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THE PROGRESS OF ENGLISH CRIMINOLOGY

CICELY M. CRAVEN¹

Science, or more accurately, the scientific method, has crept into the English judicial and penal system as a thief in the night. There has been no drastic change in law, judicial procedure, police or prison administration substituting scientific for purely legal conceptions of crime or punishment, or scientific for rule of thumb methods in the detection, prevention or treatment of crime. The changes which have taken place have been made gradually, often grudgingly, and, for the most part, with little public recognition of their magnitude or significance. Theory has, on the whole, lagged behind practice. Thus the average citizen retains his belief in the inviolability of the right to trial by jury as a main guarantee of personal liberty in spite of the fact that, under his very eyes, the jury system is yielding ground before the steady encroachments of the Courts of Summary Jurisdiction. Similarly, the legal profession continues to act as though it still held, in its ancient purity, belief in complete individual responsibility for criminal acts except in the case of certified lunatics and mental defectives. Yet there have proceeded subtle changes in the practice of many Courts in sentencing, and of the prison authorities in carrying out the sentences; and these changes have been induced by a growing recognition of the necessity for individual treatment based on individual needs. The advance has been slow and uncertain, but it is real. The Judge or magistrate is becoming "*un médecin malgré lui*," while he is the last man to admit the transformation.

Police Administration

Sir William Harcourt, speaking as Home Secretary in 1880, two years after the establishment of the Criminal Investigation Department at Scotland Yard (the first serious attempt to provide London with an organized detective service) said:

"The Police ought not to set traps for the people. . . . This is consonant, I believe, with the temper of the English people, even though they know that they have to pay the price in the defectiveness of their detective system."²

¹M. A., J. P., Hon. Secretary of the Howard League for Penal Reform, London, S. W. 1, England.

²Moylan, "Scotland Yard," p. 160.

It is still true that the public demand for fair play for the suspect, even if he is known to be a criminal, influences police procedure, but the policy is not devoid of utilitarian motive. Mr. J. F. Moylan, the Head of an important Branch of the Metropolitan Police and the historian of "Scotland Yard," wrote in 1929:

"If Science is of great and increasing importance in the investigation of crime, 'information' will continue to be the predominating factor in the great majority of cases."³

If this is so, it is good police policy to secure the good-will and consequent cooperation of the public even at the expense of rejecting any scientific methods of detection which might be regarded as unfair by the ordinary man. Hence no serious consideration has been given to such inventions as the so-called "lie detectors." A medical paper, "The Lancet," in an article quoted apparently with approval by the Royal Commission on Police Powers, dealt with the possibility of obtaining truthful confessions or evidence from persons under the influence of hyoscine, hydro-bromide or other drugs, and concluded:

"We cannot therefore accept a method . . . which would trick a suspect and catch him off his guard. It would be instinctively repulsive alike to Judge, Counsel and Jury, apart even from the fact that English Courts of Law are conservatively distrustful of scientific discovery in its application to criminal investigation. To dope a man into confession would be as distasteful as to extract evidence by torture."⁴

But Scotland Yard is not blind to the value of the scientific method. One of the greatest reforms in the Criminal Investigation Department was the establishment of the Central Finger Print Bureau in 1901, by Sir Edward Henry, then Commissioner of Metropolitan Police. His simplified classification of finger prints into four main groups has been retained, in preference to more detailed classification used in New York and Pretoria, because it facilitates speedy identification. The finger print method was adopted after a comparatively unsuccessful working of the Bertillon anthropometric system, and in its first year the new method scored four times as many successes as had been obtained under the old. The finger prints of every person sentenced, in the Courts of Assize and Quarter Session, to a month's imprisonment or more, and of every person sentenced for serious offenses by Courts of Summary Jurisdiction, are filed in the Criminal Record Office, together with the offender's name, aliases, signature, descrip-

³Moylan, *ibid.*, p. 180.

⁴"The Lancet," November 10th, 1928, quoted Report of Royal Commission (Cmd 3297) on Police Powers & Procedure, March, 1929. H. M. Stationery Office.

tion and criminal record. In this way the Criminal Record Office, adding over 20,000 files each year to its archives, serves as a complete "Who's Who" of the criminal world in Great Britain. Inquiries concerning finger prints are answered by Scotland Yard by telegraphy and wireless, a special code having been devised for the purpose. If the inquiry is from any place in Great Britain, a definite reply is guaranteed within twenty-four hours. The record based on the finger prints maintains the clear identity of the man or woman of many aliases or disguises. It is an infallible method of identifying or exculpating a suspect in cases where the offender has left his finger prints on the scene of his crime.

A new and valuable addition to Scotland Yard's finger print system is a collection of classified single finger prints. This consists of ten collections of prints and facilitates rapid identification when only the impression of a single finger or thumb is available. A sub-collection of single finger prints, not identified either in the main collection or in the Single Print Collection, has lately been made under the title of "Scenes of Crime Collection."⁵ With its assistance the itinerary of an unidentified burglar, responsible for nine different offenses in nine places, was duly traced at Scotland Yard, and in this way he was apprehended and all the crimes brought home to him.

The Criminal Record Office has built up, by the scientific methods of observation, classification and analysis, a system which is of great service in the detection of crime. In the "Crime Index," a fairly recent innovation, it furnishes a record of the methods employed by individual criminals, elaborately classified and cross-referenced, so that a provincial Chief Constable who is able to describe how an unknown burglar dealt with the watch-dog, or the type of story told by a "false pretender" may, by consulting Scotland Yard, be put on the track of criminals known to use the method in question.

The Criminal Record Office is responsible for three publications: "*Informations*," issued twice a day to all Metropolitan Police Stations, giving particulars of crimes reported and persons wanted; the "*Pawnbrokers' List*," issued daily to all pawnbrokers, giving details of goods reported stolen; and the "*Police Gazette*," issued daily since 1914 to all Police Forces in the United Kingdom. This paper, with five supplements, gives results of trials, information concerning "wanted" men, convicts released on license, and the appearance and methods of well-known criminals released from prison. A monthly

⁵H. Battley, Single Finger Prints, H. M. Stationery Office, 1931.

list of stolen motor-cars is issued, and since 1930 an index of identifiable stolen articles has been kept.

Apart from the finger print system, the English police do not themselves apply scientific tests in the course of criminal investigation. They maintain no laboratories for research or service, nor any scientific staff. They simply call in experts when they need advice. Sir Bernard Spilsbury, the pathologist who has become a famous figure in serious criminal cases, is not a civil servant but a specialist called in by the police to give expert advice in the course of investigation, and expert evidence when prosecution is launched.

Analysts are similarly employed by the Home Office, and progress in the science of chemical analysis has substituted a reasonable degree of certainty for conjecture in much criminal investigation. Thus the precipitin test enables the expert witness to say with authority whether a bloodstain found on the clothes of a person accused of murder was human blood or not. Evidence of this kind was largely instrumental in building up the case against Patrick Mahon for the murder of Emily Kaye in 1924. Tests to show whether a stain is that of the blood of a particular person have not, so far, been applied in the course of any criminal trial in England.

In the Gutteridge murder in 1928 decisive evidence was given by an expert on ballistics who showed that the victim was killed by a bullet fired from a revolver owned by one of the accused men.

Police Organization

Progress in mechanical science led to the organization at Scotland Yard, in 1919, of a roving body of detectives under specially selected officers, available for service or for concentration as required in any division. This force, known to the public as the "Flying Squad," is equipped with motor-cars and tenders and wireless, and has speeded up the detection of crime in the Metropolitan Police District. Ex-Chief Constable Wensley of the C. I. D., writes of the Flying Squad:

"I have always regarded this scheme as the first step in a national detective service, knitted more closely together than now, which must ultimately come if the criminal is to be effectively dealt with."⁶

This object is far from attainment, and the police at present are handicapped by the fact that there are hundreds of different police forces and authorities in the country. There is, however, a tendency to reduce the number, and a House of Commons Committee, reporting

⁶F. P. Wensley, "Detective Days," Ch. XX.

in 1932, recommended that all forces serving towns of less than 30,000 inhabitants, should be merged in the County Force.

The old system of the "constable on his beat" is becoming obsolete. Every force needs to become more mobile or "fluid" and to be served with adequate means of transport and communication. Since 1927 the system of police boxes has been modernized, and London is now ringed with boxes equipped with facilities for the temporary detention of prisoners and with telephones available for use by the public. The rate of progress in the use of scientific aids to police work depends on the degree of enlightenment of local police authorities, and various provincial forces, including some of the smallest, have carried out similar reforms.

Criminal Responsibility and Insanity

The study of mental health and disease has made it necessary to revise current beliefs as to the nature and extent of criminal responsibility. The insane person is not regarded as responsible for his actions, but English law compromised in regard to the lunatic who was proved to have committed a criminal act by devising the illogical verdict of "Guilty of the act charged but insane at the time when he did the act."⁷ As "guilt" in Common Law involves the *mens rea* or guilty intention, it is manifestly inconsistent with "insanity." The test of legal insanity is contained in the Rules given by the Common Law Judges following the McNaghten case in 1843, which require that:

"To establish a defense on the ground of insanity it must be clearly proved that at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature or quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong."

This expression of collective opinion by the judges in 1843 has acquired the force of law because it has been accepted and acted upon ever since by H. M. Judges. It gives no definition of insanity and it stands condemned as being not only obscure but at variance with modern knowledge of the problem of insanity. Perhaps the common man's bewilderment is best illustrated by a jury who found that a certain accused person "knew the nature of his act but not its quality!" Dissatisfaction with the McNaghten Rules grew with the advance of medical knowledge and in 1923 the Atkin Committee, appointed to inquire into the question of "Insanity and Crime," recom-

⁷Trial of Lunatics Act 1883.

mended that irresponsibility should be recognized in cases where the act was committed under an impulse which the prisoner "was by mental disease rendered powerless to resist."⁸ Apart from this recognition of "irresistible impulse" the Committee recommended no change in the existing practice. No legislation has been enacted to give effect to the proposal regarding irresistible impulse, and the Court of Appeal's ruling of 1920 that no weight should be given to a medical expert who states generally that the accused is insane, still stands.⁹ In cases of murder and other crimes dealt with on indictment, the jury decide the question of sanity or insanity equally with that of guilt or innocence, and the doctor's place is merely to give expert testimony on the question of the accused's mental condition. Thus the prosecution may call a doctor who testifies that the prisoner was normal, while the defense may call opposing medical evidence to show that he was insane.

Expert Testimony

Similar contests between medical witnesses may occur in respect of other disputed points as in the trial of Norman Thorne for the murder of Elsie Cameron in 1925, when Sir Bernard Spilsbury, for the Crown, expressed the view that the girl was murdered, while three doctors called for the defense supported the theory of suicide. The jury decided in favor of Sir Bernard Spilsbury's view and brought in a verdict of "Guilty." So far it would appear that the only progress registered by science in this sphere is the growing importance of the expert witness. This has resulted largely from the change in the character of his evidence. Formerly he was called to give *opinions* only, now he is often called to testify also to *facts*, those facts being of such a nature that they are only cognizable by an expert. The expert is not an arbiter, he is subject to cross-examination by a layman and his view is accepted or rejected by a jury of amateurs. He is in the arena and it is argued by many that he should be called in, not by the prosecution nor by the defense, but by the Court. In that event he might well acquire a commanding influence.

Mental Deficiency

The question of insanity is still left to be decided by the amateur in the English criminal courts, but there is more progress to report in the matter of other forms of irresponsibility. The Mental De-

⁸Report on "Insanity and Crime." H. M. Stationery Office, Cmd. 2005.

⁹Disney. *The Criminal Law*. Ch. I.

fiency Act, 1913, provided for the supervision either in Institutions or Colonies or under Guardianship, of persons certified by two practitioners as being either idiots, imbeciles, feeble-minded, or moral defectives, provided that the defect existed "from birth or early years." The Act enabled doctors and Local Authorities to place under supervision numbers of feeble-minded people who without it would undoubtedly have swelled the ranks of so-called "criminals." The Act also enables a Court dealing with an offender who appears to be mentally defective, to order detention in "a place of safety," pending examination with a view to certification. Similarly, defectives undergoing imprisonment may be certified and transferred to an institution. The Act has thus reduced that tragic group in the prison population—the sub-normal and feeble-minded, known in prison parlance as "the barmies." The restriction of the term "mental deficiency" to those whose defect had existed from birth or early years limited the usefulness of the Act of 1913, and this became strikingly evident in cases of *encephalitis lethargica* followed by mental and moral degeneration where, prior to the illness, there had been no sign of defect. The law was therefore amended by the Mental Deficiency Act, 1927, which provided for certification where the defect existed before the age of 18, and this brought many post-encephalitis cases and others within the ambit of mental deficiency. Even this age limit is criticized, and the late Medical Commissioner of Prisons (Dr. G. B. Griffiths) wrote in his Annual Report for 1928:

"The artificial standard imposed by statute that a person must have exhibited the condition of mental defectiveness before the age of 18 to be certified under that Act, and one who contracted it after that age cannot, is unfortunate. In considering the certification of a lunatic undue weight is not given to the age at which the lunacy occurred. The only consideration is the mental condition at the time of the examination. The reasonable method would appear to be to certify a person as mentally deficient on his *present* mental condition."

Medical and Psychological Examination on Remand

The vital importance of the present condition of the offender is recognized by many English Courts whose practice is in advance of the law. The law can only recognize well-defined mental states: insanity, mental deficiency, sanity. The magistrates' difficulty lies in the "border-line" case and the nomenclature is itself a fair indication of the nature of the problem. Men and women do not neatly classify themselves by falling naturally into one of three categories. Between the black of sanity and the white of normality there are

innumerable shades of grey, so varied that in fact it is found that the only sound method of dealing with the lawbreaker is by individual examination, diagnosis and treatment, and experiments in this direction have been made in the last ten years in certain courts.

The Birmingham Justices were pioneers in this field. Soon after the war they appointed a medical psychologist to serve the Court. His function was to attend the Court and give evidence as required, to examine and report upon cases of offenders on remand, whether in the prison, to which he was accorded right of entry, or on bail. By way of cooperation the Prison Commissioners appointed Dr. Hamblin Smith, a mental specialist, to be Medical Officer of Birmingham Prison. The chief Constable of Birmingham brought the cooperation of the police in the working of the scheme and issued to his force a Police Order explaining the purpose of the new procedure and instructing the police how to act in the first instance. It opened with the significant words:

"The object of the law is the prevention of crime. To this end punishments are ordered. It is, however, recognized that 'treatment' is sometimes necessary instead of punishment."

The Justices adopted the following procedure in dealing with a case before conviction

"1. In any case where a person is charged before a Court, either on apprehension (lock up) or on summons, and mental instability is exhibited, either by conduct, attitude or bearing, or oft-repeated commission of the same class of offense, or other abnormality, the Court, after hearing sufficient evidence of the charge to justify the step, directs a remand or adjournment for inquiry.

2. In all such cases the Court either:

(a) remands in custody without bail, at the same time directing that the person charged shall be committed to the special place of detention provided at the Prison for the purpose of observation by the Medical Officer. If at the end of the remand (which must not be for more than eight days) the inquiry by the Prison Medical Officer is not completed, a further remand is ordered. Alternatively, the Court—

(b) remands on bail on the person charged voluntarily undertaking to submit himself to the Court Doctor. There is no pressure used in these cases. The suggestion is made to the person charged somewhat as follows: 'We think this case should be adjourned for inquiry. We should like you to see the Court Doctor.' If the person charged consents, bail is immediately allowed and an appointment made for the doctor to see him at some specified date and time, in the Doctor's Room at the Court. If he does not consent, he is remanded in custody. Under a third method, the Court—

(c) adjourns the case on the understanding that the person charged consults the Court Doctor in the interval of adjournment.

3. At the conclusion of the remand or adjournment, if the Court decides to convict, it then calls either the Medical Officer of the Prison or the Court Doctor, as the case may be, to give evidence. Thus, the Court is in a position to view the case in all its bearings. Even at this stage it is desirable in some cases to have a further remand for the two Doctors to confer.

4. In the preliminary investigation and after, it is often advisable to seek the assistance of the Probation Officers in making discreet inquiries as to home surroundings and family history. In these and in all other steps taken by the Court, it is made perfectly clear that *the object of the Court is to ascertain what is to be done in the best interests of the person charged.*¹⁰

The Court, having heard the evidence of the doctor and his advice as to treatment, decides what order it shall make. This may be fine, imprisonment, committal to an institution under the Mental Deficiency Act or Probation. It is worth noting that imprisonment was ordered in less than 26% of the cases in the first year of the scheme and that extensive use was made of the provisions of the Probation Act, 1907, which enables Courts to impose any conditions which they "consider necessary for preventing a repetition of the same offense or the commission of other offenses." Thus in cases where the medical report showed that treatment was advisable, they imposed as a condition of his recognizance that the probationer should submit himself periodically to the medical practitioner for advice and treatment. They found that in the words of the Court Doctor, "Just as mental abnormalities explain some cases of crime, so also do physical defects. One man dealt with under the Birmingham Scheme was found to be suffering from consumption, which had poisoned his mentality; he was sent to a sanatorium for consumptives and now, after proper treatment, is a useful, law-abiding citizen."

The Bradford Justices evolved a similar scheme under which every prisoner in any of the four following categories was remanded for thorough examination by a medical expert (1) prisoners, juvenile or adult, with one or more previous convictions; (2) prisoners charged with cruelty, sexual offenses, theft or arson; (3) prisoners charged with aiding and abetting a crime; (4) prisoners whose conduct, attitude, bearing or peculiarities in the commission of the alleged offense, or from some other peculiarity appear to be mentally abnormal.

While the law remained unchanged, Courts in general, influenced by the development of interest in, and knowledge of, psychological science, have made increasing use of such facilities as exist in remand prisons for the observation of prisoners whom they suspect of ab-

¹⁰Howard Journal, 1921, pp. 78-79.

normality. Thus, in the year 1920-21, 1,738 prisoners were remanded for mental examination, while in 1930 the number was 2,528. Probably as a result of this increasing practice of remand for observation, there has grown up a demand, so far unsatisfied, for facilities for physical, mental and psychological examination under hospital instead of prison conditions. This has been voiced by magistrates and others and most forcibly by Dr. Hamblin Smith, Medical Officer of Birmingham Prison. Year after year his annual report has urged the need for more complete examination of the individual offender. In 1922-3, for instance, he wrote:

“ . . . We have definitely adopted, as our standard, the position that an offender should, if possible, not be damaged physically by his punishment. Surely the same principle applies to the mental side of the offender. But there can be little doubt that many persons suffering from these mental conflicts are liable to be damaged still further psychically, by the imprisonment without full and proper treatment.

“When once the importance of these and other mental conditions is recognized, public opinion will no longer tolerate the old routine of a trial, which only takes cognizance of the outward facts of an offense, and of certain legal criteria of what is known as ‘responsibility’ followed by a sentence to a fixed term of imprisonment.

“Objection is sometimes made that the necessary examination is too elaborate a procedure for use in what are termed ‘small’ cases. But the careful examination of these, so-called, small cases is specially necessary. Not only do they often contain indications of the greatest moment, but they are often the starting places for a career of crime. The use of central examination stations for the purpose of examining cases before trial, is much needed.”¹¹

Institutional Treatment and Borstal

Progress in the direction of scientific classification of offenders has been made by the Prison Commissioners in their administration of the Borstal system. Statutory authority was given to the system by the Prevention of Crimes Act, 1908, following the experiment in specialized treatment for boy prisoners at Fort Borstal, near Rochester. Under this Act a young offender between 16 and 21 years of age, convicted at Assizes or Quarter Sessions, of a crime punishable by penal servitude or imprisonment, may, if his criminal tendencies or bad associations render it desirable, be sent for 2-3 years to a Borstal Institution, while the Criminal Justice Act, 1914, empowered Courts of Summary Jurisdiction to send an offender of 16-21 years, after conviction and under certain circumstances, to Quarter Ses-

¹¹Prison Commissioners' Report, 1922-23. H. M. Stationery Office. Cmd. 2000.

sions, with a recommendation that he be sent to Borstal. The Home Secretary has power to release from Borstal on license when he deems it desirable, having regard to the character and progress of the offender, and no boy or girl may be committed to Borstal until the Court has considered a report by the Prison Commissioners as to the offender's *health, mental capacity and other circumstances showing whether he is likely to profit by Borstal training*. The decision rests with the Court, but the Prison Commissioners' report is always a decisive factor, and they have built up a system of observation and examination of "Borstal candidates" which marks real advance in the application of science and the scientific method.

There are now 7 Borstal Institutions, Rochester, Portland, Feltham, Nottingham, Camp Hill and Lowdham Grange for boys, and Aylesbury for girls. A central clearing house for boys is housed at Wormwood Scrubs Prison, where a careful investigation is made in each case. This consists of a physical and mental examination by the prison Medical Officers following the normal routine and using Binet-Simon tests of intelligence, and eliciting from every available source the life-history of the offender in an endeavor to trace the cause of criminality. Since 1922 the medical examination has been reinforced by sociological investigation carried out by a staff of voluntary women workers. These workers have interviews with the lads, try to gain their trust and obtain frank statements; they visit the home when possible and in every case get full written reports of the boys' previous history, school record, etc.¹²

On this investigation the Prison Commissioners base their opinion, and the Courts their decision. Further, the Commissioners are thus enabled to classify the lads and send each boy to the institution most suited to his needs. Thus Feltham is used for the physically and mentally sub-normal boys and for those with no previous criminal record—an undesirable mixture which it is hoped to avoid when more accommodation is available; Rochester receives boys with previous convictions, but not habitual offenders; Portland takes the "toughs," many of whom are recidivist and have served prison sentences. Lowdham Grange was established in 1931, by a party of colonists from Feltham, trusted boys who lived under canvas for months while they built the new Borstal. Each Institution is run more or less on the lines of a public school, and divided into "Houses" of from 60-80 boys, each under a "House-Master." The boys wear

¹²Prison Commissioners' Report, 1923-24, p. 28. H. M. Stationery Office, Cmd. 2307, and L. LeMesurier, "Boys in Trouble."

shorts and flannel shirts—the ordinary football kit of a school-boy—great importance is attached to outdoor sport, organized games, swimming, etc., and all attend educational classes, technical and otherwise, in the evening. The trades taught are various (building, engineering, farming, gardening, baking, laundry, tailoring, cobbling, etc.). Borstal does not, however, claim to turn out skilled craftsmen, but rather to train the boys in habits of work and obedience and to make them handy with tools.¹³

In 1930 the medical and social investigation was reinforced by an examination in each of 400 cases, by the National Institute of Industrial Psychology, to ascertain the boys' degree of aptitude for particular occupations.¹⁴ Standardized tests were given for general intelligence; performance; mechanical ability; capacity to judge shapes and sizes; manual dexterity. Following a long and carefully organized interview, during which the boy gave his version of his life-story, the examiner assessed the boy's qualities of character—e. g., perseverance, cheerfulness, sociability, etc. On the basis of this examination and within the narrow limits imposed by the Borstal industrial curriculum, the examiner made his recommendation as to the trade to which each of the 400 boys should be allocated. In the years that have followed, observation has been kept on the progress of the boys in order that a reasonably accurate comparison may be made between the records of those dealt with "scientifically" and those who, under the old method, were allocated haphazard to the trade in which they were "interested" and for which they appeared superficially suitable. If the application of the principle of industrial psychology is vindicated, it will no doubt become a normal part of the routine of Borstal admissions.

Habitual Criminals

The principle of classification has been continuously developed since 1908. In that year the Prevention of Crimes Act which established the Borstal system on a permanent basis, also provided special treatment for habitual criminals. An offender convicted on indictment and found to be a habitual criminal may, under the Act, be sentenced to a period of from 5 to 10 years Preventive Detention, following a term of penal servitude. As in the case of Borstal, it was provided that before the expiration of the sentence passed by the Court, the Home Secretary might at his discretion release the

¹³L. LeMesurier, "Boys in Trouble."

¹⁴Alec Rodger, "A Vocational Psychologist at Borstal," *Howard Journal*, 1932.

offender on license if he considered it advisable to do so. The time of release on license is determined on a report made by an Advisory Committee presided over by one of the Visiting Justices of the Preventive Detention Prison. The Act was passed long before public opinion was ripe for anything like an indeterminate sentence; the House of Commons was suspicious that the liberty of the subject might be imperilled, and the administrative machinery provided under the Act does not require any expert psychological examination on which to determine a man's fitness for freedom. In actual practice Preventive Detention has been little used, largely because Judges have been reluctant to order a sentence of this kind following a term of penal servitude, when they might have done so had this preliminary sentence not been obligatory. In 1928, after 20 years' experience, only 30 persons received sentences of Preventive Detention and the daily average population of the Preventive Detention prison was only 143.

Nevertheless, the Act of 1908 is important in the evolution of a scientific penal system because it contains the germ of a new principle, that the fixed sentence forming part of a tariff of punishments for crimes must be superseded by a flexible sentence ending at such time as the offender appears able and willing to return to freedom and live honestly.

Local and Convict Prisons

The legislation of 1908 provided special institutions for offenders at both ends of the scale, Borstal for the youthful offender and Preventive Detention for the "old lag." Meanwhile administrative reforms have elaborated the classification of other offenders. Up to 1922 the historic distinction between *Convict Prisons* serving the whole country for offenders sentenced to penal servitude (3 years and over) and *Local Prisons* each serving the surrounding district, for sentences of imprisonment (2 years and under) was still the basis of prison organization. Attempts were made to keep the young offenders apart from the old, the novice from the habitual, the feeble-minded from the normal, but in small Local Prisons, taking a mixed population of all sorts, even this was a counsel of perfection. To remedy this, certain prisons have been allocated for certain types of offenders so as to reduce the risks of contamination and to make specialized treatment possible. Thus Wormwood Scrubs Prison has, since 1925, been reserved for offenders serving their first prison sentence, from London and the surrounding counties. This has enabled the Gov-

error to experiment in the direction of allowing greater freedom and developing a greater sense of responsibility than is practicable in the general Local Prison. Similarly certain sections of Bedford, Bristol, Durham, Lewes, Winchester and Liverpool Prisons have been used specially for young prisoners under 21 from various districts. At other centers, e. g., Birmingham, Wandsworth, Lincoln and Liverpool, the feeble-minded have been concentrated. Since 1924, Wakefield Prison has been reserved for young men who have previous convictions but are physically and mentally fit and are regarded as hopeful subjects for training. The régime at Wakefield has included more freedom, group organization and responsibility in workshop and in games. Another experiment in classifying offenders according to disposition and capacity rather than reputation and criminal record has been started at Chelmsford, where convicts under 30 are grouped with young men of similar type and character who have been sentenced, not to penal servitude, but to substantial terms of imprisonment.

These are merely instances of a policy which is breaking up the old Prison system with its rigid distinction between Penal Servitude and Imprisonment and is rendering possible, individual methods which are the essence of scientific treatment.

A further advance is foreshadowed in the Report on Persistent Offenders, published in 1932,¹⁵ which recommends a new form of detention and training for persistent offenders over the age of 21, on the lines of the Borstal system. Offenders regarded as hopeful subjects for reformatory training are to be sent for "*Detention*" for two to four years; those who appear unlikely to benefit from training but who should be segregated for the protection of society are to receive sentences of "*Prolonged Detention*" for from five to ten years. The salient point is that before sentencing an offender to "Detention," the Courts are to be required to consider not only the offender's criminal record, but his general history, character and manner of life. To this end it is proposed that the Prison authorities should be required by Statute to furnish a report on his physical and mental condition, his history and circumstances, together with their opinion as to his suitability for a sentence of "Detention," the type of institution to which would probably be sent and the length of time which would probably be necessary for his training. Further, it is proposed that there should be power to release on license at any

¹⁵Report of the Departmental Committee on Persistent Offenders, 1932. H. M. Stationery Office. Cmd. 4090.

time after one-third of the sentence is served if it appears that the offender is likely to make good. The Committee express the hope that in the Detention Establishments the training scheme will give increasing freedom and opportunities for testing trustworthiness, so that promotion to higher grades and ultimately to freedom may be based on the judgment of experienced observers as to the offender's development of mind and character. The Report is cautious and conservative but it shows practical recognition of the importance of psychological medicine and psychiatry in penal treatment. It proposes that specialists in medical psychology, supported by social workers, should be attached to some of the new Detention Establishments to carry out psychological examinations and to give psychotherapeutic treatment in suitable cases. The Report has been favorably received by the public and it is confidently hoped that in the near future action may be taken on the lines it suggests.

The Juvenile Court and the Child Offender

The Juvenile Court dates from 1908, when Parliament passed the Children Act, a comprehensive measure dealing with many aspects of child welfare, which established at every Petty Sessions a special Children's Court, kept apart from the adult Police Court, to deal with offenders under the age of 16. It has been amended and the age limit raised to 17 by the Children Act, 1932. Children's Courts are not open to the public though bona fide press representatives must not be excluded. By common consent the Press has refrained from publishing names, schools, or photographs of children appearing in the Court, and under the Children Act, 1932, such publication is prohibited. The Children's Court can deal summarily with all offenses except that of homicide, and though children under 16 have had the right to go before a judge and jury in serious cases, it has rarely been exercised and has been abolished by the Act of 1932. Under the Act of 1908 the imprisonment of children and, except in very unusual circumstances, of young people under 16, was prohibited, and the Act of 1932 has raised this age limit to 17.

The Children Acts mark important advances towards a more rational treatment of delinquency because they are based on the belief that the young offender should receive training and education rather than punishment. The welfare of the child is their prime consideration.

In practice the treatment of young offenders varies from one Court to another. One of the pioneers in England in the more hu-

mane and scientific treatment of child delinquents was the late Sir William Clarke Hall. First at Old Street in East London, and after the re-organization of the London Juvenile Courts in 1929, as a Juvenile Courts President, Sir William made far-reaching changes in the treatment of young offenders. From the outset he made full use of the powers given under the Probation Act of 1907, and the Probation clauses of the Criminal Justice Act of 1925. Through his staff of trained women probation officers he obtained full reports on each individual case before he made any order. He also used freely the facilities for psychological examination which existed at the various clinics in London and made a practice of referring cases to a medical psychologist for report. While other magistrates committed children more or less haphazard to an industrial school or reformatory, Sir William made it a rule never to send a child to a school which he had not personally visited and he chose the particular school after full consideration of the individual needs of the child as revealed by the experts' reports. The Children Act, 1932, provides for the grading of the schools so that other Courts may the more easily adopt this policy.

Many Children's Court magistrates, largely influenced by Clarke Hall, have tried to act on the principle that treatment should be determined in the light of individual investigation and medical and psychological examination. They are dependent at present on the provision by voluntary effort of facilities for such examination. These are inevitably inadequate and there is a demand from all organizations concerned with the welfare of child offenders for the establishment of Central Remand Homes, equipped for physical, mental and psychological examination. A Committee on The Treatment of Young Offenders, which reported in 1927,¹⁸ unanimously recommended the establishment of psychological laboratories of this kind, and it is an open secret that the Government intended to make provision for them in the Children Act of 1932 and were only prevented from doing so by the financial emergencies of that year. So far as young delinquents are concerned, official and public opinion generally has ranged itself on the side of science and believes that by physical, mental and psychological examination, diagnosis and treatment, we shall in future be able to check the growth of youthful delinquency into habitual criminality.

Meanwhile in the absence of Observation Centers provided by

¹⁸Report of the Departmental Committee on The Treatment of Young Offenders, 1927. H. M. Stationery Office. Cmd. 2831.

the State, the scientific treatment of criminals, old and young, depends on voluntary effort whereby Courts with enlightened theories, may be offered facilities for enlightened action. Legally there is no obstacle to psychological examination and treatment of an offender. A court which has before it an offender who appears to be a subject for treatment, can place him on probation, require him to live in a certain home or hostel and to attend for treatment by a certain medical practitioner. In a few rare instances persons committed to Borstal or prison have been sent for out-patient treatment at a psychological clinic. This can only be done where the services of a medical psychologist and psychiatric social workers are available. The case of Birmingham has already been dealt with. In London a number of Psychological Clinics have been established during recent years, notably the Tavistock Clinic, now the Institute of Medical Psychology.

In addition there are a number of Child Guidance Clinics in London, Birmingham, Liverpool, Manchester, Bath, whose work is co-ordinated and where research is promoted by the Child Guidance Council established in 1927, thanks to the generosity of the Directors of the Commonwealth Fund. All these clinics are purely voluntary but they cooperate with the Home Office, the magistrates and probation officers, and with local education, poor law and health authorities, teachers and social workers. They receive cases referred to them by the Courts, but a far greater number come to them before the patient has come within the sphere of the criminal law. Parents and teachers, by seeking advice in the handling of difficult and "naughty" children, are thus able to do their share in the prevention of delinquency.

Progress of Public Opinion

The proof of the pudding is in the eating and public opinion, to which legislators, officials and judges must bow in the long run, is largely determined by the practical success or failure of the various experiments. But it depends also on educational propaganda. Dr. Cyril Burt's book, "The Young Delinquent," which was based on his experience as psychologist to the London County Council, in examining some hundreds of delinquent children and advising as to the best mode of dealing with each child, did a great service to the cause of scientific treatment of delinquency. It demonstrated the working methods of the educational psychologist in dealing with behavior problems, and showed that whereas 62% of those whose parents followed the psychologist's advice as to treatment were apparently com-

pletely cured, and 36% made progress; the corresponding percentages of those parents who disregarded his advice were only 12% and 23%.¹⁷

Further impetus has been given to the demand for the adoption of scientific penal methods by Dr. Hamblin Smith's "The Psychology of the Criminal," published in 1923, and by an ever-increasing number of educational lectures on various aspects of the subject organized by such bodies as the Institute of Medical Psychology, the National Council of Mental Hygiene, the Child Guidance Council, the Howard League for Penal Reform and the recently established Institute for the Scientific Treatment of Delinquency.

So far no English University has a Chair of Criminology, and penal methods lag for want of facilities for regular scientific research into the problems connected with the prevention and treatment of delinquency. But an important piece of research was carried out recently by a medical psychologist, Dr. Grace Pailthorpe, in several prisons and institutes for women where she had prolonged and numerous interviews with a number of recidivist prisoners. She thus obtained valuable information as to their circumstances, their physical, mental and psychological history and conditions and the bearing of these various factors on their criminal record. A full account of these researches and of the conclusions drawn, were published by the Medical Research Council in 1932,¹⁸ and this Report has greatly stimulated public interest in the problem of crime from the medical standpoint.

The progress recorded in the article may seem slight, but it is perhaps an English characteristic openly to deny the claims of science while admitting them unobtrusively by the back door. The experiments of individual magistrates and officials with the help of voluntary organizations and clinics have gone far to undermine the apparently unchallenged ascendancy of law over medicine in the sphere of penology. Without any outward and visible legislative or administrative signs of revolution, the progress of science and of psychological medicine during the last quarter of a century has modified our penal methods and has in all probability brought us to the eve of sweeping changes in the treatment of the law-breaker.

¹⁷Cyril Burt, "The Young Delinquent."

¹⁸G. Pailthorpe, "Studies in the Psychology of Delinquency." H. M. Stationery Office, 1932.