PRICE 3d.

NEWSLETTER No. 25 APRIL 1953

Penal Reform News

CONTENTS :

Issued By :
THE PENAL REFORM LEAGUE OF SOUTH AFRICA,
P.O. Box 1385,
PRETORIA

" The psychiatrist does not pretend to understand the law . . . to him the important thing is the potential effect of premature and ugly sexual stimulation and initiation upon a child. He is not primarily interested in the precise form if took or exactly what the offender did or tried to do. Any sexual approach to a child constitutes a social menace, whether it be that of indecent exposure, an attempt to commit carnal knowledge, the actual commission of carnal knowledge, or rape or sodomy. He knows only that children should be free from sexual approaches by adults. Insofar as he is concerned, attempted rape is as bad as rape : attempted carnal knowledge is as bad as carnal knowledge : assault with intent to commit sodomy is as bad as the actual commission of sodomy. To him, the law seems to be impractical in its concern with the precise modus operandi of the individual who takes sexual liberties with a child, rather than with the fact that a sexual liberty of any kind has been taken. He cannot see where this infinite variety of charges is necessary, or what purpose it serves. . . .

A prison sentence of so many months or so many years does not solve the fundamental problem. From a psychiatric point of view, there is no more sense in sending a man to prison for exhibitionism or voyeurism than there is for sending him to prison for tuberculosis : in both cases the man is sick, and one is just as sick as the other. . . ."

(" Considerations bearing on the Problem of Sexual Offenses" by Benjamin Karpman, appearing in Vol. 43 No. 1, May-June, 1952, of " The Journal of Criminal Law, Criminology & Police Science.")

The Penal Reform League of South Africa

(I) Official Notice to all Members of The Penal Reform League of South Africa

1. The Executive Committee of the Penal Reform League of South Africa informs officially all members of the League that the **ANNUAL MEETING OF THE LEAGUE WILL TAKE PLACE ON JUNE 19th, 1953, AT THE ST. ANDREWS HALL, SCHOEMAN STREET, PRETORIA,** at **4.30 p.m.** In view of the convening of the third national conference on penal reform in September, 1953, the Annual Meeting will be purely formal, and the members of the League are requested to send in writing to Head-Office the remarks they wish to make on all phases of the work of the League, once they have received the Annual Report.

2. At the above-mentioned Annual General Meeting the following amendment to the Constitution will be moved :—

   That the Constitution of the League be amended by the deletion from Paragraph 11, page 6 regarding the Annual General Meeting of the last 15 words of the second sentence in that paragraph — such sentence then reading :— "Due notice thereof shall be given not less than four weeks before the date fixed."

   The reason for this suggestion is to reduce expenses, and as every member receives a copy of the notice calling the meeting, no difficulty should arise from the absence of a newspaper advertisement.

3. **THE THIRD NATIONAL CONFERENCE ON PENAL REFORM WILL TAKE PLACE ON SEPTEMBER 22ND, 23RD AND 24TH, 1953, in ROOM 38, GROUND FLOOR, WITWATERSRAND UNIVERSITY, MILNER PARK, JOHANNESBURG.** The Subject of the Conference will be **CRIME, PUNISHMENT AND CORRECTION.** A comprehensive pamphlet has been prepared which will form the basis of the discussions of the Conference ; it will be sent free to all members of the League, and may be obtained by others at the Headquarters of the League for 2 shillings plus postage. THE CONFERENCE IS OPEN TO ALL PERSONS, OFFICIALS, INTERESTED ORGANISATIONS **FREE OF CHARGE,** except for the tea which will be provided in mornings and afternoons. WILL READERS KINDLY TAKE NOTE OF THE CHANGE IN DATES ; THE DATES AS GIVEN ABOVE ARE FINAL, and have had to be accepted so that accommodation may be found at the University. It will be appreciated if all members and friends who intend taking part in the Conference inform Head-Office as soon as possible. All suggestions concerning this Conference will be gratefully received. The gratitude of the Penal Reform League is hereby expressed to the authorities of the Witwatersrand University for placing a very suitable room at the disposal of the League for our Conference.

II. THE PROBLEM OF PRISON LABOUR IN RELATION TO EMPLOYMENT ON RELEASE

On many occasions, we have touched upon the question of prison labour, and it must have been obvious to our readers that the problem of devising a correct system of prison labour is one of the most critical parts of prison administration. Everybody assumes that labour is one of the main features in the process of rehabilitation of offenders, but few take the trouble to ask themselves what

kind of labour is most likely so fully to occupy a man at war with the Law that he will cease to be obsessed by his almost pathological self-pity and antagonism to society, and be drawn into normal and law-abiding ways of life. In that respect, the general public, the Trade Unions and the Law have displayed the most disconcerting " laissez-faire ", not to say complete lack of interest. Indeed, the Courts themselves and the Legislature have taken it for granted that " hard labour " was so explicit a term that there was no necessity to specify what it means, and that, in consequence, the practical definition of that form of penalty imposed by the Court, was within the terms of reference of each Superintendent of each prison. The result of such an attitude has been that, subject to the approval of the Director, a Superintendent determines — with the help of the Medical Officer — " what shall be considered hard and what light labour at his prison " (Regulation 441) and one feels very sorry for the responsible officers concerned, in view of the very limited opportunities for constructive labour available to them.

(i) Lansdown Commission Review of South African Prison Labour

In its valuable survey of our prisons, the Lansdown Commission examined in detail the present system of prison labour. The picture has changed in some respects and the changes have already been noted in this review; nevertheless, the general picture remains what was described in the following terms:—

> " No trade-training exists in the Union penal institutions for women. For men its availability is extremely limited and in the institutions visited by the Commission, its utility in providing a training for employment after release is, with one exception, quite inadequate. The exception is the Central Prison, Pretoria. Here good equipment is to be found and qualified instruction. The quality of some of the work produced is high. Prisoners are trained as shoemakers, printers and bookbinders, carpenters, basket-makers, tinsmiths and plumbers, painters, masons, locksmiths, fitters and turners, brush-makers, soap-makers, mat-makers, blacksmith, farriers, tailors, bricklayers and builders. The training is such that some men attain real proficiency in some branches of these trades, though it is questionable whether the variety of work is sufficiently large to make such training equivalent to the ordinary apprenticeship training with possible exception of the printing and bookbinding section " (Paragraph 835).
>
> " No training in handicrafts exists for non-European women unless the laundry work and mending done for the institutions can be classed as such training. For non-European men little exists. Most of the non-European prison labour is manual. Gardening is carried on at nearly all gaols and prisons to a greater or lesser extent according to suitability and size of the ground available. At the prison farms at Leeuwkop, Grootvlei and Barberton, agriculture and gardening are the main occupations and these contain the elements of useful knowledge, but more attention should be given to instruction. At the juvenile prison for non-Europeans at East London, the prisoners are employed on the production of vegetables and in the quarrying and burning of lime excavated on the prison reserve. At Leeuwkop stone-dressing is done which provides instruction in skilled work. At Barberton stone-dressing of high quality is carried out, and in addition to farming and gardening experience, the prisoners learn sisal farming and rope manufacture from the product. This is highly skilled work, but it is doubtful how far the training is of value as a means of earning a livelihood unless rope and sack-making are developed within the Union as a secondary industry. Sisal mats and other articles such as shopping-bags, table mats and picnic baskets are manufactured with a high degree of skill, but on an uneconomic basis. At Durban sisal and rope mats are made very skillfully. But apart from these avenues and brick-making at some centres, there is little vocational training for non-Europeans " (Paragraphs 838, 839).

The Commission made a number of very valuable recommendations for future developments :—

> " More individual attention should be given in future to the needs and capacities of individual prisoners in deciding to what institution they should be sent and what particular course of training they should undergo. This necessity, it is contemplated, will be met by the Allocation Boards . . . which, while having regard to any aptitudes and preferences of the prisoners, will largely have to be guided by the available facilities and the vacancies in the different institutions and instructional classes " (Paragraph 840).

The Commission recommended as a definite aim of the Department of Prisons " to make literate all illiterate prisoners serving sentences of over 6 months," and for prisoners serving longer terms " more complete plans for education." The matter of juvenile prisoners' education was emphasised. As regards vocational training, the Commission outlined two main types: one with emphasis on agriculture and one with emphasis on industry. The creation of a number of small prison farms, not to be confused with prisons on farms, is recommended, but it is also emphasised that industries must be created, and training so devised that the prisoner is really equipped for the time of his release. For that purpose, advice should be sought from Labour, Commerce and Industries and the National Bureau of Personnel Research. The Department of Education should be invited to assist in the education of prisoners. Institutions for the mentally defective should be established and course of training should be planned for work in protected industries.

It was impossible for the Commission to ignore the fact that, for forty years, our prisons have depended largely for the finding of suitable labour for prisoners on the hiring-out of prison labour to authorities and private persons or concerns. It would be entirely unrealistic to recommend the complete immediate abolition of this established system. Therefore the Commission accepts the continuance of employment of prisoners by the Railways & Harbours Administration, and by Provincial and Local Governments, by certain mining companies (until such time as the Government can provide work), etc., but it is quite clear that the Commission considered all employment of prisoners by private persons or concerns as acceptable only as a temporary measure.

> " The possibility of employing on State enterprise all sentenced persons not being trained and employed in prison institutions should be explored."
>
> While still hired-out on private employment, prisoners " should not be employed away from responsible prison control: their labour if hired to private employers should be paid for at approximately the standard rates for free labour: and wherever prisoners are hired out, due regard should be had to the Commission's recommendations as to the education and training of prisoners " (Paragraph 913).

The Commission very wisely drew attention to the fact that, in the employment of prison labour by Government Departments or by Provincial and Local Authorities, this labour is granted gratis, or in return for almost nominal payment, and that not infrequently there is a tendency to use this labour extravagantly: and the Commission pleaded for such agreements to be made on a better economic basis.

This last recommendation is so important in our view that it leads to the consideration of the problem of prison labour on the

basis of what is done in other countries at the present time. It is certain that, should every prisoner be treated as a free labourer, in economic terms, and should all responsible authorities and private concerns be obliged to pay exactly the same amount of money for prison labour as for free labour, the whole picture of prison finance would be entirely changed. It would soon appear that the childish complaints of Treasury about the cost of prisons, and the no less childish public outcry for economy in that field, is sheer hypocrysy, because — as is shown in the case of many overseas institutions (like Witwil in Switzerland) — it would be found that the prison pays and brings a considerable appreciation in the value of the farms on which it is established. Moreover the costs of improving education and general training in the prisons would be quickly met by the real revenue accruing from a sound and economic use of prison labour. Another most important result would be that, at last, the real value of our prison staff would be realised, and they would be entitled to much better remuneration than hitherto. Prison service would then become attractive, more ambitious and able youths would understand that the job is worthwhile and a first-class service to the community.

(ii) Prison labour as it should be in the views of the Hague Congress, 1950

The question was put to the Hague Congress " How is prison labour to be organised so as to yield both moral benefit and a useful social and economic return ? "

Commenting upon the tone of the discussions on the subject, the following report precedes the resolutions passed unanimously :—

> " The importance of prison labour is generally recognised. Prisoners must be kept busy with useful work in conditions that will make it as similar as possible to free labour. But there are obstacles to the carrying out of this principle, mainly objections on the part of private manufacturers who apprehend the competition of prison labour. The conditions of prison life and particularly the demands of prison discipline are also a hindrance to rational organisation of works in prisons. It is generally admitted that between the prisoner and the prison administration there is no real labour contract and that the remuneration paid to the prisoner can therefore in no way be considered as a salary. This has consequences, for instance as to the application of various laws of social security, in case of labour accidents, and also in respect of unemployment insurance, family allocations, old age pensions, etc. Furthermore, if the inmate carries out remunerative work in his spare time, should he be allowed to sell the yield for his own benefit and in which conditions can this be done ? To sum up, the question is how to organise prison labour so as to obtain the results hoped for. Finally, it will be useful to examine how this work should be organised in accordance with the general laws of the country ruling free labour and the social protection of workmen."

The resolutions passed were :—

1. (a) Prison labour should be considered not as an additional punishment, but as a method of treatment of offenders.

   (b) All prisoners should have the right, and prisoners under sentence have the obligation to work.

   (c) Within the limits compatible with proper vocational selection and with the requirements of prison administration and discipline, the prisoners should be able to choose the type of work they wish to perform.

(d) The State should ensure that adequate and suitable employment for prisoners is available.

2. Prison labour should be as purposeful and efficiently organised as work in a free society. It should be performed under conditions and in an environment which will stimulate industrious habits and interest in work.

3. The management and organisation of prison labour should be as much as possible like that of free labour, so far as that is at present developed, in accordance with the principles of human dignity. Only thus can prison labour give useful social and economic results : these factors will at the same time increase the moral benefits of prison labour.

4. Employers and labour organisations should be persuaded not to fear competition from prison labour, but unfair competition must be avoided.

5. Prisoners should be eligible for compensation for industrial accidents and disease in accordance with the laws of their country. Consideration should be given to allowing prisoners to participate to the greatest practicable extent in any social insurance schemes in force in their countries.

6. Prisoners should receive a wage. The Congress is aware of the practical difficulties inherent in a system of paying wages calculated according to the same norms that obtain outside the prison. Nevertheless, the Congress recommends that such a system be applied to the greatest possible extent. From this wage there might be deducted a reasonble sum for the maintenance of the prisoner, the cost of maintaining his family, and, if possible, an indemnity payable to the victims of his offence.

7. For young offenders in particular, prison labour should aim primarily at teaching them a trade. The trades should be sufficiently varied to enable them to be adapted to the educational standards, aptitudes and inclinations of the prisoners.

8. Outside working hours, the prisoner should be able to devote himself not only to cultural and physical exercises, but also to hobbies.

The principles accepted by the Hague Congress were fully discussed, on the basis of a large number of papers prepared in advance by experts, and therefore they should not be considered by administrators or officials as representing a very high and impossible ideal : they were formulated by Governors and Directors of Prisons, who were fully aware of all the practical problems of prison administration.

There is not need to go here into a thorough description of the various forms of prison labour in our South Africa prisons. In these Newsletters a few articles have already dealt with the subject, and in our last issue we gave a full account of the development of non-European labour training at Leeuwkop. There are phases of our conditions which compare very favourably with overseas institutions, and great efforts are being made at the present time to develop such institutions as Leeuwkop, Pollsmore, etc., but there is a pressing need for an implementation of the Lansdown Commission's recommendations as regards vocational training and the education of prisoners. One point is, above all, important : As the Department of Prisons is now engaged in the development of Leeuwkop and similar farm prisons, it seems that, for these institutions, a really effective machinery should be created for the time of release of trained prisoners : the Department of Labour should assist, and also the Department of Agriculture, in co-operating with the Department of Prisons, to create a recognised apprenticeship and qualification, and in seeing to it that, when one of the trained prisoners is released, he goes straight from the farm prison

to a job prepared for him. The same machinery should be created in all important prisons, so that no man be released on the street, with no adequate means of living, unable to find employment, and driven by loneliness, hopelessness and frustration, back into crime. The planning of prison labour towards the end of real qualifications for outside employment is a sine qua non condition of success. The Lansdown Commission very clearly pointed out that our whole system cracks at the point of release. This is not the fault of the noble efforts of those who help the prisoners at that time. This is the result of a completely erroneous conception of prison labour.

We fully appreciate the value of the efforts made by the Department of Prisons at the present time, and hope that it will go forward with its plans, but we feel that for such plans to be a real success, it is necessary that prison labour be devised by the Department in close co-operation with the Departments mainly concerned with labour, so that a true apprenticeship for industry may be given, and ready employment found on release in industry, and so that skilled agricultural training may be given, fully recognised by the State, and providing for the farmers those competent agricultural labourers which are so badly needed, and which would readily find employment, were they available. What has always shocked those who have worked for a long time with prisoners, is the fact that so little thought is given to training prisoners for the return to normal life outside, and qualifying them completely and specifically for a job. One of the reasons one objects so much to the hiring-out of prison labour is precisely the fact that so little specific training is available, while prisoners are working for private employers: and this holds good for local authorities and Government Departments and concerns, like the Railways. It is with the hope that the necessary co-operation between the various Departments interested will be established that we close this article, fully aware that unless this is done, the point of release will remain the point at which the efforts of years within prisons to re-adapt a man and rehabilitate him will fail again, in spite of all the praiseworthy efforts of those who try, often in vain and frustrated, to bring a helping hand at that critical time.

III. JUDICIAL CRITICISM OF LEGISLATION

The Penal Reform League acknowldeges with sincere gratitude the permission given by Advocate G. A. Mulligan, Q.C., and the Editor of the S.A. Law Journal, February, 1953, to reproduce the general trend of thought of a valuable article on the above subject:

Quoting firstly from the report of proceedings at the annual congress of the Free State Nationalist Party, the article gives the words of the Minister of Justice, expressing his own views of recent judicial criticism of legislation; then it quotes the Judgments themselves. Firstly a Judgment by Mr. Justice Blackwell in the matter of Rex vs. Jim Ndhlovu (29th August, 1952), in which the Judge indicates clearly the difficulties that reviewing judges have felt in dealing with the new law (Criminal Sentences Amendments Act, No. 33 of 1952) which makes flogging compulsory in the case of first offences for certain classes of crime, one of which is housebreaking and theft. Mr. Justice Blackwell asked two of his Brother Judges to keep a note of the flogging cases which came before them during a week, and it was established that, "for the three judges who kept a record, the figures came to 139 non-Europeans and 5 Europeans, of whom 72 non-Europeans were sentenced to receive in all 381 strokes. That is for two or three days in this week only. "I think it should be known that one of the

effects of this new law is that more than fifty per cent of the persons whose cases come before us on review for all classes of offences — everything that is reviewable — are flogged and that the average number of stokes they receive is between five and six."

In the second Judgment, Mr. Justice Hall at Beaufort West, dealt with the same law, and when passing sentence on three non-Europeans found guilty of housebreaking and theft, he explained the meaning of the new Act No. 33 of 1952, under which the Court had no option but to sentence the accused to indeterminate sentences and declare them habitual criminals.

The men before the Court were Vincent Snyman (21), Jerry James (22) and Ernest Sauls (21).

"You are very young and have never been in jail before, except Jerry James, who has been in a reformatory," said Mr. Justice Hall. "An indeterminate sentence means a minimum of seven and perhaps ten years in jail. In this case I regard this Act as unreasonable, but I must act according to the law. If I had to decide on sentence I would not have sentenced you to more than a year's imprisonment with hard labour. This is the first time you have come before a judge, and according to the law I must declare you habitual criminals and give you an indeterminate sentence."

"The Minister's reaction to the judges' criticism of the Act raises an important and interesting question, namely, whether it is proper for judges to criticize Acts of Parliament. One can well conceive the resentment against such criticism on the part of a hard-worked Minister who has successfully piloted the Act through Parliament. He has invited no criticism from the judges, and their duty, in his view, is merely to interpret and administer the law. The temptation of a Minister, endowed with great self-confidence, to say *Hoc voloesic jubeo, sit pro ratione voluntas,* may well be irresistible. On the other hand, looking at the matter from the judges' point of view, they, by administering the Act, are placed in an exceptionally good position for forming an opinion of its practicability. Therefore where they are satisfied that it suffers from defects making it unserviceable for the purpose for which it was enacted, they may well feel that a failure on their part to draw attention to those defects, would be a dereliction of duty."

The article goes on to quote from Sir Alfred Denning, Lord Justice of Appeal, in the Canadian Bar Review, on this subject, and the following words seem especially important:

"The true principle, as I understand it, is that judges are entitled to make responsible comments or suggestions on the way in which Acts work, if it appears to them necessary to do so in the public interest. This applies not only in respect of enactments in ancient times but also in respect of enactments in modern times, subject to the qualification that judges must never comment in disparaging terms on the policy of Parliament, for that would be to cast reflections on the wisdom of Parliament and would be inconsistent with the confidence and respect which should subsist between Parliament and the judges. Just as members of Parliament must not cast reflections on the judges, so judges must not cast reflections on the conduct of Parliament. If everyone observes these rules, there will be no conflict."

In a judgment by Mr. Judge Searle (van Zyl and Watermeyer J.J., concurring) (1925 C.P.D.20) a not very dissimilar view is expressed:

"In my opinion the functions of the judiciary with regard to criticism of legislation should be most carefully and most sparingly exercised. It is the duty of the judges to interpret the law as they find it, not to question its suitability. . . . Where a policy has clearly been enunciated and plainly carried out in the Act of Parliament, judges should be very slow in expressing their personal views as to the wisdom or the advisability of the course which Parliament has prescribed. But I do not consider it out of place to make reference to the grave dangers which may arise to the liberty of the subject if persons are dealt with in this informal way, contrary to the well-established principles which have been laid down for criminal trials, and if they can be sent for long periods of detention to penal institutions, where they may be subject to all sorts of discipline,

such as solitary confinement, spare diet and the like, at the order of the warder as well as the magistrate, when their cases neither come before any judicial court (in the ordinary sense of the term) in the first instance, nor for review by any superior court. . . ."

"The moral to be drawn from the aforegoing seems to be that while judges should be sparing of their criticism of Acts of Parliament, they ought not, on the other hand, to be muzzled by a rule restricting them to mere interpretation and administration of the law. In the exercise of their functions they learn an Act's shortcomings and how, though framed with the best intentions, it may fail to achieve its purpose and may even work great injustice. Criticism from judges ought therefore, it is submitted, to be welcomed rather than decried. . . . Neither Mr. Justice Blackwell nor Mr. Justice Hall seems to have transgressed the limits of permissible judicial criticism. Mr. Justice Blackwell was surely right in making known how large a proportion of punishments for serious offences whipping had become, and in showing that to make whipping a compulsory punishment, irrespective of the circumstances of the case, can lead to grave injustice. Mr. Justice Hall would surely have been failing in his duty if he had not drawn attention to the fact that the Act as it stands compelled him to pass the terrible indeterminate sentence upon very young men whom otherwise he would have sentenced at most to one year imprisonment."

(Sgd.) G. A. MULLIGAN, Q.C.,
Member of the Johannesburg Bar.

IV. NEWS OF THE LEAGUE AND OTHERS

1. It is with much pleasure that we are informed that **Mr. John Kidman**, the former Secretary and Founder of the Canadian Penal Association has been elected **Honorary President** of the Association. Mr. Kidman is now a member of our League and sends us from time to time very valuable news of the penal reform developments in Canada. We congratulate Mr. Kidman for the honour conferred upon him and publish with appreciation the following Note on :

American and Canadian Penal and Prison Associations

"Fraternisation in penal reform and welfare activities on behalf of the criminal and the delinquent will be in evidence next October when the **Annual Congress of Correction**, sponsored by the American Prison Association will be held in the city of **Toronto**, Canada, with the Canadian Penal Association acting as a host, Headquarters of which are now in that city, though the C.P.A. was launched in Montreal, Que., seventeen years ago. Marking that event in anticipation, the American body has elected Major-General R. B. Gibson, Commissioner of Penitentiaries, Canada, as President of the American Prison Association for this year. General Gibson, who held a responsible position overseas during the last war, has carried out the reforms in the Canadian Prison system outlined in the Archambault Royal Commission, and he remains as head of the permanent Prison Commission which superseded the old Penitentiaries Branch of the Department of Justice, Otawa.

"It is not the first time that the American Annual Congress has been held in Toronto. The writer was associated in the programme for such a meeting in the year 1929, when the Canadian Penal body did not exist, though the Montreal Prisoners' Welfare Association had a national committee which was absorbed later by the C.P.A. Naturally the two countries, the U.S.A. and Canada, cannot interfere with each other's Justice systems, but they can co-operate in devising new methods of treatment. The U.S.A. has developed new policies and treatments throughout the years. Cynics may point to the prisons outbreaks that occur now and then, as they do also in Canada ; but it will be noted by careful observers that such riots are generally due to a small grievance, often personal, rather than touching a broad issue. South Africa

has been content to follow the British lead in penal affairs — halting in the rear at times — but I must confess that I would like to see the organiser of the Penal Reform League going as a delegate to this congress of two nations in North America whose combined populations are over one hundred and eighty million. These Americans are most friendly to ex-territorial delegates and such gatherings afford the delegate the opportunity of meeting leaders. In both countries officialdom co-operates rather than stands at a distance. Invitations would doubtless be extended to visit outstanding institutions such as Sing-Sing, near New York, etc. Moreover, if South Africa were to send a delegate, the opportunity would be given to correct some wrong conceptions of conditions and attitudes in this section of the globe."

(Sgd.) JOHN KIDMAN, 4 Kotze St.,
Cape Town, 27th January, 1953.

We thank our old friend for this letter and hope that the difficult financial situation of our League will so improve that such plans as his may be considered. Relating how, forty years ago he came to devote his life to penal and prison reform, John Kidman tells of a case which so obviously needed free legal aid, that he became convinced "that it was better to save one man from prison than to help three men emerging from prison." One could not better describe the spirit of our efforts.

2. The Hon. Mr. Justice J. Herbstein sends us the two following interesting quotations:

(i) "Crime is not merely an individual failing. It is a social evil aggravated by every disturbance to the stability of the physical and ethical foundations of the community. To-day the criminal court has two prime functions: (1) to secure public safety and (2) to affect the offender in the manner which is most likely to ensure his rehabilitation. The fact that the criminal has failed in his duty to society is no justification for society failing in its duty to him."
G. Elbst, in "Obiter" (L.S.E. Magazine) No. 1, Vol. 1952/53 p. 13, 14.

(ii) **Return to Flogging?** The **Economist** (January 24th, 1953) dealing with a possibility of such return, which has since been significantly averted by a clear vote of the British Parliament, wrote:

"Opponents of corporal punishment agree with its supporters in deploring the big increase in crimes of violence since the war — while also pointing out that those crimes that were floggable before 1948 have declined. But they maintain that the best way to deal with crime is to prevent it, by insisting on a stronger police force, and where it cannot be prevented to remove the worst criminals from society for a long time. Fundamentally, however, the question of corporal punishment, like that of capital punishment, is decided by most people emotionally and instinctively. There are those — the Lord Chief Justice is evidently among them — who feel that people who do violence to others should have violence done to them by an outraged society. There are others — and The Economist is among them — who feel that the judicial infliction of corporal punishment, with all its attendant publicity, is primitive and degrading, and can only do harm to the society in whose name it is carried out."

In that context, it is important to give the following figures published by **the Howard League**, and which prove that since the abolition of corporal punishment, robbery with violence and armed robbery, and the much publicised "coshing" **have decreased.** These figures are given by the Lord Chancellor and the Home Secretary:

Crimes known to the Police

Before Abolition		After Abolition	
1946	804	1949	860
1947	842	1950	812
1948	978	1951	633
		1952 1st half	359

As the Howard League puts it:

"Corporal punishment is no answer to violence. It has long since been abolished in practically every civilised country in the world outside the British Commonwealth of Nations. Long prison sentences will protect society as effectively, if not more so. Those whose aggressiveness is an abnormal

character should be sent to a special maximum security institution, the need of which has long been recognized by the Home Secretary and the Prison Commission and which should be established without further delay."

One is grateful that the British Parliament has refused to return to flogging, but all the more distressed that, owing to the recent legislation which has drastically imposed flogging on our Courts, the brutalisation of flogged and floggers goes on in our land, and that our Magistrates Courts and our Prisons in the major centres of the Union are the scenes of so many daily floggings that once the statistics become available, the informed and intelligent public will be shocked, and ashamed to learn what our present practice is. As we often pointed out, modern views are that every case needs to be attended to according to its own merits; and what may stop a violent juvenile from entering a career of crime may harden an adult beyond any possible rehabilitation.

3. The Organiser of the League has completed a **tour of the Eastern Province** (Lovedale, Fort Hare and Alice, Rhodes University and Port Elizabeth), **and Bloemfontein**, during which he addressed 16 public meetings and held 5 church services. It is hoped that, following this effort, the Port Elizabeth Branch of our League will be revived, a nucleus of members may be created in Bloemfontein, and that interest in the League has been generally stimulated. Useful contact has been established with the National Headquarters of the National Council of Women, and the Organiser of the League wishes to express his gratitude for the way in which his efforts have been facilitated by the help of the N.C.W. Branches at Port Elizabeth and Bloemfontein.

4. The International Society of Criminology sends us a copy of the **Resolutions passed by the Non-Governmental Organisations** of the U.N.O., on the **Teaching of Criminology**, at a meeting held in Geneva from 8th to 18th December, 1952.

A long preamble notes the increased urgency of such a teaching because of the change in policies and institutional methods concerning crime prevention and the treatment of delinquents; the training of magistrates and all judicial personnel, especially of medical, police and penitentiary experts is now recommended; the training of the new experts like psychologists, social workers, etc., is also essential. As criminological science is necessary for the study and the solution of the problems of criminal law and procedure, the following resolution was passed:

"1. That Universities, on the basis of local traditions, possibilities and expert personnel, should organise a teaching of criminology and criminological subjects;

2. that this teaching should be compulsory for all those who intend to become professional magistrates or para-judicial experts, as described in the preamble;

3. that this teaching should pay special attention to practcial and clinical training."

The Assembly recommends:

"that the U.N.O., whose action is so beneficial in the field of crime prevention and the treatment of delinquents, should call the Governments' attention to this resolution and to the great urgency of its consideration."

In the Union of South Africa, the University of Pretoria has already started such teaching, and the Lecturer who is a member of the Executive Committee of the League, has just presented to that University a thesis on **Recidivism**, which has been accepted and has brought the author a welcome "cum laude". He is Dr. H. J. Venter, who will have in front of him, we hope, a number of years, to develop such teaching, on the basis of his study which covered five years of intensive and individualised research at the Central Prison, Pretoria. We hope soon to give our readers a general idea of Dr. Ventre's thesis, and in the meantime offer him our most sincere congratulations.

The University of South Africa also contemplates the teaching of criminology in a three years course. Many of our Universities would like to do likewise, but state that they cannot do so for lack of funds.

V. REVIEWS AND BOOKS

So much important development is taking place in our field that it is impossible to keep our readers fully informed ; in the present list of recent articles and books, we have had to pick and choose and have done so to the best of our own ability and information :

(i) **JOURNAL OF CRIMINAL LAW, CRIMINOLOGY AND POLICE SCIENCE :** Vol. 43 No. 1 and Vol. 2, U.S.A. Note the two articles on **Sex Offences,** by Karpman and Guttmacher and Weihofen. In Vol. 4, **" Protecting the Child in Juvenile Court,"** by Sol Rubin.

(ii) In **"Rassegna di Studi Penitenziari "** (Anno ii Fasc. v) a good summing up of **" I problemi attuali della criminologia "** by Jean Pinatel.

(iii) In **"Revue de CRIMINOLOGIE et de POLICE TECHNIQUE,"** Genève. Vol. vi No. 4. **" Linsémination artificielle "** by J. Strahl; " L'examen médico-psychologique et social des mineurs délinquants," by J. Chazal ; **" Vers la peine unique "** by A. Luisier ; etc.

(iv) **" La défense contre le Crime,"** by Dr. Edmond Locard. Payot. **Paris.** 1951, pp 152. The Director of the Police Science Laboratory of Lyons, France, describes in this book the growing dangers to society of a constantly increasing criminality. He studies the 'milieu', the criminals of the IVth Republic, the poisoners. the drug addicts, the cut-throats, the thieves, the crooks, the forgers, the stranglers, the crimes of insanes, crimes without cause, crimes suggested, criminal passions, abortions, etc.

VI. SOCIAL DEFENCE

The last number of the " Revue Internationale de DÉFENSE SOCIALE " gives a most interesting account of a special preparatory session to the Third Congress of Social Defence, which was held at Caracas (Venezuela) from 6th to 11th October, 1952. The International Movement for Social Defence is taking such proportions that it is most important that all the members of our League, and especially those who intend taking part in our Third National Conference in September, should become acquainted with the main trends of that movement.

(i) In his **inaugural address,** the President of the International Society of Social Defence, Professor Filippo Grammatica, stated that **Social Defence intends to supersede the age-old criminal Law.** It postulates a reconstruction of the three phases, of social action against offenders : firstly **observation,** a phase in which proper investigation of the personality of the offender will be carried out; secondly, the **passing of sentence** or judgment, which will establish the subjective nature of the anti-social behaviour of the accused; and thirdly, the **carrying out of the sentence,** which will consist of the application of preventive, educative and curative measures, followed by measures of precaution, and further measures tending to improve the individual. Social Defence is not only a juridical doctrine, but an entirely new social conception, in contradistinction to criminal law which tends to repress through penalties the individual reactions to the Law, and nothing else. Beyond the Law, there exists the rationality of Law, and this rationality often had the better of the postulates of ethics (lit: moral conscience) and sometimes took no account of certain human and social injustices. The whole field of prevention opens to Social Defence the deeper study of better social and economic structures. Law may prohibit; but there is a necessity for human understanding, for the offender's rehabilitation and for sparing sufferings of innocent persons. Think with awe of the children, who at this very moment, in the whole world, are told by their mother : " They have arrested Father. To-day we have nothing to eat." Social Defence intends to think of this and to obviate it : it is no pure legal process ; it leads to deep structural changes. Social Defence intends to substitute for the objective principle of responsibility for the acts committed (moral responsibility of the classics, or legal and material responsibility of the positive school) the principle of " anti-sociality" (a word which covers the English expression ' anti-social behaviour '), which is considered as a purely subjective value. All this is by no means pure theory : Social Defence advocates **the abolition of present penalties,** which do not answer any more the modern conception of the State, not the rights of man. We firstly abolish the death penalty, either in peace of in war, because man does not change, and exists as

a rational being, above war or peace. The abolition of penalties, leads Social Defence to a radical overhaul of the present penitentiary systems. We know the studies made in many parts of the world, but they are only experiments and exceptions in the old penal penitentiary system. No measure will be taken which does not answer a subjective necessity.

Professor Grammatica shows then that this new conception will bring great changes in the "trial," which will require the collaboration of experts (psychologists, social workers, etc.).

The Session followed the plan indicated, and studied Observation on the basis of an extensive paper by Professor J. A. Mendez, of Caracas; Judgment, following a paper by Prof. Dr. F. S. Angulo Ariza, also from Venezuela; and thirdly, the carrying out of the sentence, whose discussion was opened by a paper by Prof. Dr. J. R. Mendoza of Caracas.

The General Assembly passed a number of resolutions on the three phases of the subject, and among them it is interesting to mention especially the following points:

1. **Observation.** The basis of any effective system of social defence is knowing the man who must be judged. Observation must be carried out by experts in the sciences of man, who study the individual, the family and society, always under the direction of the judge. Observation must scrutinize the past human history, the present medical, psychological and social condition, and the anti-social character of the accused.

2. **Judgment.** A judge shall only consider the personality of the accused after the facts have been established, and the decision as regards the person and the facts must be entrusted to the one and same judicial authority; the experts shall be the assessors of the judge; but the final decision shall always be the judge's privilege. The decision on the social measure taken must not be irrevocable, but must be modifiable according to the needs and conditions of the person, with a view to obtaining the best possible social result.

3. **Carrying out of the sentence.** This was divided into two parts: **Long term policy:** a rejection of the dual system "penalties — security measures" and adoption of a unified system of socail defence measures Progressive replacing of present institutions by the specific institutions needed. **Short term policy.** If the idea of responsibility is maintained, the idea of "perilousness" (italian 'pericolosita'), or the dangerous state of the accused must be considered, etc.

It will be readily seen by all our readers that the development of the International Movement for Social Defence presents a number of challenging thoughts to us and may, in certain directions, provide unexpected and valuable solutions for hitherto unsolved human problems.

After discussing the influence of the press on the incidence of crime, and showing that it may have been exaggerated, **Dr. E. Locard** goes on:

"I believe that the dangers of the bioscope are much greater. Not that it would be able to determine a criminal career; but I know quite definitely that a number of malefactors, and not of the least dangerous, have found in it deplorable advices. Often the Police have seen, in far too real cases, methods of aggression or of robbery which movies had screened in the preceding week. American serial films especially have had a 'disturbing influence'."

("La Défense contre le Crime." p. 9.)

MEMBERSHIP FEES.

Life Members: £25.

Donor Members: Not less than £10 10s. 0d. per annum.

Organisation: Not less than £10 10s. 0d. per annum. (Organisations having a substantial membership of Non-Europeans, not less than £3 3s. 0d. per annum.)

Individual Members: Not less than £1 1s. 0d. per annum. Non-European members, 10s. 6d. (Associate members, not less than 5s. per annum.)

THE PUBLICATIONS prepared by the League will be sent to members free of charge. Associate members receive the Newsletter free of charge.

Will all Members of the League notify Headquarters about change of addresses — and will those who realize the importance of our efforts help us to find additional support, please.

THE PENAL REFORM LEAGUE OF SOUTH AFRICA was officially created on November 1st 1946. Its objects are: THE PREVENTION OF CRIME and THE RIGHT TREATMENT OF DELINQUENTS.

THE LEAGUE SEEKS TO ORGANISE PUBLIC OPINION AND CO-ORDINATE THE EFFORTS OF ALL PEOPLE OF GOODWILL TOWARDS PENAL REFORM.

THE LEAGUE seeks to promote investigation into THE CAUSES OF CRIME, THE MEANS OF PREVENTION OF CRIME, and THE METHODS OF TREATMENT OF OFFENDERS.

THE LEAGUE urges greater use by the Courts of remedial and rehabilitative measures in the place of imprisonment, and the removal of all petty offenders from Prisons. In South Africa, where 94 per cent. of admissions into Prisons is for sentences of six months or under, the urgency of this work cannot be over-emphasized; the League demands the abolition of racial discrimination resulting in unequal sentences;

The League suggests improvements in Prisons and Institutions Regulations and the abolition of unscientific methods of treatment; the League takes every opportunity to press for reforms in our Courts, our Reformatories, Work Colonies, and Penitentiary Institutions, and advocates the removal of Prisons from the Cities and their replacement by diversified and classified Institutions in the Country; the League informs public opinion, urges intensification and co-ordination of all efforts towards Penal Reform, co-operates with all agencies and State Departments in the organisation of proper consultation and co-ordination of efforts.

THE LEAGUE IS YOUR BUSINESS — TAKE A HAND IN IT NOW.

For full particulars of the programme of the League write to:

THE ORGANISER, PENAL REFORM LEAGUE OF S.A.,
25, Victoria Street, Waterkloof, Pretoria.

CAXTON PRETORIA — 6475

PRICE 2/-

PENAL REFORM PAMPHLET No. 7

Issued as
NEWSLETTER No. 26.
JULY, 1953.

Penal Reform News

CRIME PUNISHMENT AND CORRECTION

A booklet prepared for a Conference to be held at the Witwatersrand University from September 22nd to 24th, 1953

by

HENRI PHILIPPE JUNOD

with the help and on behalf of

The Executive Committee of the Penal Reform League of South Africa

Issued by

THE PENAL REFORM LEAGUE OF SOUTH AFRICA

P.O. BOX 1385, PRETORIA.

Obtainable also from

VAN SCHAIK BOOKSTORE — CHURCH STREET — PRETORIA

Pretoria, July, 1953.

"Is the crime of delinquency of a Chicago slum in the 1920's to be viewed as a necessary part of a process in which slums will finally be, torn down because they are socially too costly and replaced by places humanly habitable? If so, it is about as 'pathological' as the baby's cry that tells us he is hungry and needs to be fed. Or is the delinquency a sign, on the contrary, that life in large cities is inimical to personality organisation and social organisation alike, and therefore either itself pathology or the evidence of it?

"None of us, I think, knows the answer. The important point is that, except after the event, it is difficult to distinguish disorganisation from reorganisation. Even where the distinction can be made, it is often easy to distinguish in a particular case (for instance, this patient) but not in general; or in general but not in any particular case."

John R. Selley in "Social Values, the Mental Health Movement and Mental Health" (The ANNALS, U.S.A., March, 1953)

CONTENTS

FOREWORD

This booklet is issued by the Penal Reform League of South Africa with a view to providing a basis for information of all those who will take part in a Conference on CRIME, PUNISHMENT AND CORRECTION, to be held at the Witwatersrand University from 22nd-24th September, 1953. It is sent free of charge to the members of the League, and to others who desire to take part in the Conference for 2/2, if they apply to the Headquarters of the League, P.O. Box 1385, PRETORIA.

The National Organiser of the League is responsible for the full presentation of this booklet, which does not necessarily express the considered opinion of all members of the League. A first draft was sent to a large number of persons who readily contributed valuable material and suggestions for the final draft now printed. It would be invidious to name them all, but the League wishes to express its appreciation to Father O. Clark, Major F. Rodseth and Magistrate F. Harvey, who examined the first draft with the writer. A special mention must be made of the valuable help given by Prof. L. I. Rabinowitz (the Chief Rabbi), by Dr. Louis van Schalkwyk, by Mr. Victor Verster, Director of Prisons, by members of the Supreme Bench and last, but not least, by the Secretary of the League, Mrs. C. M. Pollock, Attorney-at-Law, who accomplished the difficult task of presenting in English the Latin turn of mind of the writer.

A full report of the Conference itself will be prepared, and it is hoped that that document will help in furthering the work of the Lansdown Commission, and in establishing the main lines of the activity of the Penal Reform League of South Africa in the future. Our thanks also go to those members of the Social Services Association who gave us the benefit of their remarks.

H. P. JUNOD.

Pretoria, 9th June, 1953.

The Penal Reform League of South Africa

PUNISHMENT AND CORRECTION

I. INTRODUCTION

1. Is there a PENOLOGY?

Our time is one in which the very foundations of civilisation are tested to the full, and the principles of social action against offenders are at present submitted to the most searching criticism. This is natural in view of the disconcerting inconsistency we find in history in the planning, the administration and execution of the measures taken by the community against evil-doers. "Homo sapiens" has shown a lamentable lack of wisdom in these matters. He has obeyed his instincts without applying much logic or reason in his actions. From the most repulsive, cruel and sadistic penalties, he has gone to the other extremes of sentimentality and "laissez-faire." At a time when atomic fission has opened a new era of human life, it was only natural that the apparently most solid and well established principles should be exploded, in a field where these principles have been tried by generations, and found wanting. Therefore, the question may be asked: Is there a Penology? Can there be a Science of Penalties or Punishments? Do we not delude ourselves when we use such a word? Is there not a contradiction in the word itself, as there seems to be no logic in the infliction of pain, suffering or loss?

It will be the aim of this booklet to attempt a possible answer to this question: not an individual answer only, but the answer of those persons and bodies which have created the Penal Reform League of South Africa and others who, with us, have been so conscious of the loose thinking behind so much of our social action against offenders, that they have started questioning the wisdom of hitherto accepted principles in this matter. Such a task is in many respects an impossible challenge. Firstly, it is one in which unanimity is beyond our reach. Then, the complexity of the problem and the infinite number of factors and facts to be considered, not to say within the scope of a limited knowledge, are beyond the reach of even fully trained minds, because they require, for their adequate understanding, all the resources of theology, philosophy, the law, sociology, psychology and psychiatry, the science of government, etc. — in one word, a knowledge of all the disciplines which the French so aptly call "les Sciences de l'Homme," the Sciences concerning Man. Moreover, so many brilliant minds have tackled the question that it may be regarded as partaking of superorogation to undertake such a task, in which even they have not been able to achieve conspicuous success. Nevertheless, the need for clear thinking is so evident, and the co-operation of many in this effort

(among whom we gratefully count members of the Lansdown Commission on Penal and Prison Reform) is such proof of the timeliness of a collective considered study of the problem, that it may prove of value, especially in view of the praiseworthy measures taken by the administration in prison reform at the present moment in the Union of South Africa. To all those who have received the first drafts of this booklet, and given us the benefit of their considered views, to Judges and Magistrates, to legislators and theologicians, to authors and social workers, we express here our gratitude. If they should find that their opinions have not been sufficiently taken into consideration, we would like to say that this paper will form only the basis for a much more valuable consultation of all those interested, in a **Conference on Punishment and Correction,** to be convened by the Penal Reform League in **September, 1953.** The material gathered here has had to be selective, and we do not for one moment think that it is exhaustive. As it is, we hope that in spite of many shortcomings, it will provide that indispensable information which will assist those who will answer our call and come together for a fuller review of the important aspects of a most fascinating and most essential question in our multi-racial South African Society.

2. A Short Review of the PRINCIPLES of SOCIAL ACTION against OFFENDERS in our CIVILISATION

This part of our subject is so vast, and touches so many phases of our modern conception of life, that, in order to be as succinct as possible, we limit our remarks to four main points: the Roman Catholic; the Reformed; the Jewish; and the Modern Theories of Punishment.

(a) **The Roman Catholic Standpoint:** The Roman Catholic Church has a definite teaching of her own on Crime and Punishment which provides every member of the Church with a clear and unmistakable set of principles, based on all the centuries of Christian thought on moral theology: the "clear sea-breeze" of this great tradition built through-out the ages of the Christian era is in itself awe-inspiring.

The first important teaching of the Church on our subject regards **human free will.** I quote from a fine description of the Catholic views from the Catholic Social Yearbook of 1926, in which the Rev. Francis Day, Catholic Chaplain to His Majesty's Prison, Brixton, writes under the title "The Community and the Criminal":

"By freedom of the will we mean the power of the will to be its own determinant and to originate action. A man is not equally free at all moments of his life, and no man is necessarily as free as another. Many actions are due to habit and there are pathological conditions such as insanity which impede or destroy the free character of human actions. Moreover confusion of thought also helps to reduce freedom and responsibility. Our wills are determined by the pursuit of happiness, and this may be differently conceived. The will may be compared to a vessel moving between two banks. She can sail where she will, but within limits. But in normal human beings, a conscious choice is possible between two actions. Therefore the great majority of criminals, could, if they had so chosen, have acted differently from the way in which they did act. Crime is thus a deliberate act contrary to those laws of the State which enforce or interpret the Natural Law — that Law which St. Paul tells us is written in our hearts."

The deliberate character of the act must, for practical purposes, be assumed, unless there is evidence, medical or otherwise, to the contrary. This, the Roman Catholic author remarks, is in strict opposition to a statement like the following one: "To the social

welfare the question of freedom is not of the slightest consequence" a quotation from Wines, in his book "State Prisons in the Civilised World," page 6. For the Roman Catholic, the ignoring and practical denial of free will means almost necessarily the advocacy of false theories about the method of dealing with crime.

The second point which follows is **the right,** and may be **the duty of the State to punish those who are guilty of crime,** as a deliberate act. This is the teaching of St. Paul, St. Thomas Aquinas, and of Aristotle before them, and is supported by the whole tradition of civilisation. Catholic thought is quite clear on the purpose of punishment, with its threefold aspects: retributive, deterrent and reformative. It is **retributive,** in that " it is inflicted on account of the act that has been done, which act must be atoned for, in order to satisfy the requirements of the Moral Order." The act is a fact, independent of the changes in the man's character. The criminal has been the cause of this act, and this act is liable to punishment even though the criminal may be entirely changed and penitent. The right of inflicting retributive punishment is the sole justification for the other purposes of punishment. " If punishment is never retributive, the human race in all countries and all ages has been the sport of a strange illusion." The universal urge for vengeance implies this justice of retributive punishment. Its exercise is forbidden to the individual, but lawfully satisfied through the action of legitimate authority. It is clear " that only in the case of Divine punishment can we be sure that the penalty is perfectly proportioned to the offence. For this reason, and also because the earthly ruler must have as his chief preoccupation the good of all his subjects, it would seem (notwithstanding what has already been stated) that the deterrent and reformative motives of punishment must be foremost in his mind. Indeed it is probable that human punishment can never be purely retributive." St. Thomas Aquinas writes " The punishments of this life are medicinal rather than retributive. For retribution is reserved to Divine Judgment which is pronounced against sinners according to Truth." The ruler may choose a form of punishment calculated to serve the two ends of reformation and deterrence, and he may, if he thinks well, in individual cases, dispense with punishment altogether. But the retributive element must always be present in fact, when punishment is inflicted, and as just a possibility even when it is remitted. No ruler has the right even to deter others from crime, and this is illustrated by the fact that there are many moral offences of which the State takes no cognizance, as for example, a man's being drunk in his own home. But given the right to punish the deliberate breaking of the law, on the principle of retribution, then it is within the competence of authority to punish for the two other motives mentioned.

Catholic thought thus opposes the view that the main object of punishment should be reformation. It considers that it is a "theory apriori " to say " that the law has no right to impose suffering on anyone merely because it is suffering, and because the sufferer has done wrong " and that " unless suffering is reformative in its effect, it has no justification," This is gratuitous and represents thought without the backing of authoritative tradition. It makes nonsense of the almost universally accepted principle that a heinous crime demands a severe penalty. Further, it leads to a sense of failure

in regard to the large number of criminals whose punishment and all other methods apparently fail to reform. In the " retributive " view, there has been no failure on the part of the State in those cases, if justice has been vindicated, and, at the same time, reasonable and conscientious efforts have been made to reform the offender. It is interesting to note here that the Latin " vindicatio " has no adequate satisfactory equivalent in English, as vengeance covers a set of quite different connotations.

We do not need to spend much time on the **deterrent** and **reformative** aspects of punishment, as these motives will be fully dealt with later on. The Roman Catholic view fully supports the great importance of these motives, but the specific originality of the Catholic view is in regard to retribution and we have given that aspect the place it deserves. Let us note that the Roman Catholic author reminds us that whatever may be the respective values of retribution, deterrence or reformation, " sometimes the fact is overlooked that **punishment in itself** may be reformative." In actual practice, the Church has always insisted on **correction** as the aim of punishment in the spiritual order, and has taught that the offender has incurred a **debt of punishment** : it has always granted forgiveness of the guilt when the sinner repents. For the Catholic, the proper treatment of the criminal should be concentrated on forming his will power rightly : the will must be trained to resist and conquer all temptations : and the full recognition by the Church of the grave importance of the impairment of the will by disease, or when responsibility is lessened because the understanding is clouded by delusions, or the will is fettered by irrational fears — that importance is fully recognised.

It seems also important to note here the Catholic view of capital punishment :—

" Capital punishment is the violent destruction of human life by legitimate authority, as an atonement for grievous crime and a means for the preservation of public order and security. The power of the sword is a definite right of the State. That the right to inflict the ' supreme penalty ' is inherent in the lawful authority cannot be denied without rashness by any Catholic. The universal consent of nations, not excepting those who do not themselves employ this method of punishment and the continuous tradition of the Church are in the same sense. Nevertheless, the State is not bound to exercise this right, and if it could be proved that this penalty does not achieve its purpose of deterrence, the instincts of humanity would be in favour of the suspension of its exercise, although the right to inflict it is quite inalienable from the competent authority. Moral theologians lay down three conditions for the just infliction of capital punishment, namely, that the crime committed must be grave, certain, and except in certain rare and extreme cases, judicially proved."

To sum up briefly : Catholic tradition and doctrine rest firmly on the ground of the retributive nature of punishment. St. Thomas Aquinas says that " it is of the nature of punishment that it should be contrary to the will " and therefore social action against the criminal means measures contrary to his will, inevitably hurting him, causing physical or mental pain, or both. This is inescapable as a logical consequence of sin, which is in itself pregnant with suffering. Deterrence and reformation only come within punishment as secondary objectives.

(b) **Reformed, or Calvinist Standpoint :** There is no substantial disagreement between the Catholic and the Calvinist views of punishment, but it is interesting for us, in South Africa, to come back to Jehan Calvin's word on the subject, as so much of our religious life is linked with him. In his Institutes, Calvin deals with

Civil Government in Book IV, Chapter xx, Paragraphs 9 and 10, and we translate directly from the original French edition :—

"Justice is to receive and safeguard the innocents, to maintain, defend, support and deliver them. Judgment means the resistance to the effrontry of the wicked, to repress their violence and punish their misdemeanours. Peoples and nations curse the one who says to the wicked 'Thou are Just' (Proverbs xvii, 44). Therefore the true Justice of Magistrates is to prosecute the wicked with open sword. If they wish to refrain from all severity and keep their hands free from blood, while the swords of the wicked are unsheathed for murder and violence, they would be guilty of grave injustice, and far from being worthy of praise for their justice or kindness. Nevertheless I mean with this that no too great nor harsh severity should be mixed with it, so that no Judge's Bench should already be a risen gallows, for I would not be the one who would favour any disordered cruelty, nor would I say that a just sentence may be passed without mercy. A Magistrate must take care that he avoids two things : the first is that, through disordered severity, he should wound more than he heals : the second is that, through mad or superstitious conceit of leniency, he should be cruel in his humaneness, neglect all things by sheer complacency, to the great damn of many. The result of this has been stated often, not without reason, and that is that it is bad to live under a Prince under whom nothing is allowed : but that it is much worse to live under one who allows everything through utter neglect."

For Calvin, the Prince (that is authority) is the Minister of God "to honour those who do good, and to wreak vengeance of His anger against those who do evil." He has very strong words about those who would like all men to live in licence "as rats in the straw." To ignore retribution would be a denial of justice. It is interesting to note, however, that in the development of reformed Christianity during recent times, without an under estimation of the rights of Justice, one can see a greater emphasis on the ideas of forgiveness and mercy. Indeed, the very spiritual descendants of Calvin have erected in Champel, Geneva, a monument of expiation before God Almighty, for the execution by the reformer of Michel Servet.

In brief, Calvin upholds capital punishment and supports the principle of retribution, but he reproves disordered severity and cruelty as much as complacency and "laissez-faire." To those who may be tempted, as some of us are, to consider it evil to shed the blood of wrong-doers, Calvin in his commentary on Romans xiii, 4, gives the advice that "They should go and plead against God." Again here we may note that a perhaps deeper appreciation of this grave problem had led many reformed Christians to refuse the execution of a sentence of death, as an unthinkable act from their own Master and Lord, and therefore impossible to impose on a fellow-man or indeed to ask from him voluntarily, as a "tool of public convenience" — a great word of the great Montaigne.

* * * *

Behind both Catholic and Reformed traditions, one can see a very searching and exhaustive examination of the **problem of suffering and pain.** It would be beyond our purpose to describe this in detail; suffice it to say, that it is evident for Christian people as well as for Jews, Moslems and other believers, that suffering, retributive or vicarious, is within Divine purpose. The result of suffering has been well summed-up as follows :—

"Punishment and pain in general, far too frequently embitter the heart, turn it from its last end, and harden it in perversity. But if a man under suffering have the light and the grace to accept it, in submission, in resignation and with a closer movement to the bosom of our Heavenly Father, then, never has his love of that Father in Heaven been more thorough, more effective, and more intense." — (Bishop Hedley, "A Retreat" (1894, p. 163-165).

St. Paul puts this in a nutshell : " The pain God is allowed to guide ends in a saving repentance never to be regretted, whereas the world's pain ends in death " (II Corinthians vii, 10, Moffat's Translation).

(c) Jewish Thought and Attitudes.

(Written by the Chief Rabbi, Prof. L. I. Rabinowitz)

It is impossible to appreciate the Jewish attitude to Crime and Punishment without taking fully into account the remarkable development and subsequent arrested development of criminal law among Jews.

The authoritative code, the Bible, knew only five methods of punishment, Capital Punishment, flogging, the payment to the injured party of an amount in excess of the value of the thing of which he had been unlawfully deprived, the lex talionis for personal injury, and exile to the Cities of Refuge for homicide.

During the period of the Second Jewish Commonwealth, however, the Rabbis developed these laws progressively with a remarkable humanitarian approach. Capital Punishment was to all intents and purposes abolished, the lex talionis was converted into monetary compensation and the rudiments of a prison system were established.

It is impossible to decide how far this progressive and humanitarian interpretation would have gone, since it came to an abrupt end. About the year 30 the right of judging in offences involving capital punishment was taken away from the Jews by the Romans, and since according to Jewish law only properly ordained judges could inflict corporal punishment and fines, with the cessation of ordination about the 4th century, the whole system fell into desuetude. During the period of exile, a remarkable system of social sanctions, coupled with an extra-legal right to impose flogging were the sole deterrents and punishments applied to the wrong-doer.

The establishment of the State of Israel might theoretically have provided the basis for the re-establisment of a purely Jewish system of law, but so far the State has contented itself with taking over and amending the existing legislative system which it inherited from the Mandate, a remarkable hotch-potch of Ottoman Law, Roman Law and legislation by regulation.

It is impossible therefore to speak of an actual system of criminal law in practice. All that one can do is to give indications of well-authenticated attitudes.

Of these attitudes one of the most significant is the insistence that nothing must be done to degrade the criminal beyond the just punishment for his crime. The most extreme steps were taken to see that the dignity and the sense of the value of the individual soul, even of the criminal was maintained at its highest level. This consideration applied not only to the criminal during trial, and in the carrying out of the verdict, but in the humane method of capital punishment and the reverent disposal of the dead when capital punishment was in vogue.

The vigorous plea for the abolition of capital punishment which has by the way, been adopted in modern Israel, was equally vigorously countered by the emphatic expression of view by the President of the Sanhedrin that the purpose of punishment was its deterrent value, and the abolition of capital punishment would " increase shedders of blood in Israel." His view however did not prevail.

It should also be mentioned that Jewish criminal jurisprudence is emphatic on the point that the punishment must be regarded as a full and complete expiation of the offence which has been committed. The atonement value of the punishment is complete, and it was rigorously forbidden even to make mention to a person who had thus expiated his crime, of his original offence. Significantly enough the only exception is that in the view of the Rabbis a fine for assault on a person did not expiate the offence. They demanded that the assailant also seek the forgiveness of the injured party, since he had offended his human dignity.

As the criminal code of modern Israel develops on lines of Jewish tradition, all these attitudes are being gradually brought into practice, and it seems certain that the ultimate criminal code of Modern Israel will follow the most advanced and progressive ideas of criminal jurisprudence and the relation of man to society.

(d) **Modern Developments.** The massive and solid foundations of the principles generally accepted by our civilisation in the past, and which loom very large behind all our legal principles and practices, have been very seriously shaken in our time, and one may ask why an almost complete abandonment of their general spirit and tendency is noticeable, if not in social action as yet, at least in the modern theories at present being evolved. There are potent reasons for this change.

The first is that **in spite of the strong theological background of these principles,** in spite of the agreement they show with the universal instincts of the human race, which have been quite correctly appreciated by Catholic doctrine, **they have proved ineffective in practice,** in so far as they have been unable to check the development and the increase of crime to any considerable extent. Society has been protected only so long as the offender was kept behind high walls and iron bars: but in many cases, the problem put to the community by these offenders has been complicated, because the individual who duly received such so-called retributive, deterrent and at times reformative punishment, came out of prison a more hardened and confirmed criminal than when he went in. Recidivism threw its awesome shadow over a self-righteous community, as a frightening reminder that in man, the individual, society meets a reality which is bigger than itself, because, although societies and empires pass away, superseded by other societies and empires, the soul of man is geared towards a higher and different destination, beyond the control of any human agencies. Therefore theology, in giving the collectivity of men the right of retribution, has probably infringed the higher limits set by Providence to the State. It has perhaps too quickly accepted the Divine Word "Give Caesar what is Caesar's and give God what is God's", as a complete equivalence which in history has meant the justification by the Church of appalling wars between Christian nations, and which reformed Christianity has always endeavoured, often in vain, to qualify by pointing out that God's sovereignty is above all State authority. There is a limit to the rights of the community, and this is rendered crystal clear by the second reason for the change in the modern outlook.

This second reason is that **a development of sociological sciences has brought to light very clearly the hypocrisy of society**

itself in its easy acceptance of social conditions which are making for crime. The basic conditions of life imposed on millions of people, who have to struggle incessantly to keep body and soul together, the lamentable lack of adequate housing, the inadequate provision of basic goods which has bred malnutrition, the unscrupulous way in which crime and immorality have been allowed to be projected on the screen and presented on the stage, the criminal 'laissez-faire' which has allowed alcohol interests to pour their poison on unsophisticated communities and so-called fashionable circles, the insidious manner in which the press is left free to catch the ready imagination of young and old by the often outrageous and sadistic description of the most minute details of sexual and other violent crimes—all this and many other features of social life have made the self-righteous attitude of the community towards crime in the individual an easy target for the accusation of hypocrisy. The hand holding the whip was far from being pure and a true scientific approach to the problem could not miss the target. That there was a definite right for society to protect itself was never denied: but that society should be given the right to punish in a retributive manner became obviously hypocritical.

The third reason for the change came from **the development of the psychological sciences, psychology itself, psycho-analysis and its important discoveries in the realm of the unconscious and subconscious self, and psychiatry.** This development showed that many of the age-old assumptions of retributive, deterrent and reformative measures, on the stability of the mental state of the individual, even in normal persons, were not as fool-proof as was thought. An endeavour will be made later on in this paper, to give a short description of what psychological sciences have already indicated, as regards the problem of responsibility in the individual. At this stage, it is sufficient to note that the easy generalisations accepted by the law as regards crime and punishment have been proved to be seriously at fault. The effect of punishment upon the individual offender has been found to be, in many cases, entirely different from what it was supposed to be, even as regards normal human beings. It was found that the personality of the offender was the fundamental fact in the planning of measures to counteract crime, and that this personality is an infinitely variable factor.

A further very important reason for a departure from the past in modern theories is **the realisation that punishment does not concern the offender alone, but that the agency or the person inflicting punishment is almost as directly and deeply affected by the process as the person punished.** There is no need to develop this at length here. The fact is that the human personality of the punisher is very gravely implicated in the infliction of punishment, and this is true at all levels, at the level of sentence as well as at the level of carrying out the sentence, be that sentence one of imprisonment or one of whipping—where the prison personnel is concerned—or a sentence of death, in which case society tries to escape the moral issue under the cloak of the hypocritical anonimity of the punisher, who cannot, on the basis of an old understanding, be an ordinary warder in uniform. Science does not permit that silence be imposed on these grave questions, and therefore an age which has accepted a scientific approach to the facts of life was bound to bring all those facts into the light. The result has been a

formidable challenge of the accepted principles of the past, even those principles which were backed by the massive and solid impact of centuries of tradition.

The outcome of this modern re-examination of age-old principles has been that, although the mass of the people still obey the instinctive urges to vengeance and retribution, these urges have been proved to be ineffective because they gave no solution to the problem, and it may even be that in retributive punishment, 'the human race in all countries and all ages has been the sport of a strange illusion'. Nevertheless, no modern society has entirely discarded punishment in its treatment of criminals. Even quite recent statements by competent criminologists still reveal a certain uneasiness in that respect. The following quotation from a recent article on 'Criminal Law Developments in the Last Century' by A. J. Harne, in the 'American Journal of Criminal Law and Criminology' (Vol. xliii. No. 4 pp. 466-467, December 1951) is significant:—

"The criminal law is saturated with concepts that should be appraised—that should be re-evaluated in the light of present-day knowledge and understanding. It is founded on the doctrine of good and evil—on the doctrine that the individual is a free moral agent. It assumes that conduct can be measured and that human behaviour can be controlled, through the assessments of homeopathic penalties. In this scheme, punishment becomes an end. Punishment is the 'bête noire' of criminal law. It should not be ignored: it has a place in the scheme, but only as a part of a pattern of social control. The behaviour sciences stress treatment of offenders and some salutary moves involving such measures as probation, parole, the establishment of juvenile Courts, the introduction of prison reforms, etc. have been initiated under their development because of conditions that are imposed when penalties against offenders are assessed."

Even for an author who apparently considers as antiquated the doctrine of good and evil, and the doctrine of the free-agency of the individual, punishment 'should not be ignored, it has a place in the scheme'. What he means by punishment 'only as a part of a pattern of social control' is not quite clear. He says that we pass 'from a long era of a priori assumptions in the criminal law to one in which the premises of the law are based on research': he adds that the tendency is towards 'less emphasis on punishment for wrong-doing, and more on social control and protection'. But the remarkable development of modern thought on these grave matters, spectacular as it may appear to be, seems to show more insight into expediency than into the highest values of human life: and it seems also to accept a little too easily a new scientific determinism which atomizes all ethics.

The International Movement for Social Defence, started in Italy, and which now increases very rapidly in Europe and the Latin world generally, is trying to establish the foundations of a 'politique criminelle' a policy against crime, which will be a part of juridical and penal science, as an autonomous discipline. This science aims at developing the means of preventing and repressing crime. It is defined as a policy of 'Social Defence' and is distinct from legal and penal science, because Law cares only for 'what is', while Social Defence must look for 'what must be'. In this system, Justice, while based on a superior principle, is relative, as Law can only be relative. The history of punishment, it is said, shows an absence of philosophical principles for its justification. Born from raw private need for vengeance, it pretended to proceed from a higher principle and was imposed for that reason upon the legis-

lator. A policy of Social Defence should be based on the natural sciences: anthropology, philosophy, law, etc. It is a science and not only a technique or an art. It comes within the scope of the Science of Government under the special aspect of the juridical science. In a higher set-up, it is stated, it comes within the scope of Social Sciences. It aims at elaborating a series of preventive measures, at revising the principles of action against anti-social behaviour, at changing the present system of judicial intervention, by basing it on the morally justifiable grounds of social defence, which are scientifically proved: and it aims at perfecting legislative technique so as to bring the administration of the Law and the Law itself together. All this has led to the 'negation of the right to punish', and 'the duty to defend society'. I gratefully acknowledge my indebtedness for this clear exposition of the principles of Social Defence to the President of the International Society for Social Defence, Professor Filippo Grammatica, in his valuable article on 'Politica criminale e politica di difensa sociale' published in the 'Revue Internationale de Défense Sociale' (January-June 1952).

The logical Latin turn of mind has put the problem in a nutshell: The modern view comes to a negation of the right to punish, and to an emphasis of the duty to protect society. When we come to our own conclusions, it will be found that this standpoint is largely influencing our own views, without completely discarding the principles of the past, by the adoption of the principle of 'correction', the American name for that Department of State which deals with offenders, a word which seems to us to have the right and specific semantic connotations, because it does not ignore good and evil, nor the measure in which an offender is a free agent: but it takes into account the fact that retribution must be reserved, as St. Thomas Aquinas very profoundly remarks, for Divine Judgment, which is pronounced against sinners according to Truth. It sticks to the real fact that the punishments of this life, even those administered by society, are medicinal rather than retributive. When life is considered as a religious reality in which a living God plays the all important part, the clear sea-breeze of the past centuries cannot be easily forgotten without progressive suffocation or refrigeration as a result of modern scientific determinism. And in the word 'correction' we find something very much alike to the awe-inspiring educative process through which Divine Life revealed itself to humanity.

It should be borne in mind that, notwithstanding the growth of modern ideas, the weight and value of centuries of tradition have still a very great importance in our time. There is a modern expression of the traditional view, and exponents of this view claim as much attention as the new ideas of the 20th Century. It may well be that in the word "correction" an agreement of what is permanent, solid, ethical and progressive in tradition, and in modern theories, may be found.

3. NOTES on the VIEWS of the BANTU PEOPLE.

It is quite impossible to examine the question of punishment and crime in South Africa without giving attention to the views of the Bantu themselves on a subject which affects them even more than it does Europeans. A time may come when the two racial

groups are entirely separated, as is the wish of a large part of the European population, but the fact remains that, in the integrated multi-racial society in which we live at the present time, the views of the Bantu have a very great and grave importance. Some think that the relative primitiveness of their lives precludes the possibility of giving importance to ideas and principles evolved in social patterns already superseded, and that strong authority is all that is needed. But in these matters, the ignorance which prevails among Europeans does not excuse them for imposing a form of Justice which is often entirely misunderstood by the Bantu, owing to their view of life. It may be thought that there is no consistency nor any real philosophy of society behind primitive life. But this is only further proof of ignorance. That there was no fool-proof system and no coherent codification of familial, social or legal principles is true; but that one can easily find out a set of very definite ideas and principles behind the rules of community life which the Bantu observed is no less true, although there are immense differences of outlook between the various Bantu peoples. This is, of course, a subject in itself, and would need volumes to be adequately described. I would refer those readers who care to know more to my late Father's book on "The Life of a South African Tribe", to my own "Bantu Heritage", and to many important publications like "Reaction to Conquest" by Monica Wilson, or the works of I. Schapera. Here I only wish to stress one or two fundamental points:—

The emphasis of Bantu Justice is generally on **reconciliation,** on the amicable settlement of differences, on compensation for injury done; and we find very little in it about penalties or punishment. There is no stigma attached to one who is willing to restitute. The central conception of human relationships rests on **reciprocal obligations** which are required for the proper order of the community. Very little force is generally used to impose those obligations, on the one who breaks them. The fear of being put to shame is usually sufficient to prevent disorder. Repressive sanctions do exist, and are sometimes extremely harsh, but a penitent offender is almost immediately restored to his place in the community. When murder occurs, it is considered as witchcraft, generally. A murderer cannot in their view, be a normal man, and therefore (and the various tribes differ very much in the treatment given for murder) the general trend of practice is first compensation, through the replacement of the deceased by the gift of some other person to his family by the family of the murderer, and then, either capital punishment or banishment. Crime is more a breach of etiquette than a moral wrong.

It would be childish to idealise the old Bantu system of reciprocities to such an extent that one loses sight of the arbitrary measures which were often taken, on the basis of ideas of witchcraft or magic. In some tribes, like the Zulus, which were one of the most virile but least developed tribes as regards the finer aspects of human life, the value of life itself was very relative, and to this day, one can note striking differences between the Nguni people (Zulu, Xhosa, Swazi, Pondo etc.) and the Sotho or Shangaan people on that point. Murder is very much more prevalent among the Nguni than among the other Bantu people

of South Africa. In the old Bantu clan, as yet undisturbed by the militarisation of Chaka and others, there was a great deal of calm and peace, and whenever that peace was broken by crime, the whole effort was towards settlement and compensation, and not towards punishment; but it would be wrong to generalise further, because we find very fundamental differences between the various Bantu groups in that respect.

"Law" for the Sotho is "Malao" from the verb "laea", and for the Shangana-Tsonga "nawu" (a contraction for "molawu" or "molayo") from the verb "laya"—to correct, to reprimand, or order, and, only rarely, to punish. From the same root one finds "tao", the rule of discipline: "taeo", reprehension, scolding: "molaelo", order, instruction, prescription: "taelo", order, commandment etc. Law is thus that which means to correct, to reprimand.

"Law" for the Zulu and the Xhosa is "umthetho", but the word is used for a command issued by the Chief and for a judgment given in cases brought before a Court: there is no specific word for the body of rules enforced by a Court, while the whole body of rules regulating behaviour are, in Xhosa, "amasiko". "Umthetho" does not apply to the body of rules imposed by the Court. "Geza said 'It is an 'isiko' that a man should give cattle if he marries an unmarried pregnant girl. The number that he must give is an 'umthetho' of the Court.'" (Monica Wilson: "Reaction to Conquest", No. p. 413.)

The important point to remember is that, for the Bantu People, an individual who has proved anti-social is not ostracized: he is under social stigma, but is not cast out. Except in very rare and extreme cases, where he is thought to be a "witch", no drastic action is generally taken. And even though litigation was one of the favourite pastimes of the people, the technicalities of western law were entirely foreign to them. They had no exact equivalent for "crime". Reconciliation, return to social peace by compromise and compensation were the essence of their effort.

In African Native Life, there was nothing like a prison: to separate a man from society was unknown except when dangerous madness had seized him and he was put in the African stocks.

I saw that with my own eyes at Chilembeni, in Portuguese East Africa, imposed upon a venerable Bantu Christian, Jona Kambaku, who had been the victim of one of these strange spiritual possessions, which I described in the review "Africa" (Vol. vii, No. 3, July, 1934), and had become very dangerous. His people had immobilised him in the "khotso" or "rikhotso"—the heavy trunk of a tree, into which two holes had been carved, large enough to let the two feet of the patient go through: two other lateral holes had been bored to let in two small twigs: and when the two legs had been passed through the big holes, and the two feet rested normally on the ground, on the other side, the two twigs were introduced and the old man could not withdraw his legs. I had seen there one of these proofs which Mauss opposed to Levy Brühl, showing that the so-called "primitive" mentality was perfectly logical and, indeed, quite consistent, when "homo faber" manufactured his tools. The African Natives had found a perfectly good replica of the straight-jacket. But it had been applied to a dangerous, disordered, mental patient, with a view to the prevention of violence and not imprisonment for crime. We have accepted the word "khotso" for our own "prison", because it is the nearest equivalent in Shangaan for what we mean, and today the sophisticated native uses the word, without even know.ng what it meant to his forefathers fifty years ago.

It is very important to note that the South African Bantu Tribes had no unanimous view of the supreme penalty. We all know the

"execution rocks", like the one near Port St. John, where Pondo chiefs precipitated criminals or persons they desired to destroy. But very few know that "Moshesh did not approve of punishment by death, as the persons who put the murderer to death became murderers themselves by doing so"—(Evidence of Sophonia Moshesh, S.A. Native Affairs Commission, 1881-1882 App. B. p. 22) Murder is generally punished by a fine: the law makes no distinction between a murder from malice aforethought, or from one committed on the impulse of the moment, or in revenge for the blood of a relative. Compensation for all kinds of homicides is generally insisted upon.

II. COURT PUNISHMENTS AND ADMINISTRATIVE MEASURES.

1. Court Punishments.

1. A person found guilty of an offence, arested and brought before the Court may be firstly **reprimanded, cautioned** and **discharged.** Modern penal treatment being chiefly re-educative, while the repressive element has become secondary, the duties of the Court first to use "freedom" as a reformatory means of action against the offender are evident, and therefore one cannot insist enough on the value of a reprimand and a caution. The fact that a person has been arrested and brought before the Court is already a serious warning.

2. The Court may **postpone** the passing of sentence: or may **suspend** it: and release the offender on specified conditions (such as compensation for damage or pecuniary loss caused by him, good conduct or otherwise).

3. The Court may **suspend the issue** of a warrant committing to gaol an offender who is in default in the payment of his fine, or any instalment thereof.

4. The postponement of the passing of the sentence, or the suspension of any sentence imposed, act as a powerful reminder to the offender that should the conditions stipulated by the Court not be observed, punishment within the powers of the Court will be imposed, or the sentence already imposed will be enforced. On the other hand, should the conditions be observed, the offender will either escape punishment or the enforcement of the suspended sentence.

5. When sentence is postponed, it is not a "definite sentence" which is postponed. This is often a more powerful reminder, as the sentence (if ever imposed) might be heavy; in any case, it is indefinite and the fear of what might be imposed is a better deterrent.

6. A more serious offender may be **imprisoned;** he may be deprived of his liberty as being unfit to live a free life in the community. He is undone economically and socially and **should be re-educated** before he comes back to society. He must be made to obey orders, and discipline must rule his mental and physical life. To this punishment the remnants of a previous age, may be added, such as cuts, strokes or lashes, spare diet, solitary confinement, etc.

7. A criminal guilty of rape, treason or murder may be **sentenced to death.**

8. Apart from all these punishments, our Courts are now in

a position to use an entirely different approach to the individual offender through the foresight and remarkable development by the legislator of **educational and corrective** methods, entrusted to the Department of Education, Arts and Science and the Department of Social Welfare. This progressive policy, which compares favourably with that accepted by any civilised state in the world, provides an alternative to Court punishments, which honours the Union of South Africa. It will be seen below, when we come to the examination of the detailed accepted principles and their ethical significance, that we only need to press strongly for better equipped institutions and a more scientifically trained staff, with the necessary allocations of State funds and for the all-important co-ordination of all phases of our system, to go far into a modern set-up of **correction,** and we wish to express our sincere gratitude to one of the earliest members of our League, and one of the important minds behind this whole development, for a lucid explanation of this new set-up—Dr. Louis van Schalkwyk (see 7).

2. Mitigation of Sentence.

1. Mitigation of sentence is not a right under the Prison Act or the Regulations framed thereunder, but a privilege earnable by prisoners after satisfying the Director that their conduct and industry have in all respects been either "perfect" or "satisfactory". The term "perfect" is applied to prisoners who have not lost a mark and whose conduct and industry have been generally excellent, while "satisfactory" covers prisoners who have fallen short of "perfect" but whose lapses were venial.

2. Regulated remission of sentence, on the basis of one-quarter of the sentence, is granted to the following prisoners, provided their conduct and industry fall within the above-mentioned classifications:

(a) All prisoners with sentences of from 30 days to under six months.

(b) First offenders with sentences of from six months to two years.

3. The same basis of remission is applied to first offenders with sentences exceeding two years and whose conduct and industry have been at least satisfactory on recommendations submitted by Boards of Visitors in terms of Section 48 (2) of the Prisons and Reformatories Act, No. 13 of 1911.

4. As regards recidivists it may be mentioned that prior to 1945 the maximum remission earnable was one-twelfth of the sentence. This applied to all recidivists with sentences ranging from six months upwards, including Board cases i.e. those whose sentences exceeded two years. During 1945 the distinction between first offenders and recidivists was abolished for the purposes of remission and all prisoners became eligible for remission on the basis of one-quarter of their sentence, subject to their conduct and industry having been at least satisfactory. In recent years, the effect of that policy, in conjunction with the unusually generous amnesty of one-quarter remission of sentence accorded to all prisoners during 1947, resulted in endless criticism of the Department by Judges, before whom many of the prisoners in question appeared for trial, for further crimes committed by them while still on probation in respect of earlier similar crimes.

5. As a direct consequence of the criticisms levelled against the Department, the position now is that remission is accorded to

recidivists, subject to good behaviour, on the following basis:—

(a) One-eighth of the sentence generally, irrespective of the number and nature of their previous convictions.

(b) One-twelfth of sentence for those convicted of house-breaking, theft or robbery and who have three or more previous convictions, irrespective of the number and nature of such previous convictions.

6. Apart from the mitigation of sentence as set out above, some thousands of petitions for clemency are submitted to the Department annually. In every case such petitions are carefully investigated and considered on their merits. A fairly large proportion of them result in substantial special remission of the original sentence being granted by His Excellency the Governor-General on the recommendation of the Minister in accordance with advice tendered to him by the Director and the Law Advisers.

7. Habitual criminals must, of course, be dealt with in terms of Section 47 of Act No. 13 of 1911, which provides that they shall not be released until the Board of Visitors has reported that there is a reasonable probability that the habitual criminal will in future abstain from crime and lead a useful and industrious life, or that he is no longer capable of engaging in crime, or that for any other reason it is desirable to release him. In many cases, however, where indeterminate sentences have been imposed in accordance with the law and the presiding Judges have felt that the circumstances of the case have not been such as to warrant that course, numerous representations have been made to the Director by the Judges concerned with a view to steps being taken for the remission by His Excellency the Governor-General of the declaration as an habitual criminal and for the substitution of a determinate period of imprisonment. Such representations are always accorded full and careful consideration by the Minister, which invariably results in the Judges' recommendations being given effect to. In some instances the indeterminate sentences have been remitted to as low a period as 18 months' imprisonment.

Such are, very briefly, the punishments at the disposal of our Courts of Law and the conditions of mitigation of sentences. Let us now examine the ethical implications of these punishments.

3. Infliction of Pain, Inconvenience or Loss as Punishments.

Without going into the history of punishments through the ages, and without trying to cover all the aspects of retribution, deterrence and reformation, in the process of punishment, it is necessary to have some clear idea of what the community wishes to achieve through the use of the various punishments described above. The first action of the community when an offence or crime has been perpetrated, is obviously to show by some definite act **its repudiation of the evil done** or anti-social conduct displayed. Those who think that there is no place for severity are obviously indulging in wishful thinking. The first duty of the community is to repudiate the crime, not necessarily as representing the vengeance of the injured party, but the collective repudiation or detestation of the offence committed. Nobody asks that the community should purely and simply "laisser-faire". Even in Bantu communities, in which the idea of punishment as such plays a very small part, the wrong-doer was under very effective pressure of universal disapprobation. There must be rules and laws to control or restrain

the conduct of the community or any member thereof. If these rules or laws are broken, there must be a repudiation by the State of the action of the offending member. All punishment at the disposal of our Courts is sanctioned within this principle by the State, the object thereof being to maintain, protect and promote the general security, well-being and integrity of the community. A failure to repudiate or punish such conduct might imply a condonation of it. The pain inflicted, the inconvenience created, the loss imposed are first and foremost punishments which aim at repudiating the crime and protecting the community. They are not an end in themselves: they are partly a retribution for the evil done, and are at the same time a means to impress upon the offender the disapprobation of his fellow-men. Repudiation should, nevertheless, come from his peers.

The very important **deterrent** element comes next.

"Knowing our natures as we do, we may each of us be glad that there is attached to this or that form of misconduct some penalty which saves us from ourselves, in weaker moments, from indulgence: and that our real freedom in the sense of our power to pursue our general purpose of life, is very greatly enhanced by the restraint under which we should be put if certain desires ever became predominant in us." (Temple)

Reprimands, recognizances or cautions, postponement or suspension of sentence, fines, legal supervision, imprisonment and all forms of violent punishment are deterrents. It is impossible for us in the space of a short booklet to examine the psychological assumptions of the legal view of deterrence. We would refer readers to the very remarkable "Digression on Fear" written by Margery Fry in the book "Arms of the Law", reviewed in our Quarterly recently. It shows very clearly how wrong some of our assumptions are, and how unsafe we are when we start using human fear indiscriminately as a principle of social action.

But punishments are not only an expression of the community's disapproval, nor an instrument of deterrence. Punishment may be, and should be, **a part of treatment towards reformation.** Max Grunhut writes :—

"A just punishment is more than the overcoming of evil by force. It is also a spiritual power which may make an appeal to the moral personality of man".

He goes on to show that if punishment must check crime, it must show that "crime does not pay": it must be such that the offender may be led, after undergoing punishment, to a fair chance for a fresh start: and the "State must uphold superior values, in administering punishments, which the offender can reasonably be expected to ackonwledge".

If we consider all these elements of punishment, retribution, deterrent and reformative, we must admit that there are, in our present administration of Justice, a number of features which are not only disputable, but ethically indefensible. The most striking of all is our use of imprisonment as a punishment.

4. Imprisonment as a Punishment.

One of the main reasons for the creation of our League has been the present excessive use of imprisonment as a means of punishing offenders, especially non-criminal technical offenders.

We do not need to cover the ground which has often been covered in our publications. Ethically, we consider imprisonment as a **serious punishment**, and we also consider, with the whole

civilised world, that "short-term imprisonment presents serious inconveniences from a social, economic and domestic point of view". The Hague Congress condemned "the all too frequent and indiscriminate use of short-term imprisonment". Our prisons **have bred crime** through the indiscriminate use by the Courts of imprisonment as a punishment.

The Bantu people had no prisons: they always tried to insist on **compensation,** a principle highly commendable: they said "Musasi wa nandzu hi ku riha"—the redemption of the offence is compensation. Our Law, to the Native mind—by its indiscriminate use of imprisonment—may have discredited to a certain extent the respect of the African people for our Justice. The principle that an individual who has done wrong should first be made to repair the injury is a highly ethical one, and our excessive use of imprisonment, under the pretext of the protection of society, is very highly unethical in many cases. Imprisonment, with its obloquy and separation from family and friends, from regular employment and normal life, is a serious punishment even when applied for short times.

It is very sad that so little effort has been made to understand the real **function** of imprisonment proper: it has been customary in the past to consider imprisonment for various periods as the logical alternative to almost any other punishment which seems inapplicable, especially as an alternative to a fine: and this tendency has ignored the fact that there is no equivalence between the two kinds of punishment, from a purely human point of view. The proper function of imprisonment is the segregation of individuals who are unfit for the normal life within the community. Even the Romans had the clear principle "Carcer ad continendos homines non ad puniendos deberi habet". Indeed punishment by way of imprisonment was **illegal for the Romans.** (See Ulpean 211-217 A.D. referred to by Justinian's Digest 553 A.D.) There has been grave ethical deterioration in the development which has led the Law to treat prisons as it is doing today. The argument of expediency cannot whitewash our so-called enlightened civilisation for this unjust development. The whole question of **safe custody,** of **detention** and of **imprisonment** needs scrutiny and clarification. Awaiting trial persons should, as far as possible, not be put in prison: special provision for their detention is advocated, such as safety centres or institutions. They have not been proved guilty: they are still free persons awaiting trial and should, as far as possible, be released on bail or on their own recognizances, except perhaps in cases of an extraordinary violent nature, when a hardened criminal, known to the police, awaits the decision of the Court. Nor is detention, in lieu of a fine, equivalent to imprisonment. The present use of short-term imprisonment imposed upon persons who are too poor to pay a very small fine is deprecated. A man who is unable to pay a small fine should never see the inside of a prison. A suspension of the sentence is advocated and he should be given work to enable him to pay his fine. We appreciate that in a number of cases he is given a period in which to pay the fine. Imprisonment in some cases is, ethically, a complete disregard of the claims of real Justice.

The Prisons and Reformatories Act of 1911 clearly indicated the intention of the Legislator that no non-criminal person should

go to ordinary prisons; and against the current excessive practice of short-term imprisonment, we must exert all our efforts to dissuade our Courts and our Law-givers from committing to prison persons without criminal tendencies, if other forms of restraint or detention are possible—and if they are not available, to provide the necessary facilities. The sad part of this lack of discrimination is that it has plunged into prison hundreds of thousands of people who had committed no real crime.

Imprisonment should be applied to the persons who must be segregated because they are a real danger to the normal life of the community. In their case, there is an ethical reason for complete segregation: they are entirely unable to control themselves: quite a few of them—and they confess that to those who are their friends —feel really safe only when they are in maximum-security custody. But such persons are few in number, and it has been repeatedly stated by those who have expert knowledge of our present prisons that these prisoners have often become entirely asocial because of the progressive deterioration of their personality through prison life itself and its long, enduring and deleterious effect.

In our present set-up, let us stop the use of the word "prison" for all those institutions which are used for safe custody or detention of persons, and apply it only to the maximum-security institutions for hardened criminals. Let us ask the Legislature to substitute more specific terms in sentences, such as "safe-custody" and "detention" and to provide the specific institutions therefor.

5. Fines.

No subject, in the realm of punishment, needs more careful handling than that of fines. We touch there the general attitude of the community towards material wealth, and it is in that respect that those who are deeply concerned about ethics feel almost out of the picture when they try to scrutinise the Law.

Society has certain standards which must be maintained, and the aims of education of the child should be to lead it gradually to make its own those standards on which social life is based. There are positive and negative sanctions which guard these principles and legal sanctions play a very great part in the life of a people. It is, therefore, all the more disconcerting to see how easily the Law finds an equivalent between certain unlawful acts and the imposition of a fine for the punishment of those acts. One thinks of the great proverb of the Bantu which says that "A dog with a bone in its mouth cannot bark". The power of money, in most acquisitive societies, has succeeded in reaching a high position and as such is respected. The power of money is still what Christ indicted when He said "You cannot serve God and Mammon". In cases of real crime, no money should be able to buy freedom—and conversely, poverty should not spell imprisonment for the petty offender. If these principles are not observed, the Law has abandoned its most solid foundation, in other words, its ethical basis. If an offence is not serious, it should not be classified as a crime, and in that case, all alternatives to any form of detention should be considered. Often imprisonment may be entirely disproportionate to the offence:

"Fines are (nevertheless) quite properly suggested as a suitable substitute

for short prison terms. In order to reduce the number of those imprisoned in default of fines, it seems necessary that—

(a) the fine be adjusted to the financial status of the defendant;

(b) he be permitted, if need be, to pay the fine in instalments and be granted a suspension of payments for periods when his income is inadequate;

(c) unpaid fines be converted into imprisonment not automatically, but by a Court decision in each individual case." (Resolution 12th Int. Penal and Penitentiary Congress (The Hague) Sec. 3 1st question).

It is gratifying to know that efforts are made in this country to follow some of these principles, which have been advocated by the Howard League for many years, in the imposition of fines by our Courts such as suspension of payments and postponement of sentences which are within our law: but the grave problem of adjusting the fine to the financial status of the defendant is one which needs our immediate attention in view of the large proportion of petty offences committed by poor and unsophisticated people, and the excessive use of imprisonment as an alternative to a small fine, which results therefrom.

6. Remissions and Amnesty.

Remissions are granted in terms of an elastic rule which is applied to **each individual case on its own merits,** but no case, even that of violent offenders, sentenced for theft and housebreaking with assault, is outside the scope of remission, if the behaviour of the prisoner is good and he is "playing the game". At one time, the League was perturbed by the intention to abolish completely the principle of remission in certain cases, but this intention was not carried into practice to any great extent, and we know that now, no prisoner is without the hope of some remission, if he behaves well.

The principle of granting amnesties to all prisoners in cases of national rejoicing or extraordinary events is one which has been commented upon very severely by the Judiciary on several occasions, especially when after the war such occasions arose repeatedly. It would be invidious to curtail amnesties altogether, because they show that the community still thinks of prisoners as being part and parcel of it. But amnesties cannot be easily qualified: and it is most invidious to select cases for them, while we all know that some hardened prisoners should not be freed until such time as competent Boards can ascertain that their condition has really changed—which happens, even in the most irreducible individuals in certain cases, when old age comes. Therefore, we have always felt that the principle of dealing individually with each case should remain. Humanity should be the guiding element: if humanity has been restored in inhuman prisoners, there is no reason why remissions should not be granted: but if it is the considered view of the sentencing Courts and of those who can impartially give an opinion that an individual is not safe, he should not be freed. As far as amnesties are concerned, although their complete abolition seems hard, it must be remembered that the effect of this form of leniency is a grave hardening of public feeling towards those who are set free and cannot control themselves.

7. Corrective Methods.

(written mainly by Dr. Louis van Schalkwyk)

It is significant that there are in the Union three Government authorities which are responsible for carrying out the sentences

pronounced by the Courts on offenders—namely, the Departments of Prisons; Education, Arts and Science; and Social Welfare. The functions of the two last-named Departments can obviously not be construed as punishment as that term is ordinarily understood: their task is to educate, re-educate, adjust or reform. When offenders are entrusted to their care, it is expected that they should use the machinery of education and social readjustment to reform or correct the wrong-doer.

The Children's Act of 1937 permits the Courts, in lieu of any punishment which may be imposed, to refer offenders under 21 years of age to reformatories, certified hostels or to other forms of care, such as probation. It will be noted that the Act does not state "in lieu of any **other punishment** which may be imposed". The inference is clear that the corrective methods prescribed by the Children's Act are not regarded as punishment, although it is evident that in as much as these educational measures restrict the liberty of the young offender, they must nevertheless in practice serve as a kind of punishment and as a deterrence to others. The emphasis, however, is unmistakably on correction.

The Penal and Prison Reform Commission recommended that the application of these educational principles to young offenders under the Children's Act should be extended to persons under 23 years of age. This means that young offenders could be kept in an institution until their 25th year, after which they would be subject to compulsory supervision until their 27th year. One naturally asks why limit this form of re-educative training to the 27th year. Is there any reason, psychological or otherwise, which would make it impracticable or even impossible, to produce the same educational results with offenders who are 37 or even 47 years of age? It is significant that the Commission throughout its report emphasises the duty of the Prisons' Staff to endeavour to make better citizens of their wards than they were before they were punished by the Courts, the inference being that age is no obstacle to improvement in character, or at least in behaviour—which is not quite the same thing as character. It is not possible to enter into a psychological discussion of the question raised here: suffice it to say that the old adage that you can't teach old dogs new tricks is not psychologically acceptable. If it were, then the recommendations of the Commission with regard to improving the attitudes and ways of life of prisoners in gaols are mere pious platitudes.

Parliament has, however, expressed itself unequivocally in favour of the view that it is possible to improve the ways of life of offenders of all ages by utilising the knowledge which the sciences of human behaviour have given us. The Work Colonies Act (No. 25 of 1949) in effect, extends to adult offenders of all ages the machinery of correction which the Children's Act makes available for young offenders. The expression "in effect" is used because there are differences in the application of the provisions of the two Acts, but the underlying principles are the same.

The Work Colonies Act makes provision for two types of persons: firstly, like the old Act of 1927, it deals with the idle, the dissolute, the disorderly, with beggars, drunkards and drug addicts and with those who, because of misconduct or default, fail to provide for their own support or for the support of their dependants:

groups of types, therefore, which cannot, strictly speaking, be regarded as delinquents: secondly, the Act makes provision for the training and treatment of convicted adult offenders, the relative section of the Act reading as follows :—

"If a Court has convicted any person of an offence other than treason, murder or rape, and it appears to the Court from the evidence adduced, and after consideration of a report, if any, received by the Court mutatis mutandis in accordance with sub-section (4) of Section 15—

(a) that the accused is a type of person who requires and would benefit from the training and treatment provided in a Work Colony, the Court may, whether or not any of the circumstances mentioned in par. (b) are also present, in lieu of any other punishment, order that the accused be detained in a Work Colony; or

(b) that the offence was committed while the accused was under the influence of drink or drugs, or that addiction to drink or drugs was a contributory cause of the offence, and that the accused is a type of person who requires and would benefit by the training and treatment provided in a retreat or a certified retreat, the Court may, in lieu of any other punishment, order that the accused be detained in a retreat or in a certified retreat".

For the purpose of this discussion, the relevant passage is paragraph (a). Paragraph (b) is only quoted because there is a reference to it in paragraph (a). The machinery for "training and treatment" is described in detail in the Act, and in the Regulations which have been published, which (I say it in admiration, not in disparagement) read like the principles of an educational treatise.

"A work Colony" (to quote from the Regulations), "should not be regarded as a penal, but rather as a training institution, training in habits of industry, in responsibility and generally in good citizenship."

In so far as detention in a work colony is a form of punishment, the punishment is incidental to the main purpose which is, in terms of the spirit of the Act, to teach erring and irresponsible adults to mend their ways. To achieve that purpose for which Work Colonies are established, regard should be had to certain principles and considerations, which it is not necesary to quote here.

It is also not considered necessary to deal with the machinery prescribed by the Act and Regulations to enable the Department of Social Welfare to carry out its re-educative functions with regard to adult offenders. It is sufficient to say that the success of the scheme will depend on four main factors; the availability in sufficient numbers of the specialist staff; proper classification to ensure appropriate treatment to relatively homogeneous groups; a sure and effective system of after-care to make the transition from institutional life to the free life in the community as smooth as possible, and the establishment of a fully specific and equipped probation service. Of these four desiderate, the most important is the right type of scientifically trained staff, both in institutions and in probation work.

In the Union, therefore, we have had for some years two parallel systems of dealing with offenders, both old and young: on the one hand, our prison system which is being modernised in accordance with modern conceptions of penal practice, more especially as formulated by the Lansdown Commission; on the other hand, the institutions and ancillary services conducted by the Departments of Education, Arts and Science, and Social Welfare, where systematic and intentional efforts are made, with the assistance of physicians, psychiatrists, psychologists, educators and social workers to re-train and re-educate juvenile and adult wrong-doers.

It is as well that we should have evolved these two systems so

that we may be able, by comparing their results, to see which is the more effective and which should in the future determine the direction of development of our penal practice. The sine qua non condition of a scientific comparison is a fully integrated system in which consultation between the responsible Departments concerned takes place continuously and at all levels.

III. PUNISHMENT, TREATMENT and CORRECTION

1. The Problem of Responsibility.

For a correct development of social action against offenders, it is extremely important that society should have a clear idea of what human responsibility really is. We have seen what religious tradition has to say on this point: We know well what the principles advocated by the Howard League for Penal Reform are, and the great influence the League had on such progressive legislation as the Criminal Justice Act of 1948: we have also seen that the School of Social Defence by-passes the problem and emphasises the social duty of self-protection leaving alone the vexed question of individual moral guilt. It seems to us that, in the present state of development and research in criminology, it is wise to consider the two aspects of responsibility, that of the moral and religious approach to the fallen man, and that of the attitude of the community of men towards the criminal, by a clear division of a problem which is fundamentally the same, but requires at all stages, the two rather different attitudes dictated by the different approaches. I would like to start with the second problem, that of the correct attitude of the community in its endeavour to defend itself.

(a) Responsibility or accountability.

When we dealt, in our Introduction, with the standpoint of the School of Social Defence, it was pointed out that this school of thought considers that the history of punishment shows an absence of philosophical principles for its justification. The whole development of Western thought and religious doctrine seems to show that such a statement is an over-statement. But the general trend of the modern movement is undoubtedly on the right lines, when it questions the advisability of a self-righteous community, guilty of grave misconduct, neglect and, at times, unbearable social conditions, attributing to itself the right of retribution. That the individual criminal should face his sin, his individual guilt—that he should be made to realise his own direct responsibility—is not denied. But this is the sphere of religion, a sphere far too neglected in our present set-up, and upon which we will have more to say later on.

In a recent article of the Penal Reform News (No. 23) we have outlined briefly the development of what has been called the "Medico-Legal Dilemma", and, not wishing to repeat the whole paper, we sum-up here the most important features of an evolution of thought based on recent scientific research, which has brought clearly into focus the sound basis of social action against offenders.

In as few words as possible, one may say that all the grades of individual responsibility have proved to be so complex that the law evidently is on unsafe grounds when it tries to cope with this

problem and to devise treatment of a guilty conscience. Two American psychiatrists have brilliantly described, after an outline of the medico-legal dilemma, the way in which the Law may work on safer ground by using the concept of "accountability" which is very near what the French call "responsabilité diminuée". The concept of criminal responsibility implies the fact of moral knowledge; the individual is required not to do wrong, nothing contrary to the Law; he is presumed to know what is wrong and what is right in social conduct, and to be able to do right, except in the case of mental disease. Free choice and moral knowledge are assumed. This assumption has brought the Law into many pitfalls. On the other hand, accountability means that Society only applies external value-judgment of punishability to individual actions: it means punishment, or treatment or correction following wrong-doing as defined by statute, whereas responsibility rests on a universal moral obligation not to do wrong. Accountability means an estimation of the degree in which an accused is accountable before the Law, and psychiatrists are only asked, in the legal process, to estimate the "socio-biologic impairment" of the person. The Court would accept or reject this opinion in complete freedom: but instead of asking the expert to determine moral responsibility, he would only be asked to determine the offender's mental accountability for the crime committed.

The task, not only for the psychiatrist, but also for the Court, would become much less involved and rest on the solid basis of a clear appreciation of human behaviour or misbehaviour which can be provided by the modern methods of approach to the human personality in health and disease. It may even be that the concept of accountability should be applied to all cases, normal as well as abnormal on a mental point of view. It would be a development of a theory of social defence which would be quite sufficient to assure the protection of the community, without endeavouring to make pronouncements or prescribe specific measures on terms of a universal moral responsibility, which undoubtedly exists, but is touching a sphere in which the Law and Medicine are inadequately equipped to cope with the issues involved.

(b) **Moral Responsibility.**

What has been just stated does not touch the fact that the vast majority of offenders are morally responsible, and I do not need to repeat what has often been emphasised in our publications on this subject. What is important is to return here to the sphere of religion and more especially to the teaching of Christ. Once the law has done what it has to do for the protection of Society, in terms of the accountability of the offender (and that is summed up in most cases by imprisonment or the other Court punishments described above), the problem of the individual personality comes to the foreground, and one would plead for a complete reconsideration of the all-important action of the social workers, prison visitors and more especially of the minister of religion, with a view to giving this action its full scope. The work of such a minister is a most delicate one, and one most difficult to describe. Even on the basis of an experience of over twenty-two years in this field, it is almost impossible to outline a "technique", because such a work deals with the most complex, changing and baffling reality:

the human soul. We all know that, in this sphere of a soul's action on another soul, it often happens that patient endeavours for weeks on end are destroyed by one simple fatal mistake. Moreover, the conditions under which a man whose ministry is the cure of souls must work are often all against him. To bring a man back to moral restitution and an acknowledgement of his full responsibility, the indispensable condition is that there be a complete surrender to those higher forces in human life which are so conspicuously absent from our present collective set-up, and also a vital understanding that the responsible criminal to be ministered to is just exactly what one could oneself so easily be; and this is not such an exaggeration as it seems. If the field of individual guilt is to be left to the spiritual leaders in the treatment of offenders, then it is imperative that spiritual agencies choose and train the best men they can for the job. It would be invidious and extremely indelicate to elaborate that point, but it is necessary to indicate that there is a definite need for special training, and for a real effort to meet the requirements of adequate treatment with fully equipped personnel. Basic character and personality must be implemented by real knowledge, not only of the vitally important and basic facts of religion and doctrine, but also of the complexity of human nature.

The chaplains entrusted with the work of bringing into its full implications the moral and religious development of a fallen man, should have as full and free access to their charge as any institution official. Once the functions of the State have been clearly limited to legal action in terms of the principles we have tried to describe, then the spiritual adviser and friend should be given unlimited scope and be entirely at his task, which is indeed a full-time work. The fact that routine is one of the deadliest features of institutional work would seem to indicate that there is a necessity for periods of institutional spiritual work, with intermediary periods of normal spiritual action within the normal community outside.

It should be emphasised that, if the teaching of Christ seems to be too revolutionary for our present society to accept as its own measuring rod, this teaching is entirely and absolutely adapted to that part of treatment which is the Chaplain's field. If social expediency is the best part of wisdom as far as the law and social action are concerned, spiritual action knows of no expediency and the requirements of moral law and religious revelation are absolute and uncompromising. That is why so many well intentioned persons are still insisting on the right of society to punish, and to punish harshly, mixing the two elements in the treatment of the offender which we tried to dissociate here. As we shall see further, in the concept of correction, the withdrawal of the right of retribution from society does not mean at all that no measures will be taken; society will protect itself, and perhaps more effectively than hitherto. But the retribution, which is above all a moral and religious process, and which is as the Church has always emphasised, only within the sphere of Divine prerogative, should be left to the care of those equipped by their calling to tackle. under Divine Guidance, this most difficult of all fields.

2. Lansdown Commission.

In their investigation of our legal, penal and prison system,

the members of the Lansdown Commission tried to ascertain the basis upon which social action against offenders is established. They took very great trouble to find out what the causes of crime were. They discussed the problems of Race and Crime, Heredity and Crime, Physical and Mental Causes, The Defective Home, Poverty, Slum Conditions, Alcohol, Idleness, Lack of Recreation, Illiteracy, Cinemas, The Released Prisoner and Crime, etc. They examined the whole problem of The Child and The Juvenile in relation to Crime. They reviewed our Legal Procedure, our Prison Organisation. They formulated on each of these subjects specific recommendations, and for a number of years, their work will, we hope, provide the administration and more especially the Legislature with a fully considered programme of reform. The most important part of this work, as far as this booklet is concerned is the description they give and the recommendations in Chapter IX of the Report. Paragraph 529 is very clear and a useful basis for our own conclusions on Punishment and Correction. Under the title "The General Objects of Punishment", we quote the following relevant sentences :—

"The deterrence of imprisonment is not enough. In addition treatment must be aimed at the offender's reformation. Treatment is necessary for the offender suffering from mental or bodily defect, and training for those whose delinquency arose through weakness of character. Punishment should have regard to the individual characteristics of the offender and to the pressures, whether external or internal, which have contributed to his lawlessness if it is to be effectively reformative. Stricter discipline and different methods will be necessary for the professional criminal though methods aimed at rehabilitation should still be employed. Methods of training and treatment which have proved effective in the case of juveniles should be extended to an age group up to 23 years of age. The inebriate, the psychoneurotic and the psychopath can best, in most cases only, be treated as patients."

In the body of the Report, under the title "Purposes of Punishment" the Commission did not offer a dissertation on the History of Punishment through the ages, but it formulated its considered views as follows :—

"Punishment by the Courts is the infliction of some kind of pain or loss upon a person who transgresses the Law. The fundamental purpose of this punishment in the view of modern penologists and the opinion of this Commission is the protection of the community from the depredations of the lawbreaker. Obviously, the best way to protect the community is so to educate and train people that they obey the laws, either because they accept them as their own, or a least because they realise that it is the better part of wisdom so to do. No community, however, achieves full obedience to its laws without penal sanctions, and there must therefore be punishment or penalty as a sanction for disobedience. Compliance with the law may be obtained by inflicting a sanction involving physical pain or by material loss in the form of fines, or it may be achieved by greater or less deprivation of liberty of action together with a smaller or greater degree of control of conduct. The most fundamental principles of modern penal methods is loss of liberty of action in some degree by those persons who break the laws and by their behaviour show that they are not fully responsible members of the community."

Partial or complete loss of liberty may be imposed, but "in all these cases of deprivation of liberty of action there is the punitive element i.e. the penalty for the offence, but positive treatment during this period, e.g. guidance and help by the probation officer and practical training or re-training and character development during imprisonment is emphasised in all modern penal systems".

It will be seen that the general tone of our ideas and those of the Lansdown Commission is the same, and the whole nation is

indebted to this Commission for a searching and exhaustive study of our present system, and most valuable and practical recommendations. We may, nevertheless, point out that the development of administrative policy in many lands has shown that the task of bringing into practical agreement the principle of punishment and that of positive treatment has been found extremely difficult, not to say impossible. If, as the Commission's opinion is expressed, "the only way to combine punishment and reform is to regard the loss of liberty with its obloquy and separation from family and friends as the punishment, while the treatment of the offender during the period he is deprived of liberty is aimed at his reformation"—then surely society being protected by imprisonment of the offender, the **punitive element in prison itself must disappear,** except in so far as the offender goes on offending against intelligent prison rules of conduct. Punishment and reform cannot be combined easily in prison life, and the past has left so much of the atmosphere of vengeance and "let him have it" in prison, that it cannot be overemphasised that institutions are not there to go on punishing, but to reclaim offenders and rebuild their characters, a task which cannot be achieved by punitive methods and the breaking of individual hope through the operation of straight-jacket regulations.

I do not think that the Commission would object to our suggesting that the real policy is neither one of punishment nor treatment, nor a combination of the two which is almost beyond human resource in prison administration, but a policy of **Correction.**

(iii) Correction.

Correction, from the Latin "corrigere", means to guide aright, to set right, to amend; correction means the positive action of curing an evil by counteracting this evil through education. By the use of principles of correction, no sentimentality about the evil in man is tolerated, but the effort is constantly to bring into accordance with high standards the conduct of an offender. Correction does not indulge in building castles in the air. It does not ignore that the man has done harm, sometimes appalling harm: but it acknowledges the fact that the power of life which is in man does miscarry into evil-doing, and that it remains a power of life which can be redirected, corrected. The insistence of the Commission on marks for good conduct, the replacement of harsh punishments by a system of granting privileges, and of withdrawing privileges, is a good proof that the idea of correction was in its mind.

Some of those who are very strong supporters of our League are of the opinion, with the School of Social Defence, that society has no right to punish. But even they would agree that society, bad as it may be, responsible as it may be for so much of crime in individuals, **has a right to correct.** And if this policy needs to be developed, we may do this by following some of the very valuable suggestions by those members of the Bench who have given us the benefit of their considered views on the first draft of this paper.

The perfect State would be composed of law-abiding citizens and should be the ideal aimed at. The chief instrument to attain this would be the education of the citizens to high ethical and moral standards. It must be recognised that this ideal is in present circumstances not attainable and that, while mankind is being led to an acceptance of these standards, it is necessary to protect

society against those who do not abide by the laws. In doing this, regard must be had for the fact that human beings are fallible, each of whom is a separate personality. The old adage that "the punishment must fit the crime" must give way to the newer concept that "punishment must fit the offender". We would here note that we prefer to use the word "correction": "the methods of correction must fit the individual concerned".

Approached from this angle, the policy of correction becomes a valuable means to the end which is desired. Correction should never become an end in itself, and the purpose of correction is obviously to eliminate the particular offender as a potential future wrong-doer, and thus to protect society by showing other potential offenders that "crime does not pay", and by making it impossible for the individual to go on offending. As soon as society recognises that the personality of the offender is the real problem to be solved, it is obvious that the law should be clearly stated and widely publicised, that the number of possible offences should be kept down to the necessary minimum, that every means should be used for the education of the citizens so that the need to obey the law and the necessity for the law be fully known: moreover, the law should not be used as an instrument of economic pressure.

Correction of the conduct of an offender, once the offence has been established, should draw firstly attention to the reasons why this offender has committed his unlawful act: was it due to lack of knowledge, to bad up-bringing, to bad environment, or to general viciousness? Can this offender be so dealt with as to ensure that there will be no repetition of the offence? Is it necessary in his case to take measures which must protect society? Such a policy means naturally that it is wrong to lay down that every offence of a particular kind must be met with the same correction, e.g. flogging. Each case must be dealt with on its own merits and the discretion of the courts must be complete, without any interference. If this is done, correction may prove to be a valuable instrument in the educative process. In some cases, a reprimand will suffice: in others, stronger measures will be necessary. It may be necessary to hold a threat over the offender's head, and so sentence will be postponed or suspended.

When the offence is due to environment, the question becomes more difficult: the courts cannot change environment and whatever line of correction is decided upon, the probability exists that the offence will be repeated. If the offender has to return to the same environment, there is no likelihood of any improvement. As it is wrong for society to demand retribution for something for which it is itself primarily responsible, correction will attempt to alter environment through social agencies. Where it is desirable that the offender should be made to feel the gravity of his offence, other corrective measures must be considered: fines, flagellation, imprisonment etc. If a fine has to be corrective, it must touch all individuals alike in their various stations in life, and this means a scale of entirely different fines for the same offence, according to the financial status of the accused. Imprisonment to be of any value at all should be kept for serious offences, and in general no short terms of incarceration should be imposed. In the case of flagellation, the correction should not destroy the self-respect of the offender, nor that of the punisher: it should not create a griev-

ance and turn the offender into a rebel against society: cuts, lashes, spare diet and solitary confinement all have that tendency. The efficacy of these methods is doubtful: they tend to brutalise not only the offender but the very persons who should be educating him to higher values, and they bring into the whole system an atmosphere which has nothing to do with correction.

It is important, nevertheless, to recognise that there are certain rare cases in which the interests of the State and society will call for an example, e.g. the rape of a young girl, or where premeditated fraud accompanied violence. Even the first offender in such cases must be severely dealt with with a view to protecting society. Unless this is done, it may mean that the administration of Justice will lose the respect it should get from the law-abiding members of the community.

There are also the cases of those who, by their conduct, have proved that they are not amenable to reformation, and have decided to remain enemies of an ordered community. They should be locked up and should not be released until it is practically certain that they will behave themselves. To release them because the gaols are full is to bring the Administration into disrepute. Recidivism is the visible proof of failure in correction: but while the recidivist should get a sentence adequate to his previous convictions, the fact that a person has gone straight for a number of years should bring its reward. It is one of the facts revealed by psychological science that life is not an unchanging reality, and that in the realm of human behaviour, there are very great changes taking place at the time when the power of growing life gets stabilised and more especially when maturity gives way progressively to old age. This is one of the points on which the law has been entirely out of step with scientific advance. And, in general, it may well be said that there should be a period of prescription of, let us say, seven to ten years, after which, in case of corrected behaviour, all previous convictions should be wiped off the record.

(iv) The Proper Set-up for Correction.

It was certainly a very fine step forward, when the Department of Social Welfare was started in 1937. As is usually the case, in times when the acute political differences dividing the people are forgotten, and coalition prevails, the real mind of the nation can find its expression, and that was the case when a serious depression hit the world, and the needs of all those underprivileged who had little appeal for the privileged became much more pressing and evident.

It was then very wisely thought that a Department of Social Welfare should look after the co-ordination of all voluntary agencies, and set up all those agencies of the State which should look after the grave social evils of our time, and cope with the victims of those evils. As the Departments of Justice and Education had a direct interest in the problem, and social welfare principles should find their way in the institutional principles of all social agencies dealing with crime and delinquency, a practical division of spheres of action was devised, and the Prisons remained under the Department of Justice: the Reformatories remained the sphere of Education and the Work Colonies etc. became the sphere of the Department of Social Welfare. Quite recently the Department of Prisons

became a separate Department, although remaining under the same authority, the Minister of Justice.

It would be outside the scope of this paper to go into the details of our past experience and the merits of a reconsideration of our set-up, but one thing is becoming more than evident, and it is that the **whole process of the treatment of anti-social behaviour is,** in its various aspects, **one problem,** and one which needs the full integration of all collective actions at all levels, and the full co-ordination of effort for the training of personnel as well as for the treatment of anti-social persons. Some of our social agencies working for the rehabilitation of delinquents and criminals are placed in an extremely invidious position by the fact that they are subsidized by one Department while the main impact of their work concerns another. Such a situation creates friction and prevents effective administration. One is not advocating more control in any direction: but one is advocating a Department of Correction which will be fully responsible, fully financed and fully equipped to deal with the problem with the minimum of overlapping, duplication and the consequent un-businesslike spending of public money. We repeat that we do not try to find fault with the past. On the contrary, there has been great wisdom in the steps which brought to us the Department of Social Welfare: there have been remarkable and praiseworthy developments in the improvement of our prisons and institutions: there have been remarkable results of our educational work in the reformatories. And we cannot over-emphasise these positive, valuable results. **But we need a Department of Correction.**

Such a Department will carefully leave alone that which is strictly Justice, strictly Education and strictly Social Welfare. It will be concerned with the anti-social person at all levels: it will use all our existing institutions and integrate them into one national effort: it will itself subsidise those important national movements for the redemption of fallen men and women at all ages. Such a step forward will mean planning and thinking on new lines in some respects: but it will mean little additional expense, if any. It only needs a re-organisation of all our present agencies on a basis of completely integrated effort.

One may ask how this can be put forward in such a way as to find favour with the Legislature? We know that a sense of uneasiness generally prevails in the various attributions which must be made of public moneys to the various existing agencies of the State. This plan will render the task infinitely easier, and whatever may be the name of the authority concerned, it will unify and integrate all our scattered efforts and bring them into line with the policy evolved by civilised states overseas at the present time. We may for a time combine the specific tasks entrusted to our various Departments by a co-ordinating authority, but it would be economy as well as efficiency to create without delay the specific authority which is ultimately indispensable.

* * * *

We now reach the end of a long journey. For some of us in the League, this journey has started much before the Lansdown Commission was appointed, much before the second world war, even before coalition. If we try to ascertain what progress has

been made, we may be despondent and think that the result is small, disproportionate to the efforts made, but in the realm of penology, which we may now state to be a science, the immense complexity of human nature, the inhibitions of the communities of men, the insidious resilience of the power of evil in the individual, the brake imposed upon reform by administrative routine: all this must be taken into account. In the Union of South Africa, with its most heart-rending group antagonisms, its baffling and perplexing social and racial differences, the problem of devising policies which must be applied to men at all levels of civilisation, without injustice, we may be grateful that much is being done at the present time to bring our country in line with progressive thought and practice in the world. We may be grateful that, at Zonderwater, for example, an attempt is made with long-term hardened recidivists of certain types, which has almost no equal elsewhere: that at Leeuwkop, the development of a large institution for non-Europeans with very diversified and complete training in many avenues of labour is taking place: that a special institution for awaiting trial accused persons is established on the Rand: that in the near future a fully equipped institution for Coloured Prisoners will be in operation at Pollsmore near Cape Town: that the amenable prisoner, European, and soon also non-European, will find at Baviaanspoort a medium security institution where an entirely new approach to their problem is taking shape. There are many red lights, many danger warnings at the present time—there is an imminent possibility of grave disorder. Our time requires firm Government, but Government which has foresight. The French know well that "gouverner c'est prévoir"—to govern is to foresee—a Government which is the expression of the will of the whole people, a Government which is fully entitled to correct, because its very principles of action are the respect of all human life at all levels of development. Indeed, if "maxima debetur puero reverentia", if the child must have the greatest respect, for the very future of our children of all races, we must act quickly and justly. To impose with an iron hand a set of rules which are inacceptable to the large majority of human beings is a big temptation, but the very Christian background of much of our collective life, the great contribution made by all the various European settlers in this land, the striving, progressive, and incessant activity of the Jewish people who have come to South Africa, the inherent qualities and stamina of the Bantu People, of which many have today fully assimilated our civilisation: all this warrants hope and dispels despondency. We have reached a point of acute crisis: but if we are faithful to Justice, to those essential moral principles which are the soul of our way of life, the crisis itself may drive us to higher levels and, through the Providence of God, help us to quit ourselves as men who serve Him.

Conditions of many at the present time are such that the increase in crime is inevitable. Crime must be stopped at the root, and when one sees that what is done in all parts of the Union by local authorities, by Government Departments, by social agencies and perhaps above all, by the constant and consistent action of the Christian Churches, one faces the future, not without perplexity, but with the conviction that if "science without conscience is ruin of the soul", science with conscience is the salvation of mankind. After all, there are fundamentally no class relations, nor race

relations, but only **Souls' Relations.** And at the present time **Soul Erosion** is taking frightening proportions, but no adequate concentrated attempt is made (like the Green Cross for Soil Erosion) to mend the appalling damage already done.

May those who frame State policy understand that no punishment or harsh treatment will ever achieve what a true respect of humanity (even in the person of the man who has disregarded all rules of humanity) can achieve. This is the only possible basis for a prosperous and happy Africa. After having written the fullest account of a South African Tribe which exists, the author ended his book with the great words "May God preserve the Life of the South African Tribe". We can do no better, thirty years later, than to close this review of a very grave problem, facing many lands, but more acutely our land, with the words "May God preserve the Life of Multi-Racial South Africa".

"If I knew of anything useful for me, but detrimental to my family, I would cast it out of my mind. If I knew of anything useful for my family, but not for my country, I would try to forget it. If I knew of anything useful for my country, but detrimental to Europe, or useful to Europe, but detrimental to mankind; I would look upon it as a crime."

Montesquieu (Reflexions).

"There is no sure foundation set on blood,
No certain life achiev'd by others' death."

Shakespeare (King John).

MEMBERSHIP FEES.

Life Members: £25.

Donor Members: Not less than £10 10s. 0d. per annum.

Organisation: Not less than £10 10s. 0d. per annum. (Organisations having a substantial membership of Non-Europeans, not less than £3 3s. 0d. per annum.)

Individual Members: Not less than £1 1s. 0d. per annum. Non-European members, 10s. 6d. (Associate members, not less than 5s. per annum.)

THE PUBLICATIONS prepared by the League will be sent to members free of charge. Associate members receive the Newsletter free of charge.

Will all Members of the League notify Headquarters about change of addresses — and will those who realize the importance of our efforts help us to find additional support, please.

THE PENAL REFORM LEAGUE OF SOUTH AFRICA was officially created on November 1st 1946. Its objects are: THE PREVENTION OF CRIME and THE RIGHT TREATMENT OF DELINQUENTS.

THE LEAGUE SEEKS TO ORGANISE PUBLIC OPINION AND CO-ORDINATE THE EFFORTS OF ALL PEOPLE OF GOODWILL TOWARDS PENAL REFORM.

THE LEAGUE seeks to promote investigation into THE CAUSES OF CRIME, THE MEANS OF PREVENTION OF CRIME, and THE METHODS OF TREATMENT OF OFFENDERS.

THE LEAGUE urges greater use by the Courts of remedial and rehabilitative measures in the place of imprisonment, and the removal of all petty offenders from Prisons. In South Africa, where 94 per cent. of admissions into Prisons is for sentences of six months or under, the urgency of this work cannot be over-emphasized; the League demands the abolition of racial discrimination resulting in unequal sentences;

The League suggests improvements in Prisons and Institutions Regulations and the abolition of unscientific methods of treatment; the League takes every opportunity to press for reforms in our Courts, our Reformatories, Work Colonies, and Penitentiary Institutions, and advocates the removal of Prisons from the Cities and their replacement by diversified and classified Institutions in the Country; the League informs public opinion, urges intensification and co-ordination of all efforts towards Penal Reform, co-operates with all agencies and State Departments in the organisation of proper consultation and co-ordination of efforts.

THE LEAGUE IS YOUR BUSINESS — TAKE A HAND IN IT NOW.

For full particulars of the programme of the League write to:

THE ORGANISER, PENAL REFORM LEAGUE OF S.A.,
25, Victoria Street, Waterkloof, Pretoria.

CAXTON PRETORIA — 6833