Criminal Justice in England

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The basis of criminal justice in England is the common law and the various statutes that in mediaeval and modern times have re-defined old crimes (infanticide in 1923), invented new ones (incest in 1908, and since then a host of offences by motor drivers), and laid down the maximum and, very occasionally, minimum punishments for these crimes. The whole structure rests on the theory of free will and heavy individual responsibility.

The age of criminal responsibility was 7 years till 1933 and is only 8 years at the present time. The Juvenile Court, which exercises civil jurisdiction (in adoption, truancy and care and protection cases) for children from 0–17 years and criminal jurisdiction for those from 8–17, has, however, an informal and friendly atmosphere; it sits in a different place from the Magistrates' Court and, though the press is admitted, there are safeguards against publicity for the child. Once guilt is established, it is the statutory and generally realised duty of the juvenile court to consider first and foremost the welfare of the child. Nevertheless the low age for criminal responsibility is much criticised by European lawyers and, although it is mitigated by the common-law presumption that a child under 14 is doli incapax, it is only rarely that the courts insist on a rebuttal of that presumption. For the most part it is generally accepted by everyone concerned, including the child, that a boy or girl under 14 knows quite well that it is wrong to steal a bicycle or break into a shop. Similarly the law is conservative in accepting any new doctrines that tend to impugn individual responsibility.

The obvious condition of mental deficiency was long in obtaining legal recognition. Now those who are medically certified to be suffering from mental or moral defect which has existed before

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1 Children and Young Persons Act, 1933.
the age of eighteen are legally irresponsible and immune from punishment. "Moral defect" appears to be a quite unscientific term and the provision a neat, legal dodge for dealing with the unsolved problem children who in European and American terms would be called "psychopaths", another term that is often used without precision.

The law's definition of insanity is still what it was after the judges made the McNaghten Rules in 1843. Every man is sane unless proved to the contrary. A man who commits a crime under an insane delusion that conceals from him the true nature of his act is under the same degree of responsibility as if the facts had been what he imagined them to be. It is a valid defence for an accused person to prove, on the balance of probabilities, that "when he committed the crime he was under such defect of reason from disease of the mind that either he did not know the nature and quality of his act or, knowing them, he did not know that the act was wrong". Such a defence, if successful, produces the verdict of "guilty but insane". It is the law's reaction to the danger of a murderer evading hanging by pleading insanity and then evading detention by proving to the medical authorities that he is sane. The defence is practically confined to trial on the capital charge. The advocates of common sense in law find much to commend in the logical absurdity of the verdict but criticism of the McNaghten Rules is continuous and, from time to time, fierce. It led to a review of the situation by Lord Atkin's Committee, which recommended that legal insanity be extended to include "irresistible impulse" but this extension has been successfully opposed by the judges and Lord Darling's Bill, based on the Atkin Report, never reached the Commons. Thus criminal responsibility rests firmly on the shoulders of every English citizen from his eighth birthday unless he is certified to be mentally defective or insane or secures the special verdict of guilty but insane. It is all black and white with no muddy grey to confuse the mind of the jury or magistrates.

Nevertheless life is not so simple and clear cut and the whole system of criminal justice has been gradually infiltrated by the ideas, first of Christian philanthropists to whom the criminal is a man and a brother with a soul to be saved, secondly of social reformers and sociologists to whom he is largely the child of circumstances which should be modified, and lastly of the medical and educational psychologists to whom he is a complex

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2 Mental Deficiency Acts, 1913 & 1927.
3 Departmental Committee on Insanity and Crime, 1923.
maladjusted personality, the creation of many forces, material, intellectual and above all emotional, which must be sought out, recognized and made to serve constructive life. There is a divergence of opinion and of values between these three groups but common ground in a belief that the best protection for society lies in making the criminal into a good citizen and that it is a labour of folly to try to make good citizens by mere punishment, and threats of punishment. The nineteenth century abolished capital punishment for all but four crimes. The twentieth century began with an onslaught on imprisonment as the panacea for crime. The official inquiry of the Gladstone Committee\(^4\) ventilated the doubts of the official world about the efficiency of the prison machine. John Galsworthy’s *Justice* revealed with an artist’s light the horror of the solitary system in the Victorian cellular prison. The imprisonment of conscientious objectors in the 1914-18 war led to the publication of the documented records by prisoners of good faith and character of the day-to-day miseries and stupidities of prison life.\(^5\)

In 1900 the daily average prison population was 17,435, in 1938 it was 11,000, in 1946, reflecting the effect of war on crime, it was 15,789. In those years the numbers of young people under 21 committed to prison were 15,411, 4,567, and 4,535. The figures for 1938 and 1946 are made up as follows:

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<tr>
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<th>1938</th>
<th>1946</th>
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<tr>
<td>Persons under 21 committed to prison on remand</td>
<td>3,253</td>
<td>1,418</td>
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<tr>
<td>&quot; 21 committed to prison on sentence</td>
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The law has helped to empty the prisons partly by direct prohibition of imprisonment in certain cases and partly by providing alternatives; nevertheless the increase in offenders since 1939 has resulted in a disproportionate increase in prison sentences. For a long time the Prison Commissioners have been the advocates not only of classifying and reforming but also of emptying prisons.

II. *A Policy of Gaol Delivery: The Prohibitions*

*Fines*

The most dramatic reduction in the prison population was effected in 1914 by the simple requirement\(^6\) that time must be granted for payment of fines except in cases where the offender does not desire it or has the means to pay at once or has no

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4 Departmental Committee on Prisons, 1895.
5 Hobhouse & Brockway: English Prisons To-day.
6 Criminal Justice Administration Act, 1914, s. 1.
fixed abode, or unless for some other special reason the court expressly orders that no time be allowed. Imprisonments for fines-default fell from 79,583 in 1913 to 15,261 in 1923. Nevertheless the number of "imprisonments for poverty", i.e. fines default and failure to pay rates, maintenance and affiliation allowances and other sums under court orders remained too high and after continued demands for an inquiry, from the Magistrates' Association and the Howard League for Penal Reform, the matter was investigated and reported upon and in 1935 Parliament passed the Money Payments (Justices Procedure) Act. This law forbids magistrates, when inflicting a fine and allowing time to pay, to pass the alternative sentence of imprisonment simultaneously except in special circumstances. If subsequently the fine is not paid the magistrates may not commit the offender to prison without making inquiry as to his means, in his presence, and ascertaining that he is able to pay. This put an end to the old practice of passing a sentence such as "£5 or one month", which resulted in many persons going to prison without the magistrates' knowledge, for usually the alternative sentence was passed with full expectation that the fine would be paid. The measure caused the magistrates to consider not only the offence but the whole economic position and family and other obligations of the offender, without weakening their power to impose fines where it was reasonable and equitable to do so. This principle is established in the Summary Jurisdiction Act, 1879, but no machinery was provided for assessing ability to pay. Under this Act, fines may be paid by instalments and, under the Money Payments Act, when this is done in the case of offenders under 21, they must be placed under supervision till the fine is paid. Imprisonment in default of fines fell from 12,497 in 1930 to 7,936 in 1938.

Limitation of imprisonment for Young Persons

At the turn of the century children of 12 and less were to be found in prison. Oscar Wilde reported the dismissal of a warder at Reading Gaol for giving biscuits to a little boy prisoner. From the Children Act, 1908, until this year there was an absolute prohibition on the imprisonment of "children" (i.e. under 14 years) and those from 14 to 17 could only be sent to prison either on remand or under sentence in cases where the court certified

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7 Report of Departmental Committee on Imprisonment in Default of Payment of Fines, etc., 1934.
8 Money Payments (Justices' Procedure) Act, 1935.
that they were either too unruly or too depraved to be held in a Remand Home. Under the Criminal Justice Act, 1948, the age for absolute prohibition is raised to 17 in magistrates’ courts. This age limit may be extended (gradually or otherwise) to 21 by order in council as and when the Home Secretary is satisfied that sufficient alternative methods and institutions are available. Meanwhile, in every case of an offender under 21 committed to prison by a court of quarter sessions or a magistrates’ court, the court must examine all possible alternatives and consider all the circumstances of the offender and his home life, state in court its reasons for concluding that no other method is appropriate and in a magistrate’s court enter the reasons in the court register. In courts of assize and quarter sessions the absolute prohibition of sentences of imprisonment applies only to those under 15.

III. A Policy of Gaol Delivery: The Alternatives

Remand Homes and Remand Centres

Children and young persons have ever since the Children Act of 1908 normally been sent to Remand Homes pending the completion of the trial, either before a finding of guilt or while social investigations and medical and psychiatric examinations and mental tests were made to assist the court’s decision. But, as stated previously, in cases certified as “unruly or depraved” young persons could be remanded to prison and in 1946 1,382 were so remanded. Under the Criminal Justice Act, 1948, the Home Secretary is to establish Remand Centres for young persons from 14 to 21 awaiting trial or sentence. He is to equip and staff these centres for observation so that the courts may receive a medical report on the physical and mental condition of the offenders before making an order as to treatment. Responsibility for providing Remand Homes for children rests as it has done in the past on the Local Education Authority, who may provide facilities for observation. Every Remand Home must receive a certificate of approval from the Home Secretary. It is anticipated that some Remand Homes will be ill-equipped for observation and that some children may yet be too “unruly or depraved” for them. It is therefore provided that the Remand Centres intended primarily for those from 17 to 21 may take also the unruly and depraved and those from 14 to 17 whose cases require more skilled observation than can be given in an available

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9 Children and Young Persons Act, 1933.
Remand Home. The mixture is a strange one and will complicate the task of Remand Centre authorities.

**Remand for medical examination without imprisonment**

It is a truism that the best results both in diagnosis and treatment are likely to be obtained if the offender goes to the doctor willingly and without compulsion. The Criminal Justice Act empowers magistrates' courts to remand any person found guilty of the offence charged, either in custody or on bail, with or without sureties for a period or periods (no single period exceeding 3 weeks) to enable a medical examination to be made. The offender may be required as a condition of the recognizance to attend for the purpose at a clinic or hospital either as an in-patient or out-patient. In the same way a magistrates' court may in granting bail to a person it has committed for trial make it a condition of his recognizance that he will undergo medical examination so that if he is subsequently convicted the trial court may be fully informed as to his physical or mental condition. This applies to all age groups and, with the proposed Remand Centres, is an interesting effort to substitute modern justice with the periscope and microscope for the traditional blindfold justice.

3. **Treatment without loss of liberty**

The Probation of Offenders Act, 1907, provided three ways of dealing with offenders without punishment — Dismissal under the Act, Binding Over without supervision (often miscalled Probation), and Probation, which was binding over with supervision. Under the Criminal Justice Act the names of the first two of these methods are changed and the mechanics of all three altered. Dismissal becomes absolute discharge and is appropriate only to trivial offences. Binding over becomes conditional discharge; there is no recognizance but if there is any further offence during the ensuing period of not more than 12 months, the offender is liable to be punished for the original offence. Probation is still probation and still requires the free consent of the offender, but whereas this was given in the form of the recognizance acknowledged by the probationer who often understood little of its legal jargon, under the new Act there is a Probation Order made by the court and no recognizance. The voluntary nature is preserved, in that the court before making a probation order is required to explain the effect of the order to the offender in ordinary language to make it clear that any breach of the order
will make him liable to sentence for the original offence and to ask him if he is willing to comply with the requirements of the order, which may include various conditions. Children under 14 may be placed on probation without being asked to consent, but with everyone above that age probation remains voluntary. The whole system is based on the salutary belief that in the long run no one can be saved, cured or reformed against his will. The offender is the most important recruit to the army of workers who may be mobilized to make him a good citizen. But he does not know himself well enough and is not strong enough to do the job alone. Hence the first ally is the Probation Officer and every probation order must place the offender under the supervision of a probation officer of the district where the offender is going to live. A probation order may cover any period from one year to three years. The duties of the probation officer are defined in Schedule 5 of the Act as “to supervise... advise, assist and befriend” probationers and others placed under their supervision. The three words italicized were part of the original Probation of Offenders Act and were omitted from the Criminal Justice Bill as introduced by the Home Secretary. At the instance of the National Association of Probation Officers they were restored on the ground that the personal, constructive, friendly work of the probation officers should receive all the backing that specific mention in the statute provides. Their inclusion was considered the more important as the new Act departs from the probation tradition whereby a magistrates’ court has hitherto placed an offender on probation “without proceeding to conviction”. Henceforward, except in the Juvenile Court where the words “conviction” and “sentence” have been banned since 1933, probation will follow conviction as it has always done in courts of assize and quarter sessions. The new law is more logical but it was hotly contested in Parliament; no harm whatever appeared to have flowed from the former lack of consistency as between the courts and, although the Act relieves probationers of most of the legal disabilities flowing from “conviction” (a new inconsistency), many people deplored any change that would make less clear the non-punitive character of probation. Probably the controversy is less important than it appeared to both sides. The important thing is that probation should be entered into voluntarily but seriously, that supervision should be friendly and helpful but firm and that the liability to punishment in the event of failure should not be an idle threat. Probation, if

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11 Children and Young Persons Act, 1933.
Effectively administered, is not a soft option but a stiff exercise in self-discipline.

Effective administration necessitates many auxiliaries for the probation officer. An offender may come from a home so vicious, overcrowded or even hostile that there is no chance for him unless he can get away from it or from his bad companions and neighbours. To meet this need there must be Probation Hostels where the probationer may lead a healthy normal life, going out to technical school, office, factory or shop and paying his way. Hostels have been far too few because so little financial help was available from public funds. Voluntary effort may under the Criminal Justice Act be supplemented by grants from public funds for "enlarging, improving or carrying on approved probation hostels or homes or establishing, enlarging or improving premises which . . . will be approved probation homes or hostels". No good scheme for a hostel should fall through by reason of poverty if Home Office blessing is obtained.

A second important requirement which a probation order may contain is one for Mental Treatment in an institution or otherwise for a period of not more than one year. This is an innovation although many magistrates (notably Mr. Claud Mullins in the Metropolitan Magistrates' Courts) have for years placed offenders on probation on condition that they submitted to psychological treatment. There was however no statutory provision for payment of fees, and treatment if not given free by generous doctors or at local authorities' clinics had to be paid for out of the court poor box. The practice was most common with sexual offenders but not confined to them. Mr. Mullins made it a rule always to offer a sexual offender the chance of treatment on probation and found from experience that "a high proportion of delinquents can be successfully treated by psychotherapy out of prison". The practical achievements of the Institute for the Scientific Treatment of Delinquency founded in 1932, of the Tavistock Clinic and the various Child Guidance Clinics give ample support to the belief that with increasing experience and knowledge medical psychologists will give increasing help in enabling the offender to resolve the various emotional conflicts that lead him to anti-social conduct. This is quite apart from the morbid conditions that may respond to physical or mental treatment according to the origin of the disorder. It is clear that the new Act intends the words "mental

12 Claud Mullins: Crime and Psychology.
13 The Howard Journal, 1943.
treatment” to be given the widest possible interpretation. No financial provision is included because all approved clinics and practitioners will be included in the National Health Service.

The law is thus giving wider recognition to the possibilities of preventing crime by healing emotional disorder and is allowing the doctor to enter the penal system not merely as a prison medical officer, half-doctor half-gaoler, but as a practitioner of his true profession, unhampered by the surroundings of a penal institution. As probation should be an adventure in the hardships of self-discipline so the acceptance of and cooperation in mental treatment will be an adventure in the deeps of self-recognition. There need be no fear of this becoming a soft option. Many will prefer the make-believe and self-pity of life in prison even if it is accompanied by monotony, frustration, subjection and a dull diet.

Attendance Centres are to be provided under the Criminal Justice Act as an additional alternative to imprisonment for adolescents from 12 to 20 years inclusive, to whom the court considers it necessary to give a “short sharp lesson”. “Attendance” is to be for not more than 12 hours altogether, not more than 3 hours at a time and not more than one period in any one day. The Attendance Centres will probably be held in existing buildings, and the hours of attendance, apart from the initial date and hour of reporting, will be fixed by the officer in charge of the centre. An offender may be sent to an Attendance Centre on being found guilty of an offence punishable by imprisonment or for breach of a probation order. It is too soon to forecast the nature of the Attendance Centres. It will depend on the staff whether they steer clear of the twin dangers of becoming crime clubs on the one hand or, on the other, places of purely negative repression, on release from which the young offender may be expected to bounce back into crime. At the best they may be something like the Boston Juvenile Courts Citizenship Training Department. But real educational work will be difficult and the deterrent effect of missing a football match on Saturday afternoon or the pictures with one’s girl on Saturday evening is the real purpose of the new measure. In this there is a slight resemblance to the German Freizeit Arrest, but that involves a whole weekend in custody.

Detention Centres, another new invention of the Criminal Justice Act, are to be residential centres established and run by

14 Pamphlet, The Citizenship Training Department of the Boston Juvenile Court, by the Hon. John J. Connelly (Boston, Mass.).
the Home Office. They are to be used for persons between 14 and 21, guilty of offences carrying imprisonment, who have not previously been in prison or Borstal nor in a Detention Centre when over 17. The period of detention is to be 3 months; no less except in cases where the offence carries a shorter maximum term, or the offender is of school age and the court thinks one month is enough; no more unless the maximum period of imprisonment is over three months and the court thinks 3 months insufficient, in which case the limit is the maximum term for the offence or 6 months, whichever is less.

As with Attendance Centres, no one can forecast what a Detention Centre will be like, nor what the youths and girls will do in them. Once again educational work may be thwarted by the shortness of the time and the constantly changing population. Once again one detects a faint hope on the part of Home Office and Parliament that a “jolt” will somehow get the offender back on the rails. Three months seems long for a jolt as it is short for training. At all costs the authorities will have to prevent Detention Centres from becoming short-term Youth Prisons.

For persistent offenders new methods are devised and old ones remodelled in the Criminal Justice Act. On the whole they envisage more loss of freedom instead of less.

First comes Borstal Training, formerly called Borstal Detention. The change of title represents a real change which has taken place between the birth of the Borstal system, in 1908, and 1948. The age limits for Borstal are 16 to 21 years at the time of conviction, the extension to 23 years made in 1936 having been regarded as a mistake because it brought under a régime designed for adolescents, stalwart young men with wives and families. The qualifications for Borstal have been altered. Formerly it was necessary, in cases tried by magistrates’ courts and sent to quarter sessions with a recommendation for Borstal, to prove previous conviction or failure on probation and that they had “criminal habits and tendencies” and/or were associating with thieves or persons of known bad character, as well as convicting them of an offence punishable with imprisonment. Under the new Act it is much easier to qualify for Borstal since the magistrates’ court committing, or a higher court trying and sentencing, has only to be satisfied “having regard to his character and conduct and to the circumstances of the offence that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution”. In every case the

15 Prevention of Crime Act, 1908.
court must first consider a report from the Prison Commissioners on the offender's physical and mental suitability for Borstal. A Borstal sentence does not specify any term of years. After 9 months detention, the offender may be released on licence whenever the Prison Commissioners consider it desirable to do so, subject to the maximum of 3 years laid down in Schedule 2 of the Act. On licence Borstal youths and girls are under supervision by an official agency until the expiration of 4 years from the date of sentence. If they break down in free life during that period they may be recalled and kept for further training up to the end of 3 years from sentence or 6 months from the date of recall, whichever is longer.

Borstal began in an old prison and for many years the only Borstals were in prison buildings, except for a Girls' Institution, which was and still is in an old Inebriate Reformatory, and the boys' Borstal at Feltham in an old reformatory school — both of the barrack type. In this generation the new Borstal spirit has burst the prison bars and cells. The staff, whose recruitment and inspiration was largely due to Sir Alexander Paterson, could not have found full scope for their zeal for the physical and moral welfare and activity of the lads, without greater freedom for their pupils to exercise responsibility and to make personal choices. The first Borstal without locks or bars was built by a colony of Borstal lads in 1930. Since then eight open Borstal have been started for lads and one for girls. There is one Allocation Centre for Boys still housed in Wormwood Scrubs Prison but the second is in an institution open except for barbed wire, which the Governor says prevents pursuit rather than escape. One Girls' Borstal is still most regrettably housed in a prison. So are the two Borstal institutions for those whose licences have been revoked. Experience has thoroughly justified the experiments in greater freedom and, in spite of the problem caused by absconders and their depredations in the neighbourhood, no one contemplates any reversion to maximum security except for a minority of Borstal inmates. Borstal keeps open the lifeline of communication with the free world. The open Borstals join in activities in the local town or village. In the past only those with bad records of recidivism or with convictions of serious crimes have gone to Borstal, yet the percentage of "successes" ranges from over 60% who have no reconviction for 5 years and over 85% counting those who after one lapse become law abiding citizens. "Success" is an artificial phrase and the work of the Gluecks is a salutary reminder of this. But as Britain is a small and socially
compact country it is likely that these figures would stand up fairly well even against thorough investigation. Borstal is one of the best things in our penal system, spoilt by our slowness in providing open conditions for the few girls as well for the many young men in Borstal.

Corrective Training is the name given to a new form of detention for persistent offenders who are over 21 on the date of conviction and therefore too old for Borstal. Under the Criminal Justice Act these offenders are liable to a sentence of Corrective Training if convicted on indictment of an offence carrying a maximum penalty of 2 years or more and have since their 17th birthday been twice previously convicted, not necessarily on indictment, of such offences. The period of a Corrective Training sentence is determined by the court between a minimum of 2 years and a maximum of 4 years, but the Prison Commissioners have the power to release on licence and revoke that licence, if its conditions are broken by the offender, as they have in the case of Borstal.

Preventive Detention in a quite new edition takes the place of the old sentence of preventive detention, which could only be passed as a supplement to a sentence of penal servitude and was abhorrent to the sense of justice of judges and habitual criminals alike because it meant two sentences for one crime. The result was that this method of dealing with habituals was almost a dead letter — in 1947 it was used only in the case of 9 men and 1 woman. Under the Criminal Justice Act a sentence of Preventive Detention is to be for a period of at least 5 and not more than 14 years and the offenders liable to it are those over 30 years, convicted on indictment of a crime carrying a maximum term of at least 2 years imprisonment, having been previously convicted on indictment at least 3 times since the 17th birthday of crimes so punishable and having on at least two of these convictions been sentenced to Borstal, Corrective Training or imprisonment.

It would be idle to speculate on what these two new methods will mean in practice. Corrective training will presumably be a type of adult Borstal, based on a modicum of optimism — the court which passes sentence has to be satisfied that it is “expedient with a view to his reformation and the prevention of crime”. Some of these offenders will respond to open institutional treatment, provided that good staffs are obtained; some will be kept in maximum security. In any event there is not much chance

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16 Prevention of Crime Act, 1908.
of new buildings being provided for a long time and, during the few months since this section of the Criminal Justice Act came into force, men and women sentenced to corrective training have inevitably gone to existing prisons and there appears to be as yet no clear line of demarcation between corrective training and imprisonment. England has shown growing faith in open institutions since Wakefield Camp started with no security measures in 1933 and today there are four prisons without bars and some "lifers" are serving sentences in these camps.

Preventive detention is to be imposed where the court thinks it "expedient for the protection of the public" and it is not required to consider the reformation of the individual. In law it is a gesture of despair and an attempt was made in the Commons to insert a reference to rehabilitation. But though this was successfully opposed by the Home Office on the ground that it would be hypocritical, it is still hoped that the long years of detention will be spent in conditions that will be as little irksome and as likely as possible to provoke effort and reform even in the most unpromising material. Even the most unlikely old lags sometimes make good, as some of the wisest prison governors after a lifetime of experience have testified. The greatest obstacle (apart from mental weakness and emotional disorders) is resentment born of harsh or unjust treatment and it is this hard fact of human experience that has made the "treat 'em rough" school such an abject failure. The longest sentence, even 14 years, ends at last. It is an evil day for society when the gates open to a man made worse in prison and regarding society as his enemy.

For this reason After Care is of particular importance in the case of the persistent offender, who returns to a world in which he has never had a respectable or secure place. If he is highly thought of among crooks, and a successful and wealthy thief, it may be harder for him to break with his group even if he wants to than it is for the less successful. Successful or unsuccessful in his criminal past, on release he needs help and advice in the critical time— and his crisis may last a long time— before he is established in a job, in his home or lodgings, and in the esteem and good neighbourliness of some law-abiding people. If he still really prefers the society, conventions and values of crooks even at the cost of having his liberty always precariously poised over the abyss of prison, then only the miracle of an encounter with a saint is likely to change him. But most men go out with all sorts of good intentions which, with efficient and sympathetic After Care by social workers who have training in their job as
well as a sense of vocation, may be used to pave the road to decent living and not to hell. The Criminal Justice Act provides for supervision on licence for many young prisoners under 21; for all sentenced to Corrective Training and Preventive Detention until the expiration of the period of sentence; and for all Borstal youths and girls from the time of release on licence until four years from the date of sentence. This is no longer to be police supervision, for the Act abolished the old ticket of leave for convicts. It is to be exercised by societies approved, and largely financed, by the Home Office. Only if a man, released from corrective training or preventive detention, fails to report to the society may he be required to report to the police. The whole success of After Care depends on the organization and staff of the newly-formed statutory Central After Care Association under the chairmanship of the Chairman of the Prison Commission. But it is easier to run a prison than to do After Care well and avoid a routine that kills the spirit in both the cared for and the carers. The social legislation of to-day has rendered financial help far less important to discharged prisoners. It has not lessened the need for help in knowing where to go, where to live, how to resolve post-prison domestic difficulties and how to carry oneself with dignity and resolve before one's fellow men.

The Criminal Justice Act has not only invented new methods of treatment, it has cast away much penal lumber. It has abolished as unnecessary and ineffective, as well as brutal, all sentences of flogging and birching in any court, juvenile or adult. It abolishes the for long meaningless term "hard labour", and with it "penal servitude", "ticket of leave" and the three prison divisions. This leaves the single sentence of "imprisonment", apart from corrective training and preventive detention, and places the duty of classifying prisoners on the Prison Commissioners who have wider experience and fuller opportunities for assessing individual capacity and personality than is possessed by judges and magistrates. Capital punishment is the only purely repressive and negative penalty that remains on the statute book. An amendment abolishing it was carried by a free vote of the House of Commons in a debate on the Criminal Justice Bill but was rejected by the House of Lords, which also refused all compromise. The matter is now the subject of inquiry by a Royal Commission whose terms of reference include consideration of all forms of modification but not complete abolition.

It is far too soon to estimate how the Criminal Justice Act will
work. It seems likely that the Borstals may become overcrowded. It appears that the sentences of corrective training and preventive detention are regarded as menacing by habitual criminals, some of whom anxiously scan their past and the Act to see whether they will be eligible; it does not appear that the menace causes them to contemplate retirement from crime. The only certain thing is that the problems facing English criminal justice are problems of recruitment and personnel.

The police forces are seriously below strength and therefore the percentage of detections is lower than it should be. The ratio of detections to known crimes has fallen from 72% in 1928 to 42% in 1948. The prison staffs, also undermanned, need to be strengthened by more men and women with social service outlook and training in social work. More and better qualified probation officers are needed. The need for improving the magistracy and magistrates' courts has been recognized by the appointment of the Roche Committee on Justices' Clerks, which reported in 1944, and the Royal Commission on Justices of the Peace under the Chairmanship of Lord du Parcq, which reported in 1948. The Government has introduced a Justices of the Peace Bill that goes far to implement the findings of these two Bodies, but so far it has only passed the House of Lords. It provides for the substitution of full-time qualified Justices' Clerks, instead of the present system which includes many part-time clerks and many unqualified assistants. Future appointments are to be made by a Magistrates' Courts' Committee, acting for a county but having a representative from each division, subject to approval by the Home Secretary. All court expenses, including salaries and pensions, are to be paid by the Exchequer, which in return is to receive all fines (except those payable to the Road Fund or otherwise as specified by statute) and court fees.

The Bill sets out to improve the quality of magistrates, by getting rid of the absentee, the deaf and senile. It provides for rules that may require new justices on appointment to undertake not only to do their fair share of work and to retire at 75, but, if the Lord Chancellor requires it, to go through some form of training before sitting judicially. Rules are also envisaged that will fix a maximum age for first appointment to the Juvenile Court panel and a retiring age, which the Du Parcq Commission thought should be 65. As the Bill is non-party and non-controversial it will probably pass without substantial amendment.
IV

It is a long time since criminal justice meant doling out so many years for so much damage to life or property. That was a fairly easy mathematical exercise. To-day the task is to protect society by making the criminal think it worth while to respect its rules and by enabling the weak, the rebellious, vicious, subnormal or perverted to respect those rules in spite of their handicaps. It is a problem for doctors, psychologists, social workers, sociologists, as well as for judges, magistrates, probation officers, policemen and prisons. It is possible that the fixed sentence will ultimately be considered an anachronism and the two functions of a criminal court be separated, the trial being conducted by a judge with all legal safeguards, the sentence being passed by a board representing medicine and social work as well as law. But at present there is no proposal in England on the lines of the American Youth Correction Authority and the nearest approach to the indeterminate sentence is the maximum sentence to Borstal, Corrective Training and Preventive Detention, subject to earlier release by the Prison Commissioners. In England we have a completely healthy objection to “astronomical” sentences still common in some states on both sides of the Atlantic, and we shall surely hold on to our maximum as an essential safeguard for the liberty of the subject. But there is every reason, including that of self-interest, why within our legal maximum we should do our scientific and humanitarian best for the criminal citizen.