THE CRIMINAL JUSTICE BILL 1947—A COOK'S TOUR.

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To prolonged and exuberant cheers, Sir Richard Acland was ushered into the crowded chamber of the House of Commons and sworn in as the new member for Gravesend. After a hotly-contested bye-election, he had held this seat for Labour, and great was the rejoicing of the members on the right of the Speaker as he took his seat amongst them. This ceremony over, the Home Secretary, the Rt. Hon. Chuter Ede, rose to move the second reading of the *Criminal Justice Bill* 1947, and with amazing swiftness the atmosphere changed: all but a few members bustled out of the chamber, noise and confusion yielded to sepulchral calm.

Throughout both days of the ensuing debate a quorum was barely maintained. No one will wonder at this lack of interest when it is realised that this Bill is a specialist one. It gives great scope for discussion in the Committee stage, but since it is supported in principle by all shades of political and sociological opinion, both in and out of the House, little is left to be said during the second reading debate. Further, it is really a rehash of the 1938 Bill, and regurgitation is never as pleasant as original mastication. Many members felt that " the Bill follows too much the devices and desires of the 1938 Bill—that it has left undone many things that it might have done; although there is some health in it."[1]

At the time of writing, the Bill has received its second reading and clauses one, two, and three have been examined in Committee. Amendments have been accepted, and it seems clear that many provisions of the Bill will be modified before the Report stage. Thus, for the time being, it seems wiser not to deal with many matters of detail over which battle will soon be joined in Committee, and to concentrate on the broad general scope of the Bill.

The Bill does not concern itself with substantive law, though the second reading debate was distinguished by the production by many members of their favourite plans for reform in this sphere. It does effect several modifications of procedure, the chief ones being the abolition of the right of peremptory challenge of jurors (clause 28), the introduction of a power into courts of summary jurisdiction to order, on the application of a police inspector, that the finger-prints of a person taken into custody or charged with an offence be taken (clause 33), and the extension of the admissibility of evidence by certificate (clause 34). However, it is on the reform of the penal system that the Bill concentrates. In the words of the Home Secretary—" what this Bill does is to rationalise and make more flexible methods already available for dealing with convicted offenders; and we add some new methods."[2] I propose to deal with these methods under the following headings:—terminological changes, corporal punishment, capital punishment, probation, treatment of young offenders, and treatment of persistent offenders.

Terminological Changes.

Clause 1 withdraws from the courts the power to sentence a criminal to either penal servitude or hard labour, or to specify into what prison

1. C. Royle: Member for West Salford: 444 H.C. Deb. 2182.
2. 444 H.C. Deb. 2140.

division he is to be placed. Implicit in the abolition of penal servitude is the abolition of the old " ticket-of-leave " system. All this had been proposed in the 1938 Bill when Sir Sameul Hoare described such sentences as " little more than the stage properties of Victorian melodrama."[3] Since they have ceased to mean anyting from a practical point of view, these changes are best regarded as terminological ones.

" Criminal Lunatic Asylums " become " Broadmoor institutions " and " criminal lunatics " are transmogrified into " Broadmoor patients." If the practice of some states of the U.S.A. was followed, such unfortunate people would be called " Broadmoor students," thus destigmatizing the patrons of both mental institutions and establishments of higher education. It is questionable whether the use of the term " Broadmoor " is a wise one, for public opprobium fastens easily onto such a term, and it may be that a less categorical nomenclature would be advisable so that the fate that has befallen the word " Borstal " shall not be repeated.

As Sir Samuel Hoare pointed out, such " changes are much greater than changes of name. They are the outward and visible signs of the new outlook upon the problems of crime and delinquency."[4] Thus we are to have " The New Look " in penology also, the knobby knees of the criminal being concealed by longer skirts.

Corporal Punishment.

Clause 2 prescribes that " no person shall be sentenced by a court to whipping . . ." and clause 45 lays down extensive safeguards to circumscribe the use of corporal punishment in prison. These two clauses give effect to the Cadogan Committee's recommendations.[5]

The general public's interest in this Bill seems to be confined to the two issues of corporal punishment and capital punishment, and indeed the fascination of these subjects has infected even Members of Parliament. The abolition of judicial sentences of whipping is, in the words of the Under-Secretary of State " a pedestrian measure," for (in 1945, for example) " only 49 people, including adults, youthful offenders, and offenders in prison, were actually subjected to corporal punishment."[6] Despite this desuetude, despite the Cadogan Report, despite the fact that virtually every speaker in the second reading debates on the 1938 and 1947 Bills delivered himself of his opinions on this subject, despite the three days discussion at the Committee stage of the 1938 Bill,[7] despite the high probability that no argument can be given which has not already been ridden to death at some time or another, the members of the present committee occupied the whole of their first day's deliberations with a discussion of this clause, culminating in its acceptance without division. No argument was adduced which had not been advanced at the Committee stage of the 1938 Bill. One hesitates to agree, but perhaps the words of Mr. Godfrey Nicholson contained more than a kernel of truth when he said, " Flogging is a beastly subject. It makes its beastly appeal to every newspaper reader. Is there a man or woman on this Committee

3. 342 H.C. Deb. 282.
4. 342 H.C. Deb. 282.
5. Departmental Committee on Corporal Punishment: Cmd. 5684 of 1938.
6. 444 H.C. Deb. 2351.
7. 10th, 11th, & 12th days, Standing Committee A, March 1939.

who can honestly deny that he or she takes more interest in this clause than in any other? It makes its beastly appeal to me. We are all vicarious sadists."[8]

Sir Thomas Moore adduced as proof of the salutary deterrent effect of whipping his confession that " I have been caned on MANY occasions by my father, because between the ages of 10 and 12, I had a proclivity for telling lies. The effect of those canings was completely successful, and since then my character has been above reproach." Members hesitate a long time before chaffing a member of an opposing political complexion for such a statement—fully a quarter of a second.

Capital Punishment.

The 1938 Bill was silent on this matter, though during the Committee stage an amendment suggesting an experimental suspension of the death penalty for five years was moved and defeated. Since then, there has been a phenomenal increase in the number of violent crimes, the police forces have fallen below establishment, and the public has seen the emergence of the armed criminal. Having pointed to these facts, the Home Secretary, the Rt. Hon. Chuter Ede stated—" The Government feel that they cannot regard the time as opportune to include in the Bill a provision for the suspension or abolition of the death penalty . . . but recognising that this is a matter on which very strong individual conscientious feelings are held and that the division does not follow the usual party lines, suggest that if an Amendment to deal with the death penalty is moved, it should be moved on the Report stage of the Bill so that the decision shall be taken by the whole of the Members of the House."[9] Several such amendments will be moved. The final result is hard to predict though those doubting the deterrent effect of the death penalty and hating its barbarity have high hopes of at least an experimental suspension. One suggestion, that there be two degrees of murder, as in some American states, and that only a conviction for one of these degrees be followed by capital punishment, does not seem to have met with any degree of acceptance.

Whatever the result of such a free vote of the House, it is interesting to note that the majority of those who resist abolition have shifted their ground. In 1938-9 there were many who expressed themselves as favouring the retention, sine die, of capital punishment for a more or less narrow list of crimes. Now, however, neither during the second reading debate, nor in the public airing of this question in the press, has anyone yet come forward to defend capital punishment per se; the pith of the retention argument is the unsuitability of these times for such an experiment. One is therefore fairly safe in asserting that the death penalty will be abolished in Great Britain; but whether that will come by the passage of this Bill or by a later measure is more doubtful.*

Probation.

Though much of the Bill is devoted to this method of treating offenders

8. 12th day, Standing Committee A, 21 March 1939.
9. 444 H.C. Deb. 2156-2157.

* This article was, of course, written before the House of Commons, on 15th April 1948, by a narrow majority, adopted the experimental suspension of the death penalty for five years.—[Ed.]

the reforms introduced are almost exclusively administrative in nature, and give effect to the recommendations of the Departmental Committee on Social Services in Courts of Summary Jurisdiction.[10] As such, they are of no great interest to the Australian reader where the ecological pattern renders obligatory a different administrative approach to any system of probation.

Nevertheless, clause 3 of the Bill is of more general interest, for in it the Government proposed, inter alia, to withdraw from courts of summary jurisdiction their right to place an offender on probation (or to dismiss him, or bind him over) " without proceeding to conviction." This is an illogical right, strictly speaking, for there is no technical difference between a finding of guilt and a conviction, and to the logician such a reform must appeal. On the other hand, for 40 years this procedure had been applied and there had been no complaints from those working in courts of summary jurisdiction, nor from probation officers who, indeed, strongly favour the maintenance of this illogical power. Further, to the general public, and in particular to employers, the word ' conviction ' has an unfortunate stigmatizing ring. As one member said, remove the ' —ion ' and there you have a ' convict.' On the second day of the deliberations of the Committee, issue was joined between the pragmatists and the legalistic logicians culminating in a victory for the former and the Home Secretary's agreement to modify clause 3 on this point before the Report stage. It therefore appears that some 100,000 people are to be spared the added stigma of ' a conviction ' envisaged in this clause of the Bill, though this will in no wise affect their treatment in courts of summary jurisdiction, their guilt having been proved.

Treatment of Young Offenders.

This Bill follows the 1938 Bill in restricting the use of imprisonment as a means of dealing with juvenile delinquents. No court can commit an offender under fifteen years of age to prison, and courts of summary jurisdiction cannot order the imprisonment of one under the age of seventeen years. Further, before ordering the imprisonment of a delinquent under twenty-one years of age the court must be of the opinion that no other method of dealing with him is appropriate, and courts of summary jurisdiction must state and record their reasons for coming to this conclusion (clause 16). In committe an attempt will be made to render such a statement obligatory on all courts, not only on those of summary jurisdiction : anyone who has trembled before the laconic ' Give reasons ' on an examination paper will know the terrifying strenght of such a command—fewer juveniles will go to prison.

Clause 38 of the Bill authorises the establishment of remand centres where all offenders between seventeen and twenty-one, and those between fourteen and seventeen who are too unruly for remand homes or who require observation unprocurable in the remand homes, shall be kept before and during trial. It is hoped that existing remand homes run by local authorities, and the detention centres to be set up under this Bill by the Home Office, will provide sufficient remand facilities to cope

10. Cmd. 5122 of 1936.

with all juvenile offenders without establishing state remand homes, as was envisaged in the 1938 Bill.

There is, therefore, clearly manifest in this Bill a desire to restrict the imprisonment of juveniles, before, during, and after trial, to the most extreme cases. Fundamental to this task is the provision of alternatives to prison. The 1938 Bill provided for two new types of institution for the treatment of juveniles, Howard Houses and Compulsory Attendance Centres. The present Bill has abandoned these projects and, instead, has provided (clauses 17 & 38) that Detention Centres be established in which juveniles between the ages of fourteen and twenty-one can be sent for a term usually of three months and not exceeding six months. The type of treatment to be accorded inmates of such establishments is not stated in the Bill, but the Home Secretary intimated that detention centres will provide " brisk discipline and hard work " and will give to a delinquent a " short, but sharp reminder that he is getting into ways that will inevitably land him in disaster."[11] This takes us only a very short distance towards estimating the probable value of such institutions, but nowhere is there any other pointer, and so there we must remain. One may legitimately wonder what chance there is of turning a fourteen year old delinquent away from a life of crime by a sentence of three months which would appear to be only sufficiently long to interrupt his education, and much too short to assist him to a sound adaptation to his environment.

To the many peope who had with interest and great expectation awaited the experiment of the Howard Houses and the Compulsory Attendance Centres their abandonment is most unwelcome. However, there is no sanctity in names, and since clause 16 of the present Bill points to the future raising of the lower age limit under which courts of summary jurisdiction cannot commit offenders to prison when the Home Secretary is satisfied that adequate alternative methods are available, we may well be on the threshold of a period of fruitful administrative experimentation.

When this Bill passes into law, a court will have at its disposal the following methods of dealing with juvenile offenders—probation, approved school, detention centre, Borstal, and as a last resort, Prison. However, it does not seem too much to hope that in the near future the Home Office will succeed, by founding a wide variety of institutions for the treatment of juvenile delinquents, in excluding all juveniles from prison, and really suiting the punishment to the educational requirements of the many different types of young offender.

One very trenchant criticism of this section of the Bill will be raised in Committee—nowhere is it provided that Remand Centres and Detention Centres shall not be housed in prisons or parts of prisons. This seems an obvious desideratum, and unless it is categorically ordered the dangers at this time of shortage of building materials and labour are very great.

Summing up, one can say that the whole success of the provisions of this Bill dealing with young offenders will depend on the Home Office,

11. 444 H.C. Deb. 2144.

for that Department of State will have to design the pattern of the Detention Centre and wrestle with the task of creating sufficient alternatives to prison.

Treatment of Persistent Offenders.

The Prevention of Crime Act 1908 authorized the imposition of preventive detention for habitual offenders for periods of not less than five nor more than ten years in addition to a sentence of penal servitude. The courts have shewn themselves extremely reluctant to use this type of sentence. It may be that the sudden severity with which such a sentence interrupts an otherwise regular and well-ordered criminal existence characterised by frequent relatively short periods spent in and out of prison, and its appearance of double punishment, account for this obsolescence. Its unpopularity is shewn by that fact that " the numbers of men serving sentences of preventive detention have dwindled from 94 in 1939 to 35 in March, 1945 . . . They are generally, as prisoners, harmless and elderly men whose sole aim is to lead a quiet life."[12] Perhaps the most valuable provisions of the *Criminal Justice Bill* 1947 are those which resolutely grapple with the difficult problems posed by the existence of large numbers of confirmed recidivists who, almost without exception, escape the net erected to catch them by the *Prevention of Crime Act* 1908, and who take their toll of society during their extra-mural jaunts between one short prison sentence and another.

Clause 19 of the present Bill constitutes a more profound attack on this problem than was found either in the 1938 Bill or even in the recommendations of the Departmental Committee on Persistent Offenders,[13] though it follows the general scheme of the latter. Most firmly is the treatment suited to the offender rather than the punishment to the crime. Firstly, the old " dual track " system is abolished and an accused sentenced as a persistent offender will go directly from the court to the institution provided for his special treatment, thus avoiding the appearance of double punishment. Secondly, two new methods of treatment are inaugurated :—

(*a*) Corrective training—for a person not less than 21 years of age convicted on indictment of an offence for which the court has power to pass a sentence of imprisonment for a term of two years or more and who has been convicted of at least two such offences on previous occasions, if the court is satisfied that it is " expedient with a view to his reformation and the prevention of crime."

(*b*) Preventive detention—for a person not less than 30 years of age convicted of an offence as above and who has been convicted of at least three such offences on previous occasions (and punished by corrective training, imprisonment or Borstal on at least two of those occasions) if the court is satisfied that it is " expedient for the protection of the public to do so."

12. Report of the Commissioners of Prisons and Directors of Convict Prisons for the Year 1945, page 71—Cmd. 7146.
13. Cmd. 4090 of 1932.

Corrective training is to be for a period of from two to four years, preventive detention from five to fourteen years. There are, however, provisions enabling persons sentenced to either of these two punishments to be released on licence before the expiration of their sentence.

Significant are the different formulae courts are to use in deciding upon the " expediency " of applying either of these methods; with subjective reformation underlying corrective training, and objective protection of the public justifying preventive detention. Aetiologically, corrective training is an extension of the Borstal idea to a different type of offender, whilst preventive detention is merely a more streamlined version of its predecessor of the same name.

Clause 19 constitutes a vigorous approach to the ever-growing problem of the habitual-offender, and illustrates the community's increasing utilisation of a sort of ' defence in depth ' to the regular process of criminal maturation. It is to be hoped that it proves a success, but the parliamentary terminology circumscribing these new methods is not really the vital point, as has been well illustrated by the *Baume Laws* in New York, the *Prevention of Crime Act* 1908 in England, and similar laws in many other countries. Much more important is the extent to which courts shew themselves prepared to utilise novel protective and punitive methods, and this in turn depends largely on the types of institution set up to provide the training and detention. If sentences under clause 19 become no more than longer terms of imprisonment with no clear variations of treatment and conditions, and especially if people so sentenced are mixed with the rest of the prison population, one cannot hold high hopes of success. Such matters are not mentioned in this Bill, though the Home Secretary is given power to establish institutions. As one member said in the second reading debate, " No one has inquired as to what corrective training is to be given. Members on both sides have spent a considerable amount of time on niggling matters . . . but nobody has taken the trouble to inquire what a four-year sentence of corrective training is likely to mean . . . The value of this Bill will rest not in names, but in what type of institution is to be set up by the Home Office, and what happens therein."[14] For the moment, therefore, we can only wait and see.

Conclusion.

Perhaps the *Criminal Justice Bill* 1947 is best regarded as giving a blank cheque to the Home Secretary. Admittedly it also defines and changes some of the powers of the courts, extending them here, retracting them there, renaming many sentences and creating others; but all these measures depend, in the last resort, on the vigour and wisdom with which the Home Office utilise its powers, give by the Bill, to establish and control new types of institution, as well as to control the existing ones. It is, therefore, in essence, a measure delegating legislative powers to the Home Secretary.

As your guide on this tour, I have endeavoured to point only to the main pillars of the edifice of this Bill, and have ignored the gargoyles

14. 444 H.C. Deb. 2292.

and statues of saints to be seen on all sides, commenting neither on the beauty of some of the gargoyles nor the mawkishness of some of the statues. It is not my task to fulminate against, or point to the necessity of, this further extension of delegated legislative powers.

This Bill will come to be regarded either as a measure of tepid reform, or of profound criminological significance, depending on the activities of the Home Office. How this department will stand up to the burden one cannot predict, but in the past it has proven itself commendably keen and understanding in its approach to the difficult problems of penology. A story told[15] by the Rt. Hon. Osbert Peake, Under-Secretary of State Home Office 1939-44, illustrates the results of their past efforts: Upon meeting a personal friend recently released from prison and anxiously enquiring after his health he received the reply—" I never felt fitter in my life. Your prisons are run on public school lines. But it comes very hard on those who have not been at a public school."

15. 444 H.C. Deb. 2163.