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DEVELOPMENTS IN CRIMINAL LAW AND CRIMINOLOGY IN  
POST-WAR BRITAIN

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Since 1955 Dr. Mannheim has served as Honorary Director of Criminological Research in the London School of Economics and Political Science of the University of London, where, from 1935 to 1955, he was Lecturer, and later Reader, in Criminology. Until 1933, the author was a judge of the Court of Appeal in Berlin and Professor of Criminal Law and Procedure in the University of Berlin. Professor Mannheim, who is the author or editor of a number of well-known books, including the recently published *Pioneers in Criminology*, a compilation of articles which earlier appeared in this *Journal*, is also Co-Founder and Co-Editor of the *British Journal of Criminology* (previously the *British Journal of Delinquency*), as well as the *Library of Criminology*, Co-Director of the Institute for the Study and Treatment of Delinquency, London, President of the Scientific Commission of the International Society of Criminology, and a member of the Board of Editors of this *Journal*.

The author prepared this article at the special request of the Board of Editors in commemoration of the *Journal's* fifty years of publication.—EDITOR.

I regard it as a privilege to be invited to contribute this article to the anniversary volume of the *Journal of Criminal Law, Criminology and Police Science*, to be published in honor of the fiftieth anniversary of the *Journal* and of Professor Robert H. Gault's outstanding services as its Editor-in-Chief for nearly half a century. Criminal lawyers and criminologists outside the United States, notably in English speaking countries, have every reason to pay their grateful tributes to both the *Journal* and its Editor, whose work has substantially raised the standard of criminal science not only in his own country but throughout the world. By a happy coincidence this year also sees the centenary of the founder of the *Journal*, the Northwestern University School of Law.

I have taken as my subject the principal developments and trends in the field of criminal law, criminology and penology in post-war Britain. Even limited to the short period of fifteen years this is a vast subject, and, in particular with regard to the reform of the criminal law, I shall have to be very brief and leave out from this survey many important matters of detail. British reform movements in our field have but rarely taken a steady course, evenly spread over the decades; more often than not they have come in jerks, with short periods of intense, even hectic, legislative and administrative activities followed by many years of comparative inertia. In the past

hundred years, however, a marked tendency can be observed to shorten the periods of passivity and to expand those of active, constructive work. Even before the first world war we find that short stretch of ten years from 1898 to 1908 distinguished by an unbroken flood of new legislation of bold enterprise and imaginative innovations: The Prison Act of 1898, providing a new impetus for prison administration which lasted for fifty years until the Criminal Justice Act of 1948; the Probation of Offenders Act of 1907, laying the foundations of the English probation system; the Criminal Appeal Act of 1907, establishing a Court of Criminal Appeal; the Prevention of Crime Act of 1908, introducing a system of preventive detention for habitual criminals and the Borstal system for adolescents; and the Children Act of 1908, placing the Juvenile Courts on a broader and more solid basis.

Not surprisingly, this spectacular tempo could not be sustained in the twenty years between the two world wars, a period which had to be devoted primarily to the healing of war wounds and to quiet reconstruction. Even so, we owe to those years a few successful pieces of legislation and new ventures in penal administration, such as the important Criminal Justice Act of 1925; the Mental Deficiency Act of 1927; the Road Traffic Act of 1930; the Children and Young Persons Act of 1933; the Money Payments (Justices Procedure)

Act of 1935; the Infanticide Act of 1938; and the Prevention of Fraud (Investments) Act of 1939. In the fields of criminology and penology this inter-war period saw the expansion of the Borstal system; the establishment of the first open prison at Wakefield and the first open Borstal Institutions at Lowdham Grange, North Sea Camp and a few other places; progress in classification and training of prisoners; the conception of the idea of a special Training School for Prison and Borstal Officers; and, last but not least, the founding of the Institute for the Scientific Treatment of Delinquency (I.S.T.D.) in London and the beginnings of the systematic teaching of criminology at the London School of Economics and Political Science (University of London). Moreover, a number of important Government Reports were published in these inter-war years, some of which, as we shall see later, provided the basis for legislative action after 1945: to mention only the most outstanding of them, the Reports on the Treatment of Young Offenders of 1927, on Capital Punishment of 1930, on Persistent Offenders of 1932, on Imprisonment by Courts of Summary Jurisdiction in default of Payment of Fines and other Sums of Money of 1934, on Sterilisation of 1934, on the Employment of Prisoners of 1934-35, on the Social Services in Courts of Summary Jurisdiction of 1936, on Corporal Punishment of 1938, on Abortion of 1939, and, finally, the famous East-Hubert Report on the Psychological Treatment of Crime of 1939.

The last fifteen years since the end of hostilities have once more seen almost continuous activity in practically every sector of the field, with the notable exception of the substantive criminal law. Whereas in other directions many new ideas have been taken up and many practical recommendations been put into practice, the same is not true of the criminal law relating to individual offences. Responsibility for this state of stagnation has to be attributed to various factors, not least among them the notorious conservatism of English lawyers, especially of most High Court judges, the exceptionally strong influence of the lay element, and the absence of a criminal code, which makes it particularly difficult to find a suitable place for new ideas of a more comprehensive nature which are in other countries customarily dealt with in the "General Part" of the code.

#### ENGLISH SUBSTANTIVE CRIMINAL LAW REFORMS SINCE 1945

In accordance with the arrangement in most criminal codes, the whole field might be divided

into the following main categories: offences against the person; against property with and without violence; against the State; sexual offences; and miscellaneous offences, in particular the large motley group of non-indictable offences, which includes several very important categories such as minor traffic offences, betting and gaming, various forms of assault, malicious damage, drunkenness offences, prostitution and most of the so-called public welfare offences.

Criminal law reform, for only too long the cinderella in the field of English law reform, has recently gained at least some fresh impetus through the appointment by the Lord Chancellor of an official "Criminal Law Reform Committee." It is interesting to consider the likely scope of the work of this Committee. In the "Memorandum from the Society of Public Teachers of Law, addressed to the Lord Chancellor, setting out the Case for the Appointment of a Criminal Law Reform Committee,"<sup>1</sup> which was no doubt largely responsible for the appointment, a distinction is made between, on the one hand, proposals for the reform raising "such wide issues of social policy that they can be properly considered only by a body having broadly based membership, such as a Royal Commission" and, on the other hand, more technical issues of legislative policy which "can be settled within the framework of accepted legal principles and concepts." Following this distinction, the Memorandum limits its recommendations to a list of topics which are regarded as falling under the second, more technical category, such as various reforms of the law of theft; the abolition of the largely obsolete classification of offences into felonies and misdemeanours; the "great proliferation of offences of absolute liability and the inroads made on the doctrine of *mens rea*," and "the anomalous state of certain parts of the substantive law relating to sexual offences." "By this", the Memorandum adds, "we do not mean the controversial subjects of homosexuality and prostitution, recently reviewed by the Wolfenden Committee." These quotations may suffice to make it clear where the Society of Public Teachers of Law wish to draw the line between topics regarded as suitable for consideration by the new Criminal Law Reform Committee and those to be reserved for a body with a more broadly based membership, such as a Royal Commission. The guiding idea seems in fact to be not so much the

<sup>1</sup> Published in 4 J. Soc'y Pub. Teachers of Law (N.S.) 231 (1958).

question of whether an issue can be settled "within the framework of accepted legal principles and concepts," but whether it is likely to stimulate interest and arouse heated controversies of a definite political or religious character far beyond the narrow circle of lawyers. It might in fact well be doubted whether for example the present controversies concerning strict liability offences, and, to quote again from the Memorandum, the desirability of separating certain "administrative violations from the general body of criminal law," are topics of mainly technical character not touching issues of wider social policy, but in any case their full implications are not so easily understood by, nor are they so likely therefore to arouse the deep-seated emotions of, the man in the street to the same extent as, for example, subjects such as homosexuality and prostitution. The same is true of the law of larceny; clearly, reforms in this field can be limited to certain technical aspects, some of which have been referred to in the Memorandum, but, as the present writer tried to show many years ago,<sup>2</sup> they could also be done on a less superficial level so as to bring this branch of the criminal law in line with the social and economic revolution of our time. There is at least one reference to these wider aspects of the matter in the list relating to the law of theft given in the Memorandum where it quotes "the many anomalies concerning the penalties of different offences" as being in need of reform. In the meantime, it is encouraging that in a brief report recently published by that distinguished private body, "Justice", the British Section of the International Commission of Jurists, the question of existing anomalies in the present system of legal penalties for the different categories of larceny has been taken up.<sup>3</sup>

Following the distinction made in the Memorandum we may now briefly review the principal reforms of English substantive criminal law passed since 1945, together with a few observations on those items which, though widely regarded as being in need of reform, have not yet been made the subject of new legislation and will hardly be reviewed by the new Commission.

(1) *Offences against the Person.*

(a) *The Homicide Act of 1957* has been fully dealt with in this *Journal*<sup>4</sup> by Mr. Graham Hughes,

<sup>2</sup> MANNHEIM, *CRIMINAL JUSTICE AND SOCIAL RECONSTRUCTION*, pt. 1, §§3, 4 (1949).

<sup>3</sup> *LEGAL PENALTIES: THE NEED FOR REEVALUATION* (A Report by Justice), 5 *et seq.* (1959).

<sup>4</sup> Hughes, *The English Homicide Act of 1957*, 49 *J. CRIM. L., C. & P.S.* 521 (1959).

which makes a further discussion of its legal implications at this stage unnecessary. The whole subject of "Murder and the Principles of Punishment" was also ably reviewed only a few years ago by Professor Hart.<sup>5</sup> It might be interesting, however, to add a few recent figures to show the statistical impact of the new Act. According to Criminal Statistics England and Wales for the year 1958,<sup>6</sup> the first full year of the operation of the new Act, 11 persons were tried in 1958 by Assizes for capital murder and 50 persons for non-capital murder; of the former group five were sentenced to death and executed, in one case the death sentence was commuted to life imprisonment, whereas of the latter group 19 were given a life sentence. Most of the others were either acquitted or found insane. In addition, 26 persons were tried for manslaughter under the Homicide Act, of whom 25 were tried under section 2 (diminished responsibility) and one under section 4 (suicide pact), and 22 received prison sentences. Although it is somewhat risky to judge on the strength of the figures for one year only, it seems therefore likely that the number of persons tried for non-capital murder will in future be much larger than that of persons tried for capital murder.

(b) While the Homicide Act has remained the only major piece of post-war legislation passed in the field of offences against the person, there has been a great deal of discussion and agitation on two other important subjects: abortion and attempted suicide. Both have been treated in the present writer's *Criminal Justice and Social Reconstruction*<sup>7</sup> and, more fully afterwards, by Dr. Glanville Williams,<sup>8</sup> and only a few remarks are therefore needed to bring the story up-to-date.

With regard to *abortion*, there has recently been the interesting case of *R. v. Newton & Stungo*<sup>9</sup> in which "psychiatric indication" was claimed on the ground that the woman, an unmarried nurse, had been stated by a psychiatrist to be in an actively suicidal condition<sup>10</sup> and because she had

<sup>5</sup> Hart, *Murder and the Principles of Punishment: England and the United States*, 52 *Nw.U.L.R.* 433 (1957).

<sup>6</sup> *Criminal Statistics England and Wales*, 1958, *Cmd. No. 803*, at xxxi *et seq.*, 6, 30-1 (1959).

<sup>7</sup> MANNHEIM, *op. cit. supra* note 2, §1.

<sup>8</sup> WILLIAMS, *THE SANCTITY OF LIFE AND THE CRIMINAL LAW*, c. 5, 7 (1958).

<sup>9</sup> 1958 *CRIM. L. REV.* 469. On this case, see Havard, *Therapeutic Abortion*, *CRIM. L. REV.* (Sept. 1958).

<sup>10</sup> On "psychiatric abortion," see WILLIAMS, *op. cit. supra* note 8, at 156 *et seq.*

refused to go into hospital. The judge, Ashworth, J., is reported as having instructed the jury as follows: "The law about the use of instruments to procure miscarriage is this: 'Such use of an instrument is unlawful unless the use is made in good faith for the purpose of preserving the life or health of the woman.' When I say health I mean not only her physical health but also her mental health." On account of his behaviour before, during, and after the operation, the jury found that the performing doctor had not acted in good faith, i.e., honestly believing on reasonable grounds and with adequate knowledge that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck"; consequently he was found guilty of unlawfully using an instrument with intent to procure the miscarriage and also guilty of manslaughter and sentenced to five years imprisonment in all. This case confirms the general view, prevailing since the *Bourne* case of 1938 and the publication of the Report of the Inter-Departmental Committee on Abortion of 1939,<sup>11</sup> that, providing the operating doctor acts in good faith and takes all the necessary precautions, he has nothing to fear from the criminal law. Nevertheless, in view of the still widely existing uncertainty even on the scope of legally permissible therapeutic abortion, there is no doubt a great need for special legislation on this point, for which the Abortion Law Reform Association, founded in 1936, has been pressing for nearly a quarter of a century. The principal clauses of its most recent "Medical Abortion Bill" read as follows:

- "1. Notwithstanding anything in Section fifty-eight of the Offences against the Person Act, 1861, abortion shall be lawful if performed by a registered medical practitioner in good faith—
- (a) for the purpose of preserving the life of the patient, or
  - (b) in the belief that there would be grave risk of serious injury to the patient's physical or mental health if she were left to give birth to and care for the child, having regard to all the circumstances including the patient's conditions of life, or
  - (c) in the belief that there would be grave risk of the child being born grossly deformed or with a physical or mental

abnormality which would be of a degree to require constant hospital treatment or special care throughout life, or

- (d) in the belief that the patient became pregnant as the result of intercourse which was an offence under Sections one to eleven inclusive of the Sexual Offences Act, 1956, or that the patient is a person of unsound mind.

"2. In order for an abortion to be lawful under paragraphs (b) to (d) inclusive of Section one of this Act, the operation shall require the concurring opinion of a second registered medical practitioner and shall not be performed after the end of the twenty-fourth week of pregnancy.

"3. The burden of proving that an abortion performed by a registered medical practitioner with any necessary concurrence or advice of a second registered medical practitioner was not performed in good faith for the purpose or in the belief specified in this Act or within the time permitted for terminating pregnancy shall in any prosecution for such abortion rest upon the Crown."

It will be noted that clauses 1(c) and (d) go beyond the scope of the *Bourne* and *Newton* cases (rape as such was not recognised in the *Bourne* case as sufficient justification for abortion). To some extent, the Bill even admits the socio-economic indication by referring in clause 1(b) to "the patient's conditions of life."

As with abortion cases, *attempted suicide*,<sup>12</sup> too, mostly remains undetected. The figures of 5,436 cases known to the police in England and Wales in 1957 and 5,060 cases known in 1958 are probably only a fraction of the actual numbers. Considerably smaller even than these figures are those of persons brought before the courts for this offence. In 1958, which was not an atypical year, the Magistrates' Courts dealt with 460 persons aged 21 and over, 53 persons aged 17 and under 21, and 15 persons aged 14 and under 17. Most of them were either, absolutely or conditionally, discharged or placed on probation. As the present writer pointed out in *The Times* of the 25th February 1958, "all this shows that the need for punitive action, if existing at all, is felt far less strongly here by police and courts than in the case

<sup>12</sup> See MANNHEIM, *op. cit. supra* note 2, at 10 *et. seq.*; WILLIAMS, *op. cit. supra* note 8, c. 7; *Criminal Statistics England and Wales*, 1958, *op. cit. supra* note 6, at xxxvi, 46 *et. seq.*

<sup>11</sup> H.M.S.O., London, 1939.

of other offences, but it may be doubtful whether it should be left entirely to the police to decide whether or not to take action. Some other machinery might possibly be worked out in consultation with the National Health Service, other social services, and the police, and some of the recommendations of the Royal Commission on Mental Illness and Mental Deficiency might also be relevant." In recent years several pieces of research have been published by medical experts and social workers, such as Epps, Sainsbury, Woodside, and others,<sup>13</sup> which show the futility of penal action in such cases, and professional bodies such as the British Medical Association, the Magistrates' Association, and a Committee of the Church of England have issued Reports in favour of changing the present law. The two first mentioned Associations, in a joint Report,<sup>14</sup> have stated that they have "received information from a number of consultants in general hospitals . . . and in mental hospitals, who were practically all agreed that the person who has attempted suicide is a case for medical and social care and that the intervention of the law is undesirable and unnecessary." The Report therefore recommends that "the law should be amended to provide that suicide, and consequently attempted suicide (excluding attempted suicide pacts, etc.), should no longer be a criminal offense as such . . . except, for example, where the incident takes place in public and/or in circumstances which cause annoyance and alarm." Very similar conclusions are reached in the more recent Report of a small Committee appointed by the Church of England "Assembly Board for Social Responsibility," consisting of lawyers, doctors, and theologians.<sup>15</sup> The Archbishop of Canterbury, while stressing in his Foreword that the authority attaching to the recommendations of the Report is that of its signatories only, describes it as a very valuable basis for discussion. As far as the often used argument is concerned that one has to rely on the criminal law not for the sake of punishment but to ensure that suicidal persons can obtain the medical and social care which they need, the

above mentioned publications have made it clear that the existing medical and social services—if necessary in cooperation with the police—are well able to safeguard the interests of such persons without formal court proceedings. If anything more was required, the Mental Health Act, 1959, has even further strengthened the hands of the authorities. It is encouraging that the Home Secretary has recently asked the Criminal Law Revision Committee to report on the matter and promised to introduce legislation if its report should be satisfactory.<sup>16</sup>

### (2) *Offences against Property.*

There has been no post-war legislation of any particular importance in this field. The fairly comprehensive Prevention of Fraud (Investments) Act, 1958, is mainly a statute consolidating the Act of the same name of 1939, which in its turn was based on the Report of a Departmental Committee of 1937.<sup>17</sup>

### (3) *Sexual Offences.*

In this field the post-war legislator has been slightly more active.

(a) The Sexual Offences Act of 1956, it is true, is mainly a consolidating measure, but as such it was badly needed, and it has clarified the meaning of various statutory offences and removed many anomalies. Unfortunately, it does not cover the whole subject as in particular indecent exposure, both as a common law offence and as a statutory offence under the Vagrancy Act of 1824 and the Town Police Clauses Act of 1847, and indecencies contrary to local Acts and Bye-laws are not affected.<sup>18</sup> Especially the wording of the Vagrancy Act, Section 4, is so "archaic and tautologous" that its continued existence is hardly justified.<sup>19</sup>

(b) As a consolidating statute the Act of 1956 could not tackle two of the most controversial matters of the English law of sex offences, i.e., the punishment of homosexual acts and of prostitution. As generally known, a Committee under the chairmanship of Sir John Wolfenden, Vice-Chancellor of Reading University, was set up in 1954 "to consider (a) the law and practice relating to homosexual offences and the treatment of

<sup>13</sup> Phyllis Epps (Medical Officer, Holloway Prison), *Women in Prison on "Attempted Suicide" Charges*, *The Lancet*, July 27, 1957, pp. 182 *et. seq.*; SAINSBURY, *SUICIDE IN LONDON* (1955); Woodside, *Attempted Suicides Arriving at a General Hospital*, *BRIT. MED. JOUR.*, Aug. 16, 1958, pp. 411 *et. seq.*

<sup>14</sup> *THE LAW AND PRACTICE IN RELATION TO ATTEMPTED SUICIDE IN ENGLAND AND WALES* (1958).

<sup>15</sup> *UGHT SUICIDE TO BE A CRIME?* (London: The Church Information Office, 1959).

<sup>16</sup> *The Times*, May 23, 1958, March 18, 1960.

<sup>17</sup> Departmental Committee on Share-Pushing, *Report*, C.M.D. No. 5539 (1937).

<sup>18</sup> See the detailed analysis in RADZINOWICZ (ed.), *SEXUAL OFFENCES—A REPORT OF THE CAMBRIDGE DEPARTMENT OF CRIMINAL SCIENCE*, 319 *et. seq.* (1957).

<sup>19</sup> *Id.* at 428.

persons convicted of such offences by the courts; and (b) the law and practice relating to offences against the criminal law in connection with prostitution and solicitation for immoral purposes, and to report what changes, if any, are . . . desirable." The Committee reported in 1957,<sup>20</sup> but the publication of its Report has by no means brought the existing doubts and controversies to an end. Moreover, its two sections have been treated very differently by Government and legislature.

On the treatment of homosexual acts the most important recommendation of the Wolfenden Report was "that homosexual behaviour between consenting adults in private be no longer a criminal offence" (paragraph 62) and that the age of "adulthood" for the purposes of the proposed change be fixed at twenty-one (paragraph 71). In spite of the considerable amount of approval which this recommendation has received in the subsequent public discussions, the Government has so far refused to take any action on it, and both the Lord Chancellor, Viscount Kilmuir, in the House of Lords on December 4, 1957, and the Home Secretary, Mr. Butler, in the House of Commons on May 22, 1958, have maintained that in view of the state of public opinion the time was not yet ripe for the proposed change. As the present writer, who is personally in favour of such a change in the law, has pointed out elsewhere,<sup>21</sup> this fate of the Committee's recommendation may, at least in part, have been due to its failure (a) to carry out or instigate any research on the state of public opinion in the matter and (b) to include in its Report a thorough study of the fundamental problem of the relationship between religion and morality, on the one hand, and the criminal law, on the other. As the Report did not go beyond stressing very briefly the fairly obvious truth that crime and sin were not identical, without however giving adequate consideration to the details of this eternal problem, the man in the street or on the Clapham omnibus could hardly be expected to understand its intricacies and to provide the indispensable strong support for the Committee's recommendation. All that has happened is therefore a slight statistical decline in offences of buggery, attempted buggery, and indecency between men (Nos. 16-18 of the classified list of indictable offences as shown in the official Criminal

Statistics) from the peak for buggery in 1956 (907 cases) to 706 cases in 1959, with similar decreases in the number of persons for trial (from 313 in 1956 to 287 in 1959). Correspondingly, the number of persons received in prison for these offences (Nos. 16-18) fell from 746 in 1955 and 569 in 1956 to 488 in 1957 and 466 in 1959.

(c) The Street Offences Act of 1959, which carries into effect some of the recommendations of the Wolfenden Committee on the subject of prostitution, has throughout the parliamentary debates been violently opposed by most organisations working in this field and by important sections of the public and the press. Admittedly, the subject is full of pitfalls and presents the greatest difficulties to the law reformer. No legislator has so far been able to devise a satisfactory solution. In English law, prostitution as such is not an offence, nor has there been with the exception of the four years' period of the Contagious Diseases Acts 1864-68 (abolished under the impact of Josephine Butler's abolitionist campaign) any system of regulation or registration of prostitutes. Whatever attempts there have been to keep the evil under control by legal means have been piecemeal and unsystematic, primitive and out of tune with modern views and requirements. A survey of the legal position is given in the Wolfenden Report.<sup>22</sup> Before the Street Offences Act of 1959 the law differed slightly between the Metropolitan Police District, which includes the London Area, and the rest of the country, but even outside London there were certain minor differences because some larger cities had their own local Acts. In the London area (Metropolitan Police Act, 1839, Section 54), "every common prostitute or night-walker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers" was liable to a fine of forty shillings. There was no statutory definition of the term "common prostitute," but, in the words of the Wolfenden Report, "the courts have held that the term includes a woman who offers her body commonly for acts of lewdness for payment." While there were minor deviations from this formula outside London, the terms "common prostitute" and "annoyance" were common to the law everywhere, but slightly higher fines and short

<sup>20</sup> Committee on Homosexual Offences and Prostitution, *Report*, CMD. NO. 247 (1957).

<sup>21</sup> GINSBURG (ed.), *LAW AND OPINION IN ENGLAND IN THE TWENTIETH CENTURY*, 272 *et. seq.* (1959).

<sup>22</sup> Pp. 82 *et. seq.* The Cambridge Report, *op. cit. supra* note 18, does not deal with prostitution, and it may indeed be doubtful whether the latter can be included under the heading of "sexual offences."

terms of imprisonment could be imposed outside. In Scotland, however, evidence of "annoyance" was not required. That the law was in many ways unsatisfactory, and entirely incapable of coping with the ever-growing extent of prostitution, in particular in London, has for years been almost unanimously admitted. While hardly anybody deemed it possible to deal effectively with the evil itself, it was commonly agreed that its outward manifestations had become intolerable. "From the evidence we have received," wrote the Wolfenden Committee, "there is no doubt that the aspect of prostitution which causes the greatest public concern at the present time is the presence, and the visible and obvious presence, of prostitutes in considerable numbers in the public streets of some parts of London, and of a few provincial towns. It has indeed been suggested to us that in this respect some of the streets of London are without parallel in the capital cities of other civilised countries." (p. 81) Elsewhere, too, the Report makes it clear that it is concerned not with the moral but merely with the public order aspects of prostitution. (p. 87) It is of course, as the Committee realised, very difficult to obtain exact statistical evidence for the widespread belief that prostitution in post-war England has considerably grown in extent. All we have got are the figures of prosecutions showing an increase from an average of 4,622 in the years 1945-49 to 19,663 in 1958; and even here it has to be borne in mind that these figures refer not to individuals but to cases and do not show, therefore, whether the increase means that the police have intensified their activities against individual prostitutes, charging each of them more often in the course of one year, or rather their overall activities by bringing a larger number of individuals before the courts than before.<sup>23</sup> Moreover, as the Report states, "the number of prosecutions must depend to some degree on the number of police available for work of this kind and on the

<sup>23</sup> An attempt was made some years ago by a private research project to relate the number of charges to the number of individual prostitutes, and it was found in the year 1946 that the number of individuals arrested in the Metropolitan Police District on charges of soliciting was 1,342, whereas charged numbered 4,306; in 1949 the corresponding figures were 1,399 and 5,319; see ROLPH (ed.), *WOMEN OF THE STREETS*, 185 (1955). In the Wolfenden Report it is stated that in 1953, in one Division of the Metropolitan Police District, the number of prosecutions was 6,829 and that of the individual prostitutes involved 808. (p. 81) These figures seem to show that the number of charges has grown much more than that of the individuals involved.

vigour of their activity; and this in turn may well depend on public opinion". (p. 81)

The principal criticisms made of the pre-1959 legislation were directed (a) against what was regarded by many as unfair discrimination between the prostitute and her customer who went scot-free; and in particular against the introduction of a woman charged in court as a "common prostitute" instead of as a person charged but not yet found guilty, which it was argued seemed to establish a presumption of guilt instead of innocence and to brand the individual for ever; (b) against the requirement of "annoyance" which, it was rightly alleged, had in actual court practice become a mere farce; therefore many critics thought it should be dropped altogether, whereas others demanded its stricter enforcement by requiring the court attendance of the private person (not a police officer) actually "annoyed"; (c) against the entirely inadequate nature of the penalties which could be imposed under the obsolete early nineteenth century legislation. The Wolfenden Report recommended, among other reforms, that the requirement to establish annoyance should be dropped, but made no recommendation regarding the use of the term "common prostitute." Concerning treatment, the Report recommended on the one hand higher maximum penalties, especially for repeaters, and on the other hand for beginners a system of police cautions instead of prosecutions on the lines of police practice in Edinburgh and Glasgow. The Street Offences Act, 1959, Section 1, in providing that "it shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution" has retained the offensive terminology of its predecessors and abandoned the requirement of "annoyance." A constable may arrest without warrant "anyone he finds in a street or public place and suspects, with reasonable cause, to be committing an offence under this section." Following the recommendation of the Wolfenden Report, the Metropolitan police have been instructed and police forces in other cities advised by the Home Secretary to "caution a first time and invite the woman to call at a police station, where women police officers will advise her and can put her into touch with a helpful welfare organisation. If such help is ignored and a constable apprehends her loitering or soliciting for a second time she will again be cautioned, and the procedure already described will be repeated.



On the third occasion, she may be arrested."<sup>24</sup> While this procedure is not prescribed in the statute, Section 2 tries to give the female sex at least some protection against non-justified cautioning by providing that if a woman is given such a caution she "may not later than fourteen clear days afterwards apply to a magistrates' court for an order directing that there is to be no entry made in respect of that caution in any record maintained by the police of those so cautioned and that any such entry already made is to be expunged; and the court shall make the order unless satisfied that on the occasion when she was cautioned she was loitering or soliciting in a street or public place for the purpose of prostitution." It is also provided that these proceedings shall be conducted in camera unless the woman desires that they should be in public. The other important innovation refers to the penalties which have been increased to a fine up to ten pounds or, for a second conviction, up to 25 pounds and, after that to a fine up to 25 pounds or imprisonment up to three months or both. Opinions have been divided as to the wisdom of these innovations, and it has been argued in particular that heavier penalties would only drive prostitution still more underground and gain new recruits for the ranks of call girls and other types of prostitutes not operating in the streets. It is too early to assess the effect of the new Act. Mrs. Rosalind Wilkinson, who did the field work for the research project referred to in footnote 22, has stated that in London in the first three months of the Act arrests for street soliciting had dropped by 90 per cent, and that the Act had been more successful than expected in removing prostitutes from the streets, also that penalties imposed in London and Manchester had remained well below the statutory maxima.<sup>25</sup>

(d) Another very complex subject closely related to the subject of sex offences and for a century in need of a fresh legislative effort has recently been tackled by the legislator, *obscene publications*. The Obscene Publications Act, 1959, which repeals the main provisions of the Obscene Publications

Act, 1857, bears the full title "An Act to amend the law relating to the publication of obscene matter; to provide for the protection of literature; and to strengthen the law concerning pornography." Its crucial provision is contained in Section 1(1), which gives the following "test of obscenity": "For the purposes of this Act an article shall be deemed to be obscene if its effect . . . is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it." According to Section 4(1) it is a good defence if it is proved that "publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern," and, a very important and previously controversial point, according to Section 4(2) "the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Act either to establish or to negative the said ground." The case of *Lady Chatterley's Lover*, sensational as it was, has contributed nothing to the interpretation of the Act of 1959, since one does not know whether the verdict of the jury meant that the book was not regarded as obscene or whether its publication was regarded as justified as "being for the public good."

(4) As far as quantity is concerned, the field of non-indictable offences is dominated by the various kinds of *Traffic Offences*. In 1958, out of 993,445 persons found guilty of offences of any kind, 596,587 or 60.1% were guilty of traffic offences dealt with summarily.<sup>25a</sup> According to another Table in Criminal Statistics England and Wales 1958, the number of offences against the Highway Acts rose from an average of 292,421 for the years 1930-34 to 544,238 in 1958.<sup>26</sup> Bitter criticisms of these increases and of the inadequate penalties imposed on traffic offenders by the magistrates have been fairly widespread. The passing of the Road Traffic Act, 1956, was therefore an event of major importance. Its main object was to raise the level of the maximum penalties allowed

<sup>24</sup> Hall, 10 BRIT. J. DELINQ. 135 (1959).

<sup>25</sup> Wilkinson, *Clearing Up the Streets*, The Sunday Times, Dec. 13, 1959, p. 33. On March 1, 1960, a Government spokesman stated in the House of Lords that there had been 889 convictions under §1(1) of the Street Offences Act in the period between August 16 and December 31, 1959, which was one tenth of the number for the same period in 1958. He added that prison sentences had been imposed in 63 cases, of which 17 had been for periods of more than two and up to three months.

<sup>25a</sup> Criminal Statistics England and Wales, 1958, *op. cit. supra* note 6, at ix.

<sup>26</sup> *Id.* at 12-13. According to p. vii, "the statistics of proceedings for non-indictable motoring offences are now based on a system of sampling introduced to reduce the work of dealing with the very large number of offence reports. . . . All the figures . . . in the Tables are consequently subject to a small sampling error."

above that of the Road Traffic Act, 1930, and it was hoped that in this way the magistrates would be induced to deal more effectively with the "slaughter on the roads." The Act came into force on November 1, 1956, and after a trial period of a few years Mr. J. P. Eddy, Q.C., a former Recorder and Stipendiary Magistrate, was able to state that its effect on penalties had been "almost negligible." To quote only a few of his figures,<sup>27</sup> for the offence of reckless or dangerous driving, for which the maximum fine on summary conviction by the magistrates is now fifty pounds for first offenders, the average fine imposed was £11:9:7 in the six months beginning October 1, 1955, and £14:3:10 in 1957. For the offence of careless driving it was £4:4:4 in 1955 and £5:11:2 in 1957; for driving under the influence of drink or a drug it was £18:16:7 in 1955 and £22:4:7 in 1957. Although the Act of 1956 greatly strengthened the powers of the magistrates to disqualify offending drivers, the proportion of cases in which these powers were actually used remained disappointingly small. Out of 38,731 convictions for careless driving in 1957, for example, disqualification was imposed in only 1,718 cases, and for reckless or dangerous driving the number was 1,994 out of 4,899 cases. In 1958, the average fine had increased only by a few shillings over the average for 1957.<sup>28</sup> Repeated appeals to the magistrates on the part of the Lord Chancellor to make fuller use of their legal powers<sup>29</sup> had no effect, and in December 1959 he reminded the Magistrates' Association that in 1956 he had called the Act of 1956 "the last chance of penalties, and particularly disqualification, being left to the discretion of the magistrates." The Association, on its part, was not inactive, and in November 1959 its Council passed the following unanimous resolution: "That in the opinion of the Council the time has now arrived for Courts to consider further the necessity for heavier deterrent penalties, including particularly disqualification in suitable cases, for serious traffic offences, and that this expression of opinion be conveyed to all members of the Association." These efforts of responsible authorities to influence the sentencing policy of the magistrates in what is obviously the

right direction are of considerable interest to the onlooker. While the representatives of the government have to be, and always are, very careful not to appear to interfere with the judicial work of the magistrates they have a responsibility for the proper administration of justice and are therefore entitled to appeal to the magistrates to change their policy wherever it seems to be against the public interest. In the case of motoring offences, however, there is no general consensus of opinion that penalties imposed by the magistrates are actually too lenient, and as recent press discussions have shown, motorists in particular are inclined strongly to disagree. Since most magistrates are motorists themselves, warnings and appeals are likely to be widely disregarded. On the other hand, those few magistrates who are not motorists will hardly be accepted by the public as sufficiently expert to decide cases of motoring offences. In other words, the vicious circle is almost complete.

(5) The significance of the *Mental Health Act of 1959* extends far beyond the scope of the criminal law, but some of its provisions are of the greatest immediate interest to the administration of criminal justice. We can do no more here than summarize a few of the most important provisions of this very detailed and extremely complicated statute which is largely based upon the recommendations of the Royal Commission on the Law relating to Mental Illness and Mental Deficiency 1954-1957.<sup>30</sup> According to Section 60, if the court is satisfied on the written or oral evidence of two medical practitioners (of whom at least one must be approved by a local health authority as having special experience in the diagnosis or treatment of mental disorders, Section 62) that an offender is suffering from mental illness, psychopathic disorder, or subnormality and that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment or his reception under guardianship, and if the court is of opinion that the most suitable method of disposing of the case is by means of an order under this section, the court may by order authorize his admission to and detention in a specified hospital or place him under guardianship of a local health authority or an approved person. In the case of such an offender being charged before a Magistrates' Court the magistrates may make such an order without convicting him if they are satisfied that he did the act or made the omis-

<sup>27</sup> See Eddy, *Offences and Casualties on our Roads—A Review of Fines and Disqualifications*, 15 *THE MAGISTRATE*, 39 *et seq.* (April 1959). Also my brief Note in 10 *BRIT. J. DELINQ.* 63 (1959).

<sup>28</sup> See Eddy in *THE MAGISTRATE*, December, 1959, p. 135.

<sup>29</sup> See *The Times*, Sept. 29, 1956, and *THE MAGISTRATE*, December, 1959, p. 141.

<sup>30</sup> *Report*, *CMD.* No. 169 (1957).

sion charged. The provisions relating to the discharge of such an offender (Section 63 *et. seq.*) are too involved to be set out in detail; suffice it to say that they make it very difficult for him to secure his discharge. Part IV of the Act (Section 25 *et. seq.*) deals with the compulsory admission to hospital and guardianship of persons of any age suffering from mental illness or severe subnormality and of persons under the age of twenty-one suffering from psychopathic disorder or subnormality. It is an interesting feature of the Act that psychopathy is now, for the first time in English legislation, explicitly included under the concept of mental disorder and defined by statute whereas previously, even in post-war legislation, such as the Criminal Justice Act of 1948, Section 4, or the Magistrates' Courts Act of 1952, Section 30, or the Homicide Act of 1957, Section 2, psychopathy was not mentioned and we were left to guess whether or not it was included in terms such as "abnormality of mind" or "unsound mind." The definition given in the Mental Health Act, Section 4(4) runs as follows: "In this Act 'psychopathic disorder' means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient, and requires or is susceptible to medical treatment." It is in particular with regard to psychopathic disorder that Section 4(5) of the Act will be of practical importance: "Nothing in this section shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder, or from any form of mental disorder described in this section, by reason only of promiscuity or other immoral conduct." Clearly, it would be very tempting to make a detailed comparison of the contents and practical working of the Mental Health Act and the American psychopathic sex offenders laws or, as the Act is in no way confined to sex offenders, even more appositely of legislation such as the Maryland Defective Delinquency Law of 1951.<sup>31</sup> Finally, attention might be drawn to Section 44 of the Act, according to which the compulsory detention in mental hospitals of psychopathic and not seriously subnormal patients who are not convicted of any offence cannot as a rule be extended beyond their twenty-fifth

year; only if it appears to the responsible medical officer that the patient, if released upon attaining the age of twenty-five years, would be likely to act in a manner dangerous to other persons or to himself can the authority for his further detention be renewed.

(6) The *Criminal Injuries (Compensation) Bill* of 1959, a private member's Bill, might also be briefly mentioned. Although at the time of writing its chances of becoming law do not seem to be very bright, it deals with a problem of great public interest and one which, sooner or later will probably find entrance into the body of statutory law. With the post-war rise in crime of violence and sexual crime it was only natural that the old idea of state compensation for the victims of such crimes should have been pursued with increased vigour. Aply championed by the late Miss Margery Fry the idea was sympathetically received by the Home Office which may, however, prefer to introduce its own Bill at some later stage. The purpose of the present Bill is "to provide compensation for persons who suffer personal injury as a result of certain criminal offences, for their dependants, and for the dependants of those killed as a result of these offences." The offences specified in a Schedule include murder, manslaughter, assault occasioning actual bodily harm, and certain sexual offences, and the Home Secretary would be given power to alter the list by order. Compensation would be payable on the same scale as under the National Insurance (Industrial Injuries) Act, i.e., injury benefit, disablement benefit and certain supplementary allowances for injured persons, and death benefit for widows and certain other dependants of those who are killed. The technical and financial difficulties which any scheme of this kind will have to overcome have been fully and most competently discussed in the symposium on "Compensation for Victims of Criminal Violence,"<sup>32</sup> but they may not be altogether insuperable. "Victimology" has recently developed as an important branch of criminology which can no longer be ignored in its theoretical and practical implications. In matters of crime causation and criminal responsibility it is realised that the personality and behaviour of the victim may be a determining factor and often to be considered in the interest of the offender. It is only fair that the injury suffered by the victim should also receive

<sup>31</sup> See Boslow, Rosenthal & Gliedman, *The Maryland Defective Delinquency Law*, 10 BRIT. J. DELINQ. 5 (1959).

<sup>32</sup> 8 J. PUB. L. 191 (1959).

more serious consideration than before within the framework of criminal procedure.

#### CHANGES IN THE CONSTITUTION OF THE CRIMINAL COURTS AND IN CRIMINAL PROCEDURE<sup>33</sup>

The end of the war found English criminal courts badly in need of reform to enable them to cope with the expected crime wave and the needs of the new society which was coming into existence. High courts and magistrates' courts, including juvenile courts, largely manned with over-aged judges and magistrates, were in addition handicapped by a constitution and a procedure which had in some respects become out-of-date.

(1) As far as the magistrates' courts are concerned, the Royal Commission on Justices of the Peace 1946-48<sup>34</sup> made a number of more or less drastic recommendations, some of which became law in the Justices of the Peace Act of 1949. The following innovations deserve to be mentioned: Lay magistrates aged seventy-five or over have to be transferred to a "supplemental" list, already established by the Justices (Supplemental List) Act of 1941. Also transferable are lay magistrates in respect of whom the Lord Chancellor is satisfied that by reason of their age or infirmity or other like cause it is expedient that they should cease to exercise judicial functions or that they decline or neglect to take a proper part in the exercise of those functions. A justice transferred to the supplemental list is barred from judicial work, though he may still sign certain documents and give certificates of facts within his knowledge or of his opinion as to any matter (Section 4). For juvenile court magistrates an earlier retiring age may by rule be prescribed, and at present it is sixty-five (section 14). For stipendiaries, i.e., full-time and legally trained magistrates, the retiring age has been fixed at seventy-two, with the possibility of extension to seventy-five (Section 33). Whereas before there was no legal restriction regarding the maximum number of justices who could sit on the bench and adjudicate in a given case, their number has now been limited by rule to seven for magistrates' courts and nine for Quarter Sessions (Section 13). Magistrates' courts committees have to be set up for each county and each county borough which, besides other important adminis-

trative functions, have the duty to draw up and administer schemes providing for courses of instruction for the lay justices of their area (Section 17), but while the Royal Commission had recommended that on his appointment a justice should be required to give an undertaking that he would follow the scheme and that he should not adjudicate until he had fulfilled his undertaking (p. 87 of the Report), the present scheme has no compulsory character. In fact, the courses are, however, attended by large numbers of justices. With regard to that supremely important figure, the justices' clerk, there had already been a Departmental Committee's Report in 1944,<sup>35</sup> but its recommendations were accepted in the Act of 1949 only with certain important qualifications: the clerk should, as a rule, be appointed from the ranks of barristers or solicitors of not less than five years' standing, but various exceptions in favour of admitting persons without legal training have been made in the Act, nor has the clerk necessarily to be full-time (Section 19 *et. seq.*).

(2) For the higher courts, i.e., Assizes and Quarter Sessions, the most important post-war development has been the setting up of the two Crown Courts at Manchester and Liverpool under the Criminal Justice Administration Act of 1956. The work of the higher criminal courts is greatly handicapped by the fact that most of them have no permanent structure and that justice has to be administered for the Assizes by High Court judges travelling on circuit from London or by special Commissioners and for Quarter Sessions by part-time Recorders usually residing outside their court districts. Before 1956 the only exception was the London area where the Central Criminal Court or "Old Bailey" has been functioning for more than a century as a permanent court of Assizes. For a long time it had been felt that the densely populated industrial parts of Lancashire, in particular the big cities of Manchester and Liverpool, needed similar courts, and after careful investigation, the Crown Courts there were opened in October 1956 as permanent courts of Assizes and Quarter Sessions with full-time Recorders who deal with all except the most serious cases reserved for visiting High Court judges. Much as this innovation is to be welcomed it can be regarded merely as another milestone on the road towards the establishment of a whole network of permanent

<sup>33</sup> See also *A Comparative Study of Criminal Law Administration in the United States and Great Britain*, 50 J. CRIM. L., C. & P.S. 59 (1959).

<sup>34</sup> *Report*, CMD. No. 7463 (1948).

<sup>35</sup> Departmental Committee on Justices' Clerks, *Report*, CMD. No. 6507 (1944).

criminal courts for all big centres of population in Britain. As the Chairman of the Prison Commission for England and Wales, Sir Lionel Fox, wrote several years ago, "if the superior courts are to be placed in a position in which they can devote to the consideration of treatment the same skilled attention which they devote to the consideration of guilt, it would be necessary to establish in provincial centres superior courts of justice more in accordance with the London practice at the Old Bailey and the London Sessions."<sup>36</sup> In 1958, an Inter-Departmental Committee was set up under the chairmanship of Mr. Justice Streatfield with the following terms of reference: "To review the present arrangements in England and Wales (a) for bringing to trial persons charged with criminal offences, and (b) for providing the courts with the information necessary to enable them to select the most appropriate treatment for offenders, and to consider whether, having regard to the desirability of ensuring that cases are brought before the courts and disposed of expeditiously, any changes are required in these arrangements or in those for the dispatch of business by the courts; and to report." The hope may be expressed that the Report of the Streatfield Committee will contain a strong recommendation in favour of more permanent criminal courts.

(3) In the field of juvenile courts, legislative changes in the post-war period have so far been of a comparatively minor nature, but more comprehensive recommendations are likely to be made in the report of the Departmental Committee which has been deliberating on the subject for more than three years under the chairmanship of Viscount Ingleby. Its terms of reference include the working of the law relating to (1) proceedings, and the powers of the courts, in respect of juveniles brought before the courts as delinquent or as being in need of care or protection or beyond control; (2) the constitution, jurisdiction, and procedure of juvenile courts; (3) the remand home, approved school, and approved probation home systems; (4) the prevention of cruelty to, and exposure to moral and physical danger of, juveniles. One of the most important and controversial issues before the Committee is the question of raising the minimum age, at present eight years, at which juveniles can be

<sup>36</sup> *The Medico-Psychological and Social Examination of Delinquents*, 3 BRIT. J. DELINQ. 100 (1952).

charged before the courts as delinquents and which is much lower than in most Continental countries.<sup>37</sup>

It seems doubtful whether the Report of the Ingleby Committee will express any views on the advisability of setting up special courts for adolescents, or "young adults", aged 17 to 21. The need for such courts, or rather for special divisions of the adult courts, to be established in large centres of population has recently again been stressed by the present writer after a brief study of the Youthful Offenders procedure in New York and the Chicago Boys' Court.<sup>38</sup>

(4) Concerning criminal procedure, the most detailed piece of post-war legislation is the Magistrates' Courts Act of 1952, which may be called a code of criminal procedure for magistrates' courts. It is a consolidating statute "relating to the jurisdiction of, and the practice and procedure before, magistrates' courts and the functions of justices' clerks . . . with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949." Consequently, the significance of the Act lies in its clarification of doubtful points rather than in its innovations. Even so, it contains many provisions of general interest, such as, for example, Section 40 according to which in the case of any person not less than fourteen years old who has been taken into custody and charged with an offense before a magistrates' court the court may on the application of a police officer not below the rank of inspector order the finger-prints of that person to be taken by a police constable. Unless the accused is subsequently found guilty the finger-prints and all copies and records of them have to be destroyed. Another provision which has been widely discussed in recent years is Section 4(2), according to which "examining justices shall not be obliged to sit in open court." The history of this provision which

<sup>37</sup> Subsequent to the preparation of this article, the Report of the Ingleby Committee was published. See Committee on Children and Young Persons, *Report*, CmD. No. 1191 (1960). The Report recommends that the age of criminal responsibility be raised from 8 to 12 years.

Some of the problems confronting English juvenile courts today and recent legislative reform movements in Western Germany and Switzerland are discussed in the special number on Juvenile Courts of *THE BRITISH JOURNAL OF DELINQUENCY* (Vol. VII, No. 3, January, 1957). In the same number a description is given by Arthur Collis of the work of the Children's Officers, a new category of social workers introduced by the Children's Act of 1948.

<sup>38</sup> MANNHEIM, COURTS FOR ADOLESCENTS (1958).

"finally resolved" certain previously existing doubts has been traced in the Report of a Departmental Committee of 1958,<sup>39</sup> set up by the Home Secretary in 1957 "to consider whether proceedings before examining justices should continue to take place in open court, and if so, whether it is necessary or desirable that any restriction should be placed on the publication of reports of such proceedings; and to report." This Committee was formed as the direct result of the well-known case of Dr. John Bodkin Adams who was acquitted in 1957 at the Central Criminal Court on a charge of murdering one of his patients. At the trial, the presiding judge, Mr. (now Lord) Justice Devlin, had expressed the opinion that it would have been wiser if the committal proceedings had been held in private. In its valuable Report, the Committee, under the chairmanship of Lord Tucker, came to the conclusion that "there are formidable objections to examining justices sitting in camera. We do not recommend that they should either normally or frequently do so." Concerning the publication of reports of such preliminary proceedings, however, the Report rightly concludes that there is a widespread belief "that the present system creates an atmosphere prejudicial to the accused and to that extent seriously impairs confidence in the administration of justice, and we are in no position to say that the belief is groundless" (paragraph 37). The Committee therefore unanimously recommends that "unless the accused has been discharged or until the trial has ended, any report of committal proceedings should be restricted to particulars of the name of the accused, the charge, the decision of the court and the like" (paragraph 70g). As had to be expected, the Report has been strongly attacked by the daily press, and it is to be regretted that no action has so far been taken by the Government to implement it.

Nor has the Report of the Departmental Committee on New Trials in Criminal Cases<sup>40</sup> been more successful. Following a strong plea in the House of Lords by the then Lord Chief Justice, Lord Goddard, "to consider how far the necessity for extra-judicial inquiries after conviction and

dismissal of an appeal would be obviated if the Court of Criminal Appeal had power to order a new trial,"<sup>41</sup> this Committee had been set up in 1952, also under Lord Tucker, by the Lord Chancellor and the Home Secretary to consider "whether the Court of Criminal Appeal and the House of Lords should be empowered to order a new trial of a convicted person . . . and, if so, in what circumstances and subject to what safeguards." The Committee concluded that, while the Court of Criminal Appeal "should not in any circumstances be empowered to order a new trial on a count on which the appellant has been acquitted", it should on the other hand be empowered to order a new trial of a convicted person where the appeal is based on grounds of fresh evidence. By a majority it was recommended that no such power should be given on grounds other than new evidence, and it was also recommended that the House of Lords should be given the same power as the Court of Criminal Appeal. On this Report, too, no action has so far been taken.

(5) An event of major significance, likely to affect the daily work of the criminal courts, is the setting up of a Royal Commission on the Police, announced by the Prime Minister in December 1959. The English Police service has in recent years been much in the news and, rightly or wrongly, subject to widespread criticism. There have been a few sensational criminal trials against members of the Police; charges have occasionally been made against individual policemen of ill-treatment of private citizens; policemen have been murdered or brutally attacked in the course of their duties. Recently, there has even occurred a long drawn-out and widely publicised dispute between the Chief Constable of a large city and his local Watch Committee. All this, it has been claimed, has considerably strained the relations between Police and public. Moreover, it is common knowledge that, faced with a considerable increase in crime, many local Police forces, in particular the London force, have for years been seriously under-manned and that too high a proportion of the existing manpower has to be diverted to traffic and other administrative duties or to keeping watch over prostitutes instead of being available for the business of preventing and detecting serious

<sup>39</sup> Departmental Committee on Proceedings before Examining Justices, *Report*, C.M.D. No. 479 (1958). See on it J. E. Hall Williams, *Reports of Committees*, Modern L. Rev. 647 (November 1958).

<sup>40</sup> Departmental Committee on New Trials in Criminal Cases, *Report*, C.M.D. No. 9150 (1954).

<sup>41</sup> See *The Times*, May 9, 1952, p. 4.

crime. "The police service", wrote a police expert in *The Times*,<sup>42</sup> "is resigned to being placed in the dock every so often. . . . Anything which may help to clear the air is welcomed by the police themselves. . . ." The terms of reference of the Royal Commission are very wide; they include, in addition to the remuneration of police officers, the following: "To review the constitutional position of the police throughout Great Britain; the arrangements for their control and administration and, in particular, to consider (1) the constitution and functions of local police authorities; (2) the status and accountability of members of police forces, including chief officers of police; (3) the relationship of the police with the public and the means of ensuring that complaints by the public against the police are effectively dealt with."

#### POST-WAR DEVELOPMENTS IN CRIMINOLOGY AND PENOLOGY

(1) These developments can be understood only in the light of the almost continuous increase in crime and juvenile delinquency over the past fifteen years. To quote only a few figures,<sup>43</sup> the number of persons found guilty of indictable offences rose from 78,463 in 1938 to 107,809 in 1946 and 146,714 in 1958. Much less pronounced was the rise in the number of persons found guilty of non-indictable offences, from 709,019 in 1938 to 846,542 in 1958, of whom there were 475,124 traffic offenders in 1938 and 596,587 in 1958. With regard to individual categories of offences, 56,092 persons were found guilty of larceny in 1938 and 87,966 in 1958; 10,814 guilty of breaking and entering in 1938 and 28,834 in 1958; 2,321 guilty of sex offences in 1938 and 5,423 in 1958; 1,583 guilty of crimes of violence in 1938 and 7,895 in 1958. Cases of murder of persons aged one year and over numbered 84 in 1938 and 114 in 1958, but here comparisons are difficult because of the changes in the law of homicide made in 1957. Increases have been particularly heavy for certain age groups: the number of male persons aged 14 guilty of indictable offences per 100,000 of the population of this age group has risen from 1,141 in 1938 to 2,671 in 1958; for those aged 17 from 867 to 2,331 and for those aged 18 from 740 to 2,102. Although, generally speak-

ing, there is a gradual decline after the peak age of 14, crimes of violence show a conspicuous rise for the 17 to 21 age group, from an absolute figure of 163 in 1938 to one of 2,084 in 1958.

While these figures may not seem to be excessive for a highly industrialized country of approximately 45,000,000 inhabitants (England and Wales), the increase could not fail to impose a heavy strain on the criminal courts and on all branches of the penal administration, all the more as one gets the impression—in the absence of real evidence it cannot be more than an impression—that crime has become not only more frequent but also often more serious. Armed hold-ups, for example, and bank robberies involving very large sums of money, formerly rare, have become almost daily occurrences in some of the large cities, especially London. All this is reflected in the rise of the daily average prison and Borstal population, which was between 10,000 and 11,000 before the war (England and Wales), to over 26,000 by the end of April, 1959.<sup>44</sup> A special investigation made for the Prison Commissioners some five years ago came to the conclusion that, while the largest factor in the increase was the growing number of persons convicted of indictable offences, the next largest factor was the increased average length of sentences at the higher courts.<sup>45</sup> While the proportion of convicted persons sent to prison by these courts has fallen (except for breaking and entering), the length of the prison sentences imposed has, with the exception of the very short and the very long sentences, considerably increased. This increase in average length may in part be due to the rise in crime, which makes the courts more inclined to inflict strongly deterrent sentences. In part it may also be due to the greater seriousness of the crimes committed.

To go into the causes of the post-war crime wave would take up much more space than here at our disposal. Most of the crucial factors seem to be well-known in their general outlines, but as soon as we try to be more specific and require statistical evidence for them the absence of reliable facts becomes only too painfully apparent. It was characteristic that the important Home Office White

<sup>42</sup> Christopher Pulling, *Police and Public*, *The Times*, May 1, June 1, July 1, 1960.

<sup>43</sup> These figures are all taken from the appropriate annual volumes of *Criminal Statistics England and Wales*.

<sup>44</sup> On this, see the Annual Reports of the Prison Commissioners.

<sup>45</sup> See *Criminal Statistics, 1956*, pp. xxiii *et seq.*, and Annual Report of the Prison Commissioners 1955, pp. 44 *et seq.* Also the present writer's *Comparative Sentencing Practice* in 23 *LAW & CONTEMP. PROB.* 564, 567 (1958).

Paper of February, 1959, "Penal Practice in a Changing Society,"<sup>46</sup> to which reference will repeatedly have to be made below, instead of analysing the major aspects of these changes in society, contents itself with the negative statement: "It is a disquieting feature of our society that, in the years since the war, rising standards in material prosperity, education and social welfare have brought no decrease in the high rate of crime reached during the war; on the contrary, crime has increased and is still increasing," resignedly adding, "This Paper does not seek to deal with those deep-seated causes which, even were they fully understood, would be largely beyond the reach of Government action."<sup>47</sup>

(2) How has Government action in the fields of post-war legislation and administration tried to cope with the problem? The Criminal Justice Act of 1948, so far the most outstanding piece of legislation in our sphere, had, apart from much useful detail, roughly four main objectives: First, to de-stigmatize the penal system by abolishing penalties and names of a particularly antiquated and degrading nature, such as "penal servitude," "criminal lunatic" and "criminal lunatic asylum." Secondly, it tried to restrict as much as possible the use of prison for young offenders and to replace it by less unsuitable forms of detention such as Detention Centres, Attendance Centres, and Remand Centres. Thirdly, it endeavoured to make the treatment of habitual criminals and those in danger of becoming habitual criminals more effective by drastically re-shaping the 1908 system of preventive detention for the former and by newly creating the institution of corrective training for the latter category as an intermediate stage between preventive detention and Borstal. Fourthly, by providing only the framework of the new prison system and leaving all the administrative details to the Home Secretary and the Prison Commissioners, it enabled the latter to introduce the greatest possible flexibility into the system and to experiment with new ideas.

<sup>46</sup> *Penal Practice in a Changing Society—Aspects of Future Development (England and Wales)*, CMD. No. 645 at 1 (1959).

<sup>47</sup> On this see the editorial comment in 9 *BRIT. J. DELINQ.* 241 (1959), where it is stressed that the "fundamental re-examination of penal philosophy" to which the White Paper looks forward (p. iv) cannot be divorced from understanding and action relating to the deep-seated causes of crime: "Penal philosophy and action are also part and parcel of social philosophy and action."

Today, after twelve years have elapsed since the passing of the Criminal Justice Act, it can be said that its first two objects have to some extent been reached. The disappearance of penal servitude, for example, has created no gap as its place has been taken by long prison sentences and by increased use of preventive detention; and prison sentences on persons under twenty-one have, in spite of the general increase in prison sentences referred to before, declined from an average of 2,700 to approximately 1,700 per year and been replaced in part by Borstal sentences and in part by committals to the newly created Senior Detention Centres which latter cater for boys from 16 to 21. The Borstal system, in particular its open institutions, has been greatly expanded to enable it to cope with an additional population of a few thousand boys, and the establishment of four to six more Detention Centres has been proposed,<sup>48</sup> plus a badly needed system of after-care for boys discharged from Detention Centres. Whether these sentences of three to six months in a Detention Centre—a method of treatment so far regarded as suitable only for a highly selected type of boy—will be capable of stemming the rising tide of adolescent delinquency remains doubtful.<sup>49</sup> For more serious offences committed by adolescents and requiring periods of detention longer than six months the Prison Commissioners have proposed to integrate Borstal and imprisonment into a single system of "custodial training" with a minimum of six months and a maximum of two years, the actual length to be determined by the Commissioners. In this way, the advantages of the relatively indeterminate Borstal sentence would be extended to those who are at present sentenced to fixed terms of imprisonment, and in conformity with the aim of the Criminal Justice Act of 1948 a further step would be taken towards the elimination of prison for offenders under 21. For very serious crimes sentences of imprisonment of three years and over could still be imposed. As far as these proposals involve greater flexibility, the restriction of prison sentences and the extension of after-care they are to be welcomed; and also welcome but more controversial is the transfer of still greater powers from the courts to the Prison

<sup>48</sup> See the White Paper, pp. 9 and 21, and HOME OFFICE ADVISORY COUNCIL, REPORT—THE TREATMENT OF YOUNG OFFENDERS (London, H.M.S.O., 1959).

<sup>49</sup> On the limitations of Detention Centre treatment, see Grünhut, 10 *BRIT. J. DELINQ.* 178, 192 *et seq.* (1960).



Commissioners. Whether they would make the existing system more efficient in the sense of reducing the rate of recidivism nobody can at present say. A few years ago, the Chairman of the Howard League, Sir George Benson, M.P.,<sup>50</sup> published the results of a small preliminary study, comparing the results of sentences of Borstal and of imprisonment for young men aged 16 to 21, which he regarded as "disturbing," and calling for a far more rigorous investigation into the respective results of these two forms of treatment; and with the financial support of the Ford Foundation such a study is now being undertaken.

Recent replies given by members of the Government in the House of Commons indicate that the Government is having second thoughts, and that the whole complex of problems relating to adolescent offenders, as dealt with in the White Paper and the subsequent Report of the Advisory Council, which largely endorsed the recommendations of the White Paper,<sup>51</sup> is once more being critically reviewed. In addition to the inherent difficulties of the subject, the Home Secretary gave as reasons for the delay in introducing new legislation the forthcoming publication of the Report of the Ingleby Committee<sup>51a</sup> and the recommendations of the recent Durand Report.<sup>52</sup> This Report was the outcome of an inquiry into the disturbances which had occurred at an Approved School in Bedfordshire for senior boys, i.e., boys aged 15 to 17 at the time of committal. The Approved School system, which caters for juveniles from 10 to 17, is at present administered by local authorities or private management committees under the supervision and guidance of the Childrens Department of the Home Office. Juvenile Courts have power to commit offenders and juveniles in need of care or protection to these Schools, and usually the most suitable School is selected by the Home Office after a period of observation in one of the Classifying Schools. The Schools thus cater roughly for the same age groups as the new Detention Centres, but are usually long-term institutions. With regard to Borstal, there is an overlap for the 16

year olds. The present system is lacking in flexibility in so far as the Juvenile Courts have, sometimes on the strength of insufficient information, to decide whether to commit to an Approved School or to a Detention Centre or to send the case to Quarter Sessions with a recommendation for Borstal. The Durand Report<sup>53</sup> regards it as advisable to give the Courts power to commit young persons aged 15 to 17 to "residential training" and to leave it to the Home Secretary, after a period of observation in a Classifying School, to choose between an Approved School and a Detention Centre. This is not only in line with the recommendations of the White Paper, but would, interestingly enough, also represent a further stage in the direction towards the American idea of a Youth Authority which would assume the final responsibility for selecting the kind of residential treatment most suitable for the individual.

Another matter of great concern to the Government, affecting the treatment of both juvenile and adult offenders, is the continuous pressure on the part of large numbers of their supporters to reintroduce corporal punishment for crimes of violence. Whipping, except for certain offences by prisoners, was abolished by the Criminal Justice Act of 1948 (Sections 2 and 54), but with the rise in crimes of violence there has been a growing demand for it in recent years. So far, the Home Secretary has resisted any move in this direction, but he has now asked his Advisory Council to review the position.<sup>54</sup>

(3) With regard to the third main object of the Criminal Justice Act, i.e., to make the treatment of habitual criminals and those set on the way towards habitual crime more efficient, as with regard to the whole subject of prison reform, it cannot be claimed that the progress so confidently expected in the early post-war years has throughout been achieved. The excessive pressure of increasing population has been too strong for that. In theory, the English prison administration is in a particularly favourable position in being completely centralized and therefore having at its

<sup>50</sup> Benson, *Prediction Methods and Young Prisoners*, 9 BRIT. J. DELINQ. 192, 198 (1959).

<sup>51</sup> See note 48, *supra*, and the various comments in 10 BRIT. J. DELINQ. 216 (1960).

<sup>51a</sup> Subsequent to the preparation of this article, the Report of the Ingleby Committee was published. See Committee on Children and Young Persons, *Report*, CMD. No. 1191 (1960).

<sup>52</sup> The Home Secretary, Mr. Butler, in The House of Commons, The Times, March 18, 1960: "It is hoped to have the Penal Reform Bill ready this year".

<sup>53</sup> *Report, Disturbances at the Carlton Approved School on 29th and 30th August, 1959* (Report of Inquiry by Mr. Victor Durand, Q. C.), CMD. No. 937 (1960).

<sup>54</sup> For some recent examples of this pressure, see The Times, Nov. 6, 1959, and Feb. 12, 1960. Also LAW AND OPINION IN ENGLAND IN THE TWENTIETH CENTURY 276-7. The abolition of corporal punishment in 1948 was mainly based on the recommendations of the Report of the Departmental Committee of 1938, CMD. No. 5684.

disposal a number of institutions large and diversified enough to carry out a system of classification capable of dividing its population into various categories, not only according to age and sex, seriousness of crime and length of sentence, but also with due regard to personality types and facilities for training. The Rules made under the Criminal Justice Act, Section 52, which give the Home Secretary power to regulate practically everything concerning prison administration without resort to Parliament, introduced a tripartite system of prisons: regional or training prisons, central, and local prisons, the first for all those, except short-termers, regarded as trainable, especially corrective trainees (Section 21), the second for those serving long sentences of preventive detention or imprisonment, and the third for the rank and file of the prison population; with further sub-division by type of security into open and closed, maximum, medium, and minimum security institutions. At the time, it was hoped to provide training for as many prisoners as possible and eventually to keep only the barest minimum in ordinary local prisons.<sup>55</sup> This programme could not be carried out as envisaged. Owing to pressure of accommodation, many long-term and many trainable prisoners have to serve the whole or considerable parts of their sentences in local prisons without anything resembling training. According to the White Paper of 1959, of some 15,000 men serving sentences of imprisonment (i.e., excluding the large section of the prison population being there on remand or awaiting trial or for non-payment of civil debts), only about 4,000 were kept in central or regional or open prisons, and in local prisons 6,000 men had to sleep three in a single cell built to house only one.<sup>56</sup> Antiquated prison buildings, largely dating from the Pentonville period of one hundred and twenty years ago, aggravate the position. Only very few institutions, such as the London prison Wormwood Scrubs built in 1865, are on the block system, and, apart from the many open prisons and Borstals added in the past thirty years, only one modern closed prison has recently been erected at Everthorpe in Yorkshire, at pres-

ent used as a Borstal. Moreover, while the number and proportion of very short sentences have gone down over the past twenty years, the same cannot be said of the slightly longer ones of, say, between five weeks and six months, which have actually increased both absolutely and in proportion and continue to clog the wheels of the administration.<sup>57</sup> Overcrowding and the presence of too many short-termers and of people who should not be sent to prison at all have thus played havoc with classification and training. There have been other obstacles, too. The modern idea of prison being a place for training and re-education besides punishment has, inevitably, encountered opposition not only from wide circles of the public but also from many prison officers brought up in the old tradition.<sup>58</sup> The marked trend away from the maximum security prison, partly due to overcrowding and financial stringency and partly to modern penological conceptions, is of course in itself a real advance.

In spite of all these handicaps, however, there has also been a good deal of solid achievement. In the first place, the modernisation of the prison and Borstal service has been taken in hand by expanding the Training School for officers at Wakefield in Yorkshire, by opening up new avenues of recruitment and promotion from the ranks,<sup>59</sup> and by introducing several categories of professional workers such as psychologists, social workers, prison welfare officers, tutor organizers of educational work, and the like. The complete integration of these newcomers is bound to take time.<sup>60</sup> Two of the immediate results of these developments are the so-called Norwich system and the building up of group counselling.<sup>61</sup> The object of the former, first tried out as an experiment in the small local prison at Norwich and subsequently extended to several other local prisons, is "by certain changes in routine and

<sup>57</sup> ANNUAL REPORT FOR 1958, 20 *et. seq.*

<sup>58</sup> See on this now KLARE, *ANATOMY OF PRISON* (1960); JONES, *PRISON REFORM NOW* (1959).

<sup>59</sup> For some details, see ANNUAL REPORTS FOR 1957 (p. 5) and 1958 (p. 6), and for an interesting critical assessment of the training scheme for Assistant Governors by an American observer, see Conrad, *The Assistant Governor in the English Prison*, 10 BRIT. J. DELINQ. No. 4 (1960).

<sup>60</sup> On these developments: see KLARE and JONES, *op. cit. supra* note 58, and my lecture, *The Unified Approach to the Administration of Criminal Justice*, PROCEEDINGS OF THE CANADIAN CONGRESS OF CORRECTIONS 240 (Montreal, May 26-29, 1957).

<sup>61</sup> On the Norwich System, see ANNUAL REPORT FOR 1956, 31; JONES, *op. cit. supra* note 58, at 6.

<sup>55</sup> For the details of this programme, see, e.g., *Review of Development from 1946 to 1955* in ANNUAL REPORT OF THE PRISON COMMISSIONERS FOR 1955, 9 *et. seq.* (1956), and the remarks on *Classification* in the ANNUAL REPORT FOR 1956, 24 *et. seq.*

<sup>56</sup> WHITE PAPER ON PENAL PRACTICE IN A CHANGING SOCIETY 13. On the state of affairs concerning corrective training see, e.g., ANNUAL REPORT FOR 1958, 48-9.

method to establish a new officer-prisoner relationship" in these antiquated institutions, and to some extent this experiment seems to have been successful. Group counselling, closely related to it, is also likely soon to be greatly expanded, and it is perhaps worth mentioning that the Prison Commissioners, in their latest Report, pay well-deserved tribute to the pioneer work of Dr. Norman Fenton in California.<sup>62</sup>

Prisons in Britain are, on an average, much smaller than corresponding American institutions,<sup>63</sup> the largest of them containing approximately 1,200 men as compared with the 5 or 6,000 of Jackson or San Quentin. Even so, however, the need for much smaller prisons and Borstals is acutely felt, and it has recently been suggested that, for example, in the place of the two maximum security prisons for 300 men each, recommended by the White Paper, twice as many for 150 each should be built—a suggestion coupled with the proposal drastically to alter the current system of classification by trying not to keep, as the aim is at present, similar types of prisoners together, but to mix different ones.<sup>64</sup> One of the coming issues of the *British Journal of Criminology* will largely be devoted to the current building programme of the Prison Commissioners and its international background.

The two categories of prisoners comprising the hard core of recidivists, preventive detainees and corrective trainees (Criminal Justice Act of 1948, Section 21) have been a constant headache to the Prison Administration for the past twelve years, partly because of the difficulties inherent in the human material involved, partly because of the lack of adequate accommodation and the absence of any close link between judiciary and administration which made it impossible for the latter to anticipate the extent to which these two forms of sentences would at any given period be used by the courts. The provision in Section 21(4) of the Act, according to which the courts, before passing sentence of preventive detention or corrective training, shall consider any report or representations made to them by the Prison Commissioners on the offender's physical and mental condition and his suitability for such a sentence is useful, but not sufficient to provide the desirable link between

the sentencing policy of the courts and administrative practice. No effort has been spared by the Prison Commissioners to make the system more flexible and efficient and, at the same time, more constructive and humane without weakening its deterrent power, and it is not the fault of the administration if the results have so far not been altogether satisfactory.<sup>65</sup> According to the latest report of the After-Care organisation responsible for these categories of discharged prisoners, 46.5% of corrective trainees and between 47 and 53.3% of preventive detainees discharged between 1952 and 1957 were reconvicted.<sup>66</sup> In the circumstances, it is not surprising to read in the White Paper of 1959 that it is "too soon to say whether the new form of preventive detention is achieving the results that Parliament had in mind",<sup>67</sup> and that some special research is being done to reassess the position. This reassessment will no doubt, among other matters, lead to a long overdue general overhaul of the whole system of after-care for the various categories of prisoners.<sup>68</sup>

A complete revaluation is also at present being undertaken of the Probation Service by a Departmental Committee set up "to inquire into and make recommendations on (a) all aspects of the probation service in England, Scotland and Wales, including recruitment and training for the service, its organization and administration; the duties of probation officers, and their pay and conditions of service, having regard to their qualifications and duties and to pay and conditions of service in related fields; and (b) the approved probation hostel system." As the last inquiry into the Probation Service had taken place some years before the war and profound changes had occurred in the meantime in practically every aspect of probation work, the demand for a new survey had

<sup>65</sup> For some details of this very complicated story, see ANNUAL REPORTS FOR 1955 (pp. 24 *et seq.*), 1956 (pp. 65 *et seq.* and 68 *et seq.*), 1957 (pp. 47 *et seq.*); and 1958 (pp. 43 *et seq.*), which give an idea of the problems involved and the attempts made to solve them. On the whole subject of preventive detention and its complete failure in its pre-1948 form, see MORRIS, *THE HABITUAL CRIMINAL* (1951).

<sup>66</sup> COUNCIL OF THE CENTRAL AFTER-CARE ASSOCIATION, ANNUAL REPORT, 1958 at 8, 12.

<sup>67</sup> White Paper on Penal Practice in a Changing Society, p. 19.

<sup>68</sup> See JONES, *op. cit. supra* note 58, at 13 *et seq.*; KLARE, *op. cit. supra* note 58, at 132 *et seq.*; and SUB-COMMITTEE OF THE HOME OFFICE ADVISORY COUNCIL, REPORT ON THE AFTER-CARE AND SUPERVISION OF DISCHARGED PRISONERS (1958).

<sup>62</sup> ANNUAL REPORT FOR 1958, at 32.

<sup>63</sup> See MANNHEIM, GROUP PROBLEMS IN CRIME AND PUNISHMENT 167 (1955).

<sup>64</sup> KLARE, *op. cit. supra* note 58, at 118 *et seq.*

become very persistent in particular from within the Probation Service itself.<sup>69</sup>

Both prison and probation have greatly benefited from the post-war expansion of psychiatric services encouraged by certain provisions of the Criminal Justice Act (Sections 4 and 26) and subsequent statutes facilitating the use by the courts of such services for reports on the mental condition of accused persons, and the National Health Service, established in 1948, has taken charge of the financial side. The extent to which the Prison Medical Services have been engaged in work for the courts can be gathered from the Annual Reports of the Director of these Services, regularly published in the Reports of the Commissioners. In 1958, the number of cases remanded to prison for mental observation and report to the court was nearly 6,000, and a few hundred reports by prison medical officers were made under Section 4 of the Act in cases where the court considered the making of a probation order with a condition that the offender should submit to psychiatric treatment.<sup>70</sup> The extent to which psychiatric treatment is given in prison—actually on a small scale and confined to the psychiatric units at Wormwood Scrubs and Wakefield for men and Holloway for women—can also be seen from these Annual Reports. The pre-war Report on the psychological treatment of crime, the so-called East-Hubert Report,<sup>71</sup> had already recommended the setting up of a special institution within the Prison Service where all cases suitable for such treatment could be concentrated. It is somewhat disappointing to read in the most recent official Reports that the “psychiatric prison hospital” at Grendon Underwood in Buckinghamshire, the fruit of the East-Hubert Report, is not yet ready for use.<sup>72</sup>

(4) The present survey would be very incomplete and give a distorted picture if no reference were made to the striking post-war expansion in criminological teaching and research. While an account of developments in the field of teaching has been given by the present writer a few years

ago in the UNESCO symposium on the subject,<sup>73</sup> some brief remarks on the position of research may not be out of place. Before the war, criminological research in Britain was, generally speaking, on a very small scale and entirely uncoordinated in the sense that there was no central agency to allocate and direct individual research projects, although the Government was in fact responsible for several of those actually undertaken.<sup>74</sup> The post-war rise in crime and particularly juvenile delinquency stimulated public interest in the subject, and the demand for more, and more accurate, knowledge on crime, its causes and treatment, became more widespread. Coupled with this, the establishment by English universities of a few senior teaching posts in criminology gradually provided a small, though entirely inadequate, supply of trained research workers. Simultaneously, the Institute for the Study and Treatment of Delinquency (ISTD) in London, founded already before the war, endeavoured through its various educational activities to create an atmosphere receptive to the idea of research,<sup>75</sup> and the publication since 1950 under its auspices of the first scientific periodical, the *British Journal of Delinquency*, now the *British Journal of Criminology*, provided a focal point for informed public discussion of criminological problems. A few years later, also under the auspices of the ISTD, the “Scientific Group for the Discussion of Delinquency Problems,” comprising representatives of all disciplines interested in the subject, was born, and in 1960 the “Library of Criminology” was founded, with the same editors as the *Journal*. Of even greater practical significance was the inclusion in the Criminal Justice Act of 1948, Section 77, of a provision enabling the Home Secretary to spend public money on “the conduct of research into the causes of crime and the treatment of offenders, and matters connected therewith”

<sup>73</sup> THE UNIVERSITY TEACHING OF SOCIAL SCIENCES—CRIMINOLOGY (chapter on the United Kingdom) (1957).

<sup>74</sup> The following major researches were published between the wars and during the last war: BURT, *THE YOUNG DELINQUENT* (4th ed. 1944); MANNHEIM, *SOCIAL ASPECTS OF CRIME IN ENGLAND BETWEEN THE WARS* (1940); EAST, *THE ADOLESCENT CRIMINAL* (1942); SAUNDERS, MANNHEIM, & RHODES, *YOUNG OFFENDERS*, (1944). Immediately before World War I, Charles Goring had published his *THE ENGLISH CONVICT* (1913). This and the two last-mentioned researches were undertaken for the Home Office.

<sup>75</sup> On the work of the ISTD, see in particular GLOVER, *THE ROOTS OF CRIME*, at 36 *et. seq.*, 44 *et. seq.*

<sup>69</sup> See the Special Number on Probation of The *British Journal of Delinquency*, 8 *BRIT. J. DELINQ.* No. 3 (1958), especially the article by Dawtry, *Whither Probation?*

<sup>70</sup> ANNUAL REPORT FOR 1958, 100 *et. seq.*

<sup>71</sup> EAST & HUBERT, *THE PSYCHOLOGICAL TREATMENT OF CRIME*, 159 (1939).

<sup>72</sup> ANNUAL REPORT FOR 1958, at 109, and White Paper on Penal Practice, p. 18.

and the subsequent formation of a Research Unit within the Home Office, largely as the result of the prediction research carried out for the Government in the early 1950s.<sup>76</sup> In consequence of these developments, in addition to small Government grants, money was also made available for criminological research by some of the private Trusts such as the Nuffield Foundation and the Carnegie United Kingdom Trust. Since then, a considerable number of research projects has been undertaken, many of which are listed in the Section "Research and Methodology" of the *British Journal of Delinquency* and, more recently, in Appendix B to the White Paper of 1959. Space does not allow to mention even the larger of them, and to single out a few would be insidious. Only one or two observa-

<sup>76</sup> MANNHEIM & WILKINS, PREDICTION METHODS IN RELATION TO BORSTAL TRAINING (Studies in the Causes of Crime and the Treatment of Offenders, Vol. I) (1955).

tions of a more general nature might be offered in conclusion. First, it is obvious that a Government Department such as the Home Office, responsible for the carrying out of a certain penal policy and trying to achieve certain practical results, is more interested in penological than in criminological research in the narrower sense of the term. A glance at the list of projects in the White Paper undertaken by the Home Office Research Unit itself or assisted by Government grants shows a preponderance of investigations of a more practical nature. Secondly, research of a descriptive and predictive character is regarded as more important than research into causes. All this, it may be repeated, is fully justified from the point of view of Government research. All the more, however, will it be the duty of university departments to see to it that criminological research on, to repeat the phrase used in the White Paper, "those deep-seated causes" should not be neglected.