannot help asking myself," wrote a Prison Governor a short time ago, "why, when one was called upon to superintend an execution, one should have been affected with such a keen sense of personal shame. . . . There must be something fundamentally wrong with a law which has the effect of lessening the self-respect of those whose duty it is to carry it out."<sup>4</sup>

### *Its Immorality*

We have seen that Capital Punishment is unnecessary as a deterrent and open to grave objections on other grounds. It is also contrary to

<sup>1</sup> 20th September, 1932.

<sup>2</sup> *Observer*, 24th February, 1924.

<sup>3</sup> *Daily News*, March, 1846.

<sup>4</sup> Major Blake, *Quod*, p. 315-29.



those principles which we believe should guide a nation in its treatment of those who break its laws.<sup>1</sup> The severe penalties and safeguards which must necessarily follow a conviction for murder will always provide that element of repudiation by which the State shows its disapproval of anti-social behaviour. Society can and should secure its own protection uninfluenced by primitive theories of retribution and satisfaction. In most cases the best method of achieving this end is by attempts at reformation. Prison officials who gave evidence before the Select Committee not only said that the murderers now reprieved usually become good citizens again, but that they believed that many of those who had been executed would have "made good" had they been allowed to live.<sup>2</sup> And even if a smaller number of those persons found guilty of murder are regarded as a permanent danger to the community, Society in its treatment of the feeble-minded and the insane has already recognized other ways of protecting Society without resorting to legal killing. The Home Office witnesses before the Select Committee made it perfectly clear that life imprisonment, subject to the usual powers of remission, such as is now imposed upon reprieved murderers, is a practical alternative to the death penalty, and presents no insuperable administrative difficulties.<sup>3</sup>

The assertion sometimes made that life imprisonment is worse than hanging does not really bear

<sup>1</sup> See Chapter 1.

<sup>2</sup> Report, 237-47.

<sup>3</sup> Evidence, 275.

examination. It is an illogical argument to bring forward in support of the present practice, since the very persons who are now reprieved because of extenuating circumstances are subjected to what is alleged to be the severer punishment. Those who maintain that prison is worse than hanging should throw themselves into the reform of our prison system, which to-day at least pays lip service to the idea of reformation and is capable of improvement. The death penalty is a crude survival of the retributive theory of punishment which offers no scope for reform. Moreover, the abolition of the death penalty is only part of a general process of penal reform.

There are some who would argue that the State has the right to take the lives of all those who are a danger or a burden to it. To justify Capital Punishment on this ground is illogical, when we so clearly do not carry the principle into effect in regard to the insane, the mentally defective, the aged and the infirm, who from a strictly utilitarian point of view, are of less use to the community than most murderers. Indeed, we execute the sane murderers and keep the insane ones alive. Moreover, the argument is founded upon a false view of life. It is not by the ruthless extermination of the weak and inefficient that progress is made. A nation's degree of civilization is to be judged neither by its power nor its wealth, nor its efficiency, but by the respect which it shows and the opportunity which it provides for the development of human personality, in even its weakest and least attractive manifestations.

The retention of capital punishment in our criminal law is not only an anachronism. It is a positive hindrance to right thinking upon the whole question of the treatment of crime, and its abolition has become an urgently needed step in the evolution of our penal methods.

## CONCLUSION

From this brief survey of our modern penal methods two conclusions are clear.

*First*, much remains to be done before our treatment of crime can be said to harmonize with science, reason, and humanity. A system which sends 20,000 people to prison every year not for crime but for poverty ; which punishes people for physical and mental abnormality and judges sanity by a legal definition nearly a century old ; which retains corporal and capital punishment ; which seeks to train thousands of anti-social persons in citizenship by subjecting them to a prison regime which deprives them of the only conditions under which they can learn self-control ; and which sets them free again by order of a Judge who fixes the end of the sentence before the treatment has even begun ; such a system is obviously still rooted in mediævalism.

*Secondly*, it is equally clear that the great changes made in the treatment of crime in recent years, though far from adequate, have been made in the right direction. We welcome the increased emphasis laid upon training rather than punishment in the prison system of to-day, and the decreasing use of prison as a penal method, the growth of probation and the many reforms in the treatment of juvenile

offenders. These and other changes are not a surrender to sentimentality, but are steps in the long journey from ignorance, cruelty, and passion to science and reason.

To-day in penal matters we stand at the cross-roads. An increase in crimes against property due largely to the economic problems of a post-war period, misunderstood and misrepresented by a sensation-loving Press, has led to an ignorant demand for a reactionary policy in the treatment of crime and the reversion to methods which cannot remedy the evil, and can only delay the achievement of a rational penal system. It is not too much to say that every thinking citizen has a responsibility to get to know the true facts about crime, to study the means whereby it is sought to combat it, and thus become part of an enlightened public opinion, active to promote sane and progressive changes and resolute to prevent the nation from being stampeded into the adoption of measures which will only aggravate the evils they are intended to cure.

In a lecture which he delivered just before his death in 1922, Sanderson, the famous headmaster of Oundle, used these words :—

“ If you punish it is easy, but if a community has so to arrange itself and adapt itself as to produce the reaction on the individual not to do objectionable things, that is hard. It is complicated. It requires an abundance of real sacrifice ; it demands readjustment of everything upon a basis of service.

What is the good of static methods? There is friction.  
. . . We can put an end to friction by stopping the

machine. That is the static method of dealing with friction. Or we can go on working the machine, with oil and care . . . which is not so cheap and easy but which gets somewhere.”<sup>1</sup>

It is for us to choose the difficult but more constructive way.

<sup>1</sup> *Sanderson of Oundle*, p. 361.

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## INDEX

Aberdare, Lord, quoted, 240, 241  
 Aftercare, 112, 113, 157-160  
 Age, of prisoners, 119, 120, 204; of judges and magistrates, 76, 77  
 Alcoholism, as cause of crime, 42; imprisonment for, 142, 143, 225-8  
 Appeals, Committee on, 73; *see* Courts  
 Asquith, Mr., quoted, 241  
 Assizes, *see* Courts  
 Automobile Association, quoted, xi  
 Avory, Mr. Justice, quoted, 20, 91, 275  
 Barnet, Mary G., quoted, 193  
 Betting, as cause of crime, 42, 43  
 "Binding over," 79, 80, 167, 168  
 Birmingham Probation Committee, quoted, 50  
 Blake, Major, quoted, 278  
 Blasphemy Laws, 7  
 Borstal, aftercare, 160; Association, 113, 198; Girls', 114, 197; history of, 109, 196, 197; inmates of, 117, 197, 198; necessary reforms in, 211-15; success of, 198, 199, 214  
 Brentford, Lord, quoted, 272, 274  
 Briant, Frank, quoted, 50, 52, 53  
 Brise, Sir Evelyn Ruggles, quoted, 14, 16, 101, 196, 197  
 Brockway, A. Fenner, quoted, 16, 129  
 Brodrick, W. J. H., quoted, 164, 178  
 Bruce, H. A., quoted, 240, 241  
 Buckmaster, Lord, quoted, 275  
 Burt, Cyril, quoted, 40, 41, 206, 219  
 Butler, Bishop, cited, 98  
 Capital Punishment: 259-281; abolition in other countries, 264-270; alternative to, 271, 279, 280; of animals, 4; Beck case,

Capital Punishment, *contd.*  
 cited, 275; children, of, 191, 260; deterrent, as a, 262-271  
 effect on executioners, 277, 278; officials, 276-8; prisoners, 277  
 expectant mothers, of, 260  
 gradation of murder, 270, 271  
 imitative crime, 271, 273  
 immorality of, 278-281  
 irrevocability of, 273-6  
 for lesser offences, 92, 261, 262; opposition to abolition of, 11  
 miscarriages of justice, 273-6  
 murder, causes of, 262, 263; by mentally affected persons, 261, 272, 273; by professional criminals, 261, 269  
 offences, punishable by, 259, 260  
 Select Committee on, 259, 261, 262, 266-271, 276  
 sensationalism caused by, 271-3  
 Slater case cited, 275  
 statistics of, 260  
 Cardiff, Probation in, 175-6  
 Carpenter, Mary, cited, 194  
 Central Association, 113, 158  
 Cherry, Lord Justice, quoted, 3  
 Child Guidance Clinics, 208  
 Children Act (1908), 32, 195  
 Children Act (1932), 195, 196, 200, 202, 207, 216, 260  
 Clarke Hall, Sir William, quoted, 183, 194, 217, 218, 219  
 Clinton Farms, cited, 232  
 Coieridge, quoted, 98  
 Common Law, 235  
 Corporal Punishment, of Adults, 234-258; Day, Mr. Justice, flogging sentences of, 238, 242  
 Deterrent effect on other persons, 244, 245; on persons flogged, 242-4, 249-251

- Corporal Punishment, *contd.*  
   Devon, Dr., views on, 249, 252  
   Garrotters Act (1863), 236  
   Garrotting, 236, 238-242  
   Hales, Colonel, views of, 123-4,  
   234, 246; disciplinary offences  
   at Parkhurst under, 246-8  
   history of, 235-8  
   of Juveniles, 199, 215-220;  
   abolition of, desirable, 216-220  
   offences punishable by, 236, 237;  
   other countries, discontinued in,  
   238; prison offences, for, 237,  
   238, 245-252  
   Rich, Colonel, views of, 124, 246;  
   disciplinary offences at Wands-  
   worth under, 246-8  
   Scotland, in, 244-5  
   Sex offences, for, 252-4; connec-  
   tion of flogging with, 254-8  
   Statistics of, 215, 238  
 Courts, Assizes, appeals from, 73  
   cases dealt with by, 80; jurisdiction  
   of, 72  
   Quarter Sessions, appeals from, 73;  
   cases dealt with by, 80; juris-  
   diction of, 71  
   of Summary Jurisdiction, appeals  
   from, 72, 73; appointment of  
   justices to, 70, 71, 74, 75; cases  
   dealt with by, 80; jurisdiction  
   of, 24, 69-71  
 Cranworth, Lord, quoted, 239  
 Crime, alleged increase in violent, xi,  
   xii, 30  
   causes of, 36-61; alcoholism, 42;  
   betting, 42, 43; defective family  
   relationships, 40, 41; over-  
   crowding, 39, 40; poverty, 38, 39  
   against property, causes of increase  
   in, 49-61; decline in emigration,  
   53-5; moral outlook, changes  
   in, 60, 61; motor-car, 58-60;  
   unemployment, 49-53; war  
   (1914-1918), 55-8  
   distinguished from sin, 3, 5-8  
   nature of, 1, 24  
   physical causes of, 43-5
- Crime, *contd.*  
   psychological causes of, 45, 46  
   statistics of, 28-36, 66, 200-2,  
   222, 223  
 Criminal Law Amendment Act (1912),  
   236, 237, 252-4
- Dartmoor disorder, ix, xii, 53, 54, 69,  
   124  
 Day, Mr. Justice, cited, 238, 242  
 Death penalty, *see* Capital Punishment  
 Debt, imprisonment for, 117, 139,  
   140  
 Debtors Act (1869), 139  
 Derby Probation Committee, quoted,  
   164  
 Deterrence, failure of in the past,  
   12-14, 125; *versus* reformation,  
   17-23  
 Devon, Dr., quoted, 249, 252  
 Dickens, Charles, quoted, 278  
 Dickens, Sir Henry, quoted, xi  
 Discharged Prisoners' Aid Societies,  
   112, 113, 157-160  
 Drawing and quartering, 11  
 Drunkenness, imprisonment for, 142,  
   143, 225-8  
 Du Cane, Colonel, quoted, 15, 20, 96,  
   104  
 Du Parcq, Mr. Justice, quoted, 53,  
   54, 116
- Education in prisons, 105, 107, 111,  
   112, 120  
 Elkin, Miss W. A., cited, 57  
 Ellenborough, Lord, quoted, 11  
 Emigration, effect of decline in, 53-5  
 Environment, influence of, 46-8  
 Evans, E. P., quoted, 4
- Family relationships, defective, as cause  
   of crime, 40, 41  
 Fear, protection by, 10-14, 125  
 Felony, 24  
 Fines, excessive, 141, 142, 189, 190;  
   non-payment of, 117, 118, 140-2,  
   188, 229; use of, 136, 188  
 Firearms, for police, 67, 68

- First Offenders Act (1887), 166  
 Flexner and Baldwin, quoted, 166  
 Flogging, *see* Corporal Punishment  
 Forfeiture Act (1870), 185  
 Fry, Elizabeth, 95, 103, 104
- Gaol fever, 94  
 Gardner, A. R. L., cited, 129  
 Garrotting, *see* Corporal Punishment  
 Garrow, Sir William, quoted, 11  
 Clover, Dr. Edward, quoted, 256, 257  
 Gordon, J. W., quoted, 214  
 Goring, Dr. Charles, quoted, 39, 42, 44, 45, 47, 206  
 Grand Jury, 71  
 Gurney, Russell, quoted, 239
- Habitual Criminals, 23, 78, 108; *see* Persistent offender  
 Hair, Gilbert, quoted, 125  
 Hales, Colonel, views of, 123-7, 234  
 Hard Labour, meaning of, 82, 101, 103  
 Hawkins, Mr. Justice, quoted, 250  
 Healy and Bronner, cited, 45  
 Hentig, Hans von, cited, 2  
 Heredity, influence of, 46-8  
 Herodotus, cited, 4  
 Herschell, Sir Farrer, quoted, 241  
 Hobhouse and Brockway, quoted, 105  
 Home Office Schools, 195  
 Hostel for ex-Prisoners, 159  
 Howard, John, 95, 97, 110  
*Howard Journal*, quoted, 207
- Imprisonment, 78; for debt, 117, 139, 140; effect of, 146-8; for non-payment of fines, 79, 117, 118, 140-2, 188; *see* Prison  
 Indecent exposure, 144  
 Indictable offences, method of recording, 27; nature of, 24, 118; statistics of, 29; variations in, 28-33  
 Industrial Schools Act (1857), 194  
 Insanity, legal definition of, 261  
 Irving, Edward, quoted, 265  
 Ives, George, quoted, 4, 257
- Jones, Judge Atherley, quoted, 38  
 Juvenile Courts, *see* Young Offenders
- Kenny, quoted, 1  
 Knackers Act (1786), 236
- Leach, Elmer, quoted, 243  
 Leeds, Recorder of, cited, 218  
 Le Mesurier, Mrs., quoted, 87, 174, 208  
*Lex talionis*, 2, 10  
 Lombroso, theories of, 43, 44
- Magistrates, age of, 76, 77; appointment of, 70, 71, 74, 75; clerks to, 71, 75, 76; stipendiary, 71, 75; women, 74  
 Maintenance cases, 139, 144  
 Martin, Sarah, cited, 103  
 McDougall, William, quoted, 9  
 Medico-Legal Society, *Proceedings* of, cited, 90  
 Mental Deficiency Committee, Report of, quoted, 47, 48  
 Mentally unstable persons sent to prison, 131, 132, 228, 229  
 Misdemeanour, 24  
 Moral outlook, 60, 61  
 Morris, Major, quoted, 54, 127  
 Morris, Sir William, cited, 151  
 Morrison, W. D., quoted, 37  
 Morton, Dr., quoted, 225-8  
 Motor-car, effect of on crime, 58-60  
 Motoring offences, 6, 35  
 Murder, statistics of, 30, 260; *see* Capital Punishment
- Nationality of Prisoners, 120  
 Non-indictable offences, method of recording, 27; nature of, 24, 119; statistics of, 34
- Observation centres, need for, 88, 89, 142, 182, 206-8, 211  
*Observer*, quoted, 67, 68  
 Odium, Dr., cited, 91  
 Overcrowding, as cause of crime, 39, 40

- Pailthorpe, Dr. Grace, quoted, 40, 228
- Paley, Archdeacon, cited, 98
- Parole, release on, 161
- Peel, Sir Robert, quoted, 12
- Penal Servitude, 78, 113, 114, 121; substituted for transportation, 78, 96
- Penitentiaries, *see* Prison
- Penitentiary Act (1779), 93, 98
- Persistent Offenders, 161-3; *see* Habitual Criminal
- Persistent offenders, Report of Committee on, 78, 97, 108, 133, 148, 149, 158, 161, 230, 232, 233
- Peterhead, public works at, 102
- Philadelphia, Penitentiary at, 99
- Philanthropic Society, cited, 192
- Police, arming of, 67, 68; Court Mission, 170, 183; Courts, *see* Courts of Summary Jurisdiction; duties of, 62-6; organization of, 63, 64; Royal Commission on, Report of, 62, 64, 65, 66; Select Committee on, 64; women, 63, 229
- Poor Persons' Defence, 76
- Post Office, Prison industries for, 111, 152, 155
- Pound, John, cited, 194
- Poverty, as cause of crime, 38, 39
- Preventive detention, 78, 108, 109, 162
- Prison, boys', 82, 83, 208, 211, 212; centralization of control, 96; Commissioners' Reports, nature of, 27; convict, 93-7, 102, 113, 114; cost of, 180; dress, 111; education in, 105, 107, 111, 112; failure of, to reform, 16, 128-132; history of, 92-109; labour, 101-3, 110, 111, 137, 147, 148, 151-6, 213, 230, 231; labour, Committee on, 111, 151; local, 94, 104, 113, 114; modern, conditions in, 19, 109-113, 128; population, decrease in, 114-16, 132-146, 223, 225-230; popula-
- Prison, *contd.*  
tion, nature of, 116-122, 223-5; staff, 156, 231; as training centre, 146-163, 230-3; visitors, 103, 104, 106, 107, 112; for women, 114, 223-5, 230-3; for young offenders, 209-211
- Prison Act (1877), 96, 113
- Prison Act (1898), 237, 245
- Prisons, Committee on (1894-5), 104, 105, 107, 108, 196; number of, 96, 113, 114
- Prisoners, age of, 119, 120, 224; association of, 94, 97, 99, 150; classification of, 149-151; Committee on Education and Moral Instruction of (1896), 105; offences of, 116-122, 223-5; payment of, 102, 154; self-government of, 156, 157
- Pritt, D. N., K.C., quoted, 276
- Probation, areas, 168, 169; cost of, 180; criticism, unfounded, of, 164-6, 178-180; extent used, 170-2; nature of, 166-170; necessary reforms in, 181-4; success of, 165, 172-181; use of, 79, 80, 136, 201
- Probation of Offenders' Act (1907), 167
- Probation officers, 87, 168-170, 173-4, 182-4; and aftercare, 158; number of, 169; over-worked, 87, 182; selection of, 182-4; training of, 183
- Prostitution, 35, 36, 229
- Psychological treatment, need for, 133, 145, 146, 173, 182, 228, 229, 231
- Psychology, judges ignorant of, 81; place of in determining punishment, 19, 87-9
- Public works, 94, 102, 155
- Punishment, Capital, *see* Capital Punishment; Corporal, *see* Corporal Punishment
- Forms of, 77-9; of inanimate objects, 4; meaning of, 1; origins

- Punishment, *contd.*  
 of, 2; principles in inflicting, 1-23, 85, 184-5  
 Theories of, deterrence, 10-14, 17-21, 133, 192, 262-5; reformation, 3, 15, 17-23; repudiation, 21; retribution, 3, 8-10; satisfaction of justice, 4-5, 8, 85
- Quarter Sessions, *see* Courts
- Rackham, Mrs. C. D., quoted, 177-8, 187
- Ramsbotham, H., M.P., quoted, 207
- Recidivism, 120, 121, 126, 127, 225, 242, 243, 249-250
- Reformation, as object of punishment, 3, 15, 17-23; *versus* deterrence, 17-23
- Reformatory Schools Act (1854), 193
- Reforms, recent, not a failure, x, xii-xiii, 126-7; *see* Probation
- Remand prisoners, 117, 142, 210
- Remission of sentences, 112, 161
- Repudiation, as object of punishment, 21
- Responsibility, 9
- Restitution, powers of Courts as to, 79, 185; seldom ordered, 79, 184; value of, 184-8
- Retribution, as object of punishment, 3, 8-10; unjust, 8-10
- Rich, Colonel, views of, 124-7, 246-7
- Ridley, Sir M. W., cited, 242
- Robbery with violence, 30, 236, 238-245
- Ruck, S. K., quoted, 49, 171-2
- Samuel, Sir Herbert, quoted, 110
- Sanderson of Oundle, quoted, 283, 284
- Satisfaction of Justice, 4-5, 8; of injured parties, 8
- Scrutton, Lord Justice, quoted, 82
- Sentences, indeterminate, 160, 161, 271; length of, 121, 122; nature of, 80, 121; short, 135-8, 144, 145
- Severity, failure of, 12, 125
- Sex offences, 31, 32, 85, 86, 144; offenders in prison, 133
- Sidgwick, Professor, quoted, 5
- Sin, distinguished from crime, 3, 5-8; punishment of, by State, 7, 10
- Smith, Dr. M. Hamblin, quoted, 42, 45, 46, 277
- "Social problem" group, crime among, 47-9
- "Solicitor," quoted, 73, 81
- Solicitor's Journal*, quoted, 274
- Solitary confinement, 97-101, 110, 150
- Stanley, Oliver, M.P., quoted, 215, 216, 217
- State, function of, in punishment, 7
- Sterilization, 49
- Strike, General, effect on crime, 56, 57
- Sunday trading, 35
- Tavistock Clinic, cited, 208
- Temple, Dr. W., quoted, 20, 21, 22
- Trade Unions and prison labour, 153, 154
- Transportation, 11, 13, 14, 92, 93, 96, 191
- Treason Act (1842), 236
- Turner, Colonel G. D., cited, 60; Sydney, quoted, 193
- Unemployment, effect on crime of, 49-53
- Vagrancy, imprisonment for, 143, 144
- Vagrancy Act (1824), 188, 236
- Violent crime, decrease in, xii, 30-2
- Voluntary workers, 103-7, 112
- Waller, Sir Maurice, quoted, 125
- War (1914-1918) effects of on crime, 55-8, 205
- "Warden," quoted, 251
- West, *History of Tasmania*, quoted, 13, 191

- Whipping, *see* Corporal Punishment  
 Witchcraft, 7  
 Witzwil, cited, 159  
 Women offenders: Convicts, 114;  
   drunkenness among, 225-8; Dr.  
   Morton, views on, 225-8  
   mental abnormality among, 228-  
   230  
   Pailthorpe, Dr., views on, 228, 229  
   persistent offenders, Report on,  
   230, 232, 233  
   prisons for, 114, 225, 230-3  
   prostitution, 35, 36, 229  
   recidivism among, 224, 225  
   statistics of crime among, 221-5  
   voluntary workers among, 104,  
   105  
 Women police, 63, 229  
 Work centres, suggestion as to, 137,  
 138
- Young offenders, in Adult Courts,  
 201-3; ages of, 200, 202, 204;  
 Borstal, *see* Borstal; child  
 guidance clinics, 208; Com-  
 mittee on treatment of, 89, 168,  
 191, 193, 202, 208; history of  
 treatment of, 191-200; increase  
 in crime among, 26, 203-5;  
 industrial schools, 194, 195, 199;  
 Juvenile Courts, history of, 199,  
 200; proceedings in, 200, 201;  
 Necessary reforms in treatment  
 of, 205-215; observation centres  
 for, 88, 206-8, 211; offences of,  
 200-3; prison for, 209-211;  
 reformatory movement, 192-  
 195; remand homes for, 206,  
 211; treatment of, 201, 203;  
 trial by jury, 199, 200; whipping,  
*see* Corporal Punishment