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HOERNLÉ MEMORIAL LECTURE
1948

**PENAL REFORM
and
RACE RELATIONS**

by
MRS. A. W. HOERNLÉ



S.A. INSTITUTE OF RACE RELATIONS
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HOERNLÉ MEMORIAL LECTURE

A lecture, entitled the Hoernlé Memorial Lecture (in memory of the late Professor R. F. Alfred Hoernlé, President of the Institute from 1934 to 1943), will be delivered once a year under the auspices of the South African Institute of Race Relations. An invitation to deliver the lecture will be extended each year to some person having special knowledge and experience of racial problems in Africa or elsewhere.

It is hoped that the Hoernlé Memorial Lecture will provide a platform for constructive and helpful contributions to thought and action. While the lecturers will be entirely free to express their own views, which may not be those of the Institute as expressed in its formal decisions, it is hoped that lecturers will be guided by the Institute's declaration of policy that *scientific study and research must be allied with the fullest recognition of the human reactions to changing racial situations ; that respectful regard must be paid to the traditions and usages of various national, racial, and tribal groups which comprise the population ; and that due account must be taken of opposing views earnestly held.*

PENAL REFORM AND RACE RELATIONS

BEFORE beginning my address I should like to express my sense of the honour that is mine in being asked to give this fourth Hoernlé Memorial Lecture. I hesitated long before replying to the invitation from the Institute of Race Relations, but finally I decided that my husband would have wished me to accept. And so, I have the privilege of presenting the first public statement on the report of the Penal Reform Commission on which I served. The report has, of course, been presented to His Excellency the Governor-General and handed to the Minister of Justice, but publication has unfortunately been delayed.

It is naturally quite impossible for me to deal with the whole of that report, with its sixteen different terms of reference and with its recommendations and comments running into well over 182 double-column pages of print. What I have attempted to do is to deal with the core of the problem set the Commission, the problem of the prevention of crime and the adequacy of the measures used in the Union for dealing with people who break the law. In particular it was the duty of the Commission to study how far punitive measures have been successful in combating crime, and of considering, in the light of evidence brought before us, and of suggestions gleaned from the experience of other countries, alternative methods of dealing with offenders against the law, all to the end of diminishing crime in the Union to the least possible proportions. I have, as far as possible, paid attention to the manner in which the social order of the Union with its racial caste structure, as Professor Hoernlé called it, is reflected in, and reacts upon this whole problem of crime and its treatment, but the Commission decided that it was not within its terms of reference to make a study of the laws, within our system, applicable only to certain sections of the population since the Fagan commission has been appointed especially to review them—or at least many of them.

We have, however, drawn attention to the alarming number of convictions of Non-Europeans, especially Natives, resulting from these laws. The Commission further points out that the administration of these laws brings especially the Native urban dweller and the police into hostile relationships and that these discriminatory laws, the breach of which results in no social condemnation by the general Native community and no feeling of shame, “tend to an unwholesome disrespect for law in general.”¹ It is satisfactory to note that the

(¹) Report of the Penal and Prison Reform Commission, 1947 (U.G. No. 47), 1947 p. 7. All further references to this report will be quoted as “Report.”

Penal Reform and Race Relations

Commissioner of Police, Major-General Palmer, has, during the last few days, warned the police to exercise the utmost caution when dealing with Natives and to ensure that their methods are characterized by fairness and wise consideration of the Natives' feelings.¹

TWO SYSTEMS OF LAW

It is too frequently forgotten that in the Union two systems of law are operating—European law and varieties of African tribal law. Police stations and magistrates' courts in certain areas of the country are a hundred miles and more apart, and the Native population in these parts is controlled by tribal authorities in the day-to-day happenings of their lives. Undoubtedly the Union still owes a very great deal in the maintenance of law and order to the African tribal systems. Jurisdiction in African civil law is recognized to a limited extent throughout the Union, but criminal jurisdiction must be specially conferred on chiefs and headmen by the Governor-General. These Native courts are not courts of record and the criminal statistics of the Union are all exclusive of cases dealt with solely in these courts. It is recommended by the Commission that these courts should become courts of record and that their status should be improved.

The whole study of the integration of two systems of law, or perhaps the displacement of one system of law entirely by the other is a fascinating one and one which is deserving of far greater attention than it has received. But I should not be justified in dealing with it at any length tonight for it is, in the main, the causes of crime in our European social system which have been studied by the Commission.

TRAINING FOR SOCIAL LIFE

Over two thousand years ago Aristotle pointed out that man is by nature a social being, a being who lives in communities. Unfortunately, though this is so, man is not born trained so to live and every society has the responsibility for providing means for moulding each generation to its social system, imbuing each individual with its system of values and, to the greatest extent possible, training them to conform willingly to its ways. The measure of success achieved by any society in its methods of training the young will be the numbers who obey its laws, either because they accept them as their own or at least because they realize that it is the better part of wisdom so to do.

There are, too, certain fundamental needs of human beings for which a society must provide if these individuals are to achieve adjustment to its ways with satisfaction to themselves. In his book "South African Native Policy and the Liberal Spirit," Professor Hoernlé passed in review the elements of a life which a man ought to

(¹) The "Sunday Times," December 28, 1947, in a report on the Commissioner of Police, Major-General R. J. Palmer's warning to all members of the South African Police Force in Force Orders.

be "free," that is, have the socially guaranteed power to realize. These are "first health as a primary requirement; and with it the good housing, the conditions of work, the facilities for physical recreation, etc., without which, quite apart from actual sickness or disease, the health and fitness of the population are kept below optimum level. A society," he comments, "the organization of which condemns large numbers of its members to inferior health, or to deterioration in health, is a society which is a failure." "Again, a society in which the fundamental requirements of a man's emotional life cannot find stable channels of satisfaction in parentage and family life, in citizenship and a variety of group loyalties, is a society which leaves an essential side of human nature either starved or else distorted."

"And, lastly, a society in which the minds of many men remain poor and undeveloped from lack of contact with such culture values as science, art, religion, in all their various forms, is once more a society which falls short of fulfilling the function for which it exists, namely to provide for its members lives worth living by rational human beings. Just in so far as society makes a truly human life possible for all the successive generations does it possess in itself a value laying on its members the obligation to maintain and develop it as the carrier of culture values from generation to generation."¹

There is no time this evening to analyse the structure of our society to see how far it fulfils these desiderata but it is essential, very briefly, to emphasize that our social system itself needs much overhauling and improving before it can be said adequately to provide the essentials of human life for those passing their lives within it. The Commission points out that there is no one cause of crime, but there are many predisposing causes of crime, and all of these unfortunately are too well represented in South Africa. Among these predisposing causes we mention, physical and mental defects, the defective home, poverty, slum conditions, idleness, lack of recreation, illiteracy, all of which react especially on children and young people and are liable to warp them in the process of social moulding.

Various surveys have established the prevalence of malnutrition, with the accompanying physical defects, especially among the Non-European sections of the community.

It has been calculated that it will require £100 million in capital expenditure and over 300,000 houses to overtake the country's requirements in sub-economic houses—154,000 for Natives alone. "Miserable streets, slum areas and wretched homes are poor places for the development of socially acceptable behaviour. On the contrary they are favourable places for the breeding of crime" states the Commission's report.² And while poverty from which so very

(¹) "South African Native Policy and the Liberal Spirit," by R. F. A. Hoernlé (Lovedale Press, 1939), pp. 113—114.

(²) Report, p. 13.

Penal Reform and Race Relations

large a proportion of our population suffers, does not force a person to crime, poverty does undoubtedly bring about conditions conducive to crime. So too, the absence, particularly in the Non-European areas of our large cities of means of wholesome recreation leads to leisure being used in undesirable and often criminal ways. The violent assaults, stabbings and even murders which occurred over the recent holidays, especially in the large urban areas among Natives, are attributed by those who know best, the municipal officials, precisely to these causes, namely, "inadequate housing, poverty, lack of education and no constructive recreation for leisure hours."¹

There is no general system of compulsory education for the Non-European sections of the population and the Commission points out that "most Non-Europeans found in penal institutions are illiterate."² And for those Non-Europeans who with great struggle have achieved a higher education inadequate opportunities for suitable employment are made available.

So far as stable channels for emotional satisfaction are concerned it is unnecessary for me to enumerate the evils of migrant labour and the devastating effects of broken homes. The frustration of thousands who feel the lack of citizen rights is a problem occupying the minds of our government at the present time, and there is a constant healthy pressure on the part of all sections of our population to enjoy, in larger measure, the culture values of our civilization.

YOUNG OFFENDERS

Many criminals start their anti-social activities in childhood or youth, and throughout our enquiry expert witnesses emphasized the importance of dealing effectively with signs of delinquent behaviour in the young. During 1945, 8,564 children were dealt with under the constructive preventive provisions of our Children's Act, but far more needs to be done for Non-Europeans to make alternative care possible when the children's own homes have, for one reason or another, failed them. There are 68 certified institutions for Europeans but only 32 for Non-Europeans; 55 uncertified institutions for Europeans and 28 for Non-Europeans. In all 10,307 European children are cared for in these institutions but only 3,350 Non-European. Far more differentiated provision, especially for deviate and for Non-European children is needed and much better qualified staff should be trained for this important work. Schools of industry, a most constructive type of institution for children in need of care, exist only for European children. It is urgently necessary that the various types of these schools should be provided for Non-European children also.

Of young offenders, that is persons under twenty-one years of

(1) "The Star," January 3, 1948.

(2) Report, p. 124.

age, who were convicted in our courts of various types of offence, there were 77,604 during 1945, 5,481 Europeans and 72,123 Non-Europeans. It is very distressing to report that of this total 7,803 were fourteen years old or under at the time of their conviction, 466 European and 7,337 Non-European children.

The statistical material available did not enable the Commission to discover what happened to all these children, but the following information throws out a challenge to us all.

Figures are given for 1,330 European children under sixteen years of age convicted in our courts. Some were cautioned and discharged, some given postponed or suspended sentences, others were whipped or fined with alternative of imprisonment. Only 944 of all the children were dealt with under the provisions of the Children's Act. 82 of these were sent to certified hostels, an excellent type of institution of which many more are needed and 464 went to reformatories. Reformatory treatment is usually the last resort apart from imprisonment in dealing with delinquent children. Unfortunately, in our reformatories, there is classification only by sex and race, and not even completely for race. The mixture of older and younger, of physically and mentally handicapped, with inadequate provision for classification and with inadequate staff make success very difficult. Non-European reformatories are far too large.

The Commission recommends more varied types of institutions, especially a Medical Treatment Centre for deviate children and Observation Centres at the larger Detention Homes where medical and mental observation and care can be provided and where the best type of institution for each individual child can be selected. It is suggested also that Compulsory Attendance Centres should be started at which petty persistent offenders could be ordered to report at weekends or on holidays to spend their leisure hours on vigorous useful employment instead of their usual holiday exploits!

In only 312 cases were these children put under the supervision of a probation officer. It is very regrettable that one of the measures which has been developed and found most effective elsewhere, for dealing with maladjusted persons has not been developed in the Union in the way that might have been expected. Even during the war years in England the number of probation officers was doubled, and the New Criminal Justice Bill in England provides that each of the very many petty sessional divisions shall have at least one man and one woman probation officer. It is the opinion of the Commission that here in South Africa, also, probation officers of all races should be directly attached to our courts and that they should be under the administration of the Department of Justice.

Probation provides that an offender instead of being punished or sent to an institution is placed under the helpful guidance of an

Penal Reform and Race Relations

experienced and trained man or woman. "It avoids the stigma of imprisonment and the danger of contamination and encourages self-reliance and confidence¹ in the normal community. It is one of the most encouraging methods of dealing with young delinquents before they have become set in anti-social ways, or when they are being reintroduced into the community after living in an institution," but unless the number of probation officers is large enough to make supervision close real probation is quite useless and only leaves, the young rascals thinking that they have "got away with it."

In comparison with the low figures so far quoted it is distressing to state that 10,802 persons under twenty-one years of age, 223 Europeans and 10,579 Non-Europeans were admitted to prisons or gaols in 1945. It will have been noted that all the predisposing causes of crime exist in far greater measure among the Non-European sections of the population than among the European; that the training which in large measure builds up resistances to these anti-social pressures is less developed for our Non-Europeans than for Europeans and that measures of assistance for the Non-European are as yet very inadequately provided, though they are undoubtedly increasing year by year. The numbers of anti-social persons in our community are bound to be many until our social system becomes more stabilized and until all sections of our population enjoy freedom from fear and want. The Commission is confident that among the surest means of diminishing crime in the Union are better provision for the moulding of the children of all races to the norms of our society, a vigorous and full implementation of our Children's Act and a rapid development of our social system to give social and economic opportunities to all.

GENERAL CRIMINAL STATISTICS

Contraventions or alleged contraventions of the Union, Provincial or Municipal laws reported to the police in 1946 numbered 1,168,503, an increase of 34,241 over those for 1945. For these offences of all types, 861,269 persons were convicted. Fortunately only 6.45% of this enormous total for all offences were crimes of a serious nature. Nonetheless there were 75,316 such crimes, the largest number so far recorded, and for these 2,727 Europeans and 36,228 Non-Europeans were convicted and sentenced by the courts.²

Statutory and revenue offences accounted for over 700,000 of the total cases, while liquor offences of all kinds, such as illegal possession of liquor, illicit trading of liquor and drunkenness accounted for 207,601 convictions.³

The problem of the relation of alcohol to crime needs a lecture

(¹) Report, p. 150.

(²) "Nongqai," July, 1947. Extracts from the Report of the Commissioner of Police for 1946, pp. 918—919.

(³) Ibid., p. 921.

to itself. There are only two sets of figures to which I wish to refer here. There were 40,985 convictions for drunkenness of Coloured persons, while from the far greater population of Natives the number was 34,751. The problem of drunkenness among the Coloured population, especially in the Cape Peninsula, is a very serious one. Actually in the Cape Province 42.9% of the persons committed to gaol were sentenced for liquor offences and 60% of the Coloured women in gaol were there for liquor offences, in 1946.

For illegal possession of Native liquor, which the Natives feel themselves perfectly entitled to possess, and prosecution for which causes bitter resentment, there were 92,297 convictions. Undoubtedly the whole position regarding the liquor laws needs reviewing.

Of the alarming total of convicted persons 188,883 were admitted to gaol or prisons, 117,746, or 62% with sentences of one month or under.¹ It is very hard to express in temperate language condemnation of a system which sends thousands of persons to gaol in this manner. No positive training of any kind can be undertaken during these short periods, and as a system of deterrence it is heavy-handed in the extreme. In England one in forty of convicted persons is imprisoned; in the Union it is one in four and a half. Our whole situation appears in a still more serious light when it is realized that most of these persons have been sent to gaol in lieu of payment of a fine. A table was prepared for the Commission showing the total number of persons admitted to nine of the principal gaols of the Union, during a period of 18 months from January, 1945 to June, 1946. These gaols form a representative cross-section for the Union. From this table it appears that, taking men and women together, of the total European admissions during this period, 65.24% were in default of payment of fines, of the Coloured and Indians 87.24% and of the Natives 83.2%. "In these nine large gaols, in a period of 18 months 112,166 persons were admitted to serve sentences because they were unable to pay fines. The figure is staggering, the cost of maintaining these unprofitable prisoners enormous."²

"It is a reasonable inference that where fines were paid, they were inflicted on members of the community who were in a position to pay them and that where they were not paid, the converse was generally the case. Thus, in effect poverty is being penalised—the man who can pay his fine goes free upon such payment, while the man who is not in a position to find the money goes to gaol. This position is not satisfactory." It is very sad to think that of women in gaol 78% of European women, 88% of Coloured women and 91% of Native women are there because they cannot pay their fines! Also distressing

(1) Advance copy of Report of Director of Prisons, Mr. W. G. Hoal (page 2), kindly loaned me.

(2) Report, p. 79.

Penal Reform and Race Relations

is the fact that 74,248 Natives were admitted to gaol for contraventions of the pass laws in 1946.

Presently I shall deal with the problem of punishment as a means of deterring people from crime, but surely it can be pointed out at once that there is nothing commensurate between a fine and total loss of liberty. If the offence is such that a fine will serve as an efficient deterrent, or adequate penalty for an offence, then the alternative of imprisonment is not in any way equivalent. Imprisonment must be the ultimate sanction for failure to pay where payment is feasible, of course, but a sentence of imprisonment should only be given in its own right and after careful consideration, and never as an automatic alternative for failure to pay a fine. The Commission points out that "in the case of these short-term prisoners it is impracticable, in the time available to apply to them anything in the way of corrective treatment. On the contrary serious prejudice is incurred by their loss of liberty."¹ Not only can they not support their dependants but they themselves, under present conditions, are subjected to the danger of contact with hardened criminals, and may be led into the commission of more serious crimes.

Fines imposed upon Natives for statutory offences are frequently out of all proportion to their earnings and inflict far severer penalties upon them than would normally be the case if the offenders were Europeans. The Commission recommends that "in all cases of imposition of fines, the courts should consider not only the nature of the offence and the offender's position of culpability or moral blame in relation to it, but also his financial position . . . and in the matter of imprisonment the victim of poverty should, wherever possible, not be placed in a worse position than those in better financial standing."² It is urgently to be hoped that as a result of the recommendations the Fagan Commission makes there will be a diminution of discriminatory laws and consequently a considerable reduction in the number of Natives convicted of statutory offences under them. Meantime the Commission considers the desirability of keeping out of gaol the large number of minor offenders of all races, who are, through their inability to pay fines, being deprived of their liberty, so pressing that "it urges that some early move in this direction should be made."³ Fortunately of recent years two very valuable methods have been applied in England with the wholly gratifying result that the number of persons needing to be imprisoned has dropped so considerably that it has been possible to close 30 gaols! The Commission recommends that these methods should be given a thorough trial in the Union. We suggest that as in England "legal provision should be made to require courts imposing sentence of a fine to allow time to pay such fine in all cases unless

(¹) Report, p. 77.

(²) *Ibid.*, p. 79.

(³) *Ibid.*, p. 80.

(a) the court is satisfied that the accused is possessed of sufficient means to enable him to pay the sum forthwith; or (b) upon being asked by the court whether he desires that time shall be allowed, he does not express any such desire; or (c) he fails to satisfy the court that he has a fixed abode or regular employment; or the court for any other special reason expressly directs that no time shall be allowed. If no time is allowed for payment and the fine is not paid, the reason why time was not allowed should be stated on the record and on the warrant of commitment. When time has been granted for payment of the fine additional time should be allowed on an application by, or on behalf of the offender, on good cause shown; and the court should have power in suitable cases, to reduce the fine. Where time is allowed for payment the court should, as a general rule, be debarred from imposing at the same time a period of imprisonment in default of payment."¹

There is no reason to think that blessings comparable with those in England will not result from the use of these methods. To help achieve the desired result the Commission recommends the establishment of State Labour Bureaux for all races to find work for those who have none, and the use of State Public Works for those who cannot be absorbed by private firms. As in England also when there are probation officers available the Commission suggests that it will often be wise to place a person given time to pay a fine under supervision and guidance. Indeed placing persons under the control of a probation officer has replaced short-term prison sentences very largely in England, and it is to be hoped the same change may soon be possible in the Union.

TREATMENT OF OFFENDERS

The revelations in connection with fines leads directly to a consideration of the whole problem of punishment and the correct handling of those who break the law. Punishment by the courts is the infliction of some kind of pain or loss upon a person who transgresses the law. The fundamental purpose of this punishment is deterrent, for the protection of the community from the depredations of the law-breaker. We have seen that the best way to protect the community is so to educate and train people that they obey the law. No community, however, achieves full obedience to its laws without penal sanctions. "Compliance with the law may be obtained by inflicting a sanction involving physical pain, for example corporal punishment, or by material loss in the form of fines, or it may be achieved by greater or less deprivation of liberty of action, together with a smaller or greater degree of rigid control of conduct."² Often reprimand will suffice to put into action what Professor Hoernlé always emphasized as the "self-righting tendency of human nature"; sometimes a postponed

(1) Report, p. 80.

(2) *Ibid.*, p. 54.

Penal Reform and Race Relations

sentence or a suspended sentence will be sufficient to draw out the reserves of control of an offender and help him to mend his ways; sometimes the guidance of a wise probation officer, who will control the place of residence, the selection of friends and the use of leisure, will meet the case. But when the offender is dangerous to the community or a persistent nuisance there must be, for the protection of the society, complete deprivation of liberty. The problem then is what to do with the prisoner once he is safely secured. Is the treatment during imprisonment to constitute further punishment or is the loss of liberty, with its inevitable stigma and the separation from family and friends to constitute the punishment, and can we use the time in prison to attempt to re-train the offender?

Up to the present we have had no clear vision in the matter. We have tried a bit of both but more or less on the hit-or-miss principle. We try to some extent to prevent contamination of the less bad by the very bad, we teach trades to Europeans, we admit chaplains to minister to the imprisoned. But we also sentence prisoners to hard labour with special emphasis on the hard, and we sometimes add periods of spare diet and solitary confinement or order corporal punishment.

What is quite clear is that our methods are not sufficiently successful. We are not deterring enough criminals! We are not protecting society. In 1945 34.8% of sentenced prisoners were persons who had been in prison before for a term of at least a month and probably more within a period of ten years. That is to say that more than a third of sentenced prisoners in 1945 were recidivists! In 1933 the incidence of recidivism was 17.7%, so the position is steadily getting worse. In 1945, 36.1% of these recidivists had been once previously convicted; 19.3% twice previously; 14.3% thrice and 30.3% more than three times previously convicted. So far as imprisonment is intended as a deterrent it has not been an efficient deterrent, and so far as any reformative measures have been used they have not been adequate to effect the desired result.

Many instances of recidivism were cited to the Commission in which men had been sentenced time and again and in the course of a few years had received every form of punishment in prison, including lashes, spare diet, isolation, all to no purpose. Mr. Justice de Beer cited a number of cases from the session of the Free State division of the Supreme Court in Bloemfontein which had just finished its sittings when the Commission was there. All were recidivists who had started their criminal careers when they were under twenty-one years of age. One had started at thirteen, others at fifteen, seventeen or eighteen. Most of them had ten or more previous convictions against them.

The evidence from other countries is overwhelming that criminals respond to treatment far more than they do to punishment, but they respond only to individual treatment and to the active co-operation of

those in charge of them. It is easy to get "good prisoners," that is, those who meticulously keep the regulations and ploddingly work the dull daily round, keeping out of prison punishment to achieve discharge at the earliest possible moment. But these are by no means necessarily the reformed offenders, they may be shrewd, designing men, who are determined to prey upon the world and want to do so at the earliest possible moment. The man with maladjusted personality if given scope to attempt readjustment is bound to have many setbacks, is bound to be difficult and he will obviously need far more personal attention from his mentors than the men regimented to the easiest possible prison regime.

There is only one way to combine punishment and treatment for reform, and that is to regard the loss of liberty—the loss of control of one's own life—as the punishment, as indeed it is, while the treatment of the offender during the period he is deprived of his liberty is aimed at his reformation. As he shows signs of reform some liberty will be granted to him, until with readiness for citizenship comes complete restoration of liberty. This is the recommendation of the Commission. It has the necessary corollary that if an offender remains unadjusted and shows no intention of changing his methods of life, there must be provision for the prolongation of his sentence. It is a poor protection for society to leave a man in prison for a set period, and then, though he may be as dangerous as the day he entered, to let him out once more to continue afresh as a parasite on society. It is wasteful to keep a man in prison a day longer than necessary, and hope should never be allowed to die in the case of any man, but dangerous men should not be let loose to prey upon the public.

The recommendations of the Commission are by no means easy to carry out. Resentment of the total loss of liberty is mostly very great, and anti-social persons are essentially self-centred, selfish and full of self-pity. Hence the initial stages of imprisonment are unpropitious for reformatory treatment: but the goal is fundamentally worthwhile and the methods the only ones which offer real protection for the community.

THE PRESENT PENAL INSTITUTIONS

It is hard to convey to one who has no experience of our prisons and gaols the impression they make upon one entering them for the first time. Many of the buildings are of the fortress type, designed primarily to prevent escape from within the walls, and they are cold, grim, lonely and utterly unbeautiful. If shutting out all human warmth and grace could deter criminals surely our gaols should have done it.

The segregation of races, which we consider of fundamental importance in the outer world, is rigidly adhered to within the prison walls. Europeans are separated from Non-Europeans and within the Non-European group Coloureds and Indians are separated from

Penal Reform and Race Relations

Natives where this is possible. Men are always separated from women. In addition, awaiting trial persons are kept separate, in each of these categories ; first offenders are separated where possible from recidivists and short-term offenders from those with long sentences. It can be seen how difficult a problem of administration is put before the prison authorities.

Most of the gaols in our large towns are grossly overcrowded. In 1945 the daily average of our prison population was 22,929.2, while in 1946 it reached the figure of 25,768.8. During the early months of 1947 it overstepped the 26,000 mark ! In the period between 1939 and 1946, when the daily average prison population increased by some 7,000, additional accommodation was provided for only some 700 persons.

The members of the Commission visited the Johannesburg gaol on various occasions. The authorized capacity of this gaol is 782. On the morning of our first visit there were 2,525 persons locked up there. On an evening visit we were shocked to see prisoners lying packed head to foot in rows of three, 70 persons in a room designed to accommodate 33. There were several cells similarly packed with Natives. These particular cells are new and fortunately the sanitary system in them is a flush system, and there is cross ventilation. In the older type of cell there is simply the bucket system, and the stench in the morning, when the cell doors are opened, is almost overpowering.

In Cape Town, the authorized capacity of Roeland Street gaol is 866. There were 1,124 persons there on the day of our visit. Such conditions do no credit to us as a nation. Citizens must take responsibility for these things and the Commission recommends that there should be a Visiting Committee for each gaol and prison in the country to keep constantly before the country the need for improvements, and to act as a liaison between the inmates and the ordinary world outside.

In some of the new buildings—all too few—the cells are bright and airy, but in most of our gaols they are dark and gloomy and often feel dank. Even in the awaiting-trial section of some of the gaols we visited, we found that the cells in which these persons, possibly quite innocent, were waiting, were so dark when the doors were closed, that it was quite impossible to see to read or to sew. We were told that these prisoners had to be shut up in these cells, indeed it is quite legal to keep them shut up in these cells, most of the day, because shortage of supervisory staff makes it essential to do so. The whole problem of awaiting-trial prisoners has been exhaustively dealt with in the report, but ameliorative conditions cannot be brought about until imprisonment is used, as it should be used, only for those persons whom it is necessary to deprive of their liberty and not thoughtlessly for thousands of persons who should be, and can be, dealt with otherwise.

Our prisons are kept clean, shingly clean in many cases, especially so far as floors and brass fittings are concerned, and after all there is abundant labour for this to be the case. Nonetheless, too frequently there are vermin—lice and bugs—and modern methods of dealing with these pests should, in the near future, make them things of the past. The Commission has drawn attention to the verminous state of too many of the newly admitted prisoners, making it a difficult task to keep the blankets, especially in the awaiting-trial sections, free from vermin. We have thought it wise to express the opinion that this is a state of things, especially among our Native population, that requires general attention in the interest of the health of the people.

Except for the sick, for European women and European men awaiting-trial or first offenders, all prisoners sleep on the floor, each prisoner being provided with mat and blankets. Often the floor is of cement or even of stone. The Commission suggests that beds and mattresses should be given to all European prisoners, and that for all others bed boards should be provided. At present, too, many of the prisoners, European and Non-European alike, must sit, eat, write, as well as sleep on the floor. No one contemplates prison as being a pleasant place of residence, but there should be provided the minimum requirements of the mode of life of the particular section of the community to which the prisoner belongs. Stools and tables should be provided for all those persons accustomed to use them, of whatever race they may be.

The bathing facilities in some of our older prisons and gaols have to be seen to be believed. Stone troughs in a cold, draughty courtyard—especially in the women's section in country gaols—and showers right out in the open in many gaols, should be replaced as soon as possible by more suitable facilities. In general, the women's sections of the gaols are dreary in the extreme. High walls enclose a small courtyard onto which the sun beats in summer and round which the wind howls in winter, and here women of all races must spend their weary days. The sooner women are put into guarded cottages with gardens in the country the better. Their spirit is broken and their self-respect shattered even more easily than is the case with men.

Prison rations were entirely unscientific and often inadequate, but this matter is already receiving attention.

The present prison dress, especially for Europeans, seems to date from the 18th century. Today it tends to deject the wearers. The Commission recommends that it be changed. Prison must uplift, if possible, but at least not needlessly depress those within its walls.

The most rigid discipline must prevail in the present conditions of overcrowding and understaffing. There are 55 regulations prescribing conduct and 30 specific offences in addition, the breach of any of which may subject a prisoner to additional punishment. It is the

Penal Reform and Race Relations

duty of the warders to see that these regulations are meticulously obeyed. In consequence anything approaching individual treatment requiring some relaxation of discipline is impossible and in the result the method becomes one of unbending control. Nonetheless, though the Commission has recommended higher qualification for the warders of all the different races, and though we desire a more humanistic training for warders, it is a pleasure to report that the large majority of warders we met are essentially possessed of broad human sympathies. It is the system which needs altering and the training. The basic material is good. It is important to note that each section of the population requested especially that there should be warders of their own race to guard prisoners of that race, and that illiterate peasant Native warders should no longer be employed.

A sentence of imprisonment with hard labour is one very frequently given by our courts. There is no doubt that the prison authorities are fully conscious of the need to carry out the orders of the court, and there is a sense of urgency in keeping hard labour prisoners employed, but a great deal depends on the physique of the prisoner on the one hand and the facilities on the other, just what type of labour is performed in our prisons and gaols. It is for this reason that both here and in England it is suggested that the term "hard labour" should no longer be used as part of a sentence.

In most of our gaols the uninspiring sight can be seen of men, European and Non-European, sitting with hammers on piles of stones reducing them to a smaller size, or in the case of weaker persons, breaking up pieces of bone. The product is sold, but the employment of prisoners on a type of labour wearisome in the extreme, of no educative value whatever, but rather utterly soul-destroying, and which could, with infinitely less expense be performed by machine, is depressing, and the position is one that should be remedied. The sewing of mailbags for the State is universally to be seen, and will continue to be used, at least for short-time offenders, and there is the endless washing, ironing and mending in the women's sections.

European prisoners are not employed outside the walls of the institutions but Non-European male prisoners are used for all types of unskilled work for State and Provincial authorities. They are hired out to mines and certain private employers, to farmers and to private homes. Endless idleness would be worse than the present types of labour and the Commission does not recommend that they should be immediately abolished, except where definite abuses have been discovered, but when the constructive recommendations of the Commission are put into effect prisoners will no longer be available for these purposes. Above all it is hoped that it will be possible to give instruction in the trades to those who have been deprived of such training in their earlier life. At present the most fully equipped trade departments

are to be found in the Pretoria prison for Europeans, but even there the work is handicapped because of the difficulties of employment after release, while the training of Non-Europeans is hampered by the general labour situation in the free world outside, so that very little work of a skilled or even semi-skilled nature can be given to Non-Europeans and the most satisfactory occupations that prisons or gaols have to offer them are gardening and general farming, which are increasingly being employed wherever the prison property allows of such development.

It is in our prisons that the physical punishments are carried out, whether these be court sentences or sentences for breaches of prison discipline, except in the case of juveniles where whipping in lieu of any other sentence may be ordered by the courts.

In the Union, in 1946, 2,819 orders of corporal punishment were given, of which nine were with the "cat."¹ The problem of the infliction of this punishment received very serious consideration by the Commission, and every effort was made to get the best expert opinion available in the country. In its findings it is emphatically recommended that the use of the "cat," which even today is only applied when specially so ordered by a judge, should be discontinued. This is in conformity with the practice of all progressive systems of penology.

On the other hand, after much deliberation, it has been felt that the use of whipping for juveniles and lashes for adults must remain. So far as juveniles are concerned, the chief reason for this is the undeveloped state of our country in the provision of alternative methods, and the evidence of psychologists and sociologists we were able to consult, was that it was a lesser evil to apply a crude punishment than to allow young delinquents to believe that they had "got away with it" because other methods of treatment, especially for Non-Europeans, are so inadequately developed.

Corporal punishment is a crude method of punishment. The appeal to fear of pain is a low appeal. Some psychiatrists have spoken in the strongest terms against it, as revealing the lowest sadistic instincts of those who order it and those who are willing to apply it. Others, equally experienced, have analysed the situation perhaps more clearly. So far as persons suffering from psycho-neurosis are concerned, the evidence is emphatic that whipping aggravates the malady. So far as psychopaths are concerned, applying lashes is entirely unavailing. On the other hand, there is a type of bully, brutal to others, who fears pain himself and in such cases, it is held, a sound thrashing has a distinctly deterring effect. The Commission has counselled that "those sitting in judgment should deliberate long before ordering the

⁽¹⁾ Advance copy of the Report of Director of Prisons, Mr. W. G. Hoal. p. 19.

Penal Reform and Race Relations

infliction of corporal punishment.”¹ We have further recommended that for both adults and juveniles the maximum number of strokes should be drastically reduced to six in the case of a juvenile and eight in the case of an adult, and that in no circumstances should such punishment be ordered more than twice for any one individual. Further, if the recommendations of the Commission are adopted, no whipping will take place unless a psychiatrist, or if one is not available, a medical officer, has certified that the whipping is not likely to do the offender lasting physical or mental harm. The Commission adds “a civilised community should rid itself of the obloquy of exercising a brutal means of penalty”² as soon as it is possible to do so. While it is on the statute book it should be applied to all races in similar circumstances.

The Commission has emphatically condemned the punishment of spare diet and solitary confinement. We recommend that they should have no place in the scheme of penalties which may be imposed by the courts. Spare diet is retained as a measure of prison discipline solely in the case of prisoners in the lowest class who have failed to respond to positive treatment and in whose case all other available penalties have been tried and failed, and then only provided that the normal prison ration is scientifically improved and contingent on the medical veto being strictly maintained.

With the supreme penalty of all, the death penalty, it is quite impossible to deal adequately in this address. My colleagues came to the conclusion that this sentence must remain. I entirely disagree, and felt bound to put in a reservation. To argue the whole case would need an address on its own and I have decided that it is better to state the matter simply and leave it so in this address.

PROPOSED FUTURE PENAL INSTITUTIONS

If the Commission’s plans are accepted, then the Union will fall into line with the countries of the world attempting constructive methods of dealing with these problems. Even so the race-caste structure of our society is bound to cast its shadow over the whole system, for obviously, prisons cannot be better than the world outside. If the community itself has many hampering restrictions on the free development of individuals, then the prisons must necessarily be correspondingly hampered in their work.

The keystone of the new system is the proposed Allocation Centre, to which all convicted prisoners with sentences of a year or more would go for examination and study. This centre, once established, would, of course, also be invaluable for the study of any person at any stage after arrest. It is suggested that there should be four such centres in the Union, at Cape Town, Johannesburg, Durban and East London

(¹) Report p. 70.

(²) *Ibid.*, p. 71.

and in these centres there should be an Allocation Board consisting of the local superintendent of prisons as chairman, a medical practitioner, a psychologist, the local prison welfare officer and the senior local probation officer, with power to call in any specialist required. "This board should study the prisoner, his age, his physical constitution, his mental characteristics, his past history and recent environment, his aptitude for any particular types of work for which he might be trained, and would thereupon decide to which particular institution he might best be sent."¹

The Allocation Board should in the future be the centre from which suggestions for improvements and advances in the handling of prisoners will come. We should, from the studies of this Board, begin to know the physical and mental make-up of our criminals, the differences, if any, between our European and Non-European prisoners, and the techniques most suitable for the treatment of each type. At present we have no reliable knowledge of the results of any particular type of treatment, nor whether some types of treatment are good for prisoners of one kind or one race and not for others. Indeed, there is all too little individual treatment of any kind. It is to be hoped that statistics will be kept of all the various types of prisoners and that research workers will undertake follow-up studies to establish the effects of our treatment of prisoners, by tracing their after careers in civil life, so that gradually, and probably step by step, we shall evolve the most constructive treatment possible for re-training anti-social persons.

The choice of institutions will be much greater than at present if the recommendations of the Commission are accepted. There should be primary prisons of different types, secondary prisons, prison colonies and prison farms, mental treatment prisons, prisons for sub-normal persons, prisons for the chronic sick and release depots. The Allocation Board should decide whether a prisoner goes first to the strictest form of prison or whether he should proceed straight to the Secondary Prison or even to the Prison Farm or the Prison Colony, and a new type of Remission Board will decide whether, in some cases, earlier release than the sentence passed contemplated is feasible and advisable. The whole plan is one of training for disciplined freedom, and the aim, the restoration to the community of those who had been deprived of their liberty because they could not be trusted to use it aright.

It is sad that chronic sick persons should be kept in prison and the day may come when the vast majority will be released, but some of them are dangerous persons in spite of their illness, and in other cases "their home conditions are not such as are proper to receive them, or there are no friends willing to take care of them. Their

(¹) Report, p. 106.

Penal Reform and Race Relations

retention is not a matter of punishment, but of necessity dictated by humane considerations."¹

Many of the habitual prisoners, especially, are sub-normal persons who are not fit to stand on their own feet in the free world. Time and time again they return to prison and steadily deteriorate as they grow older. Few can benefit by association with criminals with more intelligence, but rather does their sense of inferiority grow, and their resentment with it. It is hoped that a special institution, a Prison for Sub-Normals, or part of some other institution, will be set aside for this type of prisoner, where he will receive special treatment, with training for sheltered industry, or, in the case of quite inadequate personalities, training for life in settlements which, it is suggested, should be established by the Social Welfare Department, where he would live in freedom with his family, but under guidance and direction.

It is hoped, also, that there will be a Mental Treatment Prison, which will have more the character of a hospital than a prison, and be under the control of a psychiatrist with the necessary specialised staff. To this prison would be sent all those persons who, though not mentally diseased or permanently mentally defective, are definitely mentally abnormal. Among these persons are some of the most dangerous prisoners, sex perverts, perpetrators of violent assaults, etc., intelligent, perhaps, but emotionally abnormal or maladjusted. Such prisoners today are a perpetual nuisance to the prison staff and to themselves. Without hope of improvement, in present circumstances, they are subjected to repeated prison punishments and repeated re-conviction without any good result whatever. Only mental specialists can cope adequately with such persons, and it is suggested that if at the end of their sentence such persons are still dangerous, they should become inmates of a Mental Treatment Home, constituted on the lines of the Mental Treatment Prison, but not under the administration of the prisons department. Similarly, in the case of chronic inebriates and drug addicts, it is recommended that medical treatment should be given. Reformatories and retreats are needed with fully trained staff, where constructive curative methods can be studied and applied. Such institutions should be controlled by the Social Welfare or the Public Health Department. If, at first, it is impossible to establish separate institutions, then these persons should be detained in a separate portion of the Mental Treatment Prison.

Criminals, in the view of the Commission, should not be committed to Work Colonies under the Department of Social Welfare. Persons who have defied the law and who knowingly lead anti-social lives, are psychologically a different problem from the socially inadequate persons who form the band of won't works, inebriates and

(¹) Report, p. 147.

loafers, who are the proper subjects for treatment in Work Colonies, under the Social Welfare Department. It is strongly urged that the Work Colonies Bill at present before parliament be re-cast along these practical scientific lines.

Once these special types of prisoners are adequately provided for, and once short-term imprisonment is reduced to a minimum, the core of the problem, the real criminal can be properly dealt with. For them it is proposed that there should be a graded series of institutions. First the primary prison of two kinds, one for first offenders and one for recidivists. The first offender prison should make provision for separation of those under 21 years of age and those over 21, while the recidivist prison should separate those under 30 from those over 30. It has been shown in many countries that a man up to the age of 30 has much resilience and with proper constructive methods, can be changed from an anti-social person, full of hostility and bitterness, into a well set up, well disciplined and well trained member of society. In these primary prisons there should be provision for classes, graded from the penal class through the probationary and good conduct class to the star class, which would qualify a candidate for promotion to the Secondary Prison. There should be provision for strict, even stern, discipline, but there should also be the maximum of constructive opportunity, and use should be made of a system of privileges and encouragement, far more than a system of punishment, as in the past. Wrong impulses should be curbed, obedience to rules taught, and full encouragement for habits of industry, and promotion should be constantly urged and applied. What constructive as opposed to punitive treatment can do has been shown in a very simple but convincing manner recently in the Central Prison in Pretoria. While in the year from September, 1944 to September, 1945, there were committed in that prison 387 punishable offences, mostly of a serious character, among 584 persons, in the six months from September, 1946 to March, 1947, there were only 31 offences, and these of a petty nature. This signal reduction is due to the extension of visiting and letter writing privileges and above all to the extension of smoking privileges. Smoking offences are a major cause of punishment in prison, and the precautions which it is necessary to take to prevent these breaches, including degrading methods of inspection and search for illicit tobacco, especially among Non-Europeans who work outside the prison walls, are most undesirable features of present prison life. It is hoped that the tobacco privilege will shortly be extended to Non-European prisoners also, and that search for metal objects will be achieved by an X-ray apparatus, and not by the present degrading "Zulu Dance" as it is called.

The Secondary Prison to which a prisoner may well go direct, will not need such strict subdivision as the Primary Prison. It should

Penal Reform and Race Relations

continue vigorous active training and provide more opportunities for earning privileges and above all for promotion to positions of trust and self discipline.

Planned constructive education in prisons is a relatively new thing the world over, while prison labour has a long and tragic history behind it. The old idea was that since the criminal deserved punishment, the harder he could be made to work the better. Many even held that the more useless the work, the better the punishment. But modern systems of penology use education as a vital force in the effort to reform men and women who have fallen into crime. Whatever the particular causes of crime may have been in each case the result has been an anti-social attitude of greater or less degree. This it is essential to alter. It is recommended that grave deficiencies in general and vocational training should be made good as far as prison conditions permit of this. With the modern methods of overcoming illiteracy, there is no reason why all Non-European prisoners serving sentences of over six months should not come out of prison better equipped, at least to the extent of being able to read and write, than they went in. Further, men and women with distorted values of life should be helped to change them. Since the criminal is essentially self-centred, recreation in competitive group games should be instituted as an essential part of the educational system, so as to develop in them a healthy team spirit.

Higher rates of pay, too, are recommended for work performed in prisons. Today it is 2d. or 3d. a day, with the result that the prisoner often leaves gaol so ill-provided with money that he is immediately under temptation to steal.

In all prison institutions in the future it is recommended that well trained prison welfare officers of all races should be employed to aid in the general re-training of the prison population and to maintain contact between them and the world outside.

Institutions offering still greater opportunities for trust and self-discipline are the Prison Farms with the bias on agriculture and animal husbandry, or the Prison Colonies with their emphasis on trade and business.

Finally, a prisoner should be fit for transfer to the Release Depot, where he will find those ready to help him back into the free world. And for those without friends, or undesirable friends, it is recommended that there should be hostels run either by voluntary agencies or by the Social Welfare Department, to which such persons could be committed during their parole period.

The return of prisoners to the free world has been treated too lightly in the past. In theory, he has expiated his offence and is a free man. In fact, the psychological effects of imprisonment make it essential that the great majority of people regaining their freedom

should have adequate after-care on release. As the Commission states, "this is the danger period, when the prisoner is most likely to relapse into misconduct; it is the time when positive measures to reintegrate him into the community must be made . . ." (1) It is very regrettable that the measures provided in the original Prisons and Reformatories Act have been allowed, very largely, to lapse, so far as adult offenders are concerned, and the Commission emphasises, most strongly, that a large body of experienced probation officers is needed to provide an essential part of the re-training of those who have fallen into crime. We recommend that all prisoners given a remission of sentence should be placed on parole and released subject to supervision by a probation officer for the remaining portion of the sentence. We feel confident that there will be less relapse into crime if the return to the community is more skilfully handled. The Commission also recommends that the police should exercise all the tact and consideration possible in checking-up on old offenders when they are tracing the perpetrators of a crime. A check-up of old offenders is perfectly legitimate, but it should not result in the betrayal of those who are trying to live down their past, and above all, where practicable, the police should refrain from seeking an ex-prisoner at his place of employment, or exposing him to members of the public.

At present as witnesses who have experienced the situation have put it, "a man is put out of the gate of the prison and he finds himself dazed in a big world with no prospects, nowhere to go, and little or no money. His occupation is gone, and good friends willing to accept him are not to be found. He is forced by loneliness and want to seek the companionship of others who have been in prison, or who are criminally-minded and ready to accept him. After a fruitless search for work he commits another offence to obtain the means to exist, and finds himself back in prison, almost with a sense of resignation." (2)

If we can develop a system for all our races, in which there is the possibility of building up malnourished and stunted bodies, of making good deficiencies in general and vocational training, and instilling into our anti-social persons a readiness to carry part of the load of general social responsibility, we shall have gone far in our protection of society, and in making good use of the human material which is available for our corporate life. But there are other *ifs*. If Trade Unions will make adult apprenticeships available for those partly trained in reformatory and penal institutions, and if the State authorities will admit to State works, those who otherwise cannot find work, first to earn their fines and secondly to re-establish themselves in the free working world after a term of imprisonment, then we shall lift from

(1) Report, p. 144.

(2) *Ibid.*, p. 142.

Penal Reform and Race Relations

ourselves the reproach of partly contributing to the downfall of our fellowmen.

Then, with the Visiting Committees for each penal institution, research into the effects of our penal methods which it is hoped will ultimately lead to the establishment of one or more institutes of criminology, and, finally, with an awakened public conscience, aiding and abetting an enthusiastic prison director with a competent staff, and a determined Minister, we shall see the Union putting into effect the whole constructive programme of the Penal Reform Commission.

FINIS

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