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PRETORIA

THE CORNERSTONES FOR A PROGRESSIVE CORRECTIONAL SYSTEM

by

ESCHEL M. RHOODIE

(Mr. Rhoodie, who is busy preparing a D.Phil. dissertation entitled "The Prison Systems of certain Commonwealth Countries," is at present attached to the South African Information Service in New York).

Anyone looking back over the history of penal treatment cannot fail to be impressed by the somewhat meagre results of society's continuous struggle with crime and the criminal. One has only to look at the crowded courtrooms in many Western countries, the overflowing prisons and the rising cost of crime, to realise how truly inadequate our efforts have been. Treatment of the offender has been begotten of the emotional reaction to a situation rather than that of a reactional concept of the conditioning factors of crime and the purposes of punishment. The findings of modern psychology, sociology, penology, criminology and other sciences have had little application in the campaign against crime. The outcome is that our approach to the treatment and correction of the offender is haphazard and, judged by the requirements of an enlightened penology, somewhat disappointing.

The purpose of this article is to gather from recognised sources support for a truly correctional approach and to briefly outline the theoretical and practical cornerstones of a system which is founded thereon. The contents of the paper are based on two milestones in the field of penology and criminology, viz. the resolutions of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1955) and the outstanding volume entitled *Manual of Correctional Standards* issued by the American Correctional Association. The article also represents the views of the writer based on his studies and observations in Australia, South Africa, England, Canada and New Zealand.

On the basis of the foregoing we can now proceed with a discussion of the seven cornerstones of a progressive correctional system.

1. Guiding Principles

The first requirement is that the prejudices, superstitions and hatreds of the past will have to be replaced by a courageous, intelligent and forward-looking attitude. In the past few decades there has been more than just a dawning belief that a professional, if not a scientific, approach to crime and delinquency must be made. Whatever our ultimate philosophy as to the treatment of the criminal, it should be an informed one. It can be shown by those who have carefully investigated the problem, that jurisdictions who rely most heavily on punishment also support the

highest crime rates, and that those jurisdictions who have advanced to the point of attempting to understand the criminal and forestall his further activities through preventative measures, have the least amount of crime.

Physically, correctional institutions in most countries of the Western world are tremendously improved; techniques of treatment and rehabilitation have blossomed. However, it would be a grave mistake to suppose that those new techniques could work a revolution in the field of crime prevention and repression unless the wall of prejudice between the public on the one hand and the offender, the corrective administration and modern progressive methods such as probation, parole, prison education, etc., on the other hand, is surmounted and overcome. Everybody wants the sick to get well; in the field of mental hygiene miraculous cures are being developed — and the public rejoices. Only in the field of correctional work (treatment of the criminal) do we find the public becoming an anchor and the State a reluctant partner in the progress towards the revolutionary measures wherein may lie our only hope.

Perhaps the three primary tasks are (1) to convince the general public that it is good business as well as good humanity to reclaim the criminal, the delinquent or the pre-delinquent, (2) to set up that kind of reformatory system in which the criminal himself will want to participate, and (3) the adoption of methods to promote the co-ordination and co-operation between offender and state, possibly with the greatest number of lawbreakers receiving their treatment extra-murally. The latter step will involve the closing of institutions for all but the dangerous and habitual criminals.

If this sounds more than just far-reaching, it must be impressed upon and accepted by society that if we are to develop a scientific philosophy of correctional treatment compatible with the advances made by social and medical sciences during the twentieth century, the concept of punishment must be dissipated or, at least, strongly modified. Regarding the "banishment" of prisons and extra-mural treatment, the reader is referred to a provocative book by Giles Playfair and Derick Sington entitled *The Offenders — The Case against Legal Vengeance* (Simon and Schuster, New York, 1957).

The guiding principles adopted by the United Nations Congress have gone a long way towards putting correctional work, and not social revenge through imprisonment, on the map. Said the Congress: Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. "The protection of society can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

"To this end the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available and should seek to apply them to the individual treatment needs of prisoners.

"Finally, the duty of society does not end with a prisoner's release. There should, therefore, be governmental and private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation."

According to the latest opinion as expressed by leading criminologists, this modern philosophy of rehabilitation and correction is put to practical application by the development of the three related and continuous phases of the correctional process, viz. probation, institutional training and treatment, and parole.

The position taken in general by proponents of the theory of rehabilitation may be summed up as follows: they do not rule out the necessity of custodial segregation but consider custody a means to an end in the vast majority of cases, and an end in very few cases. They do not deny the desirability of achieving a deterrent effect if it can be done without impairing the effectiveness of rehabilitative programmes that offer more assurance of good results than deterrence does. They also believe that, all things considered, the prison which is not geared towards rehabilitation as one of its primary aims stands condemned on its own evidence. The best thought in what was once called the penal field and is now significantly called the correctional field, is directed, moreover, towards developing institutional buildings, personnel, and treatment and educational programmes that will accomplish the rehabilitation of as many offenders as possible and will enable those who cannot be released to adjust as well as possible to the restricted life of the prison.

Judicial and Administrative Correlation

A thoroughgoing reconstruction of criminal procedure is necessary in order to secure a speedy trial, as well as to bring out the facts concerning the crime and to enable the court to ascertain the guilt or innocence of the accused. Extensive use should be made of research to determine the facts about the physical and mental condition of the accused while social investigation by probation officers should be speedily undertaken in order to have a basis on which to determine treatment.

Wide discretion has permitted the court under contemporary penal law, also in South Africa, to direct dispositions in accordance with the objectives most appropriate to the particular offender and his crime. There is, in fact, a wide variation in the sentences imposed upon different offenders even for similar crimes. It is apparent, however, that this individualisation reflects more clearly the differences in judges than in the convicted offenders.

Such a change in the statute as will limit the function of the trial court to the determination of the guilt or the innocence of the accused and statutory provision for a Board of Treatment, the responsibility of which shall be to receive the guilty offender and, after careful study of all the facts provided by physical, mental and social investigation, determine the kind of treatment to which he should be subjected and the length thereof, would be a real indication that we are not only living in the age of the missile,

the dawn of the space age, but that we are also thinking along scientific lines. The ideal Board would determine whether the offender should be released on probation, and, through a sub-department of probation, fix its duration. It should also determine whether he should be recalled from probation and be sent to an institution. It should, further, either directly or through a department of parole, handle the cases of those prisoners who are ready to be tried out in real life and determine the length of parole. Likewise it should determine the length of a man's time in prison. Thus, the various agencies and methods employed in the correction and custody of the same offender would be unified in one Board of Treatment and the whole process of rehabilitation would become correlated. Moreover, the responsibility for results would be placed directly upon a single body of educated, informed, dedicated and trained men instead of, as at the present time, being divided between many different authorities, who often are bogged down in their task by administrative entanglements.

It also represents the key to non-institutional treatment. The latter statement is not so much wishful thinking, for many authorities are beginning to admit that the prison, as we have known it for 175 years, has failed us and that a new direction is called for. The most vital theme of our penological age is the future elimination of the prison and the substitution of clinical and non-institutional treatment for all but the remaining handful of hardened and dangerous criminals. This will, however, call for methods which are truly rational and scientific.

The Adult Authority of California is the closest we have come, in practice, to an ideal Board of Treatment. The California Board, composed of a panel of persons appointed by the Governor, is empowered to fix the terms of sentence, within the limitation of the state's indeterminate sentence law, of every adult sent to prison by a court. It is also empowered to grant parole. Integrated with classification clinics operating in each prison, the Authority operates in four areas: (1) reception, diagnosis and orientation, (2) treatment and classification, re-classification and preparation for release on parole, (3) fixing the term of imprisonment and selection of the inmate for final parole, and (4) community supervision in post-institutional treatment.

In the interest of progressive correction and of the offender, fixing of the sentence by the Authority rather than by the judge, with periodic review, is of inherent value. If the California Authority could add probation and pre-trial investigation as well as full control over all aspects of parole to its functions, including a vigorous public relations programme aiming to enlist community assistance and to inform society, it would very nearly be ideal.

Personnel

The highest ideals of society will tumble if its counsellors are corrupt and divided, and a general's perfect battle strategy may end in defeat if his troops are untrained and undisciplined for their task. Similarly, the most perfect correctional system would collapse and drown in a spate of criticism if its personnel

reflected a divided, untrained, unbalanced and careless approach. Special training is indispensable and highly developed theoretical knowledge essential in the making of a good correctional worker. Only when the administration of correctional work becomes a uniform, scientific and dedicated process, only when it is raised to the status and dignity of a profession and only when the workers are accorded the same courtesies, the same salaries and the same public standing as the men and women in other professions, can we dare to hope for success. The development of two types of schools, one for training of custodial personnel only, and one for correctional workers to obtain practical knowledge after intensive university training, should be vigorously promoted and be made compulsory. It is not necessary to go into the practical aspects of training except to state that an operational theory of criminal behaviour, as a guidance for all workers, and a standard manual of correctional work should be made compulsory in all branches of administration. The danger of difference in approach is too self-evident for discussion.

Probation

It has already been indicated that as a pre-requisite for a successful correctional system the three branches of the service, viz. probation, institutional treatment and parole, should be fully co-ordinated. Each service should know the experience of the others and their efforts with a particular individual.

Probation serves the correctional effort by keeping from the institution that lawbreaker who would later suffer from the stigma of imprisonment, from loss of contact with the community, from becoming embittered and hardened and from being so much influenced by older offenders that he later develops into a hardened criminal and a burden to society. The world's prisons are full of petty criminals who should not be there. In Australia, recently, it was estimated that the prisons of New South Wales would be more than half empty if probation could be tried on all worthy cases and if lesser criminals were given extra-mural treatment. However, because the probation service of the state was hopelessly inadequate, presumably for financial reasons, the public had to foot an even higher bill for keeping them in prison.

For a successful probation service, as an effective link in a progressive correctional system, the probation department should be adequately staffed. At the same time the system should provide proper pre-sentence investigation for the court and proper supervision, guidance and control of the offender released on probation. Through probation, the institution should and will become a place of treatment and rehabilitation and not merely a detention centre for every misfit.

Institutional Treatment

The guiding principles outlined earlier on, provided us with the essentials which the progressive system should employ. Repeated short sentences for minor criminals are practically useless. In fact, they rather stimulate than repress transgression. Refor-

mation is a work of time, and a benevolent regard to the good of the criminal himself, as well as to the protection of society, requires that his sentence be long — long enough for the reformatory process to take effect.

The progressive classification of prisoners, based on the study of the individual, should be established in all prisons above the common jail. A properly placed and fully developed reception centre for diagnosis of behaviour, determination of treatment and of proper orientation is necessary in strategic parts of the country.

On the other hand, there is no greater mistake in the whole compass of penal discipline than its studied imposition of degradation as a part of punishment. Such imposition destroys every better impulse and aspiration. Since hope is more potent than fear, it should be made an ever-present force in the minds of prisoners by a well devised and skilfully applied system of rewards for good conduct, industry and attention to learning.

Of all reformatory agencies, religion is first in importance and should be properly encouraged and supported. Churches and appointed ministers of religion should receive a high measure of support from the State.

Education is a vital force in the reformation of fallen men. Its tendency is to quicken the intellect, inspire self-respect, excite to higher aims and afford a healthy substitute for low and vicious amusements.

Recreation is considered to be an essential part of education. It has come to be recognized as an indispensable factor of normal human life. The prisoner's self-respect, allied to healthy discipline, should be cultivated to the utmost.

Industrial training should be intensified and should have a far greater breadth than has heretofore been, or is now, commonly given in our prisons. Work is no less an auxiliary to virtue, than it is a means of support. Steady, active, honourable labour, with reasonable compensation, is the basis of all reformatory discipline. It not only aids. It is essential. And if society grumbles about the cost of its correctional system, here is an ally, which, if properly used, should not disrupt or compete with the free economy to the detriment of the law-abiding.

Parole

The state has not discharged its whole duty to the criminal when it has punished him, nor even when it has reformed him. Having raised him up it has the further duty to aid in holding him up, otherwise a vicious circle is created, a second crime is committed and every previous effort undone. The over-crowding of prisons in so many countries and the demoralisation of young and inexperienced criminals by vicious association can be greatly diminished by the use of probation and parole.

Parole — the release of a convicted offender under supervision and under certain restrictions and requirements after he has served a portion of his sentence — is a most important link. It should never be divorced from the whole correctional process and should be the responsibility of the correctional authority.

With probation (the release of a convicted person without commitment to an institution but under supervision) it is a vital factor in the process of reformation. It is completely ineffective, however, unless efficiently organised with trained, competent and well-paid parole workers.

The chief function should be to bridge the gap between the closely ordered life of the prison and the freedom of normal community living. Statistics show that the greatest proportion of all violations occur shortly after release. More systematic and comprehensive methods should therefore be adopted with parole in order to save the discharged offenders by providing them with work and encouraging them to regain their lost position in society.

Public Relations and Research

One of the greatest handicaps to successful correctional work lies in the response of the community to the offender. Public attitudes of hostility and rejection can undo the efforts of the most perfect correctional system. A tremendous task, therefore, remains to be done in public education concerning the criminal and his treatment. The public must be brought to see that its own security depends not only on the development of a well-implemented correctional system, but equally upon a sufficient measure of trust in, and aid to, released offenders whether under probation or parole. Unfortunately, there are too few trained public relations officers in the correctional field and as a consequence this vital task is inadequately performed.

Ever since the modern treatment of criminal offenders and efforts to prevent crime began to replace the old punitive methods, the need for knowledge of the processes leading to man's criminal behaviour and of the means for eliminating these processes came to be of paramount importance for the handling of the crime problem. In a sense, modern criminology is nothing but the application of the modern methods of science to the problem of crime. Thus the availability or existence of scientific knowledge about crime has become a precondition for effective crime control and prevention. The amount and the quality of this knowledge and the ability to apply it determine the soundness and effectiveness of contemporary society's methods of dealing with its criminals.

A planned and systematic procedure of developing new scientific knowledge lies in research. Since the existing body of knowledge with reference to crime causation, control and prevention is inadequate, the need for the establishment of a Bureau of Criminology by the State and the role of research in that field as a means of improving and increasing this knowledge, is more than obvious.

Conclusion

It is not my contention that the seven cornerstones of the policy briefly outlined above represent the ideal or the only answer to society's struggle against crime and the rising cost of crime, but such a programme will discover and segregate those who

commit crime because of physical and mental defects, will provide a graduated scheme of correction based upon a careful study of the personality, will either deter the habitual criminal or place him safely apart from his fellow-men, will individualise the treatment of each offender according to characteristic tendencies, will reform the reformable, will make justice speedy and certain, and will, to a far greater degree than at present, protect society from the menace of an increasing army of criminals and the burden of their trial and detention.

THE DEVELOPMENT OF INMATE SELECTION IN THE NETHERLANDS

by

DR. ERNEST LAMERS,

Director-General of Prisons in the Netherlands.

The development of thought in the field of penal law and penology in the Netherlands, particularly since the Second World War, has led to important modifications in the execution of punishment. No longer are the prison authorities charged only with the safe custody of the convicted offender, but also with the duty of preparing him for his ultimate return to the free community. In principle, where imprisonment formerly was concerned mainly with close confinement in a cell, the new directive, with its emphasis on correction, also requires a concerted effort on the part of society to lend aid in the social readjustment of the fallen individual. Through the years, penological experience has provided ample evidence of the negative and disappointing outcome of the practice of mixing sentenced offenders more or less indiscriminately while in detention. From the viewpoint of successful prognosis it is considered most important nowadays to assign prisoners to institutions on the basis of certain definite criteria, as well as to make further, more specific, group classifications within the establishments themselves. Already an initial but broad classification is contained in the Dutch *Beginselenwet Gevangeniswezen* (Prisons Policy Act).

This Act provides for classification on the basis of:

sex — males and females to be kept apart;

term of imprisonment — offenders sentenced respectively to terms not exceeding 3 months, from 3 to 6 months, and more than 6 months are to be confined in separate institutions;

age — young adults between 18 and 25 years to be detained separately from older offenders; and

recidivism — professional and habitual criminals are incarcerated in a separate institution.

It is clear, however, that the above broad classification, though objective enough, is inadequate for the purposes of a modern and progressive correctional policy. In order to arrive at a more effectual

classification the Directorate, therefore, employs additional criteria such as the individual's prospects of rehabilitation, the inmate's need of individual or group therapy, the necessity for intensive psychological or psychiatric treatment, the degree of custody required (minimum, medium or maximum), etc.

The assignment of prisoners to different institutions, differentiated on the basis of the aforementioned criteria, is done by four officials called "selectors," each of whom serves a specific part of the country. After conviction, the selector makes a careful study of all the reports concerning the offender and, following a lengthy interview with the man himself, recommends commitment to an institution most suitable to his particular case.

However, it soon became evident that there were many instances in which the selector was unable to gain sufficient insight into the personality and special problems of the offender for the purpose of making a satisfactory recommendation. To meet this difficulty a special *Selectie- en Orientatiecentrum van het Gevangeniswezen* (Prisons Selection and Orientation Centre) was established in The Hague in January, 1962.

Over a period of approximately four weeks a number of trained clinical psychologists at the Centre makes a careful study of the offender and his personality. Not only is the knowledge so gained a great help in selecting a suitable institution, but it also provides the staff with invaluable data on which to base a recommendation as to the best possible form of treatment to be applied during the inmate's further detention. The Directorate trusts that the scientific work pursued at the Selection and Orientation Centre will lead ultimately to a further refinement of the existing selection criteria and so lend greater substance to such concepts as rehabilitation, etc.

Since accommodation at the Centre is limited, only the complicated cases are taken in at present. But it is intended to extend the existing facilities considerably.

Only offenders sentenced to imprisonment have been dealt with above. Offenders who, for reasons of mental disorder, are not sentenced to confinement in ordinary penal establishments but who are made wards of the State, are accommodated at a special Selection Institute situated at Utrecht. At this Institute, under the direction of a psychiatrist, it is determined at which of the private or State asylums for psychopaths the offender could be treated most successfully.

BANTOEMISDAAD EN BLANKEWETGEWING

deur

DR. G. M. RETIEF,

Departement Kriminologie, Universiteit van Suid-Afrika.

Om die vraagstuk van Bantoemisdaad in juiste perspektief te sien, moet dit noodwendig met die bestaande Blankewetgewing in verband gebring word. Daar sal uitgegaan word van die standpunt dat misdaad 'n handeling of versuim is wat afwyk van die

sedelike norme, strydig is met die eise wat deur 'n erkende gesag gestel word en wat van 'n wetlik strafwaardige aard is.

Allereers moet dan gelet word op sekere fundamentele beginsels wat aan die heersende groepsnorme en die geldende reg ten grondslag lê.

Enkele Grondliggende Beginsels t.a.v. Norme en Wette

Individuele begrippe van goed en sleg, reg en verkeerd, normaal en abnormaal, ens., hang af van die besef waarin 'n mens binne 'n bepaalde maatskaplike en kulturele verband opgroei. Met die kultiverings- en sosialiseringsproses word dan ook verstaan daardie proses waardeur die mens in sy persoonlike gedrag, optrede en gewoontes die goedgekeurde standaarde en gebruike van sy gemeenskap aanvaar, aanvanklik deur onbewuste en gedurende die latere lewensjare deur bewuste kondisionering. Die enkeling help om die groepsnorm daar te stel, terwyl die daargestelde groepsnorm op sy beurt weer 'n beslissende invloed op die oordeel van die individu uitoefen.

Dit bring ons dan by die volgende belangrike beginsel, naamlik dié van kulturele relativisme. Hiermee word in hoofsaak bedoel dat oordele op ondervinding gegrond is en ondervinding deur elke mens weer ooreenkomstig sy eie enkulturasie geïnterpreteer word. Die enkulturasie bring dan mee dat wat in een gemeenskap as verkeerd of abnormaal geld, in 'n ander gemeenskap miskien glad nie as sodanig bestempel word nie.

Nog 'n punt van belang kan genoem word: Hoewel 'n gedragsnorm ontstaan uit 'n groepsreaksie teenoor gedrag wat geag word skadelik vir die belange van die groep te wees, wen so 'n norm eers werklik aan betekenis in die mate waarin dit deel word van die persoonlikhede van diegene wat lede van die groep is. Daarvolgens word dan ook die inherente energie of krag van die norm, d.i. sy sogenaamde weerhoudingspotensiaal, bepaal. Kortom kom dit hierop neer dat 'n persoon se gehoorsaamheid aan 'n norm en sy gevoeligheid vir die dwang van die groepsmening nie alleen van sy intellektuele begrip daarvan afhang nie, maar ook en veral van die emosionele betekenis wat dit vir hom het. Hoe sterker die norm emosioneel inslaan, m.a.w. hoe meer gevoelswaarde dit vir die mens besit, hoe groter is die waarskynlikheid dat hy dit sal gehoorsaam. 'n Oortreder weet dikwels maar voel nie soseer dat hy verkeerd doen nie. Daar kan dan ook gesê word dat 'n norm slegs dan 'n element van die persoonlikheid is as die individu ten opsigte van daardie norm kennis en gevoel besit.

In die lig van die bostaande is dit nou interessant om die gedrag of te wel die misdadige gedrag van die Bantoe in oënskou te neem.

Beoordeling van Bantoemisdaad: Die Konfliksituasie

Wanneer 'n oordeel oor die gedrag van die Bantoe gevel word, dan word dit gewoonlik suiwer aan die hand van die Blanke se gedragstandaarde en die eise van sy wetgewing gedoen. Hoewel die sogenaamde afwykende gedrag van die Bantoe in die reël volgens die omvang van sy wetsverbrekinge beoordeel word is dit nie die enigste en ook nie noodwendig die suiwerste maatstaf

nie. Die morele en psigologiese fundering van sy optrede kan soms van veel groter betekenis wees. Die rede is dat 'n persoon 'n wet kan verbreek sonder om noodwendig in morele of etiese betekenis 'n „misdadiger" te wees. Dit gaan dus nie soseer daarom of hy die letter van die wet oortree nie, dan wel of hy die gees van die wet geweld aandoen. Weliswaar word hy in objektiewe betekenis (d.w.s. volgens wet) as 'n misdadiger beskou, maar in subjektiewe betekenis (d.w.s. volgens eie gewete en gemeenskapsgevoel) is hy nie noodwendig 'n oortreder nie.

As ons uitgaan van die standpunt dat die betekenis en geldigheid van 'n voorskrif vir alledaagse optrede nie bloot op 'n formele kennis daarvan berus nie maar ook en veral op die onderskrywing daarvan deur 'n gemeenskap wat dit as sy eie erken en aanvaar, dan is dit duidelik dat ons in die geval van die Bantoe binne die staatsverband van Suid-Afrika nie met 'n natuurlike regsbasis te maak het nie. Hy het geen direkte aandeel aan die maak van die wette nie, die eie wil en die gemeenskapsbehoefte van die groep waaraan hy behoort, dien ook nie as agtergrond van die heersende regstelsel nie. en daarom kan die wette by hom nie werklik verinnerlik word nie. Die norme en regsbegrippe waarna hy geoordeel word, bly bygevolg vir hom gedeeltelik vreemd, opgedring, nie groepeie nie. Anders gestel, die gees van die wette kon nog nie só by hom insink dat hy gehoorsaamheid daaraan uit eie wil begeer nie.

Dit is dan ook begryplik waarom die sanksies en wette wat deur Blankes daargestel word, deur die Bantoes slegs gedeeltelik aanvaar word. Sekere wette (gewoonlik die wat die persoon en sy goedere beskerm) dra wel hul goedkeuring en steun weg, maar talle ander — in die besonder daardie wette wat in die geheel of hoofsaaklik slegs op die Bantoe van toepassing is, soos die paswette, die lokasieregulasies, ens. — word deur hulle as onregverdig en diskriminerend beskou en word daarom teensinnig gehoorsaam. Om dié rede is geen morele stigma aan 'n veroordeling verbonde nie. Veeleer word die oortreding beskou as 'n geregverdigde reaksie teen 'n onbillike maatreël terwyl die daaropvolgende straf nie as 'n skande bestempel word nie maar as 'n soort opoffering terwille van 'n beter regsbedeling in die toekoms. So kan die misdaad dan 'n reaksie teen die bestaande orde wees. Die ongelukkige eindresultaat is egter dat 'n algemene minagting vir wette en wetgewing ontwikkel. Andersyds, indien die Bantoe die wette van die land wel gehoorsaam, doen hy dit nie soseer omdat hy sodanige wette moreel onderskryf nie maar eerder miskien omdat hy die gevolge van wetsverbreking vrees.

In die lig van wat tot nou toe gesê is, sou dit verkeerd wees om uit die huidige wetteloosheid van die Bantoe binne die Blanke se regsorde sonder meer af te lei dat hulle inherent tot die kwade neig en nog nooit vir wet en orde te vind was nie. Die teendeel kom aan die lig wanneer die regstelling binne tradisionele stamverband in oënskou geneem word. Dan blyk dit dat hul regstelsel betreklik goed ontwikkeld is. Dit is byvoorbeeld gegrond op die beginsel van kollektiewe verantwoordelikheid wat beteken dat die groep vir die misstap van die individu verantwoordelik gehou word. Kenmerkend van die Bantoe se regstelsel is ook die feit

dat dit 'n wesenlike deel van die maatskaplike struktuur uitmaak, d.w.s. inherent aan die maatskaplike stelsel van die mense self is. Die gewoontes, behoeftes en begeertes van die gemeenskap dien as grondslag daarvan en so groei dit van binne die stam uit.

Indien dan aangeneem word dat die Bantoe buite sy stamgebied hom in verskeie opsigte in konflik met die Blanke se wetgewing bevind, is die vraag nou watter maatreëls getref moet word om hierdie konfliksituasie die hoof te bied.

Toekomsbeleid

Dit is wenslik om eers die aandag daarop te vestig dat ooreenkomstig die betrokke artikels van die Wet op Suid-Afrikaanse Burgerskap, 1949, (asook van die ou Unie Nasionaliteit en Vlae Wet, 1927) die Bantoe bevolking staatsregtelik op gelyke voet met die ander bevolkingsgroepe van Suid-Afrika staan. Dit beteken dat die lede van elkeen van hierdie bevolkingsgroepe voor die wet en die reg gelykwaardig is; almal het gelyke reg op beskerming van hul persoon, hul goedere en hul private regte. Maar dit wil nou geensins sê dat die Bantoe juridies in alle opsigte as Blankes, of omgekeerd, Blankes as Bantoe behandel behoort te word nie. Want — en dit is van wesenlike belang — omdat die twee groot rassegroepe in mentaliteit, in lewensuitkyk, in die aard van hul samelewing en veral in die regsopvattings wat hul daaglikse lewe reguleer, so baie verskil, sal die toepassing van dieselfde regsnorme en maatreëls onvermydelik ook vir elkeen verskillend moet wees. Daarom is nodig 'n onderskeidende beleid en, ten gevolge daarvan, differensiële wetgewing en maatreëls. Om so 'n differensiële beleid as diskriminerend te bestempel, sou óf 'n rasionele verkeerde interpretasie daarvan óf 'n moedswillige verkragting van die waarheid beteken, want, om die twee rassegroepe gelykwaardig te behandel, is regsongelykheid juis 'n noodsaaklike vereiste. Hier word regsongelykheid vertolk, nie as die onderwerping van een ras aan die ander nie, maar suiwer en alleen as 'n verskil van regsvoorskrifte weens die verskil van regsopvattings.

Billikheidshalwe moet erken word dat onderskeidende maatreëls en wetgewing in die verlede wel geloods is, byvoorbeeld die Zuid-Afrika Wet, 1909 (art. 147); die Naturelleadministrasie Wet, 1927; verder, reëlings ten opsigte van naturelle-arbeid, naturelleregte op gronde, naturellebelange in stedelike gebiede, verteenwoordiging van naturelle in allerhande rade, maar die onderskeidende beleid was nie onderskeidend genoeg nie. Dit het verskille nie genoeg in aanmerking geneem nie maar het oorwegend Europees gerig gebly, soos die Naturelleadministrasie Wet van 1927 duidelik bewys. Die Wet op Bantoe-owerhede van 1951 dui vir die eerste keer op 'n werklike positiewe onderskeiding. Met die wet is begin om skadelike elemente uit die verlede uit ons wetgewing te verwyder terwyl Bantoeregtelike beginsels steeds groter en heelhartiger erkenning geniet.

As in aanmerking geneem word dat die Suid-Afrikaanse polisie die Blankedom met al sy wette verteenwoordig, skyn 'n versigtiger keuring en beter opleiding van hierdie beamptes on-

ontbeerlik te wees. Die Bantoe moet as Bantoe geken en verstaan en geoordeel word en enige sweem van diskriminasie teen hulle moet uitgewis word ten einde konflik uit te skakel.

Wanneer die Bantoe in die geleentheid gestel word om hul eie regs-, staats- en ander instellings selfstandig uit te werk en te ontwikkel, sal onder hulle aangetref word 'n groter rassebewustheid en -trots, 'n gesonder groepsmoraal, 'n kragtiger openbare mening, beter maatskaplike beheer, minder gevoelens van minderwaardigheid, veronregting en frustrasie, en daarom ook minder botsing en konflik. Hierdie dien almal as belangrike anti-kriminogene faktore.

SUMMARY

In the culturally diversified society that we have in South Africa the Bantu are subjected to the White man's laws which are based on standards and values typical of the Western world. In so far as he has no say in the making of laws, in so far as his own cultural heritage and all that it implies do not find expression in or form some (to him) familiar background of the present system of law and jurisprudence, he is unable to make the existing provisions his own, i.e. internalize them in such a way that they will become an integrated part of his personality make-up. Consequently, the norms and legal concepts by which he is judged, remain somewhat foreign to his nature while he cannot always feel or experience within himself the necessity of obeying or fully accepting the "strange" requirements.

Certain laws common to both cultures, particularly those relating to life and property, are accepted implicitly but other provisions applicable to the Bantu only, like the pass laws, location regulations, etc., are considered to be unfair, unjust and discriminatory. They are therefore obeyed rather reluctantly. Even so, obeyance in such cases rests rather on fear of the consequences of violation than on moral acceptance.

Because the two racial groups differ in outlook, in cultural background, in societal composition and especially in the nature of those fundamental juridical conceptions regulating everyday life, the norms by which each is judged should also be different. This viewpoint presupposes the creation of a differentiated legal system based on laws and measures developed by each group in accordance with its own requirements. Were this to come about it could lead to greater group consciousness among the Bantu, pride of own, a stronger public opinion, less feelings of inferiority, injustice and frustration and, through these, to a lessening of culture conflict as a criminogenic factor.

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PRETORIA

THE ATTITUDE TOWARDS CORPORAL PUNISHMENT IN IRELAND

by

MARTIN REYNOLDS

(**About the author:** The author is resident in Dublin, Ireland, and is a qualified architect. He has been a member of various societies interested in social welfare. Each year he travels extensively, mainly in Europe, and is observant of the human scene. Mr. Reynolds is a writer on subjects relating to architecture and industrial design, and has held an exhibition of photographs of "Modern European Architecture". His work in the St. Vincent de Paul Society, the Marist Boys Club and his contact with delinquents was responsible for the choice of the subject for his architectural design thesis: "A Reformatory for Boys", while his written thesis "Public Open Spaces" was devoted to children's playgrounds and public parks.)

From time to time a series of letters appear in the Irish evening newspapers on the subject of corporal punishment. (Extracts from the correspondence are given at the end of this article). They appear and will continue to do so because corporal punishment exists to a large extent as the main means of correction for children and teenagers both at school and in the home.

The means and the frequency of the punishment vary considerably and depend on a number of factors including environment, social position and the background of the parents. In the schools it varies according to whether it is a state or private school, day or boarding school. Age is not really a factor. This form of correction is used on an average to the sixteenth or seventeenth year with frequent cases up to twenty, especially for girls.

There is a tradition of corporal punishment in Ireland and today it is accepted as part of childhood and schooldays. This acceptance is closely linked up with the social organisation of the country where the family is a tight unit, with the mother staying at home to rear the children, and with a lot of time being spent within the confines of the home. Parents are thus in constant touch with their children and have more opportunity to supervise and correct them. Boarding schools are not very popular other than for the finishing years of schooling and for the children of remote country areas where no suitable schools can be found.

It is generally the mother who attends to the day-to-day discipline for trivial offences and the school type cane is the usual instrument used. In young families its use is likely to be daily, but not with any severity, and it is often hung in a prominent place in the kitchen to act as a deterrent. Offences of a more serious nature are usually dealt with by the father and the punishment is more severe though less frequent. Older boys, i.e. those over fifteen years of age, are usually dealt with by the fathers and in this category the leather strap is often used instead of the cane. In the home it is usual to give the punishment across the seat, and usually in privacy from other members of the family.

In the schools under state control the use of the strap is forbidden. This means that the cane only is permitted in "National Schools" attended by children up to the age of fourteen. At "Secondary" or private schools the regulations do not apply.

In the National Schools the teacher gives the punishment as the need arises. It is administered with a cane on the open hand, and in the presence of the class. Secondary schools use the strap mainly for boys and the cane for girls. In boarding schools punishment is usually less frequent and more severe, but it is given by a Dean of Discipline in the privacy of his office. Irrespective of the standard of the secondary school corporal punishment is very much in favour with the staff and is the main form of punishment used.

In the homes of lower income groups beatings are more frequent than with the high income sections of the community. The middle class which forms the bulk of the population and which has high standards of moral living, makes frequent use of the cane as a means of correction. Families in this bracket number 2 to 4 children, all born within 5 to 6 years of each other. The parents are in the 30 to 35 age group when they marry and are frequently strict in the upbringing of their children.

Corporal punishment is not used at all in prisons or Borstal institutions but there is a controlled use permitted at reformatories for juvenile offenders. These are aged up to seventeen and the superintendent or custodian is the one who gives punishment when necessary. The leather strap is used for this purpose.

Children accept corporal punishment generally as being preferable to other forms of discipline such as detention and loss of privileges. The main objections are against its excessive use and the severity with which it is often administered on young children and girls. In the schools it is disagreed with, but taken for granted. The main objections relate to its infliction on the seat in the presence of others and the use of the school cane on seniors (over 15 years). The strap is preferred by boys as being more masculine.

From the letters of those writing to the papers it is clear that the objections are concerned with details rather than the idea of corporal punishment. Girls object to the cane when they leave childhood and when it is given by the father.

Extracts from Letters

"I use the cane on my 17 year old school-going daughter. Apart from its time-honoured effectiveness, it is a conventional weapon of corporal punishment."

"Nothing can produce better results than a sound caning properly administered. If half the teenagers of Dublin got this treatment it might reduce the juvenile delinquency of this city. My advice to parents is to use the cane on them, as hard as you can, and watch the results."

"Up to the age of six, a smack will cure their little tricks.

From then up to the age of nine, a slipper makes them toe the line. For control in early teens, the cane provides the soundest means. Over fifteen up to twenty, give the strap both hard and plenty."

"By all means give teenagers the strap whenever they deserve it. My girls 14½ and 16, and my boy of 13 get a good leathering with the very same strap my mother used on me."

"It may interest your readers to know that I have had three spankings in five nights for coming home after 11 p.m. although I am a girl of 17."

"The cane and the strap are the only hope if we are to have a generation of Irishwomen worthy of their great heritage."

"The idea of using a strap on children is plain barbarism. If you have to resort to these measures you have obviously failed as a parent."

"I am a girl aged 17 who disagrees with the spanking of teenagers in this country. For staying out late I was heavily spanked. My brother, aged 15, was present as a lesson to him. This kind of thing happens when my brother or I do the least thing wrong. I am going to England to get away from this old fashioned country."

"Corporal punishment should be administered with a cane which can be more easily controlled than a strap. Don't use a heavy cane; a light one can cause quite a smart effect. The aim should be a sharp pain at the moment of impact, with a sense of discomfort lasting an hour or two so it won't be forgotten too quickly."

"My two daughters, now happily married, got the strap regularly and have admitted that it must have done them good. They do not hold any grudge against me. They both keep a strap handy and if their children are disobedient, they are given a thrashing."

"All these moans from teenage girls because they get a few blows of a cane or strap make me sick. I am a boy of 16 and have had the strap both at school and at home all my life. I got twelve blows of a strap on the behind in the last three weeks."

"I too am given the strap if I do anything wrong, and will be 16 next month. If I'm caught doing anything wrong . . . . . I get a hiding (from my father). I can't describe the pain, but for the whole of the next day its agony to sit down."

"All children, boys and girls alike, must be given physical punishment when merited. In my boyhood and teenage days I was punished in this way, and it did me a world of good. In later life I gave similar punishment to both boys and girls and found that they accepted it willingly and were never sullen or resentful. I think boys and girls would prefer a spanking to (1) being sent early to bed; (2) partial or complete stoppage of pocket money; (3) not being allowed to go to the cinema."

"I have two of the grandest daughters anyone could wish for. Both of them got a good thrashing whenever they did wrong.

I always kept a strong cane hanging behind the kitchen door. If they were disobedient, they were just told 'go to the bedroom for a hiding' and they would go up and strip and lie over the bed and my husband or I would cane them soundly. This rule, started in early childhood, kept on until the eldest was 17."

"As long as I can remember I have been spanked, strapped or caned by my father or mother. A girl of my own age (17) told me: 'Daddy leathered me'. I asked her about it and she said that she and her sister (15) and her two brothers all get beatings if they do the slightest thing wrong. Her father is a school teacher and very strict, and they have to strip and lie over the arm of a chair and be beaten with a strap."

"I am fully aware that the brutalising punishment of children at school is extinct in practically every other country in the world."

Invitation to Readers of Penal Reform News

In South Africa opinion is sharply divided over the question of inflicting corporal punishment on children. Some hold the view that "to spare the rod is to spoil the child". Others maintain that a caning has no corrective effect whatsoever but that it brutalizes and humiliates instead.

Research reports often mention defective discipline as a major factor in juvenile delinquency. It is stated that discipline which is overstrict, too lenient, or erratic is encountered more often in the homes of delinquent than of non-delinquent children. (In this connection the Editor wishes to point out that discipline embraces much more than mere physical punishment — vide H. Venter: **Youth at the Crossroads**).

Readers of Penal Reform News are invited to send in their views on the matter for publication in our next issue.

IS CAPITAL PUNISHMENT JUSTIFIED!

by

Rev. Dr. M. BÜCHLER

By its very nature the death penalty cannot be discussed or examined in light vein; neither can the contentious issue be brought to a satisfactory conclusion with some superficial arguments for or against this form of punishment; nor is it sound to approach the problem with much sentiment coming thus to conclusions which lack sound argumentation based on foolproof evidence or facts.

Sentimentality has never been a faithful servant. It creates and is created by fear; fear has never led anywhere but to panic so that any conclusion arrived at under stress of panic lacks sound judgment. At the time of the French Revolution the depraved women who gloated over the blood spouting from the

headless bodies on the guillotine at the Place de Grève, just enjoyed the macabre spectacle. In a different setting the armchair politician might muster some commonplace platitudes for or against the death penalty. But we cannot rely on such poor evidence when dealing with so important a question. Instead we now have to "sit on the bench", considering very carefully our "verdict" in the light of the facts before us.

When, after ten years of religious ministration to prisoners, I was called upon to serve the men and women in the condemned cell at the Pretoria Central Prison, I soon realised that I had to revise my approach to the members of this very new and also very special parish In all my dealings with prisoners before this time (January, 1958), the element of REHABILITATION was paramount, but in my dealings with my condemned charges "rehabilitation" assumed a quite different meaning. I was not called upon to take part in a program of social rehabilitation making the prisoner once again fit for living in free society. On the contrary, my ministrations had to be confined to a purely spiritual and moral level because about 75 per cent of my charges were going to be executed for their sins against society.

During my fours years of chaplaincy to the condemned I had the privilege to minister to a large number of those condemned to die by hanging and I shared the very last minutes with about 220. I carefully studied the court records of most of them and could even be instrumental in the commutation of some sentences as well as the reprieve of certain prisoners. It is for this reason and from my intimate contact with these people and their ultimate fate that I would not say or write anything at that time. If the study of history (provided we want to benefit from it) requires a certain perspective view more or less from a distance, the dispassionate study of this human problem requires the same approach in perspective. For this reason the present study is the first attempt I make on the subject. I do hope to be as impartial and dispassionate as the judges who sentenced my charges to hanging and I do sincerely hope that in the end the readers, as my assessors, will concur with my views and that they too, beyond any reasonable doubt, will pronounce sentence of death on capital punishment.

Let us be fair and deal seriatim with the arguments in defence of the death penalty:

1. **Let the punishment befit the crime:** An eye for an eye and a tooth for a tooth. "But, padre, is that not written in the Bible?" I usually reply with Matth. 5 : 38-39: "You have heard that it was said, 'An eye for an eye and a tooth for a tooth'. But I say to you, do not resist one who is evil . . . . " In this light capital punishment is a very primitive form of revenge, with the difference that society asks of a few officials who have not been associated with the crime, to perform the act of retributive vengeance. Besides, if punishment ends with death, or rather, if

death is to be the punishment, there is no scope for either rehabilitation or for compensation, both important considerations in a positive and enlightened correctional policy. It is clear that we cannot sustain the argument in defence of the death penalty.

2. **The death penalty is more humane than locking up a murderer for the rest of his life:** There might have been some slight justification for such an argument 100 years ago but today, in South Africa, it carries no weight at all. The rehabilitation program of our prison authorities provides the answer. In our South African prisons, except for condemned men and women, every prisoner must perform some work according to his abilities and sentence. If he has not learned a trade or profession, he is given the opportunity of learning a trade and passing the required examinations. As a prison chaplain, still of the old school, one of my duties was to seek employment for my discharged inmates but this task always was the very lightest one because a trained and qualified ex-prisoner has little difficulty in finding some work. Now, I am sorry to say that this applies chiefly to Bantu prisoners as our European, so-called civilized, society has not yet gone so far as to extend a helping hand to discharged prisoners. It is not the fault of the Department of Prisons, but of our own society.

Given sufficient time, the rehabilitation centres will play a positive part in rehabilitating even a murderer. It is always dangerous to generalise, but if I were to heed my feelings and sentiments, I would say that the rehabilitation of a murderer is likely to offer less difficulty to the people concerned. In this connection I shall never forget the proud testimony of a prison warder at one of the prison farms, now called Rehabilitation Centres: "Give me a gang of murderers any time; I'll compete with any other gang. These boys have more initiative, they learn better and put their mind to the work more than others."

The second argument in favour of the death penalty, therefore, does not hold any water and we have to discard it altogether not only because times have changed but also because the rehabilitation of a murderer probably is less difficult than the mental, moral and physical overhaul of a habitual criminal repeatedly sentenced to imprisonment for burglary or car theft.

3. **The death penalty is a deterrent and prevents potential murderers from committing the act:** This last and most impressive argument cannot be dealt with lightly. It has been used and invoked the world over by the greatest guns advocating the introduction or at least the retention of the death penalty. I quote from Viscount Templewood, former Home Secretary, in his book **The Shadows of the Gallows**, p. 24: "In 1810, Sir Samuel Romilly introduced a Bill into the House of Commons for abolishing Capital Punishment for the theft of five shillings or over from a shop. The Solicitor General resisted the proposal, on the grounds that it was based on 'the opposition of theoretical speculation to practical good'. When it reached the House of Lords, Lord Ellen-

borough, who was then Chief Justice, continued the opposition with a portentous prophecy of woe to come: 'I trust your Lordships will pause before you assent to an experiment pregnant with danger to the security of property, and before you repeal a statute which has so long been held necessary for public security. I am convinced with the rest of the judges, public expediency requires there should be no remission of the terror denounced against this description of offenders. Such will be the consequences of the repeal of this statute that I am certain, depredations to an unlimited extent would be immediately committed'. So strong were his feelings that, at a later stage in the debate, he obtained leave to speak a second time, and to make his final appeal: 'My Lords, if we suffer this Bill to pass, (this was his final peroration) we shall not know where to stand; we shall not know whether we are upon our heads or on our feet. Repeal this law and see the contrast — no man can trust himself for an hour out of doors without the most alarming apprehensions that, on his return, every vestige of his property will be swept off by the hardened robber'. His peroration succeeded, and the Bill was defeated by 31 votes to 11, the 31 including those of one archbishop and six bishops."

Virgil says: *"Tempora mutantur, nos et mutamur in illis"* (Times are changing and we change within them). Although arguments such as the above are no more entertained by reasonable people of today, the number of defenders of the theory remains great, even in England, where tradition plays a much bigger role than the casual observer might notice. For crimes against property capital punishment had ceased to be regarded as an indispensable deterrent. Was it then an indispensable deterrent against murder? For a period of 30 years the answer to this question vacillated uncertainly between "yes" and "no". The problem was discussed frequently without any of the passion that entered into the parliamentary debates a century later, viz. in 1947 and 1948. On the whole a solution was sought in the total abolition of the death penalty. Finally, in 1861 a Consolidation Act was passed, abolishing the death penalty for all offences except treason, murder, piracy with violence, and setting fire to arsenals and dockyards — crimes that remain capital to this day, with treachery and looting added subsequently vide the list of war conditions issued in 1940.

As we do not live anymore in the barbaric times of the 19th century when over 100 crimes were punished by death, we in South Africa have three different types of capital crimes: **Murder, Rape, Armed Robbery, Treason** and, lately, **Sabotage.** From the psychological point of view, I think that we can condense these five crimes into two and ultimately into one single group. Murder is usually the final act which satisfies the urge of either fear, frustration, revenge or greed — all recognised emotions and feelings. In the realm of the sentiments rape is very much akin to murder because the uncontrolled sexual urge is an ugly hydra

with many heads called in turn: pure sexual satisfaction, urge of violent domination with the "sealing" of such victory (over the victim), an unleashed act of sadistically satisfying endeavour upon a victim who has to be subdued by force. Similarly, treason and sabotage usually have a sentimental basis; there is always the hope of material or sentimental reward (money; patriotic desire to serve one's country or a particular cause; desire to be somebody "standing out" from the common crowd; ego-centered hero worship). Seen thus, we really have only two groups of capital crimes, viz (1) the very complex group of armed robbers, preparing and studying their coups with a view to robbing at all costs, even at the cost of life; and (2) the sentimental deviates, the one-tracked and therefore absolutely uncontrollable minds of murderers or saboteurs or temporary traitors.

It is obvious that the second group (murderers, etc.) cannot and do not allow any reasoning to enter their minds at the time of the crime. Fear of the rope simply does not enter the thoughts of these people. We therefore have no alternative but to discard without reserve the argument of deterrence advanced by those who defend the death penalty. In the case of armed robbery the crime calls for a certain amount of quiet thinking, studying of the victim's movements, of the premises and favourable times for the perpetration of the act, the probable or at least possible opposition to be encountered and the defence of those committing the crime. The protagonists of the death penalty might advance this important point: "The prospective robber has ample time to weigh the pro's and cons; he knows full well that, if caught, he will have to face the consequences which might even lead to the gallows. The Death Penalty therefore is a very strong deterrent, as there is no passion but real and quiet premeditation." Towards the end of the 18th Century, England still had over 100 crimes on the capital list, one of which was the "honourable" trade of pickpocket. The execution of pickpockets took place in public in order to put the "Fear of the Lord into them" (as a most honourable member of the House of Lords put it). The public execution of pickpockets had to be discontinued because at the very execution there was so much pickpocketing going on that the highly lucrative trade of hiring out seats to spectators at these executions practically came to a standstill (In 1766 on the occasion of the execution of Lord Ferrers at Tyburn, Mother Proctor's seats brought in £500.) I am convinced, therefore, that this argument of deterrence does NOT HOLD ANY MORE WATER than the other reasons advanced for the retention of the Death Penalty. Consequently we are compelled to refuse any plea for the retention of this barbaric remnant of the Middle Ages as there is no more justification for it now than in those dark days.

In conclusion, South Africa as a young country, can and must take stock now and in a fair but dispassionate manner weigh

the pro's and cons of the death penalty, its retention or abolition. In the author's opinion we, as Christians, cannot but pronounce sentence of death on capital punishment — this to the glory of God who does not want the death of the sinner but his conversion and life.

DIE AARD VAN DIE OORTREDING AS PSIGO-DIAGNOSTIESE HULPMIDDEL*

deur

Dr. B. P. GELDENHUYS,

Departement Sielkunde, Universiteit van Pretoria.

Die afgelope vyftig jaar word gekenmerk deur 'n groot toename in die omvang van misdaad, sowel as 'n vermeerdering in kennis aangaande die oorsaaklike faktore van die verskynsel.

Sedert die baanbreker-ondersoek van Healy, Burt, Shaw en andere aan die begin van die eeu, is groot vordering gemaak in die wetenskaplike bestudering van misdaad.

Die literatuur oor die onderwerp getuig egter in 'n groot mate van eensydigheid in benadering en verklaring. Aanhangers van bepaalde teorië is nog geneig om te glo dat die waarheid alleen te vinde is binne hul besondere studieveld.

Hoewel daar in teorie aanvaar word dat misdaad die produk is van beide aangebore en verworwe eienskappe wat in 'n voortdurende wisselwerking met mekaar verkeer, is die meeste ondersoekers nog geneig om oor te hel na die een of ander kant, met die noodwendige verwaarlosing van die ander.

Misdaad is die produk van 'n hoogs ingewikkelde sisteem van bio-kulturele faktore en kan nie verklaar word in terme van 'n enkele teorie nie. Dit is juis hierdie gekompliseerdheid van kriminogene faktore wat as gevolg het dat feitlik alle benaderingswyses wat enigsins verband hou met die probleem, lig kan werp op die oorsaaklike faktore van misdaad.

Selfs klimaatstoestande kan 'n bydrae lewer. Ondersoeke het seisoensverskille in die omvang sowel as die aard van die misdaad getoon.

Die invloed van ekonomiese faktore op misdaad is intensief ondersoek deur veral Europese ondersoekers.

Ook die verband tussen bepaalde woonbuurte en misdaad is ondersoek, sowel as meer spesifieke faktore binne die omgewing, soos kulturele konflikte, swak maats, onvoldoende speelruimte, ens.

Lombroso aan die ander kant, het met sy teorie van atavisme die klem laat val op konstitusionele en genetiese faktore. Hoewel

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* Die goedgunstige toestemming van die redaksie van **Rehabilitasie in Suid-Afrika** om die artikel oor te neem, word hiermee met dank erken.

hierdie teorie in diskrediet geraak het, bestaan dit nietemin voort in 'n verbloemde en meer wetenskaplike vorm in die werke van die moderne endokrinoloë wat poog om misdaad te verklaar in terme van storinge in die funksies van die endokrine kliere.

Ten slotte is daar die psigologiese en psigiatriese benadering waar die klem val op psigotiese, psigo-neurotiese, psigopatiese persoonlikhede en kompensasie handelinge.

Ten spyte van die groot aantal, sowel as verskeidenheid van ondersoeke na die aard van misdaad as sosiaal-patologiese verskynsel, is dit opvallend dat die soort misdaad wat deur die oortreder gepleeg word, tot dusver nog weinig aandag geniet het. Weliswaar vind ons in sommige teksboeke, veral die meer sosiologiese georiënteerde, statistieke ten opsigte van die omvang en aard van misdaad binne 'n bepaalde land of gemeenskap gedurende die bepaalde periode.

Hoewel hierdie statistieke nie sonder waarde is nie, werp dit op sigself geen lig op die basiese faktore wat die bepaalde soort misdaad ten grondslag lê nie.

Die algemene neiging is om die misdadiger te bestudeer as lid van 'n homogene groep. Hy word afgepaar en vergelyk met die nie-oortreder ten einde die faktore wat tot sy anti-sosiale gedrag gelei het, te isoleer. Geen duidelike beeld van die misdadiger word op hierdie wyse verkry nie. Die rede is dat die groep misdadigers geen homogene groep is nie en dikwels weinig meer in gemeen het met mekaar dan die neiging om misdaad te pleeg. Dit ontbreek nietemin nie aan klassifikasies van misdaad en misdadigers nie. Daar bestaan antropologies-psigologiese, suiwer psigologiese en ook sosiologiese indelings van misdaad. Hierdie indelings van misdadigers is oor die algemeen kunsmatig en het weinig praktiese waarde. Klassifikasie is geneig tot oorvleueling en selfs die baie praktiese indeling wat deur die Suid-Afrikaanse Gevangenisdepartement gebruik word, waarvolgens oortreders ingedeel word, volgens die aard van die oortreding, het leemtes. Volgens hierdie indeling sal byvoorbeeld beide motordiefstal en huisbraak en diefstal beskou moet word as ekonomiese oortredings. Motordiefstal is egter, uit die oogpunt van die jeugdige blanke oortreder gesien, baie selde 'n ekonomiese misdaad.

Met die uitsondering van die seksoortreder is daar nog geen intensiewe ondersoek uitgevoer ten einde die aard en oorsake van 'n bepaalde soort misdaad te bepaal nie.

Hierdie verontagsaming van die soort misdaad wat die oortreder pleeg, kan moontlik twee redes hê:

Eerstens kan dit te wyte wees aan die feit dat daar geen spesialisasie by die misdadiger bestaan nie. Hy openbaar geen voorliefde vir 'n bepaalde soort misdaad nie en die aard van sy oortredings word deur toevallige omstandighede bepaal. Indien dit waar is sal daar gevolglik geen sprake wees van 'n bepaalde soort misdadiger met ooreenstemmende eienskappe nie.

Die vraag of die misdadiger wel spesialiseer in 'n bepaalde soort misdaad, is deur enkele ondersoekers nagegaan. Morris[1] het in sy studie van gewoontemisdadigers tot die slotsom gekom dat daar wel spesialisasie bestaan. Mannheim[2] kom tot die gevolgtrekking dat daar geen volkome spesialisasie by die misdadiger bestaan nie, hoewel hy hom hoofsaaklik besig hou met een soort misdaad. Hy noem die geval van 'n misdadiger wat oor 'n tydperk van dertig jaar, 22 keer veroordeel is op 121 aanklagte, terwyl 17 van die veroordelings en 102 van die aanklagte op dieselfde soort oortreding betrekking gehad het. My eie ondersoeke met blanke jeugdige residiviste het ook daarop gedui dat hierdie soort oortreder 'n voorliefde vir spesialisasie openbaar, maar dat hy soms, deur omstandighede daartoe geforseer, ander tipe oortredings sal pleeg. Dit wil dus voorkom of die misdadiger hom in hoofsaak met een soort misdaad besig hou.

'n Tweede en waarskynlik deurslaggewende rede waarom aan dié soort oortreder tot dusver weinig aandag gegee is, is die feit dat dit van geen of weinig kriminogene waarde geag is.

Hierdie verontagsaming van die aard van die oortreder se wangedrag moet as 'n groot leemte in die studie van misdaad beskou word Dit kan selfs as gevolg hê dat die ondersoeker se benadering so vertroetel word deur vooropgestelde idees en teorië dat sy uiteindelike diagnose van die probleem geen verband hou met die oortreder se motief nie.

Dit wil geensins hier beweer word dat die bewuste motief van die oortreder by die pleeg van die misdaad, as enigste kriterium by die studie van sy afwykende gedrag beskou moet word nie. Dis misdadiger handel dikwels as gevolg van onbewuste motiewe en dryfvere waarvan hy geensins bewus is nie en nog minder enige insig in het. Wat ookal ten grondslag lê van sy gedrag, en hoe diep verdring in die onbewuste en simbolies van aard sy motief ookal mag wees, moet dit steeds in gedagte gehou word dat dit sigself op 'n bepaalde wyse manifesteer. Dit is hierdie manifestasie wat tot 'n baie groot mate lig kan werp op die basiese motiewe.

Aan die ander kant is dit ook moontlik dat twee oortreders hulself kan skuldig maak aan dieselfde misdade, hoewel hul basiese motiewe heeltemal verskil. Die teenoorgestelde is ook waar. Twee verskillende soorte misdaad kan albei dieselfde motief ten grondslag hê. Dit is duidelik dat ons kennis betreffende die soort misdaad en die verband wat dit het met 'n bepaalde persoonlikheid nog baie ontoereikend is.

Alle motiewe wat misdaad ten grondslag lê, kan onder een van twee soorte tuisgebring word, naamlik materiële gewin en emosionele bevrediging.

Indien oortreders dus van mekaar verskil ten opsigte van basiese motiewe, is dit ook moontlik dat hulle sal verskil wat betref persoonlikheidsamestelling en temperament. Hierdie verskille in persoonlikheidsamestelling kan weer op sy beurt tot gevolg

hê dat die misdadiger hom hoofsaaklik tot een soort misdaad wend.

Wat die maatskaplike- en gesinsagtergrond van die misdadiger betref, word blootstelling aan negatiewe sosiale beïnvloeding as gevolg van sedeloosheid, morele ontaarding en verval in agterbuurte, armoede, verwaarlosing, gebrek aan gevestigde tradisies en swak intellektuele en opvoedkundige standaarde, so dikwels beklemtoon as kenmerkend van sy agtergrond dat enige afwykinge van die patroon beskou word as toevallig en die moontlikheid van differensiasie binne die groep selde oorweeg word.

Nietemin het 'n vergelykende ondersoek tussen 'n groep jeugdige blanke motordiewe en 'n groep gewone diewe, wat deur my uitgevoer is, daarop gedui dat die twee soorte oortreders baie beduidend van mekaar verskil ten opsigte van maatskaplike- en gesinsagtergrond. Die fisiese, ekonomiese en etiese aspekte van die motordief se agtergrond is van so 'n aard dat dit onmoontlik is om te sien hoe dit 'n bydrae kan lewer tot hul misdadigheid. In die geval van die gewone dief kan hierdie aspekte wel as 'n belangrike kriminogene faktor beskou word. Hierteenoor is die emosionele atmosfeer in die gesin van die motordief so gespanne en konflikbelaai dat dit nie kan lei tot die ontwikkeling van emosioneel goed gebalanseerde persoonlikhede nie.

Ook wat persoonlikheidsaanpassing en temperament betref verskil die twee soorte oortreders baie beduidend van mekaar. Die motordief, in vergelyking met die gewone dief, is emosioneel en temperamenteel veel meer wanaangepas. Hy is sterk introtensief geneig en gaan gebuk onder toestande van angs en spanning. Sy emosionele verantwoordelikhede probeer hy ontduik en openbaar sterk neurotiese tendense. Hy is 'n gevoelsmens en by die keuse van 'n soort misdaad sal hy hom laat lei deur die mate van emosionele bevrediging wat hy daaruit verkry en nie deur die materiële voordele daarvan nie.

Die gewone dief se persoonlikheidsamestelling daarenteen, is veel meer ewewigtig. Hy het, oor die algemeen, meer selfvertroue, is selfversekerd, kalm en beheersd. Hy is realisties en prakties van aard. Emosioneel leef hy homself uit na buite. Sy gedrag word beïnvloed, en grotendeels bepaal, deur sy omgewing. Hy word nie gesteur deur onnodige gevoelens van angs en spanning nie. Hy het geen abnormale behoefte aan selfgelding nie. By die keuse van 'n soort misdaad sal hy hom laat lei deur praktiese oorweginge. Sy misdaad moet materiële voordele inhou.

Die mees uitstaande sielkundige eienskap in die samestelling van die motordief is sy sterk minderwaardigheidsgevoel, wat baie selde op rasionele gronde berus. Vir die meeste gewone diewe daarenteen is misdaad geen kompensasiehandeling nie, maar 'n praktiese beroep.

Indien hierdie twee soorte oortreders, wat op die oog af as baie homogeen beskou kan word, nogtans so beduidend van mekaar verskil, moet ons verwag dat misdadigers wat hulself skuldig

maak aan meer uiteenlopende soorte oortredings, in 'n veel groter mate van mekaar sal verskil ten opsigte van persoonlikheidsamestelling en gevolglik ook kriminogene faktore.

SUMMARY

The author's hypothesis is that criminals do not form a homogeneous group. All that they have in common is the tendency to commit crimes. Otherwise the nature of the criminal act depends largely upon the offender's personality make-up and temperament.

In this research project two groups of juvenile delinquents, convicted of auto theft and ordinary theft respectively, were contrasted with each other. Significant differences were found. By comparison the car thief is emotionally and temperamentally more maladjusted. In addition to being introtensive to a marked degree, he is ridden by feelings of anxiety and tension, coupled with strong neurotic tendencies. In the choice of the type of crime he is more likely to be led by the possibility of emotional satisfaction rather than the prospect of material gain.

By contrast, the ordinary thief is better adjusted. Generally speaking, he has more self reliance and acts in a confident, calm and collected manner. By nature he is a realistic and practical person, unburdened by unnecessary feelings of anxiety and conflict. Emotionally he is more inclined to respond to outside stimulation. Criminal activity in his case is motivated by practical considerations and the prospect of material gain.

The most outstanding characteristic of the motor car thief is a strong feeling of inferiority resulting in criminal activity by way of compensation.

ETHNIC GROUPING AND CRIME

by

Rev. Dr. M. BÜCHLER

Such a title could suggest an answer for or against ethnic grouping according to the writer's or the reader's attitude in this controversial issue. If sentimentalism is a dangerous counsellor when examining any problem in the political, social or religious realm, the subject of criminology and penology urges an even more dispassionate approach together with calm consideration of all factors as far as they are available at this stage. One might also be tempted to make comparisons with other countries where ethnic grouping exists in different forms and against different historical backgrounds but, there too, comparisons cannot help much as we would have to allow for the different setting of the problem. On the other hand, one cannot indulge in a negative and simplistic attitude insisting that as our problems have no

exact parallel anywhere in the world, one must at least be of the third or fourth generation of well established South African families before being allowed to formulate an opinion.

Before speaking of crime, let us put the question: "On the South African scene, what really is ethnic grouping?" In trying to provide an answer it is not my intention to discuss the pro's and cons of ethnic grouping. I simply have to accept it as a fact, more or less firmly established under present conditions.

(a) **In Urban Areas:** By law, the different ethnic groups of our population in general and our Bantu compatriots in particular would be settled in the big Bantu Townships or Locations in accordance with their ethnic characteristics. On one side of the Location, there would be, for example, a suburb for the Xhosa/Pondo people; somewhere else would be the suburb of the Zulu and Swazi; not far away would be the residential area of the Basuto, the Batswana or the Bapedi; in another area would reside what the Act designates as the Tsonga (Shangaan), the Venda and "others". Every ethnic suburb would have its own schools and other social amenities, clinics and churches in so far as these churches cater for a particular ethnic group. Other amenities would be built between or among the different ethnic groups, catering for the entire community. These ethnic groups would have their own tribal representatives on a central body, representing their chiefs "from home", and in this way keeping contact with the respective homelands.

(b) **In Rural Areas:** Usually the question of ethnic grouping is slightly different, because many rural areas are, and were for many generations, already tribal and therefore "ethnic" areas, each with its own indunas, chiefs, and even paramount chiefs. In certain areas, where two major ethnic groups are touching each other on a more or less well defined boundary, the State enforces the Group Areas Act every time when some new lands are allocated, when residential or agricultural areas are defined, and when schools or other amenities for a particular ethnic group are established. When such clear demarcation is not possible, separate amenities (classrooms or hospital wards) are set up along "language lines".

As far as we are concerned, examining the problem of crime in relation to ethnic grouping, we must assume that ethnic grouping is a firmly established practice in some areas, while in other areas its establishment has not gone very far and still is in the process of development, more or less according to plan. Even so, it is obvious that for the purposes of this article, we can only deal with areas where ethnic grouping is a fact, either by an old established situation or by implementation of more recent legislation. In these areas, urban as well as rural, has the incidence of crime any relation to ethnic grouping and, if so, has grouping increased or reduced crime?

We shall have to bear in mind also that in such an analysis

as the present the social element plays a very important role; that certain ethnic groups are more industrious than others and are "better off" in urban areas; that other ethnic groups still display nomadic tendencies and find it more difficult to "settle down"; Some again have a more distinct national pride than others, their chiefs being progressive rulers. Furthermore, as moral standards differ, so does the concept of crime. To be and in order to remain on the safe side, we will have to leave alone political "crimes" such as the murdering of some Sekukuniland chiefs, indunas and body guards or other upheavals and riots of either a purely political nature or of a socio-economic character. We will have to focus our attention mainly on individual or gang crimes like theft, robbery, extortion, personal or family vendetta, fraud, sexual offences, vandalism, rape and murder.

When, 27 years ago, we lived in a Homeland of the Tsonga Shangaan where the police staff of 4 to 5 had to keep law and order in an area with more than 80,000 inhabitants, the crimes mentioned were mostly dealt with by the local chiefs and their indunas. The position was quite satisfactory. Moreover, there was the control of clan and tribe with their established authorities; there was the general reprobation against such crimes; and the criminal, tried in public at the chief's court, was stigmatised.

One more element which is really a bright spot in the dark picture of crime, is the element of **Compensation.** Not only had the thief to return the stolen property, but he had to make amends by furnishing some additional "token of regrets". (In the old Bantu societies a murderer had to compensate the victim's clan by assuming a heavy and long lasting responsibility like caring for the victim's children, tilling the victim's fields, paying double "lobolo" (a form of dowry — Ed.) etc. This principle holds forth a much greater "moral" and positive element than hanging a murderer, thereby leaving his own as well as the victim's family without any breadwinner.

With the expansion of police activities and a corresponding increase in staff, criminal matters are being dealt with by government agencies while the chiefs retain a certain measure of jurisdiction in civil disputes. But the fact remains that public opinion in the rural areas still is one of the strongest elements in the control of anti-social behaviour. In urban areas where ethnic grouping has been applied in a positive and tactful manner and where members of old established families are serving on the local authorities, the same community control is to be found. On the other hand, it is becoming more and more obvious that the younger element is getting out of control in urban areas where the economic situation sometimes is such that juveniles and prospective criminals are enticed into crime as a means of making easy money. In fairness it may be said, however, that this tragically true state of affairs is not attributable to ethnic grouping as such.

Although it would be premature to draw any definite con-

clusions at this stage, the author would like to suggest that ethnic grouping constitutes an effective element in controlling crime. The reasons for this contention are the following:-

(1) In South Africa the term Bantu (i.e. human beings in Zulu) is applied to all Black people coming from a variety of tribes which often differ widely in character, customs and traditions. Some are nation, tribe and language conscious; others, with a different historical background, have a deepseated inferiority complex and are afraid of showing their "flag" in the presence of members of another tribe. This factor may and sometimes does give rise to friction and even violence. Ethnic grouping is a means of keeping the different tribes apart, particularly in urban areas.

(2) With certain ethnic groups the element of violence is more prevalent than in others. When any prospective hero knows that this spirit is prevalent within his own group and that violence will be met with violence or that if, in pursuance of an urge to impose himself as a strong man, he would venture within the bounds of another group and be met by force and violence, such knowledge acts as a deterrent.

(3) There is also, to a certain extent at least, the element of emulation within one and the same ethnic group. A prospective criminal will find it easier to earn a living in a lawful manner if he is among his own people who, by and large, follow occupations more in line with their tribal characteristics like gardening for certain tribes or, for others, home industries. By not working in competition with other tribe conscious people, it is easier for him to find his feet, earn a living and keep away from crime.

CONCLUSION

Although it would be naïve to say that ethnic grouping will eliminate crime completely, we are of the opinion that it does play a certain role in controlling unlawful behaviour. Whether it will continue to do so, remains to be seen for we cannot get away from the fact that in this period of transition and of industrial revolution, spread over a much shorter period than in the major industrial countries elsewhere in the world, crime will be on the increase. The reasons for this contention are the following:

(1) A rapid change-over from a pastoral or agricultural economy to an industrial structure with a tremendous influx of unskilled workers earning wages by far too low for normal living under the changed circumstances.

(2) Insufficient opportunities for breadwinning in the agricultural districts, tribal as well as European, with a resultant migration to the large cities "where money and food are more plentiful".

(3) Inadequate training facilities for skilled labourers together with too great restrictions on the open and competitive labour market.

GIVE THEM PLAYING FIELDS, NOT PRISON PENS

"Plenty of room for dives and dens —
Glitter and glare and sin,
Plenty of room for prison pens
(Gather the criminals in).
Plenty of room for jails and courts
(Willing enough to pay).
But never a place for a lad to race —
No, never a place to play!

"Plenty of room for shops and stores
(Mammon must have best),
Plenty of room for the running sores
That rot in the city's breast.
Plenty of room for the lures that lead
The heart of youths astray,
But never a cent on a playground spent —
No, never a place to play!

Give them a chance for innocent sport,
Give them a chance for fun,
Better a playground plot than a court,
And a jail when the harm is done!
Give them a chance — if you stint them now,
To-morrow you'll have to pay
A larger bill for a darker ill,
So give them a place to play!"

Poem written 100 years ago by Dennis McCarthy, reproduced by "The Sun", November 14th, 1947, and issued by the Playing Fields Association. Sumbitted for publication in the News by Mrs. Gwen Hardie, Cape Town Secretary of the League.

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Editor/Redakteur: Prof. Dr. Herman Venter

Contents - Inhoud

STRAFHERVORMINGSNUUS
PENAL REFORM NEWS

Penal Reform League of S.A.
Suite 236,
Standard Bank Buildings,
Pretoria.

Dear Reader,

There comes a time in the affairs of every functioning organisation to take in review its aims and objects and the means being followed for their attainment.

At the last Annual General meeting our members decided that this time had arrived as far as the League was concerned.

Upon the departure for overseas of Dr. H. P. Junod, whose name had become a household word in the Republic for his work, as the League's Director, for the prevention and reduction of crime and the right and just treatment of offenders, Prof. Dr. Herman Venter, of the Department of Criminology at the University of Pretoria, accepted appointment as Director of the League and Editor of its publications.

Recently Mr. Felix W. Mullan, M.Econ. accepted the office of the League's Associate Director.

It is thus now possible for attention to become focussed dynamically upon aspects of the League's activities requiring review and one of these is the Publication "Penal Reform News." With this end in view the questionnaire at page 21 of this issue has been prepared for consideration by readers.

As we have been privileged to include you amongst our readers, you are cordially invited to reply to this questionnaire. As much of the effectiveness of our work may hinge upon your answers, I wish to address a very personal appeal to you, to give it your consideration and reply to it as soon as you can.

I would urge you to do this as your very special contribu-

Strafhervormingsliga van S.A.
Kamer 236,
Standard Bank-gebou,
Pretoria.

Geagte Leser,

In die bestaan van elke organisasie kom daar 'n tyd wanneer die doelstellinge en die middele vir hul verwesenliking in oënskou geneem moet word. By die geleentheid van die jongste algemene vergadering het die teenwoordige lede besluit dat hierdie tydstip nou ook vir die Liga aangebreek het.

Met die vertrek van ons eertydse direkteur, Dr. H. P. Jounod, wat dwarsdeur die Republiek bekendheid verwerf het vir sy werk terwille van die voorkoming van die misdaad en ten behoewe van die billike behandeling van oortreders, het Prof. Herman Venter, hoof van die Departement Kriminologie aan die Universiteit van Pretoria, ingewillig om die taak oor te neem. Onlangs het Mnr. Felix W. Mullan. M.Ekon. die pos van mede-direkteur aanvaar.

Op hierdie stadium wil ons eerste die soeklig op „Strafhervormingsnuus" self laat val. Vir dié doel verskyn 'n vraelys op bladsy 21 van hierdie uitgawe.

Aangesien ons dit as 'n voorreg beskou om u as 'n leser te mag hê en aangesien ons u graag as leser wil behou, word 'n vriendelike beroep op u gedoen om hierdie vraelys so spoedig moontlik te oorweeg en beantwoord.

Deur aan die versoek te voldoen, sal u nie net meehelp om 'n doeltreffender organisasie van ons werksaamhede te verseker nie, maar u sal dalk ook 'n persoonlike bydrae lewer ter versagting van die menslike ly-

tion towards the amelioration of the dreadful toll of human suffering which crime in all strata of our social structure is exacting no less upon its many innocent victims than up on its perpetrators, who are so often the victims of human weaknesses and environmental conditions.

Crime and its prevention are verily national problems to-day and it should be not only the privilege but also the duty of every socially conscious citizen of the Republic to make his contribution towards its eradication and the creation of a Society in which those who fail by the wayside are justly handled, duly rehabilitated and reintegrated as ordinary law-abiding members of the community.

Yours sincerely,

Felix W. Mullan,
Hon. Associate Director.

ding wat in alle lae van die gemeenskap deur die misdaad veroorsaak word.

Nie net is daar die ontberinge van tallose onskuldige slagoffers nie, maar ook die misdadiger is in sekere gevalle maar net die werktuig van menslike swakhede en ongunstige omgewingstoestande.

Die misdaad en sy bekamping is 'n vraagstuk van aktuele nasionale belang. Dit is dus die dure plig van elke inwoner van die Republiek om die euwel te help uitroei en 'n maatskaplike orde te skep waarin die gevallenes behoorlik behandel en gerehabiliteer kan word sodat hulle naderhand as volwaardige burgers hul plekke in 'n wetsgehoorsame gemeenskap vol kan staan.

Toegenee die uwe,

Felix W. Mullan,
Ere-Mededirekteur.

The United Nations published a comprehensive report on capital punishment (ref. ST/SOA/SD/9 prepared by Mr. Marc Angel, a Justice of the French Supreme Court and Director of the Criminal Science Section of the Institute of Comparative Law of Paris. Because this report is not readily available to members, but mainly because of its extensive treatment of the subject, it is summarised here for the beuefit of members of the Penal Reform League.

I. LEGAL PROBLEMS

A. THE DEATH PENALTY IN THE SYSTEM OF PENALTIES.

1. **The Death Penalty as a Mandatory or as a Discretionary Penalty.**

In general, the modern tendency is more and more to drop the mandatory character of the death penalty. It is provided only as the ultimate punishment, but replaceable by another penalty. In many legal systems, the death penalty is mandatory only for certain specific crimes or in certain special courts, e.g. the military courts.

In the United Kingdom it is mandatory only for the five cases of capital murder specified in the Homicide Act, 1957. In Spain, an Act of 18 April, 1947 on the punishment of banditry and terrorism also makes the death penalty mandatory, but in this case the competent courts are the military courts. In Greece the death penalty is mandatory for crimes against national integrity, and in Canada in the event of conviction for capital murder or piracy and also in the military courts for certain crimes against national defence and for treason in time of war. In the Republic of South Africa and Northern Rhodesia it is mandatory for murder only.

As regards Asia, the death penalty is mandatory in India, Pakistan and Burma for murder committed by a convict serving a life or long-term sentence. It is mandatory in Japan for crimes against the security of the state in certain cases, such as assistance to an enemy using armed force; it is also mandatory in Pakistan for participation in an insurrection.

2. **Grounds of Exclusion of the Death Penalty specified by Law and Judicial Interpretation.**

The grounds of exclusion relate to the passing of the sentence and not to the carrying out of the penalty of death. Some of the grounds, however, such as insanity or diminished responsibility, take the form of a defence against a capital charge. In the Roman law systems the admission of extenuating circumstances (by the court) has the effect of barring a sentence of death.

(a) **Physical or Mental Condition of the Accused.**

As regards persons who, though no longer children, are minors for the purposes of the criminal law, most of the legal systems draw some line of demarcation in that sentence of death may be passed only above a certain age (mostly the age of 16 years). Certain legal systems, particularly in Latin America, have also retained the criterion of "discernment"; under these systems a minor may not be sentenced to any penalty whatsoever unless he is held to have acted with full discernment.

Another defence, comparable to that of minority, is that of provocation, which is recognised in most legal systems by virtue of the general principles of criminal law. In many of these systems provocation is admitted as a (partial) defence in the case of certain crimes which are normally punishable by death, such as murder committed in certain special circumstances, in particular a husband who discovers his wife in the act of adultery. Then there is self-defence which resembles provocation in some respects and in respect of which the law sometimes raises certain presumptions, particularly in the case of the killing of a person who forcibly enters or climbs into inhabited premises by night.

Even more important in practice is the case of insanity or psychic disturbance. The basic rule is that a person suffering from insanity cannot be held criminally liable. Since the nineteenth century the legal systems of the continental type tended to make allowance not only for insanity, but also for mental disturbance which deprives the accused of the full awareness of the implications of his act. The legal systems derived from the common law began to differentiate between the person who is unfit for trial and the person who was insane at the actual time when he committed the act. Under the law of some countries, e.g. the state of Tasmania, Australia, it is even possible to order a re-trial if insanity supervenes after conviction. And in the United States in particular, some judicial decisions have admitted the notion of irresistible impulse, which is placed on a par, as far as criminal liability is concerned, with mental disturbance.

Almost everywhere the accused is presumed to be of sound mind. It is therefore for the defence to plead insanity or mental disturbance, both of which conditions can only be established by means of a mental examination. The tendency of modern legislation is therefore to require such a mental examination in all cases of serious offences, in particular capital crimes (United States, Canada, France, New Zealand.)

In many other legal systems, either a special application or a court order is required for the purpose of a mental examination. (Republic of South Africa, Northern Rhodesia, Chile, Japan, Australia.) In many cases the law itself specifies that an examination by a psychiatrist is compulsory. Sometimes only a general medical examination is required.

In Canada, it is reported that between 1951 and 1958, 41 persons out of 308 accused of murder were held to be insane. In Chile, in two-thirds of the expert examinations, the conclusion is reached that the accused is not responsible for his acts.

(b) **Diminished Responsibility.**

Diminished responsibility is in many respects but a modern extension of irresponsibility by reason of mental disturbance. In the course of the nineteenth century it came to be admitted that the court could mitigate the penalty in the case of recognised psychic deficiency. As such it differs from the conception under which insanity is a complete defence calling for an acquittal. The doctrine of diminished responsibility makes it possible for the judge to sentence the accused to a penalty, but to a penalty less than death.

In only a minority of countries, however, does the law make provision for diminished responsibility, e.g. the Swiss Penal Code of

1937 and the English Homicide Act. 1957. Japan, China and Greece enacted provisions in 1950 admitting the plea of diminshed responsibility in the case of deaf-mutes and feeble-minded persons.

(c) **Extenuating Circumstances.**

If a judge admits extenuating circumstances, it becomes mandatory for him to pass a sentence lighter than that normally specified for the offence (c.f. South Africa.) In the case of a capital charge, the result will be to replace the penalty of death by one involving deprivation of liberty.

The plea of extenuating circumstances will have its full meaning only in cases where in principle the death penalty is mandatory; for where an alternative penalty exists, it is always open to the judge to sentence the accused to a lighter penalty.

B. THE PASSING OF THE SENTENCE OF DEATH IN POSITIVE LAW.

1. Competent Court.

The courts which have jurisdiction, very often differ considerably from one system or one country to another. In some countries of Europe, Latin America, the Middle East and Asia the death sentence may be passed by the ordinary criminal courts (El Salvador, Guatemala Thailand, Japan, Lebanon, Iraq, Spain.) In many other countries capital punishment may only be ordered by the supreme court.

In some countries the law requires the court to be composed of a specified number of judges. This is the case in Spain, where the ordinary criminal courts have jurisdiction, but five judges instead of three are required to pass a sentence of death.

2. Accessory Penalties.

In the systems of law existing before the end of the eighteenth century there were sometimes several degrees of capital punishment, and in the ordinary European law of the time a distinction was drawn between ordinary and aggravated forms of execution. With the abolition of torture, this graduation of the death penalty disappeared.

Under the law in force in the early nineteenth century the death penalty was generally accompanied by a certain **capitis diminutio** in the form of deprivation of public rights and honours. This idea still survives in many countries of Europe, such as France and Greece, and also in Morocco, Canada, Chile, etc. To these penalties under public law are often added statutory disabilities, such as deprivation of family rights and the capacity to dispose of property or to receive gifts. These accessory penalties only acquire their full significance in cases where the death penalty is commuted. In the Philippines, for example, it is specified that the civil disability is to last for thirty years in the case of the reprieve of a person sentenced to death.

The forfeiture of property, which takes effect even after the execution of the criminal, was formerly a traditional consequence of the death penalty, but it fell into disuse early in the nineteenth century as contrary to the principle of individual punishment, for it actually affected more the family of the criminal than the criminal himself. In the twentieth century, however, forfeiture has reappeared

in cases of crime against the security of the State (France, Morocco, Dahomey, USSR). As a rule, general forfeiture is not automatic and always requires an express court order.

3. **Remedies (Appeal, Review, etc.)**

The law of the great majority of States makes provision for appeal from a sentence of death. In the United States an appeal is often limited to questions of law, to the exclusion of questions of fact. In this respect it seems to correspond broadly to what is elsewhere termed an application for cassation, which in principle is concerned with errors of law. In certain states the appeal is automatic in the sense that every death sentence must be examined by the higher appellate court. Elsewhere (e.g. in the United Kingdom) an appeal is often subject to special leave to be given by the sentencing court or possibly by some other court. In some countries (e.g. Australia) the appeal may be followed by a second appeal, with the consequence that it can happen that three courts deal with the case.

On the other hand, an appeal is not admissible in a number of legal systems, mostly those of the countries of the Middle East, France, Spain and Greece. The true basis of the bar on appeals in countries such as France is the idea that the assize court is sovereign, in that the jury is deemed to represent the nation itself.

An application for review presupposes the discovery, subsequent to the sentence, of a new fact which reveals that a miscarriage of justice has occurred. The posibility of review exists in a great many countries, including El Salvador, the Republic of Viet-Nam, Iran, Iraq, France and Yugoslavia.

In some States a capital sentence must be **confirmed** by an authority which is not necessarily a judicial authority. In the Philippines, Thailand and Iraq a sentence of death must be confirmed by the supreme court. In the Republic of South Africa, Somalia and Sudan a capital sentence is subject to confirmation either by the Council of Ministers or by the Ministry of Justice. As a rule, confirmation of the sentence represents a supplementary safeguard for the convicted person.

C. THE EXECUTION.

1. **Mode of Execution.**

In earlier times a great variety of methods of execution was known to the law, the carrying out of the sentence of death being sometimes attended by cruel forms of torture intended in certain cases to aggravate the suffering. The differences which today exist regarding the methods of carrying out the death sentence are attributable to the efforts made to render death quicker and less painful. New methods have been adopted and certain other methods have been rejected as inhuman. For example, hanging has generally been abandoned in the United States, and in Yugoslavia it was abolished in 1950; in 1929 Greece abolished decapitation.

In the majority of countries there are two methods of carrying out the death sentence: one for crimes tried by the ordinary courts and the other in military cases; the latter method is nearly always execution by a firing squad.

Hanging remains the most frequent method in use. It is the traditional method in the United Kingdom and generally throughout the Commonwealth. In Canada the Attorney-General or the Governor may substitute for it execution by the firing squad in cases of treason or crimes against national defence.

As far as crimes tried by the ordinary courts are concerned, execution by a firing squad is practised by Morocco, Ivory Coast, Cambodia, Greece, USSR and Yugoslavia. Decapitation remains the traditional method of carrying out capital punishment for ordinary crimes in France since the Revolution of 1789 and is in use elsewhere, for example in Dahomey, the Republic of Viet-Nam and Laos.

In the United States, 24 states have adopted the method of electrocution. This method is also practised in the Philippines and in China. The gas chamber is used to carry out sentences of death in eleven states of the United States. In Spain the method used is strangulation. In the state of Utah the person sentenced to death has the choice between hanging and the firing squad.

2. **Execution in Public or Otherwise.**

As a general rule, since the second half of the nineteenth century, executions have progressively ceased to be carried out publicly. Only in a few countries is provision made by the law for public execution (Central African Republic, El Salvador, Iran, Cambodia and Chile). In Morocco an execution may be ordered to take place in public in exceptional cases, by direction of the Ministry of Justice. In Afghanistan executions are not required, nor are they forbidden, to be in public. In the United States the law of some states makes provision for the admission of a limited number of persons, apart from those who must be present at the execution by reason of their office. This would seem to represent a symbolic attendance of the citizenry at the death of the offender.

Naturally, it is invariably provided that certain persons must attend the execution, such as the governor of the prison, a minister of religion (if so requested by the offender), a doctor, certain representatives of the prosecution and in some cases judges and often also the defence lawyers.

The progressive abolition of public executions has led to journalists being excluded from the execution and often even being forbidden to describe it in detail. However, the presence of journalists is sometimes permitted by special authorisation, for example in the United Arab Republic, China and New Zealand. The law in nine of the states of the United States expressly permits the attendance of journalists at the execution. In El Salvador it is always possible for journalists to attend executions.

The press may report an execution in detail in the United Arab Republic, Ghana, Sudan, Thailand and in some states of the United States. By contrast, all press reports of executions are forbidden in the Republic of South Africa, Mauritius, Turkey, United Kingdom, Canada and France. In Austria, where the death penalty is applied in very exceptional cases only, all publicity of an execution is prohibited so strictly that it is not even announced officially.

3. **Cases of Exemption from Execution.**

(a) **Cases specified by Law.**

There are statutory provisions which either preclude the passing of a death sentence or which preclude actual execution. In most cases there is a traditional exemption in favour of pregnant women e.g. in France, Czechoslovakia, Yugoslavia and the USSR). Frequently, the law provides only for the postponement of the execution for a period which varies according to whether the woman sentenced to death breast-feeds her child or not. The statutory period of postponement is three months in Iran but two years in case of breast-feeding; in Greece the period is 30 days and six months respectively.

(b) **Pardon.**

Pardon is to some extent a case of statutory exemption from execution since it exists by virtue of the law. The sentence in the majority of cases will then be commuted.

The authority competent to pardon is generally the king in monarchies; elsewhere, it is the president of the republic or the head of State. In certain cases it is the head of the government or the governor of the province. The competent authority always has the papers in the case examined before taking a decision. In many countries the advice of a special commission is mandatory, for example in Morocco, the United States (where the commission is termed "Board of Pardon" or "Board of Parole"), Malaya and Cambodia. In France the President of the Republic is under a duty to seek the advice of the Supreme Council of the Judiciary. In the Republic of South Africa, Mauritius, Canada and Hong Kong the executive council must be consulted.

In some countries the law expressly provides that the court which passed the death sentence, must also decide on the posibility of a pardon (Chile, Ceylon). In El Salvador and Spain the advice of the Supreme Court must be obtained. In many countries there exists a customary practice under which the jurors will express spontaneously their wish to see the penalty of death commuted.

The practice existing in many countries of not executing women should be noted. A sentence of death passed on a woman is thus very frequently commuted. The same is true in the case of aged persons. In Pakistan, for example, a practice has grown up of pardoning persons under 18 and those over 60 years of age.

D. ABOLITION OF THE DEATH PENALTY.

The first cases of the total abolition of the death penalty by statute date from the late eighteenth century; in 1786 Leopold II of Tuscany promulgated his celebrated code and this was followed in the next year by the penal code of Joseph II of Austria. It should be noted that, not many years after these decidedly epoch-making enactments, the death penalty was reintroduced. In France the Convention Nationale declared that capital punishment would be abolished as from the date of the restoration of peace; but when the peace came, the death penalty was in fact restored. The abolitionists then concentrated, as is shown by the famous example of Sir Samuel Romilly, not on the total abolition of capital punishment but on the reduction

of the number of offences for which the penalty was death. It is a notorious fact that in 1800 more than 200 offences were punishable by death in England. By 1863 three capital crimes remained, of which only one (murder) involved in practice the application of the penalty of death. It has thus been possible to speak of partial abolition in lieu of total abolition.

However, capital crimes are still relatively numerous. But it is also evident that the number of countries in which offences other than murder are punishable by death is declining. On the other hand, as a result of a trend towards an authoritarian system of criminal law, the death penalty has sometimes reappeared in a more or less permanent manner in countries where it has once been abolished, and in certain other countries its application has been extended to new cases.

Abolition in law has very often been preceded by abolition **de facto.** A few examples will suffice. In Portugal the last execution took place in 1848 and the death penalty was formally abolished in 1867. In Denmark the last execution took place in 1842 and, although the 1866 code provided for the death penalty, it was never applied; hence the 1930 code can hardly be said to have abolished capital punishment in Denmark, but merely to have dropped an obsolete penalty.

In some countries the death penalty was first limited to certain exceptional cases before being finally abolished. In Brazil, at the time of the proclamation of independence in 1822, some 40 offences were punishable with death. Only three capital crimes remained thereafter, viz. murder, robbery and insurrection of slaves. On the proclamation of the Republic in 1889 the new Brazilian constitution abolished the death penalty entirely. Similarly, in Equador a steady trend towards restricting the cases of application of the death penalty had, since 1852, prepared for total abolition which was effected by the 1897 constitution.

In some cases the abolition came in gradual stages: first, the death penalty ceased to be applied for political crimes and then the abolition was extended to ordinary crimes. In Portugal, for example, abolition took place in two stages: first, by the Constitutional Act of 1826 and then by the Penal Code of 1867. Similarly, in Venezuela the death penalty was abolished for political crimes in 1857 and for ordinary crimes in 1863.

Some of the reasons officially given for the abolition are the following: (1) the value of the death penalty as a deterrent is not proved or is debatable; (2) a large number of capital crimes are in fact committed by persons of unsound mind, many of whom, precisely because of their mental condition, are not liable to the supreme penalty; (3) whatever precautions are taken, the possibility of judicial error undoubtedly exists; in certain countries the death penalty was abolished after doubt has been expressed as to the guilt of persons who had been executed; (4) in so far as the object of capital punishment is the effective protection of society, it is noted that life imprisonment is sufficient for this purpose; (5) the combined efforts of individual abolitionists and of leagues organised for the purpose of pressing for the abolition of the death penalty have also had an influence; (6) public opinion in certain countries has come round to the view that the death penalty is both odious and useless; (7) a

criminal, even if he has committed the most heinous crimes, cannot be considered to be utterly irreclaimable; (8) the fact that executions are rare has also often been cited as a reason for abolishing capital punishment, particularly in Portugal and in Latin America.

As is well known, the abolition of capital punishment has sometimes been provisional. In Austria the death penalty was abolished in 1919, re-established in 1934 and abolished again in 1945 with effect as from 1950. In Italy the 1889 code made no provision for the death penalty but the Fascist régime reintroduced it in 1928; capital punishment was again abolished by a legislative decree of 10th August, 1944. In Switzerland it was abolished by the 1874 constitution but the 1879 revision of the constitution permitted the individual cantons to re-establish it; the penal code of 1937, which became effective in 1942, abolished the death penalty definitely. In New Zealand the death penalty was abolished in 1917, restored in 1951 and then abolished again in 1961. In the USSR it was abolished by a decree of 26 May 1947 but restored on 12 July 1950 for traitors, spies and saboteurs and extended, on 30 April 1954, to serious cases of premeditated murder.

E. SUBSTITUTE PENALTY.

The penalty substituted for the death penalty is invariably one involving the deprivation of liberty. Mostly, at least for the most serious crimes, the substitute penalty is the severest possible form of deprivation of liberty, variously designated in the different countries: hard labour in Belgium and the Federal Republic of Germany, rigorous life imprisonment in Austria, Switzerland, Argentina and Ecuador, and life imprisonment in Denmark, Finland, the Netherlands, Norway, Sweden, Australia and New Zealand.

In some countries, however, life terms are not imposed. For example, in Portugal life sentences were abolished in 1884; the penalty now is imprisonment for a term not less than 20 and not more than 24 years.

On the other hand, it is well known that life terms, even where possible under the law, are no longer served in practice. Such a sentence is often commuted into one of a specified term, in which event the customary rules concerning release before completion of the sentence becomes applicable. This release before completion of the term is expressly recognised as a possibility in Austria, Denmark (if the prisoner has served two-thirds of his term or if at least nine years have elapsed since the conviction), Luxembourg, Norway and Sweden (where it is similarly required that at least nine years must have elapsed) and the Netherlands (where conditional release may be granted if the prisoner has served two-thirds of his sentence). (In South Africa an inmate may be released on the recommendation of the Prisons Board after expiry of at least half of the sentence — Ed.)

II. PROBLEMS OF PRACTICAL APPLICATION

Since the present study is limited to capital punishment, the discussion which follows, will deal only with the problems of practical application which arise in those countries where the death penalty exists.

A. CAPITAL CRIMES IN THE VARIOUS LEGAL SYSTEMS

In present practice the crimes punishable by death are divisible into several categories, as follows:

1. Crimes against the Person.

(a) **Crimes against Life:** These can take the form of murder which is, by far, the commonest capital crime and is punishable with death in a large number of countries; wilful homicide; killing in a duel; lynching; poisoning; paricide; infanticide; homicide accompanied or followed by another crime, like robbery, highway robbery or piracy; killing of a policeman or of an official on duty; homicide or assault committed by a prisoner under sentence; aggravated assault causing the death of a child; arson or destruction of various kinds, causing death; aiding in the suicide of a child or a person under the influence of drink or of unsound mind; killing a woman by abortion.

(b) **Offences against the Integrity of the Person:** Rape whether followed by death or not; castration followed by death; traffic in narcotics in certain particularly serious cases; kidnapping followed by death or if attended by aggravating circumstances; arbitrary detention with torture.

(c) **Other Offences which may affect the Person — Cumulative Offences:** Perjury leading to another person being sentenced to death or unlawfully imprisoned in serious cases; recidivism after sentence to the longest term of deprivation of liberty — commission of more than one offence punishable with such a penalty; train robbery and train wrecking.

2 Crimes against Property and Economic Crimes.

Because, in some countries, economic crimes are regarded as extremely serious matters, these have, in certain cases, been made punishable with death. Such crimes of an economic nature are agrravated robbery and in particular armed robbery; piracy with violence; hoarding or unlawful and serious raising of prices; misappropriation of public funds; counterfeiting currency; currency speculation; serious crimes against socialised property (the latter three in Poland and USSR).

3. Crimes against the State and Political Offences.

Whereas the liberal law of the nineteenth century had led to the abolition of capital punishment for political offences, these offences have in the twentieth century laws of certain countries taken on once more the character of what was formerly described as "odious crime" jeopardizing the security of the State.

(a) **Crimes against the External Security of the State:** Treason; spying; assistance to, or collaboration with, the enemy; crimes against the integrity and independence of the country.

(b) **Crimes against the Internal Security of the State:** Armed rebellion; insurrection; conspiracy against the State; homicide in a riot or insurrection.

(c) **Crimes against the Internal Peace:** Attempts on the life of the head of State; mutiny; incitement to mutiny, if followed by mutiny; looting; massacre; devastation; "diversionism" (note: the term "diversionism has been adopted by Soviet authors to describe a counter-revolutionary act of sabotage which in their eyes constitutes a "diversionist manoeuvre" in that it seriously hampers efforts to build socialism).

In addition, it should be noted that in Afghanistan adultery is punishable with death; in Chile the crime of assaulting a minister of religion; and in Dahomey the removal outside the country for financial gain of a person of unsound mind or of a minor without the consent of his parents. In the United States of America (Tennessee) assaulting a person with a deadly weapon while in disguise and (in Arkansas) killing by colliding while in charge of a steamboat are capital crimes.

B. STATISTICAL DATA AND CONCLUSIONS.

1. Statistics of Sentences and Executions during the most recent five-year Period.

The first point to note is that no sentence of death has been passed during this period (and even before) in a number of countries where capital punishment nevertheless exists in law (El Salvador, Guatemala (where the last execution took place on 1 December 1956) and the Netherlands Antilles (where the last execution appears to have taken place in 1870). Elsewhere, sentences of death have been passed in the last five years but have not been carried out, e.g in Australia 8 sentences of death have been passed in Victoria since 1951 but none of them has actually been carried out; in Tasmania 4 sentences of death have been passed since 1946 but none of them has been carried out; the position is similar in the Western Pacific Islands.

In a number of countries the number of executions is higher than 50 per cent of the death sentences. This is the case in the United Arab Republic (103 sentences, 66 executions), Sudan (547 sentences, 354 executions), Republic of South Africa (592 sentences, 392 executions), New Zealand (10 sentences, 7 executions).

In the following examples the number of executions is less than one half of the death sentences passed: Morocco, 14 out of 43; Nigeria, 251 out of 590; Canada, 16 out of 59; Spain, 8 out of 33; France, 11 out of 33; United Kingdom, 28 out of 100.

2. Comparative Statistics concerning Prosecutions, Sentences and Executions.

In many cases the crime with which the accused is charged, is often reduced, particularly in countries following the Anglo-American system, in which a charge of "murder" is frequently reduced to one of "manslaughter". The crimes involved are always murder in some form. The following data may be noted (the three figures following each country relate respectively to the number of capital charges, death sentences and executions): Canada, 208, 111, 51; South Australia, 27, 9, 2; New Zealand, 21, 10, 7; Northern Rhodesia, 174, 49, 26; Mauritius, 41, 4, 2.

Many capital charges end in an acquittal. For example, in Canada, from 1954 to 1958, out of 324 persons prosecuted on a capital charge, 70 were acquitted. In other cases the accused tried on a capital charge was sentenced to a penalty less than death. In Canada lighter sentences were imposed on 154 out of 342 tried on a capital charge and in Western Australia 5 out of 24.

In how many cases was the death sentence passed on first offenders and in how many on habitual criminals? In the Republic of South Africa, from 1956 to 1960, 344 were first offenders out of a total of 592; Japan, from 1945 to 1955, out of 250 convicted persons executed, 134 i.e. 53.4 per cent were first offenders; Austria, from 1947 to 1950, 12 first offenders were executed as against 8 habitual criminals; Spain, the number of first offenders sentenced to death is greater than that of recidivists.

By contrast, habitual criminals account for the majority of the death sentences passed in the United Arab Republic. In the United Kingdom, from 1957 to 1960, out of 28 persons sentenced to death, 16 were recidivists.

These indications and others support the experts who held that, contrary to popular opinion, the crimes which carry the death penalty are more often than not committed by first offenders.

C. CONDITIONS UNDER WHICH THE DEATH PENALTY IS CARRIED OUT.

1. Interval between the Offence, the Charge, the Sentence and the Execution.

The period which usually elapses between the offence and the prosecution varies a great deal and only averages can be given here. In some countries the average interval appears to be less than six months (Northern Rhodesia, 2 months; Nigeria, 6 months; United Kingdom, 3 months). In other countries the average interval varies between 6 months and one year (Chile and Lebanon, 1 year). In yet other countries it usually exceeds one year (about 14 months in Japan, for example).

The interval between sentence and execution is less than six months in the following territories: Nyassaland, 4½ months; Northern Rhodesia, 5 months; Tanganyika, 3 to 4 months; Mauritius, 24 days; Canada, 2 to 3 months; China, 14 to 18 days; France 5½ months; United Kingdom, 18 to 25 days; Austria (where the penalty of death may be applied only in the event of the proclamation of a state of emergency), 2 hours.

It varies between six months and one year in the following countries: Morocco, an average of nine months; Chile, 7 or 8 months; Greece, 6 months: It exceeds one year in the following countries: United Arab Republic, 15 months; United States, between 13 months and 4 years. It should be noted that the long interval which sometimes occurs between sentence and execution in some countries (e.g. the United States) is explained by the existence of a large number of appellate remedies.

2. Determination of the Date Execution and Treatment of the sentenced Prisoner between the Sentence and the Execution.

In many countries it is expressly provided that an execution may not take place on an official holiday or even on a religious festival (United Arab Republic, Dahomey).

The date of execution is fixed in various ways: in Chile, three days after the papers have been sent back to the court of first instance; in Guatemala, 24 hours after the notification of the decision ordering the execution; in Thailand, 60 days after the sentence has become final; and in Japan, a maximum of six months after the sentence has become final.

In most countries, furthermore, a prisoner under sentence of death must be kept in solitary confinement. The tendency is, without any relaxation of surveillance, to make the condemned person's last few days as bearable as possible. Naturally, in nearly all countries the services of a minister of religion are readily available to the prisoner.

In other countries the main concern appears to be to isolate the prisoner and keep him under constant surveillance day and night (Canada, Republic of South Africa, Iraq and Iran). In yet other countries a prisoner under sentence of death remains subject to the **usual treatment of prisoners.**

3. **Proportion of Death Sentences which have been quashed or which have not been followed by an Execution.**

A distinction must be drawn between two different situations. First, a sentence may be quashed on appeal. In the Republic of South Africa, during the most recent five-year period, 57 sentences were quashed or reversed.

In some cases, on the other hand, the sentence is not followed by execution because the offender is pardoned. It appears that in some countries a pardon is granted in fewer than fifty per cent of the cases (Morocco, 17 out of 43 death sentences during the last five years; Canada, 50 pardons out of 111 death sentences in 8 years). Elsewhere, a pardon was granted in more than 50 per cent of the cases (in France commutations are frequent; Spain, 42 persons out of 76 convicted on a capital charge were pardoned between 1950 and 1959).

In Belgium and in Luxembourg 100 per cent of the death sentences are commuted, because these countries are abolitionist in fact and not in law.

4 **Postponement of Execution (Reprieve).**

In some countries a pregnant woman may not in principle be executed until after delivery. In the United States there is express statutory provision in 23 states for a medical examination to ascertain whether the woman concerned is pregnant. In Chile the law prescribes that the sentence of death must not be notified until 40 days have elapsed after childbirth.

In other countries a person under sentence of death may obtain at least a provisional stay of execution on grounds of illness. In Togo and Somalia the sentence can be carried out after recovery. In the Republic of South Africa, though there is no statutory provision on the subject, the Executive Council may defer an execution on the grounds of illness. In other countries the law expressly provides that the execution must not take place in the event of insanity or mental disease supervening after the sentence (Ghana, Seychelles, United States).

In yet other countries the authority competent to grant a pardon sometimes grants only a stay of execution. This happens quite often in the United States, where the execution is then deferred for only a short period.

5. **The Rights of the Family where judicial Error is proved.**

Most of the countries report that no claims in respect of judicial error have been put forward and that there are no specific legislative provisions on the subject. However, in New Zealand a "posthumous" pardon appears to be possible. On the other hand, provision is made for a procedure of rehabilitation to exonerate a sentenced person even after his execution, at the request of his family or sometimes even of an authority (Poland, Indonesia, USSR). Express provisions for the granting of an indemnity (damages) exist in Northern Rhodesia, Japan, France, Sweden, Switzerland and Yugoslavia.

III. SOCIOLOGICAL AND CRIMINOLOGICAL PROBLEMS

These are the problems which have given rise to the most abundant literature in various parts of the world. The problems will be treated under four broad headings.

A. THE PROBLEM OF THE EFFECTS OF THE DEATH PENALTY.

1. **Objective Data available at Present.**

The first point to be noted is that the information assembled confirms the now generally held opinion that the abolition or (which is perhaps even more significant) the suspension of the death penalty does not have the immediate effect of appreciably increasing the incidence of crime. This point is stressed by the abolitionist countries where abolition **de jure** was preceded by a period of **de facto** suspension. Likewise, some countries which have maintained the death penalty, have experienced periods during which it was not applied or at least not carried out (France early in the twentieth century and the United Kingdom in the period preceding the Homicide Act, 1957). No appreciable increase in crime resulted in either case. Many abolitionist countries, in particular the Scandinavian countries, Austria and certain Latin American countries, take this consideration as the basis for the view that the deterrent effect of the death penalty is, to say the least, not demonstrated. And even a number of countries which have maintained the death penalty, query its value as a deterrent.

2. **The Abolition of the Death Penalty, and the Criminality Curve.**

A distinction can be drawn between partial abolition and total abolition. Partial abolition consists of the removal of certain offences from the list of capital crimes. All the information available appears to confirm that such a removal has, in fact, never been followed by a notable rise in the incidence of the crime no longer punishable with death. This observation, moreover, confirms the nineteenth century experience with respect to such offences as theft and even robbery, forgery and counterfeiting currency, which have progressively ceased to be punishable with death: indeed, these crimes, so far from increasing, actually decreased after partial abolition. It is even reported from Greece that banditry in fact decreased after it ceased to be punishable with death, though the report adds that more efficient preventive action by the police also accounts for the decline in this offence. In Canada rape ceased to be punishable with death in 1954: from 1957 to 1959 a steady decrease in convictions was noted

(from 56 to 44) while in the same period the population of Canada increased by 27 per cent.

The same general observation can usually be made regarding the total abolition of the death penalty. In this respect, it is particularly instructive to look at the experience of States which at one time abolished and then later restored the death penalty. In the United States, for example, Kansas experienced a comparatively long abolition period (1887 to 1935); capital murder accounted for 6.5 per cent of all crime during the abolition period and for 3.8 per cent after re-establishment. In New South Wales the death penalty was abolished in 1955, and there were 10 convictions for murder in 1951, 12 in 1952, 10 in 1957, 12 in 1959 and 14 in 1960; though these figures seem to indicate a slight increase in the incidence of murder in the most recent period, allowance should be made for the considerable population growth. In Argentina, capital punishment was abolished in 1922; yet, despite the constant increase in population, the number of murders of the kind previously punishable with death declined steadily in the decade which followed.

The data reported from the Federal Republic of Germany, Austria and the Scandinavian countries point in the same direction. In the United Kingdom, in spite of alternating periods of severity and virtual **de facto** abolition, the figures have remained constant from 1930 to 1960.

B. THE DEATH PENALTY AND PUBLIC OPINION.

1. General Trend of Public Opinion.

Several countries apparently wish to retain the death penalty despite the pressure of individuals or of groups for its abolition. In general, in the countries of Europe which have maintained it, public opinion as a whole apparently favours the retention of the death penalty. In some countries (e.g. Australia) public opinion seems prepared to leave the matter to the government and to the specialists. In a few abolitionist countries there is sometimes public support, although variable in extent, for the restoration of the penalty of death. Pressure for the abolition of the death penalty was particularly strong in the United Kingdom during and after the work of the Royal Commission on Capital Punishment and before the enactment of the Homicide Act in 1957, a statute which is considered by some as a first step towards abolition. In France the abolitionist movement manifests itself in various ways and has just led to the submission of a Bill to Parliament for the abolition of capital punishment.

Public opinion polls have to be used with extreme caution, for they never cover more than a fraction of the population. Nevertheless, it may be noted that in the Federal Republic of Germany poll results indicate that public opinion favoured capital punishment to the extent of 55 per cent in 1952, 72 per cent in 1957 and 75 per cent in 1953. In Canada, in 1947—1950, 68 per cent of the persons consulted favoured the penalty of death. In Australia the most recent Gallup polls indicate that the supporters of abolition are making some slight headway. In Finland, in 1948, 58 per cent favoured the death penalty, 68 per cent did so in 1953, but only 46 per cent in 1960. In Sweden a recent poll gave 28 per cent in favour and 55 per cent against capital punishment.

2. Present State of the General Controversy.

A theoretical controversy on the problem of capital punishment has been going on at least since Beccaria. The controversy has once more become very topical in the last twenty years. Accordingly one can hardly avoid giving an account of the two opposing views in the matter. In favour of the death penalty, the idea most commonly accepted is that of its deterrent effect, i.e. the protection of society from the risk of a second offence by a criminal who is not executed and who may subsequently be released or who may escape. Similarly, it is argued, the State has the right to protect itself. Many speak of the concept of self-defence and some even regard the death penalty as a necessity and the public authority as the representative in this regard of God on earth. A related argument which is often advanced is that based on the idea of atonement; the death penalty (it is said) is the only just punishment for the gravest of crimes, or the only one capable of effacing an unpardonable crime. Some add that even if, from the philosophical point of view, the death penalty may be of doubtful legitimacy, it represents a political necessity for the protection not merely of society but of the social order itself. Similarly, it is contended that, since the death penalty is the only means of eliminating the offender altogether, this penalty is necessary, at least provisionally when the public peace is endangered by certain particularly dangerous forms of crime. On the basis of these ideas, capital punishment represents the extreme security measure of elimination. Some claim that, on this basis, it is legitimate to do away with "social monsters."

An analogous notion is that based on what is sometimes termed realism in the prevention of crime. The supporters of this view argue that a particularly potent weapon is needed for dealing with dangerous criminals and individuals. Yet others argue that public opinion remains generally favourable to the death penalty and that the public as a whole, and particularly the police and prison officials, believe in its effectiveness. It is urged that this sincere belief should be respected and also that possible victims should be protected by maintaining the penalty of death. Many claim that the death penalty should be retained because it is virtually impossible to find another penalty to replace it; imprisonment, even for a long term, is said to be inadequate and its effects are moreover minimized by the practice of anticipated release. It is further argued that, if imprisonment in these cases were really to be a solitary confinement for life, it would be more cruel than death; and besides, imprisonment in perpetuity leaves no hope to the offender and does not encourage him to repentance in the same way as the immediate prospect of the supreme penalty.

Another, equally very utilitarian, view held in some countries is that the execution of the condemned person represents a saving of public funds and hence a saving for the taxpayer, who is not called upon to pay for the maintenance of anti-social criminals for an indefinite, or at least very long, period.

Against these arguments for the retention of the death penalty, the abolitionists advance the following considerations. Their main argument is that based on the sanctity of human life; since it is wrong to kill, the State should set the example and should be the first to respect human life. Some go so far as to say that an execution

is a self-mutilation of the State; though the State has admittedly the capacity to defend itself and to command, it is not empowered to eliminate a citizen, and in doing so the State does not erase the crime but repeats it.

It is further argued that the penalty of death can only be justified under the aspect of collective vengeance, of atonement, or of absolute retribution. But the modern tendency is to regard penalties as having no object other than prevention and punishment, and this object can be achieved by means other than the taking of life.

Furthermore, it is said the **lex talionis** is obsolete and hence an execution is a sort of judicial or legal murder; also the existence of the penalty of death debases justice. For some years now it has been strenuously contended that the mere presence of capital punishment in the catalogue of penalties falsifies criminal proceedings, which take on the character of a tragi-comedy. Recent works on sociology and judicial psychology indicate the extreme relativity of capital sentences.

Another argument used by the abolitionists is that the penalty of death rests in reality on a somewhat metaphysical concept of human freedom, whereas the social sciences show that an offender does not generally enjoy complete freedom. Absolute justice is therefore an illusion, and full atonement a fiction. The condemned person is in reality paying for other people or suffering for the sake of the example. His execution then appears to have no moral foundation. Nor does the death penalty have the deterrent effect attributed to it; indeed, it is said, the statistics of crime show that its abolition does not lead to any increase in crime, and consequently capital punishment loses its basic traditional justification.

Moreover, the penalty of death is a form of cruelty and inhumanity unworthy of a civilization which claims to be humane; doctors report that even the most efficient methods do not result in instantaneous and painless death. Above all, the chief defect of the death penalty is that is is irrevocable; judicial error is always possible and a few have certainly occurred recently. In such cases, the penalty of death appears as an unpardonable crime committed by society.

In any event, society can protect itself by other means and the death penalty is no more than a lazy answer, which hinders the search for effective means of curbing crime and for a rational system of prevention. In addition, the death penalty is unjust in that it affects not only the criminal himself but also his close relatives and brands the whole family with the mark of infamy. It is, moreover, paradoxical to claim that the death penalty alone makes repentance possible; it certainly totally precludes the rehabilitation of the human being concerned. In a progressive society, the death penalty appears on reflection as being the opposite of true atonement.

A further argument is that there is a contradiction in claiming that the death penalty has a deterrent effect and, at the same time, surrounding the execution with secrecy. And in some countries (it is added) the death penalty is applied most unequally, both from the social and from the racial points of view; some persons have not sufficient financial means to defend themselves or are morally unable to do so. (In South Africa a counsel is appointed Pro Deo in such cases.—Ed.) The conclusion reached is, therefore, that this penalty, which should be the expression of absolute justice, often leads in practice to injustice against individuals.

C. POSITION TAKEN BY SPECIALISTS AND BY QUALIFIED ORGANISATIONS.

1. Position taken by learned Authors.

Among the leading authorities in penal science, the supporters of abolition appreciably outnumber those who favour the retention of capital punishment. The specialists of the social sciences are, in their great majority, abolitionists. The supporters of capital punishment, apart from a number of political figures and persons holding high public office, are generally jurists with a traditional training and judges.

With regard to the position taken by these supporters of capital punishment, two special remarks may be added here. The first is that they do not generally ask for its extension to additional offences. They only state that certain particularly odious crimes, or certain crimes especially dangerous to society, should be punishable with death, and in the final analysis, they say, the raison d'être of the death penalty is precisely its exceptional character.

Secondly, a number of specialists take a view that might be described as intermediate, if not empirical; they admit the death penalty solely because it exists in fact. If it had been abolished in their own legal system, they would not advocate its re-establishment. They hesitate, however, to call for its abolition so long as they are not fully satisfied that it does not, after all, perform a useful social function.

A view close to this intermediate opinion is that held by those who style themselves supporters of partial abolition. Some of them point to the position in Austria, an abolitionist country where the death penalty has nevertheless been retained for application in the event of the proclamation of a state of emergency. (Even Beccaria, though a firm supporter of abolition, nevertheless admitted the possibility of applying the death penalty in certain exceptional circumstances). The majority of specialists do not fail to observe that in case of war or revolution, as also in the case of offences punishable under the military code, the penalty of death can be justified from the point of view of legal ethics and that, in any event, its temporary introduction becomes in certain cases unavoidable; total and unconditional abolition therefore appears to them as illusory or utopian.

Regarding the controversy as to a substitute penalty, some criminologists and penologists propose the introduction of a truly perpetual penalty, i.e. one the perpetuity of which would be in a sense guaranteed; others merely propose that the law should prohibit any anticipated release before a long mandatory term of imprisonment has actually been served. Yet other writers, basing themselves on the experience of Belgium, say that a particularly serious problem arises in the case of abnormal criminals or criminals showing recognised pathological characteristics. Even in countries where the death penalty exists, such persons are not generally executed and yet these are the individuals who are the most direct danger to society.

2. Action of the Churches and of Specialised Associations.

In the churches a controversy has been going on for centuries, mainly among Christians. It has sometimes been claimed that the majority of Catholics favour the penalty of death, which is also said

to be supported more by Calvinists than by members of the other Protestant Churches. The truth is that both opinions find support among members of these various churches; the abolitionists point out in particular that the murder of Abel was not punished with death (Genesis IV, 2 and 15), and in the Gospels they cite the Sermon on the Mount (Luke VI, 35; Matthew V, 44) and the pardon of the woman taken in adultery, a crime then punishable with death.

On the other hand, observers have not failed to point to the position adopted by the Quakers in the former British colonies of America and later in the United States, and to the movement launched in the Netherlands in the sixteenth and seventeenth centuries by the early pioneers of penitentiary reform, who held that the object of punishment should be reform, not atonement.

The Greek Orthodox Church seems, in principle, opposed to the death penalty and refuses to admit that the penalty is justified on religious grounds, although it recognizes that the State may consider it necessary.

The abolitionist movement has received considerable assistance from the work of societies and groups set up to propagate the idea. There is, for example, the remarkable activity of the Society of Friends against Capital Punishment, founded in the United States as long ago as 1651. With the encouragement of that society, the American League to Abolish Capital Punishment was formed in New York in 1925.

In Britain the National Council for the Abolition of Capital Punishment was set up in 1925 under the auspices of the Howard League for Penal Reform, which has at all times been firmly abolitionist. The 1925 Council was merged in 1948 with the Howard League itself which, in 1955, sponsored the National Campaign for the Abolition of Capital Punishment. The example of Britain was widely followed in the Commonwealth, particularly in Australia and New Zealand.

D. PRESENT PROPOSALS RELATING TO THE DEATH PENALTY.

Proposals for both the abolition and the restoration of the death penalty are more or less constant. In most of the countries where the death penalty exists, proposals for its abolition are submitted regularly and constantly renewed. Proposals for its restoration are much rarer in the abolitionist counties; they exist, however, and are becoming more frequent either because certain particularly odious crimes have aroused public opinion or because of special political circumstances.

At the present time, it is true to say that in a good many countries no amendment of the law is seriously contemplated. In Sweden proposals put forward for the reintroduction of the death penalty were rejected in 1950 and again in 1953; in Switzerland a proposal made to that effect in 1952 received a good deal of publicity but was nevertheless rejected.

The proposals for the abolition of the death penalty are the most numerous and are increasingly put forward in the countries which retain capital punishment. Other proposals have been made for the suspension of the application of the death penalty for a number of years. A proposal to that effect has attracted considerable interest in

the United Kingdom; in England its application was suspended by a government decision at the time when the conclusions of the Royal Commission were under consideration and before the enactment of the Homicide Act, 1957. In Ceylon a proposal for suspencion was rejected in 1956, but was reintroduced in 1953 and adopted; in 1959, however, the measure was repealed.

The year 1961 was marked in the United States by renewed efforts to change the situation as regards capital punishment. Altogether thirty-six proposals for legislation were submitted, twenty-three of them for the abolition of the death penalty, two for the extension of its scope, four for the amendment of the relevant legislative provisions, three calling for an enquiry into the subject and two calling for a referendum. Twenty-four of these proposals were rejected by the competent legislatures. some despite a favourable report by a legislative commission and a few by very narrow majorities.

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   OF

   Stel u voor dat die klem eerder moet val op probleme eiesoortig aan ons land sowel as op die stappe wat tans gedoen word of gedoen kan word om die vraagstukke die hoof te bied. (Die oogmerk met hierdie vraag is om vas te stel watter soort inhoud vir die lesers die interessantste sal wees en om vas te stel in watter mate sodanige inligting mag meewerk om die doeltreffendheid van die misdaadbestryding in die Republiek en die rehabilitasie van die gevangene te bevorder).

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3. What suggestions can you offer regarding—
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   (b) Its contents;
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4. Do you consider it advisable for the publication to give publicity primarily to the overall scientific aspects of the prevention of crime and the right treatment of offenders as has been done in our current issue in relation to Capital Punishment?

   OR

   Would you suggest that the publication take on a more South African flavour with emphasis on local problems and the means followed and to be followed for their best solution? (Visualised by this question are the aspects of our publication's greater readability and effectiveness in the campaign for the reduction of crime in the Republic and the right treatment of our offenders.)

5. Would you care to make any contribution at any time for publication in "Penal Reform News?"

in „Strafhervormingsnuus" te skryf?

6. Sou u miskien bewus wees van persone wat graag sulke bydraes wil lewer, vra hulle dan asseblief om met ons in verbinding te tree.

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STRAFHERVORMINGSNUUS

PENAL REFORM NEWS

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THE DUTY OF SOCIETY TO THE CONVICTED PERSON

Below appears the address given by the Chairman of Social Services Association of South Africa, the Hon. Mr. Justice (then Advocate) H. J. B. Vieyra, on the occasion of the Southern Rhodesia Prisoners' Aid Conference held in Salisbury on 9th March, 1963.

May I at the outset on behalf of the National Council of the Social Services Association of South Africa say how honoured we are to have been invited to send representatives to your Conference, as also to convey to you our Council's good wishes for its success. And may I add that we shall at all times be very willing to give whatever assistance that lies within our power to the furtherance of your aims and objects; we on our part shall be only too eager to avail ourselves of such co-operation and advice as you may be able to give us. The work that lies to hand is such as to raise problems that are no mere local problems but ones that unfortunately are world-wide requiring mutual assistance at all levels. An exchange of ideas such as is envisaged by a Conference of this sort can be productive of ideas for their solution. Even in the area of the welfare state and the psychological climate that it creates, the role of the voluntary or non-governmental organisation has by no means come to an end. On the contrary by the very nature of the work to be done it is being increasingly recognised that in many spheres the role is a necessary one.

What confronts us all, however, is the difficulty of persuading our fellow beings, not merely of the need for the work, but of the need of assistance and co-operation by and from society at large.

It is hardly necessary to remind an audience such as this that once an offender has expiated his transgression by serving the sentence imposed on him or otherwise undergoing the punishment meted out to him by the appropriate organ of the State, he must be entitled once again to take his position in society, and to that end must be entitled to achieve what is commonly referred to as **rehabilitation,** which as described by Fairchild in his Dictionary of Sociology, is **„the process or technique of re-educating and redirecting the attitudes and motivations of the delinquent or criminal so as to bring his behaviour into full harmony with the law and his own willing acceptance of social regulations and restrictions."** There is implicit in this definition the concept that it is necessary that the human being should live in full harmony with the norms laid down in the society in which he lives. It is also implied that these norms are of intrinsic worth. The definition pre-supposes that we know the purpose of society; it pre-supposes also that the extent to which the individual is content to conform with the norms laid down so also to that degree will the purposes of society be achieved. Norms — Society: to what are we referring?

Our enquiry must then go further back. Why must the individual conform and to what extent? For unless we can answer these questions satisfactorily for ourselves, unless there is a rational basis for our belief in the value of these norms we can not even start talking of rehabilitation or the necessity for the rehabilitation of offenders. and we shall certainly not be able to persuade those around us that there are obligations towards those who have offended. We are all human beings. We are distinguished from animals and plant life by the facts of our intelligence and our will. We can reflect upon ourselves. We are conscious of our own thoughts. From that point of view each one is a world in himself. We have appetites — the desire to eat, the desire

to live, the desire to acquire all those things that are necessary for mere living: food, shelter and clothing. We have the desire to marry and to have children. We have the desire to express ourselves in art, music, dancing — the desire to play games. We have the desire to exercise our faculties in the intellectual sphere: to learn, to acquire knowledge, to make use of that knowledge in a creative way, to study the earth, to manufacture things. These appetites — these desires — all go to make up man's nature and there must be ends to which that nature oorresponds, for which these appetites are constituted, and as has been said by the famous French philosopher, Jacques Maritain, **"here is an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the necessary ends of the human being."**

Let me take matters a step further. Although the person as such is a whole, self-sufficient, complete yet his needs are such that he is dependant on others for his material, intellectual and moral life. We desire to take from others and give of ourselves to others. In this way we grow in depth of personality. Thus arises society, the duty of which can be no other than to protect those rights that flow directly from our human nature. This is not the place to analyse in any detail the philosophical content of such rights but it is important to remind ourselves of some of them: the right to life, the right to the integrity of one's body, to the ownership of material goods, to marry and to have children, to educate those children, to associate with others; the right to the exercise and development of one's faculties; the right to the integrity of one's dignity. And, of course, it is self-evident that if all of us have these rights which spring from our very nature, so too all of us have the obligation to permit the exercise of those rights by others. Hence the function of society is so to order affairs as to make it possible that men may exercise their natural rights without by so doing transgressing the duties owing to others to allow them to exercise their rights. Hence the State and the existence of positive rules that must be capable of enforcement. Hence the existence of sanctions for the protection of human beings. Hence the ethical basis for all law.

It will be readily perceived that no ordered co-existence is possible unless we are prepared to accept these propositions sometimes referred to collectively as the natural law. Our duty as human beings in society can not be a mere negative one, viz. to see to it that by our conduct we do not detract from the lawful exercise by others of their natural rights. Is it sufficient too that we ourselves do not steal, defraud others, defame others, assault others, commit acts of violence, do not drive our vehicles without due regard for others using the road? Are there no positive aspects?

Two important points must be considered:—

1. If the basis of human rights is such as I have suggested, then it is society's duty to educate men to an understanding of the obligations that flow therefrom, why they exist and why it is essential that laws be obeyed — to supply motivation for the observance thereof, not based purely on law as force imposed upon human beings from without, but because of the ontological necessity springing from our existence and the necessity of living in society.

2. If man cannot find for himself in society the means whereby he can freely exercise his human rights, he will sooner on later lose the image he should have of his own dignity and integrity and that of

others. He will seek means of satisfying the urges in him that are completely contrary to the line of conduct conformable to the natural law. He becomes a rebel and positive law will have no restraining influence. He becomes anti-social and an outcast. His urges will lead him to the use of his powers without regard to the ends for which they exist.

These two important aspects lead to important conclusions — put shortly, the necessity for education in the larger sense, and the necessity for so ordering the socio-economic life of the state that motivation exists for the observance of the law. Put in another way: society must educate to a realisation of the meaning of human dignity and create conditions in which such dignity can be fostered and maintained. And in using this term "society" let us not, because of the abstract appearance of the term, try to evade personal responsibility and let us not think that because we live in an ordered society we can evade our obligations towards the State. The State can operate only through human agencies for which we all hold responsibility whether at high levels or on the lower levels. Various means will suggest themselves. I think of one — if I must come to practical things — how much juvenile delinquency or delinquency of young people springs from inadequate facilities for sport, amusement, communal activities and the teaching of responsibility — a function that could be proper to local authorities — provision of adequate sports-fields, social clubs and the like. But I pass on. When we demand punishments for transgressions, when we insist on imprisonment for those who upset the balance of order — however right we may be to insist on this — let us also examine our own consciences and ask how far we are to blame that such transgressions have taken place. Have we taken our rightful share in regard to the two aspects above mentioned?

And now the transgressor has paid the price exacted by society for his offence. He is once again a free man. He is back in society. If we, the members of society, had a duty previously to educate him to a proper realisation of his human dignity and to create conditions in which such a dignity can be fostered and maintained, if we had a duty previously to ensure that he would exercise his human rights for the ends for which they were intended, on what possible rational basis are we now released from such duties?

On the contrary, having received him back as it were into the fold, these duties become more urgent, of greater obligation, if only in our own interests. Here again it requires very little consideration on our part to come to the conclusion that if we are to solve the difficulties involved in the rehabilitation of those concerned, if in short we are to have any sort of success in persuading the offender voluntarily to accept those social and legal regulations necessary to enable him to realise his human dignity — the process begins too late if it commences only as the gates of the prison open to let him go free. It must already begin the moment he starts on his sentence. Happily that is being more and more realised. Whilst society can demand retributive and deterrent punishment, it must see to it that such punishment will also have large rehabilitative elements. I do not know what the position is in this regard in your country, but I certainly want to stress that of recent years in most countries tremendous advances have been made in this direction.

One of the problems to be solved here is to what extent our organisations should share in the rehabilitative work done in the prisons; if post prison rehabilitation work is to be undertaken, those who are to be engaged in such work must surely be able to make the necessary contact long before the prisoner is free.

And now the former convict is free. No longer is he under the control of prison authorities or subject to the influences for good that are there. Here is where the role of a Prisoners' Aid Society with its dedicated personnel becomes of the utmost importance as an organ of society to nurse the patient back to life as it were — to help his first steps — to help his family to receive him back — to help him to a position where he can maintain himself and those dependent on him — to create a desire to live the full life of a human being.

But societies such as yours and ours cannot possibly succeed without the fullest co-operation of all citizens, to which such organisations are entitled really as of right because of the duty that I have tried to explain. Specialised work it often is and therefore it would be ideal if the active work can be performed by academically qualified persons. But where that cannot be so because of paucity of funds there should not be lacking persons in the community willing to give at least some of their time to undertake personal work and keep in close contact with those whose needs are to be served. Then co-operation is required — and is to be fostered and developed — from the family of the ex-prisoner, from employers and large employers of labour, from fellow employees. And of course financial assistance not only for the ex-prisoner and his family but towards the proper running of the organisation.

How to achieve all this? Education and publicity — through the press, the radio, the schools, in universities, at all appropriate gatherings, from pulpits — wide and strong publicity to be kept up continuously, increasingly to persuade our fellow beings of the duties which they as human beings owe.

It is not easy propaganda. Convinced as we are of the righteousness of the cause there is no reason why we should not use the subtlety which it is said big business uses in its advertising campaigns — unfortunately our work holds no emotional appeal for the multitude. We are not able to hold aloft the picture of a crippled child, the hunger of a starving family, the widowed mother insufficiently endowed. The picture that the public has of our clients is that of their victims. We must make them realise that in some measure the victims are their victims.

If I have omitted to make mention of religion and religious influences, of Christian aspirations and virtues, it is not because I find them of secondary importance; on the contrary. But in a pluralist society, if we are to have a common ground as a nation to seek to solve the difficulties of the anti-social, we must find it in a philosophy that will have values for all of us. As John Courtney Murray so clearly explains in his book on certain aspects of American Society, the concept of natural law posits a nature of man as something beneath all individual differences; that there is in spite of the fall a natural inclination in man to achieve the fulness of his being, that there is a God who is eternal reason and, finally, that the order of nature is an order of reason and therefore of freedom.

FINDINGS OF AN INVESTIGATION INTO HABITUAL OFFENDERS*

by

H. VAN ROOY

Director of the Institute of Criminology, State University Groningen, The Netherlands

On the basis of the Dutch Penal Code, paragraphs 37, 37a and 37b, the judge can administer a sentence consisting of deprivation of liberty to offenders who, when they committed their offences, were mentally deficient or disturbed in such a way that they were not wholly unaccountable for the offences. If this is the case, the judge can, if it is in the interest of public order, also demand that the delinquents be 'placed at the disposal of the Government'. This measure implies that the delinquent is treated in an institution sponsored by the Government for a period of two years. Treatment can be prolonged by 1 or 2 years if it has not brought the results desired. A direct equivalent of this measure does not exist in the Anglo-Saxon countries; for reasons of convenience it will further be referred to as 'disposal' in this article.

Dutch criminologists and experts in penal law do not agree on the question of whether this measure is used in a satisfactory manner. Some think it is applied too liberally, others — especially some psychiatrists — maintain that is is not applied often enough since the judicature fears that these delinquents will return to society too soon after they have undergone punishment. The latter is due to the fact that the result and discontinuation of the treatment implied by 'disposal' is not evaluated by the judicature, but by the Ministry of Justice. The advocates of a more frequent application of 'disposal' especially refer to habitual offenders. In psychiatric circles, some even go as far as to maintain that **all** these habitual offenders should be placed at the Government's disposal, since they are all mentally disturbed to such a degree that this measure should be considered. They therefore think it wrong that only a few of these offenders actually are treated in this way. Furthermore, the impression is gained that they think the decision as to whether this measure shall be applied or not is taken rather haphazardly by the judicature, it being only a matter of coincidence that some offenders are placed at the Government's disposal, while others are not.

To assess the correctness of this view, the Criminological Institute of the State University of Groningen conducted, at the request of the Minister of Justice, a fairly thorough examination of the personality structure of 32 habitual offenders imprisoned in the Groningen prison for regular and habitual criminals, during the period 1954-1956. These offenders certainly were grave habitual criminals, since the average number of sentences was no less than 13. Sixteen of these 32 criminals had never been placed at 'disposal'. For brevity, they will be referred to as group I. The remaining 16, referred to as group II, had been placed at 'disposal'. However, the latter had received several sentences of imprisonment and even committed an average of 10-11 offences **before disposal was applied for the first time.** This implies that they

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were considered mentally disturbed at a late stage of their criminal career only.

To obtain as detailed an insight as possible into the mental structure and the criminal career of the prisoners examined, a very extensive case study was made for each of them, consisting of four parts: gathering all available data in the criminological, sociological, psychological and psychiatric field. In this way for each of the 32 criminals, 4 reports were made, each by an expert in one of the above-mentioned branches of science, making a total of 128 reports. The results of this study are, therefore, based on these multidisciplinary case studies and a statistical evaluation of the data gathered.

The criminological data were gathered from the official records of the penal courts and the police, viz. 32 personality reports, 508 criminal records and 148 reports made by after-care officials. From these, all data were collected and evaluated concerning the criminality of the offender, their sentences, treatment in penitential institutions and after-care.

The sociological study was concentrated on the subjects' environment; the parental family, school, occupational training and occupational milieu and other factors concerning the adaptation of these offenders to society. These data were obtained from records and interviews of the offenders by the sociologist.

The psychological examination consisted of intelligence, projection and other tests specially selected for this study. The reaction of the subjects was studied and differences from the average population were examined.

The psychiatric examination was concerned with hereditary factors, diseases during infancy and childhood and other psychiatric aspects that might be important for determining whether the subject was mentally disturbed. Some of these data were the result of personal examination, others were collected from earlier records of these offenders.

The results of this comparative criminologico-sociologico-psychologico-psychiatric study were gathered together in an extensive report, of which this article is a summary.

1. From the criminological as well as from the sociological, psychological and psychiatric points of view, the two groups were remarkably similar. This result was not surprising, both groups having a greatly similar criminal career. The only important difference was that in group II, the diagnosis of 'mental disturbance' had been made at a certain moment, whereas in group I it had not. It was to be decided, therefore, whether besides these great similarities there were such differences in the mental make-up of these two groups that the difference in the application of 'disposal' was justified.

2a. As regards the differences, the criminological investigations showed that the criminality of group II indeed made a less 'normal' impression in some respects, i.e. the behavioural pattern differed more from the 'common' criminality than in group I. This could be inferred from the numerous data mentioned in the official reports on the circumstances in which the total of 547 offences were committed by these 32 offenders. Special attention was given to those circumstances that make the criminal behaviour more or less comprehensible for an outsider, and all those aspects that possibly indicated a less stable behaviour or deliberation.

For instance, larceny is less comprehensible if the offender steals goods he does not deed at all and which he can easily obtain legally without running risks. Indications of unusual criminal behaviour can also be found in the fact that the offender apparently acts without much deliberation, does not go to any trouble to reconnoitre first the terrain where he is going to commit the offence, does not recognize the relationship between himself and his victims, fails to select such means, times and situations to ensure that the chances of his being caught by the police are small; and several other differences from the usual pattern. Certainly this indirect approach gives only a sketchy idea of the mental make-up of the delinquent, but the indications may be so numerous and evident that they cannot be disregarded as unimportant.

b Since the sociological examination was in the first place concerned with the external social conditions of life of the offenders, it was not surprising that this part of the study did not reveal important facts sufficiently characteristic for differences in the personality structure of the two groups. When indications were found, they merely confirmed the results of the criminological studies.

c. Psychological studies led to the result that the offenders in group II were more different from the ordinary pattern than those in group I. It was especially interesting that the Rorschach test revealed those in group II to be more easily disturbed by emotional stimuli and affective situations than offenders in group I. Other tests showed that persons in group II had a more unstable behaviour as regards their impulses and had a greater lack of natural control of urges. The Rosenzweig test also showed obvious difference in mental condition. Offenders in group II had a more 'intrapunitive' disposition, i.e. they had a greater tendency to relate the causes of their conflicts with society to themselves. Those in group I reacted more 'extrapunitive', they were more inclined to hold society responsible for their trouble. The Szondi test confirmed these findings by showing that guilt-feelings are stronger in group II, while group I takes up a more or less indifferent attitude to its conflicts.

d. Though Dutch penal legislation and jurisprudence take the view that 'the existence of a pathological disturbance of the mental powers' is a more or less decisive criterion for the application of 'disposal', the study showed that this criterion is actually very unreliable for judging the differences between the two groups examined.

The psychiatrist paticipating in our study was of the opinion that such a disturbance was present in all subjects of both groups and that there was no difference. According to the psychiatrists who had given evidence about the offenders when they were tried, there were considerable differences, however. In the 48 psychiatric reports made prior to our study, 'mental disturbance' was definitely rejected in the case of several subjects of group I and even for some of group II. Moreover, the opinions were not uniform, some psychiatrists considering a subject mentally disturbed while others did not.

We can pass over the question of whether these considerable differences in psychiatric assessment are due to difference in capability and thoroughness of observation, strictness of criteria or other causes. It remains an evident fact that these differences make the criterion of 'mental disturbance' as such insuitable for determining whether 'disposal' shall be applied or not. Therefore our study in-

cluded — besides mental disturbance — eight other neurological-psychiatric and psychiatric-psychological aspects, such as hereditary factors, infantile neuroses, cerebral trauma up to the age of 15, defective development of intelligence, low abilities, unstable emotions and other similar changes. It was found that these defects and alterations were approximately twice as frequent among group II than among group I.

Therefore, even if we concede that all our habitual criminals should be considered mentally disturbed, there is a difference of degree between the two groups, group II being **more severely** disturbed than group I. In this way results of the criminological and psychological investigations were confirmed.

3. Since the differences between the two groups were small in extent, their significance was calculated, especially as regards criminality. Significant differences were found for 16 items. This implies that our study contradicts the view advanced by some psychiatrists that the application of 'disposal' to grave habitual offenders is **generally** or **usually** random. The existence of significant differences between the two groups suggests the opposite.

However, studies on the internal composition of the two groups led to the conclusion that in certain individual cases the decision was indeed taken rather haphazardly. Some subjects of group I showed the characteristics of group II in such a degree that one might well expect that they would have been subjected to 'disposal'. On the other hand, some subjects of group II had to fall under I from the same points of view.

4. The investigation into the internal composition of the two groups also showed that the nature of the criminal behaviour and the mental structure of these two categories were so similar that there existed no sharp boundary between group I and group II. Certain members of both groups formed a gradual transition to the other group. Therefore it is obvious that for several of these habitual offenders it is a moot question whether 'disposal' should be applied. There were indications that in such cases the juridical authorities are rather inclined **not** to apply 'disposal'.

5. This attitude of reservation towards 'disposal', even when dealing with very grave habitual criminality, is certainly also related to the vague and inadequate terminology with which, in psychiatric reports, the question of whether the offender was mentally disturbed when he committed the offence is answered. The diagnosis of 'mentally disturbed' does not mean much in itself, especially since this concept allows for differences in the strictness of criteria and greatly depends on the psychiatrist's personal views on the boundary between 'normal' and 'abnormal'. Moreover a 'mental disturbance' as such is not yet relevant for criminal behaviour, let alone for a certain form of criminality. There are many mentally disturbed people who live in society and never commit any illegal act. Thus it is not sufficient to decide that the offender was mentally disturbed. He must be disturbed **to such a degree** that one can assume rightly that this has been of influence in his criminal behaviour.

Also it should be made clear that there was a **relationship** between mental disturbance and criminal behaviour. This relationship is not present per se. Whether it exist or not depends especially on the nature of the disturbance and on the type of offence the criminal com-

mits. If someone with severe psycho-sexual anomalies commits sexual offences, such a relationship is yet in advance not improbable. But if he is a receiver or commits traffic offences, the relationship is less obvious.

Therefore a justified enlargement of the application of 'disposal' requires more objective, precise and specified data on the degree and nature of the mental changes and the way in which they manifest themselves in the criminal behaviour pattern of the offender, and in his behaviour as a whole.

6. It was also found that the percentage of success in re-adaptation was significantly higher among group II than in group I. However, this does not permit far-reaching conclusions on the re-educative value of treatment associated with 'disposal'. Actually this treatment can range, in the Netherlands, from true hospitalization in a private institution to detention in a gloomy prison sailing under false colours as a 'therapeutic institution'.

However, the data of our study do permit the conclusion that generally speaking re-adaptation was more intensive in group II. They had also received more conditional measures than group I, and thus had had a relatively better chance to re-adapt. These and other data showed that the juridical and after-care authorities had given more attention and sympathy to group II.

7. In view of the small number of offenders examined, the question was asked whether, and in how far, these groups could be considered representative for the total population from which they had been sampled. They were found to be sufficiently representative for the study to be valuable as a random test.

CORPORAL PUNISHMENT IN SCHOOLS

by

The Ven. S. P. WOODFIELD

Before becoming the Archdeacon of Barberton the author served with distinction on the Executive of the League. Speaking with the authority of experience, his views are presented with a deep human understanding of and compassion for those who had to be chastised. His philosophy of corporal punishment is summed up in the following two sentences: "I have always felt that corporal punishment could and should be reduced to a minimum .... The cases I have mentioned seem to bear out my contention that the normal boy is prepared to accept corporal punishment when it is fair and administered in a proper way...."

England — Sixty Years Ago

In writing on the subject of discipline in schools and before dealing with South African schools it might be worthwhile taking a look at ordinary Elementary Schools in England towards the end of the 19th century, when I was myself attending one as a pupil. These schools, for children from the age of seven to fourteen, were day schools attended by all but those whose parents could afford to send them to private preparatory or boarding schools.

Caning in these schools was a daily occurrence and every qualified teacher had his cane which he used constantly and vigorously. I remember my Standard II (boys of nine years of age) teacher and his simple method of teaching arithmetic. First, he would work a sum on the blackboard; then a similar sum would be given to the class to work in a limited time. That sum would then be worked on the blackboard in front of the class. Thereupon came the order: "Stand up all those with the wrong answer. Hold out your hands!" Whack! Whack! Whack! was heard as he passed round the class with his cane. The rest of the period would be passed in that way—the sum to be worked, the answer on the blackboard and the caning of all who had the wrong answer. No wonder we soon learned to work quickly and accurately! So, too, with dictation. A prepared passage from the class reading book was dictated and corrected. "Stand up all those with three or more mistakes. Hold out your hands!" Whack! Whack! Whack! If the teacher was called from the room, a monitor took charge and called out any boy who spoke or misbehaved himself. When the teacher returned, each boy was caned, no questions asked

For more serious offences boys would be sent to the Headmaster. In those days there were no staff rooms, Headmaster's office or even a playground. Delinquents would creep into the classroom where the Head was teaching and stand in the small space between the door and the blackboard. At the end of the lesson, the Head would take his cane and give two, three or four cuts to each boy. He did not know what offences had been committed, but the boys had been sent for punishment and punishment they received.

When I was fourteen I left school and started training as a Pupil-teacher. It was a school of some 400 pupils. At first, I acted as a sort of A.D.C. to the Headmaster. Punctually at 9.0 each morning the doors were closed for Morning Assembly. As the classes later dispersed to their classrooms the Head and I proceeded to the corridor where there would be some twelve to twenty late-comers drawn up. No excuses were asked for but each boy received one or two severe cuts on his extended palms to start the day with.

As part of my training as a Pupil Teacher, for a time I had full charge of a class of some 60 to 70 youngsters in Standard II and, separated only by a flimsy curtain, in the same room was another class of the same size taught by another teacher. To maintain control over one's own class in such circumstances was not easy. Moreover, corporal punishment by Pupil Teachers was strictly forbidden. I remember on one occasion I had the whole class sitting with folded arms and apparently listening to the lesson in complete silence. Suddenly the Head burst into the room and said: "That boy is not attending. Look at his eyes!" He had been watching through the glass-paned door.

When our school was closed on account of some epidemic, I was sent to another school to replace a teacher who was ill. The Headmaster was one of the smallest men I have ever seen; when addressing the school he had to stand on a chair in order to be visible. But every boy in the school was terrified of him . . . and his cane. On my arrival, he took me into the classroom where I was to teach and said: "Mr. Woodfield, this is Standard V. Standard V, this is Mr. Woodfield who has come to take charge of this class." Then, turning to me he said in a voice audible throughout the room: "You will find a cane in your desk — use it!" and walked out.

During the First World War, although I had given up teaching and was then a minister in the Church, as War Service I was sent to take charge of a mixed school ("co-educational" in these days) while the Headmaster-nominate was on Active Service. On my first day I found other members of the staff sending children to me to be punished. This was a daily occurrence which I found very distasteful, especially when young girls were involved. I looked for other and less drastic methods of maintaining discipline and, although I was at the school for 18 months, during the last four months only one boy was caned; it was the only time he was ever punished. An unconscious tribute was paid by a boy who wrote in his essay about me: "He has no favourites." He ought to know for he was one of the most frequent victims.

I have always felt that corporal punishment in schools could and should be reduced to a minimum. The children must know that the cane is "there" and that it will be used if necessary, but it should be kept out of sight and only used for serious offences or when other methods have failed.

South Africa — Forty Years Ago

At the beginning of 1922 I came to South Africa to be Vice-Principal of an African Mission School and Training Institution for teachers. The Principal was a man of experience and I learned much from him. As I became more familiar with African life and customs I found that some of my ideas had to be revised, especially with regard to corporal punishment.

Beatings appeared to be part of the normal life of the African boy. He was beaten at home, he was beaten at school, he was thrashed in the Initiation school, and sometimes he was thrashed by the Chief's orders for breaking some tribal law. He recognised and acepted such punishments and so, when he came to Boarding School, he expected to be beaten there. He was not disappointed! At our school punishment for breaking school rules or for other offences was either extra manual work or a caning on the bare buttocks. It seemed to me that at times the corporal punishment administered was too severe and depended upon the circumstances of the moment or the mood of the person giving the punishment.

When, later, I became Principal I resolved that even if corporal punishment could not be eliminated, it should at least be "standardised" and regulated so that the personal element would enter as little as possible. The African boy was prepared to accept a caning provided it was just and administered in a proper manner.

I could not find any written school rules but I gradually collected a number of unwritten ones. These were drawn up and hung in a public place so that no one could plead ignorance of them. They were also explained to new students at the beginning of the year. There was a kind of "tariff" for punishments. Certain offences would be punished by four cuts; more serious ones (e.g. smoking without permission, fighting, rebellion against authority) by six or more cuts. This made for "justice" and uniformity in the administration of punishments and did away with any suggestion of "favouratism". A boy who committed a certain offence, would receive a certain punishment regardless of who he or his father might be. This also meant that the punishment was not given in the heat of the moment. It is often

said that the only justifiable thrashing is that given in anger. I could not agree less. An angry man has lost his self-control and is unable to exercise a sense of fairness at such time. In consequence the punishment is likely to be more severe than is merited by the offence.

My idea of using minor punishments such as are common in European schools — detention and lines — proved a failure. The imposition of lines meant a waste of time, energy, paper and made for careless writing and spelling. Detention was hailed with delight and the threat to keep the class after school met with cheers. It meant more time in school and in those days that was the desire of every student. Thus, when an offence had been committed which was deemed too serious for corporal punishment but not sufficiently serious for expulsion, the school Captains would unanimously recommend that the offender be kept out of school for a certain number of days. The knowledge that he was missing lessons had a much greater effect than the fact that he was employing the time in manual work.

Our school Captains exercised day to day discipline. They had no power of punishment but they kept a record of the names of offenders during the week and on Friday these were entered into the Report Book brought to me. At a glance I was thus able to see the record of each boy, not only for the week but for the whole term.

On Saturday morning at 11.00 o'clock, when the work of the week was finished, all boys whose names had been entered up during the week were paraded. Those who had been reported once or twice, were given an hour or two hours' manual work. There is always something useful to be done on a farm. Boys who had been reported three times or more in the week or in three consecutive weeks, came to my office with the Captains and a sort of court was held. (Because this parade took place at 11.00 o'clock it was commonly referred to as "morning tea with the Principal — without sugar.")

Each boy's record was gone into and he was given the chance to defend himself. The Captains who reported him, were able to challenge his defence. If necessary, witnesses were called. The court might last some time if there were many defaulters but the main point is that each boy knew that he would be given a fair hearing and not be punished unfairly. That alone was sufficient justification for the procedure taken. Boys who were appearing for the first time, were generally warned and let off under "The First Offenders Act", intended particularly for newcomers who might have unwittingly broken some school regulation. The guilty were punished forthwith. Small boys lowered their shorts and went over my knee where they received an old fashioned spanking with the palm of my hand. (I was told years afterwards by one victim that the spanking was much more painful than the canings he received in later years.) Older boys bent over a chair and received four or more cuts on their bare buttocks. Any boy was free to appeal against the verdict of the Captains but to prevent frivolous appeals, it was understood that if he lost his appeal he would receive double punishment. One advantage of this method of dealing with offences was that if a boy knew that he had been reported twice, he went very warily for the rest of the week in order to avoid the extreme penalty on Saturday.

How was this system regarded by the students, and what was their reaction to it? They soon realised the justice of it and appreciated it. In the course of twenty years I only heard of two complaints that a

boy had been unfairly punished. One came from a boy who was a frequent visitor on Saturday and who had always accepted his punishment without a fuss. On this occasion he took it in bad part and protested his innocence Later, he came to see me privately and again said that he had not committed the offence. We talked the matter over and he admitted that the evidence had all been against him. But "Father", he said, "I didn't do it." I knew the boy pretty well and had never known him tell a lie to avoid the consequences. I told him that I was prepared to take his word in spite of the evidence and apologised for having caned him. He was completely satisfied and bore no further resentment. The fact that he could come to talk to me about the matter without fear shows, I think, the happy relationship that existed between staff and students.

The other complaint of injustice occurs to me. A young lad had recently been appointed Captain largely on account of his excellent character. The naughtiest boy in the school deliberately "baited" him to see how he would act. At last, provoked beyond measure, the Captain boxed the boy's ears and this started a fight between them. In due course, the two were brought to me to be dealt with. There was no doubt about the guilt of the provoker and he was given his punishment and sent off. The Captains agreed with me that their young colleague, who had never been in trouble before, had been more sinned against than been himself a sinner and they were unanimous that a reprimand and warining would be sufficient to meet the case. These were given and the court dismissed. Later, the Captain returned, obviously in a very distressed state of mind. He complained that he had been treated unfairly and that, consequently, "his heart was not at peace". I asked what had been unfair and why he was dissatisfied? "The rule is that if a boy is caught fighting, he must be given six of the best. I was fighting George. He has had his six cuts but I have not had mine. You have not been fair to me." I did my best to explain why he had been let off the caning but could not convince him that the reprimand had been his punishment. He was adamant that he had not been beaten and he should have been. To satisfy him, I agreed to give him the punishment he felt he deserved and, knowing that he would not appreciate or understand a light punishment, I gave him six of the very best. He went away quite satisfied and once more "his heart was at peace".

One day, an old student was paying a visit after having been away for a year or so. In the course of conversation he said with a smile: "I wonder if I might have a proper look at that chair I have been over so often?" He examined it with great interest. Incidentally, I saw a letter from him in the press some time later, strongly advocating the use of corporal punishment, — a fact which didn't seem to suggest that he bore any resentment for his many canings at school. Indeed, the cases I have mentioned seem to bear out my contention that the normal boy is prepared to accept corporal punishment when it is fair and administered in a proper way, and that he regards it as part of his normal school life. A notable exception was a boy, obviously spoiled at home, who, while adjusting his dress after having been beaten, was heard to murmer: "I hope that one day the Father marries and has children, and that those children come to my school!" His hopes were never fulfilled.

Normally, corporal punishment was reserved for offences in morals or misbehaviour and not for work done (or not done) in class.

But there came a time, not long before the annual examinations, when a wave of carelessness swept throughout the arithmetic class for which I was responsible; even the more clever boys succumbed to it. Exhortations and warnings proved of no avail and something had to be done to stop the rot. So, one day I announced that in future anyone producing three careless mistakes in one piece of work would be warned. If he repeated the offence, he would bring his work to me and we would go through it together to convince him that his mistakes had been careless. If it were found that the mistakes were due to ignorance or misunderstanding, the boy would be given some coaching to put him on the right track. If the mistakes had in fact been careless, he would be given four cuts. In this way some boys of exemplary behaviour who had never before been caned, received a short sharp lesson which was so efficacious that they never appeared before me again — and the wave of carelessness died away as quickly as it had come. Our examination results were exellent.

Spiritual Discipline

What follows does not really come under the subject of corporal punishment in schools, but may serve to show the attitude of the young African to discipline of that kind.

Ours was a Church School where religion was taken seriously and the various church seasons were observed with enthusiasm. The forty days of Lent were marked by many of the students voluntarily imposing Lent rules on themselves (concerned with fasting, prayer and almsgiving). When the first Lent came round after I had become Principal, I found that I had inherited a tradition by which some of the senior students had included in their Lent Rules a voluntary thrashing once a week. It was not organised and I doubt whether anyone knew which boys were concerned, but a number of them came to me privately and asked me to give them a caning each week during Lent. I did not entirely approve of this but they were obviously in earnest and I did not want to let down either them or my predecessor, so I agreed to do as they asked. They never failed to keep their appointment but, since it was a voluntary act on their part, they were allowed to say how many cuts they wished to receive; seldom was the number less than six.

On Good Friday I was surprised to find a long queue of boys waiting to be given a beating — their act of sorrow for Our Lord's suffering on their behalf. They came entirely of their own free will without any suggestion of persuasion on the part of any member of the staff. I doubt whether the staff knew anything about it. I could but feel that they had a deeper sense of religion than a good many Europeans and I was much impressed by their obvious sincerity. Perhaps it is not surprising that although they were being trained as teachers, more than sixty of them are now ordained ministers of the Church in this country.

Unsolicited Testimonials

Several parents, when sending their boys to our school, mentioned particularly that they had chosen our school because they knew that their sons would be disciplined and taught how to behave.

One old student, sending his son to us, wrote: "During the years I was at College . . I remember canings on Saturdays at 11.00 o'clock . . this made us men."

Another old student wrote: I, for one, shall never forget . . . your caning us over the armchair. It has made some of us men of the world."

Quoting from the overseas press, a boy of 14 told his teacher that his father didn't love him enough to give him a good hiding.

Another boy wrote: "Caning is painful, but who would expect punishment to be otherwise? At my present age of sixteen I would much prefer a caning, which is finished in under a minute, to an hour's detention or 200 lines. I believe most boys would agree."

A Prep. School boy of ten in the Transvaal was telling his mother about his House-master. He finished up with a note of reluctant admiration in his voice: "He knows how to cane."

PENAL Reform News.

Oct. 1963

27/11/63	Miss Dra[illegible]

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