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ENGLISH STUDIES IN CRIMINAL SCIENCE, VOLUME I

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PENAL REFORM IN ENGLAND

PENAL REFORM IN ENGLAND*

This book, which was welcomed on its first appearance as the best general introduction to contemporary English criminal administration, constitutes Volume I of the series of English Studies in Criminal Science inaugurated by the Cambridge Department in 1940. Its purpose is to give an authoritative and concise summary of the administration of criminal justice in England to-day. It is a work of collaboration by twelve experts under a definite scheme. It explains the legislative trend of the past fifty years, the working of the machinery of justice, the special treatment of juvenile delinquents and the modern methods of educative punishment. The present edition has been brought up to date, revised and enlarged, and it will be found invaluable not only to those who administer criminal justice, but also to all those who are concerned with social progress in general

* This volume is one in a series entitled ENGLISH STUDIES IN CRIMINAL SCIENCE, promoted by the Department of Criminal Science, Faculty of Law, University of Cambridge. For a more detailed announcement of the inception and plans of this series, please turn to the back of jacket.

PENAL REFORM IN ENGLAND

INTRODUCTORY ESSAYS ON SOME ASPECTS OF ENGLISH CRIMINAL POLICY

FOREWORD BY

THE RIGHT HON. THE VISCOUNT CALDECOTE

LORD CHIEF JUSTICE OF ENGLAND

PREFACE BY

PROFESSOR P. H. WINFIELD

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CONTENTS

FOREWORD

I HAVE read these Essays. I have learned a great deal of which I was unaware. The writers are all skilled in the subjects on which they have written. Whenever they offer an opinion or propose some approach to a problem their views deserve attention. Indeed my only complaint is that some of the authors confine their essays too much to facts and figures. It is a fault on the right side. The statistics which the reader is told have been kept since 1857 are invaluable as a basis for accurate diagnosis. The old question of the purpose behind penal provisions crops up over and over again, as might be expected in a book of which the title is *Penal Reform in England*. The Criminal Justice Bill which Sir Samuel Hoare almost brought into port naturally receives notice from several of the writers. The references are, I think, always on the side of the "reformatory" and against the "deterrent" theory. I myself have visited the two open Borstals at Loudham and the North Sea Camp. I was made to see what a powerful deterrent it is to a youth to be trusted. It adds to the weight of the sentence imposing on a youth what must seem to many a long period of detention. I have noted many points in the course of my reading. I feel however that I should be well advised if I do not refer to any of them. The book will repay the reader whose own comments will be of greater value and interest to him than any of mine. Our prison system has long needed overhauling. This book will be a great help to the student as well as to the politicians and the civil servants who may be engaged in the task.

CALDECOTE.

ROYAL COURTS OF JUSTICE,
LONDON.

PREFACE

THE first edition of this book appeared in 1940, and some information as to its scope may be given here for the benefit of those whose acquaintance with it begins with this new edition. Every system of criminal justice must, if it is to deserve the name of "justice", be continually modified so as to keep it in harmony with the growing aspirations and needs of the society governed by it. The English system is no exception, despite the fact that important penal reforms were established during the last century in order to make the law more effective as well as more humane. In consequence of a gradual and uninterrupted development, we possess in this country a solid and living structure susceptible of still further improvements, which can be introduced when required, without jeopardising in any way the fundamental principles of our legal heritage. *Penal Reform in England* gives an account of some of the essential elements of this structure and of the main reforms hitherto achieved. Its value consists mainly in the fact that all the contributors to it have a direct and lengthy experience of the working of our machinery of justice in its administrative and penal spheres. Against the general background of the position of crime in England, such elements as the police system, the general organisation of the courts, the law relating to juvenile offenders and the various methods of penal, and other, treatment are examined in a series of closely linked chapters which, taken as a whole, give a general view of the basis of English penal administration. The book not only points the way for further improvements in the law but also indicates the great progress in penology that this country has achieved in modern times. In this edition of *Penal Reform in England*, two new chapters are included—The English Police System (Ch. IV), by Sir John Maxwell; and Approved Schools (Ch. VIII), by Sir Vivian Henderson. Mr. S. K. Ruck has also enlarged and rewritten his contribution to the first edition—Developments in Crime and Punishment. Other articles have been brought up-to-date.

It is hoped that this volume will, like other volumes published in this series, achieve the aims of the body under whose auspices it is published (the Cambridge Department of Criminal Science). The principle upon which the Department acts is that academic

research and teaching should not be restricted to the narrower study of the rules of criminal law, but should take account of the social and moral conditions which must be fully appreciated in order to understand the current administration of the law and to realise what reforms are needed in it. Hence, the Department has promoted the investigation of such subjects as the cause of crime, the personality of delinquents, the kinds of treatment that ought to be adopted for persons convicted of crime, and the general construction and operation of the machinery of justice. The Department has been fortunate enough to attract the interest of some of the leading practitioners and administrators of criminal law and takes this opportunity of expressing its gratitude for their sympathy and help, which are of supreme importance in the attainment of practical results. In particular, we deeply appreciate Lord Caldecote's kindness in writing the Foreword to this edition.

P. H. WINFIELD.

St. John's College,
Cambridge,
November, 1945.

I

DEVELOPMENTS IN CRIME AND PUNISHMENT

By S. K. RUCK

ENGLAND is fortunate in possessing a series of criminal statistics, kept since 1857 on a more or less comparable basis throughout, giving full details concerning the nature of crimes committed and of punishments awarded, and containing a very limited amount of information concerning criminals themselves. As a result it is possible to study trends in criminality and in the choice of penal methods in the country, and at least to attempt some estimate of the interaction of the two.

But the preparation of Criminal Statistics, like that of other statistics, involves many possibilities of error, and it is essential for anyone studying the figures to be aware of some at least of the pitfalls involved.

In the first place, the statistics include every offence committed against the laws of the land, however trivial. Murder and parking cars in unauthorised places, robbery with violence and Sunday trading alike have their place in them.

A broad distinction is, however, made between the more serious and the less serious offences, by their classification into "indictable" and "non-indictable". An indictable offence is one which can be tried before a higher court, *i.e.* an Assize Court, or Court of Quarter Sessions.[1] A non-indictable offence is one that is only dealt with by Petty Sessional Courts or Police Courts, and for which the offender cannot claim trial by jury. Broadly speaking, it is the indictable offences alone which constitute what are generally known as crimes, and the bulk of non-indictable offences can be regarded simply as nuisances.

NON-INDICTABLE OFFENCES

These non-indictable offences, while of minor interest to the criminologist, have a good deal of significance to the social

[1] In fact, only a small minority of indictable offences are dealt with by the higher Courts, as nearly all save the most serious can now be dealt with in the Petty Sessional Courts with the consent of the accused. The accused nearly always does consent, as the maximum sentence at such a Court is six months.

student. They are far more numerous than crimes, and consequently affect far more individuals. They concern manners rather than morals, but "manners makyth man". They are as it were the luxuries rather than the necessities of the law, but it has been well said that it is the luxuries which distinguish life from mere existence. It therefore seems worth while to take a glance at the changes in the incidence of non-indictable offences before passing on to the question of crime proper.

Three-quarters of a century ago about eighteen persons per one hundred thousand of the population were proceeded against for non-indictable offences (average of the years 1857–66). Some fifteen years later, the number had increased to twenty-four (average of the years 1873–77), but for the next fifty years the number steadily decreased, and until just recently it had averaged about fifteen. The figure is now again about eighteen per one hundred thousand (representing a total of about seven hundred and fifty thousand), but the recent increase is entirely due to road traffic offences.

When the figure was twenty-four per thousand, six of the cases were for offences designated "akin to indictable", four of them being assaults. Assaults now number only just over four per *ten* thousand instead of four per thousand, and all "akin to indictable" offences, together less than one per thousand. Similarly, drunkenness has declined from eight per thousand to one and a half. Offences against the education acts, which numbered three per thousand when compulsory education was first introduced, have now virtually disappeared, and there has also been a great diminution in vagrancy offences.

On the other hand, Highway Offences have increased from about seven per *ten* thousand to twelve per *thousand*, the reason, of course, being the advent of the motor car.

The general picture obtained is of a healthier and better behaved community, which, however, has not yet learnt to make a wise use of its latest inventions.

Indictable Offences

The only source of information concerning the less serious offences is the number of persons tried. With regard to indictable offences, however, there are two sets of figures—the number of persons tried, and also the number of crimes known to the police.

It would seem obvious that the number of crimes known to the police should be the better index. But a little reflection will show that many crimes are committed which are not reported to the police, and that reports are often made to the police of alleged crimes which are not crimes at all. On the one hand, probably nearly every individual at some time or other gets something stolen from him, often knowing the thief, but for a variety of reasons does not go to the police. On the other hand many a man has reported the theft, say, of a pair of gold cuff links, and has subsequently got them back from the wash.

There have thus been two influences at work on this particular sets of figures, which make it essential that they should be used with caution, especially for the purpose of long-period comparisons. The greater the confidence in the police in particular, and in the administration of justice generally, the more crimes are likely to be reported, and thus a statistical increase in crime may not be a real increase. This is the case for another reason also. Because many crimes reported to the police prove eventually not to be crimes at all, but simple losses, the police have in the past been chary of recording them. In London, for example, there was for long in existence a "suspected stolen book", in which all these doubtful reports were entered. Station officers anxious to show the comparative immunity of their districts from disorder, tended to cram as many entries as possible into this book, and as few as possible into their Criminal Statistics. In 1932 this practice was forbidden in the London Area, the suspected stolen books were abolished, and an order was made that all cases reported were to be dealt with either as crimes or as "property lost". The result of this change was that the return of indictable offences for London rose from 26,192 in 1931 to 82,846 in 1933, about 5 per cent. of the increase being real and the rest statistical. As crime in London comprises a very considerable proportion of the crimes in the whole country, the effect on the country's recorded volume of crime was very marked.

The figures of persons tried for indictable offences are not open to the sort of manipulation described above, and for this reason are much more reliable. It must be remembered, however, that these figures only record the crimes brought home to their perpetrators. Thus if crimes are on the increase because criminals are increasing their efficiency and their success in eluding the police, such increase will not be reflected in these figures. On the other

hand, if the police achieve an increase of arrests to crimes committed, the result on these figures will be an apparent increase of crime.

It is as well, therefore, to bear each set of figures in mind in studying the other, and the general conclusion to be drawn from both is that crime has been gradually increasing in this country since 1918. A prophecy may be ventured that the figures for future years will show a fall. Past indications are that in times of national crisis in face of international danger, crime decreases.

The increasing divergence between the curves of crimes detected and of persons tried is very noticeable, but this is rather to be attributed to an increase in the statistical honesty of the police than to a decline in their detective efficiency since the middle of the last century.

Crimes against the Person

Ninety-five per cent. of all crimes committed are "crimes against property", *i.e.* crimes of acquisitiveness, and thus it comes about that any generalisations made about the total volume of crime are generally true only of such crimes.

The remaining 5 per cent. comprise "crimes against the person", *i.e.* crimes of violence and sexual crimes, which, though cutting no very great figure in the statistics, bulk largely in the public estimation. Their movements, concealed in the total figures, have differed considerably from the movements of acquisitive crime.

Approximately the same number of murders are committed now as were committed seventy years ago. The average number of murders known to be committed annually in the ten years 1857–66 was 114. In the year 1937 the number was 114, and in 1938, 116. In the meanwhile, however, the population was about doubled, which means that the incidence of this crime has been halved (three murders per million of population now as against six then).

Of the 116 murders in 1938, ninety-three (involved in eighty-four cases) were of persons over the age of one year, the remainder of persons under that age. In thirty of the eighty-four cases, involving thirty-seven victims, the murderer or suspect committed suicide. Fifty arrests were made in forty-eight cases involving fifty victims, and in the case of the remaining six victims no arrest was

made. Of the fifty arrested, thirteen were acquitted or discharged, eight found insane on arraignment, ten found "guilty but insane" on trial, ten sentenced to long terms of imprisonment, and nine executed.

Other crimes of violence known to the police numbered sixty-three per million of the population in 1938, the bulk of the crimes consisting of "woundings". Woundings have shown a slight comparative increase in recent years, but this is mainly due to a modification of the law in the year 1924, by which certain less serious cases of wounding, which hitherto could only be dealt with in higher courts, became triable in Courts of Summary Jurisdiction. As a result some such cases which in order to save the elaborate procedure of trial by jury had before been classified as non-indictable cases of assault, were now classified as indictable. There has been a general tendency during the present century to make a larger proportion of indictable crimes triable in the lower Courts, and there are other instances (*e.g.* indecent assault on females) where the result has been that offences which would once have appeared as non-indictable ("akin to indictable") now have become "crimes". All crimes of violence known to the police, which numbered eighty-nine per million in the 1860's, number sixty-three now.

The trend in crimes against morals (rapes, indecent assaults, and unnatural offences) has been markedly different from that of crimes of violence against the person. To-day well over a hundred of these offences are committed per million of population, as against forty in 1857–66. The increase has been most notable in the case of unnatural offences, which have quadrupled in number since the beginning of the century. Part of the increase in indecent assault is probably statistical, since some such offences formerly dealt with as non-indictable assaults, are now dealt with as indictable offences. Actual rapes have decreased, both in absolute numbers and in proportion to the population.

The figures quoted above concerning crimes against the person all relate to crimes known to the police. As these are all crimes which are likely to be reported to the police, and there is little inducement to manipulation, they may be regarded as reliable, and the check afforded by the statistics of persons tried is not necessary.

Crimes against Property

As has been said, crimes against property comprise the great bulk of all crimes, and of crimes against property a large majority consists of larcenies. These numbered 197,514 out of a total of property crimes of 269,046 in 1938, or 4,881 out of 6,527 per million of population. The figures for crimes known to the police are notoriously liable to error in this type of offence, and it is therefore desirable to quote also the persons tried for these offences, which were 1,435 per million for larcenies and 1,869 per million for all crimes against property.

On the face of it, less than one arrest is made for every three crimes of this type known to the police, and there is apparently a considerable deterioration in this respect since the beginning of the century, when arrests to crimes known were in the proportion of rather more than one to two. Part of the explanation lies in the increased accuracy of recording by the police. It is further to be remembered that an individual person tried is frequently guilty of more than one offence. Nevertheless, the impression is left that fewer crimes are now brought home to their perpetrators than formerly, and one reason for this is certainly the fact that fewer known malefactors are now kept under lock and key than was formerly the case (see below). It should be mentioned, however, that in four-fifths of all the larcenies committed the value of the property taken is less than £5.

Burglary, housebreaking, and shopbreaking is numerically the next most important group of offences against property. 1,193 of these crimes were known to the police, and 276 persons tried, per million of population in 1938. Burglaries have been steadily decreasing in relation to the population since figures were first kept, but shop and housebreaking has shown a very marked increase, especially since the last war. Obvious reasons for this are that there are very many more shops and houses per head of population than there used to be, that far more of the shops are lock-ups, and that houses are far more frequently left unoccupied.

Robbery and blackmail, though numerically insignificant in the Statistics, socially are of much importance. The total number of robberies known was only 287 in 1938, and of blackmailing ninety-four. The incidence of robbery, however, has been reduced to one-tenth of what it was in the middle of the last century, while blackmail has increased in an almost corresponding degree. Brute

force is a factor of steadily decreasing importance in the commission of crime, and intelligence and education are now increasingly necessary attributes of the successful criminal. This is well borne out by the figures relating to frauds, including false pretences. These numbered 103 per million of population in 1857–66, as against 391 in 1938. And while in 1938 148 persons were tried in respect of the 287 robberies committed, only 3,088 persons were tried in respect of the 15,976 frauds known to the police.

The following are the remainder of the more important crimes not dealt with above, and their incidence in 1938:

Crime	Crimes known per million of population
Forgery	39
Coining	5
Malicious injuries to property	14
Suicide (attempted)	80

Forgeries have increased of late and coining decreased, as might be expected with an increasing use of paper currency. Malicious injuries to property like crimes of violence, with which they have some affinity, have decreased.

Attempted suicides (and actual suicides, which bear a pretty constant relation to attempts) have increased very considerably, the number per million in 1857–66 being twenty-four. This is very largely accounted for by the increase in the average age of the population, suicide being more common among older people.

Sex and Age of Criminals

The information given in Criminal Statistics concerning criminals themselves is limited to their sex and age, and this obviously cannot be given in respect of crimes known to the police, and is in fact not available for persons tried. The figures are, however, given for persons found guilty. Only about one in seven of all persons found guilty of indictable offences is a woman. Among the graver offences the proportion is much smaller, and it is only in such crimes as larceny by servants and from shops on the one hand, and suicide on the other, that the proportion increases above one in four. Nevertheless, not only are more women being convicted than hitherto, but the proportion of women convicted has increased lately. In 1925 it was about one in ten. On the other hand

in 1900 the proportion was a good deal higher than now, being rather more than one in five.

With regard to age distribution the trend has been so remarkable in recent years as to merit examination in rather more detail. For certain technical reasons these figures were not available after 1907 until 1929, but they have been published every year since.

In 1907 persons under *twenty-one* comprised less than a third of all persons found guilty: to-day they constitute rather more than one-half, the figures being 16,520 out of 50,271 and 36,500 out of 68,679. Put in another way, the number of persons found guilty under the age of twenty-one has increased by about 125 per cent. in thirty years. The number under the age of *sixteen* has increased *over three hundred per cent.* (numbers 1907, 7658; 1938, 23,779). And the following figures show the course during the ten years preceding the war of recorded guilt among those under *fourteen.*

Number of Children under 14 found guilty of Indictable Offences, 1929–38

1929 ..	6,380	1934 ..	11,645
1930 ..	6,863	1935 ..	13,873
1931 ..	7,587	1936 ..	14,459
1932 ..	9,014	1937 ..	16,413
1933 ..	9,743	1938 ..	15,559

These very striking facts prompt an enquiry into the present incidence of crime at different ages, and the following figures provide the answer:

Number of persons found guilty per 100,000 of population at each age group, 1938

Age	Males	Females
8	220	9
9	451	27
10	703	37
11	931	62
12	1,111	66
13	1,315	73
14	1,141	84
15	1,145	97
16	1,110	91
17	867	99

Age	Males	Females
18	740	106
19	766	108
20	665	94
21–4	559	77
25–9	431	62
30–39	307	61
40–49	182	50
50–59	101	30
60 and over	51	10
All ages	393	51

Apart from the outstanding fact that the highest incidence of crime is among boys aged 13, a number of interesting points emerge from these figures. The peak is much later among girls than boys—19 instead of 13—and the worst years are 15–20 as against 11–16. In general, criminality with females appears to be much more of an adult disease than with males. At the age of 12 or 13, nearly twenty times as many boys as girls are found guilty, but only three or four times as many men as women between 50 and 60.

While there has been a very marked increase in crime among the juvenile population, it has actually shown a decrease among adults. In 1907, out of every 100,000 of the male population over 30, 218 were found guilty of indictable offences, but in 1938 this figure had sunk to 173 (171 for the 10-year average 1929–38). Criminality in the 21–30 age group has been more or less stationary (441 in 1907, 487 in 1938, 446 10-year average 1929–38).

With regard to women over 21 there was a pronounced fall from 56 per 100,000 in 1907 to 35 in 1929, but a steady rise from then to 43 in 1938. This rise occurred among both those over and those under 30.

Undoubtedly a part of the apparent increase of juvenile crime is statistical. It should be emphasised that all the figures given relate to persons found guilty at the Courts, and the institution of Juvenile Courts (by the Children's Act of 1908), the increasing use made of them, and the extension of their scope by the Children's Act of 1933 to deal with cases up to the age of 17 instead of 16, has certainly meant that cases are now included in the figures

which would not have been included in 1907. Employers and parents and others who would have hesitated to bring a child before an ordinary police court are prepared to make use of a Juvenile Court. Moreover, before the Juvenile Courts existed, and even afterwards, it was not uncommon for the police to deal with young offenders as they thought fit, at the police station. Some chief constables even held a kind of small court of their own. The report of the Departmental Committee on Young Offenders (1927) commented unfavourably on this practice, and it has diminished under official disapproval. These changes have all meant that children who at one time made no appearance in official statistics now figure as guilty persons.

With all allowances made, however, the conclusion is inescapable, especially in face of the figures over the past ten years, that there has been a serious increase in juvenile crime and the position has now been reached that each year one child in ninety throughout the country between the ages of 11 and 16 is found guilty of an indictable offence.

Changes in the Treatment of Crime

If the change in the age distribution of convicted criminals in England has been remarkable, the altered incidence of the use of the various penal sanctions in the country has been not less striking.

There is a popular jingle which says that—

> "He who takes what isn't his'n,
> When he's cotched he goes to prison."

Half a century ago there was a good deal of truth in that statement. Upwards of half of the persons convicted of indictable offences were subjected to some form of incarceration. To-day the proportion is less than a quarter. Then, as now, the chief alternative method of dealing with the offender were fines and conditional liberty. The proportion fined has remained pretty constant during the passage of the years. The decrease in the number imprisoned has been balanced by an increase in the number conditionally released. Corporal punishment was also inflicted in some 7 per cent. of cases then, but is practically disused now.

Not only are fewer people imprisoned now. Those who are imprisoned receive shorter sentences, and the only prison sentences

which have been inflicted in appreciably greater number of late years than at the beginning of the century are those of from three to six months at Courts of Summary Jurisdiction. This is because a large number of more serious offences which were formerly dealt with at Assizes and Quarter Sessions can now be tried at the lower courts, where the maximum sentence is six months.

The general effect of the change is that at any given moment less than half the number of known criminals are under detention than there were in 1900, and the police attribute a good deal of the blame for the increase of crime to this cause.

A general indication of the methods of treatment at present in use for various age groups is given in the following table:

Nature of Sentences for Indictable Offences, 1938

	Under 14	14–16	17–20	21 and over	All ages
(*a*) At Courts of Summary Jurisdiction:					
Numbers sentenced	15,558	12,317	9,447	32,529	69,851
Percentages sentenced:					
Conditional liberty[1]	86 (51)	77 (51)	69 (45)	40 (15)	61 (34)
Detention[2]	8 (H)	13 (H)	10 (P 7) (B 3)	26	17
Fined	5	8	17	32	20
Otherwise dealt with	1	2	4	2	2
(*b*) At the Higher Courts:					
Numbers sentenced	—	240	2,004	6,367	8,611
Percentages sentenced:					
Conditional liberty[1]	—	63 (48)	54 (36)	28 (13)	35 (19)
Detention[2]	—	35 (B 20) (H 15)	44 (B 37) (P 7)	67 (P 58) (PS 5) (B 3)	61
Otherwise dealt with	—	2	2	5	4

[1] Figures in brackets indicate percentage placed under supervision of probation officers.

[2] H = Home Office Approved Schools.
P = Imprisonment.
B = Borstal Detention.
PS = Penal Servitude.

The broad comparison between methods of treatment now and at the beginning of the century is as follows:

Nature of Sentences for Indictable Offences at all Courts, 1900 and 1938

	1900	1938
Numbers sentenced	43,259	78,462
Percentages sentenced:		
Conditional liberty	16	58
Detention	55	23
Fines	22	18
Otherwise dealt with	7	1

In 1900, as has already been said, the majority of offenders were imprisoned. To-day the majority are released. Only in the case of adults at the higher courts are the bulk of them incarcerated.

Those "otherwise dealt with" in 1900 were nearly all whipped, the total number then so dealt with being 3,260. In 1938 60 persons were whipped, of whom 17 were adults flogged for robbery with violence and 43 juveniles whipped for a variety of offences.

In general it can be said that deterrent methods of treating crime have been largely abandoned, especially in the case of the younger offenders and reformatory methods largely, though not wholly, substituted for them.

Results of Treatment

The revolution in the methods of treating crime which took place during the last generation is very remarkable, and very characteristic of this country. It was not effected as the result of any proved insufficiency of the old methods or demonstrable efficiency of the new. It is only within the last dozen years that any attempt has been made to analyse the comparative results of the various methods of treatment, and by that time the revolution was complete. The change was thus wholly empirical, but it had the unusual merit that it appealed equally to the open-minded and the close-fisted. It is seldom that the humanitarian reformer finds himself in the happy position of being able to show that his reforms will save money, and penal detention, involving the board, lodging and custody of the offender, is demonstrably more expensive than conditional release. In these circumstances it is not surprising that conditional release as a method of penal treatment rapidly gained favour.

The primary object of penal treatment, however, is not to save

public money nor to make life pleasanter for the criminal, but to prevent crime. Is conditional release effective from this point of view?

In the early days, extravagant claims were made on behalf of the probation system. It was frequently stated that upwards of 90 per cent. of those placed on probation were reformed. On analysis, it was usually found that this meant that 90 per cent. did not offend again during the currency of their probation order, which was rather like claiming 99 per cent. success for methods of detention because detainers rarely commit crime when in jail.

The first honest attempt at analysis was made by the Cardiff Court who found that the percentage of probationers *not* reconvicted *five years* after the expiration of their term of probation was:

in	1919	44·82
	1920	57·78
	1921	47·82
	1922	54·56
	1923	41·78

This presented a very different picture, and judged by these figures probation compared unfavourably at this time with Home Office Approved Schools, Borstal, and even in some respects Penal Servitude.

Thus the Home Office stated in 1928 that out of 3901 boys and 299 girls discharged from reformatories during the years 1922–26, by December, 1927, only 13 per cent. of the boys and 9 per cent. of the girls had been reconvicted, the corresponding figures for industrial schools being boys 6,161 discharged, 8 per cent. reconvicted; girls 1,416 discharged, 9 per cent. reconvicted.

With regard to Borstal, in 1925 it was stated that of 2,089 youths discharged in the five years ending December, 1924, 70 per cent. had not been reconvicted (of 883 youths discharged in 1933, 53·6 per cent. had not been reconvicted in December, 1937).[1]

Convicts (*i.e.* those undergoing penal servitude) were, until 1930, divided into three classes—Stars (1st offenders), intermediates, and recidivists. Analyses made from time to time indicated that 95 per cent. of stars, 50 per cent. of intermediates, and 15 to 20 per cent. of recidivists are not reconvicted five years after release.

All these figures were incomplete and inconclusive, and in particular the Cardiff probation figures formed far too narrow a basis on which to erect any general conclusions. But they did suggest a possibility that conditional release might be a less effective method

[1] For more recent figures see p. 163.

of dealing with offenders than reformatory detention, and that an uncritical acceptance of probation as the best method for dealing with young offenders in particular was not warranted.

What appeared to be required to throw further light on this question was an analysis of the effects upon offenders of the sentences passed upon them when they came before the courts for the first time, indicating what proportion appeared again before the courts within say five years, and what had been the treatment meted out to those so appearing. Since practically all persons over 16 charged with indictable offences were finger-printed, it seemed that such information should not be impossible to obtain.

A request for information on these lines was made in connection with the chapter on Crime by the present writer in the *New Survey of London Life and Labour*, and was courteously acceded to by Lord Trenchard. The results relating to London are published and analysed in detail in Volume IX of the Survey. They were at the same time extracted in respect of the whole country, however, and were published in *Criminal Statistics*, 1932. The analysis was repeated in similar lines five years later and published in *Criminal Statistics*, 1938.

This last analysis shows that there were in 1932 17,918 male and 2,749 female "first offenders" over 16 (*i.e.* persons first recorded in that year as guilty of offences sufficiently serious to warrant the taking of finger-prints and with no previous offence proved against them) as against 15,417 males and 2540 females in 1927. Their age distribution, and the number found guilty of a further offence or offences in the following five years were as follows:

Age	No. first found Guilty in 1932		No. found Guilty of subsequent offences		Percentage	
	M.	F.	M.	F.	M.	F.
16 and 17	1,896	177	561	24	29·6	13·6
18–20	3,796	446	1,010	70	26·6	15·7
21–24	3,446	399	863	58	25·0	14·5
25–29	2,718	380	592	52	21·8	13·7
30–39	3,289	646	518	86	15·7	13·3
40 and over	2,773	701	278	64	10·0	9·1
Total	17,918	2,749	3,822	354	21·3	12·9

The analysis gives a good deal of highly interesting information which cannot be discussed here. What is relevant to the point under consideration is how the various methods of treatment of these first offenders compared from the point of view of the incidence of reconvictions.

The figures are as follows:

Numbers and percentages of First Offenders of 1932 Reconvicted by 1937 according to nature of sentence

Age	Number and percentage reconvicted who had been:							
	Imprisoned		Placed on Probation under supervision		Bound over or dismissed without probation		Fined	
Males:	No.	%	No.	%	No.	%	No.	%
16 and 17	*23*	24·7	*290*	35·5	*186*	26·3	*51*	21·7
18–20	*151*	29·4	*386*	29·8	*310*	24·2	*161*	23·9
21–24	*301*	28·8	*209*	29·3	*207*	22·1	*145*	19·8
25–29	*228*	22·4	*89*	28·2	*132*	19·8	*142*	20·1
30–39	*234*	16·4	*52*	22·3	*99*	13·7	*131*	14·7
40 and over	*122*	9·6	*16*	11·8	*61*	9·9	*79*	10·8
Total	*1059*	19·7	*1042*	29·7	*995*	20·2	*709*	17·8
Females:								
16 and 17	*2*	—	*14*	14·1	*8*	12·9		
18–20	*5*	16·1	*42*	18·9	*19*	12·1		
21–24	*10*	15·1	*19*	13·3	*22*	15·9		
25–29	*14*	17·1	*13*	13·4	*16*	14·3		
30–39	*23*	15·0	*17*	15·0	*20*	12·0		
40 and over	*15*	9·2	*10*	12·5	*14*	7·3		
Total	*69*	13·8	*115*	15·2	*99*	12·0	*71*	10·9

The figures relating to females are inconclusive, largely because the numbers are so small, but in the case of males the least successful method of treatment at all age groups is probation under the supervision of a probation officer. This comparative lack of success is particularly conspicuous in the case of the 16–17 age groups.

It is not altogether surprising to find that the results of probation with supervision appear to be less favourable than those of probation without supervision and fining. It is to be expected that the less difficult cases are dealt with by the latter methods of

treatment. But equally it is to be expected that the worst cases are dealt with by imprisonment rather than probation with supervision. Yet fewer of those imprisoned again offend.

The conclusion to be drawn is not necessarily that probation is a failure, but rather that too indiscriminate a use is made of it.

Conclusion

The facts revealed by study of the Criminal Statistics are first that there has been a marked decrease in the number of civil offences, with the exception of those due to the arrival of the motor car. On the other hand, there has been a marked increase in the incidence of crime proper, more especially in recent years. Women are responsible for growing numbers of offences, but still comprise only a very small proportion of the criminal population. The really striking feature is the increase of criminality among juveniles, especially among those under sixteen, and especially over the past decade. Accompanying this growth of crime, and especially juvenile crime, there has been a general tendency to substitute reformatory for deterrent methods of treatment and conditional liberty for imprisonment.

It is the general purpose of this article to indicate the facts and not to attempt to explain them.

Nevertheless, since the very limited selection of facts recorded here seems to point to the conclusion that the reforms which have characterized the penal methods of this country during the present century have been accompanied by an increase of crime, it is well to utter a warning.

An increase of crime does not necessarily mean that existing penal sanctions are ineffective. There are many factors in this country which may have tended to promote crime, especially juvenile crime, among them being smaller families leading to the spoiling of children, a general lack of discipline, a failure in religious teaching, the decay of the apprenticeship system, the shortcomings of our educational and industrial system in regard to the adolescent, and unemployment.

In the belief of the writer, the failure, if failure there has been, has lain not in the reformed penal methods themselves, but in the uninstructed use made of them by some of the Courts. Especially has this been so in the case of probation, which by some magistrates has been regarded as a sort of cheap universal panacea,

with a consequent overloading of probation officers with unsuitable cases. In the case of juveniles this has been in a considerable measure due to the lack of suitable alternatives. The Criminal Justice Bill endeavoured to remedy this defect by the provision of additional sanctions and it is to be hoped that now that the war is over this measure will soon become law.

II

THE TREND OF CRIMINAL LEGISLATION

By CICELY M. CRAVEN

LAW-MAKING is rather like bread-making, and Parliament is the baking oven. A law which is to become a reality, an integral part of the life of the community, must be wanted, consciously and unconsciously, by a solid body of public opinion. It must be well prepared, well mixed, and the leaven which lightens it and makes it digestible must be given ample time to work. Now in a democracy the mixing and the leavening is the task of the people, and the people works not only through the Parliament, which is the vehicle of its sovereignty, but through its servants in central and local government, the vehicle of its executive power; through its judges and magistrates, the vehicle of its judicial authority, and also through the Press, which is the national "market-place", and through the countless associations national, local, commercial, philanthropic, and educational, which assist in and criticise the methods of government. In general, these associations reproduce more or less faithfully the principles underlying the nation's government, administration by an executive responsible to and elected by the whole body of members. Occasionally some lone figure, like John Howard in the eighteenth century, works individually, but the normal course for modern British pioneers in reform is to form a society to study, to preach, to experiment, and to exert political pressure in order to prepare a legislative loaf for the Westminster oven. In modern times, the link between the work of enlightened or statesmanlike officials and unofficial groups and that of Cabinet and Parliament is the official enquiry by means of a Royal Commission, a select committee of one or both Houses of Parliament, or a Departmental Committee. In the first and third of these, the members of the committee of enquiry include both officials and private individuals, and in all the qualification of witnesses is that they shall either as individuals or representatives of groups have some special practical knowledge of the matter at issue. A new development of this kind is the new standing Advisory Committee on

the Treatment of Offenders which the Home Secretary appointed in 1944.

In no sphere of national government and legislation is the development of this machinery more marked than in the trend of the development of the criminal law and the treatment of offenders. The nineteenth century saw its beginnings in the public agitations, parliamentary movements, and commissions of enquiry which culminated in the abolition of the death penalty for all offences save murder, treason, and arson of dockyards and arsenals, in the substitution of penal servitude for transportation,[1] and in the unification of the prison system by placing all prisons under the jurisdiction of the Prison Commission.[2]

In 1895, the Home Secretary, Mr. Asquith, had appointed a Departmental Committee under the Chairmanship of Mr. Herbert Gladstone to enquire into the working of the prison system. The Gladstone Committee had reviewed the prisons in the light of twenty years' experience of the working of the machinery of central control, standardised prisons, standardised "penal labour", and rigid cellular system mitigated only by the Progressive Stage scheme, whereby months of passively good conduct earned the well-doer the privileges of a mattress on his plank bed, the use of approved school books and communication with friends. The Committee took a long look at this system (just brought out of the customary obscurity of prison by Oscar Wilde and the *Ballad of Reading Gaol*), and the longer they looked, the less they liked it. They condemned its uniformity, its rigours, and its treatment of prisoners, children, adolescents, and old lags alike as a "hopeless or worthless element of the community". Despite the healthy cynicism of a realist official, Sir Godfrey Lushington,[3] who in his evidence cast doubt on the possibility of reforming a man while you humiliate him by depriving him of liberty and responsibility, the Gladstone Committee, hopeful and humane, claimed that prison should be designed for reclamation as well as deterrence, condemned the useless unpaid labour of crank and treadmill, laid sacrilegious hands on the principles of solitary confinement and silence. They recommended greater elasticity in the system, with the object of meeting the needs of individual prisoners, the provision of workshops for labour in association, the development of educational work and prison libraries, the

[1] 27 & 28 Vic., Cap. 47, 1864. [2] 40 & 41 Vic., Cap. 21, Prison Act, 1877.
[3] Permanent Under Secretary of State, Home Office.

utilisation of the services of outside bodies and individuals for visiting and teaching, more effective after-care for discharged prisoners, a special régime for habitual criminals living by dishonesty, and a "penal reformatory under governmental management" for young offenders between sixteen and twenty-three. Such were the seeds sown in 1895 and left to germinate, some quickly, some slowly.

Within three years, some of the Gladstone Committee's proposals crystallised into law in the Prison Act, 1898, which with certain additions governs the system to the present day. "Elasticity" was provided (though the elastic was not very supple) by enacting that the details of routine be fixed by rules made by the Secretary of State. The Statutory Rules were made therefore and are continuously added to, rescinded, or modified as practical experience dictates, without recourse to legislation, though parliamentary control is preserved in the requirements that draft Rules must be on the Table of the House of Commons for thirty days before they become valid.

The Act of 1898 mitigated the ferocity of the prison administration by reducing the number of offences punishable by flogging to three—mutiny, incitement to mutiny, and assault on prison officers—and requiring the confirmation of each sentence of flogging by the Secretary of State.

The Act also made the first effort at classification of offenders by establishing the Three Divisions—the First Division to comprise political offenders has rarely been used, Dr. Jameson, of the S. African "Raid" being the chief example; the Second Division, prisoners of normally upright character with no serious criminal record in the past; the Third Division all the rest. The Court, not the prison authority, decides the division in which an offender shall serve his sentence, and as the Court knows little of the real character of the man or woman, the Triple Division was worked by rough-and-ready classification, the governing factors were the externals of the criminal's career and real individualisation was impossible. Similarly, within the prison the routine based on wholesale dealing deprived the segregation of Second from Third Division prisoners of much practical value. The black sheep of the Second Division wore brown suits, the still blacker goats of the Third Division were dressed in grey, but they all went through the same mill of grinding monotony, loneliness, silence, and futility.

A third reform effected immediately by the Act was the institution of a regular system whereby a prisoner could by good conduct earn remission of his sentence.

So, with all its limitations the Act was a landmark. The nineteenth-century prison where discipline was based on fear of punishment and the hope of reformation on a belief that solitary contemplation of an evil past would induce a good future, had been weighed in the balance by the Gladstone Committee and found wanting. From that day to the present, prison has been regarded by those who studied the question to be an evil, more or less inevitable, and the object of subsequent legislative reforms has been gradually to empty the prisons and break up the prison system by devising alternative methods of treatment and providing a greater variety of institutions. Simultaneously under the elasticity of the Act, and under cover of changing Standing Orders, the Prison Commissioners since 1922 have reduced separate confinement periods to nil, mitigated the silence rule, abolished broad arrow and convict crop, inaugurated the experiments at Wormwood Scrubs, the earnings scheme (financed for the first year by the Howard League), the system of unofficial visitors and teachers, the minimum security prison of New Hall Camp Wakefield, home leave for Borstal boys, the "open Borstals" at Lowdham, the North Sea Camp, and so forth.

The twentieth century opened with the South African war, which held up all reforms, but its aftermath of poverty, unemployment, and crime, in turn impelled people and Parliament to revise their conceptions of crime and criminals. The new Parliament which met in 1906 was agog for reform and enthusiastically humanitarian. The new Home Secretary was the Herbert Gladstone of the Gladstone Committee, and the Chairman of the Prison Commission, Sir Evelyn Ruggles-Brise, had since 1902 been experimenting with the "penal reformatory" for boys and young men. The experiment was the selection from prisons up and down the country of lads between sixteen and twenty-one who were brought together in the old convict prison at Fort Borstal and given special treatment in which some stress was laid on physical training, educational activities, and useful labour.

In 1907 the Probation of Offenders Act gave statutory recognition to the probation system which for a quarter of a century had been growing up under cover of the old legal procedure of

binding over, allied with the new philanthropy which appointed the police-court missionary or other religious or social worker to befriend, advise, and admonish the offender who was bound over.[1] The Act of 1907 provided three separate alternatives to prison or other forms of punishment: dismissal after the charge was proved, binding over, and binding over with an order for supervision by a probation officer. Confusion has been caused and probation has been handicapped by being thus indiscriminately associated with two other methods which carry no supervision and no attempt to provide discipline or training, or change of environment. The confusion accurately reflects the mind of Parliament dealing with a technical matter. The Act provided that the dismissal, the bond, and the probation order should be effected by a Court of Summary Jurisdiction "without proceeding to a conviction"; probation, if used by the Courts of Assize and Quarter Sessions on the other hand, is preceded by a conviction, and this inconsistency in the law has led to the recent proposal in the Criminal Justice Bill (1938) to require a conviction as a preliminary to probation in all cases. Whereas the Act of 1887 had given the benefit of binding over and dismissal to "first offenders" (*i.e.* those who are found guilty for a first time), in 1907 Parliament extended the power of the Courts to use these methods in any case where "*having regard to the character, antecedents, age, health, and mental condition of the person or to the trivial nature of the offence or to any extenuating circumstances it is expedient to inflict any punishment or any other than a nominal punishment.*" Behind these words and the sweeping power for mercy and individual treatment which they confer on the magistrates in Petty Sessions, lies the lesson taught by the Gladstone Committee's great gaol enquiry, the need to set free from the humiliation, degradation, cruelty, and stultification of prison routine the children, lads, and girls, the cripples and imbeciles and mentally unbalanced, the poor and friendless driven to petty crime. The Probation of Offenders Act was the first of the twentieth-century Parliaments' many confessions of faith in anything but prison. Outside Parliament reformers were preaching the need for a rational probation system with a trained probation service; they had done so ever since William Tallack, the Secretary of the Howard Association from 1867 to 1902, had first studied the probation system in Massachusetts and at the request of the Home Office expounded

[1] Summary Jurisdiction Act, 1879, and First Offenders Act, 1887.

it in a Memorandum to the Secretary of State. But Parliament, though ready to authorise magistrates to "cease to do evil and learn to do good", was not yet ready to authorise the expenditure of national funds on probation, and apart from a few local authorities who paid fees or salaries to probation officers, the constructive work was left to public-spirited individuals and voluntary societies, and notably to the staff of the Church of England Temperance Society and its Police Court Missions, who thereby obtained the monopoly which is the reward of pioneers.

Only one other Act dealt with the probation system before the war of 1914–18, and that was the Criminal Justice Administration Act, 1914, which added a power to include as a condition of the recognisance and probation order "*additional conditions with respect of residence, abstention from intoxicating liquor, and any other matters as the Court may . . . consider necessary.*" This is significant as showing the tendency of Parliament to avoid laying down rigid rules, but to provide a framework of law, within which progressive enterprising and humane magistrates may experiment with a variety of means—and within which the hidebound, unimaginative or ignorant magistrate may do precisely nothing more than his grandfather before him did on the Bench a hundred years ago. More and more does law become what the pioneers plan, what the public tolerates, what Parliament authorises, and what the executive and the judiciary make it in actual administration. Thus the Departmental Committee on the Training, Appointment, and Payment of Probation Officers found in 1922, fifteen years after the Act was passed, that more than one-fifth of the Courts throughout the country had failed to appoint a probation officer, and the Committee on Social Services in Courts of Summary Jurisdiction, reporting in 1936, stated that the percentage of persons found guilty of indictable offences and placed on probation varied from 43·8 per cent. to 5 per cent. in different Courts.

Nevertheless the number of cases dealt with by probation has increased, steadily. The Home Secretary constantly urged its more frequent use, and in 1910 Mr. Churchill sent a strongly worded circular to every Justice urging "a wise use of the Act".

Year by year the Prison Commissioners' Reports deplored the fact that offenders who might well have been placed on probation were given short terms of imprisonment; with equal persistence the Magistrates' Association, founded in 1921 on the initiative of

the Howard League for Penal Reform, created a strong body of informed magisterial opinion on the question, exposing the defects in the system as well as its beneficent possibilities. This was reinforced by the growing professional organisation, the National Association of Probation Officers, which raised the status of the officers and their calling. The effects of all this on the legislature were seen in the parliamentary moves for a real national probation system.

A Bill promoted by the Howard League in 1921–22, which never got beyond a first reading, proposed the establishment of a National Probation Commission comparable to the Prison Commission, and of local Probation authorities, as well as the appointment of a number of "reasonably well educated, trained, and paid Probation Officers". In 1924 a deputation of M.P.s belonging to the Parliamentary Penal Reform Group urged on the Home Secretary the need for public expenditure on salaries for probation officers.

Effective parliamentary action, much less drastic than these proposals, was embodied in the Criminal Justice Act, 1925. Half of this statute dealt with probation. It required every Court to appoint (or combine with other Courts to appoint) a probation Committee of magistrates; it required every Court to have (alone or in conjunction with other Courts) the services of a probation officer appointed by the Probation Committee—the first attempt to make probation an integral part of the English penal system. It provided that the salaries and pensions of probation officers should be met partly by the Exchequer—the first national expenditure on the system.

So far as Parliament is concerned, probation stands in 1944 where the Criminal Justice Act placed it in 1925.

The same busy Parliament which passed the Probation Act in 1907, produced in the next year two other measures of first importance, designed to empty the now discredited prisons, and to provide greater variety of treatment for the infinitely various lawbreakers. The Children Act, 1908, provided for the establishment throughout the country of Juvenile Courts to deal with boys and girls under sixteen, sitting either in a different building or room, or on a different day or at a different time from the ordinary Court. Mr. Secretary Gladstone's explanatory circular to Justices' Clerks strongly urged that a different place was far better than a different time, and that the work of the Juvenile

Courts should be assigned to a rota of Justices with special knowledge of juvenile delinquents and their problems. The public, except Press representatives, were excluded from the Juvenile Court. The Act forbade absolutely the imprisonment on remand or under sentence of children, *i.e.* those under fourteen, and of "young persons" (aged fourteen to sixteen) unless the Court certified that the boy or girl concerned was too "unruly or depraved" to be detained elsewhere. It required local police authorities to provide special places of detention.

The Act closed the prisons to children; it gave Justices the powers under which progressive magistrates such as Sir William Clarke Hall in London and the Birmingham City Justices built up by experiment and study the modern English Children's Court which the Children Act of 1933 took as the model to be adopted throughout the country.

The same year, 1908, Parliament passed the Prevention of Crimes Act which set up the Borstal system and so provided an alternative to prison for lads and girls from sixteen to twenty-one who had committed some very serious offence, or had sinned repeatedly and shown "criminal tendencies". Here, again, Parliament by legislation set its seal of approval on the experiment carried out at Fort Borstal by Sir Evelyn Ruggles-Brise, even to the extent of turning the name of that old prison into a generic term for these new reformatories for adolescents. Here, again, its policy was to pass a permissive measure, to define loosely, and leave it to Courts and Prison Commissioners to work out by experiment the salvation or damnation of adolescent offenders. "Borstal" from the small beginnings at Borstal with all the variants from Portland and Nottingham to Lowdham Grange, the North Sea Camp and Hollesley Bay, all function under the Act of 1908 and the Standing Orders made by the Home Secretary.

The second part of the Prevention of Crimes Act was less successful. It invented the new sentence of "Preventive Detention" for the habitual criminal. Behind the Home Secretary's original proposal was the idea of shutting up a professional criminal not as a punishment for past crimes, but to prevent future crimes. Parliament, healthily imbued with a respect for the liberty of the subject, amended the Bill so that the new sentence could only be passed as a supplement to a sentence of penal servitude imposed for a particular offence. As a result judges and criminals were in agreement as to the impropriety of giving "two sentences for one

crime". Preventive detention has been little used, and in the form given it in 1908 it was destined to be abolished by the Criminal Justice Bill of 1938. There are few more striking examples of the truth that pioneers, experts, and Home Office must initiate reforms, but that Parliament is the mirror of the general will, often obscurantist, generally confused and illogical, but holding on grimly to prejudice against tampering with ancient ideas as to "liberty" and "justice" or with ancient customs and legends. The same quality which in 1908 hamstrung preventive detention showed itself in the debates on Corporal Punishment of the Standing Committee on the Criminal Justice Bill in 1938–39. Legislation outside the programme of the party in power cannot proceed till the man in the street and his prototypes at Westminster are convinced that it is good.

Penal reform as set in motion by the Gladstone Committee concerned the law breaker and his treatment after conviction. But there is another aspect of the criminal law with which Parliament has been intermittently concerned, and that is the improvement of judicial procedure and the mitigation of the disadvantages under which the poorer defendants labour. Thus in 1903 was passed the Poor Prisoners' Defence Act which authorised the provision of free legal aid for the defence in cases tried at Assizes or Quarter Sessions, where at the hearing before the examining magistrates a plea of "not guilty" had been entered and a defence disclosed, and where the accused was unable to pay for legal aid. It was a mouse of a Bill to produce out of the mountain of argument adduced to show the injustice of allowing the efficiency of the defence to depend on the wealth of the prisoner, but it was useful as a lever for a later generation to use in order to obtain further reform. This did not come until twenty-seven years later, when the Poor Prisoners' Defence Act (1930) extended the power to grant legal aid to poor prisoners to Courts of Summary Jurisdiction, abolished the condition that a defence should be disclosed, and made it compulsory for Courts to offer legal aid to every poor prisoner charged with murder. Parliament followed this up three years later with the Summary Jurisdiction (Appeals) Act, 1933, which abolished the requirement of sureties in large sums in the case of appeals to Quarter Sessions, and authorised the grant of legal aid in the prosecution of such appeals. None of these Acts have been used freely, and the Criminal Statistics show that even eight years after the passing of the Poor Prisoners'

Defence Act only a very small number of persons received legal aid under its provisions. Thus once more it proves true that Parliament, all powerful in legislation, may be defeated by the apathy or hostility of the Courts.[1] It is a matter of some significance that both the Poor Prisoners' Defence Acts and the Summary Jurisdiction (Appeals) Act were introduced by private members, Bills were supported by all parties united in the Parliamentary Penal Reform Group, and in virtue of their uncontroversial nature were then blessed by the Government and given parliamentary time to pass through all stages. There were other measures in which the twentieth-century Parliaments, reflecting the growing interest in social questions and containing an ever-increasing element of working-class representatives, showed its desire to redress the balance of the old world which weighed heavily against the poor man or woman in the dock. The Criminal Justice Administration Act (1914) by one simple clause which compelled the Courts to allow time for payment of fines (unless there were compelling reasons, such as lack of fixed abode, to the contrary) reduced the number of imprisonments in default from 83,187 a year from 1909 to 1913 to 11,615 in 1933. By 1933, Parliament, impressed once more by the criticisms coming from bodies like the Magistrates' Association and the Howard League, was finally convinced by the findings of the Departmental Committee on imprisonment by Courts of Summary Jurisdiction in Default of Payment of Fines and other sums of money. It thereupon returned to the legislative assault on imprisonment for poverty, and by the Money Payments (Justices Procedure) Act, 1935, ended the bad old habit of passing alternative sentences such as "40*s.* or 14 days", under which offenders whom Justices believed to merit only a fine were imprisoned in default without the Justices being apprised of the default. Under the present law, a person who has defaulted in the matter of a fine, an order to pay rates, income tax, or allowances for wife or dependents, must be brought before the Court and enquiry made as to his means before a decision is taken to commit him to prison. The effects of this Act are indicated by the fact that imprisonments in default of fines have fallen from 13,433 a year in the five years 1925 to 1930 to 7,936 in 1938, in default of rates from 2,001 to 1,250, in default of

[1] But the defeat is not accepted as final; in May 1944 the Home Secretary appointed another Departmental Committee to make further enquiry into the problems of Legal Aid for Poor Persons and its Report was published in 1945.

separation allowances to wives and illegitimate children's allowances from 6,701 to 2,927.

The growing vigilance of Whitehall and Westminster in this sphere is illustrated by the fact that in peace time, the Criminal Statistics and Prison Commissioners' Reports show year by year the numbers affected by the Poor Prisoners' Defence Acts, the Appeals Act, and the Money Payments Act. Parliament is able to keep its finger on the pulse of the judiciary; it knows what the Courts are doing, and so is able to test the efficacy of its own work. A further Act showing Parliament's revulsion from the old laws directed against the poor and friendless is the Vagrancy Act, 1935, sponsored by a private member, and making it no longer an offence to sleep out without visible means of sustenance as it had been since the Vagrancy Act of 1824. The occasion for this legislation arose out of the tragic and mysterious death in prison of a poor man sentenced for sleeping on a steam roller. Characteristically Parliament altered the law to redress that particular wrong, but has not attempted the overdue repeal of the Act of 1824 and the substitution of a modern vagrancy law.

The great Acts of 1907 and 1908 were signposts showing the road along which Parliament hoped the Courts would travel in dealing with young offenders, first offenders and others of no criminal habit, with adolescent law breakers, and with hardened recidivists. In the twenty years following the war of 1914–18 a series of official enquiries and reports put the searchlight of experience, study, and criticism on English penal methods and on these policies in particular. The most notable of these reports were those of the Royal Commission on Police Powers and Procedure (1929), and the Street Offences Committee (1928), the Select Committee of the House of Commons on Capital Punishment (1930), the Departmental Committees on Young Offenders (1927), on Persistent Offenders (1932), on the Employment of Prisoners (1934), Employment on Discharge (1935), on the Social Services in Courts of Summary Jurisdiction (1936), on Corporal Punishment (1938). Apart from the introduction by private members of Bills to abolish the death penalty, none of which have progressed further than first reading, Parliament has not as yet attempted to carry out in legislation the recommendation of the Select Committee that capital punishment should be abrogated by law for an experimental period of five years. Spasmodically, when emotionally aroused it has passed laws to

exempt certain cases of homicide from the passing of the death sentence. The Infanticide Act (1922) created the offence of infanticide as distinct from murder in the case of the killing of a newly-born baby by the mother while still suffering from the stress of childbirth. The Sentence of Death (Expectant Mothers) Act (1931) forbids the pronouncement of the death sentence on expectant mothers, the House of Commons having been moved to sympathetic indignation by a tragic case of a young expectant mother who had killed one of her children under the urge of poverty and desperation. Slowly but surely parliamentary opinion appeared to be turning against the death penalty: witness the vote of the House of Commons in favour of abolition in 1938. It was, however, not yet ready to translate that vote of a small House into a law expressing the considered judgment of the majority and in May 1940, under the stress of war and the struggle for national independence it extended capital punishment for certain offences of treachery and sabotage, thus reversing the trend of legislation of over a century and a quarter. It is significant that even in this crisis, the voices of several M.P.s were raised in courageous protest on the ground that the death penalty gave no protection against treachery which was not equally provided by other penalties, and that a humane and progressive community could not preserve its "own honour and dignity" by resorting to barbarous methods.[1]

Side by side with the Report on Capital Punishment the Reports of the Royal Commission on Police Powers and of the Street Offences Committee lie dormant in the Home Office, shelved until public and parliamentary opinion, kept informed by societies like the Association of Moral and Social Hygiene, or a reforming Secretary of State, brings them out to support a new policy. The latest are the Report on Justices Clerks published in the spring of 1944 and on Legal Aid for Poor Persons (1945).

All the other Reports have contributed their quota to laws already passed, or to Sir Samual Hoare's (now Viscount Templewood) Criminal Justice Bill, which was carried through the Committee stage of the House of Commons in 1939, and only failed to reach the statute book owing to the outbreak of war. In that Bill were gathered up the fruits of thirty years' experiment, experience, criticism, and reflection. It illustrates better than any law actually passed, the trend of legislation in this generation both in its nega-

[1] *Hansard*, 22nd May, 1940, and *Hamlet*, Act II, Sc. 2.

tions and its affirmations. It proposed to abolish immediately penal servitude and ticket-of-leave and sentences of corporal punishment in all Courts, and by gradual stages all sentences of imprisonment on persons under twenty-one in Courts of Summary Jurisdiction. It proposed to render this last prohibition practicable by providing more alternative methods of treatment and bringing the probation system up to date. For the first time it was proposed to give parliamentary sanction to the spending of public money on the training of probation officers, while a statutory obligation was laid upon justices to form case committees through which every Court would be required to do as the best Courts had done for years and give systematic care and attention to the work of their probation officers. It provided for the establishment by the State of hostels to be called Howard Houses, where adolescent offenders could be required to live under discipline and control, while going out to factory or workshop, earning their living, paying for their board, and leading a normal life, with normal temptations and responsibilities. This was an extension of the valuable experiments made under the law which authorised Courts to insert a condition as to residence in a probation order, but Howard Houses were to be State institutions not connected with probation. It provided Senior and Junior Compulsory Attendance Centres, where obstreperous or defiant young offenders whom probation failed to control could be required to spend up to a certain number of hours for a certain number of weeks. It was perhaps characteristic of English hatred of logical plans, that neither the Secretary of State nor Parliament appeared to have any very clear idea as to what the young offenders would do in these centres. The Senior Centres (for those from sixteen to twenty-one) were to be run by the State, the Junior Centres by the Local Education Authority, and it was stated by the Home Secretary that they would have the atmosphere of a well-run boys' club. Obviously Parliament was not for the first time simply proposing to give Courts and local authorities and departmental chiefs a new idea with which to experiment.

In the original Bill as presented to the House, Courts of Summary Jurisdiction were to be empowered to commit offenders to Borstal, but again characteristically, the House of Commons reflected the widespread reluctance of many sections of the public to give to a Court which might consist of two lay justices of the locality in which the offender lived, the power to pass a sentence

of three years' detention. The Home Secretary bowed to the will of the House and amended the Bill so that as it emerged from Committee stage it left the procedure of committal to Quarter Sessions unchanged, though it made the qualifications for Borstal less rigid.

The Bill invented two new forms of treatment for recidivists, young and old, following roughly the recommendations of the Persistent Offenders' Report. Sentences of Corrective Training for two to four years for young men from twenty-three to thirty were to provide an extension of Borstal methods to this age group. Sentences of Preventive Detention of from four to ten years were to provide for the protection of society by shutting up offenders over thirty years of age, with at least three previous convictions of indictable offences, out of harm's way for long periods. Here again, Parliament did not propose to lay down regulations as to what the régime should be in either Corrective Training or Preventive Detention. It was concerned to safeguard the offender against unduly long sentences for insufficient reason, and stiffened up the original requirements as to previous convictions, and after that it proposed to hand over to the prison authorities the task of working out the new schemes by the method of trial and error, governed only by Rules to be made by the Secretary of State after they had been laid on the Table of the House.

The most far-reaching proposals of the Bill were those which provided that money from public funds might be spent on providing medical examination, mental, physical, and psychological, of offenders before sentence and "mental treatment" (defined with English parliamentary elasticity and inexactitude as "any treatment designed to cure or alleviate his mental condition") after sentence. The preliminary examination has been demanded in season and out of season by reformers, probation officers, psychologists, and other experts, ever since the Young Offenders Committee in 1927 had urged the establishment of three Observation Centres similar to the Belgian Centre at Moll, for young delinquents. The Children's Act of 1933 had failed to provide this. The Criminal Justice Bill included it in the form of State Remand Homes for those under seventeen, and Remand Centres for those from fourteen to twenty-one. "Mental Treatment" was to be obtained through a fresh development of the probation system by allowing Courts to make attendance for such treatment a condition of probation. The House of Commons was alert to emphasise

and safeguard the voluntary nature of probation so that no offender could legally be compelled to undergo treatment however desirable such treatment might be. It showed less interest in the question of ensuring the provision of effective medical service for this purpose.

Such briefly were the new plans outlined in the Criminal Justice Bill. It reveals Parliament and the trend of its legislation in all its strength and weakness. It is cautious, slow to abolish old custom however evil, witness the formidable Conservative revolt against the Conservative Government's proposal to abolish flogging. It is vague as to the future, and just gives the executive and judiciary a few ideas and authority to work them out. It is kindly and humane in a general way, and is convinced that prison should be avoided at all costs at least for the young. Ever and always it is alert to protect the liberty of the subject, even the criminal subject, from long and heavy sentences behind the bars.

Parliament gives judges and magistrates great powers for good and evil. It can enlarge or diminish those powers as it pleases by legislation. It avoids the minimum sentence, save in the case of murder, and the power to use probation in the case of any other offence however serious and of any offender however hardened, is the supreme instance of its faith in the Courts. It controls the Home Secretary because it holds the purse-strings and if some scandal concerning the treatment of offenders or the handling of prisoners or of children on remand or under supervision is either alleged or proved (as in the case of the Hereford Juvenile Court (1943), the London Remand Home (1945) and the boarding out of the O'Neill children (1945)) Enquiries and public reports are likely to be demanded by the House of Commons, and authorities will be either vindicated or rebuked on the evidence. It can by petition of both Houses of Parliament remove a judge or magistrate. So it is sovereign. But mindful that the independence of the judiciary is a corner stone of liberty it neither interferes itself nor suffers the Government to interfere with the decisions of the Courts, although the royal prerogative remains in the background to provide mercy.

III

THE ADMINISTRATION OF CRIMINAL JUSTICE

By ALBERT LIECK

THE English system of criminal procedure has, like many other English institutions, been of slow growth and subjected to much adaptation. It is in consequence unsymmetrical in structure and not well balanced in function. Yet it works effectively, a result due in part to an underlying conception of justice which is sound, and in part to a certain national genius for getting good results out of imperfectly adjusted social machinery.

A system which has thus grown and been continually re-adapted as occasion has arisen can be completely understood only in the light of its history. That history is too long and complicated for treatment here. It must suffice to say that modern English criminal procedure has two ancient roots with which we have primarily to be concerned—the jury and the justice of the peace. A description of their constitution and functions will be given in the proper place in this chapter with such particularity as is possible in a short disquisition, and something will be said about the present relationship of these two elements to one another, a relationship continuously in a state of change and development, with a trend clearly recognizable by those who will pull from their eyes the wool of tradition and complacency. Altogether too common is the assumption that an institution of which men have in the past been justly proud is still in full vigour long after it has, in fact, been partly superseded, and the still more shortsighted view that any national institution must be the best in the world, when in truth it is no more than a thing which happens to be well suited to one particular people. The first assumption is a kind of mental myopia to which Englishmen seem especially liable, by reason perhaps of an ingrained reluctance to enquire into fundamentals and a disconcerting readiness to put new wine into old bottles without much regard to the labels upon them. Sometimes one feels indeed that the Englishman is never happier than when, as Rudyard Kipling once put it, he is making a bicycle do typewriting. The second assumption is a piece of false

thinking to which members of every organised community at times succumb and is usually logically completed by the equal falsity that they alone are the salt of the earth.

With this preliminary warning as to the nature of what more orderly minded peoples are bound to regard as a haphazard and anomalous system, we proceed to as orderly a presentment of its leading features as can be compassed.

THE COURTS

1. Courts of Summary Jurisdiction[1] and Examining Magistrates

A. *Justices as Trial Courts.*

The English criminal courts of first instance will be found spoken of in statutes and text-books as "courts of summary jurisdiction", "petty sessional courts", and (not strictly as a term of art) "police courts", but one and all of these terms refer to the same tribunals—justices of the peace sitting as a court to try offenders (we leave on one side their civil jurisdiction). The same justices, usually sitting in the same room, when engaged in a preliminary enquiry whether an accused person shall or shall not be committed for trial by a jury, are spoken of as "examining magistrates" or "examining justices" but their functions are not now, though centuries ago they were, similar to those of the *juge d'instruction* or *Untersuchungsrichter* of Continental practice. To confuse the uninitiated still further the expressions "magistrate" and "justice of the peace" are interchangeable, though there is a tendency to keep the former for the paid professional magistrate, and the latter for the unpaid lay justices; and, further, examining magistrates are sometimes spoken of as a court of summary jurisdiction; whether they are or are not a court is not of technical importance, but they are certainly not then exercising summary jurisdiction.

There are paid professional magistrates in the County of London (not to be confused with the City of London, which is the

[1] This part of the subject is discussed at greater length than others because the rapidly growing importance of courts of summary jurisdiction and the peculiarities of their constitution and operation are by no means fully appreciated even in their home country, and still less abroad. It is necessary, too, to say at an early point much which applies to all criminal trials. In dealing with other courts a mere reference back will suffice.

mere central core of the metropolis, nor with the very large area popularly known as "London", an urban area consisting of the aggregate of the City of London, the County of London, some County Boroughs, and parts of the Counties of Middlesex, Surrey, and Kent, with spillings over into other counties). These magistrates are variously spoken of as "police magistrates", "metropolitan police magistrates", and "metropolitan magistrates". They inherit the word "police" from days when they were not merely criminal judges of first instance, but heads of small bodies of police constables. They now have no connection with the police whatever.

There are also paid professional magistrates in some large centres and densely populated areas elsewhere in England. They are known as stipendiary (*i.e.* paid) magistrates.

These professional magistrates are simply justices of the peace paid to secure their regular attendance[1]; and required to have professional qualifications for the more effective performance of their duties. The professional qualification is seven years' practice at the Bar.[2] Each usually (in London always) sits alone, but (save in some only of the metropolitan courts[3]) lay justices may, and in some places do, sit with them with an equal vote. In London, side by side with the metropolitan police courts, sit courts constituted solely of lay justices with concurrent jurisdiction[4] (we deliberately refrain from going into certain exceptions to the generality of this statement). As, however, the lay justices are by law forbidden to take fees,[5] most of the business goes to the "police courts". The whole position in the County of London has in recent years been under review,[6] and is to be made less of a patchwork scheme. It is hoped that certain serious defects and abuses will disappear.

A court of summary jurisdiction exercising full powers consists of two or more justices of the peace,[7] or one professional

[1] Preamble to the Middlesex and Surrey Justices Act, 1792. Preamble to the Merthyr Tydvil Stipendiary Justice Act, 1843. Metropolitan Police Courts Act, 1839, s. 12, and other enactments.

[2] Metropolitan Police Courts Act, 1839, s. 3; Municipal Corporations Act, 1882, s. 161 (1), and other enactments.

[3] *Ibid.*, 1840, s. 6.

[4] *Dodson* v. *Williams* (1894), 10 *Times Law Reports* 211.

[5] Metropolitan Police Courts Act, 1839, s. 42.

[6] Report of the Departmental Committee on Courts of Summary Jurisdiction in the Metropolitan Area (1937), of which the present writer was a member.

[7] Summary Jurisdiction Act, 1848, s. 12.

magistrate,[1] either sitting alone or with other justices. There is in general no legal maximum number of members of the court, and sometimes the ridiculous spectacle has been seen of forty and more judges sitting to try small infractions of the law. Usually common sense restricts the number to a manageable one, often only two or three, and there is now a tendency to regulate the number by statute. Thus a juvenile court (which is a court of summary jurisdiction dealing with persons under seventeen years of age) has never more than three members[2] (one at least of whom is, in ordinary course, a man and one a woman).

One lay justice sitting alone can constitute a court, but his powers are then very limited. One justice sitting alone can act as an examining magistrate.[3]

A court of summary jurisdiction (save a juvenile court) sits in a place open to the public.[4] Even the juvenile court must admit the Press.

Offenders are brought before justices either by a summons[5] (a written order to appear for trial) granted upon an information which in some cases is by statute required to be in writing and in some on oath; by a warrant[6] (a written order to the police to arrest and bring before the court) granted on such an information; or upon a charge preferred by the police or other prosecutor after arrest on powers of arrest without warrant. Once an accused is before the court, even if brought there irregularly, he can be dealt with, subject to his being clearly charged and being given a reasonable opportunity to prepare his defence.[7] Defendants who are summoned but do not appear may be tried in their absence,[8] or a warrant of arrest may be issued.[9] They are entitled to appear by counsel or solicitor; if they do so a warrant cannot be issued. Any accused person whatever is entitled to be legally represented (*i.e.* to have counsel or solicitor to defend him).[10]

Before expounding the jurisdiction and powers of courts of

[1] *Ibid.*, s. 33; Metropolitan Police Courts Act, 1839, s. 14; Stipendiary Magistrates Act, 1858, s. 1, and other enactments.

[2] Children and Young Persons Act, 1933, Second Schedule; Children and Young Persons Act, 1938, s. 7; Juvenile Courts (Constitution) Rules, 1933.

[3] Indictable Offences Act, 1848, ss. 17, 25.

[4] Summary Jurisdiction Act, 1848, s. 12; Summary Jurisdiction Act, 1879, s. 20 (1); Children and Young Persons Act, 1933, s. 47 (2).

[5] Summary Jurisdiction Act, 1848, ss. 1 and 2; Indictable Offences Act, 1848, s. 1; and other enactments.

[6] *Ibid.* [7] *R.* v. *Hughes* (1879), 4 Q.B.D. 614.

[8] Summary Jurisdiction Act, 1848, s. 13. [9] *Ibid.* [10] *Ibid.*, ss. 12, 13.

summary jurisdiction it is necessary to say something about the classification of offences in English law. The ancient division into felonies and misdemeanours has become almost meaningless; in a general and loose way one may say that felonies are more serious crimes than misdemeanours. That was true once upon a time, but the distinction by degree of heinousness is no longer exact. Thus stealing money or goods is felony; obtaining money or goods by false pretences with intent to defraud is misdemeanour. Space will not permit discussion of what effective differences remain between felonies and misdemeanours; a few will be dealt with incidentally as we go along. For our present purpose it is more useful to consider all offences as:

offences punishable on indictment; and
offences punishable on summary conviction.

For convenience' sake we abbreviate these phrases to "indictable offences" and "summary offences".

All summary offences are triable by courts of summary jurisdiction. All indictable offences other than homicide are triable summarily where the accused is a person under the age of fourteen years, and must be so tried unless some person over fourteen is jointly charged with the one under fourteen.[1]

All indictable offences other than homicide are triable summarily if the accused be a person of fourteen and upwards and under the age of seventeen years, and he consents to be tried summarily.[2]

A large number of indictable offences are triable summarily where the accused is a person of seventeen years of age or more and he consents to be so tried.[3]

When an indictable offence is tried summarily the procedure is the same as for a summary offence.[4]

When the maximum punishment on summary conviction for a summary offence exceeds three months' imprisonment, the accused can claim to be tried by jury, and he must be informed of this right before the case begins.[5] There are, however, exceptions to this salutary rule.[6] When the right is claimed the procedure thereafter followed is as for an indictable offence.[7]

[1] Summary Jurisdiction Act, 1879, s. 10; Children and Young Persons Act, 1933, Third Schedule.

[2] Summary Jurisdiction Act, 1879, s. 11.

[3] Criminal Justice Act, 1925, s. 24 and Second Schedule. There have been additions to the list of offences in the Schedule by subsequent legislation.

[4] Summary Jurisdiction Act, 1879, s. 27.

[5] *Ibid.*, s. 17.

[6] *Ibid.* and other enactments.

[7] *Ibid.*

Some Acts of Parliament provide a penalty upon summary conviction, and also one upon conviction on indictment. The choice of which method to follow is with the prosecutor, subject to the power of the justices to commit for trial by jury if they think proper. Where the maximum punishment on summary conviction for such an offence exceeds three months' imprisonment, the accused can, of course, claim to be tried by a jury and so compel the prosecutor to proceed by indictment even though he may wish to proceed summarily.

Summary offences range from small matters, such as neglecting to send a child to school or failing to have a light on a bicycle at night, to such serious ones as frauds by bankrupts; and the penalties which may be inflicted on summary conviction range from a shilling fine[1] to twelve months' imprisonment,[2] or even, for certain revenue and other offences, two years' imprisonment.[3] There are almost unlimited powers of mitigation; a fine can be substituted for imprisonment, and either the maximum term of imprisonment or the maximum fine can be reduced.[4]

There is a time limit, usually six months, for the prosecution of summary offences;[5] there is no time limit for the prosecution of indictable offences (with a few exceptions).

The list of indictable offences triable summarily by consent, in the case of adults, includes common forms of theft or fraud, certain offences of counterfeiting coins, some forgery offences, serious offences of violence, indecent assaults on persons, male or female, under sixteen years of age,[6] and other crimes.

The penalty on summary conviction of an adult for an indictable offence is six months' imprisonment or a fine of one hundred pounds, or both such imprisonment and fine.[7] Consecutive sentences up to an aggregate of twelve months may be imposed;[8] a term of imprisonment imposed in default of payment of an addi-

[1] Profane Oaths Act, 1745. This law is obsolete in practice.

[2] *E.g.* Bankruptcy (Amendment) Act, 1926, s. 10.

[3] Customs Consolidation Act, 1876, s. 186; Finance Act, 1935, s. 15; National Service Act, 1941, s. 4.

[4] Summary Jurisdiction Act, 1879, s. 4. But there are some exceptions made by over-riding provisions.

[5] Summary Jurisdiction Act, 1848, s. 11. The period is longer in some instances, see for example the Merchandise Marks Act, 1887, s. 15. In some it is shorter, see Food and Drugs Act, 1938, s. 80. In one instance there is no limit, Military Training Act, 1939, s. 13 (2).

[6] Criminal Justice Act, 1925, Second Schedule.

[7] Criminal Justice Act, 1925, Second Schedule, s. 24.

[8] Criminal Justice Administration Act, 1914, s. 18.

tional fine may be added to this.[1] The penalties on conviction of children (persons of more than eight and less than fourteen years of age—eight is the age at which criminal responsibility begins)[2] or young persons (persons of fourteen or over but under seventeen) are dealt with in a later chapter on the juvenile courts. Exposition of the methods of dealing with juveniles is also postponed to that chapter.

Courts of summary jurisdiction have discretion not to punish at all offenders whom they have found guilty of offences. They can use their powers under the Probation of Offenders Act, 1907, as amended by subsequent legislation. Probation is a subject to be dealt with in a later chapter, and here it is mentioned only in passing.

Courts of summary jurisdiction dealing with adult offenders have various additional powers in the case of particular offences,[3] but we will not cumber our exposition with details of that sort. They have no powers of corporal punishment. They can make orders of restitution of stolen property or property fraudulently obtained.[4]

Appeals from decisions of courts of summary jurisdiction are discussed *post* under "Quarter Sessions" and "Twentieth Century Developments", and see "King's Bench Division" as to appeals on law only.

B. *Justices as Examining Magistrates.*

The justices as examining magistrates sit in the same court-room (with rare exceptions such as taking the evidence of witnesses too ill to appear) as when trying offenders. They almost invariably sit in open court, though there is power to exclude the public.[5] Their function is to take evidence and decide whether it is sufficient to put the accused on trial for any indictable offence. They are not bound by the charge preferred at the commencement of the proceedings, but may commit for trial for any indictable offence revealed by the evidence.[6] The committal is to the Quarter Sessions or Assizes according to the offence and the opportunity for early trial. The defendant is entitled to give evidence on oath, and he is entitled to call his witnesses. In deciding

[1] Criminal Justice Act, 1925, s. 27.

[2] Children and Young Persons Act, 1933, s. 50.

[3] *E.g.* Gaming Act, 1845, s. 8. [4] Larceny Act, 1916, s. 45.

[5] Indictable Offences Act, 1848, s. 19. As to the desirability of excluding the public in notorious cases see *Bow Street World*, p. 137, by the present author.

[6] *Ibid.*, s. 25.

whether there is a case for trial or not the evidence for the defence must be taken into account.[1] The examining magistrate may not question the accused unless he has chosen to give evidence on oath, when he may be treated in general as any other witness.[2] He may not be asked any questions tending to show he has committed or been convicted of any offence other than that charged, or is of bad character.[3] (There are exceptions to this rule, but they would require lengthy explanation, and do not affect the general principle.) The accused is never questioned by the magistrate apart from those cases in which he gives evidence. He is entitled to have, at his own expense, legal assistance throughout. There is provision for legal assistance to poor persons at the public expense.[4]

If there is not a *prima facie* case made out the accused is discharged,[5] but this discharge is not an acquittal, and does not, like an acquittal, prevent his being again arraigned on the same charge.

Upon committal the defendant may be bailed, *i.e.* allowed his freedom, with or without sureties to appear at the trial, or he may be kept in prison until the trial. The magistrates have full discretion whether to bail a defendant or hold him in custody; but, by a queer anomaly, in cases of misdemeanour he can go to a judge of the High Court, who has no option but to grant him bail, which, by the ancient law of the land, must not be excessive. Upon committing for trial for misdemeanour the magistrate must inform the accused of his right to apply to the High Court for bail.[6]

2. Courts of Quarter Sessions

A. *Original Jurisdiction.*

A court of Quarter Sessions consists of:

(*a*) for a county—the whole or any number more than one of the justices of the peace for that county;[7]

(*b*) in a borough—the Recorder.[8]

[1] Criminal Justice Act, 1925, s. 12 (8).
[2] Criminal Evidence Act, 1898, s. 1.
[3] *Ibid.* This applies also to the actual trial.
[4] Dealt with *post.*
[5] Indictable Offences Act, 1848, s. 25.
[6] Criminal Justice Administration Act, 1914, s. 23.
[7] Interpretation Act, 1889, s. 13 (14); Halsbury's *Laws of England,* 2nd edition, vol. 21, p. 669, para. 1144.
[8] Municipal Corporations Act, 1882, s. 165 (1) (2); the recorder is appointed by the King, and must be a barrister of five years' standing. *Ibid.*, s. 163 (1). Not every borough has a court of Quarter Sessions however.

There are special arrangements for the County of London and for the City of London.

The court is held four times a year, hence its name, but "adjourned sessions" are held at intermediate dates.

In the County of London[1] and also in the County of Middlesex[2] there are paid professional chairmen and deputy chairmen. The professional qualification is ten years' practice at the Bar. Elsewhere the appointment of a legally qualified chairman is optional.[3] The qualification is ten years' standing as a barrister or solicitor having legal experience which the Lord Chancellor considers qualifies him.[4] They may be paid.[5] By the end of March 1940 every county Quarter Sessions, save those of five small counties, had legally qualified chairmen.

As a court of trial a court of Quarter Sessions sits with a jury. What follows as to juries applies to juries at Quarter Sessions and at Assizes alike.

The trial jury consists of twelve members, although by a recent innovation if, during the hearing, one or even two die or be discharged on the ground of illness or for other cause, the trial may proceed with only eleven, or it may be ten, jury members.[6] Under the stress of the recent war it has been provided that the jury may be constituted of seven members only.[7] Women as well as men now serve on the jury.[8]

Until recent years the trial jury (petty jury) tried accused persons on indictment (written accusation) found by the grand jury (which might consist of any number of members from twelve up to twenty-three), but the grand jury has been abolished,[9] with an exception not worth mention here; and now the bill of indictment has only to be signed by the proper officer of the trial court as being in compliance with the law.[10]

The law of evidence is the same in trials on indictment as in summary trials, and what has been said above as to not questioning the accused also applies.

All criminal trials proceed in one order, first the case for the

[1] Local Government Act, 1888, s. 42.
[2] Middlesex County Council Act, 1934, s. 90.
[3] Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 1.
[4] *Ibid.* [5] *Ibid.*, s. 4. [6] Criminal Justice Act, 1925, s. 15.
[7] Administration of Justice (Emergency Provisions) Act, 1939, s. 7.
[8] Sex Disqualification (Removal) Act, 1919, s. 1.
[9] Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 1.
[10] *Ibid.*, s. 2.

prosecution, then the case for the defence, the summing-up of the judge to the jury, verdict, and discharge or sentence. Both the prosecutor and the accused are entitled to have their case conducted by counsel.[1] Witnesses are examined "in chief" by the party calling them, cross-examined by the other side, and re-examined by their own to clear up any point raised in cross-examination.

The general burden of proof is upon the prosecution. This ancient requirement of English law is sometimes spoken of as the "presumption of innocence".

The verdict must be unanimous.[2] The verdict is "Guilty" or "Not Guilty".[3] "Not Guilty" means only that the case is not proved to the satisfaction of the jury, not necessarily that they deem the prisoner to be innocent. Either verdict is a bar to a subsequent charge for the same matter;[4] no one may be put in peril twice for the same offence.

A court of Quarter Sessions has jurisdiction to try all indictable offences save those expressly excepted by law.[5] Quarter Sessions presided over by a legally qualified chairman have wider jurisdiction than Quarter Sessions presided over by a chairman not so qualified.[6]

No trial on indictment takes place in the absence of the accused. In legal theory there are circumstances when it may, but it is not going too far to say that in practice it is never so.[7]

The trial is, with rare exceptions, in a public court with open doors throughout.[8]

Appeals from convictions and sentences at Quarter Sessions are discussed *post* under Court of Criminal Appeal.

[1] In some courts of Quarter Sessions solicitors have a right of audience.

[2] Ancient practice; see Stephen's *History of the Criminal Law of England*, Vol. I, p. 304.

[3] What are called "special" verdicts are uncommon, and will not be discussed here.

[4] As to the exact effect of the plea of *autrefois convict* or *autrefois acquit*, see Halsbury's *Laws of England*, 2nd edition, Vol. 9, p. 152.

[5] Halsbury's *Laws of England*, 2nd edition, Vol. 21, pp. 691 *et seq.* A list of the exceptions will be found there. It includes, of course, all capital offences.

[6] Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 2. List of offences in *ibid.*, First Schedule.

[7] For details of the rules see Archbold's *Criminal Pleading and Practice*, 31st edition, p. 175.

[8] *Op. cit.*, p. 198. For instances of exception see Children and Young Persons Act, 1933, s. 37; Official Secrets Act, 1920, s. 8 (4).

B. *Appellate Jurisdiction of Sessions.*

The Quarter Sessions hear appeals from courts of summary jurisdiction; there is then no jury.

Until a few years ago the theory might have been upheld that the Sessions as a court of appeal was the whole body of the justices of a county reviewing the decisions of some of their number, though this matched ill with the fact that in boroughs having a court of Quarter Sessions the recorder is the sole judge. That is still the position in boroughs, but by a recent law the constitution of the court in counties has been substantially modified. As the matter of criminal appeals is to be dealt with mainly as a twentieth-century development it will be convenient to postpone dealing with the jurisdiction of Quarter Sessions as a court of appeal to a later portion of this chapter. But it is in place to set out here its constitution and powers.

In boroughs the recorder is the court.

In counties there is what is inappropriately called an appeal "committee".[1] The number and mode of appointment of the committee is settled by the justices in Quarter Sessions. When hearing appeals the members must act by a court consisting of not less than three or more than twelve magistrates. Twelve is an excessive number, which was inserted in the progress of the Bill through Parliament. Five is, generally speaking, an outside number of judges for a court to be conveniently operated, and three (as also an odd number) is a convenient alternative. The County of London has a special constitution for its Quarter Sessions appeal court with which we need not concern ourselves here.

Quarter Sessions, as an appeal court, may confirm, reverse, or vary the decision of the court of summary jurisdiction, or remit the matter with their opinion, or make such other order as they think just, and generally exercise any power which the court appealed from might have exercised.[2]

3. Courts of Assize

A court of assize is presided over by a judge of the High Court, or a Commissioner specially appointed, who tries persons on in-

[1] For this and what follows as to the constitution of the court, see Summary Jurisdiction (Appeals) Act, 1933.

[2] Summary Jurisdiction Act, 1879, s. 31 (viii), as substituted by the Summary Jurisdiction (Appeals) Act, 1933, s. 1.

dictment, with a jury. What is said above as to the jury, the order of trial, representation by counsel, and the law of evidence at Quarter Sessions applies equally to Assizes.

The judge or commissioner travels a "circuit" of Assize towns,[1] in each of which he holds a court. There are the following circuits: the South-Eastern, the Midland, the Northern, the North-Eastern, the Oxford, the Western, and the North and South Wales and Chester.

The Central Criminal Court is a branch of the High Court of Justice.[2] It has jurisdiction over an extensive area in and around London.[3] A judge of the High Court takes the more serious cases. There are also courts presided over by the Recorder, the Common Sergeant for the City of London and the judge of the City of London Court. Indictments for offences in the City of London which elsewhere would be tried at Quarter Sessions are tried at the Central Criminal Court. Trials may be specially removed by the King's Bench Division of the High Court to the Central Criminal Court from other parts of the country.[4]

The Assizes and the Central Criminal Court have jurisdiction to try all indictable offences.

An appeal against a conviction or sentence on indictment lies to the Court of Criminal Appeal.[5]

4. The King's Bench Division of the High Court

As a criminal court of first instance the King's Bench Division has cognizance of all criminal causes from treason down to the most trivial misdemeanour or breach of the peace.[6] Criminal trials in the King's Bench are very rare. Very occasionally what is called a "trial at bar" takes place there, that is a trial before at least three judges of the division.[7]

The King's Bench Division controls and corrects the irregularities of inferior criminal courts by orders of mandamus, prohibition, and certiorari. These orders are the modern equivalent

[1] As to the frequency of Assizes and places for holding them, see Halsbury's *Laws of England*, 2nd edition, Vol. 8, pp. 606 *et seq.*

[2] Halsbury's *Laws of England*, 2nd edition, p. 583, note (*q*).

[3] Central Criminal Court Act, 1834, s. 2.

[4] Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 11.

[5] See *post* under *Court of Criminal Appeal.*

[6] Halsbury's *Laws of England*, 2nd edition, Vol. 9, p. 49.

[7] For an example see the Trial of Sir Roger Casement (1916). *Notable British Trials.* London, Hodge & Co. Generally, see Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 11.

of the ancient royal writs bearing the same names.[1] By *mandamus* the inferior court can be compelled to exercise one of its functions which it is neglecting or refusing to exercise; by *prohibition*, acting beyond lawful powers can be prevented, and by *certiorari* action without or in excess of lawful powers can be corrected.

An appeal by the prosecutor or the defendant lies to the King's Bench Division, by a case stated on a point of law from the decision of a court of summary jurisdiction,[2] and from the decision of a court of Quarter Sessions on an appeal from a court of summary jurisdiction.[3]

5. The Court of Criminal Appeal

Here is set out the constitution and powers of this court, leaving its jurisdiction for explanation as a twentieth-century development.

The Lord Chief Justice of England and all the judges of the King's Bench Division are the judges of the court.[4]

The court duly constituted consists of not less than three of these judges, and an uneven number. It decides by a majority. The judge who tried the appellant may sit on the hearing of the appeal.

The court can appoint any person with special expert knowledge to act as assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case; but never in its history of over thirty years has the court made such an appointment.

The court has power to quash a conviction on the ground that the verdict of the jury was unreasonable or against the weight of evidence, or that the judgment of the trial court was wrong in law, or that there was a miscarriage of justice. The court may dismiss the appeal, although of opinion that the point raised in the appeal might be decided in favour of the appellant, if they consider no substantial miscarriage of justice has actually occurred.

The court can quash a sentence and substitute the one it thinks ought to have been passed, and it can substitute a verdict for that in fact returned where it is justified by the evidence.

[1] Administration of Justice Act, 1938, s. 7.

[2] Summary Jurisdiction Act, 1857; Summary Jurisdiction Act, 1879, s. 33.

[3] Criminal Justice Act, 1925, s. 20.

[4] For this and what follows as to the constitution of the court and its powers, see the Criminal Appeal Act, 1907, and the Criminal Appeal (Amendment) Act, 1908.

The court cannot order a new trial, but where it holds the trial to have been a nullity it can order the appellant to be tried on the indictment in question.[1]

The court can hear witnesses whether or not they were called at the trial.[2]

6. The House of Lords

The House of Lords has original criminal jurisdiction to try:

(*a*) impeachments by the House of Commons—these are obsolete;[3]

(*b*) peers accused of treason or felony (not misdemeanour). Such trials are rare, and only Parliamentary time and opportunity are wanted for the abolition of this privilege of peerage. A Bill was introduced into the House of Lords for this purpose in 1936, but did not become law.

An appeal lies to the House of Lords from the judgment of the Court of Criminal Appeal, but only where the Director of Public Prosecutions or the prosecutor or defendant obtains the certificate of the Attorney-General that the decision involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought.[4] Such appeals are rare.

In theory, and actually upon trials of impeachments or of peers for treason or felony, the judges are all the members of the House. But on appeals only lords who hold or have held high judicial office act as judges.[5]

TWENTIETH-CENTURY DEVELOPMENTS

1. Increase in List of Offences

The expression "list of offences", while convenient for a heading, corresponds to nothing in reality. There is no list of offences, to attempt making one would be a heavy labour, actually to make

[1] *R.* v. *Dyson*, [1908], 2 K.B. 454; *Crane* v. *Director of Public Prosecutions*, [1921], 2 A.C. 299.

[2] Criminal Appeal Act, 1907, s. 9.

[3] The last was in 1805. The one before that was the famous trial of Warren Hastings, 1787.

[4] Criminal Appeal Act, 1907, s. 1 (6).

[5] Halsbury's *Laws of England*, 2nd edition, Vol. 8, pp. 543 *et seq.* No lay peer has attempted to vote on judicial questions since 1883.

one an impossibility. All that can be said is that the twentieth century has seen a great multiplication of offences. Not many new crimes[1] have been created.

The creating of new offences has been the unavoidable accompaniment of new social developments, such as health and unemployment insurance, the advent of mechanical road traction, economic reorganisation due to the abandonment of free trade in the face of the intensification of international trade rivalry, and, much disguised under old forms and forwarded unconsciously by all political parties, a general trend to the reconstruction of English society on what is spoken of by one side with contempt and the other with praise, as a "socialistic" model. The sphere of Government control has increased, is rapidly increasing, and it seems certain will continue to increase.

Many of the new offences are created by statute, but, by a practice which indeed existed in the nineteenth century but which has been vastly extended in the twentieth, many more are created by what is called "subordinate legislation", *i.e.* Orders in Council, departmental regulations, by-laws of local authorities and public utility corporations, made by authority of powers conferred in more or less general terms by Acts of Parliament.

A few samples will be enough to illustrate the matter.

Time was when foreigners could enter England without question, stay as long as they wished, and settle here for good if they chose. In 1906 a small measure of control was imposed.[2] No sooner did the Great War break out than an Act was passed giving the King in Council power to make highly restrictive regulations, and this power has been continued ever since.[3] There is a very drastic and detailed code of regulations,[4] the maximum penalty for breach of any of which is on summary conviction six months' imprisonment or a fine of one hundred pounds, or both such imprisonment and fine.

The motor car is a thing of the twentieth century. To follow out all its effects on crime and criminal law would be to write a large part of the social history of the last three decades. For our

[1] The word is here used in its popular sense of serious offence. Technically any infraction of the law for which the law provides a punishment is a crime.

[2] Aliens Act, 1905.

[3] Aliens Restriction Act, 1914; Aliens Restriction (Amendment) Act, 1919, and the annual Expiring Laws Continuance Acts ever since. See also British Nationality and Status of Alien Act (1943).

[4] Aliens Order, 1920.

immediate purpose it is sufficient to take such a code of rules as the Motor Vehicles (Construction and Use) Regulations, 1937, with its nearly one hundred clauses casting duties upon motorists, the breach of any one of which is an offence punishable on summary conviction. All these offences are created by the Minister of Transport under powers given him by the Road Traffic Acts.

County Councils and Borough Councils have powers to make by-laws for "good rule and government", and for the prevention and suppression of nuisances in their counties and boroughs.[1] These by-laws may create offences and impose penalties.[2] There are innumerable such offences and penalties, all recoverable on summary conviction.

There is a whole range of modern statutes dealing with production and trade, such as the Agricultural Marketing Act, 1933, the Sea Fishing Industry Act, 1933, the Cotton Spinning Industry Act, 1936, the Livestock Industry Act, 1937, and many others, with an attendant host of departmental regulations and again innumerable summary offences.

It is superfluous to go on piling up details. The reader must bear in mind a continuous and vast output of new "subordinate legislation", as it is conveniently called; and in particular the creation of a great mass of "emergency" law of this type.

When we turn to serious crime the picture is not so much encumbered. We have created the crime of incest, new to the English law.[3] We have differentiated infanticide from murder.[4] But when we have mentioned a few such additions we have exhausted our additions to serious crimes, save for one large class made necessary by new vices or new dangers. The Dangerous Drugs Acts, which seek to suppress unlawful traffic in narcotic and other dangerous drugs and their non-medical use, are an example of the one. The Official Secrets Act, 1920, and its amendments, designed to strengthen the safeguarding of military, naval, and other State secrecy, is an example of the other. Both sets of laws create serious new offences with heavy punishments.

One other twentieth-century social phenomenon, the institution of private armies, has been roughly checked by new criminal law,[5] as has the indiscriminate possession of firearms.[6]

[1] Local Government Act, 1933, s. 249. [2] *Ibid.*, s. 251.
[3] Punishment of Incest Act, 1908.
[4] Infanticide Act, 1922, replaced by the Infanticide Act, 1938.
[5] Public Order Act, 1936.
[6] Firearms Act, 1937, replacing earlier Acts.

A growing necessity is the need for some sensible classification of the innumerable summary and indictable offences. The maximum penalties vary in the most astonishingly haphazard way. They are impossible to memorise, and often logically indefensible. But very few people engaged in the pursuit of law seem to be troubled by this form of disorderly thinking and practice.

One development which illustrates the peculiar nature of English law is the resurrection of the ancient common law misdemeanour of doing an act tending to the public mischief. It was thought by the learned Commissioners who in 1879 reported on a draft criminal code, largely the work of Sir James Fitzjames Stephen, that the power inherent in the judges to apply the principles of the Common Law to new offences and combinations arising from time to time would never again be exercised, but in 1932 a remedy had to be sought for the waste of time of the police by false statements made to them as to crimes not committed, and the remedy was found by resuscitating a piece of old law and applying it to the new mischief.[1] It is characteristic of the caution of English lawyers that little advantage is being taken of the elastic nature of this misdemeanour to extend its scope further, but the episode beautifully illustrates the observation of a great English judge, Mr. Baron Parke, that "the rules of the Common Law have the incalculable advantage of being capable of application to new combinations of circumstances perpetually occurring". He might have added that in evil times they might have the incalculable disadvantage of being tyrannously extended. But then, in times evil enough anything evil is possible.

2. Form of the Law

This branch of our subject can be dealt with very briefly. A few consolidation Acts[2] have been passed. They have the merit of collecting the law on their subject in one place instead of leaving it scattered all over the Statute Book.[3] But they leave the old law in all its formlessness and with all its overlapping. The law

[1] *R.* v. *Manley*, [1933], 1 K. B. 529, and see an article in the *Justice of the Peace*, Vol. 97, p. 47.

[2] *E.g.* The Perjury Act, 1911; the Forgery Act, 1913; the Larceny Act, 1916; the Coinage Offences Act, 1936.

[3] This expression is a pleasant little joke. There is no Statute Book. The phrase is meant to cover the aggregate of Acts of Parliament from the earliest times to the present day.

as to larceny, for example, had it really been consolidated and "simplified" as the preamble to the Act promises,[1] could be got into half its present compass. As it is, all the special forms of larceny have been retained which were created in the passion for protecting property which accompanied the Industrial Revolution of the late eighteenth and early nineteenth centuries, when the punishment of death was thought to be the panacea for all crime.[2]

The Statute Book is marred by much obsolete and obsolescent criminal law, and no definite attempt is made to clear the ground.[3]

A peculiarity of Anglo-American law is the importance of the decided case (binding precedent). These cases are, in theory of law, applications of law, either the Common or the Statute law, but sometimes, though it is judicially denied, they create new law. In any event they have to be treated as expository and explanatory. A matter which begins to be serious is the inconvenience created by their vast number. So serious is it that the Government recently appointed a committee to consider what can be done to reduce the multiplicity of reports which may be cited.[4] It is a sign of the times not to be neglected in any review of the present trend of English law. It has its historical parallel in the difficulty which arose in the Roman Law from the voluminous activities of the jurisprudents.

English criminal law in the twentieth century has retained the *ad hoc* character it assumed in early times. Little attempt at system is made. Every evil is met as it arises. Nothing better illustrates the national genius in both its strength and its weakness.

3. Simplification of Procedure. Extension of Venue[5]

In the past, two highly technical branches of the criminal law were that relating to the form and contents of indictments, and

[1] Larceny Act, 1916.

[2] For an exposure of the absurdities of the English law of larceny, see *Bow Street World*, by the present author, p. 134.

[3] See a suggestion for reform in the book last cited, p. 134.

[4] The committee has reported since the above was written. Nothing is to be done. It would help if judges would be less verbose.

[5] Venue is vicinage on neighbourhood. A man was in old days entitled to be tried by his neighbours, and imperfect transport required that witnesses should be near their homes.

that as to the local jurisdiction of criminal courts. The first arose partly from the very formal mode of thought common to all learned men in Europe in mediæval times and partly by way of mitigation of the frightful severity of the criminal law. Every technical point was taken on the prisoner's behalf, *in favorem vitae* as it was phrased. The slightest mis-statement of the offence, the slightest mis-spelling of a name was fatal to the proceedings. The rules were gradually relaxed, until by the Indictments Act, 1915, the matter was put on a rational basis.

The law of venue was a survival of local exclusiveness. Only slowly were the Saxon kingdoms of the so-called heptarchy hammered into a homogeneous nation, and in the process a thousand local jurisdictions of feudal lord and chartered township were created. Very slowly indeed have the resulting ideas and practices yielded to common sense, and there are still awkward survivals. But space demands that we come straight to the present condition of things, and but briefly indicate it.

An indictment is now sufficient if it contains a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.[1] It starts with the name of the case, "*The King*[2] v. *A.B.*" It goes on to name the court of trial, states the offence or offences, cites the statute infringed (if the offence is created by a statute), and gives particulars in ordinary language.[3] Each offence must be set forth in a separate count.[4] There are provisions for the amendment of defective indictments,[5] and it can be said that indictments are now fairly simple and that technicalities are not allowed to stand in the way of substantial justice, though full protection is extended to the defence.

The provisions as to indictments may be compared with provisions intended to avoid failures due to merely technical irregularities in prosecutions in courts of summary jurisdiction, and

[1] Indictments Act, 1915, s. 3 (1).

[2] In theory of law all criminal prosecutions are at the suit of the King. In practice most of them are left to be carried on by private persons or corporations. But the Director of Public Prosecutions can take over any prosecution. See the admirable American book, *Criminal Justice in England*, by Pendleton Howard, but his statement of the law and practice has already become out of date here and there.

[3] Indictments Act, 1915. First Schedule, Rule 4.

[4] A count is an accusation of a specific offence.

[5] Indictments Act, 1915, s. 5.

to secure a clear comprehension by the accused of what is alleged against him.[1]

With few exceptions[2] offences committed outside England and Wales are not triable by the English Criminal Courts, and originally an offence committed in one county of England could not be tried in another. But there have been successive relaxations of the rules, which in days when men travel through a score of jurisdictions in a day would be fantastically restrictive. Much has been done in the same direction with the object of speeding up trial. The law still bears the marks of its early limitations, and they have been removed or modified piecemeal,[3] but it is not too much to say that convenience of access to justice and prompt trial are the commonplaces of present-day English criminal procedure.

4. Criminal Responsibility of Corporations

In President Wilson's fine little book *The New Freedom* he says (and it is as true of English as of American law): "Our laws are still meant for business done by individuals; they have not been satisfactorily adjusted to business done by great combinations, and we have got to adjust them."

The present writer has pleaded for the formulation of a considered doctrine of criminal responsibility of corporations.[4] Provision has, in this century, been made in considerable variety for fixing criminal responsibility on agents, such as directors and officers of limited companies,[5] and machinery has been created for committing a limited company for trial,[6] but the doctrine wanted is in process of judicial elaboration and the process is slow and defective.[7]

[1] *E.g.* the last proviso to s. 1 of the Summary Jurisdiction Act, 1848, and s. 32 of the Criminal Justice Act, 1925, and cf. *R.* v. *Hughes*, cited *ante*.

[2] Murder and manslaughter are such exceptions, Offences against the Person Act, 1861, s. 9.

[3] It would be tedious to deal with a number of miscellaneous provisions. The reader may consult Archbold's *Criminal Pleading*, 31st edition, section *Venue*, pp. 23 *et seq.*, as to the position in prosecutions on indictment. As to summary prosecutions, see Summary Jurisdiction Act, 1879, s. 46; Criminal Justice Act, 1925, s. 31; and other statutory provisions.

[4] See my articles, Vol. 88, p. 198, of the *Justice of the Peace*, and Vol. 103, p. 780. There is a mistake in the printing of the article last cited. It should be read as beginning with the paragraph at the bottom of the second column.

[5] A typical section is s. 17 of the Prevention of Fraud (Investments) Act, 1939.

[6] Criminal Justice Act, 1925, s. 33.

[7] Articles cited and the cases mentioned therein. See, for example, *R.* v. *I.C.R. Haulage Ltd. and Others* [1944] 108 J.P.N. 271.

5. Criminal Appeals

A. *Indictable Cases.*

As the law stood at the beginning of this century there was no appeal, properly so-called, from conviction or sentence on indictment. A judge could, if he thought fit—the matter was entirely in his discretion—"reserve" any question of law which had arisen during the trial, for the consideration and determination of the whole body of the judges.[1] For the rest any miscarriage of justice could be set right only by a royal pardon.

Only in 1907 was an Act passed,[2] against a great deal of professional opposition, giving an effective right of appeal from conviction and sentence to a specially constituted court, the Court of Criminal Appeal.[3] An appeal can be made by a simple notice, and without cost. The Court has amply justified its existence. It has had occasion to quash many convictions and modify many sentences.[4] By its continual review of law it has done much to clear up obscurities and difficulties; by its continual review of sentences it has tended to smooth out differences of treatment due to the personal idiosyncrasies of trial judges. In brief, the Court of Criminal Appeal has been a great success.

There are in the neighbourhood of five hundred applications per annum for leave to appeal, of which at least four-fifths are disposed of on the hearing of the application.[5]

B. *Summary Cases.*

The position as to appeals from conviction and sentence by courts of summary jurisdiction is not so satisfactory. The rights of appeal are comprehensive and ample, but the practice of appeal is hampered in several ways.

The appeal is to Quarter Sessions, whose constitution and jurisdiction have been described *ante*. Before 1914 there was a general right of appeal against a conviction only where imprisonment

[1] Crown Cases Act, 1848.

[2] The Criminal Appeal Act, 1907, which applies to all persons convicted after 18th April, 1908.

[3] Described *ante*.

[4] A convenient conspectus of its work can be obtained by an examination of the series of reports of cases known as Cohen's *Criminal Appeal Reports*.

[5] See the annual volumes of *Criminal Statistics* published by authority. In 1937 there were 476 applications and 58 appeals tried, in 1938 the numbers rose to 587 and 123 respectively.

without the option of a fine had been adjudged, and there had been no plea of guilty.[1] There was no appeal against sentence where there had been a plea of guilty. There was also a number of miscellaneous rights of appeal given by particular statutes creating offences. In 1914 a right of appeal was given against any conviction where the accused did not plead guilty[2]; in 1925 against any sentence[3]; and at the same time an appeal against a finding of offence proved under the Probation of Offenders Act, 1907.[4]

Appeals to Sessions can be troublesome and costly. The would-be appellant may be required to find sureties for prosecuting his appeal. Some justices resent appeals, and use this requirement to bar appeals by poor and friendless persons. Until quite recently security had to be given for the costs of the respondent if he should be successful, and costs may still be given against an unsuccessful appellant.[5] The statistics are significant. In 1938 courts of summary jurisdiction found guilty 69,851 persons tried summarily for indictable offences only. Persons found guilty of summary offences numbered 709,019. Juries rendered a verdict of guilty against 8,612 persons. Approximately 1 in 15 of those convicted on indictment applied to appeal; 1 in 233 of those convicted summarily of indictable offences appealed to sessions; of the nearly three-quarters of a million found guilty of summary offences only 632 appealed[6]; of course a large proportion of these latter were trivial offences, but many were as serious as the indictable offences tried summarily.

The appeal to the Court of Criminal Appeal is easier, cheaper, and more effective than that to Quarter Sessions. The latter ought to have been carried much further concurrently with the vast increase in the jurisdiction and powers of summary courts discussed later.

[1] Summary Jurisdiction Act, 1879, s. 19.

[2] Criminal Justice Administration Acts, 1914, s. 37.

[3] Criminal Justice Act, 1925, s. 25.

[4] Criminal Justice Act, 1925, s. 7 (1). Under the Probation of Offenders Act a court of summary jurisdiction can deal with the offender "without proceeding to conviction". The Criminal Justice Bill of 1938 proposed to do away with this anomaly, but the Bill disappeared in the whirlwind of war.

[5] Compare this with the Court of Criminal Appeal, where no costs may be granted; see the Criminal Appeal Act, 1907, s. 13.

[6] The subject of criminal appeals was exhaustively discussed by the present writer in an article in the *Law Journal* of the 21st January, 1939.

6. Free Legal Aid for the Defence

At the opening of the century there was no provision of legal aid to poor defendants in courts of summary jurisdiction, or before examining magistrates, and the only free legal assistance to the accused on trial before a jury was on the rare occasions when the judge asked counsel who happened to be in court and disengaged to give his services to the prisoner without fee. There was also a custom, which indeed still exists, by which a prisoner could demand the services of any disengaged barrister in court for a small payment then and there tendered.[1]

Now, so far as the law goes, the poor defendant is well provided for. In 1903 a law[2] was passed by which the magistrates on committal for trial could, "having regard to the nature of the defence" set up by the prisoner, certify that he ought to have free legal aid, and thereupon solicitor and counsel to be paid out of public funds could be assigned to him. In 1908 it was provided that the costs of any defence (poor defendant or not) might be ordered to be paid out of public funds.[3] In the case of poor prisoners so certified under the Poor Prisoners' Defence Act, 1903, the costs were to include legal fees.

All these provisions related to trials of indictable offences only, whether tried on indictment or summarily, but the Poor Prisoners' Defence Act, 1903, applied only to cases committed for trial and not to those dealt with summarily.

In 1930 they were repealed and a more liberal enactment[4] took their place. There are provisions for free legal aid both before courts of summary jurisdiction (and examining magistrates) and at trials on indictment. They are completed by similar provision for free legal aid in appeals. There was already provision for this in appeals to the Court of Criminal Appeal,[5] and now provision is made in respect of appeals to Sessions against conviction or sentence by a court of summary jurisdiction.[6]

The weakness of the position is that the grant of free legal aid

[1] Known as a dock defence. See on this Halsbury's *Laws of England*, 2nd edition, Vol. 2, p. 515, note (s). The dock is the railed enclosure where the prisoner stands, or nowadays sits, during his trial.

[2] The Poor Prisoners' Defence Act, 1903.

[3] Costs in Criminal Cases Act, 1908.

[4] Poor Prisoners' Defence Act, 1930.

[5] Criminal Appeal Act, 1907, s. 10.

[6] Summary Jurisdiction (Appeals) Act, 1933, s. 2.

is in the discretion of the court, and the power is in practice exercised unequally by different tribunals, and altogether too little. There is, it would seem, only one way to put the poor defendant on a real equality with the prosecutor, and that is by the institution of a Public Defender, responsible for the effective administration of the provisions noted above. Especially in the matter of scientific witnesses is the defence at a disadvantage. Parsimony in the allowance of expenses from public funds is the rule, even for those of the prosecution. But prosecutions in serious cases are usually at the cost of some wealthy corporation, or of the Director of Public Prosecutions, with the Treasury behind him. A defending solicitor, unless he will take the risk of a heavy personal money loss, will not engage expensive experts for he may never get their fees awarded.

The present position is that great progress has been made in providing for the free defence of the poor, but something is lacking to make the machinery really effective. It is only too likely that the recent war will make impossible any further advance in a matter involving expense to public funds. Like many other useful social reforms, this one will be arrested.

7. Jury and Justice of the Peace

The Englishman is very proud of the jury, and, in spite of all the historians can say, ascribes its institution to Magna Charta. He entirely overlooks the fact that the jury in criminal cases (we are not concerned with civil litigation) has been very largely ousted by the justice of the peace and that the process of ousting the jury is going on and likely to go on.

As we saw earlier, the grand jury has gone, largely unwept. It was a fifth wheel to the coach, was defective in operation,[1] no longer served any useful purpose, and is a nuisance out of the way. But the petty jury is, as the saying goes, another pair of shoes altogether. It may be that it is due for gradual extinction, but the change ought to be made with open eyes, and careful preparation for the effectiveness of the alternative machinery.[2]

At the end of last century justices dealt with a large number of summary offences and a large number of offenders. The list of

[1] At the Central Criminal Court it was quite usual for the court usher (for they were allowed no other assistant) to assist and guide them in their deliberations.

[2] But see an article "Jury Trial Today" by Dr R. M. Jackson in *The Modern Approach to Criminal Law*.

offences triable summarily has been added to not only by the natural accretion of all the new minor offences created, but also by a process of giving jurisdiction to try many offences which formerly were only within the cognisance of the jury. The number of persons tried by magistrates has steadily risen, the number of those tried by jury has steadily diminished.

To deal first with the matter statistically[1]:

The annual average number of persons tried for summary offences in the period 1900–1904 was 726,811; the number so tried in 1938 (the last year for which we have statistics) was 744,779 (a drop from 1936 with 791,577, and 1937 with 765,014). The annual average number of persons tried summarily in 1900–1904 for indictable offences (by consent or, as it was before June 1926, by consent, or on plea of guilty) was 45,635; the number so tried in 1938 was 75,402. For the same periods the number tried by jury was 11,276 and 10,003 respectively. If the total of all offenders be taken, the disproportion is imposing, and though many of the hundreds of thousands of persons tried for summary offences were guilty of minor delinquencies only, a large number had committed serious offences the punishment of which years ago would not have been entrusted to the justice of the peace.

The process of transfer from the jury to the justice of the peace has been by three methods:

First directly, by scheduling indictable offences to statutes which permitted of their summary trial under various and diminishing restrictions.[2] This began early in the reign of Queen Victoria, was carried to considerable length in 1879,[3] and received very great extension in 1925,[4] in consequence of the recommendations of a committee appointed by the Lord Chancellor "to consider the desirability of introducing changes in the procedure and practice of the criminal law with a view to effecting improvements and economy in its administration".[5] Economy was very much to the fore in the years following the war of 1914–1918, and summary trial is much less expensive than trial by jury.

[1] *Criminal Statistics for England and Wales*, 1938. These are the latest criminal statistics published up to now (1944).

[2] See articles by the present writer in the *Law Times* for the 12th April, 1924, and the *Justice of the Peace* for the 28th March, 1936.

[3] Summary Jurisdiction Act, 1879, ss. 10, 11, 12, 13.

[4] Criminal Justice Act, 1925, s. 24.

[5] Published by H.M. Stationery Office in 1925, Cmd. 1913. The present writer was a signatory of the report.

The second method is in use when legislation is overhauled. In 1914 there was a new Bankruptcy Act. Before that Act was in force bankruptcy offences were triable only by a jury. The Act made them all triable summarily or on indictment alternatively.

The third method is used when new serious offences are created. They are either made triable summarily, or alternatively summarily, or on indictment. An example is supplied by the Dangerous Drugs Acts passed to cope with a serious evil which became evident after the last great war.

The general acquiescence in the substitution of the justice for the jury is largely explained by the facts that prosecutors, and especially the police (who are always overworked), prefer the speediness of the summary procedure, and that accused persons have a preference for "getting it over and done with". This consideration applies more to first offenders, but the old hands have an equally powerful motive. They would rather plead guilty and accept a comparatively short sentence than take the chances of a trial by jury, from which they might emerge safely, but if convicted are liable to a much heavier punishment. There is a sort of tacit understanding (sometimes perhaps unofficially expressed in words) that if the accused will save trouble by pleading guilty the police will not press for committal for trial on indictment. So the right to trial by jury is largely abandoned in practice.

So we conclude our review of the administration of English criminal justice and the trends of its development. It can by no means be claimed to exhaust its subject. To do that would require a treatise. But it does cover most of the ground, and, it is hoped, gives a picture which can be appreciated not only by Englishmen but by the lawyers of other nations, to whom Anglo-American law with its different origins, strange practices, and disorderly form must be an unusally difficult subject.

Addendum

The foregoing was written before the recent war began. Minor alterations in wording have been made and statistics brought up to date. Substantially the practice remains unaltered. The immediate effect of the war on the criminal law is an immense increase in the jurisdiction of justices of the peace. Under the Defence Regulations (made by orders in Council under the authority of the Emergency Powers (Defence) Act, 1939) they can, as they

could in the last Great War, try (and there is no right to claim trial by jury) offences which contain the elements of high treason. Under various other statutes they have jurisdiction to try other grave offences. It is too early to speak of the more permanent effects which the war may have on English criminal law. When the time is ripe for considering them a subject of quite exceptional interest will be open to the philosophically minded investigator.

IV

THE ENGLISH POLICE SYSTEM: GENERAL DEVELOPMENT AND OUTSTANDING FEATURES

By SIR JOHN MAXWELL

THE English Police system rests on foundations designed with the full approval of the people and has been slowly and laboriously moulded by the careful hand of experience.

The maintenance of public law and order is achieved through two closely allied agencies, Justices and Police, the first through the judicial system and the latter by the enforcement of the system. Clarke in his *Outlines of Local Government* expresses the purpose of modern police as "being concerned with the prevention of violence, rather than with the causes which lead to violence." Webster defines "police" as the "organised body of civil officers in a city, town or district whose particular duties are the preservation of good order, the prevention and detection of crime and the enforcement of the law."

Police, therefore, occupy a position of great importance in the life of the country, and it is quite safe to say that the restraining influence exerted by an efficient police system is as necessary to the welfare of society as are self-imposed moral and physical restraint to the general health of the individual.

It is impossible adequately to appreciate the proper functions and the importance of the modern police system without a brief examination of the origin and progress of the English police organisation on which, after centuries of conflict and experiment, the present system has been built.

As a preliminary there must be a short survey of the origin of the constable and the development of the police system from the earliest times up to the introduction of Parliamentary legislation.

It is sometimes wrongly assumed that the police system as such was introduced by Sir Robert Peel a little over one hundred years ago. History shows that, throughout the progress of civilisation, police in one form or another have been an essential to ordered society and it is quite clear that our present system was super-

imposed on the parochial principle of policing which obtained for several centuries.

Police System in the Saxon Period

With the development of monarchial government under Saxon rule there evolved the accepted responsibility for the maintenance of public order, or as it was termed, the King's Peace. Under this general responsibility every freeman in the kingdom, in accordance with common law, became a pledged constable or conservator of the King's Peace holding office not by payment, but by the right and responsibility of citizenship. This system is generally referred to as the Frankpledge System—frankpledge signifying the guarantee for peace maintenance demanded by the King from all his subjects. The two essentials of this individual responsibility were that it was local and that it should be mutual. It will be seen that these essentials have survived and are inseparable from our national conception of police functions.

The first effective system of police and local government was established in Saxon England under the wise rule of King Alfred the Great. That King, having established his supremacy, commissioned one of his great officers or Earls, in each of the several provinces to exercise the power of keeping the King's Peace; and for the purpose of effecting and maintaining police supervision he divided the kingdom into Counties or "Shires". Each County or Shire was placed under the supervision of a Shire Reeve or Sheriff who was responsible to the Earl.

The Shires were then further divided into "Tythings" or companies for mutual protection and for the discovery of offenders. Each tything comprised a district or township, including approximately about ten families or settlements. The tythings were combined in groups of ten, approximately 100 families, settlements or townships and these "Hundreds" or "Wapentakes", as they were called, were under the orders of a bailiff styled "Alderman".

Freemen were required to be enrolled, were bound by their pledge on oath, and in the discharge of their civil duty were responsible for the good conduct of themselves and their neighbours. Under this system every freeman became a constable or freeborough bound in sureties for the preservation of the peace and the prevention of crime amongst his neighbours in his tything.

The derivation of the word "Constable" is rather interesting.

The "Comes Stabuli" was originally a high official of the Frankish Court and the title was later applied to certain military commanders in European Countries. In England, however, the word "Constable" connoted a local rather than a personal jurisdiction and there was, therefore, an intimate connection between the Parish and the constable. It was laid down by Holt C.J. in the case of the village of Chorley (1 Salk. 175) that a village and a constable were correlatives.

It will be seen that the Anglo-Saxon conception of police functions is clearly intelligible; the internal peace of the country was held by them to be of the first importance and every freeman had to bear his part in maintaining it. The word "peace" was used in the widest meaning and breaches of the peace were understood to include all crimes and disorders, whilst the principle on which the police system was based was primarily preventive.

Norman or Feudal System

This system of policing remained in operation until, following the Norman Conquest, a feudal or semi-military system was substituted. Conquered lands were distributed amongst the soldiers of William the Conqueror, each of the beneficiaries, or feudal lords, being then answerable to the King for the maintenance of the peace of his lands. The inhabitants became the retainers or soldiers of the feudal lord and they were compelled to live under a system approaching martial law.

Under the feudal system the Vicecomes became the successor of the Shire Reeve or Sheriff, who under the Saxon regime had controlled the police administration of the Shire or County. The vicecomes went on circuit each Michaelmas to hold Courts of Tourn to deal with petty offences, and to make an annual revision of the frankpledge. The visit of the Vicecomites, or Norman Sheriffs, generally resolved itself into a demand for the payment of heavy fines, the object being to collect as many fines as possible. The "Courts of Tourn" never appear to have won the confidence of the people, and gradually certain lords, more favoured than the rest, obtained the royal consent to the substitution of local courts under a steward nominated by the Lord of the Manor.

It is therefore assumed that it is from the influence of the fedual system that we may trace the development of the Courts Leet, which subsequently took over the real authority of the Sheriff, the

functions of the Sheriff being largely delegated to Justices of the Peace. Lee, in his *History of Police*, says—"When the Office of Justice was first created, it was not intended that the Sheriff should be altogether superseded, but rather that the new officer should become an auxiliary agent for the preservation of the peace, to co-operate, as the Conservator had formerly done, with the Sheriff, who still retained the primary responsibility for the policing of the Shire. The Justices of the Peace, formerly the Peace Wardens or Conservators, gradually increased in number and eventually not only deprived the Sheriffs of their judicial powers, but to a large extent took their place as directors of the police also."

The office of "Justice of the Peace" is one with which the police have always been closely associated in the functions of preserving the peace. Originally appointed with executive responsibilities undertaken in the name of the King, the Justices were soon invested with judicial functions which were extended and increased from time to time. It will be observed that executive power was invested in Justices before they were granted judicial responsibilities; in other words, they were policemen first and judges afterwards.

Courts Leet became very popular and they were soon established all over the country. The establishment of the Court Leet marks an important stage in the development of the English Police System, demonstrating that the system of frankpledge could only be of value as long as its strictly local character could be maintained.

It is also interesting to note that after the Conquest, probably due in large part to the insistence of the growing communities engaged in trade and commerce for the continuance of the ancient guarantee against robbery and violence, the ancient forms of police and justice were not entirely abolished, and that about fifty years after the Conquest a charter was exacted from the King compelling the feudal lords to restore the old institutions and to do justice to their vassals. As a result the Saxon system of frankpledge or mutual security for the peace was revived and justices were commissioned by the King to administer justice.[1] Later the Great Charter was obtained and the Saxon system of frankpledge was secured and adopted as the law of the land. It will thus be

[1] It was however not until 1327 that a statute created Justices of the Peace. Maitland, *Constitutional History* (1919), p. 206.

seen that, with the constitution of a Parliament ensuring the permanent safety and continuity of our institutions, the essential features of police established about 400 years earlier had survived.

The Courts Leet were, of course, primarily domestic in character in that at first their functions were purely civil and applied to the tenants of the Lords of the Manor. In the course of time, however, as trade and commerce expanded and the population increased, the area and influence and the powers of the Courts Leet were enlarged and extended to include criminal and penal jurisdiction.

The creation of new manors was stopped in 1289 but the jurisdiction of the Courts Leet continued until about the beginning of the Eighteenth Century when some of their functions were transferred to the King's Courts. About the same time the power of appointment of parish constables began to be transferred from the Courts Lect to the Justices in Quarter Sessions although many constables continued to be appointed and sworn in at Courts Leet in various parts of the country until the nineteenth century.

During the reign of Queen Elizabeth, when conditions changed rapidly, the functions of the Courts Leet to dispense justice were taken over by the Magistrates who not only controlled the police, but also acted as Justices.

Up to the time of the Tudors the duty of serving as constables continued to be compulsory and carried no emoluments. This arrangement had worked smoothly enough under the old feudal system, but it would appear that eventually the compulsory duty of serving as a constable became irksome—especially to the middle classes who considered it unprofitable and a waste of good time. It began to be felt that it was more economical to delegate police duties to deputies rather than that every man should be compelled to serve his turn in an office which interfered with his normal activity and for which he probably had no special aptitude. As a result the paid deputy was gradually introduced. It is certain that in the Tudor period, instead of one headborough being responsible for the maintenance of the peace in Tything and Hundred—the ancient system—we begin to find two or more constables answerable to the justices, nominally employed by the year, but practically as permanent deputies, performing duties delegated to them in parish and township and their services paid for, not by the public at large, but by the individuals for whom they were deputising.

This change, probably a gradual one, led to the deterioration of police administration, because of the inferior type of man selected to act as deputy. It must be recognised, however, that the employment of deputies, although mischievous in its immediate consequences, was important in that it marked a definite stage in the police organisation, marking as it does the beginning of the principle of freedom from personal liability.

The gradual change in the feudal system coincided with the rise of the merchant and the artisan. As trade increased the merchant and artisan recognised the value of combination and the result was the creation of numerous Trade Guilds or Livery Companies, and these guilds were, for a time, used as a form of private police for the protection of their several trades, their properties and their members.

The next important phase in the development of the police appears to have taken place during the reign of Queen Elizabeth. During this period numerous statutes affecting the police were passed, the most important being those which referred to the City and Borough of Westminster "for the suppressing and rooting out of the vice there used." The police administration of the City had from time immemorial rested with the ecclesiastical authorities, but in 1559 the Queen granted a Charter to the Dean and Chapter, carrying the same privileges, immunities and powers that the Abbot and Convent used to enjoy. The Dean and Chapter delegated their authority to the High Steward, but as the system was not successful a further change was made in 1584 when the City was divided into twelve wards, each under a Burgess who was nominated by the Dean or by the High Steward.

It should be noted that up to this period the System of Hue and Cry was the only practical agency for the pursuit and capture of delinquents. Under the local system of Frankpledge definite instructions were laid down relating to Watch and Ward and the raising of the Hue and Cry.

As has already been explained each tything or hundred was held responsible for crime committed within its boundaries. It was the duty of the tythingman—the prototype of the modern constable—to raise the Hue and Cry after escaping felons and suspected persons and he and his tything were held responsible for the capture of such persons. According to Kemble's *Saxons in England* a law of King Edgar in regard to the Hue and Cry provided "That a thief be pursued, if necessary. If there be present

need, let it be told the hundred men and let them afterwards make it known to the tythingman, let them all go forth whither God may direct them to their end, . . . We have also ordained that if the hundred pursue a track into another hundred, notice to be given to the hundred elder, and that he go with them. If he fail to do so let him pay £30 to the King. . . ."

It was also provided that in cases where the fugitive was not apprehended the headborough was liable to pay the value of the amount stolen, or have distraint made on his goods to the amount involved. Under a measure passed during the reign of Queen Elizabeth this liability was taken from the headborough and placed upon the inhabitants of the hundred.

During the reign of James I the tything could no longer be said to exist, due to the growth of trade, the increase of population and the improved facilities for moving from one part of the country to another and gradually the parish took the place of the tything, whilst the parish constable gradually replaced the tythingman.

No chapter on the development of our English police system would be complete without some reference to the Statute of Winchester which was passed in the thirteenth year of Edward I (1285) who, it has been claimed, did more for the preservation of peace in the first thirteen years of his reign than was collectively accomplished by the thirteen monarchs next succeeding. As W. L. Melville Lee in his *History of Police in England* says, "The Winchester Statute is important because it presents to us a complete picture of that police system in the Middle Ages which continued with but little alteration for more than five hundred years, and which even now, though greatly changed in its outward appearance, is still the foundation of the police structure. The Statute of Winchester is not presented as a brand new system of police, but rather as the product of a long series of experiments, all tending in the same direction."

The Statute of Winchester did not apply to London, but in its stead a local Act—Statute Civitatis—was passed in the same year, having special reference to the government of the Metropolis.

The Protectorate Period

The next stage in the development of the police system to which reference should be made is the introduction of a military control by Cromwell after the Revolution. To quote Lee again—

"When Civil War begins, the 'King's Peace' is at an end, the law is forgotten or despised, the whole body politic is in a state of fever, and the usual functions of orderly government are suspended". Cromwell found after his victory that the re-establishment of order, particularly in the rural districts, was a very difficult matter. In London, the Parliamentary stronghold, no serious difficulty was experienced, but in the country, where the Justices of the Peace were mainly Royalists, the difficulties were very real and actually hampered Cromwell's administration to such an extent that he was forced to introduce new expedients.

Cromwell, of course, held the supreme command of a large and powerful army, and in view of the difficulties he encountered it was inevitable that he should make use of his military force to restore order. The country was divided into twelve police districts and a Military Officer was appointed in each district with full powers but with instructions to co-operate with "the other Justices of the Peace".[1]

The Major Generals were assisted in this work by a special force of militia, mostly mounted, and the cost of the new administration was met by the imposition of a tax of ten per cent. on the estates of Royalists. In addition to the above duties, the Major Generals were expected to carry out a general supervision over the religious habits of the populace.

To quote Lee, "Cromwell's lieutenants did their work with honesty and diligence, and, according to their lights, they held the balance of justice level between man and man. If their discretion had equalled their impartiality, posterity would be able to look upon their administration with unqualified approval, but the admonishing, meddling, and eavesdropping tactics that they saw fit to pursue only invited the reaction that so quickly followed on the heels of their employment."

The regime was irksome but short-lived, and it was inevitable that the revulsion of feeling following the Restoration led to many abuses and to general confusion. For a time no organized effort was made to cope with the situation, but later an attempt was made to check lawlessness in London by an Act of Common Council appointing a force of 1,000 Watchmen or Bellmen to

[1] (The Major Generals (see D. W. Rannie's *English Historical Review No. 10*) who were appointed by Cromwell and remained under his personal supervision were ordered to take measures "for the security of the peace of the nation, the suppressing of vice, and the encouragement of virtue" (see Professor Gardiner's *History of the Commonwealth and Protectorate*, Vol. III).)

patrol the streets. These watchmen, established during the reign of Charles II, were popularly nicknamed "Charleys".

In the country districts conditions were so bad that in 1673 a Statute was passed compelling magistrates to appoint more constables.

No real improvement in the state of affairs appears to have been effected, but about the middle of the eighteenth century there was evidence of an awakened interest and it became evident that there was a desire for a better state of affairs. This increasing interest was in large part due to the efforts of Henry Fielding and his half-brother, John Fielding, later Sir John Fielding. Henry Fielding, a famous novelist, spent the later years of a short life in a vigorous campaign against what he called the domination of society by the criminal classes.

Henry Fielding and his brother both published a number of pamphlets on police questions and they were successful in directing the attention of the public to the state of the criminal law which had been greatly increased in severity without any decrease in the number of offenders. The brothers Fielding did much more than this, however, towards the development of the police service; they employed paid detectives and by this means succeeded in making the streets of London much safer. Later they obtained permission to establish, as an experiment, a small police force, known as the Bow Street Foot Patrol, and this force patrolled the principal highways outside London as well as the streets of the City. A few years later the usefulness of this system was increased by the formation of a horse patrol, which was posted for the protection of travellers on the main roads leading into the country.

The experiment met with great success and the officers, who were known as "The Bow Street Runners" and had evidently been carefully selected, became famous for their skill and sagacity. The Bow Street police organisation suffered a number of setbacks chiefly on the ground of expense and consequent lack of numbers, but it may well be claimed that the establishment of the Bow Street Foot Patrol was actually the first practical step which was taken towards the reform of the police.

At this stage it is interesting to note that Pitt in the year 1785 introduced a Bill under the title "A Bill for the Further Prevention of Crime and the more speedy Detection and Punishment of Offenders against the Peace in the Cities of London and Westminster", and there is a great similarity between the proposals

contained in that Bill and those of the measure subsequently introduced by Sir Robert Peel. Sir Archibald Macdonald when presenting the Pitt Bill to Parliament said that it was his conviction that extreme severity instead of operating as a preventive to crimes rather tended to promote and increase them by adding desperation to villainy. There was considerable opposition to the Bill, which was withdrawn.

According to Lee in his *History of Police in England* there were, at the beginning of the nineteenth century, five distinct classes of Peace Officers:

(i) Parochial Constables, elected annually in Parish or Township, and serving gratuitiously;
(ii) Their Substitutes or Deputies serving for a wage voluntarily paid by the Principals;
(iii) Salaried Bow Street Officers, and Patrols expressly charged with the suppression of highwaymen and footpads;
(iv) Stipendiary Police Constables attached to the Public Offices established under "The Middlesex Justices Act";
(v) Stipendiary Water-Police attached to the Thames Office, as established by Act of Parliament in 1798.

The first two were, of course, common to the whole of England, whilst the others were peculiar to London and its immediate neighbourhood. It would appear that whilst there had been some development in the Metropolis, the standard of police in the country generally was more or less in conformity with the old-established pattern. In the year 1800 the parish constables were generally permanent deputies and they were apparently of a very inferior type, and as a result the protection of the public was of a variable quality.

It was gradually becoming apparent that the system which worked in Anglo-Saxon times was neither adapted not adaptable to the changing conditions. Constables were entirely unorganised, unqualified and miserably paid.

Considerable anxiety was shown at the growth of lawlessness, and from 1812 onwards a number of Parliamentary Committees were successively appointed to investigate and report on the subject of the police, but whilst the appointment of these committees points to the fact that the Government was disposed to make some

effort to put the police on a better footing, it is equally clear that the advice and recommendations submitted by successive Parliamentary Committees were sadly neglected.

Sir Robert Peel

In the year 1828 Sir Robert Peel, having successfully introduced a number of legal reforms, asked Parliament to appoint a Select Committee to inquire into the causes of the increase of the number of commitments and convictions in London and Middlesex for the year 1827, and into the state of the police of the Metropolis and the districts adjoining thereto.

In concluding his speech, when asking for a Committee, Peel said, "I think—and it is unwise to disguise the fact—that the time is come when, from the increase in its population, the enlargement of its resources, and the multiplied development of its energies, we may fairly pronounce that the country has outgrown her police institutions, and that the cheapest and safest course will be found to be the introduction of a new mode of protection." It will be seen from this that Peel had plans for establishing his new system throughout the whole country.

The Committee was appointed, and in July, 1828, it submitted its report in which it recommended the creation of an Office of Police, under the immediate direction of the Home Secretary, to which should be given the general control over the whole of the Establishments of Police of every denomination, including the Nightly Watch and responsibility for the whole Metropolitan area, excluding, however, the City of London. It was also recommended that the Office of Police should be in charge of specially appointed magistrates who would have no bench duties. In the following April (1829) Peel introduced his "Bill for Improving the Police in and near the Metropolis". It provided for the creation of a new Police Office which would be under the Home Office. It laid down rules regarding the duties, powers, and discipline of a new force of paid constables who were to be enrolled. The Bill also provided for the appointment of a "Receiver of the Metropolitan Police District", whose duty would be the handling of "all monies applicable to the purposes of the Act". The Watch Rate was abolished and a new "Police Rate" was substituted.

The Bill demonstrated Peel's complete recognition of the

necessity, orginally revealed by Pitt, of separating the judicial and executive branches of police administration.

The Bill was approved by both Houses without any unusual opposition, and the new Police Office was shortly afterwards opened at Scotland Yard under the joint command of Colonel Rowan and Richard Mayne, who were appointed as the first Commissioners of Police. The members of the new Force, which consisted of 1,000 men, made their first appearance in public in September, 1829, three months after the passing of the Act. Considerable opposition was experienced for some time, and whilst Peel was accused of being a "tyrant and dictator" the new police were described as "The Blue Lobsters", "Peel's Bloody Gang", and other choice epithets which were later replaced by the more affectionate terms of the "bobby", the "peeler" and "copper". The opposition gradually disappeared, and it was soon realised that the new police force was most effective in the maintenance of good order and that it was no longer necessary to fear the menace of unruly mobs. Reith in his *The Police Idea* very aptly sums up the position at that time as follows: "Authority had at last come to long-delayed recognition of the truth that contact with disorder in its early stages by a force of unarmed but trained police was a possible and effective alternative to waiting helplessly until outrage and bloodshed justified resort in kind by volley-firing and sabre charges."

It will be remembered that the City of London was specifically excluded from the Metropolitan Police Act of 1829. It should not be assumed from this that the policing of the City was satisfactory, because the system was not good. Certain improvements had been introduced but the general scheme was not good. In spite of the improvements which had been introduced the general scheme remained practically the same as it had been for many years, and there can be little doubt that if the Civic Authorities had permitted this unsatisfactory system to continue, Government pressure would have been applied, but the Lord Mayor and Aldermen took the new Metropolitan Police as a pattern and reorganised the London City Force. Steps were also taken to improve the efficiency of the City Police by removing the causes of lack of uniformity and effecting a better state of co-operation with the Metropolitan Force. It has been claimed that the proposals to maintain the City of London Police as a separate organisation were favourably received by Parliament as the whole of the ex-

penses of the improved City Force were to be borne by the City Authorities without any assistance from the Treasury.

The Government of the City of London is vested in the Court of Common Council, which is responsible for the Police Force of the City, acting through its Police Committee. An Act of Parliament passed in the year 1839, defined the liberties of the City and authorised the appointment of a Commissioner by the Court of Common Council, subject to the approval of the Crown. The command of the Force is vested in the Commissioner of Police for the City, who is responsible for the appointment, control and discipline of the Force.

The City Authorities continued to bear the whole cost of the Force until 1919, when the provisions of the Police Act were applied to the City Force, and since that time half the cost of the Force has been paid by the Treasury.

In 1839 steps were taken by the Legislature to improve further the position in the Metropolis by passing the Metropolitan Police Act, 1839. This measure consolidated the River Thames Police, which had been remodelled in 1798, with the Metropolitan Police. It also merged the Bow Street Horse Patrol with the new force, the Horse Patrol becoming the mounted section of the Metropolitan Police Force. This Act made provision for many offences against the public peace and included powers to:

(*a*) Impose penalties for neglect of duty;
(*b*) Compel Constables wishing to resign to give notice, and if dismissed to deliver up accoutrements;
(*c*) Compel Constables to excute Summonses and Warrants in criminal proceedings;
(*d*) Appoint additional Constables at the expense of individuals;
(*e*) Impose penalties for impersonating and assaulting police;
(*f*) Provide for a Superannuation Fund and for the payment of fines imposed for drunkenness and assaults on police into this Fund.

The passing of the Metropolitan Police Acts of 1829 and 1839 and the formation of this new force of paid police was the beginning of a new and efficient system of police in England, a system which has ensured a high standard of law and order and has earned for the English policeman the admiration of the world. The success of the system introduced by Peel is due in great part to the fact that, on reorganising the police, Peel preserved the

old office of constable which, as has been shown, had existed for centuries and the new system was founded on the ancient office.

To quote Lee, "The success that had attended the reorganisation of the police of the Metropolis, and the gratifying results that, on the whole, had followed the experiment, encouraged the hope that the benefits conferred by an efficient constabulary would soon be shared by the boroughs throughout the country."

At that time, whilst each provincial town had its own police system of maintaining order, there can be no doubt that there was a complete lack of proper police supervision everywhere, the country having outgrown the old system. In fact in the whole of the kingdom there were only two real organised police forces in existence at the end of the eighteenth century, *i.e.* the London Bow Street Patrol and Manchester. In the latter town a police office was established in 1772 on the recommendation of Sir John Fielding, and it is interesting to note that in 1816 the day police in the borough consisted of a deputy Constable and four beadles, known as runners or "bang beggars", whilst the night patrol consisted of fifty-three men. In 1828 a police station which also served as a lockup was provided by Sir Oswald Mosley, the Lord of the Manor. The strength of the Manchester force about this time (1828) was forty-one on day patrol and 116 on night patrol.

There was a great need for a revised system of policing in the industrial centres and populous areas and the passing of the Reform Act of 1832 may be said to have been the first step in that direction, in that new boroughs created by that Act were allowed to appoint bodies of paid constables.

This measure was followed by the Lighting and Watching Act of 1833 which provided for the appointment of inspectors with a certain amount of control over the local police establishments in all English towns, with a few special exceptions. This Act was intended to give the provinces an opportunity for extending police organisations, and it is interesting to note that it was the first real attempt to provide a day police outside London. Watchmen were to be appointed and provided with arms, clothing, etc., the watchmen to be sworn and to have the powers of constables.

Municipal Corporations Act, 1835

Many towns had in the process of time been granted charters giving powers of local government, but in 1834, Special Com-

missioners were appointed to investigate the whole question of charters, and as a result of their recommendations the Municipal Corporations Act, 1835, was introduced and passed. This measure repealed all Acts, Charters and customs inconsistent with, or contrary to, the provisions of the new Act, and at the same time created the larger towns into municipal corporations, such corporations to be styled "The Mayor, Aldermen and Burgesses". The Act also replaced the Common Law method of appointing Constables by creating the "Watch Committee" and entrusting the appointment of Head and other Constables to the Watch Committee. The appointment of the Watch Committee was made the responsibility of the Borough Council which "from time to time shall appoint, for such time as they may think proper, a sufficient number of their own Body, who, together with the Mayor for the time being, shall be the Watch Committee for the Borough." Borough Councils were also authorised to levy a Special Borough Watch rate—at first limited to sixpence in the £.

These Watch Committees were given full discretionary powers for the local management of the police, including the provision of station houses, and, in order to co-ordinate the police system on a partially national basis, each Committee was required to furnish the Home Secretary with a statement detailing the strength of its police force, its equipment, salaries and standing regulations. This requirement meant that whilst local control was maintained, the ultimate authority continued to be vested in the Home Office, acting on behalf of the Crown.

The Act required every borough to organise its own police force and consequently a number of new borough forces were instituted throughout the kingdom during 1835 and in the next few years. In some of the boroughs there was opposition to the new organisation and in certain places a question as to the legality of the new system was raised. In this connection it is particularly interesting to find that in Manchester, where, as it has already been shown, a police force had been functioning for some time, the opposition was particularly active. Mr. Richard Beswick, who had been connected with the borough force for several years, was appointed by the Watch Committee as the first Head Constable, but as a result of the opposition encountered and the refusal of the Police Commissioners and the Parish Constables to recognise the new Authority, the Government appointed Sir

Charles Shaw to be Commissioner for a period of two years, and he took control of the old and new establishments.

As previously indicated there can be little doubt that when Peel introduced his Metropolitan Police Bill he meant it as an experiment and that it might be eventually extended on a national basis. The Municipal Corporations Act of 1835, however, placed the new borough police forces under the local control of Watch Committees of the Borough Councils.

The County Police Act, 1839 (Permissive Act)

In October, 1836, Charles Shaw Lefevre, Esq., Lt.-Colonel Charles Rowan, one of the Commissioners of the Metropolitan Police, and Edwin Chadwick, Esq., were appointed Commissioners under the great Seal "to enquire as to the best means of establishing an efficient Constabulary Force in the Counties of England and Wales, for the prevention of offences, the detection and punishment of criminals, the due protection of property, and the more regular observance of the laws of the realm." This Commission, after conducting an extensive enquiry throughout the country, submitted a most comprehensive report in 1839, setting forth their findings and recommending:

> "That as a primary remedy for the evils set forth, a paid Constabulary Force should be trained, appointed, and organised on the principles of management recognised by the Legislature in the appointment of the new Metropolitan Police Force."

They further recommended that the Counties of England and Wales should be policed by a force, estimated at a total of 8,000, to be appointed, organised and managed by the Commissioners of the Metropolitan Police. This proposal was strenuously opposed.

Following the report of the Commissioners and as a result of the experience gained in some of the boroughs, the County Police Act, 1839, was passed. This Act, frequently referred to as the Rural Police Act, which was permissive in character, made provision for a majority of the Justices in Quarter Sessions, to raise and equip, at their discretion, a paid police for the protection of the County. Justices who decided to take advantage of the provisions of the Act were empowered to appoint a Chief Constable, and delegate to him the power of appointing, directing

and disciplining a sufficient number of police constables, not to exceed one constable per thousand of the population, excluding Corporate boroughs already provided for. (*Note.*—This limitation was subsequently removed.)

Boroughs incorporated under the Municipal Corporations Act, 1835, or under the provisions of any charter granted in pursuance of that Act were exempted from the provisions of the County Police Act, 1839.

The Act also provided that rates of pay, rules of government and appointments of Chief Constables, their Assistants and Superintendents had to be submitted to the Home Office for sanction.

In the following year (1840) an amending Act was passed which provided for the cost of the County Police, where appointed, to be met by a separate County Police rate and not by the General Rate as formerly. Provision was also made in the amending Act for the setting up of a superannuation scheme, for the permissive amalgamation of borough police forces with that of the County, and for the sub-division of the Counties into definite police districts, each district being responsible for the payment of its constables. The form of oath to be taken by local constables was prescribed by the Act.

Judged by its results the Rural Police Act, owing to its permissive character, was anything but a success. Lee describes the position in the following terms: "The result of the Permissive Act was precisely what might have been expected, and the situation may be summed up in the single phrase—crime follows impunity. The influences of pride and jealousies proved powerful enough to prevent a complete recantation by those counties which had pinned their faith in the *status quo ante,* but they were not sufficiently potent to produce insensibility or indifference when the day of reckoning came." The real position was that in those counties where the Permissive Act was adopted there was definite progress towards efficiency, whereas in counties which preferred the regime of the Parish constable there was no progress or improvement.

As a result, an attempt was made in 1842 to improve conditions in counties where the Rural Act had not been adopted, by an Act of Parliament requiring Justices of the Peace to hold Special Sessions for appointing proper persons to act as Parish Constables, and permitting the employment of new Officers called

Superintending Constables to supervise all Parish Constables, the salaries of such Officers to be paid out of the County rates. This system, which was adopted by most of the Counties which had declined to adopt the Rural Act, was given a good trial, but whilst it proved popular, experience clearly indicated that it was not a success and it became quite evident that if anything on a national and efficient basis was to be achieved compulsory legislation would be necessary.

The County and Borough Police Act, 1856 (The Obligatory Act)

This was accomplished by the passing of the second great Rural Police Act—The County and Borough Police Act of 1856. This Act, commonly called the Obligatory Act, enacted that where a Constabulary had not already been appointed, the magistrates were forthwith to cause such a force to be appointed. Where the Permissive Act had only been adopted for part of any County the magistrates were required to appoint forthwith a force for the whole of the County.

Other important provisions in the Obligatory Act, which had an important bearing on the development of the police service, were:

(1) The police forces of all boroughs with populations not exceeding 5,000 were merged with the police of the counties wherein such boroughs might be situated.

(2) The appointment of Inspectors of Constabulary, with authority to visit and enquire into the state and general efficiency of the police in the several counties and boroughs, and to report thereon to the Secretary of State.

(3) Providing a certificate was issued by the Home Secretary that the police force of any county or borough was efficient, a sum not exceeding one-fourth part of the total cost of pay and clothing for such police force was to be paid by the Treasury.

(4) An annual statement respecting crime in counties to be rendered by the magistrates to the Secretary of State for the Home Department, in order that an abstract of the same could be presented to Parliament.

(5) A similar statement for boroughs to be rendered for the same purpose by Watch Committees.

Provision was also made in the Act of 1856 to grant gratuities out of the Superannuation Fund to incapacitated constables who had served fifteen years, and authority was given to make up any deficiency in the Superannuation Fund from the Police Rate. Provision was also made to provide superannuation for Chief Constables.

The County and Borough Police Act, 1856, is generally recognised as one of the most important enactments affecting the police service in that it made it compulsory for police to be appointed throughout the country and provided a co-ordinated system, which, whilst it remained under general local control, was, due to the operation of the Exchequer Grant, also under partly National direction.

The Municipal Corporations Act, 1882

From now on the administration of the police was one of steady progress and development throughout the country and numerous Statutes were passed which materially affected police administration, and also placed increasing duties upon the shoulders of the Constabulary. The Municipal Corporations Act, 1882, repealed the Act of 1835 and consolidated, with amendments, all enactments relating to Municipal Corporations in England and Wales. Part IX of the Act is confined to police, the appointment and powers of Watch Committees and the appointment of constables. Under this part of the Act it is provided that:

(1) The Council shall from time to time appoint for such time as they think fit, a sufficient number not exceeding one-third of their own body, who, with the Mayor, shall be the Watch Committee.

(2) The Watch Committee may act by a majority of those present at a meeting thereof, but shall not act unless three are so present.

(3) The Watch Committee shall from time to time appoint a sufficient number of fit men to be borough constables.

(4) Borough constables shall be sworn in before a justice having jurisdiction in the borough, and when so sworn shall, in the borough in the county in which the borough or any

part thereof is situate, and in every county being within seven miles from any part of the borough, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable has and is liable to for the time being in his constablewick, at common law or by statute, and shall obey all such lawful commands as he receives from any justice having jurisdiction in the borough or in any county in which the constable is called on to act.

(5) The Watch Committee may from time to time frame such regulations as they deem expedient for preventing neglect or abuse, and for making the borough constables efficient in the discharge of their duties.

(6) The Watch Committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the Watch Committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same.

The Local Government Act, 1888, marks an important phase in the general development of the County Police as it provided for the establishment of a Standing Joint Committee of the Quarter Sessions and the County Council consisting of such equal number of Justices appointed by the Quarter Sessions, and of members of the County Council appointed by that Council as may from time to time be arranged. The Act also transferred the appointment of the Chief Constable and the general control of the county police from Quarter Sessions to the Standing Joint Committee. The transfer of power to the Standing Joint Committee under the Act did not, however, affect the powers, duties and liabilities of the Justices as Conservators of the peace, nor the obligation of the police to obey any lawful orders the Justices might give.

This Act, in its application to boroughs, provided that the police force of any borough, with a population of less then ten thousand, should cease to operate as a separate force and be merged in that of the county police force.

The Police Act, 1890

The next important phase in the development of the English police system to which reference should be made is the Police

Act, 1890, which, according to the preamble, was "An Act to make provision respecting the Pensions, Allowances and Gratuities of Police Constables, and their Widows and Children, and to make other provisions respecting the police of England and Wales."

Efforts had been made from time to time to provide for the payment of pensions or allowances to constables injured on duty or "worn out by length of service" and also to widows of those killed on duty, but the whole position was most unsatisfactory. The Act of 1890 for the first time provided the policeman with the right to a statutory pension and may therefore with justification be called the Policemen's Pension Charter.

The Act provided for the adoption of a Pension Scale in every provincial force under which ordinary pensions were payable after fifteen years' service, the amounts payable increasing by stages to the maximum of two-thirds of the annual pay on completion of twenty-six years' service. Provision was also made for Special pensions payable to constables incapacitated for further service as a result of injury received in the execution of duty, the amount of pension varying according to whether the injury was or was not accidental, and according to whether the constable was partially or totally disabled from earning his livelihood.

Just as the amount of the ordinary pension was according to whether the maximum scale, *i.e.* fiftieths, or the minimum scale, *i.e.* sixtieths, was adopted by the Police Authority (the Watch Committee), so also the amount of the special pension was within a prescribed maximum and minimum, at the discretion of the Police Authority.

Provision was also made for the payment of a pension to the widow and allowances to the children of a constable who lost his life from the effect of an injury received in the execution of his duty, the amounts payable being a fixed sum under the Act. The Act also provided for the payment of gratuities not exceeding the amount of one month's pay for every completed year of approved service to the widow and children of any constable who died under circumstances which did not entitle them to a pension.

The Police Act, 1890, was, subject to certain exceptions, applied to the Metropolitan Police Force, but not to the City of London Police.

Another important development provided under the Act of 1890 was the provision of powers for assistance by one police

force to another to meet any special emergency. Such assistance, popularly known as Mutual Aid, could be arranged by mutual agreement for a particular occasion or as a standing agreement for recurring or unforeseen events and aiding constables, notwithstanding that they had not been sworn in or taken any declaration as constables of the aided force, were, for all purposes, constables of the aided force and given the same powers, duties and privileges.

The police service continued to make steady progress during the last decade of the nineteenth and early part of the twentieth century. The Legislature continued to delegate additional responsibilities on the police service, all of which, in addition to the ordinary functions of the police, were discharged in such a manner as to increase the respect and confidence of the general public. Several Acts of Parliament affecting the police system were passed subsequent to 1890, the most important being:

(1) The Police Returns Act, 1892, which provided for the Returns required by the County and Borough Police Act, 1856, to be submitted to the Secretary of State for each calendar year;

(2) The Police Act, 1893, which enabled duties rendered by police at fires to be regarded as police duties and empowered the use of borough police as firemen. Power was also given to increase pensions in cases where partial disablement became total disablement.

A much needed reform affecting the individual member of the police service was achieved by the passing of the Police (Weekly Rest Day) Act, 1910. At this time constables generally were only allowed one day's rest off duty in fourteen. The new measure made it compulsory for every constable to be given one day's rest from duty in every seven.

The Great War of 1914–18 was the next important stage in the general development of the police system in England. A large percentage of the regular police answered the call for active service with the fighting forces and Special Constables were enrolled in large numbers to augment the depleted police forces in the maintenance of peace and in the prevention of crime in the homeland. The experience gained by such large numbers of the general public and the realisation of the value of the police service to the general community resulting from this experience was of very

real importance. It certainly resulted in a closer friendship between the public and police and it was at last realised that the police service was not merely a repressive force but a real public service, protective and helpful to all.

During the war period the pay of the police was stationary, the only steps taken by the Government and local authorities to assist the police being the grant of a war bonus or allowance, although food and clothing cost more and the wages paid to all workers reached very high levels.

Representations made by all ranks resulted in a new scale of pay being approved in 1917, but this was considered to be quite inadequate to meet the situation. This led to great disquiet and unrest, which culminated in the formation of the Police Union and the unfortunate police strike of 1918, which seriously affected London and certain provincial cities. Practically the whole of the men in the Metropolis came out on strike, but only a small proportion of the men in the provincial forces actually took strike action.

Desborough Committee—The Police Act, 1919

As a result of the strike the Government appointed the Desborough Committee early in 1919 to make a general enquiry into the police of England and Wales, and the report of the Committee, which was accepted by Parliament, was the basis of the Police Act, 1919. The Desborough Committee report is generally claimed to be the Policeman's Magna Charta on the grounds that it is the basis and authority for pay and conditions of service for all police forces in England and Wales. The Act empowered the Secretary of State to make regulations as to Pay, Allowances, Pensions, Clothing, Mutual Aid and conditions of service generally. It also required every Police Authority to comply with the Regulations made by the Secretary of State.

Another important feature of the Act was that the Police Union was swept away and in its place authority was given for the organisation of the Police Federation for the purpose of bringing to the notice of the local authorities and the Home Office all matters affecting the welfare and efficiency of the police as distinct from questions relating to discipline and promotion.

It was generally regretted that the Police Union, which had engineered the strike of 1918, continued to be active during the

investigation carried out by the Desborough Committee and the subsequent consideration of the Committee's report. In any event it was a tragic business when, following the decision of Parliament to abolish the Union there was a second and disastrous police strike when a large number of men in the Metropolitan Force and at Liverpool, Birmingham and a few other places went on strike to enforce recognition of the Police Union. The Police Union's constitution and its claims were quite inconsistent with the maintenance of discipline, and the Authorities warned the affected men that if they left duty they would be dismissed from the service. The warning was ignored, the authorities held firm to their decision, and all men who had absented themselves from duty were dismissed.

The Secretary of State under the powers conferred upon him by Section 4 of the Act of 1919 immediately made regulations as to pay and allowances, granting substantial increases to all ranks, and for the first time standardising the rates of pay for all the lower ranks in all forces. Similarly the amount of certain allowances payable to police were standardised throughout the country.

Police Federation

The Branch Boards

Reference has already been made to the creation of the Police Federation as an alternative to the Police Union. This was provided for in Section I of the Act of 1919, the Schedule to the Act providing the procedure and machinery for the Federation. The constitution of the Federation embraces all members for the time being of the several police forces in England and Wales below the rank of Superintendent, and the Federation acts through Branch Boards, Central Conferences and a Central Committee as provided in the Schedule. In each force there are three Branch Boards—one for Constables, one for Sergeants and one for Inspectors. The Branch Boards may meet and act independently or they may by agreement meet and act jointly as a Joint Branch Board for the force. The members of the Branch Boards are elected in October of each year and the Branch Board, or Joint Branch Board, in addition to submitting any representation to the Chief Constable or the Police Authority, may submit it also to the Secretary of State.

Central Conferences

Central Conferences for each rank are held annually in November, and delegates to each Central Conference are authorised in the proportion of one delegate from each Board where the authorised strength of the force is less than 200; two delegates where the strength of the force is between 200 and 500; three delegates if the force is between 500 and 1,000 and four delegates where the force is over 1,000.

Central Committee

The members of the Central Conference elect from amongst their members a Central Committee of six members, of whom two are elected by the Metropolitan and City of London Police Forces; two by the delegates of the County Police Forces, and two by the delegates of the City and Borough Forces.

The Central Committee of the three ranks, *i.e.* Constables, Sergeants, and Inspectors, or any two of them may, by agreement, sit together as a Joint Central Committee for any special purpose, or regularly for all purposes of common interest.

The Central Committee, either separately or as a Joint Committee, may submit representations in writing to the Secretary of State, and on matters of importance the Secretary of State will be prepared to give any Central Committee, or a deputation from the Central Committee, a personal hearing.

Police Councils

The Secretary of State may arrange for the holding of Police Councils for the consideration of general questions affecting the police, at which the Joint Central Committee, or a deputation from that Committee, may be invited to meet representatives of Police Authorities—Counties and Cities and Boroughs—Chief Constables—Counties and Cities and Boroughs—and Superintendents, under the chairmanship of the Secretary of State or of an Officer of the Home Department, or other person appointed by the Secretary of State.

A draft of any regulations relating to the government, mutual aid, pay, allowances, pensions, clothing expenses and conditions of service of the police, is submitted to the Police Council.

The Police Act, 1919, applies to every police force to which the Police Act, 1890, applies, and to the City of London Police.

Police Pensions Act, 1921

This Act was passed into law in July, 1921, to consolidate and amend the law respecting the retirement, pensions, allowances and gratuities of members of police forces in Great Britain and their widows, children and dependants.

The Act makes retirement compulsory in all police forces for Sergeants and Constables at the age of fifty-five years; for Superintendents and Inspectors at sixty years, and for Chief Constables and Assistant Chief Constables at sixty-five. Provision is also made for the compulsory retirement of any member of any police force who is required to retire by the Police Authority on the ground that his retention in the force would not be in the interests of efficiency, after he has become qualified by length of service to receive a maximum pension without medical certificate. The scale of pensions provided by the Act and contained in the Schedule is on the bases of sixtieths, necessitating a period of approved service of thirty years to qualify for a maximum pension of forty-sixtieths or two-thirds of pay at the time of retirement, and this scale was made to apply to members who were serving as such at the commencement of the Act. An exception was provided, however, in Section 29, under which the scale of ordinary pensions prescribed by the Act shall not apply to any person, other than a police woman, who became a member of a police force before the 1st July, 1919, and was serving as such at the commencement of the Act, unless within three months after the commencement of the Act such person gave notice in writing to the Police Authority of his desire that the new scale should apply to him, and, where no such notice was given, the scale of ordinary pensions applicable immediately before the commencement of the Act had to continue to apply.

The Pensions Act of 1921 also provided scales of pensions and gratuities payable to widows and for allowances and gratuities payable to children and dependants.

Discipline

The Police Regulations made by the Secretary of State included a Code of Discipline for all forces and outlined the pro-

cedure to be adopted in dealing with breaches of the Discipline Code. In the Metropolitan Police the procedure has to be specially approved by the Secretary of State; in borough forces the decision of Chief Constables has, subject to any general directions of the Watch Committee, to be either:

(i) to dismiss the case, or
(ii) to remit the case to the Watch Committee for further hearing, or
(iii) to award one of the following punishments:
  (*a*) dismissal;
  (*b*) being required to resign as an alternative to dismissal;
  (*c*) reduction in rank;
  (*d*) reduction in rate of pay;
  (*e*) forfeiture of Merit or Good Conduct badges;
  (*f*) fine;
  (*g*) reprimand;
  (*h*) caution.

In County forces the decision of the Chief Constable is final, but in Borough forces the punishment (other than Caution) is subject to confirmation by the Watch Committee, and in addition the right of appeal to the Watch Committee against a punishment inflicted by the Chief Constable is provided for members of Borough forces.

In 1927 the Police (Appeals) Act, was passed. This Act provided to members of all police forces the right of appeal against the punishment of dismissal or being required to resign as an alternative to dismissal. The Act provided that a member of a police force who, after the passing of the Act is dismissed or required to resign as an alternative to dismissal, may appeal to the Secretary of State in accordance with rules made under the Act.

The Police (Appeals) Act, 1934, amended the Act of 1927 by adding reduction in rank and reduction in rate of pay to the punishments against which a member of a police force may appeal to the Secretary of State. A further amendment contained in the later enactment is that the Secretary of State is empowered to increase as well as to reduce a punishment.

Crime—Scientific Aids

During recent years great progress has been made in the application of science as an aid to police work. The introduction of the motor car giving greater mobility was followed by the use of wireless, the gradual development of police laboratories to help in crime investigation and the adoption of traffic signal lights are typical examples of the process of mechanisation which is gradually taking place in the police service.

In October, 1935, the Home Secretary appointed a Departmental Committee of senior police officers to enquire and report upon the organisation and procedure of the police forces of England and Wales for the purpose of the detection of crime. The work of this Committee was sub-divided into four fairly well-defined heads, namely, (*a*) The Selection and Training of Detectives; (*b*) Crime Records; (*c*) Communications and (*d*) The Use of Scientific Aids in the Detection of Crime, and four Sub-Committees were appointed to investigate these groups of subjects.

The Report which was eventually prepared by the Committee and presented to the Secretary of State was divided into eight chapters. The first dealt generally with the prevailing police system in England and Wales, the second with the existing state of crime, and the third dealt specifically with the detective work of the police. Chapters IV, V, VI and VII were respectively devoted to the detailed consideration of the four main subjects already mentioned, *i.e.* the selection and training of detectives, crime records, communications, and the use of scientific aids in the detection of crime. Chapter VIII dealt with Miscellaneous Questions, mainly of a legal or quasi-legal character, and contained a summary of the conclusions and recommendations of the Committee.

Apart from the general conclusions and recommendations of the Committee, the investigation conducted by the Sub-Committee, the visits to many of the forces and the discussions which took place during these visits stimulated great interest and focused attention upon many aspects of local work on the investigation of crime. As a result procedure was changed and new work developed in many places up and down the country.

It soon became obvious that local measures and developments should be co-ordinated and the Home Office, in advance of the presentation of the full report, took steps to put into opera-

tion certain important measures based on interim recommendations submitted by the Committee.

These included, for example, the inauguration of courses of instruction for detectives, following the syllabus adopted by the Committee, other courses for senior officers, the initiation of measures for dealing with Criminal Statistics, the issue of a model force record system, the inauguration of regional laboratories at certain selected centres and the issue of a pamphlet of instruction on Scientific Aids.

The recommendations contained in the Report of the Committee were most important, and if and when adopted will have a far-reaching effect on police administration generally and on crime investigation particularly. Included in the recommendations were the following:

Training of Recruits

Instruction in crime investigation to form an integral part of the Recruits Training Course and not postponed until recruits have obtained experience of actual police work.

Theoretical instruction in crime work given to young constables to be supplemented by attaching them to the Criminal Investigation Department early in their service for a period of six weeks.

The establishment of Approved Training Centres for the training of men selected for detective work; for short refresher Courses of Instruction for detective officers, and Special Courses of Instruction for from four to six weeks duration for senior officers.

Crime Records

Group Records.—Where possible, one force to maintain, for the composite area of a group of forces, a set of records of criminals for the benefit of all the forces in the area, as if the whole of the area were included in one police district.

Regional Records.—The establishment and maintenance of regional records of criminals, the main purpose of the regional records to be similar and complementary to that served by the force records. The formation of Clearing Houses to serve, in the case of regional centres, such adjacent forces as can be most effectively served from such centres or, in the case of the Crim-

inal Record Office, the country as a whole. Each Clearing House established to be supplied by the forces concerned with such particulars regarding local criminals who commit, or are likely to commit, crimes in other police districts, as are needed to enable identification work to be effectively carried out.

Central Records of Criminals.—All registration records, whether local or regional, to be subordinate to the Central Registry at New Scotland Yard, and to be dependent upon it. The Central Single Fingerprint Index at New Scotland Yard to be built up as rapidly as possible.

Communications

Existing facilities for the dissemination of messages from headquarters to divisional stations to be reviewed, and private telephone lines installed, preferably with teleprinters. Teleprinter installations in County forces to take account of the requirements of the borough forces in the county. The public to be encouraged to use the facilities at their disposal to communicate with the police.

Wireless.—The Committee recommended the provision of nine regional wireless centres in England and Wales providing for telephony as well as Morse working, also that police forces should maintain an adequate number of wireless patrols.

Crime Informations.—The Committee recommended that the organisation for the circulation of Crime Informations should be revised and developed on a more systematic and consistent plan and specified in general terms the material which should be included in, and the use to be made of, (*a*) Local Crime Informations; (*b*) Inter-Force Crime Informations, and (*c*) Crime Informations in county and borough forces. In the latter case it was recommended that the county force Crime Informations should be circulated to the separate borough forces in the county and that Crime Informations issued by the borough forces should be received at the county police headquarters.

Application of Science to the Investigation of Crime

In certain forces progress has been made in the application of science to the investigation of crime, and the Committee expressed the view that there could be no doubt as to the import-

ance of this work. It was recommended that the possibilities of the application of science to the routine investigation of crime should be brought home to the members of every force as an integral part of their instruction; that the Pamphlet on Scientific Aids to Criminal Investigation, issued by the Home Office, should be given to all recruits as well as to detectives. It was further recommended that interest in this branch of police work should be fostered by means of lectures; that proper instruction on the subject be provided for detectives and other officers responsible for the investigation of crime; that a distinction be drawn between matters of police technique and laboratory processes, and that detectives should not themselves carry out laboratory processes, but should understand the possibilities of the work, the character of the traces which may yield information, and the manner in which they should be handled.

Laboratory Work.—It was recommended that provision be made for laboratory examinations under the heads of (1) routine examinations, (2) specialist examinations, and (3) research. The general principles on which laboratories should be organised, administered and financed were suggested and it was recommended that a standing advisory and consultative committee, representative of the police authorities, be appointed to assist the Home Office in general administrative problems.

As a result of conferences held with the County Councils Association and the Association of Municipal Corporations, an Advisory Committee of representatives of the Associations was set up to consider the recommendations of the Departmental Committee, especially the financial arrangements, relating to certain police services to be developed on a regional basis.

The Advisory Committee, after considering the proposals in detail, recommended:

(*a*) That a Central Fund for the financing of Regional Services should be established by means of contributions by police authorities with an equivalent Exchequer contribution;

(*b*) That the services, the cost of which should be borne on the Fund at the outset, should be Forensic Science Laboratories; a Regional Police Wireless system; clearing house for criminal records; and the training and experimental centre for police dogs which had been established by the

(*c*) That the cost of the services should be spread evenly over the county and borough police funds, each police authority paying, as previously agreed to by the Associations, according to the authorised strength of its force, irrespective of the amount of benefit likely to be derived from any particular service at the present time;

(*d*) That the unit of contribution should be the same for all forces and that the contribution should be calculated on the estimated cost of the services for the year, any balance of the actual cost being taken into account in the assessment of the contribution for the following year.

The outbreak of war in September, 1939, seriously affected the proposals, and the original recommendations had necessarily to be modified, one result being a decision to postpone the establishment of Regional Clearing Houses.

It was decided, however, that Forensic Science Laboratories were necessary, and in accordance with this decision laboratories have been established on a regional basis as follows:

East Midlands	..	at Nottingham
North Western	..	at Preston.
West Midlands	..	at Birmingham.
South Wales	..	at Cardiff.
North-East	..	at Wakefield.

It was also decided to proceed with the experimental work and the development of a regional police wireless system. A great amount of experimental work and actual development had already been carried out by individual forces and in some cases local group arrangements had been made for all forces participating in the wireless service provided to pay a proportionate part of the cost of the service. The advisory Committee recommended that these arrangements should be superseded by a complete system on a regional basis, and as a result regional wireless stations have now been established as follows:

No. 1 Region	..	Marley Hill, Newcastle-on-Tyne.
No. 2 Region	..	Kippax, Leeds.
No. 3 Region	..	Stanton-on-the-Wolds, Nottingham.
No. 4 Region	..	Cheveley, Suffolk.
No. 5 Region	..	Metropolitan Police Area, West Wickham.
No. 6 Region	..	Hannington, Hants.
No. 7 Region	..	Shapwick, Somerset.

No. 9 Region	..	Romsley, Birmingham.
No. 10 Region	..	Billinge, Wigan.
No. 12 Region	..	Cranbrook, Kent.

In addition to the regional wireless system, most forces are also operating a purely local system on the ultra-high frequencies which have been made available for this purpose. Under the local ultra-high frequency system force headquarters can maintain wireless communications with divisional stations and mobile units throughout the police district.

The Regional Service is, of course, financed in accordance with the agreed policy referred to above, but the cost of the necessary apparatus for the ultra-high frequency service for an individual force falls on the police fund of that force.

Women Police

One important development of the English police system to which special reference must be made is the appointment and recognition of women as police officers. Many Social Services were developed as a result of the experiences of the Great War of 1914–18, and the woman police officer is actually a product of that war. Miss Damer Dawson and Miss Nina Boyle were responsible for the formation of the Women Police Volunteers in the early days of the war. At the outset a number of professional women were enrolled and they were to give their whole time to their new work and to be ready to answer a call day or night, or to go to any part of the United Kingdom.

The new organisation very naturally created very great interest and received encouragement from many Chief Constables and Magistrates. It soon became evident, however, that co-operation with the male police was essential and the result was the substitution of the Women Police Service in 1915. Official recognition came in 1916 when, by the passing of the Police Factories, etc (Miscellaneous Provisions) Act, women police, *i.e.* women employed by a Police Authority to perform any of the duties of the police, and required to devote the whole of their time to such employment, were to be paid out of rates like the regular male constables.

Several county and borough forces took immediate advantage of the Act of 1916, and by the end of the war women police were operating in quite a large number of forces.

In 1919 the Home Secretary (Mr. Edward Shortt) appointed a Committee under the Chairmanship of Lord Stonehaven to enquire into the employment of women police. This enquiry evoked considerable interest and revealed the excellent services rendered by women police during the war, not only in ordinary police work but in many factories and munition works. The report of the Committee, which was published in July, 1920, expressed itself in favour of the employment of women police for undertaking duties which could more advantageously be performed by women than by the men police. The Committee also made certain recommendations in regard to pay and conditions of service.

In 1914 the Bridgeman Departmental Committee investigated the employment of women police and this Committee recommended that the employment and duties of women police should be left to the discretion of local authorities, and that women police should make the declaration of a constable and become an integral part of the force. Subsequently the Police (Women) Regulations made by the Secretary of State under Section 4 of the Police Act, 1919, came into force. These Regulations which apply to women who, having been attested as constables, were members of a police force, make provision in regard to the appointment of constables, their duties, service and pensions.

Considerable doubt still remained in certain quarters as to the value of women police, but just as the Great War of 1914–18 demonstrated the need for the employment of women, so the World War which broke out in 1939 brought further recognition of the value of women police by the creation of the Women Auxiliary Police Corps, which is now satisfactorily performing many of the duties of male police who have been thereby released for service with His Majesty's Forces and for other work of National importance.

Special Constables

No chapter on the police system of our country could be complete without some reference to the position occupied by Special Constables in the general organisation. To quote Lee "The institution of Special Constables was a natural accompaniment to the general drift of circumstances, which, for a long time, had

been modifying English police. Originally as we have seen, every free Englishman was compelled to take an active part in maintaining the peace. . . ."

The foundation for all subsequent legislation for the appointment of Special Constables, *i.e.* constables appointed not, as in the ordinary course, for a specified term, but for a special emergency, was an Act passed in 1662 (13 and 14 Car II c. 12). This empowered Justices when the Court Leet had failed to elect a constable, to appoint Special Constables. Special Constables do not appear to have been very extensively used, however, and it was not until 1831 that we find any effort made by the Government to regularise the position and make use of the reserve of force at the disposal of the Authorities.

Although Special Constables do not appear to have been generally employed, it is on record, as will be seen from the following letter issued by Mr. Joseph Nadin, Deputy Constable in Manchester, that Special Constables were being used in that city in 1814:

Mr. Peakman,
London Road,
Manchester.

Sir,

Please to send two constables and two of the watch and ward belonging to No. 4 Division to this office to-morrow evening at 9 o'clock to go out with the picquets, also two constables and two of the watch and ward every night at 9 o'clock at this office until the whole of the Special constables of your Division have gone out with the picquets, also please to send here a list of their names prior to their coming to this office to go with the picquets.

I am, Sir,
Your humble servant,
(signed) Jos. Nadin.

Manchester Police Office.
January 14th, 1814.

The Act of 1831 provided that "in all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, or division having a separate commission of the peace, or to any two or more justices of the peace of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness, that any tumult, riot, or felony has taken place or may reasonably be apprehended in any parish,

township, or place situate within the division or limits for which the said respective justices usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of property in any parish, township, or place as aforesaid, then and in every case such justices, or any two or more justices acting for the same division or limits, are hereby authorised to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons . . . to act as special constables, for such time and in such manner as to the said justices respectively shall seem fit and necessary. . . ."

The Act of 1831 also prescribed the powers of Special Constables and provided penalties for refusing to take the oath of Office, or for neglecting or refusing to appear at the time or place appointed for the taking of the said oath; also for refusing to serve, or for disobedience of orders.

This Act was followed by the Special Constables Act, 1835, enlarging the powers of Magistrates in the appointment of Special Constables and the Special Constables Act, 1838, for the payment of expenses incurred by Special Constables employed to keep the peace near public works.

In August, 1914, the Special Constables Act, 1914, was passed empowering His Majesty, by Order in Council, to make regulations with respect to the appointment and position of Special Constables appointed during the war under the Special Constables Act, 1831, or under the Municipal Corporations Act, 1882.

The Act authorised the appointment of Special Constables under the Act of 1831, although "a tumult, riot, or felony" has not taken place or is not immediately apprehended. An Order in Council was made on 9th September, 1914, authorising the appointment of Special Constables "during the present War" for the preservation of the public peace, for the protection of the inhabitants, and the security of property in the police area for which the Justices making the appointment act. It was also provided that a Special Constable who became incapacitated for the performance of his duty as the result of an injury received in the execution of his duty without his own default was entitled to receive a pension. Provision was also made for the payment of pensions and allowances to widows and children of Special Con-

stables who died from the effects of any injury received in the execution of their duty without their own default.

During the war Special Constables rendered signal service throughout the country, and in September, 1919, His Majesty the King recognised the faithful and devoted service of Special Constables, and instituted and created the Special Constabulary Medal.

During the autumn of 1919 it was decided in many parts of the country to disband the Special Police Reserve and to create a new Special Reserve to be available in the event of any sudden emergency or on important ceremonial occasions.

In June, 1923, another Act of Parliament was passed by which "Section I of the Special Constables Act, 1914, which confers power to make regulations with respect to Special Constables appointed "during the present war" would have effect as though the words "during the present war" were omitted therefrom."

The Special Constabulary Reserve therefore became a permanent organisation, the members being trained and utilised as and when their services were required. The value of this reserve of trained and disciplined men was fully realised when the present World War overwhelmed us, and it was decided to form a full-time Police War Reserve to augment the police service in this country, as the nucleus of this new force was largely composed of trained Special Constables who were prepared to accept full-time employment as War Reserve Constables.

Post-War Development

As has been shown, the war has had the effect of suspending and curtailing the general development of the police system which has been so noticeable during recent years. These developments will naturally again come up for review after the war, together with other problems affecting the general administration of the police service and the welfare of the members of the service.

The question of the merging of the smaller forces has been considered from time to time, and whilst there is general agreement that many of the small forces should be merged, very little progress had been made in that direction when the present war broke out. The requirements of the war situation have brought the question of Amalgamation prominently into the light, and already quite a number of borough and county forces have been amalga-

mated into Joint Forces. The measure which has brought this about is intended to apply only for the duration of the war, but no one can prophesy to what is likely to happen in this connection when the war ends. It has to be remembered that more than once the question of a national police force has been considered, and there are suspicions in many quarters that what has been done by amalgamation to meet the war situation is only the beginning of a general policy in the direction of a national or regional police system.

Apart altogether from these important problems there are other matters which may probably have far-reaching effect on the police system. During the gradual development of the police system in this country, changes which have been effected have very largely been necessitated by the changing conditions of the life and development of the public itself. The police service has always been intimately connected with public life and conditions, and the success and popularity of the service will depend to a large extent on a continuance of that intimacy. The question of post-war reconstruction is a very important one and is more than likely to bring about great changes in the life and conditions of the general community and it is inevitable that changes in the living conditions of the general public will materially affect the police service. Whatever changes are suggested in our existing police system as a result of post-war reconstruction, it will be wise to remember that throughout the history of our country one important factor in police administration has survived all changes and enactments—it has remained local in character and in its application.

V

THE JURISDICTION OF JUVENILE COURTS

By A. C. L. MORRISON

> "Every court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training."

THESE words, taken from Section 44 of the Children and Young Persons Act, 1933, are the key to the duty and policy of those who mainly in the juvenile courts, but occasionally in other criminal courts, have to deal with young offenders. But a juvenile court is a court of law. It must administer the law, and it must exercise its discretion judicially. If, even with the idea of benefiting a young offender, a court should act in excess of jurisdiction, the High Court, upon application made to it, will set aside the order of the juvenile court.[1]

1. THE ORGANISATION OF THE JUVENILE COURTS

Since the vast majority of juvenile offenders are dealt with in the juvenile courts, it will be well to state at the outset how these courts are constituted, and where they are accustomed to sit.

In the Metropolitan Police Court District, which corresponds almost exactly to the County of London (not including the City of London), a juvenile court ordinarily consists of a Chairman, who may be either a professional magistrate or a lay justice, and two other justices of the peace for the County of London. The Chairmen are appointed by the Secretary of State, and the justices who form a panel for juvenile court purposes are also appointed by the Secretary of State from the ranks of the justices for the County of London. Usually they are appointed for a term of three years, but appointments may be renewed. So far as possible, every court is to include one man and one woman, but in case of emergency, the court may consist of two justices, without regard to

[1] *R.* v. *Toynbee Hall Justices*; Joseph, *ex parte*. [1939] 108 L.J. (K.B.) 649.

sex, or a professional magistrate (one of the magistrates of the police courts of the Metropolis) may sit alone and exercise all the powers of a juvenile court. For some years past the Metropolitan juvenile courts have been generally presided over by lay Chairmen, but the Chief Magistrate himself and some of his colleagues are on the panel of Chairmen, and sometimes sit as chairmen. In case of an emergency any of the Metropolitan magistrates may sit in the juvenile courts.

Outside London the justices for every petty sessional division elect from among their own number such justices, men and women, as are considered specially qualified to deal with children and young persons, and these form the juvenile court Panel. No justice of the peace who is not a member of such Panel may sit in the juvenile court, just as in London only those specially appointed may do so. Here, again, the appointments are for three years, but there may be re-election at the end of that period. Normally the court consists of three justices and should include one member of each sex. Not more than three justices may sit together.[1]

Juvenile courts must sit either in a different building or room from that in which other courts are held, or on a different day.[2] In the Metropolitan Police Courts Area juvenile courts do not sit in a police court, but in case of need, a special court may be held in a private room at Bow Street Police Court. The juvenile courts sit in places like Town Halls or halls attached to Social Service Settlements. Before the war the question of building a special juvenile court to serve part of London was under consideration.

The general public is not admitted to a juvenile court, and the Press, though entitled to be represented, must not without special permission publish the name, address, or such other particulars concerning a juvenile offender as may lead to his identification.[3] Outside London, the arrangements vary, but there are places with special juvenile courts. Birmingham, for instance, has an admirable building set aside for the purpose.

The juvenile court when not held in an ordinary court-room is furnished simply, probably contains no witness-box, and certainly no dock, and while it should convey an impression of dig-

[1] Children and Young Persons Act, 1933, s. 45, and Second Schedule, as amended by the Children and Young Persons Act, 1938.

[2] *Ibid.*, s. 47.

[3] *Ibid.*, ss. 47 and 49.

nity, it should also strike a note of simplicity and informality. This, however, depends much more upon the magistrates and officials than upon the room or the furniture.

2. Jurisdiction

The juvenile court is a petty sessional court—a court of summary jurisdiction. It deals with most of the offenders who have not attained the age of seventeen years. No child under eight can be dealt with as an offender.[1] A child who is over eight but under fourteen years of age comes within the statutory definition of "child", and the offender who is over fourteen years of age and under seventeen is described as a "young person".[2]

A person under seventeen years of age who is accused of an offence must be brought before a juvenile court unless he is charged jointly with an adult, or an adult is charged with aiding, abetting, causing, or permitting the offence, in which case both the juvenile and the adult may be brought before an adult court.[3] The juvenile court can try all summary offences committed by children and young persons, and also all indictable offences except homicide. It must not commit a child for trial at Quarter Sessions or Assizes (except in case of a charge of homicide) unless he is to be tried jointly with an older person. A young person has the right to trial by jury, but may be tried summarily for any indictable offence except homicide if he consents.[4] A court other than a juvenile court before which a child or young person is found guilty of an offence may remit the case to a juvenile court so that the juvenile court may determine what punishment or treatment will meet the case.[5] The juvenile court has also a considerable jurisdiction over children and young persons not charged with offences, but this article is concerned only with offenders.

3. Powers of the Court

In a juvenile court the terms "conviction" and "sentence" must not be used in relation to juvenile offenders. The terms "finding of guilt" and "order upon such finding" being substituted for those words".[6]

[1] *Ibid.*, s. 50. [2] *Ibid.*, s. 107. [3] *Ibid.*, s. 46.
[4] Summary Jurisdiction Act, 1879, ss. 10 and 11.
[5] Children and Young Persons Act, 1933, s. 56. [6] *Ibid.*, s. 59.

Any juvenile offender may, upon being found guilty, be put on probation for a period not exceeding three years. In London and some other places probation officers may sometimes deal only with children and young persons. At the present time in the Metropolitan juvenile courts it is usual to place girls, and boys under fourteen, under women probation officers, and boys over fourteen under men. In some courts probation is used in something like half the cases, and it is natural that this method should be freely employed in the case of young people who, even though they have committed offences, should always be regarded as susceptible to reforming influences. If there should be a breach of probation, the court has then the power to inflict some form of punishment, or make some order by way of more drastic treatment.

For trifling offences not involving any moral guilt, it may be thought well to impose a fine. Such a fine may be ordered to be paid by the parent, unless the court is of opinion that the offence was in no way the fault of the parent.[1] Sometimes, especially in the case of the older boys and girls who are at work, the court may prefer that the fine should be paid by the offender, and time to pay is generally allowed if requested. In the last resort, the offender might have to be sent to a remand home in default of payment if the court were satisfied that he was recalcitrant. Before taking any such step, however, the court is expected to place the offender under the supervision of some person such as a probation officer, and to receive a report from him before making any order of committal.[2] Since, however, the principal object of the juvenile court is the reform of an offender, and a fine is not necessarily conducive to reform, the courts rarely impose fines where there is evidence of criminality, even in its earliest stages.

Upon being found guilty of an indictable offence, a boy who is under fourteen years of age may be ordered to receive not more than six strokes with a birch rod. In the London juvenile courts there have been no birchings for many years, and although in some parts of England this form of punishment is still used, it appears that the majority of courts can have little faith in this, judging by the small number of birchings now ordered. The Criminal Justice Bill, which was before Parliament when war

[1] Children and Young Persons Act, 1933, s. 55.
[2] Money Payments (Justices Procedure) Act, 1935, s. 6.

broke out, proposed to abolish corporal punishment entirely as a sentence of a court.

The court may also order a parent of an offender to give security by way of recognisance for his child's good behaviour.[1] The object, of course, is primarily to fix responsibility on the parent who has, perhaps, hitherto not realised sufficiently his duty towards his child.

It is not lawful to send a child to prison in any circumstances whatever,[2] and a young person must not be sent to prison unless he is too unruly or depraved to be suitable for a remand home. Remand homes are institutions established by local authorities for the purpose of the safe custody of children and young persons who are to appear or who may have appeared before the courts. They are not often used as places of punishment, but it is lawful for the court to send to a remand home for a period not exceeding one month a child or young person who would, if he were an adult, be liable to imprisonment.[3]

Where a juvenile offender is found to come from a home where the influence is bad, or the parents are ineffective, or where it seems that the offender is becoming a recidivist, the court may find it necessary to remove him from his home, and to make an order under which he will be taken from the custody of his parents. The court may in the case of a child or a young person found guilty of an offence for which an adult might be sent to prison commit him to the care of a "fit person" who may be a relative or not, and that person becomes responsible for him as if he were the parent,[4] and the "fit person" order normally remains in force until the young offender becomes eighteen years of age, but it may be revoked at some earlier time.[5] A local authority, such as a county council, may undertake the duty of a "fit person", and in that case it is under a duty to board out the young offender with foster-parents so that he may enjoy the benefits of ordinary family life with respectable people.

But it is not always possible to find a "fit person" to undertake the care of the young offender, and this applies particularly to those in the older age groups, and those who have shown themselves to be really troublesome. The court can, however, in circumstances in which it might make a "fit person" order, make

[1] Children and Young Persons Act, 1933, s. 55.
[2] *Ibid.*, s. 52.
[3] *Ibid.*, s. 54.
[4] *Ibid.*, s. 57.
[5] *Ibid.*, ss. 75 and 84.

instead an order sending the young offender to an approved school.[1] An approved school (formerly called either a reformatory or an industrial school), which is a school that has a certificate of approval from the Home Secretary, may receive children and young persons sent there by the courts, and such a school receives grants from public funds. Some of the schools belong to and are managed by local authorities, while others, some of them established a century ago, are in the hands of voluntary societies. All the schools are inspected by the Home Office. Their objects are education, industrial training, and, above all, character training. The schools are divided in the case of girls into junior and senior, the former taking girls up to the age of fifteen on admission, the latter up to the age of seventeen on admission. In the case of boys there are three classes, junior up to thirteen on admission, intermediate up to fifteen, and senior up to seventeen. There are special schools for those of Roman Catholic and of the Jewish faith. To-day it is the policy of the school authorities to give the boys and girls as much freedom as possible, to repose trust in them, and to make their lives as nearly like those of other children as is possible in an institution. Parents are encouraged to keep in touch with their children, home leave is allowed where the home is fit for the child to go to, parents are encouraged to visit the schools. The vast majority of those boys and girls who pass through the approved schools make good. Interesting accounts of the work being done in the schools are to be found in the reports of the Children's Branch of the Home Office, published from time to time.

The court in making an approved school order does not specify the period of detention. The maximum period is regulated by statute,[2] and it may be said that, save in the case of younger children who cannot be sent out as a rule until they are fourteen or fifteen years of age, the period of detention is on the average something like two or three years. The school managers, subject to a certain measure of control by the Home Office, can send a young offender out on licence when they consider that it is desirable that he should leave the school and take his place in society as a young wage earner.[3]

In a few cases boys and girls who have attained the age of sixteen years, and who are found to be of criminal habits or ten-

[1] Children and Young Persons Act, 1933, s. 57.
[2] *Ibid.*, s. 71.
[3] *Ibid.*, 4th Schedule.

dencies, or to be associating with persons of bad character, may be sent to Borstal institutions, but in such a case the juvenile court sends the offender to a court of Quarter Sessions or to an Assize Court with a view to such a sentence, and the final decision rests with that higher court. The juvenile court has power, however, to send to Borstal direct for two years a boy or girl between the ages of sixteen and seventeen who escapes from an approved school, or who is guilty of serious misconduct in such a school.[1]

Very rarely does a juvenile court send a young offender to prison. It has the power, however, to do so for offences which carry imprisonment in the case of an adult, but only if it is prepared to certify in writing that the young offender is too unruly or too depraved to be fit for a remand home. The Criminal Justice Bill proposed to forbid the imprisonment of anyone under sixteen years of age, and further to restrict imprisonment of persons under twenty-one years of age.

The idea of punishment is not excluded from the scheme of things in the juvenile court, but it is the aim of everybody connected with those courts that whatever punishment is inflicted should be reformative, and never merely retributive. Reform naturally and rightly takes first place when the courts are considering how to deal with a young offender. In order to know how best to reform the offender it is necessary to know a good deal about him. The juvenile courts, therefore, frequently remand a young offender, sometimes in custody, sometimes on bail, in order that information may be obtained about him, his health, his home, his friends, his school character, and in order that probation officers or officers of school authorities may confer with the parents, whose co-operation is much to be desired.[2] At some remand homes medical psychologists are available, and their reports are much valued by the courts. It may be said that in dealing with a young offender who is in need of treatment such as will prevent him from joining the ranks of adult criminals, the court looks to those social workers whose services are at their disposal to formulate plans, and maybe to make suggestions so that the court, with the fullest information at its disposal, may carry out the intention of the legislature and act with due regard to the

[1] Children and Young Persons Act, 1933, s. 82, and 4th Schedule, paragraph 8.

[2] As to remands for the purpose of obtaining information, see Summary Jurisdiction (Children and Young Persons) Rules, 1933, Rule 11.

welfare of the young offender. In this task the magistrates have often been heard to acknowledge their indebtedness to school teachers, school attendance officers, probation officers, and police officers, all of whom are as anxious as the court is that what is done should be for the benefit of one who, if he is an offender, is still what in England is often called "a young hopeful".

VI

THE TREATMENT OF THE JUVENILE DELINQUENT

By W. A. ELKIN

If anyone desires to know how the juvenile offender and those in need of care and protection are treated in this country a study of the law is obviously the first necessity, but this by itself is not sufficient to give any picture of how the juvenile courts work in practice. Unless the law is rigid in laying down what penalty is to be enforced for any given offence, practice in different courts, whatever their nature, will inevitably vary according to the point of view and personality of the particular magistrates who preside. Nowhere is this more true than in the working of the juvenile courts, not only because the widest latitude is allowed to the justices and practically speaking any of the various methods open to the courts can be applied to any case, but also because two divergent, not to say contradictory, conceptions have gone to the development of the courts.

The juvenile courts in this country are first and foremost Courts of Summary Jurisdiction, held in a different place from the ordinary police courts and with a different procedure, but they are none the less criminal courts dealing with those who have broken the law, unlike the Courts of Chancery which deal with young offenders in the United States or the Child Welfare Councils of the Scandinavian countries. Although the English courts can deal with anyone under seventeen, however young, who is in need of care and protection, they can only deal with offenders who have reached the age of criminal responsibility, which by the 1933 Act was raised from seven years of age to eight. On this basic conception of the young offender as a person criminally responsible for his actions an entirely different idea has been grafted. The Departmental Committee on the treatment of young offenders stated that the principle of guardianship lies at the root of all juvenile court procedure. The young offender is thus regarded as someone in need of the care and training that a wise guardian should give, and at the same time as someone who is criminally responsible for his actions. In many, if not most of

the Courts, the thought of guardianship is paramount; their only aim is to help the child overcome the difficulties of his life. But since the conception of the young offender as a criminal is still interwoven in the fabric of juvenile court structure, out of the thousand odd Courts in the country there will inevitably be some that tend to emphasise this aspect, rather than the aspect of guardianship, and which will in consequence give greater prominence to the idea of punishment. There is thus not even a universally accepted outlook to provide a common basis on which the juvenile courts can build up their detailed policy. An attitude of mind that one Court accepts as axiomatic might be regarded with horror or scorn by another.

This difference of point of view can be seen even in such externals as the location and arrangement of the court-room. In London, as in several of the larger towns, the juvenile courts are held in buildings that have no other connection with police work; but in many instances, indeed probably in the large majority of instances, the juvenile and adult courts are held in the same building. If the adult court does not sit every day the juvenile court would probably be held on a different day of the week, and the children and young persons who come before the latter are not brought into contact with any of the outward signs of police court work. On the other hand, in the larger cities where the police court sittings take place every day, the young offender or the child in need of care and protection is likely to find his way to the right room through halls and corridors thronged with police and witnesses and other persons connected with the police court cases. There is thus no hope that he will entirely escape the influence of the police court atmosphere, whatever the atmosphere of the juvenile court itself may be. Though this arrangement is often taken for granted, the drawbacks cannot be regarded as a matter of no importance. There is apt to be a certain morbid attraction in anything connected with crime, and the young offender is the last person who should have his interest in and curiosity about police court proceedings unnecessarily stimulated.

In the room in which the juvenile court is held there is generally little in the outward appearance that is suggestive of a court of law, but there are still a few juvenile courts that are held in an ordinary court-room because no other accommodation is available, or at least it is alleged that no other accommodation is

available. There are even one or two courts where the justices have deliberately had a room that is not a court-room arranged to look as much like one as possible, because they believe the young offenders do not take their appearances before the Courts seriously enough. In such instances the children find themselves literally kept at a distance from the justices because of the arrangement of the furniture and figuratively remote because of the greater sense of formality. The close contact between the child and the justices, which most people regard as an essential of good juvenile court work, is thus made impossible.

Such differences as these in the first approach of the Court to the young offender are necessarily reflected in the methods used in different districts. According to the Criminal Statistics for 1938 children and young persons charged with indictable offences in England and Wales were treated as follows:

Dismissed after charge proved ..	24·0 per cent. of total
Bound over without supervision ..	7·4 ,,
Bound over with supervision ..	51·0 ,,
Committed to Approved Schools ..	9·6 ,,
Fined	5·8 ,,
Otherwise dealt with	2·2 ,,

These figures, however, cover very wide variation between one district and another. Whereas the average for England and Wales was 51 per cent. on probation, and just under 6 per cent. fined, Liverpool put only 35 per cent. on probation, but fined 21 per cent., and Gateshead put 34 per cent. on probation and fined 38 per cent. Other districts vary rather in the proportion of cases they dismissed after the charge was proved. The percentage under this heading for England and Wales was 24 per cent., but Swansea put 26 per cent. on probation and dismissed 42 per cent., whilst Bootle dismissed as many as 56 per cent. of the cases and put only 21 per cent. on probation. In Windsor the percentage placed on probation remains always under 10 per cent. Sometimes a comparison of the figures for two consecutive years will show a complete revolution in the policy adopted by a particular town. Thus in 1937, Oldham put only 21 per cent. on probation and fined 36 per cent.; in the following year the percentage on probation went up to 61 per cent., and no use at all was made of fines, and this policy was continued in 1938. It is clear that opinion on the best way to treat young offenders is still very fluid, for such variations as those just given can certainly not be entirely ex-

plained by differences in local conditions or the conditions between one year and another. They illustrate rather how far the practice of the courts is dependent on the attitude of mind of the particular panel of justices and make it clear that a common basic point of view as to the best method of treating the young offender has still to be achieved.

The pioneers of juvenile court work would take it for granted that most young offenders need some kind of re-education and some constructive help if they are to develop into law-abiding citizens. The Courts that make an excessive use of dismissals or of binding over without supervision—which differs little from a dismissal—do not accept this belief. There are some courts that make a habit of dismissing all first offenders, disregarding the fact that the earlier delinquent tendencies are dealt with, the greater the chance of success. One may hear really serious offences dismissed either on the ground of their being first offences, or for even less relevant reasons. The case of a boy of sixteen charged with indecent assault on a small girl is one that came within the writer's knowledge, but other equally startling instances of cases dismissed or bound over without supervision could be quoted.

Behind this frequent use of dismissals often lies a desire to economise. The probation officers are all too often overworked, and it is cheaper to dismiss a large number of cases than to appoint more probation officers. It is not unknown for the Chairman of a Court to say openly that the probation officers have as many cases in hand as they can deal with, and a child will accordingly be dismissed, even though supervision might seem urgently necessary. Fortunately the Home Office has been making determined efforts the last two or three years to increase the number of probation appointments, but the ideal state of things has certainly not yet been reached, and the link between economy and the treatment adopted is far from being entirely a thing of the past. It is to be feared that the effect of war conditions will be to intensify this difficulty.

At the other end of the scale from mere dismissal is the imposition of purely punitive treatments, namely, fining or whipping. Divergent as these are from the over-leniency of frequent dismissals, the two types of treatment have nevertheless more in common than at first sight seems apparent. Whether the Courts dismiss a case on the one hand or fine or birch the offender on the other, they equally fail to make any constructive effort to re-

educate him. On the one hand they believe that a "talking-to" and a warning are likely to be enough to break a child of delinquent habits, on the other they believe that a punishment will prove to be sufficient. Neither recognises that it is training and help that are generally needed.

On that much-debated subject of birching it is not necessary to say much here. The practice has been steadily on the decline for many years, and its use is now confined to a very small number of Courts; but that it should be used at all, in spite of the frequently expressed disapproval of the Home Office and the clearly expressed conclusion of the Departmental Committee on Corporal Punishment, serves to illustrate how difficult it is to achieve any common standard in the working of the Courts.

The question of fines presents no such clear-cut issue. Obviously there are many instances when a fine is the right treatment. If a lad rides a bicycle without a rear light, or plays football on the pavement in a busy street, to place him on probation would be an absurdity. A fine will serve to make it clear to him that he cannot be allowed to make himself a danger or a nuisance to the community without having to pay a penalty. It is a different matter if fines are imposed with any frequency for indictable offences. There has been during the last few years a definite tendency to use them rather more frequently in this way. In 1932 only 4 per cent. of juveniles guilty of indictable offences were fined; by 1937 the corresponding figure was 7 per cent., though it fell again to just under 6 per cent. in 1938. This upward tendency is probably to be explained by the fact that the Children and Young Persons Act raised the age of young persons coming under the jurisdiction of the juvenile courts from under sixteen to under seventeen, and thus brought in a larger proportion of those who are wage-earners and who have money themselves with which to pay a fine without recourse to their parents. Most Courts even now make only a very limited use of fines for indictable offences. In the Metropolitan Juvenile Courts fines were imposed in only 2·5 per cent. of indictable cases, in Manchester in 3·2 per cent. On the other hand in Liverpool, as already pointed out, the corresponding figure was 21 per cent., and there are a few other Courts where the figure is also very high. As a result it is still possible to find cases of flagrant dishonesty or other types of serious misbehaviour dealt with by a fine which can hardly have any reformative influence.

The importance of probation lies in the fact that it is the one method open to the Courts which aims at re-educating the offender or helping him to adapt himself to the circumstances of his life, without any violent interruption to the normal course of his existence. As was shown above, in 1938 over 14,000 or 51 per cent. of all children and young persons guilty of indictable offences were placed on probation. In addition, 1,600 of those guilty of non-indictable offences were also treated in this way, and a large proportion of those committed to Approved Schools would have been on probation at an earlier stage. It is clear, therefore, that the success of the Courts is largely dependent on the adequacy of the probation system and the degree of wisdom they show in making use of it. In neither respect is our present system immune from criticism, magnificent as probation work is in certain districts.

It has already been pointed out that in some districts the probation officers are seriously overworked. When the Departmental Committee on the Social Services in connection with the Courts of Summary Jurisdiction issued its report in 1936, it was emphatic in its condemnation of the excessive number of cases with which many probation officers were loaded, and though there has been a considerable improvement since that date it would be idle to pretend that all leeway has been made up. If the probation officers have more cases than they can deal with thoroughly their work cannot be successful, however devoted and competent they may be. They can have no influence on a young offender or tackle his problems satisfactorily without getting to know him as an individual and understanding his personality and his difficulties. That takes time and cannot be properly done by someone who is so hurried that he can only cope with the unavoidable routine of his job. If that is the case, probation becomes meaningless. The belief sometimes expressed that probation is merely equivalent to letting the offender off shows a complete misunderstanding of the theory of probation as it should be, but it is perilously near the truth as a criticism of what probation sometimes is in practice. In such circumstances to put an offender on probation will probably only have the result of lessening still further his already inadequate respect for the law.

The same result, or lack of it, is likely to be achieved if the probation officer is not properly qualified for the work, and what with the apathy of some of the Probation Committees responsible

for the appointments and the low rates of pay they have offered, this has all too frequently been the case. Here again there has been a real improvement in the last two or three years, as the Home Office has now established a minimum scale of salaries, and has been trying to raise the standard of the work by means of its training scheme. But considering the importance and difficulty of the work it is doubtful whether even the new scale, with its maximum of £400 for men and £320 for women, can be regarded as high enough to attract the right type of officer in sufficient numbers. Moreover, neither the training scheme nor the minimum rates of pay apply to part-time officers. Actually over half the total number of probation officers are on a part-time basis, and the Home Office has no control of their rates of pay, and can do little to ensure that they are efficient and properly trained. Many unquestionably are neither the one nor the other. It is particularly the girls who suffer from the all too frequent weakness of the part-time officer. In 1938 there were over 26,000 boys found guilty of indictable offences by the juvenile courts, but only 1,700 girls. There are in consequence many districts that need the services of one or more full-time probation officers for the boys, but cannot possibly make full use of a woman officer. The only way to overcome this is for probation areas to combine together and share the services of a full-time woman, but the large number of part-time appointments makes it clear how much still remains to be done in this direction. There are even some districts that have no woman probation officer at all, but make use of the services of such social workers as may be available, or even occasionally place the girls under the male officers. In 1934 there were three hundred areas with no woman officer. Most of these were country districts, but a few quite large towns were included in the number. Doubtless the number of such areas is now considerably less, but no up-to-date information on this point is available. The Criminal Justice Bill laid down that the services of a woman officer should be available for every district. That measure of reform is now indefinitely postponed. Some Courts regard the problem of the girl offender as unimportant in view of the small numbers concerned, but individually the girls are often the most difficult to deal with; they require a skilled handling, which the part-time officer or social worker is rarely able to give.

Any consideration of the adequacy of the probation service

must be supplemented by a consideration of the use made of it by the Courts. It was suggested above that as a result of a mistaken economy there is a tendency in certain Courts to delay its use; that must seriously militate against the chances of success when the child is finally put under the charge of the probation officer. But if it is immediately cheaper to dismiss a young offender than to place him on probation, it is also cheaper to place him on probation than to commit him to an Approved School. Every child sent to an Approved School costs the local authorities 15*s.* a week for a period that may extend up to three years, or even longer in the case of children under twelve. Some Education Authorities object to being too frequently burdened with this charge, and as a result of their protests one may find cases of children placed several times on probation for repeated offences, even though probation may obviously have proved a failure and the probation officer himself may regard committal to a school as the wiser course.

If the best use is to be made of probation it is essential that the Court should be well informed as to the nature of the home influence as well as of the character of the child. A child may appear in himself to be a quite suitable subject for probation, but if the parents are likely to prove antagonistic, or if there is constant friction and unhappiness in the home, probation has but a poor chance of being successful. It is because of such considerations that the preliminary enquiries made before the Court reaches a decision are of such importance. The Courts that do not recognise this fact are few in number, though they do exist. There is, however, no common agreement as to who should make these enquiries. The Children and Young Persons Act placed the onus on the Local Authorities, unless the justices or the Probation Committee directed that the probation officers should make the necessary investigations instead. Many of the Education Authorities feel strongly that it is for them to deal with the welfare of the children of school age, and cling tenaciously to their right to make these enquiries. On the other hand, there is probably no one closely connected with probation work who is not convinced that it is a complete mistake for the Courts to place children on probation, unless the probation officer has had the opportunity of first visiting the home and of expressing his opinion whether it provides a suitable background for probation work or not. At present some Courts make use of the special officers of the local

Education Authorities, others of the probation officers, whilst in some districts the unfortunate family is visited by both. It must be admitted that there is occasionally a professional jealousy between the Education Authorities and the probation officers that is apt to throw grit into the smooth working of the machine.

There is one special type of enquiry of which something may be said at this juncture, namely, psychological examination. In the towns that are provided with Child Guidance Clinics or suitable specialists, psychological examination and treatment is being used with increasing frequency in conjunction with probation. Opinions with regard to this differ profoundly. The extremists of one school of thought regard the extent to which psychological methods are used as quite inadequate, whilst at the other extreme many Courts look upon all such methods with ridicule. Others again consider the Child Guidance Clinics more helpful in diagnosis than in treatment, and take the view that the most valuable part of the psychologist's work must lie in preventive treatment carried out at a much earlier stage, that is to say, before the children ever appear in the Courts. It is impossible to appraise these varying views without discussing how far juvenile delinquency and misbehaviour can be explained by psychological considerations. Such a discussion would be out of place in a short survey of the present practice of the Courts. All that need be said here is that the application of psychological methods is growing, though growing slowly. It is, however, unquestionably true that modern psychological theories have had an influence on the work of the Courts and of the probation officers that cannot be measured by the numbers actually treated by psychological experts.

Probation strictly speaking applies only to the delinquent, but children and young persons in need of care and protection, or in moral danger, can be placed under the supervision of a probation officer. A supervision order has, however, not the same binding force as a probation order, and the Courts cannot insist in the same way on definite conditions. The probation officers are therefore in a much weaker position with regard to these cases. The general public sometimes assume that the delinquent children all show signs of moral depravity, whilst those brought before the Courts under the care and protection clauses are merely the unfortunate victims of circumstance. Actually this is far from being the case. The girl who is heading for a life of prostitution is not a

delinquent, but she presents a harder problem than many of the children, for example, who steal foodstuffs and sweets from an open-air market with its all too tempting stalls. It is unfortunate that the Courts have not greater powers in connection with what are often most difficult cases. At present supervision orders are not very frequently made. In 1938 there were only just over five hundred.

Another difficulty that often arises is due to the limited alternatives between probation and committal to an Approved School. There are frequently children who need to be temporarily removed from home, perhaps because they have fallen in with bad companions, or because of the mother's absence in hospital, or similar causes. The long committal to a school may not be necessary if a hostel or a scheme for boarding out is available. Recent Home Office regulations as to the conditions under which Government grants can be obtained have made it easier to deal with these cases, at least in theory. But the possibility of obtaining a Government grant is of little use if the hostels or foster-homes do not exist. We are as yet only at the beginning of developments along these lines. Such developments would doubtless have come with the new regulations and the help towards the establishment of hostels contemplated by the Criminal Justice Bill. What will happen under war conditions is a matter for conjecture, but the outlook is not encouraging.

There remains to be considered the question of the Approved Schools and the use made of them. It is impossible here to attempt any appraisement of the work of the Schools. Their number is large, they are run by a diversity of philanthropic or religious bodies, or by the local Education Authorities. Like the Courts, they vary greatly in quality. All that can be said with assurance is that they are much less repressive and more truly educational than the Industrial Schools and Reformatories of an earlier generation. At the same time it must be recognised that some people, who have studied the result of their work, consider that the discipline and institutional life of the Schools over a long period does not teach the inmates to stand on their own feet and to cope with the difficulties of life outside the walls of the School.

It is easier to come to a definite conclusion as to how the Courts use the Schools, than as to the true character of the Schools themselves. There is a disposition in certain sections of the Press to suggest that the Courts are inclined to embark light-

heartedly on ordering the lengthy separation of a child from its home that committal to a School involves. Such an attitude of mind, if it exists at all, is a rarity. The Courts may make mistakes, but they nearly always regard committal to a School as a course to be taken only in the last resort. It was suggested above that the question of cost is likely to make them too unwilling, rather than too anxious, to take such a step. Where some Courts are inclined to use the Schools too freely is in connection with the very young children. The Children and Young Persons Act stipulated that children under ten should not be sent to an Approved School unless no alternative, such as committal to the care of a fit person, was open to the Courts. But, as pointed out above, the development of the use of foster-homes has not proceeded very far. Some Courts make no attempt to deal with a small child on these lines, and never having taken any steps to obtain a list of suitable foster-parents, they send a child of eight or ten years of age, or even younger, to pass the years in an institution until he is fifteen. One of the most difficult problems for Local Authorities is the wise selection and regular and sympathetic inspection of foster homes. Boarding out, which is at its best an excellent solution of the problem of the neglected or naughty children who need care and protection or training denied to them in their own homes, is fraught with danger if there is not adequate and intelligent supervision. One moral to be drawn from recent boarding out scandals is the importance of making a statutory requirement that the officer who will actually make the visits and inspection should be personally named in the order.

The foregoing brief attempt to give a picture of the practice of the Courts may convey a somewhat critical impression, but the aim of this article has been rather to show how the Courts vary in their attitude, than to give a glowing account of the system at its best. No one would deny that the best of the Courts are doing magnificent work and handle the many problems that come to them with insight and a true constructive sympathy, but the standard of the average Court does not reach so high a level, and some Courts fall woefully below it. In the present circumstances it is inevitable that this should be so. No special training or knowledge is demanded of the justices, and to a great extent they are unaware how the justices in other districts tackle the work. The keenest of them may visit other Courts and attend conferences, but it is just those who are most in need of enlighten-

ment that fail to do so. The only guidance given by the authorities comes in the shape of formal circulars which the justices may or may not study. It is hard to see how the general standard can be raised unless the justices are expected to go through some specialised course of training, or unless the Courts are inspected by officials who, without interfering with the independence of the justices, could make suggestions and spread knowledge of what is done in the most successful Courts. The term "the most successful Courts" is, however, used in a very general sense. There is unfortunately no information to show which Courts or which methods are producing the best results. If one Court puts 10 per cent. of its children on probation and another 75 per cent., there is nothing beyond general impressions, probably coloured by personal predilections, to show which is right. Much more comprehensive statistical information, training, and inspection would seem to be essential if the highest degree of efficiency is to be obtained.

VII

THE PROBATION SYSTEM

By C. D. RACKHAM

THE Probation System began in this country with the Probation of Offenders Act, 1907.[1] The system and the name both had their origin in the United States of America. The Act laid down three methods of dealing with proved offenders whom, for reasons specified in the Act, it was desirable, not to punish by fine or imprisonment, but to release on condition of good behaviour. The three methods were: (1) dismissal of case, (2) release of the offender on his undertaking to observe the above condition, and (3), in addition to (2), requiring him to be under the supervision of a Probation Officer. It will be seen that the nomenclature is confusing: all three methods are comprised as Probation under the Act, but it is only in the case of the third method that a Probation Order is made and the Probation Officer comes into the picture. The circumstances which the Court must have regard to in making use of the Act are threefold—firstly in connection with the offender, his character, antecedents, age, health, or mental condition; secondly, the trivial nature of the offence; and, thirdly, any extenuating features in the case. A further point must be noted. The Act cannot be used without a finding of guilt, but, where the offender is tried summarily, there is no conviction. At the Higher Courts a conviction is recorded as well as the case being proved. This question will be discussed later in connection with proposed legislation upon it.

The growth of Probation was at first slow, partly because many Courts failed to appoint Probation Officers and were therefore unable to make proper use of the Act. In 1925, the Criminal Justice Act made it obligatory for the services of Probation Officers to be available at all Courts. As many Courts are too small to require the services of an Officer, power was given to combine areas of Courts to form Probation areas large enough to employ a full-time Officer. There are now 433 areas working singly,

[1] This was the beginning of the system. The idea of Probation can be traced in practice to a much earlier date, and in legislation can be found in the First Offenders Act, 1887.

whereas 593 single areas have been combined in forty-seven combined Probation areas. As a result of this process, it is becoming more common for full-time Officers to be employed and this is universally regarded as the most satisfactory plan.

Probation is now increasingly used by the Courts. The percentage of adults found guilty of indictable offences in the Courts of Summary Jurisdiction who were placed on Probation has risen from 11 per cent. in 1910 to 30 per cent in 1938; in the Juvenile Courts the increase has been from 26 per cent. to 51 per cent. in the same period. In the year 1938, the total number of persons placed under the supervision of a Probation Officer was 29,301; of these 25,252 were males and 4,049 females. As the proportion of male offenders to females is about eight to one, it will be seen that Probation is more frequently used for females than males. The number placed on Probation at the Higher Courts was very small—only 1,690. The proportion of adult offenders placed on Probation was 4 per cent. at Assizes, 16 per cent. at the Central Criminal Court, and 16 per cent. at Quarter Sessions, while the corresponding percentages for those between seventeen and twenty-one were 19, 42, and 38. It is clear that Probation for adults is very sparingly used. The failure of the Higher Courts to use Probation to any great extent is very disappointing. The London area comes out well in this respect and more persons are put on Probation at the Central Criminal Court than at all the other Assize Courts put together. It is noticeable that the figures for Probation for all Courts vary very much between one part of the country and another, and particularly is this the case with adult offenders. In Courts of Summary Jurisdiction the proportion in the Metropolitan Police District was 24 per cent., in Bristol 16 per cent., Birmingham 9 per cent, Liverpool 3 per cent. To take some smaller towns the proportion in Burnley was 31 per cent., and Brighton 4 per cent. If all Courts could bring their use of Probation up to the best, it would be possible to say that the system was properly understood and well used throughout the country.

Having considered the extent to which Probation is used by the Courts, we may now turn to a description of its working. Magistrates are required to appoint Probation Committees from among their own number both for single and also for combined areas. These Committees appoint and pay the Probation Officers, the salary being found by the Local Authority with a 50 per cent.

grant from the Treasury; the Committees also receive reports from the Probation Officers on their cases and generally supervise their work. An exception is found in London. Here Probation Officers are appointed by the Home Office, and there is one Probation Committee for the whole Metropolitan area. It is obvious that such a Committee cannot deal with individual cases and is only able to advise on the general organisation of the work. There is much variety in the activity of Probation Committees. Some are merely formal and take little interest in their duties; others meet regularly and are in constant touch with the Probation Officer and the delinquents committed to his care. It is unfortunate that the number of women magistrates is so small as compared with men, so that very few (and sometimes no) women are to be found as members of Probation Committees. It is only as the quality of the justices improves, as they are younger in age with a wider knowledge of all types in the community and with a larger proportion of women among them, that the Probation Committees will become a stronger and more helpful element in the Probation system.

As was stated at the outset, it is a condition of a Probation Order (which may be for any period between six months and three years) that the offender should undertake to be of good behaviour. But this is a minimum requirement and expressed in very general terms: others can be added in detail, and it is often very desirable that they should be. The Court can make it a condition that the probationer shall pay costs or damages of such an amount as the Court thinks fit. The payment of damages is known as making restitution, and it may be a valuable method, both of compensating an injured person and of enabling the offender to make good his offence. The money can be paid in instalments to the Probation Officer if it cannot be paid all at once, but, even so, the Court should be careful to see that the sum demanded is not greater than the delinquent can pay. In that case he will become resentful and disheartened by being burdened with a debt that he cannot meet, and Probation in such circumstances will certainly be a failure. But, where this condition is properly used, the offender, when he has made restitution, will gain a sense of having made good which he can perhaps get in no other way.

Other conditions sometimes made are that a delinquent should abstain from alcohol or from certain bad companionship, or that

he should live in a particular place. It is most important that no conditions should be imposed which are absurd or impossible to enforce, such as requiring him to be at home by a certain hour every night, or to attend church on a Sunday. It may often be desirable that a delinquent should move away from the scene of his offences, and a condition may be made that he should live with relatives in another district or in an institution. In this connection, Hostels are often very useful, especially in dealing with youths and girls between fourteen and twenty-one. When a lad of this age has committed an offence, he often loses at once his work and his character. And it may happen that his family, indignant at the disgrace that he has brought upon them, are no longer anxious that he shall live at home. Or, if the family condone the offence and encourage the lad in wrongdoing, it is all the more necessary that he should leave his old surroundings. A lad can be required as a condition of a Probation Order to reside in a Hostel for a period of six months. There he will go out to work every day and will pay to the Superintendent a part of his wages for his board and lodgings. He will be under a certain amount of discipline. He will be supporting himself, and, while his life will be free and normal, it will at the same time be the ordered life of a well-managed home. After six months in such a Hostel, a lad will have regained his character, and can probably return home without incurring the same difficulty in obtaining employment as beset him at first. The expenses of sending a lad to a Hostel are met by the Local Authority, with a 50 per cent. grant from the Government. Payment for a Probationer residing in lodgings as a condition of the Order can also be made in the same way. It must be remembered that, in binding over a defendant and in placing him on Probation and in attaching conditions to the Order, the Court must at every stage obtain the consent of the Probationer to its action. If consent is refused, the defendant can be convicted and punished for his offence.

If the Probationer does not observe the conditions of the Order, if he returns home from his Hostel, or throws up his work for no good reason, or neglects to obey the instructions of the Probation Officer that he should report to him at specified times, or if he takes to evil courses such as over-indulgence in drink or gambling, or fails to keep up the payments which he has been ordered to make by the Court, the Probation Officer must take action. He will at first use his influence and authority to bring the offender

to a better frame of mind; if this fails, he can order him to appear before the Probation Committee, who will hear what he has to say and will also impress upon him the importance of mending his ways. Where this fails in its turn, the Probation Officer will bring the offender before the Court and he will be charged with failing to observe the conditions of the Probation Order, or, to use more legal language, with a Breach of his Recognisances. The Court then has several courses open to it. It can inflict a fine as a penalty, or, indeed, impose any penalty which could have been imposed for the original offence. A child can be sent to an Approved School, an adolescent recommended for Borstal, or an adult sent to prison. The Court can (in less serious cases) vary the terms of the Order. It can prolong the period, and this may be useful if the Order has nearly expired and it is obvious that the delinquent still needs the help and guidance of the Probation Officer. Or fresh conditions may be imposed, as, for example, if the Probationer is unable to keep straight in his present surroundings, he may be required to reside elsewhere for a certain period. It will be seen that the Court has many alternatives open to it, and there is no excuse for allowing Probation to become too slack and easygoing. It may also be noted that, if the Probation Officer considers at any time that a Probationer is doing so well and is in such good surroundings that the continuance of the Order is unnecessary and may even be hampering to him in his career, it is open to the Officer to apply to the Court and the Order may be discharged.

The question arises as to how far the Probation System is successful in keeping those that it covers from committing further offences. The figure of 29 per cent. of re-convictions among males over sixteen placed on Probation for a first finger printable, that is a serious, offence, in 1932 is given in Criminal Statistics for 1938. The proportion of reconvictions is smaller among the older than among the younger offenders. Many statements have been made from time to time as to the results of Probation in particular areas. Some experienced Probation Officers assert that the number of failures at their Courts is less than 10 per cent., and even as low as 5 per cent. We have it on the authority of Mr. S. W. Harris, of the Home Office, that one of the two main causes for the immense reduction in the prison population of to-day, compared with thirty years ago, is the operation of the Probation System. Statistics which have been kept carefully over

a period of years in Cardiff, the West Riding of Yorkshire, and Southend, show that about 70 per cent. of Probationers did not during a period of five years appear in Court again. Taking juveniles alone, we find that returns from fifteen large towns covering a period of three years after Probation was completed show that 65 per cent. of the children did not commit a further offence during that period. Results of Probation vary a great deal from Court to Court, and no doubt some of the fifteen towns would show results much better than 65 per cent., and some worse.

The fact that there is so little uniformity, both in the use made of Probation by the Courts and on the results obtained from it, naturally leads us to enquire how the general standard in both these respects can be improved. The system is a good one, but it needs to be better worked, and both magistrates and Probation Officers can contribute towards this end. One reason for the non-use of Probation is the lack of an adequate staff of Probation Officers, easily available, properly trained, men for male offenders, and women for females. Another is that Benches are ignorant of the intentions of the law concerning Probation. They conceive of it as something suitable only for children or for young people or for first offenders, or they are simply prejudiced against it, regarding it as a piece of sentimentality—letting off the guilty—and they prefer to inflict what they would term an old-fashioned punishment. Magistrates must rid themselves of the conception that Probation is a "let-off", and only to be used in the case of trifling offences. In every proved case of guilt that comes before them they should bend their minds to the question as to whether Probation is a suitable method of treatment, and not until they have decided in the negative should a conviction be recorded and a penalty inflicted. Probation may be suitable for almost any offender provided that the Bench considers that there is a reasonable chance that, under the supervision of the Probation Officer, the offender may mend his ways. The question cannot be properly decided unless the Bench have before them full information about the defendant—his record, his personality, his surroundings. If, in the light of this information, the Bench decide to use Probation, it is most important that the chairman should make clear to the defendant exactly what this involves. He should explain that the Probationer has entered into an undertaking to be of good behaviour, that the Probation Officer will help him, but

he himself must play his part, and, if he fails in his undertaking, he will be brought back into Court and can be punished for the original offence. It should also be made clear that part of his undertaking is that he will take the advice of the Probation Officer, will report to him regularly, and co-operate with him in every way. Many a case has failed on Probation because the conditions have never been properly explained. The Probationer has resented what he considers the interference of the Officer in his concerns, and is in no mood to take his advice because he has never been clearly told what is his relationship to the Officer. A careful choice then of the cases to put upon Probation and a careful explanation of its meaning is the first duty of the magistrates. They should also be careful not to use Probation where it is unnecessary, that is, when dismissal or a simple binding over is all that is required. Where the character and circumstances of the defendant are such that there is every prospect of his making good on his own, assisted by his own relatives or employer or other influences, it is unfair to put him on Probation, and is giving quite unnecessary work to the Officer. It is equivalent to compelling a person to attend hospital when he does not need hospital treatment and is quite likely to recover his health without it. The fact that an offender has been placed on Probation and has then broken down and come before the Court a second time, is not in itself a reason why he should not be placed on Probation again. It may be quite right that he should have a second or even a third chance. But the fact that Probation has failed in any particular case should always put the magistrates upon their guard, and they should consider very carefully whether they should (metaphorically speaking) change the medicine, or try a further dose of the same. The mistake is sometimes made of placing a person on Probation again and again when it is obvious that the Officer can do nothing with him, just as the opposite mistake is made of at once convicting and punishing an offender for whom Probation has never been tried, and who might very likely do well under the guidance of an Officer.

Something must now be said as to the position of the Probation Officer. Every Court should see that it has available the services of both a man and a woman, adequately paid, and provided with the necessary office accommodation. They must not be overburdened with too many cases to be supervised. It is impossible to say exactly what is the maximum number that an Officer can

undertake as the distances to be covered in the course of the work affect so closely the time that is taken in supervision. And the number of Courts in the area that the Officer has to attend and the distance between the Courts are also factors in the situation. In any case, the Officer will be helped by being furnished with proper means of transport, a telephone, and where necessary with clerical assistance. The magistrates should also see to it that the Officer has a sufficient holiday in each year, and that a suitable substitute is provided in his absence. Opportunity should also be given to the Probation Officers to attend conferences which are concerned with Probation work. Probation Officers are appointed by the Courts they serve, and are paid by the Local Authority, the salary and expenses being subject to a 50 per cent. Treasury grant. Each appointment must be sanctioned by the Home Office, but Courts have a fairly free hand in their selections. Training has become more systematic in recent years, and the Home Office selects a number of both men and women trainees every year. They are paid a grant for a period during which they attend lectures and also work under experienced Officers. After training, they are either appointed directly by the Home Office to posts in the Metropolitan area, or they apply for posts in the provinces advertised by the Local Authorities. But there still remains, among the older Officers, a large number who have gained their knowledge through day-to-day work and not from any regular training.

In the recent Criminal Justice Bill, which unfortunately failed to complete its stages through Parliament in 1939, there were several clauses which concerned Probation. They were of a very useful character, and it is to be hoped that when times become more settled again they will become part of the law of the land. The rules about Probation areas are tightened up in the Bill: the Home Secretary takes powers to combine areas by Order if he thinks fit. A distinction is drawn between the Probation Committee, which sits for the area or combined area, and the Case Committee, of which there is to be one or more in every Petty Sessional Division. The Probation Committee will appoint the Probation Officers and arrange their work, while the Case Committee will review the cases which have been placed under supervision. It is clearly laid down that both a man and a woman Officer must be assigned to each Petty Sessional Division, and that the Probation Officer appointed to supervise a woman or a girl

must always be a woman. This leaves the Courts free, as now, to place boys under the supervision either of a man or a woman Officer whichever they prefer in principle or find more convenient in practice.

There are several provisions in the Bill which will increase the opportunities available under Probation. A Probation Order may contain a provision requiring the Probationer to submit himself to mental treatment, and power is given to the Court to pay the cost of his receiving this either as a resident or a non-resident patient. Probation will also be helped by the new arrangements for Remand Homes, in which there will be an opportunity for the observation and mental examination of the Probationer. And, under the Bill, the Probation Officer would have at his service a larger number of Hostels as the State takes power to assist Societies or persons with grants of money to establish Hostels for those placed upon Probation. It is laid down that the period during which a Probationer may be required to reside in an institution (including a Hostel) shall not exceed twelve months, and any such institution must be subject to inspection by some Government Department.

Attention must be drawn to one Section in the Criminal Justice Bill which has aroused a great deal of controversy. The reader will remember that, in the earliest Probation of Offenders Act passed in 1907, it was laid down that, where the magistrates decided to bind over a defendant, they must record a finding of guilt, but would not proceed to a conviction. The idea was that a conviction was a slur on a man's character, and the whole system of Probation is based on the principle that the offender is to have an opportunity to make good his offence. He is not to be punished for what he has done; if he fulfils his undertaking to the Court and keeps straight for a given period of time, he has passed the test and, before the law, the offence is wiped out. For this reason no conviction was to be recorded against the Probationer. The system has worked well, and in thirty-three years no complaint or criticism of it has been made by any of the persons who have been called upon to work it. The principle was emphasised in 1933, when it was laid down in the Children's Act of that year that no conviction should ever be recorded in the Juvenile Court which deals with delinquents under the age of seventeen. The new Bill proposes to alter the system in the Adult Courts, that is, to lay it down that the Bench, before binding the offender over,

must first convict him of the offence with which he was charged. Many experienced magistrates would much regret this change. They consider it important that the Court should, by making use of the Probation Act, be able to avoid marking the offender before them as a criminal as a conviction against him may be said to do. It is easy to argue that the difference is one of words only, and that the important factor in the situation is that the defendant has been found guilty of the offence. But there is no doubt that in the public mind there is a difference between a person who has been convicted of a crime and one who has been found guilty of committing it, and that the legislature has, in its wisdom, decided that there are certain circumstances in which it is desirable to avoid the former and severer action, and to adopt the latter and more merciful course.

Like most things that are worth while Probation involves considerable effort and anxiety on the part of all concerned. If it is to be a success, the Bench, the Officer, and the Probationer must all take a great deal of trouble. A sentence of imprisonment gives no trouble whatever to the first two, and though to the third, the offender, it is irksome and a disgrace, it cannot be said that, speaking generally, prison life makes any demands upon the prisoner beyond the observance of the regulations. It is because it is positive and constructive that Probation is such a valuable feature of our penal system. And it will become ever more valuable as it is better understood and more sympathetically and energetically worked by all those who are concerned with the Criminal Courts.

VIII

"APPROVED SCHOOLS"

By LT.-COL. SIR VIVIAN HENDERSON

THE Approved Schools, as they are now called, were first given this title by the Children and Young Persons Act, 1933, because they were schools approved by the Home Secretary for the reception of children and young persons sent there by Juvenile Courts. Before the passing of this Act, these schools were known as Reformatory and Industrial Schools, and by way of preface it is desirable to give an outline of their foundation and development. The earliest schools were founded by voluntary Managers, genuinely interested in the welfare of destitute and delinquent children. It is a matter of history that they originated in the same philanthropic movement that at the end of the eighteenth and beginning of the nineteenth century championed penal reform. One of the founders of what we now call Burford House Girls' School, in London, was Elizabeth Fry. I believe Kingswood School, at Bristol, owed its original foundation to Mary Carpenter. One of our oldest schools at Redhill, Surrey, was founded by the Philanthropic Society in 1788, and Norton School, in Birmingham, is equally old. Many of the present-day school Managers are direct descendants of the founders of these schools, and are justly proud of the fact.

Although during recent years more Local Education Authorities have availed themselves of the powers given them to found and maintain Approved Schools of their own, such schools are in a minority. The majority of schools are still under the voluntary management of bodies of individual Managers or of some of the large philanthropic societies. At first sight it might seem simpler for the State to take over these schools altogether, but the Home Office attaches great importance to the personal interest taken in the schools by good voluntary Managers, and no administrative simplification would compensate for the loss of this interest. All the Acts which have been passed dealing with these schools, from 1854 to 1933, have confirmed this principle of voluntary management, which has proved itself so effective when dealing with the welfare of young people and children.

As has been pointed out the earliest schools came into existence between a hundred and a hundred and fifty years ago. The first use which the Government made of these schools was occasionally to pardon a young offender, sentenced to death, or transportation, on condition of the child being received and trained in a Reformatory School. By degrees, however, the value of the schools came to be more widely recognised, and in order to regularise their position, a Reformatory Schools Act was passed in 1854, when Lord Palmerston was Home Secretary. This was followed by the Industrial Schools Acts of 1857 and 1861. Provision was made for some State assistance for those schools, which applied for, and received, a certificate, on a satisfactory report from a State inspector.

Under the provisions of the Reformatory Schools Act, any child under sixteen convicted of an offence for which a minimum sentence of fourteen days' imprisonment was awarded could, on completion of the sentence, be sent to a Reformatory. The Committal Order was for not less than two and not more than five years. The penalty for misconduct at the school, or for absconding, was up to three months' imprisonment.

The Industrial Schools were intended for orphans or vagrant children under fourteen, who could not be detained after fifteen, except with their own consent. As an alternative to sending the children to a school, the Justices were permitted to accept a surety from the parents that children would be of good behaviour for twelve months. The school Managers were also allowed to arrange for children attending a school to sleep out in suitable cases. Here we see the beginnings of a system of juvenile probation, and the practice of boarding out.

By the Industrial Schools Act of 1861, a child under twelve could be sent to a school for committing an offence punishable by imprisonment, and, on the representation of the parents, any child under fourteen could be sent to a school on the ground that it was out of control, provided the parents gave some undertaking to meet the expenditure. The Secretary of State was also empowered, under this Act, to move children from one school to another, a provision which is still found very useful, and has always been re-enacted. The Guardians were also permitted to contract with school Managers for the education of a pauper child.

In 1866 the scope of the Industrial Schools was widened. Children could now be sent there if found keeping company with

thieves, or if a surviving parent was undergoing penal servitude. The State was beginning to realise that children were sometimes in need of care and protection as well as in need of punishment. The age up to which they could be detained was raised to sixteen, and the school Managers were empowered to place children out on licence after eighteen months at a school. Reformatory Schools Managers had already been given this power in 1854. Whilst enquiries or arrangements for the child's reception were being made, the Magistrates had power to detain a child in a workhouse up to seven days, and here we see the genesis of our modern Remand Home.

Between 1866 and 1908 various amending measures were passed, but few of them are of sufficient importance to call for any comment. By an Act passed in 1880 Justices were empowered to commit a child to a school if it was found living with prostitutes. The Act of 1891 gave the school Managers power to apprentice a child at any time. In 1898 the minimum period for committal to a Reformatory was increased from two to three years. The period of detention during enquiries was also increased from seven to fourteen days. In 1899 the power to sentence a child to imprisonment in addition to committal to a Reformatory was at last abolished, and a step forward was taken in removing children from prison surroundings, although it must be remembered that the earlier regime in the schools was much more penal than reformative in character.

Now we come to the Act of 1908, which repealed all the earlier legislation and re-enacted it in a more modern form. It was made clear that, with certain exceptions, Industrial Schools were intended for the reception of children up to fourteen, and Reformatories for young offenders over twelve and under sixteen. Drunkenness of the parents was included as a ground for the removal of a child, the failure to attend school as the ground for committal. The Managers were allowed to board out any child under eight years of age until, in normal cases, it became ten. The period of detention at both types of school remained the same, the maximum age in the case of Reformatories being fixed at nineteen years. The system of licensing after eighteen months was continued.

In 1894 the Industrial School Managers had been given power to supervise the children released on licence, up to the age of eighteen. This extended system of after-care had proved most

successful, and in 1908 the Reformatory School Managers were given similar powers of supervision up to the age of nineteen in all cases where a licence was granted before that age. I believe the great success which has attended the work of the Home Office Schools in the last thirty-five years is mainly due to this extended system of after-care, and I will refer later to this important aspect of school work.

Day Industrial Schools, which were established towards the latter part of last century, have now disappeared, and their passing need not be regretted. Established in one or two of our larger cities, these schools did not achieve the same success as the residential schools, because the school influence was so often counteracted by a bad home influence, and the buildings were often old and situated in most unsatisfactory surroundings.

Under Section 62 of the 1908 Act a few Industrial Schools were certified for the reception of youthful offenders suffering from mental defect. Experience has shown, however, that the needs of this type of child can be more suitably dealt with either by facilities now afforded by the Mental Deficiency Acts, or by Part V of the Education Act of 1921. The provisions of Section 62, therefore, have now been repealed.

The Act of 1933, which embodied many of the recommendations made by the 1927 Committee on the Treatment of Juvenile Offenders, raised the age of young persons from sixteen to seventeen. It also made three important alterations in the powers of the Courts and the school Managers. It laid down that a child should not normally be sent to a school under ten years of age. It reduced the minimum period after which a child might be licensed by the Managers from eighteen months to twelve months, and I might add here that the Home Secretary has the power to licence at an earlier period. The Act also altered and extended the period of supervision after licence. Now every child whose period of detention expires before he is fifteen, remains under supervision until he is eighteen, whilst if over fifteen when his detention expires, he remains under supervision until twenty-one, or for three years, whichever is the shorter period. Any child or young person under nineteen, on licence, may be recalled to the school for three or six months if it is considered in his interest to do so.

A child sent to an Approved School may now be detained for three years, or until he is fifteen if the three years should expire

before he reaches that age. In the case of a young person, if he is under sixteen on committal, he may be detained for three years, or if over sixteen, until he becomes nineteen. The Court does not actually specify a period of detention, because experience has shown that the actual training required by each child depends on the circumstances of each case, and can only be judged by those responsible for the management of the schools. Before the war two and a half years was about the average time spent by a child or young person in a school. Since the beginning of the war, in order to provide more places in the schools, this average period has been temporarily reduced to about eighteen months, or perhaps a little longer.

Under the provisions of the 1933 Act, Approved Schools receive both young offenders and children and young persons who need care and protection. There is now no discrimination between the treatment of the neglected and the delinquent child. Courts must deal with boys and girls brought before them, according to their needs, and the welfare of the child or young person must be the paramount consideration. This principle is established in Section 44 of the Act.

The following classes of children, and young persons under seventeen, may be sent by Courts to Approved Schools:

Any child or young person, who is found guilty of an offence, punishable in the case of an adult with imprisonment. It should be understood, however, that in these cases there is neither conviction nor sentence.

Any child who is in need of care or protection as defined by Section 61 of the Act.

Any child or young person who is beyond control may be sent to a school on the application of his parent or guardian.

Any refractory child or young person, who is maintained in a school or institution belonging to a Public Assistance Authority, on the application of that Authority.

Any child in respect of whom a School Attendance Order is not complied with, on the application of the Local Education Authority.

Under the First Schedule to the Act the Secretary of State was given wide powers to reclassify the schools, and this has now been done. The new classification is based primarily on age-groups, the boys' schools being placed in three groups, and the girls' schools in two, as there are fewer girls in the schools. Taking

the boys' schools first, the Junior Group is intended for boys of ten years and under thirteen years of age on admission. This type of school is really a residential elementary school, but makes use of available facilities, such as gardens or workshops, for a more practical type of education. The Intermediate Group is for boys between thirteen and fifteen. In these schools the first year's training is largely in the schoolroom, but subsequently it is intended to be mainly vocational. The Senior Group of Schools is intended for boys over fifteen. Here the training is almost wholly vocational, both theoretical and practical, with the intention of teaching the boys a trade. The boys do a short refresher course of six months in the schoolroom when first admitted.

The girls' schools are grouped into Junior and Senior Schools. The Junior Schools take girls under fifteen, and combine the system of education and training given in the first two Groups of boys' schools. This is not entirely satisfactory, but in view of the much smaller numbers involved, it cannot be avoided. In fact, even under this arrangement, it is sometimes necessary to send girls committed to the schools some distance from their homes. Where facilities are available, the girls in the Junior Schools attend the local elementary schools, while those in the Senior Schools usually go out to evening classes. The outbreak of war involved the temporary closing of a few schools, and the evacuation of others, but until 1939 there was a boys' school, for each age-group, in most parts of the country, and it was seldom necessary to send a boy far away, except on religious grounds or because he wanted a nautical training.

There are now 137 schools, and the total number of children and young persons in them is 11,473, 9,312 boys and 2,161 girls.

Some of the schools are provided especially for Roman Catholics and for Jews, and three of the schools are nautical ones, where various branches of seamanship are taught.

The girls receive an all-round domestic training, and there are two girls' schools, or rather hostels, for the commercial and technical education of girls selected by examination from other approved schools. The vocational training in the Senior and Intermediate boys' schools, consists of farming, carpentry, cabinet-making, bakery, tailoring, metal work, and engineering. Carpentry and cabinet-making probably make the greatest appeal to the boys as a vocational subject, and are generally the best

outlets for disposal to a trade. The Herts Training School and several other schools have developed this form of training with excellent results, and Kingswood School has made several fine church screens. Much of the farming has reached a high standard, and Redhill School has repeatedly won both the Surrey County Council Milk Competition and other championships. Netherton, which is a farm school, has a workshop where farm carts, poultry houses and other similar equipment are constructed. The Worshipful Company of Turners holds exhibitions and competitions in turnery from time to time, and at least three Approved Schools have been successful competitors. School gardening, under a capable teacher, has a genuine educational value, and for older boys can provide material for a Science Class.

For some years a bonus scheme has been in force in a few of the Senior Schools, with the object of stimulating punctuality, industry, good conduct, and the care of tools. The instructors grade their pupils on the above qualities, and the length of time they have been under training. The amount of the bonus varies from a few pence to a couple of shillings a week, and the schemes, on the whole, have been successful.

The size of the schools varies considerably from about 40 up to about 200. It has been found more satisfactory to have only two or three main types of vocational training in any one school. There is, of course, always scope for some general training in maintenance work in the larger Intermediate and Senior Schools, and a good deal of useful knowledge can be gained in this way. Before 1913 too much time was spent by the occupants of the schools in maintenance and domestic work at the expense of their educational and vocational training, mainly owing to lack of available funds, but I refer to this question more fully at a later stage.

Many Juvenile Courts have cases before them where they feel that the boy or girl should be removed from bad surroundings, and would benefit from six or nine months' residence in a school, but does not require a long term of training. It would not, of course, be desirable to deal with children in this way, as a short committal would interfere with their education, but for young persons over school age, there can be no doubt that such a course is often helpful.

The Act of 1933 has been so framed that short-term schools

can be provided if required, and two Local Authorities, Surrey and Birmingham, have provided short-term schools where boys, over school age, can be given a short-term training with a view to early release, if they make satisfactory progress. Another school of this kind for girls has been provided under voluntary management. If boys or girls, after admission to these schools, are found unsuitable for short-term training, they may be transferred by the Secretary of State to a long-term school.

There are certain types of girls who may do better if allowed to go to regular work outside the school, the school becoming a hostel for them. One such school has been opened by the Church Army at Bristol, and has since been evacuated to Nottingham. Here, after a short preliminary training, the girls are allowed to go out to work in domestic service, factories, and laundries, returning to the school in the evening. One of the London County Council schools for girls also has a hostel attached to it, from which girls go out to daily work during the latter part of their training; the Leicester Home School is run on similar lines, but these are not really short-term schools.

For any system of classification to be successful, those choosing a school for a particular child should know a good deal both about the child and the available schools. The 1933 Act gave the Juvenile Court the responsibility of finding a school. The Justices sitting in these Courts have personal contact with the child, and supplement their knowledge with reports submitted to them by Probation Officers, Education Officers, Medical Officers, and officials from the Remand Homes. Although many Justices visit Approved Schools and obtain information as to others from people who know them, very few Magistrates can claim to have sufficient knowledge of all the schools to guide them surely in their choice. The present war has aggravated this difficulty, for some schools closed or evacuated as I have pointed out, and at first the opening of new schools could not keep pace with the increase in the numbers of children committed, so that to find a vacancy for a child in any school involved the Courts in a large amount of additional work, and resulted in children being detained unduly long in Remand Homes.

It was therefore decided that from the beginning of 1943, a new scheme should operate by which the Children's Branch at the Home Office undertakes, on behalf of the Courts, to find a suitable school for each child. If no more had been done

than this, however, the difficulty would have been no nearer solution; for what had been done was to pass this work from the Justices, who knew the child but not the schools, to the Children's Branch, who knew the schools but not the child. What was needed to make the new scheme successful was for the Children's Branch to get to know the child. Accordingly the Home Office propose to establish, under voluntary management, some seven "classifying schools", five for boys and two for girls, to which all children selected by the Courts for residential training will be sent. These classifying schools will be equipped with all modern requirements and manned with teachers and staff competent to assess the child's abilities, temperament and character. Children will spend long enough in the centres to enable the authorities there to decide which school would most likely benefit them, and they will then be transferred there. The working of this new scheme will be watched with great interest. I might point out that the principle of a classifying centre for Borstal boys has been operating for many years, and has proved very successful.

Although some of the older schools are still in their original premises, few of these would now be recognisable as the somewhat grim barracks they once were. By the removal of walls and window bars, the admission of more light, the additions of bright schoolrooms, gymnasia, libraries, swimming-baths, the modernisation of kitchens, bathrooms, dining-rooms and dormitories, and, above all, by the use of bright colours on walls and in decorations, most of these old buildings have become both attractive to look at and comfortable to live in. Many of the original buildings, however, would not lend themselves to alteration. Just before the 1914 war, and again just before the recent one, a decline in the numbers of children brought before the Courts provided an opportunity of closing the worst of the old buildings, and in the case of others the Managers have found new premises. These have been an interesting assortment, and have included wooden hutment camps at one end of the scale, and a former Public School at the other. For the most part, however, they have been large country houses which have been adapted to their new uses with careful regard for their original character. These are not always so convenient to live in as a new building designed as a school, but they often make up for this by the beauty of their surroundings. Only one new Approved School has been built as such in the present century, and here curiously enough, those

responsible for the design reproduced a plan which in external appearance resembled the early barrack building.

Not all the original buildings, however, were of the barrack type; in fact the first Reformatory was originally organised in separate houses grouped round central social and administrative blocks. Since then, several other schools have been planned in this way, commonly known as the cottage system, with each house accommodating from twelve to forty children. It may seem surprising that this was not the plan generally adopted in the Approved Schools, especially in view of the value to children of a homely atmosphere and individual attention. Here, however, the reason has usually been one of economy. A cottage school, with its considerably larger staff, is more expensive and usually more difficult to run than the centralised barrack type of school. The alterations which have occurred in the structure of the schools are a reflection of the changes that have taken place in the mode of life led by their occupants. Day Industrial Schools, as I have mentioned, have now disappeared, and all Approved Schools are residential schools where children live away from their own homes in company with those who teach and look after them. The Managers of the schools are invested by the Act with all the rights of parents, and so undertake also, their responsibilities. Apart from providing education and training, they have to feed, clothe and shelter these children, take care of their health, physically, mentally and spiritually, and help them to learn the art of living with other people. Some Managers even hold that this last art is the most valuable thing they can attempt to teach the children, and are well satisfied if a child leaves them with some social sense, even if he has acquired no other skill.

At one time the food and clothing were considered as part of a child's punishment, but now they are considered valuable adjuncts to his education. The children are given the kind of food they need, in attractive variety, and they are dressed in the same way as children from good homes outside. By a regular daily routine, which most of them have not before experienced, they are given the chance to develop and to gain self-confidence. As many of the children come from neglected or poor homes, special attention is paid to health and physical training, and nearly every school has on its staff a physical training instructor and a woman with nursing experience. Such care is essential if

the children are to profit by all that a school can now offer them both in work and play. Up to the outbreak of war most schools held an annual holiday camp.

All schools are artificial communities, in the sense that most children would not join them, let alone become socially-conscious members of them, unless they were compelled to do so. This is even more true of Approved Schools, for the children sent there for training have been those conspicuously lacking in social virtues. Since the schools endeavour to train children to live in a community, they must to some extent make use of a system of rewards and punishments. The extent to which they can use the latter, particularly corporal punishment, is strictly limited by rules drawn up by the Home Secretary. In these rules emphasis is laid more on rewards, and it is recommended that punishment should only be resorted to when other methods have been tried and failed. Within these limits individual schools vary in the methods they use. For instance, in all schools children receive pocket-money, but in some this is given automatically, and in others made dependent on the child's behaviour. Actually the privileges which can be given or withdrawn are now extensive, and include such things as going out for walks without supervision, attending both inside and outside cinema shows, and what is most prized of all, going home for two or three weeks' leave in each year. Parents of good character are also allowed to visit their children at school.

The improvements which have taken place in the schools are due as much to reforms in administration as to legislation. Some of the earlier defects in the schools were pointed out by the Royal Commission of 1884, and the Departmental Committee which reported in 1896. The most important enquiry which was made about reformatory and industrial schools was undertaken by the Departmental Committee of 1911–13. The Committee pointed out that most of the deficiencies found in the schools were due to the general failure to give to this branch of public work, the share of attention and support it deserved. They made a number of recommendations for increased grants from the Treasury and Local Authorities, for improvements in accounting and audit, for inspection, for the proper constitution of school committees, for improvements in the type and status of staff, and proposals for improving the education, training, and classification of the children, and their supervision, both at school and after licence.

It fell to the lot of the late Mr. C. E. B. Russell, a member of the Committee, who was appointed Chief Inspector of these schools, in 1913, to carry out the Committee's recommendations. Thanks largely to his energy, and the co-operation of the schools, the work of reorganisation was successfully begun. Although the war of 1914–18 delayed improvements, reconstruction was afterwards completed, and practically all the recommendations of the Committee were carried out.

Although these reforms resulted in great improvements in the schools, those that were still maintained out of money obtained from voluntary sources, and from income earned by the boys and girls, supplemented by per capita grants from the Exchequer and Local Authorities, found themselves at a disadvantage as compared with Schools owned by Local Authorities, who were able to meet their working deficiencies from the rates. The voluntary schools were therefore not only compelled often to overwork their boys and girls, but to exercise economy at the expense of efficiency, and engage poorly qualified and underpaid staff. There were no pensions available except for those teachers who came under the Board of Education.

These conditions led to the appointment of the Salaries Committee of 1918–19. The Chairman of this Committee was Doctor A. H. Norris, C.B.E., M.C., who had succeeded Mr. Russell as Chief Inspector of Schools, and who did so much for the welfare and advancement of the schools during his long tenure of this appointment. On the recommendations of this Committee the salaries and status of school staffs were improved, and a Home Office Pensions Scheme was started for certain members of the staff who were not teachers. As an outcome of the Committee's report, negotiations took place between the Home Office, Treasury, and Local Authorities, and a scheme was evolved by which the whole approved cost of the boys and girls maintenance in the schools, after allowing for the product of the children's work, and any available voluntary contributions, was equally divided between the Exchequer and the Local Authorities. In the case of children, the responsible Local Authority is the Local Education Authority, and in the case of young persons, the County Council or County Borough Council.

In 1935 another Departmental Committee was appointed, under my Chairmanship, to consider the conditions of service in the schools. The Committee commented on the need of a wider

choice in the selection of heads of schools, and on the unsatisfactory staffing conditions in girls' schools. The Committee also made a number of recommendations aimed at obtaining better supervision, and better housing and other improved conditions for staff. Most of these recommendations have now been carried out.

I have already pointed out that under the provisions of the 1854 Act, children had to spend fourteen days in prison before going to a Reformatory. It was natural therefore that the first Inspector of Schools should also have been the Inspector of Prisons. Between 1854 and 1861 the Industrial Schools came under the Council of Education, but in view of the large number of children sent to them by Courts after 1857, they were placed under the jurisdiction of the Home Secretary. Subsequently a Reformatory and Industrial Schools' Department was formed, and this has now given place to the Children's Branch of the Home Office. The work of the schools is co-ordinated by a Chief Inspector and a staff of seven other Inspectors. There are also three representative Committees; a Committee representing the school Managers, a Committee representing the headmasters and headmistresses, and an Advisory Home Office Committee, presided over by an Assistant Under-Secretary of State, on which both Managers and Headmasters and mistresses sit. Quite recently an Approved Schools Joint Sub-Committee has been formed representative of Managers and heads of schools.

This account of the Approved Schools would be incomplete without some reference to after-care work. The schools claim some 75–80 per cent. of successes, and this achievement, while no doubt in part due to the fact that the children are sent to them at an impressionable age, is also largely due to the long period of supervision which headmasters are allowed to exercise over their former pupils. Each child's future career is carefully considered in the light of his progress and training, and, if possible, his parents are consulted. Nearly every child is found employment on leaving, although occasionally a boy is allowed to go home pending a vacancy in a job he has chosen, and all, on leaving, are given outfits. Members of the school staff, apart from their other work, are employed to find suitable openings. When a boy or girl remains under supervision they receive a visit from their headmaster, or another officer of the school, at

least once every six months, and in many cases oftener. If during this time they fall out of employment and show signs of getting out of hand, Managers can, and do, exercise their powers of temporary recall. Many schools also have a number of Associates, whose business it is to keep in touch with the school, and with any young people placed under their care. This is especially necessary in the case of schools which draw their pupils from a very wide area, as in these cases it is often physically impossible for the school staff to carry out all the after-care work. Many of the school Associates are Probation Officers who may, of course, have had some of these young people under supervision before they were sent to a school. Parents are often very helpful to the school and the Associates, but occasionally you find parents whose only interest is the amount of money a child can bring into the home. It must be remembered also that many of these children are sent to a school, not because they are offenders, but because they are in need of care and protection. This often means that they have to be placed out in lodgings on leaving the school, but it also means that they come to regard their school as a real home, turning to their old headmaster for advice and guidance, and going back regularly on Old Boys' Day, which every school holds annually. A headmaster once told me of one old boy, aged eighty, who came back to see the school from time to time.

As an example of after-care work, let me quote the case of a boys' school, before the recent war, which had 127 boys, who had left within the previous three years, and who were still under supervision. There were 110 in work and doing well, seven out of employment, but not in trouble, four who had since been put on probation, three who had since been sentenced by a Court, and three of whom trace had been temporarily lost, either because they had joined the army, or, more probably, gone on a deep-sea voyage. Unfortunately the war has considerably restricted the amount of home-visiting which it is possible for the school staff to carry out unaided. They have therefore recently been assisted in this work by Welfare Officers appointed to areas, who undertake to visit children living in their area from whatever Approved School they come, and to advise the Managers of the schools, by means of reports and personal discussion, of the progress a child is making. This scheme has not been long enough in operation to judge definitely of its success, but it has already

provided many schools with considerable relief from anxiety about this important point of their work, and it is being extended.

I cannot conclude this article without expressing my indebtedness to Mr. M. M. Simmons, one of the Inspectors of Schools, who has placed at my disposal a number of facts and figures which have proved most valuable to me.

IX

THE BORSTAL SYSTEM[1]

By MARGERY FRY

IT is not easy to explain exactly what is meant by the Borstal System.

In the first place, it derives much from the traditions and methods of ordinary English education. There is a well-attested story of a Borstal Institution which was expecting the visit of a cricket eleven from Eton. The Borstal lads were told not to smoke their own ration of cigarettes whilst their visitors were there, since smoking is forbidden by the Eton rules. "Gosh!" said one young criminal, "I'm glad they sent me to Borstal instead of to Eton." The phrase has more in it than street-boy wit and irony: it hints at an analogy and perhaps at a criticism which are both freely pointed out by the friends and the critics of Borstal, and mark a certain aspect of the system which can on no account be neglected, since it gives Borstal a distinctively national character, bearing the qualities and the defects of its local origin.

With this side of our subject we must deal later on. But two other obstacles no less serious to a "translation" of the Borstal idea into a foreign medium at once present themselves. Though we speak of the Borstal System, each of the institutions differs very considerably from the others, and though it is now over thirty-six years since the first Institution was opened near Rochester (in a small village called Borstal, which has given a generic name to all the group), the regime, the installations, one might almost say the ideals, of the system are constantly changing, and no account can be complete.

We shall circumvent these difficulties more readily, and get a better idea of what the word Borstal stands for if we consider the various institutions, not as parts of a rigid system, but as a series of experiments towards the solution of a set of problems

[1] This article was written before the War. Whilst an attempt has been made to bring it up to date on such matters as the number and location of Institutions it must be clearly understood that the general picture of their conditions and routine represents what existed in Pre-war years. Much has of necessity been modified during the years of the War. A recent government publication *Prisons and Borstals*, 1945, giving much useful information, should be consulted by those who wish to make a further study of the subject.

which are themselves constantly receiving fresh definition and new forms of statement as the work progresses.

In general terms, the object of the founders of the first Borstal Institution was the diminution of crime by special training intended to reclaim young offenders, but nearly every term in this definition has more or less changed its connotation in the years since the inception of the plan. "Young offenders" now covers girls as well as lads, and the original age limit of sixteen to twenty-one has been extended to twenty-three.

"Crime" which is the object of attack has largely altered its character, and the training has changed from a regime closely resembling prison life to one which allows a certain amount of liberty of action. Meanwhile, modern statistics have given a new emphasis to the importance of the treatment of young delinquents. Carr-Saunders and Mannheim (*Young Offenders*, 1942) give figures for London and six other large towns showing that on an average one delinquent out of three has had a previous charge or charges.

When, in 1919, Dr. Goring (one of the first Englishmen to bring scientific methods to bear upon the study of criminology), discovered that over 53 per cent. of habitual offenders had first been *convicted* before they were sixteen, and nearly 20 per cent. more before they were twenty, the statement created surprise. People were startled to find amongst the great body of criminals so many whose law-breaking began at a tender age. Now it is realised that the true view is that out of the great body of child offenders, a small percentage carry on their law-breaking into manhood. The latest figures available, those for 1937, show that for males the age of greatest "criminality" is thirteen. Offences against the law are about seven times as common amongst men and boys as amongst girls and women, so that, in this matter at least, the male sex is the more important. But it is interesting to note that girls are less precocious in wrong-doing than their brothers: for them the age of greatest delinquency is eighteen.

Whilst it is not possible to say how many adult criminals have already appeared in the ranks of child and adolescent offenders, the probabilities—reinforced by Dr. Goring's observations—are that comparatively few persons *begin* a career of law-breaking after they have reached maturity. If we may make this assumption, the delinquencies of youth take on an importance far in excess of the seriousness of the offences themselves—they are danger signals, or, more accurately, they include danger signals, which it is foolish

to neglect. It is important here to emphasise that many of the actions for which young people come before the Courts are, as it were, accidents in the process of growing up, and have no sinister meaning for the future. What is essential is to discriminate between these unimportant offences and those, often more serious in the matter of damage to the community, which indicate a grave maladjustment.

There are people who are horrified to think that delinquency is so prevalent at an early age. They point to the growing number of convictions of people under age, and deduce a melancholy argument of degeneration and indiscipline. Closer inspection reveals the fallacy of these Jeremiads.

In the first place, cases brought before the Courts are not *necessarily* an index of the amount of law-breaking. Public interest in the treatment of juvenile delinquency, confidence that it is often the best thing for the children themselves to be brought to the Courts and a growing trust in the methods they employ, a more efficient police service, all are just as likely causes as an actual increase in delinquency. In fact, the figures suggest that the offences for which boys and girls are tried can only be a fraction of those they commit. In 1937 there were in England 2,958,200 boys between eight and seventeen—the ages dealt with by the Juvenile Courts—of whom only 27,365 (about 1 in 108) were found guilty of indictable offences, (a phrase which includes almost all forms of stealing, the most frequent failing of the young). For girls the ratio was 1 to 1,579. In 1939, 0·55% of the juvenile population were found guilty of indictable offences; in 1943 the figure was 0·74%. It was higher in 1940 and 1941, and about the same in 1942. No one who knows children will believe that the youth of England is as law-abiding as these figures would suggest. For one boy brought before the Courts for stealing cigarettes, or tampering with an automatic sweet machine, it is a fair guess that dozens must escape the law.

Actually in these critical years, as psychologists have now shown us, the child in passing through adolescence to maturity is having to make in its own person the adjustments necessitated by millennial developments in the human race: it has to change from savage to civilised man. "Civilised" is perhaps too flattering a word. Our actual social organisation, whilst denying or thwarting the satisfaction of many of the primitive instincts of man—the wish to roam freely, to win the objects of his desires by skill or

speed or strength, to mate as soon as nature urges—gives to the majority of our citizens little in place of this satisfaction. We speak sometimes as though for law-breaking the whole moral blame lay with the breaker: it is well sometimes to remind ourselves that the fault may also be with the law. It is not only the least valuable people who are irked by our over-crowded, machine-made civilisation, where even the pleasure of creative work is a luxury enjoyed by few.

The growing human being has to deform himself as well as form himself to fit into the world as he finds it, and he will often knock himself against some hard corners before the process is complete.[1] The child whose home is a happy one will have guidance and consolation at hand, but the matter is made worse where an unsympathetic home life thwarts the more intimate instincts as well as those related to active life. It is a commonplace of penal science that broken homes frequently result in broken laws.

Looked at thus, the duty of the Courts in respect of minors appears less as the punishment of precocious wickedness than as the adjustment to adult life (not, alas! the adult life of some remote Utopia, but the ordinary workaday life of our States to-day) of that fraction of our youth whose failure in adaptation brings them into conflict with the law: it becomes, that is, a branch of education especially aimed at the prevention of future crime.

Such is the problem which has gradually defined itself. When once stated, it is difficult to see how it could have waited so long for formulation. The vindictive punishments of children in the past are seen to have been as stupid as they were cruel.

Punishment seems to offer a tempting short cut to reformation, but it very often (especially where wrong-doing has become a habit) is found in the end to have led in the wrong direction. Training, re-education, re-adjusting can very rarely be short processes.

It was not, therefore, enough to found special institutions for young offenders: it was necessary to arrange for their detention

[1] Children brought to a school in Canada from a remote island where their family were the only inhabitants and possessions were common to them all found it difficult to learn not to take whatever pleased them from the shops. Others coming from forest lands to London could not understand the prohibitions of garden and park, and pleaded pitifully for a "boys' bush" where picking flowers and breaking boughs were not sins. These painful adjustments have to be made by the majority of children born into the modern world less suddenly, but just as truly. Even country children find themselves often with no permitted playground but the road.

for longer periods than those of ordinary penal sentences. This special type of detention first became a part of English law in the year 1908, by the passing of the Prevention of Crime Act, though the actual experiment of separating young prisoners from older ones and subjecting them to a special regime had already been in existence for about six years.

The Act has been amended and extended by subsequent legislation. We need not follow the enactments regarding Borstal treatment through all their stages: it will be enough if we briefly consider the law as it actually stands to-day.

Here we must ask for the patience of any readers to whom the peculiarities of the English law present a somewhat unattractive tangle.

The vast majority of criminal cases in England are heard by the Courts of Summary Jurisdiction, rather unfortunately known in popular parlance as Police Courts. These are in most instances presided over by a bench of two or more Justices of the Peace, unpaid Magistrates who need not have had any legal training, but who are advised upon legal points by a Clerk who is, as a rule, a solicitor. In large towns the work of these Courts is wholly, or mainly, taken over by paid professional officials, known as Stipendiary Magistrates, who have, single-handed, the same powers as a bench of lay Magistrates. All these Courts sit without a jury, and they have full power to try what are called "non-indictable offences", *i.e.* offences for which the accused cannot claim a jury trial. These are for the most part trivial delinquencies, though the distinction between indictable and non-indictable offences does not follow any clear or logical principle. The tendency of modern legislation has been to increase the number of non-indictable offences, and so to give more scope to the Courts of first instance. But beyond the boundaries of non-indictable offences comes a huge group of indictable offences for which the accused may, *with his consent*, be tried by the Summary Courts without the delay involved in waiting to go before a higher Court. So common is this procedure that in 1937 nearly 90 per cent. of these more serious cases were tried by the Magistrates' Courts.

Let us see what are the powers of these Courts with regard to sending young people to Borstal detention. There is only one case in which they can actually pass such a sentence, *viz.* when a young person who has reached the age of sixteen years, and has already been sent by a Court to an Approved School, is proved

guilty of serious misconduct, when they may, on their own authority, send him or her to a Borstal Institution for two years, with a further period of one year under supervision, during which he can, if he misbehaves himself, be recalled for a further year's detention. In all other cases the power of the Magistrates sitting in a Court of first instance is confined to sending the young person, with a view to a Borstal sentence, to a higher Court. Before so sending him, the Magistrates' Court must "consider any report or representations which may be made to it by or on behalf of the Prison Commissioners as to the suitability of the offender for such detention," if necessary adjourning the case to allow of this report being made. It is the duty of the Court to which the offender is sent to enquire into the circumstances of the case. They may then (if they are convinced that his age is as stated, and that other conditions to which we shall refer below are fulfilled) sentence him to a period of not less than two or more than three years (followed by supervision) in a Borstal Institution.

The necessary conditions before such a sentence can be passed, besides the actual conviction for an offence (which must be serious enough to be punishable by a month's imprisonment without the option of a fine), are as follows:

> "It must be 'proved that the offender has previously been convicted of an offence, or that having been previously discharged on probation, he failed to observe a condition of his recognisance';"

and it must appear to the Court

> "that by reason of the offender's criminal habits or tendencies, or association with persons of bad character, it is expedient that he should be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime."

Borstal sentences can also be passed by the higher criminal courts of Quarter Sessions and Assizes upon a young person, within the same age limits, who has been convicted before them of an offence for which he is liable to be sentenced to penal servitude or imprisonment.

The conditions in these cases are the same as those already described for cases tried in Courts of Summary Jurisdiction, except that no proof of previous conviction or failure upon probation is required. Here, again, any report made by the Prison Commissioners, or on their behalf, must be considered before

sentence is passed, though no Court is bound to act in accordance with the advice so tendered to them.

A young person sentenced to Borstal detention has the same rights of appealing to the Court of Criminal Appeal as any other person dealt with by Quarter Sessions or Assizes. Many judicial decisions have made more precise the meaning of the law relating to Borstal sentences. In particular, the exact significance of "criminal habits and tendencies" and of "association with persons of bad character" is now exemplified by a number of judgments. Into the details of these instances it is unnecessary to enter. The main objects of all this legislation are clear: in the first place to provide the power of passing long sentences with a view to training and reformation; in the second, to safeguard the liberty of the citizen by hedging round these powers by conditions designed as precautions against their misuse.

The debates which have taken place in the House of Commons, and the discussions in the country, upon proposals in the Criminal Justice Bill introduced in Parliament in 1939 to alter these safeguards, have shown that they are regarded by the country as valuable.

The first draft of the Bill contained a clause which would have allowed Courts of Summary Jurisdiction to sentence offenders to Borstal without sending them to a higher Court. This was withdrawn by the Government largely on account of the opposition which it aroused amongst Magistrates themselves. The Bill will, if it becomes law, probably increase the number of committals to Borstal, whilst lessening the number of young persons sent to prison, but the principle of safeguards against a too free use of these periods of prolonged detention will be maintained.

It should be emphasised that all Borstal sentences are indeterminate sentences with a maximum, rather than fixed sentences. The young person detained can be released on licence at any time after three months in the case of a girl, after six months in that of a lad, if the Prison Commissioners are satisfied "that there is a reasonable probability that the offender will abstain from crime and lead a useful and industrious life."

In every instance the young person remains under supervision for a period which extends a year beyond the expiration of his sentence. During this supervision he is liable to be recalled to the Institution if he has either misconducted himself or broken the terms of his licence, and may be detained there for a time not exceeding one year.

There is one other path by which a young criminal may find his way to Borstal. The Home Secretary may, if he thinks it to the offender's benefit, transfer a prisoner serving an ordinary sentence, who falls within the Borstal age limits, from a local or convict prison to serve the remainder of his sentence in a Borstal Institution.

Conversely, a Borstal inmate who

> "is reported to the Secretary of State by the visiting committee of such institution to be incorrigible, or to be exercising a bad influence on the other inmates of the institution."

may be transferred by the Home Secretary to prison for a time not exceeding the remainder of his Borstal sentence.

The long sentences passed for Borstal training for offences which would, in adults, be purged by far shorter terms of imprisonment can, we believe, be justified where there is real evidence that a life of crime has actually begun, but in no other cases. People are sometimes apt to speak as though it was almost a privilege to be sent away for two or three years! It should never be looked upon as anything but a painful necessity. There is nothing young people dread so much as to be deprived, for what seems to them an endless time, of freedom to choose their occupations, their amusements, above all their companions; to lose the life of the family (even an "undesirable" family); to be segregated from the other sex at the most susceptible age; and to lead a life of ordered monotony.

It is inevitable that the Borstal sentence is often received with a bitter sense of injustice. It is the duty of the Court to ignore this where the need is proved and real. But no care can guard against all risks of contamination, and no teaching can quite undo the sense of injury if this drastic measure is too lightly resorted to. The law has rightly hedged Borstal round with safeguards: enthusiasm for the good work done there should never lead the Magistracy to disregard them.

Having now sketched the legal procedure by which young people are sent for Borstal training it will be possible to follow the different stages through which they actually pass. We will take the most complicated case, that of a young person brought before a Court of Summary Jurisdiction and convicted of an offence which qualifies him for Borstal. He will have to be sent to prison on remand for a week or more in order to allow the prison report on his fitness for Borstal treatment to be received. If he is

found by the prison doctor to be suffering from very grave physical or mental defects, he will not be recommended for this treatment. There are also cases where, when a boy is not yet seventeen, the prison authorities may think that he would do better in a senior school than in Borstal. But as a rule the report is in favour of the course suggested.

Having considered this report, the Magistrates, if they decide to commit him for a Borstal sentence to Quarter Sessions, will in general remand to prison again, though they *can* give bail if they think fit. The case may be sent to any Quarter Sessions the Magistrates consider best, so shortening the delay. But it is admitted on all hands to be unfortunate that there is no better place than prison to which these young offenders can be sent for waiting, and prison authorities and Magistrates are united in hoping that it may soon be possible to provide accommodation unconnected with the associations of adult crime.

If, when the case has been considered by Quarter Sessions, a sentence of Borstal training is passed, the offender, if a girl, is sent straight to the only Borstal Institution for girls, at Aylesbury. In the year 1938, seventy-one girls were sent. The number of youths is much larger (in 1938 it amounted to 1,276), and the question of their distribution amongst the different Institutions is an important one.[1] For these places are not merely local repetitions of a single type. They are deliberately varied to meet the needs of different types of lads. The Institutions range from that at Wormwood Scrubs, forming part of the prison for adults, and strictly penal in discipline (for lads who have proved seriously unruly in the other Institutions), to "open" Borstal Institutions like Lowdham Grange or the North Sea Camp, where lock and key are unknown, and a large amount of liberty is accorded to boys whom it is hoped to licence out at an early date.[2]

At Feltham youths of physically or mentally poor type are

[1] The total number of committals to Borstal has been decidedly higher in recent years than it was before the war; official figures are not yet available.

[2] There are at present (1944) seven Training Institutions, namely, Borstal, Portland, Usk, Sherwood, Lowdham Grange, North Sea Camp and Hollesley Bay Colony. There are also three wings of prisons which have been declared to be Borstal Institutions for particular purposes, namely the Licence Revocation Centres for boys and girls which are at Chelmsford and Holloway respectively, and a Hall of Wormwood Scrubs which is used for penal purposes for lads who abscond or otherwise seriously misbehave in the Training Institutions. In addition to these there are two separate parts of what is now the Boys' Prison at Feltham which are used for Borstal purposes, one as the Collecting Centre, the other as the house for those who are physically or mentally unfit for a normal Training Institution.

received: at Portland, those who have already passed through schools for young delinquents, or who have a long experience of crime. At Sherwood (Nottingham) older offenders are taken: this Institution has less the character of a school than others.

The decision as to the destination of each offender is not easy. In order that this individualisation of treatment may be successful, careful investigation into his education, his antecedents, and his character must be made.

For this purpose he is sent to the collecting centre at Feltham. Allocation is made on the advice of a Board presided over by the Assistant Commissioner in charge of the Borstals, on which sit the Governor and other members of the staff of Feltham. This Board is usually attended by a Governor from one of the Training Institutions.

It is, of course, possible for the authorities to transfer an inmate from one place to another; this is, in fact, done when it seems desirable. But it is far better to send him to the right place straight away, and, so far as possible, determine what type of work he is most likely to succeed at. In this the advice of industrial psychologists has often proved of great use, and a good many members of the Borstal staffs have in fact taken courses at the National Institute of Industrial Psychology. It has been found that where these preliminary tests have been made false starts at different trades are less frequent than where the matter has been left to chance or whim.

But, whatever trade is chosen for a lad's training, he does not, when he reaches the Borstal Institution, begin upon it at once. For some three months he is employed on the domestic duties of the place. The whole system is based on progressive stages, promotion to which is not automatic, but dependent on some real effort on the inmate's part. So the inclusion in a party in which a trade is taught or labouring work undertaken is a step forward from the period of cleaning and tidying and necessary "chores". From one point of view this stage is a useful one, and as the work must be done it is right that the newcomers should undertake it.

On the other hand, it has the disadvantage of shortening still further the already inadequate time for training in any really skilled occupation. It has to be admitted that these cannot be adequately taught in the time available, and the Borstal lad who comes to the Institution without any specialised knowledge,

though he can be educated in the use of tools and in the rudiments of a trade, cannot hope to reach the level of skill gained by a man who has served an apprenticeship of several years. It is to this, rather than to a desire to discriminate against them as delinquents, that one must attribute the unwillingness of the Trade Unions to accept a Borstal training as equivalent to an apprenticeship. Moreover, the young men themselves, on leaving the Institution, are usually not willing to take work as "improvers" at low wages and on a level with boys several years younger than themselves who have entered their training on leaving school. As a rule they prefer to renounce the hope of ever reaching the higher scale of wages which can *ultimately* be gained by a skilled mechanic in favour of immediately gaining adult labourer's wages and man's work. The difficulty, under modern conditions, of finding employment in a particular trade for a man already handicapped by his want of character is another reason for the comparatively small number of men discharged from Borstal who actually find work in the trades which they have been taught there. But it must not be forgotten that a labourer with some knowledge of carpentry, blacksmith's work, or building is in a far better position than one who has no training. Moreover, the actual process of learning the use of tools and machinery has an educative effect on many young offenders, especially on those who have had no work at all, or work of the "blind alley" type as van-boys or errand-boys. As one Borstal Governor says: "I have seen many lads learn control of themselves by learning to control material."

The work done is of very varied kinds. The lads are occupied as carpenters, smiths, fitters, and tinsmiths, farm labourers, gardeners, bricklayers, plumbers, painters, cooks and bakers, electricians, gas-fitters, stonemasons, plasterers, tailors, and shoemakers; the girls do needle work, dressmaking, mailbag making, washing, cooking, and gardening.[1]

The trade instruction is in the hands of men and women who are skilled at their job. Neither they nor any other Borstal officers wear uniforms; they frequently work with the young people instead of only directing their work.

In all the Institutions there is now a system of wages which, though small in amount (the maximum is about 1*s*. a week), act

[1] 1944. During the War very large numbers of Borstal boys have gone out to work for farmers near the Institutions. The usual practice is for them to go off in the morning, quite on their own on a bicycle, and come back to the Institution in the evening after the day's work.

as an immense incentive to good work. A small sum, 3*s.* or 4*s.*, has to be saved before an inmate can be discharged: the rest can be spent in the canteen on various small luxuries or wants, such as tobacco or sweets.

Progress through the framework of the Institution is marked by certain changes in treatment and privilege—the change from a brown suit to a blue implies greater freedom and trust, and carries with it certain new rights and duties.

Since, as we shall see later, the amount of freedom varies widely from Institution to Institution, these privileges are not everywhere the same.

In almost all Borstals there are yearly camps to which the more privileged boys go, where life under canvas in the open country gives opportunities of greater liberty and more recreation than the usual routine allows (though even on these holidays agricultural work is done in the mornings to help neighbouring farmers). In peace time in several of the Institutions the boys who have earned the privilege are allowed a few days' home leave, in one at least selected lads who have shown that they can be trusted are allowed to spend week-ends away on bicycles, or camping on their own account without the supervision of officers.

One Institution has tried with success the experiment of allowing lads to go out for a few hours in mufti, with their visiting relations. In several they may attend technical classes at outside schools.

The "open" camps, where no external barriers to freedom exist, are used for those inmates who are regarded as the most trustworthy. They are carefully selected.

In the other Institutions there is more constraint, but everywhere an attempt is made to encourage some sense of responsibility by giving the management of the lads' own affairs to some extent, to committees for the selection of games' teams, for the running of special clubs, and so forth. But undoubtedly in these stricter places the problem of the transition from a regulated routine to liberty is even harder of solution than in those giving a freer training.

It is interesting to remark that the four most recently founded Institutions are all of the "camp" type, though at Usk there is a double system. There, an old prison is being used as a place of probation (though even there the main gate stands open all day, without a gate-keeper, and the doors of the rooms are not locked

at night). The lads who prove themselves suited for free training will after three or four months be transferred to a camp nearby, whilst others will be sent to Institutions of the walled type. It is intended that the ratio of camp inmates to those in the old prison shall be about 5 to 2.

In passing we may notice that the "open" system of training for selected Borstal lads is largely the same as that followed for selected older prisoners at Wakefield.

In view of the variety of treatment, it is impossible, within the compass of a short article, to give a complete description of the Borstal routine. It is true to say that always an eight-hours day of work is insisted upon, followed by educational and recreational classes, that stress is always laid on physical training, games, and swimming (nearly all Institutions have their own swimming pool), and prominence given to moral and religious instruction.

A typical day's time-table may be quoted: it is for Portland, an Institution which may be regarded as about halfway between the most closed and the most open type. The lads there are of the rougher and more difficult sort, about half have already been in schools for delinquents, a quarter have been in the army. Their average age is between twenty and twenty-one. Most of them have been before the Courts two or three times. At Portland a lad has to rise at 6 a.m., he has biscuits and cocoa at 6.15 a.m., and then has fifteen minutes' Physical Training from 6.30 a.m. Breakfast is at 7.0 a.m., and work starts at 8.0 a.m. Dinner is from noon to 1.0 p.m., and a lad finishes his eight-hours' work at 5 p.m. There are no dormitories at Portland. Each lad has his own room, and after tea he goes to his room for a silent hour until 6.50 p.m. During this silent hour he reads or writes letters, or, if so inclined, he might attend a hobby or educational class. From 6.50 p.m. until 8.0 p.m. all the lads are in association: they might walk, play cricket, swim, or remain in the House for indoor games. Supper is at 8.0 p.m., and the "Browns" turn in at 8.30 p.m. The "Blues" follow at 9.0 p.m., and "Lights out" is at 9.15 p.m. During winter the silent (or study) period is extended to 7.30 p.m., and there are many more hobby and educational classes. Most lads are able to select a class of some description which can hold their interest.

The Institution for Girls at Aylesbury follows the arrangement of the boys' Institutions in its main lines.

Some details of the life may be interesting.

Classes are held from 5.30 to 8.0 p.m., and with the exception of physical training, are all voluntary. They include handwork of all kinds, dress-making, cookery, hygiene, first aid, English, history, divinity, French, current events, civics, painting, and singing. No outside classes are attended.

The girls learn to swim and play netball, cricket, and tennis.

They have no summer camp, but those in the top grade are allowed to go out in parties of three or more every Saturday and Sunday, wearing non-institutional clothes. They may go to the town and to outside churches or for walks on Sunday. The other girls occasionally go to the cinema, or out to tea in small groups when invited by well-wishers in the neighbourhood.

There is a wage system which has not only increased output at work, it has introduced the element of choice which is too much lacking in an Institution regime, and given a sense of financial responsibility. The loss of a full week's wages for a girl who refuses to work is a punishment which is neither lightly incurred nor resented when it has been incurred, since it appeals to the girls' idea of fairness. It is to be observed, too, that destruction of Institution property is becoming increasingly rare, since damage done wilfully is paid for from the culprit's earnings. "Smashing" has entirely ceased since one girl ran up a bill for 8*s.* 10*d.*

After the first few months the girls are never shut in, and during the evening they are allowed to be in each other's rooms and come and go as they like without supervision.

The average length of detention is two years for a girl with a three-year sentence, and just under two years for a girl with a two-year sentence. They are released as soon as the authorities think them fit for freedom.

So far it has been a comparatively easy matter to give a condensed account of facts and rules. A very much harder task must now be faced. There undoubtedly is a theory of education, an ideal, one might even say an inspiration, struggling with varying success, for embodiment in the Borstal system, to which we must now turn our thoughts.

In its best exponents it is patent, not so much in the spoken words as in their attitude towards their charges and in their lives. When one puts it into words it may sound high-flown, even exaggerated, in view of the frequent disparity between the ideal and the actual. Yet we shall not only do injustice to the system, we shall fail to explain either its past development or its promise for

the future, we shall underrate both its risks and its successes unless we make the attempt. To begin with, we cannot do better than to quote from the official handbook.[1]

"The purpose of a Borstal Institution is to teach wayward lads to be self-contained men, to train them to be fit for freedom. It is impossible to train men for freedom in a condition of captivity. There have ensued, therefore, certain practices by which lads have been given greater freedom.

"At the back and at the bottom of this Borstal system of training there lies a fundamental principle. There have always been bad lads, and the supply will never cease entirely. Once upon a time the method employed to deal with them consisted simply in the use of force. The lad was regarded as a lump of hard material, yielding only to the hammer, and was, with every good intention, beaten into shape. Sometimes there were internal injuries, and the spirit of the lad grew into a wrong shape, for sometimes the use of force produces a reaction more anti-social than the original condition. There ensued a second method which has flourished for fifty years in many schools and places where boys are trained, and might be termed the method of pressure. The lad is treated as though he were a lump of putty, and an effort is made to reduce him to a certain uniform shape by the gentle and continuous pressure of authority from without. In course of time, by perpetual repetition, he forms a habit of moving smartly, keeping himself clean, obeying orders, and behaving with all decorum in the presence of his betters. It happens sadly often the lad who has been merely subjected to the pressure of authority from outside will, when exposed to the different influences of free life, assume quite another shape and respond successively to the influences of each environment.

"The third and most difficult way of training a lad is to regard him as a living organism, having its secret of life and motive-power within, adapting itself in external conduct to the surroundings of the moment, but undergoing no permanent organic change merely as a result of outside pressure. So does Borstal look at him, as a lad of many mixtures, with a life and character of his own. The task is not to break or knead him into shape, but to stimulate some power within to regulate conduct aright, to insinuate a preference for the good and the clean, to make him want to use his life well, so that he himself and not others will save him from waste. It becomes necessary to study the individual lad, to discover his trend and his possibility, and to infect him with some idea of life which will germinate and produce a character, controlling desire, and shaping conduct to some more glorious end than mere satisfaction or acquisition."

[1] *The Principles of the Borstal System*, Prison Commission, Home Office, 1932.

Such an ideal as this is hard of attainment. The attempt to reach it may well produce less *apparent* successes than the older systems of "beating" and "moulding". Its failures will not only be amongst those sent for training, but amongst the trainers themselves. A hundred men can impose a discipline, well armed with penalties, for one who can watch wisely over the unfolding of cramped and twisted character. Yet on the men and women who are to carry out the re-education everything depends. "The Borstal System has no merit apart from the Borstal staff" says an official document.

The best things in human character are contagious, they can be given but not manufactured. They are most naturally learned in the normal relations of free life, but even in family or school a constant watch is needed to keep the relation between parent and child, teacher and taught, sincere, free from formality, alive. Where the relation is based ultimately on constraint all difficulties are greater, yet the aim of Borstal is to reproduce, so far as may be in confinement, the relations between older and younger in the happily ordered free life rather than those of warder and prisoner, or martinet and private. In England, though the vast majority of the population is educated in day schools, the wealthier classes have for generations preferred the training of the residential public school for their sons. We are, as a people, fond of attributing to ourselves certain social virtues, and the much quoted phrase that "Waterloo was won on the playing fields of Eton" is only a slight exaggeration of the habit, only now dying out, of rather undiscriminating admiration for our public school system.[1]

This is not the place to attempt to assess the merits and demerits of the public schools. But they have undoubtedly certain good features. If they insist somewhat wearisomely on "public spirit" or "playing the game", they do at any rate help a boy to feel responsibility for and pride in a circle wider than that of his immediate home, and implant ideas of loyalty. Now these are above all the qualities in which the young offender is apt to be lacking: selfishness and self-centredness, a want of standards of behaviour, have generally been his undoing. The segregation of

[1] It must be remembered that the so-called "public" schools are, in fact, expensive institutions, many of them heavily endowed, which cater exclusively for the well-to-do. They are largely independent of the State system of education which caters for the vast majority of English boys and girls.

a school with its resultant separation from the world of home, which is a frequent reproach against the public school for wealthy boys, is an inevitable part of a training which aims at keeping a lad away from undesirable surroundings even against his will, and is therefore less to be deprecated.

The public school tradition, with its residential life, fosters a very close relation between masters and boys. The Borstal system has made a similarly close contact the keystone of its structure.

In every Institution the lads are divided into "houses", generally of sixty to eighty boys, staffed, as a rule, by a Housemaster, his Assistant, a Matron, and House Officers. The duties of the Housemasters are, above all, to get to know the members of their House, to help, advise, and if need be correct them.

His duties are thus described:

> "The Housemaster and his colleagues must ensure that the spirit of the House is good. They will do so by the careful selection of leaders, by training them and standing very close to them, by being always in and out of the House, by thinking of it as their family, by being there for meals and recreation because they do not want to leave it. It is they who make the spirit of the House, and it is that spirit, in addition to their own efforts, which will bring out the good in a lad and help him to save himself."

Here is a picture of a Borstal Housemaster, drawn from a book written by an ex-Borstal lad—a book by no means altogether appreciative of the system.

> "He was a funny, fat man, ridiculous in his shorts, odd with his cropped skull, bewilderingly sincere. He was a brilliant lawyer, a psychologist, unstable, dynamic, devoted to the boys of his House. . . . He kept on demanding that the blokes should be allowed to assert their personality, be allowed to express themselves. . . . 'Don't treat 'em like cyphers. They're men, grown up. How can they be happy if you don't allow them to deny your judgment, to use their own initiative? They'll be unable to live without your help. Let them learn now!" . . . That he was always busy didn't matter. He had twenty-four hours a day to work.
>
> "He spent his holidays touring the country, visiting the homes of boys whose parents he hadn't a chance to meet, whose background was not familiar to him. He dashed off to find work for one of his boys who was going out next month and had no home; to speak in court on behalf of another who had got into trouble. Always he hastened back to his house, his boys, his life. . . . He refused to censor letters. How could he hope his boys to trust him if he didn't

trust them. He refused to have his ground-floor lavatory windows barred up, never mind the number of blokes who had absconded that way. . . .

"I said, 'I'd like to talk with you, if you're not too busy.'

"He looked up from the letter he was writing. 'I'm never too busy,' he smiled. 'Sit down!'

"We began to talk about books. He went on to people, their conduct, their religion, their thought. The papers on his desk were left there, neat, orderly, ready when he should want to study them. . . . We talked together a couple of hours. . . . A man of power, imagination, vigour, faith; who conducted his business to leave room for the turbulence of his personality; who had long ago forgotten the wordage of the Prison Order Book; who never forgot the purpose of Borstal was to teach people to live."

The Chaplain is another important personage. Considerable emphasis is placed on religious and moral teaching, often of a very practical kind. (One may find a class receiving instruction in the duties of husbands and fathers.) Here, again, there is no easy success to be gained, and one may quote another portrait by the same author (himself a Jew) of the kind of Chaplain who can make himself felt.

"He was so simple a man, so modest. He couldn't exhort people to righteousness, he couldn't threaten them with the fires of hell. In all of his years, he had not met a bad man, only a man he didn't understand. . . . He clamoured against living without love. That was all his sermons, all his religion, that was the way he lived.

"It was his sincerity that attracted his congregation; his sincerity that sent them away buoyant and sparkling, eagerly chattering. It was the feeling that Cantor lived his religion that had the effect no parson had ever had with them, had the influence, the power and the attraction. . . . He gathered whoever would come, whoever would be received. He made no difference between creeds, between shapes, sizes, colours, uses. He called himself a Christian. He said he loved his fellowmen besides on Christmas Day. He said men only were important; and things only in relation to men."

It would be idle to pretend that all Housemasters and Chaplains can, or could, live up to such portraits as these. If we quote them here it is because they show what can be the influence of this band of men, poorly paid, hard worked, selected with great care from all classes of society, the mechanic, the university, the army, and the Church. It is to such men that the Borstal System

owes all that is most living in it. The influence of the House Officers on the lads is also of great importance.

Nor must the Matrons be forgotten.

The introduction of women on the staff of a male institution has proved an excellent innovation. There are obvious difficulties about it which have, with a few exceptions, been overcome.

The lads can go to the Matron's room for help and counsel, not only in the matter of clothes and health, but for the sympathy she can give, and for the comfort of talking to her of their home life and their future plans. She is one of the busiest people on the staff—as the old proverb has it: "Woman's work is never done."

An illustration of the working of the re-education which Institutions seek to give is shown by the following incident.

In a new Borstal Institution the men elected by their fellows came together to discuss progress and make suggestions for making the place (according to their promise) "as happy as it should be". At first only selfish questions were asked: "Could more jam be allowed? or tobacco cheapened?" Later they grasped the meaning of their gathering and began discussing essentials, discussing policy with the officials. The officials on their side were ready to accept fair and honest criticism, to allow the occasional necessity of admitting failure on *their* side, even of apology. Now a system that tries to fit men in these ways for life runs risks which no mechanical routine need fear. But where it succeeds it has made men, not robots.

Critics point out, with truth, that freedom of intercourse is often abused, that fresh crimes may be plotted, that, under the unnatural conditions of segregation, vice finds its opportunities. One would be naïve indeed to hope that hundreds of young men, fresh from a life of crime, can live together in compulsory association without such things happening. It is a cogent argument for not sending the accidental offender, the non-criminal, to Borstal. But it is clear that a large number of lads who *have* started on a life of crime do in fact leave Borstal to lead, perhaps after one or two failures, honest and decent lives.

The test of sincerity comes when they leave the Institution. The hardest part of their punishment begins when they face the conditions of employment for a man already handicapped.

A system has been built up for after-care through the Borstal

Association. The lad on discharge is still under the supervision of the Association's officers. He must not—

"Leave his work without permission or lose it through his own fault.

"Change his address without permission.

"Mix with anyone who has been in trouble or is looking for trouble.

"Disobey instructions given to him by the Association or its Associate to whom he has been given an introduction on discharge."

The staff have already made his acquaintance whilst he is under training, and they have all necessary information about him. They find an "Associate" in the neighbourhood to which he is sent, whose duty it is to keep in touch with him, and help him to find work. In addition to the Associate, he is usually put in touch with an unofficial (voluntary) "friend" whose duty it should be to maintain "fraternal contact" with him, giving help, advice, and guidance. Some two thousand young men are actually under this supervision to-day.

It is obvious that this, an all-important part of the Borstal System, is one of the hardest to carry out.

Anyone who looks through the records of the Association will be struck by the immense amount of correspondence, visits, etc., which it entails. Undoubtedly its achievements are open to some criticism. The "jobs" found for the boys are too often bitterly disappointing after the hopes raised by Borstal training. Too many lads are placed, owing to the difficulties of the labour market, as kitchen boys in hotels, or in similar uncongenial jobs. Monotonous distasteful labour is sometimes accompanied by exploitation on the part of employers, who, knowing that the lad risks recall to serve the rest of his sentence if he throws up his work, are only too apt to take advantage of his situation. Again, much depends on the Associate: his influence in the kind of employment open to the lad may be decisive: if he is slack in carrying out his duties, the result may be disastrous.

The Borstal Association has, of recent years, done much to strengthen its work. Perhaps it has undertaken an almost impossible task. In the nature of things the worker with a Borstal past will not, perhaps should not, stand such a good chance as a boy who has borne a good character. But if Borstal is in some way a place where things are made too easy, the awakening to his position in a world which does not want him is often too abrupt.

It may be that the last months of sentence should be served in semi-freedom, as of a hostel from which the young man could go out to work. One Governor writes:

> "I still feel that we can and should go much further in giving lads a chance of living and working in more natural conditions when they are nearing discharge, and I hope that in the not too distant future lads will be allowed to spend the last period of their training under more normal conditions."

We have endeavoured in a short space to give some account of a great experiment, an account necessarily incomplete and inadequate. If, however, we have been able to suggest its underlying principles, and the directions in which it is developing, if we have succeeded in arousing some interest in its methods, it may stimulate those in every country who are trying to embody, within the framework of their own national culture, the same ideals in the reclamation of young people who have made a false start in life.

The following table indicates the percentage of success achieved in recent years by the Borstal system. It gives the position, at the end of each year, of those who had been discharged from the Institutions not less than two years earlier. It will be observed that, if those who are reconvicted once and then apparently settle down, are included as potential successes, it may fairly be said that out of every 10 persons discharged some 7 or 8 appear to be restored to good citizenship. The figures for girls are similar, though slightly less favourable.

BORSTAL STATISTICS (MALES)[1]

Five-year total percentages as at 31st December of each year in column 1

1 Position as at 31st December of Year:	2 Discharges during Years:	3 Not Reconvicted	4 Reconvicted	
			Once only	Twice or more
1936	1930–34	53·8	24·3	21·9
1937	1931–35	56·1	22·6	21·3
1938	1932–36	57·7	21·4	20·9
1939	1933–37	59	20·4	20·6
1940	1934–38	62·4	19·3	18·3
1941	1935–39	63·5	20·1	16·4
1942	1936–40	60·7	20	19·3
1943	1937–41	58·9	20·3	20·8

[1] From *Prisons and Borstals*, 1945.

X

THE PRISON SYSTEM[1]

By JOHN A. F. WATSON

THE history of the English prison system is the history of a war between two schools of thought. On the one side were those who regarded all criminals as social outcasts, and who believed that the best way to combat crime was to inflict a retributive punishment so horrible that people would be frightened into good behaviour; on the other were those who believed that the interests of the community were better served by a penal system which, though unpleasant enough to remain a deterrent, made some attempt to reform the offender. Ultimately the reformative school triumphed, and the re-organisation of the English prison system which has taken place since the end of the last war has been based on the objects defined by the Prison Commissioners in their official report for the year 1922–1923: "It is not," they said, "to make prisons pleasant, but to construct a system of training such as will fit the prisoner to re-enter the world as a citizen. To this end the first requisite is greater activity in mind and body, and the creation of habits of sustained industry. . . . Next comes the removal of any features of unnecessary degradation in prison life, and the promotion of self-respect; and education on broad lines calculated to arouse some intelligent interests, and to raise the mind out of a sordid circle of selfish broodings. Finally we endeavour to awaken some sense of personal responsibility by the gradual and cautious introduction of methods of limited trust."

It is proposed in this article to provide a sketch of the English prison system as it exists at the present time.

First, it may be of interest to examine the way in which the present system has evolved. For this purpose we need not go back further than the early years of the nineteenth century, at which time Elizabeth Fry—second only to John Howard, the greatest of all English penal reformers—was labouring in Newgate Gaol

[1] This article is based, with the kind permission of the publishers, on the author's book, *Meet the Prisoner*, Jonathan Cape, 1939.

to kindle in the darkness of cruelty and neglect the light of Christian understanding and forgiveness.

At that time there were several hundred prisons in the country. Most of them were owned by municipal authorities and townships, and the local magistrates were entrusted with their supervision. In point of fact, however, they were often not supervised at all, for the magistrates were only too pleased to delegate so unpleasant a duty to a "turnkey" or gaoler, who managed the gaol and derived his living, not by a salary, but by such payments as he was able to extract from the wretched prisoners themselves.

Conditions in our prisons at that time were very terrible. Men and women were herded together like animals in filthy dungeons, the food was insufficient, and the beds provided for the prisoners were often little more than heaps of verminous straw. This was all the more horrible when one realises that the population of the average prison did not in those days consist, as it does to-day, of convicted offenders. Most of the prisoners were either debtors, cast summarily into gaol at the instance of their creditors, or offenders awaiting trial at the next "gaol-delivery" to be held by a High Court Judge on circuit. If at the gaol-delivery the prisoners were found guilty, they were liable to be hanged or transported overseas for life.

The practice of transporting felons abroad dates from the middle of the seventeenth century, and did not finally cease until 1867. In early days they were shipped to America, until the American War of Independence, which began in 1778, put an end to the practice. But the discovery of Australia a few years later provided a new and equally convenient dumping-ground for the social refuse of the mother country. As time went by, however, the ordinary settlers in the new colony began to object, with the result that at the beginning of the eighteenth century the Government found themselves faced with the necessity of finding some alternative to transportation. They solved the problem by erecting in London, in 1821 and 1824 respectively, two vast penitentiaries named Millbank and Pentonville, and by converting many of the old transport ships into prison "hulks", moored permanently in the Thames and other large rivers.

Millbank, Pentonville and the hulks were the first English prisons to be under central control. Pentonville was designed as a model institution, and between the date of its erection and 1878

more than a hundred prisons were built according to the same plan.

The year 1878 marks a turning-point in the history of our prison system. By the Prisons Act of the previous year the ownership and control of all the prisons were taken from the municipal authorities and the magistrates and were transferred to the State. The same Act of Parliament provided for the formation of the Prison Commission, closely connected with the Home office, which body assumed and still retains full responsibility for the administration of all prisons in England and Wales.

In 1878 the prisoners in the local prisons, most of which had separate departments for women, numbered 21,030. There were in addition some 10,000 convicted offenders, known technically as "convicts", already under central supervision in the State penitentiaries and in the hulks: 113 local prisons were transferred to the Home Office, and in the first ten years fifty-seven were closed, there remaining in 1894 no more than fifty-six.

Millbank and Pentonville, together with the many prisons built on the same plan, were designed to serve what was known as the "separate system". We have seen that in the previous century men and women had been herded together in dungeons, rife with gaol fever and smallpox. This was an evil which had been condemned by Howard and by other reformers who followed him. Then, as so often happens, the pendulum swung too far in the opposite direction, and it is doubtful whether the physical miseries of the common dungeon were not more tolerable than the mental agonies which were induced by what was virtually solitary confinement. We are told that one result of the separate system was to produce in Pentonville, in each year between 1843 and 1849, no less than 124 cases per 10,000 of mental disease, a ratio twenty times as great as in all the other English prisons of the time.

For several years after 1878 the newly-constituted Prison Commissioners were fully occupied in reorganisation. Above all things they sought to achieve uniformity, and they took immense pains to ensure that every local prison in the country was managed according to one plan. The hulks, described by a well-known historian as "the most brutalising, the most demoralising, and the most horrible of all places of confinement which British history records," had now been abolished, but the old distinction between prisoners and convicts remained, and the Com-

missioners set apart special prisons for offenders in the latter category.

The first Chairman of the Prison Commission was Sir Edmund Du Cane. He was succeeded by Sir Evelyn Ruggles-Brise, later to become famous as the founder of Borstal, to whom fell the responsibility of administering a further enactment of major importance—the Prison Act of 1898. The provisions of that Act were far-reaching, but dealt mainly with internal administration, and in particular with two matters of first importance—the classification of offenders and prison industries.

So much for history. We come now to the modern system, and it may be useful to begin by studying for a moment the extent and the nature of our criminal problem.

During 1938 the total number of receptions in prison was 50,060 persons. Of these, 44,928 were men and 5,132 were women, including 1,276 boys and 71 girls sentenced to Borstal treatment. Excluding debtors and prisoners on remand, an examination of the total sentences imposed reveals that no less than 35 per cent. were for a month or less, and that 41 per cent. for more than one month, but not exceeding three. This means that only 24 per cent. of the total sentences passed were for longer periods than three months, which is considered to be the shortest period during which any serious reformative training can be attempted.

It is next of interest to observe the nature of their offences. The statistics for 1938 show that out of a total of 28,703 men received on conviction, 13,997 were convicted of indictable offences; 3,887 were convicted of crimes which, though not indictable, were of a serious nature; whereas the remaining 10,819 were sent to prison for offences of a comparatively trivial nature.

The normal occupations of the offenders were equally varied, ranging from vagrancy to the learned professions, and their level of education from illiteracy to the standard of the university graduate. Thus during 1938, 794 men were found to be unable to read or write; 1,596 could do so imperfectly; 25,375 showed moderate proficiency; 877 could read and write well; and 61 were of superior education.

The need for classification has always been realised. We have seen that convicts are in a class by themselves, serving a sentence which originally was imposed as an alternative to transportation. This form of sentence is called "penal servitude", and is for a

minimum sentence of three years. The maximum sentence is for life. Until 1931 all convicts were segregated from prisoners by being confined in separate establishments. This, however, is no longer the case, and the traditional distinction between convicts and prisoners is rapidly becoming obsolete. It is a distinction which it was proposed to abolish entirely in the Criminal Justice Bill, now unfortunately abandoned as a result of the war.

Prisoners—*i.e.* persons serving sentences of imprisonment from a minimum of one day to a maximum of two years—are classified by the Courts in three main categories. The First Division is seldom used, and then mainly for persons committed for contempt of court, or for offences which are sometimes loosely described as "political" (although the English law knows no such thing as a political offence). The Second Division is for prisoners who, having regard to their offences, are deemed likely to suffer contamination by association with those who are depraved or of criminal habits. The Third Division is for all the others.

In days gone by there was in addition a special form of irksome industry, called "hard-labour", to which Third Division prisoners might be sentenced; but hard-labour to-day is little more than a name, for all prisoners do the same kind of work.

The present method of classification has two serious faults. The first fault lies in the fact that the judge or magistrate is not the best qualified person to decide in which category the prisoner shall be sentenced. A mere recital of a man's record in open court does not provide an infallible clue to his personality, or to the chances of reforming him. The experienced prison official, who has had the man under close personal observation, is far better able to decide to which category the prisoner can most usefully be assigned.

The second fault of the present system is to be found in the old-fashioned method of imprisonment which still, to some extent, persists; whereby all prisoners in any given district had to be sent to the same establishment, called for this reason the "local prison". Here, owing to the old-fashioned design of the buildings and the smallness of the numbers, efficient classification was virtually impossible.

The first of these faults was met by the Criminal Justice Bill, which proposed to sweep away the technical difference between the various types of imprisonment and penal servitude, and to allow the Prison Commissioners to proceed with their own

method of internal classification. Such a method has in fact already been superimposed on the traditional system, whereby the prison authorities make their own classification as between young prisoners and those who are older, between first offenders and recidivists, and between those who have merely made a mistake and those who are hardened rogues.

The second fault in the system is being gradually overcome by the Prison Commissioners themselves, whose policy to-day is to separate the various classes of offender, not in each prison, but in special prisons reserved for each class. As a result the expressions "local prison" and "convict prison" are almost out of date.

At the outbreak of the war in September, 1939, there were thirty-one prisons in commission in England and Wales. Of these, four were convict prisons—Maidstone for first offenders; Chelmsford for men who, though not first offenders, were under the age of twenty-six; Parkhurst for convicts who required special medical care; Dartmoor for the recidivists. Two of the large local prisons Wakefield in Yorkshire and Wormwood Scrubs in London—were set apart for first offenders and selected cases which were considered likely to yield to special treatment. Five prisons were also collecting centres for boy prisoners between the ages of sixteen and twenty-one, and four prisons were specially for the weak-minded. Brixton prison in London was kept for male prisoners awaiting trial; Holloway, also in London, was solely for women, who were also kept in separate wings of five of the local prisons. One establishment—Portsmouth—was reserved for men serving a special form of sentence called "preventive detention", now rarely used. Preventive detention is intended for the habitual offender, and can be imposed for not less than five and not exceeding ten years, to succeed a term of penal servitude.

Most English prisons, as I have already stated, were built during the nineteenth century on the plan of the model prison of Pentonville. The layout is best described as resembling a giant starfish, the several halls of the prison radiating from the centre, whence the interior of the whole building can be surveyed. The wing leading from the direction of the prison gate usually contains the administrative offices. Each hall contains several tiers of cells, built against the outer walls and opening on to balconies or "landings" which run its entire length on either side. The whole building is surrounded by a security wall, in which there is but a single gate.

The prisoner's cell, in the average English prison, measures 13 feet by 7 feet by 9 feet high. The walls are of lime-whitened brickwork above a coloured dado. The floor is of wood or stone. The window is opposite the door, high up in the outer wall, and either heavily barred or formed of a number of small panes fixed in a steel sash; a sliding panel admits the fresh air. Some prisons are now provided with electric light, and a general conversion scheme from the coal-gas system is in hand. All cells are centrally heated in winter, and an attempt is made to maintain a standard temperature of 60 degrees Fahrenheit throughout the building.

The cell contains a plank bed, which is furnished with adequate bedding and a mattress. The furniture also includes a wooden stool, a corner washstand equipped with enamelled utensils, and two wooden shelves. In some prisons the stool has been replaced by a chair, and there is in addition a small wooden table. The remaining equipment includes a slate and pencil, a set of cleaning materials, and a chamber. There are no water-closets in the cells, these being situated in recesses off the landing. Inside each cell is a bell which the inmate may ring if he needs to be unlocked in a case of extreme emergency.

Between the main halls of the prison are the recreation grounds, the workshops, the laundry, and the kitchens. There is also a Protestant Church in every prison, and in the larger establishments, a Roman Catholic Chapel and a Jewish Synagogue.

The administration is vested in the Prison Commissioners, and the senior officers of each establishment comprise the Governor, and in large premises one or more Deputy Governors, the Chaplain, the Medical Officer, and the House Masters. The subordinate officers are the Chief Officer, the Principal Officers who are the intermediate grade, and the rank and file. Subordinate officers always wear uniform when on duty. The senior officers wear plain clothes. No prison officer carries fire-arms, and few prisons contain any kind of armoury.

In five prisons there is normally a special wing for women, under the control of a female Deputy Governor. To this wing the male officers have no access unless in the company of a female officer. Before the war, Holloway, in North London, was entirely set apart for women, including young prisoners. This prison normally collects from the whole of South-east England.

However enlightened the theory of prison administration may

be, everything depends on the type of man or woman who is entrusted with the responsibility of translating the theory into practice. In England we are very fortunate in our prison service. Prison governorships are no longer mainly reserved, as they were once, for retired officers of the Army and Navy who have given the best years of their lives to a very different profession. To-day our prison governors are men selected by the Prison Commission as much for their experience in other branches of social service as for the sterling worth of their characters. Likewise in the lower ranks. The subordinate officers are men of unblemished reputation who, before their final appointment, are required to undergo an intensive course of training in the Prison Officers' Training School attached to Wakefield Prison.

As a result, the relationship between the officer and the prisoner is very different to-day from that which existed in the past. The prison officer is no longer merely a guard. No longer does he regard prisoners just as prisoners, but as men and women of individual and spiritual significance. His task is not to oppress, but to lead. His constant endeavour is so to administer the system that he may discharge from prison at the end of a sentence a better citizen than the man who entered it.

The general treatment of convicted prisoners varies to some extent between one class and another, and there are special regulations affecting certain prisons. But the daily time-table, subject to minor differences, is everywhere the same. Prisoners rise at 6.30, and after cleaning their cells receive their breakfast, which consists of porridge, bread and margarine, and tea. Dinner is at noon, and consists of bread and one of sixteen alternative dishes (mostly comprising meat and vegetables), none of which must recur more than three or four times in each month. Supper, the last meal of the day, consists of bread and margarine and cheese, with a pint of cocoa. Breakfast and supper are served in the cells; first offenders and the more privileged prisoners are allowed to dine in association. At nine o'clock the prison is locked up and all lights are extinguished.

During the intervening periods prisoners are employed in associated labour for eight hours daily, and at some time during the day every prisoner has an hour for exercise. In the case of the younger prisoners this consists of some form of physical drill; those who are old or infirm take walking exercise only. The old rule of silence has now been abolished, except on certain occa-

sions. It is not an offence to talk; it is an offence to talk only when told not to do so.

All convicted prisoners, with the exception of those under twenty-one, are subject to a system of "progressive stages". Briefly, this is an arrangement which enables the individual prisoner to earn certain privileges as a reward for industry and good behaviour. Deprivation of privilege is the main form of punishment. The privileges include the right to write and receive a greater number of letters as time goes on, to draw additional books from the prison library, to attend lectures, classes, and occasional concerts, and to smoke at certain hours. Most important of all, by the progressive stage system the prisoner for the first nine months of his sentence becomes eligible to earn money by his labour.

This "earning scheme" is a recent innovation, and has revolutionised prison industry. Until a few years ago prisoners were induced to work by the threat of punishment if they were idle. To-day our methods are positive rather than negative; we try and teach the prisoner the habit of work by offering him, as in the world outside, a reward for his exertions. In every case where the work can be measured payment is made on a piecework basis. In the case of labour which cannot readily be measured the payment is made on a contract system whereby a definite weekly sum is fixed for a certain job, and the money divided amongst the men employed; the fewer men required to do the job the larger share each of them receives. The weekly sum which a prisoner can earn is relatively small; it rarely exceeds a shilling, and is often no more than a few pence. He can spend it on tobacco and other small luxuries in the prison canteen.

Goods made in prison may not be sold to the public. Prison industry, therefore, is principally confined to domestic labour and to the manufacture of articles which can be used by the works branch of the Service, or by some other Government department. The domestic work includes the maintenance and cleaning of the building, besides laundering, cooking, and baking bread. Prisoners' boots and clothing are made in the prison workshops, and prisoners are constantly employed in keeping the stock in repair. Women prisoners are largely employed in some form of needlework. In one of the large men's prisons there is a printing and book-binding shop in which is produced, amongst other things, the specially edited newspaper which is circulated to the inmates

of all prisons each week. Apart from these domestic industries, prisoners make a large number of articles which the public are accustomed to seeing in daily use: post-office mail bags, brushes, baskets, rugs, polling boxes, ships' fenders, items of military equipment, and the like. In those prisons specially set apart for male convicts, the men are also employed outside the prison walls reclaiming waste land and cultivating farms.

The following table, comparing the total value of goods manufactured in our prisons and sold to Government departments during the last few years, speaks for itself.

	£
Value for year 1934–1935 ..	145,283
Value for year 1935–1936 ..	206,100
Value for year 1936–1937 ..	218,985
Value for year 1937–1938 ..	254,671
Value for year 1938–1939 ..	327,809

Thus in four years there has been an increase in the value of goods manufactured of approximately £182,500, or 126 per cent., while the number of prisoners so employed has *decreased.*

Let us now turn from the official routine of prison life to something which is unofficial, and which for this very reason is of special value. In 1922 the Prison Commissioners inaugurated a system which has not merely become an integral part of the English prison administration, but is without parallel in any other country; namely, the introduction of the unofficial prison visitor.

Unofficial prison visitors are voluntary workers who, on the invitation of the Prison Commissioners, are permitted to undertake the voluntary visitation of prisoners in their cells. There are to-day between six and seven hundred men and women doing this work. They are drawn from every social class, and are mainly sensible middle-aged people who lead an active life outside the prison, and are thus in daily touch with social and industrial conditions. To each prison visitor is allotted a list of prisoners, generally between six and twelve, according to the time which he or she is able to give to the work.

It is quite impossible in this short article to describe in detail the work of the prison visitor—the many problems he is called upon to solve, and the infinite variety of difficulties in which he is asked to advise. Regularly once a week he comes to the prison.

He enters the prison cell, not as an enquiring official, but as a man or woman who is anxious to help someone less fortunately placed. Perhaps the greatest strength of the prison visitor lies in the fact that he is paid no wages, and the prisoner knows that he comes to see him *because he wants to*, and for no other reason.

Every prison visitor has his own methods, and it is certain that there are no two prisoners whose problems are the same. By friendly conversation on every kind of topic, by sympathy in the prisoner's trouble, by sound common-sense advice, above all, by his personal example, he can do much to alter the prisoner's outlook, to lessen his selfishness, and to rouse in him a sense of his responsibilities as a citizen.

Hand in hand with the unofficial prison visitors come the unofficial prison teachers. They, too, are volunteers, prepared to spend one or more evenings each week holding a class in some subject in which they are proficient. Their work, no less than that of the visitors, is justified on one ground alone: that imprisonment to-day is designed primarily as a means of reclaiming the offender and as such forms a final, but essential, link in the whole chain of English penalogy. We no longer regard our prisons as convenient lumber-rooms in which unwanted members of society may be safely stored away. We are trying to make our prisons places of leadership and training, where the social liability may yet be moulded into the social asset.

The forms of labour available to prisoners demand little mental effort. To bring a man back from the workshops at 5.30 in the evening and to lock him in his cell until 6.30 the next morning is to leave him too much alone. An active mind has nothing to bite on, and tends to deteriorate in the same way as a machine will rust if it is left idle for a long period. Prison education is designed to prevent this corrosion, and to ensure that the prisoner on discharge shall at least be as mentally active as on the day of his reception. But we hope for more than that. We believe that to build up a man's character we must first widen his outlook, and to this end the educational scheme in a modern English prison is designed.

Prison classes are held in the evenings after the day's work is over. No prisoner, even the most privileged, is allowed to attend more than two classes a week, each of which lasts roughly for an hour. The men meet in a special room, some twenty or thirty of them in each class, alone with their teacher; no prison officer is

ever present. The subjects taught are many and varied, and are chosen less perhaps for their intrinsic value than for the opportunity which they afford the pupil of self-expression and self-knowledge. Sometimes this application is not at once apparent. Granted that a bricklayer who has taken a short course in literature will not, as a direct result, lay better bricks. But the class may have made him a more honest and conscientious craftsman, if only because the discussion of some play or poem has revealed to him a novel point of view, as a result of which he has been led to change his standards.

The reading of plays—Shakespeare and other great dramatists—form an important part of the educational programme. Classes are held in history, geography, economics, mathematics, and various languages, besides an immense variety of handicrafts. During 1937 (the last year for which figures are available), in the thirty-one prisons of England and Wales, 262 separate classes were being held each week. They were attended, entirely voluntarily, by no less than 10,753 prisoners.

There is in every prison yet a third department of voluntary effort. This is the Discharged Prisoners' Aid Society, which meets each week to consider the cases of men and women to be discharged, and to give them such assistance as they may need. The Society maintains one or more full-time agents who devote the greater part of their time to interviewing employers in order to find ex-prisoners work. In these days of industrial depression this is not an easy task, and it is through the generosity of countless men and women, throughout the length and breadth of the country, that many prisoners are found jobs on their discharge. Many others, as a result of representations made by the Society, are sent back to the work upon which they were previously engaged.

The Prisoners' Aid Societies are financed partly by charitable subscription and partly by Government grant. No prisoner is ever allowed to leave the gate without a small sum of money in his pocket, which will last him until he either receives his first week's wages or draws such relief under the Poor Law or National Unemployment Scheme as may be due to him.

It is fitting to conclude this chapter with a brief description of New Hall Camp, near Wakefield, which is the latest experiment of the Prison Commissioners. But New Hall Camp is something more than this. It is a signpost to the future. In May, 1936, for

the first time in the history of this country, a batch of prisoners, many of them with long terms yet to serve, were allowed to sleep outside the prison walls. Seven miles from Wakefield, partly concealed by birch trees at the bottom of a wooded valley, is a camp of timber-built huts. Within these huts there are living some eighty men, fit and bronzed by constant exposure to the weather. In charge of them is a house master and four officers. No wall surrounds them. The doors are not locked, nor are the windows barred. The bounds of New Hall Camp are nothing more than the hedgerows surrounding the fields in which it stands.

But the inhabitants of the camp are not ordinary prisoners. They are picked men from a prison of picked men, to whom it was decided to grant the privilege of semi-liberty as a halfway house between the repressive discipline of prison life and the hazardous contrast of freedom. The camp is not a picnic. Between two and three hundred acres of farm land are under intense cultivation, and ten hours of heavy manual work are demanded of each man per day. They are cooking their own food, cleaning their own huts, organising their own amusements. Above all, they are building their own tradition, for in three years not a single man has absconded. The experiment must be regarded as a success, to be repeated, so soon as conditions permit, in other parts of the country.

Classified List of Prisons and Borstal Institutions [1]

PRISON	SPECIAL FEATURES (additional to normal adult male population)
	Local Prisons—Provincial
Bedford	Young Prisoners Centre (Ordinary class)
Birmingham	Women's Prison
Bristol	Young Prisoners Centre (Ordinary class)
Cardiff	Women's Prison
Chelmsford	Borstal Licence Revoked Centre
Dorchester	—
Durham	(1) Women's Prison (2) Young Prisoners Centre (all classes)
Exeter	Women's Prison
Gloucester	—

[1] As in June, 1945. The arrangements are liable to change from time to time. Reprinted from *Prisons and Borstals* (1945), pp. 47-48, by kind permission of H.M. Stationery Office.

PRISON	SPECIAL FEATURES (additional to normal adult male population)
	LOCAL PRISONS—PROVINCIAL
Leeds	—
Leicester	—
Lewes	—
Lincoln	—
Liverpool	Young Prisoners Centre (Ordinary class)
Maidstone	See also under Training Centres
Manchester	Women's Prison
Norwich	—
Oxford	—
Shrewsbury	—
Stafford	Young Prisoners Centre (Star class)
Swansea	—
Winchester	Young Prisoners Centre (Star class)
	LONDON AREA PRISONS
Brixton	(1) Unconvicted adults (2) Adult Stars serving 3 months or under (3) Aliens and detainees
Holloway	(1) All classes of women and girls (2) Borstal Licence Revoked Centre for Girls
Feltham	(1) Prison for convicted youths under twenty-one (2) Training Centre for Star Adults (3) See also under Borstal Institutions
Wormwood Scrubs	(1) Adult Stars serving over 3 months (2) Unconvicted youths (3) Borstal Allocation Centre (4) Borstal lads temporarily transferred for misconduct (5) Surgical and Psychological Centre
Wandsworth	Convicted adults of Ordinary class
Pentonville	Used at present for "overflow" only
	TRAINING CENTRES
Wakefield	For North and Midlands
Maidstone	For South-East
	CONVICT AND PREVENTIVE DETENTION PRISONS
Aylesbury	Women of Star class
Holloway	Women of Ordinary class and Preventive Detention
Camp Hill	Men of Star class and those under twenty-one
Parkhurst	Men of Ordinary class and Preventive Detention
Dartmoor	Men of Ordinary class

PRISON	SPECIAL FEATURES (additonal to normal adult male population)
	BORSTAL INSTITUTIONS
Aylesbury	The girls' Borstal
Feltham	For lads requiring special medical observation or treatment
Borstal	A closed Borstal for younger lads with bad records
Hollesley Bay Colony	An "open" camp Borstal for younger lads with better records
Lowdham Grange	An "open" Borstal for younger lads of poor mental or physical ability
Portland	A closed Borstal for older lads with bad records
North Sea Camp	An "open" camp for older lads with good records
Nottingham	A closed Borstal for young men with bad records
Usk	A part closed, part camp, Borstal for young men with good records

XI

APPENDIX

PRISON REFORM

SOME AUTHORITATIVE RECOMMENDATIONS

By I. H. REEKIE

THE following extracts have been collected from authoritative pronouncements in order to indicate some further improvements in the present prison organisation which are now recognised as being highly desirable.

1. NEW BUILDINGS

Just a hundred years ago, in May, 1840, the House of Commons was asked to vote a sum of £20,000 towards defraying the cost of a model prison at Pentonville, a prison the plans of which were to be available for study by the county authorities when erecting their local gaols in order that prisoners all over the country might share with the inmates of Pentonville the advantages of a sentence served under the separate system; a system which, as Lord John Russell said in the Debate, "had been tried elsewhere. He had called the proposed plan an experiment from deference to those who doubted its efficacy. He had himself no doubt that it was the best system of prison discipline that could be adopted." And so, Pentonville was built, and, in its train, other fortress-like gaols came into being up and down the country. And such was the thoroughness of the work of our forefathers that they are with us to-day, handicapping many of the efforts of the Prison Commissioners to introduce new ideas, try new experiments, in the handling of their difficult charges—since they no longer hold Lord John Russell's opinion that the separate system, as practised in prisons like Pentonville, is the best that can be adopted in all cases. Many prisoners need other treatment in other conditions. How great the authorities feel the handicap of the hundred-year-old buildings will be made apparent by the following extracts from official statements on the subject.

Speaking in the House of Commons on 27th July, 1938, Sir Samuel Hoare (at that time Home Secretary) said:

> "I have given the House this description of what has been going on in our present administration, but I should not like to sit down without saying something about an almost equally important problem, and that is the problem of our prison buildings. One of our greatest difficulties to-day is that our present buildings are so out of date. There has not been a new prison built for fifty years, and some of the prisons still in use date back a century or more. We have tried our best with the money at our disposal to improve the buildings, and anyone who has gone round the prisons will congratulate the prison administrators on their attempt to make the best of a bad job.
>
> "While it is the fact that no new prison has been built for fifty years, it will be realized that during that period the whole outlook of the country has changed towards penal questions. We have gathered together a much greater body of experience of how to deal with crime and delinquency, but time after time we are held up by the difficulty of trying to introduce these reforms into buildings which are so much out of date. My time at the Home Office has unfortunately coincided with the moment when it is difficult to get money for these services. In the nature of things we have to face a huge expenditure on rearmament, and it is very difficult to find money for the big and comprehensive building programme which I should like to see undertaken. I am glad, however, to be able to tell the House that we have formed a programme for the future. We wish to have a housing programme for prisoners just as we have a housing programme for other classes of the community. We have approved the first steps in this big and more comprehensive programme."[1]

2. New Type of Establishments

While Sir Samuel Hoare (now Viscount Templewood) has thus dealt on broad general lines with the necessity for new prison buildings of a totally different type from those bequeathed to us by the nineteenth-century builders, Mr. Harold Scott (until recently Chairman of the Prison Commission) has dealt in more detail with the necessity for setting up an entirely new type of training institution: the prison camp. Mr. Scott, speaking at a meeting of the

[1] See Sir Samuel Hoare, Parliamentary Debates (*Hansard*), House of Commons, 27th July, 1938.

Howard League for Penal Reform, described the working of the Wakefield Prison Camp and added:[1]

". . . You must give people an opportunity to do wrong if you are going to teach them to do right.

"This is a new method and I want to apply the test to it that I referred to at the beginning. The test is, 'Does it work?' The records that have been kept of the men at Wakefield show clearly that it does. We have kept records of the after-careers of these men over a period of years, and over 85 per cent. never come back to prison. It is a common statement that prison creates criminals, but at any rate this new form of prison does not seem to create criminals; it may not do all it might to reclaim them, but it cannot be said that it creates them.

"It seems to us that this new method is a good method and worthy of trial, but of course there are a great many good and desirable things which we cannot have because we cannot afford them. This particular new method has the further advantage that it is cheap. . . . So the prison camp does provide a way of escape from our old buildings, which anyone acquainted with our prison system will agree have been a handicap for many years past. We have these buildings and have not known how to get away from them. The cost of building a modern prison on anything approaching the old model would be absolutely prohibitive. . . . The other advantage of the camp in its cheaper and less permanent buildings is that as ideas change, so the buildings can be changed. I do not suppose that in thirty years' time ideas about prison in this country will be anything like they are to-day, and it would be a disaster if we repeated the mistake of the nineteenth century and put our ideas into solid bricks and mortar which could only be removed by dynamite. Something less expensive will be required if we are to change the prisons of the future.

"I do not want to be misunderstood. I do not suggest that all prisoners could be accommodated in prison camps even if they were situated in idyllic country surroundings. Not all prisoners are suitable for the minimum security prison. Some men certainly need a more secure building. . . . But I believe the number who require this greater degree of security is a great deal less than anyone would have thought a few years ago. . . . I think it should be possible to handle quite a number of these young recidivists in conditions of very considerable freedom and without the building of the costlier type of prison thought necessary in the past.

"And so, as the result of the experience of the last few years, we look forward to the establishment of a certain number of prison

[1] See *The Howard Journal*, Spring issue, 1939, pp. 4–6 (reprinted).

camps for first offenders, even for young recidivists; to the creation of a women's prison which will not emphasize the security aspect of imprisonment, but will be in the nature of a country colony with cottages for the women and opportunities for outdoor work and outdoor recreation; and, finally, to further Borstal Camps.

"The object of Prison and Borstal camps is not, as one or two newspapers have suggested, to coddle the prisoner. . . . Neither is the object to make men work hard as a sort of punishment. That was tried and failed. The object is to give to men who have failed a chance by hard work to re-build their morale, their self-respect and their self-control; and it can be done."

3. Improved Classification of Offenders

Very closely connected with the problem of prison accommodation are the problems of better classification of prisoners and the after-care of prisoners. The following extracts are taken from an article by Mr. Alexander Paterson:[1]

". . . . For many years the classification of prisoners to prisons was on a purely regional basis. The mere fact of a man having committed his crime in a certain area meant that if he was sent by you to prison, he would, whatever his nature, whatever his type, whatever his need, serve that sentence in the prison in that particular part of the country. This Sunday I spent in a small county prison, and there I found at least fifteen types of prisoner, three or four of each type all requiring a different type of treatment and training, and yet, because they were there on this regional basis, they were all subjected very largely to the same treatment and training. The days of the old mixed county jail are gone for ever. There is no point in having a jail in the county, and there confining all the people sentenced to imprisonment in that county. In the future, there should be prisons in different parts of the country for each type of prisoner; a prison or an observation centre for those awaiting trial; another place for first offenders; another place for young recidivists; another place for old recidivists. They should not all be bunched together on a purely regional basis within the confines of a small county jail."

[1] See Alexander Paterson, M.C., one of H.M. Prison Commissioners, "The Present Policy of the Prison Commission", *The Magistrate*, Vol. V, Number VI, November–December, 1938, p. 141.

4. Improvement of the Methods of Mental Treatment in Prison

On this subject we may quote the following extracts from a Report recently published by Dr. W. Norwood East and Dr. W. H. de B. Hubert.[1]

"We believe that the most satisfactory method of dealing with abnormal and unusual types of criminal would be by the creation of a penal institution of a special kind. Briefly, this would serve four functions. First, as a clinic and hospital, where cases could be investigated and, if necessary, treated by psychotherapy and other means, and their disposal decided on. This would serve, also, as a centre for criminological research and also for co-operating the various aspects of prison and aftercare organisation.

"Second, as an institution in which selected cases could live under special conditions of training and treatment. Many cases who proved unsuitable for, and unmodified by, the re-educative and re-habilitative influences of the modern prison system would be allocated to this section. Its aims would be, by the application of psychiatric experience, to achieve alterations where future behaviour is concerned.

"Third, as a colony in which a further type of offender could live, who had proved himself quite unable to adapt himself to ordinary social conditions but for whom reformative measures, however specialised, seemed useless and the severity and hardship of ordinary prison life inappropriate.

"Fourth, as an observation and treatment centre for Borstal lads who because of mental abnormality appeared unsuitable for, or had failed to respond to, ordinary Borstal training and for various reasons were considered unfit for early licence. . . . We consider a new institution for convicted offenders under the administration of the Prison Commissioners is required. At the present time no establishment is available, for the purposes we have set out, which is suitable in locality, buildings or land for cultivation. We recommend this institution be provided. The present investigation deals with men and youths only, and our conclusions can only be applied with considerable reservation to women and girls offenders. We have no doubt, however, that our experience justifies the appointment of a woman psychotherapeutist to a woman's prison and we recommend an appointment be made."

[1] See *The Psychological Treatment of Crime*, by W. Norwood East, M.D., F.R.C.P. and W. H. de B. Hubert, B.A., M.R.C.S., L.R.C.P., London, 1939.

5. Organisation and Selection of Prison Work for Reformative Purposes and Improvement in Organisation of the After-care of Prisoners.

This whole matter has been the subject of a survey by a committee especially set up for this purpose. And in spite of the fact that since its recommendations have been published a great deal has been done towards carrying them out they are still of current interest. We quote below the most important of these recommendations:[1]

"(1) The root of all evil in the employment of prisoners is the definite shortage of work. Occupation for prisoners is essential to their physical and moral needs. More work, preferably requiring no considerable skill in actual performance, must be obtained; it may with advantage be work which is physically hard.

"(2) Training in industry rather than production on an economic scale should be the primary consideration of employment in the case of:

(i) Borstal inmates.
(ii) Prisoners under thirty years of age with comparatively long sentences.

"Delay in commencing training should be minimised.

"(3) A definite policy regarding prison industries must be formulated and carried out, including a continuance of the policy of segregating suitable types of prisoners in selected prisons, and the allocation to those prisons of suitable industries.

"(4) The organisation and lay-out of prison workshops should be overhauled and modernized.

"(5) The nominal 8-hour day of associated labour should be restored.

"(6) Speed and efficiency of work in prison workshops must be improved in order to guard against deterioration of the physical and moral power of instructors and prisoners. More, and better qualified instructors are needed. Industrial managers should be appointed at the larger prisons. A system of payment to prisoners who reach a minimum output of adequate quality should be introduced. Rate fixing, both as regards quantitative output and rate of payment, should be done scientifically. A measure of psychological training should be given to selected Borstal Housemasters.

"(7) The machinery for seeking manufacturing orders from

[1] See Report of the Departmental Committee on the Employment of Prisoners. Part I. Employment of Prisoners, 1933, pp. 87–88.

Government Departments, Local Authorities and other sources, and for the purchase of materials must be improved.

"(8) More land work should be obtained, either cultural or land reclamation."

As for an adequate organisation of the after-care of prisoners the following passage from the Report on persistent offenders summarises the most important task that lies ahead:[1]

"We would also suggest that the employment of persons sentenced to imprisonment or detention should not be considered in isolation as a problem of internal prison administration without reference to the prisoner's subsequent career as a free man, or to the organisations concerned with helping him. The problems of prison labour and of after-care have different origins and have developed along different channels. The first takes its rise in the administrative question of how to occupy as economically as possible persons under detention: the second represents the development of a time-honoured philanthropy which makes heavy calls upon wide human sympathy and personal services by voluntary workers. But in any consideration of the methods of employing prisoners the importance of fitting them for work outside must be borne in mind. We think that the time has now come to regard these allied problems of administration and philanthropy as a single problem of industrial training and resettlement."

[1] See Report of the Departmental Committee on Persistent Offenders, 1932, p. 37.

INDEX

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ENGLISH STUDIES IN CRIMINAL SCIENCE

EDITED BY

L. RADZINOWICZ, LL.D.

AND

J. W. C. TURNER, M.A., LL.B.

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AFTER-CONDUCT OF DISCHARGED OFFENDERS

BY

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Foreword by Dr. FELIX FRANKFURTER, Justice of the Supreme Court of U.S.A.

Preface by PROFESSOR P. H. WINFIELD, K.C., LL.D., F.B.A.

What happens to the former inmates of our prisons and reformatories? How many return to a life of crime and vice? What proportion of them change from aggressive and dangerous criminals to misdemeanants, vagrants, chronic alcoholics and the like? Is imprisonment a preventive of recidivism? To these and similar questions even today we in this country cannot give adequate answers. Some years ago Professor and Mrs. Sheldon Glueck of the Harvard Law School opened a new chapter in criminal science by initiating what are known as "Follow-up Investigations" to obtain the information needed, and the Cambridge Department asked them to make a report on the methods and results of their labours. This book summarises their findings and gives the answers to the questions stated above. The importance of the work which these distinguished authors have promoted is emphasized in the foreword written by Dr. Felix Frankfurter, Judge of the Supreme Court of the U.S.A. 8s. 6d. net.