

PRISON LIFE IN ÉIRE AND THE ENGLISH CRIMINAL
JUSTICE ACT, 1948.

By the RT. HON. SIR THOMAS MOLONY, BART.

(Read before the Society on Wednesday, February 9th, 1949)

In 1827 Elizabeth Fry enunciated a great axiom to an unbelieving public " Punishment is not for revenge but to lessen crime and reform the criminal " The belief in this axiom grew slowly but gained more important exponents as time went on and it fell to a great great nephew of Elizabeth Fry, Sir Samuel Hoare (now Lord Templewood) to give full scope to it in the Criminal Justice Bill which as Home Secretary he presented to Parliament on November 10th, 1938

Sir Samuel in his New Year's message to his constituents in 1938 said that in considering the measure he intended to introduce into Parliament he had three great objectives

First, to keep the young out of prison, secondly, to develop the reforming side of prison life, thirdly, to have a better system of protecting the persistent offender from himself and for protecting society from the hardened offender

The Bill met with a formidable reception In Committee certain differences appeared, not affecting the general structure, but before the report stage had been reached hostilities had commenced and the further consideration was postponed until Britain again enjoyed the blessings of peace More time elapsed than had been dreamt of before peace came, but at last after ten years Mr Chuter Ede, the Home Secretary, re-introduced the measure with such modifications only as the passage of time and the impact of war had rendered necessary

The Bill was well received and, after a full but in the main friendly discussion in both Houses, received the Royal Assent on the 30th July, 1948

In 1940 (March 12th) I wrote a paper for the Society on the subject of Sir Samuel Hoare's Bill which I called " New Methods for Offenders ", and just as Mr Chuter Ede's Bill was to a great extent a replica of Sir Samuel Hoare's, so to a somewhat similar extent this paper must traverse the same ground as my paper ten years ago

The first objective was to keep the young out of prison In Ireland this was left more to the instinctive good sense and charity of the Justices than to positive enactment, while in England the statute itself (Criminal Justice Act) laid down positive rules which had to be obeyed A child, that is, a person under 14, cannot be sent to prison, a young person under 15 cannot be sent to prison, a young person over 15 and under 17 cannot be sent to prison by a Summary Court, and persons over 15 and under 21 cannot be sent to prison by any Court unless the Court is satisfied there is no other appropriate way of dealing with them Quarter Sessions must state reason if they do

impose imprisonment and Summary Courts must not only state reasons but must specify it on the Commitment Warrant and in the Register.

We next come to the second objective, to develop the reforming side of prison life. Before coming to this, obsolete or unnecessary processes and distinctions were cut away

- (a) Corporal punishment
- (b) Penal servitude
- (c) Imprisonment with hard labour
- (d) Classification of prisoners in 1st, 2nd and 3rd divisions

We are now reduced to a simple sentence of imprisonment by Judge, and the classification of the prisoner, the nature of his work, and the terms of his employment are all left to the prison authorities. In practice the tendency had in Ireland been all in this direction, and for quite a long time past all prisoners whether sentenced to hard labour or ordinary imprisonment have been employed on such labour as they are best fitted to carry out having regard to their skill and physical ability (See *Annual Report on Prisons for 1946*, p. 7)

The reform of prisons has long been a subject of interest in Ireland and when John Howard came to Ireland and found many abuses to contend with and many scandals to expose, he met with a cordial and sympathetic hearing in Trinity College, and the Provost and Senior Fellows by a private Grace of the House conferred on him the honorary degree of doctor of laws (LL.D.) on May 31st, 1732, and so Trinity can claim to have been foremost in the fight for prison reform more than a century and a half ago.

When I was Attorney-General 36 years ago I found that, although the "crank" and "tread mill" had disappeared, hard labour consisted of oakum picking (by hand), making heavy coal sacks and other forms of heavy industrial labour. There was little intercourse with the outer world, few visits were allowed and when a convict had served his sentence he was thrust back into the world without any knowledge of what had been happening in his enforced absence. One can understand what Fitzharris, one of the prisoners in the Phoenix Park trials, said on emerging after 14 years' solitude, that what astonished him most was to see trams running without horses and women on bicycles. One of the minor reforms associated with my term of office was to allow and indeed encourage prisoners to read, or at least to look at the pictures in the *Illustrated London News* during the last six months of their time and become acquainted with what was happening outside. Another consisted of allowing old convicts sentenced to preventive detention to earn a small sum of 1/6 a week and to spend it on simple luxuries such as jam and biscuits. Well; these were slight ameliorations of a hard lot, but they represented the beginning of progress. It was soon realised that there was no limit to the march of progress, the end of the journey is ever beyond. I think too little attention has been paid to the improvement in prison conditions in Ireland, and too little credit given to the men and women, prison officers and staff, visiting committees and clergy of all denominations, who with self-sacrificing zeal have worked to improve the lot of the prisoners, to give them hope for the future, no matter what may have been their errors in the past, and to enable

them to realise that in their efforts to reform they will meet with sympathy and understanding and never want a helping hand. Indeed, sometimes one hears of the excessive leniency of to-day, but would anyone who considers the problems like to go back to the prison conditions of 30 or even 20 years ago

Let me for a moment recall to your minds the improvements which have been made in prison conditions during the past 20 years as noted in the *Annual Report on Prisons for 1946*, page 9. The following are examples

- (a) The practice which required prisoners sentenced to hard labour to sleep without a mattress for the first 14 days of sentence was abolished in 1927. No prisoner is now deprived of a mattress either as a punishment or by reason of the nature of his sentence. Generally there is now no difference between the treatment of prisoners sentenced to hard labour and those sentenced to imprisonment. All prisoners are employed on such labour as they are best fitted to carry out, having regard to their skill and physical ability.
- (b) Plank beds were abolished in 1928 and were replaced by ordinary spring beds.
- (c) The practice requiring prisoners sentenced to penal servitude to spend the first months of their sentence in separate confinement was abolished in 1934.
- (d) In 1940 it was decided that on ordinary week days prisoners should be allowed to associate for recreation from 5.30 to 7.30 p.m. (during which hours they had previously been locked in their cells) and should be given a light meal before returning for the night.
- (e) In July, 1945, the early lock up on Sundays and Holydays was abolished. Prisoners on these days are now unlocked for practically the entire day from 7 a.m. to 7.30 p.m.
- (f) In January, 1946, the regulations as to visits and letters were revised on more liberal scales.
- (g) In August, 1946, the period during which lights could be allowed in cells was extended from 8.30 p.m. to 10 p.m.
- (h) In June, 1947, smoking by long-term prisoners was allowed in Portlaoighis Prison. The clothing of such prisoners was also improved by the issue of suits, of similar cloth and of a similar pattern to those worn by civilians, for wear during the evening recreation period and on Sundays and Holydays.

In addition to the foregoing, the practice of permitting all prisoners to receive parcels containing fruit, sweets and other small luxuries was introduced at Christmas, 1946.

At Portlaoighis Prison there is a farm of about 35 acres attached to the prison, the prisoners are allowed to smoke, they are provided with special clothing to be worn outside working hours, they are not locked in their cells for the night until about 8 p.m., lights remain on in the cells until 10 p.m., ample recreational facilities, including a ball alley, radio and games are provided, and any prisoners who so desire are afforded facilities for study. There is also a very well stocked library.

A century ago prisons were looked on as dens of infamy and now they may be regarded as hives of industry, but this result has not been achieved without much thought and patient labour. Many of the prisoners have no knowledge of any but the simplest work and many prior to committal have never been in any employment. The authorities are able to utilise fully the labour of those committed and there is no dearth of suitable work. In 1946-1947 the gross receipts from the sale of farm and garden produce and from pig feeding amounted to £1,268 as compared with £1,561 in 1945-1946, while the principal indoor employments naturally reduced the cost of living. For instance, bagmaking, matmaking and wood cutting was carried on for Government services. Tailoring and needlework, laundry work and shoe making for prisoners and officers were all done by prison labour, and cloth was woven and bread baked at Mountjoy.

I think if John Howard and Elizabeth Fry could revisit the scenes of their labours on earth they would come to the conclusion that Ireland had responded nobly to their behests and had kept well abreast in the march of progress.

It would not be right in a paper read before the Statistical Society if I did not touch on our prison statistics and, judging by the figures given in the Report for 1946 (the Report for 1947 has not yet appeared), I am able to present them in a somewhat favourable light. The result of living under reasonably good conditions is shown in the health of the prisoners, which was generally excellent. In 12 cases release was ordered on medical grounds, but in 11 of the 12 the diseases which necessitated the prisoners being discharged originated prior to the committal. Three deaths occurred and one of them was caused by hunger when on hunger strike. This would be too simple an explanation of a simple fact, so the death was officially entered as due to "cardiac failure resulting from inanition and dehydration following break of food and fluid intake" (Report, p. 30.) The prison population rose sharply from 545 in 1941 to 740 in 1943. The number has since been falling, and in 1946 was 643. The total number committed on conviction rose in much the same proportion, 2,129 in 1941 to 2,546 in 1943, and fell in 1946 to 2,483, but it is in the nature of the crimes the greater change is seen. Of all prison sentences imposed in 1946 60.4 per cent were for under 3 months, which leads one to believe that drink was the principal cause of these lapses, while there was a steady, but very remarkable decrease in the number of really serious crimes. This will be apparent in the decrease in the sentences of penal servitude, which in the last six years steadily decreased. The figures are worth noting. In 1941, 70, 1942, 58, 1943, 54, 1944, 43; 1945, 30, 1946, 17, a reduction which leads one to think that whatever may be the defects in our prison system remaining to be cured, the improvement in the condition of our people is remarkable and great credit is due to the social and charitable work which is done in our midst. This is shown also in the small number of inmates, 40, in our one Borstal Institution in 1946, and even that number was an increase in the numbers in some previous years. In this connection I think all the figures show that one of the best ways of preventing or diminishing juvenile crime is abstinence from intoxicating drink, and any efforts made to induce young people to abstain from intoxicants, at least until they attain 21, deserves the encouragement of parents, teachers and, indeed, all who are interested in the welfare of youth.

I now come to Sir Samuel Hoare's third objective, to have a better system of protecting the persistent offender from himself and for protecting society from the hardened offender. This is carried out in the Criminal Justice Act by the provisions made for (1) corrective training and (2) preventive detention.

Corrective training is restricted to persons not less than 21 at the time of conviction who have been convicted on indictment of an offence punishable with at least two-years' imprisonment, and had been previously convicted since the age of 17 of such an offence at least twice. This means that after three convictions a person may get not less than two nor more than four years, as the Court may determine.

Preventive detention is limited to persons not less than 30 years who have been convicted of an offence punishable with at least two years' imprisonment and had been previously convicted since the age of 17 at least three times and sentenced at least twice to Borstal imprisonment or corrective training. The time of preventive detention must not be less than 5 years or more than 14, as the Court may determine. The main object of preventive detention is the protection of society.

Corrective training is new, and found its origin in an experiment in Wakefield Jail which I had an opportunity of enquiring into more than 20 years ago. Preventive detention has never been popular with judges. There is not and has not been for a considerable time any person sentenced to preventive detention in Éire, and the necessity for such a sentence has never been felt.

The other methods covered by the Act (1) Borstal training, (2) Detention in a Detention Centre, (3) Remand Homes, (4) Attendance Centre, are all useful in their way, but, apart from Borstal, have not received much attention. There is no detention centre or attendance centre operating in England or Éire, and we must have some experience of their working before we express any opinion on their usefulness.

There is, however, one branch of philanthropic effort in which we have made no progress, that is in providing legal aid to poor persons. Much has been done in England in recent years, a great deal was done in Scotland 500 years ago. In a paper which I read before the Society on 4th February, 1931, I traced the history of legal aid which found its first practical solution in the Act of the Parliament of Scotland in 1424, and I drew attention to the valuable work done in England by the Society of Our Lady of Good Counsel and the Bentham Society, in addition to the aid provided by statute. I concluded the paper with the following words: "In bringing under your notice the present position of legal aid to poor persons in England I am not in any way forgetting the amount of charitable work which has always been done by both branches of the legal profession in Ireland. In my experience, they have never failed to respond to any reasonable claim which has been brought to their notice, but there is no organisation and no statute, and the question arises whether the time has not now come when there should be one or both."

Well, after the lapse of 18 years, I ask the same question, and I hope I may find it answered before I pass away.

There are four matters on which I would like to indicate my views and have them to be considered in the discussion which I hope will follow this paper —

(1) *Probation.* Probation outside the City of Dublin does not seem to have been used to any considerable extent. Outside the city there

was not to be found a single whole-time officer in 1940, and I have not heard of any appointment since. This is a pity, because I agree with Lord Hewart in his Clarke Hall lecture in 1935 "The probation system derives its value from the probation service. If the officer has the genius of guide, philosopher and friend, the system succeeds. Rightly used, probation can save thousands of offenders every year from a repetition of their crime."

(2) *Juries* It seems the fashion in some quarters to decry the value of the jury system, but I am a profound believer in it. In *Crocker v Crocker*, which, as some of you may remember, was an action to establish the will of Richard Crocker (usually referred to as Boss Crocker), and which lasted from May 31 to June 15th, 1923, I concluded my charge to the jury with the following words "I have never felt more grateful to a jury for giving me and giving the various witnesses their undivided attention and taking an active interest in the presentation of the case, and doing everything to justify the retention, if not the expansion, of the jury system as being—as I have always believed it to be—one of the best handmaids of justice and one of the greatest institutions our forefathers have handed down to us."

(3) *Whipping* The Criminal Justice Act describes whipping as a judicial punishment in England and Wales, but it remains in force for certain cases. The desirability of its retention has been and still is the subject of controversy. In the Home Office Committee on young offenders, over which I presided, in 1925, its retention was approved by 9 votes to 3, and having read the reports of various committees which have since considered the question, I see no reason to depart from the decision we arrived at after much consideration and prolonged discussion. In the Report we said "We deprecate strongly any indiscriminate use of whipping. To the boy who is nervously unstable or mentally unbalanced the whipping may do more harm than good. The mischievous boy, on the other hand, who has often been cuffed at home, will make light of the matter and even pose as a hero to his companions. We believe that there are cases in which whipping is the most salutary method of dealing with the offender, but as so much depends on the character and home circumstances of the boy concerned, whipping should not be ordered by a court without consideration of these factors and especially without some enquiry whether corporal punishment has been applied already, and, if so, with what result. In all cases there should be a medical examination. The law provides that the parent or guardian should have a right to be present when the punishment is administered. If, as we recommend, whipping is retained, we see no reason why it should be limited to certain offences. Cruelty to animals or wanton acts endangering the lives of others ought not to be excluded, but the character of the individual rather than the nature of the offence must be considered. Nor do we see any adequate grounds for discriminating between boys under 14 and those between 14 and 17. Subject to the safeguards suggested above, we think it would be right to give the courts a discretion to order a whipping in respect of any serious offence committed by a boy under 17, but whipping should not be associated with any other form of treatment."

(4) *The Death Penalty* I am in favour of the retention of the death penalty, with all the safeguards which surround it at present. In 1921 there were no Assizes held in the country for reasons which I

need not discuss, and in 1922 it fell to my lot to deal with the accumulation of crime from all parts of the country at the Commission Court in Green Street. The country had been in a very lawless state. I had, with many other cases, 18 cases of murder to try. In some the jury properly returned a verdict of manslaughter, but in 7 distinct cases returned verdicts of murder, and I sentenced each of the prisoners to death, as I was bound to do. In two of the cases I recommended a reprieve and in one I said that while I could find no logical reason for a reprieve I would not be adverse to the Minister giving an extreme example of mercy, which he did. In four cases the prisoners were hanged, and at the conclusion of the trials, which had lasted five weeks, I addressed the jury in the last case in the following words, which after the lapse of 26 years I fully endorse. "I desire before parting with you to thank all the juries, not only for their attendance but in an especial manner to commend you for the manner in which you have performed the very difficult and onerous task cast upon you at this Commission. I know that I have had to make demands upon your time and attention such as no other judge has had to do within living memory. You have honestly and faithfully done your duty, and by your unflinching courage and determination to see that justice is done, you have rendered a great public service, have done much to restore order and security and made the whole country your debtor." This was my tribute to the juries of the City of Dublin, and that it was well deserved is shown by the era of peace and order which came after it and in which I closed my judicial life. In 1924 the title of Lord Chief Justice of Ireland, that is, *all* Ireland, which had been created by King John in 1209, was abolished by Act of Parliament, and I retired into private life, cheered by the goodwill of my brethren of the Bar, who presented me with three silver cups as a tribute of "affectionate esteem", and of my friends of the solicitor profession, who presented me with my portrait painted by Sir William Orpen, and of my much esteemed court officials, who presented me with a replica of the Ardagh Chalice, for all of which gifts I was and ever will be profoundly grateful.

DISCUSSION.

MR. JUSTICE KINGSMILL MOORE, in proposing a vote of thanks, paid a tribute to Sir Thomas as man and as judge.

Though he himself could not claim the long external knowledge of prisons which Sir Thomas possessed, or the intimate internal experience of which so many Irishmen were able to boast, he had given some thought to the problems of punishment and had tried to acquaint himself with the conditions to be found in Irish prisons. Those conditions were, on the whole, very satisfactory. Hard labour, in the old sense, had ceased to exist. In Mountjoy weaving was the task which involved most physical exertion. Food was more than adequate in quantity and of good quality, though lacking in variety and monotonously cooked. The old exercise rings, when prisoners circled in silence, were a thing of the past and now exercise was taken in small casual groups among whom conversation was allowed. Some handball courts had been built and more were building. In the evenings there

was a period of indoor communal recreation. The old prison garb, depressing in colour and texture, was being replaced by normal clothes. One of the latest and most important reforms was the provision of cigarettes and sweets. Those little luxuries were a token to the prisoners that they were not regarded as mere outcasts.

There was need for reform. The prison libraries were lamentable, congested with books that no living man was likely to read with enjoyment. Visiting psycho-therapists were needed, for English experience had shown that a small but appreciable proportion of prisoners could really be helped by psycho-therapy. A scheme of adult education with the aid of first-class lectures and cinematograph films was an experiment worth trying. Unfortunately—or fortunately—the small number of prisoners in Ireland did not permit the erection of separate prisons for separate classes of offenders or the institution of exceptional forms of treatment. Yet something might be attempted on those lines. The operation of the Criminal Law Amendment Act had involved the imprisonment of a number of vigorous young country lads whose fault was heedlessness and impetuosity rather than any definite criminal tendency. Special arrangements should be made for this class of offender if it was considered necessary to imprison him.

It was vitally important to secure the very best type of warder. Cheerful, kindly, sympathetic, efficient and incorruptible warders were the most powerful of reforming influences, for they provided a practical proof that decent living could be both agreeable and attractive. The standard of education among warders could be raised and there was urgent need of a special course of training such as was provided at the Wakefield Training College. It should be possible to staff the prisons with warders who, while maintaining discipline and order, would come to be looked on by the prisoners as friends rather than enemies.

MR LYON. It gives me great pleasure to second the vote of thanks to Sir Thomas Moloney for the paper which he has just read. Less than two months ago when in London I met Sir Thomas, and through his good influences I also met Sir Leslie Harris, late of the British Home Office, who secured me introductions to the governors of two prisons in the London area, viz, Holloway Gaol (female) and Pentonville Gaol (males). My visits to each of these places were most instructive, and I would recommend any members of our Society who can do so to visit gaols occasionally, not, however, as delinquents, to see for themselves the type of prisoner and the conditions under which they pass the time of their sentence of imprisonment. The principal feature that struck me in the London prisons was that the first offenders are at all times kept apart from the ordinary inmates or regulars who were second or more frequent offenders and had previously served some time in prison. First offenders wear a distinct mark in the form of a red star on the arms of their grey coats. They are housed in a separate wing in the building. When at work they are screened from the regulars, though doing their task in the same workshop. I was very much impressed with the type of person who fills the position of governor. The lady governor at Holloway had previously been the medical doctor to the prison, and when she was appointed governor she was only about 30 years of age. Though discipline and efficiency were quite apparent in her character, there was undoubtedly a good portion of the kindness of human nature radiating from her and through her staff to the

unfortunate beings who were temporarily in her charge. Similarly, in the male prison, the governor explained to me that he interviews each prisoner individually when received in the prison and also, a few days before his time for leaving, he has a talk with the prisoner to encourage him and help him to mend his ways and to warn him against the dangers which he will find lurking at every corner when he again goes out into the world. The living conditions of the prisoners were very much better than I had ever thought possible. Their cells had comfortable beds and were equipped in such a way as one would expect in the cheaper class of hotels, except that perhaps a very much higher degree of cleanliness was evident. In the places where the men worked I happened to be passing through the mat-making section when the workers there were being given the extra money which they had earned for work over and above what is laid down for them by regulation. It was pitiable to see men receiving as little as 11d or 1/2 (1/4 was the maximum) for the extra work they did in the preceding seven days. Immediately they received the money they exchanged it for cigarettes or sweets contained in a box on a nearby table. The general atmosphere was, of course, most depressing.

I passed a remark now and again to one of the inmates on meeting them in corridors, in the cookhouse or in the workshops, and not in a single case did I receive any sort of ordinary human recognition. Perhaps this may have been because I was accompanied by an officer of the gaol, whom they probably regard as their natural enemies. Some of the work on which the men were engaged, such as the picking of oakum, was so terribly monotonous that I wondered the prisoners who were engaged on this work did not suffer from melancholia. These were men who were presumably physically or otherwise unfit for the ordinary work of making mail bags, mats or doing repair work to clothes and boots for the other inmates.

It was further of interest to me to see a table prepared in the kitchen on which were samples of the food which the inmates were to have that day. In each of the prisons the governor every day tastes in the kitchen from what is left on this table some portion of the food.

Sir Thomas asked for observations on the subjects of probation, juries, whipping and capital punishment. As regards probation there would appear to be a good case for dealing leniently with first offenders and I would be in favour of an extension of this policy, but any lasting benefits would be nullified unless there is a sufficiency of probation officers. With reference to juries, I noticed a few evenings ago in one of the Dublin papers that when a judge gave the defendant the choice of being tried by him with a jury or without a jury, he opted without any hesitation for a jury. For certain types of offences committed by hardened criminals (old offenders) the addition of whipping punishment has had, I believe, a deterrent effect on others and should not be abolished. The abolition of the death penalty had not in New Zealand the desired effect. Since the abolition of hanging seven years ago there were 87 verdicts of murder as compared with 54 cases in the seven years before the abolition, and several grand juries and other authorities in the country have recommended that the hanging penalty should be reintroduced.

The paper which we have just heard read to us by Sir Thomas is one of the best which he has contributed to our Society. It is of the same high standard as those which went before, some of which were provocative of legislation. It is a happiness for his colleagues in this

Society to see him enjoying a measure of good health notwithstanding his advancing years and to note that in his retirement he is devoting part of his leisure to helping to improve the lot of his less fortunate fellowmen. Much of that work has been done in connection with many of the Home Office Commissions on which he has sat either as chairman or as ordinary member, and we should feel grateful that he has been able to spare time to prepare a paper for this Society, of which he is an honoured past president. I beg to second the motion of thanks which has been so ably proposed by Mr. Justice Kingsmill Moore.

MR ROWLAND HEALY said Experience as an ex officio visitor of many jails in Burma justifies suggestions that country resembles Ireland, it is agricultural and overshadowed by a great industrial neighbour, it is intensely religious, and it has known "troubles." It is not backward in the administration of criminal justice, it preceded Great Britain in adopting benevolent treatment of juvenile offenders.

The probation method might be more widely used here. In Burma an offender is bound over with two neighbours as sureties, they keep an eye on him and if he relapses withdraw their recognizances. He is then committed to jail. The vigilance of his friends is a guarantee of good conduct, and the method is preferable to short sentences of imprisonment, which are too common in Ireland. In Burma courts were enjoined by the High Court not to pass sentence of four months or less without special reasons, which had to be recorded.

Whipping is fit punishment for brutal crime. Sympathy with misguided criminals does not justify depriving the weak of the protection afforded by the fear of it. Moreover, it is often a more effective corrective than imprisonment, and has not got the contaminating effect of jail. In the same way the public are entitled to the protection afforded by the fear of a death sentence, although it must be remembered that it is not so much severity of punishment as certainty of conviction that is deterrent. I have had to pass many sentences of death and have, therefore, thought it my duty to see sentence executed—as every judge who has to try a man for his life should do. Nevertheless, I think the death sentence is a necessary resource. But it should not be obligatory on a conviction for murder, the judge should have a discretion to impose a lesser sentence if the facts so demand. That discretion is exercised in Burma. The trial judge is more fitted to exercise it than the executive, who do exercise it, in fact, in these islands.