

CRIME AND IMPRISONMENT IN SOUTH AFRICA
WITH PARTICULAR REFERENCE TO PRISON LABOUR

A Thesis

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of the requirements for a degree of
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I N T R O D U C T I O N

The process of imprisonment is frequently somewhat loosely referred to as the prison system. This system has a series of inputs, prisoners, who go through a process which theoretically results in an end product of reformed/rehabilitated persons ready and able to play a useful role in society. However, the system frequently fails in that the end product is not reformed and in some cases anti-social tendencies are developed to such an extent that imprisonment seems to become addictive and the system virtually self-generating. The explanation could be that some of the inputs are wrong and that certain offenders should not be imprisoned, or that the corrective process in prison is insufficiently flexible to deal with the infinitely variable complexity of human personality. In practice no single explanation can possibly be given, for even the terms success and failure are relative in the context of the rehabilitation of offenders.

In this thesis, which records research into prisoner employment practices in various countries and makes certain recommendations for the development of correctional treatment in South Africa, the author has started from the premise that, justifiably or not, imprisonment as a major penal sanction will be with us for the foreseeable future. Furthermore, it is probable that the average length of time being served by prisoners will increase as greater use is made of non-custodial methods of

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treatment. The treatment of juvenile offenders has been deliberately excluded throughout. Assuming that the aim of imprisonment is to reform/rehabilitate offenders, in addition to keeping them in safe custody, then everything practicable should be done to enhance the possibility of achieving this goal.

For centuries penal reformers have momentarily discovered the panacea for crime; a few years pass and another theory is discarded with the broadening of man's understanding. Possibly the twentieth century's greatest contribution to penal science will be the acceptance of an interdisciplinary approach to the understanding and treatment of offenders. This thesis, which advocates the development of profit orientated employment in prisons, does so on the clear understanding that the interests of prisoners and their training must not be subordinated to the aims of making a profit. Secondly work alone will not reform offenders, and a balance must be achieved between work, education, and the different aspects of social care and psychological treatment.

However, society requires that the majority of people should be willing and capable of earning their living and contributing to the costs of maintaining the structure of society. More than a century ago certain prisons in England were so organised that they succeeded both in earning a profit and so training prisoners that employers eagerly sought their labour. The development of trade organisations, both of

Employers and employees, intent on protecting their own interests, succeeded in killing the development of prison industries. However, today it seems probable that in many countries society has matured sufficiently to accept that prison labour should be treated as part of, and not distinct from, the total labour force of a country - particularly once it is realised that prison labour is usually far less than 0,5 per cent of the total labour force, and fears of unjust competition are largely illusory.

If this is the case, and experience from England and Sweden, amongst others, and research in South Africa indicate that it is, then prison labour can be so organised that it both provides a training for the offender and generates some of the finance necessary to provide the educational and other treatment facilities which are so necessary and so lacking in most penal institutions.

At best, the integration of profit orientated employment practices into the total rehabilitatory programme in South Africa will enhance the possibility of prisoners being reformed/ rehabilitated - at worst, more prisoners will be employed in work akin to that which they will do on release, and the revenue from their labour will contribute towards the costs of the Department of Prisons.

A C K N O W L E D G E M E N T S

Indirectly the staff of the Institute of Crimonology of Cambridge University are responsible for the genesis of this thesis. In 1966 the Institute organised visits to various local prisons, and on one of these visits the writer was appalled at seeing grown men sewing mail bags by hand. Since that date the Institute, and particularly Martin Wright, who is currently the Director of the Howard League for Penal Reform, have been most helpful.

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In conclusion, the author places on record that this study is his own work, except where otherwise stated or acknowledged.

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CHAPTER IHISTORICAL REVIEW OF THE SOUTH AFRICAN
PRISON SYSTEM WITH REGARD TO
THE UNDERLYING IDEOLOGIESA. 1652 TO 1910A.1 The Cape Colony

Until the arrival of the English in 1795 the Cape Colony, which had been settled in 1652 by the Dutch East India Company, was an offshoot of Holland and consequently followed Dutch laws and traditions. These laws were based on Roman Law but incorporated many of the customs of neighbouring countries, particularly those states which eventually formed Germany.

(a) Punishment and Deterrence 1650 to 1828

In the seventeenth and eighteenth centuries the Dutch penal system reflected the philosophy of the time and was punishment and deterrent orientated. Prisons were for holding offenders pending trial or punishment, they were not, with the exception of the workhouses, places for the correction of offenders. Thus in the early days of Dutch settlement in the Cape Colony little more was needed than a lock-up, and the cells of the Castle in Cape Town served this purpose. Punishment was extremely harsh and was designed to fit the

crime taking into consideration the status of the prisoner (slave or freeman), the purpose of the crime, the degree of premeditation and earlier convictions. For example¹ in 1657 a certain Abel Courts for stealing some watermelons from the garden of the East India Company was sentenced to receive 100 lashes and to lose three months' wages. In 1667 a soldier for stabbing the Provost Marshal was sentenced to have a knife driven through his hand into a post, to be flogged and to lose four months' wages. In 1669 a female slave murdered her baby and the Council

having considered this serious affair, at once ordered that this murderous pig be placed in confinement and be punished according to her deserts. The next day the Council decreed that she be tied in a bag and thrown into the sea.

The punishment was duly carried out.

From the earliest times prisoners had been sent to Robben Island² - these included long term prisoners, lunatics and those suffering from dangerous infectious diseases. During the eighteenth century a prison system such as we understand it today slowly developed but without any real goal other than the incarceration of offenders. There was invariably a shortage of funds and contemporary descriptions show that physical conditions were as bad as

¹R.N. Leon, "Punishment in South Africa: A Brief Historical Perspective," NICRO Criminological Journal, Vol. 2 No. 3, pp. 6-7. See also XXV South African Law Journal 1908, pp. 261 et seq.

²An island situate a few miles off Cape Town.

those described in Europe by John Howard.¹ For example the Landdrost of Stellenbosch, R. van Riet, wrote in 1808:

On my arrival here about the end of the year 1795 the prisons were in a most deplorable state, in so much that they might rather be termed places of punishment than apartments to secure wicked persons, in this state they remained until the year 1806 for lack of the necessary funds. They consisted in one male and one female apartment, very small and unwholesome, and at most able to contain only from 20 to 25 prisoners. The consequence was that contagious diseases frequently prevailed in them during the summer season²

In 1823 an English Parliamentary Commission of Enquiry was established to investigate prison conditions. Regarding Cape Town prison the Commission reported:

The principal objections to which we think that the gaol at Cape Town is liable consists in its low and confined position, preventing the possibility of enlargement except towards the sea, its insecurity, its bad ventilation, and the defects of its internal arrangements³

Judging by this letter of Dr. James Barry to Governor Somerset of 16th April 1824 the conditions at Cape Town had either improved or the Commissioners were masters of understatement:

In a dungeon of that place (Cape Town) found Jacob Elliot with his thigh fractured, without clothes, without a bed or pillows, or blankets,

¹John Howard, Account of the Principal Lazarettos in Europe (London: Warrington, printed by William Eyerer, 1777).

²C.O. 2565, Letters received from Drosdy Stellenbosch, 1809, No. 1.

³C.O. 414, Commissioners of Eastern Enquiry 1828, Cape of Good Hope, Police and Trade Reports, unpublished, pp. 147-148. See M. van Wyk's doctoral thesis "Die Ontwikkeling van die Gevangeniswese in die Kaapkolonie vanaf 1806 tot en met unifikasie 1910" for an extremely detailed account of the development of the penal system in the Cape Colony from 1806 to 1910.

dirty in the extreme, without a single comfort and in short exhibiting such a state of misery that if he had not been under the special provision of Providence he could not have survived.¹

The Commission of Enquiry made a number of recommendations concerning the treatment of offenders particularly with regard to their classification and separation. However, as usual insufficient funds were available for this purpose and the only separation existing at most prisons was the separation of the sexes and even this was not achieved particularly effectively. The only constructive and possibly reformatory institution in the early part of the nineteenth century was the work house which had been established in 1827. However this held only some 20 to 25 prisoners who were engaged in mat making and laundry work. Generally little attempt was made to employ prisoners² productively, either for their own benefit or to defray the costs of their incarceration. This ended in 1843 with the appointment of John Montagu as Colonial Secretary.

(b) Montagu - Punishment and Reformation: 1840-1910

Montagu, during his period as Colonial Secretary, set the pattern for the treatment and employment of prisoners in South Africa for the next fifty years. His principal goal was the punishment and eventual reformation of offenders:

¹G.M. Theal, "Records of the Cape Colony from January to June 1824," Vol. XVII, p. 245. Dr. Barry was a fascinating character who among other escapades fought a duel at Alphen (Now Alphen Hotel Constantia), rose to the rank of Inspector General in the Army and only after death was discovered to be a woman.

²See Chapter 4 where the employment of prisoners at this time is discussed in some detail.

In the carrying out of punishments short of death or perpetual imprisonment among communities that have to absorb or receive their liberated criminals, the reformation of the convict before his restoration to society is of paramount importance, both in the political and social point of view, to say nothing of the duty devolving on a christian people (in regard to its criminals) whose social conditions may of itself have conduced to crime.

Secondary punishment, which in the main is imprisonment with hard labour for periods proportioned to the nature of the offence, and the previous character of the offender, not only satisfies the ends of justice for the public good, but if properly, humanely and consistently carried out, subserves also to that other end, the reformation of the offender.¹

Montagu effected this reformation by employing prisoners in the building of roads and passes. Although convicts worked extremely hard Montagu did not neglect their education, and every evening time was set aside for educational purposes.²

In 1849 Montagu sent a report to Lord Gray, the Secretary of State for the Colonies, describing in detail the working of the convict stations,³ accompanying this report was a letter from the Governor of the Cape, Sir Harry Smith, acknowledging Montagu's achievements.

It will be found that for the system which was in force in 1843, and which, to use the words of Sir George Napier was "a positive evil, which should be got rid of as soon as it could be replaced by

¹Montagu, Accounts and Papers 1850, p. 35.

²See Chapter 8, p. 585.

³The author recommends this fascinating letter to all students of penal history, it can be found in W.A. Newman's Bibliographical Memoir of John Montagu (London: Harrison, 59 Pall Mall. Cape Town: A.S. Robertson, Adderley Street; W.L. Sammons, Plein Street, 1855), pp. 123-149.

a better," has been substituted one, the object and effect of which have been to reform the criminal, so that he may be returned to the society from which he emerged, without danger to that society, or without being an object of scorn and dislike to those by whom he will be surrounded I have much satisfaction in assuring your Lordship that the system has given universal satisfaction throughout the colony ... From the judges in particular I have learned that they have been relieved from serious embarrassment by its operation. In former times the sentence of imprisonment with hard labour was a premium on crime, and longest imprisonment was only in fact the highest rewards for its commission. The courts are now enabled to pass sentences proportioned to the nature and gravity of the offences of which the prisoners are convicted, and the change has been to a system which deters from crime, the best proof of which is furnished by the fact that crime has diminished in the Colony during the last five years.¹

Although Montagu undoubtedly improved the penal system in the Cape Colony to an enormous extent, there was still insufficient money to provide adequate facilities at all prisons. The country gaols were particularly bad, thus in 1856 this report of Fort Beaufort prison was given by the Prisons Board,

In the present gaol there is no separation of sexes, not even a screen to conceal the tub, which is exposed in the yard for necessary purposes. This and the very limited and filthy accommodation are altogether a disgusting sight.²

The Prison Board was set up by Ordinance No. 24 of 1847 to propose measures for the provision of prison accommodation.

¹G.H. 23/19, Despatches to the Secretary of State, 25th June 1849 to 6th December 1850, pp. 75-76.

²Annexures to Votes and Proceedings of the House of Assembly, 1856. Report to the General Board of the Commissioners of Public Prisons, G.16-56, p. 266.

However it failed to fulfil this function as it argued that its terms of reference were too vague.¹ Regrettably after Montagu's death in 1852 the organisation of the prisons was once again neglected, and if anything the conditions in prisons grew worse due to the lack of funds.²

Thus the Cape Argus of 1858 and 1859 described the prisons as "dirty", "out of repair", "dens of filth", "sink holes of iniquity", and a "disgrace to any civilised community."³

(c) Penal Labour 1865 - Reformation and Discipline

However to some extent prisons in South Africa were preferable to those in Europe. In the 1840's England had adopted the Pennsylvania System of Corrections which involved the total separation of prisoners from each other with confinement in separate cells. In this way they were to have the opportunity of reflecting on their sins in silence, away from the harmful influence of other prisoners. In addition prisoners were to work, for nobody doubted the reformative values of hard work. This meant that prisoners had to work in the seclusion of their cells, to make this possible machines were designed which employed prisoners in hard and useless labour.⁴ The English Government was

¹M. van Wyk, "Die Ontwikkeling van die Gevangeniswese in die Kaap Kolonie vanaf 1806 tot en met Unifikasie 1910", p. 264.

²Ibid., p. 289

³H.J. Venter, "Die Geskiedenis van die Suid Afrikaanse Gevangenisstelsel 1658-1958," (Pretoria: H.A.U.M. 1959), p. 39.

⁴The most common forms of penal labour were the crank, the treadmill and shot drill.

convinced that separation was having the desired result, the 5th Report of the Prison Commissioners in 1847 stated:

The result of our entire experience is the conclusion that separation of one prisoner from another is the only basis on which a reformatory discipline can be established with any hope of success.

Thus from the 1840's until the Prisons Act of 1898 prisoners in England were "reformed" by being employed in the useless and degrading toil of the crank and treadmill.

South Africa was insulated against this whole trend of reformation by penal labour both by her distance from London and the lack of prison buildings. In 1865 the Secretary of State wrote to the Governor of the Cape Colony, Sir P.E. Wodehouse, urging the introduction of penal labour:

Thus labour enforced by the treadwheel or the crank for a minimum term of imprisonment or portion of the sentence, is considered to be essential in the case of every prisoner¹ condemned to imprisonment with hard labour.

After delaying for some considerable time Governor Wodehouse replied that it would be impossible to introduce penal labour in South Africa for the existing prison buildings were totally inadequate for the separation of prisoners, other than by sex, and that profitless labour was unacceptable for "the distribution of the convict labour is jealously watched; and the several districts look eagerly to the time when they hope to obtain the benefit of it."²

¹G.H. 5/5, 16th January 1865.

²G.H. 23/30, Despatches to the Secretary of State 1865-67, pp. 12-14. In fact a treadmill had been erected at Cape Town gaol in 1823.

As Sir Philip Wodehouse's letter suggests prisoners were employed in public works. In the early 1860's the construction on roads and passes gave way to the construction of harbours. Later in 1879 the overcrowding in prisons led to prisoners being released to work for private persons, without any pay being received by either the State or the prisoners.¹

By 1887 matters were so bad that a parliamentary committee was set up

Instituting an enquiry with the view of ascertaining whether it is practicable to establish a classification of prisoners at Convict Stations and Gaols, whether more effective punishment for offences can be devised, whether any improvement with regard to discipline can be effected, whether the system of hiring out prisoners is of satisfactory character, and whether it is possible to place Penal Establishments of the country generally upon a more economical basis²

As is so often the case with commissions of enquiries into a country's penal system some frightful abuses were discovered, one of the worst was the case of a man being kept in chains for nine year.³

As a result of the commission a Prison Act was passed, Act 23 of 1888, setting out new regulations for the custody and reformation of prisoners.

¹M. van Wyk, op cit., p. 347. See Chapter IV infra.

²Annexures to the Votes and Proceedings of the House of Assembly, Cape of Good Hope 1888, Vol. 1. Report of the Committee on Convicts and Gaols, September 1887 - May 1888. G.2-88. First Report, p. i.

³Ibid., Second Report, p. xix.

In particular the separation of prisoners by colour, sex, age and criminal experience was to be enforced.

From this date onwards Europeans were confined and usually employed inside the prisons while Non-Europeans were sent to the convict stations. By 1898 separate facilities were established for juvenile offenders.¹

The Commission of 1888 recorded that European prisoners should be trained in industrial trades. For this purpose a new section was added to the Breakwater Prison in the Cape Town docks. Generally a vigorous start was made in improving existing prison facilities and building new prisons² for very little had been done in this way for many years as so many prisoners had been employed in road building and had been housed in temporary work camps. However the initial enthusiasm of reforming zeal soon abated and in 1897 the Inspector of Prisons reported:

At the Breakwater station the roofs of the wards are rotten. In the summer the dust and sand is blown through them by the south-east gales, and in the winter the convicts huddle together in corners to avoid the rain, which percolates in every direction as through a sponge.³

¹M. van Wyk, op cit., p. 474.

²Annexures to the Votes and Proceedings of the House of Assembly 1891. G.35-91, p. 12.

³Annexures ----- 1898. Appendix A, Report of the Inspector of Prisons for the Year 1897, p. ii. Quoted from Van Wyk, op cit., p. 429.

The Boer War put an effective stop to virtually all prison building, and without adequate buildings it was impossible to proceed with reformative treatment which required at the least the separation of hardened criminals from first offenders.¹ Following the war there was no money available for prison building work and thus by the date of Union in 1910 the inadequacy of prison buildings had effectively prevented the implementation of many of the reforms contemplated by the Act of 1888.

In brief the history of the prisons of the Cape Colony from its earliest days until Union consists largely of reports of overcrowding due to a lack of funds, as a result virtually all attempts at reforming prisoners failed for lack of facilities.² Since Union the Prison Population has grown from 2 916³ in 1909 to over 100 000 today (1975). Although prison facilities have been enormously extended the Commissioner of Prisons finds that the greatest impediment to penal reform in South Africa today is the lack of money allocated to his Department.⁴

¹During the Boer War there was a marked diminution in crime among Non-Europeans as they were unable to obtain liquor due to martial law. Annexures ----- 1902. Appendix A, Report of the Inspector of Prisons for the year 1901, p. ii. Quoted from Van Wyk, op cit., p. 433.

²For a brief period under Montagu the road camps were model institutions and seem to have succeeded both in punishing offenders and in reforming them.

³Van Wyk, op cit., p. 459.

⁴Meeting with Commissioner of Prisons, February 1975.

A.2 Natal

Natal, like the Cape Colony, was governed by the British during the nineteenth century. It was first settled by Europeans in the early part of the century, and the population then as now was largely African. For some considerable time there was sporadic conflict between the Africans (mainly Zulus) and the settlers due to their very different cultures and traditions. Dominance was fought out in the Kaffir Wars which ended in the crushing of the Zulus in 1879.

(a) Punishment

Initially little more was needed in the way of prisons than a few lockups. The most common form of crime was stock theft and the settlers believed that the only way to deal with it was by corporal punishment. They believed that there was no point in arguing with people from such different backgrounds as indicated by this sentence given in 1857 for cattle thieving:

Three years imprisonment with hard labour and to receive a whipping of 50 lashes on the 25th August next, another public whipping of 50 lashes on the 25th August 1858, and another public whipping of 50 lashes on the 25th August 1859.

The Natal Witness of the day welcomed this punishment:

By Jumbo, if we could only publish such like punishments all over Kaffirdom, we should soon, I guess, see an end of cattle stealing.¹

¹H.J. Venter, op cit., p. 61.

Work in Natal was badly organised, with the exception of work on the Durban Harbour. Prison discipline was lax and in 1868 the Colonial Office sent instructions¹ that prisoners should no longer be permitted to do the shopping for the prisons. In 1870 the dreaded treadmill and crank were introduced into Durban and Pietermaritzburg Prisons as it was believed that this would result in "a great diminution in the number of Kaffir and Coolie prisoners."²

The Prison Act No. 6 of 1870 made provision for the separation and classification of prisoners in Natal with a progressive scale of work. However this proved impracticable due to the overcrowding in the prisons which grew steadily worse as the years went by. Once again in 1891 an attempt was made to reform the Prisons and new Gaol Rules for the Colony of Natal were introduced. Eventually in 1907 the "Report of an Official Enquiry into the Prison System of the Colony with recommendations touching the Sentencing, Punishment and Treatment of Offenders" stressed the deplorable conditions in many prisons. For example, the Commission reported concerning Port Shepstone Prison "water from tank tested and reported unfit for human consumption," Verulam Prison was reported as being "altogether abominable," and at Vryheid the "atmosphere throughout the gaol was unspeakable."³

¹Despatches received from the Secretary of State 1867-68, G.H. 17, No. 17.

²Ibid.

³Report of an Official Enquiry into the Prison System of the Colony 1907, p. 51 et seq.

Above all they found overcrowding and they stressed the need for the separation of offenders:

Men, being neither animals nor machines, the system that treats all alike, as so many wild beasts, is doomed to failure, in that it is antagonistic to those principles which make for the moral development and improvement of human character.¹

During the nineteenth century and even on into the early part of the twentieth century there was little attempt at the reformation of offenders in Natal. The rationale behind punishment was to deter the offender from repeating his crime, and so it came about that Natal earned the sobriquet of "the lashing province."

A.3 Orange Free State

The history of the penal system of the Orange Free State is rather different from that of the English colonies of Natal and the Cape. Primarily the Voortrekkers were farmers, more concerned with developing the land than with setting up towns and industries. Initially administration was very lax as it was the dislike of governmental interference and taxes that had partly inspired the Trek. There are few records of these early days in the Free State. Such records as there are show that deterrence was the fundamental

¹Ibid., pp. 16-17.

²Annual Report of the Department of Justice 1917, p. 92.

objective of the penal system; public executions took place up until the turn of the century. This was not without criticism: "The Friend of the Free State and Bloemfontein Gazette" stated on 28th January 1861:

We think it a great pity that the last remnant of the Mosaic Law, viz. 'a life for a life' should still be enforced in this enlightened era. We are convinced that capital punishment does no good, inasmuch as we believe that the dread of ¹ it never deterred a man from committing murder.

The Free Staters were living a hard life in an inhospitable part of the country. They were far more concerned with farming their lands than worrying about the reformation of prisoners.

In 1861 the President in his opening address to the Volksraad stated that the prisons - particularly Bloemfontein Prison - were in a deplorable condition and that some improvements should be made. In 1863 a commission was set up to investigate Bloemfontein Prison. This reported that the prison was "zeer schoon" but that the cells were a disgrace, badly ventilated and overcrowded. However little was done other than structural repairs. In 1891 President Reitz commented that Bloemfontein Prison was still in a disgraceful condition. However there was insufficient money allocated to make a significant improvement.

¹H.J. Venter, "Die Geskiedenis van die Suid Afrikaanse Gevangenisstelsel 1652-1958", op cit., pp. 80-90.

The country prisons were in even worse condition, for example a certain Barend Johannes Pretorius who was inadvertently arrested in Winburg described the prison there as the "Black Hole of Calcutta" in 1858. The main problem was overcrowding, and in 1865, the Volksraad declared that prisoners could be contracted to work for a Burgher for a period of five years either with or without pay. This was abolished in 1895 and there are no records of whether such contracting out of prisoners ever took place.

From 1902 to 1910 the English were responsible for administration after the Boer War. They immediately instituted reforms, separating Europeans from Non-Europeans, males from females, young from old. As always when reforms are introduced there were complaints that prison was now too soft, prison being described as a "government hotel" where "they are supplied with food of the best quality, ... well cooked; they have no trouble whatever, and the amount of work which they perform, is certainly infinitesimal - certainly not the amount that the ordinary man paid as a labourer would be expected to do for his day's wage."¹ As there was little extra money granted for prison administration one wonders just how well appointed were these "Government Hotels".

¹Orange River Colony. Debates in the Legislative Council during the Fourth Session 1904, pp. 56-57.

A.4 South African Republic - Transvaal

The penal system of the South African Republic has much in common with that of the Orange Free State prior to 1910. Once again there are very few reports and very little money was spent on prisons. Such details as have survived show that here too the prisons were filthy, overcrowded and neglected, with insufficient ventilation or washing facilities. The women's prison at Johannesburg was described by a Commission of Enquiry as "a confused oblong ramification of ill-devised, wooden-lined cells, dark, badly ventilated and greatly overcrowded ... and without any provision except three or four ordinary taps for bathing or washing."¹ The prison for Africans was so dilapidated that guards had to be placed on the roof to prevent them escaping. District prisons were even worse with men and women being confined together in many cases. In Heidelberg the prisoners were kept chained to prevent them escaping, but in 1896 it was decided that chains should only be used as a punishment. The prisoners were used for building roads, ditches and buildings - including the Prison at Wolmaranstad, Fort Johannesburg, and Barberton. By Article 4 of the Regulations of 1868 they worked extremely long hours from sun-up until half-an-hour before sunset. These hours were reduced in 1880. In 1895 in order to reduce the overcrowding, prisoners were hired out at 5 shillings per day for Whites and 2 shillings per day

¹Report of the Commission appointed to enquire into the Johannesburg Prison 1904-5.

for Non-Whites. This was made considerable use of but a year later in 1896 "hiring out" was stopped as it was felt that prisoners should work for the State and not private persons. Some attempts were made to make prison work more efficient with the introduction of two sewing machines for making mail bags in Johannesburg. The prisoners received gratuities of tobacco and coffee in return for their work.

When the English became responsible for the prisons of the former South African Republic they decided that overcrowding was the greatest single problem, so they set up a "Farm Prison for Non-Whites", and some road camps. By 1909 there were 600 prisoners working daily on the road between Pretoria and Johannesburg. Some attempt at reformation was made and Act 38 of 1909 introduced Trade Schools at reformatories for youths under 18, and White prisoners at "The Fort" Johannesburg, and Pretoria Central Prison were encouraged in trade work. However the idea of reformation spread very slowly - the Report on Johannesburg Prison of 1904-05 stated that the Director of Prisons had little experience of prison affairs and no training whatsoever - consequently the administration was very autocratic.

It cannot be disputed that the prison systems of the Orange Free State and the South African Republic before 1910 were particularly backward by European standards. This was understandable while the economies were poor and based on

agriculture, but with the discovery of gold and diamonds and the increase in wealth such poor prison conditions became inexcusable.

Section two describes the development of the penal system of South Africa from Union in 1910 to the Lansdown Commission Report in 1947.

8. UNION TO LANSDOWN COMMISSION¹ (1910-1947)

8.1 Underlying Ideology of the 1911 Prisons Act

Prior to Union, and in particular the Prisons Act No. 13 of 1911, the individual provinces were responsible for prison administration in their own areas. Act 13 merged these administrations into one department, and the Office of Director of Prisons for the Union was constituted. In retrospect this Act has been judged farseeing in its provisions² and in line with international penological thought at that time.

Mr. J. de Villiers Roos was largely responsible for the underlying ideology of the 1911 Act, and this statement by him taken from the Union Year Book for 1910 to 1916 shows clearly his intentions:

The guiding principles of the Union penal system are to rescue the child from criminal environment and prevent it from becoming a criminal; to build up

¹The Lansdown Commission was appointed in November 1945 to make a detailed enquiry into the causes of crime in South Africa, the adequacy of existing measures for preventing crime and dealing with offenders, and to make recommendations with regard to the above matters. The report was published in 1947 and is an authoritative statement of the correctional system as it existed at that date. As a result of this report a number of major reforms into the correctional system were started under the direction of the outstanding new Commissioner of Prisons, Mr. Victor Verster. However between 1948 and 1975 the prison daily average population has risen from approximately 25 000 to 100 000, with the result that many reforms have been lost owing to the administrative problems involved in handling this unanticipated increase in prisoners.

²Lansdown Commission Report, U.G. 47 of 1947, para 595, p. 93.

and supplement in the criminal the elements necessary to prevent a recurrence of crime; and if all else fails, by means of the indeterminate sentence to remove the habitual criminal from society and prevent his remaining a menace to it; but even then to allow him an opportunity of self-redemption. It seeks to attain these objects through the instrumentality of Government industrial schools for waif and stray children, of reformation for children who have committed crime, and of various penal institutions for adults, and by classification and division within such institutions. The factors making for reformation operating in the prison are religious and moral influences, schooling, drill and discipline, the training of the hand and the eye, and sound literature.

A simple system of marks records the progress or retrogression of the prisoner. The Prison Visitors' Boards, on which the judicial, the medical, and the prison administrations are represented in addition to the body of citizens, determine the period when the prisoner may with safety be allowed back into the ranks of society by keeping in constant touch with him personally and by following his conduct reports. They commend him when he improves and exhort him when he lapses. The South African Prisoners' Aid Association also keeps in touch particularly with the European prisoner, preserves the bond with his family, prepares the way for his return to society, and stands by him in the difficult days after his discharge from prison when, after long restraint, he regains his liberty. To make the release not too sudden the Prison Farm has been introduced, where gradually the prisoner gets back to the conditions of outside life.

Among preventive influences there is the suspended sentence, and there is also the Probation Officer, who stands by the sentenced man and helps him to redeem the promises made by him to the Courts. Again as regards the Native the Road Camp has been created, so that for venial offences against the Pass Law, the Tax Law, or the Masters and Servants Law he goes direct from Court to camp and never actually enters a gaol.

Gradually the features and methods of penal systems of the past are being abandoned. Single cells are coming more and more to the fore. The detention of Europeans and Natives in the same wards is now forbidden. The guarding of European prisoners by Coloured warders has now been discontinued. The indiscriminate locking up of witnesses for months in gaol lest they might disappear is no longer resorted to. The practice of restraining lunatics in prison

has been resolutely discountenanced, and under Section 14 of the Prison Act lunatics now go to proper hospitals, while the pauper sick are dealt with similarly. The treadmills and stocks of the old system have become a thing of the past. Night schools for adults, popular science books in place of unedifying literature, and an occasional lecture on an elevating subject have now found a permanent place in the prison system.¹

The intention of the 1911 Prison Act was clearly the reform of the criminal in order to fit him to re-enter society. Initially many excellent changes were instituted but gradually lack of funds, particularly after the First World War, resulted in a slowing down and the eventual cessation of virtually all reforms. As the Lansdown Commission summed up the situation:

Changes in the Directorship before the policy was fairly established, and the need to effect compromises and economies, have resulted over the years in a gradual whittling away of many of the means designed for use, and it is thought that to a large extent, the whole underlying intention of the legislation was gradually submerged by these unavoidable difficulties. Existing facilities were in many cases unsuitable for the purposes the Act contemplated, and money was not forthcoming as it was needed to improve the situation. Penal institutions have tended to become places for punishment with insufficient emphasis on the need for reformatory treatment.²

In this section covering the forty year span from the date of Union to the Lansdown Commission Report in 1947 certain of the improvements mentioned by Mr. Roos will be briefly discussed, particularly those matters relating to the

¹ Ibid.

² Lansdown Commission Report, op cit., para 596, p. 93

treatment of offenders. No attempt will be made to describe in detail the progress or otherwise of the Department of Prisons during this period. To some extent this has already been done by two of the three authorities on the history of the South African penal system, Dr. D.G. Steyn in "Die Suid-Afrikaanse Gevangeniswese," and by Professor H.J. Venter in "Die Geskiedenis van die Suid-Afrikaanse Gevangenisstelsel 1852-1958," although both these books are rather short of material prior to 1947.¹ This is understandable for very little information is available. The Annual Prison Reports up to the early 1920's were in reasonable detail, usually consisting of 20 to 25 pages but these gradually shrank to some fifteen pages or so mainly consisting of statistical detail with little or no statement of Prison Department policies or goals.

¹For the period 1806 to 1910 see M. van Wyk, op cit.

B.2 The State of the Prisons in 1911(a) Composition of the Prison Population¹T A B L E 1YEAR: 1911DAILY AVERAGE PRISON POPULATION: 13 556²

| <u>European</u> | | <u>Natives</u> | | <u>Indians</u> | | <u>Chinese</u> |
|-----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <u>Males</u> | <u>Females</u> | <u>Males</u> | <u>Females</u> | <u>Males</u> | <u>Females</u> | <u>Males</u> |
| 1 286,2 | 52,9 | 10 867,4 | 815,3 | 498,3 | 15,4 | 20,4 |

Total number of persons admitted to
Correctional Institutions:

138 971³

Total Population of the Union of
South Africa:

5 973 394⁴

Percentage of population admitted to
prison institutions:

2,3%

¹Report of the Commissioner of Prisons of the Union of South Africa for the year 1911. U.G. 56/1912.

Hereafter these reports will be referred to as the Annual Prison Report and will refer to South Africa unless stated otherwise or from the context it clearly refers to the Prison Reports of some other country.

²Ibid. Under Natives are included today's classification of Coloured Persons, who are those of mixed blood.

³Includes paupers, lunatics and civil debtors.

⁴Annual Prison Report 1911. U.G. 56/1912

T A B L E 2PERSONS SENTENCED TO IMPRISONMENT 1911

(Showing numbers and percentages of prison population by race)

| <u>Whites</u> | | | | <u>Natives</u> | | | |
|---------------|----------|---------------|----------|----------------|----------|---------------|----------|
| <u>Male</u> | <u>%</u> | <u>Female</u> | <u>%</u> | <u>Male</u> | <u>%</u> | <u>Female</u> | <u>%</u> |
| 5 608 | 7,8 | 369 | 0,5 | 81 805 | 80 | 10 104 | 7,4 |

| <u>Indian</u> | | | | <u>Chinese</u> | | |
|---------------|----------|---------------|----------|----------------|----------|--------------|
| <u>Male</u> | <u>%</u> | <u>Female</u> | <u>%</u> | <u>Male</u> | <u>%</u> | <u>Total</u> |
| 4 663 | 3,6 | 348 | 0,1 | 64 | 0,23 | 102 961 |

As can be seen the vast majority of offenders were Africans and Cape Coloured - approximately 87 per cent.¹

(b) Length of Sentences 1911

| | <u>Numbers</u> | <u>Approximate Percent- age of all Sentences</u> |
|---|----------------|--|
| 1. Sentences of One Month or Under | 80 161 | 78% |
| 2. Sentences of 1 - under 3 months | 7 706 | 7% |
| 3. Sentences of 3 - under 6 months | 5 805 | 5% |
| 4. Sentences of 6 - under 2 years | 5 724 | 5% |
| 5. Sentences of 2 years - under 5 years | 505 | 0,5% |

Continued

¹This proportion has changed little over the last sixty-five years, as 45 per cent of those in custody on the 30th June 1974 were African and Coloured. Extracted from statistics given by the Minister of Prisons in the Senate on August 23rd 1974. Senate Hansard 2 Col. 694.

| | <u>Numbers</u> | <u>Approximate Percent- age of all Sentences</u> |
|--------------------------------------|----------------|--|
| 6. Sentences of 10 years and over | 37 | - |
| 7. Indeterminate sentence | 18 | - |
| 8. Life Imprisonment | 2 | - |
| 9. Death | 70 | - |
| 10. Corporal punishment only | 1 301 | 1% |
| Corporal punishment and imprisonment | 177 | - |

The percentage of short term sentences, 78 per cent under one month, is almost identical with the present (1974) percentage.

(c) Nature of Offences

The Department of Prisons only started to collect unified statistics for the whole country after the centralisation of the Department in 1910-1911. At this time details are recorded of only those offences for which sentences of over one month were imposed.

T A B L E 3¹

MOST COMMON OFFENCES: 1911

| | |
|-------------------------------|---------------|
| Property Crimes | 30,4 per cent |
| Crimes Against Public Welfare | 23,6 per cent |
| Offences Against the Person | 18,7 per cent |

¹Annual Prison Report 1911. U.G. 56/1912, p. 32.

(d) Prison Buildings

At the date of Union (1910) there were a total of 390 prison institutions to house a daily average prison population of approximately 15 000 persons.¹ One of the first executive actions of the newly constituted Department of Prisons was to close small unimportant gaols and to concentrate improved facilities at the larger central prisons. By the end of 1912 the numbers of penal institutions had been reduced to 218.² In many cases the old lock-ups having been handed over to the police.

B.3 The Sentencing of Offenders

The sentences available for judicial officers and the extent to which particular penalties are imposed is one guide of the underlying ideology of a criminal justice system. However such sentences must be related to the facilities available for the treatment of offenders, and the nature of the offenders and their offences. Any comparisons between sentencing policies in South Africa and other parts of the world should be viewed with some caution for South Africa is neither a developed country as one understands the expression in relation to most of Western Europe, nor is it underdeveloped in comparison with the rest of Africa. However South Africa has many similarities with both Europe and Africa.

¹Annual Prison Report 1910. U.G. 30/1911, p. 95.

²Annual Prison Report 1912. U.G. 44/1913, p. 233.

Professor Kahn, in his excellent paper "Crime and Punishment 1910-1960: Reflections on changes since Union in the Law of Criminal Punishment and its Application,"¹ gives a thorough review of the changes in sentencing policy since 1910. It is not the author's intention to cover the same ground as Professor Kahn but merely to highlight certain of those aspects which affect the organisation of prison labour. Thus a discussion of capital and corporal punishment is out of place save in so far as the continued existence of such penalties reflects a belief in the efficacy of deterrence and co-ercion which is not shared by the vast majority of modern penologists. On the other hand it is argued that the racial and cultural composition of South Africa requires more basic methods of punishment or treatment than are suitable in Western Europe.

According to Mr. J. de Villiers Roos,² the principal designer of the 1911 Prison Act, the guiding principles of the Union penal system were the reform of the criminal to prevent a recurrence of crime.³ However Professor Kahn maintains that:

The history of criminal punishment since Union, as will be detailed later, has amply shown the appeal, conscious or unconscious, of the non-rational theories of expiation, retaliation and retribution.⁴

¹Professor Ellison Kahn, Crime and Punishment 1910-1960, Acta Juridica, 1960.

²See supra, pp.

³Lansdown Commission Report, op cit., para 595, p. 92.

⁴Crime and Punishment 1910-1960, op cit., p. 192.

Professor Kahn was referring both to the substantial use of capital¹ and corporal² punishment in South Africa between 1910 and 1960, and to the fact that the daily average of persons imprisoned had risen from 0,22 per cent of the population in 1919 to 0,31 per cent of the total population from mid 1957 to mid 1958.³ One of the reasons for the high prison population was the proliferation of petty statutory offences and the inability of people to pay fines. In particular this resulted in a high incidence of short prison sentences which many people, including the various directors of prisons, considered to be harmful to the person concerned and detrimental to the prison system in that it caused overcrowding and dissipated the energies of the prison staff.⁴ The problem was to find an alternative penalty for certain offenders. Between 1945 and 1946 the Lansdown Commission conducted a survey into nine representative gaols to find out how many persons were imprisoned in default of fines. It

¹Capital punishment. Persons sentenced to death: 1911: 57; 1922: 13; 1932: 19; 1942: 12; 1972: 100; 1972-73: 79.

²Corporal punishment: Number of offenders so sentenced: 1911: 3 399; 1927: 2 458; 1937: 2 918; 1947: 2 696; 1957-58: 18 542; 1972-73: 3 569.

³Crime and Punishment 1910-1960, op cit., p. 213.

⁴

| <u>Year</u> | <u>Total Number of Persons Sentenced to Imprisonment</u> | <u>Sentences 1 month or under</u> | <u>Percentage of all sentences</u> |
|-------------|--|---------------------------------------|--|
| 1911 | 102 961 | 80 161 | 78,0% |
| 1943 | 157 887 | 96 962 | 61,4% |

transpired that 65 per cent of Europeans, 87 per cent of Coloureds and Indians and 83 per cent of Natives had been admitted to these prisons between 1st January 1945 and 30th June 1946 for non payment of fines.¹ One of the reasons for this high percentage of imprisoned fine defaulters was that magistrates were unwilling to implement the provisions for recovery of fines by instalment and other methods for fear that the offenders would disappear. Yet, Mr. W.G. Hoal, when as Director of Prisons he investigated hundreds of cases of long term imprisonment, found:

A progressive series of seven days, fourteen days, three weeks, a month, two months, three months, in carefully graduated homeopathic doses accustoming the prisoner to gradually increasing periods of imprisonment.²

The Indeterminate Sentence in South Africa first dates from 1909 but came into general use in 1911 with the Habitual Criminal Act No. 9 of 1911. By this legislation a judge could declare an accused who was found guilty of a scheduled offence³ to be an habitual criminal. Such a person could only be released by the Governor General on the recommendation of the Board of Visitors. Initially this punishment was used sparingly, for instance in 1917 a total of 56 persons were declared habitual criminals and there were only 374

¹Lansdown Commission Report, op cit., para 545.

²1945. 12 Race Relations 67.

³The scheduled offences were rape, robbery, assault with intent to commit any of the foregoing or grievous bodily harm, indecent assault, arson, forgery or uttering, housebreaking with intent to commit an offence, fraud and theft.

indeterminate prisoners in custody.¹ In 1937 there were 128 persons declared habitual criminals and in 1947 241. After 1935 it became the practice that indeterminate prisoners had to serve seven years before they would be considered for release.

There are two schools of thought on the indeterminate sentence. Some persons consider it to be the best way to deal with serious offenders while others, of whom the author is one, consider it to be a destructively harsh sentence - particularly when the judicial officer has no discretion and must award this sentence, and when the minimum term is fixed at nine years as is the case today.

From 1947 to the mid 1960's the sentencing policy in South Africa became even harsher. This was largely due to statutory requirements and not the wishes of the sentencing officers who were becoming more lenient. During the last few years there has been a slight swing back to greater judicial discretion and less deterrent orientated punishments. These trends are described in the third section of this chapter.

¹Crime and Punishment, op cit., p. 217.

8.4 The Treatment of Offenders

(a) Classification and Separate Institutions

The 1911 Prisons Act laid down for the classification of prisoners their separation by sex, colour, age and where possible their degree of criminal experience, first offenders to be kept apart from recidivists and non-criminal persons such as drunks and vagrants to be kept separated from criminals. To effect this degree of classification and separation required the establishment of a large number of separate institutions. In particular S.3(e) to (j) of the 1911 Act made provision for the following institutions:

- (a) Institutions styled government industrial schools, to prevent waif and stray children from falling into crime;
- (b) Institutions styled reformatories, to reclaim and reform juveniles¹ who have already been convicted and sentenced for offences;
- (c) Institutions styled juvenile adult² reformatories, to reclaim and reform juvenile adults who have been convicted and sentenced for offences;
- (d) Institutions styled road camps, to prevent the contamination by association with hardened criminals,

¹Under 19.

²Persons aged 19-20, occasionally up to 23.

- of persons sentenced to imprisonment for petty offences;
- (e) Local gaols;
 - (f) Convict prisons;
 - (g) Chronic sick or hospital prisons;
 - (h) Prisons for the treatment of habitual criminals;
 - (i) Institutions styled farm colonies, work colonies, refuges, or rescue homes, to secure an easier transition from the rigours of prison discipline to complete liberty on release of the convict, or to vagrants to labour, or to secure treatment or discipline in substitution for prison treatment or discipline;
 - (j) Inebriate reformatories.

Between 1911 and 1947 responsibility for certain of these institutions was transferred from the Department of Prisons to other government bodies. In particular responsibility for juveniles and juvenile adults reformatories was transferred to the Union Department of Education by Act No. 27 of 1934, following the transfer to this department of industrial schools which had been affected by Act No. 46 of 1920, work colonies were transferred to the Department of Labour in 1927 (Act No. 29 of 1927) and later to the Department of Social Welfare.

Thus the Department of Prisons was left freer to deal with the more criminal offenders.

In the first few years after Union the Department of Prisons set about their task with considerable vigour. Prisons for the treatment of European habitual criminals were established at Pretoria, and for Non-European prisoners at Boksburg and Barberton. Farm colonies for Non-Europeans were established at Leeuwkop (1911) in the Transvaal and at Grootvlei (1913) in the Orange Free State. Inebriate reformatories were set up for the different race groups (1912) and in 1927 a work colony¹ was established for European vagrants under the control of the Department of Labour and this was soon followed by a similar colony for Coloureds at Kraaifontein near Bellville in the Cape Province. In many cases the building work for these institutions was carried out by convict labour.

However the First World War followed by the Depression resulted in funds not being available for the Department of Prisons to continue developing as was required to implement the provisions of the Act of 1911. Virtually every year the size of the prison population increased until by 1948 the daily average was 25 027,² nearly

¹Work colonies had been contemplated by the Prison Act of 1911 for the purpose of detaining vagrants and "won't works" apart from criminal offenders and to attempt to teach them the work habit. The first such colony was established in 1927 following the Work Colonies Act No. 20 of 1927.

²Annual Prison Report 1952, U.G. 37/1953, p. 22.

double that of 1911. However insufficient new prisons had been built, despite repeated requests by the Department of Prisons for more money for this purpose. Thus by 1947 many of the reforms contemplated by the 1911 Act were impossible due to overcrowding.¹

(b) Physical Conditions of the Prisons

Apart from overcrowding the general maintenance of prisons was good, and buildings were always particularly clean. In some of the older style fortress² prisons washing and sanitary facilities were inadequate - a common complaint in prisons of this type. One feature of the prison regime which perhaps typifies the approach of the prison administrators was the furnishing of cells. Only European women and male first offenders were usually provided with a bed, a stool and a table. Recidivists and Non-European prisoners had only a sleeping mat and their blankets, consequently they had to sit, eat and sleep on the floor.

(c) Prisoner Training and Reformation

(i) Trade Training³

S.88(1) of the 1911 Prisons Act empowered the Governor-General to make regulations governing the

¹Between 1939 and 1946 the prison population increased by 7 000 and accommodation by 700.

²The cost of building prisons is such that these old prisons are still in use in South Africa as they are in most countries where they were built.

³See Lansdown Commission Report, Chapter XV, para 818, pp. 122-127.

instruction of prisoners and their employment and work training. In practice very little trade training took place - for women there was none, and for European males the Lansdown Commission reported as follows:

For men its (vocational training) availability is extremely limited and in the institutions visited by the Commission, its utility in providing a training for employment after release is, with one exception, quite inadequate.¹

(ii) Prison Work²

Work was considered of considerable reformatory value, particularly useful work as opposed to the purposeless penal labour such as the crank and shot drill which fortunately had only been introduced into a few South African prisons during the late nineteenth century.

From 1911 onwards, Europeans were employed exclusively within prison confines while Non-Europeans were permitted to be leased to private bodies or persons. The 1911 Act contemplated workshops being erected for the employment of prisoners in the making of articles for use by the Department of Prisons. A number of workshops were erected, the best being at Pretoria

¹Ibid., para 835, p. 124. The exception was Pretoria Central Prison.

²Prison work during the period 1910-47 is dealt with in more detail in Chapter VIII.

Central, and prisoners made clothing, footwear, brushes, matting and a variety of articles. However the prison population grew more rapidly than the provision of workshops and so other forms of employment had to be found. This was not always possible and so, even by the 1940's, some prisoners were employed (including Europeans) in breaking by hand larger stones into several smaller ones. This work could be done far more efficiently by machine and anybody who doubts the repressive soul destroying nature of such work should read H.C. Bosman's "Cold Stone Jug"¹, for Bosman himself was employed in this way.

Non-European short term prisoners were usually, until 1951,² sent out to work on the roads or similar public works. Longer term Non-European prisoners could be employed inside the prisons on maintenance work, while a large number were hired out to various mining companies. In 1943 one prison alone, the Cinderella Prison at Boksburg, hired out a daily average of 937 convicts to the East Rand Proprietary Mines Limited.³ Women were usually employed in laundering work.

¹ H.C. Bosman, Cold Stone Jug: Life in a South African Prison, 1949.

² During 1943 a total of 11 434 short term prisoners were admitted to the three major road camps. In 1943 the total number of persons admitted to prison was approximately 158 000 and the Daily Average was approximately 10 per cent of this total or some 15 500 prisoners. Report of the Department of Prisons, 1943.

³ Annual Report of Department of Prisons, 1943, U.G. 19/1945, p. 15. By 1946 a total of 1 400 prisoners were employed daily by the mines. Lansdown Commission Report Para 891, p. 131.

Probably the largest single employer of prison labour in the 1940's, apart from the Prisons Administration, was the South African Railways and Harbours Administration who employed approximately 2 600 prisoners daily from a variety of prisons throughout the country. These Non-European prisoners were employed almost exclusively in quarrying and breaking rock.¹

In 1932 it was decided to alleviate the overcrowding in prisons by releasing Non-European male first offenders serving sentences of three months or less to work for private farmers. These farmers paid the Prisons Department 6d per day for the prisoner's labour, the prisoner himself earning nothing.² In this manner many thousands of prisoners were spared from having to serve their sentences in prison.³ There were however various abuses and inequities and a revised version of this form of employment was introduced after the Lansdown Report.

By 1943 and 1944 the overcrowding in prisons was such that the Department of Prisons were obliged to expand their farm colony at Grootvlei. In addition, 528 good conduct farm colony males were

¹See Annual Prison Report 1943, U.G. 19/1945, pp. 15-16.

²This scheme, the "6d per day Scheme", is described in more detail in Chapter VIII.

³The author has been unable to obtain the exact number of persons released in this manner during the early 1940's but it was between 25 000 to 30 000 persons annually.

released to farmers on licence after expiry of half their sentences. The farmers were responsible for their maintenance and good conduct, and employed them at ruling market wages, less deductions for board and lodging for the remaining portion of their sentences. No farmer was permitted more than 2 such probationers.¹

It is quite clear that the majority of prisoners during this period 1910-1947 were employed in simple manual labour of very little training value. The prison authorities were severely taxed to find sufficient accommodation and employment for the increased numbers² and facilities for their training were totally inadequate. Prison authorities largely blamed this situation on the large numbers of short term prisoners, in 1943 sixty-one per cent of all prisoners were sentenced to one month's imprisonment. However even such workshop work as was available seems to have been of little rehabilitatory value according to an ex-prisoner, Prison Number 3513/6354

The prison reports which deal with the work performed by convicts are facile and vague, when they are not deliberately inaccurate or misleading. As regards prison labour, they must definitely be disbelieved.³

¹Annual Prison Report 1943, U.G. 19/1945, p. 16; and 1944 p. 16. See Chapter VIII.

²In 1922 there were 96 772 sentenced persons admitted to prison and in 1943 there were 157 887 sentenced persons admitted to prison. Annual Prison Reports 1922 and 1943.

³3513/6354, Prisons and Prisoners in South Africa (Durban: Knox Publishing Company, 1946), p. 29.

At this time hard work was considered to have considerable moral and practical value in the reform of prisoners. Whether this beneficial result was in fact achieved is extremely doubtful.

(iii) Education

Mr. de Villiers Roos¹ contemplated the reformation of offenders in prison by means of "religious and moral influences, schooling, drill and discipline, the training of the hand and the eye, and sound literature."

Today, some sixty years later one might question the efficacy of for example drill in the reformation of offenders, but nobody doubts the value of good schooling. Unfortunately very little education was given between 1910 and 1947. In 1947 Pretoria Central was the only prison having the services of a schoolmaster. Otherwise prisoners had to organise their own education by way of correspondence courses which they paid for themselves or with the help of the Social Services Association. As the majority of Non-European prisoners were illiterate² one might reasonably have anticipated literacy courses at most prisons but "except for one or two attempts of

¹pp.23-4 supra.

²Lansdown Commission Report, para 830, p. 124.

private individuals to give instruction in prisons, nothing has been done."¹ Not only was literacy not taught but apart from Pretoria Central, virtually no prison in the country had a library or even borrowing facilities from a local library. This was a disgraceful state of affairs for under Montagu in the 1840's every road camp had its own library.²

(iv) Social Care - Psychological Treatment

During the period 1910 to 1947 there was no attempt at the treatment of offenders by trained social workers or psychologists. Thus the only guidance for prisoners was the good example set by the prison officers and the occasional "talk" from an officer who felt that such treatment was necessary.

(d) The Motivation of Prisoners

(i) Progressive Stage System, Privileges

In terms of Prison Regulations 400 to 404 in force in 1947 prisoners on reception in prison were classified into the following classes:

1. The Penal Class;
2. The Probation Class;
3. The Good Conduct Class;
4. The Star Class.

¹Ibid.

²See Chapter VIII supra, p. 585.

Each class had a different set of privileges attaching to it, progressing from minimal privileges in the penal class. All recidivists started in the penal class, and remained there for three to six months before being able to progress to the probation class and so on up to star class. First offenders began their sentence in the probation class and all offenders could be promoted or demoted according to their behaviour.

Today most modern penologists regard visits and letters from family and friends in the interests of the prisoner's reformation and believe that such visits should be the prisoner's right rather than a privilege.

Thus the regulations existing in 1947¹ would be deemed rather repressive. In terms of Regulation 449 a prisoner in the penal class during the first three months was not permitted to receive privileges or indulgences or to write or receive letters or visits. After the completion of three months he could receive and write one letter and could receive a visit of thirty minutes' duration once every month from one person.

¹Today's regulations in South Africa regarding letters and visits are virtually unchanged. See Chapter. IX.

In the probation class a prisoner could receive and write a letter once a month, and receive one visit a month from one person of 30 minutes' duration.¹

In the good conduct class a prisoner was permitted to indicate the type of work performed at the prison which he would like to do.² In addition he could write and receive two letters per month instead of one and was permitted one visit per month from 2 persons rather than one person.³

The only advantage in the star class over the good conduct class was that one could receive two visits per month, but the period was reduced to twenty minutes per visit.⁴

Apart from the privileges of visits and writing and receiving letters the most cherished privilege was the right to smoke tobacco. According to the Lansdown Report:

This privilege until recently was accorded to convicted prisoners only as a supreme reward for industry and good conduct during any week, and was limited to 40 per cent of European prisoners who had completed three months of their sentences and to Non-European indeterminate prisoners in the Barberton Prison.⁵

¹Regulation 450.

²Once again today it is considered sound practice to try and give a man the type of work he wants and not to regard this as a privilege.

³Regulation 451.

⁴Regulation 452.

⁵Lansdown Commission Report, op cit., para 934, p. 134.

The granting or withholding of this privilege was a very real inducement to good conduct, but by making tobacco difficult to obtain a premium was placed on its possession and thus gave rise to tobacco baroning and other abuses.

(ii) The Mark System

The object of the mark system was to have an index of a prisoner's conduct and progress whilst in prison, and to link this system to the award of privileges, indulgences and the remission of sentence. It applied to all prisoners serving sentences of six months or over who could earn a maximum of three marks per day: one mark for industry, one mark for general conduct and one mark for progress at school or moral progress.¹ If no school was available the prisoner would be given an additional mark for industry. The loss of three marks was treated as the equivalent to the loss of one day's automatic remission.

(iii) Remission of Sentence

As a general rule remission of sentence was automatically granted for one quarter of the sentence.

In the case of long term offenders, being all those

¹Lansdown Commission Report, op cit., para 945, p. 135.

serving sentences of over two years, remission was granted by the Governor General acting on the advice of the Minister of Justice who received an annual progress report on every prisoner in this category from the relevant Board of Visitors.¹

Remission of sentence for offenders serving sentences of from six months to two years were granted by the Governor General on the recommendation of the Prison superintendent and the Minister of Justice, while prison superintendents were empowered to grant automatic remission of one quarter of the sentence to first offenders serving from four weeks to six months.

Theoretically remission was granted for good behaviour gauged on the mark system but in practice remission became automatic, and, from this remission of one quarter of the sentence, days were deducted as a punishment. Prior to 1945 a prisoner could lose up to 14 days' remission for a prison offence which invited a severer punishment than a caution or reprimand, but this was reduced to a maximum of three days' loss of remission for each offence, save that a reprimand entailed only the loss of one mark.

¹Prison Act No. 13 of 1911, S.48 and Prison Regulation 528. Prisoners sentenced to the indeterminate sentence naturally did not have an automatic remission of sentence. In practice from 1935 onwards all such prisoners served seven years before any possibility of release was considered. Annual Prison Report 1943, U.G. 19/1945, p. 1.

As can be seen the remission of sentence was broadly in line with penal practices elsewhere in the world.

(iv) Gratuities

In terms of S.88(1) of the Prison Act 1911 the Governor General was empowered to make regulations governing the payment of gratuities to prisoners. In practice gratuities were only paid to skilled workers who in 1947 were receiving the following sums:¹

- (a) Europeans: 1d to 3d per day
- (b) Coloureds or Indians: 1d to 2d per day
- (c) Natives: 1d to 2d per day

It was the opinion of the Lansdown Commission that these scales were far too low and they recommended the extension of gratuities to all prisoners at a significantly higher rate.²

During 1946 the Daily Prison Average was approximately 24 000 and of these gratuities were only earned by a few prisoners as follows:

| | <u>Men</u> | <u>Women</u> |
|-----------------------|------------|--------------|
| Europeans | 606 | 5 |
| Coloureds and Indians | 114 | 2 |
| Africans | 762 | 28 |

¹Lansdown Commission Report, op cit., para 871, p. 129.

²Ibid., para 875, p. 129.

This reluctance to pay prisoners for work was symptomatic of the belief that prisoners were in prison as punishment, and that the payment of a gratuity was an unnecessary charge on the exchequer.

Fortunately prison administrators appreciated that to discharge a prisoner with no money whatsoever was liable to result in the early commission of a fresh offence. Consequently those prisoners who had served a sentence of two years or more and had earned no gratuity were entitled to receive a sum of ten shillings on discharge. Initially this had been only for European prisoners¹ but in 1944 it was extended to all prisoners. Even in 1944 the sum of ten shillings was of little purchasing power and the Lansdown Commission recommended that it be increased substantially.²

(v) Prison Discipline

Finally prisoners were motivated to be of good behaviour and work industriously by strict prison discipline and by a variety of penalties that could be inflicted upon an offender by a prison superintendent.³ These penalties included among others a reprimand, deprivation of marks privileges and gratuities for a maximum of one

¹Prison Regulation 474.

²Lansdown Commission Report, op cit., para 876. p. 129.

³Prisons Act 1911, Sections 35 and 36.

month, loss of remission of sentence, extra labour for a maximum of three hours per day up to three days, solitary confinement for up to 15 days with or without spare diet for a maximum of ten days (if spare diet was ordered for more than three days the offender was to receive full diet for one day after each period of three days), and finally corporal punishment to a maximum of six strokes. This was a formidable battery of sanctions in the hands of prison officers, all of which could be imposed without trial with the exception of solitary confinement. The only control on the prison superintendent was that he had to record the details of any offence and the punishment awarded in a "Punishments Book" and show it to the visiting magistrate on his next visit. In addition every prisoner had the right to state grievances to the visiting magistrate on the occasion of any visit.¹

(e) The Inspection of Prisons and Prison Staff

(i) Prison Inspectors

The 1911 Prison Act made careful provision for the inspection of penal institutions. In terms of Section 4 of the Act the Governor General was empowered to appoint Prison Inspectors to inspect and report on all places of detention including police lockups.

¹Prisons Act 1911, Section 37(2).

Initially such Prison Inspectors were appointed but within only a few years their role was taken over by inspecting magistrates attached to the staff of the Department of Justice. In 1922 a general inspectorate of the Public Service Commission was instituted which included the visiting magistrates. As a result both magistrates and public service inspectors were appointed to inspect prisons. The Lansdown Commission felt it most undesirable that inspectors with no experience of prisons should be appointed for this task.¹

Prison Regulations 17 to 27 of the Act set out the duties of visiting magistrates, who, in addition to visiting and inspecting institutions at irregular intervals but as often every month as directed, were to summon all prisoners and ask them if they had any complaints. If any such complaint was made the magistrate was to make full enquiries into the matter, and if so requested by the prisoner such enquiries were to be made out of the hearing of the prison officials.

According to the Lansdown Report² this system of hearing complaints worked reasonably well although from time to time prisoners feared that complaints might result in

¹Lansdown Commission Report, op cit., para 684, p. 103.

²Ibid., para 695, p. 105.

reprisals. This fear was not widespread.

(ii) Prison Boards of Visitors.

S.48 of Act No. 13 of 1911 enacts as follows:

For the more effective treatment of convicts and prisoners and to obtain advice as to the conditions (if any) to be imposed in remitting portions of sentences, the Governor-General shall appoint Boards of Visitors to consist of such members, official and non-official, as he may think fit, and shall prescribe their duties and periods of office.

Under this provision three Boards were appointed to deal with the entire country. Each year they were required to submit a detailed written report on the progress of every prisoner serving a sentence of two years or longer, and to make recommendations concerning remission of sentence. Initially the Boards were well balanced having members of the prison administration and independent members usually including a magistrate or ex-magistrate and a medical practitioner. However over the years this independent element was reduced until the unofficial members were usually retired government employees, frequently former senior prison officers. This is still the position today, 1975.

(iii) Prison Staff

Prior to 1946 the basic qualification for the appointment of warders was to be over 21 years old and to have passed the sixth standard of education.¹ In 1946 the

¹Standard 6 is normally taken at 13 years of age by Europeans.

age limit was lowered to 19 and the education level raised to Standard 8.¹ Basic training took three months and was similar to military training, concentrating almost exclusively on drill, weapon training, physical training and self defence, first aid, and the Prison Rules and Regulations. No attempt was made to teach warders any basic sociology or psychology which would have helped them to understand "types of conduct or misconduct in their fellow men and to direct their behaviour into the right channels."² Consequently

The (Lansdown) Commission recommends that, in addition to the subjects now comprised in the syllabus of the training school, the course should embrace lectures on the elements of criminology and criminal procedure, elementary psychology in so far as it deals with impulses and their control, and the cardinal rules of social welfare.³

This paragraph goes on to stress that warders are one of the chief agents for the reform of prisoners and states that:

The punishment of a prisoner for the crime he has committed is for the most part conveyed by the deprivation of his liberty and the opprobrium of his fellow men. It is not the purpose of imprisonment that human personality should be destroyed or debased; nor is it necessary to withdraw from prisoners that courtesy and human consideration which is the right of all men.

¹Today the age limit is 16 with Standard 8 education for Whites and Standard 6 for Non-Whites.

²Lansdown Commission Report, op cit., para 718, p. 107.

³Ibid. Despite the Lansdown Commission's recommendations there is still considerable scope for improvement in these aspects of the training of prison staff.

The 1911 Prison Act had made provision for prisoners to be employed on prison farms prior to release, particularly long term prisoners, so that they would grow accustomed to more open conditions. Unfortunately lack of finance prevented the adoption of this practice. The Lansdown Commission Report recommended that such a farm be established and in 1952 the Annual Prison Report announced that Zonderwater Prison would be used for this purpose having accommodation for 900 prisoners.¹

In addition to the lack of pre-release treatment the vast majority of prisoners were released from prison with virtually no money whatsoever. The folly and short-sightedness of such a procedure has been discussed under prison gratuities.²

(ii) Probation

The 1911 Prison Act contemplated the use of suspended sentences and probation officers to supervise offenders granted a suspended sentence and those released from prison. A web of legislation was passed between 1910 and 1947 in this regard but little practical work was

¹Annual Prison Report 1952, U.G. 37/1953, p. 13. Unfortunately the size of the prisons mitigates against the individualised treatment of offenders. South Africa has, since the 1911 Prison Act favoured large prisons, often of over 500 to 1 000 persons. Such prisons are easier and cheaper to administer than the smaller prisons (accommodation for a maximum of 100) favoured by treatment orientated countries such as Sweden.

²See p. 83.

done, as the Lansdown Commission Report bluntly stated:
"The probation officer no longer functions for discharged prisoners with any appreciable effect."¹

South Africa still has a totally inadequate probation service, although the State President announced in 1974 at the State Opening of Parliament that the possible extension of the probation service was being considered.

(iii) Recidivism

Statistics on recidivism in South Africa always require very careful analysis for the seemingly low rate of recidivism (1943: 34,4%; 1974: 64%) is distorted by the very high numbers of petty first offenders. On the 31st December 1943 there was a total of 20 839 persons in prison, of these a total of approximately 7 000 were first offenders; consequently recidivists comprised some two thirds of the total prison population - somewhat different from the 34,4 per cent recidivism rate of all persons sentenced to imprisonment. Thus although the underlying aim of the Department of Prisons was the reformation of the offender the Department does not seem to have been very successful in this regard.

¹Lansdown Commission Report, op cit., para 597, p. 93.

The Lansdown Commission concluded that although the 1911 Prison Act had been extremely advanced in its provisions the spirit underlying the Act had not been adequately applied.

Lack of funds for new buildings and staff, with resultant serious overcrowding of penal institutions, has led, of necessity, to stereotyped methods and mechanised routine. Militarization and restraint, while essential to some degree, have been permitted to submerge the farseeing objects of the measure.¹

The next section - 1947 to the Present Day describes some of the reforms proposed by the Lansdown Commission, their implementation or lack of implementation, and the ideology governing the treatment of offenders in South Africa at the present time.

¹Lansdown Commission Report, op cit., para 595, p. 92.

C. LANSDOWN COMMISSION REPORT TO PRESENT DAY (1947-1974/75)

C.1 The Aims of Punishment and Imprisonment

(a) The Lansdown Commission Report

The Lansdown Commission Report stated that

Reformation and deterrence are the real purpose of prison life. The obloquy incurred by conviction and the deprivation of liberty constitute in the main the punishment of the offender. The punishment must not consist of anything in the way of illtreatment or degradation during the imprisonment, and while prisons and gaols must not be made places of such pleasant residence as would detract from the purpose of punishment, it is no part of prison life to degrade the prisoner or shatter his self-respect. On the contrary, by wholesome and increased activity of mind and body and by the creation of habits of sustained industry, his self-respect must be built up or restored, and he should receive such training as will enable him, upon his release, to take his place in ordered society, and to earn his livelihood and maintain his dependants, a sense of personal responsibility should be inculcated and he should be given such occupation and interest as will prevent a morbid and subjective habit of mind.¹

Basically the Commission underlined the three aims of imprisonment as being the punishment of the offender, the future deterrence of the offender and other like minded persons, and the reform/rehabilitation of the offender. This was broadly in line with the aims of the 1911 Act which had been frustrated by the growth in the prison population.

¹Annual Prison Report 1952, U.G. 37/1953, p. 3 quoting the Lansdown Commission Report.

In 1952 Mr. Victor Verster was appointed Commissioner of Prisons with instructions to implement certain of the reforms suggested by the Lansdown Commission Report.

(b) Prison Reports

Mr. Verster in his first annual prison report (1952) stated the aims of the Department of Prisons as follows:

It is fully accepted by the Department that the aim of penal sanction is not only to punish the delinquent, but also, as far as may be practicable, to further his reformation and re-adaption to the normal standards of social behaviour in the community in order to prevent recidivism.¹

As regards the deterrence aspect of imprisonment Mr. Verster commented:

It is fully realised that in any imperfect community crimes and offences of varying degrees of seriousness will be committed and that these cannot be dealt with without some recourse to the instrument of punishment, not only as a deterrent to the wrongdoer himself, but also to others who may have similar inclinations.²

(c) 1959 Prison Act (Act No. 8 of 1959)

The Lansdown Commission Report eventually resulted in the current Prisons Act - Act No. 8 of 1959 which replaced the former Prison Act No. 13 of 1911.

S.2(2) of the 1959 Prisons Act provides that the functions of the Prisons Department shall be:

¹Annual Prison Report 1952, U.G. 37/1953, p. 7.

²Ibid.

- (a) to ensure that every prisoner lawfully detained in any prison be kept therein in safe custody until lawfully discharged or removed therefrom;
- (b) as far as practicable, to apply such treatment to convicted prisoners as may lead to their reformation and rehabilitation and to train them in habits of industry and labour.

It is interesting to compare the change in judicial attitudes to punishment as opposed to imprisonment, over this period. In 1945 it was accepted by the Court of Appeal that

The ends of Criminal Justice are four in number, and, in respect of the purposes to be served by it, punishment may be distinguished as:

- (1) Deterrent
- (2) Preventive
- (3) Reformative
- (4) Retributive

Of these aspects the first is the essential and all important one, the others being merely accessory.¹

By 1961 the Appellate Division had modified its views:

While the deterrent effect of punishment has remained as important as ever, it is, I think, correct to say that the retributive aspect has tended to yield ground to the aspects of prevention and correction.²

However in 1972 Mr. Justice N. Ogilvie Thompson, at that time Chief Justice of South Africa, stated:

It is, I think, obvious that the deterrent element is all important. Without the sanction of

¹R.V. Swanepoel 1945 AD 444, at p. 454/5 citing from Salmond Jurisprudence. See article by Mr. Justice A. Harcourt. NICRO Journal 1973, Vol. 2 No. 1, p. 23.

³Karg's Case 1961(1) SA 231 (AD). See article by Mr. Justice A. Harcourt, op cit.

punishment the only deterrent against crime would be the moral sanction which, human nature being what it is, would hardly suffice to maintain law and order.¹

Doubtless there will always be controversy over the relative weights in sentencing of the different purposes of punishment. However there is no doubt that the stated purpose of imprisonment in South Africa is the protection of society and if possible the reformation of the prisoner.

C.2 The Organisation of the Prison Department with Particular Reference to the Aims of Reformation/Rehabilitation

(a) Classification and Separate Institutions

Prior to 1947 separation of offenders had existed as discussed earlier but there was less separation than contemplated by the 1911 Act - mainly due to the lack of facilities for so many prisoners.

Between 1947 and the present day the Department of Prisons has concentrated on improving facilities so that persons of differing criminal experience can be separated to a greater extent. Thus there has been a vastly increased use of the release of short term prisoners on parole, and other such measures to keep short term prisoners either out of gaol or apart from recidivists.

¹Mr. Justice N. Ogilvie Thompson, "Crime, The Community and The Rehabilitation of Offenders," NICRO Journal 1973, Vol. 2 No. 1, p. 7.

Similarly there has been a considerable improvement in the classification of offenders, particularly prisoners serving sentences of over two years. Today long term prisoners are sent to Observation Centres - Europeans to Pretoria, Coloureds to Allandale, near Paarl, Africans to Leeuwkop.

At these Centres

a study is made of the individual by analysing the environmental, economic, social, criminal, physical and other personal factors concerning (the prisoner), in order to determine, as far as possible, to which particular factor or factors the commission of the offence is attributable; hereafter he is classified on a basis conforming to the principles embodied in the Standard Minimum Rules.¹ ... Aptitude tests are carried out at the Observation Centres, to establish prisoner's individual potentialities for benefitting from different types of corrective training. ... The basic considerations for allotting a prisoner to a specific institution are not so much the length of sentence or whether or not a prisoner is a first offender, but his character, his social background, active or latent potentialities and how he is likely to benefit by the different methods of treatment and training available at the different institutions.²

Since July 1971 classification has been taken a stage further with detailed psychological testing of all European and Coloured long term prisoners.³

¹"The Republic of South Africa has adopted the Standard Minimum Rules in principle and has generally applied them subject to local legal, social, economic and geographical conditions. They are, in fact, pertinently reflected by the Prisons Act, 1959 (No. 8 of 1959), regulations thereunder, prison service orders and other departmental directives." Addendum to 1959 Prisons Act as amended.

²Prison Administration in South Africa. Published by the Department of Foreign Affairs of the Republic of South Africa, Pretoria 1969, p.11.

³See Chapter 9, p. 729 (M) for a more detailed discussion of classification.

Unfortunately detailed classification with a view to the future training/treatment of prisoners is only undertaken for long term prisoners, however even this is a considerable improvement over the position in 1947.

(b) Prisoner Training and Reformation

Regulation 117 of the Consolidated Prison Regulations¹ sets out the aims and applications of the treatment of prisoners with regard to their reformation as follows:

Aim

- 117.(1) As far as the duration of a sentence permits, the aim of the treatment and training of a sentenced prisoner shall be:
- (a) to cultivate in him the desire to lead an honest and industrious life after his release;
 - (b) to equip him for an honest and industrious life after his release; and
 - (c) to develop self-respect and a sense of responsibility in him.

Application

- (2) Subject to appropriate security measures and the avoidance of familiarity, and in order to promote the aims set out in sub-regulation (1), the undermentioned principles shall be strictly observed and applied in the treatment and training of a sentenced prisoner:
 - (a) Continuous and intensive instruction and regular discipline within the scope of the institutional treatment and training;

¹Consolidated Prison Regulations made in terms of S.94 of the Prisons Act 1959 (Act No. 8 of 1959) as amended, promulgated under Government Notice No. R.2080 of 31st December 1965.

- (b) personal advice and guidance by all members or special warders directly or indirectly charged with the treatment and/or training of the prisoner;
- (c) the promotion of proper and healthy social intercourse and a good team spirit with fellow prisoners and all members or special warders directly or indirectly concerned with the treatment and/or training of the prisoner.

Establishment of Workshops

- (3) The Commissioner may, in consultation with Treasury, establish and equip workshops and other working places which he may deem necessary for the training of prisoners at a prison.

Determination of Training

- (4) (a) Training shall be determined by an assessment of the personal factors and history of the prisoner concerned, and special attention shall be given to
 - (i) qualifications and previous experience;
 - (ii) aptitude and ability; and
 - (iii) duration of sentence.
- (b) Whenever it appears that a prisoner is not displaying interest or making progress in the training to which he has been assigned, or when for any other good reason it is desirable to transfer him from such training, the Commissioner may order a change of training or take such other action as he may deem necessary to place him in other suitable work.

(i) Trade Training

Since 1947 workshop facilities have been considerably improved to provide facilities for trade training for a far greater number of prisoners. Similarly in

1952 a Building Section¹ was officially formed to provide training for prisoners and to build exclusively for the Department of Prisons. These developments are discussed in some detail in Chapter IX.

(ii) Prison Work

(a) Legal Basis

In terms of S.77 of the Prisons Act 1959²

Every prisoner sentenced to imprisonment and detained in a prison shall, subject to the provisions of this Act and subject also to any special order of the court, be employed, trained and treated in such manner as the Commissioner may determine, and such a prisoner shall at all times perform such labour, tasks and other duties as may be assigned to him, for the purposes of such employment, training or treatment or for any other purpose connected with such prison, by the member of the Prisons Service in charge of such prison or by any other member of the Prisons Service in whose charge he may be.

Thus it can be seen that work is compulsory for sentenced prisoners but there is no mention or indication of a sentenced person having the right to work. In 1955 the U.N. Report on Prison Labour concluded³ "The prisoner's right to work is not generally recognised in law or administrative practice."

¹Building work had been done in the past by prisoners on a considerable scale as discussed earlier.

²S.77 has been substituted by S.16 of Act No. 62 of 1973.

³"The right to work" is discussed in the U.N. Report entitled Prison Labour 1955 ST/SQA/SD/5, p. 2.

For unsentenced prisoners in South Africa no work is available and only in very exceptional cases do unsentenced prisoners work. There are understandable administrative difficulties in organising work for unsentenced prisoners but as most prison labour in South Africa is manual labour¹ such problems are not insurmountable. The 1955 U.N. Survey on Prison Labour reported "the most common practice throughout the world is to allow the untried to work at their own option."² In South Africa on the 30th June 1973 there were 18 869 persons in custody awaiting trial, some of these prisoners will have been in prison because of an inability to pay bail money while others will have been refused bail. It is submitted that incarceration in prison pre-trial without work can be a worse ordeal for many persons than the serving of the actual prison sentence,³ and can be extremely damaging in that an unsentenced first offender may be held in the same cell as an unsentenced recidivist. Due to the enforced idleness the contact with and influence of the recidivist will be intensified. It is submitted that work for untried prisoners should not only be made available

¹See Chapters VIII and IX.

²Prison Labour, op cit., p. 9.

³Such period in custody does not count towards any sentence later awarded.

but should be encouraged by the payment of gratuities as far as possible in line with free wages subject to the value of work done.¹

(b) Rehabilitative Value of Prison Work

In his second prison report Mr. Verster stated with regard to prison work and training:

It cannot be too strongly emphasised that the detention of prisoners in penal institutions is not only to bring home to them punitive measures but that the Department is also charged with the more important duty to endeavour by all means within its power to reform and rehabilitate detained persons. It will be readily realised that the ideal can only be achieved if the prisoners are kept occupied continuously in a constructive manner.²

The employment of prisoners is the basic subject of this thesis and it is the author's contention that the majority of prisoners are not kept "occupied continuously in a constructive manner" and that this lack of proper work, and training for work, materially contributes to the high rate of recidivism in South Africa.³

(iii) Education

Regulation 109 of the Consolidated Prison Regulations deals with the education of prisoners as follows:

¹Another incentive for untried prisoners to work could be some form of graded remission based on the number of days' work they had done while unsentenced.

²Annual Prison Report 1953-54, U.G. 24/1955, Chapter VI. "Technical Training of Prisoners in Relation to Rehabilitation," p. 17.

³Chapters IX and X.

Regulation 109(1)

If the Commissioner is of the opinion that a prisoner's deficient or inadequate schooling or complete lack thereof could possibly be a factor in causing crime, such a prisoner should at all times be encouraged to undertake an appropriate course of study in his free time, due regard being had to the period of his sentence and personal aptitudes: Provided that the Commissioner may, in his discretion, allow any other prisoner to embark on a suitable course of study.

This regulation is notable in that first of all the prisoner is to be encouraged to study in his free time rather than in lieu of work. However to some extent this is corrected by Regulation 109(2) which provides for "compulsory studies ... in certain categories of offenders." Secondly, Regulation 109(1) makes it clear that such a course of study is at the Commissioner's discretion; in order to prevent any possible misunderstanding a new sub-regulation 109(6) has been added which states:

Permission to study or the utilisation of any library in terms of this regulation is subject to the discretion of the Commissioner and the provisions of the said regulation may in no way be construed as implying that such permission and/or utilisation of any library allows any prisoner a right which he can legally claim.

With regard to the provision of libraries, Regulation 109(3) states:

A properly organised library containing literature of constructive and educational value shall, as far as is possible, be established and maintained at a prison and may in the discretion of the Commissioner be placed at the disposal of all prisoners detained in such prison.

It is difficult to imagine any circumstance where it should not be possible to establish and maintain a library.

Finally in terms of Regulation 109(4) a prisoner may receive books and periodicals from outside the prison. These are subject to scrutiny and acceptance or rejection by the prison staff.

(iv) Social Care

In recent years the Department of Prisons has increasingly recognised the importance of social care of prisoners. Prior to 1966 the social care of prisoners was undertaken by the Department of Social Welfare and voluntary welfare organisations - at this time there were 157 qualified social workers with "right of access to prisons, for obtaining information for court reports, family care of dependants and after-care of prisoners about to be released."¹ It was decided in 1966 to form a special section of the Prisons Department concerned with social welfare. (See Table on following page.)

During the last few years the Department of Prisons has made itself responsible for virtually all social work

¹Annual Prison Report 1966, R.P. 71/1967, p. 22. These 157 persons had to deal with a daily average prison population of 74 033.

inside the prisons and voluntary bodies and the Department of Social Welfare personnel are responsible for external social work. This has led to a diminution in the contact between prisoners and their families by way of the external social workers, and has made the prisoners themselves less accessible to non-prison department personnel - although visiting permits are issued to such personnel, mainly to interview prisoners, pre-trial or prior to release.

TABLE OF SOCIAL WELFARE PERSONS WITH PERMISSION
TO VISIT PRISONS

| | <u>1968-69</u> | <u>1969-70</u> | <u>1970-71</u> | <u>1971-72</u> | <u>1972-73</u> |
|-------------------------------------|----------------|----------------|----------------|----------------|------------------|
| Non-Department of Prisons Personnel | 247 | 490 | 338 | 374 | 502 ¹ |
| Department of Prisons Staff | 11 | 23 | 29 | 40 | 50 |
| Daily Average Prison Population | 80 079 | 90 555 | 91 108 | 91 253 | 95 015 |

In September 1974 there were a total of 110 persons employed in the Department of Prisons Social Welfare Section, both trained social workers and administrative staff. That the authorities recognise the need for more social workers, both full time and voluntary is

¹There were 123 social workers in the employ of private welfare organisations, and 379 probation officers.

clear from the statements of Dr. P.J. van den Berg - the head of the Psychological Services Section of the Department of Social Welfare and Pensions.¹

(v) Psychological Services

In 1970 a Psychological Services Section was established as part of the Department of Prisons. Colonel Roux - the first director of this Section - was aided in his first year by two full-time clinical psychologists and two female assistants. In the first year of operation 231 prisoners were referred to the Section and of these 31 received psychotherapeutic treatment and 10 were certified under the Mental Disorders Act.² (The fact that these statistics relate only to the Central Prison in Pretoria gives some idea of the need for this service. The work is greatly helped by the detailed analyses carried out at the Observation Prisons.)

By 1972-73 there were 12 full-time members, seven of whom were stationed at Pretoria Central, one at Victor Verster, and four in full-time study at the University of Pretoria. Colonel Roux - the Director of this Section - is alive to the dangers of prisonisation, and believes that imprisonment should be used only as a last resort, and even then should be as comparable as

¹Article by Dr. van den Berg, "Probation Services" read at the UNISA Criminology Conference in Pretoria in 1973.

²Annual Prison Report 1970/71, op cit., RP 101/1971, p. 13.

possible with outside life:

The question arises whether prison is or can ever be the most suitable place for the rehabilitation and resocialisation of offenders, that is, irrespective of the services of professional people the social workers, clinical psychologists, educationalists and spiritual workers, as well as the availability of other treatment facilities. ... The prison is traditionally and from a functional point of view so regulated that it verily breathes regimentation with little or no opportunities or actual encouragement for the individual to accept responsibility for his actions ... imprisonment involves the denial of normal interpersonal and social relationships ...

Colonel Roux concludes:

Can we, in all honesty and reasonableness, say that the prison is the best place to send the offender for treatment and rehabilitation ... The prison, in spite of all the facilities, specialised staff and programmes for the treatment of offenders, still remains the most unsuitable place and environment for resocialisation. It would, however, be unrealistic to state that the prison is worthless as a social institution for the protection of the community and that it should therefore disappear. Just as we will always have the poor with us, there will always be a certain percentage of people who somehow cannot or will not adapt to the demands of society. Assessing all the facts therefore prompts me to believe that the time has arrived for us to seriously consider keeping the offender in the community for as long as possible and sending him to prison only as a last resort.¹

This is a forthright and significant statement to be made by a man in Dr. Roux's position, and bodes well for the future development of the South African correctional system.² However at present only a very small percentage even of long term prisoners receive any psychological

¹ Colonel Dr. J.P. Roux - Director of Psychological Services - Department of Prisons. Paper entitled "Rehabilitation Expectations," read at UNISA Criminology Conference, Pretoria, 1973.

² Prisonisation. See also: Donald Clemmer, The Prison Community (Boston: Christopher Publishing House, 1940). Donald Cressey, The Prison (New York: Holt, Rinehart and Winston, 1961). Also Thomas Mathiesen, The Defences of the Weak (London: Tavistock Publications Ltd., 1965), and see Mathiesen's Bibliography.

counselling or treatment, other than that given at the Observation Centres.

(c) The Motivation of Prisoners

(i) Progressive Stage System

The principles of the progressive stage system are still fundamental to a prisoner's training in South Africa although the former classification into the penal class, the probation class and so on has been abandoned.

Instead prisoners are classified A to D, A being for the best behaved minimum security prisoners while Groups C and D being for those requiring maximum security.¹

These groups have different privileges attaching to them, and a prisoner must behave well and work diligently to graduate from one group to the next.² It is firmly believed by prison officials in South Africa that this system of progressive amelioration of custody and increase of privileges is of very positive benefit in the training of prisoners, and provides a series of short term goals for prisoners to attain. The fear of down grading is very real especially for indeterminate³ prisoners for this will probably affect their date of release.

¹See Chapter IX, pp. 730-731.

²It is unusual for a man to be given trade training unless he is in Grade A, furthermore Grade A entitles a man to 2 oz of tobacco per week.

³Here "indeterminate" is used with its normal meaning, not that attached to it by everyday practice in the South African Prisons Department as described below.

(ii) Sentences of Uncertain Duration - Boards
of Visitors

The introduction of the Indeterminate Sentence to South Africa and the use of this penalty has been described for the period 1911 to 1947.¹ By 1935 it had become the practice that persons declared "habitual criminals" and sentenced to the indeterminate sentence were not considered for parole until seven years had been served.

The Lansdown Commission reported as follows:

The use of the indeterminate sentence in its present form does not appear to have solved the problem of recidivism: nevertheless the Commission is of the opinion that it should be retained as an essential part of the system contemplated, which in effect recommends detention for as short a period as may be needed to bring about reformation or for so long as may prove necessary to protect the community.²

The Report continued

Paragraph 436: There must be security against escape by the habitual criminal, but within the limits of this essential security there should be constructive educative and reformatory treatment aimed at improving those individuals capable of improvement.

The 1959 Prisons Act extended the use of indeterminate sentences by creating two new categories of indeterminate sentence. Section 39(b) created the sentence "Corrective Training" which was to be for a minimum of two years and a maximum of four years, while Section 39(c) established "Prevention of Crime" being a sentence with a minimum of five years and a maximum of eight years. In both

¹ pp. 33-34 supra.

² Lansdown Commission Report, op cit., para 435, p. 62.

these two sentences release is granted by the Minister of Prisons after the relevant Prisons Board has recommended release to the Commissioner of Prisons who in turn forwards their report to the Minister of Prisons.¹

The old "indeterminate sentence" which used to be for a minimum period of seven years was extended by the 1959 Act to a minimum of nine years,² there is no maximum period:

S.66(1)

... no person who has been declared an habitual criminal under the provisions of any law shall be released until a prison board has reported to the Commissioner

- (a) that there is a reasonable probability³ that the habitual criminal will in future abstain from crime and lead a useful and industrious life; or
- (b) that he is no longer capable of engaging in crime; or
- (c) that for any other reason it is desirable to release him.

In practice Prison Boards aim to release habitual criminals reasonably soon after completion of their nine year period but should a prisoner have behaved badly in prison he is liable to remain until the Prison Board are prepared to recommend his release.

¹Prison Act 1959, S.62.

²Prison Act 1959, S.38.

³Underlining by author.

In 1947 the Lansdown Report said:

Release should not take place until there is real hope of a normal life in the community. This will necessitate a gradual return to freedom, and a system of help and supervision after release.¹

However one of the problems facing the Prison Boards is the inadequacy of aftercare due to the almost total lack of probation officers.²

Significantly a growing number of the members of Prison Boards, who in practice are nearly all ex senior prison officers, are disenchanted with all forms of indeterminate sentence and believe it would be in the interests of everybody that only determinate sentences be awarded. To safeguard against the release of a person dangerous to the public a similar procedure to that suggested by the Lansdown Commission³ could be followed, with the period of imprisonment being authorised to be extended annually after a thorough review of the case by the Supreme Court.⁴

The number of persons serving the nine year indeterminate sentence has increased significantly since 1947.

¹Lansdown Commission Report, op cit., para 438, p. 62.

²In practice aftercare is only done by NICRO (National Institute for Crime Prevention and Rehabilitation of Offenders) who were granted by the State a mere R119 000 for 1974-75.

³Lansdown Commission Report, op cit., para 429-434, p. 62.

⁴The prisoner's rights could be protected by his being granted legal aid to present his side of the case.

T A B L E 4IN PRISON ON 30TH JUNE SERVING THE
INDETERMINATE SENTENCE¹

| | |
|------|-------|
| 1958 | 5 551 |
| 1969 | 8 290 |
| 1970 | 8 194 |
| 1971 | 8 235 |
| 1972 | 8 457 |
| 1973 | 9 024 |

However Table 5 (see p. 79) shows there has been a small decrease in the use of this sentence over the last few years. Table 5 illustrates very clearly what the sentencing pattern has been over the last ten years. Periodical imprisonment - which is rarely imposed - was introduced by the 1959 Prisons Act. Its aim is to punish an offender by keeping him out of gaol during working hours,

known to a number of Continental countries, the object of periodical imprisonment is to impose that stigma and thus deterrence, which a prison sentence carries - or should carry - while not conducing to loss of civil employment or complete disruption of family life.²

¹ Figures taken from the relevant annual prison reports. There is no significant difference by race of the numbers sentenced to the indeterminate sentence compared with any other long term sentence, e.g. from the total of 9 024 in 1973 approximately 60% were Africans, 25% Coloureds, 6% Whites and under 1% were Asians.

² Professor E. Kahn, Crime and Punishment, op cit., p. 219. Periodical imprisonment can be imposed from 100 to 1 000 hours, 20 hours counting as one day.

TABLE 5
DISTRIBUTION OF SENTENCES
1964-1973

| <u>Year ending June</u> | <u>1964</u> | <u>1965</u> | <u>1966</u> | <u>1967</u> | <u>1968</u> | <u>1969</u> | <u>1970</u> | <u>1971</u> | <u>1972</u> | <u>1973</u> | <u>1964-1973</u> | |
|--|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|-------------------|-------------------|
| | | | | | | | | | | | <u>% Increase</u> | <u>% Decrease</u> |
| Death Penalty | 157 | 124 | 138 | 143 | 115 | 107 | 95 | 100 | 91 | 79 | - | 50% |
| Life Imprisonment | 48 | 21 | 5 | 8 | 34 | 13 | 19 | 19 | 23 | 15 | - | 69% |
| Indeterminate Sentence | 1 004 | 935 | 1 052 | 1 690 | 1 580 | 1 223 | 1 253 | 1 243 | 1 085 | 1 082 | 8% | - |
| Prevention of Crime (5-8 years) | 1 227 | 1 418 | 2 026 | 2 371 | 2 127 | 1 656 | 1 678 | 1 889 | 1 821 | 1 747 | 42% | - |
| Corrective Training (2-4 years) | 3 785 | 3 829 | 4 512 | 4 113 | 3 585 | 3 431 | 3 313 | 3 297 | 3 296 | 3 229 | - | 15% |
| Two years and over | 5 537 | 5 431 | 6 933 | 6 618 | 5 964 | 7 409 | 8 399 | 8 559 | 9 685 | 9 625 | 74% | - |
| Over 6 months but less than 2 years | 17 467 | 16 821 | 19 521 | 18 408 | 19 052 | 21 485 | 20 700 | 24 262 | 23 817 | 22 405 | 28% | - |
| Over 4 months and up to 6 months | 24 969 | 22 807 | 23 203 | 25 240 | 31 049 | 35 913 | 31 940 | 32 479 | 29 540 | 32 070 | 28% | - |
| Over 1 month and up to 4 months | 109 007 | 100 999 | 118 786 | 141 361 | 145 456 | 158 481 | 148 198 | 145 229 | 132 283 | 108 538 | - | 4% |
| Up to and including 1 month | 133 228 | 131 394 | 162 472 | 222 927 | 276 745 | 265 713 | 268 548 | 256 246 | 238 478 | 184 583 | 39% | - |
| Periodical imprisonment | 333 | 332 | 214 | 243 | 217 | 201 | 224 | 388 | 388 | 421 | 26% | - |
| Corporal punishment (cane) | <u>475</u> | <u>407</u> | <u>281</u> | <u>342</u> | <u>336</u> | <u>439</u> | <u>294</u> | <u>354</u> | <u>415</u> | <u>406</u> | - | 15% |
| TOTAL | <u>297 237</u> | <u>284 528</u> | <u>339 143</u> | <u>423 464</u> | <u>486 260</u> | <u>496 071</u> | <u>484 661</u> | <u>474 065</u> | <u>440 922</u> | <u>364 200</u> | <u>23%</u> | |

Source: "Crime Punishment and Correction" NICRO Criminological Journal, Vol. 3 No. 3, October 1974.

Although this innovation has been welcomed by both the judiciary and academics, experience from other countries, particularly Belgium where weekend imprisonment is being abandoned, give pause for consideration. The Belgian authorities are very much in favour of a short prison sentence where the prisoner sleeps in prison every night but is released to his normal employment early in the morning returning to the prison at about 8 p.m. - in this way the prisoner can retain his employment and see his family for a few hours each day. However, they maintain that weekend imprisonment, which is usually imposed in Belgium for approximately 30 consecutive weekends, is very harsh and punitive, for the prisoner is kept apart from all other prisoners and has little other than reading to dissipate his boredom.¹

Table 5 also indicates a very considerable growth in the numbers of persons sentenced to two years' imprisonment or longer. At any one time the total number of persons serving sentences of two years and longer (including all sentences of over two years' duration) account for approximately half the daily prison population. This is a fact which is frequently forgotten due to the attention paid to the high incidence of short term offenders. In terms of the 1959 Prison Act all persons serving sentences of

¹The author records the beliefs of the Belgian authorities but feels he has insufficient knowledge of the subject to express any opinion.

over two years must be seen regularly by the Prisons Boards and an annual written report must be made to the Commissioner on the progress of these prisoners.

Prison Boards

In terms of S.5 of the 1959 Prison Act the Minister of Prisons may constitute one or more Prison Boards. The composition of such Boards is to a greater extent than before in the control of the Prisons Department due to, Section 5 subsection (3)(a) which states:

A prison board shall consist of so many commissioned officers as official members and so many non-official members, as the Minister thinks fit.

In practice the members of the Prison Boards are nearly always retired senior prison officers usually of the rank of Colonel. The duties of the Prison Boards are defined in Regulations 127 and 129 of the Consolidated Regulations and are a great deal more onerous than those contained in the 1911 Act. In effect they oversee each long term prisoner's treatment and training, make recommendations as regards training, the granting of privileges and gratuities, the remission of sentence and release either unconditionally or on probation/parole. In practice they see all long term prisoners every six months, and hear a verbal report on the prisoner's progress in the presence of the prisoner. In virtually all cases, the report is made by the officer responsible for the prisoner's daily work. A social welfare officer

is usually present to comment on the prisoner's home background and to make such enquiries as the Board may direct.¹

The Prison Board is of vital importance in the life of a long term prisoner. On the basis of a short interview² every six months, which usually consists of a verbal report by one person and a brief scrutiny of his prison record, particularly with regard to what the position was at the last interview and any disciplinary offences during the intervening six months, must be decided how the next six months will be spent. Thus in effect the officer in charge of the prisoner's work has very considerable influence over the prisoner's destiny. Experienced Prison Board officials can often tell when an officer is being unduly derogatory or complimentary about a prisoner, and can discount this bias. However this does not alter the fact that the prisoner's relationship with his employment officer is of paramount importance to his future. This matter is discussed in more detail in Chapter X.

(iii) Remission of Sentences

In terms of Regulation 119(1) prisoners serving sentences

¹For example a prisoner may be upset because his wife has stopped visiting or writing to him so the social welfare officer contacts the wife on the prisoner's behalf.

²Usually of 10 minutes' duration but there is no set period and conscientious Prison Board officials frequently spend up to thirty minutes with a prisoner who requires special attention.

of under two years may be granted remission of up to one-third of their sentence. There are various further qualifications on remission, including Regulation 119(5) which makes it clear that remission is not a legal right but is at the sole discretion of the Commissioner. In practice all such prisoners get one-third remission of sentence automatically and then forfeit periods of remission for prison offences. The marks system which still applied in 1952 was excluded from the 1959 Prisons Act.

(iv) Gratuities

The Lansdown Commission Report recommends considerably increased gratuities over those pertaining prior to 1947:

Gratuities should be earnable by prisoners of all races serving sentences of three months and over, women as well as men, whether qualified artisans or ordinary or maintenance labourers, on a scale according to the nature, amount and value of the work done. The rate of gratuity allowed to individual prisoners should be determined by the Superintendent of the prison in consultation with the welfare officer and the prisoner's instructors, and should be raised without undue delay as the prisoner becomes more proficient.¹

Unfortunately this recommendation was largely ignored.

Today only prisoners doing skilled work receive gratuities² - for 1974-75 the total gratuity estimate

¹Lansdown Commission Report, op cit., para 874, p. 129.

²See Chapter IX and recommendations in Chapter X.

is R160 000 for a daily average prison population of 100 000.¹ Not only do few prisoners receive gratuities but there are considerable delays between increases, usually a minimum of six months and frequently twelve months for an increase of only 50 cents per month.

The low gratuity scale and inadequate provision for giving prisoners money on discharge causes certain anomalies. It is not uncommon for a prisoner reaching the end of his sentence to be put on gratuity so that he can save some money for discharge although his standard of work is lower than the accepted standard to qualify for a gratuity. This is because in terms of the Prison Regulations the maximum a Non-European can be given on discharge is R1 and a European R2. These sums are usually only given to prisoners who have served sentences of two years or longer and have earned no gratuity. In addition to this money released prisoners are given rail warrants to their destination and money to buy food on the journey. All senior prison officials with whom the author has discussed this matter are agreed that these sums of money are totally inadequate and should be increased.² It is also dangerous to permit some prisoners to leave prison with their total savings which

¹ Estimates of the Expenditure to be defrayed from Revenue Account, Year ending 31st March 1975. R.P. 1974 Vote 46, p. 335.

² For 1974-75 the sum available for discharged prisoners has been reduced from R96 000 to R64 000 despite the larger prison population. Estimates of the Expenditure to be defrayed from Revenue Account, Year Ending 31st March 1975. R.P. 1974 Vote 46, p. 336.

may be over R100 for a long term prisoner. In such a case provision exists in the Regulations for the Prison Board to order that a proportion of the money be given into the care of NICRO or some other responsible body or person - in practice this very rarely happens; consequently there is a risk that the prisoner's savings will be rapidly squandered. The whole subject of gratuities is discussed in greater detail in Chapters IX and X. The basic concept in South Africa is that the prisoner really has to earn his gratuity which is as dependent on his good behaviour as on his work ability.

(v) Prison Discipline

There is no doubt that prison discipline is laxer in South Africa than it was at the time of the Lansdown Report but by the standards of most Western countries discipline is strict and the prison regime authoritarian. Prison Regulation 98 gives prison officers some guide as to the degree of discipline to be enforced.

Regulation 98

- (a) Discipline and order shall be maintained with firmness but in no greater measure than is necessary for security purposes and an orderly community life in prison.
- (b) In exercising control over a prisoner, a member or special warder shall, by personal example and sound leadership, endeavour to influence him towards good conduct.

- (c) The aim in treating the prisoner shall at all times be to promote his self-respect and to cultivate a sense of responsibility in him.

The disciplinary powers of the prison staff have altered little over the last thirty years. Perhaps the most notable changes have been that spare and reduced diet are now more strictly controlled so that each period of 30 days of spare or reduced diet must be followed by a period of 14 days on full diet.¹ Dietary punishment is usually accompanied by solitary confinement.

Another change has been in the imposition of corporal punishment by a prison official. Prior to the Lansdown Commission Report corporal punishment could be ordered by the head of a prison and the prisoner had no appeal against this sentence - a record of the punishment and the reasons for it were entered in the "Punishments Book" which was inspected by the visiting magistrate on the occasion of his next visit. In terms of S.56 of the 1959 Prison Act provision is made for the review of certain sentences for prison offences, particularly that of corporal punishment, by a Judge of the Supreme Court who can "confirm, set aside, alter or reduce the sentence or correct the proceedings as justice may require." The sentence of corporal punishment is suspended pending the judge's decision. However in terms of S.56(4)

¹S.54(e)(ii) of Prison Act 1959.

"No appeal shall lie against any conviction or sentence imposed under the provisions of Section 54."

In the case of really serious offences which merit a trial in prison the prisoner is entitled to be represented by his legal adviser.¹

The procedure for prisoner complaints has changed significantly since 1947. At that time prisoners could make complaints to the visiting magistrate who came regularly, usually once per month. Nowadays the inspection of the prisons is controlled by the Prisons Department² so complaints are heard by the prison officers. Every Sunday morning prisoners are paraded and after inspection the duty officer asks if there are any "complaints or requests". These are then entered in the "Complaints and Requests Book" and are dealt with.³

In terms of Regulation 103(3)(a)

if a prisoner has valid grounds⁴ for requesting an interview with the Commissioner, Deputy or Assistant Commissioner or Chairman of the Prison Board, he may submit a written request for such interview together with the grounds in support thereof, to the commanding officer.

¹S.58 of Prison Act 1959.

²See p. 88 infra.

³If a matter is urgent a prisoner can see the head of the prison on any day in terms of Regulation 103(1).

⁴Underlining by author.

In Terms of S.103(3)(b) the commanding officer must forward this request to the relevant person who may grant the prisoner an interview on his next visit. The great danger is of course that prisoners will be frightened to prejudice their future career in prison by making such complaints. This is very different from the system in Sweden where prisoners are free to write or telephone anybody, including the press, in order to air their grievances and seek redress.¹

The author has been unable to form any opinion from his visits to South African prisons whether prison discipline in South Africa is unnecessarily harsh or not.

(d) The Inspection of Prisons, Prison Staff

(i) Prison Inspection

In terms of S.25 of the 1959 Prison Act prisons are now inspected by commissioned officers of the Department of Prisons. Thus prisons are no longer officially inspected by the judiciary although in terms of Prison Regulation 104(2) judges of the Supreme Court and

¹See D.A. Ward, "Prison Reform in Sweden and Denmark," NICRO Criminological Journal, Vol. 3 No. 2 1974, pp. 55-57.

²February 1975. Discipline in prison is one of the matters currently being investigated by the Commission of Enquiry into the Penal System

magistrates can at all times visit any prison¹ or any section of any prison and can interview any prisoners and can bring any matter to the attention of the Commissioner of Prisons. In practice very few judges or magistrates exercise this right.²

The dangers of a prison system cut off from the community and free from independent judicial scrutiny require no elaboration. It is not suggested that anything sinister happens in the South African Prisons but for the protection of the Prison Department's good name there should be a system of regular independent inspection, preferably by the judiciary. This in turn would help the sentencing authorities by reminding them of what their sentences mean in human terms.

(ii) Prison Staff and Training

The present ratio of prison staff to prisoners is approximately 1 : 8, this is poor by international standards, particularly when the stated aim of imprisonment is to reform/rehabilitate prisoners in addition to retaining them in custody.³ The training of prison staff is a great deal better than it has ever been although one could say that there is an undue reliance

¹Magistrates are limited by Regulation 104(2)(b) to prisons within the areas of their jurisdiction.

²According to the 1972-73 Annual Prison Report during the period 30 judges and 33 magistrates visited prisons.

³See Chapters IX and X.

on custodial training and too little emphasis on treatment and teaching trainees the basics of psychology and social care as recommended by the Lansdown Commission. The average age of recruits is eighteen and the majority of recruits have not passed their matriculation examination.¹

The importance of the prison staff and their training is discussed in some detail in Chapters IX and X.

(e) Preparation for Release, Probation, Aftercare and Recidivism

(i) Preparation for Release, Probation and Aftercare

Virtually nothing is done to prepare a man for his release in the final stages of his sentence even for long term prisoners. This is due to the lack of trained staff. Europeans are more fortunate in this respect than Non-Europeans. A month or so prior to the release of a long term prisoner NICRO is contacted by the Welfare Section of the Prisons Department. A representative of NICRO interviews the prisoner in the presence of the Prison Welfare Officer and arrangements are made for his accommodation and employment on release. Where possible prisoners are encouraged to find their

¹Matriculation Standard 10 - equivalent to one year above the English 'O' Level which is taken at 15 or 16. The minimum educational entrance qualification to the prison service in South Africa is Standard 8 for Whites and Standard 6 for Non-Whites. Prison Regulation 8.

own employment as it is considered important that the prisoner should learn once again to start making decisions for himself.

Virtually all aftercare work in South Africa is undertaken by NICRO who have a staff of approximately 44 trained persons throughout the country. What NICRO achieves with its small staff and extremely limited financial resources is quite remarkable but they would be, and are, the first to point out that a proper probation and aftercare service is urgently required in South Africa.¹

(ii) Recidivism

With the present lack of statistics it is extremely difficult to calculate a realistic recidivism rate in South Africa. Of the persons sentenced during the period 1st July 1972 to the 30th June 1973 approximately 40 per cent were first offenders, consequently 60 per cent were recidivists. But of this 40 per cent of first offenders nearly 90 per cent were sentenced to imprisonment for under six months, and many of them will have been offenders under the laws specifically pertaining to Africans. Similarly a number of the recidivists will have been sentenced for these offences

¹See Chapter X for a discussion of the treatment of prisoners in the community and the role of the probation officer with particular reference to South Africa.

but no statistics are available to indicate what the percentage may be. Table 6 (see p. 96) shows the numbers of first offenders and recidivists admitted during this period, and an examination of this table will show the probability of an extremely high recidivism rate in South Africa.

The simple conclusion must be that the Prison Department's aim of reform and rehabilitation is not being achieved.

C.3 Sentencing and Judicial Discretion¹

Professor Kahn in his paper "Crime and Punishment" points out that on the one hand

there has been an enlargement of the types of sentence available to the courts, to allow for the individualisation of the penalty. But while in this respect judicial discretion and control has been widened, in other regards it has been narrowed, especially in three ways: first by legislative compulsion to impose particular sentences for specified crimes in certain circumstances - especially the imposition of a whipping or the indeterminate sentence ... secondly, by greater administrative discretion in the actual sentence to be served, even to the extent of radically changing it to another form; and thirdly - though to a very limited extent - by legislative directions to be taken into account by the court.²

Mr. Justice Steyn in his address to the University of South Africa Criminological Conference in Pretoria in 1973 laid

¹For more detail of sentences awarded in South Africa see Chapter IX. Table 4 Distribution of Sentences 1972-73, p. 634.

²Professor E. Kahn, Crime and Punishment, op cit., p. 193.

T A B L E 6

FIRST OFFENDERS AND RECIDIVISTS ADMITTED

| | <u>Whites</u> | | <u>Bantu</u> | | <u>Asiatics</u> | | <u>Coloureds</u> | | <u>Total</u> |
|--|---------------|---------------|----------------|---------------|-----------------|---------------|------------------|---------------|----------------|
| | <u>Male</u> | <u>Female</u> | <u>Male</u> | <u>Female</u> | <u>Male</u> | <u>Female</u> | <u>Male</u> | <u>Female</u> | |
| Not previously sentenced, with sentences of: | | | | | | | | | |
| Under six months | 2 019 | 151 | 105 248 | 24 893 | 629 | 46 | 8 449 | 2 610 | 144 045 |
| Six months to two years | 358 | 8 | 7 408 | 749 | 82 | 1 | 1 947 | 109 | 10 662 |
| Over two years | 77 | 4 | 1 416 | 150 | 8 | 2 | 305 | 18 | 1 980 |
| Death penalty | - | - | 11 | - | - | - | 7 | - | 18 |
| One previous conviction with sentences of: | | | | | | | | | |
| Under two years | 1 199 | 63 | 46 220 | 10 432 | 193 | 10 | 7 574 | 1 436 | 67 127 |
| Over two years | 133 | 1 | 1 430 | 101 | 6 | - | 442 | 23 | 2 136 |
| Death penalty | - | - | 8 | - | - | - | 8 | - | 16 |
| Two previous convictions with sentences of | | | | | | | | | |
| Under two years | 828 | 38 | 31 147 | 9 152 | 88 | 11 | 7 324 | 1 483 | 50 071 |
| Over two years | 148 | 3 | 1 992 | 82 | 7 | - | 800 | 22 | 3 054 |
| Death penalty | - | - | 6 | - | - | - | 3 | - | 9 |
| Three previous convictions with sentences of | | | | | | | | | |
| Under two years | 945 | 85 | 23 827 | 6 952 | 46 | 28 | 5 952 | 1 106 | 38 941 |
| Over two years | 180 | 2 | 1 949 | 95 | 16 | - | 594 | 25 | 2 861 |
| Death penalty | - | - | 5 | - | - | - | 5 | - | 10 |
| More than three convictions with sentences of | | | | | | | | | |
| Under two years | 1 294 | 116 | 19 321 | 5 791 | 275 | 45 | 8 314 | 2 421 | 37 577 |
| Over two years | 274 | 3 | 3 903 | 136 | 25 | - | 1 288 | 38 | 5 667 |
| Death penalty | - | - | 22 | 1 | - | - | 3 | - | 26 |
| <u>Total</u> | <u>7 455</u> | <u>474</u> | <u>243 913</u> | <u>58 534</u> | <u>1 375</u> | <u>143</u> | <u>43 015</u> | <u>9 291</u> | <u>364 200</u> |

93.

some emphasis on the legislature's faith in deterrence and the interference with judicial discretion of mandatory sentences.

The South African legislature has for some decades placed great emphasis upon sanction as the principal force sustaining law and order. Much legislation was enacted creating offences and prescribing penalties. The ambit of the death penalty was extended, a system of compulsory sentences was introduced and mandatory sentences were prescribed for offences viewed with particular disapproval.

The results were not those sought by those who drafted and enacted these provisions. An abnormally high prison population was the result. Yet crime increased apace and little or no determinable long-term benefits were experienced - in the sense of any significant decline in anti-social conduct.¹

In the last few years judicial discretion has been extended.

Compulsory whipping was abolished and

compulsory sentences - although remaining on the statute book - were rendered discretionary, provided the judicial officer found circumstances justifying the imposition of a lesser penalty.²

Mr. Justice Steyn concludes:

Despite protestations from the judiciary and academicians there has been no perceptible change in the attitude of the legislature towards punishment over the last 25 years. It is true that some of the harsher and more brutal forms of punishment such as whipping are no longer compulsorily prescribed. On the other hand it would seem as if there is still great reliance upon punishment in itself.³

¹Mr. Justice J.H. Steyn, "Reform and the Provisions Concerning and Processes Affecting Punishment in South Africa." UNISA Criminological Conference, Pretoria, 1973, p. 2.

²S.335A introduced by S.20 of Act No. 9 of 1968 into the Criminal Procedure and Evidence Act.

³Mr. Justice Steyn, op cit., p. 4.

The dangers of an over-reliance on punishment particularly in a multi-racial country like South Africa are described in the following chapter under the social costs of crime.¹ It is to be hoped that the authorities will heed the words of the late Mr. Pelser, spoken in 1968 at the opening of Victor Verster Prison when he was Minister of Justice:

The past has unquestionably shown that harsh and inhuman prison sentences have not brought about a decrease in crime. In consequence the conviction has arisen, and it is today accepted, that the prisoner should rather be treated positively in an effort to rehabilitate him ... In the past too much reliance has been placed on the easy and convenient formula that quick and effective punishment is the only remedy for crime.

In the following chapter the cost of crime in South Africa is examined briefly both with regard to the financial cost and the short and long term social implications of a crime rate which is the highest recorded anywhere in the world.

¹See pp. 174-179.

CHAPTER IITHE COST OF CRIME IN SOUTH AFRICA

- A. THE PURPOSE OF A STUDY INTO THE COST OF CRIME
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Continued

C.1 The Extent and Economic Impact of Certain Crimes (continued)

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Continued

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D. THE SOCIAL COST OF CRIME

E. THE NEED FOR RESEARCH INTO THE COST OF CRIME

C H A P T E R I ITHE COST OF CRIME IN SOUTH AFRICAA. THE PURPOSE OF A STUDY INTO THE COST OF CRIME¹

In South Africa there has never been an attempt to analyse the cost of crime whether that cost be the economic and social costs to the State or to private individuals. Yet crime affects everybody either directly as a perpetrator or a victim of a criminal offence, or less directly through the payment of taxes levied in part to meet the costs of the public services concerned with the administration of the criminal justice system with all its ramifications. These public economic costs are considerable, during 1974-75 the budgets voted for the Departments of Police and Prisons in South Africa were over R200 million, in addition there are the costs of the courts, social welfare and the health services. These sums are very substantial yet the public accounting system concentrated exclusively on how the funds have been spent, not on whether these funds have been spent to the best possible advantage. Cost effectiveness studies have many drawbacks but at least they do require the setting of goals and some attempt at measuring whether these goals have been achieved.

¹The author is indebted to Professor J.P. Martin - Professor of Sociology and Social Administration at the University of Southampton - for correspondence and articles on the cost of crime. Although these were received after the author had completed his own brief survey the research design criteria outlined by Professor Martin and J. Bradley in their "Design of a Study of the Cost of Crime," British Journal of Criminology, October 1964, pp. 591-603 were of considerable assistance.

In 1967 the United States President's Commission on "Law Enforcement and the Administration of Justice" were hampered in their investigations by the acute shortage of statistical information related to the economic cost of crime, the cost of public law enforcement and the administration of justice.

Economic factors relating to crime are important in the formation of attitudes and policies. Crime in the United States today imposes a very heavy economic burden upon both the community as a whole and individual members of it. Risks and responses cannot be judged with maximum effectiveness until the full extent of economic loss has been ascertained. Researchers, policymakers and operating agencies should know which crimes cause the greatest economic loss, which the least, on whom the costs of crime falls and what the costs are to prevent or protect against it, whether a particular or general crime situation warrants further expenditure for control or prevention and, if so, what expenditures are likely to have the greatest impact.¹

As a result of the Commission's recommendations a central office was established for the collection of crime data, particularly data on the cost of crime. This information has been extensively used by administrators responsible for policy decisions, and has concentrated attention on the importance of cost benefit with regard to the prevention of crime and the treatment of offenders.

These then are two of the main purposes of any study into the cost of crime, the gathering together of data on the different financial aspects of the cost of crime to provide basic information for informed discussion of the economic implications

¹The Challenge of Crime in a Free Society - A report by the President's Commission on Law Enforcement and the Administration of Justice (U.S. Government Printing Office, 1967), p. 32.

of crime. Without such information there is the risk that administrators will over-react to public outcries on some aspect of crime or its treatment, and under-react to some less obvious matter of greater significance. Typically the public are concerned with escapes from imprisonment, as for example in England when the spy Blake escaped from a maximum security prison,¹ so administrators tighten security with little attention as to whether the money allocated for this purpose would be better employed in some other way.

Secondly administrators must decide on the allocation of public funds between the competing claims of different services.

In very simple terms related to South Africa, will an expenditure of X million rands on housing and social facilities for Non-Europeans lead to a saving of Y in the costs of the police, prisons, social welfare, medical services and so on, due to a decrease in crime, particularly crimes of violence? Without adequate statistics on each of these costs administrators are compelled to rely on their experience which may be extremely limited in this field.

Thirdly alternative methods of dealing with some matter may not be significantly different in non-economic terms. In

¹This escape resulted in the Mountbatten Commission which advocated far greater security in prisons without any consideration as to the penological significance of such measures.

such cases their adoption or otherwise could be influenced by their relative costs. For example research in Finland comparing the effectiveness in terms of rehabilitation between ordinary prisons and open work camps resulted in no significant difference between the two methods of treatment in terms of reconviction rates but work camps were substantially cheaper.¹

Fourthly Professor Martin and J. Bradley in their "Design of a Study of the Cost of Crime"² suggest that

it might be possible to use the results of research to predict trends of costs by paying attention to underlying demographic factors liable to be overlooked in the course of day-to-day administration. In the Health Service, for example, Abel-Smith and Titmuss were able to demonstrate the importance of the relation between marital state and hospital in-patient treatment. It seems reasonable to hope that the asking of fundamental questions in the field of crime may have similarly revealing results.³

As suggested above there is considerable scope for the analysis of demographic factors in relation to crime in South Africa, particularly with regard to crimes committed by Non-Europeans, and the prediction of the rise and fall in the extent and cost of crime from the initial settlement of a Non-European township until it settles down and develops a community identity.

¹Paavo Uusitalo, "Recidivism After Release from Closed and Open Penal Institutions," British Journal of Criminology, July 1972 Vol. 12 No. 3. The author has reservations about the relevance of Dr. Uusitalo's findings regarding recidivism for more than half his sample were imprisoned for drunken driving or offences committed while the offender was drunk. Imprisonment either open or closed is of limited value in dealing with drunkenness.

²Professor Martin and J. Bradley, op cit., p. 593.

³B. Abel-Smith and R.M. Titmuss, The Cost of the National Health Service, (C.U.P. 1956). This research was the first example in Great Britain of applying the techniques of social accounting to a social service. It had a profound effect on the deliberations of the Committee of Enquiry into the Cost of the National Health Service.

Finally little research has been done into the related questions of the cost of the prevention of crime and the losses suffered by victims. The prevention of crime is largely the responsibility of the State but the greater the incidence of crime in any society the more money and time the private sector will have to spend in additional security measures unless it is prepared to bear the costs of being a victim. Like all aspects of crime this has both economic and sociological implications. In recent years there has been increasing attention paid to the "victims" of crime, and in some countries laws have been enacted to provide compensation for the victims of crime. Such measures imply community responsibility for the prevention of crime, and a social duty to compensate the victim. However on economic grounds, although possibly unacceptable socially, it may be cheaper to compensate the occasional victim than to provide costly preventive measures. A balance must be found between the social and economic costs. The costs of a murder hunt can be very considerable, but, for the protection of society and the prevention of crime, the certainty of apprehension is the most effective deterrent to crime, consequently these costs may be justified - but in some cases they may not be justified.

All these matters require research as to the incidence and cost of different crimes. The importance and implications of such research was discussed in 1968 by the United Nations in the

broader aspect of social defence policies.¹ The matter was further discussed at the Fourth United National Congress on the Prevention of Crime and Treatment of Offenders held in Kyoto, Japan, during August 1970. In May 1970 the cost of crime and crime control was the theme for the Second International Symposium in Comparative Criminology held in Quebec. At this symposium papers were read on cost benefit analysis and planning in relation to the administration of justice, and the evaluation of gains and losses to the national economy resulting from certain criminal activities and other matters directly related to the cost of crime.²

Despite the attention paid to the cost of crime at these international conferences there is still comparatively little research that has been published on this subject.³ One of the main problems is the vast scope and complexity of the

¹Meeting in Geneva, August 1968 of the U.N. Consultative Group on the Prevention of Crime and Treatment of Offenders - Report ST/SOA/91 - in particular the discussion on the working paper prepared by the U.N. Secretariat ST/SOA/SD/CG22/UP2.

²Szabo et al. The Cost of Crime and Crime Control. Analysis of the work of the Second International Symposium in Comparative Criminology held in Quebec, April 29 to May 2 1970. Published by Information Canada, Ottawa 1971. See also "The Cost of Crime and Social Defence Against Crime," Summary of Second International Symposium in Comparative Criminology Quebec 1970, Acta Criminologica 1970-71, pp. 196-205.

³For America see Mark S. Richmond - Assistant Director Bureau of Prisons, U.S. Department of Justice, "Measuring the Cost of Correctional Services," Crime and Delinquency, July 1972. In West Germany - A. Neu, "An Economic View of Corrections," Z. Strafvollzug, 1972 20/6.

subject. In England Professor J.P. Martin¹ and J. Bradley in their "Design of a Study of the Cost of Crime" have outlined what they consider the most important aspects of the subject which both require investigation and can be investigated without too many assumptions. In particular they planned to investigate the costs of the Public Services which dealt with the prevention of crime and the detection, conviction and treatment of offenders. Secondly they considered the expenditure by potential victims on the prevention of crime, and the losses incurred by victims. Finally they wanted to draw up a balance sheet of a number of individual criminal careers to find out how much had been spent on these persons and with what effect.

Research on the scale envisaged by Martin and Bradley is beyond the scope of this thesis. They anticipated that owing to the lack of relevant information it would take a research team a number of years to prepare a worthwhile report and as a result the research still remains to be done. In this brief and inadequate survey the author has attempted to highlight certain aspects of the cost of crime in South Africa where the data produced by sound research can be of real value to those respons-

¹See (1) J.P. Martin and J. Bradley "Design of a Study of the Cost of Crime," op cit.
 (2) J.P. Martin, "The Cost of Crime: Some Research Problems" - International Review of Criminal Policy No. 23, pp. 57-63 - complementing the 'Study' referred to above and dealing with the private costs of crime and some of the sociological implications.
 (3) J.P. Martin, "Could Crime Cost Less," Science Journal September 1970, pp. 53-57.
 (4) J.P. Martin and Gail Wilson, The Police: A Study in Manpower (Heinemann Educational Books, 1969).

ible for the allocation of public funds. No attempt is made to calculate the overall cost of crime in South Africa for the lack of basic information is such that one would be compelled to make so many major assumptions that the final figure would be of little value.

B. THE SCOPE AND LIMITATIONS OF A SURVEY INTO THE COST OF CRIME

B.1 Definition of Cost of Crime - Economic and Social Costs

The term "cost of crime" is useful for describing the subject under review but it is ambiguous and requires definition. In America the Wickersham Commission Report¹ of 1931 distinguished between the "immediate cost", being the current burden on society, and the "ultimate cost", conceived as the loss in income due to crime,² but they decided that it would be impracticable to analyse cost in this way. The 1967 U.S. President's Commission on Law Enforcement and Administration of Justice attempted to

¹The National Commission on Law Observance and Enforcement (The Wickersham Commission) Vol. V, The Cost of Crime, U.S. Government Printing Office, Washington 1931. This was the first major study of the cost of crime in the English language.

²"How is the economic cost of crime to be determined? Theoretically, the cost on an annual basis to the country as a whole could be arrived at by determining (a) the actual annual national income; and (b) what the annual national income would be if there were no crime. The result reached by subtracting the first factor from the second might then fairly be said to be the annual economic cost of crime to the country. But any such procedure is obviously impracticable." Ibid., p. 34. Quoted from J.P. Martin and J. Bradley in "Design of a Study of the Cost of Crime," op cit., p. 594.

work out the economic cost of separate crimes:

Knowing the economic impact of each separate crime aids in identifying important areas for public concern and guides officials in making judgements about priorities for expenditure. Breakdowns of money now being spent on different parts of the criminal justice system, and within each separate part, may afford insights into past errors. For example, even excluding value judgements about rehabilitative methods, the fact that an adult probationer costs 38 cents a day and an adult offender in prison costs \$5,24 a day suggests the need for re-examining current budget allocations in correctional practice.¹

This method has the merit that it focusses attention on the extent and economic importance of certain crimes, and clearly one can not express social values in monetary terms, but how the actual cost of each crime has been calculated is extremely suspect. For example in the case of homicide the economic cost has been calculated including the lost potential earnings of the victim. This involves so many assumptions regarding health, life expectancy, and earning capacity that the conclusions are too vague to be of any value.² The author in this survey has considered the incidence and where possible the economic implications of certain crimes but has made no attempt to place a financial cost upon each crime. The purpose has been to indicate that there are certain aspects of crime in South Africa which are of very considerable economic and social cost to the community.

¹The Challenge of Crime in a Free Society, op cit., p. 32.

²Until the early 1970's such surveys calculated women's wages as being approximately half that of men, this is unacceptable with today's virulent assault on male chauvinism.

Secondly the author has considered the economic costs of those public services which are in some way connected with crime. However, public services such as the Police have functions other than that specifically related to crime. In England research has shown that traffic duties absorb between one quarter and one fifth of police time, while specific anti criminal activities occupy a similar period. The remaining 50 per cent of police time is spent on general purpose activities to do with civil order and internal organisation.¹ In South Africa in addition to their non-criminal duties the Police are employed in a quasi-military role in countering terrorist activities on the borders of South Africa and Rhodesia; no separate cost is distinguished for these activities in the Annual Budget of the Department of Police. As Martin and Bradley emphasised:²

recognition of the importance of the functional basis of the inquiry also entails the use of supplementary surveys in order to estimate the appropriate proportions into which expenditure should be subdivided. For example, there is no adequate a priori way of dividing police expenditure under the heads mentioned above and, at the same time, excluding that part unrelated to crime. Guess work would be possible, but as the overall magnitude of the costs involved is substantial a small percentage error would relate to millions of pounds. Not only are such surveys essential for this purpose, but they are likely also to provide a considerable amount of information useful either for research or administration purposes.

The author has had neither the time nor the facilities to

¹J.P. Martin in Science Journal 1970, op cit. referring to research contained in The Police: A Study in Manpower, by J.P. Martin and Gail Wilson (Heinemann Educational Books 1969).

²J.P. Martin and J. Bradley, "Design of a Study of the Cost of Crime," op cit., p. 598.

undertake such surveys so only the overall costs can be given with some explanatory information.

On several occasions the social costs of crime have been mentioned. Although these are less tangible than the economic costs of crime and consequently have received far less attention in the author's survey they must not be considered any the less important. This is particularly true of a multi-racial State such as South Africa with its differences in cultures and with the allocation of public expenditure totally controlled by the White minority. Because the Black majority has less influence on the Government than the White electorate there is a danger that their social needs will be given a lower financial priority than other matters of immediate importance to that electorate. In the short term this can give rise to a very high crime rate among the Black population partly due to their social conditions (slum housing, lack of educational facilities and so on),¹ in the long term the neglect of these social conditions can not but exacerbate racial feelings.

B.2 Delineation of Crime

Finally any survey of the cost of crime must delineate what is to be included under the term crime. In practice

the term is used in a variety of senses ranging from the broadest - anything which might be the subject of prosecution in a criminal court - to

¹See Chapter III infra.

the narrowest, an offence against the criminal law definitely involving moral guilt. Some usages are legal and technical, others also involve attitudes as to the moral guilt involved.¹

In South Africa the laws specifically relating to Africans (the pass laws) involve no element of moral guilt on the part of the Africans, yet for the year ended 30th June 1973 they constituted 24,2 per cent of all cases sent for trial for law infringements.² These cases occupy a great deal of the time of the police, the courts and the Department of Prisons, yet strictly they are not criminal offences. Any detailed survey of the cost of crime in South Africa would not be complete without a section on these laws. However the author has confined himself to those crimes involving some element of moral guilt and for which there are some meaningful statistics.

B.3 Limitations Due to the Lack of Adequate Statistics

This brief survey does not pretend to be comprehensive but if nothing else it emphasises the almost total lack of statistics and relevant detail relating to both the incidence of crime and the cost of crime in South Africa. The

¹J.P. Martin and J. Bradley "Design of a Study of the Cost of Crime" op cit., p. 595.

²Report of the Commissioner of the South African Police for the year ended 30th June 1973, R.P. 50/1974. Fortunately there was a substantial decrease in prosecutions compared with the previous year. Number of cases:

| <u>1971-72</u> | <u>1972-73</u> |
|----------------|----------------|
| 615 825 | 515 608 |

Government Bureau of Statistics has never published detailed statistics as to the cost of crime although statistics are available as to the number of cases reported to the police and convictions.¹

Efforts by the author to obtain detailed information from insurance companies, the Registrar of Insurance Companies, and bodies such as the Insurance Council of South Africa, on the amount of money paid out in claims for theft, motor accident claims, malicious damage, arson and other insurable risks with a criminal element, met with very limited success.² Owing to the dearth of statistical information any survey on the "Cost of Crime" in South Africa can only be a very rough estimate with many quantitative assumptions. Far more detailed information is required and this can only be obtained with government assistance.

This survey of the cost of crime in South Africa specifically concentrates on the extent and economic impact of certain crimes, the economic cost to both the public and the private sector of preventing crime, dealing with offenders, and being victims of crime, and finally a brief outline of the social costs of crime.

¹See Department of Statistics Report No. 08-01-06 entitled "Statistics of Offences and of Penal Institutions 1969-70."

²Contact was made with the following:

1. Registrar of Building Societies and Insurance Companies
2. Insurance Council of South Africa
3. The African Insurance Record
4. Eight of the leading insurance companies, only one of whom admitted to having relevant statistics and who was prepared to help on condition that its identity was not disclosed.

C. THE ECONOMIC COST OF CRIME

C.1 The Extent and Economic Impact of Certain Crimes

(a) Crimes Against the Person

(i) Homicide - Road Deaths

In America

the economic impact of crimes causing death is surprisingly high. For 1965 there were an estimated 9 850 homicide victims. Of the estimated 49 000 people who lost their lives in highway accidents, more than half were killed in accidents involving either negligent manslaughter or driving under the influence of alcohol.¹

In South Africa during the period 1st July 1971 to 30th June 1972² a total of 11 686 persons died as a result of culpable acts of violence. (See Table 1 on following page.)

Attempting to measure the cost of these deaths, in terms of lost earning capacity, as was done in America, is valueless. However these 11 069 persons represent 47,5 per 100 000 of the

Continued overleaf

¹"The Challenge of Crime in a Free Society," op cit., p. 34.

²Annual Report of the Commissioner of South African Police, 1971-72, RP23/1973.

population - or more than double that rate for 1960, which was 21,8 per 100 000.¹

T A B L E 1

ACTS OF VIOLENCE

(1 July 1971 - 30 June 1972)

| | <u>Whites</u> | <u>Coloured</u> | <u>Asians</u> | <u>Bantu</u> | <u>Total</u> |
|--|---------------|-----------------|---------------|--------------|---------------|
| Murder | 118 | 543 | 55 | 5 004 | 5 720 |
| Culpable Homicide ² | 869 | 438 | 75 | 3 388 | 4 770 |
| Infanticide | 5 | 8 | 1 | 80 | 94 |
| Faction Fight | - | - | - | 235 | 235 |
| Assault | 6 | 24 | 1 | 203 | 234 |
| Public Violence | - | - | 2 | 14 | 16 |
| Other Culpable Acts (included railways and aeroplane accidents) | 61 | 13 | 3 | 540 | 617 |
| TOTALS | 1 059 | 1 026 | 137 | 9 464 | 11 686 |

¹Homicide Rates for Selected Countries (per 100 000 of Population)

| <u>Country</u> | <u>Rate</u> | <u>Year Reported</u> |
|-----------------------------|-------------|----------------------|
| Colombia | 36,5 | 1962 |
| Mexico | 31,9 | 1960 |
| South Africa | 21,8 | 1960 |
| United States | 4,8 | 1962 |
| Japan | 1,5 | 1962 |
| France | 1,5 | 1962 |
| Canada | 1,4 | 1962 |
| Federal Republic of Germany | 1,2 | 1961 |
| England/Wales | ,7 | 1962 |
| Ireland | ,4 | 1962 |

Table taken from "The Challenge of Crime in a Free Society," op cit., p. 30. Possibly the 1960 South African figure was differently composed.

²Culpable Homicide - the majority of cases occur on the roads. Annual Survey of South African Law, p. 435.

Road Deaths

In South Africa during 1970 a total of 7 948 persons were killed on South African roads.¹ The official statistics show that only 81 of the drivers involved in these fatal accidents were drunk and a further 81 had their judgement seriously impaired by drink. However the Director of the South African Road Safety Council states

As far as driving under the influence of alcohol is concerned, 10 451 drivers were convicted of this offence in 1971. In 1972 the figures rose slightly to 10 510. It must be remembered, however, that probably only a fairly small percentage of offenders are actually convicted. Figures available to us indicate that almost one half of the drivers involved in fatal collisions had concentrations of 0,10 grams of alcohol per 100 millilitres of blood. In single vehicle accidents, 57 per cent of all drivers killed had more than 0,10 grams of alcohol per 100 millilitres. Throughout the world the indications are that in 50 per cent or more road accidents, alcohol has played a definite role.²

The high cost of motor vehicle accidents is dealt with later - what must be emphasised is the hidden figure of death due either to drunkenness on the part of the driver or the drunkenness of pedestrians. (Pedestrian fatalities represent 45 per cent of all South African road deaths.)³

¹Road Traffic Accidents 1970. Report No. 12-01-04 published August 1972.

²Letter from Dr. Uken - Director of National Road Safety Council - to the author dated 30th July, 1974.

³National Road Safety Council Report for period ended 31st March 1973, p.7.

(ii) Assault

In South Africa during 1971-72 there were 294 097 cases of assault reported to the police - the vast majority being assaults by Blacks on Blacks - this is approximately 1 050 assaults per 100 000 of the population, or slightly more than one person in ten is assaulted every year.¹

This is ten times the rate for America during 1965.

What is more the dark figure concerning assaults in

South Africa is considered to be extremely high. It

is reasonable to assume that the dark figure amongst

the Non-European population is far greater than amongst

Europeans. For most Europeans to report an assault is

relatively simple either by telephone or by going to

the police. For Non-Europeans there may well be no

telephone in the vicinity and the nearest police station

may be several miles away involving a comparatively

expensive and time consuming trip by public transport.²

The number of assaults is such that the police force are

unable to investigate each case in the detail that they

might wish, consequently the person reporting the assault

may well feel he has wasted his time. Finally, in many

cases the victim has a thoroughly justified fear of

retaliation should the offence be reported to the police.

When comparing South African crime figures with those of

¹In America during 1965 there were 100 serious assaults for every 100 000 persons. The Challenge of Crime in a Free Society, op cit., p. 3

²Expensive in relation to the victim's income.

other countries it should be remembered that approximately half the African population live in rural areas often remote from contact with the White authorities.¹ Thus the reported crime figures may well underestimate the true picture, or the crime rate in certain localities, such as the Non-European townships, may be a great deal higher than one would appreciate from the limited statistics available.

There has been no detailed research into the incidence of causes of assaults in South Africa and none whatsoever into the economic costs occasioned by a typical assault.² The author has listed those costs which could be involved in a typical assault case. A very similar list could be prepared for homicide or any other offence against the person, assault has been selected because it is by far the most common offence of this nature.

¹Estimated population of South Africa as at June 1974 as issued by the Department of Statistics:

| | <u>Number</u> | <u>Percentage</u> |
|----------|---------------|-------------------|
| African | 17 745 000 | 71,2 |
| White | 4 160 000 | 16,7 |
| Coloured | 2 306 000 | 9,3 |
| Asian | 709 000 | 2,8 |

Rand Daily Mail, 18th September 1974.

²In Cape Town a brief report was published by Jaycee Cape Town in 1969 entitled Victims of Violence. This was a study of the characteristics of 2 000 assault victims, and the circumstances and consequences of assaults in Greater Cape Town.

Costs of a typical assault case

(a) Costs to Victim

1. Medical Treatment - Injury to Victim requiring his conveyance to hospital by ambulance and his treatment in hospital - drugs, medical attention etc.
2. Release from hospital - period of convalescence either with or without pay, possible rights to state assistance, and/or insurance for injury.
3. Pain suffering, inconvenience. Probable return to out-patients, transport costs. Possible cost of relation or friend missing work to take care of victim during convalescence.
4. Loss of earnings by victim.

(b) Employer

Cost to employer of lost productivity etc.

(c) State

1. Department of Health - Cost to State for medical attention etc.
2. Department of Police - Cost of investigation of case and apprehension of offender.

3. Department of Prisons - Cost of holding accused pre-trial assuming no bail or inability to pay bail.
4. Legal Aid¹ - or lawyer's fees.
5. Department of Justice - Cost of trial procedures etc.
6. Department of Prisons - Costs of keeping convicted prisoner.
7. Department of Social Welfare and Pensions
 - (a) Social Welfare contact with prisoner's family, possibly financial aid granted to family.
 - (b) Grants by Department of Social Welfare to non-Government bodies concerned with social welfare e.g. NICRO and various Church bodies.
 - (c) For Non-Europeans financial aid to families is given by Departments of Bantu, Coloured and Indian Affairs.
 - (d) Pre-release possible contact between welfare officer and the prisoner to make provision for release.

¹See page 159 for Legal Aid.

- (e) Release - possibly on Probation - cost of probation officers.

The economic costs occasioned by one major assault are very considerable. The author is convinced that more detailed research into the causes of crimes of violence will demonstrate that the particularly high incidence of these crimes in the Non-European townships is largely due to the socio-economic and political position of those who live there.¹ Furthermore experience from other countries has shown that the improvement in social conditions and the level of education can lead to a dramatic decrease in crimes of this nature.

One can not assess the pain and suffering occasioned by such acts of violence, nor measure in economic terms the fear inspired by an actual assault or the possibility of assault. One can not measure the disruption of normal social life brought about by the fear of going out at night, or of the fear of leaving one's children unattended.

In America a survey conducted in high crime areas of two large cities found that:

¹See A. Russell, "The Association Between Crimes of Violence and the Socio-Economic Status of the Cape Coloured People of the Cape Peninsula." Unpublished Master's Thesis, University of Cape Town, 1966.

In America a survey conducted in high crime areas of two large cities found that:

1. 43 per cent of the respondents say that they stay off the streets at night because of their fear of crime.
2. 35 per cent say that they do not speak to strangers any more because of their fear of crime.¹

No such survey has been published in South Africa in recent years, nor are detailed statistics available as to the incidence of crimes of violence in the Black townships.²

The existing evidence suggests that the vast majority of crimes of violence in South Africa take place in the townships and that many people have a very real fear of going out at night.³ It is disquieting to note that the numbers of Black policemen have declined from 15 537 in 1969 to 15 218 in 1972.⁴

An important side effect of a high crime rate, particularly crimes of violence, is the gradual acceptance by society of criminal acts, which in turn leads to an increase in lawlessness. Lombroso noted that

¹President's Commission "Challenge of Crime in a Free Society," op cit., p. 5.

²House of Assembly Debates Vol. 40 Col. 541 (14 March 1972).

³NICRO are currently investigating the incidence of crimes of violence in certain Coloured townships in Cape Town.

⁴Annual Report of the Commissioner of the South African Police (RP23/1973) - the most recent report available at the time of writing.

the certainty of apprehension and conviction was a more effective deterrent than savage punishment.¹ In the major cities of Northern Ireland today the police are unable to carry out normal investigations, or even normal traffic control duties in certain areas, for fear of being killed. This has led to an enormous increase in all manner of crime, and the growth of a generation of young people who have never known a lawabiding society.² A significant impediment to peace in Northern Ireland is that gunmen and their associates have developed an effective protection racket which will end with peace and resumption of normal police activities.³

In South Africa in October 1972 Mr. Justice V.G. Hiemstra referred to Black townships as crime developing areas. This was due, in his opinion, to the lack of security and stability in these townships.⁴ The long term costs for society of this developing subculture of violence could be very considerable.

¹In South Africa Mr. Justice V.G. Hiemstra in 1972 stressed the importance of certainty of detention, NICRO 1973, No. 1, p. 42.

²See footnote - for very low homicide rate in Ireland pre recent disturbances.

³Interview in 1973 with General Sir Harry Tuzo, G.O.C., Northern Ireland.

⁴Mr. Justice V.G. Hiemstra in Rand Daily Mail, 5th October 1972, also in NICRO Journal No. 1 of 1973, p. 42.

(b) Crimes Against Property

Crimes against property are the most common offences involving moral guilt in most societies. The economic cost of these crimes is particularly difficult to assess. Where property is damaged or destroyed the loss is obvious both to the victim and in the withdrawal of wealth from the economy. Theft does not destroy wealth but merely transfers it involuntarily from the victim, or perhaps his insurance company, to the thief.

(i) Unreported commercial theft

In America commercial theft, mainly direct stealing of cash and merchandise, shoplifting and manipulation of the accounts and stock records constitute between 1 per cent and 2 per cent of the total sales of retail enterprises.¹ In practice these crimes are largely dealt with by business itself, consequently estimates for these crimes are somewhat haphazard.

In South Africa losses from shoplifting have been estimated as being between R50 million and R150 million per year,² but the NICRO report on shoplifting indicated that these figures were guesswork as there are no comprehensive statistics on losses due to shoplifting nor are separate figures kept of prosecutions for shoplifting.³

¹"Challenge of Crime in a Free Society," op cit., p. 32.

²K.D. Nunes, "Shoplifting: Controlling the Losses," NICRO, Autumn 1974, p. 3.

³Ibid., pp. 2-3.

(ii) Robbery, Burglary, Larceny and Motor Car Theft

No figures exist in South Africa concerning the economic cost of robbery, burglary, larceny or motor car theft. None of the major insurance companies keep records of the annual sums paid out by them in the different categories such as fire, theft, motor car theft. Consequently one can only note the incidence of cases reported to the police and recommend that the government asks insurance companies to make an annual report of claims paid out separated into various categories - in this way a better knowledge of the composition of these different costs may help in forming policies to counteract these crimes.

During 1971-72¹ 454 729 cases of crimes against property were reported to the police (1970-71: 430 837).² Of these 26 574 cases were stocktheft³ and 88 232 were burglaries. Unfortunately fuller details of prosecutions and convictions are only available for 1969-70⁴ - see Table 2 on the following page.

¹Report of the Commissioner of South African Police, 1971-72, op cit., p. 12.

²Report of the Commissioner of South African Police 1970-71, RP40/1972, p. 12.

³4 594 cases (17,3%) of the stock theft cases were unfounded.

⁴Statistics of Offences and of Penal Institutions 1969-70. Report of Government Bureau of Statistics No. 08-01-06 July 1972, Table 4 i

T A B L E 2
PROPERTY OFFENCES - 1969-70

| <u>Offences</u> | <u>Prosecutions</u> | <u>Convictions</u> |
|--|---------------------|--------------------|
| Burglaries | 24 958 | 5 874 |
| Theft from the person by force or threats | 16 561 | 6 390 |
| Stock Theft | 13 120 | 8 361 |
| Other Thefts | 81 709 | 51 331 |
| Includes Auto Theft | 3 383 | 1 929 |

The number of offences gives no indication of the actual cost of these crimes, either in terms of property stolen or in the cost of police time and effort spent in investigating these crimes and recovering stolen property.

Motor vehicle theft has an importance beyond its number of convictions in that it is so frequently committed by young persons and can be the first step in a criminal career. In 1969-70 of the total of 1 929 persons convicted of motor vehicle theft in South Africa 536 were aged between 18 and 20 years.¹

(iii) Embezzlement: No figures exist in South Africa.

¹Statistics of Offences and of Penal Institutions, 1969-70 Report No. 08-01-06, Table 4.2, p. 21.

(iv) Fraud and Forgery

Total of 3 870 prosecutions 1969-70 with 2 259 convictions for all frauds and forgeries.¹

(v) Property Destroyed by Arson and Malicious Damage

Insurance companies and insurance bodies were unable to give details of claims paid out separating accidental fires from arson - in fact no details were available even for fire claims separated from other claims.

In 1969-70 there were 832 prosecutions for arson and 311 convictions. During the same period there were 11 326 prosecutions for malicious damage and 5 502 convictions, of these 20 per cent were aged between 18 and 20 years.²

In Cape Town the City Treasurer's Department estimated during 1974 that vandalism was costing the city R250 000 per annum.³

(c) Other Crimes

(i) Driving Under the Influence of Alcohol

As discussed previously in the section on homicide

¹Statistics of Offences and of Penal Institutions, op cit Table 4.1, p. 11

²Ibid., Table 4.2, p. 21.

³Mr. Steed - Treasurer's Department of Municipality of Cape Town 1974.

the convictions for drunken driving reflect only a small percentage of those accidents in which alcohol has played a significant role. The most recent figures for the cost of accidents are for 1968 and were compiled by the National Institute for Road Research of the Council for Scientific and Industrial Research. The total cost for 1968 was R68,11 million¹ - assuming that 50 per cent of these accidents were partly due to alcohol, and ignoring the other accidents in which there was a criminal element, the cost of R34 million per annum is 50 per cent more than the R23,7 million spent on the Department of Prisons in the Republic of South Africa and South West Africa for the year 1968-69.²

(ii) Tax Fraud

No figures were available for the cost of income tax fraud in South Africa. During the period 1969-70 there were 6 198 prosecutions under the income tax laws and 4 149 convictions - of the convictions 2 981 were Whites and 712 were Asians.³

¹ Figures supplied by the National Road Safety Council 30.7.1974.
Average cost per Accident:

| <u>Degree of Accident</u> | <u>South Africa (R)</u> | <u>Great Britain (£)</u> |
|---------------------------|-------------------------|--------------------------|
| Fatal | 3 015 | 16 980 |
| Serious Injury | 2 063 | 11 230 |
| Light Injury | 674 | 220 |
| No Injury | 406 | 90 |

² Annual Prison Report, year ended 30th June 1971 (RP101/71), p. 1.

(iii) Abortion¹

No figure exists for the cost of abortion in South Africa. The number of prosecutions are so small that one must conclude that this is an offence which is not vigorously prosecuted. In 1969-70 there were 73 prosecutions for abortion and only 39 convictions. New legislation widening the scope of legal abortion is currently before Parliament.

(d) Illegal Goods and Services

(i) Drugs (Including Dagga Offences)

No figures exist for the cost of offences against the legislation covering drugs and dagga.² However during 1971-72 there were 36 680 prosecutions for offences against dagga legislation made up as follows:

| | |
|-----------|--------|
| Bantu | 26 356 |
| Coloureds | 7 943 |
| Whites | 2 876 |
| Asians | 1 347 |

In all a total of 2 177 408 009 kilograms of dagga were confiscated, at current blackmarket prices this would have been sold for R19 441 142.³ As discussed

¹The author excluded the pass laws from this analysis on the grounds that they were offences involving no moral guilt. Some people would argue that abortion, although an offence in South Africa, involves no moral guilt.

²The Abuse of Dependence Producing Substances and Rehabilitation Centres Act 41 of 1974.

³Report of the Commissioner of South African Police 30th June, 1972 op cit., p. 7.

earlier the consumption of dagga by the Bantu in South Africa is recorded in the earliest histories of the country, and is a part of their culture.

The cost to the State of preventing the introduction of drugs into South Africa is considerable.¹ In contrast the finance granted to Rehabilitation Centres for the treatment of drug addicts and alcoholics is extremely meagre, being R880 800 for 1974-75.

(ii) Prostitution

As with abortion there is seemingly little police action countering prostitution in South Africa. During 1969-70 there were only 11 convictions for keeping a brothel, 13 convictions for living on the proceeds of immorality and 10 convictions for procuration.

(iii) Offences Concerning Alcohol

(a) Public drunkenness

The economic cost of public drunkenness, as with so many offences, can only be measured in terms of the cost of its control by the police, court actions, and in a few cases the

¹This cost is clearly infinitesimal compared with the economic and social costs of dealing with a drug problem such as exists in the United States of America.

cost of rehabilitation centres. As described in Chapter 4 it is current practice (1974) to restrict the numbers of prosecutions for public drunkenness. Drunks are held until they sober up and are then released. However the cost of drunkenness in terms of family suffering, broken homes and neglected children is very considerable.¹ During 1971-72 there were 135 798 prosecutions for public drunkenness.² Treatment facilities for alcoholics are very limited. For Whites there are positions for 350 men and 50 women at the four certified retreats and halfway houses. In 1969-70 these facilities cost the Department of Social Welfare and Pensions R85 459 but these facilities have been rapidly improved.³

(b) Illegal Possession of Bantu Liquor and Other Liquor Offences

During 1971-72 there were 31 463 cases of illegal possession of Bantu Liquor sent for

¹ See Social Costs of Crime, op cit., p. 174.

² Report of the Commissioner of South African Police, p. 4. Conviction figures have not been published - but in 1969-70 there were 122 028 prosecutions and 111 726 convictions. The convictions were made up as follows: Whites: 9 200; Coloureds: 64 341; Asians: 1 118; Bantu: 41 067

³ Report of the Department of Social Welfare and Pensions 1966-70. RP2/1974.

| <u>Estimates of Expenditure</u> | <u>1973-74</u> | <u>1974-75</u> |
|--|----------------|----------------|
| Rehabilitation Centres (State) | R270 000 | R277 000 |
| Rehabilitation of Alcoholics and Drug Dependents | R259 800 | R880 800 |

trial, and 35 645 other liquor offences. The cost to the State is both the police and judicial costs and the cost of lost tax revenue. It can not be too frequently stressed that in the townships the "shebeens" tend to be highly conducive to crime. The legalising of Municipal Bottle Stores in the townships has not led to a decline in the importance of the shebeens as had been hoped - and which was one of the official reasons for introducing these Bottle Stores contrary to the wishes of the township directors.¹

(e) Gambling

Fortunately South Africa has no problem of organised crime on the scale of the mafia, or other organised crime syndicates, which thrive in America. In America the President's report commented

Perhaps most important, it is the proceeds of this crime tariff (on gambling) that organised crime collects from those who purchase its illegal wares that form the major source of income that organised crime required to achieve and exercise economic and political power.²

(f) Organised Crime in South Africa

(i) Gangs

Organised crime in South Africa can be divided into two sections which overlap to a limited extent. The

¹See footnote, p. 217.

²The Challenge of Crime in a Free Society, op cit., pp.34,35.

first is the township gangs both African and Coloured with their subcultures of violence.¹ Their direct cost to the economy is very significant in that they are responsible for so many crimes of violence which result in death or hospital treatment for their victims.

Burglary, theft, vehicle theft, vandalism and arson are all associated with these gangs. Township prostitution and the organising of shebeens are either under their control or their protection. Their terrorism restricts the social life of the townships and breaks down the normal fellowship between people which leads to a stable society.

Drug Peddling² is far less organised in South Africa than in America or certain parts of Europe. Addiction to hard line drugs is extremely rare, and there are seemingly no organised rings of peddlars of hard drugs. On the other hand dagga (marijuana) is so plentiful in South Africa - as it grows here - that there is little difficulty in obtaining it, consequently there is no sophisticated chain of dagga pushers.

¹G.L. Ndabandaba (Lecturer in Criminology, University of Zululand), Crime and the African, NICRO Journal, June 1974, pp. 35-37.

²Interview on November 22nd 1974 with the South African Police in Cape Town.

(g) The Significance of Obtaining More Detailed Knowledge as to the Economic Costs of Particular Crimes

The economic costs of crimes against the person have been dealt with in some detail and the specific medical costs of treating victims of assault are discussed later under the heading "Medical Costs of Crime". In England during 1974 one hundred and forty two persons were murdered.¹ This compares with 6 421 persons murdered in South Africa from the 1st July 1972 to the 30th June 1973.² Nobody in South Africa has any idea what these crimes cost the community every year, that it is tens of millions of rands can not be disputed. Without detailed research into these costs, those responsible for the allocation of public funds³ will continue to remain ignorant of the fact that by not providing adequate social conditions⁴ in the first place they are loading the costs of some other sector. For example the lack of housing and other amenities in the Greater Cape Town Area has a direct bearing on the high crime rate of the Cape Coloured

¹Daily Telegraph, 8th February 1975.

²Annual Report of the South African Commissioner of Prisons 1972-73, p. 6. A further 5 105 persons died as victims of culpable homicide.

³Both State funds and local authority funds.

⁴Housing, education, recreational facilities etc.

People.¹ Responsibility for housing rests with the Cape Town Municipality and the Divisional Council of the Cape who are financially aided by the State. The tardiness of these two bodies in providing these facilities has significantly contributed to the crime rate in the area.² However these Councils are not financially responsible for many of the ensuing costs such as that of the departments of Police, Prisons or Social Welfare. If local authorities were responsible for these costs, or if they had to pay a portion of the costs involved in the apprehension, trial and treatment of each offender found guilty of committing an offence in their area, then they would soon appreciate the necessity for providing better living conditions and other social amenities. Such a scheme is neither so far fetched nor so impracticable as it may seem on first consideration. Before the establishment of central State administration each local community was responsible for bearing the costs of its offenders. Today's system of public accounting is so remote that it is easy for the community to forget that crime is a community responsibility.

¹Estimated Coloured Population June 1974: 2 306 000 (Estimate of South African Department of Statistics, Rand Daily Mail, 18 Sept. 1974). Coloured Persons in Custody on June 1974: 18 632 (this is approximately half the entire British prison population). Minister of Prisons, Hansard 2 Col. 694, 1974. 52 267 Coloured Persons imprisoned during the period 1st July 1972 - 30th June 1973. Report of the Commissioner of Prisons RP91/1973, p. 6.

²The crime rate, particularly crimes of violence, in certain of the Non-European townships of the Cape Peninsula is probably higher than anywhere else in the world that keeps statistics - the qualification probably is due to the extent of the dark figure for crimes of violence. See Chapter III infra.

With adequate information on the cost of property crimes individuals and public bodies could then decide how much money they were prepared to spend in countering or protecting against such crimes. In South Africa the State spends practically no money in educating people in crime prevention and in creating awareness to the possibility of crime. In Cape Town during 1974 motor cars to the value of R1 million were stolen.¹ Unfortunately no statistics are available as to what percentage of these cars were locked. Research findings in America have shown that the ease of opportunity to take a car significantly contributes to auto theft. South Africa would be wise to follow the legislation passed in the Federal Republic of Germany in 1960 which made the following a part of the highway code:

Passenger cars, stationwagons, and motorcycles should be equipped with an adequate safety device against unauthorized use of vehicles. The locking of the doors and removal of the ignition key are not regarded as safety measures within the meaning of the preceding sentence.²

In this case detailed statistics on the economic cost of car theft could help administrators decide between the comparative costs of car theft and the cost of effective locking devices.³

¹Cape Times, February 12th, 1974.

²The Challenge of Crime in a Free Society, op cit., pp. 260-261.

³The social costs of car theft are not inconsiderable for such crimes are so frequently perpetuated by young offenders, see p. 124 supra.

Police Numbers¹

| <u>Year</u> | <u>White</u> | <u>Non-White</u> | <u>Total</u> | <u>Ratio of Police per 100 000 Pop.</u> | <u>White</u> | <u>Non-White</u> |
|-------------|--------------|------------------|---------------------|---|--------------|------------------|
| 1970 | 16 346 | 15 531 | 31 877 | 1,56 | 16 430 | 2 873 |
| 1971 | - | - | 32 109 ² | 1,40 | - | - |
| 1972 | 17 063 | 15 218 | 32 281 | 1,48 | 15 806 | 3 524 |

(b) Cost of Department of Prisons

As can be seen from Table 5 (p. 142) the costs of the Department of Prisons have risen from R8,5 million in 1960-61 to an estimated R55 million in 1974-75 - a rise of nearly seven times in fifteen years. During this same period the daily average prison population has risen from 55 762 persons to an estimated 98 000 in 1974-75 (1972-73: 95 015).

The sum of R55 million for 1974-75 is made up as follows:

T A B L E 3³

| | <u>1974-75</u> | <u>1973-74</u> |
|---|----------------|----------------|
| A. Salaries, Wages and Allowances | R39 580 000 | R27 850 000 |
| B. Subsistence and Transport | 1 786 000 | 1 401 000 |
| C. Postal, Telegraph and Telephone | 215 000 | 226 000 |
| D. Printing, Stationery, Advertisements and Publication | 185 000 | 148 000 |
| E. Miscellaneous Expenses | 363 000 | 346 000 |
| F. Supplies and Services | 13 132 000 | 10 683 000 |

¹Unless otherwise stated the figures are taken from the Annual Surveys of South African Law 1970 and 1972.

²1971. 32 109 represents the authorised establishment of police as per Annual Report of Commissioner of Police 1972-73, Annexure III, p. 17.

³Estimates of the Expenditure to be defrayed from Revenue Account Year Ending 31st March 1975. Vote 46, RP 2/1974, p. 333.

(i) Salaries and Staff Numbers

By far the greatest increase is in salaries which have risen by almost R12 million between 1973-74 and 1974-75, being a rise of almost one third. This rise was to counter inflation and to bring prison officers' pay into line with that of the Police. During 1972-73 there were a total of 12 782 prison staff compared with an estimated total of 12 905 for 1974-75 - so clearly the rise is in the salaries themselves rather than in the number of staff, although some of the new staff will be recruited to the treatment side of the Prisons Department and consequently will command far higher salaries than the custodial staff.¹

In 1960-61 there were just under 5 000 prison staff for a daily prison average of 55 762 persons, or 1 staff to 11 prisoners, by 1974-75 this will have risen to approximately 13 000 staff for 98 000 prisoners, or an average of 1 staff to 7,5 prisoners. This compares with 15 000² staff in the English Prison Department on the 1st January 1969 to deal with 35 000 persons (includes borstal boys) - this is a ratio of 1 staff to 2,3 prisoners. In 1974 the prison staff earned £42 million³ - slightly over half the cost of the prison system - whereas in South Africa the salaries

continued on p. 143

¹See Table 4.

²See Chapter VII - Survey of Prison Labour in England and Wales.

³England. Annual Prison Report 1973, Appendix 4, p. 86.

T A B L E 4Whites¹Salary Scales 1975

| | |
|--|-------------------|
| Commissioner of Prisons | R16 800 per annum |
| Chief Deputy Commissioner | R15 600 per annum |
| Deputy Commissioner | R14 400 per annum |
| Assistant Commissioner | R12 600 per annum |
| Colonels | R9 900 - R11 700 |
| Lt. Colonels | R7 740 - R9 540 |
| Majors | R6 300 - R7 380 |
| Captains | R5 340 - R6 660 |
| Lieutenants | R4 380 - R6 060 |
| Warrant Officer (formerly Chief Warder) | R3 300 - R5 820 |
| Sergeant Class 1 (formerly Head Warder) | R2 700 - R5 340 |
| Warder | R1 440 - R4 380 |

Non-Whites

| | |
|---|-----------------|
| Coloured Captains | R4 380 - R5 340 |
| Coloured Lieutenants | R3 450 - R4 740 |
| Non Commissioned Officers' pay ranges from | |
| Senior Chief Warders | R2 580 - R4 380 |
| down to Warders with Standard 8 or 9 level education who are paid | R1 350 - R2 700 |

¹Details obtained from the Department of Prisons, March 1975.

TABLE 4 (continued)Africans

| | |
|-------------|-----------------|
| Lieutenants | R2 700 - R2 900 |
|-------------|-----------------|

Non Commissioned Officers' pay
ranges from

| | |
|---------------------|-----------------|
| Senior Chief Warder | R1 980 - R3 600 |
|---------------------|-----------------|

| | |
|----------------------------|----------------|
| To Warder Standards 8 or 9 | R 900 - R2 100 |
|----------------------------|----------------|

T A B L E 5

| <u>Year</u> | <u>Cost of Prisons Department including South West Africa</u> | <u>Nos. of Prison Staff</u> | <u>Daily Average Prison Population Sentenced and Unsentenced</u> |
|-------------|---|---------------------------------|--|
| 1910 | R 494 000 | 2 847 | 15 000 |
| 1930-31 | R 1 279 156 | 2 541 | 19 681 |
| 1940-41 | R1 423 406 | 2 551 | 20 837 |
| 1950-51 | R 3 690 384 | 3 250 | 28 266 |
| 1960-61 | R 8 478 567 | 4 991 | 55 762 |
| 1965-66 | R15 493 000 | 7 403 | 74 033 |
| 1970-71 | R30 295 000 | 11 919 | 91 108 |
| 1971-72 | R37 140 000 | 12 265 | 91 253 |
| 1972-73 | R38 785 000 | 12 782 | 95 015 |
| 1973-74 | R40 654 000 | - | 98 851 ¹ |
| 1974-75 | R55 261 000 | 12 905 (estimate) | 100 000 (estimate) |

(The Capital costs for 1974-75 were R9 744 300)

¹Statement by Minister of Prisons in the Senate on 25th August 1974 giving the prison population as at 30th June 1974. Senate Hansard 2 Col. 694.

for 1974-75 of R40 million (£25 million) represent over 70 per cent of the cost of the prison system. Drawing comparisons between salaries in different countries with different costs of living and different tax structures is a hazardous venture. However, on balance there is no doubt that the prison staff in South Africa are better off per hour worked than those in Britain.¹

The low ratio of prison staff to prisoners indicates that the prison system in South Africa is custodial rather than treatment orientated.² If there is to be a reasonable possibility of effective treatment for the majority of prisoners the ratio of staff to prisoners must be raised. This can be done by either increasing the numbers of staff or decreasing the numbers of prisoners or preferably both. With today's prison population of approximately 100 000,³ in order to have a staff prisoner ratio of 1 : 2,5 will require a trebling of the existing prison staff. This would cost the State a further R80 million per annum.⁴ Experience from other

¹In Britain the Prison Officers substantially supplement their pay by working many hours of overtime. During 1971-72 prison staff in England and Wales cost £42 million for a prison population daily average of approximately 38 000. Total Current Expenditure for the English Prisons Department 1971-72 was £70 million, salaries forming four sevenths of the total cost. Annual Prison Report 1972, pp. 96-97.

²In Sweden the ratio is 1 : 1, in America approximately 1 : 5, see pp. 499 infra.

³February 1975.

⁴Assuming that the new staff were recruited in the same salary categories as the present staff.

countries, particularly Japan, Sweden, Holland and America¹ has shown that it is a great deal less expensive to treat offenders in the community than to imprison them. Community treatment requires an effective probation service, preferably making use of volunteer probation officers acting under the guidance of trained officers.² There is no published evidence that non custodial treatment of offenders is any less effective in rehabilitating offenders than prison treatment.

(ii) Prisoners' Pay and the Contribution of Prison Labour to the Costs of the Department of Prisons

The expenditure items B, C, D and E³ are insignificant in comparison with "Salaries" and "Supplies and Services." However, under "Miscellaneous" one item requires comment. A sum of R160 000 has been allocated for the payment of gratuities to prisoners. When one considers that the estimated daily average prison population is approximately 100 000 prisoners it is obvious that R160 000 spread over an entire year will not go very far. There is inevitably some correlation between prison pay and the output of prison labour.

¹See Chapter VII and Chapter X.

²See Chapter X.

³See Table 3, p. 138.

Income from Prison Labour 1972-73

- | | |
|---|--|
| 1. Cash Receipts 1972-73 | R2 571 301 (for hire of labour to private persons. Includes South West Africa) |
| 2. Prison Labour supplied to Government Departments | R4 050 476 |
| 3. Agricultural Produce at Market Prices | R2 592 701 |
| 4. Workshops (Raw Materials utilised) | R1 816 337 |
| 5. "A sum of R400 000 in respect of sale of furniture to Government Departments and uniforms to the Prison Service will be recovered and paid to Revenue." ¹ | |
| 6. In addition there is the value of building work performed by the Building Section of approximately R2 950 000. ² | |

It is interesting to compare the South African revenue from Prison Labour with that of other countries.³ In England during 1972-73 the industrial workshops produced

¹Vote 46 1974, p. 336.

²Statistical Report of Commissioner of Prisons, 1972-73, op cit., p. 13.

³It is appreciated that this comparison can only be very approximate due to different methods of costing and different rates of hiring out labour. The purpose of the comparison is to emphasise that an expenditure of R160 000 on gratuities is a false economy.

goods to the value of over £10 million with a work force of approximately 15 000 inmates (Total Prison Population 33 000 excluding borstal inmates and young people). This work showed a profit of over £1 million.¹ The Farms and Gardens Section in England sold over £2,25 million of produce (R3,8 million) using an average work force of 2 378 person.² This compares with South Africa's produce of R2,6 million using approximately six thousand prisoners.

T A B L E 6

PRISON INDUSTRIES³

| <u>Country</u> | <u>Approx. No. of Prisoners Employed</u> | <u>Value of Produce</u> | <u>Profit</u> |
|----------------------------------|--|---------------------------------|--|
| Belgium | 2 562 (1972) | 100m francs (R2m) | 18m francs (R350 000) |
| England | 15 000 (1972-73) | £10m (R16m) | £1 million (R1,6m) |
| South Africa | 2 600 (1972-73) | R1,8m of raw materials utilised | |
| Sweden | 2 096 (1973) | 65,4m crowns (R11m) | Contributed 8,9m crowns to fixed costs (R1,5m) |
| Japan | 37 313 (Dec.1972) | 7 715m Yen (R17,8m) | Yes |
| U.S.A. Federal Prison Industries | 23 366 | US \$54m (R36m) | \$6,6m (R4,4m) |

¹Annual Prison Report England and Wales 1972, p. 48. Excludes loss made by occupational workshops.

²Ibid. Only just over 1 000 were employed in farming. p. 420.

³Compiled from Annual Prison Reports and replies to author's questionnaire.

Prisoner gratuities are discussed in some detail under J in the section on South African Prisons Today.¹ The basic principle is that prisoners only receive a gratuity if they are involved in skilled or semi-skilled work - this is at variance with Standard Minimum Rule 76 for the Treatment of Prisoners which states that "there shall be a system of equitable remuneration of the work of prisoners."² However, just as important as the breach of the Standard Minimum Rules - which South Africa normally adheres to - is the lack of motivation for the prisoners to try hard. In England prison remuneration is considered too low by those responsible for directing prison labour, yet in 1972 a sum of £888 488 (R1,4 million) was allocated for the 39 281 prisoners, or almost nine times as much money for only 40 per cent of the number of prisoners. It is probable that prison labour in South Africa will be more productive if better paid. The increased costs being met by the increased value of goods produced. This is discussed in Chapters IX and X.

It is clear that prison labour in South Africa is not being used as financially productively as in several other countries. This is unfortunate for 100 000 persons represent a very considerable work force which

¹See also international prison pay scales in Chapter VII, Table 4, p. 371.

²Quoted from "Prison Administration in South Africa." Published 1969 by the Department of Foreign Affairs of the Republic of South Africa, p. 43.

could be organised to contribute substantially to the costs of the Department of Prisons. This could be achieved without conflicting with Standard Minimum Rule No. 72(a) for the Treatment of Prisoners. Rule 72(a) states:¹

1. The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.
2. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

In South African prisons the emphasis is on the training of prisoners rather than on productive work to contribute to the costs of the prisons. The effectiveness of this training is discussed in Chapter IX. It is the author's contention that training and productive work can to some extent be combined to the mutual advantage of both prisoners and the financing of the Department of Prisons.

¹Standard Minimum Rules for the Treatment of Prisoners. U.N. A/Conf/6/1 Annex. 1.A.

(iii) Prisons Department Cost of Supplies
and Services - R13 million

Significant Items:

| | |
|--|--------------|
| Rations | R4,1 million |
| Medical, Dental etc. | R3,1 million |
| Clothing and Bedding | R2,1 million |
| Equipment, Plant etc. | R3,4 million |
| Material Assistance to Prisoners on Discharge | R64 000 |

This last sum for "material assistance to Prisoners on discharge" of R64 000 compares with the sum of £970 000 allocated in England during 1971-72 for the same purpose, for a prison population two-fifths the size of South Africa's. Nobody disputes that one of the most difficult periods for ex-prisoners is their first week or two of freedom, particularly if they have no immediate employment. In South Africa only very few prisoners are given help to find employment, and it may be that lack of money predisposes some to commit criminal acts which could have been avoided. This is the view of many experienced members of the South African Judiciary, Prisons Department and NICRO. It would seem that the parsimony in assistance to prisoners on discharge is rewarded by the additional costs of an unnecessarily large number of recommitments within only a few days of discharge. Once again research is needed to ascertain whether this is so or not.

In the South African Prisons Budget no sum is specifically allocated for either staff or prisoner education and training, save for R5 000 for "class and examination fees and diploma courses." In Britain, where prisoner education is of low priority, a sum of approximately £1,5 million was allowed in 1971-72 for education and recreation - four sevenths being for the 32 469 persons in prison, and three sevenths for the 5 253 borstal inmates and 1 559 detention centre detainees. The fact that no sum is specifically allocated for the education of prisoners in South Africa is significant, particularly as their general level of education is below the national average. As the Lansdown Commission stated in 1947

Generally it may be asserted that the higher the attainment of a nation in the general and vocational education of its people the less likely will be the tendency of members of the community to disregard the rights of others or develop anti-social behaviour.¹

In South Africa it is estimated that a prisoner will cost R1,54² per day during 1974-75 as compared with R1,18³ in 1973-74 and R1,11⁴ in 1972-73; and R1,06⁵

¹Lansdown Commission Report 1945, op cit., para 87, p.13.

²Estimates of Expenditure 1974, op cit., Vote 46, p.336.

³Ibid.

⁴Estimates of Expenditure Year Ended 31.3.1973, p.170.

⁵Ibid.

in 1971-72. In England during 1971-72 a prisoner cost just under £5 per day.¹ In America in an article published in 1972 the costs of the correctional services were measured for 1965 by the National Council on Crime and Delinquency. This article highlighted the enormous cost of treating people in prison as opposed to in freedom and calculated that in 1965 it cost 38 U.S. cents per day for adult probation, whereas treating a juvenile in detention cost \$11.15 per day.² The trend in developed countries is to treat offenders in the community rather than in prison whenever this is possible. Thus in many countries³ the prison population has actually declined in recent years. Treatment outside prison is very considerably cheaper than custodial treatment - for not only is the cost of the actual prison building saved,⁴ and the substantial custodial costs, but the prisoner can remain in society, hopefully contributing to the country's gross national product and maintaining his dependants. For extra-custodial treatment to be effective there must be a well organised Probation Service.

¹ £1 568 per annum in prison and £1 926 in borstal. Annual Prison Report England and Wales 1972, pp. 86-87.

² Mark S. Richmond - Assistant Director, Bureau of Prisons. U.S. Department of Justice in Crime and Delinquency, July 1972, p. 244.

³ For example, Japan, England, Holland and several U.S. States.

⁴ In England the 1972 Annual Prison Report (P 87) amortized the annual cost at 1971 prices of providing one new place, including staff housing, in a Closed Prison as £968. Today, November 1974, this sum will have risen to approximately £1 300 per place.

The author has been unable to find any follow up study of released prisoners that has ever been conducted in South Africa. The current recidivism rate is just under 60 per cent but this lowish rate is largely due to the high proportion of first offenders committing minor crimes, during 1972-73 more than 90 per cent of all first offenders were sentenced to under six months imprisonment. Two conclusions can be drawn from this which would probably be corroborated by research. The first is that the majority of first offenders could be treated extra custodially, and in fact would be so treated in those countries with a developed probation service. The second is that if these first offenders and all pass law offenders were excluded from the prison population it would be found that South Africa's recidivism rate is very high by international standards. If this is so it would be reasonable to question whether the present system of dealing with offenders is the best possible allocation of the funds available. Such questions can only be answered by vigorous independent research into the cost effectiveness of the corrections system.

(c) Cost of Welfare Services

No detailed attempt has been made to calculate the cost of crime in terms of either social welfare, or the cost

of the welfare services.¹ The cost of crime to third parties, the indirect victims of crime, is discussed separately. Unfortunately the author found it impossible to separate the various costs of the welfare services in order to distinguish what sums could be attributed to crime and which were for normal welfare work. For example a sum of approximately R24 million will be spent in 1974-75 on "Child Welfare";² some of this will be spent on the care and maintenance of orphans and related matters while a portion will be spent maintaining families where the parents have been found by the courts to be unfit to take care of their children.³

In this review only those costs which are reasonably clearly attributable to crime or quasi-criminal activities have been included. Probation - or rather the paucity of probation - is considered, as are the costs of "Rehabilitation Services," the costs of social workers, the state aid to NICRO and finally the cost of legal aid.

¹Such research would have involved a disproportionate amount of time and effort in relation to the other sections of the thesis. Not only is relevant detail extremely difficult to obtain, but the matter is further complicated in that the different racial groups are administered by different departments i.e. Bantu Administration Department, Coloured Affairs, Indian Affairs, and the Department of Social Welfare and Pensions.

²RP2 1974 Vote 25, p. 169.

³In England Professor Martin estimated for 1967-68 that of the total of £55 million spent on child care only £5 million was attributable to the costs of maintaining delinquent children. Professor J.P. Martin, Science Journal, September 1970, p. 56.

(1) Probation

Probation in South Africa is administered by different departments for the different racial groups. The author has been unable to obtain any figures as to the number of probation officers in South Africa. It seems probable that the only really effective probation officers for adult offenders are those employed by NICRO, who numbered 41 in 1974-75 - these dealt almost exclusively with White offenders. The Department of Social Welfare and Pensions is responsible for white children who are put on probation.

In practice in South Africa the vast majority of prisoners - even excluding those imprisoned for pass law offences - are Africans. However, there are very few trained African probation workers. It has been suggested that:

the new methods of treatment of offenders, such as probation, parole, and after-care, lend themselves admirably to easy adoption in the society in Africa today. This is in view of the fact that there is going on apace a process of partial break-up of the traditional patterns of the family or extended family.¹

In South Africa it is probable that in the close knit communities of migrant workers African probation officers would be extremely successful, as they would be in the country areas where tribal traditions remain strong. Among urban Africans, who have discarded their tribal culture, it is probable that a probation and after-care

¹Dr. T.D. Elias (1969) 27/International Review of Criminal Policy 18. Dr. Elias was at the time Attorney-General of the Federation and Commissioner for Justice, Nigeria. Quoted from Justice J.H. Steyn's paper "Public Participation in the Prevention of Crime" 88 South African Law Journal 1971, p.221.

service would be no more or less successful than with any other race group.¹

(ii) Rehabilitation Services

Whether community orientated programmes are effective in rehabilitating/reforming offenders is unproven.

What has been proved over the last two hundred years is that imprisonment does not necessarily reform criminals - it certainly punishes them and possibly deters a few, but it does not per se fit them to re-enter society.

In South Africa attempts to solve the crime problem have been almost exclusively restricted to the law enforcement agencies. In 1972-73 the cost of police and prisons was R151 million,² for 1973-74 the sum was R220 million and for 1974-75 a sum of R261 million has been allocated for these two services.³ These sums should be compared with the following estimates⁴ for rehabilitation services.

| <u>1971-72</u> | <u>1972-73</u> | <u>1973-74</u> | <u>1974-75</u> |
|----------------|----------------|----------------|----------------|
| R313 000 | R437 000 | R532 000 | R1 160 000 |

¹Dr. Martin West - School of African Studies, University of Cape Town.

²Charges on Revenue Account.

³The R220 million and R261 million have been obtained from the Department of Statistics, Statistical Survey 74-75.

⁴Estimate RP2 1974. Estimates of the Expenditure to be defrayed from Revenue Account during the year ended 31.3.1975. Also estimates RP2 1972 of the Expenditure to be defrayed from Revenue Account during the year ended 31.3.1973.

These funds were subdivided as follows for 1971-72 and 1972-73:¹

| | <u>1971-72</u> | <u>1972-73</u> |
|---|----------------|----------------|
| State Rehabilitation Centres | R170 000 | R225 000 |
| Registered Private Rehabilitation Centres | R105 000 | R150 000 |
| Prevention and After Care Services | R35 000 | R59 000 |

These funds were subdivided as follows for 1973-74 and 1974-75:²

| | <u>1973-74</u> | <u>1974-75</u> |
|--|----------------|----------------|
| State Rehabilitation Centres | R270 000 | R277 000 |
| Rehabilitation of Alcoholics and Drug Dependents | R259 800 | R880 800 |
| Grants in Aid (Salvation Army) | R2 200 | R2 200 |

Although the contribution to State Rehabilitation Centres has been raised by R7 000, in real terms this is a decline, for inflation in South Africa during this period was approximately 10 per cent, while the wages of state employees was raised by a minimum of 15 per cent. The contrast between the sums spent on the Department of Prisons as compared with those spent on rehabilitation

¹Rehabilitation Services Act 41 Of 1971. 1971-72 and 1972-73 figures from p. 275 of RP2 1972.

²RP2 1974, p. 175.

centres reveals a reliance on custodial treatment which does not seem to be justified by the high rate of recidivism.¹

It is gratifying to see that the grant for the Rehabilitation of Alcoholics and Drug Dependents has been raised substantially, for drink plays a very significant role in crime, particularly crimes of violence. The 1969 Report "Victims of Violence" stated:

About 50 per cent of Coloured, African and White victims (of assault) showed signs of intoxication, there being no significant difference between the sectors. About 57 per cent of the Coloureds and 45 per cent of the Africans claimed that their assailants were obviously intoxicated. The role of alcohol in facilitating tendencies to aggression is thus strikingly confirmed.²

The need for state action to discourage drunkenness was discussed in relation to the cost of crimes due to drunkenness. According to the South African National Council on Alcohol (SANCA) there is an urgent need for more facilities and treatment centres for alcoholics.

Interestingly less than 1 per cent of victims admitted to having consumed cannabis (dagga) prior to their attack.

¹Particularly the adjusted recidivism rate once first offenders sentenced to 6 months or under are removed.

²Gerald L. Stone, Victims of Violence, op cit., pp. 10 and 12.

Certainly the apparently negligible involvement of cannabis fails to support the popular notion that it plays a major role in the genesis of aggression, or even in diminished social judgement by the victim.¹

Unfortunately no details are available as to how much of this money is spent on cases where help is required as a result of crime - either for the victim and his family or for the family of the offender.

(iii) National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO)

For the financial year ended 28th February 1975, NICRO - the main body engaged in prisoner welfare work in South Africa - received over R190 000 in donations from the Sunday newspapers,² while only R120 000 was received from the State.³ On a total budget of approximately R300 000 NICRO undertakes pre-sentence investigation of prisoners' backgrounds and family situation, helps prisoners' families and maintains contact and communications between prisoners and their families during imprisonment, helps the prisoners to find employment on release,

¹Ibid., p. 16.

²The Sunday Times and Rapport run special crossword puzzles every year and send the proceeds to NICRO. The Sunday Times was particularly generous during 1974/75 giving additional funds.

³Detail supplied by NICRO, March 1975.

runs hostels for discharged prisoners and in addition publishes a Criminological Journal which is the main platform for penal reform in South Africa. NICRO's effectiveness is limited by the finances at its disposal - more money spent in this and other welfare work might well help to reduce the sums spent on the police and prisons. It is ludicrous to compare the sum of R120 000 given by the State to NICRO with the R261 million being spent on the Police and Prison Services.

(iv) Legal Aid

For many years in South Africa the State has granted free legal aid if required for capital offences, but not until the Legal Aid Act No. 22 of 1969 has legal aid been available for indigent persons in other cases. From 1st April 1973 to 31st March 1974, its third year of operation, legal aid was granted in 425 criminal matters and 4 443 civil matters - more grants being given to Whites than to any other race group.¹ The overwhelming bias has been to civil matters, mainly matrimonial, as the authorities do not want to encourage a mass of applications for legal aid which, if granted, would clog the courts to an impossible degree by slowing down the hearing of cases.

¹Report in Rand Daily Mail August 22nd 1974 quoted from A Survey of Race Relations in South Africa 1974. (Institute of Race Relations, January 1975), pp. 92-93.

In its first two years of operation the legal aid scheme cost the State R243 863.¹ In contrast during 1971-72 England spent £295 000 in advertising legal aid - during the same period over £15 million were earmarked for appropriation to the Legal Aid Fund.² One of the reasons for the slow growth in State legal aid has been the lack of publicity accorded to it. Prisoners are not automatically asked by the police whether they need legal aid nor are there signs in the police cells in the various common languages to inform arrested persons of the existence of legal aid. Nobody wants to overload the courts with unnecessarily defended actions, however, in many cases it is probable that persons are being imprisoned, who might have been released or given a lesser sentence should they have been represented. The cost of imprisonment is such that the additional costs of increased legal aid might well be recouped indirectly through a smaller prison population.

State legal aid is augmented in Johannesburg by a voluntary Legal Aid Bureau which is a registered welfare organisation financed by a municipal grant and voluntary contributions. During 1973 this Bureau agreed to handle 1 141 matters having given 12 272 interviews - more than

¹House of Assembly Debates, Vol. 44 Col. 738, 27th April 1973.

²Estimates 1972-73, HMSO Annual 4921 March 1972. See Survey of South African Law 1972, article by D.J. Pavlich on Legal Aid.

the entire number of applications received by the State Legal Aid Board.¹

It is to be hoped that Legal Aid will be greatly extended in the future.²

(d) The Cost of Crime in Relation to the Administration of Justice

From the Report of the Department of Justice it is impossible to calculate what percentage of the court's time is taken up with civil cases as opposed to criminal cases. As Professor Martin stated in his "Design of a Study of the Cost of Crime"

The analysis of costs under this heading is likely to be extremely complicated, owing to the lack of standardised accounting by local authorities, and to the need to separate costs of civil and criminal proceedings.³

During 1973⁴ the Supreme Court dealt with 32 369 civil cases and only 3 584 criminal cases, while Magistrate's Courts dealt with over 1,5 million criminal cases (1,36 million cases of admission of guilt) and approximately 680 000 civil cases.

¹A Survey of Race Relations in South Africa, 1974. (South African Institute of Race Relations, January 1975), p. 93.

²1974-75 - R 307 000 was voted for Legal Aid. RP2/1974, p. 324
Vote 44.

³Professor J.P. Martin, "Design of a Study of the Cost of Crime," op cit., p. 600.

⁴Annual Report of the Department of Justice 1973, p. 26.

A mere enumeration of the number of cases gives no indication of how time was divided between civil and criminal cases.¹

The total costs of the Administration of Justice are as follows:

| <u>1971-72</u> | <u>1972-73</u> | <u>1973-74</u> | <u>1974-75</u> |
|----------------|----------------|----------------|----------------|
| R23 189 500 | R24 362 900 | R26 426 600 | R31 795 000 |

(e) Medical Costs of Crime

(i) Medical Costs of Assault Victims

No research has ever been published in South Africa with regard to the financial costs borne by the State through the provision of medical treatment to the victims of crimes of violence. These costs are many millions of rands every year as shown by the evidence supplied by only one hospital, Groote Schuur² in Cape Town.

¹In Britain Professor Martin discovered in his research into the use of "police time" that a substantial amount of police time was spent in the courts, either escorting and guarding offenders or in the giving of evidence. In fact he found that the courts themselves cost approximately £18 million for criminal cases while police time in court work came to a further £30 million. Professor J.P. Martin, Science Journal, September 1970, p. 55.

²Groote Schuur is one of the largest hospitals in Cape Town and probably receives approximately one third of all assault victims who have been assaulted within ten miles of Cape Town. The population of Greater Cape Town is approximately 1 250 000.

T A B L E 7

NUMBER OF ASSAULT VICTIMS RECEIVED BY THE
ACCIDENT UNIT OF GROOTE SCHUUR HOSPITAL,
FROM 1st FEBRUARY 1973 to 31st JANUARY 1974¹

| <u>White</u> | | <u>Coloured</u> | | <u>African²</u> | | <u>Total</u> |
|--------------|---------------|-----------------|---------------|----------------------------|---------------|--------------|
| <u>Male</u> | <u>Female</u> | <u>Male</u> | <u>Female</u> | <u>Male</u> | <u>Female</u> | |
| 634 | 185 | 6 115 | 2 091 | 4 254 | 1 260 | 14 539 |

Regrettably figures were unavailable as to how many of these victims spent the night at Groote Schuur before being discharged the next day. However the medical superintendent estimated that approximately 15 per cent spent the night, being a total of approximately 2 180 persons for this period, while he reckons that a further 5 per cent of victims were so badly injured that they were admitted to hospital immediately rather than being admitted via the "Accident Unit".

The average costs of Groote Schuur for this period were as follows:

¹ Figures supplied by Dr. Baigrie, the Medical Superintendent of the Accident Unit of Groote Schuur. No separate figures are kept for Asians as the number of Asian assault victims in the Cape is very small, both because the Asian population of the Cape is small and because the Asian crime rate is low. The Victims of Violence report showed that the vast majority of assaults were committed by assailants upon their own racial group.

² The number of African women assaulted is amazingly high when one realizes that there is less than one African woman to every three African males in the Greater Cape Town Area.

| <u>Mid 1974</u> | | <u>January 1975</u> |
|-----------------|--|---------------------|
| R32 | per bed per day | R34 |
| R15 | per bed per night | R17 |
| R10 | per attendance at outpatients or at the Accident Unit | R12 |

The majority of Non-Europeans pay 50 cents per attendance at outpatients, while the top rate for Europeans is R3,50 per visit.

If one assumes that the average number of attendances at outpatients is 3 per victim - once on admission and twice later for a checkup or further treatment - the outpatient cost will have been

| | |
|-------------------------------------|---------------|
| 14 539 x R30 | R436 000 |
| Less payments of perhaps R26 000 | <u>26 000</u> |
| | R410 000 |

In addition 15% of victims (approximately 2 180) spent at least 24 hours in hospital for treatment and observation,

2 180 x R32 Approximately R70 000

When one realises that Groote Schuur alone spends almost half a million rand annually on the victims of minor assaults which require a maximum of one day in hospital, the enormous medical costs of assault become apparent.

(ii) Costs of Psychiatric Treatment of Offenders

Psychiatric treatment for offenders in South Africa is still comparatively rare, largely due to the lack of trained psychiatrists to diagnose that an offender requires such treatment. In 1970 a Director of Psychological Services was appointed to "assume responsibility for the planning, organisation and expansion of this section."¹ During 1972-73 this section examined 808 prisoners of whom 36 required psychiatric treatment while a further 60 prisoners consulted psychiatrists at their own request.² It can be argued that the cost of psychiatric treatment of offenders is not a cost of crime, for usually it is the unbalanced state of the offender's mind which led to the crime rather than the crime leading to an unbalanced mind. The Department of Prisons recognises the need for expanding their Psychological Services section which now consists of 12 persons, of whom only two are qualified clinical psychologists, while the others are in various stages of training.³

(f) Economic Cost to the Public Sector of the Prevention of Crime

As no figures are available as to the economic cost to the

¹Director of Prisons Report 1970-71, RP 101/71, p. 13.

²Annual Prison Report, 1972-73, RP 91/73, p. 13.

³Ibid. In South Africa psychologists are prohibited from giving psychiatric treatment.

public the author merely wishes to show that this is another area requiring research. This expenditure can be divided into two main headings, the cost of manpower such as security staff and the police, and the cost of security measures such as burglar alarms, safes, fireproof doors and so on.

The costs of the Department of Police have been discussed briefly above. The value of "police presence" in preventing crime must not be underestimated. Many Non-European townships of thousands of persons have no police whatsoever and no telephone to summon the police in an emergency. At present there is a shortage of police in South Africa (between 1st April 1973 and 31st March 1974 nearly 10 per cent (1 275 persons) of all White policemen resigned, although recruitment resulted in a net loss of only 421 police.) If there are insufficient police to man a full time police station there is no reason why the police should not have temporary stations which they can man at weekends and at irregular times during the week.¹

No separate figure exists for the cost of security measures sold to the public sector to prevent crime although figures have been obtained for the entire annual sales of certain equipment. This is dealt with later under the private costs.

¹The security forces in Northern Ireland have developed such a system of irregularly manned observation posts. Not only do these require fewer soldiers but they attract less fire from the terrorists who are never certain whether they are manned or not.

(g) The Costs of Research into Crime

Regrettably these costs in South Africa are very small as virtually no research into crime is taking place. The author has been unable to find any specific sum allocated to research, unlike the costs of the Home Office Research Unit in England. Three universities have full time degree courses in criminology,¹ but there is no separate state-financed body for research in this field nor any Institute of Criminology. The 1963-66 Director of Prisons Annual Report mentioned that the possibility of setting up such an institute was being explored² and it now seems reasonably probable that one will be established in the near future.³

The need for such a research body can not be too strongly stressed. To be effective it must work in close co-operation with the various government authorities but remain independent from them. Such a body could help in the planning and co-ordination of a comprehensive social defence policy which is so badly needed in South Africa.⁴

¹The University of Pretoria, the University of Potchefstroom, and the University of South Africa (UNISA).

²Annual Prison Report 1963-66, RP 71/1967, p. 28.

³February 1975. Possibly 2, one at UNISA and one at U.C.T.

⁴See Chapter X.

C.3 The Economic Costs of Crime to the Private Sector

Under private costs related to crime can be grouped Prevention Services, the sale of prevention equipment and insurance against the possible risks from criminal activity and the costs to the victims of crime.

(a) Prevention Services and Equipment

In South Africa no statistics exist as to the sums spent by private business and individuals on crime prevention. For the Cape Peninsula a spokesman for one of the leading security companies¹ put the cost at R2 million for 1974. The Transvaal market is a great deal larger and in addition theft is more common than in the Cape Peninsula.² In Johannesburg and Durban most of the larger buildings have nightwatchmen, as do some of the wealthier homes in Johannesburg.

In America the U.S. President's Commission on Crime estimated that seven times as much money was spent annually on prevention services as was spent on prevention equipment. In South Africa the following

¹Mr. Horsfall, Managing Director of Cape Night Watch.

²All the insurance companies contacted agreed that burglaries were lower in the Cape than elsewhere - this is reflected by the insurance rate for burglary being twice as high in the Transvaal as elsewhere.

estimates have been given for security equipment:¹

| | |
|---------------------------------------|-------------------------|
| 1. Safes and Fire Resisting Equipment | R5 million ² |
| 2. Burglar Alarms | R5 million |
| 3. Household Locks | <u>R6 million</u> |
| | <u>R16 million</u> |

If the American ratio of Prevention Agencies to Prevention Equipment is applied to South Africa the cost of Prevention Agencies and Personnel is approximately R100 million or more than half the annual cost of the South African Police. However, it seems probable that the cost in South Africa for prevention personnel is far less - for traditionally Non-European security men (nightwatchmen) earn far less than they would in industry.³

(b) Insurance

In South Africa no centralised statistics are kept of the amount of money spent on insurance for theft, or on the amounts paid out for such claims. Fortunately

¹Information was supplied by Chubb Lock and Safe Company (Pty.) Limited. In addition letters were written to the S.A. Burglar Alarm Systems Association; Industrial and Commercial Security Association of South Africa; and the South African Security Equipment Suppliers and Services Association who were either unwilling or unable to supply information.

²Approximately R1,25 million is specifically fire protection equipment.

³Nightwatchmen in South Africa are very badly paid.

one insurance company¹ helped by giving details of the extent of its burglary insurance. What it paid out in claims is some indication of the size of the burglary insurance market in South Africa. However, even with this help it is probable that the estimates are a few million too high or too low².

| | |
|---|----------------|
| Estimated Annual Total Burglary Insurance | R20-25 million |
| Estimated Total Burglary Claim Payments | R12-15 million |

No central statistics are kept on losses due to malicious damage, arson, or any of the other insurable risks with a criminal element.

Without proper statistics it is impossible to assess the importance of burglary in relation to other crimes. That R20 to R25 million are spent annually by private persons in insurance against theft alone should be compared with other government expenditure. How much police time is spent investigating these crimes? What proportion of the police budget of R153 million is spent

¹Eight of the leading insurance companies were approached. All but one claimed that no suitable statistics were kept.

²In England during 1967 British Insurance Companies paid out £51,7 million for crime losses. Security Gazette 1968, 10/11 (484). In America a sum of \$300 million was spent during 1965 in insuring against potential loss with a criminal element. "The Challenge of Crime in a Free Society" U.S. Government Printing Office 1967, p.33. In England during 1973 thieves stole £81 million in valuables and cash, of which only £17 million were recovered. Financial Times October 23rd 1974. During 1972 goods to the value of £191 million were stolen by shoplifters in England. "Shoplifting" published by HMSO, 1973.

in this way? Should more police time and money be spent in this manner or should there be a greater concentration of burglary prevention by a greater use of burglar alarm systems?¹ R25 million spent on burglary insurance is a colossal sum when it is appreciated that the bulk of it is paid by Whites, who number only 4 million. In England insurance companies submit statistics on claims to the British Insurance Association. It is clearly in the interests of the State that a similar practice be introduced in South Africa, for without adequate statistics administrators cannot make soundly based decisions.

(c) Victims of Crime

The economic cost to the victims of crime can be separated into the direct losses such as health, money and goods, and less direct losses such as loss of time and inconvenience. The direct cost to an assault victim was briefly discussed in the examination of the costs of assault. Apart from the loss of health such a person would have transport costs to and from the hospital, medical costs at the hospital and lost earnings in approximately 50 per cent of all cases. The 1969 Research Victims of Violence asked victims whether they had been assaulted previously and whether this had

¹Certain insurance companies are only prepared to cover private dwellings for burglary insurance in Johannesburg if they have burglar bars and alarm systems approved by the insurance companies.

entailed their missing work. Approximately 40 per cent of Coloureds and Africans claimed to have been previously assaulted¹ (600 persons), of these about half (311) had missed no work, while the majority of the remainder had been off work for from 1 to 30 days.² For Non-Europeans the greatest single cost of assault is usually their lost earnings, for there is no automatic sick pay for the majority of employees, whereas sick pay is standard employment practice for Europeans.

In addition to his physical injuries and loss of money the victim may have been robbed. The 1969 Report found this to be the case in approximately 20 per cent of all assaults, but surprisingly only in 10 per cent of all assaults was the victim robbed of his pay packet on the way home from work.³ These figures relate only to robbery from assault victims, of far greater magnitude are the losses incurred from theft. As discussed under the costs of insurance (insurance can be regarded as a predictable loss which is preferred to an unpredicted loss) approximately R13 to R15 million were paid out for burglary claims during 1973.

The whole community is indirectly an economic victim of crime. Not only must the community, by way of its

¹Victims of Violence, op. cit., p. 16.

²Ibid., Table 30: Period Off Work After Last Assault, p. 14.

³Ibid., Table 14, p. 8.

taxes, pay for the prevention and control of crime, but it pays for the increased costs of goods and services occasioned by crime. The most obvious example of this is in the price of foodstuffs where retailers automatically allow for "shrinkage" which in some cases is equivalent to the firm's profit margin.¹

The direct victims of crime and their immediate families are those who suffer most heavily from crime, which in South Africa means the Non-Europeans who constitute the vast majority of offenders and victims. No provision exists in South Africa for compensating the victims of crime.² To some extent White persons protect themselves by way of insurance, but for Non-Europeans, who usually can not afford insurance, the loss from crime is very real and direct. The 1969 Research "Victims of Violence" concludes:

Those who know the hazards of the streets in the most impoverished Coloured and African residential areas would have no difficulty in accepting that every adult male resident stood a very strong chance of being beaten up at least once in his lifetime.³

¹Challenge of Crime in a Free Society, op cit., p. 32.

²See article by Mr. Justice J.H. Steyn, "Compensation for Victims of Crime as a Penal Reform Measure," NIGRO Criminological Journal No. 1 1974, pp. 22-29.

³Victims of Violence, op cit., p. 16.

D. THE SOCIAL COST OF CRIME

The social cost of crime is by its very nature intangible but no less important because it can not be measured in quantitative terms. Crime will never be totally eradicated, but society, and in particular those responsible for the administration of that society, must decide on what level of crime is acceptable.

A balance must be found between lawlessness on the one hand and a "police state" on the other, both conditions being detrimental to the freedom of society and the quality of life in general.

In South Africa the crime rate, particularly for crimes of violence, is quite staggeringly high in certain Non-European townships. The 1969 Report "Victims of Violence" had no doubt as to the underlying causes of this phenomenon:

There is no immediate measure which will substantially stem the slowly rising spate of physical violence in Cape Town. Equally clear is the almost exclusive association of such conduct with poverty and prolonged, pervasive socio-economic frustration. These experiences do massive violence to one's identity and cripple one's capacity for relatively full self-realization. The more educated and affluent are less physically violent. They drink less devastatingly. Men who feel free and secure in society do not lash out so destructively at those around them, nor is their judgement so vitiated or their apathy so profound as to lead them to be battered and beaten over seemingly trivial differences of opinion.¹

One cannot measure in economic terms the disruption of normal

¹Victims of Violence, op cit., p. 19.

social life brought about by the fear of going out at night. In America a survey conducted in high crime areas of two large cities found that:

1. 43 per cent of the respondents say they stay off the streets at night because of their fear of crime.
2. 35 per cent say that they do not speak to strangers any more because of their fear of crime.¹

No such research has been carried out in South Africa but the author knows that in certain Cape Town townships many persons are only willing to leave their homes after dark if accompanied by a number of other persons. This has resulted in a breakdown of the community spirit which was traditionally so strong among the Non-Europeans in South Africa, particularly among Africans.

An important side effect of a high crime rate, particularly crimes of violence, is the gradual acceptance by society of criminal acts, which in turn leads to an increase in lawlessness. Lombroso noted that the certainty of apprehension and conviction was a more effective deterrent than savage punishment.² In the major cities of Northern Ireland the police have been unable to carry out police investigations or even normal traffic control duties in certain areas for a number of years. This has led to an enormous increase in all manner of crime and the growth of a whole generation of young people who have never known a law-abiding society. A significant impediment to peace in Northern

¹Challenge of Crime in a Free Society, op cit., p. V.

²In South Africa Mr. Justice V.G. Hiemstra stressed the importance of certainty of detection in the prevention of crime. NICRO Journal 1973, No. 1, p. 42.

Ireland is that under the cover of terrorist activities has developed extensive protection rackets¹ which would have to end with the cessation of hostilities.

Non-European townships are inadequately policed.

The author has visited Northern Ireland regularly over the past few years and has noted a significant and increasing degree of acceptance or lack of shock at crimes of violence, so that now after years for petty offences such as inflicting... that now after six years of violence people have grown callous to... even the most brutal murders. Yet the death rate per 1 000 of population in the Non-European townships of South Africa is higher than that in Northern Ireland. In 1972 Mr. Justice V.G. Hiemstra referred to these townships as crime developing areas. This is to be expected in every society where the authority group not only control the police force but, in his opinion, to the lack of stability and security.

The long term costs for South Africa of this developing subculture

of violence could be very considerable. Not only do people become accustomed to crime from an early age but this association leads to

a diminished regard for the consequences of crime. In the year 1973 the Commission of Police reported that there were 18 cases referred for trial in terms of the Masters and Servants Act and

1 In addition, to the protection rackets large scale, systematic robberies are taking place in Northern Ireland and innocent persons can not give warning of these robberies or report on them for fear of being murdered. July. 99-100, 16 August

2 Interview in 1973 with General-Sir Harry Tuzo, G.O.C. Northern Ireland. Interview in 1974 with Sir M. Shillington - Commissioner of Police for Northern Ireland (now retired). 7% of total population

3 The author is an Irishman by birth and was brought up in Northern Ireland.

| | | | |
|---|--|--------|---------------------------|
| 4 | Asian | 753 | 705 000 |
| | Mr. Justice V.G. Hiemstra, NICRO Journal No. 2, 1973, p. 42: African | 15 684 | 17 745 000 |
| | Percentage | | 71,2% of total population |
| | Total | 16 437 | 24 920 000 |

Population estimates issued by the Department of Statistics taken from the Rand Daily Mail, 16th September 1974.

exacerbated by the criminal justice system which relies on the custodial treatment of offenders. Thus one in every 12,5 Coloureds, and one in every 23,4 Africans spends a period in prison each year.¹ This familiarity with imprisonment, often initially for a minor offence, breeds a lack of respect for the criminal justice system and exacerbates racial feelings. No research has been done into the prison subculture as it exists in South Africa but it is accepted that a period of imprisonment strengthens the allegiance of gang members, and that a number of gangs have their base in prisons.² There is a very real danger that persons imprisoned for minor offences may get influenced by members of these gangs and be led into further criminal activities.³

In South Africa the costs of crime are far greater than today's relatively easily calculated economic costs. There are

¹ Average Prison Population (Sentenced and Unsentenced)
during the year ended 30th June 1974

| | <u>Male</u> | <u>Female</u> | <u>Total</u> | <u>Numbers imprisoned per 100 000 population</u> |
|----------|---------------|---------------|---------------|--|
| Whites | 3 890 | 84 | 3 974 | 95,5 |
| Coloured | 17 611 | 1 021 | 18 632 | 808,0 |
| Asians | 534 | 19 | 553 | 78,0 |
| Africans | <u>70 437</u> | <u>5 255</u> | <u>75 692</u> | 426,5 |
| Total | <u>92 472</u> | <u>6 379</u> | <u>98 851</u> | |

² During 1974 Geoffrey Dekenah of the Cape Times wrote a number of articles on the Cape Town gangs.

³ The authorities are well aware of this danger which is one of the reasons that so many prisoners are released on parole. See Chapter VIII.

various inequities between the racial groups which have led and will continue to lead to conflict. As Mr. James Vorenberg, former Executive Director of the U.S. President's Crime Commission stated:

Crime is rising, and law enforcement alone won't stop it ... even if we double or quadruple the effectiveness of law enforcement ... crime will be a worse gamble only when potential criminals have decent lives on the outside so that they are unwilling to risk arrest and conviction.¹

Certain of the inequities which can lead to crime are discussed in the following chapter. It is the author's contention that a fuller understanding of the cost of crime will emphasise the urgency of dealing with those social problems which are crime producing, rather than spending rapidly increasing sums on the Departments of Police and Prisons. The conclusion of the report by the President's Commission on Law Enforcement and the Administration of Justice is as applicable in South Africa as in America:

Crime flourishes where the conditions of life are the worst, and therefore the foundation of a national strategy against crime is an unremitting national effort for social justice. Reducing poverty, discrimination, ignorance, disease and urban blight, and the anger, cynicism or despair those conditions can inspire, is one great step to reducing crime.²

E. THE NEED FOR RESEARCH INTO THE COST OF CRIME

In this survey of the cost of crime in South Africa there are so many assumptions and omissions due to lack of information that it is pointless to attempt to calculate an overall

¹Quoted from NICRO Journal, July 1972, p. 2.

²The Challenge of Crime in a Free Society, op cit., p. 279.

annual cost of crime.¹ What is clear is that a great deal of research is required. In 1967 the U.S. President's Commission² made certain recommendations regarding such research which South Africa might well follow:

The Commission recommends that the lack of information about the economic cost of crime in America be remedied - not only to furnish a better basis for assessing the nature and amounts of the various kinds of losses but also as a means of developing new and improved measures of control. (Research and data collection should be coordinated between State Agencies, Businesses and Universities.) In addition, periodic censuses and surveys could provide more detailed information that would be useful in indicating crime problems of national scope and in evaluating the relative effectiveness of the various crime prevention and control measures adopted by individuals, businesses and governments.

The author recommends that one of the first research projects to be undertaken by an Institute of Criminology in South Africa be a detailed research project into the cost of crime.

¹The author has been compelled to spend a disproportionate amount of time compared to the remainder of the thesis in obtaining even this limited amount of information.

²The Challenge of Crime in a Free Society, op cit., p. 35.

C H A P T E R I I I

CRIME IN SOUTH AFRICA - SOME SPECIAL ASPECTS

- A. SOUTH AFRICA'S POLITICAL DEVELOPMENT
- B. RACIAL DIFFERENCES WITH REGARD TO CRIME IN SOUTH AFRICA
- C. VARIOUS ASPECTS AND CAUSES OF CRIME IN SOUTH AFRICA
 - C.1 Legal Infringements - The Pass Laws
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C H A P T E R I I I

CRIME IN SOUTH AFRICA - SOME SPECIAL ASPECTS

A. SOUTH AFRICA'S POLITICAL DEVELOPMENT

South Africa has the largest prison population proportionate to her total population of any country in the Western world. In 1972-73 South Africa had a daily average prison population of 413 persons per 100 000 of her population,¹ this compares with a daily average of 65 persons in England for the same period.²

An enquiring mind immediately questions why the numbers imprisoned should be so large. Are a large number of people imprisoned for offences which are not offences in other countries? If so, and this is the case,³ then how do the figures compare once these special offences have been removed? The figures are still greater than other countries, but then large numbers are imprisoned in South Africa as they are unable to pay their fines, so further adjustments must be made.⁴ Any comparison with any other

¹Daily Average Prison Population 95 015 persons. Annual Prison Report 1972-73, RP 91/1973, p. 9. Population of South Africa for mid-1973 approximately 23 million people (Statistical News Release by Department of Statistics, 3rd January 1973).

²Answer to author's questionnaire. See Chapter VII. See also Table 2 on p. 631 giving details of Numbers Imprisoned per 100 000 of Population for the various countries.

³Pass Law etc. in South Africa.

⁴The most recent statistics of persons imprisoned for their inability to pay fines appeared in the Lansdown Commission Report (U.G. 47, para 545 of 1947) - nearly thirty years ago.

correctional system is meaningless without a sound knowledge of the countries being compared.¹ This is particularly true of South Africa with its interrelated problems of a multi-national state consisting of peoples of widely varying cultural and economic standards and aspirations. The brief review given below merely serves to illustrate some of the complexities and how they affect the penal system. It is not the purpose of this thesis to analyse the causes of crime in South Africa in any depth, but no review of the correctional system is meaningful without some understanding of why a person committed the offence which led to their imprisonment and what future there is for that person on release from prison.

For the first two hundred years of South Africa's recorded history from 1650 to 1850 there was little contact between Europeans and the Bantu nations as they both settled in separate parts of the country. This came to an end when Sir George Grey was appointed High Commissioner and Governor of the Cape in 1854.

He initiated a policy of gradual political and economic integration of the two races, which remained the basic principle of the Cape even after responsible government had been granted. The essence of the policy was that the degree of civilization, rather than race, was the criterion by which a man should be judged.²

This policy of integration came to an end with Union in 1910.

¹For an excellent account of the use and abuse of statistics as related to Crime see Chapter I of Decisions in the Penal Process, A. Keith Bottomley (London: Martin Robertson and Company Ltd., 1973).

²Hobart Houghton, The South African Economy (1973 edition; edited by Oxford University Press), p. 22.

In 1910 integration was halted and various laws were enacted to circumscribe the free movement of Africans - particularly into urban areas where considerable overcrowding had developed - and designating the specific areas where the different racial groups would live and own land. South Africa faced the problem of:

How to satisfy the widely divergent political and social aspirations of different Bantu nations ... and that of the White Nation ... all within the boundaries of a single territory.¹

Since Union the various governments' policies have evolved from social differentiation between the races into a policy of separate constitutional development.² The government's long term goal is that the Bantu nations should eventually have full self government in the areas allotted to them,³ but having limited rights and no political rights in the areas reserved for Europeans. In 1963 the Transkei received limited self government as the first of several such grants of independence.

Traditionally the Bantu are a pastoral people but this is becoming increasingly impossible as a way of life.

The Bantu areas are at present incapable of supporting the population domiciled there, and large numbers migrate temporarily to work in the industrial areas; the remittances they send home account for about half of the money income of the people in the reserves.⁴

¹E.M. Rhoodie, Penal Systems of the Commonwealth (H and R Academia 1967), p. 24. Rhoodie's footnotes to Chapter II give excellent references for a more detailed study of the policy and history of "Separate Development".

²Ibid., p. 25.

³See Tomlinson Report, U.G. 61/1955.

⁴Hobart Houghton, The South African Economy, op cit., p. 24. This situation was envisaged by "Report of Native Affairs Commission 1945-46", see paragraph 11.

The 1951 census showed "that some 43 per cent of Africans lived in the Bantu areas, some 30 per cent on farms owned by Whites, and 27 per cent of Africans in the cities and industrial urban areas of the country."¹

In 1973² some 46,6 per cent of Africans were living in the homelands, 24,4 per cent on farms and 29 per cent in urban areas. However certain large towns inhabited by Africans are situate just within the boundaries of the homelands, and form part of the homeland population.³

A large percentage of the Africans living in White areas are migrant workers, who work for a period and then return to their homes, their places being filled by other migrants. This leads to considerable instability and many economic and social problems which frequently lead to crime.⁴

A brief study of these socio-economic problems will provide a basis for a better understanding of the South African correctional system.

¹Hobart Houghton, The South African Economy, op cit., p. 24.
Quoting Census 1951.

²Minister of Statistics, Assembly 13 June 1973, Hansard 18 Col. 1003.

³See A Survey of Race Relations in South Africa, (Johannesburg: South African Institute of Race Relations, 1974), p. 49.

⁴H.J. Venter and G.M. Retief, "Bantoe - Jeugmisdaad," (Cape Town: H.A.U.M. Publication No. 10, Department of Sociology and Criminology, University of Pretoria, 1960).

B. RACIAL DIFFERENCES WITH REGARD TO CRIME
IN SOUTH AFRICA

The differences in criminality among the different various racial groups cannot be determined on a racial basis. In spite of this, it cannot be denied that certain conditions and factors connected with a racial group can have a profound influence on the incidences of crime. There are, for example, social, economic and cultural inadequacies, unequal treatment in society and in the administration of justice, factors connected with the historical development and cultural background of a racial group, culture conflict, etc. which may have a close bearing on crime.

When comparing a Native's degree of civilization and development with that of a European, sundry factors are responsible for the fact that he appears in an unfavourable light. On the one hand, he has not had the opportunity to develop to the degree to which he is perhaps capable. On the other hand, his backwardness and the accompanying immaturity of mind do not spur on towards improving his standard of living; nor are they conducive to higher aims in moral and ethical values. The lasting and stimulating effects on his criminality are apparent.¹

The Lansdown Commission Report² considered the causes of crime particularly among juveniles and Non-Europeans and it considered the following to be the more important causes: a defective home life and the lack of family and school influence; poverty caused by unemployment and inadequate wages; the anti-social influence of slum conditions; the influence of alcohol; voluntary idleness; the lack of recreational facilities; the lack of satisfactory education. Other factors not included but

¹ H.J. Venter and G.M. Retief "Bantoe - Jeugmisdaad." It must be recognised that the Bantu had highly developed moral and ethical values which to some extent have been broken down by detribalisation and the collapse of family life.

² Lansdown Commission Report, U.G. 47 of 1947.

of importance today are the lack of trade training and employment opportunities; the feelings of inadequacy brought on by a materialist orientated society and the inability to earn sufficient money to attain these materialistic goals; the hopelessness and bitterness brought on by the removal of former rights without the substitution of other rights (particularly among the Cape Coloured¹); and the bitterness engendered by the enforcement of the Group Areas Act, and other legislation restricting the rights of Non-Europeans.

A great deal has been done since the Lansdown Commission Report in 1947 to improve the situation but the crime rate is still growing more rapidly than the population.²

Crime in African Townships - Soweto

In 1972 on July 11th, 12th and 13th "The Star" ran a series of articles on crime in Soweto, the African dormitory suburb of Johannesburg. Firstly, and perhaps most significant of all, The Star was unable to establish how many Africans lived in the Soweto complex and estimates ranged from 650 000 persons to 1 million. The police estimated serious crimes per week as follows:

¹To some extent this is considered in a doctoral thesis by James Midgley "Crime and Normlessness: An Attempt to Isolate Conditions of Anomie," submitted to the University of Cape Town 1971.

²Between 1960 to 1970 the population of South Africa grew by 24% while the daily average prison population grew by 76%.

| | |
|---|--|
| Murders | 13 |
| Reported Rape | 13 (unreported rape cases are believed to be far higher) |
| Robberies | 50-60 |
| Assault with intent to cause grievous bodily harm | 60-80 |

In all some 43 gangs were roaming the streets at night. Among the possible reasons discussed for this situation were the ill-lit streets, the dearth of telephones, the insufficiency of schools, broken families and illegitimacy, the breakdown of traditional parental control, the insecurity of tenure, the inferior status in society of Africans, disillusionment about the enforcement of law, the fear of reprisals if crime were reported and a lack of community spirit. To counter this violence the police set up a special Soweto Police Division in January 1973, but results of its effectiveness have not been published.

The Soweto story is repeated in townships all over the country. In the Assembly on 9th March, 1973 Mr. L.E.D. Winchester¹ (U.P.) said that it was nothing to read of 300 stabbings, 11 murders and 8 rapes in the Cape Townships at any weekend. He stated that this was no reflection on the police as crime was caused largely by lack of education, poverty, poor housing, lack of opportunity and general frustration.

¹Assembly, 9th March 1973, Hansard Cols. 2378-81.

No satisfactory statistics exist to prove or disprove Mr. Winchester's statements or to verify his claims as to the causes of crime but few people would doubt them. What is needed is that the new "Criminological Institute" which is to be set up by the University of South Africa should carry out research into the extent, causes and consequences of crime. Without such research one can only point out, like the Lansdown Commission, "certain outstanding features of human affairs which in common experience favour the breeding of crime."¹ Similarly without an understanding of the background to crime, particularly in South Africa, one can not design an effective prison rehabilitation process.

C. VARIOUS ASPECTS AND CAUSES OF CRIME
IN SOUTH AFRICA

To give a fuller picture of crime in South Africa the position in the late 1940's and early 1950's will be compared with the early 1970's. Similarly the causes as given by the Lansdown Commission Report will be compared with today's position.

T A B L E 1

DAILY PRISON AVERAGE (SENTENCED AND UNSENTENCED)

| <u>Year</u> | <u>European</u> | <u>Non-European</u> | <u>African</u> | <u>Coloured</u> | <u>Asiatic</u> | <u>Total</u> |
|-------------|-----------------|---------------------|--------------------------|-----------------|----------------|-----------------------|
| 1948 | 1 084,2 | 23 942,7 | | | | 25 026,9 ² |
| 1950 | 1 390,6 | 26 875,8 | | | | 28 266,4 ³ |
| | | | (Breakdown Unobtainable) | | | |
| 1972/3 | 3 701 | 91 314 | 73 313 | 17 466 | 534 | 95 015 ⁴ |

¹ Lansdown Commission Report, op cit., Para 12, p. 3.

² Annual Prison Report 1952, U.G. 37/1953, p. 22.

³ Ibid.

⁴ Annual Prison Report 1972-73, RP 81/1973, p. 9.

T A B L E 2REPUBLIC POPULATION
(Numbers in Thousands)

| <u>Year</u> | <u>European</u> | <u>Non-European</u> | <u>African</u> | <u>Coloured</u> | <u>Asiatic</u> | <u>Total</u> |
|-------------|-----------------|---------------------|----------------|-----------------|----------------|---------------------|
| 1951 | 2 642 | 10 029 | 8 560 | 1 103 | 367 | 12 671 ¹ |
| 1973 | 3 958 | 19 029 | 16 217 | 2 144 | 668 | 22 987 ² |
| 2000 | 6 890 | 43 398 | 37 298 | 4 890 | 1 215 | 50 288 ³ |

From the statistics above the following broad conclusions can be drawn. First the prison population has increased more than threefold since 1950 while the population has not quite doubled. Secondly the percentage of Europeans to Non-Europeans in prison has not significantly altered. However as a percentage of their population groups a far higher percentage of Non-Europeans are in prison than Europeans.⁴

| | | |
|---------|---------------|-----------------|
| 1972-73 | Europeans | 93 per 100 000 |
| | Non-Europeans | 479 per 100 000 |
| | Africans | 452 per 100 000 |
| | Coloured | 814 per 100 000 |
| | Asiatic | 79 per 100 000 |

There are many reasons why this is so, some of which are discussed in the following pages.

¹Statistical Year Book 1964, p. A-7.

²Estimate of Population by Mid-1973, issued by Department of Statistics, 3rd January 1973.

³Projection by Professor J.L. Sadie "Projections of the South African Population 1970 to 2020." Johannesburg: I.D.C., 1973.

⁴Analysis based on Commissioner of Prisons Report 1972-73, RP 91/1973.

C.1 Legal Infringements - The Pass Laws

Unfortunately with the available statistics one can not give a complete analysis breaking down the numbers imprisoned into their different categories of offence. However a pattern can be seen by putting together such statistics as are available.

In the period 1970-71 the Daily Prison Average was 91 108, there being a total of 474 065 sentenced persons admitted to prison. Of these 401 475 were sentenced to imprisonment for periods of up to and including four months.¹ The Minister of Justice said in the Assembly on the 25th May 1971² that 42 per cent of all prisoners serving sentences of up to 4 months had been imprisoned as a result of influx control regulations (i.e. approximately 168 619 persons). Undoubtedly a number of prosecutions will have been the same person offending more than once, and not all offenders will have been Africans, but the conclusion one must draw is that a very large number of Africans come into contact with the law for offences which are legal infringements and not crimes as such. As the Lansdown Report stated

Contravention of these laws, (pass law, tax etc.)³ involving in the main no moral delinquency, bring the urban Natives into considerable contact with the police, and these laws, being regarded by the Natives as of repressive if not oppressive character, their administration by the police brings the

¹Annual Prison Report 1970-71, RP 101/1971, p. 6.

²House of Assembly, 25th May 1971, Hansard 16 Cols. 7491 and 7539.

³Lansdown Commission Report, op cit., para 42, p.7.

Native urban dwellers and the police into much hostile relationship.¹

In 1971 the government announced its intention of establishing Bantu Aid Centres to deal with influx control problems. During 1974 there were 16 such centres in operation to whom some 138 980 Africans arrested under the "pass law" regulations were referred, and as a result some 44 387 cases were not prosecuted. In addition the Aid Centres helped 1 628 of the Africans to find employment - approximately 1,2 per cent - and sent 92 886 of them back to their various homelands.² The majority of the thousands of Africans who are imprisoned for pass law offences are offered the option of a fine - usually R5-R10 which they are unable to pay. It is not unreasonable to assume that most of them have come to the urban areas to find work as there is insufficient work in the homelands.³ In the main they

¹Cases sent for Trial the majority involving Africans 1971-72 from the Commissioner of Police Report 1972-73, RP 91/1973:

| | | |
|----|--|----------------|
| 1. | Curfew Regulations | 132 264 |
| 2. | Foreign Bantu entering urban area | 16 819 |
| 3. | Registration and production of documents by Bantu | 277 393 |
| 4. | Bantu Urban Areas Consolidation Act | 170 967 |
| 5. | Bantu Administration Act | 15 307 |
| 6. | Trespassing | 170 828 |
| 7. | Bantu Tax | 59 013 |
| 8. | Illegal Possession of Bantu Liquor | 31 463 |
| 9. | Master and Servants Act and Bantu Labour Regulations Act | <u>19 894</u> |
| | | <u>893 948</u> |

²A Survey of Race Relations in South Africa 1974, op cit., p. 173.

³Research by Professor Hobart Houghton - a member of the Prime Minister's Economic Advisory Council - has shown that the Homelands are regressing in comparison to other areas. In 1955 he wrote of the Ciskei "Apart from a small quantity of work it is only labour that can be expected to pay for the imports ... Without earnings of the emigrant the population of the district would starve." H.D. Houghton, Life in the Ciskei (Johannesburg: SAIRR, 1955)p.368.

are unskilled labourers consequently, they have difficulty in obtaining employment in the urban areas unless there is a general labour shortage. Furthermore, persons found employing Africans who do not possess passes are themselves heavily fined.

The basic problem is that the population is growing faster than the number of jobs available. Clearly it is beyond the scope of this thesis to do much more than point out that these technical offenders, serving sentences of only a few months, must not be confused with other offenders or compared with prisoners in other countries.

C.2 Crimes of Violence¹

A second aspect of crime in South Africa which distinguishes it from most other countries is the high incidence of crimes of violence. During 1967-68 serious crimes of violence accounted for 22 per cent of all convictions while all crimes of violence accounted for 30 per cent of all convictions. Of the total number of convictions for all offences the ratio is 1 White to 8 Non Whites,² this ratio corresponds to the ratio of Whites to Non-Whites in the whole population.

¹Based on the article "Crime in South Africa" by J.J. Labuschagne, NICRO Journal 1972, Vol. 1 No. 2, pp. 6-17

²The White ratio is raised by the high rate of motor vehicle offences.

... for assault the ratio of White compared to Non-White convictions is 1 : 15, assault with intent to do grievous bodily harm 1 : 75, robbery 1 : 56, rape 1 : 33, robbery under aggravating circumstances 1 : 17, and murder 1 : 58.¹

Clearly for crimes of violence the incidence is far greater among Non-Europeans than Europeans, and the numbers of serious offences are increasing.²

C.3 Westernisation, Detribalisation, Broken Homes, Education

The Lansdown Commission Report stated that much of the African urban crime was due to the break-up of tribal discipline and family control resulting from a man leaving his village, where he is known, and entering the obscurity of the townships. Not only may he find it difficult to find employment but the dearth of healthy recreational facilities is as great today as it was in 1947.³

Furthermore tribal marriage customs are falling into disuse.

The result is that unions are casually entered upon and as casually terminated. The children of such unions have only the mother to depend upon for support, and it is not unusual to find that a man fails to support his former paramour's children ... with the result that the mother must

¹ Ibid.

² E.g. Assault with intent to cause grievous bodily harm prosecutions

| | |
|------|--------|
| 1969 | 73 934 |
| 1970 | 80 059 |
| 1971 | 82 741 |
| 1972 | 85 926 |

Mr. Justice J.H. Steyn, Essays in Honour of Sir Leon Radzinowicz "The Punishment Scene in South Africa - Developments over the Past Decade and the Prospects for Reform." (London: Heinemann, 1975).

³ Lansdown Commission Report, op cit., para 34, p. 6.

work to maintain them. The sound basis of family life in which the father maintains the children thus breaks down. There is no compulsory education for these children, and not more than a third of them are in privately conducted schools. The children are in consequence left to roam the streets with inadequate discipline and consequent danger of developing delinquent tendencies.¹

This was written some thirty years ago and although much money and effort has been spent in providing schools the increase in the population has meant that schooling facilities for Africans are still inadequate. On January 9th, 1973 "The Star" (Johannesburg) estimated that about 35 000 children could not be admitted to school in Soweto alone because of the lack of adequate accommodation.² The Minister of education stated that approximately 76 per cent of African children in the age group 7 to 15 years were enrolled in schools in 1972,³ however the average percentage of those actually attending school will have been lower due to drop-outs.

It is universally accepted that a child's upbringing influences greatly the future adult. As the Lansdown Report stated: "A decent home background, with a wholesome family life, is the best guarantee against crime and delinquency." In many cases such a home background is lacking

¹Lansdown Commission Report, op cit., para 32, p. 6.

²On 28th June 1973 the Soweto Urban Bantu Council put the figure at 42 000 but this included dropouts, children who had failed Standard II or Standard VI twice.

³Assembly, 23rd February 1973, Hansard 3 Col. 173.

due to little parental control (parents both working), poverty, slum conditions, and the lack of recreational facilities. Frequently the problems have a multiplier effect; adequate schooling is a start, but unless the home itself is large enough for the children to be able to do their homework without constant interruptions much of the value will be lost. Despite this, as a step towards reducing the incidence of crime the government must aim at compulsory schooling for all people as quickly as possible.¹

The Lansdown Commission stated:

That there is close association between poverty and crime is clear, and although statistics are not available which would enable the commission to base the proposition upon figures, there is no doubt that the volume of crime emanating from the poorer and more congested parts of the cities is comparatively much larger than that traceable to other areas.

C.4 Crime and Poverty in Eighteenth and Nineteenth Century England

In eighteenth and nineteenth century England it was clear that the vast majority of all crimes were committed by the poor. However,

the relationship between crime and poverty was by no means a simple one. The two were often closely linked, but it is necessary to look below the surface to see the connection between them,

¹The 1974 Annual Survey of Race Relations, op cit., p. 340, published details of the per capita costs of education broken down into racial groups. White costs varied from R387 to R557 per annum varying in the different provinces, Indian and Coloured per capita costs were approximately one-third of these sums, while African costs were only R28,56 per annum.

In many cases it was not poverty alone that was the cause of crime, but poverty amid all the pressures of the overcrowded and expanding towns.¹

It is worth examining these pressures to see if they have relevance to South Africa. First of all the larger the town the greater the anonymity and consequently better opportunities for undetected crime. Writing about London in 1829 John Wade said: "The metropolis is like an immense forest, in the innumerable avenues of which they (offenders) may always find retreat and shelter."²

Frequently it was not the older persons who became criminals but their children. It was common for both parents to have to work in order to provide for their families with the results described by Mayhew in 1862.³

Our artificial state of society ... and the scanty remuneration given to many of our forms of labour ... render it now almost impossible for a family to be supported by the man alone ... If, then, the mother be away from home the greater part of her time, and the children, consequently, left to gambol in the gutter with others as neglected as themselves, what reward, think you, can society look for from such a state of moral anarchy and destitution? ... This constitutes the real explanation of juvenile delinquency.

In 1910 a prison official wrote that compulsory education had led to a decrease in crime because it swept off the

¹J.J. Tobias, Crime and Industrial Society in the Nineteenth Century (Pelican Books, 1972), p. 187.

²J. Wade "A Treatise on the Police and Crimes of the Metropolis ..." by the Editor of 'The Cabinet Lawyer' 1829, pp. 6-7. J.J. Tobias, op cit.

³H. Mayhew and J. Binny, The Criminal Prisons of London ... 1862, p. 387. J.J. Tobias, op cit., p. 196.

streets "hundreds of neglected waifs and strays who were criminals-in-the-making."¹

In 1842 a Report on the "Sanitary Conditions of the Labouring Poor"² drew attention to the relationship between bad housing and crime. It was said that

the effects of bad housing were to cause the men, and often the women, to prefer the gin-shop to a return home, to cause the children to be turned out into the streets to play - and hence to get into bad company - and to lower the moral atmosphere because whole families had to live in single rooms.³

In the eyes of contemporaries drink was a very potent cause of crime in the eighteenth and nineteenth centuries. Harsh working and living conditions and nowhere to spend one's leisure time save in the street or public house definitely encouraged drunkenness. "Not only was there the crime committed by the drinker himself. Attention was often called to the disastrous effect on the family when the father, and even more the mother, was addicted to drink."⁴

During the second half of the nineteenth century England's economy developed very rapidly. This increase

¹R.F. Quinton, Crime and Criminals 1876-1910, published 1910, p. 38.

²Edwin Chadwick, Sanitary Conditions of the Labouring Poor, 1842.

³J.J. Tobias, Crime and Industrial Society in the Nineteenth Century (Pelican Books, 1972), pp. 209-210. See also W.D. Morrison, Juvenile Offenders 1896, p. 173.

⁴J.J. Tobias, supra, p. 211. Tobias cites the "Select Committee on Police" 1816, pp. 89, 116 and the "Select Committee on Drunkenness" 1834, Chapter VIII.

in national wealth coincided with an awakening of conscious responsibility for the poor. Administration in the towns was improved, slums were destroyed and the people rehoused, better wages were paid, recreational facilities such as parks, gardens and playing fields were set aside, and perhaps most important of all compulsory education was introduced removing children from the streets.

Dangerous though it is to draw comparisons between different societies and cultures the similarities between eighteenth and nineteenth century England and South Africa are inescapable.

C.5 Unemployment and Inadequate Wages

(a) Unemployment

Poverty in South Africa is largely due to two causes. The first and most important is the lack of employment opportunities for Non-Europeans. The second is the low wages paid to a large percentage of workers. It is extremely difficult to obtain reliable data on the extent of unemployment and underemployment particularly among the African population. In July 1972 there were over 86 000 Africans registered as unemployed (26 891 in the homelands)¹, but it must be remembered that large numbers of Africans are in urban areas without passes and consequently could not register as unemployed.

¹Deputy Minister of Bantu Administration and Development, Assembly 9th February 1973. Hansard 1 Col. 37.

They have the choice of remaining in the homelands and registering as unemployed or coming illegally to the cities to find work. In 1971 Professor J.L. Sadie¹ estimated that there were 1 294 500 unemployed and underemployed Africans. Professor J.H. de Lange, Professor of Economics at the University of the Orange Free State has estimated that African unemployment is rising at the rate of 100 000 a year.²

In 1942, the Elliot Committee, appointed by the Honourable the Minister of Justice and Native Affairs to investigate the position of crime on the Witwatersrand and in Pretoria, stressed the fact that

Once the view is accepted that the average wage paid to Native employees in urban areas is barely sufficient to meet the cost of living on a basis which takes into account only the provision of the bare essentials of life, without any margin for contingencies and a moderate degree of comfort, the urge to resort to illegal expedients such as illicit liquor selling, etc. to supplement the family income becomes, in many cases, too powerful to resist. Along this path the way to crime is easy and swift.

Clearly what was true thirty years ago is true today.

The Lansdown Commission in 1947 stated:

Want, envy, avarice and the craving for distraction are the distinctive motives of human conduct which, in conditions of poverty, lead to anti-social behaviour. The correction of wrong economic conditions and the application of education directed to the establishment of a well-ordered mind are the means by which these are to be combatted.³

¹Professor J.L. Sadie "Labour Supply in South Africa" April 29/30 1971.

²Rand Daily Mail, 10th May 1973.

³Lansdown Commission Report, op cit., para 67, p. 11.

(b) Wages

Undoubtedly per capita income has risen very markedly in South Africa during the last fifty years, and per capita income is higher than anywhere else in Africa. However per capita income is a misleading measure of national wealth when there is unequal distribution of that wealth. The Spro-Cas Social Commission¹ found that the average per capita income of Whites was over thirteen times higher than the average income of Africans.

In 1945-46 average African earnings in manufacturing and construction were 25 per cent of those of Whites. An article in the Financial Mail of 26th May, 1971 showed that in manufacturing the White/Black wage ratio, which is called a skilled/unskilled wage ratio, had increased from 5,1 : 1 in May, 1966 to 5,7 : 1 in June 1970. This estimate of a ratio of skilled to unskilled wage rates of almost 6 : 1 should be compared with a ratio of less than 1,5 : 1 in the U.S.A. and Canada and the fact that in Western European countries skilled rates are² only 15 to 20 per cent above unskilled rates.

Many will argue that unskilled workers in South Africa are less productive than those elsewhere, but nobody can dispute the inequality of pensions between the race groups.

¹"Toward Social Change", the Report of Spro-Cas Social Commission, Publication No. 6, Johannesburg 1971, p. 14.

²"Power, Privilege and Poverty", the Report of the Spro-Cas Economics Commission, Spro-Cas Publication No. 7, 1972, pp. 20-21.

Maximum Monthly Pension Paid per
Individual in 1974¹

| | <u>Whites</u> | <u>Coloureds and Indians</u> | <u>Africans</u> |
|------------------------------|---------------|----------------------------------|-----------------|
| Free Income Allowed | R42 | R21 | R6,66 |
| Old age, blind disability | R57 | R29,50 | R11,25 |

Even more disturbing than the White/Black wage gap, is the actual wages being paid when related to the cost of living. The Bureau of Market Research (Report No. 3 of 1971) estimated in 1971 minimum living costs nationally for an African family of 6 persons at R56,77 and indicated that 77 per cent of all African families had incomes of less than R60 per month.

During the last few years there has been growing concern over Black wages.² This has resulted in pay rises throughout the country but these in turn have been largely reduced by inflation, particularly the rising cost of basic commodities. On April 5th, 1974 the Financial Mail published a front page article entitled "Black Bellies and Businessmen." It stated:

There's a time bomb ticking on every factory floor. And each day the fuse is getting shorter. African discontent is spreading as their wage packets are eaten away by inflation. Real incomes - in many cases already pitifully low - are rapidly declining again.

¹M. Horell, D. Horner and J. Hudson, A Survey of Race Relations in South Africa (Johannesburg: South African Institute of Race Relations, 1974), p. 389.

²See "Power, Privilege and Poverty," op cit., pp. 18-22; SAIRR 1972, pp. 233-247 op cit.; SAIRR 1973, pp. 192-212 op cit.; F. Wilson, "Migrant Labour in South Africa," S.A. Council of Churches, 1972. SAIRR = South African Institute of Race Relations.

It is widely accepted that black wages are in many cases inadequate, and equally accepted that poverty and crime are closely related. South Africa is a sad example of the saying that a society has the criminals it deserves. Until employers recognise their responsibilities to their employees, not only by increasing wages but subsidising housing and providing other basic requirements, and the government encourages employers to do so through tax concessions, productivity in South Africa is likely to remain very low. In 1974 Professor Cilliers¹ at a Chamber of Commerce meeting pointed out that productivity in South Africa was lower than in any of the 44 Western countries where productivity rates had been recently surveyed. Many people would argue that South Africa is not a western country and that such comparisons are invalid, but the fact remains that productivity in South Africa is extremely low and this is largely traceable to poor social conditions.

C.6 Inadequate Housing

Seemingly the inevitable short term result of urbanisation is overcrowding and the creation of slum conditions. Nor is the answer simply to demolish the slums and provide more and better accommodation unless this is combined with adequate education and wages, employment opportunities,

¹Professor S.P. Cilliers - Chamber of Commerce Meeting, 14th June 1974.

recreational facilities and all the other ingredients conducive to a balanced social environment.¹ If people are moved and rehoused without attention to these other matters, then, at best, there will be a breakdown in social patterns during a period of adjustment, as is happening in Europe and America - at worst, the slum conditions will be recreated in new areas with greater social problems than before, as is happening in Cape Town with the rehousing of the Cape Coloured Community.

The Lansdown Commission Report stated:

Slum conditions, the usual accompaniment of poverty, are favourable places for the breeding of crime. There are no South African statistics which might enable the Commission to present figures in proof of this; but it is a reasonable inference from the experience of other countries that approximately two-thirds of all crime can be traced to persons inhabiting poor and overcrowded areas.²

It is appreciated that a great deal has been done since 1947 to provide housing for all sectors of the community. What is also very clear is that large sections of the population are still living in slum conditions. There is some doubt as to how many housing units throughout the country are required. The official number of dwelling units as required early in 1973 excluding group areas removals was given in the Assembly by the Minister of Community Development as being 6 450 for Whites, 26 725 for Coloured families, and 13 950 for Indians. The figures supplied by the Minister

¹See studies of the rehousing of the Gorbals population in Glasgow.

²Lansdown Commission Report, op cit., para 68, p. 11.

are for the entire country and exclude the Group Areas Removals. In order to see the matter in perspective and to understand that the position is far more serious than the Minister indicated the housing shortages in the major cities have been examined.

In November 1972 Professor S.P. Cilliers of Stellenbosch University read a paper to the Cape Chamber of Commerce on the housing needs of the Coloured people in the Greater Cape Town area. (i.e. the Peninsula and the magisterial districts of the Strand, Somerset West, Stellenbosch, Paarl, Wellington and Malmesbury.) He pointed out that the Coloured people had been inadequately housed at least since the turn of the century. In 1902 a Commission reported on the shortage and in 1943 a further Commission reported that approximately 16 500 dwelling units were required for Whites and Coloureds and commented:

Here then, is one of the largest and culturally most outstanding cities of South Africa which for forty years and more has undergone slow metamorphic growth and yet has apparently never at any time made a serious effort to cleanse its fringes once and for all of the fungus of haphazard planning, insanitary housing, disease and crime.¹

¹Report of Commission "To Enquire into Conditions Existing on the Cape Flats and Similarly Affected Areas in the Cape Division," 1943, para 45.

For 1972 Professor Cilliers calculated the shortage for the Coloured Group Population as being (including Group Areas Removals);

| | <u>Dwelling Units</u> | <u>Number of People Involved</u> |
|-------------------|-----------------------|----------------------------------|
| Peninsula | 41 806 | 239 548 |
| Greater Cape Town | <u>13 102</u> | <u>75 075</u> |
| Total | 54 908 | 314 623 |

The number of people involved represented 41,01 per cent of the total Coloured population of Greater Cape Town. It is however an understatement to think that only 41 per cent of the Coloured population are affected by the housing shortage for the natural result is that many families double up, with the result that they too live in overcrowded slum conditions. A particularly worrying aspect is that current planning in Cape Town makes insufficient allowance for the anticipated growth in the population, and even should the present scheme to build 40 000 houses be fully completed by 1980, as initially planned, the housing backlog will remain virtually unaltered.

Nobody doubts that the inadequate housing of the Coloured community is a contributory factor to their extraordinarily high crime rate, yet the matter is not treated as one of high priority by the government as shown by the comparatively small sums allocated for Coloured housing.¹

¹For the year 1972-73 a sum of approximately R6 million was allocated to Cape Town Municipality by the Department of Community Development for housing the Coloured Community. In fact the Municipality only spent R5 million of this sum as their building programme was delayed by planning difficulties emanating from Government Departments.

Housing for Africans is possibly a greater problem, and a greater potential cause of unrest, than the lack of housing among the Coloured people. For both groups it is vital that home ownership is encouraged, and more land must be set aside for this purpose. The Native Laws (Fagan) Commission appointed in 1946 to investigate the laws relating to Africans in urban areas concluded that

The African population must be regarded as a part of the permanent industrial population of the country settled in urban areas, that the Native territories cannot maintain even the future increase of their population there, and that there must be a continual addition over the years to the urbanised African population.¹

The predictions of the Fagan Commission are being borne out but Africans are still not permitted to own land outside the homelands. Without security of tenure people are less willing to make improvements to their property and lack of ownership removes that pride of possession and feeling of belonging which is an important aspect of stability.

No comprehensive figures are available as to the shortage of African housing in the Republic. The waiting lists for houses, from which all projections of future housing requirements are made, are totally misleading. Many persons never sign on the lists for a home, for part or all of a family may be living in the Republic illegally having no passes, others may be ignorant of the procedures, while many do not "qualify"

¹South African Report of the Native Laws Commission 1946-48 (Fagan) U.G. 28/1948.

for accommodation. In terms of Section 10 of the Bantu (Urban Areas) Consolidation Act, an African qualifies for a house outside the homelands only if:

- (a) he is married
- (b) he is over 21
- (c) he was born and has resided since birth continuously in the area, or has worked continuously in the area for 10 years for one employer, or fifteen for more than one employer.

Thus women do not qualify for housing, and for example widows must make special application for permission to remain in their late husband's home.

Figures relating to the shortage of housing for Africans should be treated as conservative for the reasons given.

Estimated Housing Shortage 1975¹

- 1. Pretoria : No figures available but in early 1973 there were some 120 000 squatters living in the Tswana Homeland some 30 to 35 kilometres from Pretoria.²
- 2. Johannesburg³ : 14 160 Housing Units required for Africans; 4 300 Coloured and Indian families are on housing waiting lists.

¹This table has been largely based on an article in the Financial Mail, 7th March 1975, p. 788.

²Deputy Minister of Bantu Administration. Assembly 30th March 1973. Hansard 8 Col. 546.

³Financial Mail, March 7th 1975, pp. 788-790.

3. Bloemfontein : 8 500 Housing Units required for Africans¹
4. Cape Town and Greater Cape Town Area : 54 908 Housing Units for Coloured Community.² No figures available for African housing requirements. On the 14th June 1974 a senior official of the Bantu Affairs Department informed the author that there were approximately 100 000 Africans living illegally in the Greater Cape Town Area.
5. Durban : 31 000 Housing Units for Africans plus 120 000 hostel beds for Africans needed over the next 15 years.³ 27 000 Housing Units for Indians.⁴
6. Port Elizabeth : 26 000 Housing Units required for Africans.⁵

These statistics do not pretend to be comprehensive but serve merely to illustrate that there is a very considerable shortage of housing for Non Europeans and that this has led

¹Survey of Race Relations in South Africa 1973 (Johannesburg: South African Institute of Race Relations), p. 153.

²Professor Cilliers, p. 206 supra.

³Financial Mail, op cit., p. 790. The fifteen year period is misleading for according to the Financial Mail the shortage of African housing in Durban is as great as in Port Elizabeth.

⁴Mr. J.B. Patel, President of Durban Indian Benevolent Society in Financial Mail, op cit., p. 790.

⁵Financial Mail, op cit., p. 790.

to overcrowding and slum conditions which are conducive to crime, not to mention the misery and unhappiness caused by husbands and wives having to live apart and the lack of parental control over young children.

C.7 Migratory Labour¹

Migratory labour, the movement of workers from areas where the market value of their labour is low to areas where it is higher, is a well known phenomenon. It exists in Europe today where workers from the poorer countries, for example Turkey, Greece, Portugal and Spain seek employment in France, Belgium, Germany and other more industrially developed countries. The basic differences between migratory labour in Europe and that in South Africa is one of scale, although in certain European countries this is not so.² In Switzerland some 16 per cent of the total labour force are migrant workers while in South Africa in the gold mining industry, for example, between 80 and 90 per cent of the total labour force of all races have been oscillating migrants for over

¹Dr. Francis Wilson, "Migrant Labour of South Africa," published by S.A. Council of Churches and Spro-Cas 1972.

²Migratory Labour Patterns in Europe (in millions)

| <u>Receiving Country</u> | <u>Foreigners</u> | <u>% of Population</u> | <u>Foreign Workers</u> | <u>% of Work Force</u> |
|--------------------------|-------------------|------------------------|------------------------|------------------------|
| France | 3,78 | 7 | 1,80 | 8 |
| W. Germany | 3,60 | 6 | 2,35 | 8 |
| United Kingdom | 2,60 | 5 | 1,78 | 7 |
| Switzerland | 0,97 | 16 | 0,66 | 30 |
| Belgium | 0,72 | 7 | 0,22 | 7 |
| Holland | 0,20 | 2 | 0,13 | 3 |

Extracted from article by Douglas Brown, "Europe's Migrant Workers," Optima, No. 1 1974, pp. 35-46.

80 years and where today every second Black in South Africa in registered employment is a migrant worker.¹

The attitude of the South African Government to African workers was clearly enunciated by the Minister of Bantu Administration and Development in the Assembly on the 9th May, 1972² when he said:

We do not regard the Bantu working in South Africa - even if they have always been working here, for whatever length of time, even if it is from the day they are born until the day they die - as being present here in an entrenched, fixed capacity; we regard them as being here in a casual capacity.

Thus according to the Minister migrant workers must remain migrant workers, and may not settle permanently outside their homelands. This is in contrast with the position of migrant workers in the European Economic Community, where in terms of the Treaty of Rome, they are entitled to settle with their families after working a number of years in a country. In practice the host countries do not want migrants to settle permanently³ so they are either not permitted to complete a full year's working cycle and are sent back to their own countries or else local authorities deliberately make housing unavailable for them.

¹See Dr. Hobart Houghton, The South African Economy (1973 edition; Oxford University Press), Chapter 4, "African Migratory Labour."

²Hansard 14, Col. 6879.

³In discussing migrant workers and crime with French and Belgium prison authorities it became clear that foreign workers were coming into contact with the police and the prisons far more frequently than their numbers warranted. This was largely due to their way of life which was frequently too noisy and violent for their hosts and the natural antipathy of the police for rowdy foreigners exacerbated by the difficulties of communication. The parallel with South Africa is apparent.

It is extraordinarily difficult to assess the number of migrant workers in South Africa. Dr. Hobart Houghton estimated that there were approximately 2,1 million migrant workers at the time of the 1951 census.¹ Dr. Francis Wilson in his comprehensive study "Migrant Labour in South Africa"² carefully analyses the extent of migrant labour and the arguments for and against it. Economic, political, moral and ideological arguments apart there can be no doubt that the system is totally disruptive of family life and that as a result children grow up without adequate parental guidance and control. For the partners themselves living apart for most of the year, a large number enter illicit unions, many of the men having two families, one in the town and another in their homelands.

In the gold mines Dr. Wilson estimated that less than 1 per cent of the men were eligible for family housing,³ the other 99 per cent living in all male hostels. Naturally these men seek sexual gratification either with prostitutes, women other than their wives, or with other men.

Living conditions are soulless and cramped, recreational facilities are most inadequate and the consumption of alcohol is high.⁴

¹Dr. Hobart Houghton, The South African Economy (3rd edition; Oxford University Press, 1973), p. 88.

²Dr. Francis Wilson, Migrant Labour in South Africa (S.A. Council of Churches and Spro-Cas, 1972).

³Ibid., p. 9.

⁴Ibid., p. 180.

Given the extent of liquor consumption and the fact that thousands of men are living in barracks, far from the restraining influence of their families, it is not surprising to find that the African townships of South Africa are very violent places with frequent cases of rape, assault and murder. ... Township violence which in 1971, in Soweto alone, saw the murder of no less than 80 people per month is, it is argued, exacerbated by the feeling of rootlessness and the breakdown of social structure engendered by the migrant system.¹

In 1971 Mr. Justice V.G. Hiemstra said, when discussing crime in the townships,

How can you fight crime in a community whose members have no stability, no loyalty towards the area in which they live or towards each other.²

Until there is such stability, brought about by adequate housing with freehold tenure or long leases, full employment at living wages, the right for families to live together near their places of work, and all round better economic and social conditions, one can not expect a significant fall in Non-European urban crime. As the Lansdown Commission Report put it almost thirty years ago:

Apart from necessary economic adjustments which would bring wages into closer relationship with the cost of living, some of the measures which would tend to lessen the crime rate would be the provision of decent homes for the workers with reasonable means of access to their work, the establishment of community or people's centres, the introduction of means by which leisure would be wholesomely and profitably employed, and the extension of means of adult education.³

Certainly much has been done since the 1940's but very much more needs to be done. The Government's current priorities

¹ Ibid., p. 181.

² M. Horell, Annual Survey of Race Relations (Johannesburg: South African Institute of Race Relations, 1971), p. 75.

³ Lansdown Commission Report, op cit., para 39, p. 6.

in allocating the Annual Budget show that there is little likelihood of sufficient immediate expenditure to remove these social inadequacies. However there are signs that more attention is being given to these matters.¹

C.8 Alcohol and Crime

The Lansdown Commission Report stated that there was "an excessive addiction to liquor within the Union."² No official statistics were available then, or now, but the Commission stated that there was undoubtedly a relationship between liquor and crime. Any study of economic history will show that poverty, alcohol and crime are closely associated, whether in Hogarth's England or that described by Fielding,³

... (gin) removes all Sense of Fear and Shame, and emboldens them to commit every wicked and desperate Enterprize. Many instances of this I see daily: Wretches are often brought before me, charged with Theft and Robbery, whom I am forced to confine before they are in a Condition to be examined; and when they have afterwards become sober, I have plainly perceived, from the State of the Case, that the Gin alone was the Cause of the Transgression, and have been sometimes sorry that I was obliged to commit them to Prison.

Many magistrates in South Africa today would sympathise with Fielding's plight of two centuries ago. In 1968 "one of every four convictions reported in the crime statistics

¹See Chapter on Cost of Crime.

²Lansdown Commission Report, op cit., para 70, p. 11.

³Fielding - one of the first Bow Street Magistrates in London wrote in 1751 "An Enquiry into the Causes of the Late Increase of Robbers." See pages 18-19.

(in South Africa) were for the offence of public drunkenness."¹

Convictions for Drunkenness 1968

| | | |
|-----------|-----|-----------------------------|
| Coloureds | 51% | of all Coloured convictions |
| Bantu | 25% | " African " |
| Whites | 19% | " White " |
| Asiatics | 10% | " Asiatic " |

In 1968 there were a total of 108 421 convictions for this offence. Since then the numbers of persons prosecuted for drunkenness increased annually until 1973 when administrative measures were taken to limit the number of such cases coming before the courts.² Detoxification centres have been set up in a very rudimentary form.

Offenders are locked up, dried out and released - but without going through the courts and prisons. It is however, hoped that the requisite medical and social services needed to give these measures a meaningful rehabilitative content will be provided as part of what is presently still an experimental procedure.³

While the removal of these offenders from the judicial and correctional process must be wholeheartedly welcomed, care must be taken that the underlying social causes encouraging drunkenness are dealt with, for otherwise the problem

¹Advocate J.J. Labuschagne, "Crime in South Africa," NICRO Criminological Journal 1972, No. 2, p. 15.

²Department of Police - Annual Report, 1972.

³Mr. Justice J.H. Steyn, Essays in Honour of Sir Leon Radzinowicz - The Punishment Scene in South Africa - Developments over the past Decade and the Prospects for Reform (London: Heinemann, 1975).

will remain but less obvious and as less of a strain on the courts.

In 1969 a survey was carried out in the Greater Cape Town area into the characteristics of assault victims, the circumstances and consequences of these assaults.¹ This survey indicated a higher incidence of violence among Cape Town's African population than the other racial groups (582 victims out of a population of 90 000 in a seven month period December 1967 to July 1968).

About 50 per cent of Coloured, African and White victims showed signs of intoxication, there being no significant difference between the sectors. About 57 per cent of the Coloureds and 43 per cent of the Africans claimed that their assailants were obviously intoxicated. The role of alcohol in facilitating tendencies to aggression is thus strikingly confirmed.²

Some idea of the amount of alcohol consumed in Cape Town's townships can be obtained from an analysis of the Cape Town City Council's Liquor Sales.

In Cape Town, in the beerhalls and bottlestores controlled by the Municipality in Langa and Guguletu, the annual turnover in hard liquor (excluding Bantu Beer) has risen over 500 per cent within the space of seven years.³

(1963 to 1971, the numbers of Africans have approximately doubled during this period.)

¹ Jaycee Cape Town, Victims of Violence (G.L. Stone, A. Parsons and A. Russel, 1969).

² Ibid., p. 15

³ Dr. Francis Wilson, Migrant Labour in South Africa (S.A. Council of Churches and Spro-Cas 1972), pp. 180-181.

Excluding sales of liquor to Africans by bottle stores in Nyanga or by private retailers, the figures imply that in 1971 every African man, woman or child living in the Cape Peninsula, from Bellville to Simonstown spent an average of R45 on hard liquor. And this in a city where the Black per capita income in 1970 was estimated to be R193 per annum.¹

To what extent such liquor consumption may be attributed to the migrant labour system is impossible to assess. Nevertheless the fact that in Langa the male : female ratio is 11 : 1, and that in Cape Town as a whole there are twice as many African men as women suggests that it is not irrelevant. Such a conclusion is reinforced when one compares Cape Town with Port Elizabeth where with an African population two-thirds larger than that of Cape Town, but with an approximately equal male : female ration of 0,9 : 1, the municipality's hard liquor sales in 1971 were 39 per cent lower than those of Cape Town. Per capita consumption of hard liquor in Port Elizabeth was approximately R16 compared with Cape Town's R45. Nor was this the only expenditure in this direction; in February 1972, the City of Cape Town Municipality sold 142 000 gallons of Bantu beer ... Yet when in 1962 a referendum was held amongst Africans in Cape Town to ascertain their views on the introduction of beer halls and bottle-stores into townships, 79 per cent of those voting, including migrants in the hostels, stated that they were opposed to the introduction of these outlets.²

However these liquor outlets were introduced against the wishes of the people concerned. One reason for their introduction was to try and reduce the number of "shebeens", where liquor is both brewed and sold illegally, and which are frequently the centre of gang activity. According to the

¹Figure for per Capita income is taken from the University of South Africa's Bureau of Market Research, Cape Town Survey Research Report No. 2711 dated 1972. Dr. Wilson points out that this figure of R45 for per capita consumption of alcohol is only an approximation based on the 1970 Census which was probably an underestimate, and that it excludes all liquor outlets other than those of the municipality.

²Dr. Wilson, op cit., pp. 180-181.

Police shebeens still flourish in Cape Town's townships despite the introduction of municipal liquor outlets and vigorous police action.

In South Africa, apart from poverty, the contributory factors to such a high consumption of alcohol are the migrant labour system and the widespread and long established practice in the Cape Province of giving wine to agricultural labourers (The 'Tot' system). It is not uncommon for labourers to be given 6 to 12 tots of wine during the day (2 to 3 bottles) in addition to their pay, this results in a high incidence of alcoholism among Coloured farm labourers. Attempts to curb this practice have shown that as a first step some form of recreation must be provided instead of drink, for getting drunk is the traditional weekend entertainment for many. In addition better housing conditions, increased pay and adult education are all conducive to a decrease in the consumption of alcohol.

Today it is accepted as the responsibility of all people, and particularly of the government as the representative of the people, to find a solution to the problems of poverty and crime, unlike in nineteenth century England when it was written:

that the heartless selfishness of the upper classes, their disgraceful ignorance of, and indifference to, the brutal degradation in which they suffer the poor to be, is the primary cause of almost all the crime in the country ... in common with most practical persons, he (The Reverend John Clay) considered that almost all crime was traceable to three closely

linked causes, drunkenness, ignorance, and the habit of living in filthy overcrowded dwellings. But he maintained that these, in their turn, were due, in a great measure to the want of sympathy and intercourse between the upper and lower classes.¹

Certainly in South Africa much more must be done to eliminate the poor living conditions of the majority of the people, living conditions which are conducive to a high crime rate.

C.9 Drugs²

Act 41 of 1971 "The Abuse of Dependence-Producing Substances and Rehabilitation Centres Act, 1971" was passed to deal with the drug problem. This act was a sequel to the 1970 Report³ on Drugs which had differentiated between hard drugs and soft drugs (dagga); and had stated "... while the illicit distributor should be prosecuted and punished mercilessly the dependant is in a condition requiring treatment."⁴ Despite the Committee's recommendations Act 41 was so harsh that the Supreme Court described it as one of "manifest and unique severity and one which authorises punishments which the courts of the Republic would not have imposed had the Act not been passed."⁵

¹W.L. Clay, The Prison Chaplain - A Memoir of the Rev. John Clay (Cambridge, 1861), pp. 211-212, 492. J.J. Tobias, op cit.

²Mr. Justice J.H. Steyn, Essays in Honour of Sir Leon Radzinowicz, op cit. No page reference given as book unavailable.

³Report of the Committee of Enquiry into the Abuse of Drugs, 1970, RP 97/1970.

⁴Ibid., para 550, p. 90.

⁵S.V. Shangase and Others 1972 (z)S.A. 410(IV) at page 415.

The court went on to say¹

The history of the enforcement of the Act to date shows that a severe strain is being - and will to a progressively larger degree continue to be - placed upon the prison services to accommodate an unprecedented influx of convicted persons who have been sentenced to very substantial sentences of imprisonment. It is also the experience of Judges of this Division in conducting gaol inspection that remission of sentences for dagga is seldom, if ever, granted.²

The Act does not differentiate between hard and soft drugs, nor does it differentiate between the race groups, despite the committee of enquiry's recommendations on both these points. The use of dagga in South Africa goes back to the beginning of historical records³ and its consumption is widespread among both Coloureds and Africans. Unfortunately statistics are not available of those imprisoned for "drug offences" - but senior prison department officials have ascribed the increase in the prison population daily average between 1972 and 1973⁴ as being largely due to the Drugs Act.⁵ The increase is particularly disturbing as it had been hoped that the Daily Average would have been reduced by the new administrative measures designed to keep "pass law" offenders and "drunks" out of the judicial and correctional process wherever possible. Although Act 41 of 1971 provides

¹S.A. Shangase and Others, op cit., p. 415.

²Mr. Justice J.H. Steyn, Essays in Honour of Sir Leon Radzincowicz, op cit. See also Professor E. Kahn, South African Law Journal (89)1972 and article following by Dr. Bensusan.

³Ibid.

for rehabilitative centres

it seems highly unlikely - bearing in mind the \pm 30 000 annual convictions for the use or possession of dagga and the few facilities available for treatment - that any significant number of dagga addicts or users would ever be committed for treatment. They will almost certainly be dealt with in the mainstream of the Criminal Justice System only.¹

Yet the Criminal Justice System has not the facilities for giving persons dependent on drugs the treatment they require.

C.10 The Extent of Unreported Crimes

In criminology the dark figures or unrecorded crime is of interest not only to the sociologist but also to the penologist who wants, for example, to assess the deterrent or corrective efficacy of penal measures.²

There are many reasons why people do not report crimes to the police, the most common reason in assault cases was found in an American Survey³ to be fear of the offender's retaliation. In certain cases the victim may have been a willing party to an offence, as with homosexual offences and illegal abortions, or else too embarrassed to report the offence in the case of sexual assaults. The American Survey referred to above, found that less than half the number of assaults were reported, less than one-third of rapes, and less than one-third of burglaries. In South Africa one suspects that the percentage of unreported crimes is probably higher.

¹Mr. Justice Steyn, op cit., p. 10.
Cases sent for trial - Possession of Dagga, 1970-71 37 740;
1971-72 33 606, Report of Commissioner of Police 1973, op cit., p. 4.

²Nigel Walker, Crimes Courts and Figures (Penguin Books 1971), p. 15.

³P.H. Ennis, Criminal Victimization in the U.S. - A Report of a National Survey (Washington D.C.: U.S. Government Printing Office, 1967).

Certain of the reasons for crime not being reported to the police require amplification in the South African setting. Undoubtedly the fear of retaliation is a major factor, particularly among those living in the townships. As shown by the Jaycee Survey¹ over 60 per cent of victims claimed to know their assailants. In addition many people feel that the police will be able to do nothing.² Often the victim will feel antagonistic towards the police, and may even have no "pass" and so be arrested himself.

Many cases are not reported due to the shortage of police and the difficulty and inconvenience of making a report. Frequently there are insufficient telephones and sometimes none at all in certain townships with the result that the crime may not be reported at all, or so late that it is impossible for the police to take effective action. A number of new townships, particularly in the Cape Peninsula, have no police stations so people can neither report crime easily nor take refuge from assailants. The lack of transport facilities and the cost of transport, relative to income, allied with the thought that the police will achieve nothing anyway, discourages many people. The shortage of police means that they usually travel in police vans rather than on foot thus cutting them off from the people and

¹Jaycee, Cape Town, Victims of Violence, op cit., p. 15.

²Judging by the number of people in Cape Town treated for assault and the number of convictions it would appear that serious crime (murder) is vigorously investigated but that there are so many assault cases that the police are unable to investigate them as thoroughly as they might want.

reducing the amount of information that they would otherwise receive. Finally the whole process of police, courts, and prisons is seen as being White dominated and amongst Blacks this can result in a lack of identification and even some antagonism to the whole system.

It is to be hoped that the new Institute of Criminology to be developed by the University of South Africa will conduct a survey into the extent of unreported crime in South Africa. Only as a result of more and better documented information can the public be made aware of the extent and significance of crime in South Africa.¹

The social problems outlined above are typical of a pastoral country changing from an agricultural economy into an industrial economy.² The pattern has been seen many times before in many societies and civilisations. Many of the causes of crime described above are due to social conditions caused by rapid urbanisation, population growth and inadequate long term planning. The very high crime rate is largely due to these social conditions; the high prison population to the inability to pay fines and the lack of an effective parole and probation system for those able to pay fines.

¹In South Africa it is quite clear that the dark figure for crime is far greater among the Non-European community than among Europeans, for the reasons outlined above.

²The rate of industrialisation and urbanisation has been particularly rapid since 1956.

Understanding the problem is not the solution. During the last sixty years a great deal has been done to provide housing, education and other basic necessities for the Black population. However, although the country has grown richer,¹ living standards for the Whites have risen far more rapidly than for the Blacks. What is required is a national programme to remove those social conditions which are the basic causes of so much crime in South Africa. Such a programme would require the active co-operation of all sectors of the community, employers, employees and the government.

The previous chapter dealt with the cost of crime in South Africa, the following chapters trace briefly the history of prison labour and the modern principles of prison labour, while the final chapters show how the constructive use of a prisoner's time while in captivity can be to the advantage of both the prisoner and society.

¹Net Domestic Product 1912 R266 million
Net Domestic Product 1964 R6 095 million
Figures from South Africa in the Sixties, edited by M.T. Andrews.
S.A. Foundation. Central News Agency, Johannesburg, 1962, p. 17.

CHAPTER IVA BRIEF HISTORICAL REVIEW OF PRISON LABOUR
IN NORTHERN EUROPE AND NORTH AMERICA

- A. THE ORIGINS OF PRISON LABOUR IN NORTHERN EUROPE
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CHAPTER IVA BRIEF HISTORICAL REVIEW OF PRISON LABOURIN NORTHERN EUROPE AND NORTH AMERICA

For an understanding of the present position of prison labour in South Africa and other countries it may be useful to outline briefly the historical development of prison labour. Initially prison labour was labour as a punishment, this developed into labour as a means of promoting the rehabilitation of offenders for their eventual reintegration within society, while today prison labour is slowly being accepted as part of a country's total labour force.

A. THE ORIGINS OF PRISON LABOUR IN NORTHERN EUROPE

The earliest form of prison labour was labour as a punishment, the imprisonment being merely a practical measure to ensure that the labour was carried out. Thus in Roman Law there was the penalty of praesidio - imprisonment with hard labour and without pay. Such labour could be in the galleys where prisoners were shackled together or in the mines. The basic purpose of this penalty was to punish the offender, deter potential offenders and to exploit the prisoner's labour to as great an extent as possible.¹

¹In 1602 Elizabeth I of England appointed a Royal Commission to investigate the replacement of certain punishments with galley labour so that offenders could be "In such short corrected and punished that even in their punishment they may yield some profitable service to the Common Wealth." For a fascinating account of the galleys see "Memoirs of a Protestant" by Jean Marteilles as translated by Oliver Goldsmith.

According to the 1960 United Nations Report on Prison Labour¹ this utilitarian concept of prison labour is still found in certain countries.²

Prison labour as we understand it today, being labour as a means towards the reformation/rehabilitation of offenders, developed from the medieval workhouses. During the sixteenth and early seventeenth centuries the population of most of Europe increased rapidly, and where, during the fifteenth century, there had been a shortage of labour, there was now a surplus.³ This surplus labour in the country areas caused a drift to the towns to seek employment in the new manufactories, but this in turn led to an oversupply of labour in the cities. Thus people were forced to beg to feed themselves and their families.

In England Holdsworth in his History of English Law stated that:

¹J. Carlos Garcíá Basalo, "The Integration of Prison Labour with the National Economy, including the Remuneration of Prisoners." 2nd U.N. Congress on Prevention of Crime and Treatment of Offenders, London 1960, A/Conf/17/1.

²Unfortunately this report gave no further details and the author has no reliable data on this matter.

³Population of Germany: Inoma and Sternegg Estimates:

| | |
|-----------|----------------------|
| 1475 | 17,64 million people |
| 1600-1620 | 20,95 million people |
| 1650 | 13,29 million people |

Quoted from Rusche and Kirchheimer, Punishment and Social Structure, (Columbia, 1967), p. 25.

with the rise of a large class of able-bodied vagrants, indiscriminate charity became positively dangerous and incapable of dealing with the problem of unemployment. At the same time the change in the position of the Church and the confiscation of Church property led to the complete disorganisation of poor relief.¹

To replace the Church controlled poor relief England introduced the system of Bridewell's during the mid sixteenth century. An Act of Parliament in 1575 proclaimed that houses of correction were to be erected in every county "for the punishment of vagabonds and the relief of the poor." Their purpose was to employ these beggars, if possible to teach them a trade, and to exact work in return for pay and lodgings. By the end of the eighteenth century there were one hundred and twenty-six such work houses. The intention behind these Bridewells was laudable, but by the eighteenth century John Howard found them indistinguishable from the common gaol, there were

few in which any work is done, or can be done. The prisoners have neither tools, nor materials of any kind; but spend their time in sloth, profaneness and debauchery.²

In France the problem of beggars was just as serious and in 1532 the Parlément of Paris decided to arrest beggars and to force them to work in the sewers of the city, chained in pairs. When Henry IV besieged Paris there were estimated to be 30 000 beggars out of a total population of 100 000 people. The French equivalent of the Bridewell was the Hôpital. The first was

¹W.S. Holdsworth, A History of English Law, Vol. IV, p. 390 quoted from Rusche and Kirchheimer Punishment and Social Structure, published in 1939 by Columbia from 1968 Edition published by Russell and Russell, p. 25.

²John Howard quoted from M. Foucault, Madness and Civilisation, published by Pantheon 1965, p. 52.

founded in Lyons in 1612, and in 1656 the most famous of all, the 'Hôpital Général' was founded. By 1657 more than 6 000 persons (mainly beggars) were confined in the Paris Hôpitaux.

The reasons for the Hôpitaux in France and the underlying economic aspects were the same as in the rest of Europe.

For a long time, the house of correction or the premises of the Hôpital Général would serve to contain the unemployed, the idle, and vagabonds.¹

But outside the periods of crisis, confinement acquired another meaning. Its repressive function was combined with a new use. It was no longer merely a question of confining those out of work, but of giving work to those who had been confined and thus making them contribute to the prosperity of all. The alternation is clear: cheap man power in the periods of full employment and high salaries; and in periods of unemployment, reabsorption of the idle and social protection against agitation and uprisings.²

In Holland³ workhouses followed much the same lines as those in Britain - there is no proof that the Dutch were copying the English but it seems likely as the first Bridewells were opened in London in 1556, and in Norwich in 1565.⁴ At this time the Dutch resident in London in 1567 were approximately 5 000, and in Norwich in 1578 approximately 6 000, these were refugees from the religious persecutions taking place in the Low Countries.

¹M. Foucault, op cit., p. 50.

²Ibid., p. 51

³T. Sellin, Pioneering in Penology, "The Amsterdam Houses of Correction in the Sixteenth and Seventeenth Centuries. (University of Pennsylvania Press, 1944).

⁴The author is informed that as early as 1520 a certain Juan Vives, a Spaniard living in Ypres, wrote a book De Subventione Pauperum in which he recommended reformatory work for offenders and idlers.

The founding of the Tuchhuis in Amsterdam in 1589 is well documented. The aims were set out in a memorandum by a certain Spiegel - aims which are as relevant today as four hundred years ago. Work was to be

not sore punishment, but the improvement and correction of those who do not realize its usefulness to them and would try to avoid it.¹

Further aims were to make the prisoners healthy, temperate eaters, used to labour, desirous of holding a good job, capable of standing on their own feet, and God fearing. The regime was based on work with the prisoners receiving one eighth to one quarter of the value of their labour - with some exercise and recreation. Furthermore the warders were carefully chosen as men who would sympathetically encourage these aims. The period of imprisonment was usually between 14 and 90 days, intentionally short enough not to cause too great a family disturbance. In fact it is possible that conjugal visits were allowed as Sir John Carr wrote in 1806:²

I was informed that women who are attached to the prisoners are permitted to visit them at stated periods, without any restraint, by which one of the great political objects of Holland, the encouragement of population does not suffer by this wholesome separation of the faulty from the blameless members of the society.

In fact, Spiegel's laudable aims were never fully brought into effect. Little trade training took place. Weaving was taught but wood rasping, the other main occupation, had no training value.³ Some classification took place with the

¹T. Sellin, *op cit.*, pp. 20-30.

²Sir John Carr, "A tour through Holland, along the right and left banks of the Rhine, to the South of Germany, in the summer and autumn of 1806."

³The Amsterdam House of Correction was commonly referred to as the "Rasphuis".

separation of male and female, young and old.

In 1597 Amsterdam's female equivalent, the "Spinhuis", was founded. Initially this was a workhouse for the poor where spinning and weaving and net making were taught. Within a few years the Spinhuis had become a penal institution for drunk and disorderly women, prostitutes and thieves. The financing of the Spinhuis was novel and had a touch of poetic justice being based on funds levied from the licencing of taverns - this system was extended to an entertainments tax on theatres and even to fishing licences.

Amsterdam was very proud of its workhouses - although the inmate numbers were small being usually under one hundred and thirty people at any one time. Visitors from all over Europe were so impressed with the idea that they returned to their countries and advocated their introduction. Workhouses were founded in Antwerp in 1613, Brussels in 1623, in Germany Lubeck founded its Zuchthaus in 1601, Hamburg in 1618. They were founded in Sweden in 1621, in Spain (Madrid) in 1611, while only England remained backward with its ineffective Bridewells. Eventually, two centuries later, John Howard wrote in his "An Account of the Principal Lazarettos in Europe" that

The Act of Parliament (Penitentiary Act 1779) for Penitentiary Houses was originally founded on the principal regulations of the Dutch rasphouses and spinhouses, but has received many alterations and improvements.¹

¹T. Sellin, Pioneering in Penology, op cit., quoting John Howard.

One might wonder why the idea of workhouses should come to the fore in the 1550's. Sellin suggests in his *Pioneering in Penology* that the sudden oversupply of labour, the development of industry, the rapid urbanisation of Europe and the increase in the numbers of the unemployed coincided with the spread of new learning. The classics were being widely studied after centuries of neglect. Plato's *Georgics* (427 to 347 B.C.)

maintained that punishment must either aim to reform the offender or induce reform in those who beheld it, and in his remarkable book on "The Laws" he proposed a whole system of punishment in which correctional imprisonment found an important place.¹

Plato suggested three categories of prison, the "Common Jail" in the market place for the safe custody of offenders; the "House of Correction" for those "whose fault is due to folly apart from viciousness of temper or disposition"; and finally a punishment prison in some solitary part of the country. Plato's "Georgics" and "The Laws" and Seneca's "De Ira" and "De Clementia" were widely read and interpreted by both Erasmus and Calvin. Sellin concludes:

Thus the wisdom of the ancients, reviewed by the humanists, the opinion of the scientists, religious scruples, humanitarian sentiments, and the demands of an expanding industrial economy became the wellsprings of reform.²

There is no doubt that methods of punishment - particularly attitudes to prison labour - are influenced by the supply and demand for labour. Rusche and Kirkheimer in their "Punishment and Social Structure" have traced this interrelation with some care. As

¹Ibid., p. 12

²Ibid., p. 13

discussed sometimes workhouses were set up to employ idle beggars:

Methods of punishment began to undergo a gradual but profound change toward the end of the sixteenth century. The possibility of exploiting the labour of prisoners now received increasing attention ... These changes were not the result of humanitarian considerations, but of certain economic developments which revealed the potential value of a mass of human material completely at the disposal of the administration.¹

Initially the workhouses were able to work at a profit or at worst break even. But

imprisonment became the chief punishment throughout the western world at the very moment when the house of correction was destroyed by industrial changes.²

In 1802 a pamphlet entitled "Warum werden so wenig Sträflinge in Zuchthaus gebes sert?" (Why are so few prisoners improved in the House of Correction?) This anonymous document pointed out that conditions 'inside' were better than those of the unemployed 'outside'. These sentiments were expressed by many influential people throughout Europe.³

The upper margin for the maintenance of the prisoners was thus determined by the necessity of keeping the prisoners' living standard below the living standard of the lowest classes of the free population.⁴

As people became poorer due to unemployment so prison conditions worsened so that in many cases health and even life expectancy were reduced.

¹Rusche and Kirkheimer, op cit., p. 24.

²Ibid., p. 102

³Ibid., pp. 106-107.

⁴Ibid., p. 108.

⁵Ibid., p. 109.

The industrial revolution made it impossible for work-houses to compete unless prison work was mechanised - but the possible competition of prison work with free labour had always been a problem. Initially when there had been a shortage of skilled labour this had not mattered, in fact

it is certain that the houses of correction were very valuable for the national economy as a whole. Their low wages and their training of unskilled workers were important contributing factors in the rise of capitalist production.¹

But when there was no lack of labour there was a barrage of complaints, Daniel Defoe wrote:

it is giving to one what you take away from another, putting a vagabond in an honest man's employment; and putting diligence on the tenters to find out some other work to employ his family.²

Now, with the industrial revolution, it was clear that unless prisons mechanised they could not compete with outside industry, and they could not mechanise owing to the opposition of both employers and employees. Consequently prisoners were frequently left with nothing to do and people questioned the whole purpose of imprisonment. Idleness was a sin and yet productive competitive labour was unjust to the freeman. As always in periods of unemployment and a general decline in the standard of living the number of prison convictions rose.³ The Establishment

¹ Ibid., p. 50 referring to Dutch work houses.

² Quoted from M. Foucault, Madness and Civilisation, op cit., p. 52.

³ See Conviction Tables for England and France in early 19th Century Rusche and Kirkheimer, pp. 96-97.

| | |
|---|---------------------|
| England Convictions by Assizes and Quarter Sessions | |
| 1805-1806 | 2 649 convictions |
| 1813-1815 | 4 443 convictions |
| 1831-1833 | 14 408 convictions. |

understandably reacted by calling for harsher punishments as a deterrent. Since men could not work productively in prison they had to be kept occupied and the harder the work the surer the deterrent and possible reform. In 1818 the treadmill was devised and as it was cheap its use spread rapidly throughout the English prisons. The treadwheel was the ultimate refinement of what has been described a labour as a part of punishment: "It's main feature is that the work is invested with a 'repressive' function in line with the 'expiatory' aim which the imposition and execution of the sentence are designed to achieve."¹

At the turn of the nineteenth century South Africa, in particular the Cape Colony, had again come under the control of England. The next section traces the development of prison labour in England from this time up to the present day.

B. PRISON LABOUR IN ENGLAND FROM THE 1770's TO THE 1960's

B.1 The Prison Hulks, 1776-1865

In 1776, with the decline of transportation to America, English penal administrator's introduced the 'Hulk System' for removing malefactors from the public eye. The Hulks were old warships moored around the coasts converted for use as floating prisons. They had the advantage of being both cheap and mobile - far cheaper than land prisons (Millbank

¹J. Carlos Garcíá Basalo, op cit., p. 5.

built in the early nineteenth century cost over half a million pounds.) At Woolwich the hulk prisoners were employed in digging up gravel and their lives were totally in the control of a private contractor, Duncan Campbell, who paid £38 per annum for their hire. In the first two years one hundred and seventy six prisoners died, being 25 per cent of the total hulk prisoners.

In 1785 a Select Committee of the House of Commons denounced the Hulk System on the grounds that the hulks were only an interim measure, whereas transportation had removed offenders for ever.

After expiration of sentences, convicts return into the mass of the community, not reformed in their principles, but confirmed in every vicious habit. No parish will receive them, and no person set them to work.... The danger of starving almost irresistably leads them to a renewal of their former crimes.¹

As Giles Playfair commented in his "The Punitive Obsession" -

That, of course, was to state a problem which the 1831 Committee was to re-state and which to this day remains unsolved: the problem of how society can use a prescribed dose of imprisonment to exact a payment from its offending members without, in the end, impelling them to incur further and worse debts.²

However it was not until 1802 that the government recognised and acted against the dangers of releasing prisoners into the control of private contractors who might treat their

¹Giles Playfair, The Punitive Obsession (London: Victor Gollancz Limited, 1971), pp 25-26.

²Ibid., p. 26.

charges as cheap labour rather than strays requiring reformative guidance. In that year an "Inspector of Vessels" was appointed and from then on the hulks were directly run by government appointees. However, under government control, insufficient work was found to keep the prisoners occupied: "At Portsmouth labour by day is merely an apology for work"¹ It is significant that prison administrators should first hire out "convict labour" until manifest abuses compelled closer control, and then when the government took control there was found to be insufficient useful work to occupy them. This has been the pattern of prison labour in England, America and South Africa. The 1831 Select Committee recommended the abolition of the Hulk System, but, owing to the lack of land prisons, the system lingered for a further thirty years.

B.2 The Millbank Disaster

Prison work in England's first major prison, Millbank,² was done in seclusion in the prisoners' cells. The underlying reformative principles at Millbank were seclusion, regular employment and religious instruction. Men were engaged in tailoring while women laundered and sewed. The produce was sold on the open market:

¹Samuel Hoare - Chairman of Prison Discipline Society, 1828.

²The first prisoners were received at Millbank in 1816.

part of the proceeds went to the task-masters and task-mistresses, part to the institution, and three half pence out of every shilling to the prisoners themselves. But the prisoners, whose earnings averaged two shillings and three pence a week for the men and one shilling and five pence for the women, were not actually paid the money until their discharge, when they were also handed a gratuity of three pounds. They were entitled to a further gratuity in the same amount a year later on proof of good conduct; from the germ of an idea of preventing crime by reward, rather than punishment, which regretably perhaps, has never been pursued.¹

The Webb's earned £40 000 per annum gross revenue from making for various reasons, bad architectural design resulting in little ventilation, repressive discipline; insufficient diet and others, Millbank proved a disaster. The governor were given a cut of the profits, and the prisoners received gratuities in the form of money or special meals for exceptional industry. More-

- B.3 Prison Labour in the 1850's - Public Work or Prisons and Local Goals who wished to continue their employment in mat-making. Other goals went in for the manufacture of clothes, brushes, boots and Penal Servitude end marketed their goods both at home and abroad. Steam power was used, and in one or In 1853 Parliament introduced a new prison sentence - work basis. At Preston goal, which was a cotton "Penal Servitude"ry, Playfair describes the aim as being to make a virtue of necessity through exploiting convict labour to the best possible national advantage. At Portland the prisoners were already employed in quarrying cement and building a breakwater, and at Chatham, where another of the public works prison was to be erected in due course, they would build the fortifications.² were motivated by economic rather than humanitarian reasons.

- No statistics are readily available as to the value of
 1.4 Reformatories and Industrial Schools
 the work done in these "public works prisons" - nor are there
 During the 1850's juvenile crime was markedly reduced

¹ Giles Playfair, The Punitive Obsession, op cit. 85 p. 83; reformatory

² Ibid., p. 66. were introduced for those who had committed crimes

¹ Giles Playfair, The Punitive Obsession, op cit., p. 82.

of amateurs with preconceived ideas on the efficiency of deterrent punishment.

In 1878 Sir Edmund du Cane became Chairman of the Prison Commissioners and for nearly twenty years he presided over a harsh prison system consisting of

a uniform application of cellular isolation, absolute non-intercourse among the prisoners, the rule of silence, oakum picking and the treadmill.¹

However contemporary accounts suggest that life in prison was better than that of the unemployed outside and certainly better than that of the pauper.

Prisoners not only were better fed than free labourers, they often did less work as well. For instance, the task for ten hours' hard labour in Holloway in 1868 was the picking of three pounds of oakum, but an honest woman had to pick over six pounds to earn one shilling, a very modest daily wage.²

The evidence is contradictory as to whether prisoners were in fact better off than free labourers or paupers. There is always a substantial body of opinion advocating harsher sentences and tougher prison conditions. However there is little doubt that unemployment was a great incentive to crime and that released prisoners found it particularly difficult to obtain employment.

¹S. and B. Webb, English Prisons Under Local Government (1st edition; reprinted 1963), p. 207. See also Crime and Industrial Society in the Nineteenth Century, J.J. Tobias (London: Pelican Books, 1972).

²J.J. Tobias, Crime and Industrial Society in the Nineteenth Century, p. 241. Tobias' statement based on Journal of the Statistical Society, Vol. XXXI, September 1868, p. 320.

Throughout the century, the difficulty - some said the impossibility of discharged prisoners obtaining honest work was stressed.¹

This situation improved towards the end of the century as work opportunities increased with the expansion of industry.

Generally imprisonment during the period 1860 to 1898 was harsh and determinedly deterrent. The idea of "work as a cure for crime" was not unknown but it was deliberately rejected. Lord Caernarvon addressed the 1872 International Prison Congress as follows

There is a school which holds - and I believe the opinion to be as dangerous as it is attractive, that all prison labour ought to be remunerative and that the great, if not the primary objective of a prison is to make it self-supporting. But, as stated by the House of Lords Committee in 1863, whatever may be the actual incomings from prison work "a profitable return from industrial labour ought not to be made the test of prison efficiency." If, indeed, it were so considered, it must lead to a relaxed discipline, and an injurious influence on the mind of the prisoner. Where, indeed, the sentence is of sufficient length, it may have the happiest effects upon the offender; but it ought to follow upon the harder and more penal labour, and ought not to be made the equivalent of it.

At the same time the labour of those serving sentences of "penal servitude" was permitted to be genuinely productive.

In 1878 the output of mats from the convict prisons (notably Brixton) exceeded the country's total remaining output of mats by nearly 24 per cent. Moreover, penal servitude, was traditionally equated with employment in public works, and as such could be a major undertaking.²

¹J.J. Tobias, p. 243, and see Mayhew, "London Labour and London Poor" 1861-62, Vol. 3, p. 383; and T. Archer, "The Pauper, the Thief, and the Convict" 1865.

²Giles Playfair, The Punitive Obsession, op cit., pp. 143-145.

Some five hundred convicts were employed during the 1880's constructing the fortifications at Chatham arsenal. They were held in camps akin to modern concentration camps with the result that:

the very sight of them was apparently so terrifying that no one who set eyes on a convict at work could ever be persuaded to give an ex-convict a job.¹

B.6 The Gladstone Committee 1895 to the 1960's²

The last decade of the nineteenth century saw a complete change in direction of the English penal system. Prior to the Gladstone Commission Report (1895) the system had been intentionally deterrent and had failed either to deter or to reform. The Committee reported:

We think the system should be made more elastic, more capable of being adapted to the special cases of individual prisoners; that prison discipline and treatment should be more effectually designed to maintain, stimulate or awaken the higher susceptibilities of prisoners, to develop their moral instincts, to train them in orderly and industrial habits and whenever possible to turn them out better men and women, physically and mentally, than when they came in.³

Laudable aims, but there was nothing new about them. The Prison Act of 1779 had stated:

That whereas if any offenders, convicted of crimes for which transportation had been usually inflicted, were ordered to solitary imprisonment, accompanied by well regulated labour and religious instruction, it might be the means, under Providence, not only

¹Giles Playfair, op cit., p. 145

²The history of English prison labour from 1895 to the present day has been reviewed in less detail than the previous period as English penal practice was of less direct importance to South Africa after the date of Union (1910).

³Gladstone Committee Report 1895 - quoted from Giles Playfair, op cit., pp. 157-158

of deterring others from crime, but also of reforming the individuals and inuring them to habits of industry.

The Committee made many sound recommendations such as ending unproductive labour, the training of warders, the abolition of the rule of silence¹ and the provision of libraries. The general emphasis of their report was to promote the education and reformation of the prisoners. However very few of their recommendations were put into effect, the most notable being the abolition of punitive labour by the Prison Act of 1898. This Act made provision for the training of longer term prisoners in various trades and crafts, and a start was made with the employment of prisoners to provide goods for the use of the Prisons Department. The majority of prisons at this time had been designed with the intention of employing prisoners in solitary confinement and there was insufficient room and insufficient capital to build proper industrial workshops. This proved, and still proves, a major hindrance to the development of efficient prison industries. Prison administrators were faced with the problem of how to employ large numbers of prisoners in a small area usually without machinery of any type. The sewing of mail bags by hand which required a minimum of space and virtually no capital outlay was their solution.

¹The rule of silence was still strictly enforced in 1922. See: Stephen Hobhouse and Fenner Brockway, who edited English Prisons Today (London: 1922).

In 1950-51 there were a total of 24 116 persons in English prisons who were employed as follows:¹

| | |
|----------------------------------|--------|
| Industries | 11 133 |
| Handicrafts | 1 405 |
| Agriculture | 1 250 |
| Construction and Conservation | 2 590 |
| Maintenance | 5 312 |
| Other Employment | 63 |
| Unemployed | 2 413 |

However the term industries is somewhat misleading as it includes those prisoners employed in the sewing of mail bags and other unskilled tasks such as cable stripping and metal recovery.

From an examination of the 1961 Report of the Advisory Council on the Employment of Prisoners one can gain some understanding of how prisoners were employed, and how prison industries in particular had developed since the Prison Act of 1898.

¹U.N. Report on Prison Labour, 1955, op cit., p. 96

²Work for Prisoners, Report of the Advisory Council on the Employment of Prisoners, HMSO, 1961.

Prison Employment in England 1960

| | |
|---------------------------------------|---------------|
| Manufacturing | 11 205 |
| Outside Work | 317 |
| Farms | 836 |
| Works Services | 1 846 |
| Domestic Services | 5 007 |
| Vocational and Industrial Training | <u>720</u> |
| Total | <u>19 931</u> |

Further details were given of the manufacturing, or industrial work being done by prisoners and from these details Table 1 has been prepared showing those industries employing over 100 prisoners.

T A B L E 1INDUSTRIES IN 1960 EMPLOYING APPROXIMATELY100 PRISONERS OR MORE

| | <u>Numbers of Prisoners Employed</u> |
|--|--|
| A. Tailoring and Textile Group | (Total 6 769) |
| Mailbag manufacture | 2 527 |
| Mailbag repairs | 1 147 |
| Heavy canvas work other than mailbags | 205 |
| Tailoring and Repairs | 1 019 |
| Needlework, Dressmakers and Repairs | 255 |
| Mats, matting and ropes | 761 |
| Mattresses (coir and hair) | 236 |
| Weavers (cotton, linen and wool) | 210 |
| Knitters and repairers | 306 |
| B. Woodworking | 300 |
| C. Engineering and Allied Industries | (1 306) |
| Metal Recovery | 1 000 (approx.) |
| Tinsmithing | 96 |
| D. Bookbinding (Printing) | 130 40 |

From this table it can be seen that tailoring and textile work was the largest single industry, and that in this group more than half the prisoners were employed in mailbag manufacture or repair. The Committee deprecated the hand sewing of mailbags as being of no training value and stated that there were other better forms of employment than manufacturing mailbags by machine. Tailoring, the second largest employer of prison labour, they considered to be suitable work for prisoners except that outside prison most tailoring work was done by women. The third largest industry was metal recovery which employed approximately 1 000 prisoners. This work the Committee recommended for expansion in local prisons as it requires little training, little workshop space and virtually no capital expenditure.¹

Clearly the majority of prisoners, even in the industrial section, were engaged in work of little training value or interest. Even if this work had been sufficiently interesting 'to train them in orderly and industrial habits' as contemplated by the Gladstone Committee it is certain that the physical conditions of imprisonment in local prisons would have made this goal virtually impossible as shown by the 1961 Advisory Council Report:

The general local prisons are grossly overcrowded; they are old buildings never intended for modern penal methods (including the provision of work in conditions comparable to those of modern industry);

¹The author views metal recovery as nothing more than a means of keeping prisoners occupied and of no training value whatsoever.

and there is a shortage of prison officers ... The results are that prisoners' working hours in some local prisons are as few as 16 hours a week; that even during these short hours prisoners are removed from the workshops for various other prison purposes, such as bathing, interviews, etc., and that the development of better types of work is gravely hindered.¹

As a result of this report and the two later reports² of the Advisory Council on the Employment of Prisoners, the whole system of employing prisoners in England and Wales had improved dramatically. In 1962 prison industries produced goods valued at £3,4 million. By 1966 this production had risen to £5,25 million, however, the Department made a loss of three quarters of a million pounds, but by 1972 this annual loss had been turned into a profit of over half a million pounds.³

The present position with regard to the employment of prisoners in England and Wales is discussed in some detail in Chapter VII.

¹Work for Prisoners, op cit., p. 6.

²Work and Vocational Training in Borstals, HMSO 1962;
The Organisation of Work for Prisoners, HMSO 1964.

³See Chapter VII, Survey of English Prison Labour, Sections F2 and K.

C. THE DEVELOPMENT OF PRISON LABOUR IN THE UNITED STATES OF AMERICA ENCOMPASSING A DESCRIPTION OF THE DIFFERENT SYSTEMS OF ORGANISING PRISON LABOUR

The history of prison labour in the United States of America has been reviewed briefly as it illustrates many of the systems of employing prisoners and certain of the problems of prison labour which will be dealt with in the following chapters.

Nineteenth century America differed from England in that there was a shortage of labour. This meant that administrators and public alike insisted on prisoners working to defray the expenses of their incarceration, rather than on discouraging prison work as being unfair competition with free men. Despite this belief, in the early part of the century productive work was limited by the prison reformers' conviction that total separation and the isolation of prisoners one from another, with convicts working in their individual cells, would compel prisoners to contemplate their wrongdoings, and encourage them to lead upright honest lives on their release. In 1887 Dickens had this to say of the reformers' model of "solitary confinement"

I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers; and in guessing at it myself, and in reasoning from what I have seen upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible endurance in it - which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow creature.¹

¹Charles Dickens, American Notes, 1887.

Fortunately, by 1887 when Dickens wrote his American Notes "solitary confinement" had become the exception and the majority of prisons in the United States were based on the Auburn system - named after Auburn Prison built in 1821 which advocated sleeping in separate cells where possible but working in association.

The type of work and the system of organising prison labour varied from State to State to a far greater extent than it does today. In all there were six major ways in which prison labour could be organised - the "lease" system, the "contract" system, the "piece-price" system, the "public account" system, state use, and public works and ways. Certain of these systems still exist in America whereas others have been stopped, either on humanitarian grounds or as a result of political pressure, however they are all still in existence in different parts of the world. Until the 1890's the main systems of organising prison labour in America were those in which private interest played a role.

C.1 Prison Labour Systems in Which Private Interests Participate

(a) Lease System

Under the lease system prisoners are hired out to private employers by the Prisons Department. The employer pays the State an agreed sum of money and is thereafter responsible for the prisoner's maintenance, guarding and employment. Prisoners can either be hired out totally into the control of private persons, or

arrangements can be made for them to be returned to the prison confines at night.

The advantages of the system to the State is that it receives a sum of money for the prisoner and is saved the expense of building prisons, and looking after the prisoner. The advantage to the employer is that he obtains labour usually at substantially below the market price. The U.N. Report on Prison Labour in 1955¹ commented:

Because the lease system has been, in the past, frequently characterised by an almost unrestricted private exploitation of prisoners under extremely unsavoury conditions, and because its widescale use has often simply reflected the indifference of the States to the welfare of their convicts, it has few defenders among present-day penologists.

The worst example of the lease system in England was probably the hire of prisoners to Duncan Campbell in the late eighteenth century.² In America the lease system was particularly common in the Southern States after the Civil War. Convicts were leased to private persons for employment in timber and turpentine camps, frequently situated beyond the control of the State which was supposed to inspect such camps and their employment conditions.

¹U.N. Report on Prison Labour 1955, ST/SQA/SD/5, p. 10.

²See supra, p. 236.

The 1928 Handbook of the "National Society of Penal Information" stated that 81 per cent of those employed under the contract system were doing women's work, mainly shirt making.¹

The real objections to the contract system were not quite as altruistic as one might think from the above, and in fact both employers and organised labour complained vociferously of "unfair competition" and applied political pressure with the result that the Hawes-Cooper Act was passed in 1929 which prevented the introduction of prison made goods into any State which had passed legislation prohibiting such introduction.

The effect of the Hawes Cooper Act was that many thousands of prisoners were made idle, and to a large extent prisoners are still not fully employed in many American prisons. In 1885, according to Sutherland 75 per cent of the inmates of state and federal prisons were engaged in productive labour, but by 1932 this figure had fallen to 52 percent

moreover, the number now engaged in productive labor is padded by over-assignment and probably at least two-thirds of the prisoners are in fact idle on an average day.²

¹F. Tannenbaum, op cit.

In 1932 some 22 million shirts were made in American prisons.

²E.H. Sutherland, Principles of Criminology (Chicago: Lippincott, 1939), p. 463.

In 1932 State prison industries employed 77 267 prisoners and produced goods to the value of \$71 million.¹ By 1936-37 only 25 000 prisoners were employed and goods valued at \$20 million were produced, and by 1940 the value of goods produced had fallen to \$9 million.²

The intention was to develop State controlled industries and public works for the employment of prisoners who were made idle by the Hawes-Cooper Act. However in practice States were extremely slow at setting up alternative employment and the result was idleness with all its attendant evils. In 1972 certain prison administrators were grouped together to promote the reintroduction of the employment of prisoners by private persons³ and a bill was introduced to the Senate on 15th August 1972.⁴ It is possible that America has come full circle.

(c) Piece Price System

The Piece Price system has been described by Sutherland⁵ as "merely a subterfuge - really the contract system under a different name and in a somewhat preferable form." The contractor supplies the raw materials and

¹Attorney General's Survey of Release Procedures 1939, p. 185.

²P.W.Tappan, Crime, Justice and Correction (New York: McGraw Hill, 1960), p. 681

³See Prison Labour in North America, Chapter VII, infra.

⁴Bill No. S.3922 - See the Congressional Record for the 2nd Session of the Ninety-Second Congress, p. S13518.

⁵E.H. Sutherland, Principles of Criminology, op cit., p. 466.

purchases the completed product from the prison at an agreed figure. The control of the labour, and usually the ownership of the machinery and tools, remain the responsibility of the prison.

The contractor gains by obtaining goods at prices permitting him to undercut the free market, while the prison administration can often realise a profit and yet retain complete control over its prisoners,²

however the main disadvantage is that there can be

long periods of idleness when the State is unable to obtain contracts, and, when work is available (prisoners are) forced to work under pressure to produce as many finished goods as possible.³

The heyday of the piece price system in America was the 1880's and 1890's - particularly in New Jersey - when States switched to this system in preference to the contract system in order to side step objections to the contract system.

C.2 Systems of Organising Prison Labour in which Private Interests Play No Role

(a) Public or State Account

Under the Public (or State) Account system the prison is managed by the State Authorities for the purpose of selling prison made goods on the open market.

The principal disadvantage of this system is that marketing as well as production becomes a responsibility of the State, and - in view

¹U.N. Report on Prison Labour, op cit., p. 11.

²Ibid.

of the peculiar economics of prison labour - goods requiring relatively simple productive processes must be specialised in if the State is to realise a worthwhile return, thus restricting the variety of skills which can be utilised and/or taught within the prison.¹

The danger is that because the prison has to concentrate on a particular industry it tends to push other such industries out of the State, making it all the more difficult for a released prisoner to find employment in the work for which the prison has supposedly trained him.²

According to Sutherland³ the public account system was first used in America in the 1800's in the State and country prisons, and in the federal prisons from 1800-1825. The local prison authorities were empowered to produce goods and sell them at a profit to contribute to the costs of the prisons.

It failed because of the inadequate equipment, capital, transportation facilities, and demand for prison-made goods, and because of the consequent inability to keep the prisoners steadily employed, and the introduction of machinery in outside industries which resulted in lower prices with which the prison products could not compete.

In the 1880's the public account system was re-introduced as a substitute for contract labour and according to Sutherland was still flourishing in 1939. However by 1955 it only existed in a few States - the most notable

¹U.N. Report on Prison Labour, op cit., p. 11.

²See Tannenbaum, Chapter XV.

³Sutherland, op cit., pp. 465-466.

being Minnesota where the sale of farm machinery earned some \$4,5 million in 1953-54.¹

(b) State Use

The State Use System

perhaps representing less a system of prison labour resulting from advanced penological thought than a point to which prison administrations have been driven by outcries against 'unfair competition', State Use denotes the supplying of prison-made goods to public institutions and agencies.²

Today this system is the most extensively used throughout the world. In many countries it has developed from the sewing of mailbags to the manufacture of office furniture, stationery, clothing and many other products.

In America the State Use System was developed as a result of the Hawes Cooper Act and today it exists in all States. Possibly the greatest advantage of this system has been the diversification of prison production and the increased emphasis on work as a part of rehabilitative training, and the teaching of trade skills. However Tappan commented in 1960:

The change has been accompanied by a considerable reduction in prison production and in efficiency of work. The maintenance of prisons has become costly rather than profitable. Idleness is widely prevalent and demoralizing.³

¹In the same period open market sales accounted for 70 to 100 per cent of gross income from prisons in Minnesota, Texas, Arkansas, Missouri, North and South Dakota. Paul Tappan, op cit. p.683

²U.N. Prison Labour Report, op cit., p. 12.

³Paul Tappan, op cit., p. 683.

(c) Public Works and Ways

Public works and ways is the oldest of all systems of organising prison labour. The Egyptians used slave labour, criminals and captives to build the pyramids, while Rome used similar labour in her mines and galleys.

In America the first examples of prison labour being used on public works were the road gangs of the old Philadelphia Walnut Street Jail, and the chain gangs of the Southern States that worked on the roads and parks. Today many States employ prisoners in building work for the prison department, conservation, forest preservation and fire fighting and other similar activities.

Assuming that labour is not exploited and is properly treated, unlike the Southern chain gangs which were notorious for their inhumanity, such programmes can have the result not only of providing healthful outdoor employment for prisoners, but of utilizing prison labour for the public well-being.¹

This list of prison labour systems is not exhaustive. For example farming activities carried out by a prison can be to produce goods for consumption by the prisons and also for sale on the open market. The most noteworthy omission is the "Day Release" system, or the release of prisoners to

¹U.N. Report on Prison Labour 1955, op cit., p. 12.

private employers during the day, the prisoner returning to the penal institution at night. Prisoners released in this fashion are usually serving the final stages of a long period of imprisonment and the aim of "day release" is to help the prisoner to adjust to outside life.¹

In America today the majority of prisoners are employed in industry to produce goods for the use of the State, while some are engaged in Public Works and Ways, while others are receiving trade training or education.² Possibly the greatest lesson to be learnt from a study of the history of prison labour in America is that if one wants to employ prisoners in industrial activities one must have the support of the community and one must take care to explain the purpose of the employment. At the time of the Hawes Cooper Act prison labour in America represented less than 1 per cent of free labour but because its energies were concentrated in a few industries, particularly the making of shirts, it had an effect totally out of proportion to the numbers employed. Overreaction on the part of employers and organised labour has resulted in prison employment practices which were of little value to the State and positively disadvantageous to the prisoners.

¹See description of Pre-release in Chapter V, and its application in England - Chapter VII, infra., pp. 444-449.

²See Chapter VII.

If production orientated prison industries are developed in South Africa, as they have been in the United Kingdom,¹ the government must avoid repeating America's mistakes - but unjustified fear of complaint from the private sector of "unfair competition" is no excuse for administrative inactivity.

¹See Chapter VII.

CHAPTER V

MODERN PRINCIPLES OF PRISON LABOUR

- A. PURPOSE OF PRISON LABOUR
- B. STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS
- C. SOCIAL ASPECTS OF PRISON LABOUR
 - C.1 Work Training for Employment on Release
 - C.2 Work and Character Formation
 - C.3 Remuneration
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- D. ECONOMIC AND ORGANISATIONAL AIMS OF PRISON LABOUR
 - D.1 Financial Contribution to the Costs of Imprisonment
 - D.2 The Economic Merits of the Different Systems of Employing Prisoners
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- E. LEGAL BASIS FOR THE EMPLOYMENT OF PRISONERS
 - E.1 Prison Labour as a Right or as a Duty?
 - E.2 Work for Untried Prisoners
- F. RECENT TRENDS WITH REFERENCE TO PRISON LABOUR
 - F.1 Open Prisons
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 - F.3 Semi-Detention and Week-End Imprisonment
 - F.4 Corrective Labour without Deprivation of Liberty
 - F.5 Profit Orientated Prisoner Employment

C H A P T E R V

MODERN PRINCIPLES OF PRISON LABOUR

A prisoner humbly begs and prays for work;
give me some work to do, or I shall go raving
mad.¹

Fortunately the days of solitary confinement without work are gone, but the lack of useful work in penal institutions is a major factor militating against the smooth running of prisons and preventing the rehabilitation of offenders.

In 1955 the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders resolved that the question of prison labour and full employment had to be solved "before there could be any improvement" in the penal system in general.² Max Grünhut in his classic "Penal Reform" wrote "Useful work is indispensable for any reformative programme," and he wisely added "but enforced labour is not an infallible method of achieving a lasting social readjustment."³

In this section the ideological principles underlying the organisation of prison labour today will be examined, and in the next section will be discussed some of the problems of prison labour which hinder the realisation of these principles.

¹Charles Dickens, American Notes, 1842, relating to his visit to Pittsburgh Prison.

²U.N. Report on the 1955 Congress. Quoted from E.M. Rhodie "Penal Systems of the Commonwealth" (Pretoria: Academica, 1967), p. 104.

³Max Grünhut, Penal Reform (Oxford, 1948), p. 196.

A. PURPOSE OF PRISON LABOUR

In 1955 the United Nations, as part of its survey on Prison Labour, investigated what different countries considered to be the purpose of prison labour. The Report concluded:

There apparently is general abandonment of the principle that prison labour should serve punitive ends. By either law or administrative practice, prison work is widely viewed as properly serving the purpose of providing at least a modicum of occupational training and/or experience to facilitate adjustment after release.¹

However the Report continued

It appears likely that thorough vocational or trade training is available only to a very small minority of prisoners.²

The principle aim of prison labour today is generally considered to be the reformation of the offender. This can be achieved in a variety of ways and must vary from prisoner to prisoner, thus for one prisoner the emphasis may be on the teaching of a trade to fit him for employment on release and to develop in him a feeling of self reliance and self respect, while another prisoner may be an artisan for whom the maintenance of his work skills is essential,³ while a third may have little aptitude for trade training and for him the reformatory emphasis of prison labour may be the development of the "work habit"⁴ and the ability to work in harmony with other people.

¹U.N. Report on Prison Labour, ST/SOA/SD/5, June 1955, p. 9.

²Ibid.

³Finland and the Netherlands in their replies to the 1955 Survey stressed the importance of maintaining work skills. Ibid.

⁴The inculcation of good work habits was included in their reviews of the purposes of prison labour by Belgium, Argentina, the Republic of South Africa and New South Wales. Ibid., 1955. Today more countries favour this laudable but elusive goal. See Chapter VII.

In 1959 the American Correctional Association summarised the different aims of prison work laying particular stress on the reformation/rehabilitation of offenders.

Penologists and prison administrators have long been aware of the importance of work activities as an aid in their efforts to achieve effective and economic institutional administration. There is a recognition of the great potential work programs have for the building of morale, for the maintenance of security and a high level of discipline, and as a means of reducing, or preventing tensions, unrest and even rioting. However, contemporary authorities in the field of correction emphasise that the principal value of work activity is to be found in the opportunity it may afford for the inculcation, or the reactivation, of attitudes, skills, and habit patterns which can be instrumental in the rehabilitation of many offenders.¹

The broad aim of prison labour is generally accepted as being the reformation of offenders but in practice prison administrators are far more concerned with the smooth running of their prisons and this can be best achieved by keeping prisoners occupied.

Thus there are two main purposes of prison labour, the social one of the reformation of the offender, and the overlapping organisational and economic role of keeping a prisoner occupied and making a contribution to the costs of imprisonment. These aims will be dealt with separately.

¹American Correctional Association, Manual of Correctional Standards 1959, p. 387.

B. STANDARD MINIMUM RULES FOR THE TREATMENT
OF PRISONERS

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders¹ adopted² the following Standard Minimum Rules for the Treatment of Prisoners, with particular reference to the employment of prisoners. No discussion of prison labour is meaningful without a brief review of these rules which must be read in the light of Rule I which states:

The following rules are not intended to describe in detail a model system of penal institutions. They seek only on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

and Rule 58

The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, as far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

Standard Minimum Rules with Regard to Prison Work

Rule 71

1. Prison labour must not be of an afflictive nature.
2. All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

¹U.N. Document A/Conf/6/1 Annex 1.A, 1955.

²Adopted on 30th August 1955 and endorsed with minor alterations by the U.N. Economic and Social Council on 31st July 1957.

3. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
4. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
5. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
6. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

Rule 72

1. The organization and methods of work in the institutions shall resemble as closely as possible those of similar work in outside institutions, so as to prepare prisoners for the conditions of normal occupational life.
2. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

Rule 73

1. Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.
2. Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

Rule 74

1. The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.
2. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

Rule 75

1. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.
2. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

Rule 76

1. There shall be a system of equitable remuneration of the work of prisoners.
2. Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
3. The system should also provide that a part of the earnings be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

C. SOCIAL ASPECTS OF PRISON LABOURC.1 Work Training for Employment on Release

The main social aim of prison labour, the training of a prisoner for his release has been discussed above and is contained in Rule 71. Surveys carried out in different countries indicate that the vast majority of prisoners have no work skills and have bad employment records. It is believed that if this can be rectified prisoners will be able to retain jobs on their release and become useful productive members of society. In practice it is clear that very few prisoners use the skills they are taught in prison and the majority return to the same kind of work as they had before imprisonment. There are many reasons

for this, not least that insufficient trouble is taken to consult prisoners as to their wishes prior to work allocation in prison, and further that the type of employment offered by prisons is rarely that which a prisoner would choose for himself.¹

C.2 Work and Character Formation

In some countries, particularly South Africa, it is believed that work can be of very real value in helping to develop or change a person's character. In South Africa this is done by means of the progressive stage system, a prisoner starting in menial employment and by good conduct progressing to more complex and challenging work. Prisoners learn that to progress they must behave properly and work enthusiastically.² This is particularly true of long term prisoners where their date of release can be significantly affected by their work attitudes. Thus prisoners learn that good work and good behaviour are rewarded and this is held to be formative of character.

It may be argued that it is the progressive stage system and not the work itself which is character forming but such niceties of definition are unimportant to the prisoner who learns a trade and experiences a sense of pride and achievement in passing his trade exams. However,

¹See Chapter VII, in particular the Survey of Prison Labour in England, where research has shown that most medium term prisoners would like employment in the building trades, or motor mechanics or employment which appeals to their idea of manliness.

²See Chapter I, C.2(c), p.76.

it is only the minority of prisoners who have the opportunity to learn a trade.¹

For prison labour to be character building in a positive rather than a negative sense the prisoner must believe that the work is worthwhile - such an attitude is all too rare, largely due to the uninspiring nature of most prison work and the inadequate incentives and sanctions for the motivation of prisoners.

C.3 Remuneration

The remuneration of offenders for prison work can be discussed both in terms of the social, and the economic and organisational aspects of prison work.² Minimum Rule 76(1) states that remuneration must be equitable - a deliberately loose word permitting very different interpretations. Inadequate or non-existent remuneration can have a very negative effect on a prisoner, and may make him feel that his labour is being exploited.³ On the positive side, if wages are more than token payments and if they vary significantly in amount depending on the nature and amount of work performed, then, they can be of value in inculcating a respect for the system of rewards normally accepted by society. Secondly if wages are sufficient to cover more than the prisoners personal requirements (such as tobacco),

¹See Chapter VII - International Survey of Prison Labour Practice - Section G for each country deals with Trade Training and the incidence of trade training in each country.

²Chapter VII infra, with particular regard to England.

³See Chapter VI, Problems of Prison Labour. Only Yugoslavia is known to the author as paying full market wages to all working prisoners.

he can allocate the funds in a number of ways¹ which can help him to retain his self respect.

C.4 Idleness

In 1927 Mr. E.R. Cass, the General Secretary of the American Prison Association stated:

Those who have visited prisons regularly are unanimous in the opinion that idleness in a prison is subversive of discipline and hurtful to the moral, intellectual and physical well-being of the inmates. No greater cruelty can be inflicted on prisoners than enforced idleness ... Their health declines and in a large number of cases the mind, burdened by the monotony of the slowly passing hours in which neither hand nor brain is active, become affected.²

It is unversially accepted that idleness in prison must be avoided in the interests of the efficient organisation of the prisons and the well being of the prisoners.

C.5 Prison Welfare

The basic tenor of the Standard Minimum Rules are that work conditions in prison should resemble as closely as possible the conditions in outside employment,³ and that the training/rehabilitation of prisoners must not be subordinated to the purpose of making a financial profit.⁴

The same safety and health regulations should apply as those

¹E.g. Contributing to the cost of his imprisonment, helping to support his family, paying his fines and possibly paying compensation to any victim, paying his social security stamps and saving for his release. See Chapter VI infra.

²E.R. Cass, Paper on "Prison Labour" read at the National Conference on the Reduction of Crime, New York 1927. Quoted from Louis N. Robinson, Should Prisoners Work, 1931, p. 2.

³Standard Minimum Rule 72(1).

⁴Standard Minimum Rule 72(2).

in outside industry, with compensation for injury or death. In addition in certain countries the Prisons Department must pay for the prisoners' regular social security contributions, so that his rights to pension and so on are not affected.¹

The importance for the morale and work attitudes of prisoners of having good physical working conditions, and bright and spacious workshops is discussed below.²

Above all, prisoners must leave prison with both the desire and the ability to earn an honest living. If at the same time the Department can recoup some of its costs from prison labour this should be regarded as a bonus to the primary aims of safe custody and prisoner reformation/rehabilitation.

D. ECONOMIC AND ORGANISATIONAL AIMS OF PRISON LABOUR

D.1 Financial Contribution to the Costs of Imprisonment

Imprisonment is an extremely expensive penal sanction.³ Not only do prisoners cost the State substantial sums of money to house and feed, but the State is denied the normal value of their labour, the income tax to be garnered from them, and in some cases it must provide for the prisoner's family. In addition the entire custodial staff is

¹During 1974 there were a wave of prison strikes in France until it was agreed that the Department of Prisons should pay these stamps.

²See Chapter X, p. 783.

³See Chapter II on the Costs of Crime, pp. 138-151.

unproductive, and therefore a burden on the State.

It is universally accepted that prison labour can and should be used to defray the costs of imprisonment, subject of course to the training/rehabilitative value of such work. However the evolution of prison labour has been such that it is rarely organised to the optimum economic and rehabilitative advantage. In fact little attempt is made to balance these two possibly conflicting objectives.¹

No single system of prison labour is suitable for all countries as different countries have different economic and social structures. Some countries may have a shortage of labour while other countries have a glut. Some countries may have strong trade unions totally opposed to any form of competition by prison labour, while other countries may have either weak trade unions or union members with a more developed sense of social responsibility who encourage productive work by prisoners. Other countries, such as South Africa, may have different forces pulling in different directions. In South Africa there is very considerable underemployment linked with a shortage of skilled labour, yet the trade unions and the law protect the privileges of skilled labour although the lack of skilled labour retards the country's development.

¹The conflict between the economic and penological aims of prison labour is discussed in Chapter VI.

Ideally one wants to train and employ prisoners so that they are successfully reformed and at the same time contribute to the costs of imprisonment. In the last few years there has been a significant move away from the emphasis of "training for work" towards a greater concentration of good work being good training.¹ This is typified by prison employment practices in England,² which are deliberately profit orientated, and are organised along similar lines to private industry. It is argued that only the minority of prisoners are suitable for trade training, and that the best training for the remainder is to give them similar work experience as that which they would receive outside. In this way both the penological aim of giving the prisoner work training and the economic aim of contributing to the costs of the Prisons Department are realised.

D.2 The Economic Merits of Different Systems of Employing Prisoners

The basic systems of employing prison labour were discussed in the previous chapter.³ The economic advantages of prisoners being employed by the private sector are that the Department of Prisons can be saved the capital costs of providing a prison, and the set up and running costs of

¹This has been the case in Japan for many years.

²See Chapter VII, England Prison Labour, pp. 398-463.

³Chapter IV, pp. 250-260.
Employment of Prisoners by the State: Public Account, State Use, Public Works and Ways.
Employment of Prisoners by Private Persons: Lease, Contract, Piece Price and Day Release.

providing work for the prisoners. In addition to these savings the Department receives money for the hire of the convicts. In financial terms this may be the most lucrative system of organising penal labour but in many cases the work supplied by private employers is of little training value for the prisoners. This applies whether the prisoners are leased out, usually to farmers, or employed in the prisons in light industry. However, there are various other penological advantages and disadvantages, which must be considered before accepting or rejecting the private employment of prisoners in any particular situation.¹

The employment of prisoners by the State has the advantage that the prisoners are at all times completely under State control. The prison population represents a considerable labour force, undoubtedly of considerable complexity in terms of length of sentences and work ability, but nevertheless a considerable reservoir of potentially productive labour. The State Use system of organising this labour has various economic disadvantages. By definition State Use means producing articles for the use of the State, and the State's demand for various goods is limited. Thus in many cases the economies of scale are lost, for the prison industry can not bring in the necessary quantities to obtain the discounts achieved by private industry, nor can long production runs be justified. In some countries prison

¹See Chapter VI.

made goods are carefully costed but in the majority of countries finished goods are charged out at materials cost plus a somewhat arbitrary "mark-up" to cover labour and overheads. The Department acquiring the goods still pays below the market price so nobody is concerned with the true costs of production.¹ This haphazard accounting almost invariably results in insufficient controls and an inefficient use of labour.

The Public Account System, where prison made goods are sold on the open market, is becoming more widely accepted and will eventually become the most important way in which prison labour is organised. Industry or agriculture can be organised along modern lines, and the economies of scale can be realised so long as no particular sector of the market is unduly affected by prison produced goods.² Properly organised in this way prison labour can make a significant contribution to the costs of the Prisons Department.

Public Works and Ways have fallen from favour as a means of employing prison labour,³ both due to the former exploitation of prisoners, the desire to keep prisoners out of the public eye, and the increased mechanisation of most

¹The quality of prison made goods for State Use is usually high, often as good or better than private production, for the emphasis tends to be on quality rather than on quantity.

²A possible disadvantage of this system is that to realise a worthwhile return the Prisons Department may find it necessary to restrict the variety of industries, as has happened in England, and thus limit the skills which prisoners can acquire.

³See Chapter VII, Table I, p. 351.

aspects of public works. The author believes that there is still considerable scope for the employment of prisoners in this way, particularly in construction works. In this way both short term and long term prisoners could be productively employed, which would be of far greater economic advantage to the State than the current practice in many countries of over assignment to prison maintenance and prison agriculture.

The largest item in any statement of accounts for a Prison Department is salaries. Naturally the nature of the work in which prisoners are engaged is governed by the availability of staff. Certain industries require considerable supervision, whereas farming requires a very low ratio of staff to prisoners.¹ Thus certain countries favour farming as a means of employing prisoners, usually such countries are concerned with containing the costs of imprisonment rather than viewing prison labour as a source of revenue,² and good employment practices as a means of training for release.

D.3 Prison Work and Discipline

Most investigations into the causes of discontent and riots in prisons indicate that boredom resulting from a lack of work is often an important contributory cause of the unrest. This is so well known and self evident that it requires no elaboration.

¹Assuming that only prisoners who are unlikely to try to escape are employed in this manner.

²This is the situation in South Africa - see Chapters IX and X.

E. LEGAL BASIS FOR THE EMPLOYMENT OF PRISONERS

E.1 Prison Labour as a Right or as a Duty?

Generally speaking work is required by law (or prison regulation) in nearly all countries. Few countries seem concerned with the prisoners "right to work" and only in Norway, Denmark and Sweden does the law "explicitly or implicitly grant the right to work."¹ However, unless this "right to work" is laid down by law or prison regulation the prisoner runs the risk of being forced to remain idle. In South Africa the prisoner has no legal right to work but it is administrative practice that all persons fit for work are employed. In 1960 at the Second UN Congress on the Prevention of Crime and Treatment of Offenders, Mr. Verster, the Commissioner of the South African Prisons,

subscribed to the principle that prison labour should be regarded as a right but that the prisoners should not be allowed to refuse to work.²

E.2 Work for Untried Prisoners

Most penologists are agreed that untried prisoners should be given the opportunity to work should they wish to do so. In fact prisoners should be encouraged to work, particularly in those countries which have no adequate system of bail or where many offenders can not afford bail.

¹U.N. Report on Prison Labour, op cit., p. 2.

²U.N. Congress on the Prevention of Crime and Treatment of Offenders, London 1960, A/Conf.17/20, p. 37.

It is argued that work should not be compulsory for untried prisoners, for although they are restricted in their movements, they should be presumed innocent until found guilty by a judicial body. As a consequence of this presumption of innocence they should be as free as anybody else to decide whether they want to work or not. If they do decide to work then their work must be separate from convicted prisoners and they should be paid market wages for such work subject to the value of work performed.

One of the problems of permitting work for untried prisoners is that in those countries where the period of detention pending trial is deducted from the full term of the sentence those prisoners who have not worked while awaiting trial avoid having to work for part of their sentence, and this is unjust compared to those who have worked. The author considers this of little importance, particularly if proper wages are paid to the working prisoner awaiting trial.¹

In practice work for untried prisoners is almost invariably routine maintenance work of little merit save for helping to pass the time. Too little attention has been paid by prison administrators to keeping untried

¹In Switzerland in one of the Cantons a person awaiting trial can, if he makes a confession, be transferred to a penal institution before judgement and begin to serve his sentence. Ibid., p. 39.

prisoners occupied. For many people this initial period in prison is the most difficult to endure. The initial shock of imprisonment, the tension of awaiting their trial, the lack of any constructive work, can make them the more susceptible to the damaging influence of the experienced ex-prisoners who are imprisoned with them and who are also awaiting trial. The value of useful work for untried prisoners is recognised by all prison administrators yet little has been done to make provision for such work.¹

F. RECENT TRENDS WITH REFERENCE TO PRISON LABOUR

F.1 Open Prisons

Although open prisons have been known for many years,² there has been a marked increase in their numbers since the Twelfth International Penal and Penitentiary Congress held at the Hague in 1950. A resolution adopted at this Congress stressed the advantages of open prisons and recommended their extension to the greatest possible number of prisoners. The resolution suggested that prisoners should work in agriculture or in industrial and vocational workshops under open conditions.³ This was repeated by the U.N. Secretariat at the 1955 U.N. Congress on the

¹In South Africa prisoners awaiting trial are not given work. On the 30th June 1973 there were 18 939 persons awaiting trial, being approximately 20 per cent of all persons in prison on that date. Annual Prison Report 1972-73, RP 91/1973, p. 8.

²One of the first open prisons was the famous Witzwill Prison in Switzerland founded in 1891.

³Proceedings of the Twelfth International Penal and Penitentiary Congress, the Hague, August 1950, Vol. III, pp. 586-588.

Prevention of Crime and the Treatment of Offenders which further recommended the compilation of statistics to make it possible to assess from the point of view of recidivism and social rehabilitation the results of treatment in open institutions.

In Finland such research has been carried out to compare the incidence of recidivism after release from closed and open institutions.¹ Great care was taken to analyse the sample groups of prisoners to account for different personality characteristics among the prisoners. It was anticipated that those persons held in open conditions would have a lower incidence of recidivism on release, particularly after the research of Mannheim and Wilkins in 1955,² but this did not prove to be so - "according to the material presented, however, this variance in the conditions of imprisonment had no effect on recidivism."³ Similarly Uusitalo found that there was no significant difference in the deterrent value of prison or open labour colony. He concluded

From the point of view of crime prevention, prisons do not seem to be more effective than labour colonies. At the same time prisons involve much higher economic and social costs than labour colonies. In addition to these costs the needless sufferings caused to prisoners and their families have to be considered. It seems to be possible to achieve remarkable savings

¹Paavo Uusitalo, "Recidivism after release from closed and open institutions," British Journal of Criminology, July 1972.

²Hermann Mannheim and Leslie T. Wilkins, Prediction Methods in Relation to Borstal Training (London: H.M.S.O., 1955).

³Paavo Uusitalo, op cit., p. 225.

in the costs of the prison system by further decreasing the use of closed prisons and replacing them by labour colony-type open institutions.¹

A logical extension of the system of open prisons which today are usually farming orientated, would be the establishment of open factory prisons, being factories in normal industrial areas and organised on similar lines to a normal factory. Similarly there is considerable scope for the extension of construction work in open conditions.²

F.2 Pre-Release

In 1955 the U.N. Report on Prison Labour stated:

The development of pre-release programmes on larger scales would represent an extremely important step in the direction of reducing further the traditional isolation from society which has heretofore been typical of the status of offenders subjected to incarceration.³

Prisoners nearing the end of their sentences whose work habits and general conduct have been good are selected for pre-release to work away from the confines of the prison institution during the day and to return at night. At work

¹Ibid., pp. 225-226. Uusitalo's study requires careful analysis both to the length of sentences - almost 70 per cent under six months - and to the nature of the offences - in approximately 60 per cent of offences the offender was intoxicated. See tables 8 and 13, pp. 228-229. Further research on the same lines as that conducted by Uusitalo but concentrating on longer sentences and excluding those offences committed under the influence of alcohol might lead to different conclusions.

²See Chapter X.

³U.N. Report on Prison Labour, op cit., para 80, p. 22.

they are treated as normal employees receiving normal wages and only the employers are informed of their imprisonment. Generally they travel to and from the institution unattended and at night they are housed apart from the other inmates. Part of their wages are paid to the prison authorities, part are saved pending release and part are for the prisoner's immediate use.

Such schemes have been in operation in parts of America since the Huber Law in Wisconsin 1913,¹ in Sweden since 1945,² and in Scotland for borstal boys since 1947.

The advantages of such schemes are that the prisoner is gradually reintroduced to society so that on his eventual release he will be the more capable of settling down and adjusting to freedom. From the viewpoint of society it narrows the gulf separating the prisoner from normal life, and reduces the cost of incarceration while still punishing the offender by imprisoning him. It is to be hoped that pre-release will be considerably extended.³

¹Louis N. Robinson, "Should Prisoners Work," Philadelphia 1931, p. 200.

²Act of 21 December 1945, "Concerning the Execution of Imprisonment," S.53.

³See discussion on its use in Scandinavia, "The Part Time Prisoner," The Prison Journal, Spring 1964.

F.3 Semi-Detention and Week-End Imprisonment

Semi-detention, as applicable in Belgium,¹ is somewhat similar to pre-release but with the important difference that it starts at the beginning of the sentence and not at the end. In this way it is hoped to preserve the offender's normal occupation and thus avoid the difficulties of finding employment on release and to help to maintain family relations.

Week-end imprisonment means that an offender carries on his normal life during the week, attending his work and living at home but on Friday night he reports to the prison and is incarcerated until the following Monday morning.² During this period the prisoner remains in his cell except for the exercise period and possible attendance at a religious service. Thus imprisonment is reduced to mere detention with no remedial treatment.³ The punishment is deterrent and not reformatory but is considered preferable to a short term of imprisonment.⁴

F.4 Corrective Labour without Deprivation of Liberty

In the U.S.S.R. Article 30 of the 1926 Criminal Code⁵ sanctioned the imposition of corrective labour without

¹Paul Cornil, "Trends in Penal Methods with Special Reference to Prison Labour," 1968 in Crime and Culture edited by M.E. Wolfgang, (New York, 1968), p. 398. See infra Chapter VII, Survey on Prison Labour in Belgium.

²Introduced into South Africa in 1959. Sections 329 and 334 (bis) of the Criminal Code.

³Strictly weekend imprisonment is not prison labour.

⁴The Belgian prison authorities are unanimously opposed to weekend imprisonment. See Chapter VII - the section on Belgium.

⁵Now Article 21,40 of the 1960 Criminal Code of the Central Republic. See Paul Cornil, op cit., p. 400

deprivation of liberty. In terms of this sentence the offender must work for the State as his punishment, but at the end of the day he can return home to his family.

Although not a recent trend of prison labour it is included here as a possible extension of the present practice of the community treatment of offenders rather than their imprisonment.

The development of such a system has interesting possibilities but in practice there would be considerable administrative difficulties. If sufficient "public work" was required near large urban centres - then it might be feasible for those unable to pay a fine, usually labourers, to be sentenced to a period of work similar to the cost of their fine. Those who had bad attendance records could be imprisoned in the normal way, while those who worked well could retain their family ties - although their normal employment, if any, would be interrupted.¹

F.5 Profit Orientated Prisoner Employment

The Standard Minimum Rule 72(1) states that:

The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

The object of most businesses is to earn a return on the capital employed, and consequently outside industry

¹It seems probable that in South Africa offenders would not come to work and the cost of finding them would probably outweigh the advantages of the scheme.

and agriculture is usually profit orientated. Standard Minimum Rule 72(c) specifically states that the profit motive must not take precedence over the interests of prisoners and their training. However certain countries, notably Japan, England, Sweden and New Zealand believe that efficiently organised work is rehabilitatory training in itself.¹

This trend towards profit orientated prisoner employment practices is one of the most significant advances since the U.N. Report on Prison Labour in 1955.

The different systems of organising prison labour were reviewed in the previous chapter with some comments on the advantages and disadvantages of each system. The following chapter deals in some detail with certain of the problems of prison labour with particular reference to South Africa.

¹Other countries are starting to accept this - e.g. France, Belgium and Canada.

CHAPTER VI

PROBLEMS OF PRISON LABOUR

- A. SHORT TERM PRISONERS
- B. CONFLICT BETWEEN ECONOMIC AIMS AND PENOLOGICAL AIMS OF PRISON LABOUR
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CHAPTER VIPROBLEMS OF PRISON LABOUR

In the past the problems of organising prison labour under the various restraints put upon it both by the nature of the labour force and the fears of antagonising private industry and organised labour have resulted in prison employment practices which are neither profitable nor good training.

Probably the four greatest individual problems are how to train and employ short term offenders in a useful manner; how to find the balance between the economic aims of prison labour and the penological aims; how to avoid competing with free industry, and finally, how to organise, train and motivate a work force which has not been selected for its work potential or ability, which can not leave of its own free will nor be dismissed for incompetence.

A. SHORT TERM PRISONERS

Before dealing with the different aims of prison work - financial return and/or sound rehabilitative training - one must look more closely at the labour supply position. In normal working conditions an employer expects to have his labour for at least a year (in South Africa rather less in some fields due to the migratory labour system¹), so that he can spend a short time training the man and then have the benefit of that training.

¹See footnote 1 on following page.

In 1973² in South Africa approximately 50 per cent of all prison sentences were for up to one month, while approximately 80 per cent of all sentences were for under four months. Clearly from a work efficiency and productivity viewpoint the 80 per cent are less desirable than the remaining 20 per cent.

In South Africa those in authority have regularly condemned the evil of short term imprisonment for the last sixty years. The 1910 Annual Prison report, quoting the 1910 International Prison Congress, said that

the reformatory system is incompatible with short sentences, and that a long period of reformative treatment is more likely to be beneficial than repeated short terms of vigorous imprisonment.

Since Union there has been a drop in the percentage of short term sentences being served but they still clutter up the prisons to an unnecessary degree.

¹(from previous page). Virtually no research has been done in South Africa as to labour turnover in industry. In March 1975 the Cape Town Chamber of Industry knew of no data whatsoever on labour turnover and could only comment that it was high by international standards. Enquiries with a number of major employers, mainly in the clothing industry, indicated that labour turnover in that industry was approximately 40 per cent per annum (the clothing industry in the Cape Peninsula is not affected by migratory labour.) The purpose of these enquiries were to try and establish labour turnover rates outside prison in order to establish whether the claims of prison administrators, that prison industries are particularly handicapped by high labour turnover, are justified or not. Without far more detailed research no conclusions can be drawn, save that in prison it should be possible to have a stable work force of medium and long term prisoners and to employ short term prisoners on the more menial tasks.

²Annual Prison Report 1972-73, RP 91/1973, p. 6. Over 40 per cent of those sentences for periods up to 4 months were released on parole within 24 hours.

T A B L E 1PERCENTAGE OF OFFENDERS SERVING SENTENCESOF UNDER ONE MONTH

| | |
|------|-------|
| 1911 | 72,8% |
| 1932 | 92,0% |
| 1942 | 64,3% |
| 1952 | 59,2% |
| 1966 | 47,9% |
| 1973 | 50,7% |

Apart from the difficulty of employing short term prisoners there is the possibility, some will argue probability, that short term imprisonment has a detrimental effect. In 1945 Mr. W.G. Hoal, the Director of Prisons at that time, wrote that with a few exceptions

a progressive series of seven days, fourteen days, three weeks, a month, two months, three months, in carefully graduated homeopathic doses accustoms the prisoner to gradually increasing periods of imprisonment.¹

Nevertheless, the cardinal fact remains that a strikingly high proportion of our prison population is comprised of those serving short-term sentences. It need hardly be emphasised that such a large proportion of short-term prisoners is inherently undesirable.

Given a limited amount of money, and money is usually scarce in most Prison Departments, the majority of prison administrators will prefer to spend this money in the training of long term and therefore more serious offenders than in training short

¹E. Kahn, Crime and Punishment 1910-1960, Acta Juridica 1960, p. 214.

term offenders. With a sentence of only a month or so most forms of training will be impracticable and even with sentences of three to four months prisoners are less amenable to training than long term prisoners, for they look on prison as a short unpleasant interlude to be endured and forgotten. Some penologists argue that it is just these prisoners, in particular those who have no work skill, who should receive intensive training so that they can be turned from a life of crime before it is too late. The author has sympathy with this view and in conditions other than those pertaining in South Africa he would advocate that prisoners serving sentences of 6 months or so and who are willing to be trained should be given an intensive training course - possibly on the lines of the 16 week building trades course as described in Chapter VII in the section on English prisoner employment practice.¹ The prisoner should pay a reasonable sum towards the cost of such a course,² either initially or out of future earnings, for otherwise the cost to the State will be prohibitive and by having to pay for his training the prisoner will be more disposed to learn than if it were free.

The hesitation in suggesting such a system for South Africa is on the grounds that South Africa is not yet ready for such a scheme. In South Africa there is no comprehensive State subsidised worker training. Secondly semi-skilled work of the

¹Chapter VII, pp. 422-423.

²Perhaps one month's wages.

type being discussed is done by Non-Europeans and owing to the extremely high incidence of imprisonment there is little ignominy attached to this penalty. Finally the pain of separation from wife and family already exists for substantial numbers of the population due to the migratory labour system. It is not beyond the bounds of possibility that short term imprisonment could be actively sought as a step towards self betterment. Even if this were not the case the public would vociferously object to "prison hotels" being turned into expensive work training centres.¹

Secondly most offenders in South Africa would be unable to pay for their courses, either initially or out of their future wages due to the low level of current wages in South Africa and the large families of the Non-European population.

Despite these objections the author would welcome the introduction of such a scheme on an experimental basis. The cost to the State of a criminal career is vastly greater than the cost of training a potentially productive member of society. It is difficult to know whether such training will be more effective with long term prisoners or with short term prisoners. On the negative side long term offenders are in many cases more wedded to crime but the length of their sentences gives a greater opportunity for influencing them and "inuring them to habits of industry" to use the well worn phrase of the English Prisons Act

¹The public usually object to any amelioration of conditions for prisoners. They are seemingly unaware or unconcerned with the truth of Winston Churchill's words when Minister of Home Affairs in 1910. See Chapter X, p.911.

of 1779. On the other hand, short term offenders although less criminally experienced, will be more disposed to return to their former employment. A series of controlled experiments could give valuable insight into this problem although in practice a great deal will depend on the personality and character of each individual.

Unfortunately the funds at the disposal of the Commissioner of Prisons in South Africa are so meagre in relation to the numbers of persons in prison that he will be tempted to concentrate his attention on the long term offender rather than the short termers. This does not mean that short term prisoners must be employed in menial tasks requiring no training.¹ In Sweden the average length of sentence is three months and yet prison industries succeed in making a profit. Long term prisoners are employed in those tasks which require special training but otherwise all work operations take only two to three weeks to learn. This is the same as in outside industry where production is broken down into a number of relatively easily learned operations. In this way, and by a concentration on productivity, the Swedes have managed to make prison work approximate to industry outside.²

¹ Those with trade skills are given the opportunity of practising their trades in prison.

² See Chapter VII for a detailed description of work in Swedish prisons, particularly the Tillberga experiment, pp. 488-494.

In England even very short term prisoners are employed in prison industries. They are involved in simple tasks such as the handling of raw materials or the packaging of finished goods.

It is to be hoped that the use of short term imprisonment, particularly sentences of under three months, will be replaced by extra custodial sentences as soon as an effective probation service has been developed.¹

B. CONFLICT BETWEEN ECONOMIC AIMS AND PENOLOGICAL AIMS OF PRISON LABOUR

As discussed in the previous chapter the International Standard Minimum Rules for the Treatment of Prisoners embody the principles that prison labour should:

- (a) so far as possible maintain or increase the prisoner's ability to earn an honest living upon release; and at the same time
- (b) not subordinate the interests of the prisoners and of their vocational training to the purpose of making a financial profit from an industry in the institution.²

South Africa endorsed these beliefs in 1956 when Mr. Verster, the Commissioner of Prisons, stated:

As work is recognised as being the basic principle of a modern prison system, it is axiomatic from what has already been said that any work of a repressive character must be avoided and all work planned to

¹See Chapter X, p.897.

²Standard Minimum Rules for the Treatment of Prisoners. Rule 72(i) and (iii).

facilitate the training and ultimate rehabilitation of the prisoners, and that the purpose of prison labour should not be regarded as only a means to prevent idleness and maintain order.¹

However prison administrators are themselves uncertain as to what constitutes the best form of occupation/training as a means to rehabilitation. Should the emphasis be on training per se, or on teaching good work habits by means of efficiently organised employment? In England the "Report of the Advisory Council on the Employment of Prisoners" concluded that 'Good work, that is work of good quality, is good training.'² They considered the efficiency of prison industry to be very important and recommended that it should resemble private industry as closely as possible.

It is our contention that the benefits that may be derived from employing prisoners in well-run prison industries fall steeply as efficiency drops below a reasonable level. We would emphasise that we are not arguing in favour of efficiency merely for the sake of maximum production ... We are saying rather that without efficient organisation industrial work in prison will be of little value as a form of general training.³

It would seem self evident that if work is to be the basis of prisoner training and rehabilitation then that work should be efficiently organised on a similar basis to private enterprise. In fact this is extremely difficult for the reasons outlined in this chapter. However, what is not clear is whether efficient

¹Annual Prison Report 1956, U.G. 56/1956, p. 34.

²Work for Prisoners, HMSO 1961, para 26, p. 7.

³Ibid., para 30, p. 8.

prison work is the best possible training for any prisoner, for quite clearly it is not suitable for all prisoners.

As H.J. Klare commented on the English Advisory Council's report "Work for Prisoners": "Recidivist prisoners are not like ordinary workmen outside and may have special needs which the Council does not seem to have recognised."¹

Ideally all prisoners should be carefully interviewed on their reception into prison by a team of trained psychologists to ascertain what type of training is best suited to each prisoner and what part constructive work, and the nature of that work, should play in his treatment.

Some prisoners may be so backward educationally, perhaps being unable to read and write, that education may be a first priority. Others, such as certain recidivists, may require extensive social and psychological treatment before they are capable of being usefully employed. Regrettably financial considerations make such detailed analysis impracticable and in most countries only prisoners serving sentences of over six months are classified in this way.² Consequently regular employment is virtually the only training given to short term prisoners, yet virtually no research has been carried out to find what part work and work training plays in the successful rehabilitation of offenders.

¹H.J. Klare, Reflections on Prison, Howard Journal, 1963, Vol. 11 No. 2.

²In South Africa detailed investigation is only available for prisoners sentenced to imprisonment for two years or longer.

The role of prison labour with particular regard to rehabilitation is discussed in more detail in Chapter X.¹

C. INDUSTRIAL EFFICIENCY IN PRISON

The Advisory Council on "Work for Prisoners" stated that

the efficiency of prison industries is very low in comparison with industry outside prisons ... Moreover, it is doubtful whether prison industries can ever be expected to reach quite as high a standard of efficiency as is found in an ordinary well-run factory. The reasons for this need little elaboration. The prison authorities have no say in the selection of their labour force, and it is composed of unwilling recruits. Though many prisoners are capable of good work, many have always fought shy of it; and although a few possess considerable industrial skill, most have little or none. The labour turnover is, as we have said, very large and must always be so in comparison with industry outside prisons. The need for security and the other special requirements of prison administration must, to some extent at least, impede industrial efficiency. Nevertheless, we are convinced that efficiency can be considerably increased.²

Clearly these remarks apply to agricultural employment, construction work and other forms of prison labour as well as to prison industry. Once the principle is accepted that efficient well organised work is good training then many of the problems referred to by the Advisory Council will be overcome. Industrial efficiency in prisons will be discussed in three sections, the supply of labour and the difficulties inherent in prison labour,

¹See Chapter X, Section E, pp. 825-830.

²Work for Prisoners, op cit., para 60-61, p. 15.

the difficulties of finding adequate work and finally the problems of management.

C.1 Labour Supply

(a) Character of Prison Labour in South Africa

The character of the prison population in South Africa is substantially different to that of all European countries. Firstly the percentage of short term prisoners is particularly high, over 50 per cent serving sentences of one month or under in 1972 while in Britain in 1968 only 18 per cent of prisoners had sentences of under 5 weeks.¹ The problems of employing short term prisoners has already been discussed. For longer term prisoners there is more scope for proper training if this should be justified. In the past the emphasis has been on trade training but with ever greater sophistication of machinery there is less need for a man to have a trade. In 1931 Louis N. Robinson concluded that quite a large percentage of prisoners were not suitable material for trade training and that the majority of work outside prison was unskilled.² More recently in 1961 the English Advisory Council concluded:

¹See Chapter VII, Survey of English Prison Labour, Table 3.

²Louis N. Robinson, Should Prisoners Work, op cit., pp. 298,299.

A very large part of the work in modern industry consists in the performance of fairly simple repetitive work on production lines. Such work is from every point of view eminently suitable for prisoners. It is useful; much of it can be organised in prison in the same way as it is in industry outside; it requires only a short period of training; it will give prisoners some experience and skill which will help them to get and keep a job on discharge; much of it does not need a great deal of space in workshops; and the production of even highly efficient prison workshops will form only a negligible proportion of the national production and will not therefore be a threat to the interests of anyone.¹

This is equally true of South Africa today where there is currently a shortage of semi-skilled labour in many industries. One of the results of current worldwide inflation, and the very rapid rise of the consumer price index in South Africa, has been that wages in industry have increased considerably. The proportion that labour costs bears to the total product cost has risen and many companies are concentrating on a smaller more highly skilled labour force. In some cases² more modern machinery is being used which can do the work of several people, in others, industrial work formerly done by a skilled journeyman is broken down into several tasks and performed on a production line basis by less skilled and therefore cheaper labour.

Ideally prisoners should be trained in the work at which they will want to work on their release. This will not

¹Work for Prisoners, op cit., para 46, p. 12.

²e.g. The textile industry.

be possible in many instances as for example with short term prisoners, but the importance of specific trade training can be overemphasised.

We talk about teaching and training men in prisons. The greatest lesson any man can learn is that if he would eat he must work, if he would enjoy the good things of life, he must earn by honest labour, by the sweat of his brow if necessary.¹

Race

In South Africa it is government policy to separate prisoners of different race groups. Apart from being a natural extension of apartheid it is deemed necessary by the Prison Authorities for the maintenance of good order and discipline.

To a large extent Whites have been separated from Non-Whites for over fifty years, but the separation of Coloured and Asiatic prisoners from Africans is still taking place.² This policy is extremely expensive as it necessitates duplication of buildings, facilities and staff.

(b) Job Allocation

As the English Advisory Council pointed out the labour supply is composed of unwilling recruits of varying intelligence, work habits and industrial aptitude.

¹Warden Oscar Lee (Wisconsin Penitentiary), American Prison Association, "Proceedings" (1928), p. 335.

²In 1947 separation of African prisoners from Coloureds and Asiatics scarcely existed. Lansdown Commission Report, op cit., para 760, p. 114.

It is vitally important that an inmate be allocated to the right job and preferably one of his choosing. On arrival in prison all prisoners should be interviewed and classified to find what work is best suited to their length of sentence, character, work skills and aptitudes, and hopefully future employment prospects. Although different work appeals to different people the majority of men prefer seemingly manly occupations such as building construction, sheet metal work, or furniture making, rather than tailoring or laundry work. But in prison as in normal society there may not be an opening in the sheet metal work factory and the inmate must work at something other than what he wants. However, if there is a system by which a prisoner can transfer to his chosen work when a place becomes available he may be motivated to work hard in the interim. This will only be effective if the possibility of transfer is realistic - failing such possibility the prisoner must be encouraged to accept his fate and be motivated by financial and other rewards.

Factory managers, whether they be running prison factories or normal factories, are concerned with the smooth running of their operation. It is only natural for them to attempt to minimise their labour turnover, for by losing a good worker their work programme will be disrupted. A competent workman may want to transfer to a better job but the manager may prevent him from leaving; then, if the worker retaliates by lower quality work he risks

transfer down to a less desirable job. In free society the prisoner could leave the factory but in prison he has little redress. In organising any factory prison system such problems must be borne in mind and provision made to minimise their occurrence.

(c) Training

In very simple production line work little training is required. Such training should be on similar lines to that in normal industry. In England the Advisory Council reported that there was no set pattern of training and that in many cases there was no clear separation of training from production.¹ In many cases this is very undesirable causing a drop in the efficiency of the production line which would not be tolerated in normal industry. Where possible outside training procedures should be adopted.

(d) Working Hours

Working hours should be the same as in normal industry and interruptions during working hours for other prison activities must not take place. In England the Advisory Council reported,

... prisoners' working hours in some general local prisons are as few as 16 hours a week; that even during these short hours prisoners are removed from the workshops for various other prison purposes, such as bathing, interviews etc.²

¹Work for Prisoners, op cit., para 68-69, pp. 19-20.

²Ibid., para 18, p. 6.

This is not to suggest that productive work must take place instead of the other aspects of the treatment programme such as education, group counselling, prisoner interviews and so on. The problem is to organise these activities into a working week without making employment conditions so onerous that there will be an outflow of prison staff. One solution would be to start the prisoner's working day an hour or two earlier leaving part of the afternoon free for other activities. Another solution would be to work a 4 and a half day week, the half day being staggered so that different prisoners were free on different days. This time could then be spent on other activities.

For certain prisoners the proportion of 4 and a half days' work to half a day for other treatment orientated activities will allow insufficient time for treatment. Each individual case must be treated on its merits. However, the basic rule should be that working hours must not be interrupted.

(e) Overallocation

Because of the high labour turnover in prison workshops (U.K. 300 per cent per annum in local prisons),¹ it is common practice to divide a task done by one man into several tasks. In addition more persons than are

¹Work for Prisoners, op cit., para 17, p. 6.

necessary for a particular task are allocated to it. The official reason given for such overallocation is that prisoners are so frequently transferred elsewhere or required during working hours for some other purpose that it is essential to have another person ready to take over his task. The more important and seldom stated reason is that there are too many prisoners and too little work.¹

(f) Motivation

For prison labour to serve either its penological aim of rehabilitating the prisoner or its economic aim of efficiently providing goods and services it is self evident that prisoners must be motivated to try hard. In 1955 the U.N. Congress on Prison Labour² concluded after comparing prison wages with free market wages that

the amounts paid to working prisoners are extremely small, with very few exceptions. It is consequently doubtful that present remuneration policies can be regarded as having much monetary significance.

Herzberg in his classic work on the motivation of workers "Work and the Nature of Man"³ treats monetary payment as only one form of motivation. Even in prison it is possible to develop some degree of job satisfaction, and

¹The author is informed that overallocation is being eradicated from English prisons. It was still extremely apparent at Coldingley in 1972.

²U.N. Congress on Prison Labour 1955, op cit., para 248, p. 85.

³Frederick Herzberg, Work and the Nature of Man (Cleveland, Ohio: World Publishing Company 1971).

this would be a positive protection against institutionalisation.

One of the greatest dangers of imprisonment is that the prisoner may become institutionalised. The day is organised from dawn until "lights out" with very few opportunities for a prisoner to take any responsibility or meaningful decisions.

In normal industry there is a well defined line of control. A man can advance from apprentice to journeyman, from leadhand of a section to foreman and on up the ladder. A similarly organised structure for prison work, with proper pay differentiation, would help to diminish institutionalisation. An experiment along these lines has been in operation at Norrtälje in Sweden since 1971 and found to be successful in that productivity has increased and the prisoners like the system. No figures are as yet available as to its effectiveness in terms of rehabilitation.¹

Other aspects of prisoner motivation such as prisoner pay, the progressive stage system, the granting of privileges, the remission of sentence and home furloughs are discussed later in this chapter and in Chapter X.

¹See Chapter VII - Survey of Prison Labour in Sweden, p. 495.

C.2 Work Supply

Before considering what work is available for prisoners to do, one must bear in mind Rule 71(1) of the Standard Minimum Rules¹ which states:

Prison labour must not be of an afflictive nature, and Rule 71(4) which states:

So far as possible the work provided shall be such as will maintain or increase the prisoner's ability to earn an honest living after release.

In addition to the well established purposes of prison labour such as embodied in the Standard Minimum Rules the U.N.

Survey on Prison Labour stated:

There is today widespread acceptance of the idea that prison work assignments should be relevant to the previous skills of inmates.² There is likewise considerable feeling that prison work and training should be related to post-release employment opportunities, but there are few indications that work and training programmes are actually organised with this goal foremost. No state is reported as explicitly planning institutional training with the aim of relieving skill-shortages in free society.³

Although written twenty years ago this still remains the position today.⁴ Moreover few countries have a separate section of their Prison Department responsible for the organisation of prison work. As a result many countries have considerable difficulty in finding enough suitable work

¹See Chapter V, p. 264 for the Standard Minimum Rules regarding work in prison.

²However, Sweden and England argued that this was only possible in a limited number of cases. U.N. Report on Prison Labour 1955, op cit., para 299, p. 81.

³U.N. Report on Prison Labour 1955, op cit., para 299-300, p. 81.

⁴Holland is a possible exception, for great care is taken in Holland to train prisoners for their future employment.

to keep prisoners occupied. Frequently prison governors are expected to find and organise work for their prisoners. The success or failure of this practice depends on the energy and interests of the individual governors and on the workshops and finance available to them. On a number of occasions in different countries the author has seen prisoners polishing an already immaculate floor and, on asking what other work is available for them to do, been informed that cleaning is their normal work. In fact overallocation to prison maintenance duties is the standby of most prison departments.¹

The most universally accepted system of organising prison work is the State Use System.

(a) State Use

The various different systems of organising prison labour were discussed in Chapter IV in relation to the development of prison labour in America. It was shown how the State Use System developed as a result of the complaints of free workers and entrepreneurs against unfair competition by the State. The State Use System was described in 1961 by Ralph W. England, former advisor to the 1955 U.N. Congress on Prison Labour, as follows:

The basic weakness of state use is due to its character as a residual category of prison work. It is a retreat to which prison administrators

¹See p. 308 infra.

have been driven. Consequently, as a form of prison production more or less acceptable to free interests, state use is so organised as to lose communication with economic realities. Insulated from the free economy and hedged about by restrictions, state use is hard put to respond adaptively to those outside economic and technological changes to which private industries must adjust if they are to survive. Outmoded machinery, inadequate marketing practices, severely curtailed markets and poorly motivated workers are conditions under which few private interests could long exist, but prison industries are obliged to put up with them.¹

This need not be the case, and properly organised, large numbers of prisoners can be employed in producing goods for the State. However what kills productive efficiency is the insistence on producing solely for the use of the State so that it is difficult to obtain an economic production run.² However the State Use System has the advantage that there is a steady demand for certain goods which is largely unaffected by market fluctuations or economic recessions.

(b) Public Account

The Public Account System³ of organising prison labour is the one with the greatest potential for the future. In the past fears of competition have hampered its development, but with increased co-operation between

¹Ralph W. England Jr. "New Departures in Prison Labour," The Prison Journal 41, No. 1 (Spring 1961), pp. 21-26.

²Or so prison administrators argue, but the author finds this very hard to accept, as State demand for certain goods is considerable.

³Under the State Account System the State makes and sells goods on the open market.

the Department of Prisons and the private sector there is no reason why it should not become the largest and most important employer of prison labour, with the greatest scope for the training and rehabilitation of offenders.

(c) Public Works and Ways

The main problem with public works and ways as a method of employing prison labour is that it tends to be organised inefficiently, and if confined to manual labour it is of little training value. However it is an almost inexhaustible source of work for prisoners.

(d) Maintenance Duties

In 1931 Professor Robinson estimated that 12,5 per cent of the prisoners in any one prison employed in maintenance work should be sufficient for the maintenance of a well run institution.¹ The U.N. Survey of Prison Labour indicated that most countries employed some 20 per cent of their prisoners in this way.²

Maintenance work, meaning cleaning as distinct from building work, is of very little training value and should be so organised that as few prisoners as possible are employed in this way.³

¹Louis N. Robinson, Should Prisoners Work, op cit., p. 169.

²U.N. Survey on Prison Labour 1955, op cit., Table VI, pp. 96-97.

³See Chapter X, p. 806.

(e) Private Employment of Prison Labour

Prison Departments can save themselves the trouble of organising work for prisoners by the simple expedient of hiring them out to private enterprise. The advantages and disadvantages of the lease, contract and piece price systems were discussed in Chapter IV.¹ Today increasing use is being made of the contract system in preference to the other two.² There is no reason why the contract system should not be expanded provided that the work has some training value. In particular medium and long term prisoners could be employed in more skilled work than private entrepreneurs give them at present. One of the conditions of hire could be that employers be obliged to give prisoners, of the necessary aptitude and length of sentence, a proper training in some work skill which would enable the prisoner to find employment on his release.

The fact that prison work throughout most of the world is so inefficiently organised reflects a lack of concern by prison administrators for the future employment of their charges, and a lack of interest by penologists in the day to day lives of prisoners. Prison labour is one of the worst researched aspects of prison life probably because few researchers have any worthwhile business experience and little interest in prison labour.

¹Chapter IV, pp. 250-254.

²See Chapter VII, Table I, p. 351.

C.3 Problems of Management

The management problems of organising efficient industrial production inside prisons are considerable, and all too often such management is left to prison officers with little or no experience of industry. Apart from the problems imposed by the nature of the labour force and the supply of work, the industrial manager must frequently contend with inadequate workshop facilities and a staff more concerned with the safe custody of their charges than industrial training or production.

(a) Old Prisons

During the nineteenth century prisons were designed and built without any workshop facilities. It was only towards the end of the century that penal labour was finally abandoned and productive labour actively encouraged. Many of these old prisons are still in service with workshops added on wherever space permitted.

Not only do these workshops tend to be dull depressing places compared to a modern workshop, but they are frequently inefficient as there is insufficient space for the storage of raw materials or finished goods in proximity to the production area. Other facets of these old prisons, such as inadequate bathing facilities, resulting in prisoners having to bath during working hours, militate against efficient industrial production. South Africa is fortunate in that she has only a few of

these old style prisons, although they are the most prominent and best known to the public.¹

(b) Security

Traditionally the safe custody of prisoners is of paramount importance. As it is far easier to ascertain the number of escapes from prison than the number of offenders successfully rehabilitated this custodial bias of prison officers is only natural. With certain prisoners maximum security conditions are essential, consequently they can only be given certain types of work. Such persons clearly create additional problems for the organisation of efficient work.

(c) Prison Staff

In any Prison System the role of the prison staff must be carefully defined. In the recent past prison officers were virtually turnkeys with little opportunity for influencing prisoners or helping in their rehabilitation. Since the turn of the century prison industries have been developed in many countries, and this has resulted in the employment of persons with trade experience. In South Africa the aim of prison industries is to teach prisoners a trade and to produce goods for the use of the State, however the emphasis is on training rather than production.²

¹e.g. Roeland Street Prison in Cape Town, and Pretoria Central.

²The training of prisoners is discussed in Chapter IX, pp. 684-693.

In England the development of profit orientated prison industries has left some trades officers in a quandary. Certain officers believe that the stress should be on production while others are more concerned with training and rehabilitation. These two possibly conflicting goals can result in diminished production, for neither side can concentrate on their desired goal.¹ For industrial efficiency it is imperative that the trades staff be certain of their priorities. A possible solution is suggested by the author's progressive stage system as described in Chapter X.

(d) Bureaucracy and Prison Labour

In 1933 the English "Report on the Employment of Prisoners" stated that 'the root of all evil is the definite shortage of work.' This is still the largest single problem of the prison administrator, a problem which if inadequately solved has serious repercussions on the rehabilitation programme. But prison administrators are not entrepreneurs, they are not selected for their competence at running an efficient business or farm. Their scope for innovation is severely hampered by bureaucratic control, and in America by statutory limitations. As Woodrow Wyatt in "Turn Again Westminster" has written referring to nationalised industries:

¹Prison administrators in England will argue that this problem has been largely solved and that the aims of prison industry have been clearly set out in the brochure Organisation Study issued by the Directorate of Industries and Stores in October 1970, however in practice there is still uncertainty, although far less than in the past.

In the necessary marriage between government and industry the day to day activities of civil servants must be severely limited. Otherwise the bureaucratic dead hand introduced in the name of social justice will dam the springs of commercial enterprise and prevent them becoming fruitful rivers. Civil servants are suitable for remote, not immediate, control.¹

Similarly prison industries should be organised by businessmen with civil servants setting the guide lines.

If efficient prison work is to fulfil the role assigned to it in the prison programme then it must be organised on business lines.

In the past people had great faith in appointing "Committees of Enquiry" to investigate and recommend a course of action. In business such a role is frequently fulfilled by the management consultant. Today increasing use is being made of the appointment of an outstandingly successful businessman from the private sector to organise State Institutions, such as Lord Beecham's appointment to reorganise British Railways, such a person to be responsible for formulating and executing policy decisions. The rationale for such an appointment is that the disadvantages of 'one man control' are outweighed by his increased effectiveness untrammelled by a committee, and the fact that responsibility for success or failure rests on him alone.² Many will argue

¹Woodrow Wyatt, Turn Again Westminster, 1973.

²Obviously the administrator's broad policy would be subject to parliamentary consent.

that such an appointment for the reorganisation of 'prison labour' would be totally unsuitable, for a profit orientated businessman will pay insufficient regard to the penological aims of imprisonment.

Furthermore business attitudes are not always the best for guiding a government institution, nor for dealing with other prison personnel, particularly those as conservative as are to be found in the Prison Departments of most countries.

By no means all top flight businessmen would be suitable for such an appointment, but there are some in most countries who could succeed in balancing the penological and economic aims of prison work without antagonising the private sector or stimulating protests of 'unfair competition.'

For the reasons outlined above one can not expect all or even many prison workshops to be as efficient as their counterparts in free society¹ - nor is such efficiency desirable if the other aspects of a prisoner's training/rehabilitation are thereby jeopardised.

¹However in some cases efficiency may even be greater than in outside industry as the Belgian prison authorities claim to be in that position in their printing section at Louvain Prison.*

*Author's visit to Louvain Prison, October 1974.

D. TRAINING IN PRISON

D.1 Vocational Training

Today it is widely accepted that if a prisoner is to become ready and willing to re-enter society then his training and work in prison must be organised with a view to his future employment. In the past there has been an undue emphasis on vocational training. As early as 1920 a survey into the New York State Prison Systems found, to its surprise, that only about 40 per cent of all prisoners were suitable for vocational training, the next 40 per cent could be trained to production line work but that not much could be done with the remaining 20 per cent.¹ More recent surveys have substantially borne out these conclusions.² Whether prisoners are suitable for such training or not there seems little doubt that the majority of prisoners consider vocational training worthwhile and consequently such training positively motivates these work attitudes.³

Trade training must be related to the national and local demands for skilled men for

discharged men usually return to their former backgrounds where they do not have the opportunity to

¹Report of New York Prison Survey Committee 1920, p. 177.

²Paul Tappan, Contemporary Correction (New York: McGraw Hill Book Company, 1951), pp. 99 and 233.
John Gillin, Criminology and Penology (1st Edition 1926; 2nd Edition 1945; New York and London: D. Appleton Century Crofts Inc.), p. 141.
Survey of Wisconsin State Prison. No such survey has been published in South Africa.

³Chevault Price, "Prison Education" in Paul Tappan Contemporary Correction, p. 233.

utilise elaborate vocational training - thus although vocational training is indeed desirable, it must be of the kind required by his environment ... this correlation between prison labour, vocational training and environmental and individual needs must not be ignored.¹

In South Africa the Department of Prisons has agreements with certain of the major Trade Unions, and as a result suitable prisoners have the opportunity of learning a trade and taking the normal Department of Labour trade tests on similar terms as those of free workers.²

The importance of vocational training as a means to rehabilitation is directly related to the individual's needs and skills and those of society. Only a small proportion of prisoners have the innate potential to qualify as artisans, and of these only a small proportion will have sentences of sufficient length to make vocational training worth undertaking. However in South Africa, owing to the shortage of skilled artisans, there is considerable scope for the development of trade training particularly among Non-Europeans.

D.2 Work Versus Education as a Means to Rehabilitation

There is a danger that too great a concentration on "work as training" will lead to the neglect of basic

¹Manuel Lopez-Rey, "Aspects of Prison Labour," Journal of Criminal Law and Criminology, Vol. 149 No. 1 (May-June 1958).

²See Chapter IX.

education and the countering of anti-social attitudes. Few people would question that possession of the R's is desirable for all persons living in a modern state. Without these basic qualifications a person is at a disadvantage in competing for work even of a simple nature. No system of prison work is complete unless provision is made to teach prisoners the rudiments of reading, writing and arithmetic.

The author has been unable to trace any research comparing the rehabilitatory efficiency of work training as opposed to educational training. Such research would of necessity require a number of assumptions and value judgements and even then its results would be disputed.

Clearly the emphasis that should be laid on work or education (both formal education and the readjustment of anti-social attitudes) will vary from prisoner to prisoner.¹

E. PAY

Considering the wide agreement among penologists and prison administrators as to the value of remuneration for prison work, it is surprising that so few countries pay a wage even vaguely approaching that of a free market wage. In England the Advisory Council on the Employment of Prisoners (1961) stated:

¹See Chapter X, p. 828.

We believe, first, that the fundamental reason why prisoners should work is that every person should make the best contribution he can to the community; secondly, that suitable work, if properly organised, is a most valuable part of a prisoner's training; and, thirdly, that prisoners represent a considerable labour force which ought not to be wasted.¹

Having set out their reasons for the importance of efficient prisoner employment the Advisory Council considered wages in Section VII of their report and concluded:

We therefore see a rise in prisoners' earnings as an essential part of any attempt to improve the efficiency of prison industries and to make work the very valuable element which it can and should be in the training of prisoners.²

Yet, today, in 1975 the highest paid prisoners in England receive only about 10 per cent of the free market wage. To understand why this is so, and to judge whether more pay will improve both productivity and the possibility of rehabilitation requires a closer examination of various facets of prisoner employment.

E.1 Bases for Assessing Remuneration

While prison administrators are in favour of better prison pay they emphasise the practical difficulties. There are three principal bases for remunerating prisoners:

- (a) Simple gratuities paid without reference to the amount or type of work performed.
- (b) Per diem payments for each day actually worked.

¹Work for Prisoners - Report of the Advisory Council on the Employment of Prisoners (HMSO, 1961), para 23, p. 7.

²Ibid., para 119, p. 29.

- (c) piece-work payment.
- (a) Gratuity means a handout for work performed to which the prisoner has no legal right. Thus it is not a positive incentive, but more a privilege which can be removed for bad conduct. Usually it is small in amount and is used for purchasing tobacco and other luxuries. Its effect as a motivating force to work hard will vary in proportion to the other conditions of captivity. Generally it is the least satisfactory of the three bases of payment.
- (b) Per diem payments are extensively used in free society where it is impractical to introduce a piece rate system. The system permits of considerable variation between different types of work and the skill and/or experience of the employee. This is the most common form of prisoner remuneration.
- (c) Piece-work payment can be argued to be the best incentive of all to work hard and thereby to benefit from one's labour. However, as all industrialists know, the system can cause considerable unrest. There is the difficulty of setting realistic standards, the measurement of performance, and the relative weight to be given to quality related to quantity of goods produced. In prison the problems tend to be magnified for it is common for a work process performed by one

man in free society to be broken down into several different tasks. This is done both to create more employment and to prevent the work flow being unduly interrupted by the absence of one of the links - for if the stages are relatively simple another prisoner can readily be substituted.¹ Thus if you have a team of prisoners working together they must move at the pace of the slowest. This can give rise to greater tension than in free society where less competent employees can be dismissed. Similarly the prison environment can cause considerable resentment against the work supervisor responsible for quality control and the measurement and setting of work goals. Consequently many prison administrators believe that a piece rate system should only be used if the work is carried out by one man.

Clearly in fixing the amount of remuneration regard should be had to the degree of skill possessed by the worker. However, if the differentiation in wage rates is not significant between the different grades of worker there will be little incentive for the skilled worker to work hard or the less skilled to try and improve his lot.²

¹Some administrators argue that if the men are trained to do several tasks there is less disruption when a place in the line falls vacant.

²See Chapter VII, Survey of Prison Labour in England, pp. 427-432.

In most countries wage rates are related to good conduct, and certainly this is the case in South Africa where gratuities can be removed as a punishment. The efficiency of this punishment depends on the amount of money being earned and the other privileges which can be removed.

In the past certain countries have made use of the "progressive stage" system of payment whereby wages are gradually raised the longer the prisoner remains.¹ Another progressive stage system is used by Canada whereby there are three work stages

based on work habits, effort and perseverance, personal habits and traits, and co-operation with officials ... A minimum of three months must be spent in each grade, and downgrading with consequent reduction in remuneration, can follow disciplinary action.²

However the Canadian daily pay rates of 10,15 and 20 cents per day were so low that the difference of 5 cents between scales was insignificant.³

E.2 Regulations Governing the Expenditure of Income

Most countries have regulations governing the disposal of earnings by prisoners. This money is normally used in the following ways:⁴

¹A variation on this theme applies in South Africa. See Chapter IX.

²U.N. Report on Prison Labour 1955, para 222, p. 60.

³Canada is currently developing profit orientated prisoner employment. Wages will vary between 50 cents and R1,80 per hour. See Chapter VII - Survey of Prison Labour in Canada.

⁴No significance should be attached to the order in which these uses have been listed.

- (a) The provision of spending money;
- (b) The building up of a savings fund to help the prisoner on his release;
- (c) Aid to dependants;
- (d) Contributions towards institutional upkeep;
- (e) To pay compensation to victims;
- (f) To pay any debts, fines or court fees;
- (g) To keep up various regular payments such as rent or mortgage bond repayments, hire purchase payments, life assurance or pension contributions, trade union or social security payments.

(a) Spending Money

Virtually all countries permit prisoners to spend a portion of their pay on themselves for tobacco, extra food or clothing, and further recreational or educational materials. Unless the prisoner himself receives an immediate direct gain from his work it is wishful thinking to expect him to try hard.

(b) Savings Fund

Secondly the compulsory saving of a portion of the prisoner's pay until release is widely practised.¹

It is unversally accepted that the most crucial period of adjustment for a released prisoner is the first few

¹Under Montagu money was invested in a savings bank for the prisoner and interest accumulated on the capital pending release.

weeks after his release. At best he should have a stable home and employment to go to, and at the very least adequate funds to maintain himself until he can find suitable work. Practice varies regarding the payment of these savings. Most countries pay it to the prisoner on his release, but this can result in its rapid diminution, other countries pay part over to a post-release supervisory authority. This latter practice should become the norm where post-release organisations exist, failing such organisations the money could be released by the Prison Authorities, either through the ex-prisoner's bank,¹ or directly to him, in weekly instalments. Exemption from this extended payment would be granted to prisoners who were deemed capable of managing their own financial affairs. It is common experience that many prisoners find work on release but leave it after a short period. Unless there is a savings fund to rely on and to give them security while they look for another job, the chances of committing a further offence are greatly increased.

(c) Payments to Dependants

Thirdly compulsory or optional payments to dependants are commonly provided for. The significance of such payments will depend on the actual wage paid to the

¹Such a system would require modification for South Africa where many people have no bank accounts. Payment could be made through the post office with identification safeguards to prevent the theft of prisoner savings credits.

prisoner. These payments can serve to increase the self-respect of prisoners in that they are helping to provide for their families. Assuming that payments home are worthwhile these can have various other advantages. Certain prisoners may never have regularly contributed to their family's upkeep and by making such payments a new sense of responsibility can be engendered. A bonus scheme could be organised so that the State could, for example, increase the prisoner's pay by a percentage of the amount he pays to his dependants. In many countries the dependants of prisoners are cared for by the State - as is the case in South Africa to a limited extent. If properly organised some of this expense could be reallocated through increased prisoner pay, with the positive advantage of being a reward for the prisoner's labour rather than a direct handout to his dependants.

A side effect of imprisonment is the breakdown of contact between families. The lack of parental discipline and, the separation of spouses are well documented, but less obvious and as important is the side effects of the wife having to go out to work to help provide for the family. If the prisoner could send sufficient money home to prevent this happening he would be making a very positive contribution to the upbringing of his children.

(d) Contribution to Institutional Costs

The budgetted running costs for the South African prisons in 1973-74 was R56 million.¹ It is only reasonable that prison labour should be used to offset these costs. In Japan in 1969 the Prison's Department² earned a surplus of 50 per cent over the running costs of their prisons. It is argued that by deducting a portion of an inmate's pay for this purpose the prisoner feels that he is "paying his debt to society" and that this has a rehabilitative effect. Whether this is so or not no scheme to increase prisoners' pay significantly will obtain public approval unless a proportion is deducted for institutional expenses.

(e) Compensation to Victims - Retribution
To Society

It is widely believed that the victim of an offence is often the person who suffers most, particularly if no compensation is paid either by the offender or the State. A deduction for this purpose would help the victim, mitigate the State's costs for compensation (if normally provided) and positively make the offender pay for his crime. Some penologists and philosophers would argue that a man who commits an offence harms society, and that society can be the victim of crime.

¹See Chapter II, Table 5, p. 142.

²Masaharu Yonagimoto, "Japanese Prison System", British Journal of Criminology, Vol. 10 (July 1970), pp. 216-219.

Others argue that there should be a retributive element in punishment. By the payment of a sum of money to the State the offender can be said to be making retribution for his crime.

(f) The Payment of Debts, Fines or Court Fees

Prisoners' pay could be used for the payment of debts, and fines, as well as court fees.

In most developed countries there is a system of free legal aid. If prison labour is so organised that realistic wages can be paid, then, should a prisoner wish to appeal against his sentence, he could contribute directly to the costs of such an appeal. If the appeal is won then the appellate court could award him costs. Similarly escape from prison could be punished by the forfeiture of pay, both pay already earned and retained pending release and a deduction from future pay.

(g) Regular Payments such as Rent, Pension Fund or Social Security Payments

The ability to keep up regular payments of this nature can save the prisoner and his family unnecessary hardship in the future. The punishment of imprisonment should be the deprivation of liberty and not a whole series of additional punishments which may affect the prisoner's family, such as eviction for non-payment of rent.

Deductions from the prisoner's pay for any of the above purposes must not be so great that the incentive to work hard is reduced.

E.3 The Payment of Market Wages

The advantages of paying wages approximating full market wages have been outlined above. They fall into three broad categories - the economic reason that good pay will stimulate higher productivity, as has been shown countless times in different countries¹ - the training and rehabilitative benefits to the prisoner of increased motivation to try hard - and the social benefits to the prisoner, his family and society. There is nothing new about the idea of paying full market wages. During World War I President Wilson authorized their payment to New Jersey prisoners engaged on industrial war work.² In Holland after the 2nd World War political offenders employed in the coal mines received wages equivalent to those of free workers, after deductions for board and lodging, they were able to make substantial contributions to the support of their dependants.³

It is not suggested that full market wages should be immediately introduced in South Africa for clearly prison labour as currently organised is far less productive than

¹Louis N. Robinson, Should Prisoners Work, op cit., pp. 212-214; Work for Prisoners, (HMSO, 1961), para 80-84, pp. 22-23.

²L.D. Weyand, "Wage Systems in Prisons," Annals CXXV (May 1926) p. 253.

³U.N. Report on Prison Labour 1955, op cit., para 200, pp. 55-56.

free labour. However, a start can be made by increasing the lease charges for labour. The practice of leasing to other government departments for substantially below free market wages, leads to an overallocation of men to the work available. Not only does this mean that their productivity is low and that labour resources are squandered, but it is also bad training in that the prisoners adjust to a slower work pace and find difficulty in adjusting to normal working conditions on release.

Similarly the leasing of prisoners to farmers at pay rates substantially below market wages leads to an inefficient use of labour besides the moral issue of depressing the wages of free labourers and giving farmers a vested interest in crime.¹ Fortunately the Department of Prisons is aware of this danger and hire charges for parole prisoners have been increased substantially during the last year.²

On the one hand low hire charges lead to a disregard of the economic value of prison work which leads to over-allocation, low productivity, and idleness. From the prisoner's side inadequate reward for constructive work denigrates the value of such work in his eyes. The will to try hard will be weakened and former "good work habits" which the prisoner may have possessed will be dissipated.

¹Dr. F. Wilson, "Crime and Employment," South African Outlook, March 1972. The use of prison labour by private farmers is dealt with in more detail in Chapter IX.

²See Chapter IX, pp. 679-680.

Why work hard if you can earn no more than X who is a loafer? Why incur the wrath of your fellow prisoners by showing up their idleness? On the other hand what self respect can the prisoner develop by working at half pace? What self respect can he develop by not being able to contribute to the support of his family?

In 1931 Louis N. Robinson, a former Professor of Economics and a leading authority on crime and prison labour problems in America wrote:

To pay the standard wage, a prison industry must be as successful financially as are corresponding industries on the outside, but how can it be successful when suffering from the incompetency of political management and administration and burdened by restrictive laws which do not apply to free industry? ... The writer is inclined to believe that the nearer we can come to making prison life resemble life in a well-regulated wholesome free community the more valuable will be the effect upon the individual prisoner. It seems, therefore, that the development within the prison of a wage system built upon a structure wholly different from that prevailing in the outside world will NOT be a good thing.¹

E.4 Compensation for Industrial Injuries

In outside industry the principle of workmen's compensation insurance for injuries or death incurred in the course of dangerous occupations is well established. In 1955 the U.N. Report on Prison Labour stated: "The protection of prisoners by the same workmen's compensation laws which applies to free men is infrequent."² There seems no reason

¹Louis N. Robinson, Should Prisoners Work?, op cit, p. 220.

²U.N. Report on Prison Labour 1955, op cit., para 344, p. 91.

why the conditions under which prisoners work should not be governed by a country's existing safety laws and regulations. In South Africa prisoners can receive ex gratia payments for industrial injuries but the discretion lies with the prison authority for it is feared that certain prisoners would deliberately injure themselves if compensation was more freely available.

F. COMPETITION

F.1 Background to Competition

Complaints by entrepreneurs and free workers against unfair competition from prison labour have been traced back to the late sixteenth century when the wood raspers of Amsterdam objected to the creation of a wood rasping monopoly in the Rasphuis.¹

Rusche and Kirkheimer have traced the significance of socio-economic conditions and prison labour, and shown that in periods of relatively full employment there is little objection to prison labour - as for example the transportation of convicts as indentured labour to America and Australia - but that in periods of unemployment both employers and workers protest vigorously against "unfair competition."²

¹Thorsten Sellin, Pioneering in Penology (Philadelphia, 1944), pp. 54-55.

²Rusche and Kirkheimer, Punishment and Social Structure (Copyright 1939; Columbia University Press, 1967), Chapter VI.

In particular the production of goods in prison using cheap prison labour and their sale at below the price of normally produced goods, has antagonised both entrepreneurs, who lost sales, and workers, who were either laid off or their wage reduced so that their employer could compete with the lower priced prison-made articles.

In England, during the first half of the nineteenth century, there was considerable unemployment. Rather than permit prisoners to remain idle they were employed in useless punitive labour such as the treadmill and crank. Meanwhile in America, where there was little unemployment, prison industries flourished until the Civil War. After the war the opposition to prison industries eventually resulted in the introduction of the State Use system in New York in 1894.¹ Prison labour had a brief boom producing goods for the First World War but the 1920's depression resulted in State and Federal legislation which virtually killed prison industry.²

In retrospect many people might argue that the sudden demise of the highly organised prison industries in America was a mistake. The actual extent of the competition was not very great ... in 1939 Sutherland wrote:

¹For a history of American Prison Labour see E.T. Hiller, "Labour Unionism and Convict Labour," Journal of the American Institute of Criminal Law and Criminology: 5: 851-879 (March, 1915).

²Hawes Cooper Act 1929 and the Ashurst-Summers Act 1935. See Chapter IV, p. 257.

About one-tenth of 1 per cent of the productive labourers are in prison, and many of the prisoners would be more or less efficiently employed if they were not in prison. This makes the total competition of prison labour insignificant.¹

However the competition in specific goods and in certain geographical localities was in some cases severe - particularly in the manufacture of workshirts, and the binding twine industry in Minnesota.

As discussed in Chapter IV to prevent supposedly unfair competition the majority of western countries have developed a State Use System for the employment of prisoners.

Producing goods for the State is not seen as competitive employment although in fact it is clearly taking work from the private sector. In addition other systems of prisoner employment have been developed safeguarding the interest of both entrepreneurs and free labour. Despite such safeguards the 1955 U.N. Report on Prison Labour concluded:

Although the issue of competition is not currently an active one in general, the data presented above ... indicates that most of the States of Europe, North America and Oceania have either capitulated to those raising complaints of competition by extensive modification of their prison labour programmes, or have achieved an uneasy truce with the complainants, the existence of which is contingent upon continuation of high levels of employment and of economic stability.²

¹Sutherland, Principles of Criminology (Chicago: Lippincott, 1939), p. 473.

²U.N. Report on Prison Labour 1955, op cit., para 175, p. 47.

F.2 Measures Adopted to Minimise Competition

(a) State Use

The 1955 U.N. Report on Prison Labour stated that 18 of the 28 countries who replied to their Questionnaire had adopted the State Use System for organising prison labour. Twenty years later the position is virtually unchanged.¹

The most exclusive example of this system is in New Jersey where legislation requires that no prison goods are sold on the open market, or sold or exchanged with other States; in addition all prison made goods are labelled as such and all State supported institutions must purchase prison products.

Despite the existence of a potentially large state-use market, only 955 (25 per cent) of 3 712 prisoners in its state institutions in 1953 were employed at prison industries, while 632 (17 per cent) of the prisoners were without any kind of employment.²

By 1973-74 New Jersey's prison population had risen to 6 088 persons, while only 527 prisoners were employed in industry. However 1 500 prisoners undergo trade training courses annually.

For various reasons the State Use System has never been developed to its full extent which the author considers

¹See Chapter VII, Table 1B Replies to Author's questionnaire.

²U.N. Report on Prison Labour, op cit., para 165, p. 44.

³See Chapter VII - Survey of Prison Labour in New Jersey. Interestingly New Jersey has a high recidivism rate of 75 per cent.

In 1955 the United Nations Report concluded its survey on international practices to avoid competition by stating:

Within the unavoidable limitations inherent in the use of prison labour, the vigorous application of State Use would very nearly eliminate the perennial problems of finding sufficient work for inmates.¹

(b) Market Prices for Prison Goods

As can be seen from Table 38² a number of countries minimise competition by charging market prices for prison made goods. In practice in the majority of these countries the sale of prison goods is to State supported institutions.

(c) Official Boards or Agencies

In America in 1937 a government corporation known as "Federal Prison Industries Incorporated" was set up to directly administer prison industries in the Federal institutions. On its board are representatives of labour, agriculture, industry, retailers and consumers. All products are sold to the Federal Government Supervisory Board comprising representatives of labour, management, Parliament and the Prison Administration,

¹U.N. Report on Prison Labour, op cit., footnote on p. 48.

²See p. 364.

which takes policy decisions regarding prison labour but does not handle the day to day administration.¹

In South Africa

prices of prison goods sold to public agencies under South Africa's compulsory state use law are fixed at 'fair and reasonable' levels by the Government Tender Board.²

This is very different to the American and Danish systems in that neither labour nor management are represented and the Board members are appointed by the Government.

In the United Kingdom no formal legally constituted regulative body exists but the Director of Prison Industries and Supplies goes to considerable pains to obtain the co-operation of both organised labour and employers. Every two months either the Director himself or his representative meets with Trade Union officials and appointees of the Federation of British Industries to keep them informed of development in his department, to deal with any possible clashes of interest and to seek their advice and assistance. As a result of these regular meetings relations are excellent and both the Trade Unions and the Federation of British Industries wholeheartedly support the expansion of prison industries.

¹See U.N. Report on Prison Labour, op cit., para 145, pp. 39-40.

²Ibid., para 169, p. 45.

(d) Market Wages

In 1955 of the countries replying to the U.N. Questionnaire only Yugoslavia was paying full market wages to all prisoners. This is still the position although prison wages have been greatly improved.¹ In other countries certain categories of prisoners are paid full wages.²

(e) Non-Competitive Work Locales

The location of prisoner work gangs or work camps only in areas where free labour is in short supply is an expedient taken in Finland, Norway and Japan.³

In Finland and Norway such prisoners are frequently engaged in lumbering, and in Finland they are paid market wages.

Although the U.N. Report did not say so one could infer that the South African "Prison Outstations" were to some extent work locales. Free labour is in short supply because workers can get substantially better wages in industry with the possibility of better living conditions and education for their children (particularly among the Cape Coloured).

¹ See Chapter VII, Table 4B, p. 371 - Comparison of Prison Wages and Free Wages.

² See Chapter VII, p. 480. In particular the Survey on Prison Labour in Sweden.

³ U.N. Report on Prison Labour 1955, op cit., para 179, p. 48. Regrettably neither Finland nor Norway replied to the author's questionnaire. See Chapter VII. Non-competitive work locales also exist in New South Wales and Queensland.

(f) Preferential Order of Sale

In the Argentine the National Government has first call on prison-made goods followed by provincial and municipal governments, and other bodies including charities until finally private individuals are permitted to buy.¹

(g) Concentration on Goods not Sold by Free Labour

In 1955 this occurred in Austria, Italy and New Zealand.² Insufficient detail was received from these countries to know whether this is still the position today. However, since 1955 New South Wales and Canada have adopted this practice, although Canada is currently developing profit orientated prison industries with the intent of selling goods on the open market.³

(h) Public Works and Ways

A number of countries minimise competition by employing prisoners on Public Works and Ways. This is particularly popular in the United States of America, but is on the decline in Europe.⁴

¹This was the position in 1955 according to the U.N. Report on Prison Labour, para 166, p. 44. The author is informed by a member of the Consular staff in Cape Town that this position has not altered.

²U.N. Report on Prison Labour 1955, op cit., para 179, p. 44.

³See Chapter VII.

⁴See Chapter VII, Table 1.

(i) Other Systems

Other ways in which competition is avoided are an amalgam of those raised above. They include the production of goods made in volume by Free labour and the avoidance of concentration on a single product.

In Luxembourg where there is a possibility of competition the prisons only accept orders made through the agency of regularly established local businesses.

In Norway, prison-made goods are not advertised, while in Yugoslavia prisoner hours, wages and working conditions are identical with those of free workers.

It will be interesting to see whether the present international economic depression will result in objections to prison industries, particularly in those countries where prison-made goods are sold on the open market. Seemingly neither the Trade Unions nor private enterprise object to prisoners being used to manufacture articles for the State or to be employed on Public Works and Ways. Yet in fact this is still taking work away from the private sector.

F.3 The Responsible Society and Prison Labour

It is a well worn cliché, but none the less true, that a country has the criminals that it deserves.

Yet in many countries there is a morbid fascination with crime - the more violent the better - but little concern or interest in either the victim or the offender. The payment of compensation to the victim of an offence either by the State or the prisoner is still uncommon. The means by which the prisoner could earn money to make reparation is hedged about with restrictions to protect "free industry". To a large extent society itself may have been guilty of perpetuating the socio-economic conditions which may have given rise to the offence, but there is little public awareness of its social responsibility.

In Sweden

complaints of competition ... have been stopped by a combination of factors: high general employment, low output of market-priced prison made goods for the free market, and the fact that the Prison Administration 'encounters a large measure of understanding both from employers and employees in the efforts to rehabilitate the inmates to normal working conditions.'¹

In recent years prison reform has been a popular issue in the Swedish and Norwegian press and considerable controversy has arisen over the formation of prisoner trade unions who have the right to negotiate work conditions with the Prison Administration. This publicity has helped considerably with the re-integration of prisoners into society, both in finding them employment and the acceptance by society that the offender has "paid his price" and should be given a fresh start.²

¹U.N. Report on Prison Labour, op cit., para 154, p. 41.

²In 1972 the writer visited Sweden and was agreeably surprised to find that this attitude was prevalent among all levels of society.

This responsible attitude to prisoners is a direct result of education. No comprehensive survey as to society's attitudes to prisoners has been carried out but it is reasonable to assume that such a survey would find that the better educated the person the greater his appreciation of society's role both in crime causation and prisoner rehabilitation. The less educated will at best be indifferent and at worst will object vigorously to prison employment as unfair competition, although the extent of this competition has been shown to be minimal.¹

What is required is full acceptance that prisoner labour is an integral part of the national labour force and of the national economy. Governments understandably tend to be oversensitive to cries of "unfair competition" particularly from the working sector. It is less harmful politically to have thousands of prisoners without work but conveniently out of sight than to risk a furore with labour. Yet,

it is a fundamental principle independent of changing systems, that the prisoner, as a human being, has a right to work. It is immoral to refuse it permanently and to condemn him to a long period of idleness.²

Or, As Max Grünhut wrote in 1948:

Prison labour, in spite of many shortcomings and abuses, justifies the deprivation of liberty as a legal punishment.³

¹In England prison labour represents less than 0,1 per cent of the working population. Work for Prisoners, op cit., para 40, p. 11.

²K. Krohne, Lehrbuch der Gefängniskunde (1889).

³Max Grünhut, Penal Reform (Oxford, 1948), p. 198.

In the past hard labour was a punishment, and depending on the nature of the work it can be a punishment today, but "work is (also) a much coveted remedy which helps men to endure the unnatural state of captivity."¹

F.4 Idleness in Prison

In 1961 R.W. England wrote:

The public image of state prisons as bee-hives of productive activity, with "cons" working long hours manufacturing auto tags, road signs, brooms, and clothing is largely erroneous. Even the few so employed seldom work more than six hours a day. The rest are subjected to the demoralising and wasteful assignment of trying to appear busy at housekeeping tasks, most of which can be completed easily in the first hour or two of the work period²

Unqualified acceptance of official employment figures in most countries would be a mistake, for understandably prison officials do not want to highlight their inability to find suitable work.³ The 1955 U.N. Report concluded:

Taken at face value, the prison employment statistics submitted for the present Report reflect relatively little idleness among prisoners, but prison administrators and others concerned with the problem are aware that short or alternate workdays, over-assignment to

¹Max Grünhut, Penal Reform, op cit., p. 198

²R.W. England, "New Departures in Prison Labour," The Prison Journal, 41 No. 1 (Spring 1961), p. 21.

³Work for Prisoners, op cit., paras 17-19, pp. 5-6.

maintenance work and the allocation of prisoners to already over-manned productive tasks produce figures which do not reflect reality.¹

In theory prison employment is the basis of the whole system of rehabilitation in most countries but in practice the lack of adequate work is disruptive of rehabilitation and may even cause unrest.²

In the past the problems of prison labour have been used as a screen for administrative incompetence. Although most prison administrators would deny that prison work is in practice little more than a means of keeping prisoners occupied, few can claim that it is organised efficiently or that Standard Minimum Rule 72(1) has been complied with:

The organization and methods of work in the institutions shall resemble as closely as possible those of similar work in outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

Bearing in mind that prison work is supposedly the backbone of the rehabilitation programmes of most countries it is surprising that prison administrators are so little concerned with its efficient organisation. This lack of concern is an inexcusable waste of manpower in economic terms, and a waste of the potential for rehabilitation.

¹A notable exception was the action of the Prison Officers' Association in England in 1963 who submitted a memorandum to the Home Office referring to prison work as 'something usually dull and unimaginative lasting not more than 22 hours a week' and it concluded ... 'After serving a sentence under these conditions a man's senses are dulled and he leaves prison knowing only one thing - how to live in prison.' Quoted from Manuel Lopez-Rey Administrative Penology, British Journal of Criminology, 1965, p. 17.

²U.N. Report on Prison Labour, op cit., para 176, p. 47.