CURRENT TRENDS IN PENAL PRACTICE

INTRODUCTION

General theories or formulae which purport both to render intelligible actions and events in the past and also to adumbrate the future are no longer fashionable. Prediction and prophecy in the field of human affairs are viewed with considerable scepticism. Statements as to which are the most significant current trends in any sphere of development can, it is said, be no more than conjectural; unverifiable suppositions in no sense entailed by the facts. And many exciting historical and sociological theses have withered in the bracing empirical breeze.

Nevertheless, it would be a pity if speculation were to be inhibited altogether. For it is surely sometimes possible in looking back over the course of history to discern, in a particular field, some kind of sequential pattern; and further, in the light of this insight, to make more or less valid suggestions regarding both the general direction of evolution and the principal tendencies manifest in our own time. An exercise of this kind, if it is not entirely unprincipled but informed by respect for the facts, need not be quite valueless. It may be in some degree illuminating even if its conclusions strike few readers with the force of a revelation and have no immediately obvious practical implications. It is at any rate suggested here that a careful examination of that aggregate of past events which we call penal history does enable us to distinguish an order of succession and certain well marked qualitative changes in successive periods. It is further suggested that this provides a basis for rational speculation regarding current and future development on lines which are indicated.

HISTORICAL PERSPECTIVE

As to the historical retrospect it is possible here to be reasonably brief. Few of the facts are in dispute and the interpretation does not require lengthy exegesis. For the purpose of this exposition it will be convenient to begin with eighteenth century England. This period was marked according to Sir Lionel Fox by "such a pouring panic of capital statutes that by the end of the century they were literally beyond number".[1] Now, accurate as this observation is, closer analysis reveals that the most striking feature of eighteenth century penal development in England was not increasing use of the death penalty but rather the great increase in the practice, initiated in the seventeenth century, of granting Crown Pardons to condemned felons on condition of their agreeing to be transported to the American colonies.[2] In fact, despite the proliferation of capital statutes, considerably less than half of

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[1] Sir Lionel Fox, *The English Prison and Borstal System* (1952) 22.

[2] Later in the century judges were empowered to order transportation as a sentence and after 1787 such transportation was to Australia.

those convicted of capital charges in the last half of the century were executed; and the proportion of capital penalties enforced grew less every year until by the 1820's it had dwindled to less than five per cent. So that in retrospect the most pronounced characteristic of the period appears to have been the gradual abandonment of the death penalty as the primary punishment and its supersession by the transportation system. The early years of the nineteenth century were marked by a continued decline in the actual infliction of the death penalty and a coincidental growth in transportation which reached its peak in the 1830's.

Yet by 1838 a Parliamentary Committee had condemned the whole system of transportation;[3] and eventually after the so-called "Eastern Colonies" in Australia had absolutely refused to take any more convicts the first Penal Servitude Act of 1853 abolished all sentences of transportation of less than fourteen years and substituted sentences of imprisonment.[4] A second Penal Servitude Act in 1857 prohibited any sentence of transportation at all although until 1867 some sentences of penal servitude were partly carried out in Western Australia.

Nevertheless, although the figures for convicts transported reached a zenith of about 4,000 persons per annum in the 1830's and 1840's, it is the decline and eventual complete and final disappearance from the scene of this ancient penal method which is the most striking feature of the century when viewed in historical perspective.

The decline of transportation forced the government to devise a method under which convicts would serve their sentences in England, and the latter part of the nineteenth and the early years of the twentieth century saw imprisonment established as the primary punishment. Yet by some curious irony of history, no sooner had the prison become the main instrument of the penal system for dealing with serious crime than doubts were raised as to its efficacy; and a highly critical view of the social value of imprisonment gained currency. The report of the Gladstone Committee in 1895[5] and the report of the Prison System Enquiry Committee established in 1919 by the Labour Research Department[6] provide evidence of the growth of an attitude which finally crystallized in a form perhaps best expressed in the words of Sidney and Beatrice Webb:[7]

> We suspect that it passes the wit of man to contrive a prison which shall not be gravely injurious to the minds of the vast majority of the prisoners, if not also to their bodies. So far as can be seen at present the most practical and the most hopeful of "prison reforms" is to keep people out of prison altogether.

Indeed, since the first decade of the century a series of statutes beginning with the Probation of Offenders Act, 1907, had been passed which were designed to keep offenders out of prison and provide better ways of dealing with them. This series culminated in the Criminal Justice Act of 1948 which is, as Sir Lionel Fox puts it, "except in its provisions for the treatment of persistent offenders . . . above all an Act for keeping people out of prison".[8]

In short, we may say that the cardinal features of English penal development over the past two and a half centuries may be seen as: the abatement of

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[3] Report from the Select Committee on Transportation (1838) p. xli.

[4] The following figures illustrate the impact of this Act:

Year	*Sentenced to Transportation*	*Sentenced to Penal Servitude*
1853	2086	623
1857	138	2703

[5] Report of the Departmental Committee on Prisons (1895).

[6] S. Hobhouse & A. Fenner Brockway (eds.), *English Prisons Today* (1922).

[7] Sidney & Beatrice Webb, *English Prisons Under Local Government* (1922) 248.

[8] Sir Lionel Fox, *op. cit. supra* n. 1 at 66.

the use of the death penalty and the development of transportation in the eighteenth century; the abandonment of transportation and the growth of imprisonment in the nineteenth century; and the diminution of imprisoment and the adoption of alternative methods in the twentieth century.

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For those who hold that history is a seamless garment and that, therefore, all attempts at periodisation are arbitrary and Procrustean, the above formulation may perhaps be commended as a mnemonic device only. But for those whose interest in the subject is more than merely antiquarian this characterization of the past serves also to direct attention to what may be the growing points for the future. Thus recognition that the diminution of imprisonment is one of the most characteristic features of twentieth century penal development (and this is true not only of England but also of most European countries, the U.S.A. and Australia) inevitably leads to consideration of the corollary consequences of this development. In this connection we find Dr. Grunhut writing of "the pendulum . . . swinging from institutional to non-institutional treatment".[9]

On consideration, however, neither the simple dichotomy nor the suggestion of an oscillation between two polar opposites which this expression implies are really satisfactory.

It is undoubtedly true that the development of non-institutional methods of treatment like probation is one of the most remarkable features of present-day penal policy. But no less remarkable have been the many innovations and variations which have substantially modified and profoundly changed the institution of imprisonment itself. Moreover, we have today to take note of methods of handling offenders developed in the past thirty years which, although they entail what might be called quasi-imprisonment, do not involve removal from the community and enforced confinement in enclosed residential institutions. Such modes of treatment which cannot easily be fitted into either the institutional or non-institutional category may in the long run prove to be of greater moment than those measures which obviously belong to one or other of them.

In short, it does more justice to the complexity of the facts to recognise at least three salient aspects of twentieth century penological practice. These are: firstly, changes in the nature and function of imprisonment; secondly, the introduction of quasi-institutional processes which are domiciliary and involve the deprivation of leisure rather than liberty; and finally, the development of non-institutional extra-mural modes of treatment. The order is logical rather than chronological and it will be convenient to deal with each item separately in that order.

IMPRISONMENT

Imprisonment today remains the major sanction and the chief penalty in the criminal law as it has been since the eighteen-fifties. Ideas regarding the purposes of imprisonment, however, have changed considerably since that time. Such changes are reflected in the form and conditions of prison régimes. We are here, of course, speaking of prison in its punitive rather than its custodial or coercive functions, for in respect of the latter there has been little change. In regard to its use for punitive purposes, however, the prison has changed in response to radical changes in accepted ideas regarding the nature

[9] M. Grunhut, *Penal Reform* (1948) 343.

of those purposes. In the nineteenth century deterrent principles governed penal practice and the view of the Committee of the House of Lords of 1863,[10] that "hard labour, hard fare, and a hard bed" were the proper basis of a prison régime, met with wide general acceptance. Today the United Nations Standard Minimum Rules for the Treatment of Prisoners, which seek "on the basis of the general consensus of contemporary thought . . . to set out what is generally accepted as being good principle and practice in the treatment of prisoners",[11] reflect a different approach. Whereas the Lords Committee sought for methods which would "give a more deterrent character to" imprisonment, the United Nations Rules state that imprisonment is in itself "afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not . . . aggravate the suffering inherent in such a situation".[12]

In 1863 Lord Chief Justice Cockburn had, on behalf of the Judges, stated in evidence to the House of Lords Committee that the primary object of imprisonment was "deterrence, through suffering inflicted as a punishment for crime, and the fear of a repetition of it".[13] This answer to the question—what is the purpose of imprisonment?—was accepted and adopted by the Committee. A century later we find it clearly stated in the United Nations Rules that: "The treatment of persons sentenced to imprisonment shall have as its purpose, so far as the length of sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self respect and develop their sense of responsibility".[14]

It is easy to exaggerate the extent to which this ideological revolution has been paralleled in material terms. Nevertheless the change in the rationale of imprisonment is reflected in such concrete developments as the classification of prisoners and the provision of differential systems of treatment; the specialisation of prisons and the development of open prisons; the abatement of purely penal labour and the provision of trade and vocational training courses; the abolition of the rules prescribing silence; the mitigation of prison punishments; the provision of educational and recreational facilities; and the general amelioration of living conditions. It is dispiriting, however, to have to add that neither improvements in material conditions nor the provision of such things as vocational training schemes appear to have been notably successful in achieving the rehabilitation of offenders. There is in fact no evidence that imprisonment as a penal method is any more effective today than it was a century ago. If the figures relating to recidivism are taken as a test of its effectiveness, then we have to recognise that there has apparently been no significant change throughout the period for which records are available. Of course, this is not altogether surprising. It is today generally recognised that institutional incarceration, so far from being necessarily beneficial, is in fact usually deleterious to human beings. Indeed for some time a good deal of energy, ingenuity and money has been devoted to attempting by means of the provision of pre-release courses, after-care systems and so on to counter the effects of imprisonment. Furthermore, it has lately become obvious that the task of establishing "the will to lead law-abiding and self-supporting lives" in those who have no particular desire to do so is one which it is almost euphemistic to describe as difficult.

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[10] Report from the Select Committee of the House of Lords on the Present State of Discipline in Gaols and Houses of Correction (1863).

[11] United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) para. 1.

[12] *Ibid.* para. 57.

[13] Sir Lionel Fox, *op. cit. supra* n. 1 at 48.

[14] *Op. cit. supra* n. 11 at para. 65.

Two problems, therefore, have in recent years received special attention from prison administrators: the problem of preparing prisoners for release and ensuring that the transition from closed institutional life to life in society is satisfactorily achieved; and the problem of developing means whereby anti-social individuals can be made more amenable to the responsibilities of citizenship. As these problems are obviously crucial and the manner in which they are handled will clearly be decisive in relation to the future of imprisonment, it will be appropriate at this point to devote some paragraphs to indicating briefly the nature of the most outstanding attempts which have been made to deal with them. Perhaps the most constructive approach to the first problem is that embodied in the English Hostel Scheme.

The Hostel Scheme

The hostel scheme is the most developed form of pre-release training. It was initiated twelve years ago in England to deal with the special problems which arise when prisoners are due for release after long terms of imprisonment by providing a transition stage between normal imprisonment and full freedom. There are now twelve pre-release hostels operating in the United Kingdom, and more are planned. Two of the ten are now well established hostels for preventive detention prisoners; the remainder with one exception have been opened in the last five years and are designed for ordinary prisoners with sentences of five years and over. The exception is a new hostel for preventive detention prisoners opened in 1962. One is extra-mural; all the others are within the prison perimeter.

Prisoners are transferred to the hostels for the last six months or so of their sentences. Conditions are similar to those in ordinary working men's hostels and the inmates are not subject to prison discipline. Work is found for them in the neighbourhood where they attend in civilian clothes and draw their wages as ordinary employees. Deductions are made to cover board and lodging and any expense incurred in maintaining their dependants, and an allowance is made to them for necessary expenses and recreation, etc.; the balance of the wages is put to compulsory savings. They are allowed a good deal of freedom in the evenings and at weekends. By this means the first crisis of release is mitigated and by the time the sentence has expired the external obstacles to re-establishment have been removed. The man has employment, and many remain in the same job; if he moves he has a reference and a fully stamped social insurance card; he has usually re-established normal contacts with his home and family and in most cases has a substantial sum of money saved.

As far as the ordinary prisoners are concerned, although the figures so far are very encouraging it is perhaps too early yet to assess the success of the scheme.[15] The numbers of men and women released after completing their sentences in hostels are insufficient to enable conclusions to be drawn as to the effect of the scheme on subsequent reconvictions. With regard to preventive detainees who are deemed ex hypothesi to be incorrigible by any known method of penal treatment, the experiment has been remarkably successful. Nearly half of the men who have passed through the first of these hostels to open have not been reconvicted. The authorities were surprised that such a high proportion should have been able to make a successful adjustment

[15] Vide Report of the Commissioner of Prisons for the Year 1961 (1962) 25 for the latest figures. The figures given relate to men who had been at liberty for at least fifteen months after discharge from a hostel and indicate a reconviction rate of less than two per cent. for offenders not previously imprisoned and twenty per cent. for those who had served previous sentences.

to a life of freedom. Moreover, it is regarded as valuable that these men were able to hold down an ordinary job for a period of six months while still serving their sentences, quite apart from the substantial saving to the taxpayer. If the experiment with an extra-mural hostel is successful further development on these lines is planned. In conclusion, it may be said that the hostel scheme is an outstanding step forward in dealing with the problem of institutionalisation and effecting the aim of social reconnection.

With regard to the second problem, that of socializing the anti-social or "reforming" prisoners, the most striking development in this field is what is known as Group Counselling.

Group Counselling

Group Counselling is defined by Dr. Norman Fenton who pioneered its use in penal institutions in California, as follows: "Methods of orientation or guidance or treatment in which one leader may counsel a group of individuals or direct or facilitate constructive interpersonal relationships; a situation in which the interactions of the group themselves may have favourable effects upon those in attendance".[16] Group counselling differs from group therapy or group psychotherapy which has been used on a relatively limited scale in prisons for many years in that it does not require trained psychologists or psychiatrists to conduct; it does not deal with serious psychological or emotional problems; and does not aim at major personality changes but at relatively minor personality adjustment. R. M. Harrison of the California Department of Corrections, where group counselling was first initiated in 1944 on a small scale, says: "In general counsellors can be expected to listen, moderate, draw out diverse feelings and points of view, reflect feelings help evaluate past and present experiences and future goals. It is not valid to expect group counsellors to probe into unconscious areas, or to make dynamic interpretations in order to resolve unconscious conflicts".[17] In very simple terms, group counselling consists of the formation of small groups of inmates who meet at regular intervals, usually weekly, with a member of staff who remains with the group throughout the series of meetings—usually twelve. The staff member, as counsellor, allows the members of the group to talk freely and without interruption; but without forcefully directing them in any way he encourages them to think out their own problems. The basic principle behind group counselling is the idea that human beings who will resent and reject directions and exhortations from authority will accept it from their equals. It is the experience of those who have practised this technique that, although the initial meetings of groups are frequently devoted to complaints about institutional organisation or criticism directed at external authorities, they eventually come, with only minimal direction from the counsellor, to deal with the inmates' own problems, tensions, anxieties and difficulties. Inmates are then forced to face the facts about their own behaviour and the rationalisations by means of which they have in the past justified it. As Sutherland puts it: "Inmates who have had experiences similar to his will not let him lie, bluff, or provide ex post facto justifications for his criminal behaviour",[18] and the criticism of fellow inmates being more acceptable than that of authoritative persons enables the individual to gain insight and self knowledge and see that his problems are frequently due to his own egocentricity and immaturity. It is maintained that not only does the inmate gain insight as his own criminal behaviour is analysed and

[16] Norman Fenton, *An Introduction to Group Counselling in State Correctional Service* (1957) 185.

[17] R. M. Harrison, *Model for Group Counselling* (1960) 1-2; Cited N. Fenton, *op. cit. infra* n. 19 at 16.

[18] E. H. Sutherland & D. R. Cressey, *Principles of Criminology* (6 ed. 1960) 494.

criticised, but that by participating in this process as it is directed at other members of the group in turn he identifies with anti-criminal values and law-abiding attitudes; and further that these values and attitudes come to be those of the group as a whole.

The results aimed at by this technique are, firstly, a reduction of tension and hostility to authority within the prison situation and the breakdown of the familiar prison culture pattern of sullen resistance and apathy regarding rehabilitation; and, secondly, a carry-over to life outside the prison of the more responsible and mature attitude stimulated during the group sessions. Group counselling and similar group relations methods ("guided group interaction" is another name for group counselling) are used today in the New Jersey prisons and those of California on an extensive scale. It was introduced into those of the United Kingdom in 1958 and is now practised in fifteen institutions including Dartmoor prison and a number of borstals. In New South Wales, group counselling was first introduced in June, 1960, and groups are already functioning in three institutions under the direction of parole officers. In 1961 Group methods were introduced in New Zealand penal institutions; and in 1962 into those of South Australia. The rationale of Group Counselling is fully set out in two books by Dr. Norman Fenton *An Introduction to Group Counselling in State Correctional Service* (1957) and *Group Counselling: A preface to its use in correctional and welfare agencies* (1961) and the latter publication deals amongst other things with the crucial question of evaluation. As Dr. Fenton is dealing with a prison system which has used this technique in its present form since 1954 (the 1944 experiments at San Quentin were on a somewhat different basis) and where about one half of the inmates (that is, over ten thousand) are participating each week in group counselling sessions, his findings are of particular interest. Briefly, what he says may be summarised as follows: a number of research studies are in progress designed to evaluate the group counselling programme; one of the most extensive of these is a five year project begun in 1958 at the University of California at Los Angeles; but the Research Division of the California Department of Corrections has a number of other studies in process. The results of such studies as have been completed together with preliminary findings from the University of California project indicate that positive results have been achieved. These appear to be of four different kinds:

(a) The effects upon inmates participating in counselling groups are reflected in a better adjustment within the institution as compared with non-participants.

(b) A number of studies indicate that in institutions where counselling is practised, the conflict situation with inmates and officials irreconcilably ranged on opposing sides is broken down and there is improved communication between prisoners and staff.

(c) It is generally agreed that participation in the programme is beneficial to staff members both in extending their range of insight into behaviour problems and increasing their understanding of an interest in their work.

(d) As yet it is too early to say whether this technique will produce a marked improvement in the rate of reconvictions. Fenton states that "The findings for the comparative post-release adjustment of counsellors compared with others on parole or discharge are encouraging though in general not startling". An exception to this is that with some long term groups there has been "a surprisingly high rate of satisfactory adjustment on parole".[19]

[19] Norman Fenton, *Group Counselling: A preface to its use in correctional and welfare agencies* (1961) 18.

In conclusion, it appears that the counselling procedure does provide an opportunity for inmates to see themselves more clearly, to come to grips with some of their problems of personal relationships and to express and work through some of their more negative feelings and attitudes. It seems reasonable to assume that at the same time they acquire increased insight into, and perhaps greater control over, their behaviour.

Before concluding with the subject of imprisonment, another innovation which should be mentioned briefly is the institution in a number of countries of part-time imprisonment.

Part-time Imprisonment

This takes two principal forms and so far its use has been confined to what are generally regarded as less serious offenders. Thus in certain American States (e.g. Pennsylvania) maintenance offenders who have fallen behind in family support payments are confined to gaol in the evenings after a normal day's civilian work. Similarly, in Wisconsin, since 1943, misdemeanants have under the Huber Law been permitted to serve gaol terms at night and work at regular jobs outside during the daytime. In California a device known as "work furlough" serves a similar purpose, and other states which have enacted laws similar to the Huber Act include Oregon, North Carolina and Montana.[20] In New Zealand, under the Penal Institutions Amendment Act, 1961, selected inmates are granted "part-time release" on a basis similar to the English Hostel Scheme, although this is not a pre-release procedure only.

On the other hand, in the Scandinavian countries weekend gaol sentences are imposed for such offences as being in charge of a car whilst under the influence of alcohol. In Belgium both types of part-time imprisonment were introduced on an experimental basis, as ways of serving short imprisonment sentences, in March, 1963. What is called semi-imprisonment applies to all sentences not exceeding a total of three months' imprisonment. Under this system the offender is granted permission to leave the prison daily in order to carry on his/her ordinary work, professional activity, training or studies. Semi-imprisonment cannot be forced upon the offender and at any time the convicted person can by application to the Attorney-General revert to the normal imprisonment system. Weekend imprisonment (from Saturday at 2 p.m. to Monday at 6 a.m.) applies only to sentences not exceeding one month for a select list of offences which includes desertion, neglect of family, drunkenness, and violations of the road traffic regulations. Under this system the duration of imprisonment is calculated at the rate of one prison day per night spent at the gaol. The same provisions regarding the initial choice and reversion to the ordinary system of imprisonment apply as in the case of semi-imprisonment. Such part-time imprisonment, which deprives the individual of his leisure time only, differs from ordinary imprisonment not only in the details of practice but also in theory.

Imprisonment met with ready acceptance as a substitute for the death penalty and transportation largely because it provided an alternative means of removing offenders from society. There is little doubt that this was its primary social function. Removal from society, either temporary or permanent, had always been the ultimate penalty. Systems of part-time imprisonment, however, have not been adopted as a means of removing offenders from society but are designed rather to ensure a minimum of interference with the offenders' life in the community. Moreover, consideration of changes in the nature and function of imprisonment as radical and fundamental as this brings us to

[20] P. W. Tappan, *Crime, Justice and Correction* (1960) 661-2.

the point where the distinction between institutional and non-institutional treatment becomes blurred, and the processes and methods we try to distinguish by these terms blend into each other.

QUASI-INSTITUTIONAL METHODS

The truth of this becomes even clearer in connection with the quasi-institutional methods which we now pass on to discuss, notably the English attendance centres and the training programme of the Boston Juvenile Court. It will be convenient to deal with these two developments separately.

Attendance Centres

This is another method of treatment which has the advantage of allowing the offender to remain in his natural setting in the community. Attendance centres were set up under the Criminal Justice Act, 1948, to deal with youthful offenders between 12 and 21 convicted of an offence punishable by imprisonment, without sending them to a residential corrective institution. Described by Professor Radzinowicz as "a novel and rather ingenious measure",[21] the idea behind the attendance centre derives from Sir Alexander Paterson, and can be found in the evidence which he gave to the Persistent Offenders' Committee in 1931. He wrote as follows:

> Borstal and Probation will not, however, meet all the problems an Adolescent Court must face, and other weapons must be set in its hand, if imprisonment for all save extreme cases is to be avoided. Therefore I recommend to the attention of the Committee the deprivation of leisure as a means of dealing with the troublesome adolescent. The lad who commits a street offence, breaks some bye-law or refuses to pay a fine should not have his roots torn up and be sent away from home and work to prison or institution. His future should not be handicapped by the dislocation or stigma of such a sentence. It will be a salutary reminder to him if he is compelled to surrender himself at 7 p.m. every evening for detention till 10 p.m. or at 2 p.m. on Saturday till 10 p.m. Sunday. He would be incarcerated in a central lock-up in the city and required to chop wood or scrub or clean or wash. The process would do him no harm, and might well remind him of the power of the law to interfere with his liberty if he does not conform with its requirements.[22]

This recommendation was finally adopted in a modified form in the Criminal Justice Act, 1948, and the first centre was opened in London in July, 1950. Ten years later forty attendance centres were in operation dealing with more than 2,500 juvenile offenders annually. Under an attendance centre order, youths are required to attend a centre during their spare time on Saturday mornings or afternoons for up to three hours on any one occasion and for not more than twelve hours in all. The treatment is not designed for dealing with very difficult or persistent young delinquents, but rather for reclaiming impulsive and wayward youths by forestalling habits of delinquency at the incipient stages, by teaching respect for the law and giving some instruction in the proper use of leisure. Activities at the centres include a period of instruction in handicrafts or a lecture on a practical topic (e.g. first aid) and a period of physical training or disciplinary tasks under supervision. Efforts are also made to induce boys to join a youth club or other suitable organisation. Failure to attend or any breach of the rules may lead to revocation of the

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[21] L. Radzinowicz, Preface to F. H. McClintock, M. A. Walker and N. C. Savill, *Attendance Centres* (1961) ix.

[22] Sir Alexander Paterson, *Paterson on Prisons* (1951) 60.

attendance order in which case the court may award any of the punishments it would have given, had the order not been made. To date no attendance centres for girls have been opened and, with one exception, those for boys have been confined to the 12 to 17 age group. (An experimental centre for youths aged 17 to 21, with the activities adapted to meet the needs of the older age group, was opened in December, 1958). The senior attendance centre is run by the Prison Commissioners but the remainder are run by the police for the Home Office. The person in charge is an officer of the rank of inspector at least, usually assisted by two instructors. The centres are situated in police premises or other suitable accommodation. Attendance centres have two main uses: as a method of dealing at an early stage with the less serious forms of delinquency and as a supplementary method of treating misconduct in offenders already on probation. Offenders sent to them must be either first offenders or, if they have previously been before a court, must not have been previously sentenced to imprisonment, borstal training or detention in a detention centre or an approved school.

Attendance Centres, by F. H. McClintock, is the report of an enquiry into their first ten years of operation carried out by the Cambridge Institute of Criminology, and provides an account of their emergence, a description of the régime of the centres, an analysis of the types of offenders sent to them and a careful study of their effectiveness. According to the assessment of the results of the system the general rate of success was 62 per cent. The rate of success for first offenders was much higher, being 73 per cent., whereas that for recidivists with two or more previous convictions was 50 per cent. The general rate is slightly higher than the rate of success for young offenders put on probation and much higher than those for offenders sent to borstal or detention in remand homes or detention centres. It seems probable that there will be further extension of the scheme.

The Boston Citizen Training Centre Scheme

The Citizenship Training Programme of the Boston Juvenile Court is another example of the theory of deprivation of leisure, but in this case somewhat more rigorously and positively applied. The general plan of the programme is that boys between the ages of 12 and 17 years placed on probation by the Boston Juvenile Court are required as a condition of their probation to attend the training programme immediately following their appearance in court. The attendance is for twelve weeks, five days a week, immediately after school from 3.30 to 5.30 p.m. At the end of the period a report on the offender is sent to the committing court. If the report is good the boy is discharged; if only fair, probation is continued with or without further treatment. If the report is bad the offender is sent for residential treatment. The curriculum at the centres (which are set up in existing school buildings), which is aimed at "individual adjustment and character training", includes twenty-four group discussions (that is, twice a week), physical training, handicrafts, dramatic and group singing. The staff includes group workers, a psychiatrist and psychometrist and part-time teachers. The object is to give the authorities the maximum amount of time without removing the offender from the community in which he lives and for which all penal treatment is designed to fit him; and without disturbing the normal routine of life at home or school. Each boy's progress is evaluated at least four times during his training period. Whereas the régime at attendance centres tends to be punitive (through the use of physical training and fatigues), that in force at the Citizenship Training Centres is more reformative. The emphasis is on modifying attitudes and achieving social maturity. A research project involving a ten year study of the boys who had been through the training programme since its inception

in 1936 revealed that they had "been able to restore 72.6 per cent. of this group to decent and useful citizenship". This compares favourably with what is known about the success rates of offenders *in this age group* on probation, which appears on the average to be about 60 per cent.[23] It is interesting to read the following passage from a paper read at the Harvard Law School some years ago by Louis V. Maglio, Executive Director of the Citizenship Training Group Inc.:

> Delinquency we have found is not a fixed category by which boys can be classified. We have found delinquent behaviour in all types of boys, regardless of station, race, culture or environment. This is seen in all ranges of the normal, pathological, and defective. We have also found that no particular skill has pre-eminence in the treatment of delinquent behaviour. Insights from education, psychology, sociology, medicine and religion all must be used in an adequate treatment program.[24]

The Citizenship Training Group is one of the most interesting recent developments in the treatment of juvenile delinquency. As Louis Maglio says, it stands "midway between the constant intensive supervision of the correctional institution on one hand and the periodic protective contacts on the other",[25] thus avoiding the dangers of institutionalisation without succumbing to the shallowness of many forms of extra-mural supervision.

New Zealand: Periodic Detention

It should perhaps be added that under New Zealand's Criminal Justice Amendment Act, 1962, it is proposed to establish a work centre in Auckland where young offenders between 15 and 21 convicted of offences punishable by imprisonment will report on a specified number of occasions each week over a maximum period of 12 months to do work, which will include repair or maintenance work or cleaning at hospitals, educational or charitable institutions. It is proposed that this method of dealing with offenders, which is called periodic detention, shall in selected cases involve not merely attendance, as in the case of the English and American schemes, but that some offenders may be required to stay the whole weekend, remaining at the centre overnight. The nature of the work to be done is determined by the fact that the object is "the development of consideration for others". Clearly, the success of this scheme will depend largely on its "practical application" by those in charge; in particular, the Warden of the centre who has not yet been appointed. It is interesting to note, incidentally, that New Zealand has long been in the forefront of penal development. Thus the first country in the world to follow the Massachusetts initiative in making statutory provision for the introduction of a probation system was New Zealand, where in 1886 "an Act to permit the conditional release of first offenders for probation of good conduct" was passed. This New Zealand scheme, which was the model for subsequent English legislation, represented a radical break with traditional attitudes and methods, the nature of which will be considered next.

NON-INSTITUTIONAL TREATMENT: PROBATION AND PAROLE

The expression non-institutional treatment usually refers to probation and parole. These are closely related methods of dealing with offenders, the essential difference between them being that the former, strictly defined, being

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[23] L.Radzinowicz (ed.) *The Results of Probation* (1958) 56.
[24] L. G. Maglio, "The Citizenship Training Program of the Boston Juvenile Court" in S. Glueck (ed.), *The Problem of Delinquency* (1959) 639.
[25] *Id.* 634.

a substitute for or an alternative to committal to an institution, is an independent method of treatment, whereas the latter, being conditional release from a sentence of imprisonment partly served, is an adjunct of the institutional treatment of offenders. As Professor Gillin puts it, "Parole is thus the last step in a correctional scheme of which probation may be the first step".[26]

It has been said by Professor Radzinowicz that probation represents "the most significant contribution made by this country (that is, England) to the new penological theory and practice which struck root in the twentieth century".[27]

It is important to attempt to indicate briefly not merely the difference but the complete antithesis between the ideology which underlay nineteenth century penal practice and the rationale which is the basis of such penal methods as probation and parole. In the nineteenth century few questioned the value of removal from society to prisons both as a means of protection of society and as an essential element in the correctional process in relation to the individual offender. Furthermore, it would have been generally agreed that a uniform scale of punishments applied without regard to the status or circumstances of the offender was necessary. Both considerations of equity and regard for the classical doctrine regarding the efficacy of such a scale as a general deterrent were no doubt influential in this context. Nor can there be any question that the concept of deterrence not only dominated popular and judicial thought on the subject of punishment but also informed almost every aspect of penal practice. Now probation and parole, which show close parallels in origin and development, correspond also in that they represent a fundamental challenge to these erstwhile axiomatic ideas.

Let us take first the question of removal from society which in the form of outlawry, exile, banishment, deportation, transportation or death, has been used by practically all societies as a method of dealing with criminals. Now it is a principal characteristic of probation not only that it does not involve removal from society but also that its justification, indeed its *raison d'être*, rests on the premise that such treatment is ineffective or harmful and wrong. Similarly, parole is today commonly justified not only on the grounds that there is considerable evidence that those released on parole return to prison for new crimes less frequently than those released on expiration of sentence,[28] but also because it is urged that all long term prisoners ordinarily arrive at a point when further incarceration is likely to be harmful and of less service to the individual and society than release under supervision.

Again with regard to uniformity of treatment it is clear that Sutherland is right when he says "Probation methods represent a distinct breach with the classical theory on which the criminal law is based, for an attempt is made to deal with offenders as individuals rather than as classes or concepts, to select certain offenders . . .";[29] for it is of the essence of both probation and parole that they are applied on a selective basis and that the treatment of their cases by probation and parole officers is individualized.

Finally, although it is customary to emphasize that probation is not a

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[26] J. L. Gillin, *Criminology and Penology* (1927) 679.

[27] L. Radzinowicz (ed.), *op. cit. supra* n. 23 at x. Details regarding the development and spread of adult probation and of probation legislation and practice throughout the world can be found in the United Nations publication *Probation and Related Measures* (1951). As to its results, and its undoubted success, reference can be made to M. Grunhut's *Practical Results and Financial Aspects of Adult Probation in Selected Countries* (1954) which is also published by the United Nations, and L. Radzinowicz (ed.) *The Results of Probation* (1958). The subject of parole is dealt with in another United Nations publication *Parole and After-Care* (1954).

[28] E. H. Sutherland & D. R. Cressey, *op. cit. supra* n. 18 at 577-580.

[29] *Id.* 421.

let-off,[30] that some suffering and inconvenience may result from being placed on probation and that, being a suspension of sentence, the threat of punishment is always present; despite these facts, in view of the alternatives available in sentencing, it would be ingenuous to suggest that probation can be seriously regarded as either an individual or a general deterrent. Probation is essentially a non-punitive method of handling offenders. Furthermore, in the case of parole, although the threat of return to prison is an important element in the concept of parole, it is obvious that whilst the prisoner is serving his sentence the prospect of an early release on parole is in no sense deterrent. The truth is that "both systems attempt to implement the treatment reaction to crime and criminality",[31] and their continued growth and development throughout the world constitute a transformation which is no less fundamental because it is gradual and has involved no violent change.

CONCLUSION

A brief survey of the kind attempted here can be misleading. The emphasis on recent developments may give the impression that we are in the midst of an Erehwonian revolution. This is very far from the truth. It is easy and not uncommon to exaggerate the amount of progress which has been achieved. In regard to prisons, for example, the increased amenities and facilities noted above rarely extend to all or even a majority of prisoners, and their value is, in most countries, offset by other conditions which must tend to defeat their whole object. Thus in the year 1962 there were 8,500 prisoners in the United Kingdom sleeping three in a cell and eating and living together in an area thirteen feet by seven feet with a ceiling nine feet high. One recent observer aptly commented: "Few captive animals at the zoo have cages as small; none has ventilation as bad as the inadequate, high barred window that supplements the prison ventilating system".[32] Similar conditions or other equally striking deficiencies can be found in the penal systems of almost every country in the world. Moreover, it would be sanguine to expect any marked acceleration in the rate of change in this field. If Winston Churchill was right when he made his often quoted statement in the House of Commons that "the mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country",[33] then the number of countries which can be said to have reached that stage of social development must be very limited. In the English-speaking world at any rate it seems that the penological recipe which would be most likely to satisfy that curious amalgam of punitiveness and sentimentality which makes up the average man's attitude to the criminal would be the prescription for most offenders of something in the nature of a gentle flogging. Nevertheless, it is a remarkable, if little remarked, feature of twentieth century penal development, that prison administrators and other practical penologists in many countries, in the U.S.A., in the United Kingdom, in Scandinavia, in France, and in Australia, to mention only a few, have initiated and pursued enlightened and progressive policies of development well ahead of popular opinion. The object of this article has been merely to suggest some possible lines which further development may be expected to follow. It may well be that the particular types of extra-mural treatment selected for notice here will not in the event be the subject of any considerable extension. One thing, however, seems

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[30] *Probation and Related Measures*, U.N. (1951) 8.
[31] E. H. Sutherland & D. R. Cressey, *op. cit. supra* n. 18 at 566.
[32] Michael Wolff, "What's Wrong Behind the Bars". *The Sunday Telegraph* (U.K.) February 24th, 1963.
[33] Cited Sir Evelyn Ruggles-Brise, *The English Prison System* (1921) 4.

reasonably certain. The most clearly marked twentieth century trend has been, in Sir Lionel Fox's phrase, "the abatement of imprisonment".[34] "The most practical and the most hopeful of 'prison reforms'," wrote the Webbs, "is to keep people out of prison altogether";[35] and in country after country statutes have been enacted and implemented with that object in view. The "tradition . . . that nobody should receive a sentence to prison unless all other sentences are impracticable"[36] is now well established. In the United Kingdom today only about three per cent. of the total number of persons found guilty by the criminal courts are sentenced to imprisonment; and even if we confine ourselves to serious or indictable offences less than twenty per cent. of those convicted are imprisoned.[37] Unfortunately, comparable statistics are not available for the Commonwealth, but from such figures as can be obtained the trend in Australia seems to be much the same. Moreover, as further alternative methods of handling offenders are developed this movement is likely to intensify. Of course, for some offenders institutional seclusion may always be necessary for security reasons; and it may well be that for others some kind of institution will be necessary to serve, as Dr. Grunhut has suggested, "as a first stage of observation, resettlement, and preparation within a wider composite treatment scheme".[38] But that curious nineteenth century invention,[39] the prison or penitentiary, serves neither of these purposes particularly well, and could only appear incongruous and anachronistic within a rational penal system.

There is little doubt that "Pentonville and its whole grim brood"[40] will have followed the death penalty and transportation into desuetude before the end of the century.

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[34] Sir Lionel Fox, *op. cit. supra* n. 1 at 65.
[35] Sidney & Beatrice Webb, *op. cit. supra* n. 7 at 248.
[36] Claud Mullins, *Fifteen Years' Hard Labour* (1948) 100. Cited Sir Lionel Fox, *op. cit. supra* n. 1 at 65.
[37] *The Treatment of Offenders in Britain* H.M.S.O. (1960) 1-2.
[38] M. Grunhut, *op. cit. supra* n. 9 at 343.
[39] The Common Gaols, County Gaols and Houses of Correction of previous centuries had no very significant or effective place in the penal system and bear little resemblance to the modern prison.
[40] Sir Lionel Fox, *op. cit. supra* n. 1 at 103.

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