

A REVIEW OF PENAL POLICY

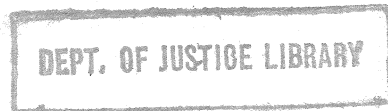
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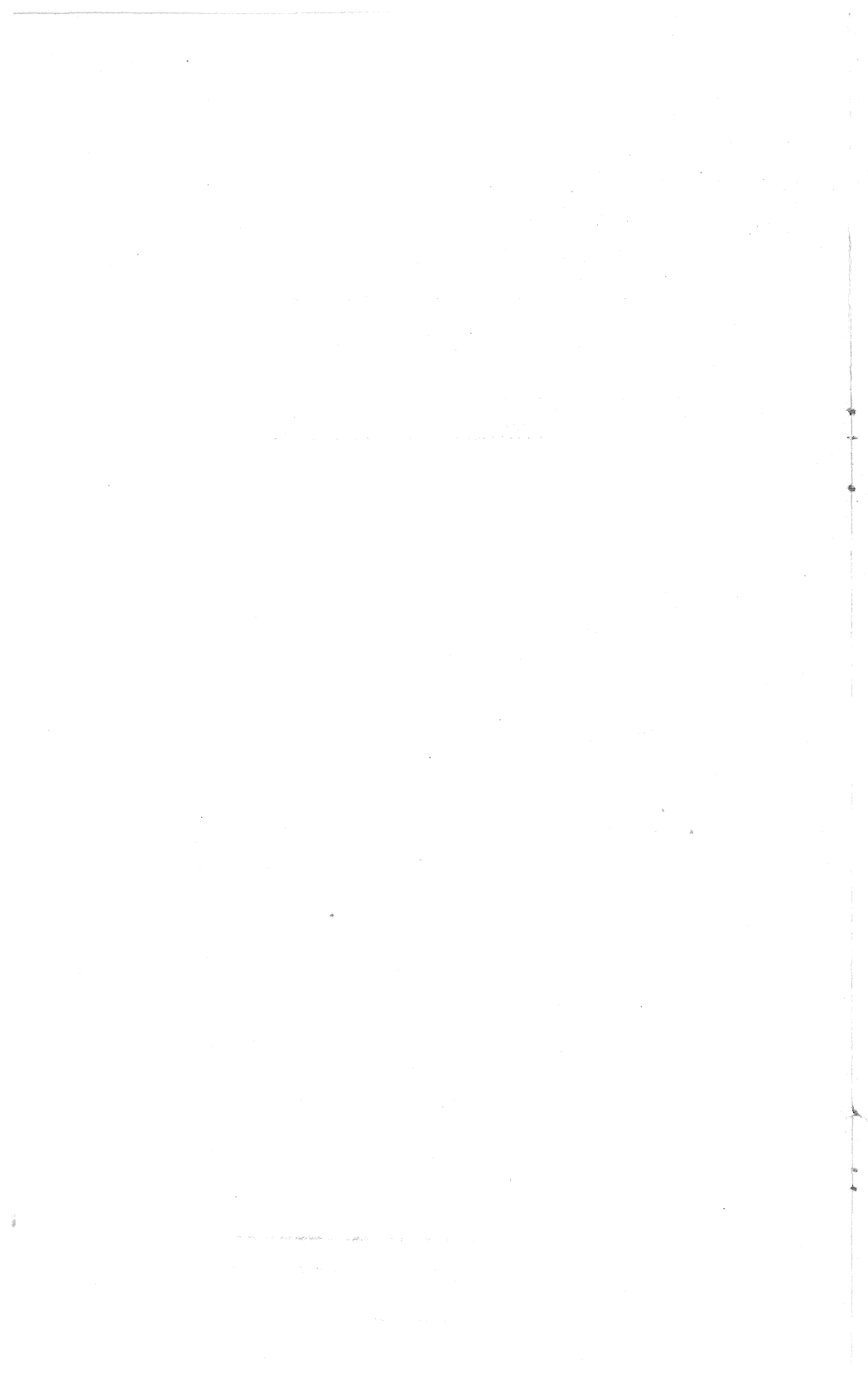
HON. J. R. MARSHALL

MINISTER OF JUSTICE.

A SPEECH TO THE HOUSE OF REPRESENTATIVES

AUGUST 20TH. 1957.





In August, 1954, in an introduction to a pamphlet entitled "A Penal Policy for New Zealand", my predecessor, Sir Clifton Webb, drew the attention of the community to the "serious social problem" that was the consequence of crime and criminals. The policy then laid down has now been in operation for three years and we are ready to review it in the light of that experience.

Crime on the Increase *

I am bound to say, although improvements have been made in the law and in the development of the penal services, crime and criminals are still, as they have always been, a persistent and endemic disease in the body politic. Three years ago, in August 1954, there were 1,112 men in our prisons and borstal institutions; there was no increase in the following year, but in August last year the number had increased to 1,271; it is now 1,420. In addition there are 80 women in our penal institution. This table sets out the position:

	<i>Male</i>	<i>Female</i>	<i>Total</i>
August, 1954	1112	66	1178
August, 1955	1112	29	1141
August, 1956	1271	65	1336
August, 1957	1420	80	1500

This figure of 1,500 in our penal institutions is small by any standards—.007% of our population—but we cannot be unconcerned about any increase in crime.

In addition, at the end of 1954 there were 1,710 probationers under the supervision of probation officers. At the end of 1955 this figure had risen to 1,850, and at the end of 1956 it was 2,145.

Causes of the Increase

It would be comforting to believe that this increase was due only to the longer sentences of borstal and corrective training and preventive detention which the Courts can now impose, or to the increasing population, or to the greater efficiency of the police. These factors have some relevance, but the plain fact is that there has been more crime.

The latest report of the Police Force of New Zealand shows a 13% increase over 1955 in the number of crimes and offences committed.

It is difficult to pin-point the reasons for this increase in offending. While an increase in crime is common to many countries at the present time, it is difficult to understand why there should be so much crime in New Zealand because there are few of the generally accepted material causes of crime to be found in this country. In comparison with other countries there is no serious degree of poverty; there are no slums by European standards; the educational system gives an equal and adequate opportunity for education to all children. There is no occasion for the

melodramatic crime of a father stealing bread to feed his starving children—there are no starving children. We are fortunately little troubled by gang crime, which plagues the big cities of other countries. There is no real reason why our young people should not find satisfying, healthy and lawful activities to occupy their leisure.

The motives for crime are not difficult to state. For crimes against property, such as theft, they are greed, envy, covetousness, sometimes merely a craving for excitement. For crimes against the person such as assault, they are anger, revenge, lust, hatred, spitefulness, sometimes a mixture of several motives.

But while the motives are easy to catalogue, the causes of crime, the circumstances which make an otherwise law abiding citizen break the law, are less easy to determine.

No doubt there are strains in the modern world which require of us an increasingly high degree of stability and judgment. Many young people have had to endure the insecurity of war, and the temptations of over-full employment and high wages. While divorces have been declining steadily since the war, the breaking-up of families by separation and divorce is still sowing the seeds which bring later crops of young criminals. The influence of literature and of films and of other entertainment can be good or it can be bad, but the capacity to take the good and reject the bad is not always developed. It may be that all these influences have tended to lower the standards of some young people and have placed a considerable strain upon others.

I am not one of those who see the forces of Christianity in slow retreat or moral standards in slow decline. I think the Churches today are, on the whole, better supported, more vigorous, more conscious of their mission in the world than they used to be. But their direct influence is still limited to a minority of our people, and their indirect influence in upholding Christian standards of conduct in the community at large is not felt on the criminal fringe of society. It is nevertheless important in the maintenance of the law that our criminal laws should reflect the general moral standards of the community and that the breach of those laws should carry the general condemnation of the community.

In addition to the general causes of crime, there are also local and individual causes. It should be possible to reveal these causes, both general and specific, by a large-scale analysis of the histories, characters and capacities of actual offenders. We cannot reasonably expect to be able to prevent or reduce crime unless we know the causes of crime.

Prevention of Crime

I am not content to see the Department of Justice restricted to the treatment of the causes of crime by dealing only with those men and women who have already offended. We have been looking for ways in

which the officers of the Department can actively prevent crime, and to this end we are prepared to adopt some new ideas.

Treatment of Offenders

We are also prepared to adopt new ideas in the treatment of offenders. It is imperative, in the public interest, that whatever treatment is adopted for offenders it must be that which is most likely to divert them from further offending. We are going to try to introduce new attitudes and services if they will help to this end.

Before dealing with the future, however, I want to tell the House what has been done and what we have found it impossible to do.

The Probation Service

During the past three years I have agreed to a considerable development of the probation service. There has during the past century been no other new form of penal treatment that has proved so effective as the probation method. It has great possibilities for good; it offers an offender an opportunity to regain his position in the community while remaining in the community. It is a restraint, but a constructive restraint. A probationer is required to report regularly; he may be required to live and work in a stated locality; he may be denied the associations which contribute to his offence. It offers the offender the assistance and guidance of the probation officer and it vests in the probation officer the power to return the offender to Court to be further dealt with if he fails to use the opportunity which the Court has given him. It avoids the dangers of imprisonment. Our future policy will be to further develop the probation service to the point where a skilled probation service is available to every court throughout the Dominion, and every offender released on probation is under the supervision of an officer who has the qualifications and the time to give him all the guidance and oversight that he requires.

In supporting this development I have been influenced by penal considerations—that is, the punishment and reform of the offender and the protection of society. I am convinced that the probation service has a vital part to play in the penal field. It is not, however, irrelevant to the overall community interest that probation is by far the cheapest form of continuing penal treatment.

The total cost of the probation service today is about £50,000 a year, and there are about 2,700 offenders under the supervision of probation officers. The annual cost of a probationer to the taxpayer is less than £20 a year. In addition, of course, the offender remains at work in the community and is able to support and maintain his family who might otherwise have to be supported by social security. He also, of course, remains a taxpayer.

The Effect of Increasing Numbers

Many of the steps that have been taken during the past few years to make the work of the prisons and borstals more constructive have been impeded or delayed by the greatly increased number of inmates. For example, there had been a steady movement towards a better classification of the prisons typified in the setting aside of Wi Tako Prison at Trentham for first offenders. Because of the overcrowding of the Invercargill Borstal, Wi Tako Prison has changed its character and is now used partly for first offenders and partly for borstal trainees. Any intention of grading the prison camps has had to be deferred since every place becoming vacant has to be promptly filled in order to relieve the great pressure on the main reception institutions at Auckland, Wellington, and Paparua.

Individual treatment which—so far as it is practicable—has been the aim of the penal administration, has become increasingly difficult as the muster of inmates has risen. The position in Invercargill borstal—where this individual treatment should be most advanced—has been made difficult by overcrowding. We know that the number of young people reaching the age of 17 in this country will increase very rapidly during the next six years. If there is only a proportion increase in the number of offenders in this age group it will be imperative to provide more borstal accommodation. This we propose to do, as I shall explain later.

Progress in Spite of Difficulties

Nevertheless, we have made considerable progress towards a more constructive prisons policy. We are making greater use of trade training as a means of developing skills, of producing a sense of achievement and of restoring or creating self-respect. Through education we are seeking to broaden an inmate's outlook, and to open up for him new interests.

Psychological Services

While I do not believe that all, or indeed most, offenders can be diverted from further offending by professional counselling, I am satisfied from our own experience and the experience of overseas penal administration that the psychological service working with the psychiatric service, has a positive role to play and that whenever possible this service should be made available to any inmate who could profit by it. I have therefore approved of the creation and development of a psychological service in the institutions. There are, or shortly will be, full-time psychologists attached to Auckland, Wellington, Wi Tako and Paparua prisons and to Waikeria, Invercargill and Arohata borstals.

The Chaplains

A more recent, but vital development has been the introduction of the chaplain service. In the past valuable work has been done by the representatives of the various churches who have visited the institutions. There are, however, considerable benefits in placing all Protestant chaplaincy work in the hands of one chaplain for each institution. In this we have had the full support of the National Council of Churches. Today there are two full-time chaplains and every institution—other than the prison camps—has its own part-time Protestant chaplain. I am very pleased with the way in which this service is developing. Roman Catholic priests continue to give services to those of their faith.

Medical Services

There has long been a need to co-ordinate our medical services and to give an overall guidance and leadership to the local medical officers. During the past 12 months I have agreed to the appointment of a part-time Director of Prison Medical Services. His responsibilities are the health, hygiene and diet of the prisoners, and he also has duties in regard to the medical care of the prison and borstal officers. It is still too early to make any worthwhile comment upon this new development, but it is one which will, I believe, make its own contribution to morale and rehabilitation.

Good Foundations Laid

From what I have said it is apparent that there has been a progressive movement in penal affairs. The main task has been to make our methods more effective in the diversion of offenders from further offending. Our success in this field has, frankly, been disappointing because the increase in the number of probationers, borstal trainees, and prisoners has been too rapid to enable us to get ahead of the problem. We are still in the process of "catching-up". I am certain that the measures which we have taken during the past few years have been sound, and that an excellent foundation is being laid on which we can build when we have all the institutions and all the officers we require.

The Building Programme

At the National Penal Centre at Waikeria, a minimum security dormitory is now being built and detailed plans are being prepared for a new cell block. Preliminary plans are being made for the building there of a new borstal for 450 trainees. This borstal will be in three sections of maximum, medium and minimum security.

The prison camps are being extended and secure workshops are to

be built at Paparua. These measures will—when completed—mean an additional 700 beds, or about a 50% increase on our present accommodation. That should be adequate for many years, although the crime rate is difficult to forecast and further buildings may be necessary.

Preventive Measures

Many of the causes of crime are to be found in conditions and circumstances which do not generally come within the sphere of the Justice Department. In the past the Department has only been concerned with those who have already committed their offence. There is, however, within the normal sphere of influence of my officers, an opportunity for preventive work and if we can help to prevent crime, it is clearly better than patching up after the damage has been done.

Research on the Causes of Crime

I am not satisfied with the research that is at present being undertaken in the fields of delinquency and crime. It is quite inadequate. It is only in the last few years that any attempt has been made to collect information in the Justice Department about those men and women who come under our control and supervision. This information is useful in that it helps to show trends, but it is not adequate and it is not of sufficient accuracy to justify the drawing of any specific conclusions.

I do not think that this country can afford to continue in ignorance about the causes of crime. There must be an exact knowledge enabling appropriate action to be taken. I have decided that a research unit must be established in the Department of Justice. I have invited my colleagues, the Minister for the Welfare of Women and Children, the Minister of Education and the Minister of Police, to join in this project by making the knowledge and resources of their Departments available to this unit. They have readily agreed to do so.

Matrimonial Conciliation

Such knowledge as we have of offenders shows the disturbing frequency with which broken homes feature in the offenders' social history. To prevent the breaking up of homes, if we can help to achieve it, would be a worthwhile contribution to crime prevention, apart altogether from the other justifications for matrimonial conciliation.

Another branch of the Justice Department is concerned with this problem when matrimonial cases come before the Courts. Of course, it is better if efforts to prevent the separation of parents begin with the first signs of trouble, but it is also quite apparent from our own experience of administration overseas that matrimonial conciliation can take place even at the stage when one party to the marriage brings his

or her problem to the Courts.

There is already legislation to provide for conciliation to be undertaken through the Courts, but the scheme has never been really effective. We propose to try and make it work. We have in the past used voluntary conciliators and they have had some success but the work has lacked direction and organization. I propose to see that that direction and organization is provided by having an officer of the probation service in charge of this work in the main centres. He will be able to draw upon a panel of voluntary conciliators with some training and experience in the work. He will select the most suitable person or persons to deal with each case. I have sought and secured the co-operation of the Inter-Church Council in this project.

Advisers to Parents and Older Teenagers

In the prevention of crime I hope that there will be an extension of the voluntary work undertaken by Probation Officers. These officers have no authority at all to interfere in the lives of law-abiding citizens; their authority does not begin until a man or woman has been found guilty of an offence. But before a case reaches that stage, before an offence has been committed but where tendencies towards offending are becoming apparent, the advice of the Probation Officer could be invaluable. I am particularly concerned that parents should feel free to ask the advice or obtain the assistance of the probation service if they are having difficulty with their older children. I want it to be widely known that the probation service can and will help in this constructive way.

In these three ways—by an intensive research programme into the causes of crime in this country, by the further development of matrimonial conciliation, by the increased use of the probation service for voluntary work among the 17-21 year old age group, I believe that the Department of Justice can enter more fully into the field of crime prevention. There is nothing very radical in the three steps which I propose but each could have—and I hope will have—very far-reaching effects.

The Family in Crime Prevention

These steps are an approach to the problem through the family. It is unusual to find persistent crime in a closely-knit family in which the relationships between all members are happy. By helping parents to overcome problems which are tending to split the family we would be lessening the chances of the children coming into conflict with the law. By helping parents who are finding it difficult to handle their children we may be able to avoid the situation in which the children break away from their parents' influence and find themselves in circum-

stances which lead to offending. This preventive work is undertaken primarily by the Child Welfare Division, but there is need for it to be continued beyond the age at which the Child Welfare Officers cease to have statutory responsibility.

Protecting the Community

By the increased emphasis upon preventive work I hope to be able to add to the degree of protection that the community has from crime. It is, however, in the diversion of convicted offenders from further offending that the Department of Justice is best able to give the community this protection.

Crime Among Maoris

Before dealing with the general treatment of offenders, I want to refer to the concern that I feel at the high incidence of crime among the Maori people. I do not want at this stage to elaborate upon this problem because it is too easy to be misled by simple statistics and I am not yet in a position to give a fully authenticated picture of the whole problem. It is clear that the incidence of crime among Maoris is far greater than could be warranted by the numbers of Maori people: it also seems to be increasing. It is essential that this problem should receive very careful consideration and that some constructive approach should be made towards its resolution. I have therefore set up an inter-departmental committee to look at this whole problem, and I hope that as a result of discussion and survey it will be possible to assess the position accurately and to find ways of preventing much of this offending.

Imprisonment for Serious Crime

Imprisonment is and will, I believe, remain the punishment for serious crime and serious criminals. While the fear of being caught and publicly dealt with is the great deterrent for most people, the disgrace of imprisonment is for many an effective deterrent. It also provides, during the period of detention, protection to the public. It gives opportunities for training which can, in some cases, lead to reform and rehabilitation of the criminal.

Limitations of Imprisonment

But with a few exceptions, imprisonment is not, I believe, a good punishment for minor offences and for many first offenders. The short term of imprisonment—a few weeks to a few months—is as a general

rule expensive and ineffective. There are exceptions to this rule and short terms of imprisonment for drunken driving is one.

It is exceedingly difficult to determine whether or not imprisonment will deter offenders from further offending or whether it will not make further offending more probable.

I have already stated publicly that in my view the penalties for sexual offenders should be increased, but because the punishment and detention of sexual offenders creates certain problems which I do not wish to link with the consideration of a general penal programme, I propose to deal with the subject separately in a later statement.

Imprisonment is a greater punishment for some than for others. For the man with a family, for the respected citizen great or small for the man who depends for his livelihood on a good name, imprisonment in any form and for any period can be a serious penalty. For the ne'er-do-well, the rolling stone, the larrikin and the hardened criminal, it has less terror and, for a short term, no terror at all. A fine can sometimes hurt them more.

The decision whether to imprison or fine or admit to probation or to impose other penalties where they are available, and if to imprison, then the type and term of imprisonment, is for the Court to decide with a full knowledge of the circumstances and with the probation officer's report. In the application of a penal policy the Courts are guided by the legislature in the penalties provided and by their own knowledge and experience in their application.

Alcoholics Not for Prison

There are certain offenders who should not be in prison. The first and most obvious of these offenders are alcoholics. Seventy years ago the penal administrators of this country were propounding the theory that alcoholism was a medical and not a penal problem; yet we still imprison these men and women. Last year I called a conference to discuss how best to deal with the alcoholics. The conference was attended by representatives of the Department of Justice and the Department of Health, the Magistracy and the Police, the Salvation Army, the National Society on Alcoholism, and Alcoholics Anonymous. There was total agreement on the need to tackle this problem from the medical angle and in fact clinics for the treatment of alcoholics are being established in Auckland, Wellington and Dunedin Public Hospitals. Alcoholism brings some people into the Courts directly for drunkenness, but its effects are more far-reaching than this. It is the prime cause of a great number of the offences committed each year, and through the unhappiness that it brings into the homes it is the indirect cause of a great number of other offences. This new approach to alcoholism tends to remove it from the penal field, but wherever the penal administration can assist towards the prevention or cure of

alcoholism its support can be relied upon. In this context I should mention that regular meetings of Alcoholics Anonymous are held in some of the prisons.

Borderline Mental Defectives Not for Prison

The second group of offenders who should not be in prison are those who can be classified as borderline mental defectives. They are not certifiable but they are nevertheless barely able to assimilate the most elementary training that can be given in a penal institution. They require a skilled medical supervision and training which we are unable to give within any of our existing institutions. I do not know the total number of inmates who would fall into this group, but some idea of the problem may be given by informing you that it is calculated that 17% of borstal trainees are intellectually deficient. This does not mean to say that they are unable to perform simple tasks, but they find great difficulty in responding to the demands of community living. It must at present be expected that they will contribute a very high percentage of the recidivists, that is the continuing offender. Some of them must be kept under close supervision since they are potentially dangerous and there can be little doubt that they will need to be detained in an ordinary prison or borstal. At present it is not possible—on account of the high muster—to set aside an institution for this purpose, but so soon as it is practicable I propose to give particular attention to the problem that this group poses and to invite the Mental Hygiene Division to join us in undertaking a more constructive form of penal treatment.

First Offenders Not for Prison

I am also concerned at the number of young people and first offenders who are detained in prison pending trial or who are remanded for sentence. It is not possible for the prison superintendents to keep these offenders entirely separated from the more experienced prisoners. There is the possibility of contamination, but even more important is the fact that it results in an acquaintanceship with prison. This familiarity with prisons is particularly undesirable because so often the young or first offender is not finally sent to prison or borstal; he may be fined or released on probation. In many other countries this problem causes no particular difficulty. The size of the population and the number of offenders justifies the building of remand centres where these novice offenders may be detained, or remanded in custody in those cases where bail is impracticable. I would very much like to be able to establish similar centres in New Zealand and I propose to examine the possibility of establishing small remand centres in the major cities. The centres could cater not only for the remand cases but also for such offenders as maintenance defaulters and ship deserters—men who rarely

have a criminal background. It would of course lie with the Courts to determine whether any individual offender should be held in prison or in a remand centre.

I do not think that the removal of the alcoholic and the borderline defective from existing penal institutions would imperil the community. It may be necessary to hold some of them in conditions of maximum security, but the absence of any penal emphasis in treatment would not be significant. Deterrence to alcoholics and to most of the intellectually defective is meaningless for they are unable adequately to estimate the consequences of their actions.

Together with this effort to remove from our institutions those who require different treatment and training, I propose—as I have already mentioned—to build up the probation service so that all the Courts may have the use of a skilled alternative form of treatment to imprisonment.

Fresh Approach to Imprisonment

I have said that imprisonment is the proper punishment for serious crime and serious criminals. But we must not fall into the easy practice of imposing imprisonment unless it is the most effective punishment. We must be prepared to make a fresh approach to the problem. We begin by saying that crime must be punished and punished in such a way that it satisfies our sense of justice. We must then have regard to the offender. If he is the kind of offender against whom the community must be protected he must be imprisoned for such term as is just. If there is not a serious risk to the community we must consider whether some punishment other than imprisonment will be a better punishment both as a deterrent and as a reforming process. We believe that there may be more cases than we at present concede where an alternative to imprisonment may be a better punishment.

Because we want to reduce crime we hope that the number of offenders sentenced to imprisonment can be reduced to the minimum compatible with the conditions I have just mentioned. In expressing this hope I am not considering the well-being of the offender. There are first offenders in prison today of whom one can say with near certainty that they will never offend again. They are in prison only because their offence seems to require that form of punishment—the distaste of the community for the offence has to be expressed and other potential offenders must be deterred. This argument should be reconsidered in the light of the true social advantage, and in the light of alternative punishments. Many cases could, I believe, be effectively dealt with by leaving the offender in the community to repay the damage that he has done. By imprisoning these first offenders society is not only hurting the offender, it is hurting the family and is also hurting itself. A strong case is required to justify the first imprisonment of an offender.

The Role of the Prison

With this preventive work, with this development of probation as an alternative to custody, with this removal of special groups of inmates and a reconsideration of the use of imprisonment, we can reduce the role of the prisons and borstals to the detention and training of those who are too dangerous or too persistent in their offending to be allowed to remain within the community; of those who require training away from the community if they are to become adequate and law-abiding citizens; and of those who require brief but firm discipline. For this latter group I am still keen to establish a detention centre and, with the co-operation of my colleague, the Minister of Defence, a disused Army Detention Centre is to be made available and I hope that this may make possible the establishment of the detention centre.

The Treatment of Prisoners

To make the period of imprisonment, where it is imposed, as effective as possible, we must continue along the lines which have been laid down during the past few years. To an increasing extent we must seek ways of getting closer to the offender as an individual, to understand his problems and to endeavour to help him to overcome them. Even if we fail in this, the knowledge that we gain should help us to prevent others becoming criminals. So long as the period of imprisonment remains an impersonal punishment, so long will the prisoner leave prison unchanged or even less able to face up to the requirements of a law-abiding citizen. We should try to reduce our prison population, instead of perpetuating our present practice whereby all sorts and conditions of men requiring diverse forms of treatment find themselves in our penal institutions. We must create a balanced programme of work, discipline, instruction, and guidance so that—in the words of the Gladstone Committee of 1895, we “turn them out of prison better men and women, both physically and morally, than when they came in.”

Parole Pre-release Treatment

The transition from imprisonment to liberty on release is still too abrupt. After months or years in a sheltered community in which the prisoner is away from normal community living, it is in some cases too great an upheaval suddenly to return him to the community. Our policy for the future will be to use more freely the provisions of the Penal Institution Act 1954 which permits an inmate to be released on parole for a few days prior to his eventual discharge. I am confident that this was a wise provision and that it can be used as a means of preventing early recidivism by enabling a prisoner gradually to re-establish his position in the family and to arrange for his employment on release.

The Unofficial Trend

On his release a long-term inmate comes under the supervision of a probation officer. This is a statutory provision and it ensures that the prisoner is subject to control and to guidance during the difficult period in which he is endeavouring to re-establish himself. In many cases however there is need for an "unofficial friend"—a man or woman who has no authority, who cannot instruct or command, but who can assist in ways not available to a probation officer. This unofficial relationship can start long before a man's release, in fact if it is to be effective it is essential that it should start earlier. I have been impressed by the value of the work that is being done by some of the Prisoners' Aid Societies. They visit the men in prison, they help the families of prisoners to overcome their difficulties and to maintain their faith in the future, they welcome the man back into the community on his release. Our policy for the future is to encourage these societies to a greater degree and to subsidise them to the extent of the resources we have according to the competence of the work they are doing. I would like to see all these societies federated into a single Dominion association for they would then be able to assist in many fields which are at present closed to them. I am, in this context, particularly concerned at the fact that it is inevitable that prisoners should be sent to institutions which are far from their home districts. This means that in many cases they will be entirely separated from their families for years. This is neither humane nor good penal practice; in many cases it imperils the marriage and encourages the loss of perhaps the one stabilising factor in the prisoner's life. The administration of any scheme to overcome this problem might well devolve upon a Dominion association of Prisoners' Aid Societies.

No Simple Answer to Crime

The days of seeking simple answers to crime are over. It is apparent that there is no one cause and that there is no one answer. Crime embraces all the manifold complications of human behaviour in a social setting and we will not be able effectively to prevent or cure crime unless we know more about the problems and weaknesses of men and women in our own community. Crime is a community problem. The task before us is not easy but working together we can and must succeed. We are approaching the problem in the right way, we have made a good beginning for successful penal work, but now we must be prepared to break new ground. Future generations may forgive us for our ignorance but they will not forgive us if we fail to follow the light which we now see.