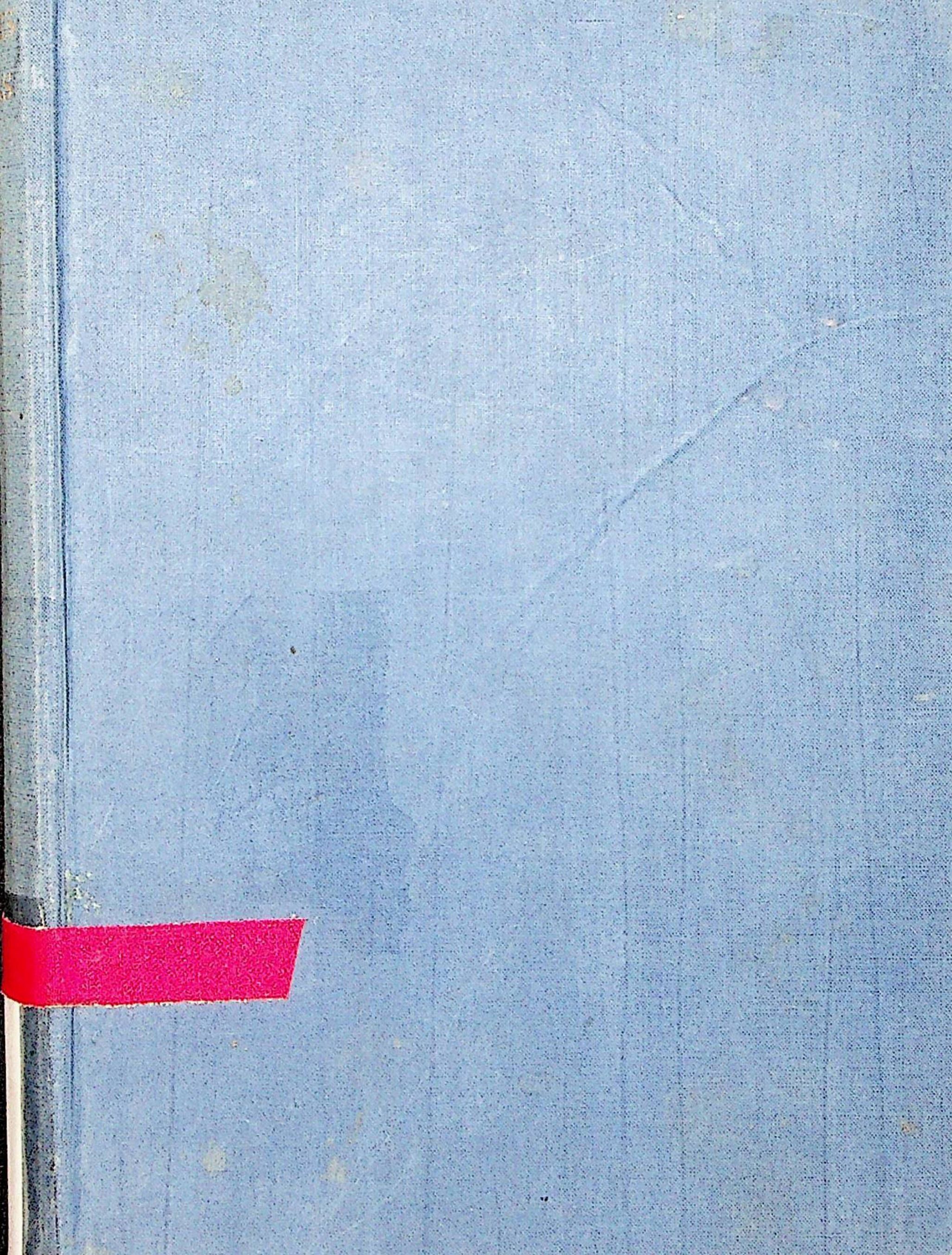

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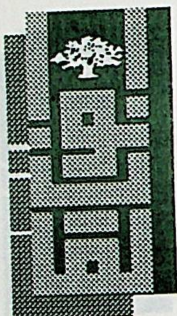

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FOR MAGISTRATES AND OTHERS

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JUSTICE OF THE PEACE

CRIME AND THE COMMUNITY

FOR MAGISTRATES AND OTHERS

195910

by

LEO PAGE

of the Inner Temple
Barrister-at-Law

with a foreword by

The Rt. Hon.
Sir Samuel Hoare, Bart.
G.C.S.I., G.B.E., C.M.G., M.P.
Secretary of State for Home Affairs

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For if the ministration of condemnation be glory, much more the ministration of justice aboundeth in glory.—II Cor. 3, 9

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To

My son Tom

Kindest of Critics

FOREWORD

Magistrates and social workers who are interested in the treatment of the offender will be grateful to Mr. Leo Page for collecting in a single volume a selection of speeches which he made recently to conferences of magistrates, probation officers and prison visitors in different parts of the country. Those who are acquainted with Mr. Page's previous books on the *Justice of the Peace* and on *Crime and the Community* will need no incentive to read these stimulating and informative addresses. Mr. Page is in a position to speak with authority on the subject matter of this book. His training at the Bar gave him a background of legal knowledge. His experience as a Justice of the Peace has made him familiar with the many difficulties which are met in carrying on the work of a Court of Summary Jurisdiction. His position as Chairman of a Discharged Prisoners' Aid Society and frequent visits to prisons have given him a keen

insight into the problems of imprisonment. He is an active member of the Home Office Advisory Committee on Probation and he has studied the training given in Approved Schools and Borstal Institutions. Few magistrates can be so well equipped for their task; still fewer can so profit by their own experience as to be able to give valuable information to others in a style which is as forceful as it is picturesque. Nor does the author lack that salt of humour which he would wish to see in the ideal prison visitor.

These addresses cover a wide range. They begin, as is right, with the Juvenile Court. It would be difficult to state more clearly than Mr. Page does in his first chapter the great importance of the problem of the juvenile offender and the right approach to it. Several of the addresses deal with the probation system and show what a valuable instrument it is in the hands of the Court, especially as an alternative to imprisonment for adult offenders. Mr. Page points out that the success of probation depends as much on the magistrates as on the personality and qualifications of the Probation Officers. The observations on imprisonment are equally valuable, particularly because they

show beyond doubt what harm may be done by its wrongful use. Prison may be a necessary evil, but all those who are familiar with prison would wish to keep offenders as long as possible away from its associations, in spite of all the measures which have been taken in recent years to help the prisoner along the road of reform.

I commend this book to the general reader who wishes to know something about the modern treatment of the offender, and I commend it in a special sense to the Justices of the Peace for whom it will give added interest to the important work upon which they are engaged.

SAMUEL HOARE

Home Office
January 1939

PREFACE

The addresses which are comprised in this book were delivered at meetings of magistrates, probation officers, and other persons interested in social problems. They are printed as spoken, save that a vigorous pruning has been effected in order to prevent a too tedious repetition. It is not at any rate wholly through vanity that I have made a book of them: a good many members of the audiences which heard them have been kind enough to suggest that what was found helpful by the few might usefully be reprinted for a wider public. The chapter on probation was written for the Clarke Hall Fellowship for distribution as a pamphlet to justices of the peace, and is included by permission of the Fellowship.

I am deeply indebted to Sir Samuel Hoare for his kindness in writing so generous a foreword to my book. I am the more conscious of my debt when I remember that he has found

time to do so while he has been engaged in piloting that great measure the Criminal Justice Act through the House of Commons, and I offer him my most grateful thanks.

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I. JUVENILE COURT WORK

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Magistrates' Association: Annual Conference
The Guildhall, London

I

It is not an easy thing to address an audience such as this of several hundred magistrates upon a semi-technical subject. I am only too conscious that there are justices here whose experience of juvenile courts is more varied, and whose knowledge of young people infinitely more profound, than my own. There may, however, be others who have only lately joined the juvenile panels, or perhaps some who do not as yet appreciate their immense importance. If there are any such, it is to them primarily that I address myself.

The juvenile court is of the utmost significance to the whole country because very often indeed the adult criminal has developed from the delinquent child. If you visit a convict prison you will find in the office records official buff-coloured folders which trace back the life of the persistent offender from the time when first he came under notice of the police. You will

not need to read many of those miserable life stories before you will find all the proof you want that youth is the time of danger. It is not that boys and girls are naturally wicked. It is that they are not naturally wise, and that, like all young animals, they have an urge for self expression, for fun, and for excitement. Unhappily, in a large proportion of cases they have parents without either the leisure, the wisdom, or the training to give them the guidance which they need, with the result that a perfectly natural and healthy urge becomes directed to dangerous and unwholesome channels. For this hunger for excitement is not confined to boys who appear in juvenile courts. It is a symptom of vigorous growth and is common to all boys. In the luckier ones it finds an innocent outlet in such fascinating games as Red Indian encampments or secret pirates' caves at the bottom of the garden. Many a boy who at ten or twelve has in imagination sailed the high seas, captured many a galleon, and slit many a throat in company with Captain Kidd or Long John Silver has none the less risen later to the top of every professional tree. I don't doubt for a moment that one or two have climbed so high as the Woolsack itself.

With boys who have not got a garden and whose playground is the street there is no possibility of doing these exciting and quite wholesome things. But there is precisely the same thrill to be got out of doing all sorts of things just as interesting and every bit as exciting which offer themselves to any boy with eager eyes in his head. Try for a moment to imagine yourself to be such a boy. You can pinch a bottle or two of ginger beer off a van while the driver is delivering his goods: you can sneak some apples off a stall in the Mile End Road: you can get in at the back window of an empty house and creep all over it to see what you can find by the light of that torch you nicked from a Woolworth counter: or, if you live in the country, you can go out at night into the park of the big house and set snares.

There are two points about all this which it is vital for a magistrate to understand. If he cannot understand the first, he is not the sort of person who should be a member of a juvenile panel. Until he grasps the second he will not realize how important the juvenile panels really are. The first point is that while to the boy the ginger beer or the apple are objects desirable in themselves, more than half the fun is the risk,

and the keeping a good look out for the policeman, and the chance of being chased by the copper or the keeper or the caretaker as the case may be. Let me put it another way. If you and your gang find a stall with no one looking after it in a deserted road you will take the stuff on it all right, but it will not be half as much fun as if you had to set sentries and scouts and all the rest of it. If I may venture so to express it, it will not be half so enjoyable as when you have to *watch before you can prey!* The second point to which I have referred is the ease, the rapidity, and the inevitability with which what *starts* as innocent fun *ends* as serious crime. It is not difficult to understand that a boy who breaks first into an empty house for the excitement goes a second time to see what he can pick up, and on the third occasion chooses an occupied house because he is there the more likely to pick up something worth the finding. In the Metropolitan Police area during 1936 two persons were arrested for crimes officially listed in the police returns as burglary and housebreaking at the age of eight years and no fewer than seven others at the age of nine. Is it not obvious that those babies were there because an empty house was more exciting than

the bed in which they should have been asleep? Is it not equally obvious that unless they are stopped from playing at burglars at eight they will be real burglars at eighteen?

That, then, is the outline of the problem. How is it to be tackled? And has it anything to do with those magistrates who are not members of the juvenile panel? Some of you here this afternoon are specialists in licensing law, or in probation work, or matrimonial procedure, or in prison visiting or some other magisterial activity and do not directly administer the Children and Young Persons' Act of 1933. Nevertheless, all of you, every magistrate, have under that Act one important—nay—one *essential* duty. The Act is, so to speak, an entity. It provides for three things, and each is an integral part of the Act. Those three things are special justices, special procedure, and special treatment after conviction. The Act is to be administered by a juvenile court: that court is to be comprised only of magistrates who are on the juvenile panel: and only 'specially qualified justices' are to be members of that panel. These justices whom the Act describes as 'specially qualified' are intended to be men and women of sympathetic understanding and a love of

children, who know something of the lives of working-class people. It is absolutely essential that this type of magistrate should be appointed because he or she alone will have the patience and insight to get the facts and the knowledge of child psychology to apply them in the choice of the special treatment which the Act provides. But you do not need me to remind you that all over the country there are Benches which have appointed to the juvenile panel magistrates of exactly the opposite type. Magistrates are appointed to the juvenile panel for a period of three years. The first appointments were made in November 1933: it was inevitable that mistakes should be made in the first lists. The really depressing circumstance is that three years later, in November 1936, those mistakes were very largely repeated. There was little excuse for that. Everything that the Home Office by circular letter to justices could do was done. Everything which the experience of three years had made manifest was told them. They were begged to exercise their choice of election to the panel with thought and care. Yet Bench after Bench has paid no heed whatsoever. They have elected magistrates to the juvenile panel who are old and deaf, crabbed and ignorant of

children. Worse still they have elected men who do not hesitate to deride the Act of 1933 as silly sentimentality and who are entirely incapable of administering it. If the Act is to be the success it might be this type of magistrate must be got off the panels. The panels are chosen by all the members of a Bench. The responsibility is therefore yours. The legislature has created in the machinery of the Act a delicate instrument: if, through ignorance, indifference, or moral cowardice you entrust its use to hands manifestly unfitted, then, at least in part, yours is the blame for the mischief which they do.

Broadly speaking, the 'special procedure' consists of the provision of information about the child to the court and of the informality of the proceedings. I want to say a word under each of those heads. To-day a juvenile court is provided with a full history of a defendant child: the details of his school life, attendance, and ability: his illnesses and his games: his companions, friends, and interests, and his past offences. You will find all these things set out for you, and I do beg you to appreciate them. If the Act of 1933 had done nothing else but give us the information which we now get it would have been worth while. At first sight you

may think that to be told the work and wages of the father, the degree of comfort in the home, or the ages and healths of the brothers and sisters cannot be of any practical value to you. I assure you that it is, if you know how to use it. None of it is of any value in the decision between innocence and guilt: it is not provided for that purpose. Nor, even in the choice of treatment, is every item of this heterogeneous mass of information of use in every case. But it is absolutely vital to have too much rather than too little. There is *some* reason why each child has committed an offence. We shall best succeed in finding the treatment most effective to prevent a repetition of the offence if we can discover what that reason is. For I do assure you that of all incapable magistrates none is more absolutely certain to commit the most deplorable blunders than he who believes that *any* single treatment is likely to be the right one in every case, whether that uniform treatment be severity or gentleness. Dr. Cyril Burt tells us that the reason actuating a child to commit an offence is generally to be found in a multiplicity of factors, and that juvenile crime is almost always the outcome of a concurrence of influences. It is our duty to learn to recognize at least the

more common amongst them. There are those of environment within the home (such as poverty, defective discipline, or drunken parents): those of environment outside the home (such as bad companions and lack of wholesome recreation): those of physical condition (such as hunger or illness): and those of mental condition (such as mental backwardness or deficiency). It is precisely the information given us by the reports of probation officers and of school attendance officers which enable us to ascertain the influences which have led a particular child into wrongdoing, and so make it possible for us to select the most appropriate treatment.

Now let me say something about the informality of the proceedings. First I want to say what it means, and then to explain the reason for it. The aim should be to substitute for the formal and impressive atmosphere of a criminal court one of simple enquiry. That does not in the least mean that we have to be foolishly weak, or that we must allow naughty and difficult children to make fun of the court. It does mean this, that before we can wisely decide how to treat a boy or a girl we need to know *all* the facts of the case. This expression 'all the facts' includes not only the details of the offence but

also the details about the defendant child. Some of the particulars about the child we can get from the probation officer and the school attendance officer, but others can in many cases be got from one person alone—the child himself or herself. The more we insist upon formality and impressiveness the more tightly do we shut the mouths of many children. Timid ones become more frightened, stubborn ones more obstinate. In Heaven's name what is the good of that? We are simply throwing up obstacles in our own path. I have seen a boy of fifteen reduced to such a condition that he closed his lips and could not be induced to say one single word during the hearing of the case. I have seen a girl cry right through a hearing because a stupid chairman told her sharply not to look about her but to remember where she was, and to pay attention to what was said, and all the rest of it, in the traditional barrack-room manner. It does not matter whether the reason for this refusal of defendant children to speak is due to nerves or to naughtiness. The result is the same. The result is that the court deliberately deprives itself of necessary data. There may be—there often are—essential facts within the child's power to give to the court

upon which it should base a decision, but the procedure of the court is so formal that the child does not understand it, or the demeanour of the chairman is so intimidating that the child is too frightened or too sullen to disclose what he knows. Certainly children can be 'impressed' by the dignity of the procedure. The point is that it very frequently hinders the administration of justice, for Justice is like most of us—she cannot move with any sureness in the dark. Was it not Cromwell who, addressing an audience of maddening obstinacy, burst out in an ecstasy of irritation with the phrase: 'Before God, gentlemen, conceive it *possible* that you may be mistaken.' I feel like bursting forth myself into the same agonized appeal when I read the pronouncements of magistrates and chief constables advocating a return to the old methods and awe-inspiring surroundings. Inevitably it will mean that with a large proportion of juvenile offenders you will put a seal upon their lips. If we are to read their minds we must have them talk. Unless they themselves tell us how can we know *why* they have done this or that, whether they are *sorry* for having done it, and what they propose doing in the *future*? Sometimes we can get some of these facts from other

witnesses: often, as I have said, it is from the child himself or not at all. Is it not the plainest common sense, therefore, that we should adopt that procedure under which the child *does in fact talk*? Sometimes a boy or girl who is encouraged to talk freely becomes impertinent, or else he tells the most obvious untruths. What does that matter? Nothing at all. It certainly does not hurt the justices or the dignity of the court. On the other hand, it enables us to see that the child is a liar, or has a bad temper, or some other important fact which we might otherwise not have known, and it may tell us just what we want to know in deciding his treatment. In any case, magistrates who are troubled too much about their dignity are unfitted for the juvenile court. If a magistrate knows his work he may be as simple and quiet and natural as he pleases, and his dignity will be perfectly safe.

Please do not misunderstand me in all this. I do not suggest that we must never be severe in our *treatment* of a defendant child. I have not said one word about treatment. There are times when we fail in our duty if we are not very severe indeed. All I have said is that in the *trial* of a case we should not adopt any procedure which will make it less easy for those facts

to emerge upon which wise and successful treatment must be founded.

I read recently the report of the speech of a chief constable in the North of England in which he said: 'The juvenile courts have failed. You see it in the rising figures of juvenile crime.' Not to be outdone in mischievous nonsense by a chief constable a stipendiary magistrate, also in the North, is reported to have declared: 'Juvenile crime is increasing by leaps and bounds. This appalling increase is coincident with the cessation of corporal punishment.' I am tempted to deal with the learned stipendiary on the issue as to corporal punishment but it would be, I think, a waste of time. I will content myself with recommending that he study the evidence and the findings of the Departmental Committee on Corporal Punishment, which came unanimously to the conclusion that 'having regard to the opinions formed by persons of long experience and mature judgment, as a court penalty, corporal punishment is not an effective method of dealing with young offenders.' But about this bogey of the rising flood of juvenile crime which is so confidently declared to be sweeping the country I must say a word. Quite frankly, I cannot

understand how people in any sort of public or responsible position are to be found to make these dogmatic statements. They are simply not supported by the statistics. I will not weary you with masses of figures, but it is really important that these wild exaggerations should not be believed. I have studied the figures with a good deal of care and there is no dispute but that the number of convictions of juveniles has increased very much. The important thing to understand however is that there are very material factors to balance against the mere gross total of convictions. First and most obvious of these is the increase in the population. Some part of the greater number of appearances in court is accounted for quite simply by the larger birth rate in the years following the war. If there are more offences there are more juveniles to commit them, and the *proportion* of offenders, which is the only thing that matters, is *pro tanto* unaffected. In the second place, when boys and girls commit offences to-day the public are no longer reluctant to prosecute, as they were when young delinquents had to face the publicity and disgrace of the adult court. Since the Act of 1933 the charges are, as you know, heard in private, and the result has been that

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many prosecutions are brought which otherwise would have been dropped. This fact is indubitable. It is shown in the sudden large rise in juvenile cases which *immediately* followed the introduction of the new procedure—there were 30 per cent more charges in 1934 than in 1933. The most jaundiced chief constable could hardly suggest that children had suddenly become 30 per cent more depraved in a single year. If he *were* to be so foolish he would have to explain the fact recalled by Sir Alexander Maxwell, Deputy-Under-Secretary, Home Office, that exactly similar increases took place after the passage of the Probation Act of 1907 and the Childrens' Act of 1908. It is too much to suggest that this should be mere coincidence. The result of this greater readiness to bring children into court is that even if there were no more crime at all amongst juveniles you nevertheless would still get a larger number of convictions. Moreover, there are yet other factors to which Dr. Methven has drawn attention. Dr. Methven is an Assistant Prison Commissioner, and would therefore have knowledge of the problem of delinquency considerably wider than that of a local official. He has pointed out that there has been increased vigilance on the part of the police,

and that there have been tremendous strides in the efficiency of the probation service. As recently as January 1937 Dr. Methven was reported as having declared that there was no real increase in juvenile crime at all.

These are considerations which very greatly modify the conclusions which might otherwise reasonably be drawn from the figures of actual convictions. Nevertheless they do not explain the increase completely. There is an increase, even in the *proportion* of juveniles who commit offences. The reassuring fact is that so many of the crimes of young people are due, not to real vice, but to the urge for adventure to which I have already alluded. If it were due to wickedness we should find the increase in juvenile crime reflected in the statistics of adult crime: in other words the juveniles would continue to commit offences when they grew a little older. But we do not find this. As they grow older they cease to commit them. Let me give you a striking example of what I mean. I have been studying a Metropolitan Police Memorandum upon juvenile offences for the year 1936. Boys do not differ greatly in London and anywhere else, and I do not doubt that what these figures disclose in London is substantially true else-

where. The number of persons arrested at the age of sixteen was forty-seven per cent more in 1936 than it was in 1935. That is an alarming figure. But at the age of seventeen the increase is only nineteen per cent, and it drops each successive year, so that at the age of nineteen it is only three per cent, and those arrested at the age of twenty were actually two per cent *less* in 1936 than in 1935. I think this bears out the view which I have laid before you that thoughtlessness and mischief rather than depravity are the main explanation of what increase there has been. It is really important that we should grasp this fact. It helps us to realize that the allies beside whom we should enlist in this fight against juvenile crime are the social workers—the managers of boys' and girls' clubs, the Boy Scouts, the Girl Guides, and the other wholesome organizations—rather than those who advocate a return to old-fashioned and undiscriminating severity. If you can work and pull strings to obtain a new playing field in the neighbourhood in which you live you will do more to stamp out juvenile offences than by all the severity possible. I have exhausted the time allowed me and I will say little on the subject of treatment. But I do want to urge

this. Make it your duty to do two things. Learn something about the practical side of approved schools, hostels, and such places. Go and visit them and see for yourselves what they succeed in doing in the way of training and of providing wholesome influences and environment. You will use them with far greater effect if you have this first-hand knowledge. The other thing I ask is that you study both the possibilities and the limitations of the probation system. I promise you that you will not do this in a day. But when you have done it—if you have done your further duty in seeing that your court has the assistance of a trained and whole-time probation officer—everything else will follow.

I end where I began. The juvenile court has a heavy responsibility and a great opportunity. If we can stop the errors of the young offender we shall go far towards solving at the same time the infinitely more serious problem of adult crime.

II. THE CHRISTIAN ATTITUDE TOWARDS THE CRIMINAL

★

Conference of Student Christian Movement, Oxford University

II

I was urged to select a title of some kind to be printed on the Agenda as the announcement of this talk. I have therefore chosen that of 'The Christian Attitude Towards the Criminal'. But you will see at once what a vast subject that would be were I to attempt to cover it fully. It would necessitate a discussion ranging over the fields of heredity, of economics, and of sociology, besides a consideration of the teaching of religion. You will accordingly be greatly relieved to hear that I do not propose to make any such attempt, and that for two very good reasons. In the first place, I have not sufficient time, and in the second, I have not sufficient knowledge. My modest effort will be to talk to you about crime as an existing and practical problem within my own experience, to tell you something of the work there is to do, and, if this form of social service attracts you, to give you some suggestions which perhaps at a later

stage in your careers you may find of value. If I am to cover a reasonable amount of ground I shall be forced to make a certain number of more or less dogmatic statements and ask you to accept them: some assumptions are essential if we are to avoid abrupt halts for arguments on theory: we shall not climb very far up the ladder in the hour at our disposal if we insist upon stopping to examine the strength of each rung. I shall not mind in the least if I do not succeed in convincing you of the truth of every statement that I make. It is far more important that I should succeed in making you think for yourselves. By all means catechise me afterwards as freely as you wish: the only fatal thing is that we should remain in the same mental groove on these subjects: we need new ideas, otherwise there will be an end of the progress and advance upon the subject of the right treatment of delinquency which have been so marked a feature of the last thirty or forty years in this country.

What should be the mental approach of a Christian to a problem, to this one as to any other? I make not the slightest profession to any knowledge of theology but I imagine it is a safe answer to say that we ought to wish to do the

will of God. The translation of that answer into everyday language is that we should desire to do good. Specifically, in this matter of our approach to delinquency, we should try to make men good rather than evil: we should do our best to create conditions in which those who have habitually been wicked may best be helped to be virtuous. These are surely aims worthy of a Christian? To succeed in them is to reduce the vast sum of suffering which comes from wrongdoing. It is to increase the amount of good. It is to lessen the amount of sin. You are members of a Christian Association, and if I as a layman may venture to give you any answer at all to my own question I do suggest that this should be your attitude of mind in approaching the problem of the criminal. If I am right, you will see at once two things. In the first place we must devote our attention to the offender. It is the criminal and not the crime who must be our main interest. The problem is a human one. The important thing is not what a man or woman has done but why he or she has done it. In the second place, we must realize that though certain causes of criminal conduct are common to large numbers of lawbreakers—for example poverty is one of the motives which

induce many offenders to steal—nevertheless there is almost always no single cause to which we can point as the occasion of criminality. It is in the overwhelming majority of cases the result of two or more concurrent influences. To take a simple and obvious instance, poverty and bad companionship may be the reasons why a man steals, or poverty, bad companionship, and drink may all have some part in the fall into crime. If therefore our aim is to make men better, or to afford them the means of bettering themselves, it is clear enough that we are the more likely to be successful in proportion as we suit our methods to the needs and weaknesses of individuals. In other words, the second point we have got to learn is that our problem is how best to deal with a number of men and women who habitually behave as we do not want them to behave, and is not merely the problem of a 'criminal class'.

I do hope you are prepared to agree with me so far. After all, what I have said is no more than that the first reaction of the Christian to the criminal should be a desire to understand his personal faults with the object of being able the more effectively to help him overcome them. That, surely, is not too absurd or revolutionary

a doctrine. Nevertheless, it is one not at all acceptable to many persons who write about these matters. For example, you will find writers who still insist upon the primary necessity for Expiation: you will meet others who are inexorably determined that the Retribution of society upon the wrongdoer should be the first essential, and that it should precede any reformative influences or treatment. In each of these theories, of Expiation and of Retribution, as you will note, there is necessarily involved for the offender the concomitant of suffering, since without suffering neither the expiation of his sin by a lawbreaker nor the retribution of society upon him are possible. Both expiation and retribution are meaningless terms unless they involve the element of suffering. In my view, those who maintain these theories are concentrating too closely upon the wrongful act and too little upon the surrounding circumstances. An act may be vile but to insist that he who commits it *must* be made to suffer is, I think, not Christian, and is, I believe, not common sense. There is a prison here in Oxford. If I were able to take you round it I could show you instances of men who had committed very wrong acts but who had committed them under

extreme stress of ignorance, or weakness, or stupidity, or temptation. I submit that only a person very much more hard-hearted than a Christian ought to be would desire them to be made to suffer by the law to any greater degree than is absolutely unavoidable. As to this minimum of hurt or suffering we must remember that there is a paramount requirement of protection for the community as a whole. Therefore, although a lawbreaker may be ignorant or poor, or may have been subjected to overpowering temptation, it is not Christian charity but blind sentimentalism which shrinks from putting upon him even such a measure of restraint as causes him suffering if that restraint is required for the protection of others.

It is really important that we should retain a grasp of reality in these matters. By all means let us walk with our heads high towards Heaven so long as our feet remain safely on earth. I am speaking to you as members of a Christian association and it is for that reason that I emphasize in the first place that an attitude towards the lawbreaker of repudiation, of condemnation, and of reproach seems, to me at any rate, too similar to that of the Pharisee in the Gospel story to be what charity demands.

But that does not in the least mean that there are no bad men in the world or that every person who commits an odious act is some sort of invalid. You are probably all familiar with the schoolboy's definition of faith as 'That which makes us believe what we know to be untrue', but charity does not require us to believe what is contrary to common sense and to experience. It is still possible to find a vast amount of pseudo-scientific rubbish written to persuade us that there is no such person as a wicked man, and that no man—and still more certainly no child—is ever to be blamed for his acts, however evil or deliberate.

I have recently been reading a singularly ill-named book—*Common Sense and the Adolescent* by Miss Ethel Mannin. Speaking of children charged with criminal acts she says: 'Most cases which come before Childrens' Courts are cases for a psychologist. . . . Every delinquent is an unfortunate. . . . I would rule out courts altogether and use psychological clinics for enquiry into young offenders' misdeeds, and not have magistrates but psychologists determine what is best to be done for the child. . . . Punishment of course would be abolished and replaced by treatment.' All this is ill-informed

and exaggerated. I have met some of the most experienced juvenile court justices, both men and women, and some of the leading medical psychological specialists, and I have heard no such statements or suggestions from them. Foolish overstatements of this sort do actual mischief because they repel reasonable enquirers and slow down the rate of progress of reforms. There is ample room for improvement in our juvenile courts but we shall not attain it by hysteria. The plain truth is that the work of the psychologist for both adult and juvenile offenders is invaluable in a certain residue of cases. It is both cruel and silly to punish in the ordinary way those who are mentally abnormal. But the suggestion which is sometimes made by writers with little practical knowledge that the commission of a crime is, even in the case of a child, *prima facie* evidence of abnormality, is mischievous twaddle. Moreover, as Christians it is not unimportant for you to remember that there are such things as sin and immorality, ludicrous and absurd as those conceptions have become to some modern writers.

If we regard as our starting point the recognition of the fact that criminals are men and, like other men, are not cut from a single pattern,

we shall see that the rule-of-thumb computation of sentences according to the iniquity of the crime must be mistaken. A few weeks ago Lord Roche, in opening the new headquarters of The Institute for the Scientific Treatment of Delinquency, said this: 'At one end of the scale is the person who offends against the law from a weakness or infirmity which may be remedied or cured: at the other is the person who has said "Evil be thou my good", and has determined to live by preying upon society. To act upon one theory or to adopt the same practice in dealing with these extremes seems to me, I confess, to be not merely unwise but to be even ridiculous.' But this practice, which Lord Roche calls 'unwise and even ridiculous', is precisely that which is followed by those courts which, in the determination of sentence, concentrate solely or mainly upon the detail of the offender's criminal act. To have eyes for the detail of the act but to ignore the circumstances which have been the cause of its commission leads inevitably to like punishment being awarded to like offences although the offenders may be fundamentally dissimilar. It is as if a doctor were to treat identically all his cases which had certain symptoms without enquiry

into what had caused the symptoms. It is in that word *treatment* that the secret lies. In the vast majority of cases which come before the criminal courts it is comparatively simple to come to a right decision between the innocence or the guilt of the prisoner. As Lord Roche points out: 'The difficulty lies in the decision as to what sentence to impose or to abstain from imposing.' If the detail of the criminal act were the true guide to sentence there would be no difficulty, and Lord Roche's words would be meaningless. If we once realize that the function of the court should be to treat an offender—and that such treatment may or may not in any individual case properly include severity of punishment—we shall then find that things begin to fall into place in our minds. It becomes clear enough that always the court should desire to have as complete an understanding of all the circumstances of an offender as is possible. Very often this is exceedingly difficult. Without such understanding, however, it is quite certain that in many cases there will be cruelty and injustice from which not only the delinquent but the community will suffer. For do not lose sight of the fact that an offender may sometimes be saved from further wrong-

doing by wise treatment while he may be hardened and made permanently anti-social by a mistaken sentence. Nothing, therefore, is more certain than that an ignorant or stupid court is a matter of concern to the entire community. The mischief which it may do is very serious. It is a modern development of this recognition by enlightened courts of the need for fuller knowledge that there is slowly growing up a wise practice of benches in difficult cases asking the assistance of experts. The simplest example of this practice, and one of which I am sure you are already aware, is that of a court sending a juvenile offender to a Child Guidance Clinic for observation and report: and you have probably heard that in some types of offences it is increasingly the custom, even in the cases of adult offenders, for a court to consult the psychiatrist before deciding upon sentence. It is true that this wise advance in practice is all too slow. We are all painfully conscious that there are many magistrates and —*horresco referens*—some others more highly placed in the judicial hierarchy who regard all reference to psychology with derision and contempt. But I am making no attempt to-night to give you a critical survey of the administra-

tion of justice in the courts. My object is solely to indicate to you certain general principles which I believe to be right. There is therefore no justification for me to lead you down any side track, however alluring in appearance, merely to amuse ourselves at the end of it by the spectacle of magisterial incompetence. In all that I have said I shall have attained my purpose if I have made plain the fact that in my view the right approach of the Christian social worker to the problem of delinquency should be that wherever reasonably possible the first object to be proposed should be the reformation of the offender. Such a statement is by no means universally accepted. Let me quote you an instance from high judicial authority of a contrary opinion. I read it in an account of the December Assize at Bedford in 1937. A miner aged nineteen had been found guilty of a sex offence. He had been under observation since his arrest and the Prison Commissioners had reported that he was a suitable case for Borstal treatment and likely to benefit therefrom. The Judge is, however, reported as saying: 'I do not see why he should be given the advantage of a Borstal training instead of punishment for the wrong he has

done.' There you have the two points of view. One—that of the trained social workers whose responsibility it is to observe these lads awaiting sentence—which desires the betterment of the offender and, incidentally, the good of the community: the other coldly pragmatical, seeing no further than the necessity for retribution. I have, I hope, at least made plain where my preference lies.

So much for the aim. We come now to the method. Clearly enough there can be no single method of treatment universally suitable to offenders who differ in every possible way from one another. The law as the instrument of the will of society must have at its disposal a wide choice of weapons—some mild, some stern—if it is to deal wisely with persons guilty of every type and degree of wickedness, of every age and class, actuated by every variety of motive, and ranging from first offenders to hardened recidivists. And indeed the choice of treatment which a court possesses is extremely wide. It would be not a little tedious for you if I were to describe them all in detail. Moreover, it would be completely unprofitable. I do, however, want to say something in broad outline about two principal treatments which the courts use

—those of probation and imprisonment. Probation differs from other treatments in that it is an entirely constructive method of approach to the offender. It is an attempt not to punish him but to do lasting good to his character. When the attempt succeeds not only the individual offender but the whole community reaps the benefit. It is, therefore, only practical common sense that probation should be used whenever it is likely to be successful, unless in a particular case there is some especial reason of public policy to the contrary. On the other hand, experience has shown that there are certain types of cases in which there is little prospect of success. Every case in which probation fails is a double misfortune. Not only has the court failed so far as the individual offender is concerned, whereas by some alternative treatment it might perhaps have been successful, but there is a danger that the failure may bring the system itself into disrepute. The first duty of a court therefore is to learn to distinguish those cases in which probation is inadvisable. Success is unlikely, to take a simple example, where, in the case of a child, the circumstances of the home are morally bad; or still more so when the parents are antagonistic to the good

influence of the probation officer. Similarly, when once probation has been already tried, either with a juvenile or an adult offender, a court will be wise to consider with especial care whether it is worth while to be content with probation a second time if the defendant commits a new offence. It is, of course, impossible to lay down any hard and fast rule. Courts must be guided by common sense and by their knowledge of human nature. But, above all, they will be wise to trust to the opinion and advice of the probation officer who will have to take charge of the case if a probation order is in fact made. It is one of the most important duties of an officer to make the preliminary enquiries upon which the report as to the suitability of the case for probation is based. I hope you noticed that I referred a moment ago to adult probationers. I did this of set purpose because some people have got the quite erroneous impression that probation is a form of treatment suitable only for juveniles. This is entirely wrong. It can be used with success, not only for adults of both sexes as well as for juveniles, but for offenders who have been found guilty of serious crimes as well as for those who have committed merely trivial mis-

demeanours. Moreover, if a court is skilful in its choice of cases, probation can sometimes be the means of salvation of men and women with long strings of previous convictions. To get the maximum of success from the probation system, you need two things—an informed court and a trained and competent probation officer. It may be worth while to say something of the duties of an officer. Of course, his main duty is the supervision of those placed under his charge by the court. The way in which that supervision is exercised will naturally vary. A probation officer is a friend appointed by the court. Obviously enough, like any other friend, he will show his friendship in ways which vary with the needs of the individual whom he is trying to help. If, for example, the probation officer is dealing with an adult offender, his principal anxiety will probably be to see him in employment, or to ensure that the wages which he earns are used for the maintenance of his family, rather than for the support of the local bookmaker: if the officer is looking after a boy who is already in work he will, in all probability, be mainly concerned to see that he gets into a decent club and has access to those healthy interests and activities which are the

surest means of keeping him out of mischief. These are, of course, no more than illustrations of the fact that methods of guidance and helpfulness are infinitely varied according to the needs of each case. I have described the probation officer as a friend. So he is, but he is a friend armed by the court with very adequate powers of authority. He is the judge as to whether a probationer is really doing his best to pull himself together and make a new start: if he thinks the probationer is not making a serious effort to do better the officer can bring him back before the court, when he may be further dealt with—or when he may even be punished for the original offence for which he was put on probation. In addition to this control, a wise court and an experienced probation officer can make very effective use of the power which the magistrates have to make 'conditions'. Thus, where Tommy Jones has always been a good boy until the evil hour when he began that close companionship with Johnny Brown which has led him from one scrape into another, the court may make it a 'condition' of the probation order that the two boys no longer associate with one another; where such conditions appear to be desirable it may be ordered that

an adult offender keep away altogether from dog racing or a particular public house; or a woman may be prohibited from visiting London during the sales if it has been found that the temptation to steal at such a time has been too much for her.

Supervision, then, is the first and main duty of a probation officer. But it is by no means his only one. I shall make no attempt to describe his other activities to you. I will merely tell you that they include most of the useful and humane services which one person can render to another who is in trouble. What has the career of a probation officer to offer any young man or young woman—because, of course, those officers who take charge of women and girl probationers are themselves women—interested in social work? It offers an infinity of hard work, frequent failures and disappointments, not a great deal of money, and, finally, the opportunity of living a truly valuable, unselfish, and constructive life. If any of you feel the urge to devote yourselves to social work, and if this form of service appeals to you, then you should get in touch with the Probation Department of the Home Office where you can obtain particulars of the training scheme which is now in force. There are alter-

native forms of training according to the needs of the individual candidate: the training may be for as short a time as six months or it may conceivably last two years. In any event the candidate is paid three pounds a week during his or her period of training. On appointment to a post a whole-time trained officer will start at a minimum salary of £220 a year, rising annually to £400, and there will be some few exceptional supervisory positions at from £500 to perhaps £600. You will make very much more money in one of the professions, if you are successful, than you can ever hope to do as a probation officer. But if your criterion is what you can get out of life, then in any event you should not give a moment's thought to probation. The successful probation officer is a man or woman who thinks not of how much he can get but of how much he can give.

Now I want to say a word about imprisonment. We still have with us the diehard of the old school—too often alas! we have him on the Bench—who believes that prisons should be places of fear and punishment, and nothing else. He knows nothing about prisons. Very often he has never been inside one. He has neither read nor really thought about the sub-

ject. But he has inherited these conventional ideas and it does not occur to him to alter them. Indeed, he looks upon the suggestion of his being mistaken as evidence of an almost decadent sentimentality in those who take an opposite view. It is because I believe you young people can do a great deal of useful educational work to counteract the diehard influence that I am anxious to guide your thoughts and enquiries into what I believe to be the right direction. In the first place, it is not a question of sentiment at all: sentiment does not enter into the matter. It is only in a very minor degree as a matter of religion or of charity that you need advocate any contrary ideas. You have an overwhelming case on the ground of mere expediency. For consider the facts. A large number of men and women are committed to prison every year. It is obviously desirable that upon their release these prisoners should not offend again. It is a perfectly *logical* argument that if prison conditions are made sufficiently harsh and onerous men who have one experience of a prison sentence will be deterred from running the risk of getting another. Indeed, this is the argument which, in one form or another, one constantly meets.

It is, however, entirely fallacious. It is founded upon a false premise—upon an ignorance of human nature. Study the penal history of this country for the past hundred or hundred and fifty years. You will find long periods during which the punishments inflicted by the courts were utterly atrocious, while the prisons were unspeakable dens of misery. Theoretically—if the deterrent theory were correct—criminals once punished should have been cowed into virtue. But nothing of the kind happened. They emerged from prison brutalized and hopeless, and after long sentences *incapable* of living by honest industry. That is not in the least degree surprising. If by confining men in unnatural conditions we destroy those qualities and talents which make it possible for men to earn their living at a trade it is not to be wondered at if they attempt to live by theft or dishonesty. And it is easy for example to destroy initiative by denying a prisoner any opportunity of using his own judgment or of doing anything, however small, except precisely what he is told: it is easy to ruin a prisoner's manual skill by keeping him for long periods at futile unskilled tasks: hope, ambition, and self-respect—each can easily be crushed by stupidity or cruelty, and when they

are gone it is useless to look for rehabilitation. To send a man out of prison with a mind twisted by abnormal living is to handicap him, even when he has the *desire* to live honestly, as he would be handicapped by a twisted limb. All those ameliorations of prison life which have been introduced in the last few years are intended not to make prisoners enjoy their sentences but to enable them to live lives nearer the normal and so be the more capable on their discharge of standing up to the fierce tests of normal competitive existence. It is for this end that prisoners are to-day allowed to earn small sums of money as payment for their work: the result has been that they double and treble their former output and learn that honest labour brings a reward and has an interest of its own. It is for the same purpose that useless degradations have been removed, that men are taught trades, that the work of Discharged Prisoners' Aid Societies is increasingly assisted and improved, and that visitors likely to be an influence for good are allowed to visit prisoners in their cells. These are but random examples of the immense strides which have been made already. I mention them to you for a double purpose. There may be some of you who, as

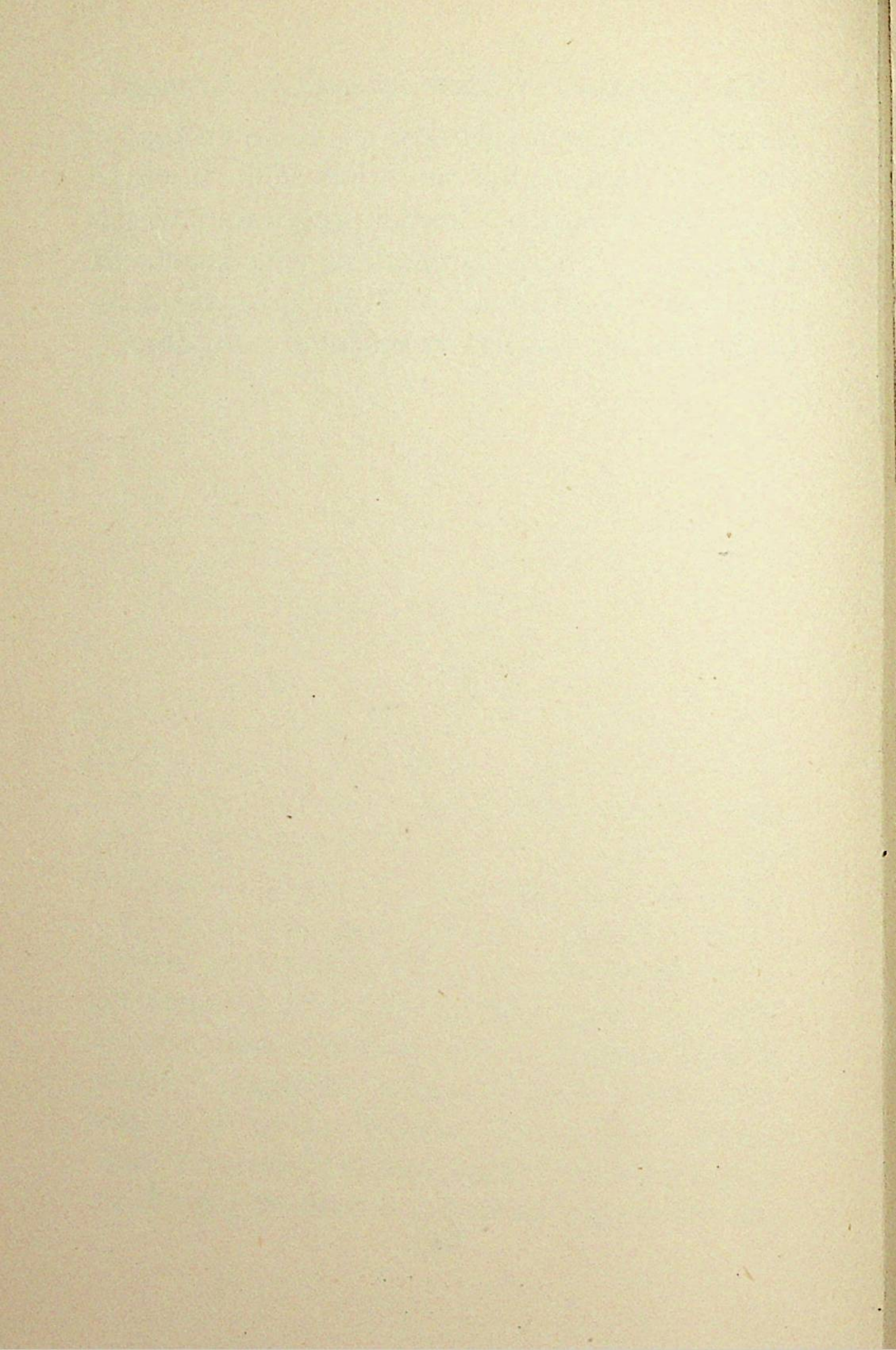
prison visitors or as members of Prisoners' Aid Societies, could take part in this work. Even if that should not be the case, your understanding and interest are of value. There are in this country no reformers more anxiously desirous of wise reform than the Prison Commissioners. But they cannot advance either far or fast ahead of public opinion. All of you can do service in moulding public opinion in the direction of mercy and understanding, which is also the direction of common sense. May I give you a word of counsel in this? Never overstate your case. Insist by all means that the wise way of regarding prison is that it should be a place of social re-education, where, by methods suited to the individual offender, he should, if possible, be induced to realize that he must respect the rights of others. But do not go to the length of claiming that *every* offender can be made to realize this by kind and indulgent teaching. It is simply untrue. Some men—and probably some women, but I am not rash enough to generalize about them—can be taught this lesson only by severity. And there is a small residue who cannot be taught at all. The treatment of these persistent recidivists is a matter of interest and importance, but it is not one with which it

is possible for me to deal adequately in a few sentences.

The man least likely to break the law is the normal man who tries to control desires socially harmful. It is for this reason that legal sanctions which tend to produce abnormality are so far as possible to be avoided. Imprisonment is itself necessarily an interference with normality. That is one reason why courts should never order imprisonment unless such a course is unavoidable. It is often necessary. It would be impossible to say that cellular confinement never did any good. It ensures at any rate prevention and a measure of deterrence. But it is superficial to depend too far upon these. The point to understand is that the prevention from crime is only temporary, and that cellular confinement may cause a permanent moral deterioration which completely nullifies the influence of deterrence.

I am so glad that you are attending these lectures and giving time and study to these problems. It is a relief to find some one who believes that reflection and experience should precede dogmatic pronouncement upon the subject of prison reform. There is so much misery caused by crime—and by no means only to the guilty—that criminology repays the in-

terest of the social worker no less than that of the mere seeker after sensation. That is why it is worthy of a place in the programme of this Conference. There is something which each one of you can do. And you will remember the truth of the saying: *Qui sert les malheureux, sert Dieu.*



III. THE MAGISTRATE AND HIS WORK

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Conference of Lancashire Justices and Probation Officers,
Town Hall, Preston

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III

The speaker who preceded me said so much that was excellent and helpful that I am reluctant to appear in any way to criticize. But there was one sentence with which he opened his address to which I must object. He said: 'The whole success of probation depends upon the probation officer.' He did not really mean this. In fact he went on to admit as much, when he described so admirably the essential duties of those justices who are members of the probation committee, for those duties would be superfluous if the probation officer were the *only* person upon whom the success of probation depended. At the end of his address the speaker said that the probation officer was 'the biggest factor' in probation, and with this I agree. The last thing in my mind is to score a debating point about his earlier phrase. I mention it because it was a striking sentence, and because any magistrate who heard it uttered might, if

he were not fully acquainted with his responsibilities towards the matter of probation, draw from it a quite erroneous conclusion. A newly appointed magistrate would, I think, inevitably say: 'Here is a very experienced chairman who tells me that the probation officer is the only person who matters: whatever else therefore there may be for me to learn about magisterial work there is nothing in this probation business which concerns me.' That is just as wrong and mistaken as any opinion can be. The essence of probation work by a court is that it is a partnership between the justices and their probation officer. It is literally impossible for a bench to get the best results unless both the justices and the probation officer are each completely competent at their own work. It is no more true to say that success depends *wholly* upon the probation officer than it is to say that when a man goes out shooting his success depends *wholly* upon the cartridges in his gun. It is quite true that if there are no shot in your gun you will never kill a bird. But it is no less true that however stuffed with shot your cartridges may be you will not kill a bird unless you hold your gun straight. The shot in the cartridges are the skill, training, personality, keenness, and equipment

of the probation officer. They are vital to success. The aiming of the gun is the selection of cases. That also is vital to success—and that selection is the sole responsibility of the Bench. It is therefore a most important duty of all magistrates, whether they are members of the probation committee or not, to learn how to select cases likely to give good results. And it is not only an important duty: it is an extremely difficult one. Every missed opportunity—when a man who might reasonably have been put on probation is sent to prison—is a public disservice. Every mistaken case—when a quite unsuitable person is put on probation—is mischievous because it overloads the officer with useless work, and by inviting failure tends to bring the system of probation into disrepute. The co-operation of magistrates with the probation officer is essential. It is impossible to give that co-operation without care and study by all members of the Bench, and it is for that reason that I deprecate always any phrase which may be misinterpreted by a new justice as indicating that he need not take pains to learn anything about probation unless he is a member of the probation committee.

The speaker also said something as to the

duty of justices to explain to the probationer his new liabilities and responsibilities. He called it the 'interpretation of probation' to the probationer. Very definitely, this interpretation is not the duty of the officer, but that of the court. It is a duty which the court very often performs atrociously. I have many times heard chairmen start their address to the defendant by saying: 'Well, we have decided to let you off this time,' thus giving an utterly false impression both to the defendant and to the public of what probation is. I do not think you could find a single probation officer with experience of country Benches who could not give you instance after instance of probationers who, after being addressed by the chairman, had still no idea at all of what was meant by the words they had just heard. Only a few days ago an officer told me of a lad whom he asked outside the court if he understood what he had been told. The boy had nothing more than a confused recollection of the form of recognizance which the Clerk had read to him, and replied that though he had not understood anything that the chairman had said, he did know well enough from what the Clerk had told him that he owed the King £5, and what was he to do about it as he had

not got so much money in the world? All this is deplorable if we think of what an excellent opportunity the chairman has of starting off a probationer in the right spirit to appreciate and benefit from his new chance. Moreover, the chairman's task is simple in the extreme if he will only remember what it is that the court is doing: it is suspending sentence. Probation is just that—a suspension of sentence. Any chairman can find some simple form of words in which to say to a defendant: 'We find you guilty of the charge against you. It is a serious offence, and we have discussed amongst ourselves whether we should send you to prison for three months for it. But we have decided to ask this gentleman to look after you. So long as you do what he tells you you will not be given any further punishment. But if you don't obey his instructions we may then decide to send you to prison for the three months after all.' If a man, or indeed a boy, cannot understand that warning he ought not to be on probation: he ought to be in a mental home. If the chairman adds that the defendant need not agree to the course which the Bench proposes, but may, if he prefers to do so, immediately go to prison or pay a fine—whichever is the alternative fixed by the

Bench—then the court will have made clear the consent of the defendant to be put on probation, which is an integral part of the system. Sometimes a chairman wishes to go beyond all this, and to explain that a period of probation is a real testing time which will make serious demands upon the probationer. If he succeeds in impressing the disciplinary element of the system upon either the defendant or the public in court he will do useful work. But he must remember that he is talking to a person who is ill at ease, in an embarrassing position, who is not well educated, and who is hearing something for the first time. For these reasons he must use the simplest of language and talk very slowly. Then he will be understood, though he may not be so 'impressive'.

What I have said about simplicity is of course material in every aspect of magisterial work in court. It is indeed fundamental to efficiency. Always we should remember that we are dealing, not with types, but with individuals. Our approach, therefore, should be such as will be most likely to succeed with the actual person standing in the dock. In each case there will be one nerve we can touch, one feeling to which we can appeal, more likely than any other to

lead the man or woman before us to pay heed to what we say. But we simply cannot find that right approach if the defendant is not able to help us because he only half understands the proceedings, and if we ourselves do not know more than half the facts. Of course, this view of our duties means that we must take a very great deal more trouble than we sometimes do in the disposal of cases. But surely we ought not to grudge that. I have always maintained that a country Bench should be more successful in its *treatment* of prisoners after conviction than a stipendiary in a large town. It is a physical impossibility for a Metropolitan Police Magistrate in London, for example, to devote very long to any one case when he has perhaps one hundred cases in his list for the day. But, at any rate outside the large cities, it is a rarity for lay magistrates to be so overburdened with work as to be unable to give ample time to the consideration of all those cases which may repay detailed examination of the circumstances. No magistrate who is a member of the juvenile court panel would deny that the information which we now get under the Childrens' Act is helpful and illuminating. If it is efficiently collected by the probation officer and studied intelligently

by the justices such information makes the difference between light and darkness. We see standing before us not a mere number in a charge sheet but an individual child. In adult courts, too, it would often be possible by remand and enquiry to get a similar result. In a juvenile court recently I saw two children tried for an offence which might have been malicious or might have been the consequence of ignorance. The justices could not be sure which was the case. The chairman gave the two boys some very sound advice, and the court then adjourned the hearing for eight weeks, at the end of which time the boys' conduct would be reported and the justices would decide upon treatment. Surely, that was an admirable procedure? Might it not give excellent results if it were adopted in suitable cases in the adult courts? It may be that the suggestion is not new to you in this part of the country, but the practice is not, I think, one which is familiar to lay magistrates as a body.

As to *simplicity*: for what do we presume to take our places upon the Bench at all? Humbly to try and do justice. If we look at it in that way can it be denied that justice is more likely to be done if the defendant is given every chance of

putting his case to the court? And is it possible for him to have every chance to do so unless he understands the proceedings? Do you believe that every prisoner really understands everything relevant that is said in court? or that he knows what points are material for his own defence? I am not speaking of the old offender who has stood in the dock fifty or a hundred times, but of the casual offender *whom by wrong treatment we may turn into the persistent criminal.* If you remember the strange surroundings in which they stand, the atmosphere of hostility which they sense around them, the legal terms and formal language which they hear, you will find it hard to believe such men are not often very much puzzled and bemused. If you think that I am wrong, or that I exaggerate, ask the opinion of any probation officer of experience, or of a prison worker. Occasionally facts fail to emerge during the hearing of a case which make the difference between innocence and guilt. More frequently, the court is not told of mitigating circumstances which it should know— which it *must* know if complete justice is to be done. Before a man is released from a prison he comes before a committee of the Discharged Prisoners' Aid Society. During his time in

prison it is not at all uncommon for facts to be discovered by his visitor, or by the Governor or Chaplain, which have never come out in court but which, if they *had* emerged during the trial, might have made a complete change in the sentence. Again and again I have asked men: 'Why on earth did you not tell the magistrates yourself at the time?' and always there is the same reply: 'I did not know it would make any difference.' You may find a further proof that defendants do not always understand the proceedings in the fact that men sometimes enter a plea of guilty under a complete misapprehension as to the ingredients of the offence. It is not at all unknown for a court to direct a change of plea, and to acquit a defendant who has pleaded guilty. Thus, I have heard a man plead guilty to a charge of larceny because he had in fact 'taken' some lead belonging to a neighbour, and it was only as he was about to be sentenced that he remarked that he had meant no harm as the prosecutor had given him permission to take the lead if he could find a purchaser. The owner of the lead was recalled to the witness box and instantly remembered the agreement. Similarly, I have seen a defendant plead guilty to a charge of false pretences because he had in

fact obtained money by falsely representing his watch to be made of silver. It later transpired, however, that he himself believed the watch to be a silver one, and had had no intent whatever to defraud—the essence of the offence. Any magistrate of experience could multiply such instances. Justice, therefore, requires simplicity so that an uneducated man without legal aid may understand the case against him; common sense requires it when such a man after conviction is to be admonished or advised. What is the value of advice if it is not intelligible? Yet I recently heard the chairman of a juvenile court begin his remarks to a boy of nine who had broken into an empty house by saying: 'Doubtless you thought that this was a courageous escapade.' And under these same heads of intelligibility and of fairness, can anything be more conducive to shutting out material which the defendant desires to bring before the court than the common practice of saying to quite uneducated men: 'You must not make statements: you must only ask questions,' when they are invited to cross-examine witnesses for the prosecution. The court should ensure invariably that if a man cannot put his questions into proper form they should be put for him. Other-

wise, he is virtually denied the right of cross-examination—the most effective method of establishing the truth—merely because he cannot afford to employ a lawyer.

All this may seem to some of you painfully elementary, and perhaps you think that I am doing no more than expound the obvious at considerable length. But, in fact, the work of a magistrate though it must be studied as a science should be practised as an art. I remember being told on one occasion some years ago by a magistrate that I was a great deal too fussy about what he called finnicky points of law. He declared that a country police court was not a place in which to split legal hairs: it was a court not so much of law as of common sense. I think that is a most dangerous doctrine. It is this conception of the office of a magistrate which leads to a relaxation, or even to a complete evasion, of the laws of evidence. Some justices are inclined to proceed not alone on what has been proved in evidence but upon what they know—or think they know—privately. This is the explanation of many a conviction of a defendant of indifferent character by the justices of a small town, weak as the actual evidence may be. It is for reasons such

as this that I believe so firmly that upon every Bench there should be at least one magistrate—preferably the chairman—with legal training and experience. I do not overlook the fact that lay justices have the assistance of their Clerk. But the function of the Clerk is to *advise*. It is not his function to lay down the law for the court. The justices have an absolute right to decline to accept his advice. It is a complete, though by no means an uncommon, fallacy for magistrates to believe that they are bound to accept the advice of their Clerk in matters of law, though not of course in matters of fact. In truth, however, whether the question be one of law or of fact, the responsibility for any decision is that of the justices, just as theirs' is the responsibility for the conduct of proceedings in court. If the responsibility is that of the justices—as it undoubtedly is—then the final decision as to the law must also be theirs, since it is upon that decision that their responsibility is based. It is inconceivable that the justices should be responsible for a decision made for them by their Clerk, and over which they have no control.

It is for such reasons as these, that I believe all the members of a Bench should have at least

some effective grasp of legal principles. It is unpractical to ask for more than one qualified lawyer upon each Bench. And indeed, as Mr. Justice du Parcq has recently pointed out, it would be unfortunate if the impression ever prevailed that the law of this country could be administered only by people who had made it their profession, and was a thing which the ordinary man could not be expected to understand. Nevertheless, it is surely impossible to justify the continuation of our system of a lay magistracy unless the justices are prepared to attain a reasonable degree of efficiency, and that most certainly cannot be done without effort and study. Efficiency in actual court work will enable a Bench to come to wise decisions as to whether a defendant should be convicted or acquitted. It will help very little in decision upon treatment after conviction. Experience and understanding are what are then required. That word understanding is the key which unlocks most doors. If I may mix my metaphors, *Understanding* is bred by *Common Sense* out of *Humanity*, and it is one of the most reliable horses in a magisterial stable. It is in most cases easy enough to determine whether a man stole a watch: the important thing to

know is why he stole it. Uncover motive and you discover character. Until you have found character, treatment is empirical: it is mere guesswork. When you have found it, you can then individualize your treatment, and individual treatment is the only sort that will give you results. Moreover, it is the only sort which will prevent useless or harmful punishment and suffering. You may think that it is a simple matter for me to utter these generalities, and that it is a more difficult business to apply them. I will therefore give you instances of two actual cases where, in my opinion, and according to my ideas, the action of the court was mistaken. If it serve no other purpose, this sort of analysis is useful in clarifying our minds. In May of this year, a curate was convicted of stealing a hat of the value of 4s. 9d. from a shop. He was stated to have been of irreproachable character prior to the offence: he had been in poor health, and during the preceding year had undergone two serious operations. He had been out of employment, and out of his small means in his present curacy he assisted his parents, who were invalids. At the time of the theft he had 25s. in his pockets. He was sentenced to six weeks' imprisonment. In the Press report, I read that

he 'seemed utterly dazed by the sentence and had to be helped by two police officers to leave the dock'. Let us analyse the sentence. The duty of the magistrate is to protect the public against a repetition of the offence by the defendant and by others of a like status. It is obvious that a court, in sentencing a first offender, should not consider the measure of severity necessary to deter a hardened recidivist; otherwise there could be no such thing as gentleness of treatment, and the Probation of Offenders' Act would become a dead letter. In the present case the defendant was poor, sick, and a first offender to whom in his sacred profession, public shame was a terrible humiliation. He was not likely to steal again. Was it not, therefore, *cruel* to add further needless pain? Was it not also *foolish* if the magistrate failed to see that the spectacle of this unhappy man in his exposure and remorse was in itself sufficient to deter others comparable to himself? Perhaps you disagree with my opinion, but, if you do, I would ask you to tell me what section of the community—or what single individual in this country—was benefited by the extra suffering of his imprisonment? Who would have been injured if the offender had been bound over to come up for judgment if

called upon? Here is another case. The defendant was a lad of twenty, guilty of a trivial offence in a workhouse. He was not in the least a hooligan tramp, but a destitute boy who had worked for six years for one employer from the age of fourteen, but had been for six months out of work. He was sentenced to fourteen days hard labour, and came before the Prisoners' Aid Committee of which I am chairman. There again the sentence was unnecessary, and therefore cruel. In the public interest it was highly mischievous, since its effect upon the lad was to bring him into association with influences in prison which made his rehabilitation into good citizenship more difficult. Would it not have been at once more merciful, more sensible, and more useful to the community for the Bench, instead of his prison sentence, to have handed him over to the probation officer with instructions to get him a job? He was not a criminal, but the justices did their utmost to make him one. How does that benefit the public of which they are themselves the servants? Two first essentials are for justices to rid themselves of this fetish that when a wrong act is committed it is always necessary to punish some one, and for them to realize that, quite apart from such

considerations as mercy and compassion, it is good business to turn bad material into good—sound economics to spend money if there is a reasonable chance of having in the future a valuable citizen where now you have some one who is a public liability. Only the other day I read in the paper a report of the outburst of the chairman of a juvenile court at Wednesbury, at which two boys of ten were charged with an offence against a girl of eight. 'This juvenile court business is the wickedest farce I know. . . . There is nothing at all that justifies the way these cases are treated. . . . It is obvious these boys are only young. If you send them away it is an expense to the ratepayers of £40 a year until the boy is sixteen, and I am against it.' It is curious that newspapers should report such nonsense, more curious that men should publicly deliver themselves of it, and most curious of all that men so ignorant of their functions should act as chairmen of juvenile courts. The duty of a chairman is to study not the interests of the ratepayers but those of the erring children and of the country as a whole. If a nasty little boy can, at the cost of £40 a year, be transformed into a creditable young man the country will have spent its money profitably.

If I have dwelt too long upon this one question of punishment it is for two reasons: in the first place, it is because I believe that this side of magisterial work is least well done; in the second place, because I confess that it is this side which interests me most. Week after week I see the offender not as a theoretical problem but man to man, not from afar but side by side at the table of a small room. I learn his past life and record, his present anxieties, and his future hopes and fears. And I am sure of two things. Prison should be used only when the court, after full consideration, feels that any other treatment would be inadequate. Further, the ordinary average prisoner is just an ordinary average man, not very wicked, or very vicious, or very terrifying, but capable of being turned by stupid treatment, or by a refusal of a chance to rehabilitate himself, into a hopeless, embittered, dangerous, anti-social creature. If you ask me the secret of unvarying success in the approach to the offender I can only say that I have not yet discovered it. But I think that in the majority of cases it *can* be found if we grope for it long and carefully enough. And I know that we are the more certain to gain the co-operation of the prisoner on his discharge if we make him

understand that we approach him without self-righteousness or condemnation but in the spirit of a friend.

IV. THE PROBATION OFFICER AND THE MAGISTRATE

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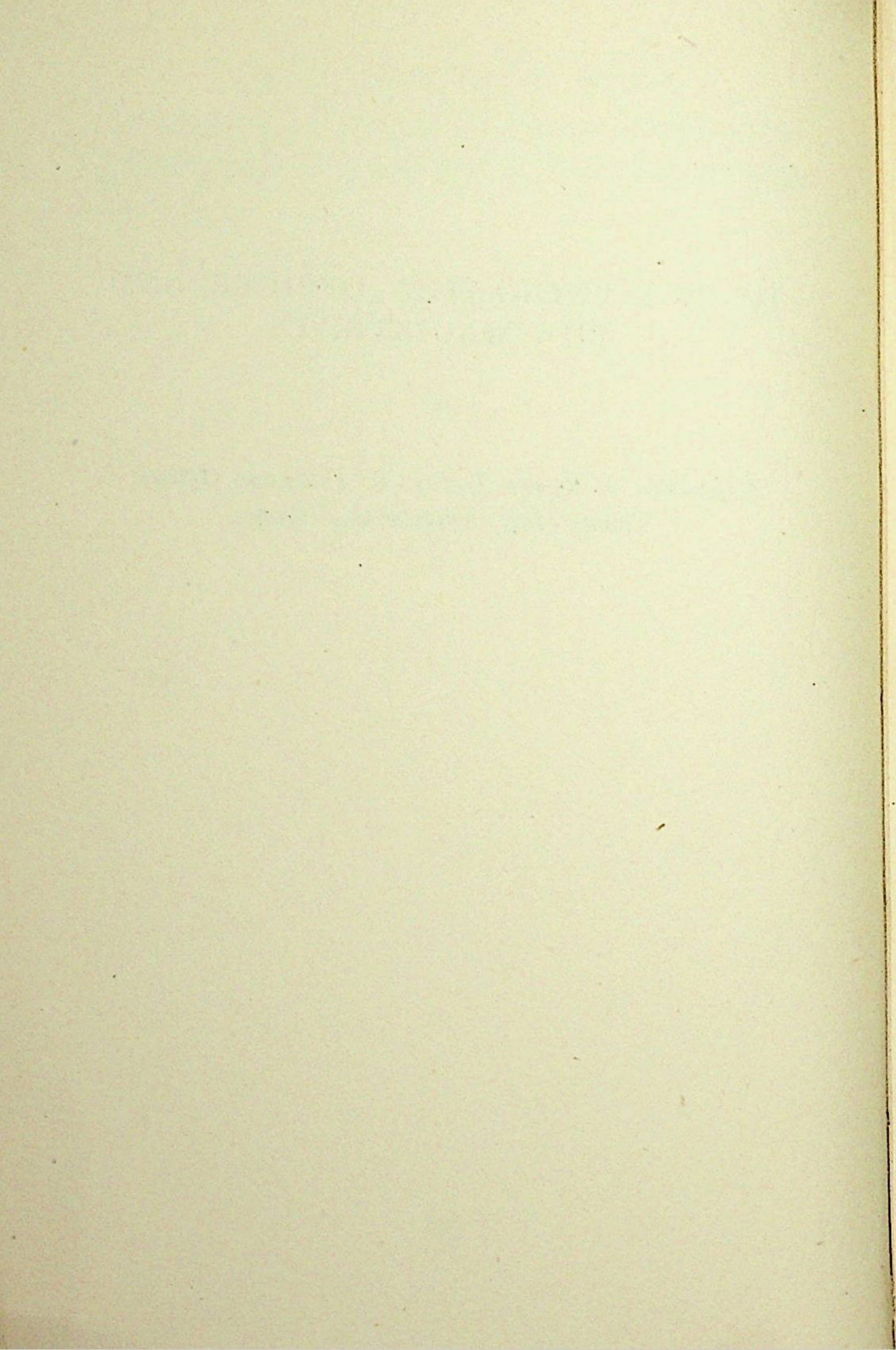
Conference of Surrey Justices & Probation Officers,
County Hall, Kingston-on-Thames



IV

The right relationship between magistrates and the probation officers of their court is a matter of very great importance. For that reason it is of real value that justices and probation officials, who ought to be colleagues in the administration of the criminal law, should sometimes consider each of them the work of the other. The result of such reflection must be to the advantage of both.

Only a few days ago I sat as a member of a committee charged with the duty of choosing candidates for training as probation officers. The task of selection is certainly interesting: in view of the gravity of the responsibilities which the successful candidates will eventually undertake it is important: and from the enormous number of candidates it is not easy. Altogether, there were recently some fifty vacancies and the selection committees interviewed about two hundred candidates who were themselves win-

nowed out with the utmost care from a grand total of over fifteen hundred applicants. I wonder if we have managed to choose the best of them. I hope so, since, as I have said, a great deal depends in the future upon the wisdom of our choice. So far as I myself have a vote in their appointment I am guided by my opinion upon two matters—their mental endowments, actual and potential, and their sense of vocation. Some years ago, when probation was in its infancy in this country, an officer was required to possess little more than a kind heart and strong religious feeling. Since then we have learnt a great deal. To-day the work of a probation officer is recognized by every one—save by those who habitually refuse to recognize the the necessity for any change at all—as a skilled profession. It is very definitely a job which cannot be done adequately by untrained men and women. Nor is it one for which all men and women are trainable. If they are to do their work well, modern probation officers need, for example, to know a certain amount of criminal law, enough psychology to enable them to recognize those cases which require the expert advice of a specialist physician, and a good deal of such types of social legislation as the Unem-

ployment Acts, Matrimonial Acts, Children's Acts and so on. In addition, they must possess a general standard of education sufficient to give them confidence to face extremely difficult problems in their work and to help them in their relationship with such people as employers of labour with whom their work necessarily brings them into touch. All this makes essential a high level of intelligence. It is mere waste of time to attempt to build a substantial edifice upon poor foundations, and it is the same waste of labour to send to a University or to a Training College young men and women who have not got the mental equipment to enable them to absorb the technical instruction we want them to possess. So much for the intellectual side. So far as their sense of vocation is concerned one can make at any rate some test of that by examining the spare-time interests, and activities in which these young people have been engaged prior to their applications for appointment. I myself have been humbled and astonished to find such records of unselfish devoted social work as some of them have done for years past—at boys' clubs, unemployed centres, evening classes and a thousand similar things. The result of this double testing of intel-

ligence and of vocation is that the probation service is being supplied with a steady stream of recruits, both men and women, not only competent but bursting with energy and goodwill. It is, perhaps, an interesting speculation we magistrates might consider for a moment as to what proportion of an average Bench would survive if the same rigid scrutiny were made as to our qualifications to take part in the administration of the law. Or, to look at it in another way, it would not be without value—were such a thing possible—to study the composition of a bench of justices selected by a board of experienced probation officers.

The problem we have to discuss is the wise relationship between the probation officers and the Bench. It is obvious enough that it must be a very serious handicap to the efficiency of the work of a court if the services of its officers are not so used as to give the fullest and the best results. A Bench has two principal functions, the determination of the guilt or innocence of an accused person, and the choice of treatment if he is convicted. With the first of these the probation officer has nothing to do: that is the responsibility of the justices, advised in matters of law by their Clerk. What should be the place

of the probation officer with regard to the second, the selection of sentence? It is the more difficult of the two. In all the courts of this country, from the highest to the lowest, it is the least understood. We are so accustomed to being told—or to telling ourselves—that the courts of justice in this country are the envy and admiration of the rest of the civilized world that we tend rather to the belief that we have nothing further to learn. No sensible person would deny that the wisdom and dignity of our higher courts, and the integrity of all our courts, are a legitimate source of national satisfaction. But the sentences which they pass are very often indeed a source neither of satisfaction nor of admiration to those who are in a position to see their results. This is not a matter for surprise. The most high-minded magistrate or the most erudite judge may make a mistake when he is dealing with subjects in which he is not trained. Penology forms no part of a legal education. Not all judges of the High Court are agreed as to the proper purposes of legal sanctions. Not a large proportion of them have any knowledge of prisons or are therefore able to understand the possible mischief of a wrong prison sentence. There is the same ignorance amongst justices.

Only the other day a question was asked in the House of Commons as to the number of judges and magistrates who had visited prisons. The answer was that during the last five years 1,600 visits had been paid by justices and 12 by judges. There are some 30,000 justices in the country, so that the proportion who take the trouble to pay a single visit to see for themselves the sort of places to which they freely commit offenders averages one per cent annually, including a few who go many times. Is it not lamentable? So far as the lower courts are concerned, we need look no further than the annual reports of the Prison Commissioners for an opinion expressed by those in the best position to judge. You will find there the most scathing criticism of the large numbers of young offenders sent to prison, of useless and harmful short sentences, and of similar blunders. Let me give you an example of what I mean. It is not in the least necessary to search far to find one. In to-day's newspaper there is a case quite typical. A girl of seventeen, previously of good character, appeared before the justices of a seaside town charged with larceny as a servant. She had come under the evil influence of a man much older than herself, and had

stolen money and a pair of gloves to the total value of two or three pounds, doubtless in order to hand them over to him. The chairman of the Bench told the girl, doubtless with perfect sincerity, that the justices were extremely sorry to see her where she was: that they had deliberated earnestly what was the best thing to do with her, and had decided that the best hope of saving her was to get her away from the influence of the man with whom she was associated. They therefore passed a sentence of one month's hard labour. Could anything be more well-meaning, more ignorant, or more viciously absurd? They were anxious to save her from one bad man and the method they adopted was to send her to Holloway to mix with three hundred and fifty bad women. Apparently they had never heard of probation with a condition of residence, or of hostels, or of any other means by which it might have been possible to keep her away from the man in question not for one month but for three years, and that without the stigma of a prison sentence.

Let us consider for a moment the relative position of the probation officer. He, or of course she, knows the life of working men and women far better than the average justice. He has made

a study of Borstals and prisons: it is part of his training to do so. Whether the officer be of the new type or of the old he has specialized knowledge. If he is of the new type he has the advantage of intensive training and he has learnt at least the elements of psychology. If he is of the old type he has the mellow wisdom, patience, and humanity which come of long experience and are often worth more than all the schooling in the world. The Bench see a prisoner only in the dock—for a short time and in the worst possible circumstances to get an accurate picture of him. If the justices are to find the best treatment in an individual case they need all the information they can get. They will display not lack of their own knowledge but sound common sense and fitness for their position if, having a probation officer available, they make use very often of the help he can give them in the determination of sentence. How can he assist them in this way? By giving them either information or advice. If as a Bench you have the benefit of a probation officer who is thoroughly competent I guarantee that the more you know of your own duties as justices the more readily and frequently will you consult your probation officer in the vital matter

of treatment. It is folly not to do so. He knows local conditions. He can study the individual offender in a way impossible to the members of a court. He is able to advise for example as to the 'conditions' of a probation order which are locally practicable and individually desirable. An instance of what I mean will occur to your minds in the procedure of juvenile courts. It is a statutory requirement that such a court shall be guided by reports upon the child furnished either by the Local Authority or by the probation officer. I do suggest that the probation officer should *always* be heard before an order is made. He has the duty of supervision if an order is made, and he is best enabled by his experience to judge if an order is likely to be successful. This is not to say that a court is to be finally bound by the advice he gives, but it is to suggest that to listen to the views of the person who has the greatest practical knowledge of probation is a common sense precaution against the making of useless and unsuccessful orders. Every unsuccessful order is doubly bad. It may bring the system of probation into disrepute: and it may be the ruin of the probationer by postponing too late some alternative treatment which would have been more effective.

Nor is the need for information less urgent in the case of adults. A court cannot know too much. Very often indeed it knows too little. In courts of lay justices it is exceedingly rare to find any systematic remand for further enquiries or report. Where the court is in any doubt as to the best course to adopt with a convicted person a remand for enquiry by the probation officer is often helpful. Let me give you a supreme illustration of the need for enquiry which came a few months ago before a Discharged Prisoners' Aid Committee, though it arose not out of a case before justices, but out of a committal for a civil debt. In an action in the County Court for the recovery of a sum of money, the judge made in the absence of the defendant, that pernicious order, still sometimes to be found, for payment of so many shillings weekly with committal for so many days in default of payment. The defendant failed to pay, and was duly committed to prison. The agent of the society visited the home. He found it spotlessly clean but almost bare of furniture: there was no money, four well-cared for children, very little food, and hardly any clothes: a vase upon the mantelpiece was full of pawntickets, as almost everything had gone to

keep the children warm and fed. That man went to prison for no crime at all: the very debt itself was incurred by his wife. No judge *who knew the facts* would have allowed him to go to prison. Here is another example of the necessity for a court to have knowledge of *all* the facts. The judge during the morning of an Assize in the South of England not very long ago passed a sentence of three years penal servitude upon a prisoner, after having heard the usual police evidence as to previous convictions, character, and so on. During the luncheon interval an official of the court who knew the prisoner, greatly daring, asked for an interview with the judge. He told him of efforts the prisoner had made to go straight, of family troubles and difficulties and of his own belief in the man if he were not crushed by a heavy sentence. In fact he told the judge just those things which do not appear, and generally cannot appear, in the usual police report, honest and helpful as this almost always is. The judge was so much impressed that he recalled the prisoner into court and altered his sentence to one of six months hard labour. I say advisedly that generally those intimate details which are so invaluable to an understanding court 'cannot appear'

in the reports made by the police, because very often neither an accused person nor his wife or family will talk as freely and revealingly to the police as they will to a probation officer. That is easy enough to understand. An accused man looks upon the police as his enemy, or at any rate, as his opponent: he looks upon the probation officer as a friend. Moreover, the police have neither the time nor the training to elicit the type of information to which I refer. The probation officer on the other hand has had—or should have had—a specialized training as a social worker. I do not even remotely suggest that a Bench of magistrates should allow the probation officer to dictate their sentences or their treatment of offenders. I do urge, and that as forcibly as I may, that justices will show wisdom if they get, regularly and systematically, from their probation officer all the information which he is in a position to give them, in order that they be best enabled themselves to select wise and successful treatment.

I have spoken of the way in which I think the justices should regard their probation officer, and it goes without saying that he or she in return owes a very definite duty to the bench. In the first place there is of course, the over-

riding duty of making himself efficient at his work: I will say nothing further about that, as the technical side of an officer's duties is less what I want to discuss than the relationship between officer and bench. I think most of what I wish to emphasize can be brought under one or other of two heads—frankness and loyalty. The probation officer must never hide his failures or his mistakes. If his reports on his cases to his committee are not absolutely truthful and candid he will neither have nor deserve that trust without which the best probation work is impossible. Then he must do his best with cases which he does not want, and about which he has the gravest doubts of success. It is a human enough temptation to an officer to spare himself just that extra effort, or that additional visit, or that final attempt to get a job for an unpromising probationer whom he never wanted to have under his charge and against whom he advised the bench when his case was heard. It is human for an officer not to be unduly sorry when the result of probation is to prove that his adverse advice was well founded. Nevertheless, it is his duty to take every case, even those he thinks unsuitable, with equal readiness and without complaint, and to do his very utmost to prove

by the result that he himself was wrong. That is loyalty to his justices whose responsibility it is to select the cases.

A court of summary jurisdiction cannot do its work with complete efficiency if it does not use the services of the probation officer fully and intelligently. That is literally true. For that reason there is a very obvious duty upon justices to understand the possibilities as well as the limitations of the probation system. There is also a clear obligation upon those justices who are members of the Bench Probation Committee to learn their additional and specialized responsibilities and to carry them out. It would be merely foolish to suggest that these duties of justices are always realized or performed. It is none the less true that the probation officer is the servant of the court. He is worse than foolish, he fails in his duty, if he attempts to plough a lonely furrow without full disclosure to the members of his probation committee. Every probation officer needs advice from time to time, and for him to go to his justices with his problems is the most effective way of promoting that close co-operation between bench and officer which is the secret of the most successful work. The co-operation of the justices should

go beyond the provision of adequate salary, office accommodation, telephone, and so on. Probationers are obviously the more likely to respect and to obey an officer whom they see treated with courtesy and dignity by the court: it is important that magistrates should not forget this simple fact. I know well enough that here in Surrey where you have the right understanding of these matters this advice is quite superfluous. But such understanding is not universal. I was told only the other day, for instance, of one Bench at least where the probation officer in open court is never permitted to address a question or a reply direct to the magistrates but is required to speak only to the Clerk. It is easy to see what a handicap to the work of an officer this sort of thing must be, for example, in matrimonial cases, where husbands and wives are far more likely to listen with due attention and respect to his advice if they are led by the attitude of the magistrates towards the probation officer to regard his status with deference. I came across an extraordinary instance of this want of thought—if of nothing else—at a recent Assize. The judge bound over two lads: one of them he put under the supervision of his father, the other under that of the local captain of the

Salvation Army. The probation officer, who was in court, was completely ignored. Could one imagine any action more certain to diminish his influence in the neighbourhood? Similarly, one still finds justices who do not hesitate to declare that the entire Home Office training scheme is useless or unnecessary, and that the specialized knowledge with which officers are being provided is unpractical and valueless. As to this, one need say no more than that such criticism comes invariably from magistrates who are without first-hand experience of trained officers. The test of the scheme—and the only test worth anything—is its results. Criticism from those Benches which are content to go on indefinitely with untrained and part-time officers, and obstinately refuse to utilize the services of the new type now available, is founded not upon knowledge but upon prejudice and may be disregarded.

I have said something already of the qualities to look for and to encourage in a probation officer. There is one other which is as valuable as any—a sense of humour. It does so help to make the wheels go round. Consider the state of mind of the new probationer. He is suspicious, on his guard, perhaps resentful, perhaps a little

frightened. The too righteous approach may repel where often a cheerful word and a joke will attract and gain confidence. You and I feel this with a new acquaintance in everyday life: how much more the probationer who has this new acquaintance thrust upon him when he is sensitively aware that he has just been found guilty of an offence against the law. Exactly the same thing is true of the magistrate himself—or herself. Preserve me from the too godly and earnest person upon the Bench who is without that saving grace of humour. The following little story is, I think, authentic, as it was told by the lady herself, the only woman member of a certain country Bench: she saw nothing humorous about it, and told the story as no more than an example of the poor manners of young people to-day. She was walking one summer evening about ten o'clock in a country lane, when she observed a couple of rustic sweethearts seated upon a stile. Shocked by their unconcealed endearments she approached them, as she herself said, intending only a kindly hint as to the impropriety, especially at so late an hour, of this too public dalliance. The phrasing of her well-meant rebuke was perhaps unfortunate. 'You are two silly young people',

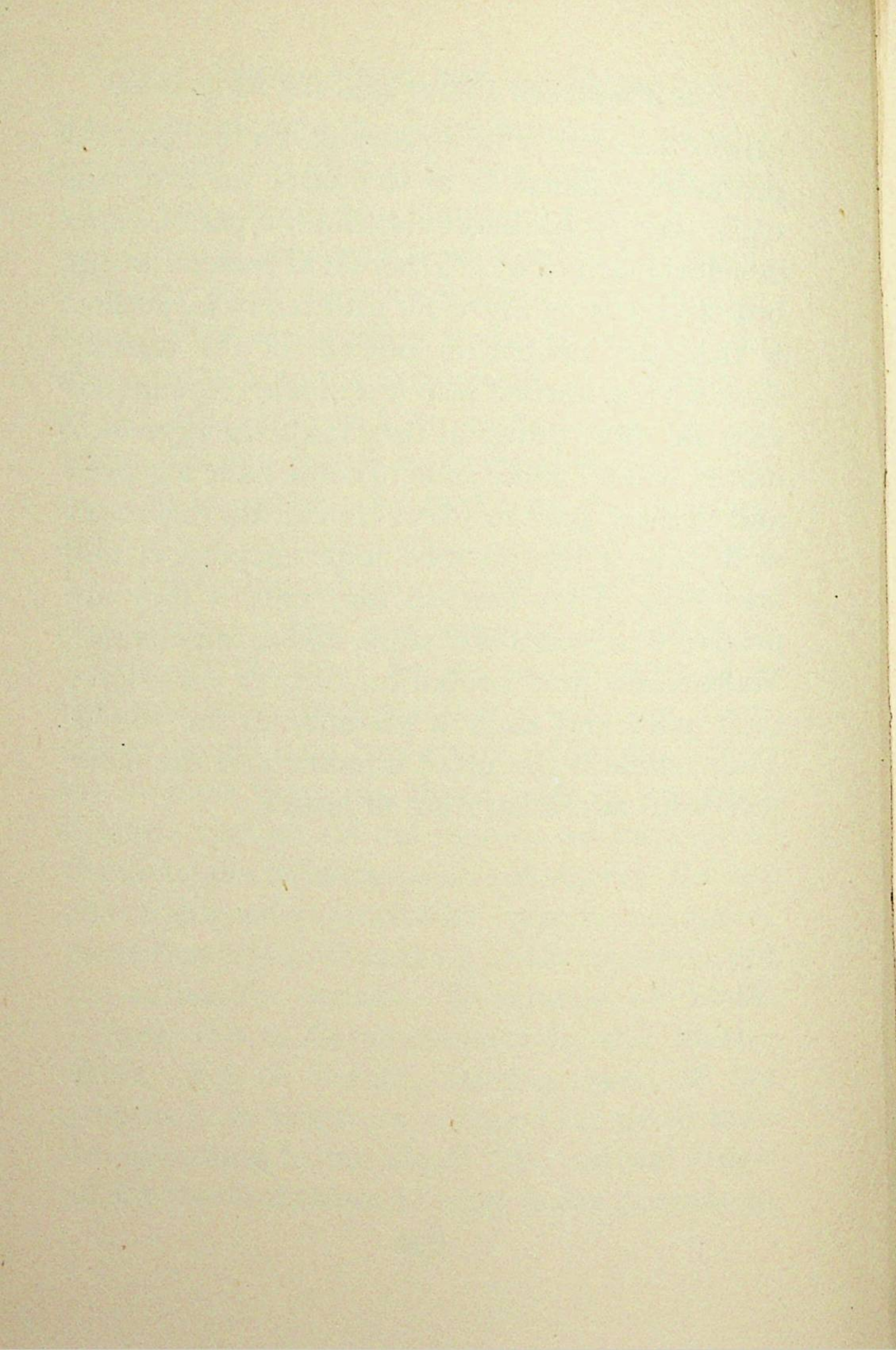
she said, 'to be sitting here like this. You would be much better in bed.' For justices and for probation officers alike, understanding is the foundation of success. Unhappily, men and women of the humourless type so often lack imagination, and so too understanding. It is surely time that we all realized that the way of approach to delinquents through fear and condemnation is out of date. Some few weeks ago, in the correspondence columns of *The Times*, I crossed swords with a protagonist of the old school upon this subject, with especial reference to juvenile courts. The controversy produced a spirited letter in support of my views from an anonymous correspondent, who told an excellent story in illustration of the traditional conception of these matters. A minister who was preaching on hell fire and brimstone, to the terror, as he hoped, of any backsliders amongst his flock, in describing the horror which awaited evildoers made great play with the text: 'There shall be weeping and gnashing of teeth.' 'Aye, and what is more,' he thundered, as he caught sight of an aged and quite toothless dame complacent in a front pew, 'for them as have none *teeth will be provided.*'

Not long ago in a juvenile court, I heard

nineteen children tried for various offences. The two justices took immense pains with each case and were the very reverse of severe. One small circumstance struck me, however, as oddly at variance with common sense. Each child after conviction was asked with great solemnity by the chairman if he was now 'truly sorry and ashamed', and each one, naturally enough, assured the chairman that he was. Finally, a gang of three children appeared. They were charged with breaking into an empty house. The youngest of the three, a boy of eleven, when asked the customary question declared stoutly, to the inexpressible horror of the court, that he was not ashamed at all. He said he had had nothing to do, that it had been a great lark, and that he had enjoyed it. The probation officer was not consulted in any way, though he was in court, and the boy, who was probably the only one of the nineteen who had returned an absolutely truthful answer to the chairman's question, was sent to the Remand Home where he might ponder over the foolishness of telling the truth. I saw him there later in the day, a bright attractive boy, romping happily with others and very far from being the hardened criminal in embryo which the

bench considered him. A few minutes' talk with him showed clearly that he was not in the least a thief but a small boy playing a game. I mention the case because it was a striking example of failure by a court to recognize the human factor. That recognition is the keynote of the wise approach to the delinquent, as indeed it is of the right approach to every other human being. To me, this is incontestable. Of its increasing acceptance by authority the development of the probation service is good evidence. That service has not yet reached its full development. It has a long and vigorous life before it. This is not the place for me to speculate as to the forms which its development will take, interesting though such conjecture might be. I will say no more than this, that I shall be surprised if future changes do not include an increase of the direct disciplinary powers of officers. To-day all enlightened authoritative opinion is in agreement that prison should be a last resource, not an automatic penalty. Secretaries of State, Judges, Prison Commissioners in this matter think alike. A certain number even of lay justices have begun to realize that there may be something in the idea!! One natural result of the determination to send fewer persons to

prison may easily be to strengthen the hands of probation officers so as to enable them to deal with rougher and more rebellious types. Another development, of which there is at present no sign but which is in my view ultimately inevitable, is that the probation officers of the country should be absorbed into one single national service. Be these things as they may, the probation officer will for some time to come have a greater and greater part to play. He can do this really well only if the justices help, encourage, and lead him. They can do that only if they are prepared themselves to study and to understand. Magistrates and probation officers each have their part and each is essential to the whole. That whole is the more humane and the more successful administration of justice.



V. IMPRISONMENT IN DEFAULT OF PAYMENT

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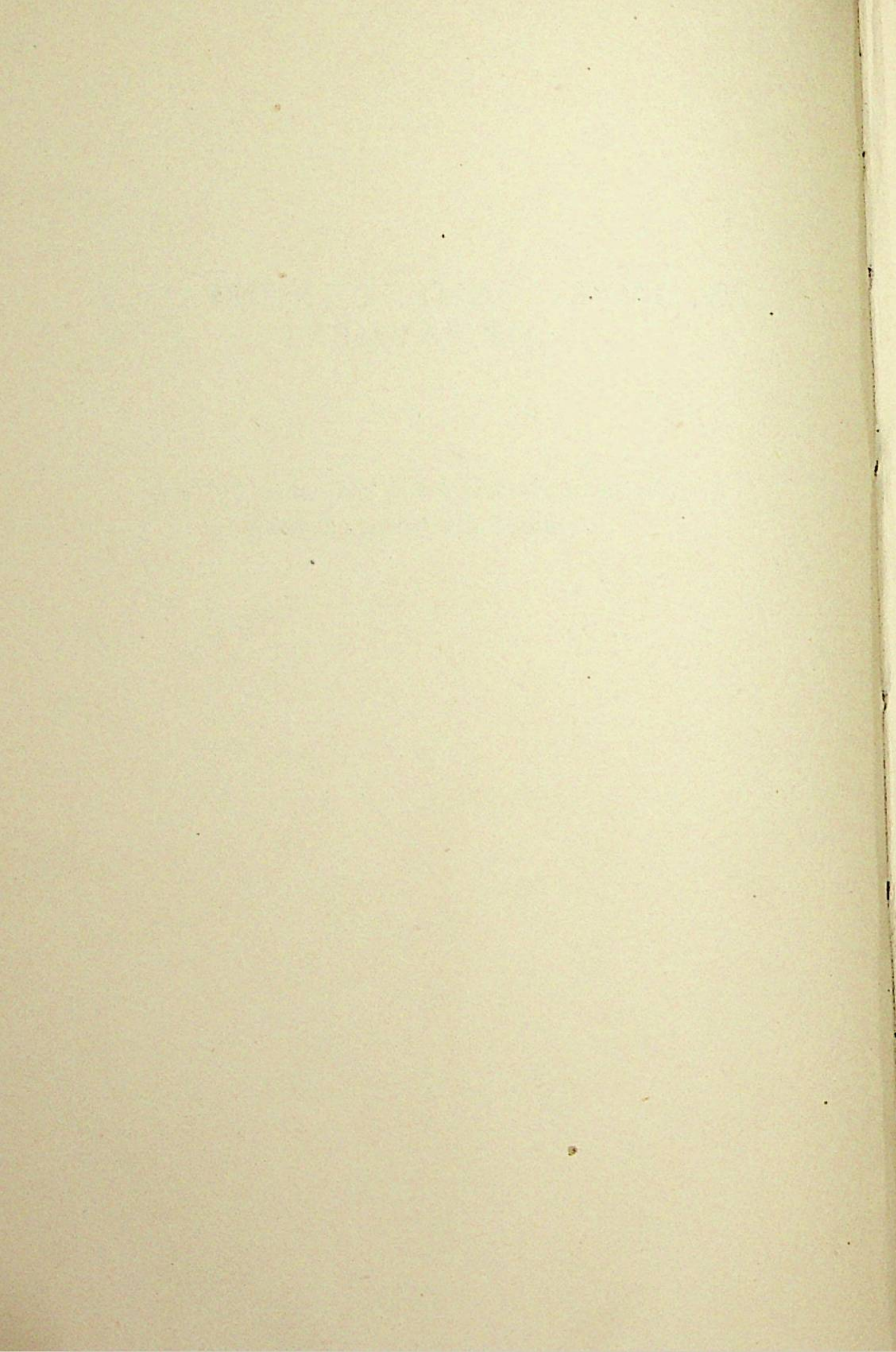
National Association of Probation Officers, Annual Conference, London



V

The whole subject of imprisonment for non-payment of money is one which has repeatedly received the earnest attention of Parliament and of successive Secretaries of State. In this, as in some other forms of social legislation, the legal machinery brought into existence by Parliament has been operated by courts of summary jurisdiction less conscious of social conditions than the elected representatives of the people, less responsive to public opinion, and less alive to the realities of economic pressure in the lives of those who for the most part appear before magistrates. I will suggest to you two simple propositions in the light of which we may approach the consideration of this subject. The first is that every sentence of imprisonment which is not absolutely necessary is a mistake, a cruelty, and a social disservice. The second is that unless it is utterly unavoidable, no person who appears before a criminal court should be

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penalized by reason solely of his poverty. These sentiments may possibly appear obvious and platitudinous to you. But their full appreciation and acceptance has not always been universal in our criminal courts. Indeed, even to-day, I doubt if all courts of summary jurisdiction would accept them. On this point collective experience of probation officers is infinitely greater than mine, but I shall be extremely surprised if you disagree with me.

If we are to attain anything like a true perspective of the present position as regards imprisonment in default of payment we must have at least some idea of what conditions were before the improvements introduced by recent legislation. I do not propose to do more than to say a very few words on the history of the matter, and I shall therefore go back no further than to the years immediately preceding the war. The changes which have taken place within these twenty-five years have been enormous. In 1913 over 80,000 persons were committed to prison annually for non-payment of fines. Even at that date, magistrates had power, if they cared to use it, to allow time for payment of fines when defendants were unable to make immediate payment in full. Indeed, the Home Office issued

the most earnest appeals to Benches that they should exercise their power to grant time. Despite the efforts of the Secretary of State, however, magistrates could not be induced to use their discretion intelligently and to extend in all suitable cases the time of payment when defendants could not pay the whole of a fine at once. No further proof of this statement is needed than the startling result of the Criminal Justice Administration Act of 1914. This Act provided that time to pay fines *must* be given by the magistrates save in exceptional circumstances stipulated in the Act itself: for example, where the defendant had not a fixed abode, or where the court was satisfied that he *could* pay the sum forthwith, or where the magistrates for some 'special reason' expressly directed that time should not be given, then the defendant could not claim to be excused the obligation of immediate payment. But the onus, so to speak, was thrown upon the court. The legislature gave the defendant a *right* to have time to pay unless the case was one which the legislature itself decided to be unsuitable. As I have said, the effect of this 1914 Act was startling. In a single year the annual figure of committals for non-payment fell from 80,000 to 12,000.

This, then, was a tremendous advance. But the same Act by another section made a further very important provision. It laid down that so far as the *amount* of a fine was concerned a court of summary jurisdiction in fixing the sum to be paid should 'take into consideration, amongst other things, the means of the offender, so far as they appear or are known to the court.' This principle would seem to us to be so obvious that it should need no enunciation. Certainly, it seems strange that it should require legislative enactment. On the other hand it is incredible that a direction so elementary should have found its way into an Act of Parliament unless the existing practice of magisterial courts showed it to be necessary. That it was necessary I have no doubt at all. Even to-day, it is insufficiently observed. And obedience to this section of the 1914 Act is essential if justice is to be done. If we could somehow ensure intelligent, sympathetic, and understanding administration by justices of the simple proposition that the means of the offender should govern the amount of the fine we would remove a great deal of present-day hardship. I go so far as to believe that we would make a substantial contribution to the whole problem of imprisonment

for debt. Here again, your experience is greater than mine. But I do not suppose that there are many of you who would be prepared to assert that Benches of magistrates even in 1938 are adequately possessed of the requisite knowledge of social conditions, or even that they realize the necessity for such knowledge. Look for example at that very widespread but illogical and utterly wrong practice amongst Benches of the 'fixed penalty' for offences, the standard fine which does not vary by whomsoever it is incurred. Some magistrates cannot be deterred from this absurdity; I have myself been told by the chairman of a Bench that it would be grossly unfair to treat people invidiously by imposing different fines when they have all committed an identical offence. See the result of such a belief in practice. One finds it every day all over the country—small thefts so much fine, motor offences so much fine for each class of offence, and so on. Only last week I was present in a court when seven cyclists were fined for not having lamps on their bicycles. They were of various incomes: some were married and some were single: some had children and some had not: one was out of work and the others in employment. But they were all fined 7s. 6d., which is the immutable

tariff at that court for that offence. I have chosen as an illustration a trivial offence and a small fine. I have done so deliberately, because these small cases are the most common and the most revealing. It is always important to consider with great care the right amount of a fine, but it is *most* important, *most* essential, and *most* vital in the case of those persons whose income is near the subsistence level. For a man supporting a family on the wages of an agricultural labourer a fine of 7s. 6d. may entail deprivations far more severe than is understood by many justices. It is, of course, sometimes right that the penalty should be substantial. But it is really vital that courts should grasp what is a mere commonplace to social workers—that to working men small fines *are* substantial penalties. To relate penalties with resources is, after all, to bring not sympathy but common sense into the administration of justice. There is need for the courts at this first stage to take greater trouble in the assessment of a fine: there is need too, in certain courts at any rate, for the justices to have a more intimate knowledge of the economics of working-class households. On the first of these two points my opinion is supported by the answers to the questionnaire recently sent out

by the National Association of Probation Officers. The first question asked your members was: 'Are any steps taken in your court to ascertain the means of an offender before fixing the amount of a fine?' To this question 261 probation officers replied, and in nearly one third of the cases the answer was that no steps were taken. If upon both these points, simple as they are, we could get substantial improvement, the result would be immediately not only a more kindly and humane but a more reasonable and just adjudication in magisterial courts.

So far, we have seen what a tremendous advance was made by the Act of 1914. But there was a fault of procedure under the Act which still left a loophole for hardship. It was the general practice when a fine was imposed and the defendant was allowed time for payment for the magistrates to order at the same time a period of imprisonment in default. If the fine were not paid within the time specified, a warrant was issued, the defaulter was asked by the police to pay forthwith, and if he did not do so he was committed to prison. The reason why he did not do so was in some cases because he had not the money and *could* not pay. Sometimes, therefore, persons found their way to

prison whom magistrates would not have desired to send there if they had been aware of the circumstances causing the default: young people were especially deplorable examples of this lack of systematic examination into the facts: the commission of quite trivial offences resulted in their going to prison because they were unable to pay even the small fines imposed: and if persons had been convicted and fined by the magistrates in their absence they were on occasion sent to prison without ever appearing before a court at all.

Under these circumstances a Departmental Committee was set up to enquire into what further inprovements were feasible, and as a result of their recommendations another big advance was made by the passage into law of the Money Payments (Justices' Procedure) Act in 1935. The principal provisions are, first, that where time is allowed for payment of a fine, the court shall not as a general rule *at the time of imposing the fine* fix a term of imprisonment in default—in exceptional cases the court may do so—secondly, that a person who has been given time to pay shall not be sent to prison for non-payment until there has been an enquiry as to his means in his presence: and thirdly, that

machinery is provided which enables a court to order the supervision of offenders who have been fined: this supervision is applicable to offenders of any age, and may be ordered either at the time of conviction or later: its object is to befriend and advise an offender, and to save him from imprisonment. This Money Payments Act has been in operation for two years: during 1936 (the first year) the figure of commitments to prison in default was reduced to a little over 7,000, and it will be lower still for 1937. The present situation, therefore, is wonderfully better than it was only twenty-five years ago: it seems to-day scarcely credible that in 1913 as many persons went to prison in one month as now go in a year for non-payment of fines. It is never easy to remember statistics, but I will summarize the existing situation for you by saying that of every hundred persons fined, only a fraction over one per cent go to prison in default.

That, then, is the position to-day. Can it be further improved? The investigation made by The Probation Officers' Association into the working of the Money Payments Act furnishes us with a means of answering that question. With the help of the replies to this questionnaire we can form a broad judgment on the facts,

and can see the road to still further advance.

The section of the Act which provides that the court, save in exceptional circumstances, shall not at the time of conviction, fix a term of imprisonment in default, is very valuable. It is designed to secure that, in cases in which the court has decided that a fine is the most appropriate penalty, there shall be no automatic, mechanical committal to prison in the event of default. The intention of those who framed the Act was that the offender should go to prison only when all the circumstances were known and the court had, in the light of that full and complete knowledge, come to the conclusion that a term of imprisonment was necessary or desirable in each individual case. Elaborate machinery was, in fact, provided by the Act whereby not only the means of the defaulting offender, but also the reasons for his default could be made known to the court. The second question put in the questionnaire to probation officers was therefore: 'Is there a tendency to fix default when time for payment has been granted?' Two hundred and thirty-three officers answered this question, and no less than seventy-seven—almost exactly one third—replied that there was such a tendency in the court in which

they served. In considering these figures, it is only right, however, that I should point out that from a study of their answers it appears to me that about twenty of these seventy-seven officers seem to refer to the exceptional cases in which the Act contemplated that it might be proper to fix default at the time of conviction despite the fact that time to pay was allowed: one such example of what I mean by an 'exceptional' case is where the offence is one of extreme gravity. Nevertheless, even after we have made due allowance for such cases as these, the replies do surely reveal serious defects in the administration of the Act by certain courts. They indicate that, either through ignorance or indifference or laziness, too large a proportion of justices do not wait for the offender to default in payment of his fine before deciding upon the term of imprisonment. When this occurs, the discrimination which is the very essence of the Act is not exercised, since no enquiries are made as to *the reason why* the offender has failed to pay. My own experience in different parts of the country endorses the findings of the questionnaire. Moreover, I strongly suspect that in those courts in which there is not a trained probation officer—and to

which, therefore, your questionnaire did not penetrate—this unsatisfactory percentage must be even higher.

The third question asked was: 'Are you called upon to investigate means when defaulters are brought into court?' To this one hundred and seventeen officers replied No, and eighty-six said Yes.

This is a regrettably low proportion of affirmative answers. It is difficult for me to imagine work calling for more quiet tact and sympathetic understanding of human nature than this preliminary enquiry, if it is to be successful, and if it is to elicit that confidence upon which a report, both accurate and humane, can be given to the court. It is vital that these enquiries should be made before a man gets into prison, and if they are to be made at all they should be carried out by the person whose character and training make it most probable that he will really enlighten the Bench. Magistrates do not always realize that offenders are often deplorably bad advocates in their own interests. Through ignorance of what is relevant they tend frequently to give the court verbose accounts of matters which the justices do not wish to know, and sometimes fail entirely to

mention facts which would be helpful to their own case. To impose a sentence of imprisonment without knowledge of all the material facts is clearly wrong. To ask a defendant if he is married and how many children he has is not an exhaustive enquiry, though it is the total of questions which very many magistrates think necessary. A man may be paying an exceptionally high rent, or he may have a sick wife or child, or he may be involved in weekly hire purchase payments. Any one of these or of a dozen similar economic causes may be operating to reduce the net margin he has available to pay a fine. The court ought at least to be informed of the fact, if it exists, and the probation officer seems to me to be the most obvious person for the court to ask to investigate whether it exists or not.

A further question put to officers was: 'Have you been asked to supervise offenders fined in 1937?' To this, one hundred and twenty-three officers said Yes, and one hundred and seventeen said No.

Some courts have been inclined to the view that a probation officer is not a suitable person to supervise offenders who have been convicted and fined. The Home Office, however, has

stated categorically that there is nothing in the duties of a supervisor incompatible with those of a probation officer, and that in the view of the Secretary of State the probation officer is clearly a suitable person to assume this duty because of his training and experience and his position of authority under the court. Justices have, of course, discretion to appoint any other person to do this work, but the utmost care should be exercised in the selection, and the Home Office has specifically pointed out that a defendant should never be placed under the supervision of his employer or of any one in a similar relationship. For what it is worth, my own advice is to use the probation officer for this purpose, save only when he is already overloaded with other work.

The final question put concerned the remission of fines. 'Is any use made in your court of the power to remit part of an unpaid fine?' To this question, one hundred and eighty-three officers replied, and in almost two thirds of the replies the answer was that the courts made no use of the machinery available.

What conclusions can be drawn from this very important questionnaire and the answers sent to your Association? Is it that we have

reached finality, and that in this matter of imprisonment in default of payment of sums of money there is no need for us to strive for any further improvement? Or is it that we can advance still further, and, if so, by what means? For the moment at any rate I do not think we need further legislation. What we want is more painstaking and more intelligent administration of the beneficial Acts already existing. I will put it in general terms. Where the court has imposed a fine as the appropriate penalty justices should be *really anxious* that the offender should not go to prison instead of paying a fine. They should show that anxiety by being prepared to take considerable trouble in the adoption of alternatives—extension of time accorded for payment, payment by instalments, and so on. It requires neither skill, care, nor understanding of human nature to impose such a fine that a defendant will not or cannot pay, and is sent therefore to prison. It necessitates sometimes both patience and intelligence to get a fine paid. But it is always worth while to take trouble to keep a man out of prison, and a thousand times worth while in the case of young people. No magistrate can show more signally his unfitness to be on the Bench than

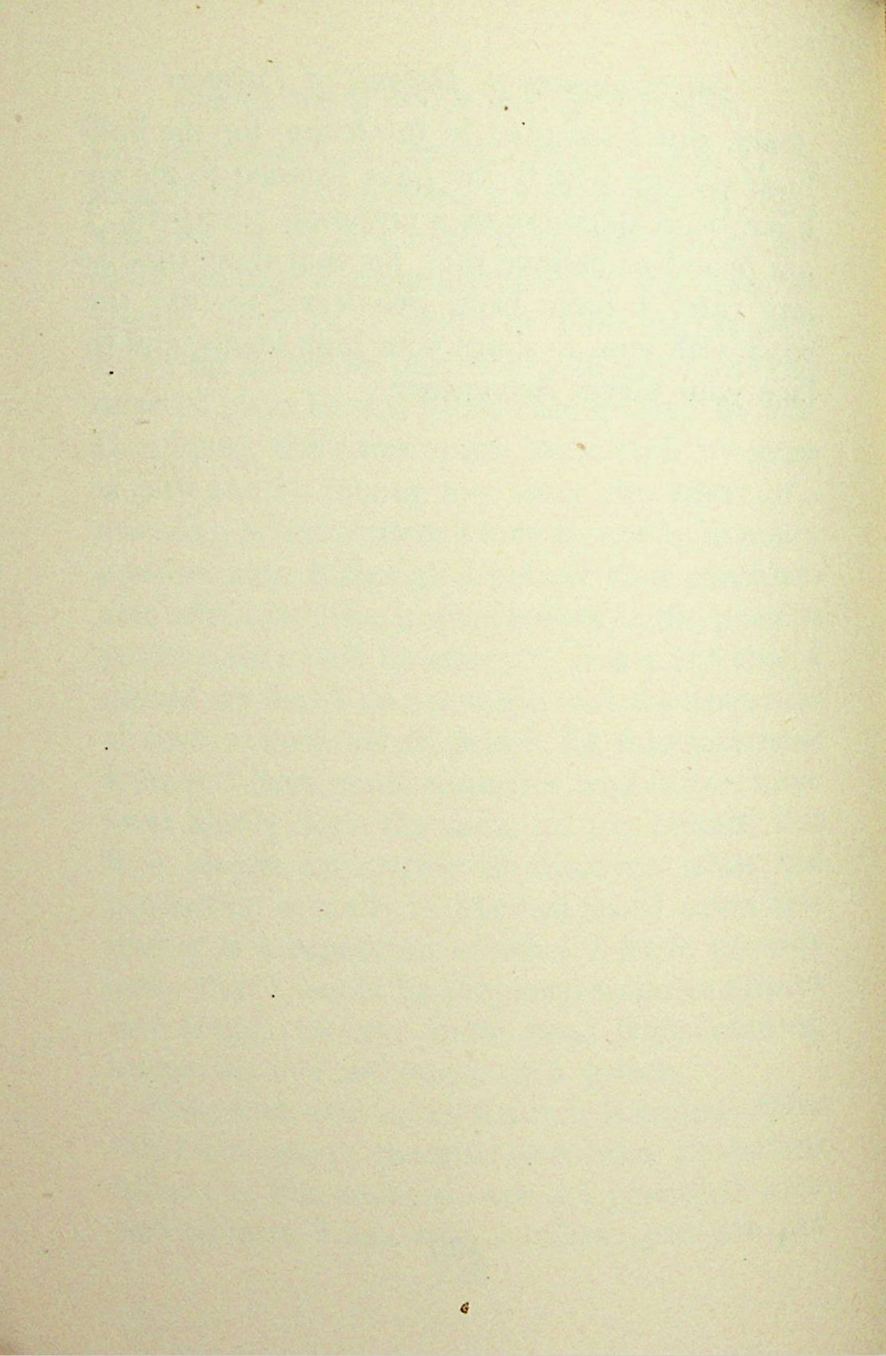
by committing to prison a boy or girl who, reasonably and with fairness to the public, can be kept out. Let us see how far this is understood by the magistracy of this country. In 1935, 352 boys were committed to prison in default of payment of fines. During 1936, to one prison alone, Wormwood Scrubs, 55 lads were so committed and of these lads no fewer than 22 were not given time to pay. And this after the enactment of the Money Payments Act!! I will give you the details of two very recent and illustrative cases. In the first, a woman defendant was fined twenty shillings and one guinea costs for not having her dog under proper control on the Underground Railway: the animal jumped out of her arms while she was standing on the escalator. She declared that as she had exercised all due care the fine was unjust, and she refused to pay. According to the Press report of the case she was told summarily by the court that she must pay the fine or go to prison, whereupon, as any one with the slightest knowledge of women could have predicted, she elected angrily to go to prison forthwith. Happily a friend paid the fine on her behalf, and she was released. The case is in itself completely trivial, but it illustrates my first

point. Rational people do not believe that a term of imprisonment should result from allowing a dog to jump out of one's arms, even upon an escalator. A prison is a suitable place for criminals. It is an unsuitable place for anybody else. Those who manage prisons know this. Very often those who send persons to prison do not. If the woman had been given a few days to think it over she would, in all probability, have paid the fine. If the magistrate had been really anxious to prevent her going to prison he might surely have thought of this simple expedient. The second case is a great deal worse. I read it over the signature of Mr. Basil Henriques in *The Magistrate*. A semi-illiterate lad of eighteen, earning 26s. a week, was fined 20s. and 2s. costs for riding a bicycle without a lamp. It was perfectly impossible for him to pay the fine in a lump sum. He was committed to Wormwood Scrubs for non-payment—a step as cruel and illogical as it was harmful to the community. The first of these cases may be merely absurd: the second is monstrous. It is not surprising that Mr. Justice du Parcq should say: 'I thought that that sort of thing was all over,' when, as recently as June of this year, he was told in another case that a boy of seventeen

was imprisoned for seven days because of an unpaid fine. To prevent a recurrence of these mistakes we do not need fresh legislation, but more intelligent administration of the laws we already have. St. Vincent de Paul said it were better for us to lose our money than to lose our sense of pity. In this futile case quoted by Mr. Henriques, the community loses both its sense of pity and its money too, since the effect of a mistaken prison sentence may be costly in every possible way. Although I believe that considerable administrative improvement in the present position may well be effected, it is right that I should say that I do not think that the *proportion* of cases committed to prison for non-payment is large. I have made enquiries, and others have most kindly done the same on my behalf, but it is almost impossible to discover what the proportion actually is. My last word upon this matter is a repetition of what I have already said—that I would be prepared to go to almost any length to save mere boys from coming under the evil influences of a prison.

Now, such as it is, my analysis is ended. After all, I am only a theorist: you—the probation officers of this country—are the practical men and women. I am only a talker: you are the

doers. But I am glad to think that for the half-hour during which you have listened to me we have been partners in a common enterprise. I am proud to believe that, for that short time at any rate, I have been privileged to take the road with you, to share your high ideals, and to face your Great Adventure.



VI. THE OFFENDER

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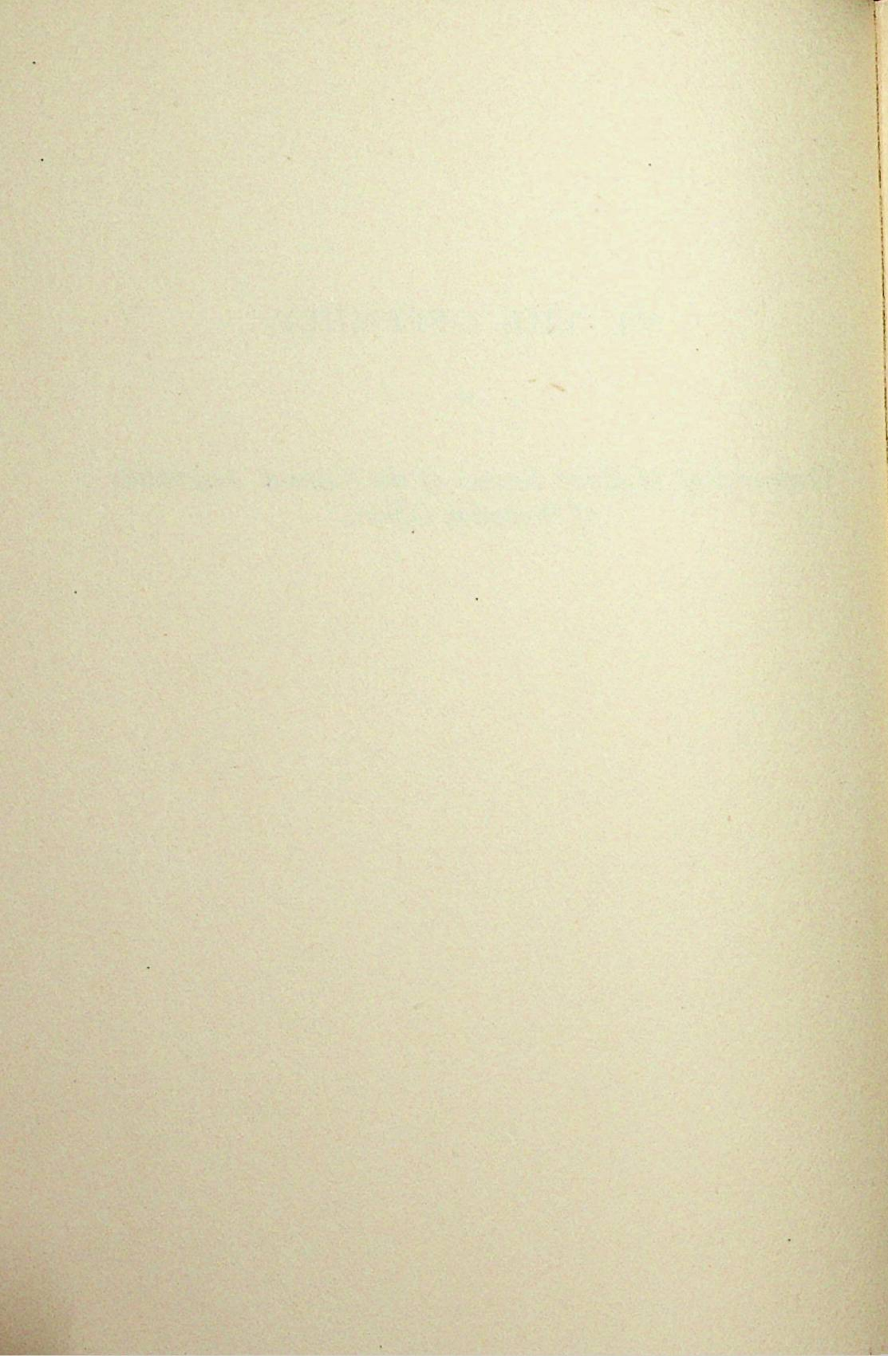
Conference of Midland Branch of the National Association of Probation Officers



VI

The subject of this address has been selected not by me but by those who organized this Conference. There could be no subject more suitable for fruitful discussion by an audience of magistrates and of probation officers than the personality of those with whom in the course of their work they are called upon to deal. In the very first words I utter I want, however, to emphasize as clearly as I can that, even if I were competent to deal with this subject exhaustively, I could not do so in a single talk of this sort. And in any case I am insufficiently equipped either with facts or figures to give you anything like a complete picture. To get that, you would need the help of a psychologist, a statistician, some prison officials, and the employment agent of a discharged prisoners' aid society, in addition to the advice of a few representative criminals. There are innumerable divisions and cross-divisions, of age and

sex, of class and education, and so on. All I can try to do is to give you some general indications which may be sufficient to show you the complexity and the interest of the subject, and at the same time the importance of the study of the personality of the offender if we are to hope to understand him. To justices especially there is a practical value in such investigation. According to the legal system of this country all persons against whom the police bring charges of violating the criminal law come before courts of summary jurisdiction, from children accused of breaking by-laws against such offences as throwing stones or playing games in the streets to persons charged with murder, from first offenders to hardened recidivists. Under our system, too, there is allowed to courts an immense discretion as to the punishments which they may impose in an individual case. Knowledge of the mentality of those with whom it is their duty to deal is essential if magistrates are to exercise this discretion wisely. Men and women of totally different types commit identical acts from utterly different motives, and react in varying ways to the same treatment by courts. Hence it is imperative that justices, who have the responsibility of imposing punishments

should clarify their ideas and should have some notion of the divergent problems which they may expect to encounter.

The first obvious division is according to the gravity of the offence. I shall not waste your time by saying anything at all of persons charged with very petty offences. You do not want to hear my views as to persons charged with riding bicycles without lights or with parking their motor-cars on the forbidden side of the road. For quite other reasons I shall have very little to say about the gravest crimes such as homicide, forgery and the rest: these cases are triable only by Judges of the High Court at Assizes, and the duty of courts of summary jurisdiction is only to commit them for trial. The offenders of whom an understanding is of practical value to justices are those with whom it is their function to deal themselves, either in courts of summary jurisdiction or at Quarter Sessions. I cannot emphasize too strongly that when I suggest that magistrates should study the personality of men and women in the dock I am advocating something which is more than an agreeable intellectual diversion for justices. On the contrary, it is one of the most effective methods of making them better at their work. And if, as they con-

sider the types of men and women they are called upon to punish, they give at the same time a little thought to the *purposes* of legal sanctions they will be acting with common sense indeed. For they will be enabled thereby to apply the tests of utility and of reality to the punishments which they administer. There is, of course, one condition precedent. Justices must be familiar with such institutions as Approved Schools, Borstals, and prisons. Not long ago a chairman of Quarter Sessions told me that he had never been inside a prison in his life and had no intention of going. He said: 'It is not my work to pry into prisons. My work is to try cases. The government of prisons is in the hands of the Prison Commissioners, and I am quite sure that they are perfectly capable of carrying it out.' In my opinion he entirely misconceived his duty. He most certainly misunderstood me. I did not suggest that he should visit a prison for the purpose of giving hints to the Commissioners. I did think—and I still do—that he should go, not in order to teach, but in order to learn: that it is his plain duty to see what conditions are like, what facilities exist, and what the advantages and drawbacks of these places really are. How can he—how can

any magistrate?—decide which offenders will be benefited by a prison sentence if he does not know what a prison sentence is?

The explanation of so many unsatisfactory sentences is that courts have come to run in grooves: sentences tend to become conventional: so much offence so much punishment. A rule-of-thumb sentence is always simple: unhappily, it is almost always wrong. Magistrates do not sufficiently often think out a clear answer to the questions: 'What do I hope to do by imposing a sentence of imprisonment?' 'What do I expect to do?' 'What harm may I do?' But even those questions are not the right ones. The right question for the magistrate to ask himself is: 'What good—or what harm—do I expect to do by a prison sentence *in this individual case*?' The great majority of men in local prisons are sent there by magisterial Benches, and of local prisons I have some knowledge. I want to describe the sort of men to be found in them, not with any pretence at exactitude, but with sufficient accuracy to enable you to gain some idea of the way in which our existing system works at the present time. Such knowledge should furnish a jumping-off ground when we come to dis-

cuss what improvements may be possible.

In a local prison the first thing which strikes one is the large proportion of men who are 'on the road'. Some of them are mere tramps, by which I mean men who have long ago given up all pretence of looking for employment and who are doing no more than walk the roads all the year round, save for such periods as they spend in prison. A considerable proportion of these vagrants find their way periodically into prison, some making a regular habit of committing an offence as winter approaches. Mingled with these genuine tramps are numbers of unemployed men searching, with varying degrees of eagerness for work. Some of these are instances of very genuine and quite undeserved hardship, men of good character and excellent records. But it requires very little experience to see how rapidly life on the road saps away from a man the inward with the outer graces: as he grows shabbier so he grows more slovenly: with cleanliness goes pride and self-respect. Nothing is more saddening than to observe the deterioration, of mind as well as of body, which even six months of road and casual ward can work in a young man. When magistrates have added to this experience one or two sentences of seven or

fourteen days his ruin is complete. The proportion of this class of prisoner 'on the road' who are virtually unemployable is very high. Some of them are so dull and stupid as to be little better than mental defectives, some are old, crippled, or otherwise incapacitated physically. In a single afternoon recently, out of ten or twelve men being discharged from one prison, I encountered two feeble old tramps each of whom had lost a leg, a man suffering from St. Vitus' dance who sold newspapers in the streets, and a lad of twenty-one 'on the road' who could neither read nor write and who sat giggling inanely all the time he was before our aid committee. A week or two ago we had a young man of twenty-two who could understand the simplest questions only with difficulty and who spoke so unintelligibly that we could scarcely follow what he said. He was very undersized, illiterate, and had been tramping the roads for some years. He was in prison for the second time for an offence of gross indecency. How is it possible for such people as these to live honestly? They present a problem, but it is not a grave one and certainly not a dangerous one. It is a problem more for the social worker than for the criminologist. They are guilty of petty

offences. They are far more to be pitied than to be blamed. The man with St. Vitus' dance sat jerking and twitching in his chair as he asked me: 'What *can* I do, if I am to live, save steal?'

Amongst the class of prisoner which I am describing you find the beggars, the street hawkers—many of whom differ from beggars only in name—the drunk and disorderly cases and of course the petty workhouse offenders. Few men of this class do more than occasional casual work. Some do indeed present themselves, year after year at the appropriate districts, for such seasonal employment as pea picking or potato digging; when that work is over they spend their wages in celebration and return to their lives on the road. These men frequently describe themselves as belonging to trades of every kind, and call themselves carpenters, painters, sailors, or labourers, though it may be many years since they did any such work. Not long ago a 'sailor' told me that his last ship had been the *Rangoon* of the Union Castle Line in which he had voyaged to South America. When I reminded him that there was no such ship in the Union Castle fleet, and that that Line sailed only to South Africa, he was in no wise disconcerted. Perhaps some day the

legislature will consider our existing treatment of this class of offender, and will devise a method more constructive than anything we now use. They commit petty offences, and they receive short sentences. This sequence occurs over and over again. The short sentence, if it is of any value at all, is admittedly valuable only as a deterrent. But after a time it ceases to be a deterrent. Then it is not only useless but harmful, as these men infect others. Is it sensible to shut a man up for a few days, or a few weeks, and then send him out into the world homeless, friendless, workless, and unskilled? Not long ago I saw two boys of nineteen released from prison to whom all these adjectives applied. What possible chance have they of making good? How many boys of good educational advantages could do so with these handicaps? The saddest aspect of the whole problem is that of these young men from nineteen to twenty-five years of age. Sometimes at their first entrance into prison they are quite overcome with distress. The unfortunate thing is the rapidity with which this feeling of shame disappears. On their second or third short sentence you see them only too often quite unashamed, deteriorating in character almost before your eyes. The dreadful

thing is not only that they are drifting to a hopeless future *but that they are content to drift.* Prison is no longer any terror to them. At present they commit small offences: it is a mere question of time before they graduate to serious crime. Those of us who are in a position to see the facts at first hand have been proclaiming them for years past. But a large proportion of courts remain supremely unmoved, quite complacent in their ignorance of the effects of what they do. Nor would greater enlightenment on the part of justices be enough. In a negative way, it would be valuable because it would put an end to much mischief caused by silly sentences. But positive legislation is needed as well, and for that we require an instructed and sympathetic public opinion.

Destructive criticism is, of course, very easy. It is a great deal more difficult—and also more useful—to show how abuses may be put right than merely to indicate their existence. I make no pretence that I have either authority or knowledge which enable me to offer ready-made solutions of this problem. But we certainly will not advance very far towards improvement if we are content to fold our hands and say that no improvement is possible. I do not know if

there are still many to be found who maintain that no improvement is needed. If there are any such, let me give them two recent cases for the accuracy of which I can vouch myself. I am shocked to add that they both come from the court of a stipendiary magistrate. The first case is that of a boy who at the age of seventeen years and eleven months was found guilty of indecent exposure and was put on probation. At the age of nineteen and two months he was again convicted of the same offence and was bound over. Four months later he was once more found guilty of an identical offence and was sentenced to three months imprisonment with hard labour. Seven months later he was again before the court on three similar charges. He was put on probation. Only four months elapsed and he was charged with two fresh cases of indecent exposure, and was sent to prison with hard labour for two months on each charge. Can any one suggest that this young man was treated wisely or intelligently? Is it not obvious that he should have been sent to a doctor? Perhaps you may think that I should not give as illustrations abnormal sex offenders. Let me therefore give another type of case. A boy aged sixteen and nine months

was put on probation for two years by a juvenile court for theft. Six months later, when he was only seventeen and three months, he was convicted of stealing from an unattended motor-car and was sent to prison by the stipendiary *for three weeks*. He was released at the end of January of this year, and in March was convicted of housebreaking. He had been sent to prison when he was little more than a boy, for a time so short that no sort of training was possible but amply long enough to contaminate him and to take away the fear of prison as a place of punishment. Is it much exaggeration to say that his treatment fostered rather than checked his bad tendencies?

The last thing that I wish to do is to dogmatize on these matters. You are to have a discussion, and I will offer you some subjects for your consideration. Criticize my proposals as freely as you will: I do not mind how completely you disparage my own suggestions so long as you are sufficiently interested to examine them and to attempt to substitute others more practical and effective. The first suggestion is that we should have more hostels and increased powers to use them intelligently. The work of Aid Societies is always handicapped by lack of funds

and of employment: it is handicapped also by lack of respectable lodgings where, under some measure of discipline and supervision, young men can be housed until work is available. Not long ago, two young men of about twenty-three and twenty-five who had been convicted together of theft, came before our committee. One of them had several convictions: the younger of the two had only once been previously in trouble. The elder was a Borstal failure, was quite indifferent to anything said to him, and had no intention of going straight: the other had made his acquaintance 'on the road' and was very much under his influence. The younger man had been to sea. We offered to send him to Cardiff, and to keep him there in lodgings until a ship could be found for him. Had he accepted the offer, as at first he promised to do, it might have been his salvation. But he changed his mind and left the prison in company with the man with whom he had already committed one theft. They were without any means of living honestly. That was only a week or two ago, but I have not the least doubt that they have by this time committed several more thefts. Would it not be worth while to have available a hostel to which suitable prisoners might

be compulsorily discharged and in which they might be detained until they accepted work? There are obvious difficulties, but I think they are not insuperable, and the disadvantages are surely preferable to our present system—or absence of system—under which we simply allow young and ignorant men to drift to complete ruin. Another suggestion for your consideration is that there should be instruction for magistrates upon the subject of sentences. Here the cynic has the conspicuously easy opportunity of scoring a debating point by enquiring: 'Who is to give the instruction?' I am not greatly embarrassed by that question, however, as I would prefer almost any tuition rather than none. If magistrates could only be induced to study the principles of penology at all, they would very soon discover which of their teachers were false guides. The mere discussion of principles, and the comparison of results of different methods would be invaluable. I do not suggest that an examination of after history would prove that long sentences were always successful in preventing further offences. I do suggest with considerable confidence that it would show that the proportion of failures in the case of short sentences for young offenders is so overwhelm-

ing as to prove that they should *never* be given. But so long as we are content to ignore theories and not even to enquire into results how is any improvement possible? One difficulty in the matter of the instruction of magistrates is obvious. For each thoughtful justice who is sufficiently interested in his work to desire to be efficient and who is prepared to attend a conference to hear new ideas, there are several others who would never dream of going to any meeting. The more urgent their need of instruction, the more determined are they not to be instructed. How is this latter class of magistrate to be reached?

A suggestion which customarily divides opinion into two angrily divergent groups is that of the establishment of colonies for persistent offenders of the vagrant class. One view is that there is the possibility of treatment and of cure: the other that it is in effect an excessive punishment for a small offence. Another proposal to which I can imagine opposition only from the very ignorant is the greater encouragement of clinics and of observation centres, especially for juvenile and abnormal offenders. Here, at any rate, are some suggestions for you to discuss and to improve.

BIRZEIT UNIVERSITY
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These various types of men whom I have pictured to you comprise between them something in the neighbourhood of fifty per cent of the inmates of a local prison. I do not mean this figure to be taken as anything more than a sort of descriptive proportion, but I should be surprised to be told by any one qualified to judge that I was far wrong. The committee of this Conference asked me to say something about the causes of crime. As to that, I am certainly no expert. Those of you who are probation officers are better able to speak than myself, and I shall have very few words to say. Amongst the sort of offenders of whom I have so far spoken the main cause is, I think, weakness. By weakness I mean weakness of mind, body, and character, and of weakness of character there is one symptom almost universal amongst them—bone laziness.

The second division of prisoners is rather smaller than that which I have just described. It amounts to perhaps some forty per cent of the population of a local prison, though that again is no more than a rough approximation. It is made up of first offenders with sentences of three months and upwards, and also of men with perhaps three or four previous convictions,

sentenced for more serious offences than any of which I have yet spoken. The great majority of men in this division have committed some form of crime against property—larceny, fraud, housebreaking, and so on—but you find in it as well men convicted of assaults, indecency, the more serious motor offences, and debtors. Debtors are sometimes persons guilty of no worse crime than misfortune, but there are debtors—such as those men who desert their families—who are thorough rogues. The point I would emphasize about this division of prisoner is that they are not the real 'professional'. They commit crimes, sometimes several crimes, but they have not, of deliberation and set purpose, elected to live by crime. The causes of crime in this category of prisoners varies. Amongst men who are unemployed I think the lack of any money for little extras or pleasures is a contributory factor, but I believe the utter boredom of their lives of idleness and the demoralization of character resultant from doing no work for month after month are more effective causes. The truth of the old saying of Satan finding mischief for idle hands would be heartily confirmed by any prison governor. The really astonishing thing is the apparent readiness with

which men in excellent employment commit crimes from which the possible gains are simply not commensurate with the amount they risk. Thus you find a postman stealing postal orders from letters. He is always caught in the end. He may gain twenty pounds: more often he is detected after he has stolen even less. He is rightly sent to prison, since the public must be protected from thefts by public servants, and he loses his position and his pension. Not long ago our committee dealt with a skilled workman who at the time of his offence had fourteen years service in his well-paid job, owned his own house and furniture, and was in no financial need whatever. He had been engaged in a series of systematic thefts of his employers' property from which he himself had benefited to the extent of under forty pounds. He told me that he could not think how he had been such an utter fool. The immediate *causa causans* is often the access to cash and a failure to appreciate the seriousness of a first step in wrongdoing. An initial successful theft leads to further offences, as is so often the case in shoplifting. In large works and businesses, men will sometimes steal the property of the firm who would not dream of breaking into a house. There are other more

general causes of crime. So far as my own experience goes, drink is accountable for a considerable number of small offences but not for serious crime, save for crimes of violence. Betting, especially 'on the dogs', is a prolific cause of offences against property—probably the largest of all single causes. I remember sitting at the reception board of a London prison, while the Deputy-Governor was interviewing men who had been admitted the previous day. One young clerk began his story. He told the board that he had lost money at the 'dogs' and that he had been told of a 'good thing' on which he would be able to recoup his losses. At this point of his story he stopped: he was a first offender and he was ashamed to continue. The Governor gently continued his story for him. 'Unfortunately the "good thing" did not win, and you found yourself in difficulties. So you took a little money from the office, intending to put it back at the very earliest moment. Then you backed another loser, and you got desperate and took some more, still hoping to get straight, and you were caught before you knew where you were.' The boy looked in surprise at the Governor, and said: 'I did not know you had heard my story already, Sir.' To which the

Governor answered: 'I have been hearing it almost every day since I have been in this prison.' One last cause of delinquency operative amongst young offenders may be mentioned: it will not surprise the probation officers to hear me speak of it. I refer to the appalling lack of parental teaching and control. In a large proportion of cases this is due to broken parentage: in others to foolish spoiling and indulgence. Finally, in many sex cases, horrid as they are, the cause is pathological and the offender needs not a prison but a hospital. As I said earlier, I do not suggest that these few remarks of mine are an exhaustive analysis of the causes of crime. But they may be useful in indicating to justices the nature of the problem. If courts consider the cause they are more likely to deal successfully with the cure. They are exceedingly unlikely to be successful if, as is so common a practice, they concentrate not on the cause but on the effect of wrong conduct.

The final ten per cent or so of a prison population is made up of the professionals. They are the few who confine themselves to important crimes and the many who commit small offences over and over again. They are Assize and Sessions cases, and therefore less the direct concern

of magistrates. The characteristics of these men are selfishness, laziness, inability to settle down to a humdrum daily life, and, amongst the 'big' men, an inordinate vanity, though what they have to be conceited about I have never been able to understand. With the real professional I have no sympathy. Of set choice and deliberation he lives by preying upon others, and for the protection of the community he should be given a long sentence. It is insufficient answer that the actual amount of harm he does measured in terms of pounds, shillings, and pence is sometimes small. Frequently it is harm done at the expense of those who can least afford to suffer. Thus, I have known one man in a single day visit some thirty houses in each of which he obtained one or two shillings from very poor people by fraud. When justices deal with such cases at Quarter Sessions they may remember that while mercy is good, weakness is bad, and that it is not justice but feebleness which allows wrongdoing at the expense of the helpless and the poor.

VII. THE PRISONER AND OURSELVES

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Annual Meeting of Hants Discharged Prisoners, Aid Society,
The Guildhall, Winchester

VII

There is only a certain amount which can be said about the detail of the work of a Discharged Prisoners' Aid Society. One can speak of the necessity for the work, of its justification, of its possibilities for good, and of the different forms it may assume. For two reasons, however, I am going to say very little under any of these heads. In the first place, there are some of you here with experience longer and more varied than my own. In the second place, even those of you without practical experience of prison work are probably perfectly familiar with the conventional arguments upon these matters. I hope, therefore, that you will allow me a quite general approach to the whole subject of delinquency and to the right attitude of society towards crime. Such a discussion should clarify our ideas. It should serve also to emphasize the fact that the after care of prisoners is not a charitable work isolated and detached but an integral, and

indeed essential, part of the modern conception of the correct treatment of the lawbreaker.

It is to me an extraordinary circumstance that those responsible for the administration of justice in this country should not make any attempt to determine, finally and authoritatively, what is the true aim of the legal punishment of crime. Surely that should be the very first point of all upon which there should be unanimity? Is it not paradoxical that courts should sit day after day without agreement—in some cases without any thought or knowledge—as to what they are met to do? The wide, indeed the complete, discretion as to the selection of punishment which, since the passage of the Probation of Offenders Act of 1907, the law allows to judges and magistrates alike makes this preliminary decision as to the right object of punishment not only desirable, but absolutely essential for consistency and efficiency. Certainly no one who knows the facts would pretend for one moment that at the present time all the criminal courts of this country are in agreement upon this matter, of primary importance as it is. Nor would he pretend even that the individual justices who comprise a court of summary jurisdiction are always agreed amongst themselves.

The results are inevitable and sometimes really shocking. It is by no means an infrequent occurrence when a Bench of magistrates retires to consider its sentence for the final decision to be reached by the simple but illogical method of striking a mean between the various conflicting suggestions of individual justices. Wise and effective treatment is not to be found by mating one form of ignorance with another. A most extraordinary case was reported in the Press about a fortnight ago. Four men pleaded guilty to a series of thefts before the justices of a Borough Bench. After a long retirement the justices remanded the accused to be dealt with at a later date by another court, stating that the justices then present were unable to agree upon the proper sentence. Such an incident would surely be impossible if there were adequate knowledge of first principles amongst all the members of the court.

In describing the evolution of thought upon the object of the punishment of crime there is no need to use such phrases as the 'Retributive' or the 'Expiatory' theories. It is simpler to say that at one time—and that not so long ago—the normal attitude was to punish the act. If the act was wrong then the person committing it

should be punished. Indeed, there are many who still believe this to-day. The theory is reasonable enough until it is examined. Then, however, we see at once into what difficult places we are led by a too rigid acceptance of this suggestion. To take an obvious example, theft is wrong. But what of a starving man who steals food? Or what of a man made desperate by the needs of those who depend upon him who, under the stress of their sickness or want, steals cash? Is it so easy to say straightway that they should be punished by the law, although undoubtedly their acts have been criminal?

To-day, the number of those who would confidently answer Yes to such a question is growing less. On the other hand, there are those who think it possible and right to exercise a discrimination between offences. They believe that it is practicable to distinguish offences which are rightly odious to decent people, to single out those crimes which justly arouse a feeling of repulsion and resentment amongst good citizens. I do not want to recite an explanatory list of peculiarly dreadful crimes; you can imagine them for yourselves—offences against small children, offences of horrible cruelty, of robbery with violence of the old or helpless. In such

cases, and in such cases alone, according to the thoughtful and humane persons who accept this selective theory it is still to-day not only reasonable but right and necessary for the community to express its detestation of the act by invariable and relentless severity towards the offender who commits it. It is not that such men desire the infliction of suffering for its own sake, but they believe that the community ought in these cases to range itself on the side of good, and that if it does not do so it will be failing to vindicate, as an example and lead, its adherence to what is wholesome and clean. In other words it is precisely because the State is Christian that it has in their view a duty to be stern.

From the opinions of those whom I have described as thoughtful and humane men, I differ with reluctance and a certain diffidence. But I believe that a little more thought—or perhaps I should say more accurately a little more experience—would alter their conclusions. For I am not at all sure that even *theoretically* one can discriminate between acts as this theory postulates: an act is either bad or it is not. And I am in no doubt whatever that *practically* it is impossible for any court of law, with the limited knowledge which it has at its disposal, without

frightful cruelty and injustice to select with certainty illustrative and exemplary offenders. For how is it possible for any judge to gauge the power of resistance to temptation of another person? how can he estimate the efforts which an offender may have made before he fell? I myself have in mind at this moment one case in which a man found guilty of a terrible offence fought against it for years, disciplined himself, subjected himself voluntarily to medical treatment and advice. Are we to judge that offender solely by the ugliness of his act? Let us look at the matter in a more general light. It can scarcely be suggested that we should punish inexorably offenders who are mentally unstable. Indeed, the English criminal law provides specifically that in those cases in which an offender does not know the nature of his act or does not know that what he does is wrong, the proper verdict of the jury is one of 'Guilty but insane'. In such cases the offender, however serious and detestable his act may have been, is sent, not for punishment to prison, but for treatment to Broadmoor. There he is regarded quite definitely not as a criminal but as a patient. This has not always been so. In primitive times even inanimate objects which had been the cause of

harm to human beings were held accountable. Xerxes caused the Hellespont to be beaten with three hundred lashes for disobedience to his orders. McConnell records that the Hebrew law ordained that 'If an ox gore a man or a woman that they die then the ox shall surely be stoned and his flesh shall not be eaten'. In medieval times animals which had inflicted injuries upon human beings were put on trial and formally accused and defended with the assistance of counsel, and this in European countries. As late as the seventeenth century, savage punishments were inflicted upon recognized lunatics, insanity not being regarded as any reason why a person guilty of an offence should not suffer for it. To-day, in this country, we have advanced beyond this stage. In the year 1843 one M'Naughton, a person of feeble mentality, murdered the private secretary of the Prime Minister as the result of delusions of persecution. Following the trial the judges were invited to declare the extent to which insanity was under the English law a good defence to a criminal charge. Their answers, which have come to be known as the Rules in M'Naughton's Case, laid down the principles to which I have already alluded—that no one shall be account-

able as an ordinary criminal if he does not know what he is doing or if, knowing what he does, he does not know that it is wrong. That is still the law in this country. It would, I imagine, be difficult to find any one who would desire that a person unable through defect of intellect to distinguish right from wrong should be held fully responsible to the law for his acts. But let us go one step further. There are those whose mental disorder is not such as to bring them within the precise definition of the M'Naughton Rules yet who are quite certainly mentally defective. There are many such people who are not protected by the Rules because they do know that their acts are wrong but who are suffering from definite mental disease. Let us go one step further still. There are men convicted in our law courts every year who, technically speaking, are not mental defectives yet who have been brought up in ignorance and squalor, who have lived since infancy amidst vice and crime, and who, if they are coarse and stupid and evil, have never in all their lives had one real chance to be other than what they are. There are others handicapped by hereditary weaknesses, marred by neglect or cruelty, or spoilt by indulgence and lack of discipline. All

these various types of men and women merge almost imperceptibly one into another. It is sometimes extremely difficult for an individual enquirer after careful and lengthy investigation to distinguish between them. It is quite impossible for a court, which sees a defendant for a short time only, and that under circumstances the least favourable to himself, to discriminate. But, in any case, where are we even to attempt to draw the line? In any of these cases which I have described is it really to be suggested that we prove ourselves to be a Christian community by unremitting severity, however horrid the act itself may be? Surely in all of them it is a travesty of the Christian ideal, an utter and complete negation of Christian charity, to insist upon a harsh or savage penalty?

But, if I am right, what becomes of a theory to which there are so many exceptions that it is inapplicable in practice? And can it be supported when, as a further argument, we remind ourselves that experience shows that unremitting severity has frequently the effect of making the offender worse than he was before, which means that not he alone but the whole community, is the sufferer? I suggest that we are driven inexorably to the conclusion that the act

itself should never be the deciding factor: that the sentence of the court should be determined by all the circumstances of the case, of which the personality of the offender should be the primary consideration. This is not to say that severity is never right. On the contrary, it is sometimes essential. Neither common sense nor humanity forbid severity when, after due examination not only of the act but of the offender we find that it is the sole or the most effective method by which we are likely to attain what should be in all cases our aim—the good of the community as a whole.

I have inflicted upon you a dissertation upon legal punishment. Even if it is sound, has it any relevance to the work of Discharged Prisoners' Aid Societies? Even if I am right, have I said anything which you can usefully remember? I hope and believe that knowledge of these things is for two reasons both relevant and valuable. In the first place, it should improve your approach to the public, and in the second, it should help you in your approach to the prisoner himself.

One finds to-day that the question is still asked: 'Why should one support the work of helping discharged prisoners? Why should one be invited to give employment to ex-convicts

when there are honest men out of work?' I myself regard with some suspicion the man who asks me why he should help a criminal because my experience has been that this question is so often put by the man who has not the slightest intention of helping anybody, honest or dishonest. Nevertheless, there are undoubtedly people who are quite genuinely puzzled as to whether they ought not to put assistance to Prisoners' Aid Societies very low indeed upon their subscription lists, even if indeed they are worthy of support at all. I do not think we can be unduly surprised at this fact. There are an enormous number of kindly and generous people around us who give freely to charities. But the more sensible they are the more do they wish to discriminate amongst the many appeals which are made to them. In these days of appalling taxation they naturally do not wish to waste what money they have available for charitable purposes. It is sometimes our fault that we are not more successful in raising funds for our work for prisoners. We fail sometimes to put our case in the strongest way. We do not put our best goods in our shop window. We hold back some of our highest trumps. Let me mix my metaphors as much as I like so long as

I make clear that it is a mistake for us to concentrate solely upon the humanitarian aspect of our work when we seek to interest others in it. It is a legitimate argument for us to employ when we say that ours is a work of charity. But it is also a work of economic value to the State, and we do not always employ that argument sufficiently. If a Borstal training can transform a loutish youth into a useful citizen, then surely it is wiser to spend the money necessary for that training than to send him to prison to become the associate of criminals. In the same way if the expenditure of a few pounds from the funds of an aid society gives a man when he leaves prison the opportunity to live honestly for the future, and if there is a reasonable chance that he will avail himself of it, then again it is good business from the point of view of the State to spend the money. Quite apart from sentiment or the religious motive it is sound economics to turn useless national material into good. This is a principle which we cannot get too clearly in our minds. Only the other day I came across an instance of the need for it to be realized. I have always urged upon justices the value of familiarity with prison and Borstal conditions. A woman magistrate visited a Borstal Institu-

tion and became most indignant at what she found. She wrote resentfully that the lads enjoyed the benefits of playing fields, of workshops and industrial training, of food and sleeping accommodation better than they would have had in their own homes if they had never broken the law. The inference she drew was that conditions were too good, and that they should be made less pleasant. There is one fallacy in this criticism immediately apparent to any one with knowledge of young men in captivity. It is this. The loss of liberty is a very real punishment in itself. The advantages of decent food and the rest of it most certainly do not compensate the normal young man for the catastrophe of being shut up for two or three years. But, quite apart from that, the lady failed utterly to understand the purpose for which the wholesome conditions of a Borstal Institution are provided. The lads are given a healthy life and valuable training not in order that they may enjoy themselves but in order that the provision of conditions better than those which in the past have been the cause of their drift into crime may in the future help to lift them into decent citizenship. Is this not logical and wise? The alternative would be to lower conditions in Borstal Insti-

tutions until they reached the level from which the lads had been rescued. Obviously enough we would then get a lower percentage of successes on discharge. Who would benefit by this crazy *volte face*? Certainly the community would not. You may think perhaps, that this lady's criticism of Borstal conditions as being insufficiently penal is unique, or at any rate so rare as to call for no notice. That is a mistake. There are many like her. On the other hand, there are still a number of people who believe that the principal argument for prison reform is the appeal to humanity or sentiment. On the contrary, as I have tried to show, the real justification for greater expenditure both of thought, money, and technical skill, is the fact that the whole community would benefit. Visitors to prisons and Borstal Institutions will welcome such improvements as they find when they realize that the way of charity in this matter—as in so many others—is the way also of common sense.

There is another direction in which a grasp of principle should be of the greatest value to you. You have practical experience of the effect of imprisonment. You see boys in their teens come before your committee at the end of their

sentences, many of them contaminated by the evil they have seen around them, many hardened and reckless as a result of having been sent to prison, very few—if indeed a single one—made anything but worse. You see at first hand what it means to lose employment as the result of being sent to prison and the awful difficulty of getting a man re-established. You see the stupid cruelty of the sentences of seven or fourteen days. You see in fact, because you cannot help seeing them, the deplorable results of the mistakes which well meaning but ignorant and uninstructed Benches are making every day. Knowledge of principle will enable you to use all this wealth of experience. It will enable you to recognize the futile sentences amongst the cases which come before you. Knowledge and experience combined should make your advice invaluable to Benches of magistrates. Do not imagine that I exaggerate the need for such instruction. There are some thirty thousand lay justices in this country. As they die, or in some few cases resign, new ones are appointed and the number remains fairly constant. It is an extraordinary thing surely that there should be no insistence upon any sort of knowledge of their work whatsoever, even

amongst these fresh appointments. They may be conscientious enough to desire to fit themselves for their new duties or they may be content to know nothing. Even those who wish to learn in some cases have difficulty in finding means of instruction. I have often thought that societies like yours might in this connection make a considerable contribution to the cause of magisterial reform. Would it not be possible for your case committee which meets in the prison here to inaugurate a system by which all newly appointed justices of those Benches which this prison serves were invited to attend a certain number of your meetings? Many of the members of your committee are no doubt magistrates. I am sure that when they sit upon the Bench their experience of men in prison assists them to avoid those errors in the treatment of offenders which are still far too common. I can see no practical difficulty in the way of my suggestion that you should offer to newly appointed justices the opportunity of sharing that valuable experience. Indeed, I would not regard such a proposal as at all extravagant if it were suggested that no new magistrate should be *permitted* to take part in the selection of sentence until by study in a prison he had realized some-

thing of the possible results of a misuse of magisterial powers. Let me give you an example of what I mean. There is no need for me to search my memory in order to find one, as these things are happening every day. Some six weeks ago I found in a local prison three lads aged seventeen, eighteen, and nineteen. They were charged jointly with the theft of eighteen pennyworth of lead and of a bicycle. Two of the boys had never been in any sort of trouble before, and all three had respectable homes. Yet a Borough Bench not only committed all three for trial to Quarter Sessions but refused them bail. As a result they spent six weeks in prison. Actions like this are quite deplorable. Not one of these boys should ever have seen the inside of a prison. They came for trial yesterday before the Recorder: two of them were merely bound over. It is inconceivable that any magistrate with experience of the effects of a prison environment upon boys would ever be guilty of stupidity so monstrous.

As to the detail of your work I am, as I have already said, diffident to speak. I will say no more than this—that I believe that in this respect also—in your approach to, and your treatment of, the men who come before your case

committee—you will be helped by a thorough grasp of the principles of punishment. The advice you give to men will be more sound, practical, and acceptable; the help you give them will be more wise and successful according as you discard the old idea that a prison should be nothing more than the agency of an avenging society, and assume instead the more hopeful attitude which I have tried to put before you—that you, the prison authorities, and the prisoner should, if it be possible, disregard the past, and co-operate in a common effort at a man's redemption in the future. We have come far from the day when the gift of a cap, or of a shirt, or of a shilling was considered the reasonable and adequate assistance to be given to a man on the completion of his sentence. It is easy to see from a study of your last Annual Report how familiar your committee has made itself with each possible form of help to enable a prisoner to start a new life on his discharge. Rightly your report lays especial stress upon the large number of men for whom it has found work or whom it has enabled to find work for themselves, for the provision of employment is the greatest test of the value of a Prisoners' Aid Society and incomparably the best service it can render to any

man leaving prison. I wonder if it has occurred to you to invite occasionally to your committee meetings local employers or prospective employers of labour who might be sympathetic towards your work. If they see for themselves that you never exaggerate your claims, that you never hide the truth even when it is unpalatable, above all if they once realize that there *are* men in prison who will repay a kindness and who long for the chance to go straight, then they will not withhold their co-operation, and the sympathy of local employers is the most useful asset any Discharged Prisoners' Aid Society can hope to find.

One of the Prison Commissioners told me the other day a story of an old man of many convictions to whom he spoke in Pentonville. The old man had been but recently discharged and had just come in with a new sentence. He said he was quite satisfied in the prison, and far, far happier than he was in the Public Assistance Institution. 'Why,' he said, 'there, I have to sleep in a ward along with a lot of others, and here I have a room to myself. There, when I have a fit of coughing the other men shout at me to shut my row, and here an officer opens the door and says "Have a cup of water, Dad?"

No,' said the old man, 'I don't want to change; I'm quite happy here.' There is a moral in the story. I leave it to you to find. He has a cold heart who can find no other moral in it than that we should make prison conditions more rigorous and hard. If, as I think, there is some lesson in the story more lasting and profound than that, if, as I believe, even a life so tragic and so futile as that old man's has in it something we may learn, we are most likely to find it if we seek rather in the spirit of the publican than of the Pharisee. Not all prisoners are to be found behind steel bars. Are we ourselves not prisoners held captive by the fetters of our own weaknesses and frailty? We shall be the more ready to help those in prison if we remember that, like them, we too need to be set free.

VIII. PRISON VISITING

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Annual Conference of Women Prison Visitors,
Home Office

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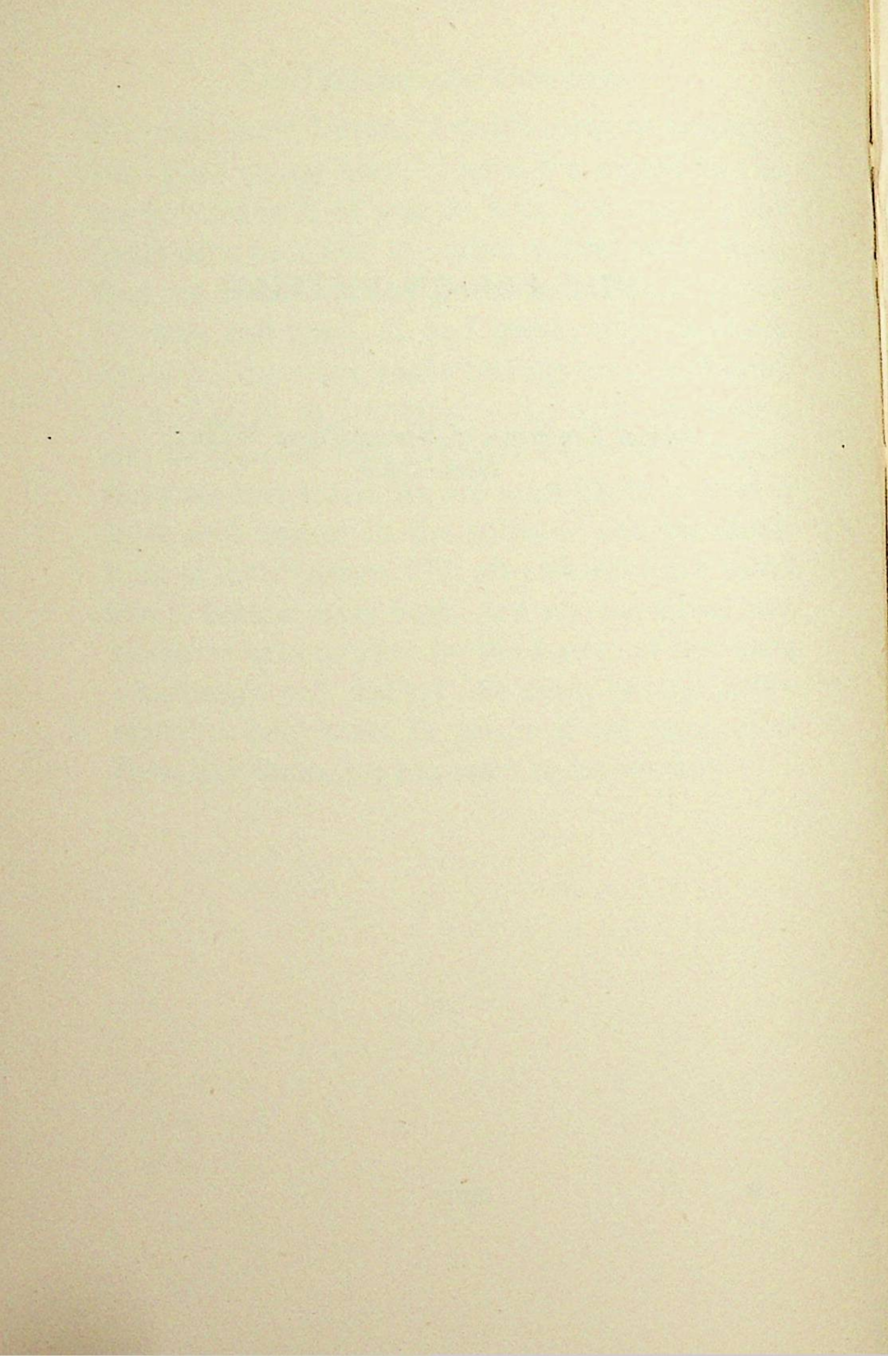

VIII

I cannot help thinking that I am a person conspicuously inappropriate to address a Conference of women prison visitors. If I had been asked to select a speaker for you I should have laid especial emphasis upon two things: I should have stressed the need for the speaker to have had practical experience of prison visiting, and I should have urged that she should be a woman. In the matters I am about to discuss there are two problems—the work itself and the human material with which that work has to be done. As to the first, I have no personal experience at all since, as a Visiting Justice of a prison, I am debarred from undertaking it. As to the second, the human factor is all important. It *must* be understood. The very first essential of all if you are to do this work with any hope of success is a realization that you are not appointed a 'Visitor of Prisons', or even a 'Visitor of Prisoners', but a visitor to a number

of individuals who are as a fact in prison—and the distinction is quite vital. Every prisoner is an individual problem. My own experience as the chairman of a Discharged Prisoners' Aid Society tells me that that is true in the case of men. Even with men prisoners we can do very little unless we really make an effort to understand them, to approach them not in the mass but one by one, and to let them see that we realize that each one has a need peculiar to himself. If that is true of a man how infinitely more puzzling the problem must be with women. Every woman, even when in the outside world she is free to express herself, is—to a man at any rate—not one problem but half a dozen. Complicate the matter by the suppressions of captivity and enforced restraint and I can only be thankful that my part is the easy one of theorizing about your work and not the infinitely more trying and difficult one of doing it myself. You will not be surprised, therefore, when I say that I shall make little attempt to enter into the *minutiae* of detail of your duties but that I shall content myself with giving you some general reflections which, if they seem to you worth while, you may yourselves apply to your work in the light of that intimate know-

ledge of its difficulties which I do not possess.

When, several years ago I first began to do any prison work, I must confess that I was extremely sceptical of the value of the work of prison visitors. I looked upon it as a humane relaxation of the rigours of imprisonment, as an indication that the Prison Commissioners were laudably desirous that conditions should not be too hard: I regarded it in fact as a sort of alternative to an extra concert or entertainment. Most certainly I did not believe in its possibilities as a permanently humanizing influence. I have been led to change my view by two things —the first, the opinions of prison governors of great experience, and the second, my own experience at the committee of a Discharged Prisoners' Aid Society. I have been told that very often instances are to be found, especially in the case of men serving long sentences, when the tie between the prisoner and the man who over a span of years has been his friend has become something more than one of gratitude for repeated kindness: it has deepened into a very real and permanent influence for good. I have seen for myself, over and over again, a prisoner appear before the committee of which his visitor has been a member. I have been

struck by the obvious feeling between the two —the trust of the one, the half humorous, half-affectionate understanding of the other. There is, of course, a type of prisoner, among men at any rate, sour, suspicious, and embittered, with whom any friendly approach is merely a waste of time. But, such men apart, my present view is that good visiting is very valuable indeed, but that thoughtless uninstructed work is not only not of value but is, or easily may become, actively harmful.

How should a visitor approach his—or in this case, her—task? Who should undertake this work? Within the last month I have encouraged two women to take it up, and discouraged two men from so doing, though I do not mean to indicate by those figures my relative opinion of the sexes! It is sometimes said that women are unable to co-operate, that they cannot be just one of a team. If one does not like women, one expresses it by saying that they are too selfish to forget themselves and to play for their side and that, whatever the corporate need, they remain essentially egotistical. If one does like women, one says that it is precisely because they have so much character and individuality that they are too fine to give blind and unreason-

ing obedience. One explanation is a good deal more polite than the other but the result is exactly the same. Possibly the truth lies half-way. Perhaps women will give the teamwork if first they are brought to understand the necessity and the value of it. It is at least partly for this reason that I urge upon all who are prison visitors that they make some effort at any rate to understand the history of legal punishment and the theory of penology. Such study will make them realize the necessity for a designed, systematic, and consistent treatment of offenders. It will make their work incomparably more effective. Moreover it will have a further excellent result. All, or at any rate most, women are very ready critics of such human institutions as are governed or dominated by men, and I suspect that women visitors are not unduly backward in this respect. Study of the sort which I recommend will make their criticism of greater value, their outlook broader, and their advice more reasoned and more sound. It needs little argument to prove that if a prison visitor has a false idea of the entire purpose of penal discipline she is the less likely to direct her energies with the maximum of wisdom in her work, less capable of getting the best results. Some grasp

of general principle is therefore not a waste of time but a practical and effective preparation of real value for the task for which she is appointed.

Let me illustrate my meaning. Many people believe—I think erroneously—that a prison sentence is intended, or should be intended, primarily as a retribution of society upon the offender for his wrongdoing. If we believe that then, obviously, in talking to prisoners we shall direct our minds rather to the past than to the future. Naturally and inevitably we shall point out how wicked the prisoner has been rather than insist upon how good she may become. We shall lose the influence we might have had because we shall be inclined to harp upon the offence instead of concentrating upon the personality of the offender. As I have already indicated I myself do not believe in what are known as the retributive or the expiatory theories of legal punishment. I have still to be persuaded that any human being can ever know sufficient of another person—of his weaknesses and his struggles to resist temptation—to be enabled to make that nice apportionment of pain and suffering which these theories necessitate if they are not to lead to cruelty and injustice. All that,

however, is in parenthesis. I do not wish to be drawn this afternoon into a dissertation upon the ethics of legal punishment. All I wish to do is to indicate that some quiet thought upon these problems will without any doubt be of assistance to you in your work. And I would add that thought can be stimulated and directed by reading, though I modestly decline the invitation to suggest any particular book as of especial value or distinction. I hope, however, that as a result of your thought and study you will arrive eventually at the conclusion which I myself have reached. If you do, and if, therefore, you come to believe that the right view of a prison sentence is that it is in some cases a regrettable necessity for the protection of the law-abiding majority of the community, then you will see immediately how complete a change it must induce in your approach to those you visit in prison. Your message will not be one of reproach for past wickedness. You will come to them not at all as the representative of an outraged society which desires their punishment, but as a fellow member of the same society, anxious for your sake as for theirs that they shall be bettered, but wise, truthful, and candid enough to insist that they themselves must collaborate in the task of

making their freedom desirable in the public interest. Such an approach gains both their assent and their respect: most certainly it does not alienate them.

Perhaps to you what I have said appears obvious or platitudinous. If so, I can assure you that it is not universally accepted. But that need not trouble us. The important point is not whether my opinion is popular or unpopular, but whether it is true, and I do earnestly believe it to be so. Moreover, I have little doubt that its acceptance by you will make your work of visiting a good deal more effective.

There is one other aspect of the value of some general knowledge on your parts to which I may refer. If you know your case sufficiently well you can do work of very great usefulness as propagandists. Needless to say, the Prison Commissioners to not want to see you standing on tubs in Hyde Park. Nor is that what I suggest. But clearly enough your work gives you the opportunity to see and to appreciate many things which men and women without your experience fail to understand. You see the contamination which is almost inevitable in a prison. You see the effect of the short sentence: you see the way in which it destroys the fear

of the unknown in a woman who has not previously seen the inside of a gaol, while it gives no chance for the training of character or instruction in a trade. You see the considerable proportion of persons committed to prison who could be dealt with far better by other methods. Above all, you see the far too large numbers of young people sentenced to imprisonment. All these tragic mistakes are constantly occurring. They will continue to occur until by some means or other magistrates come to realize more than at present is the case the responsibility and difficulty of the selection of sentence and the deplorable results which sometimes follow their mistakes. And I do seriously suggest that your work and your experience give you the knowledge and the authority on suitable occasions to spread this most valuable instruction. I need hardly say that I do not suggest that you should become mere gossipers or mischief makers. But after all, if any one has yet discovered a method of muzzling a woman, I have yet to hear of it. You will talk. You had best then talk wisely and usefully about these very vital matters upon which you are peculiarly well informed. If you will talk discreetly and without giving offence I believe you will all

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find occasions when you can do immense good in educating those whose duty it is to know these things but who most unhappily do not know them.

There is a sort of corollary to all this. If you once realize that you, as visitors, are part of a big machine—a part of great potential value but a comparatively recent and not an essential part—you will agree that it is not only right but necessary for efficiency that you should do your work with complete loyalty to the directing authorities, the Prison Commissioners. No part of a machine can without danger to the whole be used for purposes alien to those for which it was designed. To say this is not to suggest that you must abandon your independence of judgment or be fearful of all initiative. It is to suggest, very strongly, that if and when you find rules and regulations of which you disapprove you should observe them loyally so long as you remain a part of the machine, reserving naturally the right to approach the Prison Commissioners after due consideration with your criticisms. And I say this, not because I observe the watchful eye of one of the Commissioners upon me at this moment, but because I believe it to be sound and because I have known the

contrary to be done by visitors—though this, I hasten to add, was in a men's prison.

I was asked recently how your work of visiting prisoners should be done. As you well know, no one can teach you that. If you are the right sort of person to do the work the art will come naturally and soon. If you are not the right sort, it will not only not come of itself but you can never be taught. But perhaps you will allow me to mention one or two pitfalls which are common to men visitors and may possibly prove instructive therefore to you. In the first place, never forget for one moment that your status is that of a visitor whom the prisoner is perfectly at liberty to receive or not at her option. If a woman once feels that you are thrust unduly upon her, then your influence is immediately gone. That is why cellular visiting is, in my opinion, much preferable to visiting in a room. If you see a woman in her cell she is the hostess: you see her on her own ground, surrounded by *her* photographs, and *her* things, in her individual atmosphere. You ask: 'May I come in?' It is quite otherwise if she is conducted by an officer to see you in a room in which you say: 'Sit down please' and she sits down in a chair in which she knows some other

prisoner has sat five minutes before. One cannot expect her to look upon the interview as a visit from a friend when she is led to it in exactly the same fashion and by exactly the same officer as she is led to a task or to a bath. If your first point is that you must not forget that you are a visitor, your second is that nevertheless somehow, unobtrusively, but by some means or other, you have got to take charge of the conversation and lead it into desirable channels. If you do not manage to steer the boat, the woman will, and just because the majority of prisoners are egocentric and many of them particularly selfish, they will steer it into very troubled waters indeed. You will find yourselves discussing matters either useless or actively mischievous. Up will come the dangerous topic of their grievances, with every sort of criticism and denunciation of the prison administration. You will be told how unkind and unjust this officer or that has been to them; how unfair the judge or magistrate was when he passed sentence in their case and how infinitely worse was the conduct of another prisoner who, quite wrongfully, was given a shorter sentence than they themselves received. Naturally you wish to be kind and sympathetic. It is precisely because of that

wish that you are in the prison at all. But if you sympathize—even if you do so with reservations and with good advice thrown in—it is both foolish and wrong. It is wrong because after all you make no enquiry into the facts. You are merely accepting as true, accusations which you have no authority or opportunity of investigating: you hear one side of the story only. It is foolish because trouble comes from this kind of conversation. It comes just because you stand—or should stand—in the eyes of those you visit for what is good and unselfish and decent. What you say becomes therefore invested with peculiar significance. However carefully you may try to word your sympathy the danger is that the women will forget, consciously or unconsciously, all the good advice and the reservations with which you have accepted their statements of fact and will remember only that you have said you were sorry for them. They persuade themselves that their visitor agrees that they have received something less than justice, and they are made the more unsettled and unhappy. When this happens the result of your visit will have been exactly the opposite of what you have intended. You will not have helped the prisoner—the very thing you went to do—

but you will have grievously upset and distressed her. There is this further danger. Naturally enough, when you are the only person from the outside world whom they see and to whom they can talk freely, the women whom you visit note every word, almost every intonation of your voice. If they are of an emotional type and not too well educated there is the risk that under the unnatural conditions of imprisonment they may distort, exaggerate, or misinterpret what you say. The very maximum of discretion on your part is insufficient guard against the possibilities of mischief.

For the sake of clarity I should, perhaps, add one word. I do not want you to misunderstand me or to imagine that because prisoners are ready to complain of grievances or discrimination I believe that such complaints are necessarily well founded. That would be entirely untrue. It would be equally untrue to believe that I wished to stifle legitimate complaints. What I do emphasize is that it is not your function to investigate these matters. You have no means of so doing. It is therefore almost certain that you can do no good, and for the reasons which I have already given you extremely probable that you will do harm by listening to

them. Moreover, in all our prisons, every prisoner who so desires can ask for complaints to be investigated either by the Governor, the Visiting Magistrates, or the Prison Commissioners.

As a corollary to all this it may be useful to suggest that you should always have one main subject ready for discussion when you enter a cell. This will avoid this pitfall of the conversation taking a direction chosen, not by you, but by the prisoner. Whether you think out your topics the day before, whether you keep a notebook for the purpose—these are matters of detail for you.

Never forget a promise. If you have said that you will come on a particular day, or that by the date of your next visit you will find out some special fact, or that you will try and obtain some special book, do your utmost to make good your promise whatever it may be. Only the other day I spent a long and tiring day upon a committee. As we rose for the day, one of my fellow members whom I knew to be a prison visitor, remarked ruefully that before he could go home he had to pay a visit to the prison. As this was in the opposite direction to where he lived and he was obviously weary, I suggested

that the next day might be time enough. He told me that he had been visiting a prisoner the evening before and that the man had asked him to find out how many times Mrs. Godfree had been the lady lawn tennis champion: the ruling on this point was required to settle a bet between this prisoner and another. My friend had promised to let him have the information that night. Before the committee sat in the morning he had made the necessary enquiries and he insisted that he must redeem his promise and let his prisoner friend have his answer immediately. Surely it is easy to understand that by going that day when he was very tired he gave the man in prison something more valuable than a trivial piece of information or the means of winning a bet. He gave him trust and friendship and confidence.

I have heard prisoners express not gratitude or affection for visitors, but suspicion of their motives in coming into the prison. I do not suggest that this attitude is widespread, but it is sufficiently common for us to consider what lies behind it. At first sight, it appears to us ungracious that what we intend as kindness should be questioned in this surly spirit. But, if we really want to do good, it is wise that we

should try and understand what gives rise to this lack of welcome rather than that we should dismiss it as evidence of mere want of decent feeling in certain prisoners. It is possible that the fault may lie in ourselves. The secret of successful prison visiting is to be found in friendship. If we cannot enter a cell as a friend, we had best not go into one at all. It is an obvious temptation for us to think all the time that we are better than those we see in prison, just as we are doubtless richer and cleverer and more highly placed socially. But if we want prisoners to respond, if we want our visits to result in something more than momentary relief from boredom on the part of those whom we visit, we must discard all assumption of moral superiority, not only from our outward manner, but from our inmost thought, and the better we really are the easier we shall find it to do this. I do not mean in the least that prison visitors should have no moral influence for good. On the contrary, it is the very object for which they exist. I mean that the visitor is not there as a disciplinarian, or even as a teacher, save in so far as she teaches by the strong lessons of example and inspiration. If you want the best results it is by self-abnegation that you will get

them. Treat each prisoner whom you visit as a separate personality in whom you are deeply interested individually. Spend enough time with each one for your visit to mean something. Do more than discuss matters with them in such a fashion as to *appear* concerned in their lives: *be very vitally concerned*. Do not merely catechise by shooting at them a series of questions about their children, their religion, or their previous convictions: learn about their families for the sole reason that you *want* to know, just as you would want to know these details in the case of other women not in prison with whom you were in conversation. If you approach your duties in this spirit, your visits will give greater pleasure to those whom you go to see. What is more important still, you will help to build up a prisoner's self-respect. When you have arrived at that relationship you will find that a woman will do a great deal to please you. It may be she will start reading decent books rather than the rubbish which has hitherto contented her, and having begun to read them for your pleasure will continue to read them for her own. It may be she will think about decent employment when she leaves prison because she knows that it is your wish to see her established in life. One

could multiply examples easily enough. There is nothing strange in all this or in my insistence upon the power of friendship. After all, could you expect to have influence over a woman if she was able to see that you looked down upon her? And there is one last point. You must be tolerant and broadminded and you must possess some knowledge of social conditions. Otherwise, neither of you will understand the other.

We live in times of change, and prison life is changing fast. The visiting which you do was instituted at a time when the prisoner spent most of her day in her cell. To-day, classes and earning schemes make visits less necessary and important to women in prison. There is, so to speak, a competition between the class and the visit. This should not be a discouragement to you but an incentive. Yet how inevitable and how depressing discouragement in your work must be! How easy it must be to expect too much: how difficult not to fear that you are accomplishing nothing: how impossible not to wonder sometimes: 'Is it worth while going on?' It *is* worth while, even if the results are not always apparent, or immediate, or spectacular. Sympathy, unselfishness, kindliness, and good talk about wholesome subjects are not everyday

matters in the lives of those whom you visit. These things have their effect, sometimes only for a time, sometimes for ever, in the lives of prisoners. And their effect is all the greater if they are not obtruded. You will succeed not at all unless you think nothing of yourself and a great deal about the woman whom you go to see. You will not succeed even then unless in her own heart she knows that you want nothing but to help her. And even when you have reached that stage remember one thing. It is this: common sense and a sense of humour are powerful allies of spirituality. If a woman laughs with you she will be the more ready to listen to your counsel, because she will recognize you as the human being which she is herself. The casual—or apparently casual—word of advice dropped with a smile has often greater effect than a sermon. Do we not ourselves often feel inclined to cry out to a friend 'Oh! for Heaven's sake don't *preach*', just because we know a sermon is deserved? when our own nerves are on edge does a lecture, however well intentioned, ever help *us*? For the matter of that, laughter is a pretty good thing in itself: it is a fine solvent in times of trouble, and no visit is wasted if you have made a woman laugh in her cell.

If I have said nothing of the purely spiritual approach, do not imagine that I desire to belittle it. It is not that. I have not touched upon it because it is not for me to speak of it. We no longer risk the gaol fever by entering a prison, as did John Howard or Elizabeth Fry. If we approach the outcasts of society we sacrifice a little of our leisure, perhaps something of our money or of our peace of mind. We do not sacrifice our lives as did Damien when he ministered to the outcasts and the lepers of Molokai. But even if we give less, we can at least try to give in the same spirit as they who gave more. Our work will be the better if some faint echo of their voices lingers in our hearts. It will be the better if it is founded upon a realization of our own imperfections and rooted in a love of our fellows not less real because they have faltered or fallen. It will be best if it has the inspiration not of patronage which is human, but of charity, which is divine.

IX. THE RESTORATION OF THE CRIMINAL TO SOCIETY

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National Association of Probation Officers
(South-Western Branch)
Conference at Exeter

IX

This is the final address of the Conference and for that reason I propose to attempt a somewhat broader survey of the problem of delinquency than has been undertaken by any previous speaker. I shall try to examine the relative positions of the law-abiding citizen and the lawbreaker, to discuss the changing attitude of society towards the question of crime, to see if that change is in a wise direction, and to enquire whether in these grave social issues there is any part which we ourselves should play.

The most ignorant amongst us are aware of the immense changes which during the last hundred years have completely transformed the sentences passed upon convicted persons by the criminal courts of this country. We have all heard of the savage punishments inflicted during the first quarter of the nineteenth century for offences which to-day would be looked upon

as comparatively trivial. We have read of transportation to Australia, and even of the penalty of death, awarded for larcenies which to-day would be met at the most with a few months imprisonment. Persons were treated as desperate criminals who to-day would be looked upon only with pity. Only yesterday, in one of those newspapers which reproduce items of news printed in their columns 'One hundred years ago', I read an account of the trial at Assizes in July 1838, of a boy of twelve who received a sentence of seven years for stealing some small sum of money. As I say, we all know that there has been a complete transformation of thought and of practice in a hundred years. But there are some who hardly realize that this evolutionary process is still in progress, or if they do know that it is still going on are but vaguely aware of the why and the wherefore. It is of very real importance that everyone who is concerned in the administration of justice should understand not only what changes are going on, but also what are the reasons for those changes. There are still persons to be found who oppose all humanitarian inovations as mere weakness and sentimentality and it is therefore essential that those who disagree with them should know

enough to be able to present a reasoned case.

It would be too lengthy a matter to examine the fluctuations of authoritative opinion upon the right treatment of the criminal during the period of the nineteenth century. Nor is that necessary. Since the beginning of the present century the changes have been not only regular and continuous, but also basically consistent. There are three different aspects in which we can see the attitude of society towards the offender: first, the immediate reaction of the community to wrongdoing as shown by the sentence passed upon him, and the purpose behind the sentence: secondly, the official attitude towards an offender as shown by his treatment in prison: and thirdly, the degree of society's forgiveness as shown by the chance given him to rehabilitate himself on his discharge. In each of these three circumstances the prisoner for the last forty years has been treated with an ever increasing measure of humanity and understanding. We have, of course very much still to learn. No one would be so foolish as to suggest that we have reached finality in this or in any other department of social science. That, however, is not for the moment my point. I am concerned only to

emphasize that whether we have gone too fast, or, as some maintain, too slow in these matters, the direction in which we have moved has been always the same—towards greater mercy and forbearance.

As late as the beginning of this century the court looked primarily at the act. If the act was criminal, then the person committing it had to be punished. If one reads the records of criminal trials or the biographies of lawyers of thirty and forty years back, one finds constantly examples of dreadfully severe sentences which are explicable, and were then justified only by this stern doctrine of the absolute necessity of punishing acts in themselves bad and wicked. Moreover, where a convicted person had any criminal record the sentence passed upon him for relatively small offences was very often savage. As a result of such judicial practice you had broken and embittered men who emerged from prison without hope. Even to-day, one reads from time to time, accounts of the trials of men who have spent the greater part of their lives in prison, whom the judge himself describes as having been made the life-long criminals that they are by some appalling sentence of imprisonment upon them as mere boys thirty years ago. All

this was thought necessary as deterrent. It was a still living tradition from the even harsher penalties of half a century before. The courts had not yet learnt—not *all* courts have learnt to-day—that severity of punishment, however extreme, is in itself not sufficient to deter men from breaking the law. The same difference of spirit in the administration of the law is to be seen in the *numbers* of persons sent to prison. At the beginning of the present century the average daily prison population was about 20,000: to-day with a considerably larger population it is a little more than 10,000. Judges no longer allow their sentences to be determined solely by the offender's wrongful act. It has become their more merciful habit to examine not only the act, but all the circumstances which accompany it. A court no longer prides itself upon the number of convicted persons whom it can sweep away into the seclusion of the gaols: the tendency is rather to take satisfaction in the number of those offenders for whom the court can find alternative treatments and so save from a prison sentence. I do not wish to exaggerate or for one single moment to suggest that in the choice of treatment of offenders the courts are perfect. Unhappily, they are not, and this is due

not only to human fallibility, but to the curious absence of concerted study by judicial authorities of their most delicate and most difficult function, the determination of sentence. It remains of their duties the least efficient: it is the weakest part of the judicial system of this country, and sometimes, amongst the lay magistracy especially, scandalously cruel and inefficient. I am not concerned, however, at this moment with anything narrower than general tendencies, and there is no doubt at all that in the last forty years the whole bent and leaning of judicial authority has been in the direction of mercy and understanding. The courts are the agents of the community. Their sentences are the expression of the will of society. This modification of practice is therefore in reality, evidence of the change in the general conception of the right relationship between the offender and the remainder of his fellow citizens. Is it a wise change? I think it is. I hope so to persuade you, or at least to cause you to think the matter over afresh. For it is by thought and reflection, by the consideration of fresh ideas and the knowledge of new facts that progress is made. If I may summarize in a sentence what I believe to be the right view it is this: the law in punish-

ing an offender should not concentrate upon his act but should take into account all the circumstances, including those of his life and personality, and this in all cases even where the act itself is peculiarly atrocious. There are two main reasons which influence me in thinking this. In the first place, no one who has read anything of the history of crime can pretend that unremitting severity is an effective deterrent. In the second, such uniform severity must lead to cruelty and injustice. Let me give an illustration of my meaning. Inevitably where courts are prepared *save in exceptional case* to season justice with mercy such discrimination leads to anomalies. The exceptions are not universally agreed. Thus one judge may be moved with peculiar indignation by crimes of violence: I myself knew a judge of great gentleness and humanity who visited all offenders convicted of such crimes with penalties far more severe than those he thought necessary in any other cases. Another judge may regard violent men with tolerance but may be merciless for all those guilty of sexual offences: I remember one such case on circuit in which the most frantic efforts to get a case postponed were made by counsel for the defence because a particular judge was

announced as the judge of Assize. Yet another judge may be pitiless only in cases of financial fraud. I am not defending the commission of these or of any crimes, nor am I minimizing the dreadful suffering of which they are sometimes the occasion. I am emphasizing the fact that under a system by which certain crimes are arbitrarily exempted from uniform treatment the crimes to be so exempted will vary with the individual judge, with the result that men guilty of identical offences will receive—as indeed they do now sometimes receive—very different sentences. That is injustice. What is even more sure is this. Only very rarely is a court provided with all the evidence necessary if the real degree of moral guilt of an offender is to be assessed. The court can be satisfied easily enough that he has committed the act. It cannot always be shown why he has committed it. It can seldom be shown what efforts he has made to avoid doing so. Hardly ever is his psychological past history shown by expert medical evidence. If every person who commits an act sufficiently wrong in itself is to be severely punished some at least will suffer who are more to be pitied than to be blamed. That is cruelty.

I want to make it plain that I am not saying,

and have never said, that there is no place in the administration of the criminal law for stern punishment. It is sometimes not only justifiable, it is wise and necessary. With a certain number of offenders it is the only effective treatment. And there are types of offences which strike at the security of the State—in different degrees, espionage and crimes committed by officers of the police are examples—where the interests of the individual may legitimately be subordinated entirely to those of the community. *Salus populi suprema lex*. All this is commonplace. Nothing I have said calls it in question. All that I have pleaded is that it is not only more humane but more common sense and logical that the iniquity of the offence should not itself alone determine in any case the measure of the punishment.

So much for the offender before sentence. If we turn to the offender in prison we find during the same period of time the same steadily progressive introduction of reforms. At the beginning of the century the one purpose of the régime was punishment. It is true that the treadmill, the crank, and the shot-drill had disappeared but the administration of prisons was still based upon deterrence through suffering and humiliation. There was still the close-

cropped hair cut which stamped a man as an ex-prisoner, the broad arrow which never allowed him to forget that he was in a class apart, the dark cells and the poor lighting, the rule of silence, and the whole atmosphere of misery and disgrace. Little by little and step by step, all this has been swept away. To-day you have educational classes in all sorts of subjects, occasional concerts, visitors, far greater freedom of association, industrial training, and a general atmosphere designed rather to improve than to brutalize. Some prisons are better than others owing to the age of buildings, their size and locality and so on, and some are still very imperfect. But again I am concerned to show not to what exact degree of perfection this or that individual prison has attained but the fact that in all English prisons there has been an attempt to make life more tolerable and conditions infinitely more humane. The process is still continuing. You have the experimental prison at Wakefield where a large proportion of the men work and sleep away from the prison altogether in a hut encampment. Within the last thirty years we have seen the first introduction and the rapid and considerable expansion of the entire Borstal system for

the treatment of young offenders, approximating in its latest developments at any rate more to the life of a school than to that of a prison. In the same sense I saw recently at Winchester Prison the erection in progress of a new building designed solely for the training of young prisoners as bricklayers: there, selected young prisoners will be given an industrial training intended for one purpose only—to fit them to obtain and to retain honest employment: it will have nothing in it whatsoever of punishment: the instruction itself will be like that given at an industrial centre to other lads who have never been inside a prison. What is behind these innovations? There are not lacking critics of the old school who have no words too scathing in which to denounce them as ludicrous and insipid. You need not give much attention to this type of critic, however dogmatic or vociferous. It is easy enough to retain our sense of proportion if we bear two facts in mind. There is always punishment in the loss of liberty: and the old system of administering prisons was a failure. If people would remember those two simple truths there would be less rubbish talked about prison reform. To spend months or years of one's life in a single building under constant

supervision, without one's family or friends, with coarse food and enforced labour, is a very real punishment, except perhaps for the lowest types of vagrant prisoners. But it is even more important to recognize the object of introducing the new spirit of prison administration of which I have spoken. That object is not to encourage crime by making life inside prison attractive: nor is that its effect. Practical experience has shown beyond argument that the old system of taking men who were dishonest or violent and thrusting them for longer and longer periods into harsh and unnatural conditions in which they were degraded and humiliated and wretched was bad for the community to which they returned. It was bad because upon their release the system did not make them better or even desirous of being better. On the contrary, it brutalized them and very often they came out of prison worse than they went in. Not only were many men made worse, but those who did wish to lead an honest life on discharge were less capable of doing so than before their imprisonment. In the name, not of mercy or of sentiment, but of sanity and common sense, is it not high time that such a system *was* changed?

It would be impossible to give you a better

illustration of the value and intention behind the present-day reforms than that of the 'earning scheme' which has been started in all convict prisons. It was described recently by the chairman of the Prison Commission in a speech at Oxford as 'a modern miracle' in its effects. It was, he said, emptying the prison hospitals: men who on one excuse or other had for years pleaded illness as explaining their inability to work were now being ordered against their wills to down tools: output in every workshop had increased enormously, in some it had gone up by one hundred per cent. In short, men are being taught that there is a reward and an interest to be found in honest industry, and so are being given a new self-respect, together with a training which makes them more fit to be released and more able to earn their living without resource to crime.

Finally, there is the question of the man as he leaves prison. Here again there has been a parallel development. Thirty years ago a prisoner on his discharge was handed a few shillings if he was destitute, or a piece of clothing if he was in rags, and turned out to fend as best he could for himself. To-day, each prison has its Prisoners' Aid Society. The work is not

done in precisely the same fashion or with exactly the same measure of success in all prisons. That is inevitable in all social work where there has been over a period of time insufficient co-ordination between one Aid Society and another. But in principle the help given in each prison is the same. It differs only in detail. You have in every prison the committee of the Society, aided and encouraged by the Prison Commission, interviewing prisoners before their discharge, finding out their needs, helping them by the provision of clothing, tools, or of money, and best of all doing their utmost to get them employment. In a large prison the Aid Society will employ one or more whole-time agents whose sole work it is to endeavour to find work for men going out. The work of a Discharged Prisoners' Aid Society is extremely difficult and doubtless many mistakes are made. But at least there is always a real desire, translated very often into action, to give every man a chance to start afresh—sometimes one chance after another.

I have drawn for you in outline the modern attitude towards the criminal. As I have told you, it is not universally accepted, but I hope most earnestly that I have been able to convince

you that it is the right one. At all events you will not reject such ideas as I have put before you merely because they are new or unaccustomed. Before sentence, in prison, upon release the offender offers not three problems but one. It is illogical to treat him on different principles at what are merely successive stages of the same journey. It is the same man who stands awaiting sentence in the dock, whose life in prison has to be planned for him, and who emerges to face the world again. You will see that at any rate the line of approach which I have sketched out for you at these different stages is consistent, clear, and logical. There is a reasoned purpose behind it in all three aspects in which we see the offender. It regards him, so to speak as material, human material, which, whatever its present or its past, is susceptible of change. The offender may be made better or he may be made worse by the treatment he receives at the hands of the law, which is to say at the will and command of his fellow men and women who comprise the society in which he lives. Obviously enough, it is more kind and charitable to look upon the criminal as some one whom it is in our power to help rather than to regard him with aloof contempt. However, the point which I

am endeavouring to emphasize that it is in addition more sensible to do so. The economic argument is that which I am urging to you now. Is it not the plainest common sense to approach the offender with this desire and intention of bettering him if in fact he who is now harmful to the community *can* be turned into some one of use and value to the State? If this *can* be done, are we not showing ourselves as rather silly persons if we *prevent* its being done by insisting upon severe sentences in all cases, upon harsh prison conditions, or upon insufficient aid to a prisoner upon discharge? Conversely, I myself am perfectly prepared to maintain that if, after full opportunity to rehabilitate himself, the offender persists in crime, then the community is entitled without inhumanity to deprive him—if necessary for ever—of the opportunity of doing further harm to others, in exactly the same way and for precisely the same reason as the State now isolates a man suffering from an infectious disease.

If, as I believe, I am right in what I have said to you, and if, as I hope, I have convinced you, how can you translate these ideas into practice in your work as magistrates, as probation officers, or as social workers? So far as justices are

concerned, I could ask nothing better than that in considering sentences you should never allow yourselves to be ruled too much by precedent, but that you should make it your invariable practice to put to yourselves in each case the specific question: 'What is the possible good, and what is the possible harm that the Bench may do by this sentence? Which is likely to outweigh the other?' Let me give you some examples. I select them because almost every Bench has such cases fairly often and because they are simple: begging offences, small workhouse offences, and ordinary 'drunk and disorderly' charges. I shall be very much surprised if you do not decide the penalty in these cases, not after discussion and consideration, but almost as a matter of course by what is customary. You impose either a few days hard labour, or a fine with the alternative of so many days. You know the defendant has no money, and cannot pay a fine, so that in reality the penalty is automatically a few days imprisonment. What good do you suppose your sentence does? or is it not a fact that you have never thought about that question one way or the other? As magistrates *ought you not to have thought about it*? I am pretty sure the governor

of any prison would tell you that these prisoners, such as drunks sent in for a few days, were never benefited by the experience, whilst his work was hampered by having them in the prison. That is what I have been told by every prison governor with whom I have discussed the matter. You have power to order detention up to four days in lieu of imprisonment in all sorts of cases in police cells certified as suitable by the Secretary of State. In many minor cases the law is sufficiently vindicated by this detention: an offender is saved the stigma and the contamination of prison: the country is saved expense: an offender sometimes does not lose his employment as he does by a prison sentence. Are there any police cells so certified in Exeter? Did you know that you had this power? *Ought you not to have known?*

I have mentioned these petty offenders simply because most country Benches have such cases frequently. But one could multiply questions indefinitely. Do you as justices ever trouble to follow up cases? Are you in close contact with your probation officer so that you know the progress of each one of his cases from your court? Have you ever visited a child at the Approved School to which you have committed

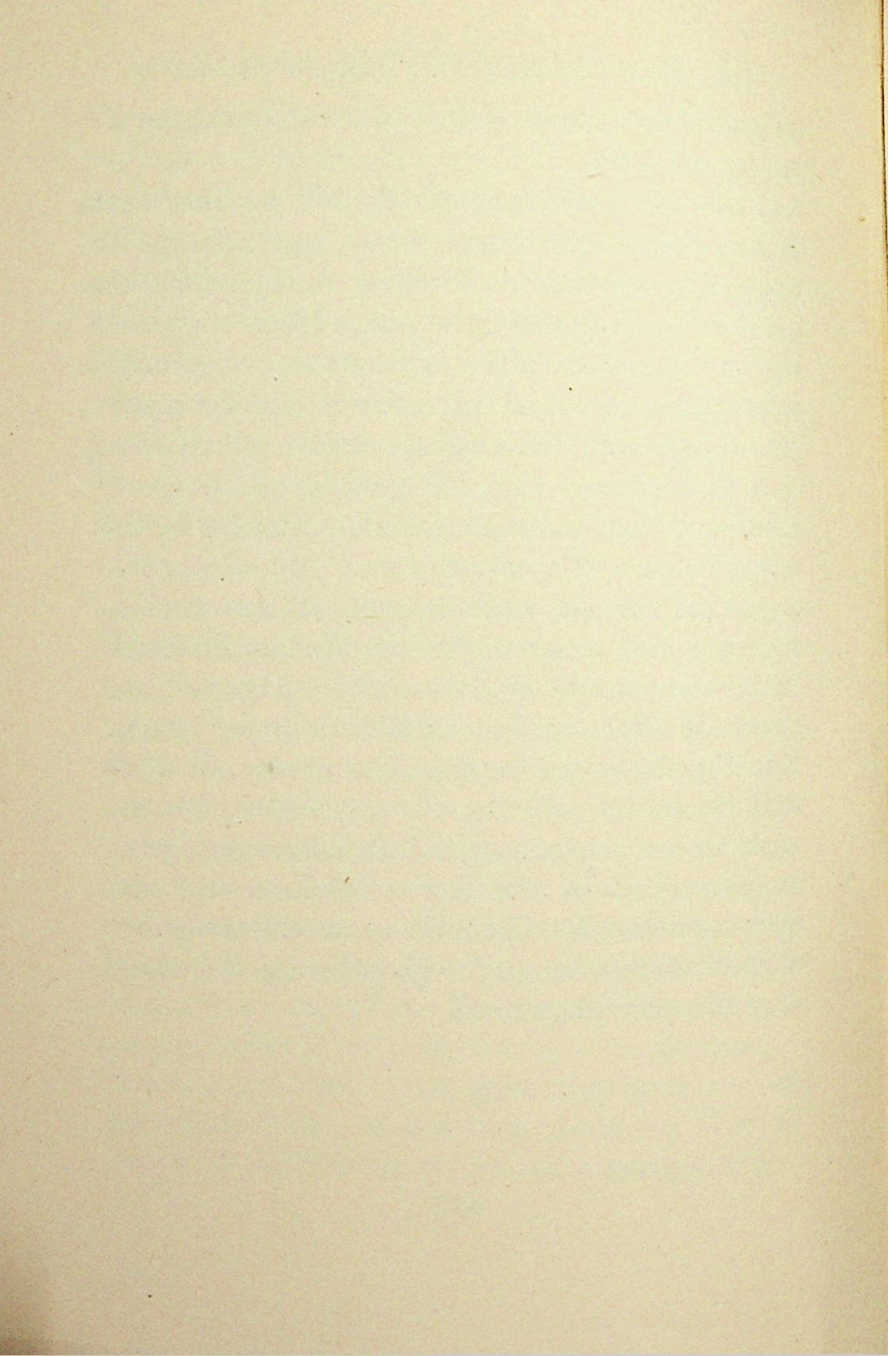
him? Have you sought sometimes to find work for a man after discharge from the prison to which your Bench has sent him? Have you elected as your chairman, quite irrespective of seniority or rank, the person most capable of conducting legal proceedings? Are the Home Office leaflets on such matters as matrimonial or children's courts carefully studied, or do you perhaps leave all these things to your Clerk? There is no end to the questions which I might put. You will not think me discourteous because I ask them frankly. And in fact I should direct them less to you than to your fellow justices who were invited to this Conference but have not cared to come. At some meetings of this kind I have been the only speaker. Quite obviously I have been unable to call attention to the tiny proportion of justices who have been present: there would have been available too instant and crushing a retort. But on this occasion you have had the advantage of expert and distinguished speakers, one of them a Judge of the High Court. It is disheartening to find justices either too indifferent to learn or too ignorant to realize that there is anything which they should know. In the boroughs there should be no place upon a Bench of justice for the man

whose sole claim is that he has been a local politician or small civic dignitary. In the country, the day of the charming, but entirely uninstructed hunting squire upon the Bench, is really past. Most of us have met him—jovial, loud voiced, and dogmatic, or if I may so describe him *Fox et praeterea nihil.* The system of a lay magistracy is to-day on trial at the bar of public opinion. If it is improved I think it will remain. If no method of improvement can be found I believe it will be swept away. And it will deserve to go.

There is a vast scope in social work for those of us who are interested in men and women who have been 'in trouble', as the expression is. After all, they are for the most part people very much the same as ourselves, but with greater temptations and less advantages. If your interest is more than academic you can do a great deal to help. You can become a prison visitor, you can subscribe to the funds of a Discharged Prisoners' Aid Society, or better still, you can work on its committee, you can try to help men on discharge from prison to get employment, you can assist your local probation officer with his endless tasks, or you can become a Borstal Associate. This is by no means a complete list

of possible activities, but it is something to be going on with.

You will have noticed that in nothing that I have said has there been any attempt to appeal to sentiment. I believe that justification can be found for the views which I have suggested for your consideration without any arguments save those of social expediency and economic advantage. But in my last words which close this Conference you will perhaps allow me to reinforce the cold materialistic reasoning by the warmer plea of sympathy and pity which, like a golden thread, runs through all this work to sweeten and to strengthen it. We can do excellent work in this field even if we have not one spark of affection for our fellows in our hearts. But if we have got the gift of humanity our work will be better still. It will inspire us with the wish to see others happier. It will encourage us to persevere in the face of failure and disappointment. It will enable us to read the hearts of those in trouble and to give them in the wisest way the help they need.



X. THE PRISONER ON DISCHARGE

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Howard League Luncheon, London

X

During the last few days I have been looking through an old Minute Book of the particular Discharged Prisoners' Aid Society of which I was at one time the honorary treasurer. The book records the assistance given to men on discharge from a local prison. The volume begins in 1903 and I have extracted from it more or less at random a dozen consecutive cases of that date in order to show the sort of assistance which used in those days to be given to a man to enable him to start a new and honest life. The examples are in no way exceptional and are therefore of interest as evidence of what was then thought sufficient help. Here is the list: boots, a cap, a cap, boots, boots, a cap and boots and a neck'chief, a shirt, two shillings and sixpence, jacket and waistcoat, cap and jacket, fare to Birmingham and one shilling, a pair of trousers.

To-day, we smile at the solemnity with which

half a dozen important gentlemen assembled round a table in the prison to perpetrate these absurdities. But it is really extraordinary to think for how long a time this state of affairs lasted. Things are better to-day, infinitely better as we shall see, but how very slowly they moved! Ten years later, in 1913, the same Minute Book contains a lengthy correspondence which took place between Sir Evelyn Ruggles-Brise, the then chairman of the Prison Commission, and the gentleman who was acting as chairman of the Aid Society in question. In one of his letters the society's chairman, a Fellow of All Souls and a very distinguished Member of Parliament, replied to a query from Sir Evelyn as to whether he was satisfied with the amount of funds at the disposal of the society. He declared himself to be absolutely satisfied: the society was not in any way hampered in its work for want of cash, more especially (as he pointed out) since they had available to amplify their own resources the sixpence per prisoner allowed to them by the Home Office. In answer to this expression of satisfaction Sir Evelyn said how glad he was to find that this contribution of sixpence per prisoner was appreciated, and he went on to point out that it was by no means the limit to

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which the Home Office was prepared to go towards assisting men on leaving prison: his letter went on: 'Do not forget the fact that the State, after a man has served twelve months, does go so far as to grant him a gratuity of so much as ten shillings.' That, then, was the position so recently as 1913.

If we are contemptuous of this treatment of the prisoner when he goes out into the world—and, of course, we are—the justification for our derision of what was all meant so kindly is the fact that the whole approach is so hopelessly and absurdly useless. Of two things, one: a discharged prisoner ought to be helped adequately, or we ought not to go through the farce of pretending to help him at all. But for the first fourteen years of the present century there was no general systematic improvement. Then came the war, and naturally enough the matter of aid for discharged prisoners remained in abeyance. During the period of fourteen years or so which followed the end of the Great War this Aid Society work remained disorganized and unsatisfactory. No one need wonder at that. At a time of unprecedented strain, and with all the problems financial and industrial of ex-servicemen to engage the minds of politicians

and of social workers alike, it would have been asking a good deal too much to require the community to occupy itself with the improvement of the conditions of its most troublesome members. Things were difficult enough for those who had served the State honourably and were themselves in need of re-establishment. If we examine the position during those years merely from the point of view of effectiveness the main criticism is that there was no attempt at co-ordination of effort. The Aid Societies of some prisons were doubtless very good: there were undoubtedly others which were extremely bad. There was no central authority which gave, or could give, any real leadership, and there was a geographical discrimination as absurd and illogical as it could be. In one locality a man would be discharged from prison and would receive planned and substantial assistance: in another locality another man with exactly similar abilities, claims, and record would be discharged in precisely similar circumstances from another prison and would be given five shillings. The standards of the members of different committees in different prisons varied completely, and there existed no effective central authority to which they could—or at any rate to which

they did—look for education and guidance. It is true that the Central Discharged Prisoners' Aid Society was in existence in London, but this aspect of its work was certainly not very effective.

It was in these circumstances that the Departmental Committee on the Employment of Prisoners was set up by the Home Secretary, Sir Herbert Samuel as he then was, in 1932. This committee, which came to be known as the Salmon Committee, issued Part 2 of its Report, which dealt with the work of Discharged Prisoners' Aid Societies, in May 1935. In considering the value and authority of its recommendations as to the assistance which should be given to men on their discharge one ought to remember not only that there were ten members, all able and distinguished persons, who comprised that Committee, but that they sat for a considerable period: they examined thirty-six witnesses with expert knowledge of the matters under discussion, and in addition they received a large number of memoranda from other persons who, though not called as witnesses, had practical knowledge of the subject: finally, two members of the Salmon Committee visited twenty-five prisons all over the

country to see the work of assistance to prisoners actually carried out. In my own view there is no doubt that the severe criticisms and the drastic recommendations which the Committee thought right to embody in their Report were fully justified.

It would serve no purpose to recapitulate in detail all the recommendations which the Committee made, but to any one who takes the trouble to study the Report it will be evident that throughout the whole of that lengthy document runs an eager, a desperate search for efficiency. The members wanted the work of aid on discharge to be adequately done so that really *effective* help should be given to men leaving prison, provided they were capable and desirous of benefiting by it. None of us who have any experience of this work in actual practice can, if we are honest, fail to admit the lamentable but nevertheless indubitable fact that an extremely large proportion of the men who come before us are incapable of being helped at all. Many men of the tramp and vagrant class, for example, drift into prison: you certainly find a great many in provincial prisons. Whatever they may have been twenty or thirty years before, or whether they were then suscep-

tible of help, I do not know. But as we get them before us to-day, men of fifty to sixty years of age, or more, men who have been in and out of prison for the greater part of their lives, who have done nothing but a little casual labour, who care for no life but that of the road, these men are beyond redemption by any human agency. It is with the remainder of those who appear before the Aid Committee that we need to concern ourselves. What proportion that remainder forms of the prison population varies enormously from prison to prison: it is obvious enough that in a prison for first offenders, like Wormwood Scrubs, the proportion is very much higher than in one for recidivists, like Wandsworth. Of course, anything like an estimate in figures is mere guesswork on my part, but for the purpose of illustration one might say that from Wormwood Scrubs three quarters of the men would be hopeful cases, while from Wandsworth three quarters would not make much serious effort to keep out of future crime. Taking the local prisons as a whole—and for the moment we are not concerned with convicts—perhaps we might reasonably say that between thirty and forty per cent are worth the expenditure of time, trouble, and money. It is putting our

case far too high, and it is injuring it in the eyes of the public, to pretend that we can help every man who leaves prison. Co-operation on their part in any help you try to give them is the very first essential which must be required from ex-prisoners if such help is to be effective. If a man does not *want* to be helped, nothing that you can do for him is going to make very much difference. And it is not sufficient for a man to remain so to speak passive in the matter: he has got to want to turn over a new leaf earnestly enough to enable him to face difficulties and disappointments in the process. If he does not, to spend money upon him is merely a waste of the funds which a charitable public entrusts to us for the purpose of giving a chance to deserving cases.

The Salmon Report laid insistence mainly upon the fact that the gift of a small cash dole, such as those to which I have already referred, is in almost all cases completely useless. If in 1903 it was useless to give a man five shillings, then in nine cases out of ten it is equally profitless to give a man fifteen shillings in 1938. Some men have work to which they can return, or relations who are able to help them: others, as I have said, are irreclaimable. Clearly, a small

present of cash is not of real use in such instances. But also in deserving cases, where we want to be of use to a man in setting him on his legs again, a gift of a few shillings is rarely the sensible way of doing so. The Salmon Report makes abundantly clear, and with absolute truth, that men need moral sympathy, encouragement, help, supervision, and *above all*, employment. One sees very many of these men when they leave prison utterly discouraged. My own views on this matter may be considered unorthodox because my own experience, for what it is worth, leads me to believe that a really considerable proportion of the people who find their way to prison ought never to have been sent there at all. Let me give you one or two examples of what I mean. Here are two cases which I myself met with in the prison in which I work. The first was a lad, a stableboy in Newmarket, who lost his employment there and set out to walk to Lambourn in order to look for a job in some racing stables there. He started with only a few shillings in his pocket. On the third day he arrived in a certain village —I will not pillory the Bench in question by mentioning the place as that would serve no useful object—where he found himself penniless

and without either food or shelter. It was nine o'clock at night: he was hungry and destitute: the rain was beating down: it was bitterly cold and he had many miles to go before he reached Lambourn. He stole the sum of four shillings and sixpence which he spent on food and a bed. Next day he was arrested and brought before the justices. He was nineteen years of age and he had never been in trouble before. I should have thought the proper course to adopt with the boy was to give him some sympathetic advice and a little money out of the poor box to enable him to get as soon as possible to the place where he had a chance of work. The local magistrates did not, however, take that view. Instead of sympathy or help they awarded him a month's hard labour. As chairman of the Aid Society committee I saw the boy when his time was nearly up and he was on the point of going out. It was quite dreadful to see a lad not yet twenty so utterly beaten by life. He told me that he was without hope: he said he realized that he was now a criminal who could not expect any one to employ him: he declared that he could never hold up his head again or rid himself of the taint of prison, and that there was nothing for him but to go 'on the road', as he

had learnt in the prison to anticipate. Happily we were able to pull one or two strings, and as a matter of fact we secured a job for him in the actual stables that he had set out originally to reach from Newmarket. That is an example of what I mean when I speak of the uselessness of a money grant. What that boy needed—and what he got—was sympathy, understanding, encouragement, and a job, and we gave him all those things. He worked hard and honestly at Lambourn, and only left his employment, to the regret of the kindly trainer who gave him another chance, when he became ill. Such cases are not wildly exceptional. Here is another which came before the same committee. A young man of twenty committed a small workhouse offence. He had become an orphan when he was fourteen and went to the United States to work on the farm of an uncle. Six years later his uncle died, leaving very little money and the farm was sold. The lad was a British citizen and worked his passage back to this country in search of employment. On his arrival he found himself without friends, money, or references, and soon he drifted on to the roads. One morning, after a night in a casual ward, he attempted to continue his tramp without performing his

allotted 'task'. He told us that it was the first time he had been inside a casual ward and that his offence was committed in error. I am not myself greatly concerned as to whether this was the truth or not, so far as his subsequent treatment is in question. It may well have been the truth, but even if in fact he understood that he was under an obligation to do a set task his attempt to evade it was scarcely a very grave crime. The fundamental fact was this. The magistrates before whom he was hurried by the casual ward authorities had to deal with a lad of twenty years of age, who had no criminal record whatever, who wanted work, and who pleaded guilty to a breach of workhouse regulations. If the magistrates had possessed either humanity or common sense they would have handed the boy over to the probation officer with the request that he should find him a job. They did, however, sentence him to fourteen days hard labour, thus doing what lay in their power to ensure that a young man who so far had not been a criminal should as soon as possible become one. As it so happened, the Aid Committee was able to find a sympathetic friend who gave the lad work in his garden. The boy therefore had his chance given him to

make good. Besides the action of the Bench, which in my submission, was wholly mistaken, the moral which again I draw from that story is the uselessness of a cash grant. If we had given that lad two or three pounds, the result would have been merely to postpone by a week or so the inevitable day when he found himself once more destitute.

It is going perhaps a little outside my subject, but I hope you will allow me for a moment to digress in order to say a word about such sentences as these. I do not wish to use intemperate language and I say only this. Can *any one* be found to defend them? They manufacture criminals. I could add example to example, but I will be content to give you one more. A young married man of about twenty-seven had five years continuous employment as a lorry driver with a single firm when it went into liquidation. He had excellent references and an irreproachable character. He had very small savings as during the five years he had furnished and partly bought his home. Such as they were, he left his savings with his wife, who was about to have a child, and he took only a few shillings with him when he started to walk to London to find work. He arrived one evening in a casual ward. In

the morning he was given a 'task' which would have soiled the one suit of clothes which he possessed and so have diminished his chances of getting employment for which a good appearance was important. He told the superintendent that he would do any other task, or he would do this one if he could be provided with protective overalls, but that he dared not risk spoiling his only suit. The immediate result was the customary fourteen days hard labour. The ultimate result was that he was sent by the Aid Committee by rail to London with a little money and an introduction to a firm of contractors. The magistrates who passed these sentences would no doubt stigmatize our actions as weakness: it is possible that they believe that we are encouraging crime by showing favour to men whom they have properly punished. As to that, it is for the public to judge. Certainly, without the support of the public a Prisoners' Aid Society can accomplish nothing. For myself I believe that these cruel, ignorant, and stupid sentences are a public mischief, and that it is the wise and merciful province of an Aid Society to prevent that mischief being permanent.

However, I have wandered somewhat away from the Salmon Report. I return to it now in

order that we may get the history of the matter clear. The Report was not well received by the various D.P.A. Societies all over the country. I do not exaggerate when I say their attitude was definitely unhelpful. It was one more of wounded pride than of self-examination as to whether the strictures of the Committee, severe as they were, might not be justified. I myself attended a quite fantastic meeting at Victory House at which the Report was considered by delegates of local Societies from different prisons. Their reaction to all criticism was that they had been vilified quite unjustly by the Salmon Committee and that there was little, if any, ground for finding fault. As a counterblast to the Report of the Departmental Committee they issued, as of course they had a perfect right to do, their own report—known as the Whitbread Report—a year later.

At that time I was deeply pessimistic as to the outlook and greatly concerned by the intransigent attitude of the local Societies. I envisaged the necessity for the official authorities to devise some method of taking entire control of this work of assistance on discharge. I saw no other hope for the future if it was to be done effectively. I am glad to say I was quite mistaken. Within

a short time of the report of the Whitbread Committee the position changed. A wiser spirit was manifested. Meetings were initiated between the Salmon Committee, the Whitbread Committee, and the Prison Commissioners, and continued for a year with the most happy results. The entire relationship between the local Societies and the Prison Commissioners altered for the better. As an instance, a meeting took place at the Home Office in November 1937 at which the chairman of the Prison Commission took the chair and at which there were present representatives of the old Central Society and of almost all the local Societies throughout the country, as well as of the Ministry of Labour and of the Unemployment Assistance Board. The purpose was a common endeavour to evolve a plan to prevent overlapping and to find means of working harmoniously together for the future. Under former conditions such a meeting would have been utterly impossible.

A recommendation upon which the Salmon Committee laid great emphasis in their Report was that there should be certain reorganization of the Societies, and this has been largely effected. The Central Society has been completely re-formed under the name of The

National Association of Discharged Prisoners' Aid Societies, and the goodwill which was always present in those kindly people who gave their time to this work has proved to be the lubricant which has made the wheels go round with more efficiency and less friction than ever before. Best of all, there has been an acceptance in principle of the ideal upon which the Salmon Committee so rightly insisted that employment is the best help which a Society can give. I do not wish to exaggerate or to suggest that the whole position is now perfect or that the work is now one hundred per cent efficient. The situation must always be one of delicacy where, as in work like this, the great bulk of the money is raised and much of the drudgery is done by voluntary workers, while the ultimate responsibility must be borne by the Prison Commission. Too tight a rein brings one sort of trouble: too lax a control permits inefficiency. We have not got finality of perfection in a day, but we have got a new leadership in the National Association, and it is up to us in the country places to take advantage of it.

I would like to say one word of more general application, because you who listen to me may find it helpful. There are two grounds upon

which we may base our appeal to others to help us by subscriptions or otherwise in this sort of work: they are charity and expediency. I do not belittle the charitable approach. As Mr. Justice McCardie once said, the law is sometimes hard but it is never so merciless as society itself, and if society will not give a prisoner another chance it is making every sentence a life sentence. Unhappily, the public are not much moved by the charitable appeal: they hear it so often when every post brings moving requests from every sort of charity. That is why I urge you not to neglect the appeal of expediency. It is one with which the public is not so familiar, and it will not be recognized, important as it is, until we put it before them. Quite apart from ethics or morality the question of aid on discharge is an economic problem. The criminal class is a very expensive one for the community. It is sound economics to give a man the opportunity of being honest if he wishes to be. And we should realize that an appreciable proportion of men leaving prison *cannot* be honest without help, however much they may desire to turn over a new leaf. I suggest that you stress this aspect of the matter when you are discussing it—that it is of definite, practical,

economic value to support a Prisoners' Aid Society. And do be careful not to put your case too high. Do not put the case of the discharged prisoner before that of other men who have not broken the law. It antagonizes people and it is not common sense either. Do not be so carried away by charitable enthusiasm as to put yourself in a position to be misrepresented as saying that preferential treatment should be given to a man because he has committed a crime. That is frankly nonsense. To break the law cannot constitute a claim to employment. We do not say that. But we do say, reasonably as well as compassionately, that equality of treatment should be accorded to a man who has purged his offence if he wishes to be honest for the future.

That is all I wish to say about local prisoners. I will add one word about convicts and young persons from Borstal Institutions not because they are the direct concern of Aid Societies, but in order to complete the picture. Convicts—that is to say prisoners released from sentences of penal servitude—are the responsibility of the Central Association, which is an official body, and Borstal youths and girls are looked after by the Borstal Association. I am the more anxious to mention these two bodies because in the

flood of books written by ex-prisoners which has recently descended upon us it has been so often stated that the convict is sent out helpless into a hostile world with no further assistance than a small money grant of anything from fifteen to forty shillings. If I may judge from my own experience I think that such statements are entirely untrue. Let me give you a case with which I was connected a few months ago. The man had a really bad record: he had been eight times in local prisons, had served two sentences of penal servitude and one of preventive detention. No one could have had much grounds of complaint if the Central Association had decided to waste no more money on him. Work was found for him at an excellent wage with a contractor who was told the man's history, though no one else in the works knew anything of his past. He was provided with a suit of working clothes and a complete outfit of clothes for everyday life. An agent of the Central Association found the man respectable lodgings and as his work was three miles away he was given a bicycle. After he had been in his job some six weeks he wanted to get into the local band and as it was thought that this might be the means of giving him not only an interest but also

decent friends, the Association spent eight pounds in buying him an instrument: he had been a member of the prison band. I saw the correspondence between the Association and those who were trying to help the man: its entire attitude was one of sympathy, helpfulness, and understanding, and I have no reason to think that this and other examples of their methods which I have seen were in any way exceptional. Similarly, the Borstal Association never confines itself to a money grant but invariably tries to find a lad or a girl employment. It is true that there is sometimes a wide divergence of opinion between the Borstal lad and the Association as to the sort of job for which he is fitted!! In this connection some of you may have followed a correspondence initiated by my friend Mr. Basil Henriques in *The Times*. He has given the greater part of his life to work for lads in the East End of London, and few men have wider experience. He is chairman of the Wormwood Scrubs Committee which cares for young prisoners on discharge. Immense pains are taken to find these lads work when they leave prison, but no legal power exists by which they can be forced to take advantage of the opportunity given them. Very

often these boys of under twenty go off only to return, through stupidity and thoughtlessness, to their former lives of idleness. The result is inevitable, and they find themselves again in prison. It may be that some day legislation will be introduced to make it possible by some system of licences to prevent these mere boys from being allowed to ruin themselves. We stop a man from committing bodily suicide, but we stand back and allow a boy to destroy himself not only in body but in soul by drifting back to a life of crime when he might be restrained.

Prisons are—or should be—a last resort. Very many men and women who go to prison would not be there if courts knew their work better and understood human nature more intimately. But some it will always be necessary to send to prison, not only for their sakes but for that of society. When they come out, we, as members of Prisoners' Aid Societies, are there to help them to lead a wholesome, decent life. In doing that we are helping not only them, but the whole of society—the whole of the community of which we are brother members.

XI. THE PROBATION SYSTEM

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Written for the Clarke Hall Fellowship

XI

A Memorandum for Justices

The choice of the best treatment of a convicted person is one of the most responsible, difficult, and important tasks with which a magistrate is confronted.

Probation is one available treatment. The purpose of this pamphlet is to suggest to magistrates some conclusions based upon the experience gained during the thirty years for which probation has been in operation in this country. Its further object is to draw their attention to their own duties and functions in relation to probation, and also to emphasize both the scope of the system and its definite limitations.

Probation differs from other treatments in that it is an entirely constructive method of approach: it is an attempt to do lasting good to the character of an offender. It is for this reason that it offers considerable opportunity for the thought, energy, and enthusiasm of a justice who is anxious to do his work well. Not

only the individual offender but the whole community benefits if probation proves successful. It is, therefore, only practical common sense that probation should be used in all cases in which it is likely to be successful. On the other hand there are certain types of cases in which probation generally fails and is sometimes actually harmful. It can scarcely be too strongly emphasized that it is the duty of justices to be properly informed as to:

1. The nature and possibilities of the system.
2. Those offenders for whom it is suitable, and
3. The duties of justices in its administration.

1. *The Nature of the System*

At the outset it is essential to differentiate between 'binding over' and probation. If the offender is 'bound over' he is answerable to no one provided that he keeps the peace; whereas if an offender is put on probation he is, with his own consent, placed by the order of the justices under the supervision of the probation officer. His consent to be put on probation is, indeed, an integral part of the system, and the fact that he may refuse, if he wishes to do so, should be made clear. The subsequent control of the probation officer is easier and more effective when

the probationer realizes that he is on probation of his own choice.

There is a very real disciplinary element in probation, and it is important that this should be generally understood. When effectively carried out, probation is far from being a sentimental gesture: on the contrary it is a system which makes serious demands upon the probationer.

> 'Much depends upon the attitude of the Courts and the probation officers. It may be right to explain to the offender that he is being given another chance instead of being sentenced for the offence, but it should be made clear at the same time that the opportunity of rehabilitation will involve a serious effort of self-discipline, and that unless he satisfies the Court that he is determined of his own will to make this effort the opportunity may be lost.'[1]

The precise *method* of supervision by the probation officer will vary with the individual requirements of each case. That is obvious enough. A high-spirited young man or woman needs widely different handling from the middle-aged father or mother of a family.

[1] Report of the Departmental Committee on Social Services in the courts. (Cmd. 5122) para. 61.

With one type of probationer the officer will get the best results by firmness, with another by showing trust and confidence. Frequent visits will be necessary with one case: with another an occasional visit will suffice. Again, justices have power to attach 'conditions' to a probation order. In some cases, as will be explained, it is found very helpful to exercise this power. But in every case, of whatever kind, there is the same underlying principle. That principle is the real control over the life and conduct of the probationer which the order of the court gives to the probation officer for the period for which the order remains in force. If during this period the probationer behaves satisfactorily then he will receive no punishment for the offence for which he is put on probation. If, however, his conduct is not satisfactory, then it becomes the duty of the officer to bring him back before the justices. This is his duty whenever there is substantial failure on the part of the probationer to mend his ways. There should be no question of waiting to bring him before the court until he commits another crime. When a probationer is in this way brought back before the justices, they may give him a warning, or they may extend the period of probation,

or again they may attach new or more stringent conditions. If they think that none of these courses is sufficient they may punish him by fine or imprisonment *for the original offence*. Thus it can be seen that in reality probation is a suspension of sentence. It is not, and it ought not to be thought to be a 'let off'. The impression that a person placed on probation is being 'let off' is most mischievous, since it spreads a false conception of its nature and brings the system into contempt.

2. *The Offenders for whom Probation is Suitable*

It is entirely mistaken to believe that probation is either intended or suitable *only* for young persons, or for first offenders, or for those guilty of trivial offences. In addition to such cases experienced courts use it successfully, where the circumstances warrant such a course, for adults, for those guilty of serious offences, and even for those with criminal records. In the decision whether or not to put an offender on probation the test should be the personality of the offender, the circumstances rather than the seriousness of his offence, and the consideration whether in each instance there are sufficient grounds for belief that the offender will respond to this

treatment. Justices will be the more likely to choose cases for probation successfully, if they remember that the probation officer attempts to become a personal influence for good in the life of the offender such as he has never found before.

3. *The Duties of Justices*

These fall under two heads—the selection of cases and the administration of the probation system. So far as the first of those duties is concerned every member of a Bench must share the responsibility of the decision as to which offenders should be put on probation. To help them in making this decision the Probation of Offenders Act says that the court 'shall have regard to the character, antecedents, age, health and mental condition of the person charged, the nature of the offence and any extenuating circumstances under which the offence was committed.'[1]

The chief consideration is that justices should be guided in the choice of treatment more by the personal characteristics and social needs of the offender than by the seriousness of the offence with which he is charged. Clearly then it is the

[1] Probation of Offenders' Act, 1907, Sec. I (i).

duty of *all* justices to learn how to exercise that choice wisely, since the selection of suitable cases is vital to the success of the system. Moreover, it is not only cruelty to an offender but a disservice to the community to send a man or woman to prison if he or she could have been dealt with equally effectively by probation. So far as the second duty, of administration, is concerned, *certain* justices (those who are members of probation committees) have the responsibility of supervising the work of the officers and the conduct of probationers. These two types of duties must therefore be explained separately.

(a) *Selection of Cases*

In all cases where there is question of probation being used the court needs to know all those social facts about offenders referred to above in the quotation from the Probation of Offenders Act. It is the previous knowledge of these things which should govern the decision of the justices. It is often necessary to remand an offender in order to obtain this essential information upon which the decision of the justices should be based. Without it no court can properly determine whether an offender is likely to respond to the opportunity which probation will give

him, for it is only by chance that a wise sentence is passed upon an offender by a court which is itself ignorant of his character and circumstances. The probation officer is the best person to give the court this information. The reports made by the police, admirable as they may be, cannot be as informative as the views of a probation officer who is a trained social observer, and knows by his experience which cases are likely to benefit by probation. For, just as it is important that all suitable cases should be put on probation, so it is equally important that offenders shall not be so treated when the facts do not justify that course, since the selection of unsuitable cases imposes an unfair burden on the probation officer, and tends to bring the system into disrepute. No hard and fast rules can be laid down in this matter. Justices must be guided by common sense, their knowledge of human nature, and by the opinion of the officer who will have the control of the case. But it is possible to indicate the sort of circumstances which may reasonably be taken as a deciding factor. Thus, success is not likely in the case of a child whose home surroundings, and especially whose parents, are such as to be antagonistic to the good influence of the proba-

tion officer. Or again, justices will be wise to consider with especial care before they place upon probation an offender with whom this treatment has already been tried unsuccessfully. But it is worth noticing that the Home Office survey shows that fifty-four per cent of the offenders *who had committed an indictable offence before that for which they were put upon probation* were afterwards satisfactory. In each case the justices will be guided by the circumstances in determining the length of time for which they make the order. There is power to make an order for as long as three years, but this is rarely necessary. Normally a period of one or two years is best according to individual requirements. Similarly, justices will be enabled to impose wise conditions in such cases as they are advisable only if they go carefully into the details of each case. Thus, if justices believe that an offender has been led into trouble by others, they may make it a condition of probation that he does not associate with persons whom they name in the order, or they may forbid a man to attend race meetings if he has been led by gambling losses to commit theft, or where drink has been the cause of a crime they may forbid a man to frequent public-houses. The intention

behind all conditions should not be to punish a probationer: it should be to create the atmosphere most conducive to his rehabilitation. Thus in suitable cases a most valuable condition is that a probationer should go for a time into a hostel if there is one in the neighbourhood: or it may be sufficient to insist that he or she goes to live in respectable lodgings. Justices should be careful never to impose unpractical conditions. They are worse than useless: they will be disobeyed, and they bring probation into ridicule.

(b) *Duties of Probation Committees*

When a Bench makes a probation order the duties of the justices are not at an end—they have just begun. Each Bench has its probation committee and it is hard to exaggerate the importance of its work. Upon its efficiency, success or failure largely depends.

The making of a probation order lays upon the members of the probation committee the obligation to assist in making the order effective and successful, for the probationer remains under the jurisdiction of the magistrates during the whole period of the order, and whatever the probation officer does, is done with the

authority of the magistrates. It is the duty of the committee to meet regularly in order to supervise the progress of those persons under the charge of the probation officer of that Bench. For this purpose the justices meet the officer, who reports to them and discusses his work. (It will naturally depend upon the number of cases whether these meetings should be monthly or quarterly.) This personal interest and supervision by the justices is an integral part of the probation system. It has a double value. It is a spur to the efficiency and enthusiasm of the officer, and it teaches the justices the limitations as well as the possibilities of probation as nothing else can do. It is only when they do thoroughly understand the system that justices are competent to select cases for probation. Moreover, certain justices are responsible for the appointment and choice of officers. In single areas (i.e. those which consist of one petty sessional division) this duty falls upon all the justices of the division unless they have delegated their power to the probation committee. In combined areas (i.e. those which consist of a group of petty sessional divisions) the duty belongs to a probation committee made up of representatives of each petty sessional division

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in the area. In either case, those who have to choose a probation officer will perform the task more wisely if they are intimately informed of all his varied duties. Again, they will be the less likely to ruin his work by overloading him with cases, as is sometimes done. The actual number of cases which a single officer can effectually supervise must depend upon such circumstances as the geography of his district, but as an indication of what is possible it may be suggested that no officer can normally be expected to look after more than sixty probationers. The probation committee should require the probation officer to submit a survey of his work at the end of the year, as a means of making sure that he is not being given more work than he can undertake.

It is impossible within a small compass to refer in any detail to all the various duties of probation officers. Magistrates may study with advantage the Report of the Social Services Committee, Cmd. 5122, 1936, and/or the Home Office booklet *The Probation Service* published at sixpence by H.M. Stationery Office, where the duties of justices and of officers are described more fully. An excellent *Handbook of Probation* is published by the National Asso-

ciation of Probation Officers, 47 Whitehall, London.

While their main duty is the supervision of offenders, it is the duty of probation officers to make those preliminary enquiries into home and family circumstances upon which justices will be wise very largely to base their decision. They are responsible for the very difficult duties allocated to them under the Domestic Proceedings Act: they carry out investigations as to means, and supervise persons ordered to pay fines: they are in touch with other agencies, official and voluntary, social and religious, whose help they can enlist as, for example, in the all-important matter of obtaining employment for probationers: they look after children who are found by the courts to be in need of care and protection: and women officers are often employed in helping unmarried mothers in bastardy proceedings.

These are duties at once wide and exacting and of immense importance. Only when justices appreciate this fact will they realize that it is essential that they should appoint as probation officers men and women who possess both a high sense of vocation for their work and good education and adequate training. So far as

practicable every probation area urban and rural should be staffed with full-time officers. There must be proper office accommodation and equipment: it is a false economy which denies officers facilities for transport, for interviewing probationers, conducting correspondence, and keeping records. The Probation Branch of the Home Office trains suitable men and women as officers and the enquiries of justices who contemplate the appointment of a probation officer are welcomed by the Home Office.

The probation system has of recent years been greatly developed and improved. It is certain that the courts who use it wisely are able to deal with crime more effectively—and, incidentally, at far less financial cost—than those which disregard it. But it cannot be emphasized too strongly that in order to attain the maximum of efficiency probation must be based not solely upon the work of trained officers but also upon *the intelligent and informed co-operation of justices*. It is quite impossible for justices to give that co-operation without study and knowledge.

VALEDICTORY

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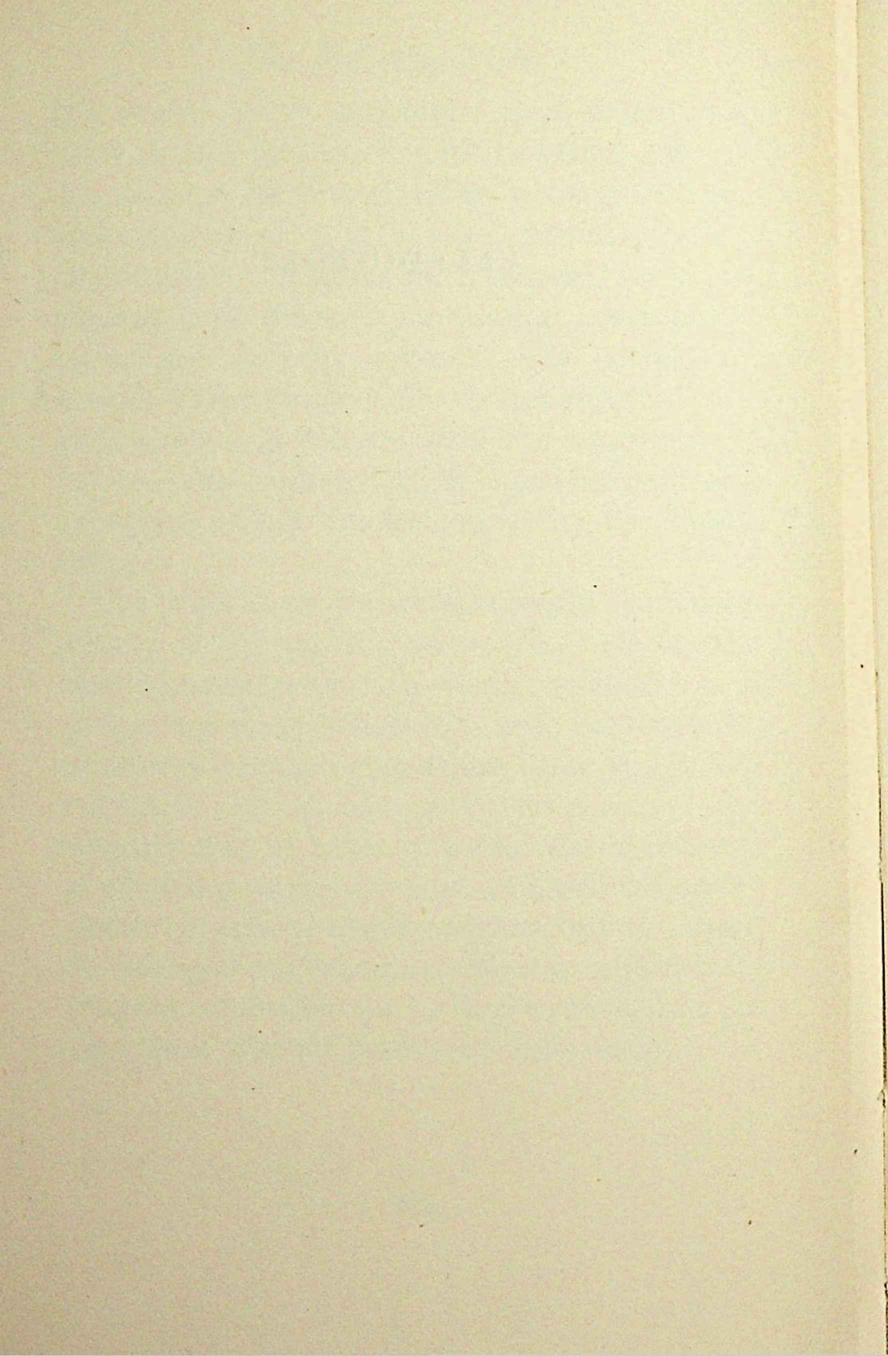

XII

'The office of a justice of the peace is undoubtedly ancient and highly honourable, and it is not too much to say that without the gratuitous services of the lay magistrates the administration of criminal justice in this country could not be continued as at present.' These words are quoted from a Circular issued by Lord Hailsham as Lord Chancellor on 1st January 1938. They indicate the respect and importance which are rightly attached to the work of justices. It is precisely because of the importance of that work in the lives of their fellow citizens that justices should be the first to desire to co-operate in measures designed by high authority for its improved efficiency. That there is no room for improvement, that there are no abuses, and that no reform is needed I suppose no one in his senses would maintain. I myself believe that public opinion is so alive to the injustices which arise from the

misuse of their powers by an uninstructed lay magistracy that it is ready to insist upon reform as an alternative to the substitution of some other system. Improvements must be effected. They can be introduced from within, or they can be imposed from without. It is infinitely better that they should be initiated with the co-operation and goodwill of justices themselves. With sufficient goodwill scarcely any reform is impossible. By goodwill I mean a realization by justices that they hold office not as a reward for services or for the purpose of enhancing their personal dignity, but solely for that of carrying out specific duties for which certain qualities of mind and body are essential. Without goodwill amongst justices themselves, administrative reform of present abuses, unless it be backed by compulsion, can be made almost unattainable. Thus, it is an abuse for justices who no longer reside within reach of the districts for which they were appointed to the Bench to remain upon the Commission. It is an abuse for this reason: the number of justices appointed to any single Bench is necessarily limited: if, therefore, absentee justices remain, they choke the lists and obstruct fresh appointments. It is similarly an abuse for justices to

remain upon the Commission if they have lost interest in the work and do not attend, if through advancing years or infirmity they are unable to attend, or if they are blind or deaf and so cannot adequately attend.

Lord Hailsham's Circular referred to justices in each of these categories. It suggested the propriety of their resignation from the Bench, or, alternatively, of their asking for their names to be put upon a Supplemental List of which the members would 'still remain magistrates; would forgo none of the rights and privileges which magistrates enjoy; would be capable of discharging, in common with those whose names were upon the active list, many of the useful functions of a magistrate, and could continue to take part with them on ceremonial occasions'. The wisdom and justice of these recommendations can be disputed only by those who are prepared to argue that it is right for suitable persons to be denied access to the Bench in favour of those who being already members do not attend, and that it is just for defendants to be tried and sentenced by magistrates incapable of hearing more than a fraction of the evidence. With goodwill amongst justices, therefore, recommendations so obviously judicious

would have met with ready acceptance. But the fact has been otherwise. Some months after the publication of the Lord Chancellor's Circular, the Solicitor-General (Sir Terence O'Connor) stated[1] in reply to a question in the House of Commons that rather more than 400 justices had applied to have their names placed upon the Supplemental List. If, bearing in mind the fact that the total number of justices of the peace is about 30,000, we make the most cursory examination of justices still on the Commission, we shall find it hard to believe that more than a very small proportion indeed of those to whom the recommendations apply have responded to the appeal. This rather shocking indifference of justices to official guidance is too common. Another instance may be found in the matter of the composition of the juvenile panels. In September 1936 the Home Secretary issued a letter[2] to magistrates advising them on the choice of justices for juvenile court work. He emphasized that the most careful attention should be given to the proper selection of the panels. He asked that men and women of fresh mind and sympathy, with experience of children should, as the Children's Act laid down, be

[1] Hansard, 4th April 1938. [2] Reference: 661/673/45.

picked out for this duty. He quoted the words of the Lord Chief Justice that it was desirable that magistrates in the juvenile courts should 'be of parental age, ranging from forty to sixty, rather than of the grandfatherly period that runs from sixty to a happily distant future'. It is little exaggeration to say that, taking the country as a whole, the letter was almost completely ignored. In some places all the members of the Bench, quite irrespective of suitability, were put on the juvenile panel. Some deplorable mistakes have been made by juvenile courts as a consequence. Moreover, justices have very largely disregarded the advice of the Secretary of State on the question of age. Two years after the date of the letter of the Home Secretary an article in *The Magistrate*[1] contained the following passage: 'The really good juvenile court makes a point of giving the parents a chance of discussing what is the best thing to be done with their erring child. How much more real is that discussion when the parents realize that they are talking to justices more or less of their own generation who have more or less the same contemporary views about life. To interpose an interval of two generations between the boy or

[1] August 1938, p. 70: the italics are mine.

girl and the court, and the interval of one generation between the parents and the court may be (and more frequently is) to make difficult any real personal contact between the justices, the parents, and the child. . . . [Yet] recently published figures show broadly that *for every juvenile court justice under* 50, *there are three aged* 50–59, *four aged* 60-69, *and two aged* 70–79; *and there are* 129 *over* 80.' This whole question of the age of justices is a very serious one and by no means only in the juvenile courts. No one can defend the appearance on the Bench of very aged magistrates if he recalls the striking phrase of the Lord Chief Justice: 'It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly appear to be done.' It may be true that there are individuals of over eighty years of age who retain both the physical advantages of good sight and hearing and also the mental powers of understanding, sympathy, and alertness which are essential for the proper performance of judicial work. But such men are rare. Defendants whose cases are tried by very old men feel indignation and a sense of injustice. Perhaps justice is in fact done: certainly to those in the dock it does not 'manifestly and undoubtedly appear to be done' if it

is dispensed by persons whom they regard as almost senile. A man of 25 or 30 is charged with an offence of drunkenness, assault, or high spirits: he simply does not believe it to be possible that a magistrate of 75 or 85 can judge his offence sanely and reasonably. Yet there are hundreds of justices of these ages who persist in sitting. Only a fortnight ago a solicitor who appeared professionally in a matrimonial court of three justices told me that one of their number was aged 90, and that he was extremely deaf. Imagine the handicap to justice when a woman—if she wishes to be heard—is forced to shout the details of her unhappy married life to a man old enough to be her great-grandfather.

Whether magistrates be young or old they can have few qualities more valuable than a readiness to learn, to accept new ideas, and to discard methods of treatment which have nothing but antiquity to recommend them. In the single fact that the enormous preponderance of old men find it practically impossible to do these things is to be found sufficient justification for the imposition of an age limit for justices who adjudicate in any court. A peculiarly apt illustration of my meaning is afforded by a recent

article in the *Nineteenth Century and After.*[1] The author is Sir Robert Armstrong-Jones, an octogenarian magistrate who has consistently supported the more robust—not to say the more brutal—penological theories. Thus, a year ago in a letter to *The Times*,[2] Sir Robert committed himself to the statements that '. . . the knowledge of right and wrong depends fundamentally upon fear. Fear is its chief foundation. . . . To preserve order is to create and encourage a feeling of repulsion not only to wrongdoing but to the wrongdoer. The young delinquent to-day is too often petted. . . . The wrongdoer must be punished and to make punishment effective it must be properly related to discipline and pain . . . bodily pain, especially for the young, is the greatest deterrent to wrongdoing.' It is not surprising that Sir Robert, prior to the issue of the Report of the Departmental Committee on Corporal Punishment, was a sturdy supporter of the birch for the young offender. It would have been curious if he were not. The real interest of his article in the *Nineteenth Century* is that it affords us an opportunity of seeing what effect, if any, the findings of the Departmental

[1] '*Corporal Punishment*'; *Nineteenth Century*, August 1938

[2] of 7th January 1938.

Committee have had upon his mind. This Committee was appointed by the Home Secretary in May 1937 and reported in March 1938, after twenty meetings during which they examined seventy-two witnesses and memoranda submitted by nine individuals and Associations. The Report of the ten members of the Committee, which included a judge, the president of the Royal College of Physicians, and an educationist of great distinction, was unanimous. After considering this wealth of evidence the Committee concluded that 'corporal punishment should not be used by the courts as a method of dealing with young offenders'.[1] Their Report contains some forty pages of close reasoning and examination of the evidence submitted to them on the history and effects of the corporal punishment of children. Here are to be found the arguments which have persuaded ten men and women of considerable distinction, after careful enquiry, to recommend that such punishment should be abolished. Have these arguments had any apparent result upon the mind of Sir Robert Armstrong-Jones? So far as one can judge, they have had absolutely none at all.

[1] 1938 Cmd. 5684 at p. 45.

In his *Nineteenth Century* article we find only a reiteration of his dreary theories of the treatment of delinquency. 'No human being is exempt from fear. It has been described as "the standing dish in the banquet of life". Fear is of vital importance to the welfare of the child, and the warnings of pain and fear are far more effective than the softer methods of gentle coaxing and wheedling persuasion. . . . The fear of pain has proved to be the strongest deterrent from the cradle to the grave.' I am far from suggesting that the Report of a Departmental Committee should be invested with infallibility, and I do not complain that any reader should remain unconvinced by its findings. What I condemn is the rigidity of mind which leads a magistrate to reject findings contrary to his own views not for weighty reasons but, so far as is apparent, without any reasons at all. The Committee state[1] that: 'We wish to make it clear at the outset that our conclusions are not based on any objection in principle to all use of corporal punishment as a method of correction for children. . . . Our conclusion is based on the practice of the more experienced juvenile courts, which have discontinued the use of the

[1] Cmd. 5684 at p. 34.

birch not on *a priori* grounds but *because they have found it less effective than other methods*, and on the moderate views put before us by men and women of mature judgment who have considered this problem dispassionately in the light of a wide experience in dealing with children.' The key to the entire Report is to be found in the words which I have italicized. Over and over again the Report emphasizes that it is precisely because the Committee have heard from witness after witness that in fact the court birching of boys has not the desired effect (while it does have undesirable effects) that they recommend its abolition. The Report stands or falls by this single question of effectiveness. Sir Robert Armstrong-Jones with superb indifference to mere reasoning ignores it entirely. In his article there is not one single reference to it. He prefers to be guided—as alas! so many elderly magistrates prefer likewise—less by new facts than by old prejudices. But I must not be unjust to Sir Robert. He has arguments of his own. Let us examine two which he places at the beginning of his article. 'The Committee recommend that all existing powers (of summary courts of jurisdiction) to order young offenders to be birched or flogged should be

repealed; and this in the face of and in spite of a definite increase in juvenile crime, which has more than doubled during the last five years.' Sir Robert appears to have overlooked a passage in the Report itself which deals sufficiently with this logic. 'As regards the argument that the powers of birching should not be abolished at a time when juvenile delinquency appeared to be increasing, we would point out that this argument is valid only if it is accepted that birching is in fact an effective means of ensuring that the offender will not offend again.'[1] Sir Robert's second argument is similarly confused. He says: 'It was believed by the Committee that the whipped offender became the hero of the gang in consequence of corporal punishment. May it be asked, is not the young offender who escapes punishment altogether a greater hero for his pals to emulate than if he had been captured and flogged?' Is it necessary for me to point out to Sir Robert that the Committee did not suggest that an offender as an alternative to being whipped should 'escape punishment altogether', but that he should be dealt with by more constructive methods which experience has shown to give better results?

[1] Cmd. 5684 at p. 27.

These are specimens of Sir Robert's arguments. But he does not often condescend to argue. He prefers the method of *petitio principii*—on the principle that if you repeat a foolish thing often enough you may in the end persuade some one that it is wise. Thus, he heads his article with the solemn admonition that 'It is better to whip the boy than to hang the man', and he gravely records the maxim that 'The parent who spares the rod spoils the child'. I call attention to these absurdities for a particular reason: only too frequently do venerable *clichés* of this calibre pass for arguments with elderly magistrates. Here is a final extract from Sir Robert. 'Schoolboy age (five to fifteen) is the most momentous period in the life of the individual. It is the time when the instinct of power and the gratification of the senses (especially taste) are almost irresistible. In the young, to thieve and to lie are the most frequent transgressions, and, if the boy is to be saved from future catastrophe and tragedy, not only are rebuke, admonition, and reproof necessary warnings, but corporal punishment is necessary as a deterrent.' The author seems to be quite unconscious of the complete *non sequitur*: he is merely repeating once again as an established fact what he has set out to prove. As

a contribution to the study of juvenile crime the article is not of conspicuous importance, but it is of real value as an illustration of the reluctance and difficulty with which the minds of elderly men yield to evidence and conform to new ideas. Let us leave the subject of the young offender upon a happier note, with a last quotation from the Report. 'In Norwich, for example, a Boys' Club was established in 1918 at the instance of the Chief Constable in consequence of the great increase of juvenile crime which had occurred throughout the country during the war years. The amount of juvenile crime in Norwich began to decrease immediately after the establishment of the club, and after a very marked drop in 1922 it has remained at a consistently low level ever since. . . . In other districts also, police officers have interested themselves in the establishment and administration of Boys' Clubs and the Chief Constables who gave evidence before us were all agreed in attaching the very utmost importance to the development of the juvenile organizations as one of the most effective means of checking delinquency among young people.'[1] This is the voice not alone of humanity but of common sense.

[1] Cmd. 5684 at p. 47.

Fortunate is the court in which sit magistrates who are possessed of sound common sense. It will be a safer guide than either sentiment or idealism, and will save them from the pitfalls into which they will invariably be led by ignorance and indifference. For it is the plainest common sense for a magistrate to realize that when he sits upon the Bench he is taking part in legal proceedings and that, so long as he remains completely ignorant of all law and procedure, he must do one of two things. He must either take part in these proceedings with a very imperfect understanding of what he is doing, or he must be content to evade what is his personal responsibility. For it is fundamental to our system of the administration of justice that every decision, both of law and of fact, is the decision of the Bench, and the responsibility therefore, legal and moral, is that of the justices who comprise the Bench. Decisions of one sort or another have to be taken in every case: is this witness to be believed? should this other be corroborated? is this evidence to be admitted? is that evidence, if it is believed, sufficient to convict? how best can the defendant be helped to put his case before the court? how is it wisest to treat him after conviction? In each and every

case the decision is solely that of the magistrates, and therefore the responsibility is solely theirs. In no case can magistrates divest themselves of responsibility and transfer it to their Clerk. He is merely an adviser, with no right at all to advise on points of fact, whose advice on points of law justices have power to reject. Common sense, then, will lead a magistrate to think it wrong that he should take no part in the decisions of the Bench, else of what value is he to the court? But it will tell him that it is more wrong that he should take part if he is really unfitted to do so. The conclusion is obvious enough. He should make himself fit. How can he do this? He can read books written for his instruction. He can join the Magistrates' Association, attend Conferences, raise questions at the meetings of his juvenile court panel, keep in touch with the work of the probation officer, learn what are the various treatments of offenders available to him, and above all study how he may use them to the best advantage of the public of which he is the servant. If he regards his duties in this way he will be the first to appreciate rather than resent the presence upon his Bench of a colleague with professional qualifications. It is surely common sense that lay

magistrates should welcome the assistance in what is legal work of a new justice with legal training. But this is by no means a universal attitude. I have known the appointment of a distinguished King's Counsel to the very undistinguished Bench of a small country town received not as an opportunity of securing an able chairman but with the liveliest determination that he should be made to realize his position as the junior member. Magistrates would not commit such absurdities if they fully understood that they are appointed to the Commission not for personal aggrandisement or as a title of honour but for the sole purpose of administering criminal justice. The fetish of seniority is therefore out of place. It is important to enquire, not which member of the Bench has sat there for the longest period of time, but which one can best do the work to-day. And that again is common sense.

There is still to be found on some Benches confusion between law and morality. Many immoral acts are rightly visited with severe punishment, but the homily which accompanies the punishment not uncommonly betrays the fact that the magistrate insufficiently appreciates the functions of a court of law. The duty

of a Bench is to impose punishment for an immoral act not in the least because it is immoral, but because, besides being against the moral law, it is also contrary to the criminal law of this country. If it is not contrary to the criminal law then, however grossly immoral, it is outside the purview of the court. 'Magistrates should remember that they are not there as censors of morals and should not visit their personal wrath on the defendant. They are there to deal equitably according to law. Morals are better left to the Supreme Judge of us all.'[1] It may be said that the law is made by legislators who have a responsibility to see that the morality of the State shall be maintained. So much is true. Nevertheless, the courts have neither the duty nor the right to do more than enforce obedience to the enactments actually made. Any attempt by courts to read into criminal statutes an overriding moral code must lead to injustice, if only because their interpretation would be uncertain and would vary from court to court.

Perhaps the most inapt definition in the English language is that which declares genius

[1] From a speech of Mr. Wellesley Orr at the Magistrates' Association Conference, June 1938.

to be an infinite capacity for taking pains. The genius reaches at one bound without pains the conclusion at which the rest of us arrive only after grievous effort. No justice of the peace need be distressed because he is not a genius. But he may well be ashamed if he is not prepared to take infinite pains. With a proper conception of our duty we may always be learning. For there is so much for us to know.

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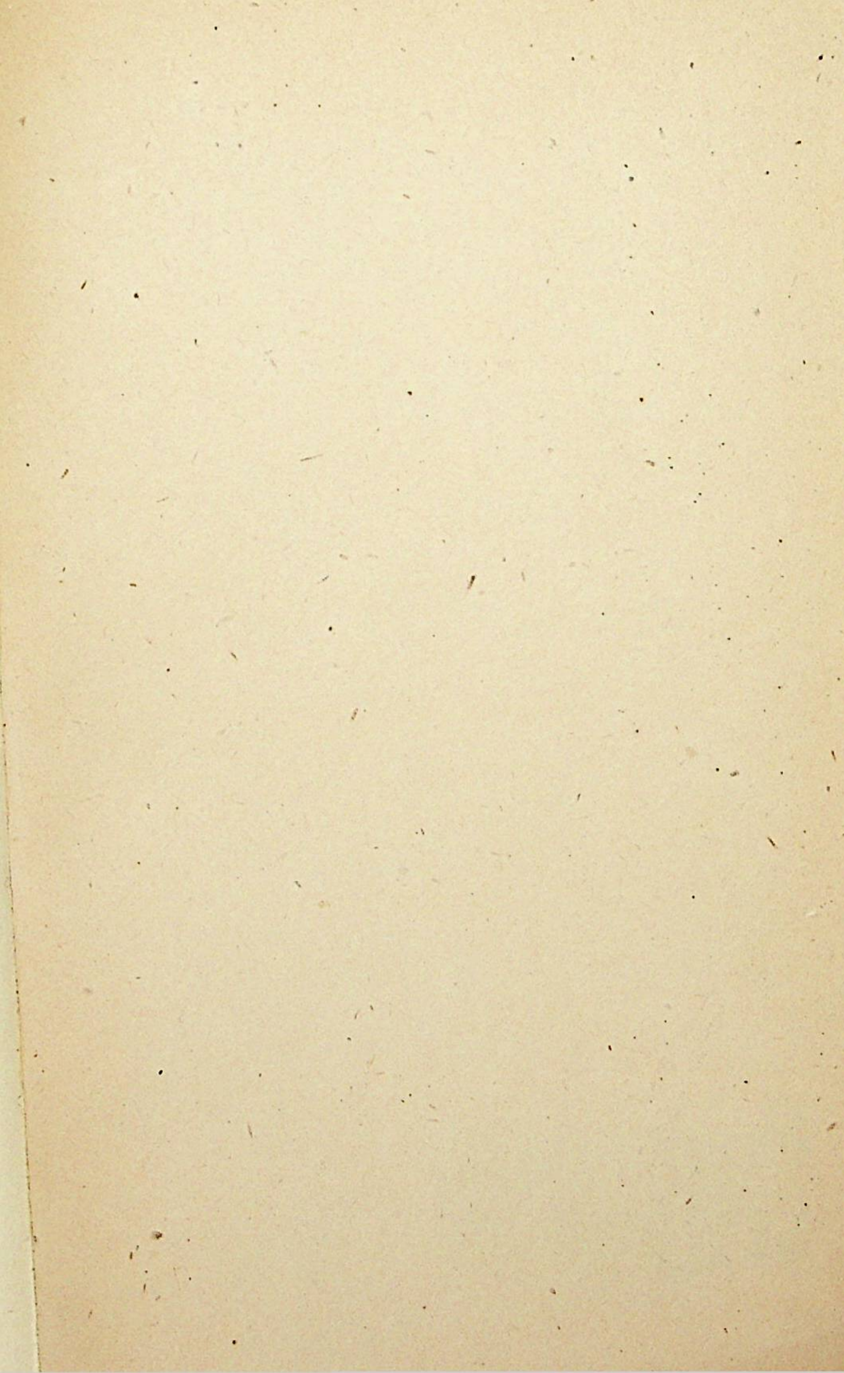

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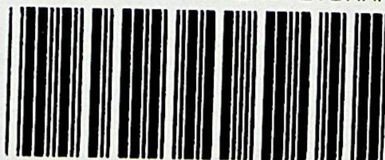
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