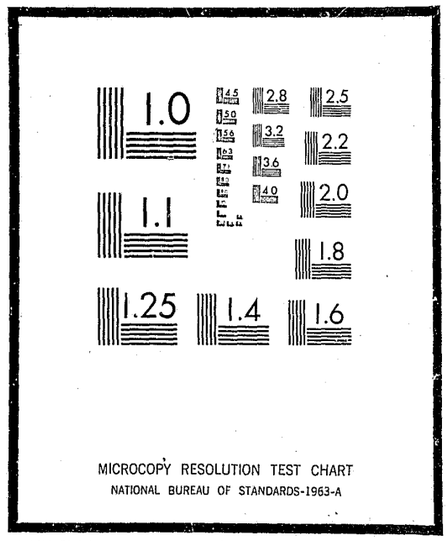

UNAFEI (United Nations Asia and the Far East Institute for the Prevention of Crime and the Treatment of Offenders)

RESOURCE MATERIAL SERIES No. 6

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for the
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and
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Contents

Introductory Note

The Editor is pleased to present, as scheduled, No. 6 of the "Resource Material Series."

This issue contains material produced at two International Courses held at UNAFEI—the 32nd Seminar Course and the 33rd Training Course.

Part I contains material produced during the 32nd Course, which had as its subject "Criminal Justice Reform in Asia and the Far East," and was held from 15 February to 25 March, 1973.

In Section 1 is published the papers by the Visiting Experts at this Course. Mr. W. Clifford who was one of the Visiting Experts at the 32nd Course, has made another invaluable contribution to UNAFEI's "Resource Material Series" in his learned article on "Reform in Criminal Justice in Asia and the Far East." Mr. T. G. P. Garner, the other Visiting Expert at this Course, has, in the first of his two papers, dealt with "Some Human Factors Affecting the Criminal Justice System." Mr. Garner, who has made an exhaustive study of the problem of drug-addiction, and has first-hand experience of tackling this problem in Hong Kong—where the problem having assumed serious proportions has received much official attention—explains, in his second paper, the Hong Kong approach to the treatment and rehabilitation, within the correctional system, of those addicted to narcotic drugs. This subject is of topical interest at this time when the problems of drug addiction and control are receiving more and more attention in many parts of the world. Here at UNAFEI, too, in recognition of this trend, we have been giving increasing emphasis to this subject in our recent Courses, and special sessions devoted exclusively to narcotic problems have been a regular feature of such Courses.

Section 2 consists of material produced by the participants of the 32nd Course, which was organized for senior officials and administrators of criminal justice in this Region.

Part II contains material produced during the 33rd Training Course, which was focussed on the treatment of offenders, and was held from the 16th April to 7th July, 1973.

Section 1 consists of the papers by the Visiting Experts at this Course. "Changing Concepts of Crime and Criminal Policy" by Professor Benedict S. Alper, one of the Visiting Experts at the 33rd Course, is the text of the Public Lecture delivered by him to an appreciative audience at the Ministry of Justice on 25 May 1973. The material Prof. Alper used at his lecture-discussion sessions during the 33rd Course is being included in a book which is to be published by him shortly in the United States. The paper on "Problems of Crime Control in Developing Countries" by Mr. L. H. R. Peiris, the other Visiting Expert at the 33rd Course, contains material used by him at his lecture-discussion sessions during that Course. Mr. Peiris discusses some practical measures of crime control

and prevention that will not entail the diverting to this field of scarce national resources which are urgently needed for other purposes.

For the purposes of the Comparative Study Sessions, the participants were divided into four groups, and each group elected a Rapporteur whose duty it was to prepare a report of the discussions in summary form. Section 2 contains the Summary Reports of the four Rapporteurs so elected.

In Section 3 is included the material pertaining to the Group Workshops, which constituted an important feature of the Course. The participants were divided into four groups, and each group elected its own Rapporteur and Co-Rapporteur, and held discussions separately for sixteen hours. Two members of the Staff were assigned to each group, and every participant prepared a paper on a topic related to his field of work. Each of the participant's papers was discussed during the workshop sessions by the members of the group, and the Rapporteur of each group made a summary report of the discussions and read it out at a Plenary Session when all the participants re-assembled together at the conclusion of the workshop sessions. The Summary Reports of the four Rapporteurs are reproduced in Section 3, together with some of the papers prepared by the individual participants. The Summary Reports list the titles of the papers presented by all the participants, and include a resumé of the contents of the papers as well as the discussions held thereon at the workshop sessions.

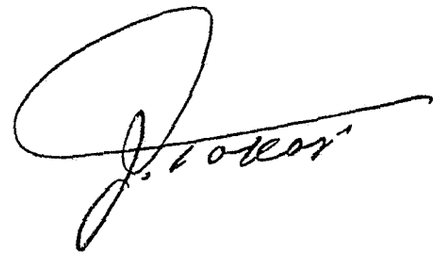
The Editor regrets very much that lack of space precludes him from publishing all the papers prepared by the participants of the 32nd and the 33rd Courses. The selection of the papers for inclusion in this issue was a difficult task, and the merit of the papers was by no means the only criterion that guided him; indeed, there was merit in all of them. The final choice was the result of the Editor's attempt to select the most representative papers, having regard also to the extent to which any subjects had been covered in papers published in previous issues of the Resource Material Series. However, all papers prepared by the participants of both these Courses are now preserved in the UNAFEI Reference Material Room and are available for the perusal of not only the participants of future courses at the Institute, but also of visitors from any part of the world who are interested in the criminal justice systems and social defence activities of countries of the Asia and Far East Region.

By the time the editorial work on this publication could be commenced, the participants of both Courses had left the Institute; hence any editorial changes that were found to be neccessary, particularly in regard to the curtailment of the length of some of the articles, had necessarily to be done without reference to their authors. The Editor craves their indulgence for adopting this course which, it will be appreciated, was unavoidable in the circumstances.

The Editor would like to add that the views expressed in the papers included in this publication are those of the authors only, and do not necessarily represent those of the Editor or the Institute.

In conclusion, the Editor wishes to place on record his sincere appreciation of the vast contribution made by Mr. L. H. R. Peiris to the editorial and other work in connection with this publication; but for Mr. Peiris's wholehearted collaboration and valuable assistance, this volume could not have been published in this form. The Editor also expresses his grateful thanks to all those who so willingly helped him in the publication of this volume, by attending to the typing, printing and proof-reading, and in various other ways.

October, 1973



Zen Tokoi
Editor

PART I

Material Produced During
The 32nd Seminar Course
On Reform in Criminal Justice

SECTION 1: EXPERTS' PAPERS

Reform in Criminal Justice in Asia and the Far East

*by W. Clifford**

In criminal justice and penal policy there are currently two revolutions in progress. One is a revolution of material and human development outmoding the old conditions of criminal practice and demanding change to meet new circumstances of urbanisation, industrialisation, migration and technological progress. The other is a revolution of values and ideas born of new and higher expectations, frustration with rising crime rates, dissatisfaction with the earlier ways of conceptualising and dealing with social problems and the feeling that our penal institutions are no longer relevant.

Of course the two revolutions are related: like all revolutions they are themselves born of changes which make further and more sweeping transformations both possible and earnestly desired: material changes have increased peoples' expectations just as newer thinking has induced material change. But criminal and penal policy is not entirely a function of social and economic change: it is related in part at least to the fundamentals of orderly living and the basic human needs in any kind of society.

For that reason alone a period of change, particularly if it is revolutionary in character, can be confusing and dangerous as well as necessary and valuable. On a world scale this is particularly true. The needs and demands for change vary from country to country—even from part to part of the same country. Changes may be induced by culture contact with other areas long before any needs for change are being felt locally. The mass media have made the problems and solutions extra-territorial in that discontent with a *status quo* is easily disseminated. As the world shrinks so the way we treat offenders becomes a matter of far more than national concern—especially when offenders in one area are regarded as heroes in another. There is a possibility therefore of change being as disruptive as it is adaptive and as destructive as it can be creative.

At the same time there are changes nearly impossible to resist, however unwelcome they might be. For instance, the improvements in technology affect our criminal justice systems in principle as well as practice, the development of better transport and communications affects the location of penal institutions, the spread of police authority and the jurisdiction of the courts. Areas previously remote from central control and governed largely by tribal or customary law are brought within the effective range of legal administration. Again, changes in the means of production affect the organisation of prison labour, the forms of crime and the methods of criminal justice investigation, prosecution and treatment. Correspondingly, changes in living conditions serve to modify both the concepts of crime and the minimum standards of treatment thought to be permissible. As a preoccupation with human rights becomes worldwide some countries expect others to maintain a standard which they consider to be a civilised limit despite any local traditions or customary practices.

On a world scale it is possible to discern a drive for uniformity sponsored by the wider recognition of basic rights, by common legal systems, by the spread of similar industrial conditions and by urban concentrations which throw up all the familiar problems of overcrowding, anonymity, and the breakdown of social controls. On the other hand, their worldwide reduction to common denominators is greatly modified by obvious cultural differences, by differential rates of economic growth, great inequalities of distribution and varied patterns of social change. Occasionally, in periods of political crisis or ideological stress or when there is a marked preoccupation in a society with

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changing practically all things established or previously valued, it seems that the drive to uniformity might even be reversed. Some countries have managed to cut themselves off from the drive for change for years—even decades—but sooner or later they are reintegrated into the world pattern frequently retaining however their independence of approach.

The extent to which all this is relevant to the situation in Asia and the Far East may perhaps be judged by the issue of a report on criminal justice reform published by a distinguished gathering of American lawyers in the past few months which calls for radical changes which however pertinent may not be practical in other contexts. This document calls for:

(a) The abandonment of the prison system as now practised with as many offenders as possible being released to community services and the remainder being allowed conditions of life and work comparable to those of persons living outside.

(b) The discontinuance of the system of indeterminate sentences or discretionary parole so that each offender would know exactly how long he must serve.

(c) The removal of discretion from police and prison administrations and the opening of all records to scrutiny by an accused or his representatives.

Already there are politically organised groups of ex-offenders in many of the developed countries campaigning for the removal of all discrimination in employment due to the recording of a conviction, for more specialised training, for the extension of self-government for prisoners in institutions, for the payment of equal wages and the increase of privileges for all those coming into contact with the law, for the representation of prisoners at all levels of prison administration, for legal counsel and legal training for offenders and for the removal of stigma from a prison conviction. There are young European lawyers and criminologists arguing for the abandonment of all ideas of treatment and questioning the right of the authorities to try to change the life styles of offenders. And the idea that the whole structure of criminal administration is related to a class system with discriminatory implications is gaining ground in a number of the more developed areas where of course there is also more crime, more trouble with criminal justice and more pressure for revolutionary change.

Merely to list these demands is to indicate that they find no echo of general sympathy in some of the developing countries of Asia and the Far East where there may be less crime but there is a greater attachment to the idea of condign punishment. In many such countries there is no widespread call for change. Conditions in the institutions may be worse than in wealthier countries able to afford something better: but the dissatisfaction in so far as it exists has no disturbing dimensions for the *status quo*. It may be argued that this is because the opportunity to protect is more limited or because people are not educated or perhaps because the social system is more moralistic. Nevertheless the fact remains that generally speaking the trouble emanates from those quarters where conditions may not be the worst or where attempts to deal with growing crime by repressive techniques have not been markedly successful or where the possibilities of organising for change are rather better understood.

These proposals for change in criminal justice practice are advanced ideas entirely contrary to a great deal of the established thinking about crime. They are sometimes bewildering to people in countries where there is really no widespread intellectual or public dissatisfaction with the criminal justice or legal system. It is more than doubtful that they would find any place in those Asian or Far East countries which are still struggling to bring their criminal justice systems up to the levels which the Europeans and Americans now appear to be abandoning. If one takes into account the limitations of resources and the fact that it might be impossible anyway to provide the kind of egalitarianism for offenders now being advocated as a matter of right (not privilege) then the issue becomes clearer.

Fundamentally, it is a question of whether countries with different cultural backgrounds and potentials, with different principles and systems of values, can be (or should be) expected to be caught up in the transformations of values being experienced in the West. Perhaps they

cannot escape: their philosophies might be transformed by the culture contact, the great expansion in education, dissatisfaction with older and more entrenched ideas which subordinate the young to the more mature. Here the power of mass communications cannot be over-estimated. Nothing spreads like ideas and there are always frustrated, under-privileged or unjustly treated groups ready to use changed concepts of this kind for the benefits they promise. On the other hand the intellectual gymnastics of modern Western culture may be an indication of its philosophical poverty. It could be that Asian and Far Eastern countries would be ill advised to follow modernism of this kind if it entails abandonment of older principles which have proved their worth. It is significant that many of the younger people in the West, dissatisfied with confused value systems, have turned to Eastern religions and Eastern mystics for possible solutions. It is arguable therefore that Asia may be advanced in its thinking on fundamentals and in a position to develop criminal justice systems more appropriate to their needs than those emanating from America or Europe.

The issue is crucial for Asia where the modernisation has usually meant the abandonment of older approaches to criminal justice in favour of Western laws and penal philosophies. Obviously these have been modified in practice by diverse local conditions and in their administration or day to day application they may be very different from the Western systems they emulate. Nevertheless the drift has been in the direction of following what were regarded as more enlightened practices. Now is the time for some very deep thinking about criminal justice in Asia and the Far East. Older, usually harsher methods of dealing with crime have been abandoned in favour of Western laws and principles. If these are still the best and most enlightened then reforms will need to be considered in the light of the revolutionary thinking of the West. If there are local philosophies considered better then they need to be studied, brought up to date, worked out in detail and applied in practice so that the West can benefit eventually from the longer experience of civilised living to be found in this segment of the globe.

The question for the future for all developing countries is the question of whether their differences from developed areas are due to basic cultural distinctions or merely due to a time lag in the general process of material, economic and social change. If the differences are culturally determined and represent a definitely distinct system of values then this should become more explicit in planning for criminal policy. Measures taken should relate more directly to cultural fundamentals. This is not easy where not only the legal and court systems but the police and prison services have been imported structures from culturally alien metropolitan countries but the crisis in these older systems makes a reconsideration necessary. If, on the other hand, the differences are not really so fundamental, if only a time lag is involved and the question is really only one of greater conservatism where the pressures for change are not so great then the developing areas would do well to move fast in the direction already being taken by the developed countries. Indeed, being rather less set in their industrial and urbanised ways they may be able to jump ahead of the rather less flexible developed countries and to show the way to improved criminal policy.

Perhaps in no area is it possible to provide a categorical reply to a question of this kind. Some of the differences are cultural and the values very different indeed: but the time lag problem is also a reality in many areas. Therefore, the issue is a good deal more complicated than at first appears and inevitably logic has to be tempered with compromise.

Criminal Justice Systems

Criminal justice systems vary in Asia and the Far East from the Anglo-Saxon type based on Common Law to Continental types derived from Civil Law—and from traditional Moslem forms of legal administration to less formal systems of social control based on a Hindu, Tao or Buddhist conception of social structure.

Some of this variety flows from the diversity of colonial history in Asia and the Far East — from the Portuguese,

Dutch, French and English penetrations overlaid more recently by the American presence. However, there are also differences derived from the ancient civilisations of Asia predating by hundreds of years those of Western nations.

In Afghanistan and Iran there are forms of criminal justice based on Moslem precepts with however modern statutes and judicial procedures introduced from Europe. Here there is also a National Immunity Office for the receipt of complaints from any citizen. Complaints need not be signed but will not lead to prosecution unless corroborated in some way.

In Laos the law is, in effect, the lesser of many forms of social control based upon a highly integrated village form of social structure which even the fortunes of civil-war have not greatly disrupted. Here even the evacuations of large populations and the flood of refugees from internal conflict has been no less than the movement of integrated villages complete with their own forms of administration. With such strong local cohesion the official type of statute law is essentially peripheral to the more powerful and effective informal controls of human behaviour. In both Laos and Thailand, Buddhist monks are active in the moral development of the people dealing with family problems and sometimes minor offences of a criminal nature.

Japan offers a fascinating example of a traditional structure absorbing both Continental and Anglo-Saxon systems and precepts yet fashioning a criminal justice system which is still essentially Japanese in practice.

Australia and New Zealand present almost complete reflections of the British legal systems but with some interesting local variations whilst there are other parts of South East Asia faithfully reflecting a French culture, or, as in Ceylon carrying forward a Roman-Dutch system of legal administration. China offers two interesting examples of criminal justice policy, one based upon the ideas of Sun Yat Sen and the older Mandarin principles of social development and the other based upon a Marxist conception of the structure of society and its interpretation in behavioural terms. Both of these are modern, however, in the sense that they are affected by modern developments in economic and social growth and in the changes of life style which flow from innovations in the methods of production. But they necessarily differ in their concepts of crime and in their approach to the treatment of offenders.

In this situation, it is very difficult for Asia to develop any one common approach to criminal justice reform. Apart from the diversity of history, of culture, and of general backgrounds, there is the obvious conflict of fundamental values which will determine how one will (or should) define crime and how one will (or should) deal with persons who do not conform to social standards. The very foundation of any criminal justice system consists of the philosophy behind a given society. Behaviour to be prohibited can only be defined in terms of basic values. Indeed there can be no criminal justice policy without both politics and philosophy since the individual and social conduct to be controlled depends upon a nation's conception of what is good and what is bad —and on what can be appropriately controlled and what cannot. It is for this reason that a considerable number of modern dilemmas arise in criminal justice. Basic principles are either taken too much for granted or else they are bypassed in the attempt to develop control systems without moral implications.

Where a society is either:

1. small and fully integrated in its value systems so that everyone supports the general principles of right and wrong; or
2. large but ideologically uniform so that there is a general consensus on basic values,

then the criminal justice system can be expected to follow a logical, if not always an enlightened, pattern. Ideas on crime will coincide and the criminal will be a non-conformist to be eliminated altogether or to be re-educated and restored to the society according to the gravity of his offence and the prospects for his reformation.

On the other hand where a society is large in population, highly urbanised, complex in structure and also diverse in its ideas of right and wrong, then the criminal justice system can be expected

to become exceedingly difficult first to define and then to administer. In this situation which is typical of a number of highly industrialized countries there is really little or no real consensus on right and wrong. There are innumerable subgroups and sub-divisions of sub-groups fragmenting society to such an extent that the more widely separated sub-cultures of society are frequently in conflict.

In such conditions even majority rule is often achievable only by the kind of compromise which allows political stability at the expense of toleration. Behaviour considered right by some and wrong by others has to be allowed and it is often only the most extreme forms of nonconformity or the most dangerous offences which can be clearly defined as crime. Inevitably such a society drifts into a growing permissiveness with a corresponding confusion for those who are expected to define the law determine minimum standards of conduct and to regulate behaviour. On the one hand there will be an increasingly strong support for the idea that no one is really competent to judge right and wrong because even a heinous crime in the eyes of some is justifiable protest in the eyes of others. On the other hand the laws will be expected to provide minimum standards which are no longer prescribed by informal social controls or defined by morality.

The problem for the modern society is therefore one of how to maintain order in change, stability in a period of dynamic adjustment and peace in a situation of essential conflict. For Asia and the Far East these problems present themselves in a variety of forms. In some areas the societies are still relatively undisturbed, relatively uniform in their value systems and therefore relatively satisfied with their criminal justice.

In many areas of Asia the pressures of industrialisation, urbanisation and scientific change have already spawned large urban complexes with all the problems and difficulties of big cities anywhere. In some of these urban areas the issues of sub-cultural conflict are already very clear and the rates of crime are rising. Hong Kong, for example, after a history of massive immigration and abundant labour is developing all the difficulties of an affluent metropolis, with its concentration of high rise buildings, new life styles and value systems, complicated by divisions of a social and traditional character which are peculiar to Chinese society. Armed robberies are increasing in urban centres as far apart as Manila, Bangkok, New Delhi and Teheran. And everywhere the flood of cars cause traffic problems giving rise to situations which are criminogenic because of the fundamental similarities of motivation which are not always completely disposed of by decriminalising traffic offences or setting up special courts. Everywhere criminal problems are permeated with political issues and corruption; land speculation and organised crime become serious outgrowths of the modernisation of living.

The approach to criminal justice systems must therefore be both extensive and intensive. On the one hand there is the need for a wider view of criminal policy as an integral part of general political and social policy of a given country. It is a reflection of local mores and customs and a by-product of development. From this wider viewpoint criminal policy cannot be something apart from the more general social situation but must be developed from it and through it.

From this point of view the traditional criminal justice services of the police, the courts and prisons, and the probation and parole systems may be too limited for the wider needs of effective policy making. The "criminal justice system" in this extensive context would need to include not only health and education but also the general economic and developmental services of government.

In this general context it is impossible to talk about criminal policy (thinking only of courts, police, prisons, etc.) whilst vast amounts are being devoted to sweeping economic changes likely to create opportunities for crime or to make the detection of crime more difficult.

On the other hand, the criminal justice systems even in the traditional sense of police, prisons, courts, parole and probation services, etc., are themselves not always inter-related effectively so that there is need for an intensive conception of criminal justice working on the creation of

a system which is truly a system in the sense that it links and inter-relates all those direct services for the prevention of crime and treatment of offenders like police, prisons, courts and probation in such a way that they strengthen, reinforce and service each other. Too often, at present, the national policy in relation to police strength is quite unrelated to the parallel investments being made on the courts or on the prison services. The result is that an improved police force often means an overcrowded court system and both of these may lead to an overcrowded and correspondingly inefficient correctional system. Correctional, judicial and law enforcement policies therefore have to be interlinked so as to produce an effective criminal justice system. In the smaller countries, this interlinking of the direct crime prevention services is not too difficult but in the larger countries—particularly those with federal constitutions—the problem of bringing together police, judicial and correctional services can be immense and sometimes so complicated as to appear overwhelming.

The point to note therefore is that for the development of criminal policy and for any approach to criminal justice reform it is necessary to be clear about the way in which the term "criminal justice system" is being used. It is important to specify whether, when we are thinking of the criminal justice system, we are thinking of crime prevention in its widest context to include social and economic services as well as the direct crime prevention services like the courts, police, prison services, etc. —or whether we are restricting our thinking to the narrower limits of the direct crime prevention services. Both perspectives are necessary but it is important they should not be confused.

Objectives of Criminal Justice Reform

After a revolution there is usually a frantic effort to redraft laws, reorganise judicial procedures, appoint new judges, establish new precepts of advocacy and to generally bring the criminal justice system into line with the new political order and its revised criteria for good and bad behaviour. Crimes may be redefined, earlier prisoners released and new groups subjected to investigation, prosecution and various forms of restriction or punishment.

Without selecting any particular countries for comment it is instructive to look at the results of these revolutions after a period of, say, ten or fifteen years. Despite a very disruptive period of change and adaptation it is often possible to observe that after some time the prisons begin to look much the same as before (though the types of people incarcerated may have changed), the courts are soon following procedures which are becoming increasingly dependent upon precedent and established practice and even the police forces are, within a short time, falling back on principles of investigation and prosecution which are familiar everywhere.

In other words, criminal justice systems are not too easy to revolutionise. It is not difficult to change the laws or to change the types of people prosecuted—and it is not difficult to break away for a short time from the regular methods of conducting a trial. But there is a certain prevalence about criminal justice practices which would appear to indicate that the options are rather limited. A trial in Greek times looked not too dissimilar from some of the trials today. Police inquiries were comparable even though modern police services were not known and the principles of advocacy, argument and counter argument were much the same. Dungeons were used to keep persons pending trial and though the methods of disposal tended to be harsher these were offset by the relative inefficiency of the inquiries so that fewer offenders were caught. Even the Communist technique of a public trial has many historical precedents. And the tortures sometimes inflicted on accused persons subjected to the ordeal in medieval times have a habit of recurring throughout the chronicle of human endeavour. On the other hand, the use of prisons for punishment and the development of parole and probation are relatively new techniques and the conditions of modern living impose new problems which place the older vintage systems in newer social containers.

Criminal justice reform needs to be approached therefore with a view to its limitations as well as its necessity. The proposals for ideal societies are still far from actualisation and criminal justice reform has to become the art of the possible.

Objectives are therefore paramount. In fact when considering criminal justice systems the objectives do not simply provide direction: they serve also to motivate the administration of the system and give it meaning: above all they justify what has to be done. The questions must always be: "Why do we prohibit or enjoin certain types of conduct—What makes them preferable or not preferable to their opposites?"; "Why do we investigate in this or that particular way?"; "Why do we have trials and adopt these procedures rather than others?"; "Why do we punish and how should we punish?" In short, we have to be constantly saying why we have a criminal justice system at all and what we are intending to achieve by it.

The answers to these questions have never been either easy to provide or consistent when they were provided: Utilitarian principles have to be tempered both with justice and mercy — with practicality as well as humanitarianism. For example, if our objective in having a criminal justice system was simply to rid society of its offenders then from a purely utilitarian standpoint this could be achieved by the consistent use of the death penalty. Whatever its effect in general or particular deterrence there can be no doubt that a regularly applied death penalty would rid society of those brought before the courts. Here is a simple, cheap and effective way to eliminate offenders. Of course we cannot adopt such a simplistic solution because neither our sense of justice nor our humanitarianism would permit it. In justice we could not execute all offenders because some would have deserved it far less than others and it would not be fair to treat them all alike. Moreover, even for those who could be held to have committed equally heinous offences or to be equally dangerous to society, the death penalty is not a sanction to be applied automatically. Humanitarianism intervenes to avoid large scale executions and even when by all the rules and regulations the death penalty is both deserved and fitting for the type of offence mercy intrudes to temper the quality of justice and efficiency.

So what is the criminal justice system for? To wreak public vengeance on those who have outraged public feelings? To ensure a condign retribution, *i.e.*, to make an offender pay? To reform the miscreant and restore him to society? Or simply to provide protection for society? Most societies have found it impossible to give any single answer to such questions. Perhaps it is impossible to do so except in a very academic sense. Certainly no one answer can avoid complications from the other considerations or possible objectives. It might be possible to reform an offender by providing him with a pension for the rest of his life so that he has neither the need nor reason to steal: but this would be unfair to people who have not committed crime so that justice gets in the way of efficiency once again. Similarly, retribution has the disadvantage of removing all justification for reforming the offender or protecting society. If it is the principle of retribution which counts above the others then it has to be recognised that when an offender has paid he has no further obligation to society. In fact there are well known cases of traffic offenders or prostitutes being prepared to make full payment by way of fines because this is a business investment leaving them free to make more money than otherwise. In some cases of parking fines or the operation of vehicles without appropriate licencing or repairs—and particularly with the practice of some types of vice or prostitution it "pays" to operate illegally and to accept the usual penalties. The fines become a kind of inescapable tax which, once paid, however, "permit" the offenders to continue their illegal but profitable trade. Sometimes the cost in fines can be offset by higher prices for the illegal service offered. Here again considerations of justice, the protection of society and the need for reformation so as to reduce the social ailment tend to obstruct any total commitment to the principle of retribution alone.

Whilst no society has found a satisfactory answer to this inconsistency of possible and necessary objectives some have been clearer than others. Once again it is a case of the simple, less complicated or ideologically cohesive societies having the advantage of a clear philosophical background within which to set their criminal policies. They can work wholeheartedly for strict justice, reformation, retribution or efficiency with no qualms even if other considerations sometimes cut across these:

the direction is clear even though the path may not always be straight. Complicated, culturally diverse or internally divided societies are in greater trouble with their objectives. Not only are they sometimes constrained to try to follow all the objectives at one and the same time—with all the confusion and internal contradiction which this implies but the terminology is plagued with diverse interpretations. "Protection of society" can be construed by its opponents as the use of power to protect vested interests in the *status quo*, *i.e.*, as resistance to necessary change. "Reformation" can be challenged as being an unjustified imposition of the standards of a power elite on a dispossessed minority. And "retribution" can be interpreted as official vengeance. The variations on this kind of theme are numerous and inimical to any effective ordering of the possible objectives of criminal policy.

The issue is as frustrating then as it is pertinent to the whole question of criminal justice reform. The problem of objectives is a nettle which must be grasped before the question of reform can have any meaning. Present objectives — or the lack of them—need to be compared with those to be proposed for the future. To provide any answer to the relevance or validity of the sweeping changes in the criminal justice system of the U.S. mentioned earlier in this paper we need to answer the question of objectives. Only when we know the main objectives is it possible to judge the validity of present criticism and the justification for change. Only by knowing the objectives proposed for the future is it possible to evaluate the specific recommendations being made.

It is possible of course that in many countries of Asia and the Far East the objectives of the criminal justice system have never been posed in quite such terms. The obvious need for law and order and the obligation to provide courts with sanctions were in themselves sufficient aims and justifications for the law and its administration. In the light of the revaluation of systems now likely to be imposed by world conditions it is important to look carefully at objectives whether they be expressed or simply implied in the action being taken to deal with crime. For one thing it is obviously impossible to evaluate present systems of criminal justice without knowing what in fact they are supposed to be doing. Only when we know what they are expected to do or are intended to do can we begin to judge whether or not they are efficient, useful, desirable or effective.

The Need for Change

Any suggestion of criminal justice reform raises the question of whether it is needed and by whom. In some countries the rises in crime have been sufficient to attract attention to the inefficiency of the present criminal justice structure as a mechanism for crime prevention. Elsewhere humanitarian movements have induced changes in the name of a higher standard of consideration for the less fortunate. Lately the preoccupation with human rights has engendered a concern that present criminal justice procedures and practices may be doing less than justice to man's fundamental rights to life, liberty, education and equality of opportunity.

However, the definition of a 'felt-need' for change is not very easy. It cannot be claimed that improvements in penal practice have always had the support of the public. Frequently such improvements in penal practice have taken place either without the public being aware of the fact or else with the public being in favour of quite the opposite tactics with offenders. Capital punishment, for example, is a classical case of change often quite contrary to public feeling. In several countries capital punishment has been abolished by the legislators against the express wish of the general public as reflected in public opinion polls. And in England 'hard labour' had been eliminated from prisons long before the fact was appreciated by the legislators or the general public. Usually the view of an 'enlightened intellectual elite' demanding change is not that of the public at large.

There is a question therefore of how the demand or the need for change in the criminal justice system is to be estimated. Is it needed at all—how do we know? How much change is desired? In what direction? Here the authorities will obviously have the last word: but they may decide to preface any revision of the system with a kind of referendum: or the authorities may publish in advance their proposals for change so as to obtain public reaction. Again, there are so many different ways of doing this but any government will need to be on its guard against promoting fundamental changes in the criminal justice system without some reason to believe that the public will accept it. History shows however that whether it has been a question of changing the law, decriminalising certain behaviour like prostitution or homo-sexuality or building new types of prisons, it has rarely been possible to rely on a public opinion poll. It is well known that neighbourhoods oppose the building of new prisons near them either because they are afraid of escaping offenders or they are fearful of the effect of such an institution on the prices of housing in the locality. Does this mean that the majority view must of necessity be ignored in the attempt to improve the criminal justice system? Certainly it cannot mean that the majority of the legislators can be ignored, *i.e.*, those elected to represent the people—for it is these legislators who need to approve the changes thought necessary.

We should also note, however, that in the past it has been possible to effect quite a number of improvements without legal change at all. For example, the police might gradually reduce the attention they give to breaches of old laws which are no longer respected. This happened with the old Sunday Observance Law in England or the legal prohibitions against certain religious clergymen wearing special dress. These laws were unenforced for a great many years before they were actually repealed and it is clear in many countries today that criminal justice reform is in operation by the changes which are administratively effected in police policy: changes in the public attitude to certain offences are reflected in the day to day behaviour of the police. Similarly, the courts can change the law in practice by interpreting it differently. Judges say they apply the law but they do not make it: but this is only half true for a great deal of the making of modern law depends upon the way in which the judges choose to interpret the intentions of the legal draftsmen. The entire way of life in the United States has been changed since 1960 by significant decisions of the Supreme Court affecting discrimination and human rights. And in England the entire process of police investigation was changed in the early 1920's by the decision of judges on the kinds of voluntary statements which would be admitted in evidence. Finally, hard labour as a punishment was abolished in England long before the fact was realised either by the public or the judges. Administrators gradually reduced the differences between those sentenced to hard labour and those sentenced to ordinary imprisonment so that it eventually became purely technical. Maybe by the end of the war there was only a difference of one blanket between the two groups. Yet until 1948 judges continued to award hard labour as if it was a much more severe penalty.

These are examples of criminal justice reform which have happened without the necessary approval of the public or the legislators. They came as a matter of policy decision on how present laws and practices were to be applied. It could be said that they could not have happened without the tacit approval of the public and the legislators but we cannot be sure. It could be that every one of these changes would have been opposed if put to the vote of the public. On the other hand the public can react quite differently. There are examples in the 19th century of juries so opposed to the harsh laws dealing out the death penalty for petty stealing that they would value the object stolen at a ridiculously low figure so as to allow the offender to escape the capital punishment. Here was an example of the public changing the law in practice. Also there are many instances of public sympathy for offenders which make unpopular laws unworkable—either by the police or the courts. Therefore in estimating the need for change in the criminal justice system we have to apply a number of different criteria, not the least of which is to assess the mood of the public and its capacity for tolerating non-conformity.

Directions of Change

It is sometimes assumed that changes in criminal policy must always be in the direction of greater leniency and greater permissiveness. Indeed we are frequently urged to avoid using the law excessively and to strive for greater humanity in our approach to offenders. Nor can it be

doubted that the history of the past two hundred years has been that of a general world movement towards greater consideration for those who have been so unfortunate as to get into trouble with the law. However, it would be a mistake to assume as a result of this that the only logical efficient or humanitarian direction for criminal justice policy to go is in the direction of relaxed laws or increased privileges or that leniency and civilisation are necessarily concomitant.

Of course compassion for the underprivileged or unfortunate and mercy in the administration of justice are essential marks of civilisation but if these should become indiscriminate, excessive, or haphazard; if they should become the rule rather than improvements of the rule; if they should undermine rather than refine justice, then they are likely to deteriorate into sentimentality and become self-defeating. No one would suggest that criminal justice should move in the direction of greater harshness towards offenders but many developing countries have had to face the problem for a long time that the commitment of a juvenile to a well equipped and well staffed re-educational institution might give him a level of education or vocational training not offered to the young people who do not cause trouble. There is a balance to be maintained therefore between the rights and privileges of the general public and those of convicted offenders. It is significant that some of the developed countries have recently been trying to achieve this balance by giving more attention to the rights of the victims of crime (or witnesses), by awarding them compensation and by ensuring that they do not actually suffer from their cooperation with the police. A good deal of the cooperation of the public with the police depends upon the way in which people repeating crime are dealt with. At the same time it has to be recognised that in many countries the better conditions for prisoners have been achieved more in words or on paper than in fact. The lack of resources, low budget priorities for prisons and the limited understanding of this field have often meant that prison conditions have been far below the standards agreed upon so that any idea that prisoners were favoured was greatly misleading.

Directions for reform will be dictated by the social climate in the country, the attitudes to various offences (*e.g.*, toleration or outrage) and the needs of the system as indicated by the problems which the system is experiencing. Obviously the direction of reform cannot, for reasons already explained, be determined solely by considerations of efficiency. Justice, humanity and especially the obligations imposed by human rights mean that efficiency alone cannot be the only criterion. On the other hand the country will require a system which works satisfactorily: if, despite all the efforts made, crime is rising then we need to look at the total system—to see how criminal justice in the widest sense is operating, to understand what factors in society are placing burdens on the police, prisons, courts, etc. We will also need to look intensively at our direct services to see whether they are not operating inconsistently, *e.g.*, the courts overcrowding the prisons with persons for whom the prisons were never intended, the police overcrowding the courts with cases which might be better dealt with otherwise—or perhaps the legislators giving immense trouble by trying to deal with every kind of problem by means of legislation.

Harshness or leniency should not apply. The question should be to decide what will work within the limits of possibility, justice and public acceptance. Obviously a prior concern will be with the protection of the fundamental human rights—not only those of the offenders but those of their victims and of the public generally. Needless severity can be excluded from the beginning since there is a basic obligation in any civilised society to respect the dignity of man whether he be an offender or not. If prison is in itself a punishment (*i.e.*, the deprivation of liberty) then it is wrong to make the conditions painful. But it may be necessary to devise other penal sanctions to provide incentives and motivations which cannot be produced by prison conditions as they are known. Here it is important to bear in mind that whilst the U.S. is having problems with its prison administration some of these seem worst where the conditions are not the worst in the country—and Scandinavian countries which have extremely progressive prison systems including the unionisation of prisoners, home leaves, telephones, no uniforms, half-way houses, outside employment and the representation of offenders at all levels of administration also have problems which probe the realities of the penal system.

The fact is that society has never really devised entirely suitable procedures for dealing with crime and with offenders in situations where complex and divergent value systems have to be accommodated in large cities. Most penal methods had their origin in societies which had a consensus of values and full public support for the penalties. Also most criminal justice systems originated in conditions within which it was not necessary to think of eliminating all discrimination or providing a uniformly effective service. Criminal justice systems traditionally served the ends of those in power and sometimes had the effect of reducing opposition to the *status quo*. Professionally the criminal justice services moved away from this so that courts, lawyers, policemen and prison officers regarded themselves as servants not of any power elite but of the general public. In so doing they contributed substantially to the social changes which have made the older systems of criminal justice difficult to operate.

In determining directions of change therefore, it may be necessary to take a new look at the ways crime is being dealt with—perhaps to take a new look at the concept of crime itself. In Denmark, for example, the proposal has been made that shop lifting be removed from the statute book, *i.e.*, it should not be a crime. In other countries stealing of goods below a certain value has been suggested as unnecessary to prosecute. These are examples of affluent societies not thinking so much as in previous times about the protection of property rights. Instead, they tend to become concerned with pollution, violations of anti-trust laws, currency speculations which can impoverish millions and the ramifications of organised crime or white collar crime. All this is an interesting trend but alongside it must be placed the recrudescence of violence in modern urban society — the evident recourse to cruder and more harmful ways of stealing or robbing people or extorting money. These too need a criminal justice system which is capable of contributing to a safer, more civilised and social just society.

Evaluation

Whether change or reform is necessary —apart from any public demand—will be revealed by an objective evaluation of the criminal justice system in the light of its objectives. Does it do what we want it to do? For example, does it really prevent crime? Are we sure? Does it really administer justice? Or are we perhaps overlooking the fact that in practice it serves some interests or some classes more than others? Do the technicalities of the law sometimes benefit the clever rather than the just? Are there in fact too many laws for them to be enforced—or for them to be enforced consistently? What about the penalties or forms of 'treatment'? Do they deter or discourage crime? Do the prisons reform—or do they embitter and make offenders worse? Do the probation and after-care systems really work or are they workable only with the kind of persons who do not really need them and who could have been better dealt with by a fine or conditional release? And the police force—is it efficient in detecting and prosecuting crime—is it effective in preventing crime? Have increases in police strength improved the crime position or made it worse? To what extent does corruption subvert the stated aims of the criminal justice system?

These are the kinds of questions which have been troubling American and European experts lately. They have been troubling them because either there were no answers or else the answers were extremely disturbing. To take only one example, a check made of the number of persons sentenced to death over the past decade revealed a disproportionate number of negroes. Now it may be true that this is a reflection of the fact that more negroes proportionately commit offences liable to capital punishment but many Americans believed that this was an example of the difficulty of even being able to administer capital punishment in a fair and uniform way for all classes. Therefore, one of the arguments against capital punishment has nothing to do with its deterrent effect or its justice but is directed against the fact that it always seems to be used more

against one class than against another and therefore it is always discriminatory in its effect. We might subject our own systems to similar scrutiny. It is often true that in police practice the tendency is to concentrate attention on certain classes of the population. The extent to which this is justified will depend upon the situation in each country.

We can always ask ourselves pertinent evaluation questions about the criminal justice system but we can never be sure that we have the answers because the techniques of effective evaluation are still being worked out. However, if our objectives are clear and our time sequences are clearly specified (*e.g.*, we want to reduce crime by X per cent in X years), then it is possible to get some idea of where we are going. Definitions and interpretations will always make it possible to advance different versions but at least we will be clearer in our thinking about the value of our institutions.

The role of the police is especially important. Are they preventing crime? In one short police strike in New York there was no noticeable difference when the police were off the streets but a few months earlier in Montreal there was fairly widespread looting when the city police went on strike. Police methods also require careful evaluation. Do police boxes or radio cars or alarm systems really reduce crime—or is it better to have policemen walking the streets in a more visible way? No one has yet decided what is the optimum proportion of police to population but it is significant that the highest crime rates often go with the highest number of policemen.

The courts are always difficult to evaluate because it seems that the more courts we have the more we need. This is especially true when, as in so many countries, even larger numbers of young people are benefiting from higher education and are more conscious of their legal rights. Cases are not so easily disposable where more lawyers can be employed (as in affluent societies) or where an offender strongly objects to the way his case is being handled by the authorities. There is something of a dilemma here, of course, because there may be no society rich enough to provide all the courts which will be needed if everyone in every circumstance is to be given every one of his legal rights. Here in the past discretion has always been the rule and we have trusted judges, police officers and various officials to be fair. If such discretion is to be reduced, however, in favour of protracted arguments for legal rights then the courts system may need to be transformed. This is especially true where there is a prospect of continuous appeals from one kind of court to another.

Various attempts have been made to gauge the efficiency of the various penal methods—prison, probation, fine, etc. However, it is not easy to follow up offenders for long, years perhaps, intruding into their private lives to find out whether past 'treatment' succeeded. The usual method has been to use as a criteria of success the number of reconvictions. On this basis most of the methods come out about the same ineffectiveness except that probation is strangely uniform in its 70–80 per cent success and in advance of the other methods. Prison is not very reformative on this basis but for a long time it has been known that prisons get their greatest success from the number of persons sent to prison for the first time. The majority of these do not return. In recent years, however, the tendency has been to question these so called success rates and to maintain that there is really no 'treatment' worthy of the name. There is a revulsion against an earlier mental health approach which tended to treat offenders as either slightly abnormal or emotionally sick and to use terms like 'reform' or 'rehabilitation.' In any case, it is argued that the authorities have really no right to reform or change a person. He may be 'reintegrated' into his society but not regarded as different from other people and in any need of a cure. Actually, this idea is reinforced by the evidence that reported crime may be only 16 per cent of the crime actually committed in a society so that really those who are caught are unlucky rather than unlike the people who never get caught. Obviously there are sick or peculiar people in prison but these are also to be found outside and their need for treatment may be only

incidentally related to their crimes.

With all this heart searching on penal methods it is clear that the developing countries need to take a long hard look at the services which they have usually inherited from those parts of the world now largely dissatisfied with their own systems. The criteria for evaluation appropriate to each culture and its needs will have to be worked out before it can be decided what to reform and why, what to retain and why, what to strengthen and why.

The Broader Perspectives

It has been suggested in this paper that criminal justice needs to be considered in both its extensive and intensive connotations. Taking the first of these it is clear that criminal justice reform would not even bear consideration if there were not certain changes in our societies which have made this necessary. There are some respects in which growing crime is a price of development. When large resources are devoted to changing the means of production and the established life styles of people it is evident that certain negative by-products can be expected. It is therefore futile to create criminogenic conditions and then expect crime to be prevented by simply adding to the police force, the courts or the police. These, as we have seen, deal with perhaps no more than a sixth of all the crime actually committed so that when this is rising for the society as a whole the segment dealt with by the criminal justice services cannot be eliminated simply by more vigorous repressive action.

Nevertheless, the situation usually created by a changing society with declining moral and social controls is that the law and its enforcement define the permissible limits of behaviour. If therefore there is apathy in the administration of the law then the permissible limits are necessarily extended. For this reason it is essential to first determine the limits of public and official toleration in a society and then to develop a criminal justice system capable of operating efficiently to maintain these limits in the interests of all citizens.

Criminal justice in its widest context however needs to be concerned with the funds being devoted to agriculture, forestry, commerce, industry and construction as well as the amounts going to health, education and welfare. Apart from the obvious opportunities for corruption and fraud likely to be created when such large amounts are being made available for distribution, there is the need for attention to be paid to crime prevention in the general planning. Urban development in particular may be expected to mean more crime but its prevention can be made easier by the attention paid to better roads to reduce traffic problems, street-lighting or community neighbourhood planning to reduce anonymity, and different forms of crop or warehouse protection. Even commercial methods can be designed so as to reduce the opportunities for armed robbery. These are just a few examples but the need for greater attention to be paid to crime prevention in national development plans is being increasingly appreciated.

Although excessive crime is difficult for any society to live with, crime, as such, is a normal part of any social structure and may even serve a number of useful ends. A criminal justice system is also part of this total social structure and fills a role which needs to be integrated into political, economic and social decisions for the society as a whole. Even the most remote features of a modern society have criminal connotations. Computers have not only made some kinds of operations easier to control and expand, they have also created new opportunities for the clever criminal and complicated problems for the lawyer, the policeman and those who are supposed to prevent crime. Air travel, achievements in modern medicine, satellite communications and electronics, have all greatly amplified the dimensions of crime and extended its range. But more to the point than these scientific changes are the changes in work styles, leisure activities and educational levels. These have all transformed societies in ways which have immense significance for those concerned with crime prevention.

Large scale migration, the fragmentation of families, the increases in the num-

ber of young people as infant mortality rates fall—these are pregnant with implications for crime prevention. They have all been induced by the directions taken by those determining how to invest the nation's available or obtainable resources. Therefore they can be provided in advance with adequate built-in safeguards for crime prevention. We may not yet be sure what these safeguards should be. There is still much to be done in research and evaluation before we know how far to go—but they can be tried and tested over time; and if the past is any guide to the future it should be possible to do far better than we have been able to do in the past in the direction of general crime prevention.

In this approach the attention will probably be concentrated on planning, technology, distribution and commercial practices and the *direct* crime prevention services like the police, prisons and courts will be brought into the picture as the broader attempts to reduce crime have failed with particular groups and with certain individuals. However, the direct crime prevention services are not purely for 'mopping up' and they too have crime prevention roles to play which fit neatly into and augment this broader approach.

Coordination of Direct Criminal Justice Services

When there is little crime the problem of coordinating the various services directly connected with crime does not pose itself so forcibly. When, however, the police force employs thousands, the courts represent a major part of the investment in government services and the numbers of offenders are increasing yearly then the problems of these various services not necessarily serving the same objectives and sometimes even working against each other begin to arise. It has become a very serious problem in some of the more highly developed countries where within these services there are now strongly entrenched vested interests which are resistant to change.

Perhaps a beginning needs to be made with a coordinating council to work out the common objectives and principles for all the related services and to deal with some of the day to day problems which are bound to arise. However the kind of informal but day to day liaison which this kind of approach represents has its limitations and sooner or later effective coordination will be possible only by the use of either existing or additional funds.

Where a country can establish an additional fund to be used for projects designed to improve the day to day coordination of the services within the criminal justice system this will induce the kind of working relationships which are desirable and will eventually draw all the services into effective coordination. Where such additional funds are not available there is no alternative but to allow the planning authority power to amalgamate some of the budgets so that overlapping and duplication are avoided. However the issues are so important and the resistance to change so likely to be critical that it may not be possible to achieve the necessary coordination without a high level political decision. The possibility has to be faced that a rationalisation of a criminal justice system may affect the employment and promotion prospects of a large number of people —and may well disturb some deep seated professional interests.

Notes on Particular Services

Each one of the services concerned with crime prevention provides detailed subjects for consideration when the question of reform is being discussed. It is possible here only to deal with a few of the elements which are important for the broader perspective of criminal justice reform.

Legislation

Abraham Lincoln once called upon:

"Every lover of liberty (to) swear never to violate in the least particular, the laws of the country and never to tolerate their violation by others. Let every man remember that to violate the law is to tear the character of his own and his children's liberty."*

* Abraham Lincoln, Complete Works: Ed. J. G. Nicolay and J. Hay: Century, 1915; Vol. I, pp. 42, 44.

Would he call for the same thing today when no lawyer even can be sure that he is not violating some law without knowing it. Legislation is now so voluminous that it is impossible for it all to be either observed or implemented. Perhaps some of this is necessary in a complex, technological setting. In cities of ten or eleven million people it is clear that laws and regulations are necessary and that the laws required for some groups are unlikely to have relevance for others; for instance, the laws and regulations required for governing standards in engineering may seem far removed from the regulations required for the licensing of commerce or trade and laws which govern university activities may seem a long way from the laws required to maintain order in the streets. Nevertheless all these laws are needed and the public is often aware of a direct overlap when there is an emergency or some local crisis.

Even so, it is impossible for the average citizen to know the full requirements of the law or to make sure that he is always observing it. Moreover, the unfortunate tendency of governments and peoples to rush into legislation to solve any kind of problem inevitably means that police forces and courts cannot possibly administer all laws. If all of the laws were uniformly administered then greatly augmented police and court services would be required. The penal systems would be unable to cope with the numbers placed in their care and society could probably be brought to a standstill simply by rigidly enforcing present law.

In fact this does not happen because law enforcement and judicial services administer the law selectively in accordance with prevailing public opinion and official policy. Many offences are tolerated, many regulations expected to work without special enforcement and many new forms of legislation may not be implemented at all unless there is a special demand for new forms of legal action, *e.g.*, in the case of pollution. For this reason many attempts recently to obtain criminal justice reform have concentrated on legislation. The attempt has been made to decriminalise a great many forms of behaviour which it is thought public opinion would now tolerate, *e.g.*, homo-sexuality, prostitution, drunkenness, vagrancy. This is useful in releasing the criminal justice services from activities which absorb a great deal of its time unnecessarily. At the same time it must not be overlooked that social problems do not disappear when they are taken from the statute book. Recent attempts to deal with the drug problem by decriminalising drug addiction and using alternative facilities have sometimes shown that the decriminalisation is only useful if the other services can be provided.

In legislative reform it is perhaps important to be able to determine levels of toleration of society. This has been done usually by attitude surveys and public opinion studies. These may be useful but also it is necessary to bear in mind that most standards have been achieved in society by leaders able to gauge much more what people are likely to want than what they may say they want. Most laws were not achieved by public opinion studies but by decrees from a religious superior or a political leader able to assess the mood of the time. Getting the right kind of legislation is therefore perhaps a combination of good leadership and accurate referenda.

The most difficult part of legislative reform is of course training legal draftsmen capable of understanding how far the various criminal justice services can go and how far they can effectively translate political requirements or social needs into appropriate legislation. Legislative reform might therefore begin by the training of legal draftsmen in producing the kind of legislation which now is becoming increasingly appropriate to modern urban society.

One interesting aspect of this kind of approach to legal drafting is that, in the past, laws have been drafted to deal primarily with individual problems and individual types of behaviour. As time goes on, however, it becomes increasingly clear that criminal activities in the modern urban society are often corporate in character. In other words, the laws to deal with individual problems are inadequate to deal with syndicated crime or with the various ways of extorting money which are devised by large companies and corporations. These corporations or syndi-

cates have legal personality but prosecuting them or prosecuting individuals who are responsible for them is often ineffective. From time to time the leaders of organised crime are prosecuted but inevitably new leaders are available to take their place so that the crime flow continues. Corporations are fined but if they can recoup such losses in fines by simply increasing prices for the consumers then once again the law becomes ineffective.

Legal reform therefore requires consideration of the new conditions in which modern man is required to live. It must also be alert to the changing concept of crime in modern urban society.

Courts

There are various ways in which courts can be relieved of some of the work which now flows to them automatically, *e.g.*,

(a) Diversion

Halting or suspending formal criminal proceedings before conviction on condition that he will do something in return, *e.g.*, writer of false cheque may be allowed to escape proceedings if he makes restitution, or a charge of assault may be dropped if the offender agrees to take psychiatric treatment, or a young offender may be allowed to escape prosecution if he agrees to accept employment and social counselling.

(b) Negotiated Pleas

In most systems 90% of criminal convictions are not obtained by the verdict of a jury or the decision of a judge but by the plea of guilty made by the accused. In some systems there may be a degree of bargaining: in others not. In all systems the negotiated plea raises questions of legal rights which need careful attention.

(c) Limitation to period of time allowed for trial

In many countries prisons are overburdened with persons awaiting trials. In some countries as many as 80% of total persons in prison are awaiting trial. The only way to prevent this might be to stipulate a period of, say, 60 days for felony prosecutions and 30 days for lesser offences. Whether from the period of arrest to the beginning of sentence or from the period of arrest to the beginning of the trial would be a matter for each country to decide.

(d) Abolition of preliminary proceedings

In some systems a great deal of time is lost in preliminary proceedings before an actual trial. Sometimes the procedure could be streamlined without loss of justice by abolishing such preliminary proceedings. In Asian countries particularly these preliminary proceedings may have no cultural foundation.

(e) Use of public prosecutors

In some countries the courts are saved a great deal of work by the use of public prosecutors to examine cases brought by the police and to determine which of these should go before the court. Here the judicial purposes need to be carefully considered. It is possible for public prosecutors to become a different kind of judiciary and for the courts to be rendered relatively ineffective. On the other hand if this danger can be avoided then a public prosecutor system can relieve the courts of a great deal of unnecessary work.

(f) Rationalisation of court systems

In some countries there are lower courts operating systems of law somewhat different to those of the higher courts—or the court system may be divided between different state or provincial administrations. In such cases a study of the structure of the court system with a view to saving time and improving efficiency could be very helpful.

(g) Management systems

In some countries there have been experiments with the application of management systems to court systems. Attention has been paid to:

(1) The scheduling of cases to obtain maximum speed of attention;

(2) Record keeping which can be delegated;

(3) The provision of statistics for different stages of the court process allowing presiding judges to have the picture of the flow of cases at any one time;

(4) Selection and allocation of judges to particular areas or types of cases;

(5) The usefulness of a central registering of information available to all participants in the case so as to avoid conflicts of periods set for the hearings and delays due

to unavailability of advocates for prosecution or defence.

Police

The entire role of police in relation to a modern anonymous urban population is very important in considering problems of reform. The old police system designed mainly for smaller groups of people and for operating in close proximity with the public has become outmoded. The big cities produce new relationships between the public, the police and the offenders.

Many police services have been concerned with the development of neighbourhood security programmes, encouraging people to work with the police in reporting suspicious circumstances, to act as the eyes and ears of the police in apartment buildings or in residential areas or to develop links between neighbours for mutual protection. Sometimes volunteers patrol their own housing complexes to augment the available but sometimes inadequate police protection.

The telephone in a modern urban area is the primary link between the community and the police. The importance therefore of an immediate response by the police to a telephone call or to radio communication becomes increasingly important and care has to be taken to ensure communication systems which work quickly and easily.

The perennial issues of patrols of officers known to a neighbourhood or police cars, or police boxes or police stations have been submitted to management analysis, systems analysis and computerisation with the fundamental questions usually remaining unanswered. Should the policing of a modern city be radically decentralised or intensely centralised? In practice the attempt is usually made to get the best of both worlds within the limits of the funds available.

Officers to population ratios are frequently the basis for police manpower claims but in fact there is no universally accepted scientific principle for the determination of the optimal police to population ratio. Similarly, there are no general principles for defining the most efficient distribution of personnel to functions within police forces. Perhaps 80% of a typical force may be used in patrol, traffic and investigation work with 20% used for staff or administrative duties: and of this first 80% perhaps 50% would be patrol functions, the remainder of the staff being used for traffic or investigations.

Work-load studies have been carried out of patrol systems to indicate crime committed, calls made for police services and arrests. Then in addition, efforts are being made to evaluate the percentage of patrol time spent on non-emergency and non-criminal affairs, *e.g.*, community relations, vehicle maintenance, court attendance and administration. On the basis of this information decisions can be made to distribute staff geographically and chronologically according to the relative needs or demands made on the police. Here the extent to which the police presence deters or prevents crime is an important area of concern on which, unfortunately, there is, as yet, little reliable information. It seems unlikely that crimes of passion or vengeance are much deterred by police presence: on the other hand the opportunity for crime is substantially reduced by effective surveillance.

Police agencies are accustomed to rely upon crime and arrest statistics to measure their effectiveness. However studies of police work which have been made suggest that from ½ to ¾ of all police time is spent in providing non-enforcement services. Many police forces are reluctant to relinquish these emergency or community services not related to crime because they constitute an important element in police/community relations.

A patrol officer is usually the first police official in the scene of a crime and therefore the first investigator. In some countries he may be permitted to follow up his investigation to the prosecution stage but in other countries he will have to hand over to a specialised investigator or detective unit. Sometimes these detective units are also highly specialised by region, type of offence and weapon involved. An instance given to a Presidential Commission in the U.S. was that

of a "North Division liquor store armed robbery team." Naturally the possibility of this kind of high specialisation depends upon the size of the force and the needs of the particular area but few countries can afford to over-do the specialisation at the cost of manpower for more general work. Vice squads, fraud teams and homicide units are common: and drug or armed robbery units are becoming more popular: but the need for sufficient manpower for general services will usually restrict the extent to which specialisation can be carried by a police service.

Clearly the role of the police in a modern urban setting is something very different to that of police in earlier years. The size of the town, the multiplicity of police duties and the withdrawal of so many people from concern with the fate of fellow citizens both alienates the police and makes the police more essential. Tests of public demands of the police seem to show a desire for a greater police presence. More police patrols are called for, more protection demanded: but in these very areas of increased police strength crime continues to rise. Again police seem to be valued more according to the speed with which they can respond to calls in a modern urban setting. Both of these expectations indicate that the victim of crime feels that he can no longer depend upon his neighbours, friends or passers-by to protect him. And the tendency of the public is to withdraw more and more into areas controlled by private security guards, cameras or electronic devices, leaving the streets for the long standing struggle between police and criminals. But of course this only makes the insecurity greater, enables criminals to divide and terrorise a population and makes police work more complicated.

In some way then the public needs to be induced to work more closely with the police for their own protection, the police need to review their traditional duties in the light of modern needs and perhaps in some areas to decentralise to an extent which will bring them closer to those they serve. Higher standards of police work are expected by better educated communities with a greater understanding of their traditional rights and privileges. This fact plus the need to control crime make better policing an essential of modern living.

Corre~tions

The prison systems in developed areas have come under heavy attack in recent years because of the increased concern with the rights of prisoners and the failure of some of the existing systems to reform offenders or prevent crime. In other countries, sometimes with materially worse penal institutions no such dissatisfaction has been expressed publicly—or otherwise. Nevertheless there is no prison or correctional service (*i.e.*, including parole and probation) which can be satisfied with its present performance, especially if this involves the kind of overcrowding which is becoming familiar in correctional services as crime rises and there is a recourse to more legislative or police activity to deal with it.

The priorities for attention in prison services are usually:

(a) The maintenance of standards of care, custody and training capable of helping the offender to improve himself whilst respecting his basic human dignity and the inalienability of his human rights. The extent to which a criminal offence should lead to a curtailment or suspension of a prisoner's basic human rights (if at all) is very apposite.

(b) The exclusion of cases which cannot possibly be dealt with by prisons. This group usually includes drug addicts, mentally ill persons, alcoholics and perhaps debtors. However, no prison service has entirely succeeded in excluding such borderline cases from prison either because resources do not exist for alternative services or because the offence does not permit the bypassing of a prison sentence.

(c) The move towards the integration of prison and community with the development of more community services to avoid the unnecessary use of costly institutions.

It is clear that some form of imprisonment will always be needed for the most

dangerous persons or for those whose offences are of too serious a nature to permit early release. However, in most countries, many of those sent to prison could be dealt with by other sanctions if these were available. Unfortunately, alternatives to imprisonment have not been very imaginative or practical so far. Extra-mural labour, attendance centres, week-end imprisonment and the suspended sentence have constituted most of the ideas so far advanced.

Some Human Factors Affecting the Criminal Justice System

*by T. G. P. Garner, J. P.**

The criminal justice system in most countries in the world today is being criticized in part or in total for its failure to stem the rising tide of crime. In particular, for its failure to deal effectively with crimes involving violence or the threat of violence. At the same time the issue of the rights of man (human rights) and all the attendant values they should bring is receiving much more attention and is now being put forward in relation to prisoners confined in prisons.

No one would doubt the basic principle of human rights or the necessity to strive for the ideal. However, the application of the principle must among other things depend upon the setting in which man finds himself including prevailing social and economic conditions. For instance, it should be the right of every man or woman to be given equal opportunity to work, but in countries where the unemployment level is high, acknowledging this right brings no comfort to those who may be starving or under-privileged.

It is also the right of every man, woman and child to be able to walk the streets and go about their daily commitments without fear of being robbed or molested in any way. What then of their right in the event of their being robbed or molested? Is it not their right to be able to seek an accounting, a return of property or in more simple terms, a right to justice?

The criminal justice system is intended to provide an umbrella under which the protection of the community is paramount and to provide a means of dispensing justice in fairness to the innocent as well as the guilty. It is therefore understandable why it is strongly criticized when it fails to stem the rising tide of crime.

Every country has a crime problem. Much has been said and there is no doubt that in the years ahead much more will be said of how far we can trace the roots of crime, particularly, violent crime, back to? What causes it? Why do we have so much crime, particularly, violent crime today?

How crucial to the efficiency of the criminal justice system is community support? How can a crime be investigated if it is not reported? Do victims who fail to do so commit an offence, perhaps of another nature? Is it condoning the offence by giving support to the offender if he believes it will not be reported?

How can an offender be held to account for his offence if vital witnesses are unwilling to come forward and give evidence? How can the courts function efficiently without the facts? How can the prison service (except in a purely warehousing role) and other correctional facilities function effectively without assistance and support from the family of an offender and the community? Particularly, support for programmes designed to re-integrate the offender within the community after discharge, for sooner or later almost all prisoners are eventually released.

We know from history that crime has been with us almost as long as man himself and as we have progressed and become more affluent the pattern of crime has changed along with the offender. Laws have changed and so too has community attitudes towards the law.

This change in attitude by the community towards the law has great significance and is perhaps overlooked, not necessarily unintentionally, by some of the very persons who criticize the criminal justice system. Examples are easy to quote, for instance, how many members of the community would consider tax evasion a crime?; the motorist who allows his vehicle to cause an obstruction (illegally parked) — does he consider himself a criminal? Such examples can be labelled, minor and petty, but are they, is this not relevant to the issue?

What part does the news media play in assisting the criminal justice system? Does

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it play a positive or negative role or a mixture of both? The tragic and mounting toll of criminality and delinquency is continuously making the headlines of newspapers, talked about on radio and television — is sufficient use made of the news media in the field of crime prevention?

Crime is often looked upon as the end product of a long history of unstable and anti-social behaviour. On the other hand, it can be the result of an act done on the spur of the moment, an impulse perhaps, without any thought of the consequence. This latter phenomenon particularly noticeable among young offenders is often caused by association with the wrong type of companion and the offender does not want to appear as if he is not of the same breed as those with whom he is associating.

The rise of the young offender as a major contributor to the crime situation presents a very serious social problem. If crime is to be substantially reduced something must be done about the young offender. Various ways have been tried in many countries in an effort to remedy the situation but it has been found that just as there is no single cause, there is no single remedy for youthful involvement in crime.

It is in the area of the young offender where we find glaring examples of lack of concern, particularly on an individual basis. How many cases of young offenders come before the courts when the parents have expressed disbelief that their son or daughter had committed an offence. Very often an investigation of the facts reveals that evidence of misbehaviour was present long before the offence was committed. To aggravate an already difficult situation and give cause for even greater concern is the fact that many young offenders come from good homes and cannot be classified as under-privileged.

In many cases, parents have been aware for some time of the "slide down," signs have been too prominent to ignore but they could not, or would not, seek advice or assistance. Of course, not all young offenders can be blamed for their involvement in crime, particularly when it stems from inadequate parents, a lack of parental control and lack of love and affection. Influences brought to bear by the young on the young, reactions within peer groups, all play a part in the expansion of crime among the youth of today.

The call for more playgrounds and recreation areas will not help solve the problem if a bad influence is allowed to operate within these areas. Indeed such facilities could have the opposite effect to that which they are expected to achieve. Of course, this does not mean that playgrounds or recreation areas are not required; it does mean, however, that they must not be allowed to become breeding grounds for crime and so aggravate an already complexed problem.

What of the amount of crime which stems from greed, gambling, alcohol, drug addiction, and even violent outbursts (loss of temper), does this indicate need for a closer look at the prevailing standards within the community? Are young people alone in their attitude to authority? Can we trace some, if not the majority, of cases of crime back to a lack of self control—self discipline within the community? Does this indicate that it is within the community that the process of correction must begin if the problem is to be successfully tackled? On the other hand, is it possible to ignore the community and reform the criminal justice system and by this means alone check the rising crime rate?

Does the criminal justice system as it stands at present require reform? If so, in part or total? On the basis of the system which now exists in any given country, is it under stress mainly because of lack of manpower—police, courts and prisons? Is the system so clogged up that we are demanding too much?

What exists in the way of research? We know that research into crime is still in its infancy but this is no real surprise. It has over the years been taken for granted that prison is an appropriate punishment for most crimes to act as a deterrent for potential offenders and also considered a suitable setting for reform. The more serious the crime, the longer the sentence? Does this still hold true, if not what options exist?

Volunteers from the community work in a number of countries alongside permanently employed workers in such fields as probation and after-care. Are they useful? Do they have a role to play in the criminal justice system or are they simply do-gooders? If volunteers in these fields (probation

and parole) can be used effectively, how does one recruit such persons? What qualifications must they have?

Police, Courts and Sentencing

The difficulties facing the police in applying and enforcing numerous laws and ordinances in a way in which the delicate balance of the liberty of the individual and the protection of the public can be accomplished is without doubt a monumental task. The rise in new legislation involving law, the clamour by the community for protection, the difficulty of having to enforce unpopular laws, all add to the burden of the police. A policeman has to be highly trained and in many cases specializing in a particular field. The man on the beat has to be ready at all times to make quick decisions and at the same time he is often expected to be a mine of information. There is no doubt that at times, being human, when he is over-burdened this takes its toll, yet each and every policeman particularly those working at street level is a representative of the main law enforcement body and it is on their showing that the community will normally decide its efficiency.

One basic aspect of the role of the policeman which cannot be over emphasized is his attitude towards members of the community from whom he has a right to expect support. Any show of harshness, bad manners, overbearing, or aggressiveness by the policeman on the beat, one who is conducting an investigation (perhaps taking statements from witnesses), or a policeman on traffic duty, will not win him friends or influence people to look favourably upon him. Perhaps in some countries where this attitude prevails, it has been born out of failure by the community to voluntarily cooperate with the police, this in turn has set the wheels of aggressiveness and other unfavourable attitudes in motion and created an unhealthy situation in which both are dissatisfied with each others' performance. A policeman must be able to enjoy the respect of the community but that respect must be earned.

Can it be that the time has now come when too much is being asked of a policeman, should there be some easing of his burden or a reduction in the demands we make upon him? Should certain specialist roles be taken over by another body? In some countries, for instance, traffic is the problem of a separate department.

Once an arrest has been made and the due process of law leading to a conviction has been followed another aspect of controversy comes to the fore, that of sentencing. There are few countries today where the question of sentencing does not come under fire either because of harshness or leniency. Such criticism is at times difficult to understand because most critics have not usually sat through the case and learned all the facts, neither do they have the training and experience necessary to interpret them. However, much will depend on the range of sentencing tools which are available to the courts. The range of options is now growing and with them comes the responsibility for the right selection. The full value of a good criminal justice system cannot be realized if the wrong sentencing tool has been selected for an offender. The same amount of care, attention and thought must be brought to bear in relation to sentencing as it is in the determining of guilt or innocence.

When the magistrate or judge decides the guilt of an offender, whether he should be sentenced to a term of imprisonment or dealt with in another way will depend on a number of factors. If a magistrate or judge has confidence in the probation system or the suspended sentence, he may well choose this method of dealing with him, if so the load on the prison service will be reduced. However, if he is a firm believer in an institutional sentence, then the load on the prison service will increase.

The sentence imposed upon an offender depends in part upon the personality, training and penal philosophy of the individual magistrate or judge. In view of the range of options now open to magistrates and judges when disposing of a case, once a finding of guilt has been established, it is essential to have available or cause to be made available reliable pre-sentence reports. Unfortunately, all too often the time allowed or personnel available to work on these reports is insufficient. Some magistrates and judges take the view that this can be compiled in a matter of

hours and personnel are lined up waiting to take each case as it is remanded for such a report. After a person has been found guilty, is it not worthwhile to take some time perhaps as long as three weeks to prepare a sound pre-sentence report, particularly when it means that the proper utilization of the information it contains will result in the selection of the correct sentencing tool?

Clearly, of course, if such reports are desirable, then it is necessary for the authorities concerned to provide sufficient places and personnel required to carry out this task.

Overcrowding in prisons and other correctional institutions is another problem which tends to clog up and seriously hamper the criminal justice system. This is a situation which presents great difficulties for the courts and the prison service. New prison and correctional facilities cannot be built in a day, a month or a year, they take planning and thought and require large sums of money which is not usually forthcoming until one meets a crisis.

Under such circumstances, is it right to aggravate the situation by committing more and more persons to a prison in the face of knowledge that serious problems of overcrowding exist preventing the carrying out of proper programmes and on occasions resulting in a breakdown of programmes and even discipline within an institution? It could be that a more heavier concentration of prison committals is creating this because the range of options is not being used. Prisons and correctional institutions are expensive to build and expensive to run, they should be a place of last resort, not the first and while no doubt this is elementary, how often is the principle applied?

Judicial sentences may be inappropriate or ineffective because magistrates or judges do not understand the nature of the correctional problem within the community. Is it possible to arrange for a programme of training so they can better understand the problem? Does this type of training exist now? It is doubtful that such a training programme has ever been organized but is it not the case that magistrates and judges particularly at the start of their career require some form of guidance. It is also important that magistrates and judges should know more about the functioning of correctional institutions to which they sentence offenders. Apart from visits to such institutions, conferences and consultations with correctional administrators would prove of value particularly in view of the dependence each has on the other.

Prisons and Other Correctional Institutions

The prison service linked as it is to the courts offers a good example of interdependence in the criminal justice system. No prisoner can be sent to prison who does not pass through a court. The court is the means by which it is determined who will be sent to prison. Whether prisons will be given an impossible task or one within the scope of its facilities is determined in the first instance by the decision made by the court.

The role of an individual prison or other correctional institution is usually geared to the type of offender it is required to house—a first offender, a recidivist, a person on remand, or a young offender. In some countries it can be a mixture of several different categories or the lot. Problems and pressures are numerous and while soundly constructed buildings are important, the standard of the personnel engaged to carry out the task of running them will in the main determine their usefulness. Prisons are usually the end product of a substantial investment of community funds, this being so it is not unreasonable for the community to expect a return on such an investment.

What of the men and women who work in a prison service, if our prisons and other forms of correctional facilities are going to have a real chance of success, either as a deterrent or a means of reformation, then men and women of good quality are required in order to carry the programmes out. Staff must be of high calibre with humanitarian ideals and a standard of education on which to build and which is necessary to shape people for the challenging task of dealing with all types of offenders.

This also calls for a thorough training system within the service. However good institutions might be, no real benefit will be derived from them except in a purely warehousing sense unless staff are willing and able to take this opportunity for reforming offenders. It is a fact that the more progressive a penal policy is, the more demands it will make on the staff at all levels.

They must not only be confident to discharge the custodial aspect of their duties for the protection of the community must always be the first consideration, but they must also possess the qualities and skills which will enable them to play an effective part in the rehabilitation of offenders. Of course, they should also be able to expect fair remuneration—for the exacting and difficult job which they must do. Too often a prison service finds itself competing for the same calibre of man with the same qualifications at a lower starting salary than its competitors.

A good sound prison service should be capable of carrying out efficiently and effectively varying types of programmes designed to meet the needs of different types of offenders and their problems. While the ideal approach is based on the individual offender, from a practical point of view it is in essence a group approach with aspects of individualization woven within the programme. Few countries can afford the expense of small institutions designed to cater for limited numbers, therefore as a compromise segregation on a slightly larger scale makes for a more economical approach. The type of programme carried out in each institution can be geared to the needs of those it confines and a hand must be kept on the pulse of the programme to ensure that it is running smoothly.

Today we have permissiveness creeping in to all aspects of society, in some countries this has created great difficulty in community standards. Should this be allowed to invade the prison community? Do we have situations in some prisons today where the prisoners are dictating to the authorities?

The question of the responsibility that the prison service has in relation to the community must never be in doubt. There is a distinct dividing line between the responsibility for the carrying out of programmes in prisons based on humanitarian principles and the responsibility of the prison service to the community for the maintaining of a deterrent. Once the dividing line is crossed, once the recidivist begins to look upon prison as home, once he finds that it has become as comfortable as home, then the prison service has ceased to function efficiently. It can be said that while the easing of conditions in some penal institutions have been brought about based on prison reform, in truth the easing of conditions has been more in the nature of buying prisoner cooperation than in the general spirit of genuine prison reform.

The disregarding of all old values within the prison service is not necessarily a change for the better. The lack of discipline in a prison community will bring upon it the same problems that exist in communities which lack discipline. We cannot live without set standards and while these may be criticized by some, they are essential if we are not to degenerate into jungle type law where there is only survival by the cunning and the physically strong.

Prisons in one form or another will always be with us. The design may change, and will, their functions and roles need to be examined from time to time and revised. But there will always be a number of persons who, because of their offence, must be sent to prison, the emphasis then must be on utilizing the time that they spend in the institution in the best possible way which will assist the offender towards re-integration within the community after discharge. Pre-release centres and half-way houses have yet to be fully developed. We know that man can influence man for bad, we sometimes forget that the reverse is also true, man can influence man for good—a difficult but not impossible task. It will not be possible to be successful in all cases but is this not what makes us all different? None of us are perfect and some less than others, therefore, standards must be set accordingly.

The criminal justice system is devised

by man, supervised by man and carried through by him; in discussing and considering criminal justice reform in all its aspects old values proven sound must be retained and not disregarded in the name of progress. Less effective values require replacement. At which end does one start, within the community? Or in the prison service?

If crime begins within the community, setting the criminal justice system in motion, is it not surprising that it also ends within the community with the re-integration of the offender? Without community support, can the criminal justice system function efficiently?

Drug Addiction—Narcotics
Treatment and Rehabilitation Within the Correctional System: The Hong Kong Approach

*by T. G. P. Garner, J. P.**

Introduction

Dependence on narcotic drugs has been common in Hong Kong for many years. Before the Pacific War, when the population was about 1,500,000, the main drug of addiction was opium, usually consumed in company in a "divan." The divans were constantly raided and action was taken wherever possible against importers and distributors of opium.

The narcotic drug traffic then did not present anything like the problem it does now. Nevertheless, records for 1939 show that of 11,964 prisoners admitted to prison, 2,720 were suffering from "chronic opium poisoning" and 1,020 from the results of heroin addiction. Thus even before the war one third of all prisoners admitted were narcotic dependent, assessed on figures which only represent those needing hospital treatment. No records have been preserved of the number of prisoners received on conviction for drug offences in that period, but these numbers rose heavily in the postwar years.

Even more sinister than the alarming upward trend was the fact that the majority of addicts had switched from opium to heroin—a far more deadly form of the drug.

The opium poppy is not grown in Hong Kong; therefore narcotic drugs whether in the form of opium or morphine finds its way into Hong Kong via the illicit market.

The Heroin Problem

There is no such thing as mild heroin dependence. The drug is powerful and addiction is rapid and complete. Physical and moral degeneration soon sets in, and the craving becomes such that the addict will ruin himself and his family and, if necessary, turn to crime for the money he needs to purchase the drug.

The chemical name for heroin is diacetylmorphine, a derivative of morphine which in turn is extracted from opium. Its use by doctors as a pain killer has been the subject of considerable controversy and the medical profession today generally prefers other less addicting analgesics.

Although opium contains many different substances, its activity is primarily dependent on its morphine content. The amount of morphine present in various samples of raw opium varies to some extent but usually averages 10 to 15 per cent. On a weight basis, therefore, morphine is roughly six to ten times as potent as opium.

Morphine is not usually consumed as such by addicts in Hong Kong but is more commonly converted by a comparatively simple chemical process into heroin. Heroin itself is approximately five to eight times as potent as morphine and therefore on a weight basis is roughly 30 to 80 times as potent as opium.

Not only is heroin more active than morphine but in addition it produces a greater illusion of well-being and is infinitely more harmful and addicting than morphine or opium.

Methods of Consumption

Heroin can be consumed in various ways. The majority of addicts in Hong Kong smoke it by a method called 'chasing the dragon' or by its variant 'playing the mouth organ.' To smoke the drug by the former method, several granules of heroin are mixed with barbitone and placed on a folded piece of

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tinfoil, which is heated by a taper, the resulting fumes being inhaled through a small tube of bamboo or rolled paper. The fumes arising from the movement of the molten powder on the tinfoil resemble the undulating tail of the dragon in Chinese mythology.

The use of a narrow tube to inhale the fumes is relatively difficult for a beginner and a match box cover is often substituted for it. This latter variation is called 'playing the mouth organ' because the inhaling action is very like that of a mouth organ player.

A third method is to imbed some granules of heroin in the tip of a cigarette which is lit and held in a vertical position, while the smoker inhales the fumes. The use of heroin in this manner is called 'firing the ack-ack gun.' Other known methods include intravenous, intramuscular or subcutaneous injection and the mixing of heroin with other ingredients in the form of red pills which are either smoked or taken orally.

The Manufacturing Process

The manufacture of heroin is comparatively easy and need not necessarily take place inside a well-equipped pharmaceutical laboratory. The equipment required is neither complicated nor expensive. The drug consumed by addicts in Hong Kong — generally of poorer quality than that used medically by injection — is smuggled in from illicit sources abroad, either in refined form or in the form of morphine which is then manufactured locally to produce heroin.

In Hong Kong, most addicts employ barbiturates as a base powder during the smoking of heroin. Pharmacological investigations carried out by Dr. Carl C. Gruhzit, of the University of Hong Kong, revealed that the combined use of heroin and barbiturates may produce a particularly severe form of drug addiction. Legislation was therefore enacted to have barbitone, and its salts and preparations, included in the first schedule of the Dangerous Drugs Ordinance, thereby placing these drugs under very stringent controls.

Other Addictive Drugs

The opium-morphine-heroin group does not comprise the whole of the drug problem, for there are other drugs of addiction and abuse such as barbiturates and amphetamine developed for medical use. Unlike morphine, these are wholly synthetic and produced entirely in pharmaceutical laboratories. Procurable through diversion from legitimate medical use, they claim only a small number of addicts in Hong Kong.

Treatment of Offenders

Until 1958, people found to be drug dependent upon admission to prison received the same treatment as other prisoners. This was obviously undesirable. Clearly a special programme was needed to deal with these cases and to offer a form of treatment which would give them a real chance of ridding themselves permanently of their addiction.

Because new institutions are costly, and because in the public mind, projects such as schools and hospitals take priority, a search was made for existing buildings which could be readily converted and put to use.

When the Tai Lam Chung reservoir scheme was completed on the southern seaboard of the New Territories, the workers' lines and engineers' quarters became available. Considerable alteration and improvement converted these to serve as the nucleus of the present Tai Lam Treatment Centre, providing good, unpretentious accommodation for inmates. Bungalows for senior officers and married quarters for junior staff have since been added.

At the start in 1958 due to the poor physical condition of those admitted it was thought that the hospital and light labour sections would make up the bulk of the centre, but this has not proved the case. Physical recovery is rapid and dramatic photographs of inmates and weight records prove this. Unless suffering severely from tuberculosis or some other physical disease, or simply from old age, a drug dependent soon becomes fit for work, and the nature of the work does much to restore his self-respect.

All convicted male prisoners sentenced

to imprisonment are in the first instance admitted to the reception and classification centre. There they appear before a classification and assessment board which on the basis of information available decides the institution to which individual prisoners are allocated.

Between 1958 and 1963 prisoners who were found to be drug dependent were selected at the time of classification and assessment for allocation to Tai Lam. Information most relevant to this decision at that time was the type of offence and length of sentence. Only prisoners sentenced to terms of imprisonment for 3 years or less were sent to Tai Lam.

In 1963 as a result of experience gained during the previous 5 years it was decided that in addition to the maximum of 3 years a minimum sentence of 6 months would also be necessary. Sentences shorter than 6 months resulted in virtually all those involved being discharged before the treatment programme could have any real effect. However further experience accrued after 1963 indicated that sentences fixed by the court did not in many cases expire at the time the man had reached the peak of his response to the programme. As a result some prisoners were being discharged before reaching the peak of their response and others were having to be held after reaching it and no administrative machinery was available to rectify this. In addition as after-care was voluntary it usually turned out that those who most needed after-care were the ones who did not volunteer for it.

New Legislation

New legislation was therefore planned to introduce an indeterminate period of detention for treatment with a minimum of six months and a maximum of eighteen months for a convicted person, regardless of the nature of his offence, subject to establishing that he is in fact drug dependent and likely to respond to treatment. It must be emphasised that drug addiction itself is not an offence, nor would it be practicable to make it one.

The innovations at Tai Lam gave the Prisons Department the unique distinction of being the first organization or department to embark upon a planned programme of treatment for drug dependents in Hong Kong. In addition, the department was also involved in the first research study into treatment methods when, in 1957, the then Medical Officer of Victoria Prison, Dr. Lee Cheng-ong, in co-operation with Dr. C. Gruhzit, Pharmacologist of the University of Hong Kong, commenced a research study to investigate the use of Memprobromate for use during the withdrawal syndrome.

During the period 1958 to 1968 a total of 17,501 prisoners passed through the Tai Lam Treatment Centre. Of this total 3,485 volunteered for after-care, which commenced in 1960.

Drug Addiction Treatment Centres Ordinance

The Drug Addiction Treatment Centres Ordinance became law on 17th January, 1969. Under this ordinance the Governor may by order appoint any place or building to be an addiction treatment centre for the cure and rehabilitation of persons found guilty of an offence punishable with imprisonment, other than non-payment of a fine, who are addicted to any dangerous drug.

Where a person is found guilty of a relevant offence and the court is satisfied in the circumstances of the case, having regard to his or her character and previous conduct, that it is in their interest and the public interest that they should undergo a period of cure and rehabilitation in an addiction treatment centre, the court may, in lieu of imposing any other sentence, order that such persons be detained in an addiction treatment centre. The period of detention for treatment is from a minimum of six months to a maximum of 18 months, followed by a compulsory period of 12 months after-care.

The date of discharge from a treatment centre is determined in the light of the inmate's health, progress and likelihood of continuing abstention from drugs on release. The progress of each inmate is regularly reviewed by a board which makes recommendations to the Commissioner of Prisons for discharge.

Drug Addiction Treatment Centres for Males

There are two such centres under the

administration of the Prisons Department. The first one, providing accommodation for 500 inmates, the Tai Lam Treatment Centre nestles at the foot of the Tai Lam Chung dam. Access is gained via the Tai Lam Chung Road, located at the 16th milestone on Castle Peak Road, in the New Territories. This centre also has a remand wing for persons remanded from the courts for suitability reports for admission to an addiction treatment centre. A second centre is located at Ma Po Ping on the hillside above the South Lantao Road on Lantao Island. It became operational on 1st January, 1972 and has accommodation for 660. While both centres follow the same type of programme, for administrative reasons, inmates selected for Tai Lam are mainly first offenders and those without long criminal histories; inmates selected for Ma Po Ping are mainly old habitual offenders who may or may not have previously been treated in other centres either within the department or outside.

The programme at each of the centres is comprehensive and includes medical treatment, psychological treatment aided by individual and group counselling, a work programme aimed at instilling good work habits and a full range of welfare and after-care services. In addition there is a wide range of recreational activities, including swimming, football and volleyball, and an educational programme with emphasis on citizenship training, conducted under the auspices of the Adult Education Section of the Education Department.

Persons admitted into the centre undergo a short period in the induction wing, situated close to the hospital block. Most will already have recovered from the withdrawal phase, having been treated for withdrawal during the period on remand. A process of clinically controlled withdrawal, including the use of substitution techniques, is initiated as soon after reception as possible for all persons admitted, whether on remand or conviction.

The Inmate's Progress

The progress of every inmate is followed with the closest possible interest by the superintendent and staff. Recognising that psychological dependence is one of the most important factors to overcome, much effort is expended to combat this difficulty and clear the way for successful rehabilitation.

In the main the problem of drug addiction is not viewed as a psychiatric one, but for those who are in need of such treatment it is available.

Inmates are allowed to proceed on a leave pass, without supervision, when it is considered they have earned the privilege and the time is ripe for testing them in the community for a short period. Passes may be granted for up to 72 hours.

With their own laboratory facilities centres are able to carry out urine tests and determine at any stage if a person has had access to drugs. Advancement to discharge is progressive, with constant encouragement and guidance being given. Control is applied firmly but fairly and provides for the disciplining of inmates should it be found necessary.

Like other treatment and rehabilitation programmes the success of the programme is dependent upon the interest which is taken by the staff and over the years they have given unstinting support to the programme. Much of its success is due to their efforts.

After-care plays an important role in rehabilitation and no inmate is discharged unless and until he has employment or is enrolled in a school to further his studies.

Research

Since 1963, when the department embarked on a planned programme of research, results have played a vital role in assisting members of the staff to get to know and understand many of the problems associated with drug dependence.

The results of such research is published annually by the department and can be obtained locally through the Government Publications Centre.

New Life House

The New Life House serves as a halfway house project for those discharged from the Training Centre who are considered likely to function better in the community from within a controlled environment. Residents engage in normal occupations during the day but return to the house in the evenings. Psychological services are available within the programme

with an emphasis on individual counselling.

Situated at Victoria Road on Hong Kong Island, the house has accommodation for 24. Normal length of compulsory residence applied while under supervision ranges from one to three months. Since 1969 a total of 232 persons have been in residence for varying periods of their supervision.

Treatment for Women

Many difficulties were encountered in attempting to introduce a treatment programme for women addicts. Due to the small numbers admitted to prison, the women were housed in one building, making segregation difficult. The setting up of a full treatment facility was impossible without a large capital outlay not justified by the number requiring treatment.

Consequently, between 1958 and 1969, during which the specialised treatment programme for males was developed, treatment for women addicts was restricted to medical treatment during the withdrawal phase. However, when a new centre for women was opened at the end of 1969 the opportunity came to embark upon a full treatment programme for women addicts.

The treatment centre, administered under the Drug Addiction Treatment Centres Ordinance, has accommodation for 110 women and, like the men's centre, is also situated close to the Tai Lam Chung dam. The programme is basically similar to the one for men except where differences are made necessary because of sex. Here the main emphasis in cultivating good work habits is directed towards the type of work more suitable to women and includes tailoring, hair-dressing and embroidery.

The majority of women admitted for treatment will have recovered from the withdrawal phase, having been treated for withdrawal during the period on remand in the same centre. The usual period for remand is 14 days. Here too the progress of every inmate is also followed with the closest possible interest by the superintendent and staff. The problem of psychological dependence on the drug comes in for close attention. Leave passes of up to 72 hours are granted on the same conditions as those for men. The staff have access to the laboratory facilities at the Tai Lam Addiction Treatment Centre. Inmates participate in educational programmes, and outdoor recreational facilities are available.

Rehabilitation

Experience has shown that the rehabilitation of women addicts is in some cases more difficult to carry through than that of their male counterparts. For the young teenage girl, the lure of the bright lights and easy money available by working as a dance hostess or bar girl is an ever present threat to rehabilitation. Most of the girls formerly worked in such occupations and in the rehabilitation phase they can only be offered employment on a salary scale far less than they previously enjoyed. Added to this, the type of work they are called upon to do is much harder than that which they did previously. The problem of illegitimate children, and in some cases the necessity to return home to an environment in which a husband may well be a drug user, are difficulties which have to be faced.

Common law husbands and, in some cases, attachments to two men create an unusual situation, often due to former involvement in prostitution.

The Lok Heep Club

The staff of the treatment centres became increasingly aware that the problem of re-adjustment for a former drug dependent after leaving a treatment centre was difficult and hazardous. While a major point is reached in the treatment and rehabilitation process when a man or woman leaves a treatment centre the goal of complete rehabilitation has still not been reached for the person concerned must be able to function efficiently within the community without the use of drugs. Unfortunately there are many cases of persons who having made an effort to improve themselves and succeeded in doing so to some degree surrender all in less than a minute through—a mere puff of heroin or a shot in the arm.

To remain drug-free in a controlled environment is one thing; to sustain it without the aid of controls except one's own will is another. While psychological dependence can be overcome it would be a very bold statement to say it can be cured; certainly with effort it can be conquered but in most cases, if not all

it lurks around like a cobra ready to strike.

To assist treated drug dependents to overcome some of their difficulties particularly in the initial stages just after discharge from a treatment centre the Lok Heep Club was formed. Operating under the auspices of Caritas Hong Kong it aims to assist and encourage persons previously drug dependent to remain abstinent, to enable them to regain self-confidence and assume a responsible role within the family and towards society as a whole, and to foster mutual co-operation, assistance and friendship among members.

The Club has two types of membership: ordinary members who are former addicts and associate members comprising persons interested in the problem and seeking to help. There is a small monthly subscription. Two club houses are maintained—one in Wanchai, on Hong Kong Island, and the other in Tung Tau Resettlement Estate, Kowloon—where former addicts and their families can meet together in modest though comfortable premises and enjoy recreational and social programmes away from the pressure of urban society. The clubs are administered by an advisory committee elected at an annual general meeting.

Conclusion

Since the Drug Addiction Treatment Centres Ordinance became law on the 17th January, 1969 a total of 2,551 males and 88 females have been admitted to the centre. To date a total of 1,648 males and 55 females have been discharged. Of these, 860 males and three females have completed the mandatory supervisory period of 12 months following discharge.

Recent and Proposed Developments in the Criminal Justice System in Afghanistan

*by Hedayatullah Azizi**

Article 2 of the Constitution of Afghanistan says, "Islam is the sacred religion of Afghanistan. Religious rites performed by the State shall be according to the provisions of the Hanafi doctrine."

Afghanistan follows the Hanafi school of jurisprudence. In Islam, religion and law are tightly interwoven, and to fully understand this relationship, it is necessary to review the nature of Islamic law and the course of its development over the centuries. For this purpose I shall touch upon hose points that are closely related to our specific situation in Afghanistan.

In accordance with the classic theory of Islamic jurisprudence the Sharite of Islamic law is derived from the following main sources:

(a) Holy book or Qouron, the words of God.
(b) Sunna, the words and deeds of the Prophet Mohammed.
(c) Ijma, the consensus of the scholars of the law.
(d) Qiyas, the deduction by analogy by the jurist, based on the first three.

Thus, in Islam, great emphasis is laid on the office of judge, because the role of judges in developing a body of law through the use of precedent is fundamental. It is through the efforts of early judges who were experts in the Shariate of Islam that Islamic jurisprudence came into being, and much substantive law as well as many procedural regulations were developed.

The Hanafi Rules

At the time of Arab conquest of Afghanistan, there was no well developed body of law in the country and the Hanafi rules were applied in all civil transactions as well as in criminal cases. Even today, many cases in civil law, criminal procedures and matters related to family law and rights are handled according to the Hanafi rules.

'Fiq' or the collected rules of 'Shariate' is applied in Afghanistan as a kind of common law. As these rules have not been codified, in making decisions, judges refer to the principles of Islamic jurisprudence, which have been compiled by Islamic jurists on the basis of the Qouron and the words of Mohammed.

The Hanafi Fiq is vast and close to nature. It falls back upon the verses of the Qouron, the sayings of the prophet, the decisions made during the earlier period of Islam covering the reign of the four Caliphs and in later eras, as well as the general concepts of justice which are common among the several sects of Islam.

Legislation

During the first half of the 20th century, there began some attempts at legislation in Afghanistan. The establishment of banks and factories, the development of industries, the increase in the volume of national and international trade and the expansion of communication made the government develop some legislation to prepare the way for the economic and social development of the country.

Relationship Between 'Fiq' and Legislation

Since Shariate and specially the Hanafi school of jurisprudence is considered the most important source of law and the most valuable legal tradition in the country, efforts have been made, since the beginning of the legislative drive, to take into consideration the main principles of Islamic rules. Therefore, a number of laws, particularly relating to the judiciary, were enacted. Several of these laws are still in force today, with some slight modifications.

In 1964, the application of the new Constitution brought about a change in the field of law and legal institutions. The Constitution secures a constitutional monarchy, provides for the observance of Islamic principles, separation of three powers of the state, guarantees the rights and freedoms of the people and defines the relationship between the Hanafi 'Fiq' and other laws.

In Article 64 of the Constitution, the observance of Islamic principles by the laws of the land has been prescribed as follows:

"The Parliament legislates laws to organize the vital affairs of Afghanistan in accordance with this Constitution."

"No law can contradict the principles of the sacred religion of Islam and other values incorporated in this Constitution."

On the other hand, Article 102 of the Constitution defines as follows, the relationship between Fiq and other laws in order to expedite the execution of affairs and facilitate the application of laws:

"In case there exists no rule in the Constitution and other laws regarding a certain case, the courts shall apply one of the principles of the Hanafi Fiq within the framework defined by this Constitution and make a decision accordingly in order to secure justice."

Article 69 of the Constitution, which supports Article 102, states that when there are no other laws which apply, the principles of Fiq shall be applied.

In this way, legislation can be made to meet new conditions but no legislation can be contrary to the principles of Islamic jurisprudence.

The principles of Shariate 'Fiq' are not abstract rules. On the contrary, they comprise comprehensive, dynamic regulations whose main quality is flexibility, and allow them to be applied under varying circumstances. Therefore, legislation is considered, in many cases, as explanation, commentary and interpretation of the Fiq rules.

The object is to reach a stage in which all legal requirements of the country are met, in keeping with the principles of the Hanafi School of Islamic Jurisprudence, through the legislative implementation of modern law.

Relationship between Legal Duality and Organization of Courts

Before Afghanistan began developing legislation, justice in the country was administered purely on the basis of religious rules.

All cases, including those concerning public law, commercial law and criminal procedures were handled by the same courts. Each court was headed by a judge who was appointed by the King, with a few judicial assistants.

The judge and his assistants had learned Islamic jurisprudence from private tutors who were well-known for their scholarship. Young scholars wishing to become judges were examined by the government to assure that they had sufficient knowledge to serve as judges.

During the second quarter of the 20th century, however, Afghanistan's traditional judiciary was changed and organized to fit in with the development of economic and social affairs and to meet the requirements of the times. Cases pertaining to banks, commerce, administration and the punishment of civil servants were entrusted to relevant courts which formed part of the central government.

Legislation was enacted for affairs outside the sphere of religious courts and the rules of Fiq were applied in cases not covered by laws. Later, legislation covered some activities of the religious courts and these laws are still applied with slight modifications.

In 1964, the new Constitution separated the judiciary from the executive and as provided by Article 98, entrusted all cases including disputes between individuals and the State to the judiciary. Thus, the judiciary came into its own as an independent power. Further legislation to bring about more coordination in the judicial branch was soon to come.

The law on the organization and jurisdiction of the courts was enacted in 1964 and brought about a re-organization of the courts. This law was modified in 1966 upon the establishment of the

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Supreme Court. In this law, the cases to be dealt with by the religious courts were distinguished from those to be handled by the law courts and the authority of each body was defined.

In the religious courts, the Fiq rules are applied and in the law courts the law of the land is applied. When there exists no law applicable in a particular case, the law court administers justice according to the principles of Hanafi Jurisprudence.

At the end of this short informative introduction on the legal system in Afghanistan and its relation to the Hanafi Jurisprudence, I think it is proper just to outline some of the advantages that we have had under the Shariate. There are many advantages in following the Shariate, not the least of these being the long tradition of judicial integrity and respect inherent in Islam. From the level of the village Mullah upwards, law and religion are bound together and are represented by the same persons. Wide-spread instruction and training in each proceeds side by side. The sanctity thus afforded to the law and to judges tends to insulate the legal system from unwanted pressure and criticism and helps to ensure a fair degree of support for the courts by the people. Muslim jurisprudence also enabled the country to have a full body of written, relatively cohesive laws with which to plug the many gaps in the laws developed locally by tradition or legislation. In addition, a religious legal jurisprudence, particularly one that has been nurtured as long and carefully as Muslim law has been, is likely to be internally consistent and understandable to a higher degree than a jurisprudence derived from the many sources, and Islamic law has in this respect greatly simplified and unified the law of the country. And finally I must say that the influence of Islamic law has been highly advantageous for Afghanistan. It helped the country to produce a relatively well-trained and highly respected corps of judges, and it has brought with it all the benefits of a comprehensive, integrated, and sophisticated set of laws, one which has the highest regard for individual dignity and social responsibility.

Basic Reforms in Direct Services of Criminal Justice System in Afghanistan

Some of the Problems Which Necessitated Reform in the Criminal Justice System

One of the main forces demanding reform in the criminal justice system in Afghanistan was the community itself, because our community was losing confidence in the sound application of the criminal justice system; and there were many reasons for this, such as changes in expectations, changes in the conditions and circumstances of life, economic situation, level of education and to some extent mal-administration of justice. The scattered administration of the courts system was also responsible to some extent. Before the new Constitution was adopted in 1964, the courts in Afghanistan had come to be very awkwardly distributed under different Ministries—some courts being attached to the Prime Minister's Office, the commercial dispute chamber to the Ministry of Commerce, and the other criminal and civil courts to the Ministry of Justice. This scattered distribution of the courts proved unsatisfactory, giving rise to problems in organization, distribution of personnel and geographic location, and was an obstacle to the smooth and efficient administration of justice. To work in a court as a judge one had to be a master of the Arabic language and Islamic 'Fiq' law. This made it difficult for the Administration to supply the courts with a sufficient number of such scholars. Most of the judges were religious men trained in private religious schools throughout the country. While their training gave them a good background in traditional Islamic law, they were inadequately equipped for dealing with the complex changes that were taking place in the life of the community. Before the adoption of the new Constitution we did not have prosecutors; the police was the only authority to investigate, arrest, and place the suspect in detention. The circumstances in which the length of time that an accused could be kept in detention were not clear and there were certain abuses of police authority. Far-reaching changes in other areas of Afghan life necessitated changes in

the criminal justice system. Old conservative traditions were being challenged, and alien ideas and concepts became increasingly evident as more and more foreigners, aid missions and tourists came to the country. These changes inevitably produced a profound impact on the administration of criminal justice in the country. The rise in the number of crimes committed by juveniles caused great concern, necessitating juvenile courts and correctional services.

In October 1964, the new Constitution was adopted by the Grand Assembly and promulgated by His Majesty the King. Under the new Constitution the national life of Afghanistan was reorganized "according to the requirements of the time and on the basis of the realities of national history and culture." The new Constitution separated the executive, judicial and legislative powers and recognized them as equal to and independent of each other, and provided the protection of civil liberties. And under it the criminal justice system was re-designed to maintain law and order.

Direct Services Under the Criminal Justice System After 1969

Police

"The maintenance of public order and security"—one of the constitutional responsibilities of the government (Article 94 of the Constitution) is entrusted primarily to the uniformed police who operate from police stations in the urban areas, and from district and sub-district centres in the country side. In furtherance of Article 94 of the Constitution, Article 7 of the police law provides that the police must perform the following duties:

1. Maintenance of public order for the purposes of security and welfare of the individual.
2. Protection of individuals and society against dangers threatening life, person and property.
3. Removal of circumstances affecting public order, within the limits of the law.
4. Guarding and patrolling of the areas which in accordance with the law of the country and international traditions belong to Afghanistan.
5. Prevention of crimes and their detection.
6. Control of traffic, and assisting the people in natural disasters such as storms, fire and flood.
7. Apprehension of offenders.
8. Performing duty as investigating officers.
9. Carrying out the prosecutor's orders as to the arrest and detention of suspects and investigation of offences.
10. Execution of the order of the courts.

Police Forces

Administrative Structure

The police forces are organized hierarchically, headed by the General Commandant for Police and Gendarmes within the Ministry of Interior. Reporting to the General Commandant are two assistants, the Chief of Staff and the General Security Officer, as well as the departments for intelligence in national security matters, inspection of equipment, the special court for police and gendarmes, and the barracked, or reserve, police.

Under the control of the Chief of Staff are the Police Academy and the Department for Personnel and Logistics. In addition, the Police Commandants in each of the 28 provinces of Afghanistan and the Commandant of Gendarmes located only in the border provinces are under the administrative supervision of the Chief of Staff.

The General Security Director is in charge of the Central Recording Office, the department that deals with immigration offences, and the department that sets policies for issuance of passports and visas.

The Police Commandant, and the Commandant of Gendarmes in the border provinces, serve under the Governor of the province who reports to the Minister of Interior.

In the seven more populous provinces, serving under the Police Commandant are directors for traffic affairs and for police in the urban areas. The Director of urban police commonly has a deputy for uniformed police, who is in charge of the police stations which number in each province from 3 to 21 in Kabul, and a deputy for detectives, who is in charge

of the separate detective divisions. Each police station is in the charge of an officer (mamoori-samt).

In the districts of the countryside and in the less populous provinces a simpler organizational framework obtains than in the urban areas. Every province has usually four or more districts each headed by an *haakim* who is responsible to the Governor of the province. In some districts there are also subdistricts headed by an *alakador* who reports to the *haakim*. In each of the districts a police officer (*breedman-e-amnya*) is assigned to serve under the *haakim*, and in the subdistricts a police sergeant (*khord zabet*) serves under the *alakador*. The police officer in the district will usually have under his command a police sergeant and thirty or more conscript police (*jalbis*), while the sergeant in the subdistrict will commonly have ten police conscripts under his command.

In Kabul Province alone, there is a tactical reserve force of one hundred men under the control of the Kabul Commandant.

The Gendarmes who patrol the borders are organized separately from the Police except in Kabul Province where they are both organized under a single Commandant. There is presently discussion of merging the Gendarmes and the Police in the other provinces, as well, in the interest of efficiency and avoidance of jurisdictional problems.

The Central Recording Office is located in Kabul and has separate branches for Statistics, Technical, Investigation and Administration. The Central Recording Office also has offices in the centres of each of the seven most populous provinces.

The police normally patrol, answer calls and do preliminary investigation. In extraordinary situations, the General Commandant may order the barracked reserves to duty in any of the provinces throughout the country. Similarly in Kabul Province the tactical reserves are used to quell disturbances, assist in large manhunts or on the extraordinary occasions.

The detective divisions investigate crimes in one of the categories of murder, theft and burglary, vice control, and miscellaneous, or serve in the surveillance division. In Kabul each of these divisions exists, though in each of the seven most populous provinces at least three of these separate detective divisions exist.

The equipment of the police, including uniforms, is provided by the personnel and logistics division, while the inspection department inspects the equipment and gives instruction on its proper use and care. Equipment now includes handcuffs, walkie-talkies, and radio equipped vehicles.

Technical services, including photography, facilities for chemical, microscopic and ballistics tests and records of fingerprints, missing persons and convictions, are provided by the Technical Branch of the Central Recording and Investigation. These services are provided through its offices in the larger provinces. Further assistance is available when needed through a working liaison with a police laboratory in the Federal Republic of Germany. Moreover advisors from the FRG assist the police and the FRG has helped provide equipment to the Afghan Police as needed and as funds permit.

The Investigation Branch within the Central Recording and Investigation Office is responsible for investigation of any crime when requested by the General Commandant, who may make such a request either on his own initiative or at the instance of a provincial governor. This branch is also responsible for investigating all cases concerning narcotics, explosives, counterfeiting, or commerce in women for prostitution. This branch is beginning to develop operational information.

The Statistics Branch was established in 1966. Each Police Commandant in each of the 28 Provinces reports every morning to the Kabul Recording Office and to one of the seven regional offices as to the crime occurrences in his province. However, these statistics are not complete for a number of reasons. Because the progress of a case comes under the supervision of Central Recording once a crime is reported there is likely to be under-reporting, and it is possible that attempts are made to settle cases locally. For example, the traffic accidents reported have remained fairly constant although it is likely that there has been an increase in accidents along with increased traffic in the past few years. However, there is an increasing tendency

to settle traffic accident cases privately without making a report to the authorities.

A further report is made when the investigation file is turned over to the prosecutor, and notice is again given of the court disposition of the case. If a report is not made on a case in a reasonable period of time, the Central Recording Office will make inquiry concerning the case.

Training and Recruitment

In the past most officers of the police were recruited from the army. Therefore, most of the high ranking officers in the police today were not trained as police but as army personnel. Similarly, the ranks of the police are even today largely filled with conscripted army personnel who serve in the police in lieu of army duty. These men are untrained and constitute the overwhelming majority of all police.

Over fifteen years ago, enlightened leaders of the police recognized the need for training of police personnel and consequently established the Police Academy. The Academy has a number of training programs. First, there is training for the position of sartonman, who is a non-ranking constable who would likely be in charge of a platoon of 10 conscript police. For this training men with primary education who meet the age, physical and moral requirements, are selected by competitive examination for courses in Investigation, Tactics, First Aid, Language, Traffic Regulations, Military Training and other subjects. The course of study is 39 hours per week for 9 months with a final examination that must be passed. After passing the examination the men are put into the reserve or barracked police for active duty while continuing a course of 28 hours of study per week. Up to 1970, 1,101 such men had been trained.

For the officers' training, men with 12 years of schooling are selected for a 3 year course leading to a degree in police science. Each year about 25 to 30 are selected by competitive examination from among about 4-500 applicants. Upon graduation these men serve a one year probationary service in Kabul and then are assigned to a provincial police department. Since there is a shortage of such trained officers they are much in demand, with Kabul usually having priority over the other provinces. Up to this year 442 men have been graduated from this program.

Other courses were offered for intermediate grades of officers in the past, but have been discontinued due to problems with automatic promotion under the Civil Servants Law, which applies to the police. Over 400 men had participated in the other programs.

Other courses offered by the Police Academy include a refresher course for high ranking officers who have not had previous police training (74 participants up to 1970), and specialized courses for traffic, police station officers, a promotion course, and in fingerprinting. Proposed courses for the coming academic year deal with explosives, counterfeiting, laboratory testing and communications.

Trained officers are still a small but growing percentage of the officers' ranks. A police Law is now in draft that might strengthen the trend toward a trained officer corps. The need for such training has been recognized. However, in view of the limited resources which may be devoted to such training it is likely that only modest gains will be made toward the objective of a fully trained officer corps in the near future.

Prosecution

Before the Constitution of 1964 there was no institution of Public Prosecutor in Afghanistan. After the adoption of the Constitution in 1964 the Attorney-General's office was established under the Ministry of Justice. The main duties of the Prosecutor in accordance with the Law organizing the office of the Prosecutor are as follows:

The Police of the district must start primary investigation and send a report in this regard within 24 hours to the office of the Prosecutor of the same district. The investigating officer is obliged to send the file plus his finding as a result of the investigation to the Prosecutor's Office. (Article 12)

The Prosecutor is obliged to re-examine

the file which has already been compiled by the office in charge of the investigation, and if he does not find the material sufficient to sustain a prosecution, may return it to the same office for further review and re-investigation on the lines indicated. (Article 13)

If after the completion of the investigation the Prosecutor studying the file finds that there is in fact no crime for prosecution, a decision will be made to close the file. (Article 14)

If the Prosecutor finds on the other hand that a *prima facie* case is established on the material, he may, after having the file completed present it to the court and send a warrant directing the Police to produce the accused before the court on a specified day. (Article 15)

The Government offices are obliged to report to the Prosecutor's office any crimes, occurring during the performance of their official duty and requiring prosecution. (Article 16)

The conduct of the prosecution in the courts on behalf of the State is the responsibility of the Prosecutor. (Article 17)

In private complaints, the Prosecutor shall after studying the file decide whether prosecution should be permitted. In cases where he does not find the accusation legal or proper, he will close the file although there will be affected parties. (Article 18)

If they apprehend that the accused may escape or may destroy or remove the evidence in cases of felonies and misdemeanours, it is within the authority of the Police to arrest and detain the accused for three days, and for the Prosecutor for seven days, in accordance with the rules of law. In such cases the Governor of the State shall be informed. After completion of seven days the accused cannot be kept under detention without the authorization of the court concerned. (Article 19)

The Prosecutor is obliged to report the final judgement of the court to the Police for enforcement, and such enforcement is obligatory. The Prosecutor must in coordination with the police supervise such enforcement. (Article 21)

The Prosecutor's Office now has officers attached to the primary and provincial courts in Kabul, as well as to the special courts and provincial courts. The appellate courts, too, have prosecutors assigned to them.

There are now plans being formulated to increase the powers of investigation of the prosecutor, including suggestion to bring the police and prosecutors closer organizationally. The Prime Minister has recently stated in his statement of policy to Parliament that: "The Government believes necessary reforms will need to be introduced in the security organs of the country and in the field of criminal law administration in accordance with the requirements of the time." This statement would appear to presage reforms especially in the organization of criminal investigation and prosecution.

There has been recognized the need for legal material that would guide prosecutors in the performance of their duties and for greater training of the prosecutors. Though much progress has been made in the development of the office of the Prosecutor, much improvement is yet needed before the country will have an effective institution of public prosecutors.

Courts

The Constitution of Afghanistan prescribes:

The judiciary is an independent organ of the State and discharges its duties side by side with the legislative and executive organs. (Article 97)

In the courts of Afghanistan trials are held in public and anyone may attend in accordance with the provisions of the law. The court may in exceptional cases specified in the law hold closed trial; however, the judgement shall always be openly proclaimed. (Article 100)

The enforcement of the final judgements of the courts is obligatory except in the case of a death sentence where the execution of the court decision requires the King's signature. (Article 101)

Investigation of crimes shall be conducted, in accordance with the provisions of the law, by the Attorney-General, who is part of the executive organ. (Article 103)

The Supreme Court is the highest judicial authority in Afghanistan. (Article 107)

Under the Constitution the judiciary is

an independent organ of the State, and the Supreme Court is established as both the highest judicial authority and the administrative head of the judiciary. The Supreme Court discharges its administrative duties through the Supreme Council of the Judiciary, which consists of all the members of the Supreme Court. The Supreme Court serves as the highest judicial authority through its various chambers consisting of one or more of the Supreme Court Justices. One such chamber, the Chamber of Customary Criminal and Civil Law of the Court of Cassation consists of seven Judges with one Justice from the Supreme Court presiding. This Chamber handles all the ordinary criminal cases while a separate Chamber handles appeals on cases concerning the press, civil servants and smuggling offences.

The Cassation Court within the Supreme Court and the lower courts are regulated by the Law on the Organization and Functions of the Judiciary. The lower courts consist of:

(a) the Primary Courts which have original jurisdiction over, among other cases, all ordinary criminal cases;

(b) the Provincial Courts which have original jurisdiction over, among other cases, cases concerning the press, civil servants and smuggling offences, and have appellate jurisdiction over cases from the primary courts;

(c) the General Court of Appeals which has appellate jurisdiction over all cases in which the provincial courts have exercised original jurisdiction.

Appeals may be taken from either of the two appellate courts to the Cassation Court.

There are over 200 Primary Courts, normally one in every district or subdistrict, 28 Provincial Courts, one in each province, and a single Central Court of Appeals which has a separate penal or special criminal jurisdiction. The Primary Courts also normally exercise their criminal and their civil jurisdiction separately.

In Kabul there are also two special courts to deal with Civil Servants' offences and Juveniles. The Juvenile Court was established to render the special treatment accorded juveniles by the law.

The Constitution of Afghanistan not only established the framework for an independent judiciary, but also set forth several important rules that express important procedural limitations on a criminal prosecution. The Constitution prohibits *ex post facto* laws, permits punishment only pursuant to a court judgement, and detention only by court order; arrest must be made in accordance with the law; only the individual found guilty is responsible for his crime; he is presumed innocent and has right to counsel; coerced or compelled confessions are contrary to the Constitution and searches of private dwellings can normally be made only pursuant to a search warrant. (Articles 26 and 28)

The procedure to be followed in criminal cases was further laid down in the Criminal Procedure Law of 1966. This Law contains many novel provisions, such as expungement of a criminal record and parole from a prison sentence.

The Criminal Procedure Law went a long way in regularizing criminal prosecutions; however many problems remained. The Supreme Court through its administrative offices has taken further action to solve some of these problems. First there was the need to acquaint the courts with the provisions of the Criminal Procedure Law as well as other new laws and practices inaugurated under the new Constitution. Accordingly, the Supreme Court organized three seminars for judges, including the presidents of the provincial courts, which covered criminal procedure, appeals, enforcement of judgements, and problems in procedure. To fill the gap of Hanafite (the official Islamic school of law in Afghanistan) legal literature in the Persian language, the Supreme Court has undertaken to translate several important Arabic legal works. Finally, the Supreme Court High Council has made over one thousand expositions of legal questions in its three volumes of circulars which are distributed to all the courts.

The Supreme Court has also taken important steps in supplementing the laws concerning the organization and procedure of the courts through use of its regulatory powers. For example, the court has promulgated detailed rules governing proceedings in the Juvenile Court.

By all these means important strides

have been made in the past five years to re-organize the courts and to bring them increasingly under the rule of written laws and regulations. However, in the sphere of criminal law one important step remains to be taken. The substantive criminal law is still largely based on uncodified Shariate doctrine which is contained in Arabic language texts in an extensive literature spanning centuries which sometimes contain varying interpretations, and is not only unwieldy for modern legal purposes but also not readily accessible. There are plans to prepare a draft of a Criminal Code based on Hanafite doctrine, which when implemented would have a significant impact on the administration of criminal justice in the country.

The Supreme Court has also instituted reforms in the important area of training judges for service in the courts. Potential judges recruited from the Law Faculty, Faculty of Islamic Law, and Islamic schools of law, are given a broad academic training in the Judicial Training Program of the Supreme Court. If successful in the training program these men are appointed as judges on the recommendation of the Chief Justice and the approval of the King.

Prisons

The prison system, which is not treated separately in this paper, is mainly under the control of the Ministry of Interior. However, the Prosecutor's Office has the responsibility of making periodic inspections of the prisons. Moreover, the Juvenile Reformatory is under the control of the Ministry of Justice. The Government is also making plans for modernization and reforming the prison system, which at present is largely undeveloped. Special emphasis is likely to be placed on the improvement of the Reformatory, which now has an academic program similar to that of the high schools in Kabul, but has few facilities for recreation or vocational training.

Conclusion

It would be clear from the foregoing brief account of the situation in Afghanistan, that we are on the threshold of important reforms in the Criminal Justice system and that what we are seeking to achieve is a harmonious blending of new ideas with the old traditions. While we are anxious to modernize our system and are prepared to absorb new ideas from other systems, we are equally anxious to preserve our own culture and traditions based on Islam, which has stood the test of time and which has given and continues to give us a homogeneous community and ordered society. Our laws have commanded respect mainly because they are based on our religion, and our judges who administer such laws also command respect for the same reason. We cannot afford to tamper with this strong foundation for our laws, and whatever we build will be on this foundation only. Criminal law has necessarily to subserve the needs of the particular society; what is good for one particular society may not be so good for another or may even destroy the foundations of that other society. For this reason, we have necessarily to be cautious in adopting altogether new ideas of criminal law without examining whether it will suit our own well-tried system. I am indeed very happy to participate in this seminar as it has enabled me to see and understand what is happening in other parts of this region. I am quite sure that the knowledge, which I have acquired here would be of great use to my country in evolving purposeful reforms for the betterment of the community.

I should mention in conclusion that the knowledge I have acquired as a result of our long discussions on different aspects of an effective criminal justice system, would help my government in effecting certain reforms as proposed by the Prime Minister.

The Prime Minister of Afghanistan in his recent policy statement presented to the Parliament in December 1972 stressed the need for reforms in the social defence system in the country, and indicated the lines on which such reform is to be undertaken. The Government proposed to establish a centre for constitutional studies where eminent scholars and jurists will examine the various laws with a view to suggesting reforms wherever necessary. In particular the Government is anxious to bring about reforms in the criminal justice system with a view to protecting the rights

of the individual and at the same time ensuring the maintenance of law and order. For this purpose, apart from legislation, certain institutional reforms are also contemplated, such as the creation of additional departments for the administration of criminal justice and the strengthening and reorganization of existing departments. The Prime Minister pointed out that it is one of the primary functions of the Government of the day to maintain law and order so that law abiding people may live in peace, and also to undertake suitable reforms to secure justice to the people and satisfy their aspirations. It is also necessary in the national interest to tackle crimes such as smuggling, corruption and other such antisocial activities.

With regard to the evil of traffic in drugs and narcotics the Government proposes to discourage the cultivation of narcotics plants and to encourage farmers to cultivate alternative plants by giving them incentives. It is also proposed to restrict narcotics cultivation only for medicinal purposes and to prohibit its export.

Certain other measures for improvement in the prisons administration are also contemplated.

Reform of Criminal Law in India: Some Aspects

*by S. Balakrishnan**

1. The purpose of criminal law is to express a formal social condemnation of forbidden conduct and to provide for punishments by way of sanction. Criminal law has, quite rightly, been called one of the most faithful mirrors of a given society reflecting the attitude of that society to what at any given point of time it considers reprehensible. Obviously, criminal law has been changing and must necessarily change with social change. This is true not only in respect of what constitutes crime but also what should be the punishment for a crime, because ideas as to punishment have also been changing with the changes in the predominant moral and social philosophy.

2. By the end of the last century, a striking change in the concept of crime and punishment was noticeable. The classical school of criminology which prevailed earlier, believed that in the matter of punishment for crime special emphasis should be laid on the restrictive and repressive or deterrent aspects, as it was considered that a measure of retribution or even of revenge was justified with respect to any person proved to have committed a crime. It was gradually realised that this was a negative approach to the problem and that the larger interests of society called for a positive approach. Far-sighted men and jurists urged that crime should be regarded as a sign of sickness in the individual and in the society that breeds him and that punishment for crime should properly be directed towards the eradication of the disease rather than to the symptoms. If the soil is poor or sour, it is no good condemning plants for not growing or the flowers for not blossoming as well as they should. Instead, efforts should be directed towards improving the soil. In the same way, when there is prevalence of crime society cannot put the entire blame on the criminals and assume an innocent attitude. It must take at least part of the blame on itself. It must, therefore, devote its attention to reform and rehabilitate the criminal with a view to prevent crime in society. This positive approach to crime and punishment gradually gained world recognition.

3. The change in the attitude towards crime and punishment was reflected in some of the Declarations made by the General Assembly of the United Nations in pursuance of the provision in the U.N. Charter that one of the main purposes of the United Nations was to promote and encourage respect for human rights. In the Declaration of Human Rights adopted unanimously by the General Assembly on the 10th December, 1948, it was provided in Article 5 that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. On the 16th December, 1966, the General Assembly also unanimously adopted a Covenant reiterating the above Article 5 and also laying down certain principles relating to punishment for crimes.

4. Realising the need to have a thorough and systematic revision of the old laws so as to bring them up to date and in conformity with current ideas, the Government of India, soon after it attained independence, set up a Law Commission consisting of eminent jurists for the purpose of such revision and for suggesting reforms. It considered the two old codes of criminal law, namely, the Indian Penal Code 1860 and the Code of Criminal Procedure 1898, and, after an exhaustive study of all the relevant materials, including the reforms made in other countries of the world, and consideration of the views expressed by competent men including judges, lawyers and jurists, the Commission submitted its reports containing numerous proposals for reform. The Government of India took decisions on these recommendations and have introduced legislation in Parliament, which is about to

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complete its consideration of the Bill for the reform of the procedural law and will shortly take up the Bill for reform of the substantive law.

5. The proposals for reform now under consideration are numerous but in this paper I shall confine myself only to a few important matters relating to the substantive law of crimes and these are:

(1) The need for prescribing new punishments as alternatives to the punishment of imprisonment;
(2) The appropriate punishment when a corporate body commits crime;
(3) The need for dealing effectively with crimes by large groups of persons; and
(4) New types of crimes including 'white collar' crimes.

These are considered below:

Point (1): New Punishments

6. Apart from the sentence of death (which is prescribed for grave offences) and of forfeiture of property (which is prescribed for a few special offences), the penal law of most countries, including India, provides for only two kinds of punishments, namely, imprisonment and fine. In practice, a sentence of fine only is rarely imposed unless the offence is trivial or the law or the situation does not permit imprisonment. Even when it is open to the court to impose a sentence of fine it has necessarily to pass a sentence of imprisonment if it feels that a sentence of fine may not suit the offence or the offender. For instance, when the convicted person is poor, the court may consider that there is no use of sentencing him to pay a fine because he may not be able to pay the fine. In such and similar cases, the court may impose a sentence of imprisonment almost as a matter of course even in respect of petty offences. If at all poor persons are sentenced to fine, they are in most cases unable to pay the fine and have to suffer imprisonment for default of payment. The sentence of fine is thus virtually utilisable as a punishment mainly in relation to persons who are rich enough to pay the same. In an interesting judgment of the Supreme Court of America (*Tate vs. Short,* decided on 2.3.1971) the court observed that a law which limits punishment to payment of fine for those who are rich enough to pay it but converts the fine to imprisonment for those who are unable to pay it, offends the equal protection clause of the American Constitution. A similar objection could also be raised in countries like India where equal protection of the law is a Constitutional guarantee. Even apart from the Constitutional objection, the discrimination appears to be real and unfair on the face of it and it is time some thought is given to this aspect. One way of removing this discrimination is to devise other punishments intermediate between fine and imprisonment so as to avoid the necessity of imposing a sentence of imprisonment where one of fine is not possible.

7. The need for devising alternatives to the punishment of imprisonment has also arisen because it has come to be realised that a sentence of imprisonment has outlived its utility as a punishment. As is well known, imprisonment is not now-a-days regarded as a means of causing pain to the criminal to make him suffer for what he had done. According to modern concepts, the prison is to be used more as a place for correcting the criminal than for making him suffer pain in retribution. Most advanced countries have reoriented their prison policy to give more emphasis on the reformation of the prisoner so that on his coming out of the prison, he may become a useful citizen. Imprisonment has thus lost its original sting as a punishment. Further, a sentence of imprisonment has little or no effect on a person who committed the offence driven by poverty. Such a person on release from prison has to face the same situation as he did before he committed the crime. Possibly he may commit another crime sooner or later and so the imprisonment he suffered has had no effect upon him. Even in other cases recidivism is a problem which is being faced by even advanced countries and so, from this point of view also, imprisonment does not serve its present purpose of reforming the criminal.

8. It is also well known that the effect of imprisonment particularly on young persons and first offenders is disastrous. In India, as in many countries, provisions have been made in special laws for releasing young persons and first offenders on probation instead of sentencing them to

prison; but for various reasons the implementation of these special provisions has not been as satisfactory as could be desired and such persons continue to be sent to prison and get contaminated there. This is also a reason for devising other punishments.

9. There is yet another reason why the scope for awarding the sentence of imprisonment should be reduced and that relates to the prison population. A sentence of imprisonment having become in most countries almost a matter of dull routine, the jails have become very much overcrowded particularly because of the increase in the volume of crime arising from the creation of more and more offences to meet the complexities of modern life. This in turn not only creates administrative and financial problems but also leads to several undesirable consequences, including prison riots. A painful feature is that a very large percentage of the jail population consists of persons sentenced to short-terms of imprisonment. The evil effects of short-term imprisonment are too well known to require mention. One of these is that such imprisonment corrupts rather than corrects an individual. A casual offender who perhaps dreaded the jail earlier becomes a habitual offender after being contaminated by association with other hardened criminals. There may also be cases where a person may find the conditions in jail better than the conditions in his own house, particularly where he belongs to the poorer classes. In such circumstances, he would naturally try to come back to the prison after committing another offence, if necessary. The evil effects of overcrowded jails can obviously be mitigated if other alternative punishments are available.

10. The foregoing discussion leads to the conclusion that imprisonment as a punishment creates more problems than it solves and that there is a necessity for avoiding imprisonment as a punishment and evolving alternatives. The alternatives which may be considered are indicated below in brief.

(a) Suspended Sentence

11. Some countries like Japan, U.K. and Canada have adopted a system whereby a sentence imposed by a court may be suspended by the court on condition that if he commits another offence during the specified period, the original sentence would take effect and he is sent to prison. It is understood that this system has resulted in a considerable reduction in the number of persons sent to prison. However, the system requires for its implementation a suitable administrative machinery for keeping watch over persons released in this manner on suspended sentences. Such machinery involves considerable expenditure which a developing country may not be able to afford. A voluntary system of probation officers as in Japan is not also feasible in countries where there may not be many persons who can afford to undertake such voluntary services. This alternative to imprisonment is no doubt useful, but there are limitations to its adoption in a developing country.

(b) Corrective Labour

12. One of the forms of non-custodial punishments adopted in some countries is to compel the convict to work at his own place or at a work-centre outside the prison for a specified period. In the U.K. what are called attendance centres have been set up in which the convicted person is made to work for specified periods, or at week-ends, and permitted to spend the rest of his time at his home or any other place, as he likes. The penal aspect is the compulsion to work at the centre for a limited period. In the U.S.S.R. compulsory labour as a punishment has been in existence for a long time and it consists of compelling the convict to work on reduced wages in public work centres. Both these systems require administrative arrangements and organisations to provide work for the offenders. In developing countries, however, it may be difficult to adopt this system because in view of the unemployment position there may not be sufficient work to go round even for law-abiding citizens. A modified form of this system, however, may be suitable for such countries. Under that system, the prisoner will be asked to attend the jail every day for specified periods and do hard labour there. At other times he will be free and even earn for his family. The advantage of the system is that it does not require any elaborate organisation to provide work for the convict and does not also deprive the

law abiding citizens of their opportunities for work. The main advantage, of course, is that the rigours of jail life are avoided for the person concerned and the evils of imprisonment referred to earlier will be to that extent avoided.

(c) Public Censure

13. This is a new type of punishment which may be suitable in the case of criminals belonging to the richer class of businessmen. When such persons are convicted of anti-social offences like cheating, adulteration of food, pollution of atmosphere, etc., the court may order the publication of the names of the accused with particulars of the conviction. The fear of infamy resulting from the publicity given to their misdeeds and consequent loss of business should deter offenders more effectively than the normal punishment. This punishment is already in force in respect of certain offences in India and also in some other countries.

(d) Duty to Make Amends

14. The aim and purpose of criminal law has been mainly, if not solely, to punish the offender. In most countries the victim of the crime gets no material benefit from the conviction and has to resort to costly and dilatory civil proceedings to reclaim the property or get damages for loss or injury resulting from the crime. The victim rarely resorts to such protracted civil proceedings with the result that his grievance remains unredressed. The need for making a provision for the grant of some kind of reparation or compensation to the victims of the crime by the same court which tries the crime has been recognised in many countries and appropriate provisions have been made in the laws of some of them like France, Germany and U.S.S.R. It is time such provisions are made in other countries particularly in developing countries where the need may be greater because the victims may be too poor to afford costly civil litigation. The possible methods of compensating the victims are:

1) the State may itself pay compensation to the victim at least in certain defined classes of cases;
2) the offender can be sentenced to pay a fine as punishment and out of that fine, compensation can be awarded to the victim; and
3) the court trying the offender can, after imposing the regular punishment, and holding a summary inquiry, direct the accused to pay compensation or otherwise repair the damage resulting from the offence.

Of these items 1) may not be feasible in a developing country with slender resources where funds are required for more urgent or important purposes. Item 2) also has its limitations, because the fine may not be realised. Item 3) is perhaps the most effective means. The convicting court has before it all the relevant materials for coming to a decision on the extent of damage caused to the victim by the commission of the offence and will be in a position to award damages or give directions for restitution befitting the particular case. For instance, if a person is injured and in consequence has incurred medical expenses, the accused can be directed to pay such expenses. If the house of a poor man has been burnt down, the accused may be directed to construct at his cost a similar house for the victim. Similarly, in the case of criminal misappropriation, cheating or breach of trust, the accused may be directed to pay to the person affected the amount misappropriated, etc. A provision of this kind may be particularly beneficial to the poor where the accused is not so poor.

(e) Externment

15. Sometimes crimes are committed by certain individuals by virtue of their local influence over the community in an area. Usually this happens in respect of offences against public tranquillity. In such cases, it might be useful if the person is removed from the area and kept for a certain period outside his usual habitat. The punishment takes the shape of an order of court directing a person not to reside in a particular place or locality for a specified period. In certain parts of India and in some other countries as well, there are already provisions of this kind enabling the executive to make such orders against potential criminals for the prevention of offences relating to public tranquillity. The suggestion is that the same power may also be

conferred on the courts to make such orders by way of punishment for certain categories of offences, thereby avoiding a sentence of imprisonment. The main objection to this punishment may be that on being driven away from his normal environment, the person will find it difficult to secure honest means of livelihood and may start committing offences in the new locality. This can be met by making suitable supplementary provisions to secure that the person is kept from mischief in the new locality, such as by requiring him to report to the police at specified intervals. The main advantage of this provision is that it is an alternative to a sentence of imprisonment. The court will, no doubt, pass this order only if the circumstances are such that it may be appropriate to do so.

Point (2): Punishment on Corporate Bodies

16. When an offence is committed by a company or corporation, the only punishment which is now practicable is that of fine because corporations cannot be imprisoned. A punishment of fine never hurts a corporation and the payment may just be shown as a business loss in the books! Some special laws provide for punishment being imposed on the manager or secretary or other person in charge of the affairs of the Company but there are limitations to this. For instance, a company deriving huge profits by adulteration of food or drugs may go on replacing its managers, etc., as and when they are convicted and continue its activities. It is therefore necessary to devise some effective way of deterring such corporations. One possibility is to empower the court to order the winding up of the company or corporation, or the suspension of its activities, or to order its management being taken over by the State for a limited period. The time has come to consider this suggestion seriously.

Point (3): Group Offences

17. A feature of comparatively recent origin in regard to crimes is the mass character of criminal behaviour, such as mass disobedience of prohibitory orders, mass stealing from factories and the like. These crimes are quite different from crimes by individuals or even groups of men because of the additional element of terror on and the helplessness of the victim. We have cases where a large number of persons, usually workers, surround a person in authority and keep him under restraint for several days to extract some promise or get some demands conceded by him. These are no doubt crimes but they also have sociological or even political overtones. This new type of crime requires careful analysis and concrete solutions should be evolved to deal with such crimes.

Point (4): 'White Collar' Crimes and Other New Crimes

18. 'White Collar' crime may be defined as crime committed by a person of respectability and social status in the course of his occupation or vocation. In Western countries, the problem of White Collar crimes has been receiving considerable attention since the termination of the World War I. Some of the species of such crimes recognised in the U.S.A. are frauds in business, adulteration of food and drugs, illegal services to the underworld criminals, misleading advertisements, crimes by lawyers who aid their clients to break the law, malpractices in share markets, etc. This crime is not confined to the affluent society but is also prevalent in some form or other in developing countries. For instance, to secure fair distribution of scarce commodities among the public, or for controlling, in the public interest, the means of production, certain regulatory measures are taken in some countries and these are taken advantage of by certain unscrupulous persons to corner stocks, to create "black market," etc., and to profiteer thereby, that is, to derive huge profits at the expense of the common man. This is white collar crime of the worst variety. This new type of antisocial crime cannot be dealt with in the ordinary way because ingenious methods are employed by these criminals to get round the provisions of law. Certain special provisions are necessary. In socialist countries, crimes like business frauds may not thrive, but there also there is a whole

category of economic offences, such as producing or selling goods of inferior quality, theft of public property, etc. It is therefore necessary to make a systematic study of these and other new crimes with a view to evolve concrete measures to deal with them, if criminal law is to serve its essential purpose. In India, the matter has received due attention and suitable provisions are being made in the law.

19. With the growing complexities of human affairs and also in the light of changes in the pattern of society, there is need for making provision for a variety of other new crimes, and also for enhancing the punishment for some of the existing crimes. A systematic study of this problem has been made in India and the following brief notes would indicate the thinking on some of the aspects of the problem.

(1) Hijacking of vehicles

The hijacking of vehicles, whether it is a motor car or aircraft, whereby persons are compelled by force to go to a place which is not their intended destination, is a serious menace which requires to be curbed. There can possibly be no difference of opinion on this. Specific penalty should be prescribed for this crime as it cannot be treated just as a case of abduction. Hijacking of aircraft should be specially dealt with and a heavier penalty should be prescribed.

(2) Corruption on the part of private employees

The law in most countries provides for punishment of public servants for corruption. It is being increasingly realised that corruption is also prevalent among private employees entailing consequences detrimental to the common man. There is, therefore, need for making provision for punishment of this new crime.

(3) Criminal negligence on the part of professionals

In some countries, criminal negligence on the part of persons belonging to the medical profession which endangers human life or personal safety of others, is punishable, but negligence on the part of other professionals, like Advocates, Solicitors or Accountants is not an offence even if such negligence entails serious damage to the client. For instance, a Chartered Accountant by his gross negligence may bring incalculable harm to the share holders of a company and there is no reason why such negligence should not be punished.

(4) Cheating of Government by contractors

It is common knowledge that persons executing contracts for supply of materials or for erecting constructions to the Government commit large scale cheating taking advantage of the fact that Government is impersonal and the interests of Government are not watched as well as those of an individual. A specific provision is desirable to punish such crimes with a deterrent sentence.

(5) Mischief to public property

A disquieting tendency of recent origin is to destroy or damage public property or installations, on the slightest provocation, by disgruntled elements. In view of the serious damage to the interests of the public, such crimes should be punished deterrently.

(6) Disfigurement of public places

In many countries, a type of annoyance which is increasingly irritating is the disfigurement of places by means of posters, advertisements or slogans which are often indecent or scurrilous. It is time serious notice is taken of this nuisance and a specific provision for punishing such acts is made.

(7) Blackmail

There can be no two opinions on the need for making provision for punishing persons who blackmail others, having regard to the magnitude of the evil prevalent in many countries.

(8) Violation of privacy

The right to privacy of an individual has been recognised in many countries and it is appropriate to make a provision in the criminal law for punishing violation of privacy, such as unauthorised photographs,

eavesdropping, by planting of electronic devices to overhear conversations, etc.

(9) Punishments

Apart from the foregoing new offences, the punishment for certain anti-social offences requires to be enhanced. Among these may be mentioned crimes relating to adulteration of food or of drugs, theft from victims of calamities like earthquakes, rape by persons in charge of hospitals or other institutions, pollution of the atmosphere, abetment of offences by children, and kidnapping for ransom.

20. In regard to the vexed question of retention or otherwise of the death penalty, opinion is, as is well known, sharply divided. In many countries it is being felt that the time has not yet come for a total abolition of the penalty. A cautious step in the direction of abolishing this extreme penalty of the law would be to restrict the imposition of death penalty only to certain grave cases of murder.

Conclusion

21. From the above, it will be clear that the systematic revision of the old criminal laws, undertaken by India has been rewarding. Concrete proposals for reform of the law have been formulated with a view to meet the requirements of the present day and generally to modernise the system in the light of current ideas on crime and punishment. A comprehensive Bill for the amendment of the substantive law, namely, the Penal Code, is under the consideration of the Indian Parliament. A similar Bill for the amendment of the law relating to criminal procedure with the object of ensuring speedy justice and removing archaic and needless formalities, is in the final stages of enactment by the Indian Parliament. There is every hope that when these comprehensive reforms to the substantive and procedural laws are enacted after due consideration by the Indian Parliament, India will have the benefit of a modern penal system, particularly suitable to a developing country.

The Revision of the Code of Criminal Procedure in Korea

*by Haechang Chung**

Introduction

We have revised very recently the Code of Criminal Procedure according to the newly amended Constitution. In other words, we amended the Constitution very extensively by the national referendum on November 21, 1972, and several provisions of the Constitution regarding criminal procedure were partly revised. Therefore, according to the revised provisions of the Constitution and to reflect the spirit of the new Constitution, we decided to revise the Code of Criminal Procedure, and finally the draft amendments to the Code were passed by the Extraordinary State Council acting for the Congress for the time being on January 19, 1973. Thus, the revised Code of Criminal Procedure has come into effect since February 1, 1973.

This paper aims at a brief description of the revised provisions of the Code of Criminal Procedure as well as the background of the revision. In order to do so, I shall illustrate, at first, the provisions of the new Constitution regarding criminal procedure and the background of the new Constitution very briefly, and then move on to the details of the revised provisions of the Code. Finally, I would like to express my personal assessment of the revision.

The Provisions of the New Constitution Regarding Criminal Procedure and Their Background

We adopted our own Constitution in 1948, which was amended a couple of times until 1969. This Constitution was very closely patterned after that of the United States. However, years of experience under that Constitution had taught us that this imitated Constitution was by no means suitable for our conditions and culture. Especially, recent developments of international power politics moving from the age of cold war to an era of détente and transferring from a bi-polar system to a multi-polar system, and the south-north dialogue after more than 25 years of stalemate between the two parts of our country prompted us to take certain steps to accelerate and organize the build-up of our national strength.

Against the background mentioned above, President Park of our country announced the Special Declaration on October 17, 1972, in which he expressed his resolute determination to carry out a series of revitalizing reforms to build up a new structure and system which would be suitable for the conditions and situation in Korea and would enable the nation to maximize working efficiency in every aspect of daily life, and to maintain national unity by which national power would be steadily increased.

In pursuance of the Declaration, the draft amendments to the Constitution were put to the people in a national referendum on November 21, 1972. The proposed amendments were supported by the overwhelming majority of voters.

The new Constitution deals mainly with changes in governmental organization, but it also includes some amendments to the Constitutional provisions concerning criminal procedure.

The changes of the Constitutional provisions regarding criminal procedure are explained in the comparison table on the next page, in so far as is relevant to my discussion.

Revised Provisions of the Code of Criminal Procedure

The Deletion of the Provision Which Enabled the Arrested or Detained Person to Request the Court for a Review of the Legality of the Arrest or Detention

According to paragraph 5 of section 10 of the former Constitution and paragraphs 4, 5 and 6 of the former Code of Criminal Procedure section 201, a person

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The Old Constitution	*The New Constitution*
#10	#10
1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized, interrogated or punished except as provided by law, or be subject to involuntary labour except on account of a criminal sentence.	1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, seized, searched, interrogated, punished, subjected to involuntary labour, or branded as a security risk except as provided by law.
2) No citizen shall be subject to torture of any kind, or be compelled to testify against himself in a criminal case.	2) The same as the old.
3) A warrant issued by a judge upon request of a prosecutor must be presented in case of arrest, detention, search or seizure. However, in case the criminal is apprehended *flagrante delicto*, or in case where there is danger that a criminal, who has committed a crime for which he is liable to be sentenced to imprisonment for three years or more, may escape or destroy evidence, the investigating authorities may request an *ex post facto* warrant.	3) A warrant issued by a judge upon request of a prosecutor must be presented in case of arrest, detention, search or seizure. However, in case the criminal is apprehended *flagrante delicto*, or in case where there is danger that a criminal who has committed *a crime* may escape or destroy evidence, the investigating authorities may request an *ex post facto* warrant.
4) All persons who are arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure the same by his own efforts, the State shall assign a counsel to the defendant as provided by law.	4) The same as the old.
5) All persons who are arrested or detained shall have the right to request the court for a review of the legality of the arrest or detention. When a person is deprived of personal freedom by another private individual, he shall have the right to apply to the court for a remedy.	5) Deleted.
6) In case the confession of a defendant is considered to have been made against his will by means of torture, acts of violence, threat, unduly prolonged arrest, and deceit, etc., or, if the confession of a defendant is the only evidence against him, such confession shall not be admitted as evidence for his conviction nor shall he be punished on the basis of such a confession.	6) Deleted.

arrested or detained upon the warrant of a judge, his defence counsel, legal representative, spouse, and his lineal relatives, brother and sister, head of house, or family, may ask the competent court to examine whether the arrest or detention is legal or not.

This system was adopted to secure fully the human rights of the arrested or detained person. However, it is theoretically inconsistent for the court to review the legality of the arrest or detention which was made legally upon the warrant issued by the court itself. Furthermore, it had very detrimental effects on the carrying out of the investigation and prosecution. As a matter of fact, only about 10 per cent of the detained had applied for the review and less than 50 per cent of the applicants had been ordered to be released. In other words, only a very restricted number (about 5 per cent) of the detained persons had the benefit of being released.

The Modification of the Requirements for Urgent Arrest Without a Warrant

As mentioned above the former Constitution allowed the investigating authorities to arrest a person without a warrant only if such person had committed a crime punishable with imprisonment for three years or more. Since the new Constitution has modified that requirement, the relevant provision of the old Code was revised to enable the investigating authorities to arrest a person without a warrant in case he had committed a crime punishable with imprisonment for any period. However, a new provision was introduced requiring the police to obtain the permission of the prosecutor in advance of such arrest in order to prevent the misuse of such powers of arrest by the police.

The Adoption of Summary Public Trial System

For the purpose of speedy trial, we have adopted the summary public trial system patterned after the system in Japan.

When the defendant confesses at the trial, the court shall rule that the trial be conducted according to the procedure of summary public trial. Once such ruling is given the court may examine evidence informally as it deems proper, and even hearsay evidence is admissible. However, this procedure is not applicable to those cases which require trial by a panel of three judges. Furthermore, the court may rescind the ruling whenever it deems that resort to this procedure is improper.

It is certain that the quick disposal of criminal cases by the court will be assured by this device.

The Adoption of Immediate Hanggo by Prosecutors Against the Ruling to Release on Bail

Under the former Code, any sort of appeal against a ruling of the court to release a suspect on bail was not allowed. Therefore, there was no means to check the correctness of the court ruling concerning bail, and sometimes, as a matter of fact, bail was misused.

We revised the provision which prohibited any appeal against the ruling of the court to release a suspect on bail so as to enable the prosecutors to institute an immediate *Hanggo* which has the effect of suspending the execution of the decision.

Some Assessments of the Revision: Its Background and Philosophy

1. State interest, vs. individual rights in criminal procedure.

2. Emphasis was put on the protection of State interest rather than the maximum of individual rights.

3. Efficient disposal of criminal cases was one of the most important purposes of the revision.

4. The revision was carried out as a part of a series of revitalizing reforms mentioned above, which aim at political and social stability, economic prosperity and finally the unification of our divided fatherland.

5. The revision was made to develop an ideal system of criminal procedure in keeping with our historical and cultural traditions and present feasibility, according to the lessons learned from years of experience in operating the borrowed system

which over-emphasizes the maximum protection of individual rights at the expense of State interest.

Conclusion

The revision might be criticized as a setback in terms of individual rights in criminal justice.

The revision may not be satisfactory in every respect, but I am confident that the revised system would be operated very well, since the operation of a system is more important than the system itself.

Reform in Criminal Justice in Malaysia

*by X. A. Nicholas**

Geography and Population

1. Malaysia covers an area of about 128,308 square miles. It occupies two distinct regions, the Malay Peninsula and the North Western coastal area of Borneo Island—Sabah and Sarawak. The two regions are separated by about 400 miles of the South China Sea. The total population of Malaysia is about 10.5 million consisting of Malays, Chinese and Indians —each with its own linguistic, cultural and religious background. The Malays form 50 per cent, the Chinese 37 per cent and the Indians 11 per cent of the population. The economic mainstay of the country lies in the export of rubber, tin, timber and palm oil with light and medium industries increasing in importance. The average volume of crime for the last 5 years per 100,000 inhabitants is 410.

Constitution

2. Malaysia as a political entity came into being on 16th September, 1963, formed by federating the then independent Federation of Malaya with Singapore, North Borneo (renamed Sabah) and Sarawak, the new federation being renamed Malaysia and remaining as an independent country within the Commonwealth. On 9th August, 1965, Singapore separated to become a fully independent republic within the Commonwealth. So today Malaysia is a federation of 13 States, namely (in West Malaysia) the nine Malay States (Johore, Kedah, Kelantan, Selangor, Negri Sembilan, Pahang, Perak, Perlis and Trengganu) and the former settlements of Malacca and Penang and (in East Malaysia) Sabah and Sarawak.

3. Malaysia is a constitutional monarchy, its Head of State being the Yang di-Pertuan Agong, a Sultan elected for five years by Sultans, who has to act in accordance with Government advice. It has a bicameral Parliament consisting of a Senate comprising of 58 members (being 26 elected members, two elected by each of the 13 State Legislative Assemblies and 32 appointed members, appointed by the Yang di-Pertuan Agong) and a House of Representatives comprising 144 elected members, 104 of them from West Malaysia, 16 from Sabah and 24 from Sarawak. Elections to the lower House are held every five years on the basis of universal adult suffrage, each constituency returning one member. The Cabinet headed by the Prime Minister consists only of members of the legislature and is collectively responsible to Parliament. In the Malay States the Rulers retain their pre-independence position except that generally they can no longer act contrary to the advice of the Executive Council (the State Cabinet). The other States are each headed by a Governor federally appointed for four years who also act on the advice of the State Cabinet. Each State has a unicameral legislature, elections to which are held every five years. In view of the smallness of the country, the judiciary is wholly federal and judges of the High and Federal Courts, whose counterparts before independence held office at pleasure, are independent and may not be removed from office before the compulsory retiring age of 65, except on the recommendation of a tribunal consisting of at least five judges, and have power, which they did not have before independence, of interpreting the constitution. They also have power to declare laws invalid and to pronounce on the legality or otherwise of executive acts.

Economic, Social and Cultural Background

4. Malaysia is a land of many races with diverse social, cultural and religious backgrounds. Since independence, this multiracial society has committed itself to build a united Malaysian nation which would endure and flourish, convinced that

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our very diversity is our source of strength. The various races have lived together for generations in peace and harmony sharing the resources, with which Nature had richly endowed the land. Together the various races had worked for independence and together they had resisted several encroachments on their national integrity and independence. Together they were building slowly but surely the foundations of a society in which there is a place for everyone. However, their nation-building efforts were marred by the activities of destructive elements. These elements are to be found in all communities. From time to time latent racialist attitudes and racial prejudices were exploited on various pretexts leading to racial incidents. The most serious racial incident was the riot of May 13, 1969, in the Federal capital. One of the factors that emerged very clearly from the riot of May 13, was that despite 12 years of independence there were still diverse social, cultural and economic values which existed in our multiracial society, complicated by the identification of certain economic groups with particular racial communities and geographical locations. The Government has therefore embarked upon a new Economic Plan (2nd Malaysia Plan) to ensure that within two decades at least 30 per cent of the total commercial and industrial activities in all categories and scales of operations should have Malay participation in terms of ownership and management. The objective is to create over a period of time, a viable and thriving Malay industrial and commercial community who will operate on a par and in effective partnership with non-Malays in the modern sector. The plan represents a determined effort to promote national unity and develop a just and progressive Malaysian society. In the implementation of the New Economic Policy in the Second Malaysia Plan, the Government will ensure that no one will experience any loss or feel a sense of deprivation of his rights, privileges, income, job or opportunity.

Judicial System

5. The Judicial power in Malaysia is vested in the High Court and also in subordinate courts. Above the High Courts there also exists a Federal Court with exclusive jurisdiction to determine appeals from decisions of any High Court. The supreme Head of the Judiciary is the Lord President of the Federal Court, consisting of himself and two Chief Justices of the High Courts and Judges of the Federal Court. Every proceeding in the Federal Court is heard and disposed of by three Judges or such greater uneven number of Judges or such greater uneven number of ticular case may order. In his absence, the senior member of the Court presides.

(a) *Federal Court.* The Federal Court has jurisdiction to determine whether a law made by Parliament or by the legislature of a State is valid or not and jurisdiction to determine disputes between States or between the Federation and any State. In its appellate criminal jurisdiction, the Federal Court has jurisdiction to hear and determine any appeals by a person convicted by any High Court.

(b) *High Court.* Each of the High Courts in West Malaysia and East Malaysia consists of a Chief Justice and a number of other Judges. There are 12 High Courts in West Malaysia and 3 in East Malaysia which are presided over by a Judge of the High Court. The High Court has unlimited criminal jurisdiction and could pass any sentence allowed by law. The High Courts exercise control over subordinate Courts through their appellate, revisionary and general supervisory jurisdiction.

(c) *Sessions Courts.* In West Malaysia the subordinate courts consist of Sessions Courts and Magistrates' Courts. The Sessions Court has jurisdiction to hear and determine any criminal case arising within local limits or in any part of the Federation as specified in the jurisdiction. The Sessions Courts are presided over by either a Senior President Sessions Court or a President Sessions Court appointed by the Yang di-Pertuan Agong. The Sessions Court has jurisdiction to try all offences for which the maximum term of imprisonment does not exceed seven years or which are punishable with a fine. It could also try any offence other than an offence punishable with death or imprisonment for life, if the D.P.P. appeals to try such offences, or if the accused consents. It could pass sentence not exceeding three years' imprisonment, a fine of $4,000 and whipping up to 12 strokes or sentence combining any of the above sentences.

(d) *Magistrates' Courts.* The Magistrates' Courts have jurisdiction to hear and determine criminal matters arising within the local limits of jurisdiction assigned to them, or if no such limit has been assigned, in any part of the Federation. Magistrates have jurisdiction to try all criminal offences for which the maximum term of imprisonment does not exceed three years or which are punishable with a fine only. It could pass sentence not exceeding 12 months' imprisonment, a fine of $2,000 and whipping up to six strokes.

The Penal System

6. The Penal System, as expressed in the Criminal Law, Enactments and Legislation, aims at maintaining law and order and making it possible for the citizens of the country to live a good life free of molestation from others. The system exists to deal with infringements of the law and it has from this angle a two-fold task:

(a) to devise suitable methods for dealing with the actual law breakers and deterring them from further law breakings;

(b) to prevent as far as may be, the commission of offences by others.

Preventive Legislation

7. Chapters III, IV and XII of the Malaysian Code of Criminal Procedure embody several provisions empowering the Police, the Magistrates and the Village Headmen as well as the public to act in the prevention of crime. Every person is required to give information or to assist a Magistrate or a Police Officer reasonably requesting his aid in the taking or preventing the escape of any person whom such Magistrate or Officer is authorised to arrest. Members of the public are further required to assist the Magistrate or the Police Officer in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any rail, canal, telegraph or public property. In addition this Code empowers a Police Officer to interpose using all lawful means of arrest without warrant on:

(a) any person designing to commit or committing a seizable offence and anyone causing harm to be done to any public property or the removal thereof;

(b) any person possessing any implement of house-breaking and unable to account satisfactorily for such possession;

(c) any person concealing his presence to commit a seizable offence or anyone without ostensible means of subsistence and cannot satisfactorily give an account of himself;

(d) any person who is by repute a habitual robber, housebreaker, thief, receiver of stolen property knowing it to be stolen, or by repute commits extortion and criminal intimidation.

8. The Minor Offences Ordinance further enhances Police powers to prevent the likely commission of an offence in any public place or places of entertainment. The Pawnbrokers Enactment and the Secondhand Dealers Enactment provide the Police with the powers to check the business records held by these brokers and dealers to ensure that they do not receive nor in any way deal in stolen goods or items. Suspicious presence of a person in the proximity of these two establishments empowers the Police to make a check on him.

Preventive Powers of Courts

9. The Criminal Procedure Code further empowers the Magistrate to require the execution of bonds for good behaviour on offenders, to issue an order absolute at once in urgent cases of nuisance and cases likely to cause a breach of the peace. On habitual offenders the Court is empowered to direct a person previously convicted of any other offence punishable with a similar term of imprisonment to be subject to Police supervision for a period of not more than 3 years. This empowers the Police to supervise and maintain surveillance on such recidivists, deterring them from committing further offences.

Treatment of Offenders

10. The chief aim of the Malaysian Penal System is to reform the convicted offenders. Except for murder and certain very serious offences for which there are fixed penalties, the Courts have power to

vary the sentence within prescribed maxima in the light of the circumstances of the offence and the offender. For serious offences, the sentence is usually imprisonment or a fine or both. Most minor offences are punished by a fine only. An offender may also be placed on bond to be of good behaviour for a period and to comply with certain conditions failing which he may be sentenced for the original offence. In addition the Courts have discretion to discharge the offender unconditionally or on condition he commits no further offence during a specified period, or to pass a suspended sentence.

Law Revision

11. The Revision of Laws Act, 1968 passed in December 1968 came into effect in January 1969. This Act makes law revision a continuous process. The laws in what is now West Malaysia have not been revised since before the war. North Borneo (now known as Sabah) had a law revision in 1953 and Sarawak in 1948 and 1953.

12. The reasons for the non-revision of the laws of West Malaysia for more than thirty years are:

(a) The war years 1942 to 1945;
(b) The Emergency of 1948 to 1960:
(c) The complexity of the constitutional arrangements and the several constitutional changes which have taken place since the war.

13. The Revision of Laws Act, 1968 which came into force on 1st January 1969, established a Law Revision Committee of from five to seven members, to be appointed by the Lord President of the Federal Court. The Committee consists *de facto* (but not necessarily so) of the Chief Justices and the Judges of the Federal Court. Its function is to "vet" the amendments to laws made by the Commissioner in the course of revision, and to certify that they are *intra vires* the powers conferred upon him by the Revision of Laws Act. Although law revision in Malaysia is a continuous process, the complex background of Malaysia law revision is seen as an unending battle with backlog: even before all the laws have been revised it is expected that some of them will have to be re-revised; such is the tempo of legislative change in a fast-developing country.

14. Malaysia has been burdened, by a series of historical events, with what must be the most complex system of statute law in the world. The written laws of Malaysia consist of substantial remnants of:

(1) pre-war Ordinances of the Straits Settlements which are still in force in Penang and Malacca;
(2) pre-war Enactments of the Federated Malay States, of each of the four States of that Federation, and of each of the five unfederated States; and
(3) Ordinances of the Malayan Union; together with the following more recent legislation:
(4) Ordinances of the Federation of Malaya;
(5) Enactments of the nine Malay States and the two Settlements from 1948 to Merdeka Day 1957;
(6) Enactments of the eleven States of Malaya (West Malaysia) since Merdeka Day;
(7) Acts of Parliament since 1969;
(8) Ordinances of North Borneo and Sarawak before Malaysia Day; and
(9) Enactments of Sabah and Ordinances of Sarawak since Malaysia Day.

Due to this legislative patchwork made up of legislation passed by forty different legislatures, administrative process of law reforms/law unification had to be necessarily slow. Although the Yang di-Pertuan Agong has a complete discretion so far as federal law is concerned, it would obviously be unwise to 'steam-roll' through, without consultation, an extension or modification order affecting the law of the recipient States, and it has always been the practice, except in cases of extreme urgency or necessity, to consult the State Governments at both ministerial and departmental level. In the result, much more time is taken up in consultation and correspondence than in the actual drafting, and delays are inevitable.

15. The number of modification and extension orders published is 182. About 20 more are in preparation, or awaiting approval. The first law to be revised

was the Election Offences Ordinance, which was urgently required for the General Election in May 1969. The major laws revised, especially in regard to criminal law are:

(1) Criminal Procedure Code;
(2) Penal Code;
(3) Evidence;
(4) Juvenile Courts;
(5) Arms and Explosives;
(6) Registration of Criminals and Undesirable Persons Act;
(7) Legal Aid Act;
(8) Private Agencies Act;
(9) Firearms (Increased Penalties) Act;
(10) Prevention of Crime Ordinance.

Conclusion

16. On the basis of the New Economic Policy the Government has decided that emphasis be placed on economic and social changes as the overriding need for national unity. Concrete measures have been adopted to bring about certain law reforms and administrative changes by eradicating poverty and reducing the gap between the "haves" and the "have-nots." The administrative machinery has been set in motion with the establishment of the National Action Council consisting of all the Cabinet Members, the Chief Secretary to Government, Chief of the Armed Forces Staff and the Inspector-General of Police. This body will be fully responsible for the implementation of the New Economic Policy and for maintaining national security by carrying out operations against communist terrorists. Under this Council there are two other councils, namely National Security Council and National Economy Council. New laws/law reforms that are required to ensure the success of the New Economic Policy are dealt with by Parliament in the normal way.

17. Thus under the New Economic Policy the Malaysian society is to be restructured not only without breaking the system of our economic growth but that growth should be increased, and in that process none would suffer any real or imagined sense of grievance or denudation. Finally the increasing rate of growth of the national economy augurs well for the future of the country; for few revolutions start on a full stomach. It must also be said that while the country develops every effort must be made to ensure that every community has a slice of the national cake, and this effort should be made not only by Government, but also by every responsible citizen. The fruits of prosperity should be justly and equitably shared.

Social Reforms and the Law—Singapore

*by John Leong Ying Hung**

General

One of the most salient features of law reforms in Singapore in recent years is the introduction of a series of statutes quite different and distinct in character from the traditional types of laws relating to criminal justice. Many of these laws are designed to combat various social problems—to deal with the social process in order to encourage or discourage certain social activities based on Singaporean values and attitudes. Singapore's rapid industrialisation, economic expansion and population growth and her growing affluence have far outstripped the intentions and usefulness of many of her laws resulting in their not being able to fulfil the functions for which they were promulgated, and demanded the introduction of new laws to enable her to tackle new problems. While there is a crucial need to industrialise and ensure economic expansion, there is equally a need to ensure that industrialisation and certain social habits do not deprive Singaporeans of clean and healthy living conditions. This paper will, therefore, only attempt to provide an insight into a few of these laws and the social, economic and cultural background leading to their enactment. The selected statutes are:

1. The Clean Air Act, 1971
2. The Prohibition on Smoking in Certain Places Act, 1970
3. The Prohibition on Advertisements relating to Smoking Act, 1970
4. The Misuse of Drugs Bill.

The Clean Air Act, 1971

Singapore's rapid industrialisation, together with urbanisation and population growth, has brought about problems of pollution of various kinds which can be detrimental to the environment. This has brought about a realisation and determination to contain these problems to ensure that economic development, urbanisation and population growth will not result in an environment which is not conducive to a healthy and gracious life.

It is towards this end that tests were carried out on the level of air pollution. The results revealed that the level of air pollution was on the increase. It was further discovered that in certain parts of the island the level of pollution had reached ambient air quality standards set up in other countries. There have also been many instances of local air pollution problems caused by industrial and trade operations due to the negligent and irresponsible attitude practised by the occupiers of these premises. All this affects the comfort and well-being of the population living close to these sources of pollution.

Air pollution is essentially a problem belonging to highly industrialised urban centres in the world. It is fruitless here to enumerate the numerous ailments or diseases that can be caused by polluted air; suffice it to say that the ill-effects of air pollution on human beings are numerous. Its effects on the environment may be summarised as follows: reduces visibility, spoils the view and denies the enjoyment of the delights and beauty of nature. On the economic front, air pollution can cause economic loss through high maintenance costs and loss in man-hours, contribute to the physical deterioration of cities, and damage to crops and livestock.

Though Singapore is at an early stage of industrialisation it is pertinent that steps be taken early to control air pollution. Keeping the air clean is a collective social responsibility—all and sundry must accept this. Hence the introduction of the Clean Air Act, 1971.

The primary objective of the Act is to prevent and reduce air pollution arising from industrial or trade premises and such other premises as may be specified. In the Act the term "industrial and trade premises" is defined as premises used for any industrial or trade purposes or premises on which matter is burnt in connection with any industrial or trade process, and includes the category of scheduled premises specified in the Schedule to the Act (Appendix B). The provisions of Part II of the Act apply to these premises. Clause 4 prohibits the use of any premises as scheduled premises without written permission of the Director of Air Pollution Control. The Director in granting approval may also impose conditions. Clause 5 specifies the conditions which may be imposed by the Director in granting such permission. Clause 6 prohibits the occupier of any scheduled premises from doing certain work or making alterations without the permission of the Director, whilst Clause 7 imposes a duty on the new occupier of any scheduled premises to notify the Director of his taking over of the premises.

Industrial or trade premises, including scheduled premises are governed by Part III of the Act but the Minister is empowered under Clause 12 to extend its application to such other class or description of premises as he may specify. This part of the Act contains provisions relating to the efficient maintenance and operation of fuel burning equipment, emission of dark smoke from chimneys of any industrial or trade premises (exemptions are provided), and emission of air impurities resulting from the operation of fuel burning equipment or industrial and trade processes.

Part IV of the Act deals with, inter alia, powers of enforcement of the Director and other authorised officers, disclosure of information, furnishing of information, powers of entry, service of notices and penalties for offences. It may be of interest to note that the occupier of any industrial or trade premises that is emitting air impurities likely to be injurious to public health is liable on conviction to a fine not exceeding $10,000 (1,000,000 yen) or to imprisonment for a term not exceeding three months or to both such fine and imprisonment. The Act also provides for appeals to be made by aggrieved parties and the appointment of Advisory and Technical Committees.

Since its coming into operation, there were 2 prosecutions (both involving Plywood Factories). These 2 offenders were fined $1,200 (120,000 yen) and $2,000 (200,000 yen) respectively.

The Prohibition of Smoking in Certain Places Act, 1970

This Act is a simple piece of social legislation necessitated by the inconsiderate behaviour of some smokers in public places, such as cinemas and theatres. In a society like Singapore, special emphasis is placed on the strict exercise of social discipline by its members. Unlike many other countries, the pattern of life in Singapore makes it imperative for every member of society to value the comfort and convenience of his fellow citizens as much as his own. In other words, he should not only pay lip-service to this concept but should completely and voluntarily refrain from acts that affect the comfort and welfare of others.

An ideal solution to such a problem as smoking in public is for the smoker to exercise self-discipline and to ensure that by his action discomfort is not caused to persons around him. But regretfully, this has not always been the case. This Act was therefore introduced after the traditional forms of public exhortation had failed to produce the desired effect. As far back as 1967, the management of cinemas and theatres had constantly requested their patrons to refrain from smoking while attending a movie. The action has not been fruitful in that the patrons have simply and invariably ignored the requests.

No one can deny that smoking under congested and crowded conditions within enclosed spaces or in air-conditioned premises results in discomfort and irritation to the other occupants. Besides this effect, the smoke screen created interferes with proper and enjoyable viewing. It also makes the eyes smart. It is, therefore, with the aim of removing this source of nuisance and discomfort that the above-mentioned Act was introduced.

The main object of the Act is to prohibit smoking in the auditorium of any cinema and theatre and any specified building, at any time these are open to the public. The Act has only been applied to closed auditoriums of cinemas and theatres. Open air cinemas or theatres are expressly excluded. Under the Act, the prohibition of smoking is limited only to cinemas and theatres to which members of the public are admitted upon payment of an admission fee. The premises of clubs, associa-

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tions and other bodies in which films are exhibited or stage plays, shows, recitals or other entertainment performed or presented primarily for their members are specifically excluded. The penalty for an offence of smoking in the circumstances set out in the Act is a fine not exceeding $500 (50,000 yen).

The Act also contains provisions for the display of notices in conspicuous positions stating that smoking is prohibited and the penalty therefor.

The Manager and certain employees of any cinema, theatre or specified building if he sees any person smoking may, in accordance with the provisions of the Act:

(a) Order the smoker to cease smoking forthwith;

(b) Order him to leave forthwith the cinema, theatre or specified building, as the case may be (without being entitled to a refund of money paid for his ticket) if such person refuses, neglects or fails to comply with such order; and

(c) seek the assistance of any police officer, public health officer or authorised public officer if any such person refuses to leave forthwith.

No problem has so far been encountered in the enforcement of the Act. Since its implementation, 50 persons have been convicted for breaches of the law. Fines ranging from $35 (3,500 yen) to $65 (6,500 yen) were imposed.

The Prohibition on Advertisements Relating to Smoking Act, 1970

The danger to health of cigarette smoking is well known and has aroused worldwide concern. The ill-effects of cigarette smoking on the human body are many and varied — lung cancer, chronic bronchitis, peptic ulcers, high blood pressure, heart diseases—to name a few of them. Cigarette smoking cannot therefore be ignored if Singapore's effort to build a healthy and rugged society is to be realised. It would be logically odd in the light of the numerous efforts that have been put in so far to create a clean and pollution-free environment to ignore the hazards of cigarette smoking and thus fail to safeguard the health of Singaporeans, particularly the younger generation as they form the bulk of her population.

One of the factors, the most potent of all, that encourages smoking is persistent advertising by cigarette and advertising firms inducing people to smoke and to try new brands of cigarettes. These advertisements glorify cigarette smoking by using slogans such as "successful people smoke . . .," "enjoy the coolness of . . .," "smoke . . . for success . . .," and ". . . people who know best smoke . . .," thus misleading the young into believing that to be successful in life and to belong to the in-group cigarette smoking is a must—they usually seek to associate smoking with manliness, virility, prestige and social acceptance. The first false step often results in the young becoming a habitual smoker.

For various reasons, it is not easy to stop people from smoking and people cannot be stopped from smoking. But the use of the mass media to induce people to smoke and to glorify smoking can be stopped. In this respect, some countries have already taken steps to curb advertisements on cigarettes and more and more countries are taking steps to close the mass media for cigarette advertisement.

It is as a step in this direction that as early as June 1970 before the coming into operation of the Act, the television and radio authorities ceased signing contracts for cigarette advertisements. From 1st January 1971, cigarette advertisements over television and radio ceased completely and in their place, filmlets and messages against smoking were screened and broadcast. By so doing, a substantial portion of revenue was lost. This is considered a small price to pay if such a ban results in the reduction or prevention of increase in smoking and further results in savings in health and medical expenditure besides the economic benefits that will accrue.

It is also realised that merely banning cigarette advertisements will not bring about a reduction in cigarette smoking or discourage the young from smoking. Thus educating the young by telling them about the ill-effects of smoking with a view to discouraging them from picking up the habit has been undertaken. Campaigns have been mounted to make school children aware of the health hazards of smoking by introducing the subject in the curriculum of schools. Quick results are not expected.

Coming to the Act itself, it will be useless here to list out every provision contained therein as the title is self-explanatory. However, certain salient features may be of interest to note. These are:

(a) *Clause 5* of the Act provides that where a person is charged with an offence under Clause 3, it would be a defence for him to prove that the advertisement in question was published in such circumstances that he did not know and had no reason to believe that he was taking part in its publication.

(b) *Clause 6* provides that in consequence of the passing of the Act, if any party to a contract fails, neglects or refuses to publish any advertisement relating to smoking, no action, suit or other proceeding shall be brought or instituted in any court against such party.

(c) *Specific Exemptions:* (i) advertisement relating to smoking contained in any newspaper which is printed or published outside Singapore and is brought into Singapore for sale, free distribution or personal use; (ii) advertisement appearing on diaries, calendars, ash-trays, lighters and other samples given free of charge; (iii) advertisements appearing on or within any vehicle used by any person who is concerned or connected with the distribution or sale, whether wholesale or retail, of cigarettes, etc., for the purpose of such person's business or for the transport of his employees and others as may permit; (iv) notices in respect of brand names.

It has been pointed out that the provisions of exemptions have created loopholes in the Act. However, there were other overriding considerations when the Act was brought into being:

(a) Singapore's desire not to cut herself away from the trends and information imparted by foreign publications;

(b) Her geographical position subjects her to many influences from outside forces. No person has yet been prosecuted till today.

The Misuse of Drugs Act

It is not inappropriate at this stage to introduce into this paper a piece of legislation that touches on a subject which has aroused universal attention. Though the commencement of this paper has created an impression that attention will be focussed on legislation quite different and distinct in character from the traditional types of laws relating to criminal justice, it is believed that this piece of law *i.e.* the Misuse of Drugs Act, is not foreign to a paper of this nature. After all, the misuse of drugs is both a social evil and a criminal act. Here again, however, it is not intended to discuss the legislation in detail except to point out the rationale behind this piece of law and the salient points.

The Misuse of Drugs Act has only been given a first reading in Parliament and is still a Bill at this stage. This Bill is to repeal the Dangerous Drugs Act, Cap. 151 and the Drugs (Prevention of Misuse) Act, Cap. 154 and aims at providing a more comprehensive and up-to-date law for the regulation and control of dangerous and harmful drugs referred to as controlled drugs in the Bill.

It has been observed that since 1970, there is an increasing problem in youths taking to drugs and MX pills. Opium, the traditional concern of the Dangerous Drugs Act, is found to be confined to the older age groups, particularly the Chinese. It is, therefore, inevitable that its scope of control over dangerous drugs should be extended. Moreover, for the first time in 1971, heroin, one of the most potent and destructive drugs, was found to be abused in Singapore. The drugs scheduled under this Act and the Drugs (Prevention of Misuse) Act respectively are very often duplicated resulting in enforcement officers often been hampered in trying to press for deterrent sentences, for, offences involving a similar drug are often entitled to the lesser penalty provided for in the latter Act compared to the harsher penalty under the former Act in respect of a similar offence.

Under the existing drug legislation, there are no provisions against trafficking in the scheduled drugs as listed out in the new Bill. As Singapore is an important international port and trading centre, deterrent measures must be taken to prevent her developing into a "clearing house" for drug traffickers. Recent drug seizures by Police/Customs point to this direction.

Moreover, Singapore is a very young nation with more than half its population under the age of 21 years. It is, therefore,

imperative that the experimentation of such drugs as ganja and MX pills be curbed. Strong measures must be taken to prevent our nation from going "pot." Hence, the introduction of enhanced penalties for drug traffickers/pushers, particularly persons who distribute drugs to the young.

It is also recognised that the penalties to be meted out for offences in respect of drugs liable for misuse should be varied with the degree of physical and psychological dependence that would be created. Hence, the classification of drugs into three schedules in the Bill. Penalties for subsequent offence have been doubled to discourage offenders from becoming persistent.

In order to secure a comprehensive approach to the eradication of Singapore's drug problem, the area of detection of drug addicts and their treatment and rehabilitation has also been looked into. This is done by including in the Bill provisions empowering the Director of the Central Narcotics Bureau to direct a person whom he has reasonable grounds to suspect as a drug addict to go for medical treatment in approved institutions. To prevent drug taking from spreading amongst the youths, in particular through the influence of foreign sub-cultures, a urine test will be introduced to detect drug addicts amongst incoming foreigners and Singaporeans returning from abroad. Foreigners found to be drug addicts will not be allowed entry and returning Singaporeans found to be drug addicts will be directed for treatment and rehabilitation. In short, the proposed Bill is an attempt at a comprehensive approach to the drug problem in Singapore through:

(a) bringing it in line with modern developments in control of drug abuses;
(b) providing for greater ease in administration and enforcement;
(c) enhanced penalties for drug pushers/traffickers;
(d) detection of drug addicts; and
(e) provisions for treatment and rehabilitation.

The Bill is divided into 4 parts. Part I contains the usual interpretation provisions. Part II deals with the offences involving controlled drugs *i.e.* unauthorised trafficking, manufacture, importation and exportation, possession and cultivation of cannabis, opium and coca plants, smoking, administration and consumption. Part III deals with provisions relating to evidence, enforcement and punishments. It creates a number of important presumptions in connection with the offences under the Act and confers on police and customs officers and officers of the Central Narcotics Bureau powers of search, seizure and arrest. Urine tests are also provided for under this part of the Bill. Part IV deals with the treatment of drug addicts.

The foregoing paragraphs briefly outline the substance of the Bill. However, there are certain salient points which should be highlighted.

(a) The proposed Bill covers all abusable drugs, narcotics and non-narcotics. For this reason, the expression "controlled drugs" is used in place of the previous expression "dangerous drugs." The First Schedule to the Bill which is based on the UK Misuse of Drugs Act, 1971 lists drugs subject to control under three heads—Classes A, B and C. All Class A drugs are narcotics, some of the Class B drugs are narcotics but most of them are non-narcotics, and all Class C drugs are non-narcotics.

(b) Offences and penalties varying according to the class of drug in relation to which the offence was committed are spelt out in the Second Schedule (Appendix A). The maximum penalties for certain offences have been greatly increased. For the three major offences—unauthorised traffic in, unauthorised manufacture of, and unauthorised import and export of a controlled drug, the maximum penalties range from 20 years to 30 years or $40,000 (4,000,000 yen) to $50,000 (5,000,000 yen) or both; and in addition 10 to 15 strokes of caning for the first two offences. These penalties apply to Class A and Class B drugs; for offences related to Class C drugs the penalties provided for are less severe. Further, minimum penalties have been prescribed for certain offences. For the three major offences, the minimum penalties range from 3 to 5 years or $5,000 (500,000 yen) to $10,000 (1,000,000 yen) or both; and in addition 2 to 3 strokes of caning

for the first two offences.

(c) With a view to detecting drug addicts, Clause 28 of the Bill provides that an officer of the Central Narcotics Bureau or an Immigration Officer may require a person reasonably suspected of being a drug addict to undergo a urine test. Refusal to undergo the test is an offence which carries a maximum penalty of $5,000 (500,000 yen). Visitors arriving by air, sea or land can also be required to undergo a urine test. The person may be prohibited from entering or remaining in Singapore if he refuses to be tested or the test is positive.

(d) Officers of the Central Narcotics Bureau are also given the powers of enforcement relating to search, seizure and arrest.

(e) Clause 33 provides that a suspected drug addict may be required to undergo a medical examination and treatment at an approved institution.

It is hoped that when the Bill becomes an Act, Singapore would be able to contain its drug problem, if not eradicate it altogether.

It may be of interest to note that for the year 1971, the total number of persons arrested was 2,758. The majority of these were drug abusers and the pattern of abuse continued into the year 1972. 1,660 persons were arrested in the first half of 1972. The breakdown is as follows:

Opium —1,001
(87% of offenders over 40 years of age)
Morphine — 161
(75% of offenders over 40 years of age)
Cannabis — 455
(90% of offenders under 30 years of age)
MX Pill — 43
(97% of offenders under 30 years of age).

The foregoing sets out some of the laws introduced to tackle the problems created by industrialisation, urbanisation and population growth. It cannot be denied that the introduction of legislation to regulate social activities is not always a popular measure for any government to adopt. On the other hand, to ensure a balanced development, planners cannot ignore the attendant ills that accompany industrialisation, urbanisation and population growth. Increased anti-social acts are not an inevitable consequence of the social change accompanying economic development. Economic development complemented by proper social planning should contribute to further economic expansion and growth. As a country progresses, new problems are generated. Some of these problems may be solved by public exhortations; some by legislation. Where there is a need for legislation, then this course of action must be followed.

Second Schedule

Section Creating Offence	*General Nature of Offence*	*Punishment*			
		Class A Drug Involved	*Class B Drug Involved*	*Class C Drug Involved*	*General*
3	Unauthorized traffic in controlled drug	Maximum 20 years or $40,000 or both and 10 strokes Minimum 3 years or $5,000 or both and 2 strokes	Maximum 20 years or $40,000 or both and 10 strokes Minimum 3 years or $5,000 or both and 2 strokes	Maximum 10 years or $20,000 or both and 5 strokes Minimum 2 years or $3,000 or both and 1 stroke	———
	Unauthorized traffic in controlled drug to persons below 18 years of age	Maximum 30 years or $50,000 or both and 15 strokes Minimum 5 years or $10,000 or both and 3 strokes	Maximum 30 years or $50,000 or both and 15 strokes Minimum 5 years or $10,000 or both and 3 strokes	Maximum 20 years or $40,000 or both and 10 strokes Minimum 3 years or $5,000 or both and 2 strokes	———
4	Unauthorized manufacture of controlled drug	Maximum 30 years or $50,000 or both and 15 strokes Minimum 5 years or $10,000 or both and 3 strokes	Maximum 30 years or $50,000 or both and 15 strokes Minimum 5 years or $10,000 or both and 3 strokes	Maximum 20 years or $40,000 or both and 10 strokes Minimum 3 years or $5,000 or both and 2 strokes	———
5	Unauthorized import or export of controlled drug	Maximum 30 years or $50,000 or both Minimum 5 years or $10,000 or both	Maximum 30 years or $50,000 or both Minimum 5 years or $10,000 or both	Maximum 20 years or $40,000 or both Minimum 3 years or $5,000 or both	———
6 (*a*)	Unauthorized possession of a controlled drug	———	———	———	Maximum 10 years or $20,000 or both Minimum for second or subsequent offence 2 years or $3,000 or both
6 (*b*)	Smoking, self-administering or consuming a controlled drug	———	———	———	Maximum 10 years or $20,000 or both Minimum for second or subsequent offence 2 years or $3,000 or both
7	Possession of pipes, utensils, etc., for smoking, administration or consumption of a controlled drug	———	———	———	Maximum 1 year or $5,000 or both
8	Cultivation of cannabis opium coca plant	———	———	———	Maximum 20 years or $40,000 or both Minimum 3 years or $5,000 or both
9	Being the owner, tenant, occupier or person concerned in the management of premises and permitting or suffering certain activities to take place there	Maximum 10 years or $40,000 or both Minimum 2 years or $4,000 or both	Maximum 10 years or $40,000 or both Minimum 2 years or $4,000 or both	Maximum 5 years or $10,000 or both Minimum 1 year or $2,000 or both	———
11	Abetting or procuring the commission outside Singapore of an offence punishable under a corresponding law	———	———	———	———
27 (*a*)	Obstructing exercise of powers	———	———	———	Maximum 10 years or $40,000 or both Minimum 2 years or $4,000 or both
(*b*)	Failure to comply with lawful requirements	———	———	———	Maximum 3 years or $5,000 or both Minimum 6 months or $1,000 or both
(*c*)	Failure to furnish information	———	———	———	Maximum 3 years or $5,000 or both Minimum 6 months or $1,000 or both
(*d*)	Furnishing false information	———	———	———	Maximum 3 years or $5,000 or both Minimum 6 months or $1,000 or both
28 (2)	Failure to provide specimen of urine for urine test	———	———	———	Maximum 1 year or $5,000 or both
					Maximum $5,000

The Schedule—Scheduled Premises

Any premises—(a) being used for:

(1) cement works, being works for the manufacture or packing of portland cement, similar cement or pozzolanic materials;

(2) concrete works, being works for the manufacture of concrete and of each batch capacity greater than ½ cubic metres;

(3) asphalt works, being works for the manufacture of asphalt or tarmacadam;

(4) ceramic works, being works in which any products such as bricks, tiles, pipes, pottery goods, refractories or glass are manufactured in furnaces or kilns fired by any fuel;

(5) chemical works, being works in which acids, alkali chemical fertilizer, soap, detergent, sodium silicates, lime or other calcium compounds, chlorine, chemical or chemical products are manufactured;

(6) coke or charcoal works, being works in which coke and charcoal is produced and quenched, cut, crushed or graded;

(7) ferrous and non-ferrous metal works, being works in which metal melting process for casting and/or metal coating are carried out;

(8) gas works, being works in which coal, coke, oil or other mixtures or derivatives are handled or prepared for carbonisation or gasification and in which such materials are subsequently carbonised or gasified;

(9) crushing, grinding and milling works, being works in which rock, ores, minerals, chemicals or natural grain products are processed by crushing, grinding, milling or separating into different sizes by sieving, air elutriation or in any other manner;

(10) petroleum works, being works in which crude or shale oil or crude petroleum or other mineral oil is refined or reconditioned;

(11) scrap metal recovery works, being works in which scrap metals are treated in any type of furnace for recovery of metal irrespective of whether this is the primary object of any specific premises or not;

(12) primary metallurgical works in which ores are smelted or converted to metal of any kind;

(13) pulping works, being works in which wood or cellulose material is made into pulp;

(b) on which there is erected any boiler of steam generating capacity of 2300 kilogrammes or more per hour, incinerator or furnace burning 500 kilogrammes or more of solid combustible material per hour or 220 kilogrammes or more of liquid material per hour.

Criminal Procedure in a Changing Society (Sri Lanka—Ceylon)

*by Noel Tittawella**

The administration of justice in Sri Lanka for the past century or so has been regulated by a few major enactments, *viz:*

(a) The Criminal Procedure Code 1898
(b) The Penal Code 1883
(c) The Evidence Ordinance 1895
(d) The Courts Ordinance 1889.

These laws which were enacted during British times have been modelled on the English pattern and follow very closely the corresponding enactments in India. Whilst these laws have received amendment from time to time there had been no radical changes introduced until comparatively recent times. The nature of these changes and the possible future course in this branch of the law consequent to recent developments and changing conditions will be the subject of this brief paper.

It would be helpful to refer to the Court system prevailing for the administration of criminal justice in Sri Lanka. At the lowest level are the Rural Courts functioning mainly in the remote and the rural areas of the country. The Rural Courts Ordinance governs the procedure in these Courts. They have been given a criminal jurisdiction in relation to specified minor offences. The punitive powers are limited to the imposition of a fine not exceeding Rs. 50/– and a term of imprisonment not exceeding a period of fourteen days. The Judge, or the President as he is called, is generally a trained lawyer. Lawyers are however not permitted to appear in proceedings before the Rural Courts. An appeal lies against a conviction to the District Court which determines the matter on a perusal of the record. The Rural Court wherever possible endeavours to bring about a settlement rather than go through the full process of a criminal trial.

The bulk of the day to day trial and determination of criminal offences in Sri Lanka is attended to by the Magistrates' Courts. There are about forty Magistrates' Courts in the country. The Judges are trained lawyers and are members of the Judicial Service. The punitive jurisdiction of these Courts extends to the imposition of a term of imprisonment up to six months and a fine up to Rs. 100/–. Special enactments have in certain cases given Magistrates enhanced powers of punishment.

Many offences except the major ones are triable by a Magistrate. In matters that are contested a full trial takes place. The accused is invariably represented by a lawyer and the trial is conducted in accordance with the accepted rules of procedure and evidence. An appeal against a conviction lies to the Supreme Court. A limited right of appeal against an order of acquittal is also available. Apart from these trial cases a Magistrate also inquires into a large number of grave offences, with a view to determining whether the case is one which should be placed for trial before a higher Court such as the District or the Supreme Court. The grave offences in this category are murder, rape, etc. The District Court tries those cases that have been committed for trial after inquiry in the Magistrates' Courts. Into this category falls the running down cases and the more complicated cases of fraud and the trial takes place before a single experienced Judge.

The criminal jurisdiction of the Supreme Court is generally exercised by a Judge and a Jury. The grave crimes such as murder, attempted murder, rape, etc., are tried before this Court which has powers of passing even a sentence of death. Appeals against convictions in the Supreme Court are preferred to the Court of Criminal Appeal consisting of at least

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three Supreme Court Judges. Until recently a person had the right of appeal in a criminal case subject to certain restrictions to the Judicial Committee of the Privy Council. Appeals to the Privy Council have been abolished now and a new Court of Appeal has been established in Sri Lanka by the Court of Appeal Act No. 44 of 1971.

The foregoing paragraphs indicate the Courts in which criminal offences are tried and disposed of at various levels. The system has worked satisfactorily over the years. Reforms have been suggested and some of them have been implemented from time to time. A volume of case law has grown over the years and it would be fair to state that under normal conditions things have worked out well. In 1958 a new institution called the Conciliation Board was brought into operation by the Conciliation Boards Act No. 10 of 1958. This provides for a group of laymen to inquire into and attempt to settle disputes amongst parties.

Provision is made for the obtaining of a certificate from the Conciliation Board before a criminal prosecution could be instituted for certain specified minor offences.

From 1956 there have been radical changes in the political complexion of the country consequent to the shifting of power to a new group or class of people. As it is often said the age of the 'common man' dawned in about 1956. A clamour for the recognition of the Sinhala language which is the language of the majority resulted in the enactment of the now famous Official Language Act of 1956. This made Sinhala the one official language throughout Sri Lanka. Repercussions were necessarily felt in the sphere of the Courts for the reason that English the language of the more educated and affluent classes was being imperceptibly replaced by Sinhala even though the language of legislation continued to be English. There was considerable opposition mainly from the community of lawyers who had hitherto conducted their business in the Courts almost completely in English.

The Government elected in 1960 continued to follow the policies laid down in 1956. A programme of nationalisation was initiated and several other progressive and radical steps were either being taken or proposed when there took place an event of great significance. In January 1962 a group of high ranking army and police officers attempted to take control of the Government by staging a *coup d'etat*.

The plot was discovered in the nick of time. The Cabinet of Ministers took immediate control of the situation and within a matter of a few hours, a number of high ranking officials were locked up in prison under Emergency Regulations. The investigations into the attempted coup had to commence without the slightest delay and it became clear to all that the normal police methods of investigation, following the well established rules laid down in the Codes were totally inadequate to meet the new situation. Unorthodox but totally fair methods were employed by the Cabinet of Ministers who virtually took over the investigations from the police. At the subsequent trial of the participants in this coup this method of investigation was the subject of a severe attack by the defence. The judgment convicting the participants had however these observations to make on the matter.

"There was no legal basis for much that was done, including the arrests that were made that night. But in times of extreme emergency the state may be compelled by necessity to disregard for a time the ordinary safeguards of liberty in defence of liberty itself and to substitute for the careful and deliberate procedure of the law a machinery more drastic and speedy in order to cope with the urgent danger" (67 New Law Reports 193 at 247).

A volume of evidence of a very convincing nature was obtained by the Cabinet of Ministers with the assistance of the police. The material that came to light demonstrated that there had been a planned and a deliberate attempt to overthrow if necessary by the use of force the lawfully constituted Government of the country. It thus became the duty of those in authority to bring the offenders to trial speedily, and effectively. The bulk of the evidence, gathered in an unorthodox manner, could not be

placed before a Court or Tribunal that followed the traditional pattern of receiving evidence for the adjudication of the criminal liability of the persons concerned. The acts of the conspirators though clearly directed at wresting power for themselves did not on analysis appear to fall within the well defined offences in the Penal Code under the Chapter "Offences against the State."

The need for the amendment of the laws of Evidence and Procedure and even for the creation of new offences with retrospective effect appeared very reasonable to many. In spite of some Parliamentary opposition the Criminal Law (Special Provisions) Act No. 1 of 1962 was enacted for this purpose. This Act which had retrospective effect made the detention of persons already held in custody legal, provided for Judges to be appointed to try the offences and made admissible in evidence statements made by accused persons to police officers above a certain rank. The provisions relating to the nomination of Judges were contested at the trial and the Act had to be amended in the same year, by the Criminal Law Act No. 31 of 1962.

The persons who participated in the abortive coup of January 1962 were eventually tried under the provisions of these two Acts. Most of them were convicted by the Court that heard the case in Sri Lanka but their convictions were set aside by the Privy Council on the ground of the new laws being unconstitutional.

Nevertheless 1962 marked a turning point in the administration of Criminal Justice in this country. The events of 1962 demonstrated in a striking manner the almost total inadequacy of the normal methods of the criminal law and procedure in meeting an abnormal situation.

During the years following 1962 till about 1970 there were no great changes in the administration of criminal justice in the country. However in 1969 the Law Commission Act No. 3 of 1969 was enacted setting up a Law Commission consisting of a Chairman and seven other members. Under this Act it was the duty of the Chairman to keep under review, the law both substantive and procedural with a view to its systematic development and reform including in particular the codification of the law, the elimination of anomalies and the modernisation of the law.

A matter that engaged the active consideration of the Commission was the reduction and the elimination of the delays in the disposal of criminal trials especially those relating to grave crime which had to be eventually disposed of by the Supreme Court. The whole question of the necessity of a judicial inquiry before the trial proper commenced was considered fully by the Commission which ultimately recommended the abolition of non-summary proceedings in criminal cases. The recommendation of the Commission was that even in cases of grave crime the trial should be held and concluded without a preliminary judicial inquiry, *i.e.* a non-summary proceeding. The recommendations of the Commission were embodied in a detailed report submitted to the Government.

In 1970 there was a change of Government in the country. The Law Commission was discontinued but the recommendations of the Commission relating to abolition of pre-trial proceedings in criminal trials are very much engaging the attention of the authorities at present. Though there is some opposition for this procedural simplification the consensus of opinion is in its favour.

As mentioned earlier it was found in 1962 that the available normal procedures in the field of Criminal Law were totally inadequate to cope with an abnormal situation. A reference has been made to the manner in which it was attempted to meet such a contingency. The Criminal Law (Special Provisions) Act No. 1 of 1962 and the Criminal Law Act No. 31 of 1962 are evidence of such an attempt.

In 1971 there was a violent and a widespread uprising against the Government. Many police stations throughout the country were attacked and the loss to life and property was high. Thousands had to be arrested under the Emergency Regulations and when things were eventually brought under control there were about fifteen thousand persons in custody. They were remanded under strict security conditions in the established prisons and emergency camps.

Round about this time the police also uncovered an Exchange Control racket of vast dimensions. Valuable foreign exchange to the tune of several millions of rupees was being spirited away or being brought into the country in contravention of the Exchange Control Laws and Regulations. Suspicion fell in the direction of several persons very highly placed in business circles in the country.

The insurgent activities of 1971 and the exchange control violations called for an immediate and massive investigation of a very extensive nature. It became manifest that the normal investigation personnel of the police were not able adequately to cope with the volume of work that had to be done in connection with the investigations. It also became obvious that the investigators whoever they may be had to be given extensive powers, of questioning, arrest and detention. They were all done under the Emergency Regulations and a team of highly placed public servants was entrusted with the task of questioning and recording the statements of the several thousand persons involved in the armed insurrection and who were in custody.

When the investigations into these two matters were nearing completion the question of the procedures for bringing the persons involved to trial was being considered by the authorities. It became quite clear that the normal Courts were totally inadequate to try the large numbers involved and that the normal procedural rules were equally inadequate to meet the situation. This has resulted in the enactment of the Criminal Justice Commissions Act No. 14 of 1972.

The President (or the Governor-General as he was then called) is empowered to establish a Commission consisting of a number of Supreme Court Judges to try and determine the charges made out against the persons accused of this type of offences. The rules of criminal evidence have been relaxed and confessions to police officers have been made admissible. To put it shortly the Commission shall be free from the formalities and technicalities of procedure and evidence ordinarily applicable in the normal Courts of Law and may be conducted by the Commission in any manner not inconsistent with the principles of natural justice. The first Commission on the insurgent activities is now being held in Colombo and its functioning and progress are being watched with interest by all concerned. The Commission on the violation of the Exchange Control Laws and Regulations is due to commence its sittings very shortly and it would be of interest to watch how far it could go in bringing to book a highly sophisticated class of law breakers.

This brief resumé of the changes in criminal procedure brings to surface the question of how far it is possible to sustain the normal procedures in the sphere of the administration of criminal justice in a society that is going through rapid economic changes and where a planned programme of development is being undertaken. The traditional Courts with their many refinements do not appear to be capable of dealing with the new and complex problems that arise from time to time in the sphere of the administration of criminal justice. The traditional rights, if one may use such an expression, of accused persons pertaining to criminal trials are being eroded in the desire to lay bare the offences and deal with the offenders effectively and without delay. Time alone would show how restrained the Legislators would be in changing the well known and time honoured traditions and concepts of criminal justice that have prevailed over the years in modern civilised countries.

The Reform of the Code of Criminal Procedure in Viet-Nam

*by Ton That Hiep**

Among the various Codes, the Code of Criminal Procedure has a special importance. Any breach of law must be punished with the penalties provided in the Penal Code. For the punishment to be appropriate and rapid, it has to be governed by a precise and reasonable criminal procedure. At first the prosecuting power is to be put in action, then the culprit is to be found, in such manner as not to punish the innocent and to acquit the wrongdoer. While the public welfare is to be protected, the individual freedom must be respected.

The Criminal Procedure Codes which are presently applied are the 'Bo Trung-Ky Hinh-Yu To-Tung Phap' (Central Viet-Nam Criminal Procedure Code), the 'Bo Hinh-Su To-Tung Phap-Quoc' (French Criminal Procedure Code), the Ordinance No. 4 of 18th October 1949 and subsequent texts. In Central Viet-Nam, the 'Bo Trung- Ky Hinh-Vu To-Tung Phap' (Central Viet-Nam Criminal Procedure Code) has been created to satisfy the need of a royalist form of justice, and is now out of date. The 'Bo Hing-Su To-Tung Phap-Quoc' (French Criminal Procedure Code) of 1808, which is being applied in one part of Viet-Nam, has to be altered so as to suit the present state of the nation.

The new Criminal Procedure Code has been compiled from the said two Criminal Procedure Codes, and from the current texts, and is an unification of the criminal procedure. It also takes in such institutions of the modern criminal procedure codes of the advanced republican nations as suit the situation of Viet-Nam.

The special features of the new Code are the popularization of the criminal procedure, and the maximum guarantee of individual freedom as the most treasured interest of the nation. On the other hand, the new procedure is simplified so as to avoid expenses to the persons who have to deal with the Courts. It also codifies the fixed rules which have been approved by the Courts through their jurisprudence.

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The New Code Popularizes the Criminal Procedure

The prominent feature of the popularization of the criminal procedure is the reform of the felony courts. Under the provisions of the Ordinance No. 4, 18th October 1949, the Felony Court has two stages: the Felony First Instance Court and the Felony Appeal Court. Only at the Felony Appeal Court there are two additional popular assessors, while at the First Instance stage, the Court is composed of Judges only. With the new Code, the popular assessors will double the number of judge assessors: two judge assessors and four popular assessors (Art. 235) to respect the voice of the people in the settlement of felony cases.

To prevent the influence of the Felony Court Presiding Judge on the judgement of the Popular Assessors, while questioning the accused, the Presiding Judge may not indicate any opinion about the crime committed by the accused (Art. 322), and when terminating the discussions the Presiding Judge may not summarize the cases of the prosecution or defence (Art. 340).

In brief, the people will actively participate in the Felony Court trials. And, for justice to come to the people, a Felony Court will be set up at every administrative sector (Art. 230).

The New Code Provides Maximum Guarantee of Individual Freedom

First of all, the new Criminal Procedure Code rules on visits of Judicial Police Officers to people's homes. Except in the case of a shout for help from a house, or in some special circumstances as provided by law, the search of people's houses may not be effected before 6 a.m. and after 8 p.m. (Art. 53).

While proceeding with a preliminary investigation, if it is necessary to detain a person, such detention may not last more than 24 hours, except when there is an authorization from the Public Prosecutor (Art. 57 and 70).

The new Code also specifies the time when the questioning begins, the time when it ends, the date and time of temporary detention, the date and time of release or producing before the Prosecutor (Art. 58), as well as the accused's right to medical examinations, in order to prevent all violence that might be inflicted on the temporarily detained person (Art. 58).

Further, and hereunder is the newest reform: in implementation of Article 7 of the Constitution, to assure the utmost protection of the right of defence and the preservation of individual freedom, the new Code has provided, in Articles 38 through 45, for the right of the detained accused to know of the offence imputed to him, the obligation of the detaining authorities to inform the accused's relatives of his detention, and to allow his lawyer to attend the questioning, right from its preliminary steps.

Also for the same purpose, and to minimize to the utmost the temporary detention, the new Code provides, in its Articles 131 through 137, for the judicial control of measures in order to let the accused go free, without harming the investigation, trial, and public welfare.

For the judicial investigation, the Examining Judge shall be selected from among the First Instance Court Judges who have presided in a Court for at least five (5) years (Art. 73). This Article will preserve the freedom, honour, and property of the people.

Formerly, in proceedings against an unknown wrongdoer, the Examining Judge could question a suspect as a witness, even though he had the suspicion that such person was the offender. With such proceedings, the suspect would lose some of his rights of defence: he would not have a lawyer attending the questioning. As a witness, he had to swear to tell the truth, and nothing but the truth. Jurists have criticized such proceedings. Article 100 of the new Criminal Procedure Code, in order to protect the accused's right of defence, provides that when there are important items of evidence leading to the suspicion of guilt of any person, the Examining Judge, and the Judicial Police Officer assigned to do the investigation, may not question that person as a witness.

For the purpose of the investigation, the Examining Judge may temporaily detain an accused. Such detention may not exceed four months. Only one extension is allowed, provided that the Examining Judge shall give the reason therefor (Art 140).

Article 142 rules that not only the accused and his lawyer, but his spouse, parents, or children, may at any time apply for his temporary release. If the Examining Judge does not give his decision within 5 days, the accused may submit a petition direct to the Chamber of Indictment. The Chamber of Indictment after hearing the reasons of the Prosecutor-General, shall give its decision within fifteen days from the date of receipt of the petition. Otherwise, the accused shall automatically get his temporary release, except when the Chamber of Indictment orders a supplementary investigation. The Public Prosecutor also has the right to request the same action from the Chamber of Indictment under the same conditions.

At any stage of the case, the accused may apply for a temporary release (Art. 143, paragraph 1).

The individual's freedom must be respected. Hence, the Examining Judge has always to fulfil his duty of examination. The reforms provided in Article 155 through 158 aim at preventing any abuse of the Examining Judge's right of committing the examination to the Judicial Police.

Another feature of the reform is the clear specification of the committal examination in order to prevent general commitments. The Judicial Police Officer may not question on an undetermined offence. For the purposes of the same reform, Article 76, paragraph 4, provides that the commitment at an examination is an exception. The Examining Judge may commit an examination to the Judicial Police only when he is unable to do himself a specific examining operation.

Up to now, the Chamber of Indictment has not been utilized or organized in keeping with its importance. In the new Code,

there are many special reforms to the status of the Chamber of Indictment in order to make this judicial institution an organization for the effective protection of individual freedom.

The Chamber of Indictment becomes now an independent organization within the Court of Appeal, and as important as the Civil and Criminal Divisions (Art. 195 and 197). The functions of the Chairman of the Chamber of Indictment are specified in the 225th and subsequent Articles. The Chairman of the Chamber of Indictment shall control the operations of the Examining Judge's offices within the jurisdiction of the Appeal Court, and supervise the execution of the examination commitments to prevent any unreasonable delay in such action. To control and protect individual freedom, he has all the necessary powers and facilities. Every month he will receive an account of the number of cases under process at the Examining Judge's offices, in which are mentioned the date of the last examining operation of each case, and the cases where there is a temporary detention (Art. 226). Besides the power of controlling the detentions ordered by the Public Prosecutors, as provided in Article 24, the Chairman of the Chamber of Indictment has also the right to inspect the Reformatory Centers (prisons) in the jurisdiction of the Court of Appeal (Art. 227).

In regard to the procedure at the Chamber of Indictment, the important reform is the time within which this organization should give its decision on the temporary detention of the accused. According to Article 198, paragraph 2, the Chamber of Indictment must give its decision within thirty days at the latest, from the date of receipt of the petition for release; if that period is exceeded, the accused shall automatically obtain his temporary release, except in the case of an investigation on his petition ordered by the Chamber of Indictment or of 'force majeure.'

In the case of temporary detention, the new Code provides for the right of the accused who is the subject of an unfair detention to claim compensation from the State after he is declared not guilty.

The procedure provided in Article 152 through 154 reserves to the Courts exclusive jurisdiction with all rights of appeal.

The New Code Simplifies the Proceedings

According to Article 3, the civil prosecuting power may be exercised concurrently with the State prosecuting power, and referred to the same Court.

The civil prosecuting power is allowed in any circumstance when there is material, physical or spiritual damage. If the State prosecuting power has been exercised before a Court, that Court shall acquire jurisdiction on the petition for compensation.

Formerly, only the damage arising from a breach of law might be claimed before a Misdemeanor Court at the time when the State prosecuting power was commenced. A victim of a traffic accident, suffering injuries, may claim compensation only for his injuries; as for the material damage caused to his vehicle, or the loss of his property, it was not within the jurisdiction of the Misdemeanor Court.

Article 3, paragraph 2, has simplified the proceedings, and the victim may now claim any compensation before the Misdemeanor Court. This Article settles also the claims for compensation in traffic accidents caused by civil servants or military men driving official cars. Formerly the victims, or their heirs, of such accidents might claim compensation only before the Administrative Courts. With the new Criminal Procedure Code, the victims or their heirs may claim compensation right before the Misdemeanor Courts which have acquired jurisdiction in respect of the offence, and they, therefore, need not now waste their time and money.

The new Code also reserves to the parties all rights for standing as civil prosecuting parties, at any stage of the examination proceeding, without having to comply with any fixed formality or to notify the other parties of the same. A request for compensation may be considered as a request to be a civil prosecuting party (Art. 80 through 86).

Particularly in regard to the Expert's surveys, the special reform features are the lightening of the Expert's survey proceeding, and less burdensome and complicated formalities, while at the same time assuring guarantee of the right of defence (Art. 160 through 172).

The Examining Judge shall issue a justi-

for an Expert's survey. The Expert will fying order if he does not allow a petition work under the control of the Examining Judge or a Justice so assigned, by an order of the Court (Art. 160). Article 167, paragraph 1, authorizes the Expert to hear a person other than the accused.

Lastly, to complete the current law system, and in terms of the simplification tendency, the new Code institutes the proceeding of jurisdiction determination, and vests the power of decision in the Criminal Department of the Supreme Court, for the settlement of all conflicts, except the conflict between two Misdemeanor Courts or two Examining Judges, or two Police Courts, within the territorial jurisdiction of a Court of Appeal; in these circumstances the Chamber of Indictment shall decide the question (Art. 631 through 635).

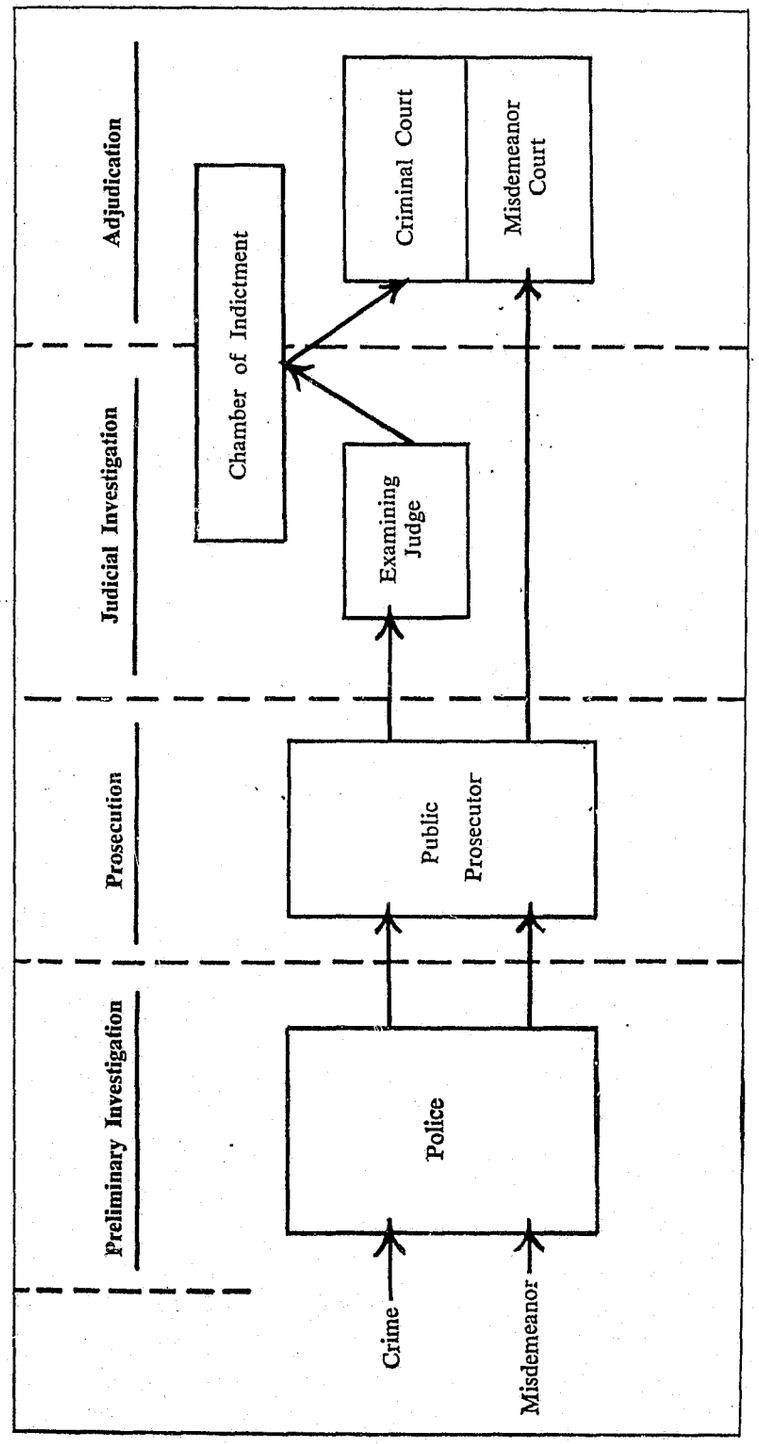
The New Code Codifies the Common Law

Formerly, the 'Flagrante Delicto' procedure was not provided for in the Criminal Procedure Code, but it was regulated by the May 20, 1863 Law. The new Code has dealt with this question in its Articles 38 through 70.

According to the old Criminal Procedure Code, the preliminary investigation has been only a matter of common practice, not provided for in any written text. Such common practices now become statute law as provided in Article 68.

Article 492 provides that if the Public Prosecutor appeals, the Court of Appeal may either affirm the first instance judgement or reverse it, wholly or partly, regardless of whether such action may or may not prejudice the interests of the accused. If only the accused or his civil prosecuting sponsor appeals, the Appeal Court's decision may not bring about more prejudice to the appellant than the first instance decision. If only the civil prosecuting party appeals, the Court of Appeal may not give a decision detrimental to that party. Before the Court of Appeal, the civil prosecuting party may not raise any new matter; however he may ask for the increase of the compensation for the damage or loss accruing from the date of the first instance judgement. The above matters, which were earlier merely the Court's practice, are now codified.

The new Criminal Procedure Code is far from able to settle all the matters of criminal procedure. However, it is a piece of work in which the largest possible number of progressive procedural provisions have been included, altered, and selected in the interests of justice, the judicial administration of Viet-Nam, and the interests of the nation.



SECTION 3: CONCLUSIONS OF THE SEMINAR

Criminal Justice Reform in Asia and the Far East

(Conclusions Adopted Unanimously at the End of the Seminar)

The conclusions of the Seminar held at UNAFEI from the 21st Feb., to 23rd March 1973 were based on a far ranging discussion which was extended necessarily from the general principles of criminal justice reform applicable to any country in any situation to the variety of special circumstances existing in the particular countries of Asia and the Far East.

It was necessary to begin with the question of whether or not criminal reform was needed at all in the countries of Asia and the Far East. Obviously discontent with criminal justice in other parts of the world, however widely publicised in this region, could not be the sole criterion for change in Asia and the Far East. This was not to say that the Asian and the Far East region could be insulated from world influences or removed from the main stream of world change: it was bound to be affected by what happened elsewhere. Moreover, Asia and the Far East were far from being a homogeneous area: there were vast differences between the countries of the region, a number of which approximated to conditions in other parts of the world. Asia needed reform therefore sometimes for reasons which had general application and sometimes for reasons peculiar to the conditions of the region itself.

The Need for Reform

The Seminar concluded that there was considerable need for reform in Asia and the Far East. In this respect the region shared the need at present being felt in many other parts of the world: although the reasons for this felt need were not always the same in Asia as elsewhere. Urbanisation and technological change for example were creating problems which strained the criminal justice systems of Asia as they were straining systems in the other parts of the world: but there were aspects of greater importance for Asia. The pace of urbanisation in the developing countries had been exceptionally rapid. Where there had been little experience of individuality and relatively little social mobility only two decades ago the effect of urbanisation and technological change had frequently been particularly serious in terms of social disintegration and the dilution of social controls. Similarly technological changes had special significance in countries where automation might be necessary for world competition but might thereby mean less employment in countries where employment was desperately needed. The effects of such structural changes in creating criminogenic conditions and subsequently overloading the criminal justice systems could be profound.

Reform in Progress

The need for criminal justice reform in Asia and the Far East could be illustrated by the work actually in progress in the countries represented at the Seminar.

It emerged that in Afghanistan there was large scale planning for a codification of that country's penal law and the translation of the texts from Arabic to Dari (Farci), that administrative reforms were under way to give more effect to the 1964 Constitution with its separation of powers. A juvenile court was being established, a prosecutor service was being developed to take over the functions of prosecution previously exercised by the police and the new police administration law was being devised to limit the powers of the police to what their duties demand. At the same time new provisions were being made for correctional services, new courts were being set up for offences committed by government employees, a central court of appeal was being established in Kabul and there were new laws being prepared relating to smuggling, defence counsel, courts and criminal procedure, the latter being designed to expedite and facilitate investigation and trial. Finally training programmes were being provided at the Supreme Court to ensure adequate servicing for the new system gradually being devised.

In India, considerable progress has been made in the revision of its old laws. A

revised Criminal Procedure Code intended to expedite investigation, trial and the disposal of cases was in the final stages of enactment. A Committee of Parliament was considering a bill for the complete revision of the substantive criminal law contained in the Indian Penal Code to bring it up to date and to reflect current ideas of crime and punishment. In addition, special laws were also being enacted by the Central and the State Legislatures to meet special situations or crimes, such as internal security, illicit export of antiques, adulteration of food and drugs etc. Some institutional changes are being contemplated such as in regard to police training, prison reform etc.

In Indonesia, a law revising the Criminal Proceedings Law was already on the Parliamentary agenda as well as another draft revising the present Penal Law. In draft but yet on the parliamentary list was a new law on the subject of "Grace, Amnesty Rehabilitation and Abolition" whilst under review were new laws or revisions of laws to deal with extradition, hijacking, narcotics, juvenile delinquency, corrections and the rehabilitation of offenders. Laws have been enacted in regard to the police, public prosecutors, judicial power and corruption.

Japan itself has had for a long time a Criminal Law Reform in draft and under expert (and public) discussion. It has recently changed the law to increase fines four-fold and to deal with hijacking and pollution. A new special law to control the use of "Molotov Cocktails" has been effective in dealing with violent riots. The Traffic Laws have been revised to streamline procedure and deal with new offences. Japan also had, under discussion, revisions of the Juvenile Law and the Prison Law.

Korea recently revised its Code of Criminal Procedure to ensure more efficient investigations and more expeditious trials and to devise a system suitable to the present situation. It had also amended its narcotics law to increase the penalties.

Laos has recently promulgated a new narcotics law and also indicated that work was in progress to reform the penal code.

Malaysia as a federal country with a diverse population has since 1969 been in the process of unifying its law and procedure throughout both West and East Malaysia and all its various States: Amendments have been promulgated and are also in the course of preparation to ensure the more even application of the Criminal Procedure Code and especially some of the criminal laws with the view to a more uniform administration of the criminal law. The Firearms (Increased Penalties) Act has made attempts as well as acts for kidnapping for ransom by use of firearms a capital offence. The other major criminal laws revised or amended in parts include the Penal Code, Evidence, Registration of Criminals and Undesirable Persons Act, Private Agencies Act etc. Both the fines and the procedure for dealing with traffic offences have been amended and a Anti-Narcotics Bureau has been established. A separate Anti-Corruption Agency has been established to deal with corruption and a detention statute with provisions for new procedures has been effective to a very considerable extent in breaking up the secret society menace which had turned from traditional protection to outright extortion and intimidation. In fact, in Malaysia crime had been considerably reduced recently by these measures.

Singapore dealt with its laws relating to anti-social activities and the Drug Act which provides for corporal punishment and enhanced penalties to be awarded. It has also established a Central Narcotics Bureau.

In Sri Lanka a large scale revision of the Courts system, to bring it into line with the new Constitution of Sri Lanka is now under consideration. A Criminal Justice Commission Act has provided for the appointment of Commissions of 3–5 Judges with wide powers to act beyond procedural technicalities in a manner 'not inconsistent with the principles of natural justice.' Sri Lanka has also adopted a system of Conciliation Boards composed of lay persons to settle minor civil, and criminal matters without recourse to the Courts. In such instances only those cases which the Conciliation Boards had failed to settle would come up before the regular Courts. In addition to these Sri Lanka has under consideration drafts for simplifying procedures, for expediting trials, for reducing the multiplicity of appeals and for increasing the punishment options available to the Courts.

In Viet-Nam, considerable progress to

reform the penal law has been made; a new Penal Code, the codification of all current texts, and a new Criminal Procedure Code with improved procedures to promote more expeditious trials were recently promulgated, and a draft law for the abolition of capital punishment has been submitted to the Congress.

In the light of this, any discussion of the need for criminal justice reform in Asia was overtaken by the fact that reform of one kind or another was already under way. Not only was there a felt need but an expressed action. Asia and the Far East was not satisfied with the law as it was—or with the way in which it was being administered. In particular, there was a widespread appreciation that the formal procedures of established law with its indulgence in fine points of interpretation and technical significance were inadequate for the needs of the masses having recourse to the courts in search of justice. Older systems had served an intellectual elite and had frequently been unused or avoided by the mass of illiterate people who did not understand the system or know-how to defend their rights. In modern urban conditions this situation no longer prevailed and the courts were often choked with cases in Asia, often at the same time deprived of the resources to deal with them. Most countries were therefore concerned about the delays and injustices of the present system and had in train a number of measures to improve the position, sometimes, as in the case of Sri Lanka by avoiding the rigidities of an older and less relevant system. Afghanistan's efforts to translate the law from Arabic and reform the police and court systems were also evidence of this desire to serve the people by bringing them into more direct touch with a legal system able to respond to their needs more efficaciously.

Reform in a Regional Setting

The view was considered that since the subject of reform was so wide, covering all aspects of criminal definition, procedural differences and punishments there could be no broad generalisations for the region as a whole. Crime had changed down the ages and varied in a cultural sense so that what was crime in one area might be a virtue elsewhere: there were also professional differences in both conceptualisation and approach which made any generalisations very questionable indeed. Whilst this was undoubtedly true and there was a sense in which all statements about criminal justice reform could never fully apply to the concrete situations in specific countries the Seminar found in discussion that they shared many of the problems of reform and were frequently working along lines which were significantly similar even when they could not be considered in any sense identical.

Obviously a number of these similarities flowed from the correspondence between the basic systems of law which had been either borrowed from outside or introduced by colonialism. Futher professional divisions and interests for example came out in correspondence between the participants but which frequently gave common ground in the approaches to the issues of reform. Secondly the common nature of the problems of urbanisation, industrialisation and modernisation meant that whilst generalisations might not be in order, there was value in taking a regional view of the problems and their solutions especially where one country might be contributing to the problems of another. Above all there was felt to be a need for a regional approach to the problems of criminal justice reform if only to clarify the objectives to be served by reform and to highlight the need for subsequent evaluations.

At the same time a division between East and West thinking on these issues might not be too useful. In these times ideas travel very fast and many of the criminal justice problems overflow many regional boundaries. Similarly human nature and criminal justice were too fundamentally related for any exclusive categorisation. The fact that Asia and the Far East was a viable region for an approach in principle to the problems of criminal justice and its reform could not be construed as separating this area from the other regions of the world. Even a division into developed and developing countries whilst having validity and offering peri-

meters for the consideration of criminal justice reform still left an overlap of no small significance.

Participants were unanimous in their views that the Seminar on Criminal Justice Reform had proved very valuable and wish to place on record the fact that UNAFEI plays a very important role in the prevention of crime and treatment of offenders within the region and deserves the utmost support and co-operation from all countries.

PART II

Material Produced During
The 33rd Training Course
On the Treatment of Offenders

SECTION 1: EXPERTS' PAPERS

Changing Concepts of Crime and Criminal Policy

*by Benedict S. Alper**

I wish to express my thanks for the honor conferred on my University by the invitation to lecture at UNAFEI and to appear before the distinguished Japan Criminal Policy Study Association, its members and invited guests, that I may share with you some thoughts on matters which currently confront all the nations of the world.

I would like to preface my remarks by saying that what I shall be presenting this afternoon derives from my professional experience as well as from my years of University teaching and research. I hope therefore that you will interpret nothing from my remarks as in any sense critical of any other country, certainly not of my kindly host—Japan. I regret that I have had only a limited opportunity on this—my second visit to your lovely land—to familiarize myself with the operation of your system of criminal justice. But I would be less than fair if I did not report that everything I have gathered from my association with the directors, faculty and students at UNAFEI leads me to believe that much of what you have accomplished here runs contrary to what I shall say about other parts of the world.

Crime is the oldest social problem on which there has been international concern and action, beginning in 1825, and recorded in more than 80 international conferences held on this subject between then and 1970. Most recently, in the Fall of 1972, the Secretary-General of the United Nations came before the General Assembly to report the urgency of the problem, and to suggest measures to deal with the rising tide of crime. The rash of international events—of kidnappings, assassinations and terrorism, of international larceny of securities and art treasures, of sky-jacking—all on an unprecedented scale was only one of the areas under his review. The economic seriousness of the problem may be seen in the Secretary-General's statement that social defence costs ran as high as 26% of the public operating expenditures in some of the countries sampled.

Other criminal phenomena, national in origin yet international in scope, which we are witnessing today are but the extrapolation of a trend which became apparent immediately upon the end of World War II: mounting crime rates (in one of the most affluent countries, the incidence of crime increased fourteen times faster than population growth between 1960 and 1970) greater involvement of young people and of females in delinquent and criminal acts, a high degree of anonymous or "faceless" crime and a large element of violence in connection with many of such acts.

This brings me to the first concept I would like to offer:—need for a search for more precise ways of measuring the true incidence of crime. In the past, crime statistics derived from crimes known to the police. Such tabulations come under increasing scrutiny each passing day as inadequate, even as misleading.

A wide range of sources caution us that officially reported criminal actions may in fact constitute only the tip of the iceberg, while the largest portion lies concealed in those offences which never come to police attention.

The next area where new concepts are emerging has to do with police intervention. Of all crimes known to the police, unlike in Japan, less than 25 per cent are today cleared by arrest. The deterrent effect of likely arrest is seriously weakened in the light of this finding. Such laxity—or inefficiency—is more of an encouragement to crime than a deterrent. If, as Cesare Beccaria stated more than 200 years ago, sureness of apprehension is the best deterrent then we have to report overwhelming failure in the area of early police intervention in the commission of crime. All too often the solution is sought in the

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computerization of data on private citizens, without regard for its serious consequences: invasion of privacy and the violation of civil liberties.

This leads to a concept of preventive action by police, of dealing more effectively with young offenders, the establishment of closer ties with the community in order to diminish the high incidence of friction and even antagonism which sets police apart from the citizenry.

In order to free the police to deal effectively with truly serious crimes, it follows that a wide variety of offences which have been on the criminal calendar for centuries must now be stricken off. This means changing some of the basic concepts of what constitutes crime, as these concepts are embodied in traditional criminal law, procedure and sanctions. (I shall touch on some further implications of this at the conclusion of my lecture.)

Interestingly enough, many of these offences derived originally from religious sources—in Western society, the Bible—in times when religion played a predominant role in the lives of people. As the influence of religion has waned, such acts —sumptuary in nature—which harm chiefly the perpetrator—gambling, sexual behavior, prostitution, drugs, vagrancy, etc., are finally being dropped from the statute books in some of our states.

At the next stage of the process—detention before trial—we are confronted with a staggering load of persons whose presence in court must be guaranteed—either by the posting of bail or by jail confinement.

A jail experience—especially for those who find themselves there for the first time—can be a degrading advanced course in higher criminal education.

Criminal justice systems which operate under the presumption of innocence have the responsibility to assure the dignity of the persons detained and to provide opportunities to utilize their waiting time advantageously. This takes on added significance when we realize that at least one-half of all detained suspects are released—for one reason or another—after they have had their day in court.

Delays in bringing defendants to trial render the administration of true justice more difficult, they advantage the truly guilty and punish the innocent. If Beccaria's second precept of speedy trial as a crime deterrent is valid, then we may state that some courts today are perhaps more productive of crime than of the dispensation of justice.

Sentencing following a plea or finding of guilt suggests two concepts which daily become more urgent and clear. The first is the acknowledged failure of the fixed institution in many places. It has taken us almost two centuries to realize that penitentiaries do not always make penitents, correctional institutions do not always correct, reformatories do not always reform. In some places as many as 80% of serious crimes are said to be committed by persons who have served time in prison.

Satisfaction of the vindictiveness in all of us—socially institutionalized in the sanction of imprisonment—may please some, but society as a whole is becoming increasingly aware of the price it pays for the luxury of revenge. This means a shift of our reliance to other than institutionalization for the treatment of some convicted offenders.

Next, it calls for a re-examination of the concept of security. The classifying of prisoners into minimum, medium and maximum security is all too often dependent upon the number of cells available for each category. If one-third of our prisons can provide maximum custody, one-third of the prison population will—by Parkinson's law—be found to require it. If there were no maximum security we would be compelled to classify prisoners only as medium or minimum. As we scale down the severity of degrees of security, we may well have less turmoil and less disciplinary problems. As we re-define our categories, we shall have re-defined our population—and at the same time re-cast our attitudes.

Sheldon Glueck of Harvard Law School once said that poetry is frozen music, and prisons are frozen penology. We are indeed frozen in much of what we are doing, because we have inherited these institutions which fix the penal philosophy for what goes on within them in accordance with what prevailed 100 or 150 years ago when they were built. Along the same vein, Paul Cornil of Belgium has compared many of our ancient prisons with the shell

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of a turtle into which we are attempting to push the body of another animal.

Both the keeper and the kept, like the captive and the captor, are fastened to a chain which binds them both, as Herbert Spenser wisely observed 100 years ago. Or, to quote Rousseau, "the master is not alone the master, but the slave as well."

I cite an example from my own state where the highest juvenile recidivism rate was reported for those boys who were held in a maximum security institution. When they were ultimately released from there, over 90% of them proceeded to commit other offences. When the term of imprisonment was reduced, the rate of recidivism dropped sharply.

To carry this *ad absurdum* would argue that if all imprisonment were to be abolished, recidivism would disappear. This is obviously an overstatement. Still there will always be a hard core of difficult offenders, whose threat to society is so great that they may need to be confined for long periods of time under very special conditions. But as we reduce our estimates of dangerousness, we can then afford to deal with these difficult cases therapeutically—which in the long run is the only truly effective corrective—as Dr. George Stürup has reported so convincingly in his excellent "Treating the 'Untreatable'."

I come now to the concept of diversion —that is, keeping out of the criminal justice system as many persons as can possibly be handled by other means. Some of the impetus for this movement derives from carefully researched critiques of the weakness and inadequacy of the criminal justice system. One observer has recently commented that it may well arise—if only in part—from a sense of desperation.

In any case, the move to divert is found at every step in the process. For example, in many jurisdictions where public drunkenness is no longer a criminal offence, the police now regularly tour certain areas and pick up those who would formerly have been locked up, taken to court, sent to jail, only to return to the street, by a process described as the "revolving door": the importance of this may be gauged from the fact that in some places, drunkenness takes up one-half of the time of police and courts and half the places in local jails.

Drunkards may now legally commit themselves—voluntarily—in the same correctional institutions where they were formerly sent by the courts, thus in a sense diverting themselves.

Such changes in procedure cannot take place without effecting changes in attitude —public, legislative and judicial, what may be described as "taking the heat out of the criminal process." Given the perversity of mankind, there will always be a certain number of—all too human—humans who will do certain things because these are forbidden. The more such laws are stricken from the books, the less laws certain people will be tempted to disobey. This takes on particular significance for the young, who traditionally take delight in doing what is forbidden, especially when we consider how few outlets exist today for them to find adventure and excitement in the process of growing up and proving themselves.

The notion of diversion is being applied increasingly to the juvenile court. Ever since the Supreme Court decision *in re Gault*, we seek for non-judicial ways of dealing with juvenile offenders. From the Scandinavian countries, no less than from the Panchayat Courts of India, and the People's Courts of the socialist countries, we derive the concept of community dealing with the problems of juvenile misconduct. Such diversion takes the form of referral to social and clinical agencies, to so-called Youth Resources Bureaus, to measures for suspending a finding of delinquency if the youngster responds satisfactorily to these out-of-court programs. Much of what is called delinquency today is what used to be called mischief in earlier times. The world has always understood that young people may have difficulties growing up, that they need help in tiding them over into adulthood. It is interesting to speculate about what would have happened if there had been a juvenile court in Mark Twain's Hannibal, Missouri when Tom Sawyer and Huckleberry Finn were boys.

Such court diversionary programs are being gradually introduced into the adult criminal court as well, for selected offenses and offenders. If the defendant agrees to

the program of rehabilitation prescribed by the court, if he keeps his job, submits to a drug rehabilitation program, stays clear of criminal acts, then at the end of a stated period he will again appear in court to have the charges—still unproven, perhaps—dropped, and no criminal history recorded against his name.

The concept of diversion is nowhere so widely applied as in the field of juvenile institutional care. In my home State of Massachusetts, under the leadership of an extraordinary man, Dr. Jerome Miller, approximately 900 juvenile delinquents who were confined in training schools have been sent out to the community. Many of them are now back home with their parents, with intensive care by community counselors to help them solve their problems. Some have been sent to private boarding schools, some to foster parents or group homes, some to small residential centers, some are living on college campuses with students as their so-called "advocates," who are paid to supervise the activities of their young charges. When this decision was made to close down the institutions for juveniles, about 4 per cent —between 30 and 40 boys, no more— were found to be so dangerous, so seriously disturbed, that they had to be confined —in a special closed section of a detention home, under intensive therapeutic care and supervision.

Illinois is currently embarked on the same kind of crusade in behalf of children. In Hawaii, in Wisconsin, among other states, the same concept is being applied to the adult offender. This scaling down of the severity of confinement results in enormous savings, which can then be invested in intensive supervision in the community. In my State, the per capita annual cost of care in juvenile training school was running upwards of $10,000 annually. Placing a child in a foster home costs one third of that. Imagine paying a probation officer $30,000 a year! Yet we could afford $10,000, and give him only three children to supervise for what it now costs to keep one child confined.

You are wondering at this point how effective are these new community methods of treating offenders. I have already stated that when sentences of juveniles were reduced, the rate of recidivism dropped sharply. I regret that I cannot be more precise as to our Massachusetts experience at this point. But in a very careful follow-up research by Dr. Lamar Empey of California—associated with the famous Provo experiment in Utah—in a study of two groups of boys—one placed on probation and the others—equally matched—committed to institutions, it was found that the rate of subsequent delinquent involvement of boys on probation dropped markedly, while the delinquency pattern of those sent to institutions went up.

I shall go further and state that even if the rate of recidivism were no less for those treated in the community than it is for those sent to institutions, the former is preferable because persons confined to many of our congregate institutions are made to feel dehumanized and more worthless than when they first went in. Treatment in a community setting cannot possibly equal the degrading effect of such confinement.

This idea of the community grows increasingly important in other areas as well. To-day we are de-institutionalizing mental patients and the mentally retarded; we no longer lock up the orphan, or exile the poor and the aged to workhouses. Our communities have responsibility for these persons in their midst who are in need of care. By returning to them these responsibilities, together with the means for dealing with them, we shall cope more effectively with people in special need, and at the same time offset the feeling of powerlessness which is one of the tragic characteristics of many people in our fragmented society today.

The idea of community should not come as a novel idea to any of you, for you have reported in your interesting "Non-Institutional Treatment of Offenders" that Japan pioneered in the introduction of half-way houses in 1880, and since 1889 has had an ongoing program of after-care services manned by volunteers. I salute you for extending volunteer probation services on such a vast scale from what was begun by the humble Boston shoemaker, John Augustus in 1841.

One of the reasons why we have seen so little basic change in prison affairs is because men behind bars have no constituency on the outside to fight for betterment of their conditions. Politically, prisoners are the least effective members of our society. Parents of school children or of the retarded, families of psychotic relatives, veterans, the physically handicapped, the aged, all have lobbies and organizations who campaign in their behalf. But who stands up before the state or national legislature to demand better prison services?

We should not be surprised, then, when prisoners riot to demand, as they did at Attica—that they "be treated as human beings," when any newspaper reader knows that only after such events is any attention paid to them. So we see the beginning—in at least four states recently—of unions of prisoners, the National Prison Reform Association—organized, counselled by lawyers, negotiating with prison administrators over regulations and other matters of concern to them. I have heard some correctional administrators vow that they would sooner resign than deal with a union of prisoners. But we all recall a time not long ago when some captains of industry made the same threats, only to retract them—and even to announce now —especially on May Day—that unions have brought stability and industrial progress.

Parallel with this development is evident a concept not only new, but equally in contradiction to tradition. All parole regulations—including those of Japan—specify that parolees may not associate with other ex-convicts—in other words, with the only people who will not shun them. This prohibition is still on the books. But ex-convicts are to-day taking the lead in public programs for prison reform, in providing after-care services — counselling, employment, half-way houses, drug-treatment centers, group therapy sessions which bring ex-offenders together for a sharing of experience and of attitudes. The Fortune Society of New York is the best known of these ex-prisoner groups, but there are at least 30 others in other States.

So far—and all too briefly, I realize—I have tried to trace some of the winds which are blowing in the criminal justice field with regard to policies and procedures.

Essentially, to call criminal justice a "system" is a misnomer, for the word suggests an inter-relationship between components which does not in fact exist. The management of police, courts, prisons, and probation/parole is developed on independent bases, usually with little or no communication between — or within — each. Law makers, police, judges, attorneys, district attorneys, and correctional officials all operate on the basis of different philosophies and methods. Little is done to bring them together for an exchange of ideas, much less an attempt to develop overall policies.

What now of the phenomenon of crime itself—its causation and definition? In the past, sociologists attempting to explain the etiology of crime, have turned their attention to—as they have based their statistics on—crimes committed almost exclusively by persons in the lower socio-economic classes. The overwhelming majority of such criminals—in court and prison—have always been the poor and disadvantaged. No rich man has ever been executed for a crime in our country. Today in some of our prisons—especially in the Federal—or national system — between one-third and one-half of the prisoners are blacks, although nationally blacks constitute slightly over 10% of the total population. If we were to base our inquiries into crime causation solely on such persons, we would of course come up with the finding that crime is primarily a proclivity of the uneducated, the unskilled, the slum dweller, the poor and the black. The reality is that these are the persons who are arrested, tried, convicted and imprisoned.

From all available records we know that different groups in society—men and women, youth and adults, blacks and whites, poor and rich — have different rates of crime. Men commit many more of all kinds of crime (except prostitution) than do women. The record also shows that each group "specializes" in some kinds of crimes and hardly commits any other kind. Poor, young, black and white males may be seen to "specialize" in such street crimes as robbery and are relatively uninvolved in fraud, bribery, embezzlement, stock swindling or counterfeiting. Rich, older, white males have the opposite pattern—they specialize in what are generously described as "white collar" crimes—sometimes referred to as "capers"—and are almost completely

uninvolved in street crime. In 1967, a study commission appointed by the President discovered that organized crime takes about twice as much from its illicit activities as criminals derive from all other kinds of criminal activities, while unreported commercial theft losses are more than double those of all reported private and commercial thefts. A current case on which indictment is expected any day, alleges that a dealer in international securities has swindled the buying public in an amount estimated at 224 million dollars—the equivalent of how many ordinary pocket pickings or burglaries?

Every day makes clearer that a huge majority of our population is—or has—engaged in some kind of criminal activity, that four out of five of our citizens admit that they have at least once in their lives committed an act for which, had there been a police officer present, they could have been arrested. If the rate of crime is so widespread, what validity or reliability is there in theories based on studies of the convicted—who are overwhelmingly the poor and the disadvantaged? As we shall have to deal more effectively with the basic social conditions in which this submerged group spend their lives—in the areas of housing, health and education, employment, racial discrimination—so are we forced at the same time to examine the social milieu in which admittedly so large a percentage of our total population—poor and not poor—commit their undetected and unreported crimes.

Each war in the past has been followed by inflation: of prices, and of crime. In both instances, the trend goes on unchecked, until a drastic event—a depression in the one instance or a social upheaval in the second, brings about a re-evaluation of the economy—or the establishment of a new political or social order, respectively. In the highly developed societies in the West crime seems to be one of the prices we pay for affluence. It is also, I submit, a sign that we are living in a period of rapid social change, in which the radio, television and cinema reflect incidentally, if not causally —sexism, violence and crime.

At the same time government itself is often gravely guilty of the very crimes which it condemns when such are perpetrated by its citizenry. We are presently concluding, I hope, the longest, most inhumane and destructive war in history. The effect of that war upon our society, especially on the young, is widespread, if incalculable. "The law floats in a sea of ethic," Chief Justice Warren once said. "If the government becomes a lawbreaker, it breeds contempt for law," Justice Brandeis declared forty years ago. "Il pesce puzza dalla testa," runs the old Italian saying—"the fish begins to stink from the head."

How many prisoners have said to me: "My crime was that I did not steal enough. I stole only $100 and went to jail. Had I stolen a million dollars, I could have been elected governor." This cynical explanation may not cancel the offender's guilt, but it does reflect an attitude that is not wholly irrelevant or invalid.

While we are taking a new look at the concept of crime causation, we should go one step further and examine the definition of crime itself. In this connection I quote from the report of a Conference called by the Council of Europe, November 30 to December 2, 1971, at which the Directors of Criminal Research Institutes agreed that:

"The definition of crime should be confined to acts genuinely disturbing the life of society. Such acts as shop-lifting and issuing worthless cheques should not be seen as real crime, while such things as pollution, and the invasion of privacy, should be. They stressed the relativity of the very concept of offence, which varies according to place, time and the status of the person concerned, and suggested that the moralistic attitude to crime be replaced by an objective consideration of the interests of society."

I submit that until crime is re-defined in some such manner as this, we cannot adequately measure its volume, assess its cost, understand its impact or deal with it in any kind of effective fashion.

Herein may well lie the germ of a new concept which we may see further developed in the near future. Society is disturbed by what is called "crime in the streets"—the traditional—I had almost said the time-honoured—crimes

against persons and against property. But today the crimes against humanity on the widest scale—by wars, by industrial processes, by economic disequilibrium and uneven distribution of wealth within nations and between nations—these are not only disturbing, they are disruptive of national and international well-being and harmony. "Crime," it has been said, "is the ransom of the technical and social progress of our times."

We come, finally, to the question of what approach we shall take toward crime, as an official policy of government. Here we find a dramatic choice of concepts. Eight years ago, at the Third United Nations Crime Congress in Stockholm, my government issued a report for general distribution to participants which declared:

"Recent developments in the criminal law in the United States can be understood best in the context of the much broader movement to combat the great problem of poverty. The root cause of much criminal conduct is unquestionably poverty, and all that this term connotes: hopelessness, disease, ignorance, and hostility toward established norms of behaviour. To break the vicious cycle of criminal recidivism, it is necessary to strike at this complex social problem."

We have had a change in government since then, and most recently the head of my government said to the nation on the radio:

"...acts of violence are the natural residue of an atmosphere in America that for years encouraged potential lawbreakers.

Americans in the last decade were often told that the criminal was not responsible for his crimes against society; but that society was responsible.

I totally disagree with this permissive philosophy. Society is guilty of crime only when we fail to bring the criminal to justice. When we fail to make the criminal pay for his crime, we encourage him to think that crime will pay."

This has been followed by this administration's introduction of a proposed Criminal Code Reform Act of 1973, 680 pages long. Among other things, this legislation would return the plea of insanity back to what it was prior to 1840; would authorize the death sentence for anyone convicted of murder or treason—contrary to the recent Supreme Court decision outlawing capital punishment as cruel and excessive; would automatically impose a life sentence on defendants who had been previously found guilty of a heroin drug offence; would permit unbridled wire tapping by law enforcement authorities, and would remove some of the basic safeguards of due process which have been won only after long years of litigation in the courts.

At this same point in history, his self-appointed high priest thundered from South Africa that convicted rapists should be castrated.

Thus, in seven short years we have reversed our national stance: we no longer claim that crime is socially induced, to-day we pronounce instead that laxity and permissiveness are its root.

Alexis de Tocqueville, in his famous "Democracy in America" over 150 years ago, warned:

"The dread of disturbance and the love of well-being insensibly lead democratic nations to increase the functions of central government as the only power which appears to be intrinsically sufficiently strong, enlightened, and secure to protect them from anarchy...

All the particular circumstances which tend to make the state of a democratic community agitated and precarious enhance the general propensity and lead private persons more and more to sacrifice their rights to their tranquility.

...The love of public tranquility becomes...an indiscriminate passion, and the members of the community are apt to conceive a most inordinate devotion to order."

Writing on this same subject, Ramsey Clark, the former Attorney-General of the United States, recently said:

"Safety and freedom are not incompatible; the thing to do is to enlarge both. Law and Order, in the modern interpretation of this slogan, will give us neither."

Here lies the basic conflict in conceptualization of the true meaning of criminal justice. How we determine the course we are to follow between these two completely antithetical extremes: how

we look at crime, how we treat criminals, may well determine not only how much crime we shall have, and of what sort, but even what will become of the democratic process, the quality of human living, and of society itself.

Being by philosophy and temperament an optimist, I prefer to close my appearance before you this afternoon on a positive note. In doing so I can do no less than to charge your country to continue to share with the rest of the world the measures which you have developed here which are reflected in a steadily reduced crime rate since 1960 while all other nations report the very opposite. You must be doing some things right!

I am confident that the Asian countries will be grateful to UNAFEI within the next 10 years or 20 years, when they have attained a higher degree of economic development—without being disturbed by a serious degree of criminality—for the help which UNAFEI has provided—and will increasingly continue to provide—in sharing the experience of Japan with them.

The translations of your White Papers on Crime since 1961 and of your Research Bulletins are well received in many places. Your continued support of UNAFEI—the first and only international training institute for administrators in the criminal justice field—helps to disseminate progressive attitudes and to exchange technical information. With all this, Japan stands today in a unique position to share its experience with the rest of the world, to give it the benefit of your advanced views and techniques. I applaud your efforts to date and look for continued—even heightened—efforts along these same lines in the years ahead.

Problems of Crime Control in Developing Countries

*by L. H. R. Peiris**

Most of the countries represented at this Training Course fall into the category of developing countries. In fact, it would not be wrong to say that with the exception of Japan, all the other countries represented here belong to that category. Therefore, it is of particular importance for us to examine the various aspects of prevention of crime and treatment of offenders while always bearing in mind the circumstances peculiar to the countries of this region, most of which are still going through the early stages of economic development. While our countries are engaged in a gigantic struggle to achieve economic development and independence, it is extremely difficult for these countries, which are compelled to allocate their scarce resources to various development projects according to a rigid system of priorities, to divert any substantial part of those resources to projects concerned with prevention of crime and treatment of offenders—projects which, even if they figure at all in a planned list of priorities, will necessarily occupy a place very low down, indeed, in such list. Accordingly, while our countries are in the happy position of profiting from the experience of the developed countries which have spent vast sums of money on various projects of social defence, our meagre financial resources do not permit us to adopt any such measures which entail the diversion to this field of any substantial amount of funds, which are urgently required for projects which have to be given high priority in the general development plans of our countries.

The dilemma confronting these developing countries is further aggravated and complicated by the fact that while they cannot afford the funds required for sophisticated schemes of crime prevention and treatment of offenders adopted by wealthy, developed countries, nor can they afford to ignore this field altogether, for, unless a tendency for an increase in crime is kept under effective control, it can seriously hinder the achievement of the vitally important development targets, and the successful completion of urgent development schemes in which the scarce resources of these countries have been invested.

An increase of productivity being of vital importance for every developing country, national leaders of these countries make repeated appeals to their citizens to toil harder and harder towards this goal. For some countries of the region the situation is so critical that "produce or perish" is the grim alternative facing them. But what incentive is there to produce if it is not uncommon for the inhabitants of a locality to see the fruits of their, or their neighbour's, toil, sweat and tears snatched away at gun-point by a band of gang robbers? In a small country like Sri Lanka, for which the maximum increase of productivity is absolutely vital, a prominent headline on the front page of the leading English-language newspaper on March 31, this year, read: "17 Gang Robberies Reported in March." Seventeen gang robberies in the space of one month may not appear to be such an alarming figure compared with the crime figures of big countries with large populations, but for a small country like Sri Lanka the figure was alarming enough to hit the headlines on the front page of the country's leading newspaper.

Most of the developing countries in this region are mainly agricultural, with vast numbers of farmers engaged in the production of food crops. Mechanized agriculture in many of these countries is still in its infancy, and the rural farmer continues to depend on his herd of cattle to till his field. If cattle thefts become rampant and are not effectively controlled at once, not only will the production of

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food crops be adversely affected, but also the general feeling of insecurity that will be generated among the farming population will act as a serious disincentive, and the farmers, far from increasing production, will be inclined only to produce the bare minimum sufficient for their own consumption.

In several countries of this region, the small-scale rural farmer—the backbone of the food-production drive—whose needs are few and who has succeeded in producing a bigger harvest by an extra-hard effort, often utilizes his hard-earned money in the purchase of articles like push bicycles, transistor radios and sewing machines. If these are snatched away from them by gangs of armed bandits, and their savings are either robbed or they are duped into parting with such savings by confidence tricksters, a seriously adverse effect on the vital productivity drive will be inevitable.

Lack of foreign exchange is one of the most serious problems facing many of the developing countries of the region. The strenuous efforts made by the Governments of these countries to conserve such scarce foreign exchange are often seriously undermined by the illegal activities of professional smugglers and international crooks operating a "black market" in foreign exchange.

Thus, these developing countries, however vital it is for them to utilize all their available resources for increasing productivity and for economic development, can by no means afford to neglect the field of social defence, for, if crime gets out of control, a climate of insecurity will be generated among those engaged in production, and the entire nation's efforts towards economic independence will be seriously jeopardized.

In addition to the above, there are, of course, the intangible costs of crime such as the untold suffering caused to the immediate victims and their families, as a result of crimes such as grievous hurt, rape, murder, robbery and fraud.

Quite apart from what has been mentioned above, there is a very real and substantial drain on the meagre financial resources of developing countries which have to divert a considerable portion of their revenue towards the suppression and control of crime. This would include the cost of law enforcement and the administration of criminal justice, the cost of maintaining prisons and other correctional institutions, the cost of probation and child care services, after-care services, etc. For example, in Sri Lanka, during the financial year 1969-70 (the latest for which figures have been officially published), the Police Service cost the people of the country a sum of Rs. 60,447,043 (about ¥2,538,000,000). For the same financial year, the Government voted in its annual Estimates a sum of Rs. 12,860,468 for the Department of Prisons, and Rs. 5,436,-286 for the Department of Probation and Child Care Services, making a grand total of Rs. 78,743,797 for these three Departments alone, not taking into account the expenditure on the Supreme Court, District Courts, Magistrates' Courts and Rural Courts, all of which devote a substantial part of their time to criminal cases, and also excluding the expenditure on Departments like the Attorney-General's, Legal Draftsman's, the Bribery Commissioner's, and Excise Departments. Even the above-mentioned sum of Rs. 78,743,797 alone (about ¥3,160,000,000) is by no means insignificant for a small developing country with a population of only 12½ millions and a total revenue of only about Rs. 2,500 millions.

Furthermore, in addition to the above-mentioned direct cost to the State and the tax payer, there is also the loss to private citizens and commercial institutions which not only sustain heavy losses due to theft, embezzlement, frauds and misappropriation, but also have to incur heavy expenditure on insurance, private security services and other protective measures to protect themselves from the activities of thieves and other criminals.

Many of the developing countries of the region have drawn up elaborate long-term National Plans for Economic Development. These Plans provide for programmes and targets for the development of Agriculture, Industry, Construction, Transport, Communications and Power, but in most of these National Plans, expenditures on the Prevention and Control of Crime do not figure at all. This is not altogether surprising, for to the National Planners, grappling with the difficult problem of allocating scarce national resources among vitally important development projects according to a rigid Table of Priorities to achieve the goal of economic development, the problem of crime appears to have no relevance at all or only of minor significance. However, as the very implementation of these vital development plans can be jeopardized and hindered unless crime is effectively controlled, and as these large-scale investments on development projects themselves yield additional opportunities for corruption and misuse of funds as well as the commission of other crimes against persons and property, these developing countries cannot afford to ignore this problem of social defence, or postpone attention to it until the dawn of more prosperous times after the achievement of the targets of economic development.

Therefore, it is imperative for these developing countries to profit from the experience gathered by the developed countries after the expenditure of vast sums on research and experimentation, and while postponing the adoption of the more expensive programmes until brighter times, they will have to adopt immediately only such measures as could be implemented without having to divert to this field those scarce financial resources which are needed for the more urgent tasks of economic development or, in the case of some countries, even for national economic survival.

Any measures of social defence that could be adopted by the mere enactment of legislation, provided always that such new measures do not entail the incurring of substantial expenditure by the State, would be the most attractive and feasible at the present juncture for most of the developing countries. Let us, therefore, now examine some such feasible measures.

A common device adopted by many Legislatures when an increase in crimes of a particular type has been observed is to amend the relevant criminal law by prescribing enhanced penalties for such crimes. In Sri Lanka, for instance, where a rationing scheme of essential consumer articles which are in short supply is in operation, blackmarketeers have exploited the situation, and there was an enormous increase of price-control offences as a result of unscrupulous traders hoarding such articles and selling them at exorbitant prices far in excess of the controlled rates. The Legislature intervened by amending the law by prescribing that every person who is convicted of such a price-control offence after summary trial by a Magistrate shall:—(a) for the first offence *be punished* (note: not merely *be liable to* be punished) with regorous imprisonment for a term not less than four weeks and not exceeding six months, and *in addition*, with a fine not exceeding Rs. 7,500 (about ¥315,000); and (b) for a subsequent offence, with rigorous imprisonment for a term not less than three months and not exceeding two years and, *in addition*, with a fine not exceeding Rs. 10,000 (over ¥420,000). In addition, the article in respect of which an offence was committed could also be forfeited. The severity of the above penalties could be gauged from the fact that the normal powers of punishment of a Magistrate is confined to the imposition of a sentence of imprisonment not exceeding six months and a fine not exceeding Rs. 100 (¥4,-200).

However, it is a moot point whether heavy penalties, by themselves, do serve as deterrents to potential criminals, particularly to those of the more persistent type. Even though heavy penalties alone may not be sufficient, there can be little doubt that they have their value. In the notorious Notting Hill racial riots of August 1958, where a number of attacks were made by white men on coloured immigrants, nine youths (all but one of whom were admitted by the Prosecution to be of "good character," and all of whom had pleaded guilty at their trial at the Old Bailey) were sentenced by Mr. Justice Salmon to four years' imprisonment each. The Judge's remarks just before the sentences were imposed clearly indicated that he intended the sentences to be exemplary deterrents. The attacks on coloured men came to an end, and though there were those who attributed the halting of the violence to other causes such as the increase of police vigilance, no less a person than Lord Chief Justice Parker has declared that "nothing would persuade him that these four year sentences were not a deter-

rent." Lord Parker gave a further illustration of the efficacy of deterrent sentences by citing the instance of the wave of frauds on Post Office Savings which were effectively brought under control when the courts passed deterrent sentences on the offenders.

In any event, even the limited usefulness of deterrent sentences will be nullified if there is a general feeling among the criminal community that the new laws with heavier penalties are not likely to be effectively enforced. If the offender feels that, however heavy the penalty for a particular offence is, the chances of detection are slender, the mere fact that the penalty for the offence is a heavy one has no effect on him. He is confident that he can commit that offence and get away with it. The classic illustration of this proposition is the instance often cited in favour of the abolition of capital punishment: when the penalty for picking pockets was death, and hangings were carried out in public to serve as deterrents for others with similar inclinations, several members of a crowd which had gathered to watch the public execution of a pickpocket, later found that their pockets had been picked by other pickpockets who had been fearlessly plying their trade even as one of their colleagues was paying the supreme penalty of the Law for that very offence within their very sight.

There can be little doubt that certainty of detection acts as a far more powerful deterrent on potential criminals than the heaviness of the penalty prescribed for the offence in the law. Statistics from countries which have abolished or suspended capital punishment have proved in almost every case that there was no increase in the murder rate after the abolition or suspension of the death penalty. The person who carefully plans a murder in cold blood takes every possible precaution to avoid detection—though of course the best laid plans often miscarry. It is not even a calculated risk that the criminal takes. He is confident that he will not be caught; so that the penalty that will have to be paid by those others who are detected, arrested and convicted is not relevant to his calculations.

If criminals are to be deterred, the machinery of law-enforcement should be so efficient that persons criminally inclined would be made to feel that the chances of their being detected, arrested and convicted would be almost certain. The potential criminal must be convinced that "crime does not pay."

To achieve this goal the first essential is that there should be a police force with the highest possible degree of efficiency and integrity and equipped with the most modern equipment. The most effective way of detecting crime and deterring criminals is of course to increase the number of policemen to the maximum possible degree—for nothing deters a criminal more than the sight of a policeman. Even armed gangs show a tendency to disappear the moment a police uniform or patrol car is sighted. This was proved to the hilt during World War II when the entire Danish police force was placed under arrest for seven months in 1944 by the German occupation forces. There was a spectacular increase in robberies and larcenies, but not in crimes such as fraud and embezzlement. Similarly, in England when the Liverpool Police joined in a strike, crimes multiplied and there was even widespread looting. Police strikes elsewhere, too, (for example, the Melbourne Police Strike) produced the same results. Even those who contend that it was not the four-year prison sentences that put an end to the Notting Hill racial riots referred to above, contend that one of the principal factors was the increase of police patrols and vigilance, and that the mere appearance of more constables in the streets of Notting Hill would have been by itself an effective deterrent.

Many crimes are committed which never even come to the knowledge of the Police—the so-called 'Dark Number' of crime. Why are so many crimes not reported to the Police? In many cases, the victim, *e.g.*, of crimes like rape and other sexual offences, wishes to avoid the embarrassing publicity that a complaint, followed by a court case where the victim would be the principal witness, would inevitably entail. Crimes like abortion come to be known only in the rare event of something going wrong in the illegal

operation resulting in the death or hospitalization of the woman. Other crimes such as thefts and shoplifting do not come to the knowledge of the Police because the victims think that the possibility of the apprehension of the thief is so remote that a complaint would be a waste of their own time. The shopkeeper also fears that frequent apprehension of shoplifters or the employment of conspicuous private personnel to keep watch on customers would scare away even genuine customers, resulting in the loss of business. So he writes off the losses by shoplifting as part of the risks of his trade. Then there are cases where no complaint is made in the case of frauds and embezzlement committed by employees, *e.g.*, the Chief Clerk of a reputed firm of Solicitors, or the accountant of a Bank or Insurance Company, because the resultant publicity may shatter the confidence of the employers' clients and customers. It is not only trivial offences that go to make up this 'Dark Number.' Even in the case of homicide, the crime which is perhaps the least likely to be unreported, a secret killing by a member of the same household administering a small dose of poison over a period of time can pass off as a death by natural causes. Then, in some countries, the image of the Police in the eyes of the public is so bad, and the public has so little confidence in the Police that they avoid going to Police Stations wherever possible.

The proverbial 'Law's delays' which result in the complainant and witnesses having to waste a number of days attending court before their case is eventually taken up for hearing, and the bullying tactics adopted by some defence counsel in cross-examining complainants and witnesses are also factors that result in crimes being unreported. "The complainant," it has been said, "is the most unprotected member of society. He may be abused in the Courts, intimidated, inconvenienced, ignored, and forgotten. Who thanks him for pressing a complaint against a burglar or drunken driver? Yet his cooperation and his courage are invaluable in the pursuit of justice."

Although it is, of course, impossible even roughly to estimate the real magnitude of this 'Dark Number,' responsible opinion has estimated that it could be in England as much as four times the number of crimes known to the Police. Even of the number of crimes known to the Police, only about 1/3rd end up in a conviction in England, so that one is left with the alarming fact that perhaps only about 1/12 of those who commit crimes are sentenced by the Courts, and of the other 11/12ths by far the larger number get away scot-free without the police even hearing of their offences.

The most deplorable consequence of this situation is that in the case of every one of these offences which the police do not hear of, there will be so many ordinary citizens, such as acquaintances of the victim or those living in the neighbourhood where the crime was committed, who come to know that though an offence has been committed the offender has got away with impunity—and this would have the unfortunate effect of at least some of them, not only the victims themselves, but also the neighbours and acquaintances of the victims as well as the offenders, losing their respect for law and order, and tempting them—especially the young—to flout the law themselves.

As stated earlier, in order to arrest the tremendous increase in crime which has been a most disturbing phenomenon almost all over the world in recent times, prescribing heavy penalties alone will not be of any avail, unless the potential offender is also made to realize that the chances of his being detected and punished are virtually certain. Superintendent O. W. Wilson of Chicago's Police Department put it succinctly when he said: "If it would be possible to have every criminal get a sharp punch in the nose within five minutes of the crime, we would have a tremendous decrease in the amount of crime. Punitive treatment is certainly a factor in preventing crime—and it is not the severity of the punishment as much as the swiftness and certainty of it that will deter crime."

While there has been an alarming increase in grave crime in almost all, developed as well as developing, countries of the world, Japan has the distinction of being one of the very few countries, if not the only country, where crime has declined. This of course is not attribut-

able to any one cause, but is the result of a variety of factors, not the least of which is the national character of the Japanese people and Japan's ancient traditions and rich culture. However, when the other day we visited the National Police Agency and the Metropolitan Police Department in Tokyo, we saw at least one of the causes for the decrease of crime here in Japan—the superb efficiency of the marvellously equipped Police Force of Japan. Even numerically Japan's police force is superior to those of most countries, for here in Japan there is one police officer to every 593 of the population. In Sri Lanka, for instance, the ratio is more than double—one policeman to every 1200 of the population.

Apart from strengthening the police numerically, it is generally accepted that the quality of the personnel should be improved by attracting to the force men of a higher standard of education, intelligence and ability, with the offer of better remuneration and conditions of service.

Furthermore, today's sophisticated criminal uses fast cars and the most modern equipment, and a police force which is not equipped with the latest technological aids and the most up-to-date and sophisticated equipment will be quickly outwitted by the criminals, and will for ever be fighting a losing battle. Modern equipment such as a large fleet of powerful vehicles, including fast patrol cars equipped with the very latest radio communication systems which patrol the main cities 24 hours a day, all controlled by a central agency which is in a position to dispatch the nearest patrol car to the scene of a crime in a matter of seconds, and which can be immediately contacted by any citizen by dialling a number (such as 110 in Japan) has long been supplied to their police forces by countries such as Japan. Apart from the above, the police of developed countries like Japan are in the happy position of being supplied with other sophisticated equipment like computers and helicopters, which are invaluable aids for a modern police force.

But all this means a heavy increase in expenditure on the police force which most developing countries cannot at all afford. In the poorer developing countries, even patrol cars are, if at all, available only in small numbers and perhaps only in the capital city, for, while they are no doubt extremely useful, as are helicopters and other up-to-date equipment, they are very costly and have to be imported from abroad by the expenditure of scarce foreign exchange which has to be conserved for the importation of the country's more basic needs such as food and clothing, and industrial raw materials.

As an example some relevant figures relating to the police forces of Japan (population about 104 million) and of Sri Lanka (population about 13 million or 1/8th that of Japan) may usefully be compared. While Japan spends U.S.$1,087 million on its police force, Sri Lanka's expenditure is only U.S.$10 million. Japan's police force has a fleet of 16,306 modern vehicles (other than motor-cycles) while Sri Lanka has only 1,204. Even of these 1,204 vehicles, 613 (or more than half) were over eight years old (according to the latest Administration Report of the Inspector-General of Police), and a further 183 were over 5 years old. That is, 796 or almost 2/3rds were more than 5 years old.

One solution available to developing countries which cannot afford to spend more on their police forces is to make more effective use of the existing forces. In many countries for one alleged reason or another, the powers of the police are considerably curbed with the result that they have often to look on passively even though they know that they are capable of dealing with the criminal element if they are given a freer hand. In Sri Lanka recently where there has been a spate of thefts and robberies of jewellery and other valuables from the persons of pedestrians and train and bus travellers, the police felt themselves so helpless as to be constrained to appeal to women not to wear jewellery, and to the general public to keep indoors after 10 p.m.! In the words of the Combined Council of Law Enforcement Officers of the State of New York: "The time has come to restore to the police their proper authority to effectively carry out their duties. In these times of mounting danger from the criminal element, it is the height of foolishness to handcuff law enforcement at the expense of public safety."

The police are in the front line in the war against crime. And they have a difficult and unenviable task to perform even without an undue restriction on their powers; they surely need and richly deserve the fullest cooperation of every law-abiding citizen. In his book, "The Police," B. Whitaker, describing "the Paradox of the Policeman in our Society" has very aptly declared:

"The public uses the police as a scapegoat for its neurotic attitude toward crime. Janus like, we have always turned two faces toward the Policeman; we expect him to be human, and yet, inhuman. We implore him to administer the law, and yet, we ask him to waive it. We resent him when he enforces the law in our own case, yet will demand his dismissal when he does not elsewhere. We offer him bribes and yet denounce his corruption. We admire violence . . . but condemn force by the police on our behalf. We tell the police that they are entitled to information from the public, yet we ostracise informers. We ask for crime to be eradicated, but only by the use of sporting methods."

One method of making more effective use of the existing police forces in developing countries is to take off the hands of the police purely administrative and clerical duties of a routine nature, on which they now waste much of their time, and to deploy them on the field on actual police duties.

Another method is to relieve police officers of the time-wasting task of pursuing petty offenders such as violators of parking laws, and to get them to concentrate their attention on the real criminals. The colossal amount of time that the police have to devote to traffic offences in some countries can be gauged from the fact that in England as many as 2/3rds of the convictions in all courts, including the higher courts, are for traffic offences. There were in 1968 in England, no fewer than 1,014,-974 findings of guilt in Magistrates' and higher courts for motoring offences. Even a developed country like England where a few years ago, for the first time in its history, the number of serious crimes committed in a year topped the one million mark, can scarcely afford to let its police force devote so much of its time on traffic law violators.

Any police officer will readily concede that it would be well-nigh impossible for him to perform his duties of law-enforcement with any degree of success without the goodwill and assistance of the private citizen. In these circumstances, another cogent reason why policemen should as far as possible be relieved of the time-consuming job of prosecuting petty technical offenders like violators of parking laws, is that the police thereby lose the goodwill and cooperation of a substantial portion of the population who regard themselves as victims of police harassment, and will not be so ready to extend their cooperation to the police in the enforcement of the graver prohibitions. This does not, of course, mean that all traffic offences should be regarded as minor violations, and taken off the hands of the police. Traffic offenders have become a serious menace to the public in countries like Japan where, for instance, no fewer than 16,756 persons were killed and 981,096 were injured in 1970 —which works out at 46 persons killed and 2,687 injured every day of the year. A slight decrease has been happily recorded in 1971, but the number of victims of accidents is still as high as 45 killed and 2,602 injured each day.

A valuable example from Japan which can be adopted in other Asian countries for the purpose of relieving the police as well as the courts of the waste of much of their time is the introduction of the Traffic Infraction Ticket System, which has the added advantage of saving valuable manhours of the violators themselves and witnesses, who have to stop their normal avocations and attend court on a number of days, and also the advantage of saving these offenders from the stigma of being branded as criminals. In Japan, in 1971, the ticket system had been adopted in the case of 79.8 per cent of all adult violators of traffic laws, and to 453,518 juvenile violators, and only 4.6 per cent of the adults and 1.8 per cent of the juveniles have failed to pay the penalty fine within the prescribed time. This would result in a substantial addition to the Public Revenue as well.

Also, if the less serious traffic law violations such as parking in a prohibited area are allowed to be handled by non-police officers such as Traffic Wardens, and other

minor offences such as the possession of unlicensed liquor are taken off the hands of policemen and entrusted to others, the police forces of developing countries, without the incurring of any additional expenditure on the increase of their strength, will be able to play a far more effective role in the suppression of the growing menace of grave crime in those countries.

An invaluable aid available to the police in the detection of offenders and bringing criminals to book is the fingerprint. Fingerprints help not only in the tracing of the criminal from a print left behind by him at the scene of the crime, but also tracing the previous criminal history of an offender. Fingerprints are scientifically classified according to certain characteristics, and it is possible to identify a given fingerprint in a matter of seconds if it corresponds to a print which is in the files. It has been estimated that the chances against a single fingerprint of one man being identical with the print of the same finger of another are 64,000 millions to one. The chances against all five fingerprints of a hand tallying with those of another man's hand are much more than 32 million millions to one. Fingerprints can even be wired by the police of one country to those of another. Although some criminals take the precaution of wearing gloves, innumerable are the cases in which a criminal has been identified and brought to book as a result of a solitary tell-tale fingerprint left behind by him either at the scene of the crime or on a weapon or vehcile used in committing the offence. Although fingerprints have over and over again proved their worth in the detection of crime for over 70 years now, the police in most developing countries are hampered in making the fullest possible use of them by out-dated laws which could quite easily be amended or repealed as a means of checking the growing menace of crime. England too has been very conservative in this respect, and most of those developing countries whose laws have been modelled on English Law, continue to hinder their police with this disadvantage. In England, only if a person is in custody on a charge can he be compelled to have his fingerprints taken, and they can be filed and kept on record only if the case ends in a conviction. If he is acquitted of the charge the Law makes it obligatory that all the prints as well as the negative from which they were printed be destroyed or handed over to the acquitted accused. Furthermore, by no means all offences are "fingerprintable offences," so that the Criminal Record Office in England contains the fingerprints of only a very small fraction of the population of the country —not even the prints of all those who have been convicted by a Court of Law. The only prints available to provide this vital aid to the police in the detection of crime are the prints of those who have been convicted of "fingerprintable offences."

According to the latest Police Administration Report, in Sri Lanka, which at the relevant time had a population of about 12½ million, the number of fingerprint slips of males and females on record amounted to only 144,267.

In 1949 the English Police had to make an appeal to all the residents of a locality where a particularly brutal murder of a little child had been committed to *consent* to having their fingerprints taken, as the only available clue was a fingerprint which did not tally with any on the Police Records. The public consented because its conscience had been outraged by the brutality of the crime; also, perhaps, for the more persuasive reason that the police in its appeal made a firm promise that after the investigation was concluded, all the prints except those of the murderer would be destroyed. The police, having thus obtained the consent of the local population took the unprecedented step of taking the fingerprints of every male in that area who was over the age of sixteen, without anyone raising an objection. The efforts of the police were duly rewarded, for the killer was ultimately traced by means of the tell-tale fingerprint; he turned out to be an insane man who had no previous criminal record.

In the United States, the police do not labour under this disability, for the Federal Bureau of Investigation had on its files, as at a few years ago, about 152,000,000 fingerprints of which 34 million were what are described as criminal fingerprints and 118 million civil fingerprints. This is another way in which developing countries, by merely amending an outdated law and making it compulsory for all adults to give their fingerprints, can take a positive step towards controlling crime—a step which

will equip the police with an invaluable aid, and deter the potential criminal with the thought that the chances of his being detected will be considerably greater. The collection and filing of such a quantity of fingerprints will no doubt be a costly exercise, but once the initial expenditure is incurred, the cost of maintaining the records up to date thereafter will be negligible. For the initial outlay it would be possible for a developing country to obtain aid from developed countries — which have been known in the past to be willing to finance such projects as part of their Foreign Aid Programmes. For instance, the much more costly exercise of issuing identity cards to all adult citizens of Sri Lanka, which is now being carried out, is being financed by project aid from a developed country. It will be an investment which without doubt will prove to be well worthwhile. These fingerprints will be invaluable to identify not only the perpetrator of the crime but sometimes also the victims. Sometimes a corpse is washed ashore or is found in an isolated spot, and days pass before its identity is established. Meanwhile, every day that passes without the corpse being identified makes it easier for the criminal to escape detection and apprehension. In Sri Lanka, for example, in 1969–70, of 502 unidentified dead bodies fingerprinted during that financial year, as many as 60 were identified as those of criminals, from the very small number of fingerprints available on Police Records. During the same year, 4,195 scenes of crimes were examined for fingerprints, and decipherable fingerprints were found in 1,988 of them; and in 201 cases the criminal was successfully identified.

Another essential measure that can quite easily be adopted by developing countries in their effort to control crime is the rigorous control of the possession of firearms. This is another sphere in which a valuable lesson can be learnt from Japan where there is a very strict and effective check on the possession of guns, revolvers and other firearms by private citizens. This is no doubt one of the factors that has contributed towards Japan's achievement of registering a decrease in grave crime while in almost all other countries crime has been increasing by leaps and bounds. In the United States where crime figures have attained staggering proportions in several States, it is often admitted by Americans themselves that the ease with which firearms can be obtained—even by mail order —has played no insignificant part in the aggravation of its crime problem. As one European observer has wittily remarked: "Churches, schools and restaurants may be segregated in the United States; but gunshops are open to one and all—black or white, moron or psychotic."

In developing countries, most of which are mainly agricultural, even where there is a fairly strict licensing system in operation for the possession of firearms, it is all too easy for private citizens to obtain licences on the pretext that guns are necessary for the protection of their crops against wild animals. It should not be difficult to devise a less dangerous means of saving such crops from wild animals than to arm such a large proportion of the population with deadly weapons.

Yet another method by which crime can be reduced without incurring any heavy expenditure of State funds, is the taking of meaningful steps, through legislation as well as by propaganda through the State radio and other mass communication media, to reduce the opportunities for criminal activity, which are now readily available to potential law-breakers.

A remarkable fact noticeable upon an examination of the criminal statistics of many countries is that by far the largest number of crimes consists of offences against property. An analysis of the relevant figures for Britain over a period of half a century has revealed that throughout this period this pattern has remained constant. In Britain during the first half of this century, crimes against the person, such as homicide, manslaughter, rape and indecency accounted for only 4% of the total, while offences against property, with or without violence, amounted to the staggering figure of 90% of all reported crimes. The position remains more or less the same in Britain even today. Theft and the allied offences of robbery, burglary, fraud, blackmail, and receiving of stolen property accounted for 71% of the persons appearing before Assizes and Quarter Sessions in 1968, and for no less than 89% of persons brought before Magistrates' Courts on indictable offences.

Although the crime statistics of countries of this region, where they are available and have been analysed, do not indicate such a fantastic preponderance of offences against property, still it would appear that even in these countries, such offences do constitute a clear majority of all cases known to the police. In Japan, for example, an examination of the figures for 1971 reveals that 58.9% of all Penal Code offences known to the police were offences against property (theft—54.7% —and robbery, fraud, extortion and embezzlement). In the Summary of the White Paper on Crime, 1971, it is mentioned that "until 1964, persons suspected of theft outnumbered all others, but starting in 1964, professional negligence causing homicide or bodily injury has exceeded theft in the number of suspects." However, even in 1970, of Penal Code offences known to the police—1,932,401 in all—no fewer than 1,039,118 or 53.8% were of theft, while professional negligence causing death or injury accounted for 654,-942 or 33.9%. In Sri Lanka, of 37,011 cases of grave crime reported to the police in the year 1969–70, 25,331, *i.e.*, 68% or well over 2/3rds were crimes against property. Even in the United States, where the impression in the minds of most foreigners is that there is a tremendous amount of violent crime, in 1965 only 13% of the major crimes were crimes of violence (*including* robbery), while 87% were non-violent crimes against property.

Many owners of property, through their carelessness or folly, unwittingly contribute to this increase in crime by not taking elementary precautions to safeguard their own property; and by presenting tempting opportunities to other citizens, some of whom may succumb to such temptation on impulse at a weak moment, turn otherwise law-abiding citizens into criminals. Many of them may never have become law-breakers if they had not been sorely tempted in that way by the carelessness or folly of the owners. A shopkeeper with a large stock of small articles of little value and with a poor system of book-keeping may not even notice the theft of a small portion of his large stock. Another shop-owner who does notice that some part of his stock is stolen, may find that the expenditure involved in taking extra precautions such as the employment of special private detectives will exceed the value of the articles stolen, and decide to write off the loss caused by the petty thefts. Even though such owners themselves may be able to afford to bear up such losses with ease, still society as a whole cannot afford to ignore the problem, for, when—say, a juvenile—otherwise law-abiding, steals on an impulse by succumbing to sudden temptation, and later finds how easy it was to commit the offence and get away with it undetected and unpunished, he will most likely repeat the theft and later graduate into graver crime. He will get the feeling—by personal experience—whatever anybody else may say, that crime does pay. Furthermore, the careless owner who has provided an opportunity for law-breaking will not always ignore the loss, but will make a complaint to an already over-burdened police, which costs the State so much to maintain and which can more profitably to society divert its energies and resources to the suppression of grave crime than wasting them in pursuing petty pilferers. Some countries, therefore, have even gone to the extent of *punishing* an owner who has lost his property through his own carelessness. For instance, in West Germany, an owner who leaves his car parked in the open without securing it against theft is committing a punishable offence. Some may be outraged at the mere suggestion of such a measure, and consider it far too drastic a step, and that it would be a gross injustice to punish, not the perpetrator, but the victim, of the crime. In the language of an ancient saying well known in my country, a Ceylonese may describe it as "similar to the man who has fallen down from the top of a tree being gored by a bull which was tethered to it." Such persons will argue that if someone is so careless as to risk the theft of his own property—*e.g.* by leaving it in an unlocked car, he alone will suffer by his own folly, and it should be nobody else's concern. It should be pointed out, however, that there are other aspects of this question, which should make it everybody's concern to see that such careless owners are checked—if not for their own good, at least in the interests of society. The theft of the property may cause loss at least to an Insurance Company, and increase the work of

the police. Even more important, the car-owner who lost his property by leaving it in an unlocked car in the street will increase the risk for other citizens, for, the thief who succeeded in getting away with the loot will most likely repeat his offence over and over again. However horrified one may at first feel at the thought of punishing the victim of a crime, a penalty imposed on an owner who carelessly leaves his property unattended, and thus offers temptation to potential thieves, may perhaps be more effective and certainly will be far more economical than most other devices of reducing the total volume of thefts which figure so prominently in the criminal statistics of most countries. It has been estimated that, if traffic offences are excluded, "three-fourths of the time and energy of criminal justice administrations all over the world are absorbed by economic crimes" (which would include, apart from thefts and other offences against property, crimes such as income-tax evasions, violations of trust, exchange control and monopoly laws, price-control offences, etc.).

To act as an effective deterrent, not only should the criminally inclined feel that speedy detection and arrest would be certain, or at least most likely, but also there should be the belief among them that once they are apprehended and prosecuted, the likelihood of their being convicted would be very real. What steps which would not be costly in terms of money can be taken by developing countries of this region towards this end?

The most effective measure would appear to be to amend certain long-standing provisions of the laws of criminal procedure and evidence which are loaded heavily in favour of accused persons and allow the guilty to escape punishment. With the notable exception of Japan, where 99.9% of those prosecuted are convicted, in many other countries of this region it would be true to say that more than half of those charged escape punishment, by their cases ending up in acquittal—if one excludes the minor cases where the accused pleads guilty, and take into account only those cases that are contested. Thus in any contested case it can be said that the chances of an acquittal are greater than those of a conviction.

It was a man with such vast experience in the field of law enforcement as J. Edgar Hoover who said some years ago:

"We are faced today with one of the most disturbing trends I have witnessed in my years of law enforcement: an over-zealous pity for the criminal and an equivalent disregard for his victim."

One important factor which contributes to the high rate of acquittal of criminals in many countries is the inadmissibility in evidence of confessions made by accused persons. In contrast, in Japan, confessions are always led in evidence at the trial, and, as noted above, Japan has succeeded in achieving a conviction rate which is as high as 99.9%.

In England, in terms of the Judges' Rules, first formulated in 1912 and last revised in 1964, a confession made to a police officer cannot be led in evidence unless certain formalities had been complied with by the police officer before recording the confession — the most important of which being that a caution should be given to the accused in the form:

"You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

In countries like Sri Lanka, which were earlier under British rule, *all* confessions made to Police Officers, Excise Officers, etc., are completely shut out from the evidence, and under no circumstances can they be led in evidence whether a caution was administered or not. It is time to consider the modification of such laws which help the criminal to get away with impunity, for, greater the number of criminals acquitted, the more difficult will it be to control the increase of crime.

Punishment must not only be certain, but, to be most effective, it must also be swift. According to that time-honoured dictum, "Justice delayed is justice denied." One of the principal ways in which this goal can be achieved is to divert from the Courts as many minor cases as possible and leave them free to deal with the graver cases and deal out swift justice to the real criminals.

One very effective measure which can, with confidence, be recommended, from my personal experience, for adoption for this purpose is the establishment of Con-

ciliation Boards on the lines of those in Sri Lanka, which have yielded very successful results since their introduction about 14 years ago. As far as I am aware, Sri Lanka was the first country to adopt this measure (which is different from the Panchayats of India), based on the reconciliation of parties and keeping them out of the courts. In most Asian countries, before industrialization and the rush of the population to cities, when a dispute among neighbours arose on matters such as the distribution of the produce of a land owned in common, or when a petty theft took place, complaint was made to a respected village elder who was usually able to bring about an amicable settlement of the dispute or have restitution made to the victim—thus preventing further disputes between the parties, which ultimately end up with graver crimes. What the Conciliation Board Act of Sri Lanka did was to adapt this basic principle to the changed circumstances of today's society, and to give it statutory recognition and sanction. Under this Act, the Minister of Justice appoints for a given area, usually the area within the jurisdiction of a Village Council, a Conciliation Board of about 20 to 25 members, selected by the Minister after considering the recommendations of bodies like the Rural Development Society and the Cooperative Societies of that area. The names of the members of the Conciliation Board are published in the Government Gazette, one of them being appointed the Chairman, and they usually hold office for about three years. The appointments are honorary, and no payment whatever is made to the members, while a very small clerical allowance is paid to the Chairman, who is supplied also with the necessary stationery including summons forms, which may be posted by him without payment of postage. Thus the cost to the State of these Boards is negligible. Although the appointments do not carry any salary or allowance, there is tremendous enthusiasm to get appointed to these Boards, it being considered an honour, with some official status, by most, and an opportunity for useful social service by the others.

The Law provides that certain specified minor crimes and offences, as well as civil disputes, shall in the first instance be referred to the Conciliation Board of the area before resort can be had to the Courts. The Police, too, are accordingly obliged to refer all such cases first to the Conciliation Board. Upon receipt of a complaint, the Chairman sends out summons requesting the attendance of the relevant parties (obedience to such summonses is obligatory under the Act) before a panel of three conciliators selected by the Chairman to deal with each dispute. Here, too, the Chairman is in a position to select from the full panel the three members who are most likely to be respected by the parties to the dispute. At the meeting of the Board, where no lawyers are permitted to appear, the three members attempt to reconcile the parties and settle the dispute amicably. If the dispute is of a civil nature, a fair ruling will be given, based not merely on admissible evidence as in a Court, but also on the personal knowledge of the Board members who are usually neighbours. If it is a criminal offence, the Board will usually request the party at fault to make amends by tendering an apology or by restitution.

The high percentage of the cases in which these Boards in Sri Lanka have in actual practice succeeded in effecting a reconciliation, and in which the Board's ruling has been accepted with good grace by both parties, is amazing. Under the provisions of this Act, no Court can entertain an action or complaint in matters governed by the Act unless it has been first referred to the Board; and after the Board has given its ruling after hearing the parties, the Act provides that any party dissatisfied with the ruling may within a specified time inform the Chairman that the ruling is unacceptable to him. In such event, the Chairman is required to issue a certificate to the aggrieved party (on a printed form, also supplied by the State) that it has failed in its attempt to settle the matter amicably; and a Court is empowered to entertain any action in respect of the matters governed by the Act, only if the complaint is accompanied by such a certificate from the Chairman.

In actual practice in Sri Lanka, it is only in a minority of the cases that the occasion arises to issue such a certificate referring the parties to Court, and the successful operation of this Act has resulted in thousands of cases, which would otherwise have

further cluttered the heavily crowded trial rolls in most Courts, being kept out of the Courts altogether. A very salutary by-product of this system is that the rancour and the bitterness, both among the victor and the vanquished (apart from saving them all the expense of costly litigation including lawyers' fees), as well as the harbouring of a sense of grievance against the witnesses who gave evidence for the opponent—which are inevitable at the end of a Court case—do not follow the amicable settlement of a dispute by a Conciliation Board. It is this type of bitterness that leads to the commission of further crimes by the parties who thereby attempt to take revenge from the opposing party and his witnesses.

SECTION 2: COMPARATIVE STUDY SESSIONS

Summary Report of the Rapporteur

1st Session: "Prevention of Crime"

Chairman: *Mr. L. H. R. Peiris*
Advisers: *Mr. Kiyoshi Hara and*
Mr. Masaaki Otani
Co-Chairman: *Mr. Akio Kasai (Japan)*
Rapporteur: *Mr. Habib-Ur-Rahman Khan (Pakistan)*

Introduction

The Chairman opened the first session, explaining briefly the ground rules and the boundaries within which the subject of crime prevention was to be discussed. It may be mentioned that the group consisted of five police officers, one public prosecutor and a prison officer. Since the subject of crime prevention is very vast, it was decided that the discussion should be held on the following points:

1. Role of the Police
(a) To what extent the police be made responsible in this field.
(b) Should the police carry arms during patrol?
(c) Importance of speedy investigation and trial.
2. Role of the Community
(a) By extending cooperation in reporting crime and giving evidence.
(b) By eliminating temptation.
(c) By firearm control.
(d) To what extent foul and obscene literature, cinema, and T.V. were responsible for the increase of crime.
(e) The role of parents, teachers and the church in this field.

Role of the Police

As the discussion opened, the majority of the participants agreed on the point that crime prevention was one of the most important problems facing the world today. History of crime was as old as man himself and since the time man occupied the globe he has been endeavouring to overcome this scourge. Man of the 20th Century has landed on the moon, but he has miserably failed to overcome this problem. As a matter of fact, the crime rate has touched alarming peaks in the modern world. The daily press reports bear testimony to this state of affairs. No doubt much research was going on in this field, but in spite of legislative and other measures, we have failed to stop the onward march of crime.

In this context, it was agreed that the police played an important role in the prevention of crime. Officers from some of the developing countries pointed out, that unfortunately in their countries the police alone was held responsible and society did not share the load. If there was increase in crime, the police was blamed, and the people forgot various other factors such as political instability, inflation or influence of bad surroundings. In developed countries, society was playing a very active role. Everybody agreed that "Prevention was better than Cure." If we are able to prevent crime, or keep it to the bare minimum, society remains safe. This would also save much expenditure incurred on investigation, trial and after-care services. Failure in this field or failure at this stage of prevention results in bringing into operation other agencies of the State like the judiciary, jail and correction agencies.

With regard to the policy of carrying arms while on patrol, it was mentioned that in Afghanistan the policeman was normally armed. This was because the people carried arms without much restriction. In Viet-Nam, too, the policeman carried arms because of local conditions and a possible threat of Communists. In Pakistan and Laos, the policeman was armed. In Japan, before the war, the policeman carried the sword but now he was carrying the revolver as the social conditions had changed. The fact

that in England, the policemen never carry arms and that they were proud of this fact, was also discussed. The view was also expressed that it was the police uniform which commanded respect and obedience and not the weapons. Another point of view was that weapons have a deterrent effect on gangsters and anti-social elements. The house in the end agreed that it should be left to the local circumstances, and the general atmosphere and situation, and that no hard and fast rules could be laid down in this behalf.

Speaking generally on the subject of prevention, it was suggested that policemen should be asked to live with the community and not in police colonies. They should mix with the community freely, educate them and win their confidence. The suggestion was opposed by a section of the participants in view of the fact that the image of the police was not good in certain countries and that it would be unwise to let them loose, particularly the lower ranks, who have yet to learn how to behave with the people. Living in barracks or in the police stations was also important, so that the men could be collected easily in case of emergency.

When a question regarding inadequate strength of the police force was raised, it was suggested that private citizens should be enrolled as voluntary police officers, in the same manner as 50,000 voluntary probation officers were enrolled in Japan. The Japanese participants explained that such organizations were in existence in Japan, and that their function was to educate people on good morals. Volunteers were also available for traffic control. It was however difficult to recruit volunteer police on a large scale as it also carried responsible duties and powers. At this stage another point was raised that many policemen were engaged on non-police duties or various other duties which could easily be taken away and entrusted to other agencies, such as traffic control, issue of tickets, collection of coins from parking meters, and paper work of a routine nature. In America many such duties were being performed by volunteers, particularly on the occasion of festivals, sports functions and Saturday nights. Those volunteers were given only a pair of uniforms, a badge and an invitation to an annual banquet.

A question was posed to the participants asking their views if the rise and fall in crime could be used as a barometer to judge the efficiency of the police. It was explained that sometimes more crime comes to light because police was more active and efficient. The question, however, was difficult to answer in a straightforward manner for reasons more than one. Normally people do judge the efficiency of the police from crime charts, which was not a correct yardstick. At times, crime goes up in spite of the best efforts of the police and sometimes there is a low crime rate without apparent cogent reasons. However, the best yardstick can be the percentage of detection, as rise and fall of crime in general is due to multifarious factors.

Emphasizing the importance of speedy investigation and trial, the class referred to the age-old saying that "Justice delayed is justice denied." Prompt investigation and trial could play an important role in preventing crime. At this juncture, the role of the public prosecutor and the positive attitude of the courts in Japan due to which trials finished quickly and the rate of conviction was 99.97% were explained. A section of the participants, however, wondered whether, in Japan, the defence counsel were very passive. This was contradicted by Japanese participants who explained that the investigation was very fair and almost foolproof, which resulted in a quick trial and a high rate of conviction. This was also said to be due to the high percentage of confessions by the accused. In 30% of the cases prosecution was suspended and this added to the high rate of conviction, because in such cases, accused was considered guilty. Another question was posed, if a cue could be had from the phenomenon of nature, wherein if a man violated a law of nature, for instance, if he put his finger in fire, the investigation, trial and punishment were very prompt, and that was why no person, not even an insane or neurotic person or a child, would get his finger burnt again. The house as a whole agreed on this point that speedy investigation and trial

were very important and that there could be no substitute for this.

It was also emphasized that the police should be better trained, equipped and paid well to enable them to discharge their duties more efficiently.

It was pointed out that one of the obstacles to speedy investigation was that in certain countries like Malaysia and Laos, it was very difficult to get the co-operation of witnesses, particularly Chinese and Viet-Namese. People belonged to different races and those of one race did not like to incur the displeasure of the others. A section of the people considered it a sheer waste of time.

Role of Community

The class as a whole agreed with the modern concept of criminologists and sociologists that crime was the product of society. And if this was so, society must own its product and extend full cooperation. In olden days, punishment was given to fit the crime, and in modern times, it is designed to fit the criminal. In future, the treatment and prevention will have to be more at society level or pre-delinquent stage. Unless this was done the problem would continue swelling. The point was further illustrated by quoting an example that as in the case of cleanliness it was the duty of every citizen to keep the surroundings clean. If most of the people start throwing dirt around the whole day, a couple of janitors cannot keep the city clean.

It was suggested that obscene films, advertisements, and unhealthy literature played a very active and destructive role in spoiling the people, in particular, the younger generation, and that this should be stopped. It was pointed out that the attitude of society in this regard was in fact paradoxical. For instance, it was unlawful for children to smoke and take alcohol, yet the people had installed slot machines in every street-corner, where cigarettes and beer could easily be obtained by anyone. Another opinion was that it was the up-bringing and the basic education which mattered and not such atmosphere. For instance, there were no slot machines in many countries, yet one could see teenagers getting drunk by taking country-made liquor. Experience showed that the more restrictions are placed on human conduct, the more it revolts. The best thing was education and training, which should inculcate self-reliance and self-restraint, as it was difficult to teach morals by legislation. There are numerous instances where people make a profession out of such prohibitions. The best method, therefore, would be to achieve the object by education and positive persuasion.

It was suggested that in this sphere, Government should take the initiative, in moulding the thinking and attitude of the people. A question was posed as to whether the police should act as educators also. A lively discussion followed. It was pointed out that the duty of the police was to enforce the law and not dabbling in social customs and good morals. The class agreed about this up to a point. Since the image of the police in most of the developing countries was not good, if this duty is also assigned to the police, the results would be anybody's guess.

The house also noted that many of the crimes were not reported by people on account of various reasons. Until and unless most crimes are reported it would be difficult to have full control over crime.

The group then wanted the house to discuss the role of the press. It was felt that this was a delicate matter. The Constitution of most countries guarantees the freedom of the press. This media could be controlled, but only to a point. At this stage it was mentioned that the press played a positive role as well in crime control, by giving publicity about absconders and so on. It was doubtful whether the press as such was responsible for spreading crime. However, by giving wide publicity to a gruesome murder, it sometimes creates resentment in society, because after reading the newspapers, a citizen's sense of justice stands outraged. He immediately feels that such a thing could as well happen to him. It also

undermines the authority and efficiency of the Government and the law-enforcing agencies.

In summing up, the house agreed that it was the bounden duty of parents, teachers and the church to educate the children and plant a built-in check in their personality, so that temptations, foul atmosphere and unhealthy literature do not put them off the track so easily. A weak man catches even a minor infection, whereas in the same surroundings a healthy being remains immune. The most important thing is to convince them about the role and importance of permanent values in life.

The house also felt that it was the duty of the Government of every country to endeavour to keep a very strict control over firearms. Japan was quoted as an example where the Government had strictly restricted the use of arms and no one was permitted to have firearms except for games. This was certainly one of the main reasons for the decline of the crime rate in Japan.

Summary Report of the Rapporteur

2nd Session: "Institutional Treatment"

Chairman: *Mr. L. H. R. Peiris*
Advisers: *Mr. Yasuo Oshiba and*
Mr. Tomiyoshi Kawahara
Co-Chairman: *Mr. Tsuneo Yanai (Japan)*
Rapporteur: *Mr. Narain Singh (Singapore)*

I. Classification and Its Implementation

The Co-Chairman in his opening address made the following points: The purpose of classification is to ascertain the appropriate forms of treatment, whether institutional or non-institutional; for example, non-institutional treatment like probation and supervision, or institutional treatment like prisons, borstals, and boys' and girls' homes. In this Comparative Study we are going to study institutional treatment only, and as such it is desirable that we confine our discussions on institutional treatment only so that we may not lose our valuable time. The purpose of classification in this context is to send the offender to the proper institution upon being convicted, so that he is not exposed to any further contamination or victimisation, and to enable us to carry out a meaningful and effective rehabilitation program. Classification is a method by which diagnosis, treatment planning, and the execution of the treatment program are coordinated in each individual case. It is also a method by which the treatment program is kept current with the inmate's changing needs. The major objectives in classification are, therefore, the development of an integrated and realistic program for the individual, arrived at through the coordination of diagnostic, planning and treatment activities, and an informed continuity in these activities from the time of commitment until release.

The following sequence was adopted by the panel members for this study:

Phase 1: The Allocation of Prisoners to the Various Penal Institutions

(a) The First Offender

Those offenders who do not have advanced criminal tendency—or the first offender as he is more popularly known. All the participants agreed that they should be kept away from the habitual offender, to prevent contamination, and that these again be divided into the various age groups. The juveniles and young offenders should be kept separately from the adult offenders. It is of utmost importance that they should not come into contact with the adult offender, even if the adult offender was a first offender. Young offenders should mix as far as possible with their own age groups, where they have interests in common and where they may be permitted to take part in healthy recreational activities.

(b) The Recidivist

All the participants agreed in principle that these offenders should be kept away from the first offenders, and be kept in a separate prison. However, one member expressed the opinion that putting all the recidivists in one prison would be hazardous as it will only make them more hardened criminals instead of reforming them. This is true in a sense, but what other alternatives do we have other than putting them all in one institution?

One participant pointed out that no country can embark on building a prison for the recidivists, with cells which have a built-in workshop and an exercise yard (mini, of course) so that they may be accommodated separately. This he felt was just not practical, and we have to carry on with the present set-up until such time as we can find better solutions. Of course, this category of offenders must be further segregated between the juvenile recidivists and the adult recidivists.

He also stressed that mixing one category of recidivists or housing them in one place would at least teach them how to

live with each other. We may isolate them from each other for the period that they are in the prison, but once they are released they have to live with each other whether they like it or not. This is more important in a setting like the multi-racial society of Singapore. Here people of all races and professions live with each other and work with each other. If the inmates are not going to learn how to live and work in harmony in the various penal institutions, then where else are they going to learn?

(c) The Mentally Defective

The discussion then went on to the treatment of the mentally defective offenders. It was agreed by all the participants that this category of offenders needed medical care and psychiatric treatment more than correctional treatment; and as such that they be sent to the proper institution for treatment. It was also agreed by most participants that this category of offenders should be kept in the particular institution until they are more or less completely cured. The discretion of releasing them should lie solely with the medical authorities. If the need be, the inmate may be kept longer than his sentence, if he has not been completely cured of the illness. On the other hand, if the recovery has been made before his date of release, and further stay in the institution will not do him any more good, this inmate should be released, perhaps with some conditions, like out-patient treatment and certain restrictions.

Phase 2: The Classification for Treatment Will Be Divided Into the Following Categories:

(a) Those who need vocational treatment.
(b) Those who need academic treatment.
(c) Those who need living guidance.
(d) Those who need professional therapeutic treatment.
(e) Those who need special protective treatment.
(f) Those to whom open treatment is recommended.
(g) Those to whom some kind of prison work, such as maintenance jobs, are recommended.

Vocational Training and the Prison Industries

Vocational training and the industries within the prison should be geared, firstly, to the needs of the nation (society), and secondly, the employment prospects of the inmate upon his release. It is no use teaching a trade or giving any kind of education to the offender, when he is not going to secure a job upon his release. Vocational training should be kept up-to-date with the industries in the private sector, or else, by the time he is released, the demand for that kind of skilled labour may no longer be there, as the trade may have become obsolete. So it is necessary that the vocational training within the prisons be kept most up-to-date. In this way the inmates would have spent their time in the most useful manner, *i.e.*, in learning a trade, and working and earning some money at the same time. This will also bring some income for the prison industries, and thus the prisons may not become such a burden on the nation.

The prisons can contribute a great deal towards nation building, by way of giving vocational training to the offenders for which there is a great demand. And the eventual outcome of this will be a continuous supply of skilled labour for the industries of the private sector.

Every opportunity should be given to the inmates to pursue their studies to advance themselves in the various academic fields. However, only carefully selected inmates should be allowed to pursue their studies, as it is of no use embarking on something which the inmates will not be able to complete and for which there are no adequate facilities. It was also stressed by some of the participants that care should be taken that the academic certificate that the inmates get upon passing any of the examinations should not carry the badge of the penal institution. If this happened, then the inmate will find it difficult to secure a job upon his release.

Phase 3: Reclassification of the Offender

We must emphasize that classification does not solve the problems totally. Our initial diagnosis may produce some side effects, as human personality and behaviour are constantly changing. In correctional work it is essential that the treatment program be kept current with the individual's changing needs. As the process of treatment gains momentum, the

diagnosis may become out of date due to our fast changing and advancing world. In order to keep up with the times we must keep the process of treatment and the offender up-to-date, so that when the inmate is released, he is not living in the past, which has become history to the outside world. If we do not make any provisions to safeguard these interests, all our efforts would have been wasted. Other likely problems to be created in the course of the treatment are:

(1) The changes in the family and the community situation.

(2) The removal of inmates from maximum to minimum security prisons or vice-versa, changes the status of the inmate.

(3) Innumerable other problems created by various factors, which may require review of the classification from time to time.

If any form of reclassification is to be done, it would be desirable if it is done by the whole committee or the full classification board. This will not only help the inmate but also keep the members of the committee up to date as to his progress. If for any reason the full committee is unable to meet, then the only solution lies with a sub-committee being formed, and all decisions and changes made by the sub-committee should be referred back to the full board, so that they may also be kept up to date.

Of course it would be desirable to examine all cases at regular intervals, but this may not be practicable for a number of reasons. There will always be some cases in which the committee is not certain that the information it has is sufficiently complete, or where it is confident that the program it has established is realistic. In such cases it is necessary to review and reconsider them after a period of observation.

The Role of the Staff in Implementing the Classification and Final Preparation for the Release of the Offender

The staff members should be encouraged to bring the fact to the attention of the committee, if they feel that an inmate needed any change, according to the observations that they have made over a period of time. They should also bring to the attention of the committee the problems brought to their attention directly by the inmates themselves. Flexibility in the referral of cases is essential if changes are to be made in the institutional program when they are most needed. If reclassification is done only at regular intervals, then there is bound to be a delay in attending to the problems, resulting in the dislocation of the programme.

The final reclassification is necessary to prepare the inmate for his parole, home leave and for his eventual release to the community where he came from. A person who has kept away from the outside world needs to be trained and reorientated before his release, otherwise it will be just like releasing a blind man, in a world of darkness. Institutional life makes a person too dependent on the prison authorities. So much so that he has no worries about food, a place to sleep in or how to organise his spending. When this man is released from the prison he is going to be completely on his own. There will be no one to guide him or to show him around other than his immediate family, if he has one in the first place. Since he is going to live within the same community where he came from, there may be some members of the community who may be hostile towards him, and he must be given the necessary training on how to overcome these problems. This form of training and orientation is just as necessary as the classification and the treatment of the offender.

II. Correctional Methods (Disciplinary Measures) Within the Penal Institution

In order to carry out the rehabilitation without any hitch, it is necessary to create the right kind of climate; the right kind of climate can only be created if there is a high degree of discipline, and law and order must prevail at all times. Once the right kind of climate is created, then we can proceed to carry out the rehabilitation programmes planned by the classification board without having any fear of having our efforts frustrated by the small percentage of the prison population who are of deviant behaviour. The participants felt that the following steps should be taken to maintain law and order in the penal institutions.

(i) Privileges and Incentives for Good Behaviour

Privileges and incentives should be given to the inmates so that the rehabilitative programme planned by the classification board can be completed without any undue interference. Then the inmates will be more eager to learn a trade, so that they may start earning some money while they are learning at the same time. Of course with this will come the privilege of being allowed to purchase at the canteen, where the inmates may be permitted to purchase some 'luxury items' such as cigarettes, toffees, tobacco, biscuits and probably their favourite brand of hair-cream. The other forms of privileges include visits, letters to and from home to keep a continuous contact with the family, to receive reading material such as books and magazines from home or from friends, recreation and free association with other inmates. The better behaved and those showing leadership qualities may be promoted to higher grades, where the inmates not only get an increase in pay, but may also get some extra privileges like being allowed to go about the penal institution unescorted, allowed to buy a cup of coffee, or even allowed to join a Trustees' club.

(ii) The Scientific Methods

Various scientific methods can be adopted to promote healthy activities in the penal institutions. One of the most modern and popular methods is the individual counselling and the group counselling. In recent years, it has come to be recognized that we can harness the dynamics of interpersonal interaction in small groups for constructive impact on inmates without losing sight of the individual inmate and without retrogressing to mass regimentation. This new approach in social treatment may be called the group approach, since the unit is a group and the inter-personal relations of a small group transcend the dynamics of a two-some such as a parent-child, physician-patient, leader-disciple, psychologist-subject. Since human beings all over the world are tremendously affected by the interaction that goes on in small 'peer groups,' that is, associates, friends, people in similar circumstances, it makes sense that correctional administrators should try to harness the dynamics of peer groups in the interest of social treatment.

In a small peer group situation, there is opportunity for self-expression. The individual participant gets a sense of support from his peers. This is not possible in large group dynamics such as crowds, audiences, spectators. Social consciousness, sense of security, and a sense of belonging are derived from small-group dynamics. If a resourceful staff leader can properly channel the dynamics of small peer groups in the correctional institution, participants can be profoundly affected in their thinking, feeling, attitudes, and values.

The group approach has applicability at several points in the correctional institution. It is peculiarly adapted to orientation sessions and to social education classes, where sharing of experiences, asking questions, and discussion of problems of mutual interest can be activated. It is realised that Alcoholics Anonymous has capitalized on the dynamics of the peer group. The group approach can also be used in inmate committees. It can be used as a means for preparing inmates for release—to meet the problems of the outside once again.

Under the guidance of a trained staff member, the group dynamics of a small peer group can merge into group therapy. If the participants can be led into a ventilation of their hostilities and feelings and can receive insight and suggestions from the feelings and experiences of others, then we have group therapy.

There is one type of group session that falls somewhere between group discussion and group therapy, between the superficial and the deep. This may be called role playing or sociodrama. The leader calls for volunteers from his group and gives them separate instructions before the group as to the kind of generalized social roles they are to play. Suppose he instructs one volunteer that he is a parolee whose employer did not know that he was on parole and is about to fire him from the job. This volunteer is instructed to try to win the employer over. The other volunteer, separately instructed, is supposed to play the

role of the employer who does not like parolees, and especially parolees who do not disclose that they are on parole when taking the job. Then both separately instructed volunteers are brought in before the group and simple staging is arranged. The paroled employee comes to the boss's office and the play is on. After a discernible time in which the little drama has run its course, the leader breaks it off and turns to the audience and asks: "Did the employee win the employer over? Why or why not? How could he have done better? You come up and show us how the employee could have done it."

The sociodrama has the advantage of being an avenue to rehearse and duplicate most of the social roles that will confront the members of the group in situations inside and outside the institution. It is more concrete and vivid than visual aids, because the audience can feel very closely identified with the action. Although the participant who is instructed to play a certain role feels secure behind this role, actually his own personality will break through very quickly in the sociodrama and he soon plays himself. The comments of the spectators are not directed towards him as a person but towards the way he played the role. The player is not threatened by comments from the audience; yet he can sense that this part of what he did was effective and that part ineffective and improve his approach to life accordingly.

(iii) The Punitive Methods

In spite of all the incentives and privileges and various forms of motivations through the scientific methods as mentioned above, there will still be some inmates of deviant behaviour. The majority of the inmates conform to the living conditions in the penal institutions as they are most interested to serve the sentence and secure their release as early as possible. It is more so with the first offender, because he is one person who is most interested in going out at the earliest possible date, as his first experience in being separated from his family is unbearable.

And for the inmates who continually flout the institutional rules and regulations it was agreed by most of the participants that solitary confinement be awarded both to act as a shock treatment as well as to remind them of the importance of freedom within the penal institution. But of course this form of punishment must be awarded with the usual daily meals which they would have normally got. Any form of reduction of meals was considered to be the deprivation of a basic human right. The participants also felt the inmates should be given reading material while under solitary confinement.

III. Corporal Punishment

There was some divided opinion on this subject, as some of the participants felt that this form of treatment was rather brutal and outdated. But on the other hand some felt that it should be very sparingly used, only in cases where all other efforts of correctional treatment have failed to make them conform to the institutional regulations. The participants also felt that it be retained to act as a psychological deterrent. Corporal punishment should be used on inmates who have committed violent crimes, such as causing hurt while committing acts of robbery, rape with violence, and any other crimes of violence against children, so that when they are flogged they get a 'taste of their own medicine.'

IV. The Recidivist

Any person who commits a crime more than once is considered to be a recidivist. But any person who has been sent to prison three times or more is a habitual offender who has chosen crime as a way of life. For such people, who have been given the opportunity to reform in their previous prison sentences, and have still not changed, the only course left is to be sent to penal institutions which have harsher treatments, so that prison will act as a psychological deterrent and not as a place for them to come and rest and recuperate, and start a life of crime the moment they are released from the prison.

Recidivists of this type are the most happy lot, because they are in a home away from home. They are generally the well behaved, although they are involved in all the rackets of the institution. They are even liked by the staff, as in most cases they are Jacks of all trades.

Summary Report of the Rapporteur

3rd Session: Probation, Parole and After-Care

Chairman: *Mr. L. H. R. Peiris*
Advisers: *Mr. Kikutoshi Takayasu and Mr. Takuji Kawasaki*
Co-Chairman: *Mr. Arata Sawa (Japan)*
Rapporteur: *Mr. Aloysius Wong (Hong Kong)*

The session was opened with the Chairman introducing the first of the selected 'Broad Topics' of our Comparative Study Group, namely: "Advantages of Non-Institutional Treatment."

The co-chairman was then called upon to elaborate on this topic, which he did, followed by an invitation to the house to put forward arguments whether in favour of or against the idea.

It was suggested that the type of persons to be considered for non-institutional treatment should first be categorised, for in the case of, say, psychopaths or severely mentally imbalanced persons, institutional treatment would probably be more desirable. This was supported by some other participants and it was concluded that in every case, the special characteristics of the case must always be first differentiated, whilst it was emphasised that the discussion was intended to be focussed on 'cases in general' where the non-institutional approach is apparently a plausible alternative.

One participant said he was inclined to think that a 'short sharp shock' institutional treatment programme, say of a month or so, might prove effective in weakening down new comers to the crime sub-culture. The desirability of such a 'short sharp shock' to some individuals could not be disputed, but disagreement was expressed by another participant who considered this approach inhumanistic, on grounds of the stigma which will inevitably be cast upon the offender, in addition to other generally known disadvantages inherent in confinement in an institution.

It was further stated that the criminal should be treated as a sick man, and that treatment should be prescribed in accordance with the 'degree of sickness,' based on factors such as nature of offence, criminal history and inclinations. At the same time it should be considered whether the treatment was to be for rehabilitation, deterrence, or retribution, etc.

Another participant added that the circumstances in which offences were committed, *i.e.*, whether by accident, sub-consciously or intentionally, etc., should also be considered in treatment decisions.

With the assumption that due consideration is always given and discretion will be exercised, whenever necessary, prior to decision on non-institutional treatment programmes, the house was requested to consider the following two topics:

(1) Disposal of cases at police stage

It was pointed out that in some countries, for instance, Japan and Hong Kong, the police had a 'ticket system' which has been extensively used to deal with minor traffic violations, and served to divert a significant number of cases from the courts, by the drivers' simply paying off a prescribed fine within a specified period, following which, the case is automatically closed. It was noted that this system was in operation in Singapore, too, but that the Singapore police had some discretion on the amount of fine to be imposed.

The Conciliation Board system of Sri Lanka was brought up and it was generally agreed that voluntary bodies like this have their merits in resolving certain minor inter-personal or family disputes, thus obviating the need for a criminal court hearing. The conciliatory system was fully endorsed by the floor.

The suggestion was made that disposal of cases at police stage could, perhaps, be extended to cover other minor charges like, say, 'loitering, littering and jay-walking,' etc.

Suspended prosecution was briefly touched upon, but in consideration of the fact that this system was, at present, only practised in Japan and not conceivably easily introduced in other countries represented, the discussion soon became focussed on the next topic below.

(2) Suspended Sentences

One participant expressed the opinion that the police and the courts were concerned mainly with securing a conviction and punishment of the offender, and were generally indifferent to the future of the offender. It was pointed out by a Japanese participant that the police in Japan always make, in principle, due allowance when justifiable, and the view was further expressed that some judges were known to be very considerate as well as lenient.

Probation and Binding Over

Probation and the Binding Over of an offender were agreed to be within the scope of suspended sentence, the difference being that a person placed on probation is subject to supervision by probation officers during the period of probation whilst a person who has been bound-over is not. In spite of the difference in terminology—suspended sentence, probation and binding over—the objective was agreed to be the same, and they were deemed useful devices which offered deserving cases a good chance of rehabilitation without an institutional experience.

Police Supervision

The next topic raised was police supervision. It was pointed out that police supervision was very commonly used in Hong Kong, both in instances when police supervision is ordered by the court in lieu of confinement as well as in other cases, in which it is to follow discharge after serving a period of incarceration.

Two participants concurred in the suggestion that police supervision was not desirable, as the supervisees were almost always at a disadvantage, in that whenever a crime was committed, the police usually rounded up all those on their supervision list as the 'number one' suspects, for investigation and interrogation, causing much unnecessary harassment and many difficulties to the supervisees. It was then suggested that the task of supervision be taken out of the hands of the police and entrusted to an independent body. The inconveniences suffered by police supervisees was not challenged and there was no disagreement in general, about the recommended transfer of supervision out of the hands of the police.

It was also pointed out that unless there is an alternative, police supervision is better than having no supervision at all, and the house agreed with this view.

Corporal Punishment

Corporal punishment as an alternative to institutionalization was raised but as reaction to the topic was not sufficiently enthusiastic, the co-chairman introduced the following three items:

Parole and After-Care

A Japanese participant started the discussion by pointing out how Parole instead of continued imprisonment, was useful from the rehabilitation point of view. The role of Parole/Probation officers, in Japan, which was said to be centred on rendering the supervisees assistance in the form of job placement, reconciling strained family relationships and providing case-work counselling, etc., was further emphasised. It was pointed out that in Hong Kong, the Prisons Department After-care officers and the Probation officers of the Social Welfare Department, functioned on the same lines. Undoubtedly, the same system exists in many other countries. It was agreed that the functions of the above-mentioned officers should, at no time, be restricted to supervision and control alone.

Pre-Release Centres

One member of the panel cited the instance of a Pre-release Centre he visited in Australia, where at the discretion of a Selection Board, certain prisoners of good behaviour, were removed from the prison institution to the 'society based' Pre-release Centre, during an unexpired portion of their sentence, where they are allowed to go to work, at a pre-arranged job, in the normal way, and return to the Pre-release centre by an appointed time.

Inmates at the centre were required to abide by the rules and regulations of the Pre-release Centre and to pay, out of their salary, for board and lodging. Violation of P.R.C. conditions results in their being

sent back to their original place of confinement to finish the remaining part of their sentence.

Half-Way Houses

It was also stressed that the function of the New Life House of the Prisons Department of Hong Kong was mainly to provide facilities for dischargees deemed in need of temporary accommodation; border-line cases, considered in need of further observation and supervision, and those cases in whom confidence by their families appears lacking.

The periodic extension of the New Life House facilities to prison inmates, especially long term inmates, on 'home leave,' who have no home or other convenient or suitable place to return to was also stressed. This was followed by a brief reference to the Hong Kong Prisons Department's new Pre-release Centre and Half-Way House scheme, which has been approved by Government, and will have accommodation for 120 persons when completed.

The co-chairman then went on to introduce the second "broad topic:" "How Best to Involve the Community in Support of Non-Institutional Programmes."

The session started with a statement that in general, neighbours, colleagues and society not only perpetuate discrimination against the ex-prisoner, but often also against his close relations such as his wife, parents and his children in school. In support of the above statement, it was pointed out that this discrimination existed not only in the community, but within the ranks of many government bodies, in that ex-prisoners are generally debarred from securing government posts, and are normally dismissed, once a conviction is recorded. It was suggested, and the general consensus was, that *Governments* should take the initiative and set an example for the community in abolishing existing discrimination.

A Japanese participant cited the tendency of the community in the vicinity of the 'Kokuji Gakuen Training Home' in which he works, to pressurize the re-siting of his Boys' Home from its present proximity to the town, to a more remote spot, thus illustrating the extent of community prejudice.

Another participant suggested that while community prejudice was one aspect, 'self-reflection' by the offender, on the other hand, created a sort of inferiority complex, which at times led to poor performance and behaviour, and thus may also be a causative factor of discrimination.

Ameliorative Measures

One member cited a small scale programme, in Singapore, where boys from Approved Schools were made to assist in certain projects for community centres in the form of minor repairs, construction, etc. This gives the boys an opportunity to serve the community, and at the same time allowing the community a chance of understanding the boys better.

Reference was made to a similar programme with drug-dependent persons under treatment in Hong Kong prison institutions, where working parties of inmates, at the request of villagers and Rural committees, were engaged on building roads, bridges, etc., with a similar objective. The usefulness of such programmes was not disputed.

It was stressed by a member of the panel that employers were more concerned with the future behaviour of a prospective ex-inmate employee than anything else, and they generally needed reassurance that there was a safeguard against prejudice to their interests, if after employment, an ex-inmate's behaviour or work proves unsatisfactory. The control safeguard of the After-care programme in the Addiction Treatment Centre in Hong Kong was cited, where the After-care officers act as the remedial mediator.

It was mentioned that Singapore has a church, the preacher of which is an ex-inmate, who organizes periodic informal 'get-together' gatherings, on which occasions certain prominent businessmen and ex-inmates would be invited to attend, thus creating an opportunity for prospective employers and employees to get-together in discussion, and to acquire a better understanding of each others' problems.

The existence of some 50,000 Voluntary Probation Officers and the Big Brothers and Sisters Association in Japan, was cited as a partial break-through in commanding public understanding of, and sympathy for, persons of delinquent behaviour. Some social prestige was said to be attached to appointments as V.P.O., with the possi-

bility of the receipt of an insignia in the future, which may be an incentive for some to become V.P.O.'s.

A Juvenile Welfare Council was said to be in existence in Malaysia, where complaints and difficulties in family relationships, finding jobs, etc., which are experienced by dischargees are dealt with by voluntary social workers.

The Chairman pointed out that in some countries, where unemployment was a serious problem, convicts were disqualified from securing or holding certain jobs. The simple fear of losing one's job deters most people from committing offences, and in this context, to completely abolish discrimination may very well constitute another contributing factor to crime.

In addition to the above aspects discussed, it was unanimously agreed that the mass communication media should be utilized to the fullest extent possible, for educating the public, by means of propaganda programmes and campaigns, and reshaping and improving public attitudes and understanding towards ex-offenders.

Summary Report of the Rapporteur

4th Session: Prevention and Treatment of Juvenile Delinquency (including Child Welfare)

Chairman: *Mr. L. H. R. Peiris*
Advisers: *Mrs. Kinko Sato and Miss Masako Kono*
Co-Chairman: *Mr. Tatemi Kajiwara (Japan)*
Rapporteur: *Mr. Lim Thiam Meng (Singapore)*

Preliminary discussions were held and the group unanimously agreed that the title of study should be discussed under two separate headings, namely: (1) Prevention, and (2) Treatment. These two headings were further discussed under the following sub-headings.

1. Prevention

(a) Role of the Parents in Relation to Prevention

"There is no basis for thinking that delinquent behaviour patterns are innate." This is the view generally held by the class and it stressed that "a criminal is developed and not born." It is doubtful that parents who are sometimes victims of unwholesome social and socio-economic circumstances should ever carry the whole responsibility for their child's anti-social behaviour. However, the class feels that despite the limits, they should recognise and accept their full and vitally important measure of responsibility towards educating the child to guard against delinquency.

In the discussion, it was pointed out that one of the main causes of delinquency had been largely due to broken homes, by death of one or both parents or by parental divorce, separation or desertion. The other causative factor seemed to have derived from parents, whose over-anxiety to guard their children against development of deviant behaviour became a serious handicap to the parent-child relationship. It was suggested that parents should adopt an indirect approach aimed at helping the child to build his inner behavioural controls instead of taking to the extreme of over-dominance. It certainly would not be understood by the child when told not to do this and not to do that instead of providing the reason why it should not be done. The third factor, which was heatedly discussed, was economic and environmental causes, the most important of which had been 'poverty.' The lack of material goods and space, particularly in Hong Kong, had been thought to be contributive to its delinquency problem.

(b) Parental Co-operation with Authority

The class agreed that in their dealings with juvenile problems, they had experienced non-cooperation of certain parents. Such parents continually created frustrating situations by their refusal to cooperate with the authority simply because of their own interest to protect their social status, or to conceal their feeling of inadequacy or inferiority. One participant stated that as a Family Court Probation Officer, he had come across some parents whom he classified as follows: The first type are parents who are ignorant, unable to meet the required skill of resolving initial behavioural problems, or detecting the first sign of deviant behaviour. The second type belonged to those parents who could only pay lip service. Third, parents who were themselves ex-convicts. The fourth type were parents who had no interest in their child.

Another participant supported this view but added that there were parents who had associated themselves with well known community welfare services seeking recognition and prestige for their own selfish ends. From his experience, a number of such parents have been known to have delinquent children. He added that it

would be easier to train and rehabilitate a delinquent but felt it impossible to rehabilitate the parents.

Following further discussion on the subject, the class felt that cooperation of parents would be of utmost importance in helping to prevent their child from getting into deeper behavioural problems.

(c) Role of the School and Teacher

It was generally agreed that truancy is one of the most common forms of delinquency and wayward conduct. Overcrowding, regimentation, excessive competition, inability of the teacher to give attention to individual problems had in one way or another, aggravated any bad tendencies which the child might bring with him to school, thus providing fuel for such tendencies. However, with the teachers' cooperation and intelligent handling, the school could, in addition to its primary functional role, play an important part in the detection and treatment of the child's maladjusted tendencies.

Such conditions were said to be prevailing in Hong Kong's privately run schools where the number of pupils in a classroom exceeded by far the maximum of 40. The teachers in such schools are not able to exercise proper control of the children.

In Sri Lanka, in one of the leading State schools, a so-called Room Mothers' Association formed within the school had been found to have successfully contributed towards the prevention of undesirable behavioural tendencies amongst the children. Members of the Association took turns to volunteer their services to assist the teachers in maintaining discipline in the school during recreational periods.

In Singapore, there are Parent-Teachers' Associations in almost every school. The role played by the Association is the fostering and promotion of understanding of the parent-teacher and pupil relationship, and recreational activities. At most of their meetings, behavioural problems as observed by teachers would be discussed and the child's parents duly informed. In the case of minor problems, the principals would usually inform the parents concerned directly.

(d) Role of the Police in Prevention

It is generally recognised that the responsibility of the police is the maintaining of law and order, to maintain the peace and to apprehend those who have broken the law. However, within recent years, the police have not had a good press, and in general, police departments have been waging an uphill fight to gain public confidence.

Mr. Alper, Visiting Expert from America, reported that generally, people in his country are antagonistic towards the police. However, he stated that measures have been taken to improve the image of the police and police-public relations in order to gain public confidence in their attempts to prevent and control crime. Measures taken by the police have been to visit schools and lecture to the children on a wide range of subjects pertaining to the work of policemen. On the other hand, arrangements were made for children to visit the police station to give them a notion of what police work is. In some cases, High School students have been employed to do work in police stations during their vacation. Police Cadet Corps have also been formed and organised for young people in the schools.

It was stated that in Singapore, almost all the Secondary Schools have National Police Cadet Corps. They are run and supervised by officers from the Singapore Police Academy. In addition to this service, Police Week, Police Road Show and Exhibitions have been held regularly. During such occasions, all the Police Stations in Singapore would be opened to the public.

It was pointed out that Police Posts have been established in the midst of the community throughout Japan. Officers assigned to such posts are playing the role of guidance centres, providing guidance to the people in that particular community.

(e) Child Welfare Centres

Delinquency reflects a character defect in the child which stems from neglect on the part of the adult community. As stated earlier, due to unfavourable socio-economic reasons, some parents have no alternative but to concentrate on survival rather more than on anything else. In the case of Singapore, where parents have to work and leave their young children

unattended, the Social Welfare Department has provided a unique service to such parents. The Department has 8 Children's Centres and 11 Crèches with capacity for 920 and 1,140 children respectively. The Children's Centres provide elementary education and vocational training for children between the ages of 5 to 15 whose parents' monthly income does not exceed $500/–. These Centres function from 8:00 a.m. to 1:00 p.m. six days a week. While in attendance, the children are taught hygiene, Malay, Chinese and English languages. They are also provided with food and medical attention. Parents pay only a nominal charge of 10 cents per day, equivalent to ¥10. The Crèches function from 8:00 a.m. to 5:00 p.m., offering a day-care service for children under 6 years of age.

2. Treatment

(a) Probation Treatment

The class generally agreed that probation is a process of treatment prescribed by the courts for persons convicted of offences against the law, during which the individual on probation could live in his community and regulate his life under conditions imposed by the court. Such an individual would be subjected to supervision by a Probation Officer. The class further agreed that probation treatment would be a most promising phase of any juvenile court programme because it could bring about adjustment in a child in his normal social setting and environment.

Much discussion was centred on the effectiveness of treatment by the Probation Officer. Much would depend on the capability of the Probation Officer in relation to a heavy case-load. The Chairman stated that on a recent survey on the subject, it was found that a Probation Officer could have no more than 15 hours a month to keep in touch with his clients. Under such circumstances, the officer would not be able to provide adequate and close attention to individuals under him. It was generally agreed that unless the case-load of each probation officer could be maintained at the 60 mark or less, such an officer would be nothing more than a frustrated clerical supervisor.

(b) Fine as a Form of Treatment

Detention is often the juvenile offender's first brush with authority. Its effect on him varies with the individual and the manner in which he is detained. But, in most instances, he is under an emotional strain, and the emotions of fear, hate and insecurity are exaggerated. Any kind of question posed for the class was whether provide a natural setting. As such, the question posed for the class was whether the imposing of a fine on a juvenile in place of other forms of correctional measures would be adequate. Conflicting views were expressed by members from the floor. Some took the view that parents, who would ultimately be involved in the paying of fines, would wake up and exercise more care and guidance to their child. Others rejected this view and held that parents could not be blamed, particularly those who had been under economic strain.

Mr. Alper suggested that instead of a fine, which might or might not affect the economic situation of parents, the fine could take the form of payment with services, as in this case, it rightly affects the offender. He stated that in England this method had been in practice, where the court sentenced the offender to do some work for an institution.

SECTION 3: GROUP WORKSHOP

Workshop I:

Summary Report of the Rapporteur

Chairmen: *Mr. Minoru Shikita and*
Mr. Kiyoshi Hara
Rapporteur: *Mr. Habib-Ur-Rahman Khan (Pakistan)*
Co-Rapporteur: *Mr. Akio Kasai (Japan)*

Titles of the Papers Presented

1. The 'Bintibmas' System as a means for Public Co-operation in Crime Prevention
   by Mr. I. Gde Made Wismaya (Indonesia)
2. Prevention of Crime by Patrolling
   by Mr. Abdul Hakim (Afghanistan)
3. Role of the Police and the Community in the Field of Crime Prevention in Laos
   by Mr. Souvannasoth Niyom (Laos)
4. Prevention of Crime: It is Society which needs 'the Treatment' and not the Criminal
   by Mr. Habib-Ur-Rahman Khan (Pakistan)
5. Some Causes of the Decrease of Crime in Japan
   by Mr. Akio Kasai (Japan)

Introduction

The subject selected for Group Workshop No. I was 'Prevention of Crime.' It may be mentioned that all the five participants in the Group happened to be police officers from five different countries, working in various branches of police administration. They shared an experience of about 70 years among themselves, which was quite apparent during the discussion.

After a participant had presented his paper, the topic was thrown open for question-answer and general discussion for the remaining two periods. Since the subject of Crime Prevention pertained to the professional field of all the participants, each and every member of the Group took an active part in the discussion and made very valuable contributions. At times, there was a heated debate, points and counter-points for or against an idea, but in the end, a consensus of opinion was arrived at; sometimes with the help of the Chairmen.

It is obvious that all the points cannot be mentioned in a summary report, but one idea runs common in almost all the papers: that is the need for better equipment for the police and active public participation in the field of crime prevention. All the participants strongly felt that the police alone cannot cope with this difficult task, without the active and positive involvement of the community.

After the session, the participants revised their papers in the light of the discussion and the suggestions made. Summaries of all the five papers as given below, are based on the final papers.

Mr. Wismaya dealt with the 'Bintibmas' System as a means for public co-operation in crime prevention. The police in Indonesia has a dual role to play. Besides maintaining law and order and prevention of crime, it is their duty to take part in the socio-political sphere as well. The National Police is therefore given the 'motto' of 'Tribrata,' which means 'Three Vows.' These are—(a) the police should be exemplary servants of the community, (b) they should be exemplary citizens, and (c) they should be guardians of public discipline.

These duties are, obviously, very difficult to perform, particularly in view of the fact that the image of the police is not very good in the country for the following reasons:

(a) as a result of heritage from the colonial regime, when the police was a tool of a foreign power;

(b) lack of equipment and inadequate budget, which hampers the efficient performance of their duties by the police.

Under the circumstances the Government introduced the 'Bintibmas' system in

1963. Its aim was two-fold:

(a) to bring the police and the public together, so that they understand each other and gain mutual confidence;

(b) to enable the police to discharge their socio-political role efficiently.

The basic function of 'Bintibmas' system is 'Dharma Bhakti' which means voluntary service. There are three ways in which such voluntary service may be performed:

(a) 'Widya Bhakti'—Giving correct and up-to-date information to the public. This is done by personal contact and also dissemination of information to the public through the press, radio, film shows, drama and traditional shows—all free of charge.

(b) 'Dana Bhakti'—Collection of funds by various legitimate means, in collaboration with Red Cross, sports festivals, scout Jumborees, etc.

(c) 'Karya Bhakti'—which means physical participation. This is achieved by physically taking part in the repair or construction of roads, bridges and various other community projects. This last is the most popular method among the people and the Government as it benefits them most.

As a result of this 'Bintibmas' system, the police has come closer to the community and that age-old gap and hatred left behind by the colonial regime are fast disappearing. People have more confidence in the police and regard them as their friends. However, better results can be achieved if the police is given adequate pay to enable them to live a reasonably comfortable life without looking towards other sources. Besides, the police should also be provided with modern equipment and transport to enable them to discharge their duties more efficiently.

Mr. Hakim's subject was the Prevention of Crime by Patrolling. The charter of police in every country all over the world is the prevention and detection of crime and maintenance of law and order. Of the two, prevention of crime is the more important one. If we are able to prevent crime, society is saved a lot of trouble. Failure of the police at this stage brings into operation the remaining agencies of the Government concerned with the administration of criminal justice.

Crime can be prevented in many ways, but in this paper only one aspect was being discussed, that is, patrolling by the police. The objects of patrolling are many; *e.g.*, (a) Prevention of Crime; (b) Collection of information; (c) Service of court process; (d) Personal contact to build mutual confidence; (e) Surveillance of bad characters; (f) Public service. Again, patrolling is mainly of two kinds: (a) Foot patrol; and (b) Mobile patrol.

Foot patrol has been done for centuries and continues till today in all countries even where the Government can easily afford cars and helicopters. It has many advantages, such as collection of information, personal contact, surveillance of bad characters and public service. The disadvantages are waste of manpower and the strenuous type of duty involving risk to life. At times the offender takes advantage and commits crime when the beat constable goes away, as he is known to return only after a fixed interval.

Mobile patrol is effective in countries where manpower is costly and the criminals are also mobile. It is efficient, quick and has an element of surprise in it. In case of violence or accident, it can take the victims quickly to hospital and perhaps arrest the offender red-handed.

In addition to this, patrol is also done on horse-back and with the help of dogs. Dogs are very faithful and alert with a high sense of smell. A dog never goes to sleep, has no friends except the master and cannot be bribed. His visibility at night time is very sharp.

However, in order to achieve the best results, foot patrol should be supplemented by mobile patrol. In countries like Afghanistan, foot patrol is the only alternative, because of mountainous regions, the population being spread over a large area and inadequate budget for the police.

The Role of the Police and the Community in the Field of Crime Prevention in Laos was the subject of the paper presented by Mr. Niyom. Prevention of crime is the direct responsibility of any police force in the world. Experience, however, shows that such a heavy task cannot be performed by the police alone, without the active help, involvement and cooperation of the community. There are certain fields in which the police and the public

can work together, whereas in others they can work separately as discussed below.

1. Role of the Police

The direct method of crime control is by patrolling. Before a policeman is sent on patrol, he should be properly briefed about his area. He should know the bad characters and their resorts and rendezvous, the night clubs, bars and the general topography of the area. He should also have knowledge about the key points, Government offices and residential areas. He should also know as to what type of offences are committed at what particular time of the day and night. It is recommended that a police officer should also carry weapons as the situation demands as weapons do have a deterrent effect. How many men should go out on patrol, at what time and in what manner and how much area they should cover depend upon the local situation.

The object of patrol, besides crime prevention, is to have direct contact with the public, win their confidence and also render them service. During patrol, police can also educate the public about their own responsibilities in this behalf.

2. Role of the Community

As mentioned above, the police cannot prevent crime single handed, unless society shares the load. In Laos, the community does take part in this behalf. For instance, (a) the Home Guards, the Security Guard, and Voluntary Police help the police in protecting key points like banks, gold shops, etc. (b) The scouts help the police in traffic control, particularly on festival days. (c) The effect of the Buddhist religion is another factor in keeping down the crime rate. On Buddhist Sabbath days (four times a month) people are busy in worship and therefore there is a very low crime rate on these days. Priests also teach them to be of good behaviour. (d) The parents, teachers and other social welfare agencies give lectures on good morals to the juveniles. (e) There is a Government ban on obscene literature, films and T.V.

3. Problems

In spite of the best efforts of the police and the community certain problems still remain which need early attention. They are: (a) Inadequate police force; the fact that the country is in a state of emergency, has added further burdens on the police; (b) Shortage of trained officers; (c) Lack of equipment; (d) Country being mountainous and with thick forests, there is difficulty in communication; (e) Inadequate budget for the police; (f) Laos is surrounded by many countries and hence criminals infiltrate from all sides; (g) Adult and juvenile prisoners are kept together in the same prison; (h) Narcotic control is not effective; about 90% of the addicts are poor and usually commit thefts in order to buy the narcotics; (i) The indifferent attitude of Chinese and Viet-Namese witnesses, who do not cooperate with the police for fear that criminals would take revenge from them; (j) There is, sometimes, inordinate delay in the investigation of offences and trial of cases; (k) Traffic offences are caused due to narrow, winding and rough roads; there are not enough traffic sign-posts, the lights are poor and the drivers and pedestrians have no traffic sense.

Mr. Khan, in his paper, discussed prevention of crime at 'Society Level' and argued that it is society which needs the 'treatment' and not the offender.

Slavery, poverty, disease and crime have long scourged humanity. Whereas we have overcome, to a great extent, the first three, a satisfactory solution to crime remains a riddle. Crime in most of the developing countries is on the increase, whereas in the West it has touched alarming peaks. Hardly a day passes when we do not see screaming headlines of a gruesome, outrageous violation of law. Nations which are rich, affluent, modern, educated and civilized and have set up welfare states and claim to give a lead to the world have utterly failed in this field. In fact they are directly and indirectly responsible for exporting crime to other countries. As the international boundaries shrink, crime flows from one country to another, making inroads into and breaking through even the age-old traditions of other countries. Does it mean that the more rich, educated and 'civilized' we become, crime and the tolerance of it also keep pace?

What is a crime and who is a criminal?

If the definition is left to the common man, the present day definition would be scrapped outright. The verdict of the majority of people in many countries would perhaps declare that possession of big bank balances, luxurious villas, big cars, etc., was a capital offence and that theft of basic necessities of life was quite legitimate. Thus all statistics would become topsy turvy.

Our ancestors solved this problem by giving, sometimes, merciless, inhuman, cruel and barbarous punishments. An individual was looked upon as someone capable of free choice in every sphere of his conduct, irrespective of biological, social, economic or hereditary handicaps. Punishment was a counter-attack of society, as the offender had 'asked for it.' In fact it was his own foul act returning on to himself. Flogging, whipping, stocks and pillory, mutilation, and death by burning, skinning alive, hanging and by throwing before hungry wolves were most common. Banishment and transportation were done in a most brutal and degrading manner. Millions of human beings suffered, and suffered perhaps innocently, and no one heard their cries of distress.

It was in the 19th century, that certain pioneers in criminology raised their protest loudly. Among them the name of Lombroso deserves special mention. He, in his book "The Criminal" published in 1876, shifted the focus from the crime, to its author—the criminal. His theory that "a criminal was a sub-human anthropological freak marked by an anatomical stigma and doomed by his nature to a criminal career" at once became the subject of study. Whatever the merits or demerits of this theory, it opened the gates; thereafter, the economists, sociologists, criminologists and psychologists stepped in and advanced their own points of view.

Since then the criminal has become a special subject of study. Numerous clinics, half-way houses, probation and parole boards, have been set up for his treatment. World famous criminologists, sociologists and psychologists are busy day and night doing research work, holding seminars, discussions and international conferences, but no one has been able to stop the onward victorious march of crime. Our failure is much more pronounced than that of our ancestors whom we condemn at every step. London, with a population of over 8 million reported over 3 million offences. In the U.S.A. there is one murder every hour, a forcible rape every 21 minutes, a robbery every 4 minutes and a burglary every 4 seconds. According to the President's Crime Commission Report, "burglaries occur about three times more than reported . . . . and aggravated assault and larcenies twice as often." There are 25 robberies in Washington in 24 hours. Out of 1,173,201 burglaries only 2,590 cases were solved.

Can we, therefore, learn from the U.S.A. or from any country in the West? In order to find a solution we have to look inside and first find out the causes. Crime causation is due to multiple reasons or a combination of various factors and forces. It is like the flow of a river, whose main source may be a small lake, but as it flows many tributaries join and make it bigger and wider till it joins the sea. Since its causes are multifarious, its cures have to be individual. Any generalization would be faulty and unwise. In this behalf the following recommendations are made:

(a) Reform, remove or eliminate all the causal factors responsible for crime and let positive forces like parents, teachers and religion play an active role in moulding the character of young ones.

(b) Treat the offender like a sick man. Although, in the chemist's shop, there are hundreds of medicines for even one disease, the doctors would prescribe a different medicine in each case. A life-saving drug for one man may be poison for another. Present day justice of sending the majority of criminals to jail should stop.

(c) Due attention is not given to the victim. All the criminologists and even state agencies are busy in looking after the offender, whereas the poor victim is forgotten. He must be compensated and his equilibrium restored. Justice remains half done—if there is no restitution.

(d) The whole judicial process has to be speeded up.

(e) As the pioneers in criminology transferred the focus from the crime to its author, the criminal—we should go a

step further and shift the focus from the criminal to its author, society. This is because we all agree that crime is the product of society and a criminal the finished product of its environments and culture. So treat society, reform society—and you will live in peace!

Finally, the Group discussed Mr. Kasai's paper, which dealt with Some Causes of the Decrease of Crime in Japan.

A steep rise in crime is noticed almost all over the world in developing as well as developed countries. This may be due to multifarious factors such as poverty, unemployment, rapid change in the social structure of certain countries, etc. In Japan, however, crime is on the decrease. All the police officers and many visitors are keen to understand the reasons. It is difficult to explain satisfactorily the whole background in a short paper. Effort is however made to get as close to the answer as possible. In short, the following factors or reasons can be listed in this behalf.

(a) The country has provided full employment to the people due to rapid growth of industry. Perhaps there would be hardly any persons who commit crime due to unemployment.

(b) The Japanese people are comprised of one race. They speak one language and have centuries old common traditions as their heritage.

(c) Family ties are still strong. People generally take pride in their family rather than club associations.

(d) Stringent and severe control over firearms and narcotics.

(e) Geographical isolation, which gives no opportunities to the offenders to easily cross the border and escape or infiltrate into the country.

(f) Efficient performance of the police, particularly in the field of accurate and speedy investigation.

(g) Positive attitude of the courts, and public prosecutors; quick trial and high percentage of conviction (99.7%).

(h) Reformative and constructive role played by correction agencies.

(i) Active public cooperation with the police.

Public cooperation

The item mentioned last needs some detailed clarification. The public in Japan, normally extends voluntary cooperation to the Police in the following ways:

(a) They promptly inform the police about various incidents. The police received 2,077,979 informations through telephone 110 last year.

(b) Crime Prevention Association, which is purely manned by the public, has 560,000 offices and branches. Their main job is reporting the crimes to the police besides cooperation and assistance in other fields. Last year they made 162,430 reports to the police.

(c) In view of increasing traffic accidents, Traffic Safety Association was formed. They promote traffic sense among the public and drivers.

(d) As many as 38,664 persons have got themselves enrolled as volunteers for juvenile guidance.

(e) Prominent persons, including artists and film stars, have formed the 'Police-Public Friendship Society' (1960) to promote goodwill besides giving some benefits to the police.

(f) Some newspapers encourage the police, by holding annual selections of the best police officer.

Crime can be further decreased by enlisting still better cooperation of the public, in particular from those who till today have maintained an indifferent attitude or considered it a waste of time. A concentrated effort is required to launch a big drive, not only to educate people but also to bring them and the police close to each other. Thus, both the police and the public together could put a very effective check on the incidence of crime.

Prevention of Crime—It Is Society Which Needs "The Treatment" and Not the Criminal

*by Habib-Ur-Rahman Khan**

Prologue

Every citizen wants to live in peace, with honour and dignity. Besides this basic requirement of an individual no country or state can progress unless there is peace and order. The first and foremost demand of the individual is therefore security, in lieu of the tax that he pays. But experience shows that in this mutual contract the society has miserably failed in the discharge of its duties. Crime in most of the developing countries is on the increase, while in the West, it is touching alarming peaks. Hardly a day passes when we do not hear and see screaming headlines of a gruesome, outrageous violation of law. Man of twentieth century can rightly feel proud of landing on the moon, but his helplessness in keeping peace and order on this planet is distressing. Does this mean that more we advance in education, wealth and technology, crime and its tolerance also keeps pace? "The great and continuing rise in crime since pre-war days in this country (England) and in most others has been the most unsatisfactory feature of our social life." Commenting on the rise of crime, Karl Menninger in his book "The Crime of Punishment" writes, "The spread of violence has startled the nation. It flares up ominously and everywhere in spite of our laws and courts. Or could it be because of our laws and courts—and ourselves?" Humanity at large is more exposed to the criminal army in the West than in the Orient. Nations which are rich, modern, educated, civilized and have set up welfare states and claim to give a lead to the world have utterly failed in this field.

I do not mean to say that there was little or no crime in earlier periods of our history. In fact history of crime is as old as man himself. The world has yet to see even a corner on this globe which is free from crime or where a particular class of humanity does not commit crime. Pages of history record crimes of all categories, committed in every country by every class of people whether rich or poor, educated or uneducated, politicians, businessmen, clergymen, teachers, thinkers and philosophers. However, at the same time, it remains a fact based on published statistics that crime had never touched so alarming peaks as it has done today. We live in a panic-stricken society. Effect of crime on the victim needs no discussion, but after hearing its news over the radio, T.V. and press, ordinary people living miles away feel highly insecure. It upsets their sense of justice. Besides losing confidence in the authority and ability of the State, he feels that it could also happen to him.

The modern world is fully aware of this acute problem. People are busy day and night doing research work, holding seminars, international conferences and writing books trying to understand crime and its causes, in order to control it. But the net result of all these efforts is to the contrary. Crime marches on! As international boundaries shrink, crime flows and penetrates into other countries, even shattering their age old traditions. "No other social problem has a longer continuous record of world-wide concern and action than the phenomenon of crime in its manifold ramifications. During the past 150 years, crime, corrections and the criminals have been the subject of more than 80 major international conferences, spreading a contagious stimulation of new ideas . . . so much has been done, so much more should be done."[1] And "Crime prevention like peace" writes William Clifford of U.N., "is a long familiar road, but man is always losing his way."

Slavery, poverty, disease and crime have long scourged humanity. Whereas we have overcome to a great extent the first three,

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[1] Crime—International Agenda *by Benedict S. Alper.*

solution to crime remains a riddle. Until we find a satisfactory solution, there is always room for research, for new ideas or perhaps introduction of old ideas. My object of writing this short paper is to discuss briefly, some of the ideas that had been coming to my mind, particularly the involvement and treatment of society which produces the criminal.

A Brief Comment on Definition of Crime and the Criminal

Not only man has failed to find a solution to crime, he has been unable to agree to a common definition of crime or the criminal. To one man it is crime to steal a penny, but good business to steal a fortune by selling goods in the black markets, by under- or over-invoicing his goods. To another it is crime to gamble at cards, but recreation to gamble at horse races or Casino Royale. Yet to another, it is a crime to betray a friend, but idealism to cross the floor and betray a political party.

The necessity of entering into such a discussion regarding definition of crime or the criminal is not an exercise in pure semantics. It is an objective issue. It can, however, be argued that such a discussion tends to confuse issues unnecessarily. This may be so, but only to a point. At the same time, over-simplification of such a basic issue, which is the pivot of our discussion, would also lead to confusion for reasons more than one. To start with one has a right to question the authority who says that a particular act is a crime. In olden days such an authority rested with Kings or despots, but today we are living in an age of democracy, wherein the majority has the right to frame the law. Given this right to majority of citizens living in developing countries, such as Pakistan, where 85 per cent people live in rural areas, they would change the definition overnight. Their first law would be to close down all casinos, night clubs, gymkhanas, horse races, etc. It would perhaps be a capital offence to withhold surplus food in stock, or possession of "villas" in hill stations or more than one house.

And who is a criminal? Surely no one behaves as a criminal all the twenty four hours. To what extent we are justified in labelling a person as criminal, who perhaps lost his temper or control over himself for a few minutes and committed an offence? He may be an excellent friend, a good husband, father or citizen on the whole. And what about "the important criminals who do irreparable damage with impunity, deftly evade the machinery of justice . . . either by remaining technically within the law or by exercising their intelligence, financial prowess or political connection."[2] The Russian Penal Code of 1926 lays down that an act is a crime if it "threatens the foundations of the Soviet political structure."

I leave the question here after raising the above basic issue. However for the purpose of this paper, I agree with the legal definition that crime is an act which is in violation of the law of that State and a criminal is the one who is proved as such in a court of law.

Prevention and Treatment in the Past

It would not be out of place to mention how this problem was dealt with by our ancestors. The fundamental maxim of justice in those days was that every one should bear the consequences of his acts. "An individual was looked upon as someone capable of free choice in every aspect of his conduct, irrespective of biological, hereditary or social environments. The life of the individual who wilfully wronged the social group or brought about serious loss to any one of its members must be forfeited. . . as he had wilfully chosen to do wrong and outrage his social group and the Gods."[3]

Punishment was a counter-attack of the authority. And this attack was merciless, inhuman and very prompt. No facilities were provided to the accused to produce his defence. Justice in most of the cases depended on the whims and pleasure of the authority. At times justice was made available to the highest bidder. It was not infrequent to see a severe punishment being awarded in petty offences and only a reprimand considered enough in serious cases.

Punishment in old days knew no rationale. For centuries torture was a common technique of interrogation. Criminals were

[2] Crime, Justice and Correction *by Tappan* (p. 7)

[3] New Horizons in Criminology *by Barnes & Teeters* (p. 355)

branded with hot irons, deprived of eye sight in a dreadfully cruel manner. In Greece criminals were broken on the wheels and thrown before the hungry wolves and in Rome people found guilty of theft were thrown from the Torpien Rock. Skinning alive was also a favourite mode of death! At times the accused was stretched naked on his back and pressed with heavy weights as much as he could bear, until a confession was squeezed out of him. As late as 1826, a case was reported in England, where a victim was pressed for nearly two hours with 4 cwt. of iron. Still he did not plead guilty, but in spite of this he was convicted and hanged.

For centuries capital punishment was awarded in many cases. Death by hanging, stoning, burning and frying was most common. Criminals were often boiled alive, traitors were beheaded or tied with galloping horses and torn to pieces. They were subjected to torture, to undergo and endure agony, every bit of their body being cut when it started healing! "As the number of crimes punishable by death increased, there was a corresponding increase in the ingenuity and variety of techniques of execution. Probably during no other period of Western civilization was there so intense a search for new ways of making a man die . . . execution had become a profession combining many characteristics of an art, a science and a public spectacle."[4] Certain executions had achieved a wide reputation for a particular speciality. "The city of Hanover developed a speciality in which death was inflicted by wasps. Sometimes the victim had to be kept conscious for a considerable period during which a detailed sequence of tortures and mutilations was carried out . . . The executioners were required to master the art of preserving life even while they destroyed it."[4]

Besides stocks and pillory and numerous other methods of humiliation, the most tragic chapter in the history of criminal punishment was the transportation of criminals. The entire credit for this innovation goes to the most civilized countries of the day. "The first English law authorizing deportation was passed in 1597. From that time until the American Revolution, the mother country made her colonies on this side of the Atlantic . . . many more were sold like cattle."[5] Discussing this further Barnes & Teeters mention that no one knows the exact number of criminals despatched to the States, but they would certainly be in the neighbourhood of 100,000. After the American Revolution, it stopped. "This played havoc in England: convicts piled up in jails . . . something had to be done immediately."[5] So they were deported to Africa and the newly found colony of Australia. The manner and the conditions under which they were shipped to these colonies remain the ugliest spot in British history. The practice of sending criminals to Australia however stopped when gold was discovered there. Henceforth the nobles started 'landing' there to fill their coffers. France also imitated the royal tradition of England. They deported their convicts to Guiana, where the conditions were incredibly miserable.

[4] Criminology and Penology *by Richard Korn* (p. 395)

[5] Crime, Justice and Correction *by Barnes & Teeters* (p. 361)

[6] Pioneers in Criminology *by Mannheim* (p. 168)

The Twilight

No one listened to the cries of suffering humanity! No one knows how many innocent souls were made to crawl at the altar of justice. It may seem incredible, but nevertheless it is true that the first serious approach to understand the criminal was made by an Italian physician, Lombroso, who published his famous work "The Criminal" in 1876. "In the history of criminology probably no name has been eulogised or attacked so much as that of Cesare Lombroso."[6] At the same time it was a fact that Lombroso's theory of the criminal as a "sub-human anthropological freak marked by an anatomical stigma and doomed by his nature to a criminal career" was at once accepted by a majority of students in Italy and Europe. "His general theory suggested that criminals are distinguished from non-criminals by the manifestation of multiple physical anomalies which are of atavistic or degenerative origin . . . these (he said) were biological 'throw backs' to an earlier stage of evolution and that the behaviour of these 'throw backs' will inevitably be contrary to the

rules and exceptions of modern civilized society."[7] For quite some time this remained the dominant doctrine that criminals can be distinguished from non-criminals by their facial and bodily characteristics. He came to this conclusion by studying 383 skulls and 5,907 criminals. He described that criminals have enormous jaws, handle shaped ears, stub noses like apes, tatooing, receding chin and forehead and small eyes, etc. Under the circumstances there was very little that could be done about these poor creatures. However, the central doctrine of this thinker did not last long. Before his death in 1909, he modified his views to the extent of admitting that the born criminals perhaps numbered not more than half of the total—the other half being the victims of circumstances.

Lombroso's theory was carried further by other Italians like Raf el and Enrico Ferri, who was his pupil and also a son-in-law. "It was Ferri who coined the word 'born criminal.' He emphasized that crime was the outcome of: a) economic pressure, b) social environments, c) constitution of mind. He held that punishment was limited in its possibilities to combat crime and therefore it was the duty of the State to find other methods. Economic factor in crime was further emphasized by William A. Binger. This theory was, however, bitterly challenged by Dr. Goring, an English physician of the Prison Service. After examining hundreds of inmates of prison and comparing the results with similar cases, he proved conclusively that criminals as a class differed more widely among themselves than they do from the community. In his work "The English Convict" he announced his results that "there was no such thing as a criminal class."

Whatever the merits or demerits of these theories, the fact remains that these pioneers in the subject of criminology made serious and 'scientific' efforts to study the criminal. One thing stands out clearly in those writings—that the criminal was made the subject of study like a patient. It was stated that crime was a disease and the criminal a victim of his emotions over which he had no control. His actions were dictated by his emotions, (sometimes unconsciously) over which he had no control. Gradually the idea spread in all the modern countries of the world. Psychologists found their most interesting and revealing material in criminology. The research is going on, producing a great many new ideas, methods and techniques.

Have We Found the Solution?

As a result of this research, a new agency has come into operation in the twentieth century, *viz.* the correction agency. We can see hundreds of psychologists, psychiatrists, doctors, professors busy in treating the offenders. There are half-way houses, parole and probation boards, open prisons and hospitals opened for them. Besides paid officers, hundreds and thousands of volunteers have also stepped in. Besides this new approach, the police, the judiciary and the jails have also changed their methods and techniques. These law enforcing agencies however need much improvement in the developing countries. They are under-staffed, ill equipped, untrained or badly trained. We can hope for much better results when these agencies come up to the required standard. But, what is happening in the West; the most advanced, civilized and affluent nations of the world? All these agencies are comparatively well equipped, well trained and manned by fairly well-educated people. Yet they have miserably failed in controlling crime. The crime graphs have touched the highest peak. Does it show that the more affluent, civilized and democratic we become, the rate of crime also keeps pace? Figures given below would illustrate my point:

London with a population of over 8 million registered over 300,000 cases as compared to only 170,000 cases registered in the whole of West Pakistan with a population of 56 m. In the U.S.A., there is one murder every hour, a forcible rape every 21 minutes, a robbery every 4 minutes and a burglary every 25 seconds. In the year 1967, as many as 3 million serious offences were reported to the police.[8] The President's Crime Commission declared that there was far more crime than ever reported. "Burglaries occur about three times more often than they are reported to the police. Aggravated assault and larcenies occur twice as often. There are 50 per cent more robberies than reported. 75 per cent

[7] *Ibid.* (p. 183)
[8] F.B.I. Report 1967

of the commercial establishments surveyed do not report to police the thefts committed by their employees—but instead add the property lost to the cost of production. 43 per cent respondents say that they stay off the streets at night because of their fear of crime."[9]

The report further discloses that one boy in six is referred to the Juvenile Court. In 1965 more than 2 million Americans were received in prison. Another survey report shows that about 40 per cent of all male children now living in U.S.A. will be arrested for non-traffic offences during their life time. Yet another sample showed that 91 per cent admitted that they had committed acts for which they might have received a jail sentence.

The Report mentions that there were 25 robberies in Washington in 24 hours. Out of 1,173,201 burglaries only 2,590 cases were solved. Property lost in these cases amounted to $284 million. As many as 486,568 cars were stolen. Half of the total arrests pertain to alcohol offences. The above criminal army consists of 6 million people, far more than the United States armed forces put together and far more force than that which has over-thrown nations in the past.

Can we, therefore, learn anything from the States or for that matter any country in the West? Their theories might look attractive on paper, but the test of an idea lies in its practical usefulness. If a medicine, instead of curing the disease, adds to its seriousness, it is not worth a penny. No one would buy a hair growing tonic from a person who himself is bald!

The problem of crime therefore becomes more complicated and its solution more difficult. Its trends are more difficult to ascertain. "Its causes are legion. Its cures are speculative and controversial—it is indicative of deep conflicts . . . Again it is not like a disease which can be cured by isolating the troublesome microbes."[9] Commenting on the causes of crime increase the Crime Commission Report mentioned that, "we continue to pass the laws, which we do not enforce, we authorize crime prevention programmes which we do not support: our laws and judicial system are more protective of the criminal than they are of the society . . . and the greater crime is the tolerance of crime."[9]

[9] Challenge of Crime in a Free Society—*Report by President's Crime Commission*

Causes of Crime

Before I come to the last part of my paper, it would be pertinent to mention briefly the main causes of crime. Wherever a crime takes place, it could have one or more factors responsible for it.

1. Poverty, unemployment or under-employment.
2. Urbanization—anonymity.
3. Neglect of parents due to broken homes—or negative influence.
4. Bad society.
5. Absence of recreational facilities.
6. Delay in the administration of justice.
7. Exposure to temptation provided by advertisements.
8. Foul literature, T.V., cinema, etc.
9. Constitution of mind or biological defects—to a point.
10. No object in life—or wrong object.
11. Lenient or wrong type of punishments.

Recommendations

One common denominator in all the above factors is that it is society which produces the criminal. And if crime is the product of society and the criminal the finished product of its culture, then society must own it. On the one hand, society spreads infection, creates temptation and actively connives at the commission of offences, and on the other gets alarmed to see its end product. Like cleanliness, it is the duty of every citizen to keep the streets free of dirt, but if every one starts spreading dirt around, a couple of janitors cannot keep the town clean. In this way, we would be trying to empty the ocean with a drinking glass!

The pioneers of criminology did a wonderful job, by attracting the attention of society from the crime to its author. Now every criminologist, psychologist and even a sociologist is busy in studying the criminal and suggesting ways and means to correct him. My thesis is that this approach is also defective and therefore would not produce the results. The emphasis should shift from the criminal again to its author —society. Put it right and you live in

peace. There are countries like China and Tribal belts in Pakistan where crime is negligible. There are no policemen, no jails, no courts and no probation/parole offices. I can foresee that if you send all the above agencies to Tribal areas, crime would spread because every one has to find a job for himself *viz.* the police, the prison officer and the probation officer. Another factor which is responsible in controlling crime in this area is that people normally have more respect for customary law than the secular law. In Pakistan, like in most other unfortunate colonial countries, the law and its apparatus was imported and enforced ready made. Before I finish my discussion, I would like to mention briefly some of the recommendations. In fact each item needs a chapter, but in view of shortage of space and time, I would only tabulate them briefly below:

1. A social order will have to be established where every citizen is respected, irrespective of caste, colour, creed or religion.

2. Every citizen should be given basic necessities of life. The State has to act like a big Insurance Co. Again every citizen must be given equal opportunities in life.

3. The parents, teachers and the church will have to play an active and positive role in the education and training of the younger generation and building up their character.

4. We will have to put a check on urbanization. This can be done in developing countries easily by taking all the modern facilities to the rural areas.

5. Provide recreational facilities to the common man—at a cheaper rate, if possible free.

6. Speedy trial.

7. Correct type of punishment/treatment.

8. An effective check on obscene literature, T.V. and cinema, particularly the advertisements which make man unhappy, as he feels dissatisfied about the things he already possesses.

The last, but NOT the least—

9. Give the people an object in life. Status in society should be determined, not in terms of economic prosperity, but on personal capabilities and noble deeds. The race to collect dollars should stop. For this, the example will have to be set at the top. If the aristocracy has all the luxuries, big cars, palaces, huge bank balances, preaching to the poor people to forget about these things would have no effect. Every person wants everything better and more. When they don't get it by legal means, they procure it by illegal means.

So in order to have a peace-loving society, we will have to introduce all the above items one by one. And I am not talking something utopian. Pages of history have recorded when such a situation existed and it exists today in some countries!

Before I come to the concluding paragraph of my paper, I want to highlight another darker aspect of our present day judicial system, which could rightly be named as the "injustice of justice." Under the present day law, very many efforts are afoot to see the offender rehabilitated by various types of treatment, but no effort is made to rehabilitate the victim. Of the two, priority, I think, should be given to the victim. The best way of imparting justice is by compensating, restitution or restoring the balance which the victim has lost.

And now I come to the focal point of my thesis. There is a famous saying in my country in this context. In order to overcome a problem most successfully, people say, "Don't kill the thief, kill his mother." This is further explained by Plato, when he said, "that the wicked owe their wickedness to their organization and education, so that not only they, but their parents and instructors should be blamed." The second point in support of this approach is the conclusion drawn by modern psychologists in respect of child psychology and formation of behaviour. The present day research has proved that a child's future attitude and behaviour is formed within the first three years of his life and in certain cases, even before birth when he is still in the mother's womb. This concept, if accepted, lessens the individual's responsibility and increases the load of society still further.

The above two points, coupled with the accepted thesis that crime is the product of society, prove it beyond any shadow of doubt that:

"It is society which needs the 'treatment' and not the criminal."

And when we agree on this conclusion, I suggest that, just as in the 19th century

attention was diverted from the crime to its author—the criminal, we should go a step further and focus our attention, not on the criminal, but on to its author—society. We will have to change our socio-political and economic system that breeds criminals. Until such time as we do that, all our efforts would amount to nothing except trying to empty the ocean with a drinking glass.

Some Causes of the Decrease of Crime in Japan

*by Akio Kasai**

Introduction

Poverty is often pointed out as a main cause of crime. However, there are many wealthy countries suffering from an increase of crimes. Lack of social welfare is sometimes considered as an influential element in the causation of crime. Yet, there are so many countries advanced in social welfare being bothered by numerous crimes. Rapid change in the social structure could be a dominant factor of crime and a flood of commercial advertisements could also be one of the main causes of crimes.

Japan, which is experiencing rapid and great changes in its social structure and standard of living, has fortunately not yet been harassed by an increase in crime. The reason why Japan has been able to achieve a decrease in crime is due to effective law enforcement and other reasons such as the following:

(a) The means of livelihood of the nation are abundant and relatively secure, and only a few persons are compelled to engage in any criminal activity to make a living;

(b) Japan is composed of one race of people of the same origin;

(c) Family solidarity—family pride and honour—still remains strong;

(d) Stringent and effective legal control of firearms and narcotic drugs;

(e) Geographical isolation—lack of a land border with neighbouring countries that criminals can easily cross to escape—and limited space;

(f) Police efficiency in administration, equipment and investigation; and

(g) Active public cooperation.

In my personal opinion, it would be possible to add another element—national character. I feel it can be said that we, Japanese, have two specific characteristics regarding this point. One is a sense of shame, the other is respect for authority or officialdom. Both have been traditionally cultivated through a long history.

Thus, many speculations are possible about this problem. However, I think public cooperation towards law enforcement would be the key to get to the root of the matter. This is the focus of my paper and I shall discuss this in detail in the chapter that follows.

Public Cooperation

The sooner the police gets information about a criminal offense, the better the chances and earlier the possibility for the police to arrest the offender. In Japan any citizen can talk with the police at once when he dials 110. The police received 2,077,979 informations through this channel last year. Emergency deployments were executed 5,646 times as a result of these informations which in fact constituted 70.7 per cent of all emergency deployments.

In a public opinion poll, 49 per cent of the citizens replied that if they get some information about a crime they immediately would report it voluntarily, and 27 per cent that they would tell the police when they are asked. Only 6 per cent of the people showed a negative attitude due to reluctance of being involved in the investigation.

Needless to say, without the public support the police would not be able to act or investigate anything at all, even though they may be equipped with very sophisticated devices. As a matter of fact, public cooperation is essential for every action of the police. Here, I would like to explain some aspects of the role of the public in law enforcement. The main contributions of the public in this field are positive and cooperative activities towards the police on the one hand, and an active and appreciative attitude which tends to encourage the police officials, on the other.

(1) To begin with, I would like to pick out the Crime Prevention Association

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(CPA) which is a voluntary private organization. A CPA was established in every community all over the nation. The membership of CPA's came to around 560,000 last year—one CPA for every 43 households. The whole organization was united in one pyramid form of structure from the small community level to the national level. The origin of CPA is the voluntary, small association which was organized by several community leaders for the purpose of protection of their community from dangers arising from social turmoil just after the world war II. Now, the tasks of CPA are chiefly to report crimes to the police, adoption of necessary measures for crime prevention, cooperation with and assistance to the police, other activities concerning crime prevention such as voluntary patrol, distribution and circulation of materials prepared by the police or CPA.

The total number of the reports, information, etc. given by CPA is as follows:

(a)	crime and juvenile delinquency	25,852 (16%)
(b)	accidents (including traffic accidents)	29,081 (18%)
(c)	insistent peddlers and persons of bad character	9,796 (6%)
(d)	drunken persons and persons missing from home	8,008 (4%)
(e)	counselling regarding crime prevention	33,422 (21%)
(f)	other	56,271 (35%)

In addition, CPA has another organization which is different from the general organization above mentioned. That is comprised by numerous shopkeepers or business offices like pawnshops, second-hand shops, amusement shops, restaurants, bars, cabarets, department stores, markets, hotels, banks and so on. The total number of these organizations is 10,969 all over the country. The members meet and discuss crime prevention and exchange useful information with each other.

Big campaigns are conducted by CPA —'Crime Prevention Campaign' which is usually conducted twice a year, in addition to 'Crime Prevention Model Area' activities. These campaigns have proved to be effective in stimulating public concern in crime prevention.

(2) In the second place, I would like to mention the Traffic Safety Association (TSA). TSA has many branches organized around communities throughout the country and its origin was voluntary activities of the citizens. In 1948, economic activities began to wipe off the stalemate created after the war and they resulted in a gradual increase of traffic accidents. In the first stage, owner drivers and transporters took the initiative and organized the people of the community. Later on, it grew as a nationwide organization. The purpose of TSA is to promote public sense about traffic safety and it functions as a link between the police and the public. Thus, TSA could be considered to be effective in crime prevention as well.

(3) In the third place, volunteers who are called 'Juvenile Guidance Agents' are working for the prevention of juvenile delinquency. They enjoy the confidence of the police and contribute services through voluntary patrolling or counselling. The number of agents total 38,664 all over the country.

(4) The above-mentioned public voluntary services are more or less supplementary activities to support directly law enforcement. Apart from such cooperation, we receive a lot of other assistance from the public. This is also quite helpful for law enforcement, and enhances the morale of the police. For example, "Police Officer Friendship Association" is a big organization which has been very active since 1960. The members of this association consist of citizens of various professions, including actors, film stars, novelists, commentators, professors and so forth. The contest for selecting the best police officer is conducted by one of the influential newspaper companies. This also serves to encourage the police.

Variety of Police Activities

The economically advanced society gives us so many conveniences; however, development has two sides like a coin. An increase in crime rates in major urban areas is caused by the influx of population into the cities. New types of, and larger scale crimes are brought about by modern communication and transportation. Now we are facing many problems and in order

to seek a solution to them, we have to first equip ourselves with the most sophisticated devices and new systems. New methods of education and training of police officers must be adopted at the same time. However, in respect of public cooperation, the advanced society caused us much more difficulty. This is due to a change in moral attitude and values. For example, according to a research conducted in respect of youths aged 15–23 to the question as to what or when they find their object in life, the answer was as follows:

(a) life which satisfies the taste or hobby without considering honour or money 54%
(b) time when he is alone without any interference or disturbance by other person 18.1%

The results of the same research further disclosed that when they come across a scene where someone incites violence, or a drunken man harasses the people, their attitude would be as follows:

(a) just watch and see the development of events 28.8%
(b) slip away because of fear of unnecessary involvement 13.7%

Another public opinion poll shows that 30 per cent of the Tokyoites know nothing of their neighbours.

These facts reveal that rapid urbanization and increase of population cause the weakening to a certain extent of the framework of the traditional community structure and neighbourhood solidarity and civic sense. This also results in taking them away from the restraining influences of their own society. At this stage, the question arises as to what should be done to awaken public concern regarding crime prevention and to maintain and promote public cooperation with the Police.

In this context, what should be given priority is to emphasize the role and responsibility of the public. I think there are two things that we must attempt regarding this point—one is to encourage the public and give them some incentive to take action; the other is to build a firmer and stronger bridge which links the police and the public. In this behalf, the police activities must be multifarious and get closer to meeting the public demands. Here, I will show some of the police activities.

(1) Fortunately, so many voluntary activities contribute to law enforcement even now. If a citizen is injured while he is helping a police officer, naturally he should be compensated by the Government. Then, the person who contributes in this field should be commended. Both systems have been established for a long time in this country and in fact work well.

(2) The system called Residential Police Box (RPB) may be almost unique as compared with the system in other countries. The RPB is located generally in rural communities such as farming or fishing villages. Usually, one police officer with his family is assigned to each RPB in order to carry out police duties and to promote better relationship with the community. The RPB is divided into two parts —the office and the private quarters where the family lives. The RPB officer's wife is paid for her assistance to, and cooperation with, her husband, particularly in promoting better relationship with the community.

(3) Each police station has a 'Police Counselling' section. Generally speaking, a Japanese feels shy in asking a lawyer for advice about a private or minor trouble. The person who has some trouble would first try to solve it with the assistance of his relatives and friends. When he fails to get to a solution by this method, he goes to the police station.

Last year, the number of cases which were brought up for Police Counselling amounted to 220,000. The particulars of the cases are as follows:

(a) accidents (most of them traffic accidents) 76,216
(b) private contracts 26,539
(c) divorce, inheritance, etc. 22,470
(d) juvenile delinquency 17,715
(e) poverty—unemployment 16,314

As a result of the counselling, 36.8 per cent of the total number of cases were solved, and in 53.9 per cent the applicants were satisfied by getting some appropriate advice.

(4) The police band is quite popular among the citizens, and a lot of children enjoy playing judo or kendo at the exercise hall of the police station. Last year, 7,000,000 citizens enjoyed the performances of the police band and 61,054 persons used the judo or kendo schools of the police. Assisting the public is an important part of the policeman's duties, and one police box that is located in downtown Tokyo was approached by around 900,000 persons who had lost their way. The population of the people aged over 65 is 7,300,000, out of whom around 460,000 persons live alone. To cheer up these solitary aged people by a visit or a phone call is now one of the daily duties of the police. Through these frequent and friendly contacts, the police always remain in touch with the people.

I would like to refer to one more thing before closing. According to the public opinion poll which was conducted last year, 46 per cent of the people talked with a police officer for various reasons in the previous year and except for the cases of actual violations of traffic laws, only less than ten per cent of them stated that the treatment of the police was not good in words or attitude. 86 per cent of the people replied that they knew the police box which is in charge of the area they live in and 41 per cent really knew the face of the officer. Further, 40 per cent of the latter in fact said that they were friendly and familiar with the officer in charge. 48 per cent of the people replied that they were satisfied with police investigations, while only 28 per cent expressed dissatisfaction.

Workshop II:

Summary Report of the Rapporteur

Chairmen: *Mr. L. H. R. Peiris and Mrs. Kinko Sato*
Rapporteur: *Mr. Aloysius Wong (Hong Kong)*
Co-Rapporteur: *Mr. Arata Sawa (Japan)*

Titles of the Papers Presented

1. Recidivism and Increase in Juvenile Crimes and Crimes of Violence in Hong Kong
   by Mr. Aloysius Wong (Hong Kong)
2. a) Causes of Increase of Crime, b) Prison Management in Iran
   by Mr. Esfandiar Teymouri (Iran)
3. The Behaviour Attitude to the Due Process of Law
   by Mr. Tatemi Kajiwara (Japan)
4. A Consideration of the Confession
   by Mr. Arata Sawa (Japan)
5. Diversion in the Criminal Justice System of Japan
   by Mr. Toshihiko Tsubouchi (Japan)

The workshop session opened with the full text of Mr. Wong's paper being read.

It was stated that factors such as political unrest, social instability and economic inequality, together with the generally selfish, lazy, jealous, domineering and unjust nature of man, etc., are some of the main contributing factors to crime. An observation was made that crime will continue to be committed and the need for prison institutions will remain, though the characteristics of such institutions, in the light of our changed and changing societies, leave much room for deliberation.

One member was of the opinion that human nature was basically good and that it was mainly society that is the cause of crime. It was also agreed that in some cases, crime was committed as a result of pressure or the influence of one's sub-culture.

The heavy cost of crime to the Hong Kong general public was reflected in the Government expenditure on 'Law & Order' for the years—1970/71 ($240.3 million); 1971/72 ($284.9 million) and 1972/73 ($345.1 million), (H.K. Report 1973, p. 221 refers).

Recidivism Rate

The lowest annual 'Prisons' recidivism rate between 1968 and 1972 was 50.43 per cent (1969–1970 figure). The lowest recidivism figure of Japan between 1967 and 1971 was 50.7 per cent (1971 figure, quoted in Japan's White Paper on Crime 1972).

Pertinent Questions

Questions deemed related to the recidivism rate and asked were:

What is the expectation of the general public, the courts or the victims of a crime when an offender is committed to a prison institution? Is the offender expected or not, to be punished, to pay for the crime he has committed? Is it logical or possible to administer both punishment and treatment at the same time? Is prison policy expected to be focussed on 'preventive punishment,' simple incarceration, rehabilitation, a combination of the above, or what should the main aim of prison be? Should treatment in a prison institution be related at all to recidivism, or share any responsibility for recidivism? It was also asked whether the attitude of 'society' (which could be negative or positive); the family environment the dischargee has to return to; the methods and powers under which the police operate; existing laws and courts' atttitude, etc., have anything to do with recidivism. The main question was therefore: 'who is to be held, or who is most, responsible for this recidivism rate —the prisons, the offender himself, the offenders' family, society, the police, the courts, or what?'

The argument was put forward that inmates were admitted to a prison institution in accordance with a court order, and once admitted, his safe custody until the expiration of the statutory period for which he must be detained, is the prisons' prime concern, as well as that of the courts and the public; and in the circumstances, treatment and rehabilitation are only of secondary importance.

Very often it was stressed, we hear that when a person has been sentenced to... years' hard labour, the public express joy that 'it is a good thing he has been caught and put away for a long time,' and in most cases a sentenced prisoner was expected to be punished, not treated.

It was also pointed out that according to modern theory, most correctional institutions profess to *treat* the convicted inmate during his period of 'forcible detention.' The question posed was 'are conditions such as they are, truly conducive to reform?' It was also asked where a prisoner or inmate really goes straight after discharge, what were considered the relevant causative factors? 'Is it because of effective institutional treatment, or because of changed family circumstances, or social conditions, or could it be because he has attained a state of maturity whilst incarcerated, which was not the case prior to his admission?'

The above questions were considered of vital importance and they need to be answered, if the incidence of recidivism was ever to be brought into proper perspective or resolved, at all.

Suggestion

Following concrete discussion on the issues raised, the summary conclusion and recommendations that emerged were:

(a) The aim of confinement in an institution, should be generally focussed on the treatment and reformation of the offender, and not mere punishment, in spite of the general expectation of the public that offenders must be punished. In this same context, it was agreed that necessary steps should be taken to make the offender aware of public opinion concerning his behaviour as it would be unwise for any Government policy to be implemented in disregard of the opinion of the public.

(b) It was agreed that in the case of hard-core and persistent criminals, the element of punishment could not, obviously, be totally dispensed with but must be applied with due caution and restraint.

(c) A certain amount of crime was agreed to be natural in any society and inevitable, and it was also agreed, that any attempt at the total elimination of crime is doomed to failure.

(d) It was agreed that repeated institutional sentences result in the offender becoming 'institutionalized.' This, in turn, adds to the difficulties usually experienced by an offender in readjusting to the life, demands and pressures of normal society, which again tends to pressurize him to deviant behaviour that channels him back to the only society he is accustomed to—that of the 'institution.'

(e) The 'stigma' that is inherent in institutionalization, often lasts for life, with innumerable disadvantages and sufferings, and due to these circumstances it was felt that an institutional sentence decision by the courts should only be the very last resort.

The consensus of opinion of the group was that the following measures might help to at least reduce the 'recidivism' rate of Hong Kong:

(1) In addition to the present system of classification of correctional institution inmates, it is advisable to further segregate them in accordance with, say, age, family background, social status, education, nature of offence, etc., to avoid possible contamination. Example: Two first offenders each serving a 6 years' sentence, one a business executive, but a hit-and-run driver, with a steady family; the other, say, a drifter who had committed numerous acts of armed robbery with violence or perhaps rape, but has been confined for the first time. In the light of future social rehabilitation, prisoners with such fundamentally different backgrounds and circumstances, should be segregated, though the shortage of funds and institutions was a conceivable problem.

(2) Though treatment in Prison institutions should be administered on a humanistic basis, care should be taken not to grant too many privileges or to provide facilities better than those enjoyed outside by the average citizen. This, it was thought, might encourage at least indifference to institution life, if not serve as a

positive incentive to be institutionalized.

(3) There was one suggestion that recidivists should be confined in different institutions, in accordance with the number and nature of offences, with a diminishing privilege system as their convictions increased. In this way, the potential offender knows what to expect the next time.

(4) Another suggestion was that at a certain stage of recidivism, a fixed sentence may be replaced by an indeterminate sentence, *e.g.* for not less than '5 years and not more than 14 years' etc. In such a case, the time of discharge would depend on progress of reformation.

Though not strictly on the subject under consideration, the group discussed and agreed that while the principle of equality of treatment under the law should be observed, it was not always the best decision to treat offenders with marked difference in background, prospects, status, etc., in the same manner, as ordinary criminals, in spite of the fact that they may have committed the same offence. To send a person to an institution was agreed to be the surest way to nurture further criminal tendencies and to lead to the commission of further offences.

Juvenile Crimes and Crimes of Violence

On the subject of increase in juvenile crimes and crimes of violence in Hong Kong, it was reported that of 863 persons sentenced to imprisonment in the Financial Year 1971/72, for Robbery and Assault with intent to Rob alone, 604 or 69.98 per cent were under the age of 25, while of the 559 persons sentenced to detention in a Training Centre during the same year, 283 or 50.62 per cent were committed for Robbery & Assault with intent to Rob.

Possible causes of such phenomena were listed as: Penetration of Hong Kong's predominantly conservative Chinese community by foreign culture, through television, pop music, movies, magazines, etc., where the emphasis is mostly on 'violence' (sword fights, armed robberies, cow-boy brutality, torture of victims and mass executions, etc.).

The increased breaking up of traditional family ties, the growing economy of Hong Kong by rapid industrialization and urbanization programmes, overcrowding and frustrations caused by such rapid changes were considered some of the main factors.

These problems were discussed and it was agreed they are identical with those of many countries, and that a common solution was not seen likely to emerge from our small group.

(A) Causes for Increase in Crime
(B) Prison Management in Iran

In his paper, Mr. Teymouri suggested that current international crimes of 'hijacking, kidnapping, drug-pushing, etc., were attributable to factors such as: creation of new ideas and thoughts and the abandoning of the old established religious principles; advancement of technology; and easy access to arms and dangerous drugs, in many countries. The introduction of new films and publications and the tendency of youth to act and speak under the influence of drugs, was considered, by Mr. Teymouri, to have an enormously bad influence on millions of ordinary people.

It was suggested and agreed that more stringent Governmental control on the possession of arms, and the availability of drugs would go a long way in reducing terrorism, capital crimes and other common offences.

Mr. Teymouri also felt that an agreement should be reached with or sanctions imposed on the 'mass communication media' so that they do not provide undue publicity to criminals or to crimes committed, which might be interpreted as an incentive to 'fame-seeking' potential criminals. The group generally agreed with this view.

SECOND TOPIC

After studying the detailed 'Administration of the Central Prison of Iran' presentation, by Mr. Teymouri, it was felt by the group that the prison system and administration were good and in line with modern thought.

It was stressed that past prison treatment methods were based on vengeance and harsh punishment, but the system has long been diverted towards proper treatment and rehabilitation of the offenders, and that experts all over the world have joined in an effort to pin-point the root causes of offences and to devise proper means of

treatment, taking into consideration, regional and local habits and cultures.

In response to the above line of thought, Iran was said to have demolished its old prisons which have been replaced by 'correctional institutions.'

A five-point programme carried out in his prison was listed as follows:

(1) Technical and vocational training.
(2) Specialized training and lectures on subjects of interest to prisoners.
(3) Orientation on prison regulations and discipline.
(4) Establishment of inmates' rights and professional relations with prison officials.
(5) Mutual respect among prisoners and officials.

A selection Committee which interviews each inmate on admission and assigns him to an appropriate section, was said to be functioning. There was said to be provision for habitual offenders, young prisoners between 18 and 25, drug addicts and those with mental disorder.

Vocational Training

A large section of the prison was said to have been devoted to house workshops and factories and there was ample opportunity for prisoners willing to learn a trade, to receive training in such fields as: carpentry, metal works, carpet weaving, shoemaking, tailoring, printing and handicrafts, etc. An earning scheme was also said to be in operation in this prison, as well as educational programmes.

In his paper Mr. Teymouri also listed nine points which he considered essential in effective prison administration. The following points induced the most discussion: 1. The objective of the prison management should always be proper treatment and not vengeance. 2. The prisoners must be oriented by appropriate programmes to accept the responsibility for their own action and to admit their own fault. 3. The prison regulations should be enforced without any favouritism and habitual offenders should not be allowed to dominate or to enjoy any special privileges at all.

Specific Problems

The specific problems put forward by Mr. Teymouri, concerning his prison were:

(1) Insufficient modern machinery in his prison to keep his prison population gainfully occupied.
(2) No after-care service.

Recommendations of the group were: (a) Endeavour to secure a larger prison budget, for the installation of the necessary machinery and the employment of needed after-care staff. (b) Consider implementing a system of 'Voluntary Probation/Parole/After-care officers, on the lines of that in Japan.

Behaviour Attitude to the Due Process of Law

A fairly lengthy discussion followed the reading by Mr. Kajiwara of his above-mentioned paper. The focal point seemed to have been on: Common social values, sense of beauty, scheme of reality and entity, dominant value system, etc.

The difficulty experienced by a committee of three foreigners and one Japanese, in reaching an unanimous decision on a particular item to be purchased, was mentioned and opened up a fairly lengthy discussion.

There was a basic difference between the item chosen by the Japanese national and that agreed upon by the foreigners. In view of this difference, a decision was not reached after some three hours, on the item to be purchased, which ultimately was neither that originally chosen by the foreigners nor that indicated by the Japanese national.

This was considered as illustrating the fundamental difference in concepts, behaviour tendency and social values of people of different cultures.

The question having arisen in Japan, the host country, it was generally felt by the Japanese national, that the foreigners might have seen it fit to accede to his choice, but this was not the case. On the other hand, had the Japanese national been willing to sacrifice his view, as was deemed customary and expected by the foreigners, in the light of 'majority choice,' the decision would not have taken three hours. So the final purchasing of a third item was obviously a compromise decision.

Apparently, the foreigners were influenced by the somewhat West-oriented 'majority-value' system, which inspired complete disregard of all other factors and held

that 'majority decision' should prevail.

On the other hand, the Japanese gentleman, influenced by his national culture and social values, of "dominant culture' and essential 'unanimous decisions,' etc., refused to yield his stand-point, hence the creation of the situation of indecision.

It was also disclosed that, according to the Japanese social value system, not merely a majority is necessary in reaching a decision, big or small, but an unanimous opinion is desirable, and it is that which is looked for at all times.

The discussion continued on the lines that when considering the criminal justice systems in Asian countries, it is to be observed that most of them were transplanted from the common law system in which the adversary system was in operation, and this system sometimes seemed to be unable to uncover the truth which was one of the important objectives in criminal procedure.

The judges in Japan have strong confidence in the absolute objectivity of their judgment and their great dignity, but sometimes they seem to forget about the relativity of the Law, and therefore we have to aim at a formal attitude to the due process of law.

Then the hearing system in the family court in Japan, in which the adversary system was not adopted was discussed. An overseas participant questioned whether the adoption of the adversary system in such proceedings was not desirable, but the Japanese participants expressed the view that such system was not necessary to protect the juvenile's interests.

We discussed the problem very freely and vigorously but according to the complex nature of the problem, no unanimous conclusion was possible.

A Consideration of the Confession

It was stressed by Mr. Sawa in his paper, that finding out the truth is impossible without a 'confession,' and since there is no hard and fast rule as to how to interrogate or extract information from the suspect, difficulties continue to be faced by the Public Prosecutor and the Police of Japan.

A unique cultural feature of Japan, however, was considered to be the frankness and conservativeness of these homogeneous people and their general tendency to be law abiding. Due to such cultural background, whenever anyone commits a crime, he is normally inclined to be repentant of his crime and to confess, with little need for persuasion, thus reducing the difficulties of the law enforcement officers. Stronger evidence is accumulated as a result of confessions and a conviction rate of some 99.9% has been achieved by the Public Prosecutor. There was said to be evidence that confession of crimes in the urban areas was greater than in the rural districts, possibly due to better understanding of the due process of law.

In spite of the fairly satisfactory situation at present prevalent in Japan, complacency was not deemed justified, in view of the continuously changing attitudes and patterns of life of the Japanese people, and the development and the acquiring of additional knowledge and skills in this field to meet future contingencies was, in Mr. Sawa's view, necessary.

Diversification of Procedures

The laws relating to confession in other countries like Sri Lanka, Hong Kong and Iran were compared.

Basic differences which came to light were that in Japan, confession to a Public Prosecutor is admissible, provided the requirements of the law had been duly observed, while in Sri Lanka, only a confession made to a magistrate and recorded by him after complying with certain strict provisions of law, is admissible as evidence in court, while confessions made to police, excise and forest officers are completely shut out from being led in evidence.

The existence of official Justices of the Peace and Commissioners for Oaths in Hong Kong was mentioned and it was stated that a substantiated confession to a magistrate, in court, was deemed sufficient for a conviction.

To describe the Japanese Judicial system, a number of provisions of the Constitution and the Code of Criminal Procedure, etc., were referred to, but the most interesting and important ones were considered to be: Articles 36, 38 and 40 of the Constitution of Japan and Article 4 of the Criminal Compensation Law. It was considered advantageous if something in line with the

above provisions could be introduced in some of the other countries.

Experimental Measure

A new measure that was agreed to be worth trying, for the purpose of inducing confessions, was to make available by law, a provision to offer some form of incentive, like an offer of suspended sentence, or a more lenient prison term, if the guilty person immediately confesses.

Conversely, it should be made to appear that a heavier penalty was likely for those who failed to confess and were later found guilty.

Diversion in the Criminal Justice System in Japan

In presenting his paper on the above topic, Mr. Tsubouchi gave a fairly comprehensive description of the situation in Japan.

Diversion at the Police Level

Starting at the police level, he reported on the disposal of cases such as those of minor traffic infractions, through a fixed fine penalty system, petty offences such as theft, fraud or embezzlement of small sums, and crimes concerning stolen property, etc., where, after due investigation, formal charge was not deemed desirable. In 1971, 5,218,028 cases or 77.9 per cent of the total traffic violations were dealt with in this manner, while in the same year, 28,475 cases were reported to have been disposed of by the police, as petty offences.

Diversion at the Public Prosecutor's Level, i.e., Suspension of Prosecution

It was emphasized that the Public Prosecutors of Japan, have the power to decide whether an offender will be prosecuted or not and that the exercise of their discretion was of vital importance, and influenced the number of cases that will be heard in the court as well as the number of convictions.

The extent to which suspended prosecution has been applied by the Public Prosecutors is reflected in the figures of 1971, which show that 371,096 or 82.5 per cent of the cases of non-prosecution decisions were the result of the exercise of the discretion vested in the Public Prosecutor, to avoid stigmatization of the criminal and thus aid his rehabilitation, rather than due to lack of evidence for a prosecution.

It was of interest to note that the status of judges and prosecutors in Japan was equal.

Diversion at the Sentencing Stage by the Court, i.e., Suspension of Sentence

It was revealed that such a system was introduced in Japan as long ago as 1905 and it has been expanded by amendments to the Law from time to time, in the light of experience.

There are a number of prerequisites for suspending the execution of a sentence, one of which is that the sentence which the court is about to impose upon the defendant, should be imprisonment (or imprisonment with labour), for not more than three years.

In the year 1971, 40,941 cases or 59.2 per cent of the offenders who were sentenced to imprisonment received suspended sentences and the need arose to revoke only about 8 per cent of those sentences.

Diversion at the Prison Level

A person sentenced to imprisonment in Japan, it was disclosed, was not entitled to remission, but need not necessarily serve the entire period of his sentence in prison. in view of the system of Parole, which may be granted after the serving of at least one-third of the imposed sentence, or ten years in the case of a life sentence, subject to the prisoner's fulfilling favourably, other requirements such as showing signs of repentance, not being deemed likely to commit another crime during parole, and it is believed that the community will emotionally accept him after parole.

Of the 28,101 prisoners discharged during 1971, 17,458 or 62.1 per cent were released on parole.

It has been observed that parolees tend to remain free from crime in the community longer than persons who have served their full term.

A survey covering the period 1967 to 1971 showed that 28.8 per cent of the parolees of 1967 committed further offences within five years of their release, as compared with a 48.8 per cent recidivist

rate among those who were released in the same year, after serving their full sentence.

The cited figures speak for themselves and the discussion group was very much in favour of the diversion system, which was seen to have been evolved to achieve many far reaching objectives, after consideration of factors such as the possible stigmatization of the offender; his future chances of rehabilitation; the emotional feelings of the public and the victims; the need to preserve basic law and order, as well as the interests of the national economy.

It was concluded that it would be very advantageous for countries not having the system, to consider its introduction.

Recidivism and Increase in Juvenile Crimes And Crimes of Violence in Hong Kong

*by Aloysius Wong**

A large prison population justifies the existence of the prisons and related services. On the other hand, it creates multi-dimensional problems. Not only is a large prison establishment and staff needed, but there is also a pressing demand for the diversion of Government funds from other deserving and constructive community projects, towards the provision of relief for prisoners' dependants, for their maintenance in prison, and the building up of related Governmental control mechanisms, such as the police force, preventive service and the Judiciary, etc.

The cost to the Hong Kong general public is reflected in Government expenditure on 'Law & Order' for the years—1970/71 ($240.3 million); 1971/72 ($284.9 million) and 1972/73 ($345.1 million). (Hong Kong 1973 Report, p. 221 refers.)

Without the recidivists, our services may well become redundant; but since due to factors such as: political unrest, social instability and economic inequality, together with the generally selfish, lazy, jealous, domineering and unjust nature of man, etc., crime will continue to be committed, we must, necessarily, be contented with trying to reduce its rate rather than to seek its complete elimination. Consequently, the need for prison institutions will remain, though the characteristics of such institutions, in the light of our changed and changing societies, give much scope for deliberation.

Recidivism

The Prison Recidivist rate of H.K. for the past 4 years is as follows:

Year	Total Received	Classified Recidivists Number	(%)
1968–1969	15,586	9,966	63.94
1969–1970	15,101	7,615	50.43
1970–1971	13,345	7,643	57.27
1971–1972	11,914	7,399	62.10

* Principal Officer (in charge of After-Care Section), Prison Department, Hong Kong.

The above figures indicate that over 50 per cent of the prison population admitted in the respective years were ex-prisoners or ex-inmates of our various institutions.

Recidivism in Japan

According to the Japanese 'White Paper on Crime' 1972, the recidivism rate of Japan is as follows: 1967—51.5%; 1968—51.3%; 1969—52.2%; 1970—52.0% and 1971—50.7%.

Relevant Questions to Be Considered Are:

(1) What is the expectation of the general public, the courts or the victims of a crime when an offender is committed to a prison institution? Is the offender expected or not, to be punished, so as to pay for the crime he has committed? Is it logical or possible to administer both 'punishment and treatment' effectively, at the same time?

(2) Is prison policy expected to be focussed on 'preventive punishment,' simple incarceration, rehabilitation, a combination of the above, or what should the main aim of prison be?

(3) Should treatment in a prison institution be related at all to recidivism, or share any responsibility for recidivism?

(4) Have the attitude of 'society' (which could be negative or positive); the family environment, the dischargee has to return to; the methods and powers under which the police operate, existing Laws and Courts' attitude anything to do with recidivism?

(5) Who is to be held, or is most, responsible for this recidivist rate: the prisons; the offender himself; the offender's family; society; the police; the courts, or what?

Remarks for Exploration

A person is admitted to a prison institution in accordance with a court order, and once admitted, his safe custody until the expiration of the statutory period for

which he may be detained, is the prisons' prime concern as well as that of the courts and the public; and in the circumstances, treatment and rehabilitation are only of secondary importance.

Very often we hear that when a person has been sentenced to so many years' hard labour, the public express joy that 'it is a good thing he has been caught and put away for a long time,' and in most cases, a sentenced prisoner are expected to be punished, not treated.

According to modern theory, most correctional institutions profess treatment of the convicted inmate during his period of 'forcible confinement.' Are conditions as such, truly conducive to reform? What are the factors considered to have operated, in respect of a discharged prisoner or inmate, who really goes straight? Is it because of effective institutional treatment, or because of changed family circumstances, or social conditions, or could it be because of his attainment of a state of 'maturity' while incarcerated, which was not the case prior to admission?

These questions are considered to be of vital importance and need to be answered, if the incidence of recidivism is ever to be brought into proper perspective or resolved.

Juvenile Crimes and Crimes of Violence

(a) Imprisonment Cases

The age group of the 863 cases sentenced to imprisonment during the last Financial Year (1971–1972), for Robbery & Assault with intent to Rob is as follows:

Under 16	1
16 to Under 21	254=29.43%
21 to 25	349=40.44%
26 to 30	123=14.25%
31 to 40	105=12.16%
41 to 50	25
51 to 60	6

The above is the 3rd largest category of offences, in respect of persons sentenced to imprisonment without option of a fine; Narcotics—4,685 (1st) and Other Larceny —2,197 (2nd).

(b) Training Centre Cases

Of the 559 cases sentenced to detention in a Training Centre during the last Financial Year (1971–1972), 283 or 50.62% were committed for Robbery & Assault with intent to Rob. This is the trend for the past 8 years or so, and it is hoped that from the above an idea may be gathered of the situation in Hong Kong.

Possible Causation and Areas of Research

(1) Penetration of our predominantly conservative, law-abiding Chinese population by foreign culture, through Television, movies, pop music, fashion, and magazines, etc., where the emphasis is mostly on revolutionary and new traits, such as drug abuse, long hair, mini skirts, violence and especially 'sex' in contemporary films, where the theme and scenes portrayed are often excessively sensuous and suggestive, if not, from a certain stand point, obscene. As a result, new attitudes and rebellious confrontation to established family tradition, law and order are engendered, causing numerous conflicts and disorders.

(2) The increasing break-up of traditional family units. Youngsters no longer want (or are very much disinclined) to live with parents or family elders, and wish to avoid home congestion and family discipline.

(3) The growing economy of Hong Kong, with the availability of more scientific inventions, luxury items and services, pleasure avenues, etc., all of which have inspired *new outlook* in our youngsters as well as *new desires*, which may involve expenditure well beyond their humble income, if any, and even that of the average citizen.

(4) Rapid industrialization and urbanization, resulting in mass movement of people into urban districts with a simultaneous switch from primary to industrial occupations, thus creating an exceedingly serious problem of overcrowding. Further, frustration caused through excessive noise from factories, aircraft and vehicles; traffic delays; air pollution and the rising cost of living, are perhaps some of the other factors which drive people into anti-social acts, in search of an escape from the pressures and reality of their environment.

(5) The uneven distribution of wealth in Hong Kong, as reflected in the skyscrapers and squatter huts and resettlement districts. Not so much the adults, but the youngsters (so called new generation), are no longer willing to live in their family huts and resettlement cubicles, sometimes with not even electricity, and where necessities like water supply and lavatories are still, in some cases, communal. An air conditioned room with hot showers, spring beds and push-button services in a hotel or public apartment, is preferred, though normally it cannot be afforded.

(6) The urban areas of Hong Kong are inundated with public apartments and hotels which are open to all and anyone who can pay the rent, thus enhancing the mobility and concealment of criminals.

Remarks for Exploration

Some 10 years ago, topless and nude scenes were banned on T.V. and in cinemas, and magazines or other publications with such pictures and advertisements were much more difficult to come by.

Today, the incorporation of sensuous sex scenes by film producers is a must if their films are to expect a reasonable return in the Hong Kong box office. Magazines and other publications with suggestive scenes can easily be bought at almost any newspaper stall, even in first class book shops.

Films with an emphasis on violence (sword fights, armed robberies, cow-boy brutality, the rapist, mass execution and torture of victims etc.), are also exceedingly appetizing attractions for the youngsters.

Can we pause for a moment to consider whether the above circumstances have any effect, at all, on our youngsters' behaviour today? Is it not natural for the youngster to imitate what he sees and hears? To see an actual demonstration on a wide screen of how the violence was applied, to actually visualize the ingenious and sophisticated techniques of robbing a bank, of committing a crime and circumventing the law, is perhaps too much for the innocent and impressionable youngsters to resist the temptation to see if he could do the same.

Another phenomenon is the undeniable tendency of family break-ups. Our youngsters, influenced by contemporary trends, want to be free, independent in thought and action, and this is not normally possible within their own family sphere. For parents to teach their children about morality, Christianity, dignity, love and responsibility, etc., is a traditional duty, centuries old. The contemporary thinking of today is based on 'equality.' 'If you (adults), can drink, smoke and have sex, why can't we?' ask the youngsters. The present demand and line of thinking are that young people should be given the right to live the way and the kind of life, they like, and not necessarily in the way their parents or ancestors used to live.

The teenagers in Hong Kong, as well as many other places, complain about the endless restrictions imposed on them by parents. 'Can't grow long hair, as I am not a girl. Can't or should not have sex, until I am married. Can't invite my friends home for a smoke, or stay out for a few days.' Practically nothing is said to be right or possible with their parents, at home, whom they brand as obstinate. The answer is to run away from home and school. To live by themselves, and do as they want, with whom, where and when, they like without interference. The social result: school dropouts, too young, untrained and unskilled for proper employment. The easiest or perhaps the most common way out for girls is to become dancing or bar hostesses, even call girls. There is also the problem of unmarried mothers, abandoned or neglected babies.

Boys become integrated into groups, which specialize in nothing but anti-social acts, like intimidation, armed robbery, drug addiction and various other forms of delinquent behaviour, which initiate their embarkation on a career of crime.

The growing economy of Hong Kong, though lopsided, makes available an endless list of appealing items such as high powered automobiles, motor cycles, cameras, coloured T.V., Hi-fi equipment and transistors; pleasure avenues such as cinemas, night clubs, dance halls, girls' bars, dog and horse racing, etc., that it is impossible not to capture the interest and desires of our youngsters. With their modern orientation, they easily become frustrated with the limitations and overcrowding in their own homes, with the noise of children crying and shouting, and mahjong games in the neighbourhood. They are dissatisfied with sub-standard living in squatter huts or even resettlement or low-cost housing estates, and often with

a little encouragement from a friend, who has had 'a head start,' reaches a decision to embark on a new approach—to live it up, to enjoy push-button and personal services, with little idea of the enormous price that needs to be paid.

Another aspect which I personally consider greatly contributes to the crime rate (juveniles' and adults' alike), is the ease with which temporary shelter or accommodation can be obtained in Hong Kong. Unlike in the rural villages, where strangers can immediately be singled out, a person committing a bank robbery or, say, an assault on the island, can easily move into a public apartment house or hotel in Kowloon, the New Territories or even in Hong Kong itself, and stay for as long as he considers necessary, without inducing any suspicion, as public apartments and hotels are meant for the public, and customers are not expected to be known.

The fact that the urban areas of Hong Kong are inundated with such accommodation, which are open to all and anyone who can pay the rent, provides an ideal hiding ground, and enhances the opportunity for criminals to disappear after the commission of an offence.

On the other hand, the population density, caused by 4 million people from different parts of China (speaking many different dialects) and from different countries and races all crammed into less than 400 square miles of land; the constant and forcible uprooting or displacement of families from old localities, due to gigantic Government and private urbanization programmes and development schemes, in addition to alarming rent increases as a result of opportunistic racketeers and ineffective Government control, have not only destroyed but constrict the growth of the district or neighbourhood system, making Hong Kong today nothing but a large family of strangers.

Concluding Comments

There is ample evidence that Hong Kong is not the only society facing a high recidivism rate, as is reflected in Japan's figure, and though the causative factors might be different, the need to devise suitable social measures to contain the problem is, therefore, a 'common' one.

It is not unnatural or without good reason that the victim of a crime expects the punishment of his offender, nor can the court be blamed for imposing the penalty that is prescribed by law, for the offence committed, since it is its duty to do so.

Some authorities in the field of prevention of crime and the treatment of offenders however, stress that there are far too many laws and penal sanctions that identify behaviour as punishable, and that less crimes would be committed if many acts were not branded as illegal.

It is also a strong argument that 'lasting peace and stability' cannot be achieved through the mere enactment of stringent legal provisions, or a fear of the punishment that is stipulated by law; but can be achieved only through the spontaneous inclination of the masses to live and coexist in peace, to mutually respect each other and the law, as a result of well planned and comprehensive educational programmes, on a national, or better still, international scale.

The laws need not always be implemented or interpreted rigidly or to their fullest extent, and in this context, the discretional margin within which the law enforcement officers may act, must be preserved and expanded.

It is felt that the retention of many existing laws can have a useful deterrent effect on the potential criminal.

On the question of implementation of the law, a wide discretion is demanded on the part of those most concerned, for it is not always the best course of action, or in the long term interest of society, the Government, as well as the offender, that he be sent to a penal institution, even though the law makes it possible.

The circumstances in which the offence was committed, the causative factors, the manifested degree of repentance after the act, the possible psychological effect on the offender by an institutional sentence, and the inevitable social stigma which follows, should be dominant factors in the minds of such law enforcement officers, who should at all times consider first, the non-institutional treatment approach, and adopt confinement only in the most exceptional instances and as the very final resort.

It is generally agreed that an institutional sentence is one of the surest ways of breeding further criminal tendency and anti-social behaviour, and that stigmatization not only affects the offender himself, but victimizes innocent members of his family and cause great strain on the economy of the State.

In the case of offences for which the penalty is not 'death,' and there is no alternative but institutionalization, then the approach to such offenders, on admission, must be focussed on treatment and rehabilitation—in anticipation of his eventual release and return to society—and not punitive measures.

The object of treatment should be to remove the cause of the crime, whether it be physical, mental, social or whatever else, and institutional programmes should be so devised, as to make individualized attention and therapy possible, which is ruled out in too large and overcrowded institutions, with a shortage of staff.

By means of institutional programmes, the offender must be made to realize his own weaknesses, his own fault, his responsibilities and irresponsibilities, and the public feelings towards his misbehaviour. He must also be made to recognize, and be willing to conform in future to, established mores and norms of the society in which he must live.

To those who still believe in punishment, solitary confinement, meaningless chores or hard labour, I suggest that this is a self-defeating and negative approach.

Classification

The importance of proper classification and assignment to the right institution should not be underestimated, in the light of possible contamination.

In addition to present systems of classification of correctional institution inmates, it is advisable to further segregate them in accordance with say age, family background, social status, education, nature of offence, etc. Example: Two first offenders each serving a 6 years' sentence, one a business executive, but a hit-and-run driver, with a steady family; the other, say, a drifter who had committed numerous acts of armed robbery with violence or perhaps rape, but has been confined for the first time. In the light of future social rehabilitation, prisoners with such fundamentally different backgrounds and circumstances, should be segregated, though the shortage of funds and institutions would conceivably be a problem.

Treatment

For the segment of society which may be described as hard-core or incorrigible criminals, the retention of some measures of punishment is necessary, but it should be administered only with the utmost caution and restraint.

Though treatment programmes should be administered on a humanistic basis, care should be taken not to grant too many privileges or to provide facilities better than those enjoyed outside by the average citizen, as it might encourage indifference to institution life, if not serve as an incentive to be institutionalized.

One proposal that deserves consideration is that persistent recidivists should be confined in different institutions, in accordance with the number and nature of the offences, with a fully publicized diminishing privileges system, as their convictions increased. In this way, the potential offender knows what to expect the next time.

Another suggestion is that at a certain stage of recidivism, a fixed sentence should be replaced by an indeterminate sentence, *e.g.*, for not less than...years and not more than...years. In such a case, the time of discharge would depend on demonstrated progress in reformation.

Role of Society

The important and indispensable role that society must play, in the offender's treatment and rehabilitation process, should be given due prominence.

Without the understanding, co-operation and assistance of the public, the ex-offender will continue to be subjected to undue pressure and discrimination, resulting in an unhappy family situation, unemployment and mental strains. This could easily precipitate the abandoning of effort and the will to endure distress and hardship, or to struggle for survival like

normal citizens, thus leading to a relapse to former habits.

Society must be led to develop a more objective and accommodating view of criminality, and accept that in some instances, it is the prevalent conditions and characteristics of society that inspire criminal behaviour, and that taxpayers' money (their money) is being diverted from more constructive and useful community investments, in all cases of institutional confinement.

It is to be seen, therefore, that the responsibility for 'containing' crime, is not that of any individual sector alone. It must be realized that only the concerted effort of all involved can ever hope to find a solution to the problem.

Diversion in the Criminal Justice System of Japan

*by Toshihiko Tsubouchi**

I. The Criminal Justice System in Japan has adopted a bold and diversionary role at every level and stage of its operation. You could see an illustration of it in the flow chart attached. It is my belief that these diversionary methods have been supported, by and large, by the country as a whole.

I would describe to you the methods of diversion:

1. Diversion at the Police Level

(1) Traffic Infraction Fine System (Traffic Infraction Notification Procedure)

This Traffic Infraction Fine System was established in July 1968 to alleviate the heavy pressure on the agencies concerned, by the sharp increase in traffic cases. This system aims at avoiding stigmatizing millions of traffic violators as criminals, since a minor traffic violator may be exempted from prosecution, if he pays a "penalty fine" within a specified time (Article 125-132, The Road Traffic Law).

A person who is caught for a minor violation of the Road Traffic Law is first given a "violator ticket" by a police official, usually on the spot; it describes the nature of the violation, the police station to which he should report at a later date, and the sum of money to be paid, which is fixed by law.

There are two ways of paying a "penalty fine." He may pay at a post office or certain other banking organ within one week after the date of receipt of the violation ticket. This is called "provisional payment."

If the violator follows this procedure, he is not required to report at the police station. When he does not make this provisional payment, but reports at the police station designated in the ticket, he is given a written notification by a senior police official. If he does not report at the police station, the notification is mailed to the violator by certified delivery. If he pays the "penalty fine" within ten days after the date of receipt of notification, he will be exempted from prosecution.

In case a violator fails to pay the "penalty fine," he is referred to the Public Prosecutors' office and is dealt with under regular criminal procedure. At first this system was applied only to adult violators, but it was extended in August 1970 to cover juvenile violators of the Road Traffic Law.

In 1971, this system was applied in 5,218,028 cases, which is 77.9 per cent of the total violators of the Road Traffic Law. In the case of adult cases only 4.6 per cent, and in juvenile cases only 1.8 per cent, failed to pay the penalty fine within the specified time and were referred to the Prosecutor. It seems safe to assert on the basis of this experience that the Traffic Infraction Fine System has been operating successfully since its establishment.

(2) Petty Offences Disposition

The responsibility for criminal investigation is vested by Law in the police, the Public Prosecutor and his assistants.

After having conducted an investigation into a crime, the police must send the case with all documents and evidence to the Public Prosecutor (Article 246, Code of Criminal Procedure), except in the cases of Theft, Fraud, Embezzlement and crimes concerned with Stolen Property where the following conditions are present:

(a) the amount of damage is negligible;
(b) it is a petty offence;
(c) the damage is already recovered and settled;
(d) the victim does not desire the punishment of the offender;
(e) the case can be considered as accidental; and
(f) the possibility of recidivism seems to be small.

In such cases, the police can terminate the cases as "petty offences" which re-

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quire no punishment. In these cases, it is only necessary for the police to make an *ex post facto* report to the Public Prosecutor.

Similarly, in cases of gambling, if the amount involved is small and it is a petty offence, with no possibility of recidivism, including that of the co-offenders, the above-mentioned measure may be taken. In 1971, 28,475 cases were disposed of at the police level with the above-mentioned measures.

On the other hand in the same year 2,720,796 cases were referred to the Public Prosecutors by the police.

2. Diversion at the Public Prosecutors' Level

(1) There are about 1,000 Public Prosecutors and 800 Assistant Public Prosecutors in Japan, assigned to 632 Public Prosecutors' Offices, distributed among 8 major administrative districts. The Public Prosecutor has the power to decide whether to institute prosecution in a case or not. The total number of suspects disposed of by the Public Prosecutors' Offices in 1971 (excluding transfer of cases from one Public Prosecutors' Office to another) was 2,811,833.

These cases were disposed of as follows:

Prosecution	1,907,944 (67.9%)
Non-prosecution	449,903 (16%)
Referral to	
Family Court	425,837 (15.1%)
Stay of disposition ...	28,149 (1%)
Total	2,811,833 (100%)

Of the total number prosecuted, 107,706 (5.6 per cent) were prosecuted through formal public trial, 1,794,411 (94.1 per cent) through summary order, and 5,797 (0.3 per cent) through summary trial proceedings in traffic cases.

(2) Now I shall explain these Informal Proceedings for Minor Cases: The summary order is given by the Summary Court following informal criminal action initiated by the Public Prosecutor in respect of minor cases with the consent of the accused. The Court considers and decides these cases on documentary and material evidence submitted by the Prosecutor, without a public hearing or hearing any evidence from the defendant. The Court cannot, however, impose a sentence heavier than a fine of ¥200,000 (before July 1972, ¥50,000).

If the defendant is not satisfied with the sentence summarily imposed, and demands formal trial within two weeks of receipt of notice of the sentence, the summary sentence is set aside and the case is prosecuted in ordinary proceedings (Art. 461–470, C.C.P.). Similarly, minor traffic offences which are to be punished with a fine of not more than ¥200,000 (before July 1972, ¥50,000) may be tried speedily in summary courts, if the defendants are not against this informal procedure. The Courts hold public trial and render summary sentences pursuant to a simple and speedy procedure (The Law for Summary Proceedings in Traffic Cases, 1954).

(3) Suspension Of Prosecution: The Public Prosecutor has the power to decide whether to prosecute an offender or not, even if there is enough evidence to prosecute and secure a conviction (Article 248, C.C.P.).

The decision to suspend prosecution is arrived at after very careful consideration of a number of factors relevant to the case. The Public Prosecutor has to find out the factors leading to the offence, the offender's character, his age and the circumstances involved, and to check and weigh his post criminal record. The Public Prosecutor has also to ascertain whether he belongs to any undesirable group or organized gang.

Next, consideration is given to the gravity of the offence, the degree of damage caused to society or a particular victim, and whether the offence committed was as a result of a premeditated act, whether the offender is prepared to make restitution and what are the feelings of the victim.

The Prosecutor will also bear in mind that the decision taken for suspension of prosecution should appear impartial to society. The exercise of this discretionary power by the Prosecutor aims at the rehabilitation of the offender by avoiding stigmatization of him as a criminal.

The number of decisions of Non-Prosecution in 1971 was, as mentioned before, 449,903. Of this number, 371,096 (82.5 per cent) were suspended prosecutions based on this discretion. You may want to know, after giving the offender a suspension of prosecution, what steps are taken

to prevent him from committing further offences.

In a larger city, the Prosecutors' Office has a so-called rehabilitation section. This section provides assistance in the form of food, lodging and transport fare to the offender to return to his home town or city. The officials in this section, who are Voluntary Probation Officers and voluntary social workers, will also try to find suitable employment for him. They will always be ready to guide him (The Law for Aftercare of Discharged Offenders, 1950).

I shall now describe the Committee for the Inquest of Prosecution. The inquest committee consists of eleven members, who are picked by lot from ordinary citizens. This system seems to have been derived from the Grand Jury System of the United States and Great Britain.

The main function of the inquest committee is to examine the propriety of the Public Prosecutor's determination of Non-Prosecution. Should the inquest committee consider that the Prosecutor's decision to suspend prosecution is not justified, the committee may recommend to the Chief of the District Public Prosecutor's Office to prosecute or to re-investigate the case. Any citizen, or the victim of the case, who is dissatisfied with the suspended prosecution, can appeal to the inquest committee for a review of the case.

The number of such appeals is under 2,000 in a year and about 10 per cent were referred back to the Prosecutor with recommendation to prosecute or to re-investigate.

However, the decision of the inquest committee is not binding upon the Prosecutor. The law requires the Chief of the District Public Prosecutors' Office to institute prosecution only when he agrees with the conclusion of the inquest committee (The Law for the Inquest of Prosecution, 1948).

3. Diversion at the Sentencing Stage by the Court

The use of suspended sentence was introduced in Japan in 1905, and its use has been extended by Amendments to the Penal Code increasing the classes of defendants eligible to receive a suspended sentence.

The Penal Code provides, in the main, the following pre-requisites for suspending the execution of a sentence:

A. (1) The sentence which the court proposes to impose upon the defendant is imprisonment (or imprisonment with labour) for not more than three years;

(2) there exist circumstances favourable to the defendant; and

(3) the defendant has not previously been sentenced to imprisonment or a graver penalty; or

(4) the defendant, though previously sentenced to imprisonment or a graver penalty, has not again been sentenced to imprisonment or a graver penalty within five years from the day when execution of the former penalty was completed or remitted.

B. (1) The defendant, having been previously sentenced to imprisonment or a graver penalty and granted suspension of its execution, is sentenced to imprisonment (or imprisonment with labour) for not more than one year, and

(2) there exist circumstances especially favourable to him (Article 25, Penal Code).

The defendant, when granted suspension of execution of sentence in accordance with (A) may be placed under probationary supervision during the period of the suspension. In the case of (B), the defendant must be placed under probationary supervision (Art. 25 (2), P.C.).

In granting suspended sentence, the court must fix the period during which the defendant is required to remain on good behaviour. This period must be not less than one year nor more than five years. If he is convicted of another crime during this period, the suspension of execution of the sentence shall be revoked and the sentence shall be executed. When the period of suspension has elapsed without being revoked, the pronouncement of sentence loses its effect (Art. 26–27, P.C.).

The number of suspended sentences has increased yearly. In 1971, of the 69,142 persons who were sentenced to imprisonment (or imprisonment with labour) by courts, 40,941 (59.2 per cent) received suspended sentences. In the same year, the courts revoked about 8 per cent of the suspended sentences given by them.

4. Diversion at the Prison Level

A sentence of imprisonment for a specified term or for a number of years does not necessarily mean that the convicted person will remain in prison for the whole of that particular period of time. Under certain conditions and circumstances, he may be released on parole.

Parole is granted by one of the eight Regional Parole Boards (District Offenders Rehabilitation Commissioners). An inmate is eligible for parole, when he meets the following stipulations:

(1) Has served at least one-third of the given sentence, or ten years of a life sentence;

(2) when he is considered penitent;

(3) when he is considered not likely to commit another crime during the parole period;

(4) when it is believed that the community will emotionally accept him on parole (Art. 28, P.C.).

The chief executive official of a correctional institution can file a request for parole on behalf of inmates, or the Parole Board itself may initiate a parole investigation.

After a commissioner investigates the parole application, the case is presented to the Parole Board consisting of three commissioners. The case is discussed and a final decision is made by majority vote (Art. 28–32, The Offenders Rehabilitation Law).

At any time after an inmate is admitted to a correctional institution, upon request from either the institution or the Parole Board, a Probation Officer visits the inmate's family or any other person named by him as having close ties with him. This process usually starts soon after the inmate has been admitted to a correctional institution.

The Probation Officer investigates and prepares the environment for the inmate's return to the community. The percentage of persons released on parole has gradually increased during each of the past five years. Of the 28,101 persons discharged during 1971, 17,458 (62.1 per cent) were released on parole, and 10,643 (37.9 per cent) at the expiration of their sentences. The parolees must be under the supervision of the Probation Officer during the remainder of their sentence. A violation of the conditions of the parole subjects the parolee to possible return to prison for the remainder of the sentence.

However, parolees from prison tend to remain longer in the community and have been found to be less likely to be recommitted to a correctional institution, than inmates released upon completion of their sentences. For example, within the same year (1967) as their release only 4.0 per cent of the parolees committed additional crimes, compared with 10.9 per cent in the case of those released after completion of their sentences.

Only 28.8 per cent of the parolees committed another crime within five years (1967–1971) of release as compared with 48.8 per cent of those who completed their prison terms. Strictness in granting parole to recidivists and the improved use of parole supervision techniques may be advanced as the main reasons for this wide difference.

II-1. In Japan, Diversion in the Criminal Justice System as described above, seems to have achieved a great measure of success. The contributing factors to this success, in my opinion, could be attributed to the following:

Primarily, the Japanese people inherited from their forefathers and elders the divine teaching of Buddhism and that of Confucianism which are richly characterized by tolerance and self-restraint, and preached against obstinacy and revenge. A brief examination of Japanese mythology as compared with that of the ancient Germans would illustrate the vast difference between the culture and traditions of Japan and those of the West.

This is clearly so, because, for more than three hundred years, as long ago as from 818 to 1156, the death penalty was officially prohibited in Japan, whereas during this same period, it was enforced in the West even for petty offences. It is my belief that tolerance and self-restraint are common characteristics of Asians.

Sociologically, influence and discipline through the family and community have been very strong. However, this seems to be slowly weakening, a fact particularly noticeable in the urban areas. Fortunately, it has not come to a stage where there is a total breakdown and nothing could be

done as in the case of some other countries. Here, family and community ties are still strong.

Japan is also fortunate because of its single race and one identity setting. It has no problems of racial and cultural complexity like some other countries. As such, it is possible to carry out these diversionary methods without resort to total dependence on punitive measures as provided in the criminal justice system.

Another reason for the success of these diversionary methods in Japan is that Japanese Judges, Public Prosecutors and other officers who are involved in the administration of criminal justice and treatment of offenders, enjoy the confidence of the people.

In Japan the status of Judges and Prosecutors is the same; and because of their independence and impartiality, their personal status and salary being protected, they are respected by the Public. Judges are highly regarded on account of their justness and integrity. Prosecutors are also regarded as the impartial representatives of the public's interest.

A recent public opinion poll conducted by a well-known news agency showed that the majority of the people of Japan are in favour of public officers who are flexible, and act as humanely as possible, in the enforcement of the law of their country. They are against officers who are too strict and stereotyped in their application of the law.

II-2. So much has been said about diversion in the administration of the Criminal Justice System. It would be in the interests of justice to consider whether or not decisions taken at the various levels and stages where the diversionary method is applied, should be consistent. As an example:

(1) Decision of the Prosecutor in regard to prosecuting the suspect or suspending the prosecution;

(2) Decision of the Judge whether to suspend the sentence of imprisonment or not;

(3) Decision of the Parole Board whether to release the convict on parole or not.

Society's feelings and demand for justice are strong immediately after a crime has been committed. However, they fade with the passage of time.

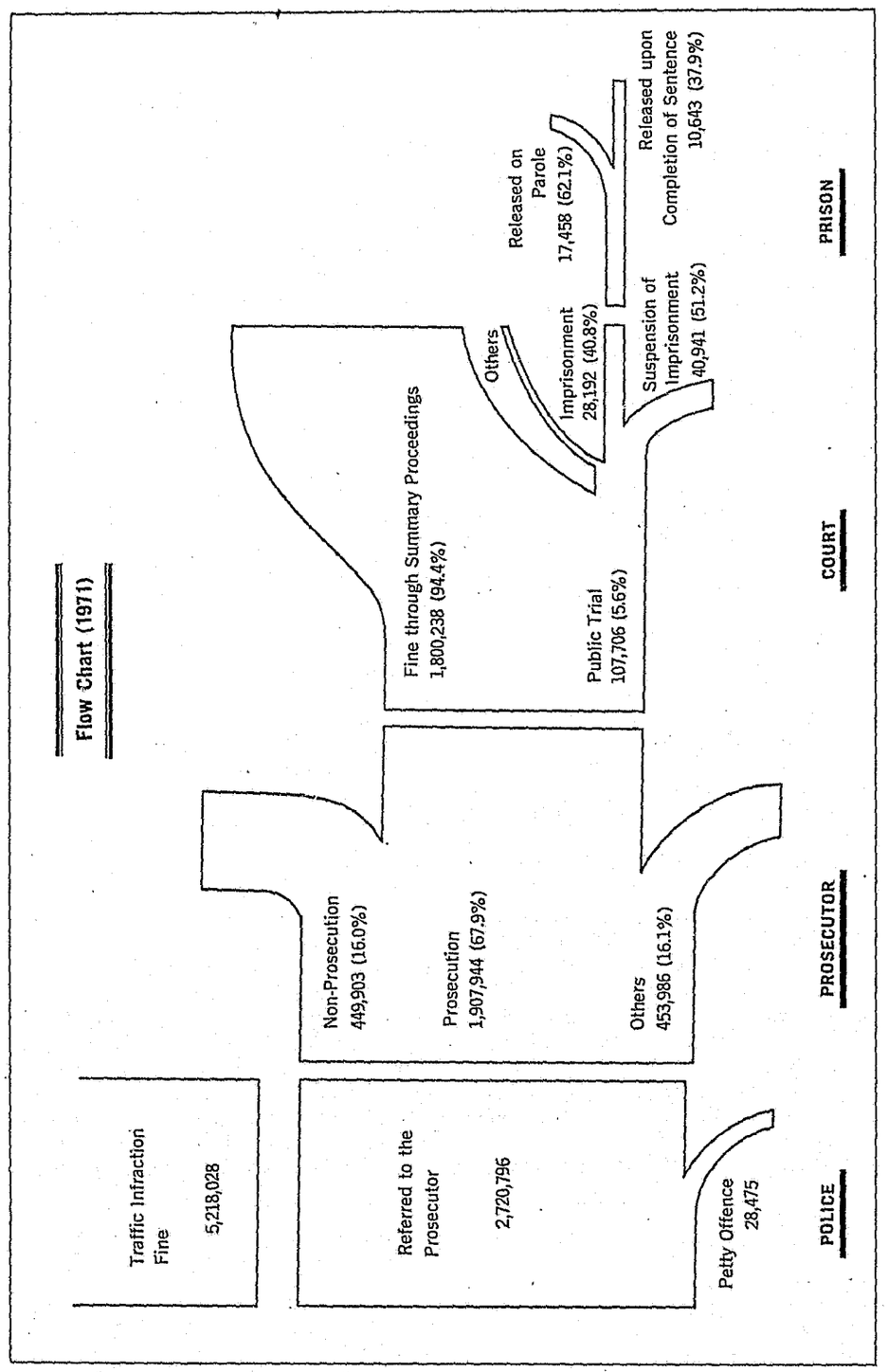
The Prosecutor who has to make a decision at a time not so long after the offence has been committed, will not only consider the individual circumstances of the suspect, but also the gravity of the offence and the retributive feelings of the victim and society.

Judges also have to take into consideration the revengeful feelings of the victim and the social impact of the offence, when they decide on the kind of punishment to be imposed on the accused.

Once the sentence, which shows the evaluation of the community in relation to the offence, is pronounced against the accused in public by the Judge, society would feel that justice has been done. It would also be felt that punishment has been awarded where punishment was due.

However, the general purpose of sentencing an offender to punishment at a penal institution is modified at the prison, because of the concept of correction and education adopted towards the convict by the prison administration. The emphasis on correction and rehabilitation comes to the fore-front as a means of achieving the goal of prevention of crime ultimately.

We should, therefore, attach great importance to the measures taken for reforming and rehabilitating of offenders. I am afraid that I may have over-emphasized the difference between the judicial stage and that of the prison administration. However, I deem it important to take into account the difference in the specific roles of Prosecutors, Judges, Police and prison administrators, and to establish a unified operation of the criminal justice system through all the above-mentioned organs.



Workshop III:

Summary Report of the Rapporteur

Chairmen: *Mr. Yasuo Oshiba and Mr. Tomiyoshi Kawahara*
Rapporteur: *Mrs. Libertad Barbasa Polintan (Philippines)*
Co-Rapporteur: *Mr. Mohamed Hassan Bin Ngah Mahmud (Malaysia)*

Titles of the Papers Presented

1. Vocational Training in a Juvenile Training School
   by Mr. Mohamed Hassan Bin Ngah Mahmud (Malaysia)
2. Prison Laws, Rules and Regulations
   by Mrs. Libertad Barbasa Polintan (Philippines)
3. Some Problems of Rehabilitation in a Contemporary Maximum Security Prison
   by Mr. Narain Singh (Singapore)
4. Corrections in a Vietnamese Society
   by Nguyen Quang Giu (Vietnam)
5. On the Problems of Smoking as a Violation of Institutional Regulations
   by Mr. Hachitaro Ikeda (Japan)
6. A Historical Review of Classification Methods in a Juvenile Detention and Classification Home
   by Mr. Tsuneo Yanai (Japan)
7. The Treatment of Traffic Offenders in an Open Institution
   by Mrs. Mitsuyo Yoshitake (Japan)

Introduction

The members of Group III comprised of Correctional Officers who presented topics which covered a wide spectrum relating to the correctional system and the administration of correctional institutions and this appeared to be the reason why these participants were considered to fall within one group.

The topics were presented in accordance with the above-mentioned sequence and every presentation was followed by further clarifications by the member concerned. Eventually all the members in the group participated in the discussion by voicing their comments, views and experiences.

Vocational Training in a Juvenile Training School

Mr. Hassan (Malaysia) briefed the group members on the population structure of the various ethnic groups, and industrial development in West Malaysia. In 1970, the total population was 8.9 millions composed of 50 per cent Malays, 36 per cent Chinese, 11 per cent Indians, and 3 per cent others. The Malays predominantly live in rural areas, and the majority of them are agricultural workers. There has been a tendency in the recent years for the Malays, especially among the youth, to migrate to urban areas in search of employment. More than 60 per cent of the Chinese live in urban areas, particularly in the big towns where they are engaged in business and manufacturing industries. About 2/3 of the Indians are living in rural areas and are settled in estates where they work in rubber, oil palm, and coconut plantations.

Industrial development has strongly centered around the principal cities in West Malaysia and the extent of industrial development has rapidly expanded, particularly industries such as metal working and fabricating, food, textile, chemical, plastic, construction and service industries. On the other hand the nature of basic rubber, palm oil, pineapple, tapioca, tin mining and lumber industries has led to the considerable development of processing plants in rural areas. Along the coastal areas fishing industries have improved with the use of modern equipment.

Subsequently the presentation touched on the set-up and administration of the Taiping Boys' School (Intermediate Reformatory School) which caters for boys from West Malaysia between the ages of 13 years and 15 years at the time of committal. The maximum accommodation is for

120 boys who fall under the following categories:

(a) Those who have committed criminal offences,
(b) Those who are in need of care and protection,
(c) Those who are beyond parental control.

The percentage of pupils according to race as on the 10th April, 1973 was 30 per cent Malays, 23 per cent Chinese, 45 per cent Indians and 2 per cent others.

The school provides formal primary education while those in the secondary level attend outside schools. Besides formal education the pupils receive vocational training in motor-mechanics, carpentry, tailoring, basketry and barbering, which are provided and structured towards the rehabilitation of juveniles with two main purposes, *i.e.*, one lies in its therapeutic value and the other in imparting basic skills so that juveniles can secure employment after release.

The Administration encounters various problems and difficulties to achieve the desired results. Due to specific factors it has been found to a large extent that the types of training provided are not economically beneficial to the juveniles. The aggravating factors are centred around the ability of the boys and the nature of training provided, namely, the wide disparity in the level of education—around 10 per cent of the boys have never been to school, 80 per cent have had primary education and 10 per cent have had secondary education. Furthermore, 98 per cent of the boys had left school between 1 to 10 years earlier at the time of admission. The boys are found not to be classroom orientated and they are only good with their hands. The minimum training period of 18 months has been found to be too short to enable a boy to acquire the degree of skill to successfully compete for a job upon release. Most of the boys in the school come from under-developed areas were vocations in motor-mechanics, carpentry, and tailoring are not easily available. In accordance with the labour law the boys released from the school (mostly below 17 years old) are not within the age bracket to enter the employment market.

The group discussion was centred around the remedial measures that could be undertaken in order to tackle the present situation, particularly with regard to the modification of training programs and the modes of improving training facilities, methods and techniques. However, all the suggestions put forward have already been implemented in Malaysia.

Prison Laws, Rules and Regulations

Mrs. Polintan (Philippines) presented a paper pertaining to the organizational set-up of the Bureau of Prisons, the administration of penal colonies for men, the history of the Correctional Institution for Women, New Trends in Correction, and the Presidential decree under the Martial Law.

In the penal colonies the colonists are graded according to conduct and efficiency and are granted extraordinary privileges based on behaviour and service. One of the unique features of the colonies is that released colonists have the right to remain in the reservation to start life anew. Their families are transported to the reservation by the Bureau of Prisons and they are given land for cultivation and housing, have fishing rights in waters adjacent to the colonies, and provided with clothing and household effects, sundries and a monthly allowance.

Prior to 1931, women prisoners were confined in the proximity of quarters for men prisoners. The only vocational training was embroidery. Subsequently, a separate prison for women was erected where diversified vocational activities were carried out such as poultry and pig raising, fruit growing and padi-cultivation. Classes in adult education and home arts were also organized. For psychological reasons, the name of 'Women's Prison' was altered to 'Correctional Institution for Women' in order to console the prisoners that they were not detained as convicted and sentenced prisoners, but for proper care and guidance and rehabilitation for eventual release to society.

One of the main problems confronting the prison administration, especially in the men's prison, was that of over-crowding. New trends were gradually developed and this problem was reduced when the criminal justice system deployed a new move by limiting the number of people sentenced to imprisonment. This was possible by eliminating from the criminal justice system, those cases of drunkenness, etc., and treating them instead as medical problems. Bail system was introduced which to a great extent reduced the number of people detained prior to trial.

In September 1972, the President declared Martial Law and Presidential Decree No. 28 stipulated among others, the establishment of Seven Regional Prisons and Converting Existing National Institutions into Regular Prisons and Penal Farms and appropriating adequate funds as a positive solution to the problems resulting from over-crowding.

Two main problems were discussed concerning finance and lesbianism. As finance was beyond the scope of this group, the problem of lesbianism was widely discussed. All members aired their views and suggestions and it was found that such a problem was universal and very difficult to solve with any specific treatment. Among the suggestions was that of referring these women to specialists in their respective professions, such as a competent Psychiatrist and a Psychologist.

Some Problems of Rehabilitation in a Contemporary Maximum Security Prison

Mr. Narain Singh (Singapore) dealt in great detail with the problems confronting the Prison Administration in the process of rehabilitating criminals. The term rehabilitation has been much over-used and misunderstood in its true perspective. In the context of this paper, rehabilitation was defined as the process of equipping a person morally, socially, and psychologically by imparting social values, strengthening the personality and the provision of vocational training.

Generally, the primary objective of prison is the safe custody of criminals; however, such objective has undergone changes from time to time. The Prison has incorporated rehabilitation as an essential objective with the formulation and implementation of meaningful programs, executed more comprehensively by trained personnel through specialized treatment such as group counselling, Psychological and Psychiatric treatment and Vocational training.

One of the pitfalls which cannot be avoided is that although the prison is a hive of activity, it is a life of routine that is found in a prison. The inmates do what they are told to do and the whole set-up runs according to a pattern where both the staff and inmates are busy doing their daily chores of maintaining discipline, issuing meals, cleaning the place, etc. As such there is hardly any time for individualized treatment or organized programs. Due to inadequate proper facilities, organized programs cannot be executed effectively and efficiently. One of the main problems encountered in the rehabilitation of criminals is the absence of facilities for accurate diagnosis of the personal and social problems of the criminals which we all know is essential for the planning of any remedial program. Over-crowding due to lack of accommodation is another problem mentioned, as such an atmosphere is not conducive to rehabilitation. With regard to prison industries, it was cautioned against the emphasis placed on production rather than the inmates' needs. Ideally, prison industries ought to be established for the purpose of training the inmates and not for monetary gain, as the long term intangible benefits achieved by the successful rehabilitation of an offender will far outweigh the monetary gain.

Prison Staffs are the catalysts and agents for the successful rehabilitation and treatment of criminals and they should be people of the right calibre and quality, but this field fails to attract people who have well balanced and equipped personalities. One of the reasons mentioned is that the salary and fringe benefits are not sufficiently lucrative; prison officers do not enjoy a high prestige in society as they are considered as misfits. Working conditions are physically and psychologically strenuous, the scope of the service is very limited and gains the least recognition in relation to other services. In addition, prison officers have to perform two apparently opposing roles—custodial on the one hand and rehabilitative on the other, which have caused confusion, but those who are dedicated and have interest in the welfare of the prisoners console themselves with the notion that "Rehabilitation comes alongside Custody, for without custody, who is there to rehabilitate?"

Another major problem confronted by the administration is concerning an inmate

culture which has the fundamental principle that inmates are to refrain from helping prison or government officers in matters of discipline and should never give information of any kind which may do harm to fellow prisoners, thus establishing a value of loyalty among prisoners in their dealings with each other. As a result the prison officers find it very difficult to cope with such a situation.

The group had lengthy discussion on topics pertaining to prison officers' salary, pension and working conditions. All the group members participated actively by giving their respective views and comments on the avenues to maintain contact between society and the prisoners socially and casually.

Corrections in a Vietnamese Society

Mr. Giu (Vietnam) presented a theoretical paper on the ideal setup of a correctional Institution. As we all know Vietnam is still at war, resulting in a situation wherein the Government cannot devote much attention to the criminal justice system; however, there is a growing public interest to improve the system, particularly in the field of corrections. The Vietnamese correctional system is based on the principle of rehabilitation aiming at reforming the offenders to become useful and responsible citizens in a free society. Correctional centers should provide facilities for religious observance and worship for all categories of prisoners. Adequate medical and dental personnel and facilities should be made available for prisoners who need ordinary and specialized medical examination and treatment.

In order to facilitate their readjustment to society, prisoners should be given the opportunity to acquire educational, vocational and cultural knowledge and to improve their latent ability. All types of vocational training should be available and prisoners should be guided to engage themselves in vocations more suitable to their interests, abilities, and personalities. All levels of education from literacy classes to professional courses should be made available. Cultural activities should be carried out as a form of training in order to enable the prisoners to respect and appreciate society upon release.

Civic education plays an important role in developing a sense of responsibility, discipline and moral obligation. The provision of such education for criminals or communists acts as an ideological guidance for them to overcome and understand their own psychic or emotional pressures which lead them to criminal activities.

Recreational facilities should be provided and activities carried out in line with the outside world. In order to sow the seed of "give and take policy" and to develop their sporting spirits, the provision of organized indoor and outdoor games and social gatherings is very essential. Prisoners should be encouraged to read and reading materials should be readily available, provided that the materials are suitable to their individual nature and ability, otherwise the more they read the more they know and the more they know the more they will forget.

In the field of living guidance, the services of social welfare personnel are desirable; from them the prisoners could get moral and financial support, guidance, and counselling. In most Institutions, the importance of such a service has not been fully realized.

Rehabilitation of prisoners is not the sole responsibility of the prison authority. The members of the public as well have an equally important role to play and their services of a purely social nature should be encouraged in order to enhance the morale of the prisoners and to make them feel that society has not neglected them.

Maintaining the relationship between the prisoners and their families is of utmost importance in order to develop the good qualities of the prisoners and to facilitate reunion after release. Prisoners should be free to receive visits from family members and to correspond with them. In cases of emergency such as the demise of dear ones or close relatives, the prisoners should be allowed to attend the funeral ceremonies and rituals.

All group members participated in the group discussion of this topic and particularly of the difficulties faced by the Vietnamese in the present turmoil of human conflicts in order to provide both the ordinary citizens and the criminals the life which they cherish and deserve. Various views and suggestions were put forward;

however, as says a Vietnamese adage "it is impossible to cover the sunlight with bare hands."

On the Problems of Smoking as a Violation of Institutional Regulations

Mr. Ikeda (Japan) pointed out that violations of institutional regulations in the form of disciplinary offences, are the major problems encountered by the correctional administration. Disciplinary cases are summed up monthly in the district correctional headquarters of Sapporo, Sendai, Tokyo, Nagoya, Osaka, Hiroshima, Takamatsu and Fukuoka. The four groups of these disciplinary cases are the following:

(a) Violent cases such as murder of inmates and personnel as well as bodily injury and others.
(b) Petty thievery and illegal transactions of goods and food.
(c) Disobedience and petty quarrels.
(d) Miscellaneous offences such as escapes, immoral acts, gambling, etc.

The problem of smoking comes under group (b).

In Japan, smoking is prohibited in both adult and juvenile prisons. However, this regulation cannot be strictly enforced due to multiple factors.

One of the problems affecting discipline is that through smoking various undesirable activities come into practice, such as exchanging of goods and food (barter trading) illegally, gambling and so on. The source of such anomalies is very difficult to detect as it is like a poisonous gas which no one knows where it comes from and how to stop it. Such a situation exists in a very organized atmosphere as the prisoners have their own code of conduct, social control and sense of belonging. They form their own informal prison society and no one prefers to become an Informer (known as Chinkoro), to the administration, as such a person is looked down upon as an outcast and is severely ostracized from their informal society.

Generally, a newcomer is compelled to smoke by the old timers so that he will be ordained as a member of the informal group of this particular prison society. Such a ceremony has a binding effect on the future relationship of the prison society. Nevertheless, the prison authority continuously attempts to solve these problems, by improving the social situation as well as applying modern correctional science, and the situation is presently under control. However, the total eradication of smoking is not practically possible because in the Japanese society, smoking is not a crime, only prohibited to minors, and to smoke is not essentially or morally antisocial.

Prisoners obtain cigarettes or tobacco from two main sources, namely: by taking the supplies along with them at the time of admission, as a thorough search by prison authorities concerned is not possible. The other source of supply is from the outside community who cleverly organize methods of throwing cigarettes over the prison walls into the prison compound by means of stuffing cigarettes in the body of dead animals such as rats, and by putting cigarettes in bricks which normally avoid the attraction and attention of prison officers.

The group had a lengthy discussion on problems related to this topic particularly pertaining to the ill-effects of smoking, danger of fire and the undesirable practices as a result of smoking.

A Historical Review of Classification Methods in a Juvenile Detention and Classification Home

Mr. Yanai (Japan) presented a paper on the historical development of juvenile delinquency and the characteristics of classification methods by dividing the subject into four stages.

The first stage from 1945 to 1950 was characterized by poor economic situation, the delinquents were poor in intelligence, rough in personality, and disobedient to law and social norms. Delinquent behaviour was rampant in respect of petty thievery which was committed in order to survive. For Classification purposes, a home was set up in 1949 to measure delinquent intelligence, personality, and attitudes, analyze problems and diagnose the disease for appropriate treatment. Classification was carried out by means of psychological tests, interviews and observation of the inmate's behaviour. In this field, only the Psychiatrists had the experience in treating criminals, as there were very few Psychologists and Sociologists then, thus the Classifica-

tion method was greatly influenced by the discipline of psychiatry.

During the period from 1951 to 1955, the characteristics of delinquency changed tremendously with the increase in sexual, traffic and drug offences as well as offences against persons which were usually committed with violence. During this period the families had not recovered from the damage caused by the war and could not function effectively. It seemed that the primary causes of delinquency then were due to poverty and the absence of parents. In this period the diagnosis of delinquency was geared towards treating delinquency as an illness, but too much emphasis was placed on the delinquents' characteristics such as "lack of will," "explosive" and "lack of emotion." As the Psychologists found that such diagnosis mainly pointed out the personality characteristics of delinquents, it was not practically effective; so they embarked on a new approach by placing emphasis on the description and analysis of concrete data of delinquent conduct through psychological tests such as intelligence tests, personality tests, projective tests and performance tests. Due to the lack of personnel, the Psychologists relied solely on psychological tests, thus they overlooked social investigations.

The period from 1956 to 1965 was marked by the achievement of high economic success and the nation's economy was stabilized. The effect of Western civilization made a terrific impact on the youth which led to their involvement with delinquent gangs, drug takers, and car thieves. In order to keep up with the drastic change in modern society, classification underwent another phase of transition in its methods. Psychological tests were replaced by a thorough description of the delinquent's life history and environmental factors which were found to be more appropriate and meaningful. The social history of delinquents was gathered through interviews and close observation of the delinquents, mainly by means of establishing rapport between the interviewer and the interviewee. During this period projective testings such as the Rorcharch test and the Thematic Apperception test as well as the Electroencephalogram were resorted to.

From 1965 onwards, Japan experienced a decrease in juvenile delinquency mainly due to the economy becoming very stable, and most of the people were engaged in rebuilding the nation, so that there were very few opportunities for the underworld characters to engage in their nefarious activities. Along with the prosperity of the country, came another impact from Western civilization, and those were the "Hippies" who manifested this influence by riots particularly by University students; this also led to the increase of traffic offences.

Presently, the Classification Board is planning another method of dealing with this new phase of juvenile delinquency. Along this line, several kinds of tests were invented like the Ministry of Justice Personality Inventory to detect whether the client takes the test seriously or not.

Impetus is given to Psychotherapy, an example of which is Rogerian's assertion that an individual can be fully understood only when he reveals his innermost thoughts and feelings and which could only be achieved through a close relationship between the Interviewer and the Interviewee.

Occupational Therapy and the Educational aspects were taken into consideration because there were doubts about the reliability of psychological tests. Under occupational therapy delinquents are put on dynamic situations while for educational purposes, the well behaved delinquents are separated from the bad ones and about 70% of them are allowed to return to society to prevent them from being contaminated by the bad ones. After a long period of trial and error, Japan has finally reached the stage of how to integrate the diagnostic treatment of delinquency.

The group discussion covered wide areas pertaining to the role of Psychology in institutional treatment, the importance of classification and the universal problems encountered by institutions in the field of Rehabilitation.

The Treatment of Traffic Offenders in an Open Institution

Mrs. Yoshitake (Japan) introduced the traffic situation in Japan with particular reference to the increase in automobiles

and the simultaneous or proportionate increase in traffic offences since 1961. She also explained the actual situation of traffic violation cases and criminal negligence causing death and injury. In 1971, 700,-290 traffic accidents occurred out of which 16,278 were fatal, 949,689 caused injuries and this group accounted for about 55% of all criminal cases. On the average, 45 persons were killed and 2,602 were injured daily. Traffic offenders can be classified into the following offences such as drunken driving, driving without licence and disregard of traffic rules.

The basic concept of treatment programs in the institutions includes the development of the individual's self respect, trustworthiness, and responsibility to gain insight and understanding of their own social and psychological difficulties and to develop to a functional level their respective capacities and qualities.

The following types of courses are available at the Ichihara Prison:

Course A:

This course provides inmates training in actual driving and education. Only those inmates who have sufficient abilities and aptitudes for driving and who intend to drive again after release are selected to attend this course.

Course B:

The main element in this course is group counselling and education and it is particularly for those inmates who are considered not suitable to pursue driving as a vocation due to poor aptitude and ability. They are instead advised and encouraged to take up vocational training.

Course C:

The program in this course mainly covers various types of vocational training which forms the major training program of this prison. It is provided for those inmates who have decided to give up driving as a profession.

The follow-up studies carried out on ex-inmates revealed that more than 66.4% of those who had attended the various courses successfully obtained a driving licence in spite of the training and persuasion given to them to give up driving. The cause can be attributed to the individual desire to drive vehicles and due to the inconvenience in daily life without using a car.

It was stated that the effective treatment of traffic offenders has not been found and Ichihara Prison is still going through a stage of trial and error.

During the discussion participants explained the traffic situations and problems encountered in their respective countries as well as the methods employed in the treatment of traffic offenders. Fundamentally, all countries face the same situation and problems but the methods of treatment of traffic offenders vary due to different circumstances and situations in each country.

Vocational Training in a Juvenile Training School (Taiping Boys' School)

*by Mohamed Hassan Bin Ngah Mahmud**

Approved Schools are schools approved by the Minister of Welfare Services in accordance with the conditions contained in the Juvenile Courts Ordinance, 1947. These schools are centres for detention, training, education and rehabilitation of juvenile offenders. There are four approved schools in West Malaysia; one for girls and three for boys. The Girls' School caters for juveniles between the ages of 10 years to 17 years at the time of committal. The boys' schools are divided into three categories, namely, Junior School (10 to 13 years), Intermediate School (13 to 15 years) and Senior School (15 to 17 years).

Before I proceed to my main topic for discussion, I feel that it is proper for me to give a briefing on the population structure of the various ethnic groups and the industrial development in West Malaysia. In 1970, the total population was 8.9 millions, comprised of 50 per cent Malays, 36 per cent Chinese, 11 per cent Indians and 3 per cent others. The Malays predominantly live in rural areas, and the majority of them are agricultural workers. There has been a tendency in recent years for the Malays, especially among the youth, to migrate to urban areas in search of employment. More than 60 per cent of the Chinese live in urban areas, particularly in the big towns where they are engaged in business and manufacturing industries. About two-thirds of the Indians are living in rural areas and are settled in estates where they work in rubber, oil palm and coconut plantations.

Industrial development has strongly centred around the principal cities in West Malaysia and development has rapidly expanded particularly in industries such as metal working and fabricating, food, textile, chemical, plastic, construction and service industries. On the other hand, the nature of basic rubber, palm oil, pineapple, tapioca, tin mining and lumber industries has led to considerable development of processing plants in rural areas. Along the coastal areas fishing industries have improved by using modern equipment.

The Taiping Boys' School is an intermediate reformatory school for boys between the ages of 13 years and 15 years at the time of committal. Admission is for those in West Malaysia in the following categories:

(1) who have committed criminal offences
(2) who are in need of care and protection
(3) who are beyond parental control.

The maximum intake is 120 boys and the racial composition as on 10 April, 1973, was 30 per cent Malays, 23 per cent Chinese, 45 per cent Indians and 2 per cent others. The majority of the boys come from the semi-urban areas with poor or broken homes. Most of them exhibit problems like petty thieving, truancy and the keeping of bad company.

The statutory period of stay for a boy in category (1) is for 3 years, (2) until he reaches the age of 18 years and (3) for 3 years. The minimum period of stay is for 18 months in accordance with the Progressive Treatment System—Unclassified for 1 month, Grade C for 7 months and Grade B for 10 months and above, when he is eligible for release on licence depending on certain conditions such as satisfactory home conditions, family circumstances, availability of employment and so on.

Vocational Training carried out in the School is structured towards the rehabilitation of the juveniles. It has two purposes. One lies in its therapeutic value and the other in imparting basic skills to the juveniles.

On admission a boy has to undergo trade tests for one week in every type of course available. The instructors observe the boy's attitude, interest and performance and then submit a report for the perusal of the Principal. The selection for training is based on the boy's personal interest and

* Deputy Principal, Taiping Juvenile Home, Malaysia.

ability, and the Principal has the final say after considering the possibility of the boy earning a living from his trade training, after his release.

At present vocational training in the school is limited to five courses, namely, Motor Mechanics, Carpentry, Tailoring, Basketry and Barbering. Training covers a minimum period of 18 months and the medium of instruction is in the National Language (Bahasa Malaysia). Training in carpentry and tailoring is for 3 hours daily while in the other courses is for 6 hours daily.

Training in motor mechanics is conducted by an instructor and was introduced in 1971. The class is full time and for 20 boys. They are taught simple basic skills on how to handle tools, to strip and fix back parts of motor vehicles.

Carpentry is also conducted by an instructor and is divided into two classes: the morning and afternoon sessions. There are 20 boys in each class and they are trained in the use of traditional and power tools to make furniture and articles for decoration. The standard of skills varies from average to low.

The tailoring course is also conducted by an instructor in classes of twenty boys in afternoon and morning sessions. The boys are divided into 4 groups. Those in Group D are beginners and they are taught to sew underpants. Those in Group C usually have had one year's experience in tailoring and they are taught to sew shorts. Boys in Group B are taught to do cutting work and sewing of both shorts and shirts. Those in Group A are taught how to make trousers, pajamas and so on. The articles sewn by the boys are for their own use. The standard of skills varies from average to mediocre.

Basketry is sponsored by the Board of Visitors and it is conducted by one of the staff members. The boys are taught to make rattan baskets for the fishing, rubber, palm oil and coconut industries.

Barbering is conducted by one of the staff members and 6 boys are under training at any one time. The average training period is around 18 months.

The problems encountered by the School are that of giving adequate training to the boys and in getting employment for them after release. The problems confronted are mainly due to the following factors:

1. Wide disparity in the level of education.
2. The boys are not classroom oriented.
3. Training period is too short.
4. Employment opportunity is very limited.
5. Not within the age limit for employment.

1. Wide Disparity in the Level of Education

The provision of formal education is a problem. The disparity in the level of education is wide and the constant admission and release of boys causes a big headache to the administration. About 10 per cent of the boys have never been to school before. 80 per cent have had primary education and 10 per cent lower secondary education. Most of the boys admitted to the school had left school between one to 10 years by the time of admission.

The school provides formal education up to primary 6 and those in the secondary level are sent to outside schools. Due to the above-mentioned circumstances adequate formal education cannot be given to the boys and as such they do not have adequate theoretical knowledge thus resulting in poor performance in their vocational training.

2. The Boys are not Classroom Oriented

The boys are found not to be classroom oriented and they are only good with their hands. But classroom education is necessary in order to equip the boys with knowledge in calculation, measuring and so on.

3. The Training Period is too Short

The minimum training period is only for 18 months which is too short to enable a boy to acquire the degree of skill to compete successfully for a job on release. On the average a boy receives between 18 months to 24 months of training.

4. Employment Opportunity is very Limited

As I have mentioned earlier, the majority of the boys come from the semi-urban areas where employment opportunity is very limited. Vocations like motor-mechanics, carpentry and tailoring are not easily available. From the Table showing

the Employment Distribution for boys released from the school in 1972, it will be seen that only 12½ per cent of them obtained employment in the vocation they were trained in.

5. Not Within the Age Limit for Employment

The majority of the boys released from the school are under the age of 18 years. As such they are not within the age bracket who can enter the employment market. In some cases the boys could only get employment after many years; by that time they would have experienced the difficulties in leading a proper life, and eventually ended up by committing another crime.

At present, expansion of training facilities cannot be undertaken due to the shortage of land in the school premises and the shortage of funds as well. Training in farming and animal husbandry cannot be undertaken and these are vocations which can benefit the boys from the villages and semi-urban areas.

Improving Vocational Training

By the end of 1975, Taiping Boys' School will move to a new premises which has an area of about 25 acres (around 10 hectares) which is 18 acres larger than the present site. The new school will accommodate a maximum of 200 boys compared to the 120 boys at the present school.

With adequate land for new projects, there is a possibility that training in vegetable farming, fruit growing and animal husbandry will be introduced. It is also envisaged that other training projects in various vocations suitable for present day society will be introduced.

The present types of vocational training will most probably be continued but I presume that the syllabus will be revised to suit modern society.

Training period might be increased from the minimum period of 18 months to 3 years so that the boys can acquire adequate skills in a particular vocation which will enable them to compete for jobs after release. This is not possible at present because of the large number of boys on the waiting list for admission.

I hope during the discussion fellow participants will air their views, comments and experience on the problems already mentioned and I hope to get some suggestions to improve vocational training in the Taiping Boys' School.

Discussion

The group discussion was centered around employment opportunities for the boys released from the school.

In Japan the Juvenile Training Schools carry out specialised vocational training programmes which are divided into two categories, namely—vocational training and vocational guidance. In its implementation vocational training is a formal training at a very high level in the field of academic education, physical training and trade training. Vocational guidance is carried out at a lower level and for a shorter period, and is aimed at imparting informal and semi-skill training in various trades. The classification method for admission into vocational training and vocational guidance is based on the I.Q., ability and attitudes of the respective juvenile. However, it has been found that the training provided and the modes of practice do not conform to modern standards of development thus resulting in rejection by society.

In Singapore, the vocational training carried out is planned and programmed according to the needs of the nation, industries and the requirements of the individual inmates. Industrial factories sponsor vocational training for boys in juvenile training school and after their release the boys are employed by the industry concerned. This apprenticeship scheme was introduced quite recently.

Another point mentioned was regarding the opening up of more new land developments for youth. The Malaysian Government has embarked on a big scale in the field of economic and rural development but because of obvious reasons the Government cannot afford to open up too many schemes at any one time.

Employment Distribution

No.	*Types of Work*	*1962*	*'63*	*'64*	*'65*	*'66*	*'67*	*'68*	*'69*	*'70*	*'71*	*'72*	*Total*
1.	Selling cakes and newspapers	–	2	–	3	–	–	1	–	–	4	–	10
2.	Shop assistant	15	6	4	9	11	8	10	13	14	7	15	112
3.	Rubber tapper	3	1	2	2	3	5	3	4	2	5	8	38
4.	Barber	1	–	–	1	–	–	–	1	1	3	1	8
5.	Vegetable seller	1	1	–	1	–	1	1	–	–	2	1	8
6.	Temporary labourer	2	6	2	3	4	4	4	3	–	13	4	45
7.	Carpenter	7	6	3	–	3	4	4	1	1	1	–	30
8.	Motor mechanic	1	2	3	–	–	3	3	4	1	2	2	21
9.	Electrician	–	–	1	–	–	–	–	1	–	2	1	5
10.	Cow herd	–	1	–	–	–	1	1	–	1	–	1	5
11.	Padi planter	–	–	1	2	2	–	–	3	1	2	2	13
12.	Gardener	2	–	1	–	–	–	1	2	–	–	1	7
13.	Fisherman	1	–	1	–	–	–	–	2	–	–	1	5
14.	Furthering education	2	7	5	–	–	3	1	4	–	1	2	25
15.	Tailoring	–	2	1	5	–	1	1	–	–	–	1	11
16.	Unemployed	7	10	11	–	6	2	4	1	2	1	8	52
	Total Number Released	42	44	35	26	29	32	34	39	23	43	48	395

Some Problems of Rehabilitation in a Contemporary Maximum Security Prison

*by Narain Singh**

The aim of this paper is not to review the rehabilitation programme being carried out in the maximum security prisons in Singapore. Rather, it is to outline the problems associated with this concept in the hope that we may learn from the experience of the other countries and not repeat the mistakes that they have made, more so as our country is undergoing transition into modern penal trends.

The concept of rehabilitation of offenders is fast gaining momentum in all countries having greater awareness of social defence. Unfortunately, however, much over-used as the term "rehabilitation of offenders" is, its implication does not always appear to be understood in its true perspective. An attempt is made in this paper to review rehabilitation in the conditions of a contemporary maximum security prison.

Rehabilitation

Writers on this subject tend to define rehabilitation somewhat differently. The psychologists stress on the ego-strengthening factor, and the environmentalists lay greater stress on manipulation of the interplaying environmental factors. However, for the purpose of this paper, I will define rehabilitation as the process of equipping a person in need (in our case the offender who may become an inmate of the institution due to economic, social or personality factors) morally, socially, personality-wise and with some vocation, so that he can face up to the pressures of life which he has hitherto been unable to do on his own. The three important elements are:

(1) The social values of the offender which need remodelling so that values held by him do not conflict with the accepted social values.

(2) His personality which has to be strengthened so that the offender has greater confidence in himself to face the pressures of life.

(3) Vocational training with a view to enabling the offender to take up some adequate employment upon release so that he can earn a living in a socially approved way.

Maximum Security Prison

This is an institution usually bounded by high walls (it could well be by the sea) in which the offenders are kept in custody behind bars and locks and under surveillance all the time, and where the primary objective of the staff is the safe custody of offenders detained therein. Maximum security prisons can vary considerably in living conditions, treatment facilities and procedures and physical structures.

Objectives of the prisons have undergone varying changes in different countries. Such prisons were initially intended to be places for punishment, and devices and facilities for executing physical torture and hard, useless labour were an integral component of the prison set up. Prisons were also meant to be places of solitude, and hence provision for free association was minimum.

Over a period of time, however, with enlightened thinking, the prisons have come to incorporate rehabilitation as an essential objective of the prison system. Offenders are sent nowadays to prisons both as a punishment and for rehabilitation. Most of the useless labour and physical restraints have disappeared from the prisons, and meaningful programmes have been introduced in their place. As such, some of the more advanced institutions have comprehensive treatment programmes executed by well trained, competent staff, and specialised facilities for group counselling, psychological and psychiatric treatment and vocational training are available.

This discussion refers to the prisons in the intermediate stage, *i.e.*, where they no longer retain the old concepts of punishment and torture, and yet are not equipped with advanced facilities for treatment. In such a situation there are several pitfalls which must be avoided. One of these is prison life becoming one of routine.

* Principal Rehabilitation Officer, Changi Prison, Singapore.

Prison Routine

A prison is a hive of activity. From the time the prison is opened to the time it is closed for the day, both the staff and the inmates are busy doing the daily chores of maintaining discipline, issuing meals and cleaning the place. There is hardly any time for individualised treatment or organised programmes to be executed. By and large, the inmates do what they are told to do and the whole set up runs according to a pattern.

Although it might be an exaggeration, there is certainly some truth in the statement that prison is a life of *routine* which any advanced system must guard against.

Some extremists have even likened the staff structure of a prison to a slot machine where one shift assumes the duties and the other shift goes off duty. Even for the staff, working life in a prison is a life of routine and this pattern hardly varies.

Facilities for Rehabilitation of Offenders

It is common knowledge that for any organised programme to be executed effectively and efficiently, proper facilities are an essential pre-requisite. A brief review of these facilities usually available in the contemporary prison is my next topic.

(a) Diagnostic Facilities

Accurate diagnosis of the personal and social problems of offenders is essential for any remedial programme to be planned for them. Yet it is a fact that in most prisons the world over, such facilities hardly exist. This unsatisfactory situation is particularly noticeable in the developing countries. The inevitable consequence is that all types of inmates are herded together in large numbers with a few officers to supervise them.

(b) Adequate and Suitable Accommodation

It is an exception to find a maximum security prison built to accommodate different personality groups separately. It is a natural result to find large numbers of offenders together in sleeping halls, dining halls, workshops and recreation yards. Another unhealthy situation results from this arrangement—difficulty in guidance. It is virtually impossible to pay attention to the individual needs of the prisoners. Rapport, which is so necessary for exercising any meaningful influence on the offenders, is impossible to establish. Under the crowded conditions and circumstances, healthy relationship are not easily built up among the offenders. The crowded environment is a most unsatisfactory atmosphere for rehabilitation.

(c) Prison Industries

Any advanced penal system incorporates prison industries as an integral component of rehabilitative treatment.

Prison industries can be an invaluable means for offenders to learn some trade, and hence equip themselves for some form of acceptable occupation upon release. However, the prison authorities must guard against a human weakness in this respect. It is a human emotion to compete —to stress on production rather than the inmate's needs.

Prison industries, ideally, ought to be established with the purpose of training inmates and this objective should always be kept in mind as far as possible. While completed contracts may bring in immediate, tangible monetary gains, the long term intangible benefits achieved by the successful rehabilitation of an offender will far outweigh any monetary gain from the industries.

While giving the inmates a vocational training, the prison industries could also contribute in a meaningful way to nation building, by providing the private industrial sector with a continuous supply of skilled labour, for which there is a great demand.

(d) Prison Staff

I prefer to label the prison staff as a facility for rehabilitative treatment of offenders. The importance of the right calibre and quality of the staff required to deal with a large inmate population is cur-

rently receiving greater recognition, and rightly so. Only a well-balanced and equipped personality can guide another. A pamphlet on "Penal Policy in New Zealand" has this to say on prison staff:

"Any penal system can only be as good as the men and women who serve as prison and probation officers. We therefore place importance on the careful selection of staff and their adequate training. Officers must command respect and their personal standards and integrity must serve as an example to the offenders in their care. The work calls for a high standard of mental and physical alertness."

While it is true that this concept of competent and qualified personnel to work in the prisons is being accepted in principle, this field fails to attract the staff necessary to achieve the objectives of the prison system. The situation is common to all countries. Many reasons have been adduced to explain the phenomena, but the more rational and logical ones are:

(i) Monetary Gains Are Small.

The salary scale of this service and the fringe benefits do not appear to be sufficiently lucrative to attract high calibre staff.

(ii) Social Prestige Is Low.

Prison officers do not appear to enjoy a high prestige in society in relation to other professions. Somehow or other, they are viewed as second class persons, probably stemming from a fallacious reasoning that people who work with the worst characters in society are themselves probably the misfits.

(iii) Working Conditions Are Strenuous.

Bulk of the work done by the prison officers is done standing, leading to physical strain. There are numerous other restrictions like smoking (a real ordeal for smokers) and difficulty in having refreshments while on duty. Besides the physical pressures are the psychological pressures involved in maintaining discipline and social order among a large number of offenders, some of whom are unpredictable and some even potentially dangerous, detained much against their will.

(iv) The Scope in the Service Is Usually Limited.

There are many officers who perform their duties diligently and with dedication, but over a period of time, they appear to come to the conclusion that the scope in this service is usually limited. It seems to be a historical fact that this service gains least recognition in relation to other services and develops slowly. The long wait for promotions tends to kill incentive and interest, leaving many persons disillusioned and frustrated. Besides all these difficulties, the roles the officers are expected to play in the contemporary maximum security prisons evoke greater confusion among the staff.

"Role Conflict"

This commonly used term implies that one person is expected and required to play two apparently opposing roles—in our situation, custodial on the one hand and rehabilitative on the other. While these roles sound conflicting on the surface, I prefer to call them complementary roles rather than conflicting roles. Rehabilitation comes alongside custody, for without custody, who is there to rehabilitate? —hence the complementary nature of custody to rehabilitation. Why then the confusion about the so called "role-conflict"?

Historical development of the prison system appears to provide an answer to the question. In the past, prisons were places for punishment and torture of the offenders. Present objectives of the prisons include rehabilitation as an essential part of the programmes. Two elements in the historical development appear to be responsible for the confusion:

(i) The physical structure of the security prisons or their practical administration has largely remained unaltered, save for the removal of physical torture and hard, useless labour. The facilities for the treatment process have not kept pace with the ideological development.

(ii) The personnel were apparently not fully prepared for the transition, thus finding themselves confused and frustrated. The dual roles, *i.e.*, the old custodial role and the modern role of rehabilitation came to be viewed as conflicting roles.

Terrence and Pauline Norris, in their studies of "Pentonville," a British Prison, have recorded that after some time, the staff do manage and appreciate that these

roles are not conflicting after all but these roles cannot be played in the contemporary maximum security prison. They found that every member of the staff who had given some thought to the problems "wanted a change, either to the calculated severity of the du Cane era, or an advance to training, counselling and constructive planning for the future of the individual prisoner."

However dedicated and conscientious service the staff may put in, there is another factor of significant dimensions that is worthy of discussion at this stage.

Inmate Culture

Culture can be described as a way of doing things, and in this context, inmate culture refers to the manner in which the inmates in an institution are expected (by fellow inmates) to act.

"Fundamental principle is that the inmates are to refrain from helping prison or Government officials in matters of discipline, and should never give information of any kind, and especially the kind which may work harm to a fellow prisoner. Supplementary to this and following from it, is the value of loyalty among prisoners in their dealings with each other."

The extent of rigidity of this code may vary from one institution to another but it is important for prison staff to be aware of its existence. The inmate culture code affects the quality of inter-inmate and inter-staff/inmate relationships.

The inmate culture code has a very strong hold over the activities of the inmates. This is another problem the staff have to cope with in their dealings with the inmates, for while they can attempt to use it to exercise some healthy influence over some inmates, acting against it may sometimes even negate any healthy influence it has over the inmates.

Conclusion

My paper might appear to paint a rather pessimistic picture of rehabilitation in contemporary maximum security prisons. Here is what some of the authorities on this subject have to say about rehabilitation in the maximum security prisons:

Dr. Joseph G. Wilson, in "Are Prisons Necessary?" concludes that "after a good deal of study and thought devoted to this subject, I have come to the conclusion that prisons have little or no value *per se* in reforming the prisoners."

"I too believe that attempting to treat and reform criminals by placing them in prisons is based on a fallacy," feels Gresham Sykes, in "The Society of Captives."

Hugh J. Klare, in "Anatomy of Prison" writes, "I do think there may be many who leave the prison, if not embittered, at least unchanged."

Whatever the various authorities have written on the possible treatment in a maximum security prison, none can deny that there is a place for maximum security prisons in any society. There are and will always be some people in any society who need a measure of order, discipline and work habits which only the maximum security prison can provide, and there is perhaps no other alternative in these cases.

As early as 1939, Professor Fred E. Hayes, in "The American Prison System" pointed out that "probation and parole universally practised will do away with the present day prison, except for the permanent custodial cases, lifers and the small percentage of criminals who are found to be unable to conform to the conditions in ordinary society."

One good lesson for us to learn is to be more discreet about whom we send to prison and for how long, for, an imbalance in these factors will always prove disastrous. A maximum security prison shock can do many people good, but the acid test, the prominent question which man cannot still answer with absolute accuracy is, "how long a shock does an individual need?"

Workshop IV:

Summary Report of the Rapporteur

Chairmen: *Mr. Kikutoshi Takayasu and*
Mr. Takuji Kawasaki
Rapporteur: *Mrs. Viola de Silva (Sri Lanka)*
Co-Rapporteur: *Mr. Lim Thiam Meng (Singapore)*

Titles of the Papers Presented

1. Aftercare Services
   by Mr. Lim Thiam Meng (Singapore)
2. Understanding the Child: Disruptive Character Traits and Their Handling —'Stubbornness'
   by Mrs. Viola de Silva (Sri Lanka)
3. Treatment of Juvenile Traffic Offenders—Traffic Training Course in Family Court
   by Mr. Akira Harada (Japan)
4. Practical Use of the Social Resources in Community Treatment
   by Miss Takako Naomoto (Japan)
5. Some Problems in Child Education and Training Homes in Relation to its Educational Functions
   by Mr. Yoshio Onogi (Japan)
6. Problems Involved in the Implementation of the Parole System in Japan
   by Yasunobu Horii (Japan)

1. Aftercare Services

Mr. Meng (Singapore) introduced his subject by explaining that although Aftercare Officers are non-institutional Social Workers and not directly concerned with the daily administration of the institution, they should work in close liaison with the institutional staff, in a joint effort to help the resident. They provide services which are very much an integral part of the total rehabilitative programme, within as well as outside the institution. The term 'Aftercare' is not to be taken to mean that this service is provided only upon the discharge or the release on parole of the resident from the institution. The physical removal of the child from his family and familiar surroundings to a big, impersonal residential institution can be most frightening. The child can react violently to the new environment by being quarrelsome, offensive, defiant, aggressive or become withdrawn and sulky. Basically there is a feeling of fear and insecurity. Mr. Meng stressed that it was vitally important that the Aftercare Officer should establish early contact with the residents, as soon as possible after their committal to an institution, to bring about a smooth-working professional relationship between them. He also stressed the importance of intensive case-work within the institution for which much skill and background knowledge of psychology and sociology are necessary. The Aftercare Officer by working in close liaison with the institution staff should help the resident to take advantage of the vocational, educational, moral and social training available in the institution. The success of rehabilitation he said depended to a great extent on the family of the resident. Hence, aftercare work should not be confined to the resident alone, since the well-being of the family will have positive effects on the resident who ultimately returns to the family. Relationships between the resident and the parents or siblings should be strengthened, so that on his eventual discharge from the institution, he could count on parental emotional support and acceptance. Joint interview at regular intervals with the resident and his parents are therefore necessary to clarify certain misunderstandings and thereby bring about better relationships between the parent and the child. Hence it would be necessary for the Aftercare Officer to deal with problems faced by the family and refer them to the proper agencies.

Another important aspect of the duties of the Aftercare Officer is the pre-

paration of the resident for Parole or Discharge. The Aftercare Officer will in his report assess the resident in relation to his family. It will be a diagnostic report which aims at pin-pointing the problem areas, factors which give rise to such problems and the treatment he thinks necessary. The report will also reveal the changes within the resident since admission and the corresponding changes in attitude of parents, as well as the prevailing home environmental conditions.

In Singapore it is quite unlikely for a resident to be released at the first interview. The average period of detention is one to one-and-a-half years. However due to increasing awareness of the ill effects of long-term institutionalization, the present trend is to minimise the length of detention.

Aftercare services outside the institution begin after the resident is released from the institution, either in the form of a total or unconditional discharge with six months' voluntary supervision, or conditional discharge on a parole licence. In the latter case, the parolee has to comply with certain conditions and the breach of such conditions could mean immediate recall to the institution. On release, the Aftercare Officer assists the parolee to find himself a job in keeping with his aptitude. If of course he is too young to work he would be assisted to engage himself in cultivating and pursuing healthy interests and activities. At this stage it is important for the Aftercare Officer to remember that he should not be either over-protective or authoritative. One of the basic concepts of social case-work is that treatment cannot be forced. Without this realisation, there is always the danger that the Aftercare Officer takes on the aggressive role in his attempt to reform or lead the resident. The dominant function of the Aftercare Officer is therefore to establish clearly in the mind of the parolee the circumstances under which the Parole Board permitted his release. He must accept the resident as he finds him without reproach. He should encourage and inspire the supervisee to develop a sense of independence as opposed to inter-dependence and effect a growth and change in him within the social situation within which he is placed. This would make him less vulnerable, than he was before, to adverse environmental influences and pressures. It is also important that the Aftercare Officer provides the feed-back to the Discharge Committee or the Parole Board on the progress and activities of the supervisee until his eventual discharge from parole. Mr. Meng concluded his paper on the note that case-work could be more effective if officers had a more reasonable case-load and were professionally trained.

The discussion which followed, opened with the question, 'What do you mean by Aftercare Officer?' In Singapore Aftercare is undertaken by an Officer attached to the Social Services Department and not by the Probation Officers. It was agreed that the system of aftercare in Singapore is therefore more effective than in Japan or Sri Lanka, where Probation Officers are expected to tackle the problems of aftercare in addition to their numerous other duties. It was also pointed out that in countries with a larger land area it would not be possible for the Aftercare Officer to meet the resident except when he goes home on home-leave. Hence the Aftercare Officer has to depend on reports made to him by the authorities of the institution periodically and therefore initial contact of the resident soon after committal would not be possible.

Much discussion revolved around the question as to whether the Aftercare Officer was imposed on the resident or whether the resident was given a chance of selecting his Aftercare Officer. In Singapore the residents were not given this choice as the authorities did not think it necessary. Of course if in the course of his period of residence, a resident decided that he would like a change and was able to support his claim with valid reasons, they would consider it. But so far, the authorities have not experienced such a problem.

However it was generally agreed that allowing the resident to choose his Aftercare Officer was ideal and this system is being followed in the Family Courts of Japan. It was further discussed that giving the resident the right to choose his Aftercare Officer was a means of pro-

moting a Human Relationship between the resident and the Aftercare Officer, which is very important.

2. Understanding the Child: Disruptive Character Traits and Their Handling —'Stubbornness'

Mrs. de Silva (Sri Lanka) presented her paper on 'stubbornness' which she defined as a refusal to agree to do something asked of one or the refusal to accept a popular view. She further explained it as persistence in not accepting or not agreeing with advice and popular opinion which are generally held correct in spite of repeated persuasion. Stubbornness may also be a characteristic in one's determination to go ahead with any actions or plans, against all advice. This may be a form of protest or the manifestation of a non-co-operative attitude. It may also be manifested as a defence or an aggressive mechanism. She illustrated the above with two examples of stubbornness in the case of children. Hence if ten different examples are analysed, Mrs. de Silva pointed out that, as many different aspects could be noted and the causes of different forms of stubbornness would also vary.

Stubbornness, itself, varies both in nature and in degree. It may appear in a mild form during the initial stages and may assume greater proportions as time and circumstances change. It could affect the personality makeup of the child and its normal growth. In fact it can spell the difference in the correct personality formation and drastically affect the normal development of the ego and the super-ego.

Stubbornness makes it difficult for a child to build healthy relationships with others, it destroys the attachment of goodwill apart from the sympathy of others. Will not stubbornness bring into grips with either views or actions of people, in whatever sphere of activity? Mrs. de Silva went on to explain that stubbornness therefore is inevitably a disruptive element. It varies only in degree. In almost all cases stubbornness is only a cry for an effective remedy or help for these ills, but there is no stock treatment for stubbornness. For better understanding she discussed the subject under two headings:

(1) Stubbornness due to social causes.
(2) Stubbornness due to individual causes.

Stubbornness due to social causes, she further explained, would be a case of a child who has had his initial development uninterrupted but due to subsequent change of circumstances as in the case of death of or desertion of the family by a parent, he will not be able to understand the sudden change and will demand and persist in securing what he wants. When these demands cannot be met, he may experience a sudden setback which will affect his personality and result in deviant behaviour.

The social causes, Mrs. de Silva explained, are very varied and as such treatment should fit each case individually.

The second category of stubbornness due to individual causes, she presented under four headings: (a) Biological factors (b) Psychological factors (c) Psychotic factors (d) Mentally defective or Pathological factors.

She then questioned whether it would be fair at all times to rate stubbornness as a disruptive trait? It is no doubt a personality deviation. Certain deviations are necessary for a progressive personality. Hence stubbornness is at times necessary and progressive. In a changing world where values, ambitions and culture are themselves changing, stubbornness to a certain degree has to be utilised for the sake of progress. The choice of a child to direct his learning to suit his temperament and aptitude, as against a wishful ambition of a parent with his disregard of the potentialities of the child, is another instance of stubbornness in the right direction. It may even be called persistence or perseverence or even a strong personality asset. We need therefore to make a careful diagnosis between stubbornness and these personality strengths, if we are to understand the child. Hence, 'I want, what I want, when I want' is not always stubbornness. It may be a demand of a basic right and should therefore be understood correctly.

The members of the group then discussed a few examples of stubbornness due to biological, pathological and social

causes. The degree of stubbornness, it was discussed, was greater in old age. Difficulties encountered by the staff and inmates of Homes for the Aged were discussed. The case of a mentally retarded child, was yet another example that was brought out in the discussion. A Probation Officer in the group, illustrated stubbornness due to social causes with his experience of an adolescent couple, who had left their respective homes and who attempted suicide on as many as five occasions, because their parents failed to understand them. This case meant much case-work with both individuals and their respective families, and the treatment of the individuals as well as the parents who may also suffer from a form of stubbornness.

3. Treatment of Juvenile Traffic Offenders —Traffic Training Course in the Family Courts of Japan

Mr. Harada (Japan) explained that he selected this topic as he realised that there is a rapid increase in traffic offences by juveniles, due to expansion of motorization. In the Family Courts of Japan, they find this to be one of the problems that need urgent attention. Much research, survey and experience, have proved that the offenders appear to possess various psychic difficulties which result in poor driving skills. Hence scientific investigation and educational treatment are necessary. In the Family Court, special psychological tests and the use of testing apparatus, help in finding out the best treatment for each individual.

He went on to explain that the offenders are usually divided into three categories: (1) 'they can't'—those with physical and mental causes; (2) 'they don't'—those who have no skill for driving; (3) 'they won't'—those who possess the driving skill, and the knowledge of regulations but do not observe them.

The first category is treated by teaching them some other interest that will not involve driving. The second category is sent to the Traffic Training School and the third category is trained to change their attitude by dealing with serious problems of daily life.

In the Family Court of Yamaguchi, to which Mr. Harada is attached, three Probation Officers have been entrusted with the investigation and guidance of traffic offenders.

Various training courses are available to these offenders, such as, training in the Court by Judges and Family Court Probation Officers, training courses in the Driving Training Schools, Traffic Training Society, and training while living together in a Youth Lodge or Camp.

The Camp course has been in existence since August 1968 and has held twenty-three such courses up to date. Each course has trained forty offenders at a time. Selection for such courses is on the basis of their past record. They should not have committed any other offence and they should be adaptable to camp training. The duration of the course is normally three days and the offenders are expected to reside at the camp. The forty trainees are divided into groups of eight and a Family Court Probation Officer acts as an adviser to each group. The trainees adhere to a strict time-table in which is included, aptitude tests, group discussions, case-study, appropriate movies and a camp-fire. On the second day the Judge of the Family Court helps with the training. Each night, after the trainees retire for the day, the Probation Officers involved in the training, meet and spend long hours discussing their observations and problems in a spirit of great devotion.

The discussion was very actively participated in. How they would cope with offenders who refused to attend the course, was the first question asked. When this course of training was first introduced, it was necessary to persuade the offenders to attend. But now that it has gained popularity for itself, parents and employers request of the Probation Officers to admit the offenders to the course. It was also mentioned, in answer to a question that 29 out of 50 Family Courts in Japan organize such courses. It was explained that the Juvenile Traffic Training Schools are a state concern while the Driving Instruction Schools are run by private enterprise. However the driving examination is conducted by prefectural police.

The effectiveness of group training at this course was then discussed. Mr. Harada explained that (1) it helped to cultivate the group feeling and made them realize

their responsibilities, within the group; (2) being away from their daily routine, a kind of dependency is cultivated and thereby a feeling of security, as they realize that they are all attempting to achieve a common goal; (3) they are given the opportunity of observing each other and each other's attitudes and thereby made to realize their own capacities. At first they are inclined to criticise others and later learn to reflect on their own selves.

The effectiveness of group discussion was also discussed. This meant giving the trainees first a chance of expressing their own minds or saying just anything they wished to say. They would criticise the police, for instance. They are then given the opportunity of introducing themselves individually and later the discussion goes on to subjects such as prevention of traffic accidents.

While appreciating the fact that this system of dealing with juvenile traffic offenders is an excellent idea, the discussion ended with the question, why should we not organize similar camps for the treatment of other offenders as well?

4. Practical Use of the Social Resources in Community Treatment & the Practical Problems Envisaged

Miss Naomoto (Japan) stressed the importance of Social Resources for the treatment of offenders within the society. She said that in Japan each Professional Probation Officer has to cope with a hundred Voluntary Probation Officers and supervise two hundred probationers. As such each Professional Probation Officer must know her Voluntary Probation Officers as well as her clients. In order to help the clients she needs to possess a good knowledge of the available resources and how they should be made use of.

She divided the social resources into two categories:

(1) visible social resources (2) invisible social resources. In the first category she included human resources such as family members, friends, employers, teachers, doctors, members of Big Brothers and Sisters Associations, members of Women's Association for Rehabilitation Aid, and rehabilitation aid societies and the social welfare institutions, etc.

Miss Naomoto put out four questions to be examined:

(1) What are the social resources available at present?
(2) Do we make full use of the available social resources?
(3) Are social resources for the use of probationers lacking?
(4) How should these social resources be effectively used?

Although some of the resources are made use of by Probation Officers and though the doctors and teachers co-operate with the Probation Officers, they do not work as a team for the benefit of the treatment of offenders. The Rehabilitation Aid Society is most exploited by Probation Officers. The fact that Probation Officers are transferred makes it difficult for officers to get to know and to establish contact with the social resources in the area during the given period. Sometimes it happens that the particular social resource needed by a particular probationer is lacking. At another time even if the social resource is available, the procedure to obtain any assistance is too complicated.

Hence it is very necessary to know the available social resources according to the client's need. This is not possible unless the Probation Officer establishes close contact with the related services and personnel. It becomes also necessary to adjust the existing resources and to maintain them, so that they could be made use of.

The discussion opened with the question, why are people not inclined to work in welfare institutions? It was generally felt that in an industrial country like Japan people prefer to take up employment in factories where they receive better remuneration and enjoy shorter hours of work rather than do a full time (sometimes twenty-four hour) job, in a Social Welfare Institution, for lesser remuneration. Some of the social resources available to Probation Officers in Sri Lanka and Singapore were discussed and it was agreed by the members that according to the present trend of affairs, in most countries, people are less inclined to take to Social Wefare work and as such the social resources available for the use of Probation Officers are not sufficient. One of the members remarked that this was mainly due to a false sense of values.

5. Some Problems in a Child Education and Training Home in Relation to Its Educational Functions

Mr. Onogi (Japan) introduced his Home as a social welfare agency for children who are prone to be delinquent as a result of the lack of parental care in their own homes. Two parent substitutes, the husband who is known as 'Kyogo' and the wife who is known as 'Kyobo' share a cottage with the children and act as instructor and counsellor and matron respectively. The children in the Home receive a training in habit formation as well as academical and vocational training. He went on to explain that psychology and the science of education have contributed much towards reforming the character of the residents and eliminating personal causes of delinquency.

A few problems which they face are, the decrease in the number admitted in spite of there being a great many children who are beyond the control of their parents. This he believes is as a result of the public considering the Home as a punitive institution like *Kanka-inn* (child reform school abolished in 1833) or *Shyonen-inn* (present juvenile reform and training school).

The fact that no child can be admitted without the consent of the parent or guardian, is another problem. In this case most parents do not admit the fact that their children are problem children. The other problem is the stigma attached to the Home, which prevents parents from sending their children, even if they are aware that they need treatment.

Although this Home is meant for predelinquents, it is now catering for delinquents. This of course is due to the fact that schools and child welfare officers have still not realised or understood the aims and functions of this Home.

The new Labour Laws have caused yet another problem. Recently they have introduced eight-hour shifts for the workers of these Homes, which is not practicable in this set up. This would defeat the aims of the institution. He also commented on the unsatisfactory method of handing over the aftercare of these children to Child Welfare Officers, belonging to Child Guidance Centers. The children usually return to the 'Kyogo' and 'Kyobo' for advice and guidance, in preference to the Child Welfare Officer. Hence aftercare too has become a part of the official duties of the 'Kyogo' and 'Kyobo.'

When the discussion opened there was unanimous agreement among the members that this cottage system was playing a very important role in the rehabilitation of the juvenile. Hence everyone agreed that the Labour Laws should not be introduced in this case, as the whole purpose of this system would then be lost. There was also a comment that the success of such a Home depends very much on the devotion to work of both the 'Kyogo' and 'Kyobo.'

6. Problems Involved in the Implementation of the Parole System in Japan

Mr. Horii (Japan) explained that the main object of release on parole would be to divert the method of treating offenders, from institutional treatment to community treatment, at the proper time and in favourable conditions. Before World War II release on Parole has been viewed as an exceptional benefit, but now the aspect has completely changed. People have come to realise that the release on Parole forms a link in the chain of treatment of offenders. It has now become a rule rather than the exception.

He pointed out that the present system of Parole in Japan is far from satisfactory. He discussed three relevant problems:

(1) Parole Boards are so passive that parole examination is initiated only by the filing of the application for parole by the Superintendents of the correctional institutions.

(2) Short-term prisoners are in great number and even if they were released on parole the term of their conditional release is so short that it is difficult to carry out any community treatment effectively.

(3) As much as forty per cent of prisoners are released on their completing their full term of sentence.

The discussion started on the last statement by Mr. Horii. It was pointed out that the forty per cent full-term prisoners were really the ones who needed to be treated in the community and these were being

sent out without proper preparation and hence turned out to be a danger to society. It was the opinion of all members in the group that 'full-termers' should be given a chance of being socialized. The 'Good time' system of old was also suggested for long term prisoners.

It was also pointed out that it is very necessary for Probation Officers or the Regional Board to ensure that proper orientation regarding parole is given to prisoners at the time they enter prison, shortly after the sentence is given. This would mean that they begin their term of imprisonment, with the prospect of release on parole in mind.

In Japan, often the Parole Board and parents of the parolee decided the future of the parolee and when released the parolee had no alternative but to follow the path lined out for him, without his consent. But recently this system has been changed. The Voluntary Probation Officer visits the parolee and finds out his likes and dislikes and reports to the Parole Board.

Understanding the Child: Disruptive Character Traits And Their Handling—Stubbornness

*by (Mrs.) Viola de Silva**

I do not propose to define *stubbornness* which to all of us is nothing new. It is sufficient to say that stubbornness is a refusal to agree to do something asked of us or to refuse to accept a popular view. It may be explained as persistence in not conforming to advice and popular opinions which are held correct in spite of repeated persuasion. Stubbornness may also be the characteristic of determination to go ahead with any actions or plans against all advice. This may be a form of protest or the manifestation of a non-cooperative attitude. It may also be manifested as a defence or an aggressive mechanism. This could be better understood by studying a simple example or two of stubbornness. A girl of ten years ignores the repeated requests of her mother to go to school regularly. We note in this example that the daughter disobeys the mother; we also note that this request of the mother is universally accepted as quite the correct one. In this negation of her mother's request is seen stubbornness, in a non-cooperative form. We also see in it a defence mechanism or perhaps a means of escapism. In another instance a girl of the same age is determined to attend dancing classes, against the advice of her parents, relatives, neighbours and even against the strong disapproval of her teachers. In this instance we have the common factor of the non-cooperative attitude and a negative attitude of the individual manifested in the form of an aggressive mechanism. Similarly, if ten examples of stubbornness are analysed, as many different aspects could be noted. We could also note that causes of different forms of stubbornness would vary.

Stubbornness itself varies both in nature and in degree. It may appear in a mild form during the initial stages and may assume greater proportions as time and circumstances change. It affects the personality make-up of the child and its normal growth. In fact it can spell the difference in the correct personality formation and drastically affect the normal development of the ego and the super-ego.

Stubbornness makes it difficult for a child to build healthy relationships with others; it destroys the attachment and goodwill quite apart from the sympathy of others. Will not stubbornness bring one into conflict with either views or actions of other people in whatever sphere of activity? Stubbornness therefore is inevitably a disruptive element; it varies only in degree. But is it correct to attribute all these ill-effects to stubbornness as such? Is it not fair to state that in almost all cases stubbornness is only a symptom of other grave ills, and stubbornness is only a cry for an effective remedy or help for these ills. I would also call it a personality deviation. For the reasons enumerated above, and due to the various forms in which it is manifested and the numerous causes for its manifestation, a thorough understanding of it in all its aspects is necessary if effective treatment is to be administered. There seems to be no stock treatment for stubbornness. For better understanding, I would like to treat stubbornness under two heads:

(1) Stubbornness due to social causes; and
(2) Stubbornness due to individual causes.

1. Stubbornness Due to Social Causes

Stubbornness being a form of behaviour is also a satisfying form of behaviour to the individual, however unacceptable it may be to others. It satisfies the child just as well as the adult. As much as any form of behaviour it could be acquired and motivated. It therefore can result from situations of unorganization or disorganization in society. To explain unorganization in society in detail: if a child is born to a family where there are no codes of

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conduct either among the parents or among their children, and if there are no opportunities of proper guidance and direction from the parents, the child will grow without any proper codes of conduct or values being formed and will be of an unorganized and an unpredictable pattern of behaviour. When such children are shown in their later life the acceptable and the organized pattern or proper code of conduct they resent and revolt, often manifesting varying degrees of stubbornness.

Disorganization on the other hand has to be studied in greater detail, as it is more diversified. This is seen in the case of the child who has had his initial development uninterrupted and according to the normally accepted pattern of social upbringing. He has had his normal initial needs both emotional and physical adequately met and he has also formed proper values, but due to subsequent change of circumstances such as in the case of the death of, or desertion of a family by, a parent, economic crisis due to loss of employment, or partial or total maternal deprivation, may affect his normal growth. The child perhaps will not be able to understand the circumstances and the sudden changes. He will demand and persist in securing what he wants exactly when he wants. This sudden setback will affect his personality and a form of deviant behaviour could result, when his demands which hitherto had been adequately met cannot now be met. This deviant behaviour which may arise out of a feeling of unwantedness, now created in the mind of the child, may be manifested in a refusal to cooperate, determination to do what he wants, and not to do or defy what his elders want, in other words, he may become stubborn. The handling of the child in these instances might have to be different from the previous case of stubbornness due to unorganization. Does it mean case-work with the individual? A careful clarification of the sudden change of circumstances?

We have again the case of a child whose home functions very effectively as a social institution for rearing children, and the upbringing of the children has up to that point been very satisfactory. However, a change of behaviour may come about due to the acquired characteristics from the child's play group, school group and the neighbourhood or any other associates. Stubbornness may be one such acquired characteristic or the child may eventually gravitate to it. Distaste for studies or the dislike of a particular teacher may bring a child into conflict with his parents, and result in stubbornness. Perhaps stubbornness may be due to a high sense of loyalty, at times false, to a play group or his peer group which he would not betray however objectionable they may be to society. Discouragement by parents or teachers of such sense of loyalty, and advice to keep off from the pitfalls could present an unrestful situation which may in turn bring about obstinacy. Parents wanting the child to be exactly what they wish him to be, without due regard to the make-up of the child or his capacities and interests, normally referred to in psychology as 'projection' can again promote a condition manifesting in stubbornness. Then again we have the case of the child who identifies himself with his parents, who are themselves stubborn. The child in turn acquires it in this process of identification and emulation of the adult. We have also the case of parents or neighbours who are constantly quarrelling, and the atmosphere in the home and the environment is hostile and unfriendly, and stubbornness is a trait interwoven with hostility and aggression. Sibling rivalry could also promote stubbornness, as much as would partiality of parents in their love and care of their children. Situations of rejection, unwantedness, neglect and deprivation are dangerous breeding grounds of stubbornness. Could one ever forget the resultant stubbornness of the harshly and cruelly treated child, and what then of the over-protected and the spoilt ones? In all these cases we note that the correct values are not formed mainly due to their basic emotional needs not being met adequately due to social factors. The social causes as you see are very varied and the treatment should fit each case distinctively. Treatment accordingly might be family case-work, re-education of the parents, fostering of peace and harmony in the environment, adjustment in the educational sphere or in certain cases temporary or long term removal from home to suit the individual's need.

2. Stubbornness Due to Individual Causes

In an endeavour to understand stubbornness due to individual causes, it would be easier to do so by examining the factors which bring about personality deviations, as stubbornness is one such deviation. These individual factors may be subdivided into (a) Biological factors, (b) Psychological factors, (c) Psychotic factors and (d) Mentally defective and Pathological factors.

(a) Biological Factors

We have learnt that the biological constitution of an individual would have a direct bearing on his personality make-up. Genes found in the chromosone cells of an individual are known to carry the hereditary factors which promote different characteristics, which directly or indirectly could bring about stubbornness. Even if stubbornness cannot be directly attributed to hereditary factors this biological constitution could pre-dispose to obstinacy or any other deviation to which stubbornness is very closely related. We also know that variation of the metabolic process which regulates the blood-sugar level causes deviations in personality. Secretions of the endocrine glands have similar control or effect on personality and so would the amount of red blood cells. To be anxious, lethargic, withdrawing, depressed and eventually stubborn are some of the possible personality deviations. The anxious, the withdrawing and the depressed due to these biological factors could also gravitate to be stubborn. The causes for stubbornness in these instances being different to the social ones, would the same manner of handling be effective? Is the treatment in these cases the same method of case-work or medical treatment for the biological constitution of the individual or both, in conjunction or at varying times, the remedy?

(b) Psychological Factors

Psychological factors can bring about unpredictable deviations in the personality of a child and stubbornness is the inevitable result. Stubbornness in fact could be said to be a predominant condition in any psychological patient. Be it an anxiety state, obsessional neurosis, a state of depressive reactions or even a transient state like epilepsy or hysteria, stubbornness will be a major symptom. In these categories we clearly see that stubbornness is due to causes very different from what we have already examined. Would therefore any or all of the treatment administered for earlier causes of stubbornness remedy the ill? Or would the remedy be worse than the disease? Would it on the other hand be sensible to concentrate on psychotherapy or any other kind or method of psychiatric treatment, for stubbornness in these cases is mainly due to emotional conflicts deep seated in the individual?

(c) Psychotic Factors

In the case of psychotics stubbornness would be noted in the extreme form, so that it bewilders most others. In this category of mentally diseased we know that the entire personality is disorganized, that they are hardly in touch with reality and live in a world of their own. They suffer from delusions, auditory and visual hallucinations against all other restrictions, and at times against all physical force and pressure to keep them at bay. To this large category of stubbornness belong the maniac depressives and the schizophrenics. The nature and degree of their stubbornness are distinctly seen according to the disease. Accordingly, the treatment, too, should be specific, and the correct diagnosis, therefore, of the cause for stubbornness is essential. Will psycho-therapy or any other form of treatment stated earlier, redeem these individuals from their stubbornness? Or would institutional treatment in a mental hospital assure better and rapid results? Would occupational therapy find a place in the method of treating stubbornness due to these causes?

(d) Mentally Defective and Pathological Factors

We observe stubbornness also among imbeciles and feeble minded children. There, stubbornness or the refusal to do a thing, is due to a low I.Q. and inability to appreciate at times the motive of a request, and is due to defective formation of the brain. How effectively could we eradicate stubbornness in this case? Would it be clinical treatment like Neuro-surgery or a particular type of occupational therapy?

Would it be fair at all times to rate stubbornness as a disruptive trait? It is no doubt a personality deviation. Certain deviations are in fact necessary for a progressive personality. Stubbornness, I am inclined to state, is at times necessary and progressive. In a changing world where values, ambitions and culture are themselves changing, stubbornness to a certain degree has to be utilized for the sake of progress. We know of parents who do not accept present values and would cherish the old. We know of other parents who discourage their children from pursuing higher studies, especially in the case of their daughters, or furthering their talents in athletics, drama, etc., or even taking up employment. In such cases stubbornness prevails with remarkable success. The choice of a child to direct his learning to suit his temperament and aptitude, as against a wishful ambition of the parent with disregard of the potentialities of the child, is another instance of stubbornness in the right direction. Stubbornness is also necessary to break away from the conservative culture, caste and racial barriers. Perhaps, one might prefer to call it persistence or perseverance or even a strong personality asset.

A hasty conclusion that the above personality strengths constitute stubbornness, could also be a cause for stubbornness. We need therefore to make careful differentiation betwen stubbornness and these personality strengths if we are to understand the child. 'I want, what I want, when I want' is not always stubbornness. It may be a demand of a basic right. Let us all understand it correctly.

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Problems Involved in the Implementation of the Parole System in Japan

*by Yasunobu Horii**

Introduction

Today there is no objection to the idea that institutional treatment should be followed by community treatment in order to reform and rehabilitate offenders; that is to say, all offenders should have opportunities to be treated in the community.

Therefore the main object of release on parole would be to switch over the method of treating offenders from institutional treatment to community treatment at the proper time and in favourable conditions. Before World War II, release on parole had been viewed as an exceptional benefit, but nowadays the attitude has completely changed. People have come to think that release on parole forms a link in the chain of treatment of offenders. Now it is becoming rather a rule than an exception that inmates are released on parole.

However, I do not think that the present working of our parole system is satisfactory. There are many problems, which are as follows:

(1) There are many short term prisoners, and even if they were released on parole, the term of their conditional release is too short for any community treatment to be carried out effectively.

(2) About 40 per cent of all prisoners are released on completion of their terms.

(3) Parole Boards are so passive that parole examination is initiated only by the filing of the application for parole by the superintendents of correctional institutions.

In these respects, I propose to analyse the present working of our parole system with reference to the agencies concerned, and to discuss the methods of effective implementation of the parole system.

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1. Release on Parole and Trial

It is said that in the assessment of penalties judges are very lenient in Japan. As a matter of fact that sentences are apt to center about the minimum terms of statutory penalties. In 1971 the total number of persons who were sentenced to imprisonment with prison labor for a limited term amounted to 25,160, of whom about 50.1 per cent were for one year or less, and the total number of persons who were sentenced to imprisonment without prison labor was 2,998, of whom about 93.7 per cent were for one year or less.

Generally speaking, the prosecution is conducted and the sentence imposed from the standpoint of applying the criminal law to the crime without consideration of the person who committed the crime. Therefore many offenders who have serious criminal tendencies are included among short termers, so that they also need sufficient community treatment after their release. But short termers are apt to serve out their time against their will, and even if they are released on parole, their parole periods are too short for any community treatment to be carried out effectively.

Strictly speaking, the release on parole should be granted on condition that supervision for a considerably long period, to effect the readjustment of the parolee to the community, shall be conducted by the probation officer. However, in the present situation where the imposition of short sentences by judges prevails, the proper and effective application of the parole system is very difficult. Nevertheless, I do not suggest that offenders should be punished severely, because long imprisonment has harmful effects on offenders. I think that judges should try to avoid the use of short sentences by considering non-institutional treatment such as suspension of execution of sentence with probationary supervision

wherever possible. Furthermore, the Parole Board should complete arrangements so as to be able to initiate timely parole examinations for short termers as soon as they serve not less than one third of a determinate sentence.

2. *Release on Parole and Correctional Institution*

Although the Parole Board is empowered to initiate parole examination in its own right by the provision of article 29 of the Offenders Rehabilitation Law, in practice such action is hardly ever taken by the Parole Board. Consequently, parole examination is usually initiated by the filing of an application for parole by the superintendents of correctional institutions.

In institutions the emphasis is apt to be put on security, so that the individual treatment necessary for preparing the inmate for release on parole is not sufficiently carried out. Naturally the inmate who never violates the institutional rules and is diligent at work, obedient and well behaved is inclined to be selected as a candidate for parole first of all. Consideration of the inmate's eligibility to return to the community and the proper time for his parole is laid aside. Among such candidates are included many inmates who never violate the rules and are obedient only in the artificial environment of the correctional institution but commit other crimes soon after they have been released. Thus, the basis of selection for release adopted by institutions is not always pertinent. Furthermore, it seems to me that the proportion of the parole period to the prison term is determined without the Parole Board's knowledge, and an easy-going method of application for parole is apt to be adopted by each institution.

It follows from these circumstances that the Parole Board cannot fulfil its important role of selecting the inmate who is deemed suitable for parole and releasing him on parole at the proper time, so long as it initiates parole examination only on the filing of an application by the head of the institution. We cannot overlook the fact that in 1971 the total number of prisoners who were released from prisons amounted to 28,101, of whom 8,923 or 31.8 per cent were released on the expiration of their prison terms without the filing of an application for their parole by wardens. I think that the Parole Board should adopt a more active attitude in respect of parole.

It cannot be said that so far the institutions' attitude towards the functioning of the parole system has been right and active. Since the ultimate object of correctional treatment in institutions consists in readjusting the inmates to the community, the correctional institutions should make all treatment plans with the object of preparing the inmates for their return to the community in cooperation with the Parole Board and the Probation Office. It is a progressive step that recently many prisons have come to conduct pre-release education in cooperation with the Probation Offices. If I may be allowed to expect so much, I hope that the inmate will be informed of the meaning of parole as soon as he is committed to the correctional institution so that he may be motivated to participate actively in the treatment plans. Thereafter continuing contacts with his family and probation officers must be made in order that the inmate may prepare himself mentally, physically and emotionally for his return to the community as soon as possible. Accordingly, I think an inmate's interview with his family should not be restricted by any limiting rules.

3. *Release on Parole and Probation Office*

It is necessary, for releasing the inmate at the proper time and in desirable conditions, that inquiry into the conditions at the place to which the inmate is expected to come back upon release should be initiated soon after he has been admitted to a correctional institution, and any likely trouble or obstacle which will vitally hamper his rehabilitation should be adjusted or removed at an early date. This work is conducted by the volunteer officer or the professional probation officer attached to the Probation Office.

In the past, this work of adjusting environment was apt to be treated lightly compared with parole supervision, and even though it was conducted, the inmate's will and feelings were not respected

very much. Consequently there were some inmates who served out their prison term because the environmental conditions at their prospective destinations had not sufficiently been adjusted.

Recently, however, the importance of this work has been realized, and especially the importance of the inmate's participation in preparing the environment for his return to the community has come to be stressed. So the volunteer probation officer often visits the correctional institution and interviews the inmate in order to make the effective adjustment of environment taking into consideration the inmate's will and feelings. However, it is difficult for the volunteer probation officer to visit and interview an inmate confined in a distant institution.

In such a situation, the "pre-parole service unit" was inaugurated in 1966 by all Parole Boards. The aims of this service unit program are to help the Parole Board initiate parole examination promptly and adequately and return the inmate to the community smoothly. A probation officer attached to the Parole Board visits the correctional institution on a regular systematic basis to collect information for parole examination. He interviews the inmates and discusses their problems with correctional officers. This investigation is started soon after an inmate becomes legally eligible for parole even if a parole application has not been filed.

Needless to say, the Probation Office is informed of the inmate's recent progress and his problems at this investigation, so that the field officer at the Probation Office is able to conduct effective pre-release inquiry and adjustment. I think, this service unit program is a very important step because by this means all information and efforts on the part of the institution, the supervising agency and the Parole Board can be well integrated, and the Parole Board can collect sufficient information to initiate parole examination in its own right at an early date.

At the beginning this experimental program was implemented only in some of the juvenile correctional institutions, but as it proved to be fruitful, it has since been expanded to include inmates in some adult correctional institutions as well. It is to be hoped that this program will be expanded to include all inmates in all correctional institutions.

4. *Attitude of Parole Board to Release on Parole*

(1) As mentioned above, although the Parole Board is vested with the power to initiate parole examination in its own right, it has hardly taken such action. In other words, at present the only function performed by the Parole Board is checking information about inmates who have already been selected as suitable persons for parole by correctional institutions. In doing so, of course, due consideration should be given to the progress of the inmate achieved in the institution, but if the Parole Board thinks that it should not initiate parole examination in its own right because doing so may injure the warden's pride, it is thereby surrendering its rights and neglecting its important role. The Parole Board should adopt a more positive attitude towards parole examination.

So far it may have been difficult for the Parole Board to initiate parole examination in its own right without a parole application by the superintendents of correctional institutions, because it was not able to collect the necessary information for initiating parole examination from the institutions and probation offices. In this respect the new program of the "pre-release service unit" by probation officers attached to the Parole Board is very useful to the Parole Board to collect information which is necessary for parole examination. It is to be hoped that this program will be universally applied to every institution and that the Parole Board will be able to initiate parole examination at the proper time.

(2) One of the reasons why the members of the Parole Board do not take the initiative to release on parole is that they are afraid of the likelihood of recidivism during the parole period. Therefore, they are apt to decide on a shorter parole period in order to avoid such a risk. During 1971, 17,458 prisoners were released on parole. Of this number, 10,320 or 59.1 per cent had short parole periods of two months or less. Indeed, it is a fact that in case a parolee commits new crimes while on parole, the Parole Board

which had granted his parole is severely attacked in the press. In the final analysis, the criterion for release may be the safety of society, not the individual's personal welfare. But I am afraid that such a negative attitude of the Parole Board might check the development of the parole system. In practice, it is difficult to judge the likelihood of recidivism. So I think it is better that the Parole Board should release an inmate on parole at a fairly early stage without hesitation and revoke parole if he violates any conditions, before he commits another crime.

(3) Recently it has been recognized that the task of parole examination is too complicated, and at present the Parole Board is composed of experts in this field such as ex-chiefs of the Probation Offices or ex-superintendents of correctional institutions. However, some board members are still inclined to consider release on parole principally on the basis of the nature of the crimes committed and the previous criminal record rather than the circumstances of the individual criminal. Such an idea goes against the main object of the parole system.

Conclusion

It is difficult to speak about success or failure of release on parole, but the following figures show the good rate of rehabilitation of parolees.

While 7,975 or 53.2 per cent of 15,001 prisoners released on the expiration of their prison terms in 1966 had been imprisoned again during the five ensuing years, 6,404 or only 33.8 per cent of 18,956 prisoners released on parole in the same year had been imprisoned again during the same period.

The Parole Board should make efforts to implement the parole system actively with confidence and courage. Further, I think, it is much better to authorize an inmate to ask the Parole Board to examine him and consider him for parole. This method would also serve the purpose of cultivating the inmate's spirit of self-help, sense of responsibility for his life planning after release, and will to readjust himself to the community. Then the passive attitude of the Parole Board will also be eliminated.

Anyway, we cannot overlook the facts that about 40 per cent of all prisoners are released only on expiration of their prison terms, and that about 60 per cent of all parolees from prison have short parole periods of two months or less. The prisoners who are released on parole too late or are discharged on the expiration of their prison terms have usually many difficulties hindering their rehabilitation. Therefore, they should be supervised and supported for a fairly long time after their release, but in actual fact any community treatment cannot be carried out effectively for them.

In order to solve these problems satisfactorily, it may be necessary to revise the law, but first of all we must do our best to work the present system. Not only the Parole Board but also the other agencies concerned should work together to devise an effective way of treating offenders and to promote the spread of the philosophy of rehabilitation. After that, a better system of treating offenders could, if necessary, be adopted according to the will of the people.

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